

- 04-1246-CD
WILLIAM J. MCCUSKER, et al VS
BJR, INC. d/b/a CONSERVCO
CONSTRUCTION, et al

William McCusker et al vs BJR Inc et al
2004-1246-CD

Date: 11/8/2007

Clearfield County Court of Common Pleas

User: LMILLER

Time: 10:42 AM

ROA Report

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Case: 2004-01246-CD

Current Judge: Fredric Joseph Ammerman

William J. McCusker, Beverly I. McCusker vs. BJR, Inc., Conservco Construction

Civil Other

Date		Judge
8/13/2004	Filing: Civil Complaint Paid by: Neiswender, Frederick M. (attorney for McCusker, William J.) Receipt number: 1884635 Dated: 08/13/2004 Amount: \$85.00 (Check) 5 Cert. Copies Atty Neiswender.	No Judge
9/7/2004	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm \$64.37 Shff. Hawkins paid by Atty.	No Judge
	Entry of Appearance of John Dennison, II for BJR/Conservco. No cc.	No Judge
9/17/2004	Praeipce For Entry of Appearance, for Appalachian Wood Products, filed by s/ William C. Gallishen, Esquire. Certificate of Service, upon Frederick M. Neiswender, Esquire.	No Judge
10/6/2004	Answer, New Matter and Cross-Claim, on behalf of Defendant Appalachian Wood Products, filed by s/William C. Gallishen, Esquire. No CC. Certificate of Service, via U.S. First Class Mail upon: Frederick M. Neiswender, Esquire, and John C. Dennison, Esquire.	No Judge
11/5/2004	Answer and New Matter filed on behalf of Defendant, by s/ John C. Dennison, II. No CC	No Judge
12/3/2004	Reply to New Matter Directed to Appalachian Wood Products, filed by s/ William C. Gallishen, Esquire. No cc	No Judge
12/8/2004	Reply to New Matter-Crossclaim filed by Atty. Dennison No cc.	No Judge
2/9/2005	Praeipce For Substitution of Appearance, filed. Kindly substitute the appearance of Gerald J. Hutton Esq., of Bashine and Hutton, on behalf of Defendant, Applachian Wood Productions, Inc. in the the afore-captioned matter for William C. Gallishen Esq., filed by s/ Gerald J. Hutton Esq. NO CC.	Fredric Joseph Ammerman
3/17/2005	Motion to Amend New Matter in the Nautre of Cross-Claim, filed by Atty. Hutton, behalf of Applachain Wood Products. 2 cert to Att.	No Judge
	Praeipce for Argument filed. filed by Atty Hutton, 2 Cert. to Atty.	No Judge
3/21/2005	Order, AND NOW, this 21st day of March, 2005, it is the Order of the Court that argument on Defendant Appalacian Wood Products, Inc.'s Motion to Amend Defendant's Answer to include New Matter filed in the above-captioned matter has been scheduled for the 14th day of April, 2005 at 9:30 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 3CC Atty Hutton w/memo Re: service	Fredric Joseph Ammerman
4/14/2005	Order, AND NOW, this 14th day of April, 2005, it is ORDERED that defendant is granted leave to amend its Answer to include the New Matter Pursuant to Rule 2252(d) attached to this Motion. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 3CC Atty. Neiswender (will serve).	Fredric Joseph Ammerman
4/21/2005	Amended New Matter in the Nature of a Cross-Claim, filed by s/ Gerald J. Hutton, Esquire. No CC	Fredric Joseph Ammerman
12/16/2005	Miscellaneous Payment: Subpoena Paid by: Dennison Dennison & Harper Receipt number: 1911698 Dated: 12/16/2005 Amount: \$3.00 (Check)	Fredric Joseph Ammerman
11/9/2006	Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa.R.C.P. 4009.21, filed by s/ John C. Dennison II Esq. No CC (In Re: Dr. Thomas L. Hoffman)	Fredric Joseph Ammerman
	Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa.R.C.P. 4009.21, filed by John C. Dennison II Esq. No CC. (In Re: Records Custodian-Clearfield-Jefferson Community Mental Health Center)	Fredric Joseph Ammerman

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Case: 2004-01246-CD

Current Judge: Fredric Joseph Ammerman

William J. McCusker, Beverly I. McCusker vs. BJR, Inc., Conservco Construction

Civil Other

Date		Judge
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	Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa.R.C.P. 4009.21, filed by s/ John C. Dennison II Esq. No CC. (In Re: Records Custodian-Blair Orthopedics & Sports Medicine)	Fredric Joseph Ammerman
	Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa.R.C.P. 4009.21, filed by s/ John C. Dennison II Esq. No CC. (In Re: Records Custodian-Leyo's Pharmacy)	Fredric Joseph Ammerman
	Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa.R.C.P. 4009.21, filed by s/ John C. Dennison II Esq. No CC. (In Re: Record Custodian-Penn Home Medical Supply Co)	Fredric Joseph Ammerman
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	Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa.R.C.P. 4009.21, filed by s/ John C. Dennison II Esq. No CC. (In Re: Records Custodian-PennCare Physical Therapy)	Fredric Joseph Ammerman
	Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa.R.C.P. 4009.21, filed by s/ John C. Dennison II Esq. No CC. (In Re: Records Custodian-Altoona Hospital)	Fredric Joseph Ammerman
	Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa.R.C.P. 4009.21, filed by s/ John C. Dennison II Esq. No CC. Records Custodian-ProCare Health Systems Inc.)	Fredric Joseph Ammerman
	Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa.R.C.P. 4009.21, filed by s/ John C. Dennison II Esq. No CC. (In re: Records Custodian-DuBois Regional Medical Center)	Fredric Joseph Ammerman
	Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa.R.C.P. 4009.21, filed by s/ John C. Dennison II Esq. No CC. (In Re: Dr. Michael J. Drass)	Fredric Joseph Ammerman
	Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa.R.C.P. 4009.21, filed by s/ John C. Dennison II Esq. No CC. (In Re: Dr. Vincent F. Morgan M.D.)	Fredric Joseph Ammerman
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Civil Other

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11/9/2006	Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Pa.R.C.P. 4009.21, filed by s/ John C. Dennison II Esq. No CC. (In Re: Zhenhui Li M.D.)	Fredric Joseph Ammerman
11/30/2006	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Dr. J. A. Robinson)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Sheldon P. Rosenthal M.D.)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Records Custodian-Tyrone Hospital)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Dr. Mary E. Green)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Records Custodian-Blair Orthopedics & Sports Medicine)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Records Custodian-Clearfield-Jefferson Community Mental Health Center)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Records Custodian-Leyo's Pharmacy)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Records Custodian-Penn Home Medical Supply Co)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Records Custodian-Clearfield Hospital)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Records Custodian-PennCare Physical Therapy)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Records Custodian-Altoona Hospital)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Records Custodian-ProCare Health Systems Inc)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Dr. Michael J. Drass)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (Carroll P. Osgood M.D.)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Zhenhui Li M.D.)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Vincent F. Morgan M.D.)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Dr. J. Philip Hall)	Fredric Joseph Ammerman
	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. No CC. (In Re: Dr. Thomas L. Hoffman)	Fredric Joseph Ammerman

Civil Other

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11/30/2006	Notice of Deposition for the Purpose of Copying Records Only, filed by s/ John C. Dennison II Esq. NO CC. (In Re: Records Custodian-DuBois Regional Medical Center)	Fredric Joseph Ammerman
	Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, filed by s/ John C. Dennison II Esq. No CC. (In Re: Dr. J. A. Robinson)	Fredric Joseph Ammerman
	Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, filed by s/ John C. Dennison II Esq. No CC. (In Re: Shelson P. Rosenthal M.D.)	Fredric Joseph Ammerman
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Date: 11/8/2007

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ROA Report

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Case: 2004-01246-CD

Current Judge: Fredric Joseph Ammerman

William J. McCusker, Beverly I. McCusker vs. BJR, Inc., Conservco Construction

Civil Other

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11/30/2006	Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, filed by s/ John C. Dennison II Esq. No CC. (In Re: Dr. Vincent F. Morgan M.D.)	Fredric Joseph Ammerman
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	Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, filed by s/ John C. Dennison II Esq. No CC. (In Re: Dr. J. Philip Hall)	Fredric Joseph Ammerman
3/9/2007	Certificate of Readiness for Trial, Re: Jury Trial, filed by s/Frederick M. Neiswender, Esq. Four CC Attorney Neiswender	Fredric Joseph Ammerman
4/9/2007	Order, NOW, this 9th day of April, 2007, Ordered that the Pre-Trial Conference shall be held on the 20th day of April, 2007, at 11:30 a.m. in Chambers. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1 CC Attys: Neiswender, Dennison, Gallishen	Fredric Joseph Ammerman
4/24/2007	Order, this 20th day of April, 2007, following pre-trial conference, it is Ordered that: The case is hereby moved to the Fall, 2007, term of court. Jury Selection will be held on Aug. 28, 2007 at 9:00 a.m. in Courtroom 1. Jury trial is scheduled for Oct. 17, 18 and 19, 2007, at 9:00 a.m. in courtroom 1. Plff shall have no more than 30 days from this date to provide to the Defense W-2 forms and tax returns for 1997 through 2006. Plaintiff shall ensure that the Defense receives a transcript from the Worker's Compensation hearing with the transcript including testimony. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys Neiswender, Dennison, Gallishen	Fredric Joseph Ammerman
5/10/2007	Motion For Leave to Amend Answer and New Matter, filed by s/ John Dennison Esquire and Gerald J. Hutton, Esquire. No CC	Fredric Joseph Ammerman
5/14/2007	Order, this 11th day of May, 2007, upon receipt of the Motion for Leave to Amend Answer and New Matter submitted on behalf of the Defendants, it is Ordered that a rule for written response is issued upon the Plaintiffs to file an answer to the Motion within no more than 20 days of this date. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Neiswender, Dennison, Gallishen	Fredric Joseph Ammerman
5/31/2007	Motion For Summary Judgment, filed by s/ Gerald J. Hutton, Esquire. No CC	Fredric Joseph Ammerman
	Answer to Motion for Leave to Amend Answer and New Matter, filed by s/ Frederick M. Neiswender, Esquire. 4CC Atty. Neiswender	Fredric Joseph Ammerman
6/5/2007	Scheduling Order, this 4th day of June, 2007, upon consideration of Defendant, Appalachian Wood Products, Inc's Motion for Summary Judgment and Brief in support thereof, it is Ordered: Oral argument June 29, 2007 at 10:30 a.m. in Courtroom 1. Notice of entry of the Order shall be served on all parties by the Prothonotary. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Neiswender, Dennison, Gallishen	Fredric Joseph Ammerman
6/11/2007	Motion to Schedule Oral Argument on Defendants' Motion to Amend New Matter, filed by Atty. Dennison, II. no cert. copies.	Fredric Joseph Ammerman

Civil Other

Date		Judge
6/12/2007	Order, this 12th day of June, 2007, after consideration of the within Motion, argument is scheduled on Defendants' Motion to Amend New Matter on July 10, 2007 at 11:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Neiswender, Dennison, Gallishen	Fredric Joseph Ammerman
	Order, NOW, this 12th day of June, 2007, it is Ordered that argument on Defendant, Appalachian Wood Products Motion for Summary Judgment is rescheduled from June 29, 2007 to July 10, 2007 at 11:00 a.m. in Courtroom 1. 1/2 hour has been allotted. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Neiswender, Dennison, Gallishen	Fredric Joseph Ammerman
7/2/2007	Motion for Leave of Court to File Discovery of Record, filed by s/Gerald J. Hutton, Esq. No CC	Fredric Joseph Ammerman
	Order of Court, AND NOW, this 28th day of June, 2007, upon consideration of Motion for Leave of Court to File Discovery of Record of Defendant, Appalachian Wood Products, Inc., it is appearing that defendant has filed Motion for Summary Judgment, it is hereby Ordered that leave of Court is granted for all parties to file with the Court deposition transcripts of Plaintiff, William McCusker, Joseph Kane (crane operator and owner of Conservco), Glenn R. MacTavish (Appalachian Wood maintenance personnel), and Harold Bratton (owner of Able Company 1), plaintiff's employer and any other discovery responses served by the parties in this action. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorney Hutton	Fredric Joseph Ammerman
7/9/2007	Transcript of Proceedings, filed. Deposition of Glenn R. Mactavish, May 11, 2006. Copy filed per Judge Ammerman	Fredric Joseph Ammerman
	Transcript of Proceedings, filed. Deposition of Joseph Kane, April 17, 2006. Copy filed per Judge Ammerman	Fredric Joseph Ammerman
	Transcript of Proceedings, filed. Deposition of Harold W. Bratton, May 11, 2006. Copy filed per Judge Ammerman	Fredric Joseph Ammerman
	Transcript of Proceedings, filed. Deposition of William McCusker, April 17, 2006. Copy filed per Judge Ammerman	Fredric Joseph Ammerman
	Answer and New Matter to Defendant's Motion for Summary Judgment, filed by s/Frederick M. Neiswender, Esq. One CC Attorney Neiswender	Fredric Joseph Ammerman
7/12/2007	Amended Answer, New Matter, And Cross-Claim. Filed by s/ Gerald J. Hutton, Esquire. No CC	Fredric Joseph Ammerman
7/16/2007	Order, this 10th day of July, 2007, Motion to Amend New Matter is granted and Defendants shall have no more than 10 days from this date in which to file an Amended Answer and New Matter. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Neiswender, J. Dennison, W. Gallishen	Fredric Joseph Ammerman
7/17/2007	Amended New Matter, filed by s/ John C. Dennison, Esquire. No cc	Fredric Joseph Ammerman
7/19/2007	Motions In Limine, filed by s/ John C. Dennison, II, Esquire. No CC	Fredric Joseph Ammerman
7/25/2007	Order, this 25th day of July, 2007, a Rule is issued upon plaintiff. Oral argument shall be held in Courtroom No. 1 on the 24th of Sept., 2007 at 11:00 a.m. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 3CC Atty. Dennison	Fredric Joseph Ammerman
8/27/2007	Order, this 24th day of August, 2007, Defendant Appalachian Wood Products, Inc.'s Motion for Summary Judgment is Granted. Appalacian Wood Products, Inc. is Dismissed from the case. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Neiswender, Dennison, Gallishen	Fredric Joseph Ammerman

Date: 11/8/2007

Clearfield County Court of Common Pleas

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ROA Report

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Case: 2004-01246-CD

Current Judge: Fredric Joseph Ammerman

William J. McCusker, Beverly I. McCusker vs. BJR, Inc., Conservco Construction

Civil Other

Date		Judge
8/31/2007	Notice of Videotape Deposition of Bill Hennessey M.D., filed by s/ John C. Dennison II Esq. No CC.	Fredric Joseph Ammerman
10/9/2007	Notice of Videotape Deposition of Michael J. Drass, M.D., filed by s/ Frederick M. Neiswender, Esquire. 4CC Atty. Neiswender	Fredric Joseph Ammerman
10/12/2007	Opinion and Order, NOW, this 11th day of Oct., 2007, following argument held on Sept. 24, 2007 and consideration of the briefs, Plaintiff's Motions in Limine are Granted. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to C/A & Attys: Neiswender, Dennison, Mikesell	Fredric Joseph Ammerman
10/18/2007	Verdict, filed. Now, this 18th day of October, 2007, Verdict in favor of the Plaintiffs in the amount of \$100,000.00, s/ Robert Malinich, Foreperson:	Fredric Joseph Ammerman
10/26/2007	Plaintiff's Motion to Mold Verdict and for Delay Damages, filed by s/Frederick M. Neiswender, Esq. Three CC Attorney Neiswender	Fredric Joseph Ammerman
11/1/2007	Order, this 31st day of Oct., 2007, argument on Motion to Mold Verdict and for Delay Damages shall be held on the 15th day of Nov., 2007 at 9:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Neiswender, Dennison	Fredric Joseph Ammerman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

No. 04 - 1240 - C.D.

Type of case: Civil

Type of pleading: Complaint

Filed on behalf of: Plaintiffs,
William J. McCusker and
Beverly I. McCusker

Counsel for Plaintiffs:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456
501 East Market Street, Suite 3
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED ^{5cc}
13:08 PM ^{Atty Neiswender}
AUG 13 2004 ^{Atty pol. 85.00}

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,

Plaintiffs,

vs.

No. 04 - - C.D.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,

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 OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
1 North Second Street
Clearfield, Pennsylvania 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

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No. 04 - - C.D.

COMPLAINT

AND NOW, come the Plaintiffs, WILLIAM J. MCCUSKER and BEVERLY I. MCCUSKER, by and through their attorney, FREDERICK M. NEISWENDER, ESQUIRE, and file this Complaint against the Defendants, BJR, INC. d/b/a CONSERVCO CONSTRUCTION and APPALACHIAN WOOD PRODUCTS, INC., on a cause of action upon which the following is a statement:

1. Plaintiffs, WILLIAM J. MCCUSKER and BEVERLY I. MCCUSKER are husband and wife residing at 555 Market Street, Coalport, Clearfield County, Pennsylvania 16627.

2. Defendant, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, is a Pennsylvania corporation located in Clearfield County with an address of 805 South Second Street, Clearfield, Clearfield County, Pennsylvania 16830.

3. Defendant, APPALACHIAN WOOD PRODUCTS, INC., is a Pennsylvania corporation located in Clearfield County with an address of P.O. Box 1408, Route 879, Clearfield, Clearfield County, Pennsylvania 16830.

4. On or about August 17, 2002, Plaintiff, WILLIAM J. MCCUSKER, was working for Able Company 1, Inc. installing a fire suppression system at the physical plant of APPALACHIAN WOOD PRODUCTS, INC.

5. In order to install the system, APPALACHIAN WOOD PRODUCTS, INC. hired BJR, INC. d/b/a CONSERVCO CONSTRUCTION to use their crane so that Plaintiff, WILLIAM J. MCCUSKER, would be able to reach the installation areas.

6. Plaintiff, WILLIAM J. MCCUSKER, was suspended approximately fifty to sixty feet (50'-60') above the ground in the man-basket of a crane owned and operated by BJR, INC. d/b/a CONSERVCO CONSTRUCTION.

7. As the man-basket was being lowered, the operator swung the extended boom and Plaintiff, WILLIAM J. MCCUSKER, began descending at a high rate of speed from approximately forty feet (40') above the ground.

8. Immediately thereafter, one of the crane's outriggers failed causing the man-basket and boom to crash to the ground with such force sufficient to bury both into the macadam.

COUNT I

WILLIAM J. MCCUSKER V. BJR, INC. d/b/a CONSERVCO CONSTRUCTION

9. Plaintiff, WILLIAM J. MCCUSKER, incorporates by reference the allegations in Paragraphs 1 through 8, above, as though set forth at length herein.

10. The incident described above was directly and proximately caused by the negligence and carelessness of Defendant, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, which consisted, among other things, of the following:

(a) causing Plaintiff, WILLIAM J. MCCUSKER, to fall;

- (b) operating their crane in a careless, reckless, and negligent manner;
- (c) operating their crane in an improper manner under the circumstances;
- (d) operating their crane with no warning of movement or intended direction;
- (e) not having their crane under proper control so as to operate it safely;
- (f) operating their crane without due regard to the rights, safety, and position of the Plaintiff, WILLIAM J. MCCUSKER;
- (g) failing to have their crane under the proper control so as to prevent dropping the Plaintiff, WILLIAM J. MCCUSKER;
- (h) failing to keep a proper lookout;
- (i) failing to use due care under the circumstances;
- (j) failing to take action to avoid dropping the Plaintiff, WILLIAM J. MCCUSKER;
- (k) failing to operate their crane in a manner consistent with generally accepted principles of crane operation;
- (l) failing to acquire and maintain the proper training required to safely operate their crane;
- (m) in allowing the dangerous and defective condition of their crane to exist when Defendant, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, knew or should have known of the dangers created thereby;
- (n) in failing to repair and maintain their crane in a proper and timely manner;
- (o) in failing to timely inspect their crane;
- (p) in allowing their crane to exist in a dangerous state of disrepair;
- (q) in failing to maintain their crane in such a condition that it was safe for its ordinary and intended use by individuals contracted to work in a man-basket;

- (r) in failing to provide warning or other notice to Plaintiff, WILLIAM J. MCCUSKER, and others of the defective condition of their crane;
- (s) in making or causing to be made improper, inadequate, insufficient and untimely repairs of their crane on some date prior to August 17, 2002.

11. At all times material hereto, Plaintiff, WILLIAM J. MCCUSKER, acted with due care and was not contributorily negligent.

12. Plaintiff, WILLIAM J. MCCUSKER, sustained the following serious and severe injuries, some or all of which may be permanent in nature:

- (a) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones, joints and intervertebral disks of the back and spine, including, but not limited to, the cervical region, thoracic region and lumbar region;
- (b) injuries and damage in and about the muscles, ligaments, tissues, nerves and bones of the ribcage;
- (c) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones and joints of the upper and lower legs, including, but not limited to, the buttocks, thigh region and calf region;
- (d) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones and joints of the ankles and feet;
- (e) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones and joint of the right wrist;
- (f) a possible aggravation of a pre-existing, non-disabling and asymptomatic condition;
- (g) damage to Plaintiff, WILLIAM J. MCCUSKER'S, mental and emotional state, including, but not limited to, severe depression and post traumatic stress disorder;

(h) shock and injuries to the nerves and nervous system;

(i) internal injuries;

(j) other serious and severe injuries.

13. As a result of Defendant's, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, negligence, Plaintiff, WILLIAM J. MCCUSKER, has suffered great bodily pain and suffering, as well as mental anxiety and nervousness, to his great detriment and loss.

14. As a result of Defendant's, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, negligence, Plaintiff, WILLIAM J. MCCUSKER, has sustained serious and permanent injury, for the treatment of which he has incurred medical bills and expenses in excess of twenty thousand dollars (\$20,000.00), and will probably incur additional medical bills in the future.

15. As a result of Defendant's, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, negligence, Plaintiff, WILLIAM J. MCCUSKER, has suffered a loss of earnings and/or earning capacity.

16. As a result of Defendant's, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, negligence, Plaintiff, WILLIAM J. MCCUSKER, has suffered and interruption of his daily habits and pursuits to his great and permanent detriment and loss.

WHEREFORE, Plaintiff, WILLIAM J. MCCUSKER, demands judgement against Defendant, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, in an amount in excess \$20,000.00, exclusive of interest and costs.

COUNT II

BEVERLY I. MCCUSKER V. BJR, INC. d/b/a CONSERVCO CONSTRUCTION

17. Plaintiff, BEVERLY I. MCCUSKER, incorporates by reference the allegations in Paragraphs 1 through 16, above, as though set forth at length herein.

18. Plaintiff, BEVERLY I. MCCUSKER, has been and may continue to be required to expend money and incur financial obligations in and about an effort to obtain appropriate medical care for her husband, WILLIAM J. MCCUSKER, as a result of the acts and /or omissions of Defendants, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, described above.

19. As a result of the injuries to her husband, Plaintiff, BEVERLY I. MCCUSKER, has been and continues to be deprived of her husband's aid, comfort, services, society, companionship and affection all to her great detriment and loss.

WHEREFORE, Plaintiff, BEVERLY I. MCCUSKER, demands judgement against Defendant, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, in an amount in excess \$20,000.00, exclusive of interest and costs.

COUNT III

WILLIAM J. MCCUSKER V. APPALACHIAN WOOD PRODUCTS, INC.

20. Plaintiff, WILLIAM J. MCCUSKER, incorporates by reference the allegations in Paragraphs 1 through 19, above, as though set forth at length herein.

21. The incident described above was directly and proximately caused by the negligence and carelessness of Defendant, APPALACHIAN WOOD PRODUCTS, INC., which consisted, among other things, of the following:

- (a) causing Plaintiff, WILLIAM J. MCCUSKER, to fall;

- (b) in allowing the dangerous and defective condition of the real estate to exist when Defendant, APPALACHIAN WOOD PRODUCTS, INC., knew or should have known of the dangers created thereby;
- (c) in failing to repair and maintain the real estate in a proper and timely manner;
- (d) in failing to timely inspect the real estate;
- (e) in allowing the real estate to exist in a dangerous state of disrepair;
- (f) in failing to maintain the real estate in such a condition that it was safe for its ordinary and intended use by individuals contracted to work on the real estate;
- (g) in failing to provide warning or other notice to Plaintiff, WILLIAM J. MCCUSKER, and others of the defective condition of the real estate;
- (h) in making or causing to be made improper, inadequate, insufficient and untimely repairs of the real estate on some date prior to August 17, 2002;
- (i) in hiring BJR, INC. d/b/a CONSERVCO CONSTRUCTION to operate their crane with an untrained operator when Defendant, APPALACHIAN WOOD PRODUCTS, INC., knew or should have known of the dangers created thereby;
- (j) in hiring BJR, INC. d/b/a CONSERVCO CONSTRUCTION to operate their crane when it had not been properly inspected and maintained when Defendant, APPALACHIAN WOOD PRODUCTS, INC., knew or should have known of the dangers created thereby.

22. At all times material hereto, Plaintiff, WILLIAM J. MCCUSKER, acted with due care and was not contributorily negligent.

23. Plaintiff, WILLIAM J. MCCUSKER, sustained the following serious and severe injuries, some or all of which may be permanent in nature:

- (a) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones, joints and intervertebral disks of the back and spine, including, but not limited to, the cervical region, thoracic region and lumbar region;
- (b) injuries and damage in and about the muscles, ligaments, tissues, nerves and bones of the ribcage;
- (c) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones and joints of the upper and lower legs, including, but not limited to, the buttocks, thigh region and calf region;
- (d) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones and joints of the ankles and feet;
- (e) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones and joint of the right wrist;
- (f) a possible aggravation of a pre-existing, non-disabling and asymptomatic condition;
- (g) damage to Plaintiff, WILLIAM J. MCCUSKER'S, mental and emotional state, including, but not limited to, severe depression and post traumatic stress disorder;
- (h) shock and injuries to the nerves and nervous system;
- (i) internal injuries;
- (j) other serious and severe injuries.

24. As a result of Defendant's, APPALACHIAN WOOD PRODUCTS, INC., negligence, Plaintiff, WILLIAM J. MCCUSKER, has suffered great bodily pain and suffering, as well as mental anxiety and nervousness, to his great detriment and loss.

25. As a result of Defendant's, APPALACHIAN WOOD PRODUCTS, INC., negligence, Plaintiff, WILLIAM J. MCCUSKER, has sustained serious and permanent injury,

for the treatment of which he has incurred medical bills and expenses in excess of twenty thousand dollars (\$20,000.00), and will probably incur additional medical bills in the future.

26. As a result of Defendant's, APPALACHIAN WOOD PRODUCTS, INC., negligence, Plaintiff, WILLIAM J. MCCUSKER, has suffered a loss of earnings and/or earning capacity.

27. As a result of Defendant's, APPALACHIAN WOOD PRODUCTS, INC., negligence, Plaintiff, WILLIAM J. MCCUSKER, has suffered and interruption of his daily habits and pursuits to his great and permanent detriment and loss.

WHEREFORE, Plaintiff, WILLIAM J. MCCUSKER, demands judgement against Defendant, APPALACHIAN WOOD PRODUCTS, INC., in an amount in excess \$20,000.00, exclusive of interest and costs.

COUNT IV

BEVERLY I. MCCUSKER V. APPALACHIAN WOOD PRODUCTS, INC.

28. Plaintiff, BEVERLY I. MCCUSKER, incorporates by reference the allegations in Paragraphs 1 through 27, above, as though set forth at length herein.

29. Plaintiff, BEVERLY I. MCCUSKER, has been and may continue to be required to expend money and incur financial obligations in and about an effort to obtain appropriate medical care for her husband, WILLIAM J. MCCUSKER, as a result of the acts and /or omissions of Defendants, APPALACHIAN WOOD PRODUCTS, INC., described above.

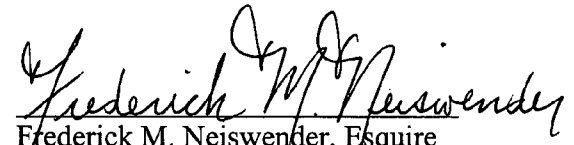
30. As a result of the injuries to her husband, Plaintiff, BEVERLY I. MCCUSKER, has been and continues to be deprived of her husband's aid, comfort, services, society, companionship and affection all to her great detriment and loss.

WHEREFORE, Plaintiff, BEVERLY I. MCCUSKER, demands judgement against Defendant, APPALACHIAN WOOD PRODUCTS, INC., in an amount in excess \$20,000.00, exclusive of interest and costs.

DEMAND FOR JURY TRIAL

Plaintiffs, WILLIAM J. MCCUSKER and BEVERLY I. MCCUSKER, by and through their undersigned counsel, hereby demand a trial by jury.

Respectfully submitted,


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs

WILLIAM J. MCCUSKER and BEVERLY I. MCCUSKER hereby state that they are the Plaintiffs in this action and that the statements of fact made in the foregoing Complaint are true and correct upon personal knowledge. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATE: 8/13/04

William J. McCusker
WILLIAM J. MCCUSKER

DATE: 8/13/04

Beverly I. McCusker
BEVERLY I. MCCUSKER

In The Court of Common Pleas of Clearfield County, Pennsylvania

McCUSKER, WILLIAM J. & BEVERLY I.

VS.

BJR, INC. d/b/a CONSERVCO CONSTRUCTION al

COMPLAINT

Sheriff Docket #

16112

04-1246-CD

SHERIFF RETURNS

NOW AUGUST 20, 2004 AT 3:00 PM SERVED THE WITHIN COMPLAINT ON BJR, INC., DEFENDANT AT RESIDENCE, 9 GUELICH AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JOE KANE, OWNER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: NEVLING/HUNTER

NOW AUGUST 20, 2004 AT 3:00 PM SERVED THE WITHIN COMPLAINT ON BJR, INC., d/b/a CONSERVCO CONSTRUCTION, DEFENDANT AT RESIDENCE, 9 GUELICH AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JOE KANE, OWNER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: NEVLING/HUNTER

NOW AUGUST 27, 2004 AT 11:43 AM SERVED THE WITHIN COMPLAINT ON APPALACHIAN WOOD PRODUCTS INC., DEFENDANT AT EMPLOYMENT, INDUSTRIAL PARK ROAD, 171 APPALACHIAN DRIVE, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO SCOTT GIBONS, DIR. OF SAFETY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: NEVLING/HUNTER

Return Costs

Cost	Description
34.37	SHERIFF HAWKINS PAID BY: ATTY CK# 1892
30.00	SURCHARGE PAID BY: ATTY CK# 1893

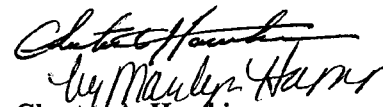
Sworn to Before Me This

2nd Day Of Sept 2004


WILLIAM A. SHAW
Prothonotary

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

So Answers,


Chester A. Hawkins
Sheriff

FILED
9/2:35 PM
SEP 02 2004

William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 04 - 1246 - C. D.

Type of Case: Civil Division

Type of Pleading: Appearance

Filed on Behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NO}CC
m/12:57
SEP 03 2004

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

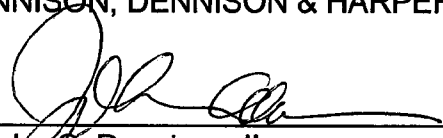
APPEARANCE

TO THE PROTHONOTARY:

Enter our Appearance on behalf of BJR, Inc., d/b/a Conservco Construction, one
of the Defendants in the above captioned matter.

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

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

WILLIAM McCUSKER and BEVERLY I.
McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

PRAECIPE FOR APPEARANCE

Filed on Behalf of Defendant, Appalachian
Wood Products, Inc.

Counsel of Record for this Party:

WILLIAM C. GALLISHEN
PA I.D. No. 39349

BASHLINE & HUTTON
Suite 3500 FreeMarket Center
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434-0201

JURY TRIAL DEMANDED

FILED

SEP 17 2004

W. A. Shaw
William A. Shaw

Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and BEVERLY I. CIVIL DIVISION
McCUSKER,

No. 04-1246

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

PRAECIPE FOR APPEARANCE

To the Prothonotary:

You are hereby directed to enter my appearance on behalf of Appalachian Wood Products,
the Defendant in the afore-captioned case.

JURY TRIAL DEMANDED.

BASHLINE & HUTTON

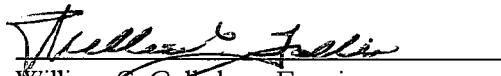

William C. Gallishen, Esquire
Attorney for Defendant
Appalachian Wood Products

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing PRAECIPE FOR APPEARANCE was served via U.S. First Class Mail, postage pre-paid, on this 15th day of September, 2004, upon the following counsel of record:

Frederick M. Neiswender Esquire
501 East Market Street
Clearfield, PA 16830

(Attorney for Plaintiff)



William C. Gallishen, Esquire

Attorney for Defendant, Appalachian Wood
Products, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and BEVERLY I.
McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and
APPALACHIAN WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

**ANSWER, NEW MATTER AND
CROSS-CLAIM**

TO THE WITHIN PARTIES:

You are required to plead to the within
NEW MATTER within twenty (20) days from
the date of service thereof or default judgment
may be entered against you.


WILLIAM C. GALLISHEN, ESQUIRE
Attorney for Defendant Appalachian Wood
Products, Inc.

Filed on Behalf of Defendant:
APPALACHIAN WOOD PRODUCTS
Appalachian Wood Products

Counsel of Record for this Party:

WILLIAM C. GALLISHEN
PA I.D. No. 39349

BASHLINE & HUTTON
Suit 3500 FreeMarket Center
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED ^{E6K}
m/11:53 ^{NO}
OCT 06 2004 ^{CC}

William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAM McCUSKER and BEVERLY I.
McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and
APPALACHIAN WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

ANSWER, NEW MATTER AND CROSS-CLAIM

And now, comes the Defendant, APPALACHIAN WOOD PRODUCTS, INC. by its attorneys, BASHLINE & HUTTON and WILLIAM C. GALLISHEN, ESQUIRE and states that it has a full, just, complete and legal defense to the allegations contained in Plaintiffs' Complaint and in support thereof sets forth the following:

1. The averments contained in Paragraphs 3 of the Plaintiffs' Complaint identifying Defendant, Appalachian Wood Products, Inc. as a corporation located in Clearfield County, Pennsylvania, with an address of P.O. Box 1408, Route 879, Clearfield Count, Pennsylvania 16830 are admitted, although Defendant, Appalachian Wood Products, Inc., makes no admission as to any allegation or inference of negligence, carelessness or liability directed against it contained in the Plaintiffs' Complaint.

2. The averments of Paragraphs 9 through 19 are directed to a party other than this answering defendant, therefore no responsive pleading is required.

3. Defendant Appalachian Wood Products, Inc. is advised by counsel and therefore believes and avers that it may deny in general the averments contained in Plaintiffs' Complaint and accordingly, the averments contained in Paragraphs 1, 2 and 4 through 8, and 20 through 30

including those allegations of negligence and carelessness averred in sub-paragraphs a through j of Paragraph 21, of the Complaint, which have not been admitted in the preceding paragraphs of this answer, are denied in general in accordance with amended Rule 1029 of the Pennsylvania Rules of Civil Procedure and strict proof thereof is demanded at trial.

4. Defendant Appalachian Wood Products, Inc. is advised by counsel and therefore believes and avers that it need not set forth any further or more specific response to the allegations contained in Plaintiffs' Complaint as all averments, other than those that have been expressly admitted, are deemed denied and placed at issue by virtue of this Answer in the nature of a general denial and in accordance with amended Rule 1029 of the Pennsylvania Rules of Civil Procedure. Strict proof thereof is demanded at trial.

WHEREFORE, Defendant Appalachian Wood Products, Inc. demands that judgment be entered in its favor with costs in its behalf sustained.

NEW MATTER

By way of further and more complete answer to the allegations in plaintiff's complaint, defendant Appalachian Wood Products, Inc. sets forth the following New Matter:

5. Plaintiffs' Complaint fails to set forth a cause of action upon which relief can be granted.

6. In the event that Plaintiffs' action was filed more than two years after the alleged incident, then in that event Plaintiffs' claim is barred by reason of the Pennsylvania statute of limitations.

7. Defendant asserts as an affirmative defense, plaintiff's contributory negligence in general, in accordance with Rule 1030 of the Pennsylvania Rules of Civil Procedure.

8. Defendant asserts as an affirmative defense, Plaintiff's assumption of the risk and/or voluntary assumption of the risk in general, in accordance with Rule 1030 of the Pennsylvania Rules of Civil Procedure.

9. In the event that is established through discovery that Plaintiff has been involved in accidents or injuries, or suffered from pre-existing or subsequently acquired illness or disease, other than the incident set forth in the Complaint, then in that event defendant avers that plaintiff's alleged injuries and damages may be unrelated to the alleged incident and for which this defendant is not liable or responsible to Plaintiff.

