

04-1076-CD

-VS-

DARLENE R BIERLY, et al

Date: 4/9/2008

## Clearfield County Court of Common Pleas

User: LMILLER

Time: 01:49 PM

## ROA Report

Page 1 of 2

Case: 2004-01076-CD

Current Judge: Fredric Joseph Ammerman

Peter W. Frailey vs. Darlene R. Bierly, Penns Valley Livestock Auction, Inc., Noah Hostettler

## Civil Other

| Date      |                                                                                                                                                                                                                                                                                                                                                                                                                                        | Judge                   |
|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 7/15/2004 | ✓ Filing: Civil Complaint Paid by: Woomer, Robert B. Esq (attorney for Frailey, Peter W.) Receipt number: 1882965 Dated: 07/15/2004 Amount: \$85.00 (Check)<br>3 Cert. to Sheifll                                                                                                                                                                                                                                                      | No Judge                |
| 8/2/2004  | ✓ Praecipe for Entry of Appearance, on behalf of Defendants, Darlene R. Bierly and Penns Valley Livestock Auction, Inc., t/d/b/a Penns Valley Livestock Auction, filed by s/James N. Bryant, Esq. No CC                                                                                                                                                                                                                                | No Judge                |
|           | ✓ Preliminary Objections, filed by s/James N. Bryant, Esq. No CC                                                                                                                                                                                                                                                                                                                                                                       | No Judge                |
|           | ✓ Praecipe for Hearing, Re: Preliminary Objections filed by Defendants Darlene R. Bierly and Penns Valley Livestock Auction, Inc., filed by s/James N. Bryant, Esq. No CC                                                                                                                                                                                                                                                              | No Judge                |
| 8/17/2004 | ✓ Sheriff Return, NOW July 22, 2004, Complaint, served on Noah Hostettler, by Deputizing, Joseph Reigle, Jr., Shff of Snyder County.<br>NOW July 21, 2004, Complaint, served on Darlene Bierly, by Deputizing Denny Nau, Shff of Centre County.<br>Now July 26, 2004, Complaint was served on Penns Valley Livestock Auction, Inc., by deputizing the Shff of Centre County. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm | No Judge                |
| 8/18/2004 | ✓ Plaintiff's Motion to Consolidate, filed by s/Robert B. Woomer, Esq. No CC                                                                                                                                                                                                                                                                                                                                                           | No Judge                |
|           | ✓ Praecipe to Request Argument/Hearing, filed by s/Robert B. Woomer, Esq. No CC                                                                                                                                                                                                                                                                                                                                                        | No Judge                |
| 8/23/2004 | ✓ Defendant Harvey J. Miller's Answer to Plaintiff's Motion to Consolidate, Filed by s/Querino R. Torretti, No cc                                                                                                                                                                                                                                                                                                                      | No Judge                |
| 8/25/2004 | Order, AND NOW, this 24th day of August, 2004, it is the Order of the Court that argument on Attorney Bryant's Preliminary Objections has been scheduled for the 22nd day of September, 2004, at 1:30 P.M. in Courtroom No. 1, Clfd. Co. Courthouse. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 5 CC w/Memo Re: Service of Rule to Atty Bryant                                                                            | Fredric Joseph Ammerman |
|           | ✓ Rule To Show Cause, NOW, THIS 24th day of August, 2004, Rule issued upon the Defendants, to show cause why the motion to Consolidate should not be granted. Said Rule Returnable the 22nd day of September, 2004 at 1:30 P.M Courtroom No. 1, Clfd. Co. Courthouse. /s/Fredric J. Ammerman, President Judge. 2CC Atty Woomer w/Memo Re: Service of Rule                                                                              | Fredric Joseph Ammerman |
| 8/30/2004 | ✓ Certificate of Service, copy of Preliminary Objections Order dated August 24, 2004 scheduling an argument on Preliminary Objections by, US Postal Service upon: Robert B. Woomer, Esq., Lori Hackenberg, Esq., and Querino R. Torretti, Esq. Filed by s/James N. Bryant, Esq. No CC.                                                                                                                                                 | Fredric Joseph Ammerman |
| 9/7/2004  | ✓ Amended Complaint in Civil Action, filed by Atty. Woomer no cert. copies.                                                                                                                                                                                                                                                                                                                                                            | Fredric Joseph Ammerman |
|           | ✓ Certificate of Service of Plaintiff's Motion to Consolidate and Rule, filed by Atty. Woomer no cert.                                                                                                                                                                                                                                                                                                                                 | Fredric Joseph Ammerman |
|           | ✓ Answer And New Matter To Plaintiff's Complaint In Civil Action, Notice to Plead, filed by s/Lori Hackenberg, Esq. Certificate of Service, served upon James N. Bryant, Esquire; Querino R. Torretti, Esquire; and Robert B. Woomer, Esquire. No CC                                                                                                                                                                                   | Fredric Joseph Ammerman |
| 9/16/2004 | ✓ Preliminary Objections, filed by s/James N. Bryant, Esq. No CC Certificate of Service, Preliminary Objections, served upon Robert B. Woomer, Esq., Lori Hackenberg, Esq., Querino R. Torretti, Esq.                                                                                                                                                                                                                                  | Fredric Joseph Ammerman |

## Civil Other

| Date      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Judge                   |
|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 9/16/2004 | ✓ Order, AND NOW, this 16th day of September 2004, upon consideration of the foregoing Preliminary Objections, a rule is granted upon the Plaintiff to show cause why such relief should not be granted. Said Rule returnable thereon the 22nd day of September, 2004 at 1:30 p.m., Courtroom No. 1, Clfd Co. Courthouse. BY THE COURT:/s/ Fredric J. Ammerman, President Judge. 4 CC Atty Bryant                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Fredric Joseph Ammerman |
| 9/17/2004 | ✓ Verification of Plaintiff to Amended Complaint in Civil action filed by atty. Woomer No cc.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Fredric Joseph Ammerman |
| 9/20/2004 | ✓ Plaintiff's Reply to New Matter of Defendant Noah Hostetler, filed by s/ Robert B. Woomer, Esquire. No CC. Certificate of Service, upon Querino R. Torretti, Esquire, James N. Bryant, Esquire, Lori Hackenberg, Esquire.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Fredric Joseph Ammerman |
| 9/22/2004 | ✓ Certificate of Service, Order for Hearing on Preliminary Objections was served upon the attorneys listed below on the 20th of Sept. 2004, in the manner indicated:<br>Robert B. Woomer, Esq. by facsimile transmission and first class mail;<br>Lori Hackenberg, Esq. by facsimile transmission and first class mail;<br>Querino R. Torretti, Esq., by first class mail. Filed by s/ Karen S. Rossman, Legal Assistant to James N. Bryant, Esq.                                                                                                                                                                                                                                                                                                                                                                                                                     | Fredric Joseph Ammerman |
| 9/24/2004 | ✓ Order, NOW, this 22nd day of September, 2004, following argument relative the Motion to Consolidate and following argument on the preliminary objections filed on behalf of the Defendants Darlene R. Bierly and Penns Valley Livestock Auction, it is the ORDER of this Court as follows:<br>1. There being no objection to the Plaintiffs' motion to Consolidate, it is therefore the ORDER of this Court that the said Motion be and is hereby granted and the above-captioned case consolidated with no. 04-393-CD;<br>2. Counsel shall have no more than twenty days from this date in which to submit letter brief to the Court relative the Defendant's Preliminary Objections as aforesaid;<br>3. All future filings shall be to case no. 04-393-CD. BY THE COURT /s/ Fredric J. Ammerman, President Judge. 2 CC Attys: Woomer, Bryant, 1 CC Def. Hostetler | Fredric Joseph Ammerman |
|           | CASE CONSOLIDATED: ALL FUTURE FILINGS TO 04-393-CD PER ORDER OF 9/22/04                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Fredric Joseph Ammerman |

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

Plaintiff,

vs.

DARLENE R. BIERLY, PENNS  
VALLEY LIVESTOCK AUCTION,  
INC., a Pennsylvania Corporation t/d/b/a  
Penns Valley Livestock Auction; and  
NOAH HOSTETLER,

Defendants.

CIVIL DIVISION

Docket No. : 04-1076-CD

**COMPLAINT IN CIVIL ACTION**

Filed on behalf of Plaintiff:  
Peter W. Frailey

Counsel of Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

Woomer & Friday LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216-2320  
(412)563-7980

**JURY TRIAL DEMANDED**

**FILED** 

JUL 15 2004

William A. Shaw  
Prothonotary/Clerk of Courts

**ORIGINAL**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

CIVIL DIVISION

Plaintiff,

Docket No. :

vs.

DARLENE R. BIERLY, PENNS  
VALLEY LIVESTOCK AUCTION,  
INC., a Pennsylvania Corporation t/d/b/a  
Penns Valley Livestock Auction; and  
NOAH HOSTETLER

Defendants.

**NOTICE TO DEFEND**

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

**Court Administrator  
Clearfield County Courthouse  
1 North Second Street  
Clearfield, PA 16830  
(814) 765-2641 ext. 32**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

CIVIL DIVISION

Plaintiff,

Docket No.

vs.

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a Penns  
Valley Livestock Auction; and NOAH  
HOSTETLER,

Defendants.

**COMPLAINT IN CIVIL ACTION**

AND NOW, comes Plaintiff, Peter W. Frailey, by and through his attorneys, Robert B. Woomer, Esquire, and Woomer & Friday LLP, and complains and alleges as follows:

1. Plaintiff, Peter W. Frailey, is an adult individual residing at 1338 Old Route 322, Philipsburg, Centre County, Pennsylvania 16866, and has been at all times relevant hereto.
2. Defendant Darlene R. Bierly, (hereinafter "Bierly") is an adult individual residing at 2627 Earlstown Road, Centre Hall, Centre County, Pennsylvania 16828.
3. Defendant Penns Valley Livestock Auction, Inc., t/d/b/a Penns Valley Livestock Auction (hereinafter "Penns Valley") is a Pennsylvania Corporation with a principal place of business at Route 45, Centre Hall, Centre County, Pennsylvania 16828.
4. Defendant Noah Hostetler, (hereinafter "Hostetler") is an adult individual residing at 0 Route 1, Beaver Springs, Snyder County, Pennsylvania 17812.
5. On July 16, 2002 at approximately 6:40 a.m., Plaintiff was operating a 1988 Ford Aeromax Truck east bound on State Route 410 while, at the same time, Harvey Miller

(hereinafter "Miller") was operating a horse and buggy (hereinafter "vehicle") west bound on State Route 410.

6. At all times relevant hereto Plaintiff had selected the Full Tort option under the Pennsylvania Motor Vehicle Financial Responsibility Act and said Full Tort has been in effect at all times relevant and material hereto.

7. On the date and time stated above, Miller suddenly and without warning lost control of the horse and buggy, crossed over the centerline and struck Plaintiff's vehicle head on.

8. At all times relevant and material hereto Plaintiff believes and, therefore, it is averred that Defendant Hostetler sold the horse to Penns Valley and provided a written and/or oral recommendation that the horse was "road worthy."

9. At all times relevant and material hereto, Defendant Penns Valley acted through employees, servants, agents and successor and/or predecessor corporations in selling the horse to the Plaintiff.

10. At all times relevant and material hereto, Defendant Bierly was an agent, employee and representative of Penns Valley and acted during the course and scope of her employment in selling the horse to Plaintiff.

11. As a result of the head-on collision, Miller's horse was propelled up over the hood of the truck and into the windshield of the truck, injuring the Plaintiff.

12. As a direct and proximate result of the negligence, carelessness and recklessness of Defendants, Plaintiff has sustained the following injuries, some or all of which may be continuing and permanent in nature:

- a) post-traumatic stress disorder;
- b) closed head injury;
- c) bruises, contusions and other injuries in or about the right leg and knee;

- d) bruises, contusions and other injuries in or about nerves, muscles, bones, tendons, ligaments, tissues and vessels of the body;
- e) nervousness, emotional tension, anxiety and depression;
- f) inability to sleep due to constant, severe and persistent pain; and
- g) other injuries to be proven at trial.