10. In the event that is established through discovery that Plaintiff was involved in an incident as alleged, then in that event said incident may have been due to the acts of third persons are parties, other than defendant Appalachian Wood Products, Inc., whose acts were independent, superseding and intervening and for which defendant Appalachian Wood Products, Inc. is not liable or responsible to the Plaintiffs.

11. In the event it is established that Plaintiff was involved in an accident as alleged in the Complaint, then in that event, Defendant avers that the accident was due to the acts of persons or parties, other than Defendant, who are independent, intervening and superceding and for which this Defendant is not liable.

Wherefore, Defendant Appalachian Wood Products, Inc. demands that judgment be entered in its favor with costs in its behalf sustained.

CROSS-CLAIM

By way of further Answer, Defendant Appalachian Wood Products, Inc. sets forth the following New Matter in the Nature of a Cross Claim pursuant to Rule 2252 of the Pennsylvania

Rules of Civil Procedure and in support thereof of sets forth the following:

12 Defendant, Appalachian Wood Products, Inc., while continuing to deny the allegations of Plaintiffs' Complaint, as set forth more fully in the preceding paragraphs of this Answer, state that in the event Plaintiffs are found entitled to recover in this action, then in that event Defendant Appalachian Wood Products, Inc. asserts that said accident and/or any injuries and damages claimed by the Plaintiff were due to the acts of Co-Defendant, BJR, Inc. d/b/a Conservco Construction, which allegations of negligence, carelessness and liability are set forth more fully in the Plaintiff's Complaint directed to co-defendant, which allegations are incorporated herein by reference solely for the purpose of raising this Cross-Claim, although by making such reference and incorporation, Defendant Appalachian Wood Products, Inc. makes no admission as to the truth of any of the matters contained in Plaintiffs' Complaint, said allegations, having been denied in general as set forth in the preceding paragraphs of this Answer.

13. Defendant, Appalachian Wood Products, Inc., while denying liability and responsibility to Plaintiffs on its part, alleges that in the event that Plaintiffs are found entitled to recover in this action, then in that event, Co-Defendant, BJR, Inc. d/b/a Conservco Construction is alone liable, jointly and severally liable or liable over to Defendant Appalachian Wood Products, Inc. for indemnity and/or contribution for any monies for which Appalachian Wood Products, Inc. is found liable to Plaintiffs or any other party in this action.

14 Defendant, Appalachian Wood Products, Inc., while continuing to deny the allegations of Plaintiffs' Complaint, as set forth more fully in the preceding paragraphs of this Answer, state that in the event Plaintiffs are found entitled to recover in this action, then in that event Defendant Appalachian Wood Products, Inc. asserts that said accident and/or any injuries and damages claimed by the Plaintiff were due to the negligent and careless acts of Plaintiff himself solely or in combination with the negligence, carelessness and/or recklessness of the co-defendant, BJR, Inc. d/b/a Conservco Construction.

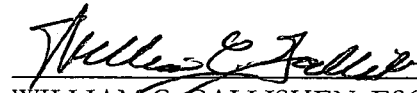
WHEREFORE, Defendant, Appalachian Wood Products, Inc., demands that judgment be entered in its favor with costs in its behalf sustained.

JURY TRIAL DEMANDED

Respectfully Submitted,

BASHLINE & HUTTON

By:

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

WILLIAM C. GALLISHEN, ESQUIRE
Attorneys for Defendant Appalachian Wood
Products, Inc.

MCCUSKER V. APPALACHIAN WOOD PRODUCTS
04-1246

VERIFICATION

I. Dana A. Null, state that I am the authorized
(Print name)

representative of Appalachian Wood Products, a Defendant herein. I aver that the statements of fact contained in the attached ANSWER, NEW MATTER AND CROSS-CLAIM are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

Dated: 9/27/2004

Dana A. Null
Signature

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing ANSWER, NEW MATTER AND CROSS-CLAIM was served via U.S. First Class Mail, postage pre-paid, on this 5th day of October, 2004, upon the following counsel of record:

Frederick M. Neiswender Esquire
501 East Market Street
Clearfield, PA 16830

(Attorney for Plaintiff)

John C. Dennison, Esquire
Dennison, Dennison & Harper
293 Main Street
Brookville, PA 15825

(Attorney for BJR, Inc. d/b/a Conservco Construction)



William C. Gallishen
Attorney for Defendant, Appalachian Wood
Products, Inc.

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,

Defendants.

CIVIL ACTION - LAW

Number 1246 of 2004, C. D.

Type of Case: Civil Division

Type of Pleading: Answer and New Matter

Filed on Behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{EEF}

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NOV 05 2004

William A. Shaw
Prothonotary

WILLIAM J. McCUSKER and BEVERLY I.
McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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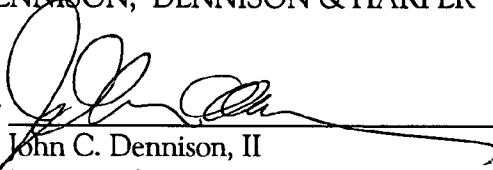
* Number 1246 of 2004, C. D.

NOTICE TO PLEAD

**TO: William J. McCusker and Beverly I. McCusker, Plaintiffs, and Appalachian Wood
Products, Inc., Defendant**

You are hereby notified to plead to the enclosed Answer and New Matter within twenty
(20) days from service hereof or a default judgment may be entered against you.

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II

Attorneys for BJR, Inc., d/b/a Conservco
Corporation, one of the within Defendants

WILLIAM J. McCUSKER and BEVERLY I.
McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

ANSWER AND NEW MATTER

AND NOW, comes the Defendant, BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, by its attorneys, Dennison, Dennison & Harper, who file the following
Answer and New Matter to Plaintiffs' Complaint:

1. After reasonable investigation, this Defendant is without knowledge or information
sufficient to form a belief as to the truth of the averments of Paragraph 1 of Plaintiffs' Complaint
and said averments are therefore denied.

2. The averments of Paragraph 2 of Plaintiffs' Complaint are admitted.

3. The averments of Paragraph 3 of Plaintiffs' Complaint are admitted.

4. The averments of Paragraph 4 of Plaintiffs' Complaint are admitted.

5. The averments of Paragraph 5 of Plaintiffs' Complaint are admitted.

6. The averments of Paragraph 6 of Plaintiffs' Complaint are denied pursuant to
Pennsylvania Rule of Civil Procedure 1029(e) and no further answer is required thereto.

7. The averments of Paragraph 7 of Plaintiffs' Complaint are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e) and no further answer is required thereto.

8. The averments of Paragraph 8 of Plaintiffs' Complaint are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e) and no further answer is required thereto.

COUNT I

William J. McCusker v. BJR, Inc., d/b/a Conservco Construction

9. The averments of Paragraphs 1 through 8 of this Answer are incorporated herein by reference thereto.

10. The averments of Paragraph 10 of Plaintiffs' Complaint, including all subparagraphs, are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e) and no further answer is required thereto.

11. The averments of Paragraph 11 of Plaintiffs' Complaint are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e) and no further answer is required thereto.

12. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 12 of Plaintiffs' Complaint and said averments are therefore denied.

13. With respect to the averments which allege that this Defendant was negligent, the same are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e) and no further answer is required thereto. With respect to the remaining averments of Paragraph 13 of Plaintiffs'

Complaint, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the same and said averments are therefore denied.

14. With respect to the averments which allege that this Defendant was negligent, the same are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e) and no further answer is required thereto. With respect to the remaining averments of Paragraph 14 of Plaintiffs' Complaint, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the same and said averments are therefore denied.

15. With respect to the averments which allege that this Defendant was negligent, the same are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e) and no further answer is required thereto. With respect to the remaining averments of Paragraph 15 of Plaintiffs' Complaint, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the same and said averments are therefore denied.

16. With respect to the averments which allege that this Defendant was negligent, the same are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e) and no further answer is required thereto. With respect to the remaining averments of Paragraph 16 of Plaintiffs' Complaint, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the same and said averments are therefore denied.

WHEREFORE, this Defendant demands judgment against the Plaintiff.

COUNT II
Beverly I. McCusker v. BJR, Inc., d/b/a Conservco Construction

17. The averments of Paragraphs 1 through 16 of this Answer are incorporated herein by reference thereto.

18. With respect to the averments which allege that this Defendant was negligent, the same are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e) and no further answer is required thereto. With respect to the remaining averments of Paragraph 18 of Plaintiffs' Complaint, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the same and said averments are therefore denied.

19. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 19 of Plaintiffs' Complaint and said averments are therefore denied.

WHEREFORE, this Defendant demands judgment against the Plaintiff.

COUNT III
William J. McCusker v. Appalachian Wood Products, Inc.

20-27. The averments of Paragraphs 20 through 27 are not directed against BJR, Inc., d/b/a Conservco Construction, and no answer is required thereto.

COUNT IV
Beverly I. McCusker v. Appalachian Wood Products, Inc.

28-30. The averments of Paragraphs 28 through 30 are not directed against BJR, Inc., d/b/a Conservco Construction, and no answer is required thereto.

**NEW MATTER DIRECTED TO PLAINTIFFS AND TO
APPALACHIAN WOOD PRODUCTS, INC., DEFENDANT**

31. At all times relevant and material to any cause of action set forth in Plaintiffs' Complaint, the Defendant, BJR, Inc. d/b/a Conservco Construction, was a statutory employer as defined under the laws of the Commonwealth of Pennsylvania and is therefore immune from suit concerning any claim or cause of action set forth in Plaintiffs' Complaint and concerning any claim or cause of action for sole liability, indemnity or contribution which may be asserted by Appalachian Wood Products, Inc., Defendant.

**NEW MATTER DIRECTED TO APPALACHIAN
WOOD PRODUCTS, INC., DEFENDANT**

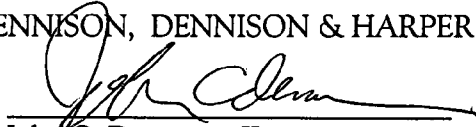
32. The Defendant, Appalachian Wood Products, Inc., is solely liable to the Plaintiffs for any alleged damages or injuries suffered by them, and the averments of the Plaintiffs' Complaint directed against the Defendant, Appalachian Wood Products, Inc., are incorporated herein by reference thereto, solely for the purpose of establishing a claim for sole liability.

33. If BJR, Inc., d/b/a Conservco Construction, is held liable to the Plaintiffs on any cause of action set forth in the Plaintiffs' Complaint, such liability being expressly denied, then the Defendant, Appalachian Wood Products, Inc., is liable over to this Defendant, BJR, Inc., d/b/a Conservco Construction, for contribution and/or indemnity, and the averments of the Plaintiffs' Complaint against the Defendant, Appalachian Wood Products, Inc., are incorporated herein by

reference thereto solely for establishing a claim for contribution or indemnity against said Defendant.

WHEREFORE, the Defendant, BJR, Inc., d/b/a Conservco Construction, hereby joins the Defendant, Appalachian Wood Products, Inc., as an Additional Defendant and demands judgment against it as being solely liable for the damages claimed by the Plaintiffs, or in the alternative, as being liable over to the Defendant, BJR, Inc., d/b/a Conservco Construction, for indemnity and/or contribution.

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Corporation, one of the within Defendants

VERIFICATION

I verify that I am the President of BJR, Inc., d/b/a Conservco Construction, one of the within Defendants, organized and doing business under the laws of the Commonwealth of Pennsylvania; I make this Affidavit on its behalf being authorized to do so; I verify that the statements made in the foregoing Answer are true and correct to the best of my knowledge, information and belief. I understand that false statements herein made are subject to the penalties of 18 Pa. C. S. Section 4904, relating to unsworn falsification to authorities.

Joseph F. Lane, pres.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and BEVERLY I.
McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and
APPALACHIAN WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

**REPLY TO NEW MATTER
DIRECTED TO APPALACHIAN
WOOD PRODUCTS, INC.**

Filed on Behalf of Defendant:
Appalachian Wood Products, Inc.

Counsel of Record for this Party:

WILLIAM C. GALLISHEN
PA I.D. No. 39349

BASHLINE & HUTTON
Suit 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED ⁶⁶¹⁶
^{NO}
^{cc}
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DEC 03 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and BEVERLY I.
McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and
APPALACHIAN WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

**REPLY TO NEW MATTER
DIRECTED TO APPALACHIAN
WOOD PRODUCTS, INC.**

Filed on Behalf of Defendant:
Appalachian Wood Products, Inc.

Counsel of Record for this Party:

WILLIAM C. GALLISHEN
PA I.D. No. 39349

BASHLINE & HUTTON
Suit 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

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William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAM McCUSKER and BEVERLY I.
McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and
APPALACHIAN WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

**REPLY TO NEW MATTER DIRECTED TO
APPALACHIAN WOOD PRODUCTS, INC.**

NOW, comes the Defendant, Appalachian Wood Products, Inc., by its attorneys, BASHLINE & HUTTON and WILLIAM C. GALLISHEN, ESQUIRE, and states that it has a full, just, complete and legal defense to the New Matter Pursuant to Rule 2252(d) contained in the Defendant BJR, Inc., d/b/a Conservco Construction's Answer and New Matter, and in support thereof, avers as follows:

1. The allegation set forth in the new matter filed against this Defendant, Appalachian Wood Products, Inc. contain only legal conclusions of law to which no response is required. To the extent that a response is required, the allegations set forth in co-defendant's new matter directed to Appalachian Wood Products, Inc. in Paragraphs 31 through 33 are denied.

2. It is denied that Defendant, Appalachian Wood Products, Inc., was negligent and that any actions or omissions on the part of Defendant Appalachian Wood Products, Inc. were the sole, joint, several, primary and/or proximate cause of the injuries and/or damages alleged by Plaintiffs. Further, Defendant, Appalachian Wood Products, Inc., incorporates herein its answer to Plaintiffs' Complaint to the extent that any other party's Rule 2252(d) New Matter incorporated the allegations of Plaintiffs' Complaint.

3. It is denied that Defendant, Appalachian Wood Products, Inc., is liable over to any other party to this lawsuit for any or all of the alleged injuries and/or damages of Plaintiffs, which injuries and/or damages are also specifically denied. It is further denied that, if it is determined that the Plaintiffs are entitled to recover, and that any other party to his lawsuit is found liable, that Defendant, Appalachian Wood Products, Inc., is jointly and/or severally liable over to any other party to this lawsuit, under any theory of law, for any or all sums which the Plaintiffs recover, or that Defendant, Appalachian Wood Products, Inc. is jointly and/or severally liable to the Plaintiffs with any other party to this lawsuit, under any theory of law.

WHEREFORE, Defendant, Appalachian Wood Products, Inc., respectfully requests that this Honorable Court enter judgment in its favor for any and all sums which Plaintiffs may be entitled to recover, and additionally, that there is no joint and several liability with any other party to this lawsuit.

JURY TRIAL DEMANDED

Respectfully Submitted,

BASHLINE & HUTTON

By:

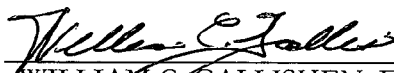


WILLIAM C. GALLISHEN, ESQUIRE
Attorneys for Defendant Appalachian Wood
Products, Inc.

VERIFICATION

I, William C. Gallishen, Esquire, do hereby verify that I am the attorney of record for Appalachian Wood Products, Inc. in the within matter. I aver that the statements of fact contained in the attached REPLY TO NEW MATTER DIRECTED TO APPALACHIAN WOOD PRODUCTS, INC. are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

Dated: December 1, 2004



WILLIAM C. GALLISHEN, ESQUIRE
Attorney for Defendant, Appalachian Wood Products,
Inc.

CERTIFICATE OF SERVICE

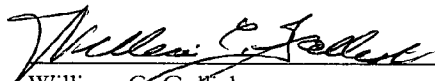
I do hereby certify that a true and correct copy of the foregoing REPLY TO NEW MATTER DIRECTED TO APPALACHIAN WOOD PRODUCTS, INC. was served via U.S. First Class Mail, postage pre-paid, on this 1st day of December, 2004 upon the following counsel of record:

Frederick M. Neiswender, Esquire
501 East Market Street
Clearfield, PA 16830

(Attorney for Plaintiff)

John C. Dennison, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825

(Attorney for BJR, Inc. d/b/a Conservo Construction)



William C. Gallishen
Attorney for Defendant, Appalachian Wood
Products, Inc.

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 1246 of 2004, C. D.

Type of Case: Civil Division

Type of Pleading: Reply to New Matter-
Crossclaim

Filed on Behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED

DEC 07 2004

William A. Shaw

Prothonotary/Clerk of Courts

no c/c

WILLIAM J. McCUSKER and BEVERLY I.
McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 1246 of 2004, C. D.

REPLY TO NEW MATTER-CROSSCLAIM

AND NOW, comes the Defendant, BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, by its attorneys, Dennison, Dennison & Harper, who file the following
Reply to New Matter-Crossclaim filed by Appalchian Wood Products, Inc., Defendant:

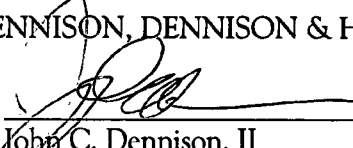
12. The averments of Paragraph 12 of the New Matter-Crossclaim filed by Appalchian
Wood Products, Inc. are denied pursuant to P.R.C. P. 1029(e) and no further answer is required
thereto. Said averments are also conclusions of law and are deemed to be denied and no further
answer is required thereto. In addition, the averments of this Defendants's Answer are
incorporated herein by reference thereto.

13. The averments of Paragraph 13 of the New Matter-Crossclaim filed by Appalchian
Wood Products, Inc. are denied pursuant to P.R.C. P. 1029(e) and no further answer is required
thereto. Said averments are also conclusions of law and are deemed to be denied and no further
answer is required thereto. In addition, the averments of this Defendants's Answer are
incorporated herein by reference thereto.

14. The averments of Paragraph 14 of the New Matter-Crossclaim filed by Appalchian Wood Products, Inc. are denied pursuant to P.R.C. P. 1029(e) and no further answer is required thereto. Said averments are also conclusions of law and are deemed to be denied and no further answer is required thereto. In addition, the averments of this Defendants's Answer are incorporated herein by reference thereto.

WHEREFORE, this Defendant demands judgment against the Plaintiffs and Co-Defendant, Appalchain Wood Products, Inc.

DENNISON, DENNISON & HARPER

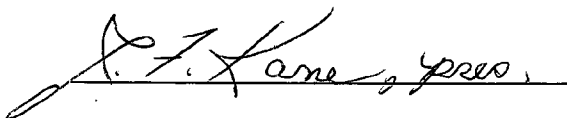
By 

John C. Dennison, II

Attorneys for BJR, Inc., d/b/a Conservco
Corporation, one of the within Defendants

VERIFICATION

I verify that I am the President of BJR, Inc., d/b/a Conservco Construction, one of the within Defendants, organized and doing business under the laws of the Commonwealth of Pennsylvania; I make this Affidavit on its behalf being authorized to do so; I verify that the statements made in the foregoing New Matter-Crossclaim are true and correct to the best of my knowledge, information and belief. I understand that false statements herein made are subject to the penalties of 18 Pa. C. S. Section 4904, relating to unsworn falsification to authorities.

 J. F. Kane, Pres.

STATE OF TEXAS

COUNTY OF DALLAS

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William A. Shaw
Prothonotary/Clerk of Courts

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

**PRAECIPE FOR SUBSTITUTION OF
APPEARANCE**

FILED ON BEHALF OF DEFENDANT:
APPALACHIAN WOOD PRODUCTS,
INC.

COUNSEL OF RECORD FOR THIS
PARTY:

Gerald J. Hutton, Esquire
PA I.D. No 23098

BASHLINE & HUTTON
Suit 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434-0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED

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FEB 09 2005

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

CIVIL DIVISION

No. 04-1246

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

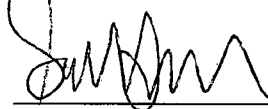
PRAECIPE FOR SUBSTITUTION OF APPEARANCE

TO William A. Shaw, Sr., Prothonotary
Clearfield County, Pennsylvania

Kindly substitute the appearance of GERALD J. HUTTON, ESQUIRE of BASHINE
AND HUTTON, on behalf of Defendant, APPALACHIAN WOOD PRODUCTIONS, INC. in
the afore-captioned matter, for William C. Gallishen, Esquire.

JURY TRIAL DEMANDED.

BASHLINE & HUTTON



GERALD J. HUTTON, ESQUIRE
Attorney for Defendant
APPALACHIAN WOOD PRODUCTIONS,
INC.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing PRAECIPE FOR
SUBSTITUTION OF APPEARANCE was served via U.S. First Class Mail, postage pre-paid, on
this 8th day of February, 2005, upon the following counsel of record:

Frederick M. Neiswender, Esquire
501 East Market Street
Clearfield, PA 16830

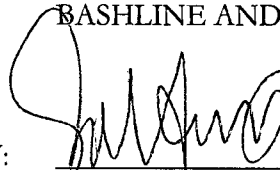
(Attorney for Plaintiff)

John Dennison, Esquire
DENNISON DENNISON & HARPER
293 Main Street
Brookville, PA 15825

(Attorney for Defendant BJR, Inc.f)

BASHLINE AND HUTTON

BY:



GERALD J. HUTTON, ESQUIRE
Attorney for Defendant,
APPALACHIAN WOOD PRODUCTS

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

**MOTION TO AMEND NEW
MATTER IN THE NATURE OF A
CROSS-CLAIM**

Filed on Behalf of Defendant:
APPALACHIAN WOOD PRODUCTS

Counsel of Record for this Party:

GERALD J. HUTTON
PA I.D. No. 23098

BASHLINE & HUTTON
Suit 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED

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William A. Shaw

Prothonotary/Clerk of Courts

1 CERT TO ATT.

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

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

MOTION TO AMEND NEW MATTER IN THE NATURE OF A CROSS CLAIM

AND NOW, comes the defendant, APPALACHIAN WOOD PRODUCTS, INC., by and through its attorneys, BASHLINE & HUTTON, and GERALD J. HUTTON, ESQUIRE, and files the following Motion to Amend Defendant's Answer to include New Matter Pursuant to Pennsylvania Rule of Civil Procedure 2252(d), in the nature of a cross-claim against BJR, Inc. d/b/a Conservco Construction, and in support thereof avers the following:

1. Defendant, Appalachian Wood Products, Inc. seeks to file an Amended Answer in which it will assert as New Matter Pursuant to Rule 2252(d) that BJR, Inc. is strictly liable for any alleged damages or injuries sustained by Plaintiffs William McCusker and Beverly I. McCusker.

2. On the basis of the factual allegations set forth in Defendant's proposed New Matter Pursuant to Rule 2252(d) a copy of which is attached as Exhibit "A", Defendant, BJR, Inc., d/b/a Conservco Construction, as the supplier of the crane/truck, is strictly liable to the Plaintiffs, in the event Plaintiffs are found to be entitled to recover for their injuries and damages.

3. The granting of this motion will not prejudice the Plaintiffs as the Statute of Limitations in this case has not expired and Defendant's proposed amendment is not against positive rule.

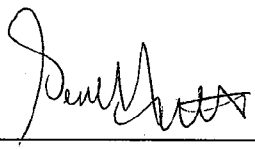
4. The granting of this motion would not act to surprise the Plaintiffs or co-Defendant given the fact that the defendant, in its original New Matter raised as new matter pursuant to Rule 2252(d) Defendant, Appalachian Wood Products, Inc.s', legal entitlement to contribution and/or indemnification from Co-Defendant, BJR, Inc.

5. The granting of this motion will not cause to delay the trial of this case as the depositions of the parties have not yet taken place, nor has there been any extensive discovery.

WHEREFORE, defendant, APPALACHIAN WOOD PRODUCTS, INC., respectfully requests this Court enter an Order authorizing the filing of an Amended Answer.

Respectfully Submitted,

BASHLINE & HUTTON

BY: 

GERALD J. HUTTON, ESQUIRE
Attorney for Defendant
Appalachian Wood Products, Inc.

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

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

**AMENDED NEW MATTER IN THE
NATURE OF A CROSS-CLAIM**

Filed on Behalf of Defendant:
APPALACHIAN WOOD PRODUCTS

Counsel of Record for this Party:

GERALD J. HUTTON
PA I.D. No. 23098

BASHLINE & HUTTON
Suit 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

EXHIBIT A

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

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

AMENDED NEW MATTER IN THE NATURE OF A CROSS CLAIM

And now, comes the Defendant, Appalachian Wood Products, Inc., by its attorneys, BASHLINE & HUTTON and GERALD J. HUTTON, ESQUIRE and files the within Amended New Matter in the Nature of a Cross Claim in response to Plaintiffs' Complaint and in support thereof states as follows:

1. Defendant incorporates herein all allegations set forth in its original Answer and New Matter as though fully set forth at length.
2. Defendant BJR, Inc. d/b/a Conservco Construction is a supplier of cranes and trucks.
3. Defendant BJR, Inc. d/b/a Conservco Construction supplied the crane/ truck in use on the day of plaintiff's alleged accident.
4. The crane/truck supplied by Defendant, BJR, Inc. d/b/a Conservco Construction failed during use causing the boom to fall during its intended use.
5. The outrigger on the crane/truck failed causing or contributing to the failure of the boom during its intended use.

6. The crane/truck was defective and unreasonably dangerous at the time Defendant, BJR, Inc. d/b/a Conservco Construction supplied it to the project, within the meaning of § 402(a) of The Restatement of Torts, Second.

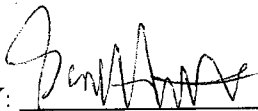
- a. Defendant, BJR, Inc. d/b/a Conservco Construction supplied a crane/truck with a boom that failed during its intended use;
- b. Defendant, BJR, Inc. d/b/a Conservco Construction supplied a crane/truck whose outrigger failed during its intended use;
- c. Defendant, BJR, Inc. d/b/a Conservco Construction supplied a crane/truck with inadequate warnings as to the dangers of collapse of the crane and bucket;
- d. Defendant, BJR, Inc. d/b/a Conservco Construction supplied a crane/truck with inadequate safeguarding to prevent the danger of collapse of the crane and bucket; and
- e. Defendant, BJR, Inc. d/b/a Conservco Construction supplied a crane/truck with inadequate systems to prevent the crane and bucket from collapsing when in its intended use.

7. For the reasons stated above, in the event Plaintiffs are found to be entitled to recover for their injuries and damages, Defendant, BJR, Inc. d/b/a Conservco Construction is alone strictly liable to the Plaintiffs for any and all injuries and damages suffered by the Plaintiffs.

WHEREFORE, defendant, APPALACHIAN WOOD PRODUCTS, INC., respectfully requests that judgment be entered in its favor with costs in its behalf sustained.

Respectfully Submitted,

BASHLINE & HUTTON.

BY: 

GERALD J. HUTTON, ESQUIRE
Attorney for Defendant
Appalachian Wood Products, Inc

CERTIFICATE OF SERVICE

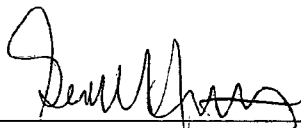
I do hereby certify that a true and correct copy of the foregoing MOTION TO AMEND
NEW MATTER IN THE NATURE OF A CROSS-CLAIM was served via U.S. First Class Mail,
postage pre-paid, on this 14th day of March, 2005 upon the following counsel of record:

Frederick M. Neiswender, Esquire
501 East Market Street
Clearfield, PA 16830

(Attorney for Plaintiff)

John C. Dennison, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825

(Attorney for BJR, Inc. d/b/a Conservco Construction)



GERALD J. HUTTON, ESQUIRE
Attorney for Defendant,
APPALACHIAN WOOD PRODUCTS, INC.

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

PRAECIPE FOR LISTING MOTION FOR ARGUMENT

TO THE PROTHONOTARY :

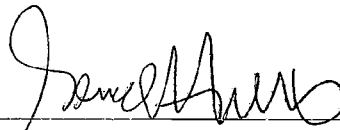
Please list Defendant Appalachian Wood Products, Inc.'s, Motion to Amend Defendant's Answer to include New Matter Pursuant to Pennsylvania Rule of Civil Procedure 2252(d), in the nature of a cross-claim against BJR, Inc. d/b/a Conservco Construction for the next argument date.

I will notify all counsel of record in writing within two days that this case has been listed for argument

Respectfully Submitted,

BASHLINE & HUTTON

BY:



GERALD J. HUTTON, ESQUIRE
Attorney for Defendant
Appalachian Wood Products, Inc.

FILED

MAR 17 2005

William A. Strawn

Prothonotary/Clerk of Courts

1 CENT TO APR

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

WILLIAM MCCUSKER and
BEVERLY I. MCCUSKER

vs.

No. 04-1246-CD

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

ORDER

AND NOW, this 21st day of March, 2005, it is the Order of the Court that argument on Defendant Appalachian Wood Products, Inc.'s Motion to Amend Defendant's Answer to Include New Matter filed in the above-captioned matter has been scheduled for the 14 day of April, 2005, at 9:30 A.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

FILED

3cc

014:0061
MAR 21 2005

Atty Hutton
w/ memo Re: service

William A. Shaw

Prothonotary/Clerk of Courts

BY THE COURT:

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

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.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

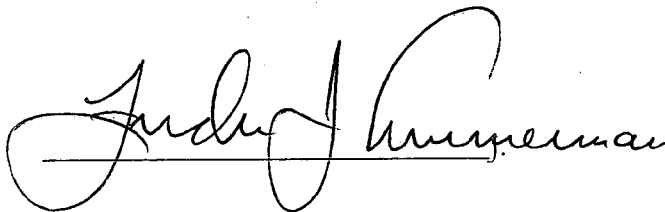
No. 04-1246

ISSUE NO.:

ORDER OF COURT

AND NOW, this 14th day of April, 2005, it is hereby ORDERED
that defendant is granted leave to amend its Answer to include the New Matter Pursuant to Rule
2252(d) attached to this Motion.

BY THE COURT:



FILED ^{6K}
3cc
019:5681
APR 14 2005
Amy Neiswender
(will serve)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

**AMENDED NEW MATTER IN THE
NATURE OF A CROSS-CLAIM**

Filed on Behalf of Defendant:
APPALACHIAN WOOD PRODUCTS

Counsel of Record for this Party:

GERALD J. HUTTON
PA I.D. No. 23098

BASHLINE & HUTTON
Suit 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED ^(6K)
m/j:4/20/05
APR 21 2005
cc

William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

AMENDED NEW MATTER IN THE NATURE OF A CROSS CLAIM

And now, comes the Defendant, Appalachian Wood Products, Inc., by its attorneys, BASHLINE & HUTTON and GERALD J. HUTTON, ESQUIRE and files the within Amended New Matter in the Nature of a Cross Claim in response to Plaintiffs' Complaint and in support thereof states as follows:

1. Defendant incorporates herein all allegations set forth in its original Answer and New Matter as though fully set forth at length.
2. Defendant BJR, Inc. d/b/a Conservco Construction is a supplier of cranes and trucks.
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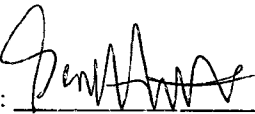
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- b. Defendant, BJR, Inc. d/b/a Conservco Construction supplied a crane/truck whose outrigger failed during its intended use;
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7. For the reasons stated above, in the event Plaintiffs are found to be entitled to recover for their injuries and damages, Defendant, BJR, Inc. d/b/a Conservco Construction is alone strictly liable to the Plaintiffs for any and all injuries and damages suffered by the Plaintiffs.

WHEREFORE, defendant, APPALACHIAN WOOD PRODUCTS, INC., respectfully requests that judgment be entered in its favor with costs in its behalf sustained.

Respectfully Submitted,

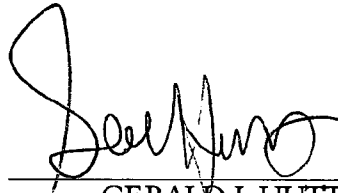
BASHLINE & HUTTON

BY: 
GERALD J. HUTTON, ESQUIRE
Attorney for Defendant
Appalachian Wood Products, Inc

VERIFICATION

I, GERALD J. HUTTON, ESQUIRE, do hereby verify that I am the attorney of record in the within matter. I aver that the statements of fact contained in the attached Amended New Matter in the Nature of a Cross-Claim thereof are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 PA. CONS. STAT. ANN. §4904 relating to unsworn falsification to authorities.

DATED: April 19, 2005

A handwritten signature in black ink, appearing to read "Gerald J. Hutton", written over a horizontal line.

GERALD J. HUTTON, ESQUIRE

CERTIFICATE OF SERVICE

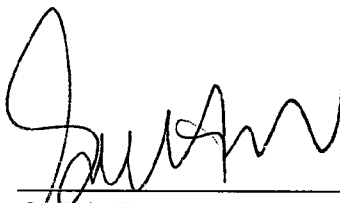
I do hereby certify that a true and correct copy of the foregoing AMENDED NEW
MATTER IN THE NATURE OF A CROSS-CLAIM was served via U.S. First Class Mail, postage
pre-paid, on this 19th day of April, 2005 upon the following counsel of record:

Frederick M. Neiswender, Esquire
501 East Market Street
Clearfield, PA 16830

(Attorney for Plaintiff)

John C. Dennison, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825

(Attorney for BJR, Inc. d/b/a Conservco Construction)

A handwritten signature in black ink, appearing to read "Gerald J. Hutton", is written over a horizontal line.

GERALD J. HUTTON, ESQUIRE
Attorney for Defendant,
APPALACHIAN WOOD PRODUCTS, INC.

FILED

APR 21 2005

William A. Shaw
Prothonotary/Clerk of Courts

RECEIVED
APR 21 2005
CLERK OF COURTS
JUDICIAL CENTER
PHILADELPHIA, PA

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PHILADELPHIA, PA

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APR 21 2005
CLERK OF COURTS
JUDICIAL CENTER
PHILADELPHIA, PA

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *NO CC*
11/14/05
NOV 09 2005

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

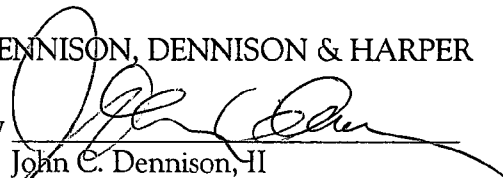
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John E. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

*

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

Records Custodian
TO: Clearfield-Jefferson Community Mental Health Center, 100 Caldwell Drive,
DuBois, PA 15801 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw LM
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for any counseling mental/health treatment for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to intake reports, evaluations, office notes, patient questionnaires, test results, reports, correspondences and billings.

CERTIFICATE OF SERVICE

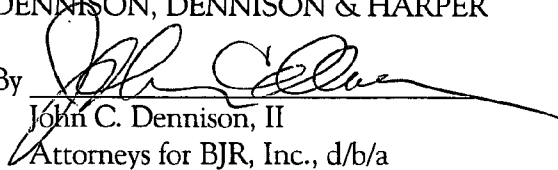
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a

Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *NOCC*
m/11/14/2008
NOV 09 2008 *um*

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

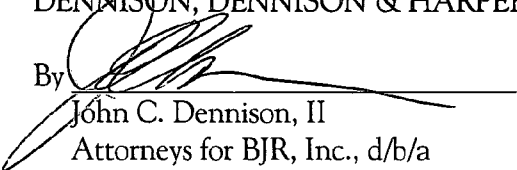
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

DENNISON, DENNISON & HARPER

Dated: November 8, 2006

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

**COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD**

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

*

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22**

TO: Dr. Thomas L. Hoffman, 320 Park Avenue, Clearfield, PA 16830
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *WAS*

Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

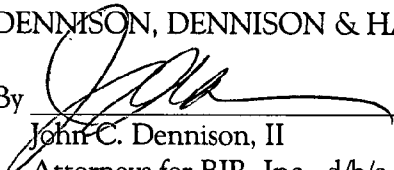
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a

Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED
NOV 11 19 2004
NOV 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

*

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

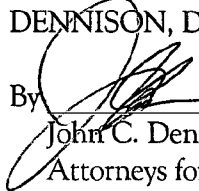
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upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. J. A. Robinson, Glendale Area Medical Center, P. O. Box 401, Coalport,
PA 16627 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

at Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

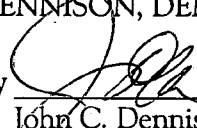
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By



John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *no cc*
NOV 09 2008

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
*
*
*
*
*
* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

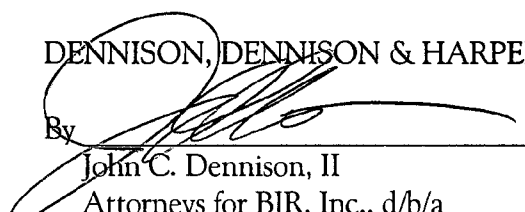
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Sheldon P. Rosenthal, M.D., 807 Doctors Drive, Clearfield, PA 16830
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

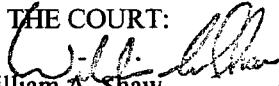
You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *lin*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

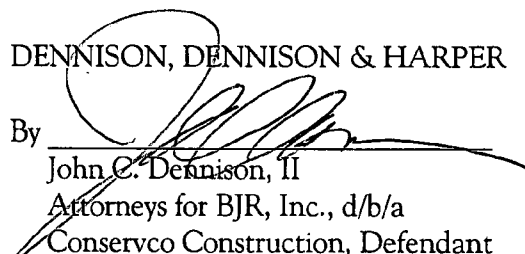
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Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{no}
10/14/08 ^{cc}
NOV 09 2008 (S)

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

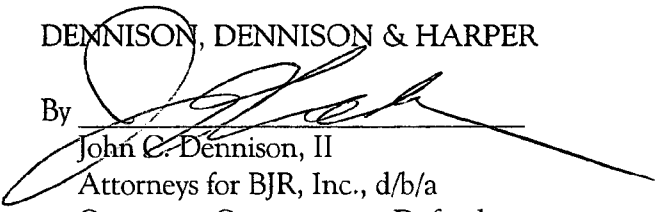
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

*

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, Tyrone Hospital, One Hospital Drive, Tyrone, PA 16686
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:
see attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:



William A. Shaw *Lm*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

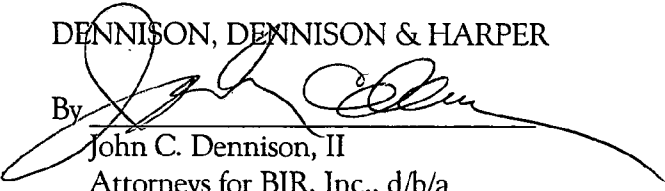
CERTIFICATE OF SERVICE

I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *Noce*
12/14/04
NOV 09 2006 

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
PA.R.C.P. 4009.21**

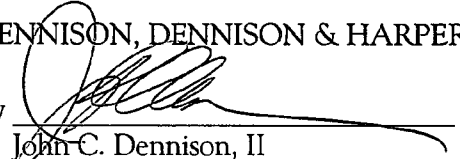
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
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be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. Mary E. Green, Green Chiropractic Center, 5311 Green Acre Road,
Houtzdale, PA 16651 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:
See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all records in your possession for any chiropractic and/or therapy services, including but not limited to office notes, patient questionnaires, patient charts, reports, evaluations, consultations, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048.