13. As a direct and proximate result of the negligence, carelessness and recklessness of Defendants, as above-stated, Plaintiff has suffered the following damages, some or all of which may be permanent in nature:

- a) Great pain, suffering, inconvenience, embarrassment, mental anguish, and emotional and psychological trauma.
- b) Plaintiff will be required to expend large sums of money for medical treatment and care, hospitalization, medical supplies, surgical appliances, rehabilitation and therapeutic treatment, medicines, and other attendant services.
- c) Lost earnings, and plaintiff's earning capacity has been reduced and may be permanently impaired.
- d) Inability to enjoy various pleasures of life that were previously enjoyed;
- e) Loss and impairment of general health, strength, and vitality.

#### **COUNT I**

#### **Peter W. Frailey v. Darlene R. Bierly** *Negligence*

14. All preceding paragraphs of this complaint are incorporated herein by reference.

15. The above stated accident was a direct and proximate result of the negligence, carelessness and recklessness of the defendant in the following particulars:

- a) In failing to properly train the horse pulling the buggy so as to be "road worthy;"
- b) In failing to warn Plaintiff that the horse was not "road worthy;"
- c) In breaching an implied covenant by misrepresenting that the horse was "road worthy;"



- d) In failing to inspect, discover and/or take the necessary steps to ensure that the horse was "road worthy;" and
- e) In failing to comply with proper industry standards for selling a horse to be used on a roadway.

WHEREFORE, Plaintiff demands judgment for damages against defendant in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and such other and further relief as this Honorable Court may deem just and equitable.

### **COUNT II**

#### **Peter W. Frailey v. Penns Valley Livestock Auction, Inc.** *Negligence*

- 16. All preceding paragraphs of this complaint are incorporated herein by reference.
- 17. The above stated accident was a direct and proximate result of the negligence, carelessness and recklessness of the defendant in the following particulars:

- a. In failing to properly train the horse pulling the buggy so as to be "road worthy;"
- b. In failing to warn Plaintiff that the horse was not "road worthy;"
- c. In breaching an implied covenant by misrepresenting that the horse was "road worthy;"
- d. In failing to inspect, discover and/or take the necessary steps to ensure that the horse was "road worthy;" and
- e. In failing to comply with proper industry standards for selling a horse to be used on a roadway.

WHEREFORE, Plaintiff demands judgment for damages against defendant in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and such other and further relief as this Honorable Court may deem just and equitable.

### **COUNT III**

#### **Peter W. Frailey v. Noah Hostetler** *Negligence*

- 15. All preceding paragraphs of this complaint are incorporated herein by reference.

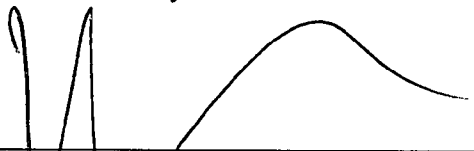
16. The above stated accident was a direct and proximate result of the negligence, carelessness and recklessness of the defendant in the following particulars:

- a. In failing to properly train the horse pulling the buggy so as to be "road worthy;"
- b. In failing to warn Defendants Bierly and Penns Valley that the horse was not "road worthy;"
- c. In breeching an implied covenant by misrepresenting that the horse "road worthy;"
- d. In providing a false written and/or oral recommendation that the horse was "road worthy;"
- e. In failing to inspect, discover and/or take the necessary steps to ensure that the horse was "road worthy" before selling it; and
- f. In failing to comply with proper industry standards for selling a horse to be used on a roadway.

WHEREFORE, Plaintiff demands judgment for damages against defendant in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and such other and further relief as this Honorable Court may deem just and equitable.

**A JURY TRIAL IS DEMANDED.**

Woomer & Friday LLP

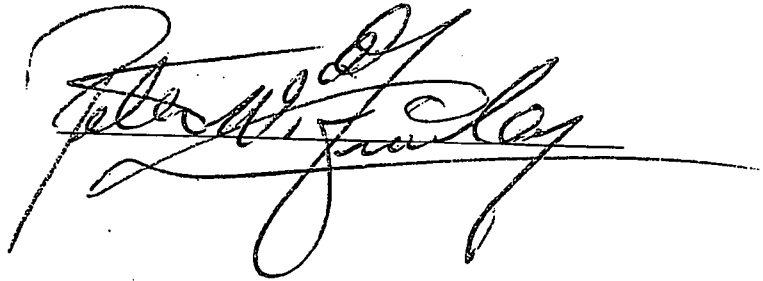


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Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiff

VERIFICATION

I, PETER W. FRAILEY, being duly sworn according to law, depose and say that the facts contained in the foregoing Complaint in Civil Action are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "Peter W. Frailey", written over a horizontal line.

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

PETER W. FRAILEY,  
Plaintiff

v.

No. 04-1076-CD

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and  
NOAH HOSTETLER,  
Defendants

**PRAECIPE FOR ENTRY OF APPEARANCE**

TO THE PROTHONOTARY OF SAID COURT:

Kindly enter my appearance on behalf of the Defendants, Darlene R. Bierly and Penns Valley Livestock Auction, Inc., a Pennsylvania Corporation t/d/b/a Penns Valley Livestock Auction, to the above captioned matter. All papers may be served upon the Defendants at my law offices located at 107 East Main Street, Millheim, PA 16854.

BRYANT & CANTORNA, P.C.

By: 

James N. Bryant, Esq.

Attorney for Defendants, Darlene R. Bierly  
and Penns Valley Livestock Auction, Inc., a  
Pennsylvania Corporation t/d/b/a Penns Valley  
Livestock Auction  
Attorney ID No. 14084  
107 East Main Street  
Millheim, PA 16854  
(814) 349-5666

DATED: July 28, 2004

**FILED**

*m/2:09/04*  
**AUG 02 2004**

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

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

PETER W. FRAILEY,  
Plaintiff

v.

No. 04-1076-CD

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and  
NOAH HOSTETLER,  
Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within **PRAECIPE FOR ENTRY OF  
APPEARANCE** was served by depositing the same with the United States Postal Service, postage  
prepaid, addressed to the following:

Robert B. Woomer, Esq.  
Woomer & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216-2320

Noah Hostetler  
0 Route 1  
Beaver Springs, PA 17812

By 

James N. Bryant, Esq.  
Attorney for Defendants Darlene R. Bierly,  
Pennsylvania Livestock Auction, Inc.

DATED: July 28, 2004

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

PETER W. FRAILEY,  
Plaintiff

v.

No. 04-1076-CD

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and  
NOAH HOSTETLER,  
Defendants

**PRELIMINARY OBJECTIONS**

Filed on behalf of

**DEFENDANT**

Darlene R. Bierly, Penns Valley  
Livestock Auction, Inc., a  
Pennsylvania Corporation, t/d/b/a  
Penns Valley Livestock Auction

Counsel of Record for this Party:

James N. Bryant, Esq.  
Attorney-At-Law  
PA I.D. 14084

BRYANT & CANTORNA, P.C.  
107 East Main Street  
Millheim, PA 16854

(814) 349-5666

**FILED** *no cc*  
*7/20/04*  
**AUG 02 2004**  
*WAS*  
William A. Shaw  
Prothonotary/Clerk of Courts

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

PETER W. FRAILEY,  
Plaintiff

v.

No. 04-1076-CD

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and  
NOAH HOSTETLER,  
Defendants

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2004, upon consideration of the foregoing Preliminary Objections, a rule is granted upon the Plaintiff to show cause why such relief should not be granted. Rule returnable thereon the \_\_\_\_ day of \_\_\_\_\_, 2004, for filing written response.

**NOTICE**

A Petition or Motion has been filed against you in Court. If you wish to defend against the claims set forth in the following Motion by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the matter set forth against you. You are warned that if you fail to do so the case may proceed without you and an order may be entered against you by the Court without further notice for relief requested by the Petitioner or Movant. You may lose 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 COURTHOUSE  
MARKET & SECOND STREETS  
CLEARFIELD, PA 16830  
814-765-2641, EXT. 50-51.

BY THE COURT:

\_\_\_\_\_  
J.

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

PETER W. FRAILEY,  
Plaintiff

v.

No. 04-1076-CD

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and  
NOAH HOSTETLER,  
Defendants

**PRELIMINARY OBJECTIONS**

AND NOW, comes the Defendant, Darlene R. Bierly, Penns Valley Livestock Auction, Inc., a Pennsylvania Corporation t/d/b/a Penns Valley Livestock Auction, and through their attorney, James N. Bryant, Esq., of Bryant & Cantorna, P.C., and files the following Preliminary Objections:

**I. VENUE**

1. The Complaint avers that a Centre County Plaintiff is suing a Centre County corporation and Centre County individual, as well as Snyder County individual.
2. Nothing whatsoever in the Complaint indicates that venue would be proper in Clearfield County.

WHEREFORE, Defendant, Darlene R. Bierly and Penns Valley Livestock Auction, Inc. requests the case be transferred to Centre County.

**II. DEMURRER**

3. Plaintiff alleged that Miller lost control of his horse and caused an accident.
4. The horse was under the care, custody and control of Miller and it is not alleged the horse had any unusual tendencies.



5. The Plaintiff fails to state a claim as matter of law.

**III. FAILURE TO JOIN A NECESSARY PARTY**

6. Plaintiff says the accident was caused by Miller losing control of a horse.

7. Miller would seem to be an essential party to the litigation.

WHEREFORE, Defendant, Darlene R. Bierly and Penns Valley Livestock Auction, Inc. requests the Plaintiff be ordered to join Miller.

**IV. FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

8. Absolutely no activity of Darlene R. Bierly, other than her name and address and her condition of employment is averred.

9. Further, the Complaint avers that the Defendant, Penns Valley Livestock Auction, Inc., sold the horse to the Plaintiff. (Plaintiff's paragraph 9)

10. It is difficult to conceive how the Plaintiff would have a claim against Defendant, Darlene R. Bierly for selling a horse which a man named Miller was driving when it struck the Plaintiff.

11. There are absolutely no allegations that Darlene R. Bierly ever had anything to do with selling the horse to either Frailey or Miller.

WHEREFORE, Defendant, Darlene R. Bierly and Penns Valley Livestock Auction, Inc. requests this Honorable Court to dismiss the Complaint against them.

BRYANT & CANTORNA, P.C.

By: 

James N. Bryant, Esq., ID No. 14084  
Attorney for Defendant, Darlene R. Bierly and  
Penns Valley Livestock Auction, Inc.  
107 East Main Street  
Millheim, PA 16854  
(814) 349-5666

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

PETER W. FRAILEY,  
Plaintiff

v.

No. 04-1076-CD

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and  
NOAH HOSTETLER,  
Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within **PRELIMINARY OBJECTIONS**  
was served by depositing the same with the United States Postal Service, postage prepaid, addressed to  
the following:

Robert B. Woomer, Esq.  
Woomer & Griday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216-2320

Noah Hostetler  
0 Route 1  
Beaver Springs, PA 17812

By: 

James N. Bryant, Esq.  
Attorney for Defendants Darlene R. Bierly,  
Pennsylvania Livestock Auction, Inc.

DATED: July 28, 2004

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

PETER W. FRAILEY,  
Plaintiff

v.

No. 04-1076-CD

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LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and  
NOAH HOSTETLER,  
Defendants

PRAECIPE FOR HEARING

Kindly schedule a hearing on the Preliminary Objections filed by the Defendants, Darlene R. Bierly and Penns Valley Livestock Auction, Inc., a Pennsylvania Corporation t/d/b/a Penns Valley Livestock Auction.

BRYANT & CANTORNA, P.C.

By: 

James N. Bryant, Esq., ID No. 14084  
Attorney for Defendants, Darlene R. Bierly  
and Penns Valley Livestock Auction, Inc., a  
Pennsylvania Corporation t/d/b/a Penns Valley  
Livestock Auction  
107 East Main Street  
Millheim, PA 16854  
(814) 349-5666

DATED: July 28, 2004

**FILED** No cc  
m/2:09/04  
AUG 02 2004  
William A. Shaw  
Prothonotary/Clerk of Courts

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

PETER W. FRAILEY,  
Plaintiff

v.

No. 04-1076-CD

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and  
NOAH HOSTETLER,  
Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within **PRAECIPE FOR HEARING** was  
served by depositing the same with the United States Postal Service, postage prepaid, addressed to the  
following:

Robert B. Woomer, Esq.  
Woomer & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216-2320

Noah Hostetler  
0 Route 1  
Beaver Springs, PA 17812

By: 

James N. Bryant, Esq.  
Attorney for Defendants Darlene R. Bierly,  
Pennsylvania Livestock Auction, Inc.

DATED: July 28, 2004

In The Court of Common Pleas of Clearfield County, Pennsylvania

FRAILEY, PETER W.

Sheriff Docket # 15968

VS.

04-1076-CD

BIERLY, DARLENE R. al

COMPLAINT

SHERIFF RETURNS

NOW JULY 16, 2004, JOSEPH REIGLE, JR., SHERIFF OF SNYDER COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON NOAH HOSTETLER, DEFENDANT.

NOW JULY 22, 2004 SERVED THE WITHIN COMPLAINT ON NOAH HOSTETLER, DEFENDANT BY DEPUTIZING THE SHERIFF OF SNYDER COUNTY. THE RETURN OF SHERIFF REIGLE IS HERETO ATTACHED AND MADE A PART OF THIS RETURN.

NOW JULY 6, 2004, DENNY NAU, SHERIFF OF CENTRE COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON DARLENE R. BIERLY and PENNS VALLEY LIVESTOCK AUCTION INC., DEFENDANTS.

NOW JULY 21, 2004 SERVED THE WITHIN COMPLAINT ON DARLENE BIERLY, DEFENDANT BY DEPUTIZING THE SHERIFF OF CENTRE COUNTY. THE RETURN OF SHERIFF NAU IS HERETO ATTACHED AND MADE A PART OF THIS RETURN.

NOW JULY 26, 2004 SERVED THE WITHIN COMPLAINT ON PENNS VALLEY LIVESTOCK AUCTION, INC., DEFENDANT BY DEPUTIZING THE SHERIFF OF CENTRE COUNTY. THE RETURN OF SHERIFF NAU IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED DAVE BIERLY, P.I.C.

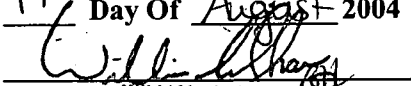
Return Costs

| Cost  | Description                             |
|-------|-----------------------------------------|
| 51.00 | SHERIFF HAWKINS PAID BY: ATTY CK# 23894 |
| 30.00 | SURCHARGE PAID BY: ATTY CK# 23895       |
| 58.00 | CENTRE CO. SHFF. PAID BY: ATTY.         |
| 30.00 | SNYDER CO. SHFF. PAID BY; ATTY.         |


Sworn to Before Me This

So Answers,

17<sup>th</sup> Day Of August 2004



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

  
Chester A. Hawkins  
Sheriff

FILED

9:10 am  
AUG 17 2004

William A. Shaw  
Prothonotary

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

PETER W. FRAILEY

VS

DKT. NO: 04-1076-CD  
NOTICE and COMPLAINT

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a Pennsylvania  
Corporation t/d/b/a Penns Valley Livestock Auction;  
and NOAH HOSTETLER

AFFIDAVIT OF SERVICE

AND NOW, July 22, 2004, I, Lewis Briggs, Deputy for Joseph S. Reigle, Jr., Sheriff of Snyder County, Pennsylvania, being duly sworn according to law deposes and says that the above described Notice and Complaint was served on Noah Hostetler, named defendant, on July 22, 2004, at 11:05 A.M., at a sawmill located at RR #1, Box 187A, Sawmill Road, Snyder County, Pennsylvania, by personally handing to Noah Hostetler, a true and correct copy of the above described Notice and Complaint, and that I made known to Noah Hostetler the contents of the same.

SO ANSWERS  
JOSEPH REIGLE, JR., SHERIFF  
SNYDER COUNTY, PENNSYLVANIA

BY *Lewis Briggs*  
DEPUTY LEWIS BRIGGS

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF SNYDER SS:  
SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 23<sup>rd</sup> DAY OF July, 2004

*Theresa J. Berger*  
PROTHONOTARY  
*LaDawn M. Hatter*  
*Adeline*

|                                          |                |                                  |  |
|------------------------------------------|----------------|----------------------------------|--|
| RECEIVED FROM: CLEARFIELD COUNTY SHERIFF |                |                                  |  |
| SNYDER COUNTY SHERIFF'S FEES:            |                |                                  |  |
| Docketing, Service, Etc.                 | \$ 18.00       | PAID TO COUNTY CHECK #           |  |
| Mileage                                  | 9.00           | REIMBURSED TO PETTY CASH CHECK # |  |
| Notary                                   | 3.00           |                                  |  |
| TOTAL: \$ 30.00                          |                |                                  |  |
| DEPOSIT \$75.00                          | Receipt # 2851 |                                  |  |
| REFUND \$45.00                           | Check# 2482    |                                  |  |



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 15968

PETER W. FRAILEY

TERM & NO. 04-1076-CD

VS

DOCUMENT TO BE SERVED:

COMPLAINT

DARLENE R. BIERLY al

SERVE BY: 08/14/2004

**MAKE REFUND PAYABLE TO:**

WOOMER & FRIDAY, ESQ.

**SERVE:** NOAH HOSTETLER

**ADDRESS:** 0 ROUTE 1, BEAVER SPRINGS, PA. 17812

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  
SNYDER COUNTY, Pennsylvania to execute this writ. This  
Deputation being made at the request and risk of the Plaintiff this 16th Day of  
JULY 2004

Respectfully,

  
CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY

# SHERIFF'S OFFICE

## CENTRE COUNTY

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

### SHERIFF SERVICE PROCESS RECEIPT, AND AFFIDAVIT OF RETURN

INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. please type or print legibly. Do Not detach any copies.

|                                                                                                                                                                                                                                                                                                                                                        |                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| 1. Plaintiff(s)<br><u>Peter W. Frailey</u>                                                                                                                                                                                                                                                                                                             | 2. Case Number<br><u>04-1076-CD</u><br><u>Page # 2795-AA</u> |
| 3. Defendant(s)<br><u>Darlene Bierly</u>                                                                                                                                                                                                                                                                                                               | 4. Type of Writ or Complaint:<br><u>Complaint</u>            |
| SERVE<br>→<br>AT { 5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold.<br><u>Darlene Bierly   Penns Valley Livestock Auction, Inc.</u><br>6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code)<br><u>2627 Earlstown Rd Rt. 45, Centre Hall, PA 16828</u> |                                                              |
| 7. Indicate unusual service: <input type="checkbox"/> Reg Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Deputize <input type="checkbox"/> Post <input type="checkbox"/> Other                                                                                                                                                  |                                                              |

Now, 20 I SHERIFF OF CENTRE COUNTY, PA., do hereby deputize the Sheriff of \_\_\_\_\_ County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. \_\_\_\_\_  
Sheriff of Centre County

8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE

NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

|                                                       |                      |          |
|-------------------------------------------------------|----------------------|----------|
| 9. Print/Type Name and Address of Attorney/Originator | 10. Telephone Number | 11. Date |
| 12. Signature                                         |                      |          |

### SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE

|                                                                                                                                 |                |                             |
|---------------------------------------------------------------------------------------------------------------------------------|----------------|-----------------------------|
| 13. I acknowledge receipt of the writ or complaint as indicated above. } SIGNATURE of Authorized CCSD Deputy of Clerk and Title | 14. Date Filed | 15. Expiration/Hearing Date |
|---------------------------------------------------------------------------------------------------------------------------------|----------------|-----------------------------|

### TO BE COMPLETED BY SHERIFF

16. Served and made known to Darlene Bierly, on the 21 day of July, 20 04, at 1150 o'clock, A m., at 2627 Earlstown Rd., Centre Hall, PA, County of Centre

Commonwealth of Pennsylvania, in the manner described below:

- ☒ Defendant(s) personally served.
- ☐ Adult family member with whom said Defendant(s) resides(s). Relationship is \_\_\_\_\_
- ☐ Adult in charge of Defendant's residence.
- ☐ Manager/Clerk of place of lodging in which Defendant(s) resides(s).
- ☐ Agent or person in charge of Defendant's office or usual place of business.
- ☐ \_\_\_\_\_ and officer of said Defendant company.
- ☐ Other \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

Defendant not found because:

- ☐ Moved ☐ Unknown ☐ No Answer ☐ Vacant ☐ Other \_\_\_\_\_

Remarks:

| Advance Costs | Docket | Service | Sur Charge | Affidavit | Mileage | Postage | Misc. | Total Costs | Costs Due or Refund |
|---------------|--------|---------|------------|-----------|---------|---------|-------|-------------|---------------------|
| 75.00         | 9.00   | 15.00   | 20.00      | 2.50      | 10.00   | .50     | 1.00  | 58.00       | 17.00               |

|                                                                                                                                                                  |                                                     |                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------|
| 17. AFFIRMED and subscribed to before me this <u>11</u> day of <u>Aug</u> , 20 <u>04</u>                                                                         | So Answer.                                          |                               |
| 23. <u>Armen Peters</u><br>Notary Public<br>Bellefonte Boro, Centre County<br>My Commission Expires Sept. 5, 2005<br>Member Pennsylvania Association of Notaries | 18. Signature of Dep. Sheriff<br><u>[Signature]</u> | 19. Date<br><u>27 JULY 04</u> |
|                                                                                                                                                                  | 21. Signature of Sheriff<br><u>[Signature]</u>      | 22. Date                      |
| SHERIFF OF CENTRE COUNTY                                                                                                                                         |                                                     |                               |
| Amount Pd. _____ Page _____                                                                                                                                      |                                                     |                               |

|                                                                                                |                   |
|------------------------------------------------------------------------------------------------|-------------------|
| 24. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE OF AUTHORIZED AUTHORITY AND-TITLE. | 25. Date Received |
|------------------------------------------------------------------------------------------------|-------------------|



# SHERIFF'S OFFICE

## CENTRE COUNTY

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

| SHERIFF SERVICE<br>PROCESS RECEIPT, AND AFFIDAVIT OF RETURN                                                                                                                                                                                                          |                                                                                                                                                                                        | INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. please type or print legibly. Do Not detach any copies. |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 1. Plaintiff(s)<br><i>Peter W. Frailey</i>                                                                                                                                                                                                                           |                                                                                                                                                                                        | 2. Case Number<br><i>04-1076-CD</i><br><i>Page 2795-AA</i>                                                                                           |  |
| 3. Defendant(s)<br><i>Penns Valley Livestock Auction, Inc.</i>                                                                                                                                                                                                       |                                                                                                                                                                                        | 4. Type of Writ or Complaint:<br><i>Complaint</i>                                                                                                    |  |
| SERVE<br>→<br>AT                                                                                                                                                                                                                                                     | 5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold.<br><i>Darlene Bierly / Penns Valley Livestock Auction, Inc.</i> |                                                                                                                                                      |  |
|                                                                                                                                                                                                                                                                      | 6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code)<br><i>2027 Earlstown Rd. Rt. 45, Centre Hall, PA 16828</i>                                             |                                                                                                                                                      |  |
| 7. Indicate unusual service: <input type="checkbox"/> Reg Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Deputize <input type="checkbox"/> Post <input type="checkbox"/> Other                                                                |                                                                                                                                                                                        |                                                                                                                                                      |  |
| Now, <u>20</u> I SHERIFF OF CENTRE COUNTY, PA., do hereby deputize the Sheriff of _____ County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. _____<br>Sheriff of Centre County |                                                                                                                                                                                        |                                                                                                                                                      |  |
| 8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE                                                                                                                                                                                  |                                                                                                                                                                                        |                                                                                                                                                      |  |

**NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN** – Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

|                                                       |                      |          |
|-------------------------------------------------------|----------------------|----------|
| 9. Print/Type Name and Address of Attorney/Originator | 10. Telephone Number | 11. Date |
|                                                       | 12. Signature        |          |

| SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |        |                                                        |            |                                                                |                |         |                             |                               |                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|--------------------------------------------------------|------------|----------------------------------------------------------------|----------------|---------|-----------------------------|-------------------------------|---------------------|
| 13. I acknowledge receipt of the writ or complaint as indicated above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |        | SIGNATURE of Authorized CCSD Deputy of Clerk and Title |            |                                                                | 14. Date Filed |         | 15. Expiration/Hearing Date |                               |                     |
| TO BE COMPLETED BY SHERIFF                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |        |                                                        |            |                                                                |                |         |                             |                               |                     |
| 16. Served and made known to <i>Darlene Bierly</i> , on the <i>26<sup>th</sup></i> day of <i>July</i> , 20 <i>04</i> , at <i>1830</i> o'clock, <i>P</i> m., at <i>Rt. 45, Centre Hall, PA</i> , County of Centre Commonwealth of Pennsylvania, in the manner described below:<br><input type="checkbox"/> Defendant(s) personally served.<br><input type="checkbox"/> Adult family member with whom said Defendant(s) resides(s). Relationship is _____<br><input type="checkbox"/> Adult in charge of Defendant's residence.<br><input type="checkbox"/> Manager/Clerk of place of lodging in which Defendant(s) resides(s).<br><input checked="" type="checkbox"/> Agent or person in charge of Defendant's office or usual place of business.<br><input type="checkbox"/> _____ and officer of said Defendant company.<br><input type="checkbox"/> Other _____ |        |                                                        |            |                                                                |                |         |                             |                               |                     |
| On the _____ day of _____, 20____, at _____ o'clock, _____ M.<br>Defendant not found because:<br><input type="checkbox"/> Moved <input type="checkbox"/> Unknown <input type="checkbox"/> No Answer <input type="checkbox"/> Vacant <input type="checkbox"/> Other _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |        |                                                        |            |                                                                |                |         |                             |                               |                     |
| Remarks:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |        |                                                        |            |                                                                |                |         |                             |                               |                     |
| Advance Costs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Docket | Service                                                | Sur Charge | Affidavit                                                      | Mileage        | Postage | Misc.                       | Total Costs                   | Costs Due or Refund |
| <i>0</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |        |                                                        |            |                                                                |                |         |                             |                               | <i>0</i>            |
| 17. AFFIRMED and subscribed to before me this <i>11</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |        |                                                        |            | So Answer.                                                     |                |         |                             |                               |                     |
| 20. day of <i>Aug</i> 20 <i>04</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |        |                                                        |            | 18. Signature of Dep Sheriff<br><i>[Signature]</i> <i>4512</i> |                |         |                             | 19. Date<br><i>27 July 04</i> |                     |
| 23. <i>Corinne Peters</i><br>Notary Public                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |        |                                                        |            | 21. Signature of Sheriff<br><i>[Signature]</i>                 |                |         |                             | 22. Date                      |                     |
| My Commission Expires <i>Sept 5, 2005</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |        |                                                        |            | SHERIFF OF CENTRE COUNTY                                       |                |         |                             |                               |                     |
| 24. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |        |                                                        |            | Amount Pd. _____                                               |                |         |                             | Page _____                    |                     |
| Member, Pennsylvania Association of Notaries                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |        |                                                        |            |                                                                |                |         |                             | 25. Date Received             |                     |

(Civil)

SHERIFF'S OFFICE WORK SHEET

# 923

Deputy assigned BS Date assigned 7/20/04 Last Day 8/11/04

DEFENDANT (S) Darlene Bierly Penns Valley Livestock Auction, Inc. Type of Writ Complaint

address 2627 Earlstown Rd Rt 45 Order # 04-1076-CD

Centre Hall Centre Hall Page # 2795-AA

PLAINTIFF Peter W. Frailey Date Served \_\_\_\_\_

Action Taken

Date/Time

7/21/04 @ 1150 Darlene Bierly @ 2627 Earlstown Rd, Rt 45  
7/21/04 1140 Penns Valley Livestock Auction, building  
7/21/04 1450 "  
7/26/04 served Dave Bierly Rt. 45 @ 1830

returned 7/27/04

Miscellaneous Information



# Sheriff's Office Clearfield County

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

CHESTER A. HAWKINS  
SHERIFF

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

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 15968

PETER W. FRAILEY

TERM & NO. 04-1076-CD

VS

DOCUMENT TO BE SERVED:

COMPLAINT

DARLENE R. BIERLY al

SERVE BY: 08/14/2004

### MAKE REFUND PAYABLE TO:

WOOMER & FRIDAY, ESQ.

### SERVE:

DARLENE R. BIERLY and PENNS VALLEY LIVESTOCK AUCTION, INC.

### ADDRESS:

Bierly---2627 Earlstown Road, Centre Hall, Pa. 16828  
Penns Valley--Rt. 45, Centre Hall, Pa. 16828

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  
CENTRE COUNTY, Pennsylvania to execute this writ. This  
Deputation being made at the request and risk of the Plaintiff this 16th Day of  
JULY 2004

Respectfully,

  
CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY

Pg 2795-AA  
Pd 75.0

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

Plaintiff,

vs.

HARVEY J. MILLER,

Defendants.

CIVIL DIVISION

Docket No. : 2004 - 00393 - CD

Docket No. 2004 - 01076 - CD

**PLAINTIFF'S MOTION TO  
CONSOLIDATE**

PETER W. FRAILEY,

Plaintiff,

vs.

DARLENE R. BIERLY, PENNS  
VALLEY LIVESTOCK AUCTION,  
INC., a Pennsylvania Corporation t/d/b/a  
PENNS VALLEY LIVESTOCK  
AUCTION; and NOAH HOSTETLER,

Defendants.

Filed on behalf of Plaintiff:  
Peter W. Frailey

Counsel of Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

Woomer & Friday LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216-2320  
(412)563-7980

**JURY TRIAL DEMANDED**

**FILED** *no cc*  
*m/2:1987*  
**AUG 18 2004**  
*WAS*  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

CIVIL DIVISION

Plaintiff,

Docket No. : 2004 - 00393 - CD

vs.

HARVEY J. MILLER,

Defendants.

---

PETER W. FRAILEY,

Case No. 2004 - 01076 - CD

Plaintiff,

vs.

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION; and  
NOAH HOSTETLER,

Defendants.

**PLAINTIFF'S MOTION TO CONSOLIDATE**

AND NOW, comes Plaintiff, Peter W. Frailey, by and through his attorneys, Robert B. Woomer, Esquire, and Woomer & Friday LLP, and files this Motion to Consolidate as follows:

1. The above cause of action was instituted by a Complaint in Civil Action being filed with the above-mentioned Court against Defendant Harvey J. Miller (hereinafter "Miller") on March 22, 2004.
2. On or about May 4, 2004, Plaintiff received Miller's Answer to Complaint, wherein Miller alleged that parties other than himself trained the horse in question.

3. On May 4, 2004, based upon Miller's Answer to Complaint, Plaintiff served Interrogatories on Miller, requesting, among other things, specific information regarding prior owners and trainers of the horse in question.

4. On or about June 9, 2004 Plaintiff received Miller's answers to Plaintiff's Interrogatories, wherein Miller alleged that additional parties may be liable for Plaintiff's injuries and damages.

5. On or about June 23, 2004 Plaintiff received additional information from Miller, wherein the additional parties responsible for the horse and the training of the horse prior to Miller purchasing the horse were positively identified.

6. On July 15, 2004 Plaintiff instituted a cause of action against Defendants Darlene R. Bierly, Penns Valley Livestock Auction, Inc., t/d/b/a Penns Valley Livestock Auction and Noah Hostetler, the additional parties identified by Miller, by filing a Complaint in Civil action against said parties with the above-mentioned Court on July 15, 2004.

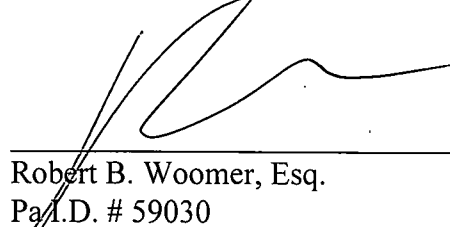
7. These two causes of action should be consolidated as there are common questions of law and fact that are predominating and significant to the litigation, as well as to the nature and cause of Plaintiff's injuries and damages.

8. By consolidating the two causes of action, duplicative discovery will be avoided, judicial resources will be more effectively utilized, and duplicative and inconsistent rulings and/or verdicts will be avoid.

9. Consolidating the two causes of action will not result in the litigation being delayed and will not prejudice the interests of any party.

WHEREFORE, Plaintiff requests that the Honorable Court consolidate Docket Case Numbers 2004-00393-CD and 2004-01076-CD under Case Number 2004-00393-CD for purposes of trial.

Woomer & Friday LLP



---

Robert B. Woomer, Esq.  
Pa. D. # 59030  
Attorney for Plaintiff

Woomer & Friday LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216-2320  
(412)563-7980

**CERTIFICATE OF SERVICE**

I hereby certify that on August 16, 2004, a true and correct copy of the foregoing *Motion to Consolidate* was served by First Class U.S. Mail, postage prepaid, upon the following:

Querino R. Torretti, Esquire  
Law Offices of Querino R. Torretti  
P.O. Box 218  
Reynoldsville, PA 15851  
Attorney for Harvey Miller

James N. Bryant, Esquire  
Law Offices of Bryant & Cantorna, P.C.  
107 East Main Street  
P.O. Box 551  
Millheim, PA 16854  
Attorney for Darlene R. Bierly and Penns Valley Livestock Auction, Inc.

Lori Hackenberg, Esquire  
Law Office of Michael H. Sholley, Esquire  
41 South Main Street  
Middleburg, PA 17842  
Attorney for Noah Hostetler

Woomer & Friday LLP

By: 

Robert B. Woomer, Esq.  
Attorney for Plaintiff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY

CIVIL DIVISION

Plaintiff,

Docket No. : 2004 - 00393 - CD

vs.

HARVEY J. MILLER

---

PETER W. FRAILEY,

Docket No. : 2004 - 01076 - CD

Plaintiff,

vs.

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION; and  
NOAH HOSTETLER,

Defendants.

**ORDER OF COURT**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2004 upon Motion of the  
Plaintiff, it is hereby . . .

ORDERED ADJUDGED AND DECREED that the above-captioned causes of action shall  
be consolidated for purposes of trial under Docket Case No. 2004-00393-CD and the  
Prothonotary is hereby directed to mark the docket accordingly.

BY THE COURT:

---

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

Plaintiff,

vs.

HARVEY J. MILLER,

Defendants.

---

PETER W. FRAILEY,

Plaintiff,

vs.

DARLENE R. BIERLY, PENNS  
VALLEY LIVESTOCK AUCTION,  
INC., a Pennsylvania Corporation t/d/b/a  
PENNS VALLEY LIVESTOCK  
AUCTION; and NOAH HOSTETLER,

Defendants.

CIVIL DIVISION

Docket No. : 2004 - 00393 - CD

Docket No. 2004 - 01076 - CD

**PRAECIPE TO REQUEST  
ARGUMENT/HEARING**

Filed on behalf of Plaintiff:  
Peter W. Frailey

Counsel of Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

Woomer & Friday LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216-2320  
(412)563-7980

**JURY TRIAL DEMANDED**

FILED <sup>EGK</sup> <sub>NO CC</sub>  
m/2:1761  
AUG 18 2004  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

CIVIL DIVISION

Plaintiff,

Docket No. : 2004 - 00393 - CD

vs.

HARVEY J. MILLER,

Defendants.