CERTIFICATE OF SERVICE

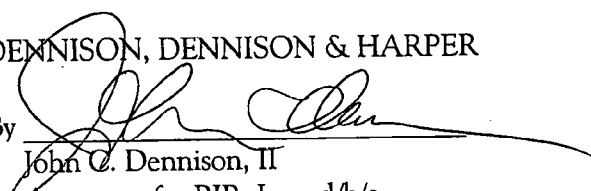
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Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a

Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{no cc}
NOV 09 2006

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

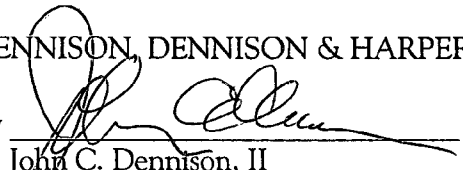
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
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Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

Records Custodian

TO: Blair Orthopedics & Sports Medicine, P. O. Box 30, Altoona, PA 16603
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

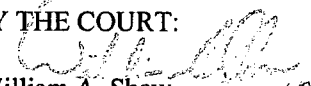
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NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

CERTIFICATE OF SERVICE

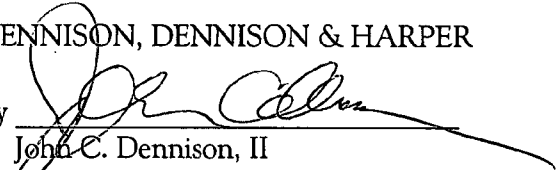
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Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NO} _{CC}
m 11/14/04
NOV 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

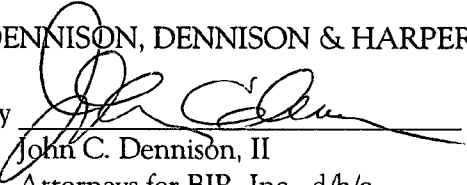
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

*

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, Leyo's Pharmacy, North Main Street, P. O. Box 397
Coalport, PA 16627 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

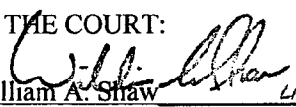
You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *LM*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all records, prescription orders, prescription fill lists, forms, drug lists, payment logs or other documents for any and all prescriptions, filled for or obtained by William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048.

CERTIFICATE OF SERVICE

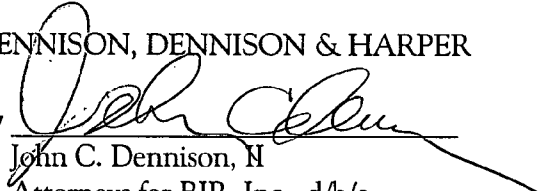
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, N
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *NO CC*
11/14/04
NOV 6 9 2004 *JS*

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
*
*
*
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*
* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
PA.R.C.P. 4009.21**

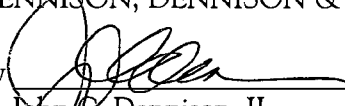
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

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be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, Penn Home Medical Supply Co., P. O. Box 1031,
Northern Cambria, PA 15714 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

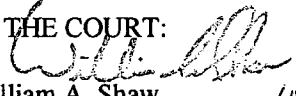
ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *LJS*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all records, prescription orders, prescription fill lists, forms, drug lists, payment logs or other documents for any and all prescriptions, filled for or obtained by William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048.

CERTIFICATE OF SERVICE

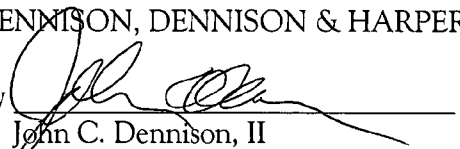
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{no cc}
NOV 09 2008

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
PA.R.C.P. 4009.21**

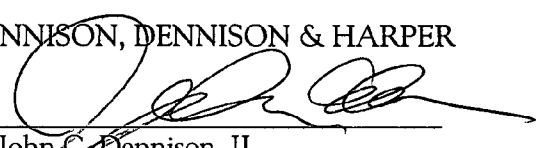
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

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Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
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be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a

Conservco Construction, Defendant

**COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD**

William J. McCusker

Beverly I. McCusker

Plaintiff(s)

Vs.

BJR, Inc.

Conservco Construction

Appalachian Wood Products, Inc.

Defendant(s)

*

*

*

No. 2004-01246-CD

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22**

TO: Records Custodian, Clearfield Hospital, P. O. Box 992, Clearfield, PA 16830
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
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to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

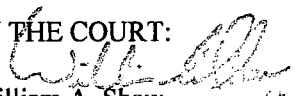
ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *cm*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

CERTIFICATE OF SERVICE

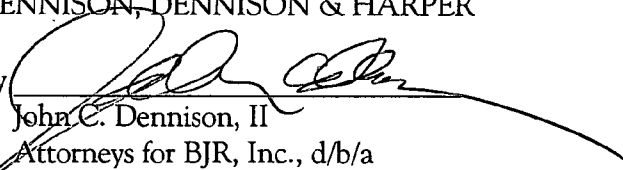
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Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *No CC*
m/11:14/04
NOV 09 2006 *SM*

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

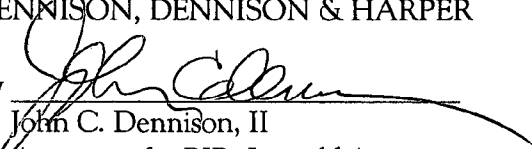
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
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Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, PennCare Physical Therapy, Patton Plaza, Suite 3, 503
Railroad Avenue, Patton, (Name of Person or Entity)
PA 16668

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
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copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, therapy records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

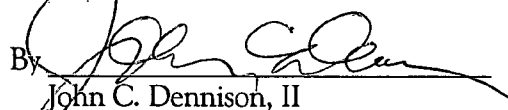
CERTIFICATE OF SERVICE

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Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *no cc*
mjl:14/6/04
NOV 09 2006 *JS*

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
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*
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*
* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
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P.A.R.C.P. 4009.21**

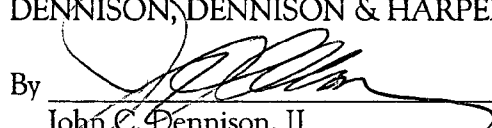
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Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, Altoona Hospital, 620 Howard Avenue, Altoona, PA 16601
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

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THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw *lm*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

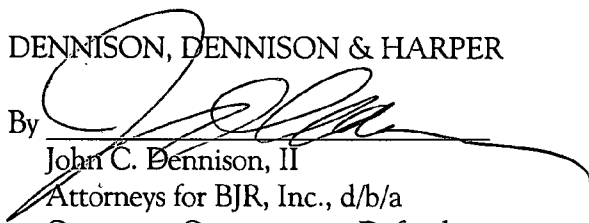
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Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II

Attorneys for BJR, Inc., d/b/a

Conservco Construction, Defendant

7 6

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NO CC}
NOV 09 2006

William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{no cc}
NOV 09 2006

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
PA.R.C.P. 4009.21**

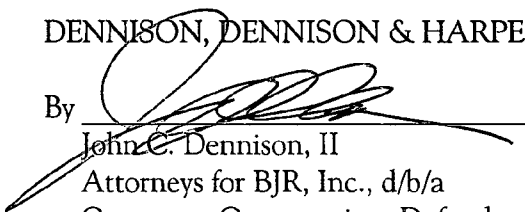
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

DENNISON, DENNISON & HARPER

Dated: November 8, 2006

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, ProCare Health Systems, Inc., 300 E. Plank Road,
Altoona, PA 16602 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

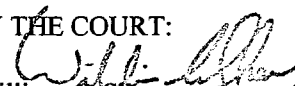
ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw LM

Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

CERTIFICATE OF SERVICE

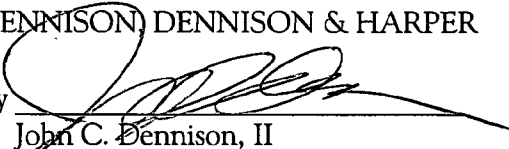
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By



John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *Vo CC*
NOV 11 14/61
NOV 09 2006 

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

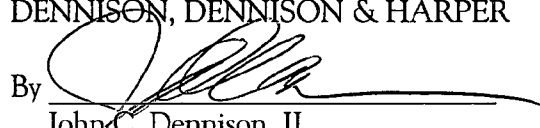
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

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be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

*

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, DuBois Regional Medical Center, Penn Township Health
Center, 1541 Curwensville- (Name of Person or Entity)
Grampian Hwy, Grampian, PA 16838

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:
See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street

Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw LM
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

CERTIFICATE OF SERVICE

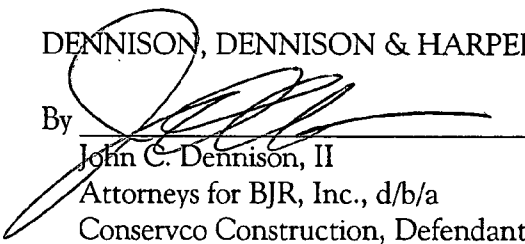
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Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{no cc}
NOV 09 2006

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 04 - 1246 - C. D.

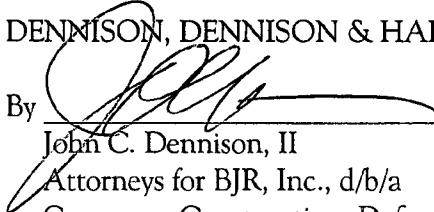
**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
PA.R.C.P. 4009.21**

TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

*

*

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. Michael J. Drass, Allegheny Surgery Center, 1402 9th Avenue, Altoona,
PA 16602
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

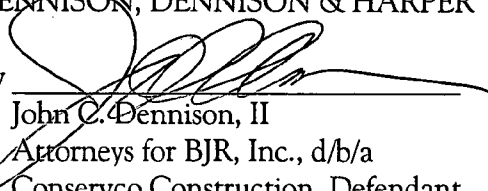
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Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *NO CC*
11/14/06
NOV 09 2006
William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

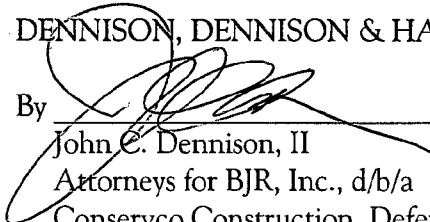
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
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Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

**COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD**

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22**

TO: Dr. Vincent F. Morgan M.D., 205 Tennyson Avenue, Suite C, Altoona, PA 16602
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

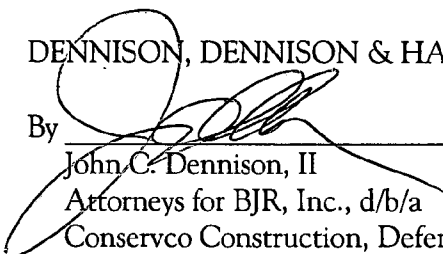
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Frederick M. Neiswender, Esq.
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211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
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Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *NOCC*
11/14/06
NOV 09 2006

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
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* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

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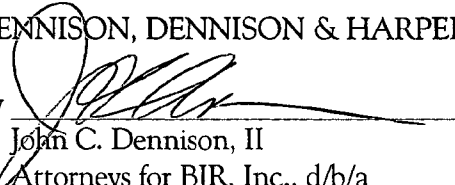
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Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

*

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. J. Philip Hall, Glendale Area Medical Center, P. O. Box 401, Coalport,
PA 16627 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

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ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
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CERTIFICATE OF SERVICE

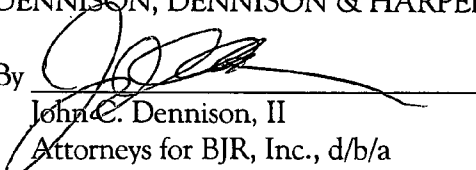
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Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED
m 7:14/04 cc
NOV 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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*
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*
* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
PA.R.C.P. 4009.21**

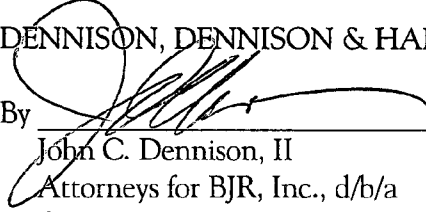
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Carroll P. Osgood, M.D., Allegheny Brain and Spine Surgeons, 501 Howard
Avenue, Building #3, (Name of Person or Entity)
Altoona, PA 16601

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

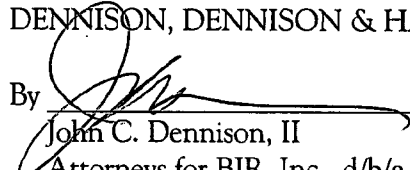
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By



John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NO}
m 11:42/ CC
NOV 09 2006 SM

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

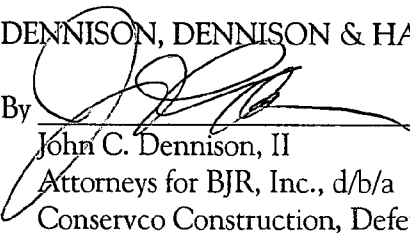
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

*

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Zhenhui Li, M.D., Blair Medical Associates, 1414 Ninth Avenue, Altoona,
PA 16602 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *cm*

Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

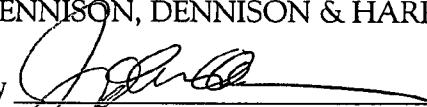
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED

NOV 30 2006

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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*
* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Dr. J. A. Robinson
Glendale Area Medical Center
P. O. Box 401
Coalport, PA 16627

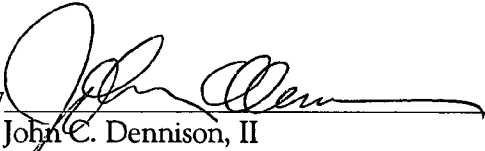
PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of Dr. J. A. Robinson twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE
MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING

IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE
AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE
ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE
ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

*

*

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. J. A. Robinson, Glendale Area Medical Center, P. O. Box 401, Coalport,
PA 16627
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

at Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:



William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

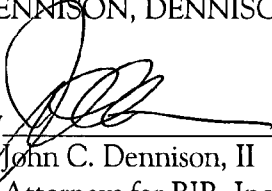
Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Dr. J. A. Robinson
Glendale Area Medical Center
P. O. Box 401
Coalport, PA 16627

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *WAC*
NOV 30 2006

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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*
* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Sheldon P. Rosenthal, M.D.
807 Doctors Drive
Clearfield, PA 16830

PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will
take the deposition of Sheldon P. Rosenthal, M.D., twenty (20) days from the service of this
Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison &
Harper, 293 Main Street, Brookville, Pennsylvania 15825.

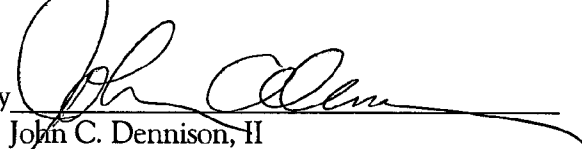
There will be no interrogation of the witness at this deposition since the deposition is for
the purpose of copying records only. No attorneys are expected to be present. Deponent is
directed to bring to this deposition copies of any and all documents as set forth on the attached
Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE
MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING

IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE
AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE
ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE
ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By

A handwritten signature in black ink, appearing to read "John C. Dennison, II", written over a horizontal line.

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

*

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Sheldon P. Rosenthal, M.D., 807 Doctors Drive, Clearfield, PA 16830
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *LSJ*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

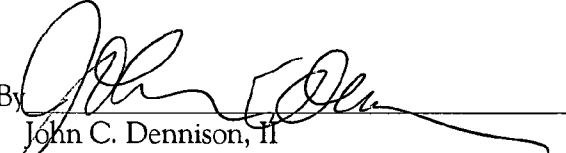
Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Sheldon P. Rosenthal, M.D.
807 Doctors Drive
Clearfield, PA 16830

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NO CC}
NOV 30 2008

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Records Custodian
Tyrone Hospital
One Hospital Drive
Tyrone, PA 16686

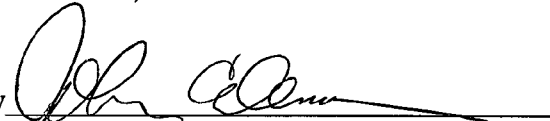
PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of the Records Custodian of Tyrone Hospital twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE

MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING
IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE
AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE
ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE
ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, Tyrone Hospital, One Hospital Drive, Tyrone, PA 16686
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:
see attached

To Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *lm*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

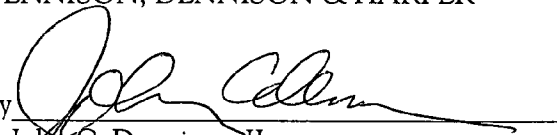
Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Records Custodian
Tyrone Hospital
One Hospital Drive
Tyrone, PA 16686

DENNISON, DENNISON & HARPER

By



John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *no cc*
3113784
NOV 30 2006 *LM*
William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
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*
*
* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Dr. Mary E. Green
Green Chiropractic Center
5311 Green Acre Road
Houtzdale, PA 16651

PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of Dr. Mary E. Green twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

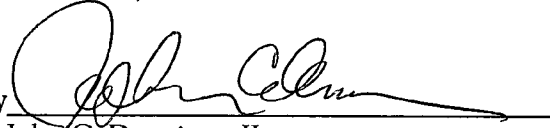
There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE
MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING

IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE
AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE
ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE
ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By

A handwritten signature in black ink, appearing to read "John C. Dennison, II", written over a horizontal line.

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

**COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD**

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

*

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22**

TO: Dr. Mary E. Green, Green Chiropractic Center, 5311 Green Acre Road,
Houtzdale, PA 16651 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:
See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all records in your possession for any chiropractic and/or therapy services, including but not limited to office notes, patient questionnaires, patient charts, reports, evaluations, consultations, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

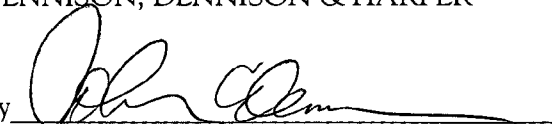
Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Dr. Mary E. Green
Green Chiropractic Center
5311 Green Acre Road
Houtzdale, PA 16651

DENNISON, DENNISON & HARPER

By



John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *no cc*
NOV 30 2004 *11:27 AM*

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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*
* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Records Custodian
Blair Orthopedics & Sports Medicine
P. O. Box 30
Altoona, PA 16603

PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of the Records Custodian of Blair Orthopedic & Sports Medicine, twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

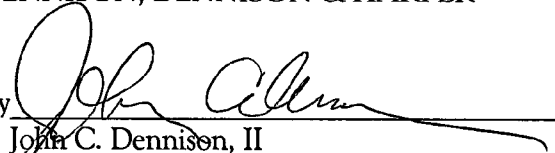
There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE
MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING

IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE
AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE
ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE
ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By

A handwritten signature in black ink, appearing to read "John C. Dennison, II", written over a horizontal line.

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

Records Custodian

TO: Blair Orthopedics & Sports Medicine, P. O. Box 30, Altoona, PA 16603
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

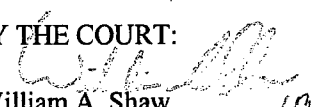
You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Records Custodian
Blair Orthopedics & Sports Medicine
P. O. Box 30
Altoona, PA 16603

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NO} _{CC}
m 11:37 AM
NOV 30 2006
UP
William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

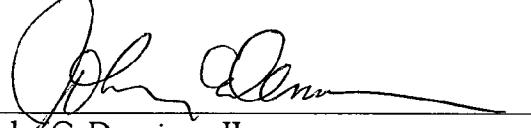
TO: Records Custodian
Clearfield-Jefferson Community Mental Health Center
100 Caldwell Drive
DuBois, PA 15801

PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of the Records Custodian of the Clearfield-Jefferson Community Mental Health Center, twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

Deputy

Any and all medical records in your possession for any counseling mental/health treatment for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to intake reports, evaluations, office notes, patient questionnaires, test results, reports, correspondences and billings.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

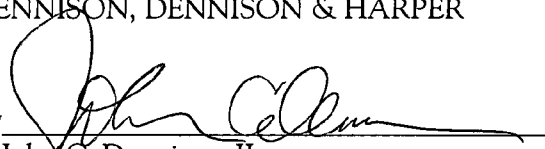
Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Records Custodian
Clearfield-Jefferson Community Mental Health Center
100 Caldwell Drive
DuBois, PA 15801

DENNISON, DENNISON & HARPER

By



John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED NO
m1:3761 cc
NOV 30 2006

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

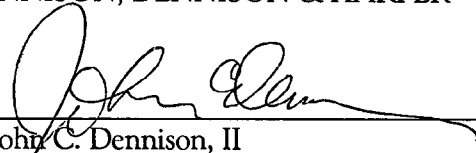
TO: Records Custodian
Leyo's Pharmacy
North Main Street
P. O. Box 397
Coalport, PA 16627

PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of the Records Custodian of Leyo's Pharmacy, twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, Leyo's Pharmacy, North Main Street, P. O. Box 397
Coalport, PA 16627 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street

Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw LM

Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all records, prescription orders, prescription fill lists, forms, drug lists, payment logs or other documents for any and all prescriptions, filled for or obtained by William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

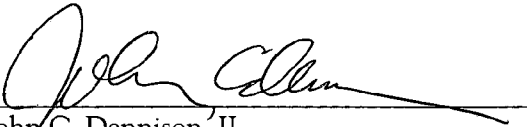
Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Records Custodian
Leyo's Pharmacy
North Main Street
P. O. Box 397
Coalport, PA 16627

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED
M/T 37/61
NOV 30 2008
cc

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Records Custodian
Penn Home Medical Supply Co.
P. O. Box 1031
Northern Cambria, PA 15714

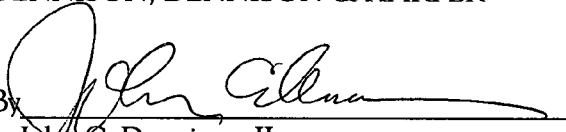
PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of the Records Custodian of Penn Home Medical Supply Co., twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE
MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING

IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE
AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE
ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE
ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, Penn Home Medical Supply Co., P. O. Box 1031,
Northern Cambria, PA (Name of Person or Entity)
15714

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

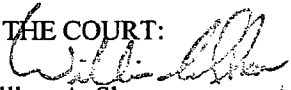
ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all records, prescription orders, prescription fill lists, forms, drug lists, payment logs or other documents for any and all prescriptions, filled for or obtained by William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

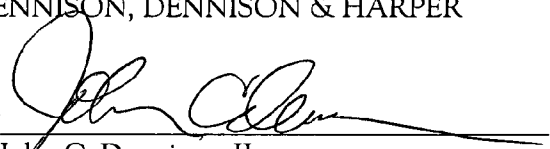
Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Records Custodian
Penn Home Medical Supply Co.
P. O. Box 1031
Northern Cambria, PA 15714

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED
376
NOV 30 2004
William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
*
*
*
*
* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Records Custodian
Clearfield Hospital
P. O. Box 992
Clearfield, PA 16830

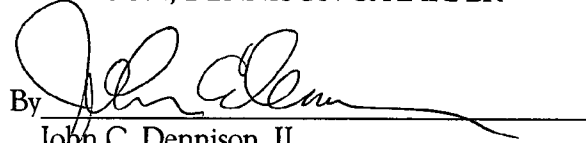
PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of the Records Custodian of Clearfield Hospital, twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE
MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING

IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE
AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE
ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE
ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

*

*

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, Clearfield Hospital, P. O. Box 992, Clearfield, PA 16830
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

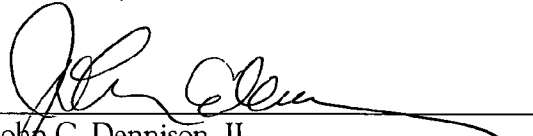
Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Records Custodian
Clearfield Hospital
P. O. Box 992
Clearfield, PA 16830

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *NP CC*
m/11-3-04
NOV 30 2004 *(S)*

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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*
* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

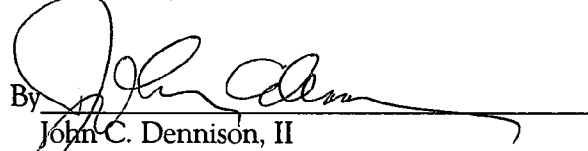
TO: Records Custodian
PennCare Physical Therapy
Patton Plaza, Suite 3
503 Railroad Avenue
Patton, PA 16668

PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of the Records Custodian of PennCare Physical Therapy, twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, PennCare Physical Therapy, Patton Plaza, Suite 3, 503
Railroad Avenue, Patton, (Name of Person or Entity)
PA 16668

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, therapy records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

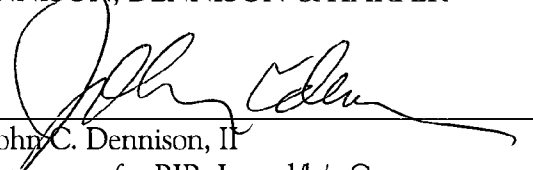
Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Records Custodian
PennCare Physical Therapy
Patton Plaza, Suite 3
503 Railroad Avenue
Patton, PA 16668

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *no cc*
m 11:37 AM
NOV 30 2006 *SM*

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
*
*
*
*
* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Records Custodian
Altoona Hospital
620 Howard Avenue
Altoona, PA 16601

PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of the Records Custodian of Altoona Hospital, twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

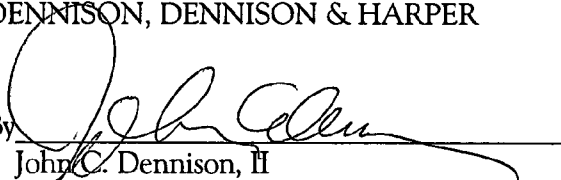
There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE
MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING

IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE
AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE
ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE
ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

*

*

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, Altoona Hospital, 620 Howard Avenue, Altoona, PA 16601
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

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(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

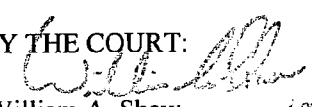
ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *LM*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

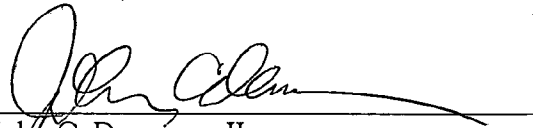
Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Records Custodian
Altoona Hospital
620 Howard Avenue
Altoona, PA 16601

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{np} ^{cc}
m113784
NOV 30 2008
William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
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*
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*
*
* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Records Custodian
ProCare Health Systems, Inc.
300 E. Plank Road
Altoona, PA 16602

PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of the Records Custodian of ProCare Health Systems, Inc., twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

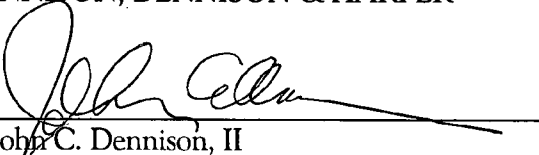
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IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
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AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE
ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE
ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By

A handwritten signature in black ink, appearing to read "John C. Dennison, II", written over a horizontal line.

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, ProCare Health Systems, Inc., 300 E. Plank Road,
Altoona, PA 16602 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

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this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
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(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

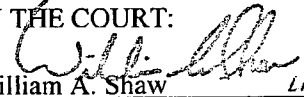
ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *LM*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

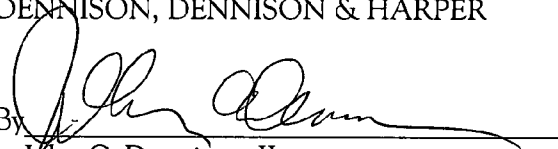
Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Records Custodian
ProCare Health Systems, Inc.
300 E. Plank Road
Altoona, PA 16602

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NO}
M 11:37 AM CC
NOV 30 2008 (m)

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
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*
* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Dr. Michael J. Drass
Allegheny Surgery Center
1402 9th Avenue
Altoona, PA 16602

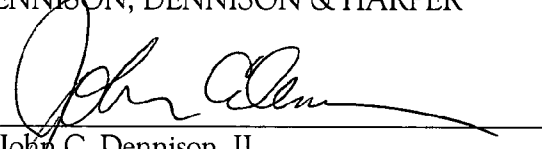
PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of Dr. Michael J. Drass, twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE
MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING

IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE
AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE
ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE
ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

*

*

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. Michael J. Drass, Allegheny Surgery Center, 1402 9th Avenue, Altoona,
PA 16602
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William J. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

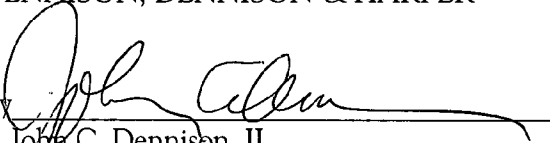
Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Dr. Michael J. Drass
Allegheny Surgery Center
1402 9th Avenue
Altoona, PA 16602

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NO} ^{CC}
MT 11:37 AM
NOV 30 2006
(5)

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

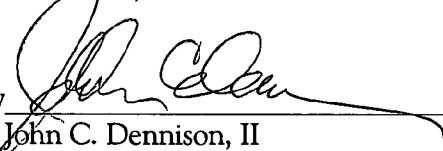
TO: Carroll P. Osgood, M.D.
Allegheny Brain and Spine Surgeons
501 Howard Avenue
Building #3
Altoona, PA 16601

PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of Carroll P. Osgood, M.D., twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Carroll P. Osgood, M.D., Allegheny Brain and Spine Surgeons, 501 Howard
Avenue, Building #3, (Name of Person or Entity)
Altoona, PA 16601

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

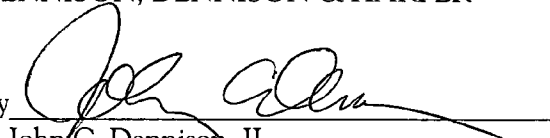
Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Carroll P. Osgood, M.D.
Allegheny Brain and Spine Surgeons
501 Howard Avenue
Building #3
Altoona, PA 16601

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NO}
m/11:37/61 cc
NOV 30 2006

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
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*
* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Zhenhui Li, M.D.
Blair Medical Associates
1414 Ninth Avenue
Altoona, PA 16602

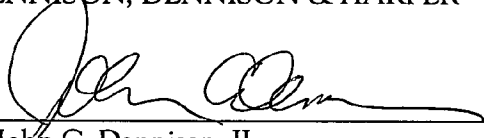
PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of Zhenhui Li, M.D., twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

**DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE
MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING**

IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE
AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE
ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE
ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

*

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Zhenhui Li, M.D., Blair Medical Associates, 1414 Ninth Avenue, Altoona,
PA 16602 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

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(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

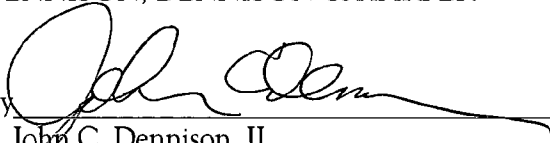
Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Zhenhui Li, M.D.
Blair Medical Associates
1414 Ninth Avenue
Altoona, PA 16602

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NO CC}
m11:3761
NOV 30 2006
William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Vincent F. Morgan, M.D.
205 Tennyson Avenue
Suite C
Altoona, PA 16602

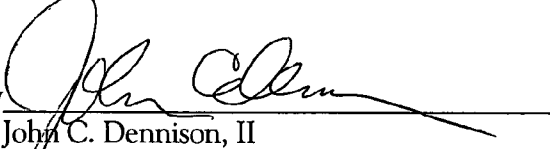
PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of Vincent F. Morgan, M.D., twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

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IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
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ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

*

*

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. Vincent F. Morgan M.D., 205 Tennyson Avenue, Suite C, Altoona, PA 16602
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
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THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

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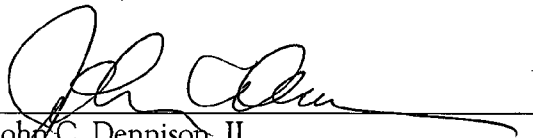
Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Vincent F. Morgan, M.D.
205 Tennyson Avenue
Suite C
Altoona, PA 16602

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED NO CC
M/J: 37/BI
NOV 30 2006
JH

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Dr. J. Philip Hall
Glendale Area Medical Center
P. O. Box 401
Coalport, PA 16627

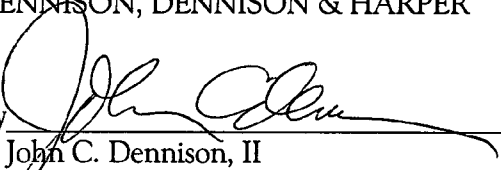
PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of Dr. J. Philip Hall, twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

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MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING

IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE
AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE
ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE
ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. J. Philip Hall, Glendale Area Medical Center, P. O. Box 401, Coalport,
PA 16627 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw *in*

Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

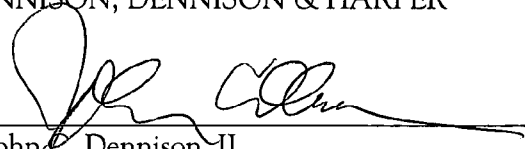
Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Dr. J. Philip Hall
Glendale Area Medical Center
P. O. Box 401
Coalport, PA 16627

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{11/30/04}
NOV 30 2004

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
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*
* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

TO: Dr. Thomas L. Hoffman
320 Park Avenue
Clearfield, PA 16830

PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of Dr. Thomas L. Hoffman, twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

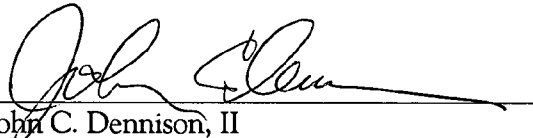
There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE
MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING

IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT
CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE
AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE
ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE
ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By

A handwritten signature in black ink, appearing to read "John C. Dennison, II", written over a horizontal line.

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

*

*

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. Thomas L. Hoffman, 320 Park Avenue, Clearfield, PA 16830
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 29th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

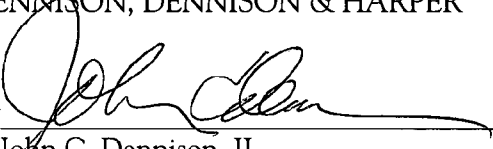
Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Dr. Thomas L. Hoffman
320 Park Avenue
Clearfield, PA 16830

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Deposition for the
Purpose of Copying Records Only

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED
m) 11:37 AM
NOV 30 2006
NOCC
(5)

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

NOTICE OF DEPOSITION FOR THE PURPOSE
OF COPYING RECORDS ONLY

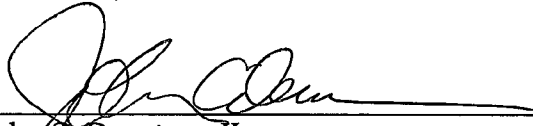
TO: Records Custodian
DuBois Regional Medical Center
Penn Township Health Center
1541 Curwensville-Grampian Hwy
Grampian, PA 16838

PLEASE TAKE NOTE that the Defendant, BJR, Inc., d/b/a Conservco Construction, will take the deposition of the Records Custodian of the DuBois Regional Medical Center, twenty (20) days from the service of this Notice and attached Subpoena upon the same, at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825.