---

PETER W. FRAILEY,

Case No. 2004 - 01076 - CD

Plaintiff,

vs.

DARLENE R. BIERLY, PENNS  
VALLEY LIVESTOCK AUCTION,  
INC., a Pennsylvania Corporation t/d/b/a  
PENNS VALLEY LIVESTOCK  
AUCTION; and NOAH HOSTETLER,

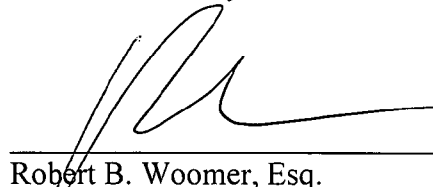
Defendants.

**PRAECIPE TO REQUEST ARGUMENT/HEARING**

Please place the Motion to Consolidate, filed on behalf of the Plaintiff, on the next  
argument list.

Respectfully submitted August 16, 2004.

Woomer & Friday LLP



---

Robert B. Woomer, Esq.

Pa. J.D. # 59030

Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

CIVIL DIVISION

Plaintiff,

Docket No. : 2004 - 00393 - CD

vs.

HARVEY J. MILLER,

Defendants.

PETER W. FRAILEY,

Case No. 2004 - 01076 - CD

Plaintiff,

vs.

DARLENE R. BIERLY, PENNS  
VALLEY LIVESTOCK AUCTION,  
INC., a Pennsylvania Corporation t/d/b/a  
PENNS VALLEY LIVESTOCK  
AUCTION; and NOAH HOSTETLER,

Defendants.

FILED

AUG 25 2004

William A. Shaw  
Prothonotary/Clerk of Courts

**RULE TO SHOW CAUSE**

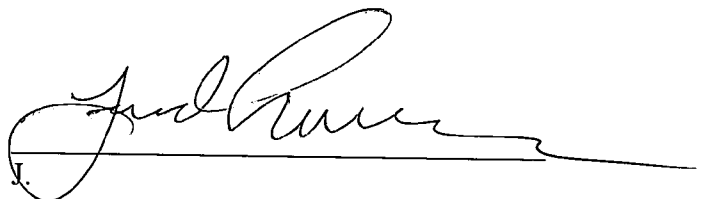
NOW THIS 24 day of AUGUST, 2004, a Rule is

hereby issued upon the Defendants, Harvey J. Miller, Darlene R. Bierly, Penns Valley  
Livestock Auction, Inc., and Noah Hostetler, to show cause, if any they have, why the  
Motion to Consolidate should not be granted.

Said Rule Returnable the 22 day of September, 2004 at

1:30 o'clock P.m., Courtroom No. 1, Clearfield County

Courthouse, Clearfield, Pennsylvania.



**CERTIFICATE OF SERVICE**

I hereby certify that on August 16, 2004, a true and correct copy of the foregoing *Praeceptum to Request Argument/Hearing* was served by First Class U.S. Mail, postage prepaid, upon the following:

Querino R. Torretti, Esquire  
Law Offices of Querino R. Torretti  
P.O. Box 218  
Reynoldsville, PA 15851  
Attorney for Harvey Miller

James N. Bryant, Esquire  
Law Offices of Bryant & Cantorna, P.C.  
107 East Main Street  
P.O. Box 551  
Millheim, PA 16854  
Attorney for Darlene R. Bierly and Penns Valley Livestock Auction, Inc.

Lori Hackenberg, Esquire  
Law Office of Michael H. Sholley, Esquire  
41 South Main Street  
Middleburg, PA 17842  
Attorney for Noah Hostetler

Woomer & Friday LLP

By: 

Robert B. Woomer, Esq.  
Attorney for Plaintiff



**OFFICE OF COURT ADMINISTRATOR  
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA**

**CLEARFIELD COUNTY COURTHOUSE  
230 EAST MARKET STREET  
CLEARFIELD, PENNSYLVANIA 16830**

**DAVID S. MEHOLICK  
COURT ADMINISTRATOR**

**PHONE: (814) 765-2641  
FAX: 1-814-765-6089**

**MARCY KELLEY  
DEPUTY COURT ADMINISTRATOR**

**MEMO: To all parties filing Petitions/Motions in Clearfield County:**

**Please make note of the following:**

**Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.**

**Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.**

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

Peter W. Frailey,

Plaintiff

vs.

Harvey J. Miller,

Defendant

vs.

DARLENE R. BIERLY, PENNS  
VALLEY LIVESTOCK AUCTION,  
INC., a Pennsylvania Corporation  
t/d/b/a PENNS VALLEY LIVESTOCK  
AUCTION, and NOAH HOSTETLER,

Defendants

:  
: CIVIL DIVISION  
: No. 2004-00393-CD  
:  
: No. 2004-01076-CD  
:  
: Type of Pleading:  
: Defendant Harvey J. Miller's  
: Answer TO Plaintiff's  
: Motion To Consolidate  
:  
:  
: Filed on Behalf of:  
: Defendant, Harvey J.  
: Miller  
:  
:  
: Counsel of Record for  
: Defendant  
: Querino R. Torretti,  
: Esquire  
: Supreme Court I.D.  
: No. 23996  
: 600 East Main Street  
: P.O. Box 218  
: Reynoldsville, PA 15851  
: (814) 653-2243  
:

FILED

AUG 23 2004

m/1:50/ums  
William A. Shaw

Prothonotary/Clerk of Courts

no c c

COPY

original filed to  
04-0393-CD

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.



7. It is denied that the two causes of action should be consolidated. On the contrary, the basis of liability for the Defendant, Harvey J. Miller, depends on facts clearly distinct from the facts relevant to the issue of the liability of the Defendants, Darlene R. Bierly, Penns Valley Livestock Auction, Inc., a Pennsylvania Corporation t/d/b/a Penns Valley Livestock Auction and Noah Hostetler. Furthermore, the law applicable to Defendant, Harvey J. Miller's liability is different from the law which applies to the liability of the Defendants in the separate action. Clearly there are no common questions of law and fact applicable to the liability issue in the two causes of action.

8. It is denied that duplicative discovery would be avoided inasmuch as the discovery which has been sought from defendant, Harvey J. Miller is distinct from the discovery being sought from the Defendants in the other action.

9. It is specifically denied that consolidating the two causes of action will not result in the litigation being delayed and will not prejudice the interest of any party. On the contrary, the cause of action against the Defendant, Harvey J. Miller at Number 2004 - 00393 - CD is clearly distinct from the cause of action against the Defendants in this suit at 2004 -0 01076 - CD. The work involved in pursuing each cause of action will clearly tend to delay the progress of the separate action.

WHEREFORE, Defendant Harvey J. Miller, requests Your Honorable Court to dismiss the Plaintiff, Peter W. Frailey's Motion To Consolidate.

Att. Querino R. Torretti  
Querino R. Torretti, Esquire  
Attorney for Defendant

Dated: August 20, 2004

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 20, 2004 a true and correct copy of Defendant Harvey J. Miller's Answer To Motion To Consolidate regarding the above matter was served on the following via United State Mail, first class, postage pre-paid:

Attorney for Plaintiff

Robert B. Woomer  
Woomer & Friday, LLP  
3220 West Liberty Avenue  
Pittsburgh, PA 15216

Attorney for Darlene R. Bierly and Penns Valley Livestock Auction, Inc.

James N. Bryant, Esq.  
Law Offices of Bryant & Cantorna, P.C.  
107 East Main Street, Po Box 551  
Millheim, PA 16854

Attorney for Noah Hostetler

Lori Hackenberg, Esq.  
Law Office of Michael H. Sholley, Esq.  
41 South Main Street  
Middleburg, PA 17842

  
Querino R. Torretti, Esquire

CA

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

PETER W. FRAILEY

vs.

:  
:  
: No. 04-1076-CD  
:

DARLENE R. BIERLY, PENNS  
VALLEY LIVESTOCK AUCTION,  
INC., a Pennsylvania Corporation  
t/d/b/a PENNS VALLEY LIVESTOCK  
AUCTION and NOAH HOSTETLER

FILED

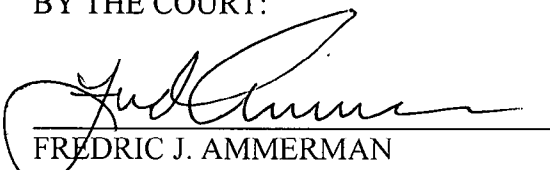
AUG 25 2004

William A. Shaw  
Prothonotary/Clerk of Courts

**ORDER**

AND NOW, this 24<sup>th</sup> day of August, 2004, upon consideration  
of Attorney Bryant's Preliminary Objections filed in the above matter, it is the  
ORDER of the Court that argument on said Objections has been scheduled for the  
22 day of September, 2004, at 1:30 P.M, in Courtroom  
No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

FILED <sup>ECK</sup> 5 cc w/ Memo Re: Service of Rule (see attached)  
018:57/61 to Atty Bryant  
AUG 25 2004

William A. Shaw  
Prothonotary/Clerk of Courts



**OFFICE OF COURT ADMINISTRATOR  
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA**

**CLEARFIELD COUNTY COURTHOUSE  
230 EAST MARKET STREET  
CLEARFIELD, PENNSYLVANIA 16830**

**DAVID S. MEHOLICK  
COURT ADMINISTRATOR**

**PHONE: (814) 765-2641  
FAX: 1-814-765-6089**

**MARCY KELLEY  
DEPUTY COURT ADMINISTRATOR**

**MEMO: To all parties filing Petitions/Motions in Clearfield County:**

**Please make note of the following:**

**Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.**

**Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.**

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

PETER W. FRAILEY,  
Plaintiff

v.

No. 04-1076-CD

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and  
NOAH HOSTETLER,  
Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Preliminary Objections Order dated August 24, 2004 signed by the Honorable Fredric J. Ammerman scheduling an argument on Preliminary Objections was served by depositing the same with the United States Postal Service, postage prepaid, addressed to the following:

Robert B. Woomer, Esq.  
Woomer & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

Lori Hackenberg, Esq.  
41 South Main Street  
Middleburg, PA 17842

Querino R. Torretti, Esq.  
600 East Main Street  
P. O. Box 218  
Reynoldsville, PA 15851

By: 

James N. Bryant, Esq.  
Attorney for Darlene R. Bierly & Penns Valley  
Livestock Auction, Inc.

DATED: August 27, 2004

**FILED**  
mjl:3201  
AUG 30 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

CIVIL DIVISION

Plaintiff,

Docket No. 2004 - 01076 - CD

vs.

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION; and  
NOAH HOSTETLER,

Defendants.

**AMENDED COMPLAINT IN CIVIL  
ACTION**

Filed on behalf of Plaintiff:  
Peter W. Frailey

Counsel of Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

Woomer & Friday LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216-2320  
(412)563-7980

**JURY TRIAL DEMANDED**

**FILED**

SEP 07 2004

M/11:15 AM

William A. Shaw  
Prothonotary

W.A. Shaw



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY

CIVIL DIVISION

Plaintiff,

Docket No. : 2004 – 01076 - CD

vs.

DARLENE R. BIERLY, PENNS  
VALLEY LIVESTOCK AUCTION,  
INC., a Pennsylvania Corporation  
t/d/b/a Penns Valley Livestock Auction;  
and NOAH HOSTETLER,

Defendants.

**NOTICE TO DEFEND**

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

**Court Administrator  
Clearfield County Courthouse  
1 North Second Street  
Clearfield, PA 16830  
(814) 765-2641 ext. 32**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

Plaintiff,

CIVIL DIVISION

Docket No.: 2004 – 01076 - CD

vs.

DARLENE R. BIERLY, PENNS  
VALLEY LIVESTOCK AUCTION,  
INC., a Pennsylvania Corporation  
t/d/b/a Penns Valley Livestock Auction;  
and NOAH HOSTETLER,

Defendants.

**COMPLAINT IN CIVIL ACTION**

AND NOW, comes Plaintiff, Peter W. Frailey, by and through his attorneys, Robert B. Woomer, Esquire, and Woomer & Friday LLP, and complains and alleges as follows:

1. Plaintiff, Peter W. Frailey, is an adult individual residing at 1338 Old Route 322, Philipsburg, Centre County, Pennsylvania 16866, and has been at all times relevant hereto.
2. Defendant Darlene R. Bierly, (hereinafter "Bierly") is an adult individual residing at 2627 Earlstown Road, Centre Hall, Centre County, Pennsylvania 16828.
3. Defendant Penns Valley Livestock Auction, Inc., t/d/b/a Penns Valley Livestock Auction (hereinafter "Penns Valley") is a Pennsylvania Corporation with a principal place of business at Route 45, Centre Hall, Centre County, Pennsylvania 16828.
4. Defendant Noah Hostetler, (hereinafter "Hostetler") is an adult individual residing at 0 Route 1, Beaver Springs, Snyder County, Pennsylvania 17812.
5. On July 16, 2002 at approximately 6:40 a.m., Plaintiff was operating a 1988 Ford Aeromax Truck east bound on State Route 410 in Troutville, Clearfield County, Pennsylvania while, at the same time, Harvey Miller (hereinafter "Miller") was operating a horse and buggy west bound on State Route 410 in Troutville, Clearfield County, Pennsylvania.

6. At all times relevant hereto Plaintiff had selected the Full Tort option under the Pennsylvania Motor Vehicle Financial Responsibility Act and said Full Tort has been in effect at all times relevant and material hereto.

7. On the date and time stated above, Miller suddenly and without warning lost control of his horse and buggy when the horse became startled for an unknown reason.

8. Although Miller attempted to regain control, the horse began kicking and jumping, crossed over the centerline and struck Plaintiff's vehicle head on.

9. At all times relevant and material hereto Plaintiff believes and therefore, it is averred that the horse was not trained or worthy for safely traveling on public roadways.

10. At all times relevant and material hereto Plaintiff believes and, therefore, it is averred that Defendant Hostetler sold the horse to Penns Valley and provided a written and/or oral recommendation that the horse was "road worthy."

11. At all times relevant and material hereto, Defendant Penns Valley acted through employees, servants, agents and successors and/or predecessor corporations in selling the horse to Harvey Miller on or about May 31, 2002 at the Jersey Shore Livestock Market, all the while relaying the information that the horse was "road-worthy" to Miller.

12. At all times relevant and material hereto, Defendant Bierly was an agent, employee and representative of Penns Valley and acted during the course and scope of her employment in selling the horse to Plaintiff as auctioneer and also relaying information that the horse was "road-worthy" to Miller.

13. As a result of the head-on collision, Miller's horse was propelled up over the hood of Plaintiff's truck and into the windshield of the truck, injuring the Plaintiff.

14. As a direct and proximate result of the negligence, carelessness and recklessness of

Defendants, Plaintiff has sustained the following injuries, some or all of which may be continuing and permanent in nature:

- a) post-traumatic stress disorder;
- b) closed head injury;
- c) bruises, contusions and other injuries in or about the right leg and knee;
- d) bruises, contusions and other injuries in or about nerves, muscles, bones, tendons, ligaments, tissues and vessels of the body;
- e) nervousness, emotional tension, anxiety and depression;
- f) inability to sleep due to constant, severe and persistent pain; and
- g) other injuries to be proven at trial.

15. As a direct and proximate result of the negligence, carelessness and recklessness of Defendants, as above-stated, Plaintiff has suffered the following damages, some or all of which may be permanent in nature:

- a) Great pain, suffering, inconvenience, embarrassment, mental anguish, and emotional and psychological trauma.
- b) Plaintiff will be required to expend large sums of money for medical treatment and care, hospitalization, medical supplies, surgical appliances, rehabilitation and therapeutic treatment, medicines, and other attendant services.
- c) Lost earnings, and plaintiff's earning capacity has been reduced and may be permanently impaired.
- d) Inability to enjoy various pleasures of life that were previously enjoyed;.
- e) Loss and impairment of general health, strength, and vitality.

### **COUNT I**

**Peter W. Frailey v. Darlene R. Bierly**

*Negligence*

16. All preceding paragraphs of this complaint are incorporated herein by reference.

17. The above stated accident was a direct and proximate result of the negligence, carelessness and recklessness of the defendant in the following particulars:

- a) In failing to properly train the horse pulling the buggy so as to be "road worthy;"
- b) In failing to warn Plaintiff that the horse was not "road worthy;"
- c) In breeching an implied covenant by misrepresenting that the horse was "road worthy;"
- d) In failing to inspect, discover and/or take the necessary steps to ensure that the horse was "road worthy;" and
- e) In failing to comply with proper industry standards for selling a horse to be used on a roadway.

WHEREFORE, Plaintiff demands judgment for damages against defendant in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and such other and further relief as this Honorable Court may deem just and equitable.

## **COUNT II**

### **Peter W. Frailey v. Penns Valley Livestock Auction, Inc.** *Negligence*

18. All preceding paragraphs of this complaint are incorporated herein by reference.

19. The above stated accident was a direct and proximate result of the negligence, carelessness and recklessness of the defendant in the following particulars:

- a. In failing to properly train the horse pulling the buggy so as to be "road worthy;"
- b. In failing to warn Plaintiff that the horse was not "road worthy;"
- c. In breeching an implied covenant by misrepresenting that the horse was "road worthy;"
- d. In failing to inspect, discover and/or take the necessary steps to ensure that the horse was "road worthy;" and
- e. In failing to comply with proper industry standards for selling a horse to be used on a roadway.

WHEREFORE, Plaintiff demands judgment for damages against defendant in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and such other and further relief as this Honorable Court may deem just and equitable.

**COUNT III**  
**Peter W. Frailey v. Noah Hostetler**  
*Negligence*

15. All preceding paragraphs of this complaint are incorporated herein by reference.

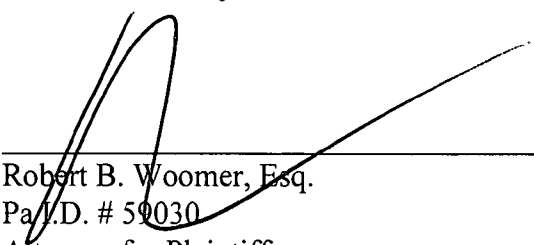
16. The above stated accident was a direct and proximate result of the negligence, carelessness and recklessness of the defendant in the following particulars:

- a. In failing to properly train the horse pulling the buggy so as to be "road worthy;"
- b. In failing to warn Defendants Bierly and Penns Valley that the horse was not "road worthy;"
- c. In breeching an implied covenant by misrepresenting that the horse "road worthy;"
- d. In providing a false written and/or oral recommendation that the horse was "road worthy;"
- e. In failing to inspect, discover and/or take the necessary steps to ensure that the horse was "road worthy" before selling it; and
- f. In failing to comply with proper industry standards for selling a horse to be used on a roadway.

WHEREFORE, Plaintiff demands judgment for damages against defendant in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and such other and further relief as this Honorable Court may deem just and equitable.

**A JURY TRIAL IS DEMANDED.**

Woomer & Friday LLP



---

Robert B. Woomer, Esq.  
Pa. I.D. # 59030  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3rd day of September, 2004, a true and correct copy of the foregoing *Amended Complaint in Civil Action* was served by First Class U.S. Mail, postage prepaid, upon the following:

Querino R. Torretti, Esquire  
Law Offices of Querino R. Torretti  
P.O. Box 218  
Reynoldsville, PA 15851  
Attorney for Harvey Miller

James N. Bryant, Esquire  
Law Offices of Bryant & Cantorna, P.C.  
107 East Main Street  
P.O. Box 551  
Millheim, PA 16854  
Attorney for Darlene R. Bierly and Penns Valley Livestock Auction, Inc.

Lori Hackenberg, Esquire  
Law Office of Michael H. Sholley, Esquire  
41 South Main Street  
Middleburg, PA 17842  
Attorney for Noah Hostetler

Woomer & Friday LLP

By: \_\_\_\_\_

Robert B. Woomer, Esq.  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

CIVIL DIVISION

Plaintiff,

Docket No. : 2004 - 00393 - CD

vs.

HARVEY J. MILLER,

Defendant.

---

PETER W. FRAILEY,

Docket No. 2004 - 01076 - CD

Plaintiff,

vs.

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION; and  
NOAH HOSTETLER,

**CERTIFICATE OF SERVICE OF  
PLAINTIFF'S MOTION TO  
CONSOLIDATE AND RULE TO SHOW  
CAUSE**

Defendants.

Filed on behalf of Plaintiff:  
Peter W. Frailey

Counsel of Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

Woomer & Friday LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216-2320  
(412)563-7980

**FILED**

SEP 07 2004

W/11:15

William A. Shaw  
Prothonotary

Certificate of Service



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

CIVIL DIVISION

Plaintiff,

Docket No. : 2004 - 00393 - CD

vs.

HARVEY J. MILLER,

Defendant.

---

PETER W. FRAILEY,

Plaintiff,

vs.

Case No. 2004 - 01076 - CD

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION; and  
NOAH HOSTETLER,

Defendants.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on August 27, 2004 a true and correct copy  
of Plaintiff's Motion to Consolidate and certified copies of the Rule to Show Cause was  
served by first class U.S. mail, postage prepaid, upon Defendant's counsel, to-wit:

Querino R. Torretti, Esquire  
Law Offices of Querino R. Torretti  
P.O. Box 218  
Reynoldsville, PA 15851  
**Attorney for Harvey Miller**

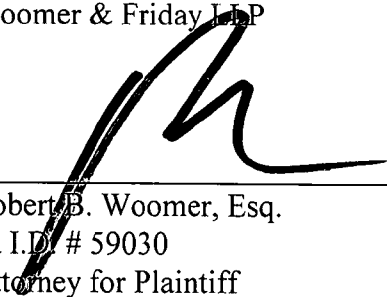
James N. Bryant, Esquire  
Law Offices of Bryant & Cantorna, P.C.  
P.O. Box 551  
Millheim, PA 16854

**Attorney for Darlene R. Bierly and Penns Valley Livestock Auction, Inc.**

Lori Hackenberg, Esquire  
Law Office of Michael H. Sholley, Esquire  
41 South Main Street  
Middleburg, PA 17842  
**Attorney for Noah Hostetler**

Court Administrator's Office  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830

Woomer & Friday LLP



---

Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiff

Woomer & Friday LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216-2320  
(412)563-7980

**PETER W. FRAILEY,**  
Plaintiff,

vs.

**DARLENE R. BIERLY, PENNS  
VALLEY LIVESTOCK AUCTION,  
INC.,**

and

**NOAH HOSTETLER,**  
Defendants.

IN THE COURT OF COMMON PLEAS  
OF THE 46TH JUDICIAL DISTRICT  
OF PENNSYLVANIA  
CLEARFIELD COUNTY  
CIVIL ACTION - LAW


NO. 04-1076-CD

**JURY TRIAL DEMANDED**

**NOTICE TO PLEAD**

TO: PETER W. FRAILEY  
c/o Robert B. Woomer, Esquire  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216-2320

You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

  
LORI HACKENBERG, ESQUIRE  
ATTORNEY FOR DEFENDANT  
HOSTETLER

I. D. No. 90587  
41 South Main Street  
Middleburg, PA 17842  
570-837-1771

**FILED** <sup>EGK</sup>  
<sup>NO</sup>  
<sup>CC</sup>  
m/jl:3182  
SEP 07 2004

William A. Shaw  
Prothonotary/Clerk of Courts

|                                  |   |                               |
|----------------------------------|---|-------------------------------|
| <b>PETER W. FRAILEY,</b>         | : | IN THE COURT OF COMMON PLEAS  |
| Plaintiff,                       | : | OF THE 46TH JUDICIAL DISTRICT |
|                                  | : | OF PENNSYLVANIA               |
| vs.                              | : | CLEARFIELD COUNTY             |
|                                  | : | CIVIL ACTION - LAW            |
| <b>DARLENE R. BIERLY, PENNS</b>  | : |                               |
| <b>VALLEY LIVESTOCK AUCTION,</b> | : |                               |
| <b>INC.,</b>                     | : |                               |
| and                              | : | NO. 04-1076-CD                |
| <b>NOAH HOSTETLER,</b>           | : |                               |
| Defendants.                      | : | <b>JURY TRIAL DEMANDED</b>    |

**ANSWER AND NEW MATTER TO  
PLAINTIFF'S COMPLAINT IN CIVIL ACTION**

**ANSWER**

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. Defendant Noah Hostetler resides at R.R. 1, Box 187-A, Beaver Springs, Pennsylvania 17812.
5. Denied. The allegations set forth in this Paragraph refer to Defendants other than Answering Defendant and pertain to matters concerning which Answering Defendant lacks information and belief and accordingly these allegations are denied pursuant to Pa. R.C.P. 1029(c).
6. Denied. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of Plaintiff's Complaint and accordingly those allegations are specifically denied and Answering Defendant demands proof thereof at trial to the extent relevant.