There will be no interrogation of the witness at this deposition since the deposition is for the purpose of copying records only. No attorneys are expected to be present. Deponent is directed to bring to this deposition copies of any and all documents as set forth on the attached Subpoena.

DEPONENT IS ADVISED THAT IT IS SUFFICIENT TO PROVIDE THE MATERIAL REQUESTED BY MAIL OR HAND DELIVERY IN LIEU OF APPEARING IN PERSON FOR THIS DEPOSITION, PROVIDED THAT THE DEPONENT CERTIFIES THAT THE RECORDS WHICH HE SENDS ARE TRUE, ACCURATE AND COMPLETE COPIES OF ALL OF THE RECORDS REQUESTED BY THE ATTACHED SUBPOENA AND BY SIGNING THE CERTIFICATE OF COMPLIANCE ATTACHED HERETO AND RETURNING THE SAME WITH THE RECORDS.

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

*

*

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, DuBois Regional Medical Center, Penn Township Health
Center, 1541 Curwensville- (Name of Person or Entity)
Grampian Hwy, Grampian, PA 16838

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:
See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

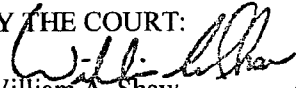
ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *LM*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Deposition was served on the 28th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

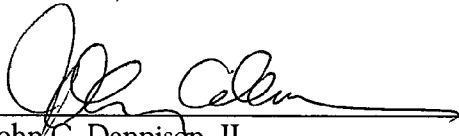
Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

and by Certified Mail, Return Receipt Requested, on the following:

Records Custodian
DuBois Regional Medical Center
Penn Township Health Center
1541 Curwensville-Grampian Hwy
Grampian, PA 16838

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Construction, Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *no cc*
11/30/06
NOV 30 2006

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
*
*
*
*
*
* Number 1246 of 2004, C. D.

CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

As a prerequisite to the Service of a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21, the Defendant, BJR, Inc., d/b/a Conservco
Construction, through its counsel, Dennison, Dennison & Harper, certifies the following
pursuant to Pa.R.C.P. 4009.22:

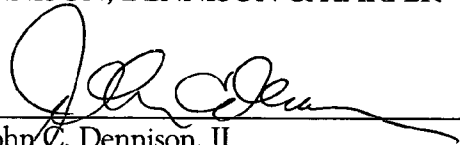
1. A Notice of Intent to Serve a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21 with a copy of the Subpoena attached thereto was
mailed or delivered to each party;
2. A copy of the aforementioned Notice, including the proposed Subpoena, is attached to
this Certificate;
3. 3. No objection to the Subpoena has been received;

4. The Subpoena which will be served is identical to the Subpoena which is attached to the aforementioned Notice.

DENNISON, DENNISON & HARPER

Dated: November 29, 2006

By



John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
PA.R.C.P. 4009.21**

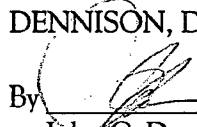
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. J. A. Robinson, Glendale Area Medical Center, P. O. Box 401, Coalport,
PA 16627
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

at Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

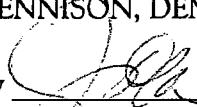
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Certificate Pursuant to Pa.R.C.P.
4009.22 was served on the 29th day of November, 2006, by United States Mail, First Class,
postage prepaid, addressed to the following:

Frederick M. Neiswander, Esq.
Neiswander & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED
m) 11:37 AM
NOV 30 2008
cc

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 1246 of 2004, C. D.

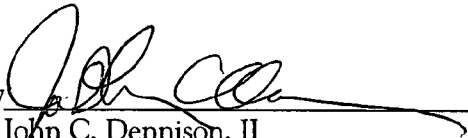
CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

As a prerequisite to the Service of a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21, the Defendant, BJR, Inc., d/b/a Conservco
Construction, through its counsel, Dennison, Dennison & Harper, certifies the following
pursuant to Pa.R.C.P. 4009.22:

1. A Notice of Intent to Serve a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21 with a copy of the Subpoena attached thereto was
mailed or delivered to each party;
2. A copy of the aforementioned Notice, including the proposed Subpoena, is attached to
this Certificate;
3. 3. No objection to the Subpoena has been received;

4. The Subpoena which will be served is identical to the Subpoena which is attached to the aforementioned Notice.

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

Dated: November 29, 2006

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 04 - 1246 - C. D.

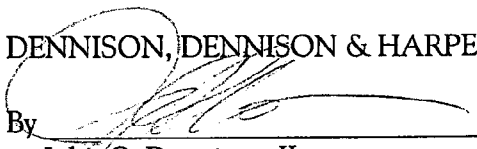
**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
PA.R.C.P. 4009.21**

TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Sheldon P. Rosenthal, M.D., 807 Doctors Drive, Clearfield, PA 16830
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *City*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

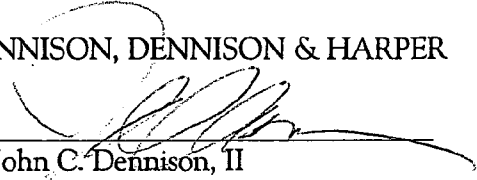
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

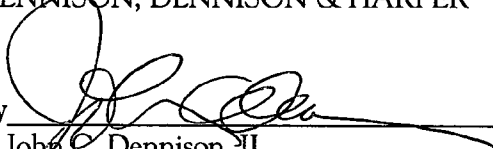
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Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II

Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED
m11:3761
NOV 30 2006
cc
(m)

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

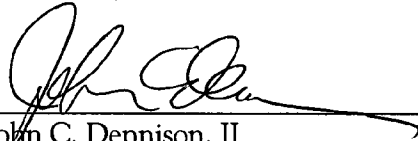
As a prerequisite to the Service of a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21, the Defendant, BJR, Inc., d/b/a Conservco
Construction, through its counsel, Dennison, Dennison & Harper, certifies the following
pursuant to Pa.R.C.P. 4009.22:

1. A Notice of Intent to Serve a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21 with a copy of the Subpoena attached thereto was
mailed or delivered to each party;
2. A copy of the aforementioned Notice, including the proposed Subpoena, is attached to
this Certificate;
3. 3. No objection to the Subpoena has been received;

4. The Subpoena which will be served is identical to the Subpoena which is attached to the aforementioned Notice.

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

Dated: November 29, 2006

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
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* In the Court of Common Pleas of
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P.A.R.C.P. 4009.21**

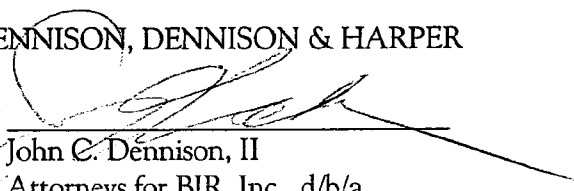
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Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, Tyrone Hospital, One Hospital Drive, Tyrone, PA 16686
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:
see attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
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NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw *LSJ*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

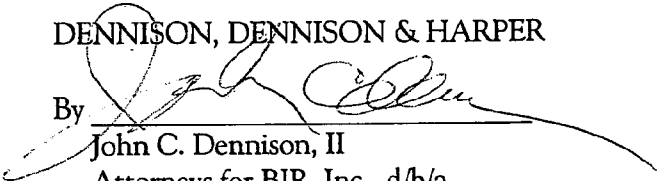
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DENNISON, DENNISON & HARPER

By 

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Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

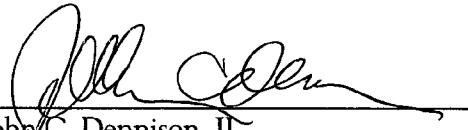
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DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{no cc}
m/11:32/61
NOV 30 2006 ^{LN}

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 1246 of 2004, C. D.

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A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

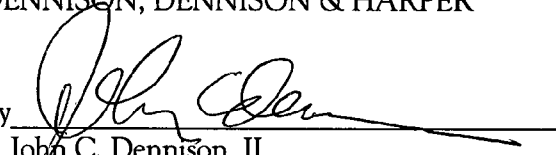
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DENNISON, DENNISON & HARPER

By

A handwritten signature in dark ink, appearing to read "John C. Dennison, II", is written over a horizontal line.

John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

Dated: November 29, 2006

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

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to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
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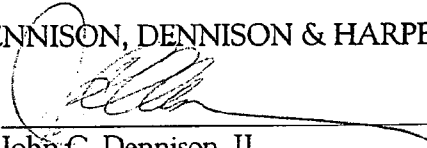
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Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. Mary E. Green, Green Chiropractic Center, 5311 Green Acre Road,
Houtzdale, PA 16651 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:
See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
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THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all records in your possession for any chiropractic and/or therapy services, including but not limited to office notes, patient questionnaires, patient charts, reports, evaluations, consultations, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048.

CERTIFICATE OF SERVICE

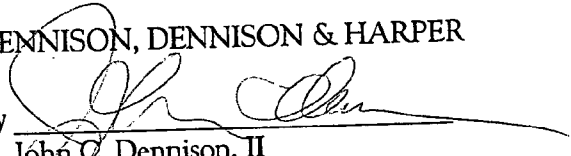
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DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

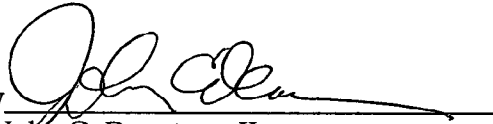
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DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED
m/11:37/01
NOV 30 2006

William A. Shaw
Prothonotary/Clerk of Courts

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I. McCUSKER,
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vs.

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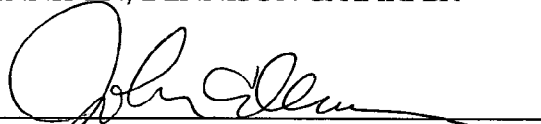
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DENNISON, DENNISON & HARPER

By 

Dated: November 29, 2006

John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
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Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

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Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
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* In the Court of Common Pleas of
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DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

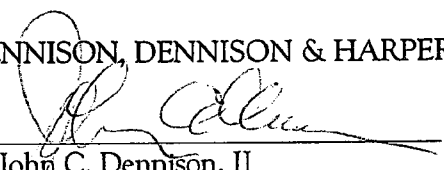
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

Records Custodian

TO: Blair Orthopedics & Sports Medicine, P. O. Box 30, Altoona, PA 16603
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

CERTIFICATE OF SERVICE

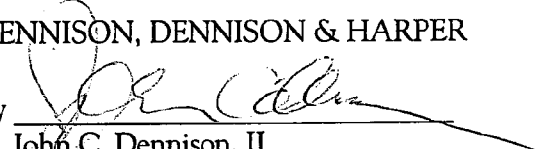
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

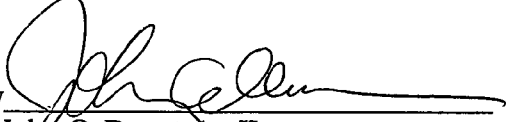
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Certificate Pursuant to Pa.R.C.P.
4009.22 was served on the 29th day of November, 2006, by United States Mail, First Class,
postage prepaid, addressed to the following:

Frederick M. Neiswander, Esq.
Neiswander & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED
m 11:37/51 cc
NOV 30 2006
(5)

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
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* Number 1246 of 2004, C. D.

CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

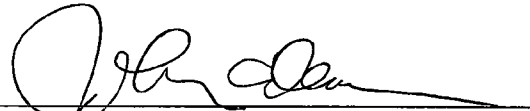
As a prerequisite to the Service of a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21, the Defendant, BJR, Inc., d/b/a Conservco
Construction, through its counsel, Dennison, Dennison & Harper, certifies the following
pursuant to Pa.R.C.P. 4009.22:

1. A Notice of Intent to Serve a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21 with a copy of the Subpoena attached thereto was
mailed or delivered to each party;
2. A copy of the aforementioned Notice, including the proposed Subpoena, is attached to
this Certificate;
3. 3. No objection to the Subpoena has been received;

4. The Subpoena which will be served is identical to the Subpoena which is attached to the aforementioned Notice.

DENNISON, DENNISON & HARPER

By

A handwritten signature in black ink, appearing to read "John C. Dennison, II", written over a horizontal line.

Dated: November 29, 2006

John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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*
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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

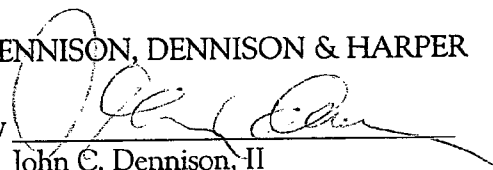
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

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Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John E. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

Records Custodian
TO: Clearfield-Jefferson Community Mental Health Center, 100 Caldwell Drive,
DuBois, PA 15801
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw lm
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for any counseling mental/health treatment for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to intake reports, evaluations, office notes, patient questionnaires, test results, reports, correspondences and billings.

CERTIFICATE OF SERVICE

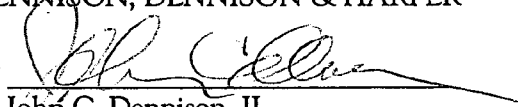
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Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a

Conservco Construction, Defendant

CERTIFICATE OF SERVICE

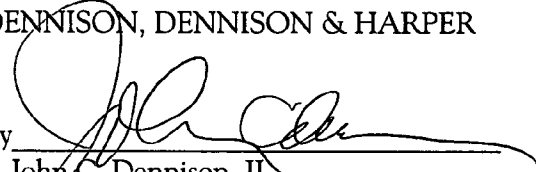
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Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED NO cc
MIL:37/SH
NOV 30 2006 (S)

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
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* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

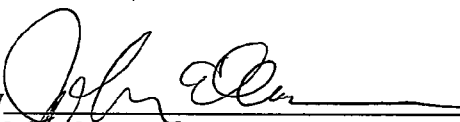
CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

As a prerequisite to the Service of a Subpoena to Produce Documents and Things for
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DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

Dated: November 29, 2006

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

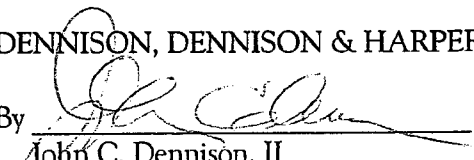
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upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, Leyo's Pharmacy, North Main Street, P. O. Box 397
Coalport, PA 16627 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

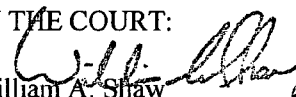
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to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all records, prescription orders, prescription fill lists, forms, drug lists, payment logs or other documents for any and all prescriptions, filled for or obtained by William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048.

CERTIFICATE OF SERVICE

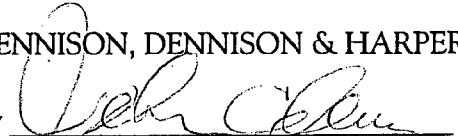
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211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

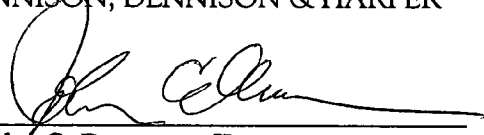
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Clearfield, PA 16830

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Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{WCC}
M/1:37 PM
NOV 30 2006

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

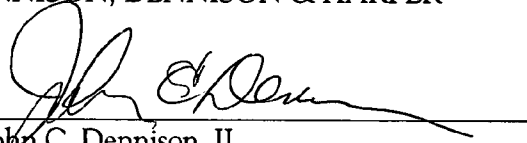
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4. The Subpoena which will be served is identical to the Subpoena which is attached to the aforementioned Notice.

DENNISON, DENNISON & HARPER

By

A handwritten signature in black ink, appearing to read "John C. Dennison, II", is written over a horizontal line.

Dated: November 29, 2006

John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
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* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
PA.R.C.P. 4009.21**

TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

*

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, Penn Home Medical Supply Co., P. O. Box 1031,
Northern Cambria, PA (Name of Person or Entity)
15714

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *LM*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all records, prescription orders, prescription fill lists, forms, drug lists, payment logs or other documents for any and all prescriptions, filled for or obtained by William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048.

CERTIFICATE OF SERVICE

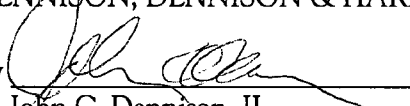
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

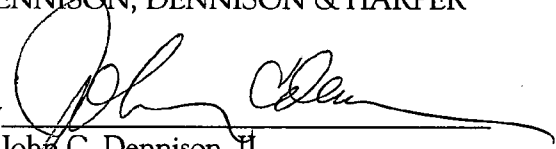
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210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED
m 11:37 AM '06
NOV 30 2006
cc

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

*

*

*

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* Number 1246 of 2004, C. D.

CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

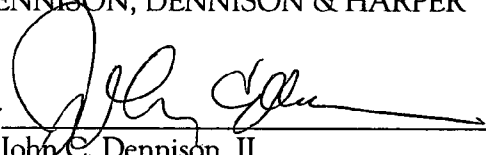
As a prerequisite to the Service of a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21, the Defendant, BJR, Inc., d/b/a Conservco
Construction, through its counsel, Dennison, Dennison & Harper, certifies the following
pursuant to Pa.R.C.P. 4009.22:

1. A Notice of Intent to Serve a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21 with a copy of the Subpoena attached thereto was
mailed or delivered to each party;
2. A copy of the aforementioned Notice, including the proposed Subpoena, is attached to
this Certificate;
3. 3. No objection to the Subpoena has been received;

4. The Subpoena which will be served is identical to the Subpoena which is attached to the aforementioned Notice.

DENNISON, DENNISON & HARPER

By

A handwritten signature in black ink, appearing to read "John C. Dennison, II", is written over a horizontal line.

John C. Dennison, II

Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

Dated: November 29, 2006

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

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to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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*

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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
PA.R.C.P. 4009.21**

TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

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Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

**COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD**

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

*

*

No. 2004-01246-CD

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22**

TO: Records Custodian, Clearfield Hospital, P. O. Box 992, Clearfield, PA 16830
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

CERTIFICATE OF SERVICE

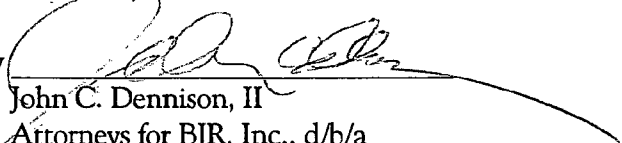
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DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

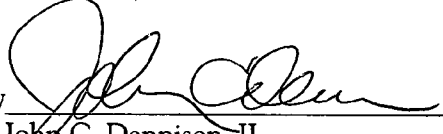
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DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *vo cc*
m 11:37 2004
NOV 30 2006 *(S)*

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

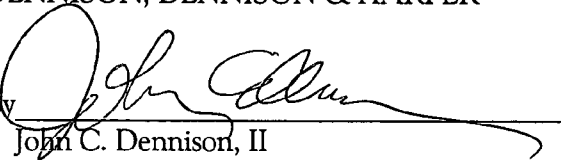
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DENNISON, DENNISON & HARPER

By

A handwritten signature in black ink, appearing to read "John C. Dennison, II", is written over a horizontal line.

John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

Dated: November 29, 2006

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
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CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
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*
*
* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

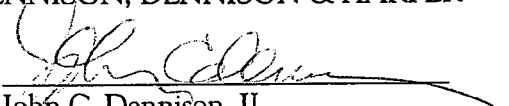
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be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, PennCare Physical Therapy, Patton Plaza, Suite 3, 503
Railroad Avenue, Patton, (Name of Person or Entity)
PA 16668

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

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NAME: John C. Dennison, II, Esq.

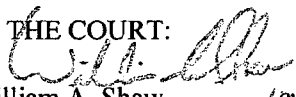
ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, therapy records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

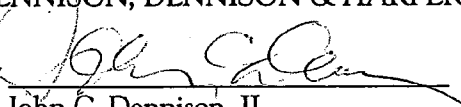
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Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

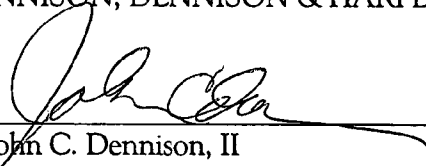
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DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
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WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED
m 11:37 AM
NOV 30 2004
ec

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
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* In the Court of Common Pleas of
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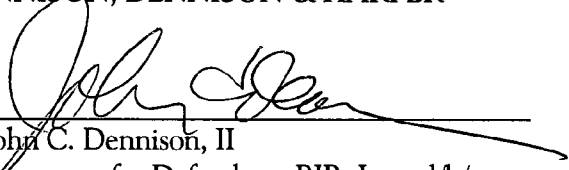
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DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

Dated: November 29, 2006

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
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CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

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Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
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WILLIAM J. McCUSKER and BEVERLY
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* In the Court of Common Pleas of
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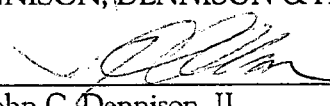
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TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

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upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

DENNISON, DENNISON & HARPER

Dated: November 8, 2006

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

*

*

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, Altoona Hospital, 620 Howard Avenue, Altoona, PA 16601
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

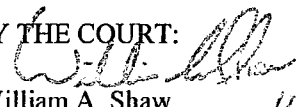
ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

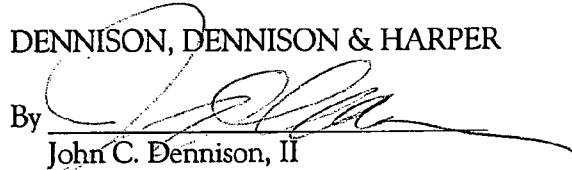
CERTIFICATE OF SERVICE

I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

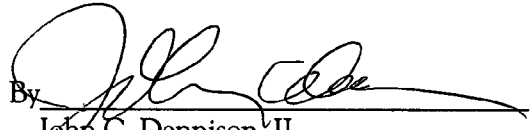
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Certificate Pursuant to Pa.R.C.P.
4009.22 was served on the 29th day of November, 2006, by United States Mail, First Class,
postage prepaid, addressed to the following:

Frederick M. Neiswander, Esq.
Neiswander & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NO}
m/r-37/61 cc
NOV 30 2006

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

*

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* Number 1246 of 2004, C. D.

CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

As a prerequisite to the Service of a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21, the Defendant, BJR, Inc., d/b/a Conservco
Construction, through its counsel, Dennison, Dennison & Harper, certifies the following
pursuant to Pa.R.C.P. 4009.22:

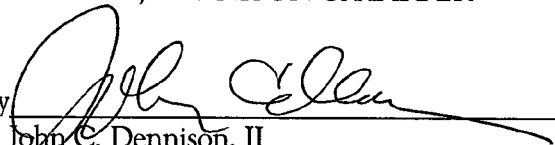
1. A Notice of Intent to Serve a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21 with a copy of the Subpoena attached thereto was
mailed or delivered to each party;
2. A copy of the aforementioned Notice, including the proposed Subpoena, is attached to
this Certificate;
3. 3. No objection to the Subpoena has been received;

4. The Subpoena which will be served is identical to the Subpoena which is attached to the aforementioned Notice.

DENNISON, DENNISON & HARPER

Dated: November 29, 2006

By


John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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*
*
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*
* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

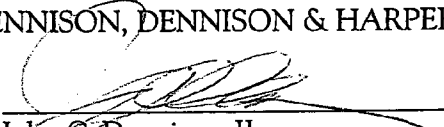
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, ProCare Health Systems, Inc., 300 E. Plank Road,
Altoona, PA 16602 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw *LM*
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

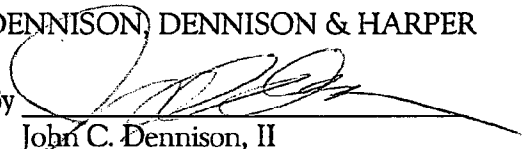
CERTIFICATE OF SERVICE

I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

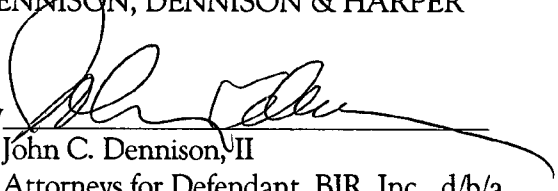
CERTIFICATE OF SERVICE

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Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED
m/1:37/81 cc
NOV 30 2006

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

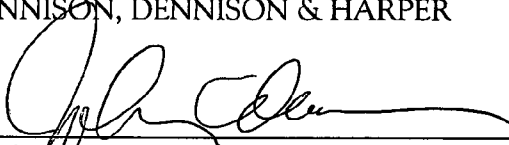
As a prerequisite to the Service of a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21, the Defendant, BJR, Inc., d/b/a Conservco
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DENNISON, DENNISON & HARPER

By



John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

Dated: November 29, 2006

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

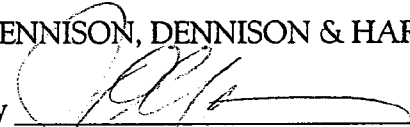
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

*

*

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. Michael J. Drass, Allegheny Surgery Center, 1402 9th Avenue, Altoona,
PA 16602
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

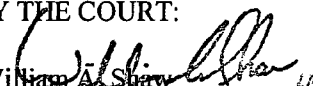
You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a

Conservco Construction, Defendant

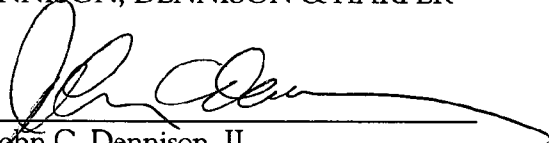
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211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED
NOV 30 2008
NOV 13 7/64
NO CC

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

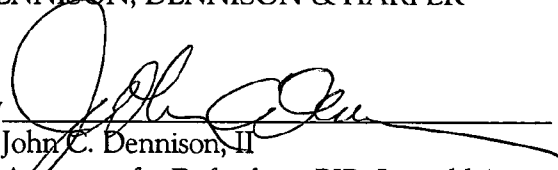
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1. A Notice of Intent to Serve a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21 with a copy of the Subpoena attached thereto was
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DENNISON, DENNISON & HARPER

By

A handwritten signature in black ink, appearing to read "John C. Dennison, II", is written over a horizontal line.

John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

Dated: November 29, 2006

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 04 - 1246 - C. D.

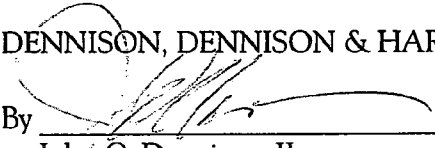
**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

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Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

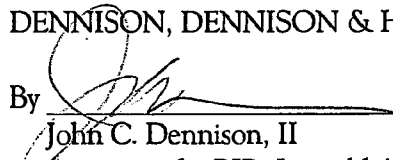
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

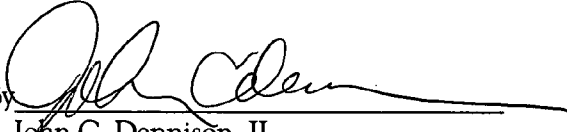
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I certify that a true and correct copy of the foregoing Certificate Pursuant to Pa.R.C.P.
4009.22 was served on the 29th day of November, 2006, by United States Mail, First Class,
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Gerald J. Hutton, Esq.
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Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NO}
m/137291 CC
NOV 30 2006 (S)

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
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* Number 1246 of 2004, C. D.

CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

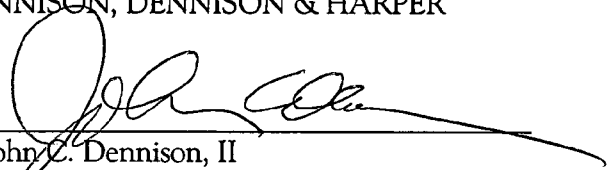
As a prerequisite to the Service of a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21, the Defendant, BJR, Inc., d/b/a Conservco
Construction, through its counsel, Dennison, Dennison & Harper, certifies the following
pursuant to Pa.R.C.P. 4009.22:

1. A Notice of Intent to Serve a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21 with a copy of the Subpoena attached thereto was
mailed or delivered to each party;
2. A copy of the aforementioned Notice, including the proposed Subpoena, is attached to
this Certificate;
3. 3. No objection to the Subpoena has been received;

4. The Subpoena which will be served is identical to the Subpoena which is attached to the aforementioned Notice.

DENNISON, DENNISON & HARPER

By



John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

Dated: November 29, 2006

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 04 - 1246 - C. D.

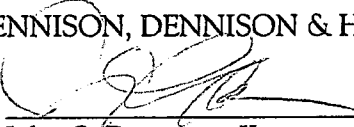
**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
PA.R.C.P. 4009.21**

TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II

Attorneys for BJR, Inc., d/b/a

Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Zhenhui Li, M.D., Blair Medical Associates, 1414 Ninth Avenue, Altoona,
PA 16602 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

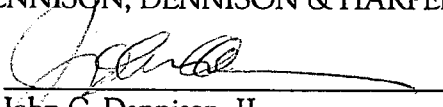
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Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

CERTIFICATE OF SERVICE

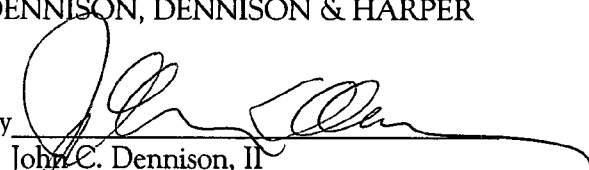
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Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *NO EC*
m/j: 376H
NOV 30 2006 

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

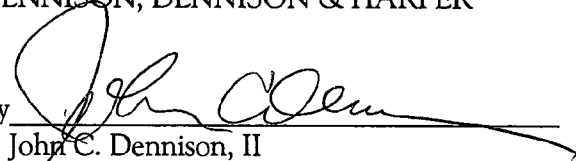
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this Certificate;
3. 3. No objection to the Subpoena has been received;

4. The Subpoena which will be served is identical to the Subpoena which is attached to the aforementioned Notice.

DENNISON, DENNISON & HARPER

By

A handwritten signature in black ink, appearing to read "John C. Dennison, II", is written over a horizontal line.

John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

Dated: November 29, 2006

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

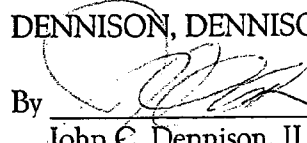
TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. Vincent F. Morgan M.D., 205 Tennyson Avenue, Suite C, Altoona, PA 16602
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

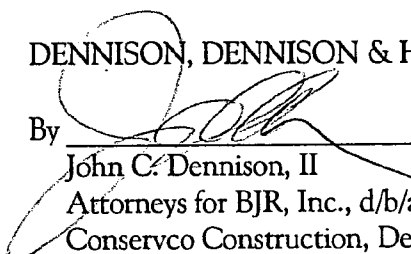
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Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

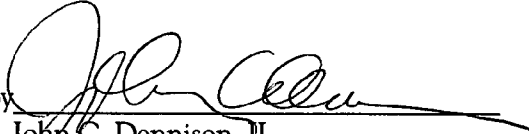
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Bashline & Hutton
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Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NOCC}
m 11:37 AM
NOV 30 2006

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
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* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
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* Number 1246 of 2004, C. D.

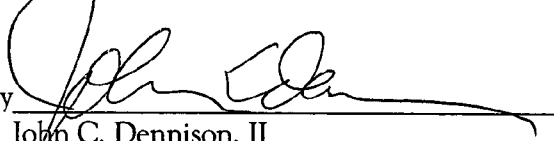
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A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

As a prerequisite to the Service of a Subpoena to Produce Documents and Things for
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DENNISON, DENNISON & HARPER

By 

Dated: November 29, 2006

John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
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* Number 04 - 1246 - C. D.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
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TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

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Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

*

Vs.

*

No. 2004-01246-CD

*

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. Thomas L. Hoffman, 320 Park Avenue, Clearfield, PA 16830

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825

(Address)

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NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street

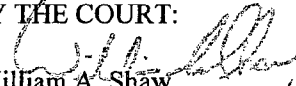
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006

Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

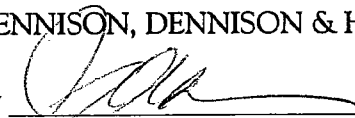
I certify that a certified copy of the foregoing Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was served on the 8th day of November, 2006, by United States Mail, First Class, postage prepaid, addressed to the following:

Frederick M. Neiswender, Esq.
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

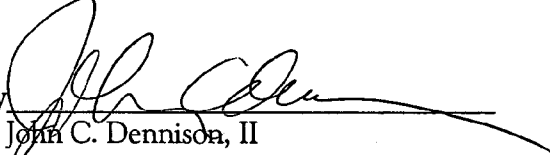
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210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED ^{NO} _{ce}
mjl:3761
NOV 30 2006 

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

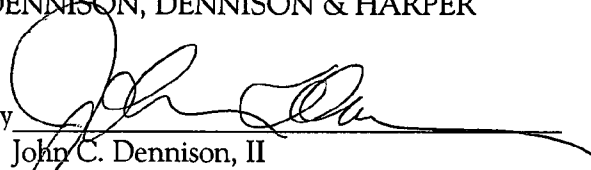
As a prerequisite to the Service of a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21, the Defendant, BJR, Inc., d/b/a Conservco
Construction, through its counsel, Dennison, Dennison & Harper, certifies the following
pursuant to Pa.R.C.P. 4009.22:

1. A Notice of Intent to Serve a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21 with a copy of the Subpoena attached thereto was
mailed or delivered to each party;
2. A copy of the aforementioned Notice, including the proposed Subpoena, is attached to
this Certificate;
3. 3. No objection to the Subpoena has been received;

4. The Subpoena which will be served is identical to the Subpoena which is attached to the aforementioned Notice.

DENNISON, DENNISON & HARPER

By



John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

Dated: November 29, 2006

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiff,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
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* Number 04 - 1246 - C. D.

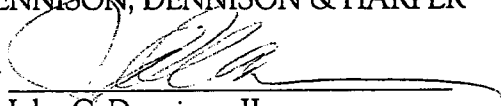
**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
P.A.R.C.P. 4009.21**

TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Records Custodian, DuBois Regional Medical Center, Penn Township Health
Center, 1541 Curwensville- (Name of Person or Entity)
Grampian Hwy, Grampian, PA 16838

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:
See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.
ADDRESS: 293 Main Street
Brookville, PA 15825
TELEPHONE: (814) 849-8316
SUPREME COURT ID # 29408
ATTORNEY FOR: BJR, Inc., d/b/a Conservco
Construction, Defendant

BY THE COURT:


William A. Shaw LM
Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to emergency room reports, patient charts, admission reports, discharge reports, physician's notes, nurse's notes, surgical reports, inpatient records, outpatient records, billing reports, lab reports, imaging reports, physical therapy records, correspondences, and originals or copies of all imaging studies.

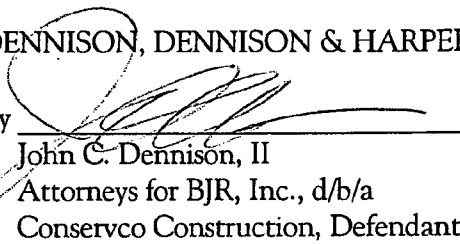
CERTIFICATE OF SERVICE

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Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

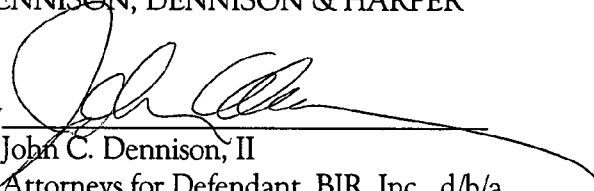
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DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Certificate Prerequisite to
Service of a Subpoena Pursuant to Pa.R.C.P.
4009.22

Filed on behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *McC*
mt 3/2/04
NOV 30 2004 *SM*

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO PA.R.C.P. 4009.22

As a prerequisite to the Service of a Subpoena to Produce Documents and Things for
Discovery Pursuant to Pa.R.C.P. 4009.21, the Defendant, BJR, Inc., d/b/a Conservco
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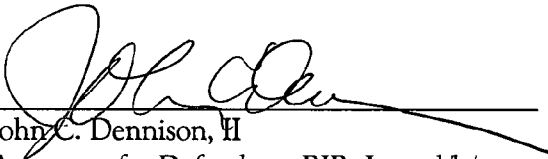
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4. The Subpoena which will be served is identical to the Subpoena which is attached to the aforementioned Notice.