7. Denied. The allegations set forth in this Paragraph refer to Defendants other than Answering Defendant and pertain to matters concerning which Answering Defendant lacks information and belief and accordingly these allegations are denied pursuant to Pa. R.C.P. 1029(c).

8. Denied. Defendant Hostetler did not sell the horse to Penns Valley Auction. By way of further answer, Defendant Hostetler sold horses at Penns Valley Auction in an "as is" condition, which contained no warranties on such horses. Defendant Hostetler is without knowledge or information sufficient to form a belief as to whether the horse alleged in Plaintiff's Complaint is a horse that was at one time owned by Mr. Hostetler and, as such, strict proof of the same is demanded at trial, if relevant.

9. Denied. The allegations set forth in this Paragraph refer to Defendants other than Answering Defendant and pertain to matters concerning which Answering Defendant lacks information and belief and accordingly these allegations are denied pursuant to Pa. R.C.P. 1029(c).

10. Denied. The allegations set forth in this Paragraph refer to Defendants other than Answering Defendant and pertain to matters concerning which Answering Defendant lacks information and belief and accordingly these allegations are denied pursuant to Pa. R.C.P. 1029(c).

11. The allegations set forth in this Paragraph refer to Defendants other than Answering Defendant and pertain to matters concerning which Answering Defendant lacks information and belief and accordingly these allegations are denied pursuant to Pa. R.C.P. 1029(c).

12. Denied. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of Plaintiff's Complaint and accordingly those allegations are specifically denied pursuant to Pa. R.C.P. 1029(c) and Answering Defendant demands proof thereof at trial to the extent relevant.

13. Denied. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of Plaintiff's Complaint and accordingly those allegations are specifically denied pursuant to Pa. R.C.P. 2019(c) and Answering Defendant demands proof thereof at trial to the extent relevant.

#### **COUNT I**

##### **Peter W. Frailey v. Darlene R. Bierly Negligence**

14. Defendant Hostetler incorporates by reference its responses to Paragraphs 1 through 13 above as if set forth at length herein.

15. Denied. The allegations set forth in this Paragraph constitute conclusions of law within the meaning of Pa. R.C.P. 1029(e) and accordingly no further responsive pleading is required and the allegations set forth in this Paragraph are denied and strict proof thereof is demanded at trial, if relevant.

#### **COUNT II**

##### **Peter W. Frailey v. Penns Valley Livestock Auction, Inc. Negligence**

16. Defendant Hostetler incorporates by reference its responses to Paragraphs 1 through 15 above as if set forth at length herein.

17. Denied. The allegations set forth in this Paragraph constitute conclusions of law within the meaning of Pa. R.C.P. 1029(e) and accordingly no further responsive pleading is required and the allegations set forth in this Paragraph are denied and strict proof thereof is demanded at trial, if relevant.

### **COUNT III**

#### **Peter W. Frailey v. Noah Hostetler** **Negligence**

18. (Incorrectly numbered on Plaintiff's Complaint as 15). Defendant Hostetler incorporates by reference its responses to Paragraphs 1 through 17 above as if set forth at length herein.

19. (Incorrectly numbered on Plaintiff's Complaint as 16). Denied. The allegations set forth in this Paragraph constitute conclusions of law within the meaning of Pa. R.C.P. 1029(e) and accordingly these allegations are denied and strict thereof is demanded at trial to the extent relevant. If further answer is deemed required, Defendant Hostetler avers he did not have a duty to train the horse allegedly involved in the incident nor did he fail to comply with industry standards by selling a horse "as is" at an auction.

### **NEW MATTER**

20. Defendant Hostetler incorporates by reference his answers to Paragraph 1 through 19 above as if set forth at length herein.

21. Plaintiff has failed to state a claim upon which relief can be granted against Answering Defendant.

22. No act and/or omission of Defendant Hostetler was a factual cause and/or substantial factor in bringing about Plaintiff's damages, if any.

23. Plaintiff's claims may be barred against Answering Defendant pursuant to the applicable provisions of 13 Pa. Cons. Stat. Ann. Section 2315 or 13 Pa. Cons. Stat. Ann. Section 2313 relating to implied and express warranties. Answering Defendant sold a horse at an auction in an "as is" condition and denies providing any warranties.

24. Plaintiff's damages, if any, were caused by third persons or parties over whom Answering Defendant had no control or right of control.

25. Defendant Hostetler avers he owed no duty to the Plaintiff, which conclusively could not result in any breach to the Plaintiff in this matter.

26. Plaintiff's action is barred by the applicable statute of limitations in this matter.

27. Plaintiff asserted a negligence cause of action against Defendant Hostetler which contained a two-year statute of limitations.

28. The Plaintiff alleged Defendant Hostetler had a duty, which Defendant Hostetler denies, at the time of the sale to warranty a horse that was allegedly involved in the incident pled in Plaintiff's Complaint.

29. Plaintiff alleges Defendant Hostetler breached such duty on the date of the alleged horse sale. Thus, Plaintiff asserted a claim of negligence against Defendant Hostetler. Defendant Hostetler did sell a horse approximately two or three weeks prior to the accident alleged in Plaintiff's Complaint.

30. Plaintiff's claim of negligence against Defendant Hostetler needed to be asserted within two years of the cause of action, which gave rise to Plaintiff's

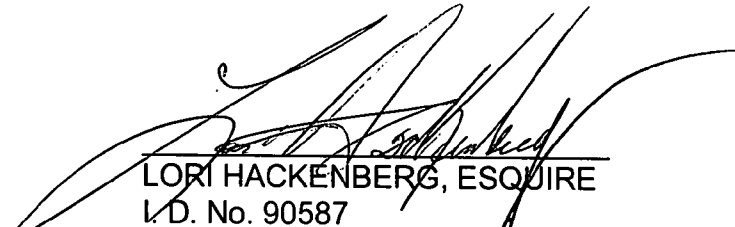


claim of negligence against Defendant Hostetler, that being the date of sale of the horse.

31. Plaintiff failed to assert its claim against Defendant Hostetler in a timely manner consistent with the statute of limitations.

32. Defendant Hostetler reserves his right to raise one or more of the defenses preserved at Pa. R.C.P. 1030, wherefore Defendant Hostetler demands judgment in his favor and against Plaintiff, together with such other relief as the Court deems appropriate.

Respectfully submitted,

A large, stylized handwritten signature in black ink, likely belonging to Lori Hackenberg, is written over the printed name and address.

LORI HACKENBERG, ESQUIRE  
I.D. No. 90587  
Attorney for Defendant Hostetler  
41 South Main Street  
Middleburg, PA 17842  
(570)837-1771

## VERIFICATION

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

  
NOAH HOSTETLER

9/1/04

## CERTIFICATE OF SERVICE

AND NOW, this 1<sup>st</sup> day of September 2004, I, Lori Hackenberg, Esquire, certify that I served a true and correct copy of the foregoing document by regular mail upon:

James N. Bryant, Esquire  
107 East Main Street  
Millheim, PA 16854

Querino R. Torretti, Esquire  
P. O. Box 218  
Reynoldsville, PA 15851

Robert B. Woomer, Esquire  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

  
LORI HACKENBERG

CA

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

PETER W. FRAILEY,  
Plaintiff

v.

No. 04-1076-CD

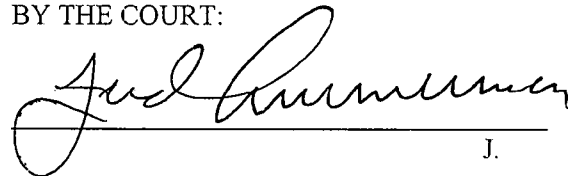
DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and  
NOAH HOSTETLER,  
Defendants

ORDER

AND NOW, this 16 day of September, 2004, upon consideration of the  
foregoing Preliminary Objections, a rule is granted upon the Plaintiff to show cause why such relief should  
not be granted.

Said Rule returnable thereon the 22 day of September, 2004, at 1:30 o'clock,  
P.M., Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

  
J.

Preliminary Objections to Amended Complaint

FILED <sup>E6K</sup>  
013:5930 4cc  
SEP 16 2004 Amy Bryant

William A. Shaw  
Prothonotary/Clerk of Courts

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

PETER W. FRAILEY,  
Plaintiff

v.

No. 04-1076-CD

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and  
NOAH HOSTETLER,  
Defendants

FILED  
01/14/04  
SEP 16 2004  
William A. Shaw  
Prothonotary/Clerk of Courts

PRELIMINARY OBJECTIONS

AND NOW, comes the Defendant, Darlene R. Bierly and Pennsylvania Valley Livestock Auction, Inc., a Pennsylvania Corporation t/d/b/a Penns Valley Livestock Auction, by and through their attorney, James N. Bryant, Esq., of Bryant & Cantorna, P.C., and file the following Preliminary Objections to Plaintiff's Amended Complaint In Civil Action:

1. The Plaintiff has alleged that Miller lost control of his horse and caused an accident.
2. The horse was under the care, custody and control of Miller and it is not alleged that the horse had any unusual tendencies.
3. The only allegation that the Plaintiff makes is that the horse "became startled".
4. Horses have become startled for years. This of and onto itself is not a basis to find negligence for an auctioneer who sold the horse at auction.
5. The horse was purchased at an auction, which was as is, where is, and Miller had ample opportunity to inspect and/or test the horse. No warranties whatsoever were made at an auction.
6. The auctioneer has no duty to inspect, discover, or take necessary steps to insure that a horse is "road worthy" or to train a horse.

7. There has not now or ever been, an industry standards for selling a buggy horse.

8. The auctioneer is not a guarantor of any representations which may have been made by the owner.

WHEREFORE, the Defendant, Darlene R. Bierly and Pennsylvania Valley Livestock Auction, Inc., a Pennsylvania Corporation t/d/b/a Penns Valley Livestock Auction, respectfully requests the Plaintiff's Complaint be dismissed.

BRYANT & CANTORNA, P.C.

By: 

James N. Bryant, Esq., ID No. 14084

Attorney for Defendant, Darlene R. Bierly  
and Pennsylvania Valley Livestock Auction,  
Inc., a Pennsylvania Corporation t/d/b/a Penns  
Valley Livestock Auction

107 East Main Street

Millheim, PA 16854

(814) 349-5666

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

PETER W. FRAILEY,  
Plaintiff

v.

No. 04-1076-CD

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and  
NOAH HOSTETLER,  
Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PRELIMINARY OBJECTIONS  
was served by depositing the same with the United States Postal Service, postage prepaid, addressed to  
the following:

Robert B. Woomer, Esq.  
Woomer & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

Lori Hackenberg, Esq.  
Law Offices of Michael H. Sholley  
41 South Main Street  
Middleburg, PA 17842

Querino R. Torretti, Esq.  
P. O. Box 218  
Reynoldsville, PA 15851

By: 

James N. Bryant, Esq.  
Attorney for Defendant, Darlene R. Bierly and  
Pennsylvania Valley Livestock Auction, Inc., a  
Pennsylvania Corporation t/d/b/a Penns Valley  
Livestock Auction

DATED: **September 14, 2004**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

CIVIL DIVISION

Plaintiff,

Docket No. 2004 – 01076 - CD

vs.

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION; and  
NOAH HOSTETLER,

**VERIFICATION OF PLAINTIFF TO  
AMENDED COMPLAINT IN CIVIL  
ACTION**

Defendants.

Filed on behalf of Plaintiff:  
Peter W. Frailey

Counsel of Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

Woomer & Friday LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216-2320  
(412)563-7980

**JURY TRIAL DEMANDED**

**FILED** *no cc*  
*m/1:35 PM*  
**SEP 16 2004**

William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

CIVIL DIVISION

Plaintiff,

Docket No. : 2004 - 01076 - CD

vs.

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION; and  
NOAH HOSTETLER,

Defendant.

**VERIFICATION OF PLAINTIFF TO  
AMENDED COMPLAINT IN CIVIL ACTION**

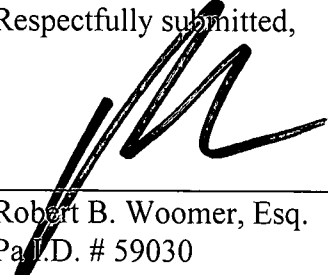
Attached hereto and incorporated herein by reference is Plaintiff's Verification of  
the Amended Complaint in Civil Action filed with the above-captioned Court on  
September 7, 2004, with a copy of the same being mailed to attorney for the defendant(s)  
via First Class Mail, postage prepaid, to-wit:

Querino R. Torretti, Esquire  
Law Offices of Querino R. Torretti  
P.O. Box 218  
Reynoldsville, PA 15851  
Attorney for Harvey Miller

James N. Bryant, Esquire  
Law Offices of Bryant & Cantorna, P.C.  
107 East Main Street  
P.O. Box 551  
Millheim, PA 16854  
Attorney for Darlene R. Bierly and Penns Valley Livestock Auction, Inc.

Lori Hackenberg, Esquire  
Law Office of Michael H. Sholley, Esquire  
41 South Main Street  
Middleburg, PA 17842  
Attorney for Noah Hostetler

Respectfully submitted,

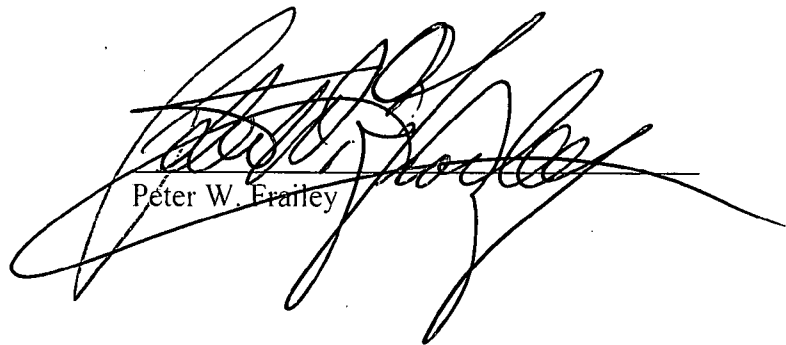


---

Robert B. Woomer, Esq.  
Pa. J.D. # 59030  
Attorney for Plaintiffs

**VERIFICATION**

I, PETER W. FRAILEY, being duly sworn according to law, depose and say that the facts contained in the foregoing Amended Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.



Peter W. Frailey

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PETER W. FRAILEY,

CIVIL DIVISION

Plaintiff,

Docket No. 2004 – 01076 - CD

vs.

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION; and  
NOAH HOSTETLER,

**PLAINTIFF'S REPLY TO NEW MATTER  
OF DEFENDANT NOAH HOSTETLER**

Defendants.

Filed on behalf of Plaintiff:  
Peter W. Frailey

Counsel of Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

Woomer & Friday LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216-2320  
(412)563-7980

**JURY TRIAL DEMANDED**

EGK  
**FILED** NO  
m/11/12/04 CC  
SEP 20 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

PETER W. FRAILEY,

CIVIL DIVISION

Plaintiff,

Docket No. : 2004 - 01076 - CD

vs.

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION; and  
NOAH HOSTETLER,

Defendant.

**PLAINTIFF'S REPLY TO NEW MATTER OF  
DEFENDANT NOAH HOSTETLER**

COMES NOW, the Plaintiff, Peter W. Frailey, by and through his attorney of record, Robert B. Woomer, Esquire, and Woomer & Friday LLP, and files the following Reply to New Matter of Defendant Noah Hostetler in accordance with Pennsylvania Rules of Civil Procedure:

1. In response to paragraph 20 of Defendant's New Matter, said paragraph is an incorporation paragraph for which no response is necessary. To the extent a response is required, Plaintiff denies the same.

2. In response to paragraph 21 of Defendant's New Matter, said allegation is a conclusion of law for which no response is necessary. To the extent a response is required, Plaintiff denies the same.

3. In response to paragraph 22 of Defendant's New Matter, said allegation is a conclusion of law for which no response is necessary. To the extent a response is required,

Plaintiff denies the same and, to the contrary, avers that the actions and/or inactions of the Defendant were the proximate cause in bringing about the damages and injuries to the Plaintiff.

4. In response to paragraph 23 of Defendant's New Matter, said allegation is a conclusion of law for which no response is necessary. To the extent a response is required, Plaintiff denies the same and, on the contrary, avers that the horse was sold as being road worthy for which it was not.

5. In response to paragraph 24 of Defendant's New Matter, said allegation is a conclusion of law for which no response is necessary. To the extent a response is required, Plaintiff denies the same and, to the contrary, avers that Plaintiff's damages and injuries were as a result of the actions and/or inactions of this Defendant.

6. In response to paragraph 25 of Defendant's New Matter, said allegation is a conclusion of law for which no response is necessary. To the extent a response is required, Plaintiff denies the same.

7. In response to paragraph 26 of Defendant's New Matter, said allegation is a conclusion of law for which no response is necessary. To the extent a response is required, Plaintiff denies the same and, to the contrary, avers that this cause of action was brought within the applicable statute of limitations.

8. In response to paragraph 27 of Defendant's New Matter, said allegation is a conclusion of law for which no response is necessary.

9. In response to paragraph 28 of Defendant's New Matter, Plaintiff admits that Defendant had a duty to the Plaintiff in the sale of the horse based upon the verbal warranty that Defendant made to Plaintiff that the horse was road worthy, which it was not.

10. In response to paragraph 29 of Defendant's New Matter, Plaintiff admits said allegations in part and denies in part. Plaintiff admits that he alleges a breach of duty and negligence against Defendant. Plaintiff is without sufficient information or knowledge to determine the truth or falsity of the vague and ambiguous allegation that "Defendant Hostetler did sell a horse approximately two or three weeks prior to the accident alleged in Plaintiff's Complaint" and, therefore, denies the same. By way of further answer Plaintiff avers that Plaintiff purchased the at-issue horse from Defendant Hostetler on or about May 31, 2004 and that the accident alleged in Plaintiff's Complaint occurred on July 12, 2002.

11. In response to paragraph 30 of Defendant's New Matter, said allegation is a conclusion of law for which no response is necessary.

12. In response to paragraph 31 of Defendant's New Matter, said allegation is a conclusion of law for which no response is necessary. To the extent a response is required, Plaintiff denies the same and, to the contrary, avers that this claim has been brought within the applicable statute of limitations.

WHEREFORE, Plaintiff demands judgment in his favor against the Defendant in an amount in excess of the jurisdictional limits for arbitration, together with court costs, interest and such other and further relief as this Court may deem just and equitable.

Respectfully submitted,

By: 

Robert B. Woomer, Esquire  
Attorney for Plaintiff  
PA I.D. # 59030

**CERTIFICATE OF SERVICE**

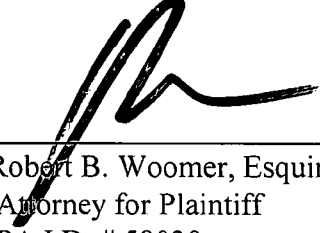
I hereby certify on the 11th day of September, 2004 that a true and correct copy of the foregoing ***Plaintiff's Reply to New Matter of Defendant Noah Hostetler*** was served upon the following, by First Class U.S. mail, postage prepaid:

Querino R. Torretti, Esquire  
Law Offices of Querino R. Torretti  
P.O. Box 218  
Reynoldsville, PA 15851  
Attorney for Harvey Miller

James N. Bryant, Esquire  
Law Offices of Bryant & Cantorna, P.C.  
107 East Main Street  
P.O. Box 551  
Millheim, PA 16854  
Attorney for Darlene R. Bierly and Penns Valley Livestock Auction, Inc.

Lori Hackenberg, Esquire  
Law Office of Michael H. Sholley, Esquire  
41 South Main Street  
Middleburg, PA 17842  
Attorney for Noah Hostetler

Respectfully submitted,

By:   
Robert B. Woomer, Esquire  
Attorney for Plaintiff  
PA I.D. # 59030

Woomer & Friday LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216-2320  
(412)563-7980



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

PETER W. FRAILEY,  
Plaintiff

v.

No. 04-1076-CD

DARLENE R. BIERLY, PENNS VALLEY  
LIVESTOCK AUCTION, INC., a  
Pennsylvania Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and  
NOAH HOSTETLER,  
Defendants

EGK  
FILED NO CC  
m/11:2584  
SEP 22 2004

William A. Shaw  
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

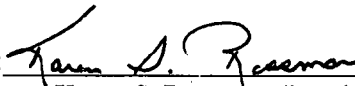
I hereby certify that a true and correct copy of the Order for hearing on Preliminary Objections  
was served upon the attorney/s listed below on the 20<sup>th</sup> day of September, 2004 in the manner indicated:

Robert B. Woomer, Esq. - by facsimile transmission and first class mail  
Woomer & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

Lori Hackenberg, Esq. - by facsimile transmission and first class mail  
Law Offices of Michael H. Sholley  
41 South Main Street  
Middleburg, PA 17842

Querino R. Torretti, Esq. - by first class mail  
P. O. Box 218  
Reynoldsville, PA 15851

By:



Karen S. Rossman, Legal Assistant to  
James N. Bryant, Esq.  
Attorney for Defendant, Darlene R. Bierly,  
Penns Valley Livestock Auction, Inc.

DATED: September 21, 2004

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

PETER W. FRAILEY

-VS-

No. 04-1076-CD

DARLENE R. BIERLY, PENNS  
VALLEY LIVESTOCK AUCTION,  
INC., a Pennsylvania  
Corporation t/d/b/a PENNS  
VALLEY LIVESTOCK AUCTION;  
and NOAH HOSTETLER

FILED

SEP 24 2004

William A. Shaw  
Prothonotary/Clerk of Courts

ORDER

NOW, this 22nd day of September, 2004, following argument relative the Motion to Consolidate and following argument on the preliminary objections filed on behalf of the Defendants Darlene R. Bierly and Penns Valley Livestock Auction, it is the ORDER of this Court as follows:

1. There being no objection to the Plaintiffs' Motion to Consolidate, it is therefore the ORDER of this Court that the said Motion be and is hereby granted and the above-captioned case consolidated with no. 04-393-CD;

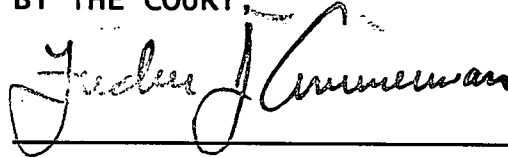
2. Counsel shall have no more than twenty (20) days from this date in which to submit letter brief to the Court relative the Defendant's Preliminary Objections as

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aforesaid;

3. All future filings shall be to case no.  
04-393-CD.

BY THE COURT,

A handwritten signature in cursive script, reading "Frederick J. Zimmerman", is written over a horizontal line.

President Judge