DENNISON, DENNISON & HARPER

Dated: November 29, 2006

By


John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2004 - 1246 - CD

Type of Case: Civil Division

Type of Pleading: Notice of Intent
to Serve Subpoena to Produce Documents
and Things for Discovery Pursuant to
Pa.R.C.P. 4009.21

Filed on behalf of: BJR, Inc., d/b/a
Conservco Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
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WILLIAM J. McCUSKER and BEVERLY
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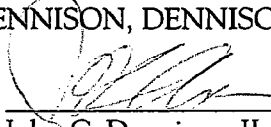
**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
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P.A.R.C.P. 4009.21**

TO : WILLIAM J. McCUSKER and BEVERLY I. McCUSKER, Plaintiffs

BJR, Inc., d/b/a Conservco Construction, by and through its attorneys, Dennison,
Dennison & Harper, intends to serve a Subpoena identical to the one that is attached to this
Notice. You have twenty (20) days from the date listed below in which to file of record and serve
upon the undersigned an objection to the Subpoena. If no objection is made, the Subpoena may
be served.

Dated: November 8, 2006

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for BJR, Inc., d/b/a
Conservco Construction, Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

William J. McCusker
Beverly I. McCusker
Plaintiff(s)

Vs.

BJR, Inc.
Conservco Construction
Appalachian Wood Products, Inc.
Defendant(s)

No. 2004-01246-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Dr. J. Philip Hall, Glendale Area Medical Center, P. O. Box 401, Coalport,
PA 16627 (Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See attached

to Dennison, Dennison & Harper, 293 Main Street, Brookville, PA 15825
(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John C. Dennison, II, Esq.

ADDRESS: 293 Main Street
Brookville, PA 15825

TELEPHONE: (814) 849-8316

SUPREME COURT ID # 29408

ATTORNEY FOR: BJR, Inc. d/b/a Conservco
Construction, Defendant

BY THE COURT:

William A. Shaw *in*

Prothonotary/Clerk, Civil Division

DATE: Thursday, November 02, 2006
Seal of the Court

Deputy

Any and all medical records in your possession for William J. McCusker, DOB: 1/3/1955, SSN: 160-48-4048, including but not limited to physician's notes, nurse's notes, office notes, patient questionnaires, reports, evaluations, consultations, lab reports, patient charts, operative reports, therapy records, admission records, discharge records, correspondences, billing statements, and all imaging and x-ray reports and films for any care and/or treatment.

CERTIFICATE OF SERVICE

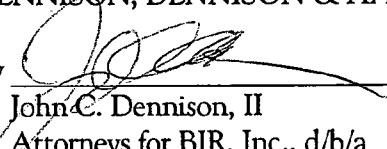
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Clearfield, PA 16830

Gerald J. Hutton, Esq.
Bashline & Hutton
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By


John C. Dennison, II

Attorneys for BJR, Inc., d/b/a

Conservco Construction, Defendant

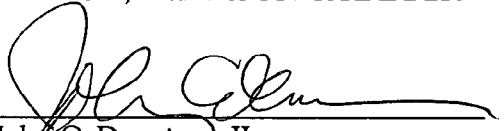
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Gerald J. Hutton, Esq.
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Suite 3500, One Oliver Plaza
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Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 
John C. Dennison, II
Attorneys for Defendant, BJR, Inc., d/b/a
Conservco Construction

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

No. 04 - 1246 - C.D.

Type of case: Civil

Type of pleading: Certificate of Readiness

Filed on behalf of: Plaintiffs,
William J. McCusker and
Beverly I. McCusker

Counsel for Plaintiffs:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED

01/338/501
MAR 09 2007

4CC
Atty Neiswender

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and	:	
BEVERLY I. MCCUSKER,	:	
Plaintiffs,	:	
	:	
vs.	:	No. 04 - 1246 - C.D.
	:	
BJR, INC. d/b/a CONSERVCO	:	
CONSTRUCTION and APPALACHIAN	:	
WOOD PRODUCTS, INC.,	:	
Defendants.	:	

CERTIFICATE OF READINESS

TO THE PROTHONOTARY:

Please place the above captioned case on the Civil Trial List.

1. Date presented: March 9, 2007.
2. Date compliant filed: August 13, 2004.
3. Type of trial requested: Jury Trial.
4. Estimated trial time: 2-3 days.
5. Amount at issue: In excess of \$20,000.00, plus interest and costs of the suit.
6. Counsel for the Defendants:

For BJR, Inc. d/b/a Conservco Construction: John C. Dennison, II, Esq.,

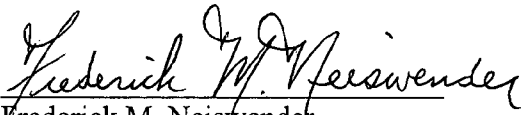
Telephone: (814) 849-8316.

For Appalachian Wood Products, Inc.: Gerald J. Hutton, Esq.,

Telephone: (412) 434-0201.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.

Respectfully submitted,


Frederick M. Neiswender
Counsel for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,

Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,

Defendants.

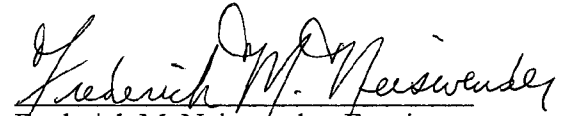
No. 04 - 1246 - C.D.

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Certificate of Readiness was made upon BJR, Inc., d/b/a Conservco Construction and Appalachian Wood Products, Inc. by mailing, first class, postage prepaid, a true copy to the office of their attorneys of record on March 9, 2007, at the following addresses:

John C. Dennison, II, Esquire
Dennison, Dennison & Harper
293 Main Street
Brookville, Pennsylvania 15825

Gerald J. Hutton, Esquire
Bashline & Hutton
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs
211½ North Second Street
Clearfield, Pennsylvania 16830

CA

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

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and
APPALACHIAN WOOD PRODUCTS, INC.,
Defendants

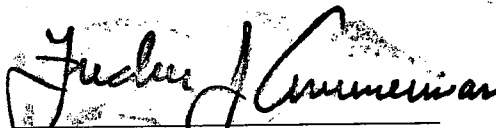
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NO. 04-1246-CD

ORDER

AND NOW, this 9th day of April, 2007, it is the ORDER of this Court that the Pre-Trial Conference in the above matter shall be held on the 20th day of April, 2007, at 11:30 a.m. in Chambers.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
014:00/6N
APR 09 2007

William A. Shaw
Prothonotary/Clerk of Courts

1ccAngs:
Neiswender
Dennison
Gallishen
CR

FILED

APR 09 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/9/07

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

CA

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

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and
APPALACHIAN WOOD PRODUCTS, INC.,
Defendants

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NO. 04-1246-CD

ORDER

NOW, this 20th day of April, 2007, following pre-trial conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. The case is hereby moved to the Fall, 2007, Term of Court.
2. Jury Selection will be held on August 28, 2007 commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
3. Jury trial is scheduled for Wednesday, Thursday and Friday, October 17, 18 and 19, 2007 commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania
4. Plaintiff shall have no more than thirty (30) days from this date to provide to the Defense W-2 forms and tax returns for years 1997 through 2006.
5. Plaintiff shall ensure that the Defense receives a transcript from the Worker's Compensation hearing with the transcript including testimony offered by any experts at the same.

FILED

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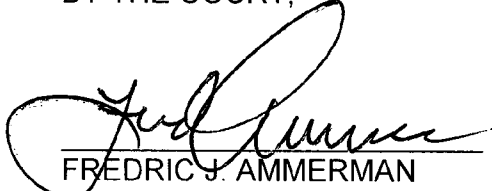
William A. Shaw
Prothonotary/Clerk of Courts

ICC Attys.

Neiswander
Dennison
Gallishen

(6K)

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

APR 24 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/24/07

 You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

MOTION FOR LEAVE TO AMEND
ANSWER AND NEW MATTER

Filed on Behalf of Defendants:
CONSERVCO CONSTRUCTION
APPALACHIAN WOOD PRODUCTS

Counsel of Record for these Parties:

JOHN DENNISON
PA. I.D. No. 290408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825

Firm I.D. No.: _____

GERALD J. HUTTON
PA I.D. No. 23098

BASHLINE & HUTTON
Suit 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED *NOCC*
MAY 10 2007 *GR*

William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

MOTION FOR LEAVE TO AMEND ANSWER AND NEW MATTER

And now, come the defendants, Conservco Inc. and Appalachian Wood Products, Inc., by their respective attorneys, John Denison, Esquire and Gerald J. Hutton, Esquire and submit this joint motion to allow defendants to amend their Answers and raise the affirmative defense of collateral estoppel based on the adjudication of Worker's Compensation Judge Michael E. Knoll dated February 28, 2007, and in support thereof set forth the following:

1. Plaintiff William J. McCusker allegedly sustained injuries on August 17, 2002 as a result of the work-related accident occurring on the premises of Appalachian Wood Products when a crane allegedly failed permitting plaintiff to fall to the ground and sustain injury. At the time of the accident plaintiff was employed by Able Company I, which specialized in the installation of fire suppression and burglar alarm equipment for commercial and industrial facilities.

2. Defendants have filed separate Answers to the complaint and have raised defenses to the allegations brought by plaintiff.

3. Defendants were advised on April 16th, 2007 by a representative of the Rockwood Casually Insurance Company, that a decision was entered to Worker's Compensation petitions filed by plaintiff and plaintiff's employer. In particular, the defendants received a copy of an adjudication

bearing circulation date of February 28, 2007, a copy of which is attached hereto and expressly incorporated herein by reference as Exhibit "A".

4. Plaintiff in the Worker's Compensation matter had filed various petitions with the Pennsylvania Bureau of Labor and Industry, Worker's Compensation Department, including Petition to Reinstate Compensation Benefits and a Petition to Review Medical Treatment. Further, plaintiff's employer had filed petitions including a Petition to Review Medical Treatment and a Petition to Terminate Compensation Benefits.

5. Plaintiff was represented in the Worker's Compensation claim by current counsel Frederick Neiswender, Esquire who also represents plaintiff in this personal injury suit. Counsel had not supplied defendants with the transcripts of the medical testimony in the workers' compensation case or adjudication of the Worker's Compensation Judge although plaintiff was previously been served with interrogatory and document request.

6. After testimony from the claimant and witnesses including the deposition testimony of Dr. Manish Sapra, Dr. Zhenhui Li, Dr. Stuart Burstein and Dr. Jack Smith, and therapist Jill Stewart, all as set forth in the attached adjudication, Exhibit "A", the judge entered a written adjudication in conformity with the Pennsylvania Worker's Compensation Act that effective November 7, 2005, the date of Dr. Smith's independent medical examination Mr. McCusker was found to have been fully recovered from the physical aspects of his August 17, 2002 injury.

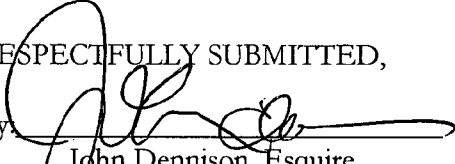
7. It was further found that by August 2, 2005 Mr. McCusker had fully recovered from any post-traumatic stress disorder as related to his work injury, and that any ongoing symptomatology including a depression disorder, and any asserted associated disability, was not related to plaintiff's work injury of August 17, 2002 but results from numerous non-work related stressors in the claimant's life.

8. The decision of the Pennsylvania Worker's Compensation Judge, as set forth in attached exhibit "A", is a binding adjudication regarding the plaintiff's claim and under doctrine of collateral estoppel precludes plaintiff from relitigating issues regarding any claim for ongoing disability whether physical or psychological.

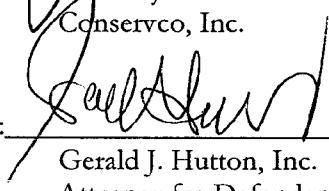
9. Defendants request leave of Court to amend their Answer to raise this adjudication as collateral estoppel. Leave to amend is appropriate as decided by the Pennsylvania Superior Court in Shaffer v. Pullman Trailmobile, Div. of M.W. Kellog Co., 368 Pa.Super. 199, 533 A.2d 1023 Pa.Super.,1987.

WHEREFORE, defendants, Conservco Inc. and Appalachian Wood Products, Inc., respectfully request that this Honorable Court grant defendants' leave to amend their Answers to raise collateral estoppel based on the decision of the Pennsylvania Worker's Compensation authority.

RESPECTFULLY SUBMITTED,

By: 

John Dennison, Esquire
Attorney for Defendant,
Conservco, Inc.

By: 

Gerald J. Hutton, Inc.
Attorney for Defendant,
Appalachian Wood Products, Inc.

WILLIAM J. McCUSKER and BEVERLY I.
McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,

Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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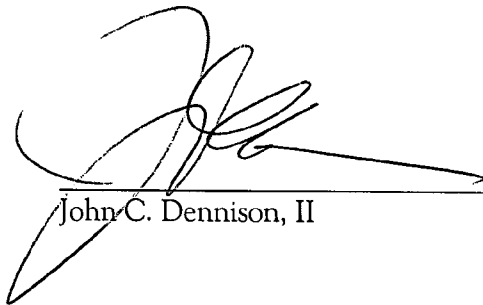
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*

* Number 1246 of 2004, C. D.

ENDORSEMENT

I, John C. Dennison, II, attorney for BJR, Inc. trading as Conservco Construction hereby
state and affirm that I have read the within Motion, and that to the best of my knowledge,
information and belief, there are good grounds to support such motion and it is not interposed
merely form delay.



John C. Dennison, II

LTR-025 REV 09/05/00



Circulation Date: 02/28/2007

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION OFFICE OF ADJUDICATION
814-765-6398

ROCKWOOD CASUALTY INSURANCE CO
654 MAIN ST
ROCKWOOD PA 15557

DECISION RENDERED COVER LETTER

Bureau Claim Number: 2430013

Injury Date: 08/17/2002

Insurer Claim Number: 244473

Petitions:

Penalty-Pet

Pet-To Reinstate Compensation Benefits

Pet-To Reinstate Compensation Benefits

Pet-To Review Medical Treatment

Pet-To Review Medical Treatment

Pet-To Terminate Compensation Benefits

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

WILLIAM J MCCUSKER
555 MARKET ST
RR1 BOX 111
COALPORT, PA 16627-0000

FREDERICK M NEISWENDER ATTY AT LAW
501 E MARKET ST STE 3
CLEARFIELD, PA 16830

The attached Decision of the Judge is final
unless an appeal is taken to the Workers'
Compensation Appeal Board as provided
by law.

If you do not agree with this Decision, an
appeal must be filed with the Workers'
Compensation Appeal Board within 20 days
from but not including the date of this notice.

Vs

ABLE COMPANY I
930-950 W HANNA ST RTE 53
HOUTZDALE, PA 16651

ROCKWOOD CASUALTY INSURANCE CO
654 MAIN ST
ROCKWOOD, PA 15557

WAGNER & FINN ATTYS AT LAW
107 LAKEMONT PARK BLVD
ALTOONA, PA 16602

Forms for an appeal may be obtained from
the Workers' Compensation Appeal Board,
Capital Associates Building
901 North Seventh Street
Third Floor South
Harrisburg, PA 17102

EXHIBIT A - attached to original only

Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program

WILLIAM J MCCUSKER - 2430013

COMMONWEALTH OF PENNSYLVANIA
RWC LEGAL DIV
1171 S. CAMERON STREET
ROOM 327
HARRISBURG, PA 17104-2501

Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program

WILLIAM J MCCUSKER - 2430013

Employee Witnesses & Exhibits:

Joette Williams (08-10-05)

William McCusker (08-10-05; 03-14-06)

- 1- Joette Williams Progress Record Notes
- 10- 02-28-06 Depo Dr. Sapra
- 11- 09/25/06 Depo Dr. Zhenhui Li
- 2- 08-09-05 Report Dr. Sapra
- 3- Lisitng of Paid Bills
- 4- Denial letters
- 5- 02-25-05 Report Dr. Sapra
- 6- Affidavit of Claimant
- 7- Allegheny Surgery Center/Allegheny Pain Mgt Reports
- 8- Blair Medical Associates Records
- 9- Fee Agreement

Employer Witnesses & Exhibits:

- A- Selected pages of Joette Williams notes
- B- Notes of Jill Stewart, Therapist
- C- 10/18/05 Depo Dr. Burstein
- D- 11-07-05 Report Dr. Smith
- E- 01-13-06 Depo Dr. Smith

Judge Witnesses & Exhibits:

- J1- Notice of Temporary Compensation Payable

Hearings:

7/12/2006 14:30:00	Held
3/14/2006 10:00:00	Held
12/21/2005 10:15:00	Held
8/10/2005 13:00:00	Held
7/27/2005 13:00:00	Canceled by Employer Counsel on 06/28/05
5/25/2005 09:00:00	Held

William J. McCusker vs. Able Company 1, et al
Termination/Penalty/Reinstatement/Reinstatement/Review/
Review Petitions
PABWC Claim No. 2430013
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FINDINGS OF FACT

1. The Claimant, William J. McCusker, sustained an injury on August 17, 2002, during the course and scope of his employment with Defendant/Employer Able Company 1, insured for Workers' Compensation purposes by Rockwood Casualty Insurance Company. Pursuant to a Notice of Temporary Compensation Payable subsequently converted, such work injury was described as "upper left arm, right back, back, both hips, bruises, contusions", with the Claimant receiving compensation at the weekly rate of \$184.42, based on an average weekly wage of \$204.91.
2. On April 12, 2005, the Claimant filed a Penalty Petition, together with a Reinstatement and Review Medical Treatment Petition, asserting that Defendant/Insurer had stopped paying for the Claimant's medical costs and expenses associated with psychological therapy and medication, under the theory the Claimant's condition was not related to his work injury. Such Petitions were assigned to this Workers' Compensation Judge by Notice of Assignment of April 15, 2005. Defendant/Employer, through counsel, filed a timely Answer denying the material averments of the Claimant's Petition.
3. An initial pre-trial conference was held in this matter on May 25, 2005. At such time it was confirmed, that as the Notice of Temporary Compensation Payable issued in this matter did not accept a psychological injury as part of the described work injury, the pending Petitions would be deemed, in the alternative, a Petition to Review the description of injury, as set forth in the Notice of Temporary Compensation Payable. A Scheduling Order was subsequently issued for the parties' completion of respective medical evidence, together with the re-listing of this matter for full testamentary hearing.
4. An additional hearing was held in this matter on August 10, 2005. At the time of such hearing, in support of the Claimant's Petition, the testimony of the Claimant was presented in pertinent part as follows:
 - a) The Claimant testified as to being fifty years of age at the time of the hearing. He testified that he was not currently employed, with Workers' Compensation being his sole source of income. The Claimant testified that as of the time of his injury, he had been employed by Defendant/Employer

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as a technician's assistant, for approximately one year and two months. In such position, he would travel to different businesses, inspecting the businesses' fire suppression systems and security systems, together with providing whatever manner of assistance he was capable of. On August 17, 2002, he had just finished installing a fire suppression nozzle on a sawdust duct, at Appalachian Wood Products. Such entailed his being hoisted by a crane to approximately eighty feet into the air. He testified that while being lowered to the ground, the cage that he was in started spinning. He testified that at such time he whistled to his boss, signaling to his boss to have the crane operator put him down, so he would not land on a piece of equipment, and the next thing he knew, he was free-falling while spinning. He indicated he looked up, saw the boom of the cab coming down on him, and jumped right before he hit the ground. He testified that when he jumped, the boom missed him, but he jarred himself very badly. (08/10/05 Hearing N.T., pp. 4-5)

- b) The Claimant testified as to initially seeking treatment at the Coalport Medical Center with a Dr. Robinson. At some time subsequently, he was referred by Dr. Robinson to the Clearfield-Jefferson Mental Health Center, believing such treatment began in May of 2003. He testified that prior to August 17, 2002, he would describe himself as a healthy, active, happy individual, with no sleeping disorders, being active in the care of his then fourteen year old stepson and eleven, going on twelve year old son, engaging in outdoor activities and sports, with no difficulties or problems at work. He described his prior general mood as being content and excited, having just invested three thousand five hundred dollars in equipment to attempt to establish a stone carving business. He testified that prior to the injury, he was slow to anger unless someone got right in his face and threatened him, with no nervousness or panic attacks. He testified that he was happy the majority of the time prior to the accident, having been active, physical, and outgoing all of his life and not afraid to be around people or speak in front of people. He indicated that he had his second wife die in his arms on May 31, 1998, being left with a seven-year-old son to raise. At such time he was a water operator for a small company, supplying over eight hundred homes. He testified at such time, he took a weeks vacation, went to Dr. Robinson, who prescribed Zoloft for him. The next week he went back to work, taking Zoloft for approximately six weeks, never missing work, and going on with his life. He testified that things kept

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getting better, remarrying in May of 2002. He testified that the work accident then occurred in August of 2002. He continued having pain, despite ten months of therapy, which made him worse. He testified that he can no longer do the things he used to do with his son, wife and step children, as well as not bringing in the income of what he used to, such that he was steadily falling behind on bills. He testified that subsequently, he started snapping at everybody, becoming very angry and yelling over small reasons. He testified that his relationship with his new wife has been steadily deteriorating, with more arguments and fights since the accident, with his wife having moved out, despite their undergoing of counseling. (08/10/05 Hearing N.T., pp. 5-11)

- c) The Claimant testified that he has additionally had difficulty sleeping, having frequent bad dreams, including of the work injury. He testified that since the time of the accident, he additionally had trouble focusing, with difficulty with his memory. He testified that since the time of the accident, he has had a fear of heights, which he did not have prior to the time of the work accident. He indicated that he additionally has become paranoid about being jostled in a crowd. He testified that he is also depressed over his physical limitations, including not being able to carry a gallon of milk out of the store. (08/10/05 Hearing N.T., pp. 11-15)
- d) The Claimant testified that after the accident he started being seen at the Clearfield-Jefferson Mental Health beginning in May of 2003, being prescribed three different anti-depressants. He indicated that subsequent to such treatment, he was doing better with his family, and was a lot more able to control his anger. He testified that such treatment included therapy sessions with a Ms. Joette Williams. He testified that he has been continuing therapy with Ms. Williams, as well as having received samples of some of the anti-depressants, but had to stop taking some anti-depressants, because he could not afford those, after being notified by the pharmacy that Workers' Compensation would not pay for such anymore. (08/10/05 Hearing N.T., pp. 15-18)
- e) Upon cross-examination, the Claimant acknowledged that the accident report that he filled out at the time of the injury indicates that he, at the time, reported he fell approximately twenty-five feet after jumping out of the cage. He acknowledged, that with respect to the symptoms that he

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testified to having, following the accident, that such mental symptoms did not begin immediately, with such being a slow building process, other than the bad dreams which started almost immediately. He testified that the longer he proceeded with physical therapy, with no sleep and constant pain, the depression kept growing. (08/10/05 Hearing N.T., pp. 18-20)

- f) The Claimant acknowledged receiving treatment for depression prior to August of 2002. He acknowledged that his sixteen-year-old daughter had been living with his ex-wife, who he had been divorced from. He testified that in February of 1992, his daughter had a fight with his ex-wife, and committed suicide. He subsequently went to Dr. Robinson, being referred to the Clearfield-Jefferson Mental Health. He testified at such time he felt rage, not having wanted his children living with his ex-wife, his first wife, who the Claimant testified left him for a long haired biker druggie. He believes at that time he received treatment at the Clearfield-Jefferson Mental Health facility for six weeks to two months. He denied at such time having any difficulties with nightmares, or episodes of panic. (08/10/05 Hearing N.T., pp. 18-22)
- g) The Claimant testified that the second time he sought treatment for depression was when his second wife died in 1998, with Dr. Robinson for approximately four to six weeks. He denied at such time, having problems with co-workers or seeking additional help for depression or anger management. (08/10/05 Hearing N.T., pp. 22-23)
- h) The Claimant acknowledged having some minor marital problems with his current wife, whom he married in May of 2002, with such beginning before they were married. He indicated that such problems were over differences of opinions, upon discussing rules and regulations for the children. He testified that they did not have problems, did not seek any counseling or need for counseling, just saw things differently, relative to disciplinary rules for the children, but worked them out. He indicated that after the accident, he began having fights with his wife, with his wife wanting to separate, until he got back on track. He acknowledged that his wife advising him, that she wanted to separate, in and of itself, caused some stress, which he discussed with Ms. Williams. He acknowledged his wife moved out in December of 2003. He acknowledged discussing with Ms. Williams on a number of occasions in his sessions with her, that he had worries about his ability to be

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a good husband and father, but denied having any such fears prior to August of 2002. He acknowledged having a lot of problems with his stepson, his current wife's son. When questioned as to also having some problems with his stepson, prior to his marriage to his current wife, the Claimant responded it was not necessarily just him, just with his current wife's ideas of what the rules should be and what his were, so they tried to reach a happy medium. The Claimant indicated that he had very few, if any, arguments with his stepson prior to his accident. He acknowledged reporting to Ms. Williams, that his own son was having problems in school and this caused a lot of tension for him, with his having started his son with counseling with Cen-Clear and at Clearfield-Jefferson. The Claimant acknowledged that his father passed away in January of 2004, and according to Ms. Williams, that such caused a lot of anxiety for him, because he felt he left his father down during the last two years of his life. The Claimant acknowledged having arguments with a sister of his, who drinks, and he does not, and he has a problem with that. (08/10/05 Hearing N.T., pp. 23-29)

- i) With respect to his physical condition, the Claimant testified that he has continuing problems with pain in his right wrist, left shoulder, right shoulder, neck, middle of his back, lower back, hips, knees and ankles. He testified that he has been receiving treatment on a once every four-week basis with a Dr. Drass, at Allegheny Pain Management. He acknowledged seeing a Dr. Ferraro as well. The Claimant testified he did not feel he was capable of returning to work in any capacity from either a physical or mental standpoint. The Claimant testified he has not worked anywhere since August of 2002. (08/10/05 Hearing N.T., pp. 29-32)
- j) The Claimant testified that with respect to his current daily activities, he tries to stay busy, but does not perform any yard work. He indicated he is able to work around the house, with a lot of breaks, as well as having to lie down during the course of the day. He denies having any injuries to his back or hips or arms since August of 2002. He acknowledged having fallen several times when his legs have given out on him, but nothing new or no new injuries or anything substantial. (08/10/05 Hearing N.T., pp. 32-34)
- k) Upon redirect examination, the Claimant testified that following his sixteen-year-old daughter's committing of suicide, he only missed the day

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that such occurred and the day of the funeral from work, working straight through otherwise. He testified the only problem he had subsequent to such time was with the rage towards his ex-wife and her boyfriend. He indicated that with respect to his second wife, he called her his second wife, but they never really married, but did live together from 1988 until she died on May 31, 1998. He indicated that during such period of time, he never had any real serious problems, other than normal differences of opinion on how to raise children, with his second wife, the mother of his son, having two sons as well. The Claimant testified that after the two events in 1992 and 1998, that he would consider his life normal, prior to the accident in August of 2002. With respect to describing his present pain, the Claimant indicated that his neck and lower back hurt very badly, with such being a constant ache and every once in a while, a sharp burning jab. (08/10/05 Hearing N.T., pp. 34-38)

5. Additionally at the time of the August 10, 2005 hearing, in support of the Claimant's Petition, the Claimant has presented the testimony of Joette R. Williams, a psychotherapist, employed at Clearfield-Jefferson Community Mental Health, Inc. Counsel stipulated, that Ms. Williams is not a licensed medical practitioner, with her testimony being relative to her being the individual who would meet with the Claimant on a regular basis, with any diagnoses relative to the Claimant's condition to be presented through medical testimony. Ms. Williams otherwise testified in pertinent part as follows:
 - a) Ms. Williams testified as to beginning to see the Claimant in October of 2002, with the Claimant having previously been seen by a Ms. Jill Stewart. She began seeing the Claimant on a weekly basis, with the Claimant presenting being very depressed, anxious, having panic attacks and angry outbreaks. Ms. Williams indicated that she started seeing improvement in the Claimant's mood, anger, depression symptoms, with less problems with anxiety and panic attacks, several months after she began seeing him. She indicated that several months after she started seeing him, the Claimant also saw Dr. Valles, with Dr. Valles prescribing medication. Ms. Williams indicated that within approximately six weeks of the Claimant beginning medication, the Claimant was reporting sleeping better, as well as there being an improvement in his anger with his anger coming under control. She testified that such improvement continued, right up until the point in time where the Claimant's medication was stopped. She indicated

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approximately a month after his medication was stopped, the Claimant began decompensating. (08/10/05 Hearing N.T., pp. 41-44)

- b) Ms. Williams testified that the Center is able to provide the Claimant with some samples of Welbutrin and Abilify, but not other medication, which the Claimant had been prescribed. She testified that she has noticed a change in the Claimant's behaviors since the stopping or reduction of his medication, with the Claimant being more depressed and not sleeping, with the Claimant reporting feeling more angry, irritable, depressed and tearful. (08/10/05 Hearing N.T., pp. 44-47)
- c) Upon cross-examination, Ms. Williams acknowledged that she was not licensed in psychiatry or psychology, with there being no licensure for a psychotherapist within Pennsylvania. Ms. Williams acknowledged that there is a small notation in her chart, that the Claimant had been seen very briefly at the Center prior to August of 2002. She does not recall specifically whether such treatment was for depression. She acknowledged that she does not know whether the Claimant had any of the symptoms which she noted, prior to August of 2002. She acknowledged that she did not have any of Dr. Robinson's records for review, with Dr. Robinson, the Claimant's family physician, having referred the Claimant to the Center. Ms. Williams acknowledged that there are a number of references in her notes, to some family problems and marital problems that the Claimant was having. She acknowledged that it would be fair to say that the Claimant reported to her that those problems were in and of themselves creating some stress and anxiety for him. She acknowledged that those types of problems can lead to depression in and of themselves. She acknowledged the Claimant reporting a prior history of physical and verbal abuse from his father, which is something that can result in depression. Ms. Williams acknowledged, that with respect to the Claimant decompensating, that additional pressures at home can cause decompensation. (08/10/05 Hearing N.T., pp. 47-55)
- d) Upon redirect examination, Ms. Williams acknowledged that the Claimant has mentioned the work accident to her, describing such in detail, with the Claimant reporting that most of his depression symptoms and anxiety and post-traumatic stress coming from the accident. (08/10/05 Hearing N.T., pp. 55-57)

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6. On November 23, 2005, Defendant/Employer filed a Termination Petition, asserting that effective November 7, 2005, the Claimant had fully recovered from his work injury of August 17, 2002, and could return to work without restrictions. Such Petition was assigned to this Workers' Compensation Judge by Notice of Assignment of November 30, 2005. Thereafter, the Claimant filed a timely Answer denying the material averments of Defendant/Employer's Petition.
7. An additional hearing was held in this matter on December 21, 2005, relative to the new Petition filing. As of such time, it was confirmed with counsel, that whereas the prior Petitions pending had been seeking the payment of medical benefits for psychiatric treatment, with the medical evidence anticipated as being submitted by way of report, with the Termination Petition pending, as well as an additional assertion that the psychiatric aspect of the Claimant's Petitions were being asserted as an independent basis for disability, that medical depositions would be required, with hearsay objections being preserved and sustained, relative to previously submitted medical reports and records. A Scheduling Order was subsequently issued for the parties' completion of respective medical depositions, together with the re-listing of this matter for additional testamentary hearing.
8. In support of its Termination Petition, Defendant/Employer has submitted the deposition testimony of Jack D. Smith, M.D., obtained January 13, 2006. Dr. Smith, who is Board Certified in orthopedic surgery, testified in pertinent part as follows:
 - a) Dr. Smith performed an Independent Medical Examination upon the Claimant on November 7, 2005. He indicated that in conjunction with such examination, he was provided with and had an opportunity to review medical records relative to the Claimant's care and treatment. He indicated that in addition to such medical records, since the time of his examination, and prior to his deposition, he had an opportunity to review additional update records from both the Allegheny Pain Management and Dr. Li, for the period of April 2005 through June 2005. Dr. Smith noted that in reviewing Dr. Li's physical examination findings, he did not note any objective abnormalities noted with respect to Dr. Li's examination of the Claimant. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 10-12)

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- b) Dr. Smith further noted obtaining a history from the Claimant, as of the time of his examination. The Claimant reported having sustained an injury in August of 2002, when he attempted to jump from a basket type crane bucket, which had malfunctioned with the bucket beginning to drop. The Claimant reported injuring his neck, posterior shoulder area, mid portion of his back, as well as reporting that he had a number of rib fractures, in addition to injuries to his lower back, back and buttocks, hip areas and both of his knees. Upon asking the Claimant if he was hospitalized, the Claimant indicated that he was not. The Claimant reported seeing a number of physicians, with such treatment being conservative in nature, without any surgical intervention undertaken or recommended. The Claimant reported that he believed he had been advised that he had problems with several discs in his neck, several hairline cracks in his neck, multiple rib fractures near where the ribs attach to the spine, as well as problems at several disc areas in the lower back as well. He reported undergoing a number of diagnostic tests, including X-rays and MRIs, with some of the tests being repeated. The Claimant reported being seen by a Dr. Wirths, his family physician, a Dr. Robinson, with a referral to a Dr. Drass, at a pain center, being seen by a Dr. Li, as well as a Dr. Ferraro, as well as with a referral to a Dr. Kivitz, with some mention of sending the Claimant to a Pain Management Center in Maryland. The Claimant reported complaints of pain in the neck area, including a sharp pain running across the posterior aspect of both shoulders, with numbness involving the ring and small fingers of the left hand. The Claimant reported having headaches associated with that pain. He also described tenderness and pain in the mid portions of his back in the thoracolumbar junction. He further reported pain in the lower back radiating into the posterior buttock area of the hip, with pain in the hips themselves. He also reported pain in both of his knees. At the time of the examination, the Claimant was walking with a walking stick, which the Claimant reported generally carrying when he was in a crowd. The Claimant made no complaints relative to his right wrist or left arm, other than complaints of numbness involving the left hand. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 13-20)
- c) Dr. Smith performed a physical examination of the Claimant. Relative to the physical examination of the Claimant's neck, all the Claimant's attempts made at movement were done in a hesitating fashion with a

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groaning accompanying virtually all movements attempted in the neck area. Dr. Smith described the halting movement as a non-physiologic-type of movement. Dr. Smith commented, that checking to see however, if there was any spasm that accompanied the end points of movement, that the neck did not spasm or tighten in any fashion. The Claimant also did not show any abnormal mechanics. Dr. Smith commented that the fact that the Claimant voluntarily terminated movements, having a non-physiologic-type of movement, makes it subjective and somewhat suspect. In the thoracic spine, the Claimant had normally maintained thoracic kyphosis, or a normal roundness. There was no spasm noted upon range of motion testing. There were no objective abnormalities. The Claimant did make a complaint of tenderness about the area of T11/T12, which would be a subjective type of finding, with no accompanying spasm or abnormal mechanics. In the lumbar area, the Claimant voluntarily flexed to forty degrees. Dr. Smith commented that when the Claimant did that movement, he reversed the lumbar lordosis, which again, is normal mechanics, expected to be seen in a normal back. The Claimant had no paravertebral spasm with that associated movement. Upon lateral bending, the Claimant only went to fifteen degrees to each side. Upon hyperextension, the Claimant just went to the straight upright position to neutral. None of these movements were accompanied with any spasm or abnormal mechanics. They were all voluntarily terminated. Upon performance of straight leg raise testing, it was found to be positive both with the knees flexed and extended. Dr. Smith noted that when such finding is positive with both the knees flexed and extended, it basically negates such finding as an objective finding and can be seen with magnification of symptoms. Upon performing hip range of motion, the Claimant did not make any complaints of pain in the hip area, but rather described pain in the low back area. Dr. Smith commented that there would not be any anatomic basis for such complaint. Upon neurologic testing of both the upper and lower extremities, such were found to be normal, with reflexes all intact. Sensation examination showed no area of sensory loss to pinprick sensation. The one area where the Claimant was found to have an abnormality, was that he had global weakness of all muscle groups tested. Dr. Smith commented that such definitely would be a non-physiologic finding because it would require a very bazaar impact with neurologic lesion, probably something of the central nervous system to produce such finding, but it does not indicate any pathology in the back or

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spine. Dr. Smith commented that it is a potential sign of magnification of symptoms. Dr. Smith checked the Claimant's knees, with such showing no effusion or swelling. Dr. Smith performed ligament testing for stability, with such being normal. There was no crepitation palpable as range of motion was accomplished. Dr. Smith noted that basically the knee showed no objective findings of any crepitation or mechanical symptoms with no effusion or instability. Dr. Smith summarized his physical examination, indicating that he found no evidence of any neurologic deficits, no abnormalities or pathology relative to the Claimant's upper extremities, including his right wrist or left arm, no pathology involving the Claimant's hips, and on an objective basis, there were no residuals that he identified in either the cervical, thoracic, lumbar areas or in the knees at the time of his examination of the Claimant. He found no objective evidence to substantiate or support the Claimant's ongoing subjective complaints. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 20-30)

- d) Dr. Smith testified having an opportunity to review diagnostic studies. A report of a CT scan of the Claimant's cervical spine obtained shortly after the accident on August 27 was normal. X-rays of the lumbar spine, wrist and cervical spine were done on the same date, and by report were normal. A bone scan was obtained, which showed some mild uptake in the right ribcage, but otherwise was unremarkable. Dr. Smith noted that such bone scan was obtained approximately a month or a little bit more after the accident, and the mild uptake certainly would not be a pattern that would be seen with a fracture of the ribs. An MRI of the cervical spine was obtained September 7, 2002, as well as an MRI of the lumbar spine done the same date. The report of the MRI of the cervical spine showed some spurs and disc bulges at C5/6, which seemed to be chronic, with no evidence of any disc herniation or any fractures or acute trauma. The MRI of the lumbar spine was reported as seeming to be basically normal. A CAT scan of the pelvis and abdomen were normal. An MRI obtained in April of 2003 of the lumbar spine showed some disc bulging at three levels, L2/3, L3/4 and L4/5, but with no evidence of any disc herniation. Such report commented that when compared to a prior MRI, likely the one obtained in September of 2002, that there was no interval change, appearing to be the same. Dr. Smith noted that he was actually provided with the films of the most recent MRI of the thoracic lumbar areas, with Dr. Smith noting some very mild disc bulges at L2/3, L3/4 and L4/5, but

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with no evidence of any disc herniation or any other pathology in the low back. In the thoracic area, the findings were essentially within normal limits. Dr. Smith commented that there was nothing that he could identify, evidencing any traumatic injury, with any findings being consistent with normal wear and tear and degenerative changes. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 30-34)

- e) Dr. Smith testified providing an opinion that as of the date of his examination of the Claimant, he did not identify any residual objective findings in either the cervical, thoracic, lumbar or knee areas, or for that matter the hip areas, to suggest any residuals of injury, with there being no objective residuals, such that he believes the Claimant had fully recovered as of such date from his work injury. It was his opinion there would be reason to place any restrictions upon the Claimant at such point, nor no need for any additional medical treatment. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 34-36)
- f) Upon cross-examination, Dr. Smith acknowledged that he did not perform a Functional Capacity Evaluation as part of his examination of the Claimant. He acknowledged he did not order or obtain any additional X-rays or MRIs. Dr. Smith acknowledged in his report, that Dr. Li had provided a diagnosis of fibromyalgia, among other diagnoses with respect to the Claimant. When questioned as to whether any of his testing of the Claimant would rule out such diagnoses, Dr. Smith explained that fibromyalgia is a clinical diagnoses based most often on a series of complaints, as opposed to on any objective findings. When questioned with respect to the Claimant's halting in his movements during the range of motion testing of the Claimant's neck, Dr. Smith testified that the way the Claimant moved was a very uncommon physiologic type of movement pattern, with there being no objectivity to it. Dr. Smith acknowledged that the MRI of September 7, 2006 reported discs bulging in the C5/6 level. Dr. Smith noted that disc bulges do not all cause pain, and can exist asymptotically. He acknowledged that speculatively, a disc bulge can cause pain, but such can also exist asymptotically. Dr. Smith acknowledged that orthopedically, there was no explanation behind the Claimant having a global weakness of his musculature. He explained that such finding was in both the upper and lower extremities, and that in order to have every muscle weak, an individual would have to have a disc at every

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single level in the neck, and lower back, with some type of compressive neuropathy, or generalized muscular dystrophy or multiple sclerosis, something that would not be in the way of a traumatic finding, or a central nervous system lesion to get that type of global weakness. Dr. Smith noted that or, it can just be effort dependent. He further explained that it is almost impossible for all of such musculature to be weak with any type of traumatic problem. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 37-47)

- g) Dr. Smith acknowledged that the April 21, 2003 MRI reported disc bulging at the L2/3, L3/4 and L4/5 levels. When questioned as to whether two areas of disc bulging at the C5/6, and the L2/3 through L4/5 levels were areas that the Claimant showed or exhibited pain, Dr. Smith acknowledged that to the extent that the Claimant complained of pain generically from his neck to his low back, such was accurate, but in terms of specifically to those levels, no. Dr. Smith acknowledged that he was not disputing that the Claimant had injuries to the bodily areas described, if he sustained a traumatic injury at the time, but as of the time of his examination of the Claimant, he could not identify any residual injuries existing nor residual symptoms. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 47-51)
 - h) Upon redirect examination, Dr. Smith indicated that in his opinion, the findings of the disc bulges on both the cervical and MRI were not related to the Claimant's original work injury. He testified that he could find no correlation between those findings, or that which he would attribute to the original work injury. On additional cross-examination, Dr. Smith acknowledged that he would categorize the Claimant's initial injury as probably a soft tissue injury, based on the way that he has reviewed the records. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 51-53)
9. In further support of Defendant/Employer's Petition, and in opposition to the Claimant's, Defendant/Employer has presented the deposition testimony of Stuart Burstein, M.D., obtained October 18, 2005. Dr. Burstein, who is Board Certified by the American Board of Psychiatry and Neurology, as well as Board Certified in forensic psychiatry, maintaining a licensed practice treating mental disorders, testified in pertinent part as follows:

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- a) Dr. Burstein performed an Independent Psychiatric Examination upon the Claimant on August 2, 2005, indicating that such interview took two hours and forty minutes. Pursuant to such examination, Dr. Burstein was provided with and had an opportunity to review medical records regarding the Claimant's treatment following the work injury of August 17, 2002, including records from the Claimant's treatment at the Clearfield-Jefferson Community Mental Health Center. He additionally obtained a history from the Claimant, with the Claimant reporting that on August 17, 2002 while in a basket or cage at work, at an estimated twenty to twenty-five feet, the basket at the end of a crane boom caught on a guide wire, with the Claimant falling to the ground. The Claimant reported landing on his feet but suffering significant pain in his legs and back at the time. He did not immediately go to the hospital emergency room, going home with his wife, who had initially planned on picking him up for lunch. The Claimant reported that as a result of such injury, he sustained a cervical sprain, wrist injury, fractured ribs, possible compression fractures, possible herniated disc and multiple aches and bruises. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 11-15)
- b) Dr. Burstein noted that the Claimant at some point in time began treating at the Clearfield-Jefferson Mental Health Center, first seeking treatment following his injury on May 7, 2003 with the Claimant reporting bad dreams and sleeplessness after the accident, with his primary care physician having placed him on anti-depressants. Such treatment was on an outpatient psychotherapy basis, with the Claimant continuing on additional anti-depressant medication. As of such time the Claimant was under the care of a Dr. Sapra, as well as seeing a psychotherapist, a Ms. Joette Williams. During the course of such treatment, the Claimant underwent the Minnesota Multiphasic Personality Inventory, Second Edition. The Claimant was noted as scoring higher than normal on scales which indicate a tendency towards suggestibility, anxiety, depression, hypochondriasis, pre-occupation with physical aches and pains and anger. Dr. Burstein noted that pursuant to the Claimant's reported history, he had also sustained several additional emotional blows earlier in his life, including the suicide of his daughter from his first marriage in 1992, with the Claimant still harboring a great deal of anger towards his first wife, the mother of that child, for contributing to his daughters suicide. In 1998, his second wife died of colon cancer in the Claimant's arms, with the Claimant's second

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wife being the one who had given him a good deal of emotional support. Subsequently, the Claimant was started on an anti-depressant by his primary care physician, taking such for approximately six weeks. The Claimant reported that he really had never resolved all the mourning for his second wife. The Claimant's father then died of cancer in January of 2004. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 15-22)

- c) Dr. Burstein further testified that in obtaining a history from the Claimant, he found it significant that the Claimant described himself as a pressured kind of guy, always preoccupied with performance. There was a tendency on his part to get irritable when things were not going the way he would like. The Claimant had one failed marriage, a loss of his second wife, together with the relationship with his third wife, whom he had married shortly before the work injury, giving him a lot of problems, with his third wife having brought to the marriage a teenage son by an earlier relationship. The Claimant described such son as very uppity, unwilling to follow directions and frequently contemptuous of the Claimant, being readily willing to engage in an argument or ignore any of the Claimant's requests of him. There have been some strong clashes, and the Claimant's third wife had left the marriage several times, with such being an ongoing source of irritation to the Claimant. Dr. Burstein explained that these other background issues indicate that the Claimant had two scenarios going on in his mind. One was the understandable anxiety experienced after the work injury, falling a distance of twenty-five feet, fearing for his life, such that he would be inclined to be anxious afterwards and have sleepless nights and restless dreams. However, the second scenario is the ongoing irritability prior to the work injury and additional factors added on with the problems that he encountered in his relationships. Dr. Burstein further explained that the Claimant's psychological status prior to his work injury would fall into a syndrome called a Dysthymic disorder, a very mild low-grade level of depressive illness or depressive attitude, referred to by Dr. Sapra as depressive disorder. Dr. Burstein noted that it is possible for any individual to have more than one psychiatric disorder, and such happened to be the case for the Claimant, who; in addition to the underlying depressive disorder, did develop acute symptoms of an anxiety disorder subsequent to the work injury. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 22-25)

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- d) Dr. Burstein testified that he further obtained a history from the Claimant relative to his physical status, as well as a complete psychological history, including reviewing the Claimant's treatment records. Dr. Burstein noted that the Claimant had been seen by Dr. Liefeld, an orthopedic surgeon, for a second opinion, who, after doing a physical examination, suggested that there was symptom magnification on the Claimant's part, with the Claimant's subjective complaints exceeding any objective findings. Relative to his review of the Clearfield-Jefferson Community Health Center records, that it appeared to be the staff's impression in reviewing the records, that the Claimant had been doing better, making progress, but nevertheless the Claimant claimed that he was still very badly off, not managing to handle his emotions, not withstanding what appears to be evidence to the contrary from the medical records. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 29-34)
- e) Dr. Burstein testified as to further performing a Mental Status Examination with respect to the Claimant. Dr. Burstein was of the impression that the Claimant does engage in what is called pain behaviors in the course of moving in and out of the office, clutching at his right leg, while walking in, wincing, grimacing, and sighing. Once the Claimant was seated in his chair, he moved around restlessly, occasionally getting up, turning his head, turning his neck and closing his eyes, repeatedly complaining of pain. Notwithstanding all of that, the Claimant remained focused on the task at hand. Even while he was complaining, the Claimant indicated or suggested he suffered from pain, but remained very obsessional in his speech, very focused in his thought. The Claimant did tend to be circumstantial, meaning he would talk around a point and give a long history, rather than get directly to the point, but nonetheless, he got to the point, with there being no tangentiality or wondering such as making him miss the mark. Dr. Burstein explained that such is a clear indication of anger, and of anger fueling an attitude which makes the individual want to explain his point to an extreme degree, with the person having the attitude that it will not work to just make the statement a simple straightforward manner. Rather, the individual has to emphasize all of their complaints and go around the circle 360 degrees to drag in every item that they can think of to emphasize some complaint that they are setting forth as the cause of a matter. Dr. Burstein testified that there was, however, no indication of any type of more serious pathology such as hearing voices, having visions, paranoia or suicidal

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ideations, nor indication of depersonalization phenomenon, generally classified with post traumatic stress disorder. Dr. Burstein noted that during the course of such Mental Status Examination, the Claimant also reported the circumstances involved in the Claimant's efforts to return to work, after his injury as a water operator for a local water authority, the type of employment which the Claimant had preformed for approximately ten years prior to going to work for Defendant/Employer Able Company. The Claimant reported leaving the office of the local water authority in a huff when he took exception to the practices of the individual who employed him at the water company. The Claimant had reported to the psychotherapist, Ms. Williams, that he needed to get five votes from the water authority in order to be accepted for the job. The Claimant reported to Dr. Burstein that he did not get the necessary number of five votes. The Claimant was also noted as reporting to Ms. Williams that he knew going back to work would in his words, "screw up his lawsuit", but wanted to get back to work and earn some money. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 34-40)

- f) Upon performance of cognitive function testing, Dr. Burstein found the Claimant's cognitive functions to be entirely intact, with the Claimant being alert, and oriented to time person and place. His memory was intact for immediate, recent or remote events. His intelligence was estimated as better than average. Concentration was normal. The Claimant provided appropriate answers and testing of his judgment when it came to insight. The Claimant's major observation at the end of the interview was, in his words, "I'm still fighting bitterness towards the owner and operator of the crane and now on top of it, I'm fighting bitterness towards the compensation company." Dr. Burstein further performed a global assessment of mental function, finding the Claimant to fall at the high end of the scale, indicative of the Claimant having a well-controlled mental state with highly effective adaptation methods. It is also recognized that when the Claimant is annoyed or irritated, he can transiently get angry, but he would readily recover from any disruption, not affecting his mental function. Dr. Burstein noted that even when the Claimant is talking about his anger towards all of the people, who he feels have done him wrong, he is able to concentrate, focus on the task at hand and continue to give a clear history. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 39-44)

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- g) Dr. Burstein provided an opinion as the Claimant's diagnoses, that he believed the Claimant had a brief episode of post-traumatic stress disorder, an anxiety disorder connected with a life-threatening event such as the work injury. He acknowledged that the Claimant's initial treatment with Elavil, an older anti-depressant had limited effectiveness. However, once the Claimant began receiving treatment at the Clearfield-Jefferson Community Mental Health Center, with new and improved medications being provided, the Claimant promptly responded with significant improvement, such that by the time of Dr. Burstein's examination, it was Dr. Burstein's opinion that the Claimant had fully recovered from the post-traumatic stress disorder syndrome. The Claimant showed no signs of still being disturbed by recalling the accident, revisiting it in his mind or replaying the experience. The Claimant did still have a Dysthymic disorder, which in Dr. Burstein's opinion, existed prior to the work injury, being expressed in the Claimant's irritability, difficulty with his marriages, unresolved mourning or depressed mood connected to the loss of his daughter, the death of his second wife, and of his father. Dr. Burstein explained that as of the time of his examination of the Claimant, he did not find any evidence of ongoing post-traumatic stress disorder attributable to the work injury of August 17, 2002. The Claimant was not suffering from any dissociative phenomenon. He did not have nightmares. He could clearly revisit the scene, which is one of the major criteria. An individual who is still disturbed by an event, comparable to the Claimant's fall at work, is going to lose concentration and fail to effectively communicate when they start talking about the event with someone else. That was not the case for the Claimant. Dr. Burstein was of the opinion that he saw no evidence of any psychologic or psychiatric disability or impairment, which he would relate to the original work injury, as of the time he examined the Claimant. In his opinions, the Claimant's evidence of ongoing Dysthymic disorder, was not in any way attributable to the work injury, but rather reflects the Claimant's feelings, status and attitudes which have built up in the Claimant, either pre-existing the work injury, or relating to other events and situations in his life. Dr. Burstein further found no objective basis to substantiate the Claimant's ongoing subjective complaints. Dr. Burstein noted that the Claimant simply did not demonstrate the kind of distraction due to pain, anxiety or depression that would be expected with anyone suffering from active symptoms. Dr. Burstein did note, that there were findings that

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caused him to question the validity of the Claimant's subjective complaints as well. He explained, that first of all, the Claimant presented for the examination, dragging himself in, looking bedraggled and overburdened by pain. Secondly, he insisted on there being anxiety and depression which would bog him down or result in him not being able to carry out activities which he carried out in the past. Dr. Burstein further noted potential issues of secondary gain, meaning benefits the Claimant could anticipate from continuing to complain to an extreme degree about physical and mental pain attributable to the work injury. The Claimant reported an additional lawsuit having been filed, with the Claimant also indicating the anger he felt towards the crane operator, his boss at Defendant/Employer, as well as towards the Workers' Compensation carrier. Dr. Burstein provided a summary of his opinions, indicating that he felt to a reasonable degree of medical certainty that the Claimant had fully recovered from a transient or temporary post-traumatic stress disorder as a result of the work injury, and was fully capable of undertaking any sort of work that he could undertake prior to the work injury. There was no indication of the Claimant suffering from any kind of psychological problem that he was not suffering from prior to the work injury, or that he could not handle in terms of his existing mental state. Dr. Burstein was of the opinion that the Claimant does not require any further treatment as a result of the work injury. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 43-53)

- h) Upon cross-examination, Dr. Burstein acknowledged that he performs approximately eight to ten Independent Medical Examinations per month, with the vast majority being on behalf of either insurance carriers or defense counsel. He acknowledged approximately ten percent would be on behalf of Claimants/Plaintiffs or their counsel. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 55-57)
- i) Dr. Burstein agreed that he would describe the Claimant as a type A personality type of person. He acknowledged that it would be fair to say that if such type of person suffers a debilitating injury, it may be harder on them mentally than on someone that does not lead such an active lifestyle. Dr. Burstein acknowledged that he would agree that such did contribute for awhile, Dr. Burstein believes approximately the first six months or year following the work injury, due to the Claimant having additional anger, irritability and depression as a result of not being able to conduct the

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lifestyle that he had become accustomed to. He acknowledged that it is his opinion that following the Claimant's having an opportunity to proceed through therapy with Ms. Williams, that he no longer suffers from the post-traumatic stress disorder or depression associated with the work injury, but continues to be subject to his underlying, pre-existing Dysthymic disorder, a mild depressive illness. Dr. Burstein acknowledged that during his interview of the Claimant, the Claimant reported having feelings of experiencing some sleeplessness, bad dreams, or other symptoms that can be associated with post-traumatic stress disorder. Dr. Burstein explained, that with respect to the Claimant, who was not working regularly, and has not fatigued in the same way that someone would be if they put in eight hours a day on a job, the Claimant tends to lie awake longer at night and to brood more about his circumstances in general, having more opportunity to reflect on his experience. He noted the Claimant has normal memories fueled by a certain amount of anger as reflected in the claims he has made that keep him preoccupied with the work injury. Dr. Burstein indicated, however, that such is different from post-traumatic stress disorder, with the Claimant not suffering from the symptoms of post-traumatic stress disorder, and does not have the type of mental blocking with the difficulty of concentration, let alone anxiety and recall that you would see with someone suffering from post-traumatic stress disorder. Dr. Burstein further noted that within six months to one year, most individuals recover from post-traumatic stress disorder. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 68-72)

- j) Dr. Burstein acknowledged that the Claimant was still suffering from some level of depression, which Dr. Burstein would attribute more to the Claimant's family situation than to the work injury. Dr. Burstein acknowledged that the Claimant suggests that his family situation has deteriorated as a result of the work injury, but Dr. Burstein does not see such to be the case in terms of the history of the Claimant's complaints. He explained what the Claimant describes is sort of a lesser tolerance for relationships in general, both before and since the work injury. He noted that the son of the Claimant's third wife seems to reflect the kinds of problems a teenage son would bring to a mother's remarriage. And what the Claimant describes is a mother going to bat for the son and acting in an alienated fashion towards the Claimant. Dr. Burstein did acknowledge that the Claimant reported having a dampening of his libido, attributed to the

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medications, as well as pain preventing sexual relations with his wife, which conceivably could contribute to the marital discourse, as well as it being conceivable that the pain could magnify the Claimant's anger and irritability. He acknowledged that the Claimant's financial problems as a result of the injury, could also lead to a depressed and anxious state. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 72-76)

- k) Dr. Burstein acknowledged that his opinions as to the Claimant amplifying his pain behaviors through his actions were based upon his observation and interview of the Claimant, as opposed to his reviewing any diagnostic studies or physical examination of the Claimant. He acknowledged it was his opinion that the Claimant was exaggerating his symptoms in order to prove that he was actually experiencing that pain. Dr. Burstein acknowledged that he was crediting the Claimant with having some pain, be it thought that the Claimant's degree of contortion and hugging his leg was an exaggeration of such symptoms, which Dr. Burstein did not see as justified by the rest of his clinical presentation. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 77-84)

10. In opposition to Defendant/Employer's Petition and in support of his own, the Claimant has presented the deposition testimony of Manish Sapra, M.D., obtained February 28, 2006. Dr. Sapra, who is Board Certified in psychiatry, testified in pertinent part as follows:

- a) Dr. Sapra indicated that the Claimant began treatment at the Clearfield-Jefferson Community Mental Health Center in April of 2003, with Dr. Sapra assuming treatment of the Claimant on October 11, 2004. As of October 11, 2004, the Claimant presented being depressed, with his depression having worsened, complaining of symptoms related to the accident, including nightmares and flashbacks, revisiting the accident. Dr. Sapra noted that as of such time, he switched the Claimant to a different anti-depressant, believing that the anti-depressant, which the Claimant had been on, was not helping him. The Claimant was also having some sexual side effects from the medicine, with his anti-depressant being changed to try to alleviate some of those conditions as well. Dr. Sapra indicated that thereafter, he would see the Claimant on an approximately every two to three month basis. Dr. Sapra noted that during the course of his treatment of the Claimant, he also had an opportunity to review the therapy notes of

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Ms. Williams. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 11-16)

- b) Dr. Sapra provided an opinion that his diagnosis for the Claimant was that he was suffering from post-traumatic stress disorder because of the work accident, and that is what Dr. Sapra was providing treatment for. Dr. Sapra acknowledged that the Claimant did have a condition of depression existing prior to the accident, with the Claimant having first been treated for depression in 1993, but those symptoms had suddenly worsened after the accident. Dr. Sapra testified that the Claimant has continued to have symptoms of depression and anxiety, as well as post-traumatic stress disorder. Dr. Sapra indicated that overall he does not believe the Claimant has had a significant improvement in his symptoms since the initiation of his treatment. Dr. Sapra further indicated that as a result of the Claimant's financial situations, together with the secession of payment by compensation for the Claimant's medications, the Claimant has not been able to take all of such medications and he has had significant deterioration during that time, having more symptoms of anxiety, disturbed sleep, and worsening of his depression. Dr. Sapra noted that the Claimant was back on some of his medications as of the time of his deposition. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 16-19)
- c) Dr. Sapra summarized his opinion, indicating that the Claimant has pre-existing depression for which he started treatment in 1993. The Claimant then had his work accident, and since then he has developed post-traumatic stress disorder, with the Claimant presently having a diagnosis of post-traumatic stress disorder and depression. Dr. Sapra indicated that as far as the Claimant's mental health is concerned, his function is certainly limited because of those reasons, such that he does not believe the Claimant would be capable of holding a normal job working a regular eight hour shift, and not believing the Claimant could take the pressures of a job at this point in time. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 19-21)
- d) Upon cross-examination, Dr. Sapra acknowledged that to his understanding the Claimant did have symptoms of depression, including disturbance of sleeping, and a depressed mood prior to the work related injury. He acknowledged the Claimant had treated for anxiety and depression prior to the August 2002 work injury, with a past history which

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would be deemed significant. Dr. Sapra acknowledged that he did not recall the specific history, or what lead the Claimant to treatment for depression in 1992 or 1993. When advised as to the Claimant's testimony that he had been treating at that time for depression as a result of a suicide of his daughter, Dr. Sapra acknowledged that certainly such event could be traumatic enough, standing alone, to result in a depression or post-traumatic stress disorder. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 27-30)

- e) Dr. Sapra acknowledged that such prior treatment is the only time that he was aware of the Claimant having treated for depression. He acknowledged he was not aware of any other specific history of the Claimant prior to the work injury, other than having treated off and on until the year 2003, when he started coming back again. He acknowledged he was not aware of any history of any particular event occurring in 1998 that lead to continued depression of the Claimant. He acknowledged that such type of history would be helpful with respect to his rendering of opinions. Dr. Sapra acknowledged that marital problems and significant family problems standing alone can lead to depression; as well as angry outbursts and continued anger caused by marital problems. Dr. Sapra acknowledged the Claimant's records are replete with instances of the Claimant experiencing marital problems with a number of his spouses over the years, as well as separating from his present wife in 2005. He acknowledged that such circumstances can lead to a depression. Dr. Sapra acknowledged that from his notes, the Claimant and his wife were going to be divorced, and all the most recent treatment records reflect an anger over his marital problems. Dr. Sapra acknowledged that is something that can lead to depression as well as sleep disturbances. Dr. Sapra acknowledged that he was not aware of any reference in the Claimant's records to anxiety and stress as a result of the Claimant's father's death. He acknowledged the death of a close family member is something that could also lead to ongoing depression. Dr. Sapra also acknowledged that he was not aware or could not recall any history through review of the records that the Claimant had continuous problems with his son or stepson. He acknowledged that is something that would be significant in determining the cause of the Claimant's problems (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 27-35)

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f) Upon additional cross-examination, Dr. Sapra acknowledged, that the Claimant could have depression and anxiety due to multiple psychosocial stresses that he is facing, including his family marital problems, but he does not think that those contribute or caused the post-traumatic stress disorder. He acknowledged he could not rule out that the other social factors, including the various histories that he was previously unaware of, as a causative factor in the Claimant's circumstances, relative to causing depression. Dr. Sapra acknowledged that it was difficult to state with certainty that the Claimant's current depression continues to be related to an incident occurring at work in 2002, acknowledging that he cannot say that is related to the injury. Dr. Sapra indicated that, in his opinion, he does not believe that the Claimant's post-traumatic stress syndrome has subsided, with the Claimant reporting specifics such as nightmares about the accident and sudden avoidant behavior. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 35-38)

11. An additional hearing was held in this matter on March 14, 2006. At such time, in opposition to Defendant/Employer's Termination Petition, additional testimony of the Claimant was presented in pertinent part as follows:

a) The Claimant testified that as of the time of his fall and accident in August of 2002, when he jumped he sustained a severe whiplash, hurting his ankles, knees, hips and lower back, ribs and vertebra. He acknowledged he did not seek medical attention immediately after the accident, thinking that he could walk it off, and return to work Monday, following the weekend. However, he still hurt over the weekend, and could hardly move by Monday morning, seeking medical treatment as of that time. He testified as to undergoing ten months of therapy; seeking chiropractic treatment; as well as undergoing injections in his neck and lower back. The Claimant testified as to having continuing pain in his neck, left shoulder, middle of his back, lower back and left knee. As of such time, the Claimant's Petition to Review was amended to include an assertion of an injury to the Claimant's neck, with a comparable amendment of Defendant/Employer's Answer to include a denial of the same. Each counsel were notified as to an opportunity to obtain an extension to the close of the record, in order to complete any additional medical evidence necessary in supporting and/or opposing such amended Petition. (03/14/06 Hearing N.T., pp. 5-19)

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b) The Claimant testified that as of the time of the hearing, the pain which he was continuing to have was mostly in his neck and behind his left shoulder, as well as being in the middle of his back, lower back, hips and left knee, with his having frequent muscle spasms and headaches, with pain which he would rate on a varying scale from a four to an eight, on a one to ten scale. The Claimant testified that he has difficulty standing for any length of time, with the longest period that he would be able to stand is for approximately two hours, but fifteen to twenty minutes is more comfortable, before sitting for five minutes or so. He indicated he has difficulty sitting for any length of time, only able to sit in one place for approximately a half hour interval before having to get up. He indicated that he is only able to walk between one hundred to two hundred feet, before being played out. He testified that the most he is able to lift and carry is a gallon of milk, weighing eight to nine pounds, and then only able to carry such from his car to the house, not being able to carry it from the store to the car. The Claimant testified as to also having numbness in his right finger and middle finger on his left hand, as well as difficulties with his left wrist. He testified that he is not able to cut the grass, shovel snow, only being able to perform some light housekeeping at home. (03/14/06 Hearing N.T., pp. 19-28)

c) Upon cross-examination, the Claimant does not believe he is able to work in any capacity. (03/14/06 Hearing N.T., pg. 31)

12. In further opposition to Defendant/Employer's Petition and in support of his own, the Claimant has presented the deposition testimony of Zhenhui Li, M.D., obtained September 25, 2006. Dr. Li, who is Board Certified by the American Board of Neurology and Psychiatry, with his practice focused of treating patients from a neurologic standpoint, testified in pertinent part as follows:

a) Dr. Li first began seeing the Claimant on March 23, 2005, with the Claimant presenting with a severe generalized pain, with his symptoms starting after a work accident of August 17, 2002. Dr. Li indicated that he obtained a history from the Claimant as to the Claimant's subsequent medical treatment, with the Claimant presenting with severe headaches, and depression, as well as generalized pain from the neck into the back and limbs. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 12-15)

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- b) Dr. Li testified as to reviewing diagnostic studies, which the Claimant had previously undergone, including an MRI, several scans and X-rays. He indicated that the spine film was actually pretty good, with no evidence of fracture, disc bulging or major problem. Dr. Li ordered a CAT scan of the Claimant's head, as well as an EMG nerve conduction study, testifying that he has seen the Claimant seven times total in his office. Dr. Li indicated that after reviewing the Claimant's CAT scan and EMG, with both being normal, he was pretty much convinced that the Claimant had a chronic pain syndrome or fibromyalgia, as well as post-traumatic stress disorder. He testified that he prescribed the Claimant medication as well as making a referral for pain management treatment, with a Dr. Drass at Allegheny Pain Management. Dr. Li indicated that the results were not very good, with his making an additional referral of the Claimant to a rheumatologist. Dr. Li testified that the Claimant has not really responded at all to any of these treatments, with the pain basically being the same, including same severity. Dr. Li indicated that he did not believe the Claimant's prognosis was very good, with the Claimant's problems starting in 2002 after the severe injury, having not gone away in over more than three years. Dr. Li noted that the Claimant's depression still was not under control very well, and over time he has also had a lot of problems at home with his wife which would not help him. Dr. Li indicated that he did not have much hope of the Claimant returning to work at any time soon. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 15-20)
- c) Dr. Li testified that he has not ordered any Functional Capacity type of examination for the Claimant, with the Claimant's physical examination really not indicating any severe motor or sensory deficit, with the Claimant still being pretty strong, with his motor strength being fine, and showing a little bit more range of motion. Dr. Li indicated that for the Claimant, depression is a major issue. Dr. Li was of the opinion that he did not think the Claimant was capable of employment as of the present time, noting that the Claimant's depression is really not under control. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 19-22)
- d) Upon cross-examination, Dr. Li acknowledged he did not have any records from the Claimant's treating physicians, Drs. Robinson or Hall. He did indicate in his computer he has some records from Alleghany Pain Clinic. He acknowledged he did not have any records in his file from the

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Washington-Jefferson Mental Health Clinic. (09/25/06 Deposition
Testimony of Dr. Zhenhui Li, pp. 23-25)

- e) Dr. Li acknowledged that throughout his visits, the Claimant has had very generalized chronic pain complaints, not limited to one spot. He acknowledged a lot of the Claimant's chief complaints were about depression. Dr. Li acknowledged that the MRI of the Claimant's cervical spine was normal, and he has never formally made a diagnosis with respect to the Claimant's neck. He acknowledged his generalized diagnosis as to a chronic pain condition is based upon the Claimant's subjective complaints of pain. He acknowledged that with respect to the Claimant's diagnosis of fibromyalgia, that such is also based upon the Claimant's subjective complaints, with there not being any objective testing for fibromyalgia, although the Rheumatologist's records did note findings of trigger points. Dr. Li acknowledged that he was primarily providing treatment for the Claimant for physical complaints, with his treatment not focusing on the mental aspect. He acknowledged he did not perform any complete psychological examination of the Claimant. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 25-30)
- f) Dr. Li acknowledged that in examining the Claimant, the Claimant has had normal deep tendon reflexes with both lower and upper extremities. He acknowledged he has presented consistently with a normal sensory examination. He acknowledged the Claimant has had normal motor examination of both the lower and upper extremities, without evidence of any neurologic deficits. Dr. Li acknowledged that the EMG studies did not reveal any evidence of neuropathy. He acknowledged that the MRI studies performed over time were all normal. He acknowledged that the Claimant has presented with a normal neurologic examination, and just strictly speaking from a physical or neurologic standpoint, objectively the Claimant really does not have any functional impairment. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 30-36)

13. Based upon the foregoing and review of the record in its entirety, it is further found as follows:

- a) Effective November 7, 2005, the date of Dr. Smith's Independent Medical Examination of the Claimant, the Claimant is found to have fully recovered

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from the physical aspects of his August 17, 2002 injury, accepted by way of the Notice of Compensation Payable describing the nature of the injury as: "upper left arm, right wrist, back, both hips, bruises and contusions."

- b) It is further found, that the Claimant's work injury of August 17, 2002 also resulted in the Claimant's development of post-traumatic stress disorder. However, it is found that effective August 2, 2005, the date of Dr. Burstein's Independent Psychiatric Evaluation of the Claimant, that the Claimant had fully recovered from such post-traumatic stress disorder, as related to his work injury, with any continuing symptomatology, including Dysthymic disorder or depression, and any asserted associated disability not being causally related to the Claimant's work injury of August 17, 2002, but rather resulting from numerous non-work related stressors in the Claimant's life.
- c) In reaching these findings, relative to the physical aspect of the Claimant's work injury, the testimony and opinions of Dr. Smith are found to be credible, probative and persuasive and are found to be more credible, probative, persuasive and unequivocal than those of Dr. Li. Dr. Smith's findings upon physical examination, as to there being no objective findings upon physical examination supporting the Claimant's subjective complaints, are not only not refuted by the testimony and opinions of Dr. Li, but actually supported by the same, with Dr. Li admitting that objectively speaking, the Claimant demonstrated no real functional impairment. Dr. Li further admitted that all the Claimant's diagnostic studies undertaken, including MRIs, CAT scans, and EMG studies were either normal or unremarkable. Dr. Li testified as to the Claimant having very generalized pain complaints, without any specific etiology for such symptoms, other than Dr. Li's impression that the Claimant's depression was not very well controlled. Additionally, although Dr. Li provides a general diagnoses of the Claimant having chronic pain syndrome or fibromyalgia, which he indicated started after the work injury of August 17, 2002, he does not otherwise provide a specific opinion that such diagnoses were causally related to the Claimant's original work injury of August 17, 2002.
- d) In reaching these findings, relative to the Claimant's post-traumatic stress disorder and/or depression, the testimony and opinions of Dr. Burstein are

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found to be credible, probative and persuasive and moreso than those of Dr. Sapra, with Dr. Sapra's opinions found to be less credible, probative and persuasive, and rejected. In reaching these findings, it is initially noted that as the original Notice of Compensation Payable did not accept a psychological component to the Claimant's work injury, it would be the Claimant's Burden of Proof through the submission of unequivocal medical evidence, establishing such causal relationship. With respect to the Claimant's underlying depression, although Dr. Sapra initially testified that the Claimant's depression was exacerbated by his work injury of August 17, 2002, he subsequently acknowledged that it was difficult to state with certainty, that the Claimant's current depression continued to be related to an incident occurring at work in 2002, acknowledging that he cannot say that such is related to the injury. Such would actually be consistent and corroborative of Dr. Burstein's testimony and opinions, with Dr. Burstein acknowledging that the Claimant's work injury, and subsequent disability and financial difficulties may have contributed initially to the Claimant's depression, but at least as of the time of his examination, such was no longer the case, with the Claimant's continuing depression being causally related to the multiple psychosocial non-work related stresses that the Claimant has experienced or is facing, including his family marital problems, as well as his pre-existing condition. With respect to the diagnosis of post-traumatic stress disorder, Dr. Burstein and Dr. Sapra are in agreement, that the Claimant did develop symptoms of post-traumatic stress disorder subsequent to his August 17, 2002 injury. The difference in their opinions, is whether the Claimant continues to have symptoms from such diagnoses, relating to his work injury. On this issue, the testimony and opinions of Dr. Burstein are found to be credible, probative and persuasive and are accepted. The testimony and opinions of Dr. Sapra are not found to be credible, probative and persuasive, and are found to be less credible, probative and persuasive than those of Dr. Burstein and are rejected. In so finding, it is noted that although Dr. Burstein performed his examination of the Claimant on an independent psychiatric basis, as opposed to a treating basis, his actual knowledge and familiarity with the Claimant's psychological history was actually much more thorough and detailed than that of Dr. Sapra. Dr. Sapra acknowledged having an understanding as to the Claimant having a significant prior history of depression and non-work related stresses, but then acknowledged that he was not aware of the Claimant's sixteen year old daughter's suicide in 1992 or 1993, which event

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he acknowledged could be traumatic enough, standing alone, to result in a depression or post-traumatic stress disorder. Dr. Sapra acknowledged he was not aware of the history of the Claimant's second wife dying in his arms from cancer in 1998. Although Dr. Sapra stated that he had access to the Claimant's treatment records, he then acknowledged that he was not aware of any reference in those records to anxiety and stress as a result of the Claimant's father's death in 2004. He acknowledged he was not aware or could not recall any history regarding the Claimant's continuous problems with his son or stepson. He acknowledged that such are factors that would be significant in determining the cause of the Claimant's problems. It is presently found, in light of it being the Claimant's Burden of Proof of establishing a causal relationship between such diagnoses, and any continuing disability associated with the same, as such diagnoses was not part of the accepted work injury, that Dr. Sapra's opinions premised upon a generalized understanding as to the Claimant's subjective symptoms, without specific knowledge as to such significant contributing factors, is not found to be credible under the circumstances, and certainly less credible, probative and persuasive than Dr. Burstein's, who testified as to obtaining a thorough understanding as to all of such conditions.

- e) In reaching these findings, the testimony of the Claimant is accepted in part and rejected in part. The testimony of the Claimant as to having continuing symptoms of depression is accepted, with such not being dispute. However, his placing the focus or basis for such condition primarily upon the work injury, is not found to be credible and is rejected, with such being inconsistent with and rejected by the credible testimony of Dr. Burstein. The testimony of the Claimant as to his physical ailments is not found to be credible and is rejected. In so finding, it was noted by both Drs. Smith and Burstein, that the Claimant engaged in symptom magnifications or inappropriate pain behavior unsupported by any objective findings upon examination or from review of the medical records. Moreover, the Claimant presented specific testimony as to the fairly all-encompassing nature of his symptoms, including testimony that to his understanding, he had injuries to several discs in his neck, with hairline cracks, cracked vertebra, fractured ribs, problems with discs in his lower back, muscle spasms and problems with his knees. Such assertions are not only refuted by the credible testimony of Dr. Smith, but in no manner supported by the testimony of his own treating physician, Dr. Li, with Dr. Li acknowledging

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that there were no such abnormalities found upon diagnostic study or physical examination of the Claimant.

- f) In reaching these findings, the testimony of Ms. Williams is accepted in part and rejected in part. The testimony of Ms. Williams as to the Claimant having continuing symptoms of depression is found to be credible. Such is not specifically in dispute. However, such is not accepted as unequivocal medical testimony as to a causal relationship between the Claimant's assertions of depression, or post-traumatic stress disorder, and his work injury, and/or is found to be less credible, probative and persuasive and less unequivocal than the credible testimony of Dr. Burstein, who is Board Certified in psychiatry and neurology, as to the etiology or causal relatedness of such symptomatology to the Claimant's work injury.
14. Counsel for the Claimant has submitted a Fee Agreement, providing for attorney's fees in the amount of twenty percent of any amounts recovered hereunder.
15. Counsel for the Claimant has further submitted a Bill of Costs, setting forth the Claimant's Costs of Litigation as follows:

01/13/06	Deposition Transcript of Dr. Smith	\$ 132.85
02/28/06	Deposition Transcript of Dr. Sapra	219.75
03/14/06	Hearing Transcript	50.73
09/25/06	Deposition Fee & Transcript of Dr. Li	1,450.85
Total Costs:		\$1,854.18

Counsel for the Claimant, in his Proposed Findings, has additionally submitted a listing of costs of the Claimant in appearing for hearing and meeting with counsel, specifically the mileage associated with the Claimant's travel for hearings, meeting with counsel and attendance at Independent Medical Examinations. It is found that with the exception of the Claimant's round trip to Pittsburgh for Defendant's medical examination on August 2, 2005, and November 7, 2005 round trip examination with Dr. Smith, that all of such other listings are local mileage, for the Claimant's traveling within Clearfield County, and as such, are not reimbursable under the Pennsylvania Workers' Compensation Act. The Claimant shall be reimbursed by Defendant/Employer for mileage to attend Defendant/Employer's medical examinations.

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CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, review of the evidence in its entirety, and appurtenant law, this adjudicator concludes as follows:

1. At all times hereto, the parties were bound by the respective provisions of the Pennsylvania Workers' Compensation Act, as amended.
2. Defendant/Employer has sustained its Burden of Proof, that effective November 7, 2005, the date of Dr. Smith's Independent Medical Examination of the Claimant, the Claimant had fully recovered from his work related injury of August 17, 2005, and specifically the physical aspects of such injury as accepted in the Notice of Compensation Payable.
3. The Claimant has sustained his Burden of Proof relative to the Petition for Review in part, that the accepted description of injury as set forth in the Notice of Compensation Payable included the diagnoses of post-traumatic stress disorder. However, the Claimant has failed to sustain his Burden of Proof, that such condition or diagnoses continued to exist, subsequent to August 2, 2005, the date of Dr. Burstein's Independent Psychiatric Examination. In the alternative, Defendant/Employer has sustained its Burden of Proof that effective August 2, 2005, the Claimant had fully recovered from the post-traumatic stress disorder aspect of his work injury of August 17, 2005. To the extent that there are any unpaid medical costs or expenses for the Claimant's receipt of treatment for post-traumatic stress disorder, for services provided prior to August 2, 2005, Defendant/Employer shall be responsible for making payment of such, conditioned upon such medical costs and expenses, having been properly submitted, as well as the reasonableness and necessity of such, being subject to the Cost Containment Provisions of the Pennsylvania Workers' Compensation Act, as amended.
4. The Claimant has failed to sustain his Burden of Proof that Defendant/Employer violated the provisions of the Pennsylvania Workers' Compensation Act, as amended. In so finding, it is noted that as of the time of the filing of the Petition, the accepted description of injury did not include either a diagnosis of post-

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traumatic stress disorder or depression. Although ultimately, it has been found that the Claimant's work injury did include a diagnosis of post-traumatic stress disorder, from which the Claimant is found to have fully recovered as of August 2, 2005, the date of Dr. Burstein's deposition, from review of the significant packet of medical bills and reports submitted, there is no clear breakdown or means of readily distinguishing from the present record, between the treatment provided to the Claimant for post-traumatic stress disorder and his underlying depression. As noted by Dr. Sapra, he could not specifically relate the Claimant's continuing depression as causally related to the work injury. Accordingly, Defendant/Employer/Insurer shall be responsible for timely making payment of the Claimant's medical costs and treatment for post-traumatic stress disorder through August 2, 2005, upon re-submission of such bills, consistent with the Cost Containment Provisions of the Pennsylvania Workers' Compensation Act, with the bills for treatment of the post-traumatic stress disorder being differentiated from the Claimant's treatment for depression.

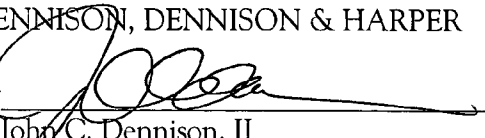
5. It is found that Defendant/Employer has sustained its Burden of Proof that its contest of this matter was reasonable. Accordingly, no award of attorney's fees is made against Defendant/Employer.
6. It is found that as the Claimant has been successful in his proceedings in part, Defendant/Employer shall be responsible for reimbursement of the Claimant's Costs of Litigation, as set forth in the Claimant's Bill of Costs, in a total amount of \$1,854.18, together with reimbursement of the Claimant's mileage for attendance at the two Independent Medical Examinations to Pittsburgh and Greensburg, or an additional amount of \$168.97.
7. The Fee Agreement entered into between the Claimant and his counsel, providing for attorney's fees in the amount of twenty percent of any amounts awarded hereunder is hereby approved. However, as there is no further award of indemnity benefits hereunder, based upon the termination of the Claimant's compensation benefits, such is not further addressed herein.

Accordingly, the following Order is entered.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion for Leave to Amend Answer and New Matter was served on the Plaintiffs, William McCusker and Beverly McCusker, on the 9th day of May, 2007, by United States Mail, First Class, postage prepared, addressed to their attorney, Frederick M. Neiswender, Esq., Neiswender & Kubista, 211-1/2 North Second Street, Clearfield, PA 16830.

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for Defendant, BJR, Inc.,
d/b/a Conservco Construction

1A

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

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and
APPALACHIAN WOOD PRODUCTS, INC.,
Defendants

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NO. 04-1246-CD

ORDER

NOW, this 11th day of May, 2007, upon receipt of the Motion for Leave to Amend Answer and New Matter submitted on behalf of the Defendants by Attorney John Dennison, it is the ORDER of this Court that a rule for written response pursuant to Local Rule 206 be and is issued upon the Plaintiffs to file an answer to the Motion within no more than twenty days (20) of this date to show cause why the Defendants are not entitled to the relief requested.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED *iccAtty*
01/108/34 *Neiswander*
MAY 14 2007 *Dennison*
Gallagher
William A. Shaw
Prothonotary/Clerk of Courts *(GW)*

FILED

MAY 14 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/14/07

☐ You are responsible for serving all appropriate parties.
☒ The Prothonotary's office has provided service to the following parties:
☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other
☐ Defendant(s) ☒ Defendant(s) Attorney
☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/ b/ a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

**MOTION FOR SUMMARY
JUDGMENT**

Filed on Behalf of Defendant:
APPALACHIAN WOOD PRODUCTS

Counsel of Record for this Party:

GERALD J. HUTTON
PA I.D. No. 23098

BASHLINE & HUTTON
Suit 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

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MAY 31 2007 (GR)

William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

MOTION FOR SUMMARY JUDGMENT

AND NOW, comes Defendant Appalachian Wood Products, Inc., by its attorneys, Bashline & Hutton and Gerald J. Hutton, Esq. and files the following Motion for Summary Judgment in accordance with Rule 1035 of the Pennsylvania Rules of Civil Procedure and in support thereof, sets forth the following:

1. This is an action for personal injury allegedly sustained by plaintiff, William J. McCusker on August 17, 2002 as a result of a work related accident occurring at the Appalachian Wood Products plant located on Route 879 in Clearfield, Pennsylvania.

2. As a result of this work accident Plaintiffs have filed suit against defendants BJR, Inc. t/d/a Conservco Construction (hereinafter Conservco) and Appalachian Wood Products Inc.

3. Plaintiffs allege that William McCusker was working for Able Company 1, Inc. installing a fire suppression system at the Appalachian Wood Products plant. (Plaintiffs' Complaint paragraph 4). Plaintiffs allege that in order to install the fire suppression system a crane was hired by Appalachian Wood Products from Conservco. (Paragraphs 5 and 6 of Plaintiffs' Complaint, a true and correct copy of which is attached hereto).

(Plaintiffs complaint paragraph 6). There is no dispute in the pleadings or discovery that the crane in fact was owned and operated by defendant Conservco.

5. Plaintiffs allege that William McCusker was occupying a man basket affixed to the crane owned and operated by Defendant Conservco. The man basket containing Mr. McCusker began descending at a high rate of speed and immediately thereafter one of the crane's out riggers failed causing the man basket containing Mr. McCusker to crash to the ground. (Plaintiffs' Complaint paragraphs 6, 7, and 8).

6. All discovery, including deposition testimony of plaintiff William McCusker, Joseph Kane (the crane operator and owner of Conservco), Glenn R. MacTavish (Appalachian Wood maintenance personnel), and Harold Bratton (owner of Able Company 1, plaintiff's employer and supervisor) confirms that the subject crane was owned, maintained and operated by Conservco.

7. Discovery and pleadings also confirm that the out rigger affixed to the Conservco crane failed. (See plaintiffs complaint paragraph 8, there plaintiff alleges "... one of the cranes out rigger's failed causing the man basket and boom to crash to the ground with such force sufficient to bury both into the macadam.")

8. Further plaintiff testified that the crane cab appeared to be a nice, new, and white. (William McCusker deposition page 201.) Plaintiff further testified that he had no concern and nor did he voice any concern, regarding the condition of the truck, the condition of the lot or the condition of the crane, before the accident. (William McCusker deposition pages 203).

9. Plaintiff testified that he knew that it was the failure of the out rigger that permitted the crane to roll over. (William McCusker deposition pages 215 -216). Plaintiff further testified that he had no concern about the condition of the out rigger before the accident and that he did not see any broken or failed out rigger beforehand. (William McCusker deposition pages 216 - 218). Plaintiff described the out rigger as a 3/4" thick piece of steel (William McCusker deposition page 216). He acknowledged that the out rigger was a big, thick piece of steel. (William McCusker

deposition page 219) and that after the accident it looked like a like big piece of steel broke off of the out rigger. (William McCusker deposition pages 219- 220). Most importantly, plaintiff acknowledged that he had no information that there were any visible fatigue cracks on the out rigger before the accident (William McCusker deposition pages 219-220).

10. As to plaintiffs' allegations directed to Appalachian Wood Products concerning the condition of the property, plaintiff acknowledged at deposition, that he had no information that the condition of the property, the physical location where the accident happened, had anything to do with the failing of the out rigger. (William McCusker deposition pages 220-221).

11. Plaintiff further testified that Mr. Glenn MacTavish, the Appalachian Wood Products employee present that morning, did nothing in terms of directing plaintiff or the crane operator. (William McCusker deposition pages 204 --205).

12. Conservco's, owner and president, Mr. Joseph Kane, testified at deposition that he set up, inspected and operated the crane the morning of the accident. (Deposition Joseph Kane, pages 16 through 32). Mr. Kane also testified that he was an experienced crane operator, having operated cranes for 15 to 20 years. (deposition Joseph Kane pages 31 -- 32).

13. Mr. Harold Bratton, owner of Able Company 1 testified at deposition that he was plaintiff's employer. Mr. Bratton further testified that Appalachian Wood Products did not direct him, nor did Appalachian Wood Products direct Conservco in the work being performed that morning by the two contracting companies. Specifically Mr. Bratton testified:

"Q. [A]nd would it also be correct that no one at Appalachian Wood was directing the crane as to the manner and method the work was to be done?

A. Yeah. No one was.

Q. You were directing your crew – Bill [McCusker] was to work, and you and –

A. Right.

Q. Mr. Kane was deciding how to operate the truck [crane truck] independent of

deposition page 219) and that after the accident it looked like a like big piece of steel broke off of the out rigger. (William McCusker deposition pages 219- 220). Most importantly, plaintiff acknowledged that he had no information that there were any visible fatigue cracks on the out rigger before the accident (William McCusker deposition pages 219-220).

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11. Plaintiff further testified that Mr. Glenn MacTavish, the Appalachian Wood Products employee present that morning, did nothing in terms of directing plaintiff or the crane operator. (William McCusker deposition pages 204 --205).

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A. Yeah. No one was.

Q. You were directing your crew – Bill [McCusker] was to work, and you and –

A. Right.

Q. Mr. Kane was deciding how to operate the truck [crane truck] independent of

Appalachian Wood?

A. Right.” (deposition Harold Bratton page 59 – 60).

14. Defendant Appalachian Wood Products further has served and filed an expert report prepared by Joseph G. Leane, a professional engineer dated March 20, 2007 concluding that:

1. It was reasonable for Appalachian Wood Products to not suspect that elevating personnel with the subject truck mounted crane exposed personnel to unsafe condition.

2. The slope of the asphalt surface was not a cause of the crane failure.

3. The failure of the crane was not foreseeable to Appalachian Wood Products. The wear to the right out rigger of the crane, that preexisted the occurrence, would not have been discovered by Appalachian Wood Products before this occurrence. That wear could only been discovered by an inspection of the interior of the out rigger assembly. There were no obvious outward signs of the excessive wear. The right out rigger sustained a sudden, single event failure.

4. A Pennsylvania State inspection will not include an inspection of the out riggers and therefore would not have discovered the weakened right out rigger of the crane.

5. It was reasonable for Appalachian Wood Products to assume the crane and man basket were an acceptable device to elevate personnel. The same crane and man basket had been successfully used previously for elevating personnel to the same part of the silo. Further information imprinted on the crane load chart and fixed to the exterior of the crane indicated that it was intended to elevate personnel. The load contained a curve labeled "Personnel Limit 500 lbs." Finally, there was no failure of the man basket or hoist mechanism, and the man basket and hoist mechanism was not a cause of the occurrence. (Leane expert report attached as exhibit to defendant Appalachian Wood Products Pretrial Statement).

15. Plaintiffs allege liability on the part of Appalachian Wood Products for causing plaintiff to fall (Plaintiffs' Complaint paragraph 21 (a)), allowing a dangerous condition of realty to exist, failing to maintain and inspect the realty, failing to see that the realty was in safe condition (plaintiffs complaint paragraphs 21 (b) through (h)), and in hiring Conservco to operate the crane with an untrained operator, and/or improperly inspecting and maintaining the crane (Plaintiffs' Complaint paragraph 21 (i) (j)).

16. Pleadings and discovery refute the plaintiff's allegations as to this defendant as: 1)

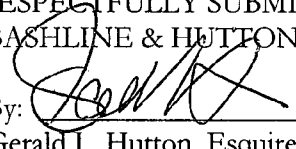
Appalachian Wood Products did not cause plaintiff to fall, plaintiff's fall was caused by a failure of the crane out rigger, which crane was owned possessed and controlled exclusively by codefendant Conservco; 2) although alleged, there was no defect in the condition of the realty and further the condition of the realty had nothing to do with the failure of the out rigger; and 3) the crane was operated by Joseph Kane whose company owned the crane and was an experienced operator; and there is no evidence from plaintiff or others, that this defendant knew or could have known that the out rigger would unexpectedly fail.

17. Under Pennsylvania law a possessor of property is not liable for the negligence of an independent contractor, such as is alleged of Conservco.

18. Defendant respectfully submits that based on the pleadings, deposition testimony, and discovery responses there exists no issue of material fact and that this defendant Appalachian Wood Products is entitled to summary judgment in its favor as a matter of law. In further support of this motion defendant expressly incorporate by reference the deposition testimony of William McCusker, Joseph Kane, Harold Bratton and Glenn MacTavish, and the engineering report of Joseph Leane attached to defendant's pretrial statement.

WHEREFORE, Defendant Appalachian Wood Products, Inc., respectfully requests that this Honorable Court enter Summary Judgment in its favor and dismiss the claims brought against it in this lawsuit.

RESPECTFULLY SUBMITTED
BASHLINE & HUTTON

By: 
Gerald J. Hutton, Esquire
Attorney for Original Defendant
Appalachian Wood Products, Inc.,

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

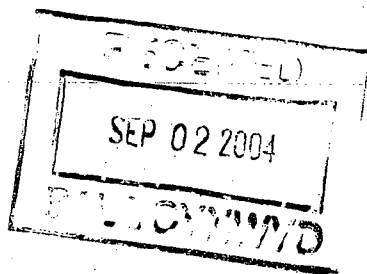
No. 04 - 1246 - C.D.

Type of case: Civil

Type of pleading: Complaint

Filed on behalf of: Plaintiffs,
William J. McCusker and
Beverly I. McCusker

Counsel for Plaintiffs:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456
501 East Market Street, Suite 3
Clearfield, Pennsylvania 16830
(814) 765-6500



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

AUG 13 2004

Attest.

William J. Neiswender
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,

Plaintiffs,

vs.

No. 04 - - C.D.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,

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 OR CANNOT AFFORD ONE, GO TO OR TELEPHONE
THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL
HELP.**

COURT ADMINISTRATOR
1 North Second Street
Clearfield, Pennsylvania 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,

Plaintiffs,

vs.

No. 04 - - C.D.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,

Defendants.

COMPLAINT

AND NOW, come the Plaintiffs, WILLIAM J. MCCUSKER and BEVERLY I. MCCUSKER, by and through their attorney, FREDERICK M. NEISWENDER, ESQUIRE, and file this Complaint against the Defendants, BJR, INC. d/b/a CONSERVCO CONSTRUCTION and APPALACHIAN WOOD PRODUCTS, INC., on a cause of action upon which the following is a statement:

1. Plaintiffs, WILLIAM J. MCCUSKER and BEVERLY I. MCCUSKER are husband and wife residing at 555 Market Street, Coalport, Clearfield County, Pennsylvania 16627.
2. Defendant, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, is a Pennsylvania corporation located in Clearfield County with an address of 805 South Second Street, Clearfield, Clearfield County, Pennsylvania 16830.
3. Defendant, APPALACHIAN WOOD PRODUCTS, INC., is a Pennsylvania corporation located in Clearfield County with an address of P.O. Box 1408, Route 879, Clearfield, Clearfield County, Pennsylvania 16830.

4. On or about August 17, 2002, Plaintiff, WILLIAM J. MCCUSKER, was working for Able Company 1, Inc. installing a fire suppression system at the physical plant of APPALACHIAN WOOD PRODUCTS, INC.

5. In order to install the system, APPALACHIAN WOOD PRODUCTS, INC. hired BJR, INC. d/b/a CONSERVCO CONSTRUCTION to use their crane so that Plaintiff, WILLIAM J. MCCUSKER, would be able to reach the installation areas.

6. Plaintiff, WILLIAM J. MCCUSKER, was suspended approximately fifty to sixty feet (50'-60') above the ground in the man-basket of a crane owned and operated by BJR, INC. d/b/a CONSERVCO CONSTRUCTION.

7. As the man-basket was being lowered, the operator swung the extended boom and Plaintiff, WILLIAM J. MCCUSKER, began descending at a high rate of speed from approximately forty feet (40') above the ground.

8. Immediately thereafter, one of the crane's outriggers failed causing the man-basket and boom to crash to the ground with such force sufficient to bury both into the macadam.

COUNT I

WILLIAM J. MCCUSKER V. BJR, INC. d/b/a CONSERVCO CONSTRUCTION

9. Plaintiff, WILLIAM J. MCCUSKER, incorporates by reference the allegations in Paragraphs 1 through 8, above, as though set forth at length herein.

10. The incident described above was directly and proximately caused by the negligence and carelessness of Defendant, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, which consisted, among other things, of the following:

(a) causing Plaintiff, WILLIAM J. MCCUSKER, to fall;

- (b) operating their crane in a careless, reckless, and negligent manner;
- (c) operating their crane in an improper manner under the circumstances;
- (d) operating their crane with no warning of movement or intended direction;
- (e) not having their crane under proper control so as to operate it safely;
- (f) operating their crane without due regard to the rights, safety, and position of the Plaintiff, WILLIAM J. MCCUSKER;

- (g) failing to have their crane under the proper control so as to prevent dropping the Plaintiff, WILLIAM J. MCCUSKER;

- (h) failing to keep a proper lookout;

- (i) failing to use due care under the circumstances;

- (j) failing to take action to avoid dropping the Plaintiff, WILLIAM J. MCCUSKER;

- (k) failing to operate their crane in a manner consistent with generally accepted principles of crane operation;

- (l) failing to acquire and maintain the proper training required to safely operate their crane;

- ✗ (m) in allowing the dangerous and defective condition of their crane to exist when Defendant, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, knew or should have known of the dangers created thereby;

-
- (n) in failing to repair and maintain their crane in a proper and timely manner;

- (o) in failing to timely inspect their crane;

- (p) in allowing their crane to exist in a dangerous state of disrepair;

- ✗ (q) in failing to maintain their crane in such a condition that it was safe for its ordinary and intended use by individuals contracted to work in a man-basket;

- (r) in failing to provide warning or other notice to Plaintiff, WILLIAM J. MCCUSKER, and others of the defective condition of their crane;
- (s) in making or causing to be made improper, inadequate, insufficient and untimely repairs of their crane on some date prior to August 17, 2002.

11. At all times material hereto, Plaintiff, WILLIAM J. MCCUSKER, acted with due care and was not contributorily negligent.

12. Plaintiff, WILLIAM J. MCCUSKER, sustained the following serious and severe injuries, some or all of which may be permanent in nature:

- (a) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones, joints and intervertebral disks of the back and spine, including, but not limited to, the cervical region, thoracic region and lumbar region;
- (b) injuries and damage in and about the muscles, ligaments, tissues, nerves and bones of the ribcage;
- (c) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones and joints of the upper and lower legs, including, but not limited to, the buttocks, thigh region and calf region;
- (d) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones and joints of the ankles and feet;
- (e) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones and joint of the right wrist;
- (f) a possible aggravation of a pre-existing, non-disabling and asymptomatic condition;
- (g) damage to Plaintiff, WILLIAM J. MCCUSKER'S, mental and emotional state, including, but not limited to, severe depression and post traumatic stress disorder;

- (h) shock and injuries to the nerves and nervous system;
- (i) internal injuries;
- (j) other serious and severe injuries.

13. As a result of Defendant's, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, negligence, Plaintiff, WILLIAM J. MCCUSKER, has suffered great bodily pain and suffering, as well as mental anxiety and nervousness, to his great detriment and loss.

14. As a result of Defendant's, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, negligence, Plaintiff, WILLIAM J. MCCUSKER, has sustained serious and permanent injury, for the treatment of which he has incurred medical bills and expenses in excess of twenty thousand dollars (\$20,000.00), and will probably incur additional medical bills in the future.

15. As a result of Defendant's, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, negligence, Plaintiff, WILLIAM J. MCCUSKER, has suffered a loss of earnings and/or earning capacity.

16. As a result of Defendant's, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, negligence, Plaintiff, WILLIAM J. MCCUSKER, has suffered and interruption of his daily habits and pursuits to his great and permanent detriment and loss.

WHEREFORE, Plaintiff, WILLIAM J. MCCUSKER, demands judgement against Defendant, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, in an amount in excess \$20,000.00, exclusive of interest and costs.

COUNT II

BEVERLY I. MCCUSKER V. BJR, INC. d/b/a CONSERVCO CONSTRUCTION

17. Plaintiff, BEVERLY I. MCCUSKER, incorporates by reference the allegations in Paragraphs 1 through 16, above, as though set forth at length herein.

18. Plaintiff, BEVERLY I. MCCUSKER, has been and may continue to be required to expend money and incur financial obligations in and about an effort to obtain appropriate medical care for her husband, WILLIAM J. MCCUSKER, as a result of the acts and/or omissions of Defendants, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, described above.

19. As a result of the injuries to her husband, Plaintiff, BEVERLY I. MCCUSKER, has been and continues to be deprived of her husband's aid, comfort, services, society, companionship and affection all to her great detriment and loss.

WHEREFORE, Plaintiff, BEVERLY I. MCCUSKER, demands judgement against Defendant, BJR, INC. d/b/a CONSERVCO CONSTRUCTION, in an amount in excess \$20,000.00, exclusive of interest and costs.

COUNT III

WILLIAM J. MCCUSKER V. APPALACHIAN WOOD PRODUCTS, INC.

20. Plaintiff, WILLIAM J. MCCUSKER, incorporates by reference the allegations in Paragraphs 1 through 19, above, as though set forth at length herein.

21. The incident described above was directly and proximately caused by the negligence and carelessness of Defendant, APPALACHIAN WOOD PRODUCTS, INC., which consisted, among other things, of the following:

- (a) causing Plaintiff, WILLIAM J. MCCUSKER, to fall;

- (b) in allowing the dangerous and defective condition of the real estate to exist when Defendant, APPALACHIAN WOOD PRODUCTS, INC., knew or should have known of the dangers created thereby;
- (c) in failing to repair and maintain the real estate in a proper and timely manner;
- (d) in failing to timely inspect the real estate;
- (e) in allowing the real estate to exist in a dangerous state of disrepair;
- (f) in failing to maintain the real estate in such a condition that it was safe for its ordinary and intended use by individuals contracted to work on the real estate;
- (g) in failing to provide warning or other notice to Plaintiff, WILLIAM J. MCCUSKER, and others of the defective condition of the real estate;
- (h) in making or causing to be made improper, inadequate, insufficient and untimely repairs of the real estate on some date prior to August 17, 2002;
- (i) in hiring BJR, INC. d/b/a CONSERVCO CONSTRUCTION to operate their crane with an untrained operator when Defendant, APPALACHIAN WOOD PRODUCTS, INC., knew or should have known of the dangers created thereby;
- (j) in hiring BJR, INC. d/b/a CONSERVCO CONSTRUCTION to operate their crane when it had not been properly inspected and maintained when Defendant, APPALACHIAN WOOD PRODUCTS, INC., knew or should have known of the dangers created thereby.

22. At all times material hereto, Plaintiff, WILLIAM J. MCCUSKER, acted with due care and was not contributorily negligent.

23. Plaintiff, WILLIAM J. MCCUSKER, sustained the following serious and severe injuries, some or all of which may be permanent in nature:

- (a) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones, joints and intervertebral disks of the back and spine, including, but not limited to, the cervical region, thoracic region and lumbar region;
- (b) injuries and damage in and about the muscles, ligaments, tissues, nerves and bones of the ribcage;
- (c) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones and joints of the upper and lower legs, including, but not limited to, the buttocks, thigh region and calf region;
- (d) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones and joints of the ankles and feet;
- (e) injuries and damage in and about the muscles, ligaments, tissues, nerves, bones and joint of the right wrist;
- (f) a possible aggravation of a pre-existing, non-disabling and asymptomatic condition;
- (g) damage to Plaintiff, WILLIAM J. MCCUSKER'S, mental and emotional state, including, but not limited to, severe depression and post traumatic stress disorder;
- (h) shock and injuries to the nerves and nervous system;
- (i) internal injuries;
- (j) other serious and severe injuries.

24. As a result of Defendant's, APPALACHIAN WOOD PRODUCTS, INC., negligence, Plaintiff, WILLIAM J. MCCUSKER, has suffered great bodily pain and suffering, as well as mental anxiety and nervousness, to his great detriment and loss.

25. As a result of Defendant's, APPALACHIAN WOOD PRODUCTS, INC., negligence, Plaintiff, WILLIAM J. MCCUSKER, has sustained serious and permanent injury,

for the treatment of which he has incurred medical bills and expenses in excess of twenty thousand dollars (\$20,000.00), and will probably incur additional medical bills in the future.

26. As a result of Defendant's, APPALACHIAN WOOD PRODUCTS, INC., negligence, Plaintiff, WILLIAM J. MCCUSKER, has suffered a loss of earnings and/or earning capacity.

27. As a result of Defendant's, APPALACHIAN WOOD PRODUCTS, INC., negligence, Plaintiff, WILLIAM J. MCCUSKER, has suffered and interruption of his daily habits and pursuits to his great and permanent detriment and loss.

WHEREFORE, Plaintiff, WILLIAM J. MCCUSKER, demands judgement against Defendant, APPALACHIAN WOOD PRODUCTS, INC., in an amount in excess \$20,000.00, exclusive of interest and costs.

COUNT IV

BEVERLY I. MCCUSKER V. APPALACHIAN WOOD PRODUCTS, INC.

28. Plaintiff, BEVERLY I. MCCUSKER, incorporates by reference the allegations in Paragraphs 1 through 27, above, as though set forth at length herein.

29. Plaintiff, BEVERLY I. MCCUSKER, has been and may continue to be required to expend money and incur financial obligations in and about an effort to obtain appropriate medical care for her husband, WILLIAM J. MCCUSKER, as a result of the acts and /or omissions of Defendants, APPALACHIAN WOOD PRODUCTS, INC., described above.

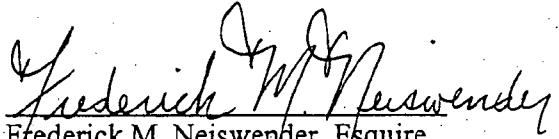
30. As a result of the injuries to her husband, Plaintiff, BEVERLY I. MCCUSKER, has been and continues to be deprived of her husband's aid, comfort, services, society, companionship and affection all to her great detriment and loss.

WHEREFORE, Plaintiff, BEVERLY I. MCCUSKER, demands judgement against Defendant, APPALACHIAN WOOD PRODUCTS, INC., in an amount in excess \$20,000.00, exclusive of interest and costs.

DEMAND FOR JURY TRIAL

Plaintiffs, WILLIAM J. MCCUSKER and BEVERLY I. MCCUSKER, by and through their undersigned counsel, hereby demand a trial by jury.

Respectfully submitted,


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs

WILLIAM J. MCCUSKER and BEVERLY I. MCCUSKER hereby state that they are the Plaintiffs in this action and that the statements of fact made in the foregoing Complaint are true and correct upon personal knowledge. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATE: 8/13/04

William J. McCusker
WILLIAM J. MCCUSKER

DATE: 8/13/04

Beverly I. McCusker
BEVERLY I. MCCUSKER

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

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

ORDER OF COURT

AND NOW, to wit this _____, of _____, 2006, upon presentation of defendant's, Appalachian Wood Products, Inc., Motion for Summary Judgment, and after consideration of the briefs and argument of counsel, it is hereby ORDERED, ADJUDGED, and DECREED that Defendant's Motion is granted and summary judgment is granted in favor of Appalachian Wood Products, Inc.

BY THE COURT:

_____. J.

CERTIFICATE OF SERVICE

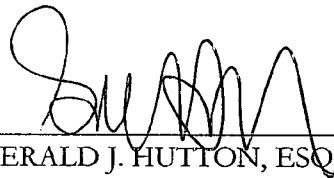
I do hereby certify that a true and correct copy of the foregoing MOTION FOR SUMMARY JUDGMENT, BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND PROPOSED ORDER. was served via U.S. First Class Mail, postage pre-paid, on this 21st day of May, 2007 upon the following counsel of record:

Frederick M. Neiswender, Esquire
501 East Market Street
Clearfield, PA 16830

(Attorney for Plaintiff)

John C. Dennison, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825

(Attorney for BJR, Inc. d/b/a Conservo Construction)

A handwritten signature in black ink, appearing to read "Gerald J. Hutton", is written over a horizontal line.

GERALD J. HUTTON, ESQUIRE
Attorney for Defendant,
APPALACHIAN WOOD PRODUCTS, INC.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

No. 04 - 1246 - C.D.

Type of case: Civil

Type of pleading: Answer to Motion for
Leave to Amend Answer and New Matter

Filed on behalf of: Plaintiffs,
William J. McCusker and
Beverly I. McCusker

Counsel for Plaintiffs:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED
06/30/04
MAY 31 2007

4 CC
Amy
Neiswender

William A. Shaw
Prothonotary/Clerk of Courts

GW

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,

Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,

Defendants.

No. 04 - 1246 - C.D.

ANSWER TO MOTION FOR LEAVE TO AMEND ANSWER AND NEW MATTER

NOW, come the Plaintiffs, WILLIAM J. MCCUSKER and BEVERLY I. MCCUSKER,
by and through their attorneys, NEISWENDER & KUBISTA and make their Answer to
Defendants' Motion for Leave to Amend Answer and New Matter as follows:

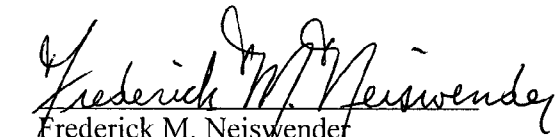
1. Paragraph 1 is admitted in part and denied in part. It is admitted that Plaintiff was injured on the premises of Appalachian Wood Products, Inc. while in a crane operated by BJR, Inc. d/b/a Conservco Construction. It is denied that the injuries sustained by Plaintiff were "alleged" or that the incident at the hands of the Defendants was an "accident."
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted.
5. Paragraph 5 is admitted in part and denied in part. It is admitted that Plaintiff is represented by current counsel in his Workers' Compensation claim. It is denied that counsel did not supply Defendants with transcripts and depositions from the workers' compensation case. To the contrary, Attorney Dennison asked for a release to speak directly with the workers'

compensation insurance carrier and obtain all discoverable material. *See attached Exhibit "A"* Counsel verbally agreed to Attorney Dennison's request and was under the impression that Defendants had procured all desired discovery. Counsel did not purposely withhold discoverable material from Defendants. Additionally, this Court, in its Order of April 20, 2007, ordered counsel to provide Defendants with copies of the workers' compensation transcripts and depositions prior to trial.

6. Paragraph 6 is admitted.
7. Paragraph 7 is admitted.
8. Paragraph 8 is denied. It is denied that in this case the decision of the Pennsylvania Workers' Compensation Judge is a binding adjudication regarding Plaintiffs' claim and the Doctrine of Collateral Estoppel precludes Plaintiff from litigating issues regarding a claim for ongoing disability.
9. Paragraph 9 is denied. It is denied that leave to amend Defendants' Answer is appropriate in this case. To the contrary, Defendants have known that Plaintiff was involved in a Workers' Compensation case since the filing of their initial Answers in 2004. Defendants have been in contact with the workers' compensation insurance carrier since at least May of 2006. To allow Defendants' amendment of their Answer at this late date (after a trial date has been set) would be unduly prejudicial to the Plaintiff.

WHEREFORE, Plaintiffs respectfully request this Court dismiss Defendants' Motion for
Leave to Amend Answer and New Matter.

Respectfully submitted,


Frederick M. Neiswender
Counsel for Plaintiffs

Subject: McCusker v. Conservco et al.

From: "John Dennison" <ddhjohn@usachoice.net>

Date: Thu, 18 May 2006 16:53:11 -0400

To: "Fred Neiswender" <fnlaw@verizon.net>

Fred Do you care if I contact Rockwood directly about obtaining the information on its lien/ I have the name and phone number of a representative on the engineering report. He will want a letter from you, a subpoena or authorization.

I will send you copies of any information which I receive.

JCD

Exhibit "A"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,

Plaintiffs,

vs.

No. 04 - 1246 - C.D.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,

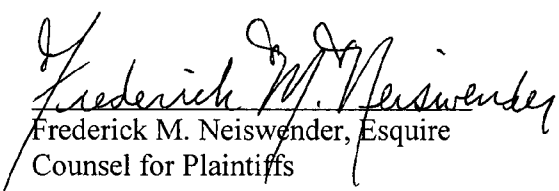
Defendants.

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Answer to Defendants' Motion for Leave to Amend Answer and New Matter was made upon BJR, Inc. d/b/a Conservco Construction and Appalachian Wood Products, Inc., by mailing, first class, postage prepaid, a true copy to the offices of their attorneys of record on June 1, 2007, at the following addresses:

John C. Dennison, II, Esquire
Dennison, Dennison & Harper
293 Main Street
Brookville, Pennsylvania 15825

Gerald J. Hutton, Esquire
Bashline & Hutton
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

SCHEDULING ORDER

AND NOW, this 4 day of June, 2007, upon consideration
of Defendant, Appalachian Wood Products, Inc.'s Motion for Summary Judgment and Brief in
support thereof,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. Oral Argument upon the Motion will be held on June 29, 2007
at 10:30 A .m. in Courtroom No. 1 of the Clearfield County
Courthouse, Clearfield, Pennsylvania.
2. All parties shall file a response separate brief concerning the issues raised in
Defendant's Motion for Summary Judgment on or before
_____, 2007.
3. Notice of entry of the Order shall be served on all parties by the
Prothonotary.

BY THE COURT:

FILED

012:52/01
JUN 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

cc Atty's:
Neiswender
Dennison
Gallishen

(6K)

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

CIVIL ACTION - LAW

Number 1246 of 2004, C. D.

Type of Case: Civil Division

Type of Pleading: Motion to Schedule Oral Argument
on Defendants' Motion to Amend New Matter

Filed on Behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for these Parties:
John C. Dennison, II
Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED

JUN 11 2007

m/11:30/c

William A. Shaw
Prothonotary/Clerk of Courts

no c/c

WILLIAM J. McCUSKER and BEVERLY I.
McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

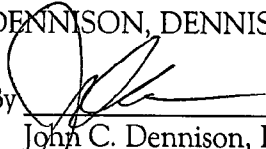
* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
*
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*
*
*
*
* Number 1246 of 2004, C. D.

**MOTION TO SCHEDULE ORAL ARGUMENT ON
DEFENDANTS' MOTION TO AMEND NEW MATTER**

TO THE HONORABLE FREDERIC J. AMMERMAN, PRESIDENT JUDGE:

AND NOW, it appearing that Plaintiffs have filed an Answer to Rule objecting to Defendants' Motion to Amend New Matter, the Defendant, BJR, INC., d/b/a CONSERVCO CONSTRUCTION, by its attorneys, Dennison, Dennison & Harper, hereby move Your Honorable Court to schedule oral argument on Defendants' Motion to Amend New Matter.

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Corporation, Defendant

FILED

JUN 11 2007

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

RECEIVED JUN 11 2007

U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
CLERK OF COURTS
1000 MARYLAND AVENUE
N.W.
WASHINGTON, D.C. 20004

U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UA

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

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER

vs.

No. 04-1246-CD

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and
APPALACHIAN WOOD PRODUCTS,
INC.,

ORDER

AND NOW, this 12th day of June, 2007, it is the ORDER of the Court after consideration of the within Motion, that argument is hereby scheduled on Defendants' Motion to Amend New Matter on **Tuesday, July 10, 2007 at 11:00 A.M.** immediately following argument on the Motion for Summary Judgment filed by Appalachian Wood Products, Inc., Defendant in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

FILED
019:50/81
JUN 12 2007

William A. Shaw
Prothonotary/Clerk of Courts

ice Attys:
Neiswander
Dennison
Gallagher
(60)

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED

JUN 12 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/12/07

X You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

113

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

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER

vs.

:
:
:
: No. 04-1246-CD
:
:

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and
APPALACHIAN WOOD PRODUCTS,
INC.,

:
:
:
:
:
:

ORDER

AND NOW, this 12th day of June, 2007, it is the ORDER of the Court that argument on Defendant, Appalachian Wood Products Motion for Summary Judgment in the above-captioned matter shall and is hereby rescheduled from June 29, 2007 at 10:30 a.m. to **Tuesday, July 10, 2007 at 11:00 A.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA. One-half (1/2) hour has been allotted for this matter.

FILED
09:47/61
JUN 12 2007

William A. Shaw
Prothonotary/Clerk of Courts

rec. Arjs:

Neiswander
Dennison
Callisher
(6)

BY THE COURT:

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

JUN 12 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/6/07
You are responsible for serving all appropriate parties.
X The Prothonotary's office has provided service to the following parties:
Plaintiff(s) X Plaintiff(s) Attorney Other
Defendant(s) X Defendant(s) Attorney
Special Instructions:

1A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/ b/ a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

**MOTION FOR LEAVE OF COURT
TO FILE DISCOVERY OF RECORD**

Filed on Behalf of Defendant:
APPALACHIAN WOOD PRODUCTS

Counsel of Record for this Party:

GERALD J. HUTTON
PA I.D. No. 23098

BASHLINE & HUTTON
Suit 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED NoCC.
0/1:45 cm
JUL 02 2007
Bed
William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/ b/ a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

**MOTION FOR LEAVE OF COURT TO FILE
DISCOVERY OF RECORD**

AND NOW, comes Defendant Appalachian Wood Products, Inc., by its attorneys, Bashline & Hutton and Gerald J. Hutton, Esq. and sets forth the following Motion for Leave of Court to File Discovery of Record to support defendant's Motion for Summary Judgment and in support thereof sets forth the following:

1. This is an action for personal injury allegedly sustained by plaintiff, William J. McCusker on August 17, 2002 as a result of a work related accident occurring at the Appalachian Wood Products plant located on Route 879 in Clearfield, Pennsylvania.

2. As a result of this work accident Plaintiffs have filed suit against defendants BJR, Inc. t/ d/ a Conservco Construction (hereinafter Conservco) and Appalachian Wood Products Inc.

3. Plaintiffs allege that William McCusker was occupying a man basket affixed to the crane owned and operated by Defendant Conservco. The man basket containing Mr. McCusker began descending at a high rate of speed and immediately thereafter one of the crane's out riggers failed causing the man basket containing Mr. McCusker to crash to the ground.

4. Defendant Appalachian Wood Products has filed a Motion for Summary Judgment,

citing therein numerous testimony and discovery findings in this action.

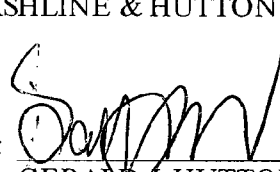
5. Defendant Appalachian Wood Products in support of its Motion for Summary Judgment, requests leave of Court to file with the Prothonotary deposition transcripts of the plaintiff, William McCusker, Joseph Kane (the crane operator and owner of Conservco), Glenn R. MacTavish (Appalachian Wood maintenance personnel), and Harold Bratton (owner of Able Company 1, plaintiff's employer and any other discovery responses served by the parties in this action.

WHEREFORE, defendant Appalachian Wood Products, Inc., respectfully requests leave of Court to authorize filing of discovery by all parties, as related to defendant's Motion for Summary Judgment.

Respectfully submitted,

BASHLINE & HUTTON

By:



GERALD J. HUTTON, ESQUIRE
Attorney for Defendant
Appalachian Wood Products, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/ b/ a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

ISSUE NO.:

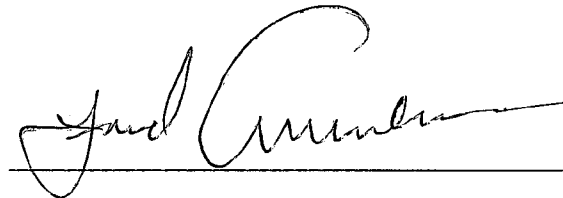
FILED 2cc AH
9/1:45 am Hutton
JUL 02 2007

 William A. Shaw
Prothonotary/Clerk of Courts

ORDER OF COURT

AND NOW, this 28 day of June, 2007, upon consideration of the Motion for Leave of Court to File Discovery of Record of Defendant, Appalachian Wood Products, Inc., it is appearing that defendant has filed Motion for Summary Judgment, it is hereby ORDERED, ADJUDGED, and DECREED that leave of Court is granted for all parties to file with the Court deposition transcripts of plaintiff, William McCusker, Joseph Kane (the crane operator and owner of Conservco), Glenn R. MacTavish (Appalachian Wood maintenance personnel), and Harold Bratton (owner of Able Company 1, plaintiff's employer and any other discovery responses served by the parties in this action.

BY THE COURT:



FILED: 7-2-2007

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

FILED

JUL 02 2007

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing MOTION FOR LEAVE OF COURT TO FILE DISCOVERY OF RECORD was served via U.S. First Class Mail, postage pre-paid, on this 18th day of June, 2007 upon the following counsel of record:

Frederick M. Neiswender, Esquire
501 East Market Street
Clearfield, PA 16830

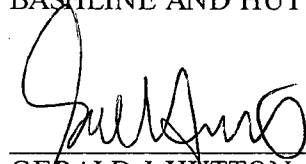
(Attorney for Plaintiff)

John C. Dennison, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825

(Attorney for BJR, Inc. d/ b/ a Conservao Construction)

BASHLINE AND HUTTON

BY:



GERALD J. HUTTON, ESQUIRE
Attorney for Defendant,
APPALACHIAN WOOD PRODUCTS, INC.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

No. 04 - 1246 - C.D.

Type of case: Civil

Type of pleading: Answer and New Matter
to Defendant's Motion for Summary
Judgement and Reply Brief

Filed on behalf of: Plaintiffs,
William J. McCusker and
Beverly I. McCusker

Counsel for Plaintiffs:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED

01346301
JUL 09 2007

icc
Atty
Neiswender

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and	:	
BEVERLY I. MCCUSKER,	:	
Plaintiffs,	:	
	:	
vs.	:	No. 04 - 1246 - C.D.
	:	
BJR, INC. d/b/a CONSERVCO	:	
CONSTRUCTION and APPALACHIAN	:	
WOOD PRODUCTS, INC.,	:	
Defendants.	:	

ANSWER TO MOTION FOR SUMMARY JUDGMENT

NOW, come the Plaintiffs, WILLIAM J. MCCUSKER and BEVERLY I. MCCUSKER,
by and through their attorneys, NEISWENDER & KUBISTA and make their Answer to
Defendant's Motion for Summary Judgment as follows:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted in part, denied in part. It is admitted that Plaintiff worked for Able
Company 1, Inc. and that a crane was used to install part of a fire suppression system at
Appalachian Wood Products. It is denied that the crane was wholly owned and operated by
Defendant Conservco. To the contrary, the crane was stored exclusively at Appalachian
Wood Products.
4. The motion does not contain Paragraph 4.

5. Paragraph 5 is admitted in part and denied in part. It is admitted that the man basket carrying Plaintiff crashed to the ground as a result of the crane's failed outrigger. . It is denied that the crane was wholly owned and operated by Defendant Conservco. To the contrary, the crane was stored exclusively at Appalachian Wood Products.
6. Paragraph 6 is admitted in part, denied in part. It is admitted that Conservco owned the subject crane. It is denied that it was exclusively maintained and operated by Conservco. To the contrary, the crane was stored exclusively at Appalachian Wood Products and for use at their physical plant.
7. Paragraph 7 is admitted.
8. Paragraph 8 is admitted.
9. Paragraph 9 is admitted.
10. Paragraph 10 is admitted.
11. Paragraph 11 is admitted in part, denied in part. It is admitted that Glenn Mactavish did not direct Plaintiff or the crane operator. It is denied that he was the only Appalachian Wood Products employee present that morning that may have directed Plaintiff or the crane operator.
12. Paragraph 12 is admitted in part, denied in part. It is admitted that Joseph Kane set up, inspected and operated the crane the morning of the incident. It is denied that he was an experienced crane operator. To the contrary, Mr. Kane testified that he had no formal training in crane operation.
13. Paragraph 13 is admitted in part, denied in part. It is admitted that Harold Bratton testified as set forth. It is denied that he had specific knowledge of Mr. Kane's actions on the day of the incident.

14. Paragraph 14 is admitted in part, denied in part. It is admitted that the expert report was prepared and filed as set forth. It is denied that the conclusions set forth are correct and accurate.

15. Paragraph 15 is admitted.

16. Paragraph 16 is denied. It is denied that pleadings and discovery refute Plaintiffs' allegations. To the contrary, 1) The crane is owned by Conservco, but possessed and controlled by Appalachian Wood Products; 2) Plaintiff testified there was a wire attached to the silo, on which the man basket got caught; 3) Joseph Kane has no formal training as a crane operator and it was his improper operation of the crane that caused the outrigger to fail.

17. Paragraph 17 is a legal conclusion and no answer is required.

18. Paragraph 18 is a legal conclusion and no answer is required.

WHEREFORE, Plaintiffs respectfully request this Court dismiss Defendant's Motion for Summary Judgment.

NEW MATTER

NOW, come the Plaintiffs, WILLIAM J. MCCUSKER and BEVERLY I. MCCUSKER, by and through their attorneys, NEISWENDER & KUBISTA and aver as New Matter the following:

19. Plaintiffs restate and incorporate Paragraphs 1 through 18 above as if stated at length herein.

20. In the deposition of Joseph Kane, he stated that Conservco had a 10 to 15 year relationship with Appalachian Wood Products and that the subject crane remained on-site at Appalachian Wood Products and was never needed to be driven anywhere. (*Deposition of Joseph Kane, page 35*)

21. In the deposition of Glenn Mactavish, he stated that there were cranes usually on-site at Appalachian Wood Products and that he was to be in the man basket after the Plaintiff on the day of the incident. (*Deposition of Glenn Mactavish, page 13-14*)

22. Also in the deposition of Glenn Mactavish, he stated that Appalachian Wood Products exclusively hires Conservco for any contracting work that needs to be done. (*Deposition of Glenn Mactavish, page 34-35*)

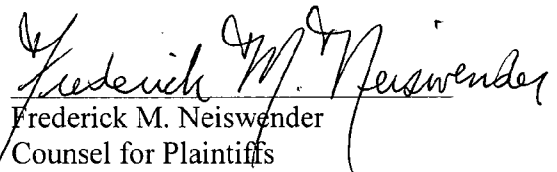
23. In his deposition, Plaintiff testified that he did not inspect the crane because he did not believe it was necessary given the size of the company (Conservco) that was using the crane. (*Deposition of William McCusker, page 200*)

24. In his deposition, Plaintiff further testified that Appalachian Wood Products was in possession and control of a guide wire attached to the silo being worked on and a scissors lift placed under the work area which contributed to the incident. (*Deposition of William McCusker, page 207-209*)

25. Also in the deposition of Joseph Kane, he stated that he does not have any formal training in operating the crane in question. (*Deposition of Joseph Kane, page 31*)

WHEREFORE, Plaintiffs respectfully request this Court dismiss Defendant's Motion for Summary Judgment.

Respectfully submitted,


Frederick M. Neiswender
Counsel for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and	:	
BEVERLY I. MCCUSKER,	:	
Plaintiffs,	:	
	:	
vs.	:	No. 04 - 1246 - C.D.
	:	
BJR, INC. d/b/a CONSERVCO	:	
CONSTRUCTION and APPALACHIAN	:	
WOOD PRODUCTS, INC.,	:	
Defendants.	:	

REPLY BRIEF

I. STATEMENT OF THE CASE

Plaintiff accepts and adopts Defendant's statements of the facts surrounding this case with the following exceptions:

- 1.) Plaintiff maintains that the condition of the premises did contribute to the incident as set forth in Plaintiffs' New Matter;
- 2.) There is a substantial question regarding Defendant's relationship with Conservco and exactly how much control Defendant had over the subject crane and the actions of Joseph Kane;
- 3.) In the event that Conservco is determined to be an independent contractor, Plaintiff maintains that Appalachian Wood Products "negligently hired" Conservco who was not properly trained to do the job.

II. SUMMARY JUDGMENT STANDARD

Plaintiff accepts and adopts Defendant's Summary Judgment Standard with the following exception:

The entire text of Rule 1035.2 should be set forth not only those sections most favorable to Defendant's argument.

III. LEGAL ARGUMENT

As a general rule, an employer may be held responsible for the negligent acts of its servants/employees, but will not be held liable for harm caused by the acts of independent contractors. Lutz v. Cybularz, 607 A.2d 1089 at 1091 (Pa. Super. 1992). As a result, the analysis must go to whether a contractor is in fact an independent contractor. Plaintiffs set forth in New Matter various statements made in the depositions that call into question the relationship between Conservco and Appalachian Wood Products. Where there is a question as to whether or not an entity is in fact an "independent contractor," the nature of the relationship must be determined by a jury. Id.

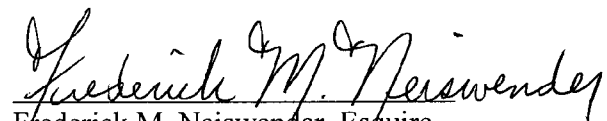
If it is determined that an entity is in fact an independent contractor, a determination must then be made as to whether or not the contractor was "negligently hired" by property owner. Id. at 1092. In Lutz, the Court affirmed granting of summary judgment regarding "negligent hiring" because the job defendant was contracted for did not require specialized skill or knowledge. Plaintiffs contend that their case is distinguishable from Lutz in that the job Conservco was hired to do required specific knowledge and skill, which Joseph Kane did not possess. Statements supporting this argument are set forth in Plaintiffs' New Matter.

Finally, employees of independent contractors are invitees who fall within the classification of business visitors. Chenot v. A.P. Green Services, Inc., 895 A.2d 55 at 64 (Pa. Super. 2006). Plaintiffs contend that the “peculiar risk” doctrine as set forth in the above case makes Appalachian Wood Products liable as a possessor of land. While the doctrine applies only in certain cases, the job to be done by Plaintiff did present peculiar risks, which were foreseeable to the property owner. As such, the property owner owed a duty to take precautions against the risk. Id. Appalachian Wood Products did not take precautions to remove or warn Plaintiff of the guide wire and the scissors lift that were present while Plaintiff was performing an unusual and difficult task. Therefore, they are liable to Plaintiff for the resulting crane rollover that caused his injuries.

IV. CONCLUSION

WHEREFORE, Plaintiffs pray this Court deny Defendant’s Motion for Summary Judgment.

Respectfully submitted,


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,

Plaintiffs,

vs.

No. 04 - 1246 - C.D.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.,

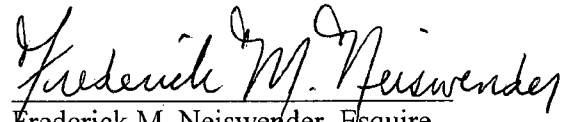
Defendants.

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Answer and New Matter to Defendant's Motion for Summary Judgment and Reply Brief was made upon BJR, Inc. d/b/a Conservco Construction and Appalachian Wood Products, Inc., via facsimile and by mailing, first class, postage prepaid, a true copy to the offices of their attorneys of record on July 9, 2007, at the following addresses:

John C. Dennison, II, Esquire
Dennison, Dennison & Harper
293 Main Street
Brookville, Pennsylvania 15825

Gerald J. Hutton, Esquire
Bashline & Hutton
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and BEVERLY I.
McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

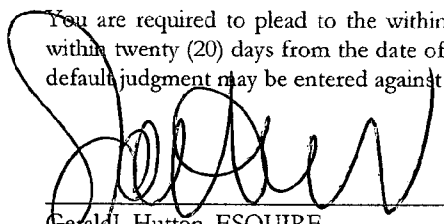
ISSUE NO.:

**AMENDED ANSWER, NEW MATTER
AND CROSS-CLAIM**

Filed on Behalf of Defendant:
APPALACHIAN WOOD PRODUCTS

TO THE WITHIN PARTIES:

You are required to plead to the within NEW MATTER
within twenty (20) days from the date of service thereof or
default judgment may be entered against you.


Gerald J. Hutton, ESQUIRE
Attorney for Defendant Appalachian Wood Products, Inc.

Counsel of Record for this Party:

Gerald J. Hutton, Esq.
PA I.D. No. 23098

BASHLINE & HUTTON
Suit 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED *no cc*
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JUL 12 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAM McCUSKER and BEVERLY I.
McCUSKER,

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BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

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CIVIL DIVISION

No. 04-1246

ISSUE NO.:

AMENDED ANSWER, NEW MATTER & CROSS-CLAIM

AND NOW, comes defendant, Appalachian Wood Products Inc., by its attorneys, Bashline & Hutton, and Gerald J. Hutton, Esquire and states that it has a full, just, complete and legal defense to the allegations contained in the plaintiffs' Complaint and in support thereof sets forth this Amended Answer And New Matter and avers as follows:

1. In response to the allegations contained in plaintiffs' Complaint, defendant Appalachian Wood Products Inc. expressly incorporates by reference the Answer, New Matter and Cross-Claim originally filed on its behalf in this action as though said Answer and New Matter were set forth at length and in full here.

WHEREFORE, defendant Appalachian Wood Products Inc. demands that judgment be entered in its favor with costs in its behalf sustained

AMENDED NEW MATTER

By way of further answer, defendant, Appalachian Wood Products Inc. sets forth the following Amended New Matter, the consent to filing of which has been granted by plaintiff's counsel, and in support thereof sets forth the following:

2. As a result of the work related August 17, 2002 accident occurring at the Appalachian Wood Products facility, which accident is the subject of the plaintiffs' lawsuit filed in this action, plaintiff William McCusker brought and was a party to Worker's Compensation petitions, which petitions were decided by written adjudication of Pennsylvania Worker's Compensation Judge Michael D. Koll.

3. Plaintiff was represented in the Worker's Compensation proceeding by counsel; plaintiff was afforded the opportunity to cross-examine witnesses; plaintiff was afforded the opportunity to present witnesses, including medical testimony; plaintiff was afforded the opportunity to present legal argument to the Worker's Compensation Judge; and plaintiff voluntarily proceeded with his claim for Pennsylvania Worker's Compensation benefits allegedly stemming from the August 17, 2002 work accident, which petitions were presented to and decided by a duly authorized Pennsylvania Administrative Law Judge, namely Judge Michael E. Koll, appointed in accordance with the provisions of the Pennsylvania Worker's Compensation Law and acting within the authority granted by the Pennsylvania Department of Labor and Industry.

4. On February 28, 2007 Judge Michael E. Koll entered written adjudication regarding the matters brought in the plaintiff's Worker's Compensation petitions filed at number 243-0013 of the Pennsylvania Department Of Labor and Industry, which adjudication has not been appealed and is a final decision of the Pennsylvania Worker's Compensation Judge.

5. Defendant, while continuing to deny the allegations contained in plaintiffs' Complaint, including plaintiffs' allegation of injury and damages, asserts as collateral estoppel to plaintiffs' claims, the adjudication of Pennsylvania Worker's Compensation Judge Michael E.

2. As a result of the work related August 17, 2002 accident occurring at the Appalachian Wood Products facility, which accident is the subject of the plaintiffs' lawsuit filed in this action, plaintiff William McCusker brought and was a party to Worker's Compensation petitions, which petitions were decided by written adjudication of Pennsylvania Worker's Compensation Judge Michael D. Koll.

3. Plaintiff was represented in the Worker's Compensation proceeding by counsel; plaintiff was afforded the opportunity to cross-examine witnesses; plaintiff was afforded the opportunity to present witnesses, including medical testimony; plaintiff was afforded the opportunity to present legal argument to the Worker's Compensation Judge; and plaintiff voluntarily proceeded with his claim for Pennsylvania Worker's Compensation benefits allegedly stemming from the August 17, 2002 work accident, which petitions were presented to and decided by a duly authorized Pennsylvania Administrative Law Judge, namely Judge Michael E. Koll, appointed in accordance with the provisions of the Pennsylvania Worker's Compensation Law and acting within the authority granted by the Pennsylvania Department of Labor and Industry.

4. On February 28, 2007 Judge Michael E. Koll entered written adjudication regarding the matters brought in the plaintiff's Worker's Compensation petitions filed at number 243-0013 of the Pennsylvania Department Of Labor and Industry, which adjudication has not been appealed and is a final decision of the Pennsylvania Worker's Compensation Judge.

5. Defendant, while continuing to deny the allegations contained in plaintiffs' Complaint, including plaintiffs' allegation of injury and damages, asserts as collateral estoppel to plaintiffs' claims, the adjudication of Pennsylvania Worker's Compensation Judge Michael E.

Koll, dated February 28, 2007, a true and correct copy of said adjudication is attached hereto as Exhibit "A" and expressly incorporated here as though set forth at length and in full here.

6. Defendant while continuing to deny the allegations contained in plaintiffs' Complaint, including plaintiffs' allegation of injury and damages, asserts as collateral estoppel as set forth in said adjudication, Exhibit "A" herein, that effective November 7, 2005 plaintiff had fully recovered from any physical aspects of the August 17, 2002 work related injury.

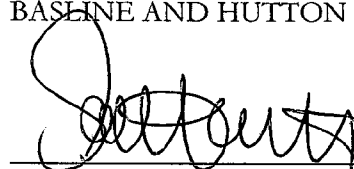
7. Defendant while continuing to deny the allegations contained in plaintiffs' Complaint, including plaintiffs' allegation of injury and damages, further asserts as collateral estoppel as set forth in said adjudication Exhibit "A" herein, that effective August 2, 2005 plaintiff had fully recovered from any post-traumatic stress disorder as may be related to his August 17, 2002 work injury, and that any continued symptomatology, including dysthymic disorder or depression, and any asserted disability was not causally related to the plaintiff's work injury of August 17, 2002, but rather resulted from numerous non-work-related stressors in the plaintiffs life.

WHEREFORE, defendant Appalachian Wood Products Inc. demands that judgment be entered in its favor with costs in its behalf sustained.

JURY TRIAL DEMANDED

BASLINE AND HUTTON

BY:



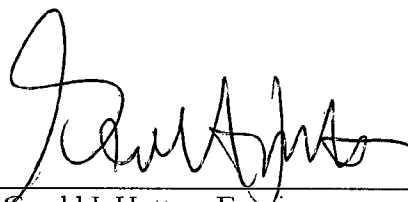
GERALD J. HUTTON, ESQUIRE
Attorney for Defendant,
APPALACHIAN WOOD PRODUCTS

VERIFICATION

I, Gerald J. Hutton, Esquire, do hereby verify that I am the attorney of record in the within matter.

I aver that the statements of fact contained in the attached AMENDED ANSWER, NEW MATTER AND CROSS CLAIM are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

Dated: May 07, 2007

A handwritten signature in black ink, appearing to read 'Gerald J. Hutton', written over a horizontal line.

Gerald J. Hutton, Esquire
Attorney for Defendant,
Appalachian Wood Products



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION OFFICE OF ADJUDICATION
814-765-6398

Circulation Date: 02/28/2007

ROCKWOOD CASUALTY INSURANCE CO
654 MAIN ST
ROCKWOOD PA 15557

DECISION RENDERED COVER LETTER

Bureau Claim Number: 2430013

Insurer Claim Number: 244473

Injury Date: 08/17/2002

Petitions:

Penalty-Pet

Pet-To Reinstate Compensation Benefits

Pet-To Reinstate Compensation Benefits

Pet-To Review Medical Treatment

Pet-To Review Medical Treatment

Pet-To Terminate Compensation Benefits

WILLIAM J MCCUSKER

555 MARKET ST

RR1 BOX 111

COALPORT, PA 16627-0000

FREDERICK M NEISWENDER ATTY AT LAW

501 E MARKET ST STE 3

CLEARFIELD, PA 16830

Judge: Michael E Koll

306 East Locust Street

Clearfield, PA 16830-2445

The attached Decision of the Judge is final unless an appeal is taken to the Workers' Compensation Appeal Board as provided by law.

If you do not agree with this Decision, an appeal must be filed with the Workers' Compensation Appeal Board within 20 days from but not including the date of this notice.

Forms for an appeal may be obtained from the Workers' Compensation Appeal Board, Capital Associates Building
901 North Seventh Street
Third Floor South
Harrisburg, PA 17102

Vs

ABLE COMPANY I

930-950 W HANNA ST RTE 53

HOUTZDALE, PA 16651

ROCKWOOD CASUALTY INSURANCE CO

554 MAIN ST

ROCKWOOD, PA 15557

VAGNER & FINN ATTYS AT LAW

07 LAKEMONT PARK BLVD

LTOONA, PA 16602

Auxiliary aids and services are available upon request to individuals with disabilities.

Equal Opportunity Employer/Program

WILLIAM J MCCUSKER - 2430013

COMMONWEALTH OF PENNSYLVANIA
EWC LEGAL DIV
1171 S. CAMERON STREET
ROOM 327
HARRISBURG, PA 17104-2501

Auxiliary aids and services are available upon request to individuals with disabilities.

Equal Opportunity Employer/Program

WILLIAM J MCCUSKER - 2430013

Employee Witnesses & Exhibits:

Joette Williams (08-10-05)

William McCusker (08-10-05; 03-14-06)

- 1- Joette Williams Progress Record Notes
- 10- 02-28-06 Depo Dr. Sapra
- 11- 09/25/06 Depo Dr. Zhenhui Li
- 2- 08-09-05 Report Dr. Sapra
- 3- Lisitng of Paid Bills
- 4- Denial letters
- 5- 02-25-05 Report Dr. Sapra
- 6- Affidavit of Claimant
- 7- Allegheny Surgery Center/Allegheny Pain Mgt Reports
- 8- Blair Medical Associates Records
- 9- Fee Agreement

Employer Witnesses & Exhibits:

- A- Selected pages of Joette Williams notes
- B- Notes of Jill Stewart, Therapist
- C- 10/18/05 Depo Dr. Burstein
- D- 11-07-05 Report Dr. Smith
- E- 01-13-06 Depo Dr. Smith

Judge Witnesses & Exhibits:

- J1- Notice of Temporary Compensation Payable

Hearings:

7/12/2006 14:30:00	Held
3/14/2006 10:00:00	Held
12/21/2005 10:15:00	Held
8/10/2005 13:00:00	Held
7/27/2005 13:00:00	Canceled by Employer Counsel on 06/28/05
5/25/2005 09:00:00	Held

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FINDINGS OF FACT

1. The Claimant, William J. McCusker, sustained an injury on August 17, 2002, during the course and scope of his employment with Defendant/Employer Able Company 1, insured for Workers' Compensation purposes by Rockwood Casualty Insurance Company. Pursuant to a Notice of Temporary Compensation Payable subsequently converted, such work injury was described as "upper left arm, right back, back, both hips, bruises, contusions", with the Claimant receiving compensation at the weekly rate of \$184.42, based on an average weekly wage of \$204.91.
2. On April 12, 2005, the Claimant filed a Penalty Petition, together with a Reinstatement and Review Medical Treatment Petition, asserting that Defendant/Insurer had stopped paying for the Claimant's medical costs and expenses associated with psychological therapy and medication, under the theory the Claimant's condition was not related to his work injury. Such Petitions were assigned to this Workers' Compensation Judge by Notice of Assignment of April 15, 2005. Defendant/Employer, through counsel, filed a timely Answer denying the material averments of the Claimant's Petition.
3. An initial pre-trial conference was held in this matter on May 25, 2005. At such time it was confirmed, that as the Notice of Temporary Compensation Payable issued in this matter did not accept a psychological injury as part of the described work injury, the pending Petitions would be deemed, in the alternative, a Petition to Review the description of injury, as set forth in the Notice of Temporary Compensation Payable. A Scheduling Order was subsequently issued for the parties' completion of respective medical evidence, together with the re-listing of this matter for full testamentary hearing.
4. An additional hearing was held in this matter on August 10, 2005. At the time of such hearing, in support of the Claimant's Petition, the testimony of the Claimant was presented in pertinent part as follows:
 - a) The Claimant testified as to being fifty years of age at the time of the hearing. He testified that he was not currently employed, with Workers' Compensation being his sole source of income. The Claimant testified that as of the time of his injury, he had been employed by Defendant/Employer

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as a technician's assistant, for approximately one year and two months. In such position, he would travel to different businesses, inspecting the businesses' fire suppression systems and security systems, together with providing whatever manner of assistance he was capable of. On August 17, 2002, he had just finished installing a fire suppression nozzle on a sawdust duct, at Appalachian Wood Products. Such entailed his being hoisted by a crane to approximately eighty feet into the air. He testified that while being lowered to the ground, the cage that he was in starting spinning. He testified that at such time he whistled to his boss, signaling to his boss to have the crane operator put him down, so he would not land on a piece of equipment, and the next thing he knew, he was free-falling while spinning. He indicated he looked up, saw the boom of the cab coming down on him, and jumped right before he hit the ground. He testified that when he jumped, the boom missed him, but he jarred himself very badly. (08/10/05 Hearing N.T., pp. 4-5)

- b) The Claimant testified as to initially seeking treatment at the Coalport Medical Center with a Dr. Robinson. At some time subsequently, he was referred by Dr. Robinson to the Clearfield-Jefferson Mental Health Center, believing such treatment began in May of 2003. He testified that prior to August 17, 2002, he would describe himself as a healthy, active, happy individual, with no sleeping disorders, being active in the care of his then fourteen year old stepson and eleven, going on twelve year old son, engaging in outdoor activities and sports, with no difficulties or problems at work. He described his prior general mood as being content and excited, having just invested three thousand five hundred dollars in equipment to attempt to establish a stone carving business. He testified that prior to the injury, he was slow to anger unless someone got right in his face and threatened him, with no nervousness or panic attacks. He testified that he was happy the majority of the time prior to the accident, having been active, physical, and outgoing all of his life and not afraid to be around people or speak in front of people. He indicated that he had his second wife die in his arms on May 31, 1998, being left with a seven-year-old son to raise. At such time he was a water operator for a small company, supplying over eight hundred homes. He testified at such time, he took a weeks vacation, went to Dr. Robinson, who prescribed Zoloft for him. The next week he went back to work, taking Zoloft for approximately six weeks, never missing work, and going on with his life. He testified that things kept

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getting better, remarrying in May of 2002. He testified that the work accident then occurred in August of 2002. He continued having pain, despite ten months of therapy, which made him worse. He testified that he can no longer do the things he used to do with his son, wife and step children, as well as not bringing in the income of what he used to, such that he was steadily falling behind on bills. He testified that subsequently, he started snapping at everybody, becoming very angry and yelling over small reasons. He testified that his relationship with his new wife has been steadily deteriorating, with more arguments and fights since the accident, with his wife having moved out, despite their undergoing of counseling. (08/10/05 Hearing N.T., pp. 5-11)

- c) The Claimant testified that he has additionally had difficulty sleeping, having frequent bad dreams, including of the work injury. He testified that since the time of the accident, he additionally had trouble focusing, with difficulty with his memory. He testified that since the time of the accident, he has had a fear of heights, which he did not have prior to the time of the work accident. He indicated that he additionally has become paranoid about being jostled in a crowd. He testified that he is also depressed over his physical limitations, including not being able to carry a gallon of milk out of the store. (08/10/05 Hearing N.T., pp. 11-15)
- d) The Claimant testified that after the accident he started being seen at the Clearfield-Jefferson Mental Health beginning in May of 2003, being prescribed three different anti-depressants. He indicated that subsequent to such treatment, he was doing better with his family, and was a lot more able to control his anger. He testified that such treatment included therapy sessions with a Ms. Joette Williams. He testified that he has been continuing therapy with Ms. Williams, as well as having received samples of some of the anti-depressants, but had to stop taking some anti-depressants, because he could not afford those, after being notified by the pharmacy that Workers' Compensation would not pay for such anymore. (08/10/05 Hearing N.T., pp. 15-18)
- e) Upon cross-examination, the Claimant acknowledged that the accident report that he filled out at the time of the injury indicates that he, at the time, reported he fell approximately twenty-five feet after jumping out of the cage. He acknowledged, that with respect to the symptoms that he

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testified to having, following the accident, that such mental symptoms did not begin immediately, with such being a slow building process, other than the bad dreams which started almost immediately. He testified that the longer he proceeded with physical therapy, with no sleep and constant pain, the depression kept growing. (08/10/05 Hearing N.T., pp. 18-20)

- f) The Claimant acknowledged receiving treatment for depression prior to August of 2002. He acknowledged that his sixteen-year-old daughter had been living with his ex-wife, who he had been divorced from. He testified that in February of 1992, his daughter had a fight with his ex-wife, and committed suicide. He subsequently went to Dr. Robinson, being referred to the Clearfield-Jefferson Mental Health. He testified at such time he felt rage, not having wanted his children living with his ex-wife, his first wife, who the Claimant testified left him for a long haired biker druggie. He believes at that time he received treatment at the Clearfield-Jefferson Mental Health facility for six weeks to two months. He denied at such time having any difficulties with nightmares, or episodes of panic. (08/10/05 Hearing N.T., pp. 18-22)
- g) The Claimant testified that the second time he sought treatment for depression was when his second wife died in 1998, with Dr. Robinson for approximately four to six weeks. He denied at such time, having problems with co-workers or seeking additional help for depression/or anger management. (08/10/05 Hearing N.T., pp. 22-23)
- h) The Claimant acknowledged having some minor marital problems with his current wife, whom he married in May of 2002, with such beginning before they were married. He indicated that such problems were over differences of opinions, upon discussing rules and regulations for the children. He testified that they did not have problems, did not seek any counseling or need for counseling, just saw things differently, relative to disciplinary rules for the children, but worked them out. He indicated that after the accident, he began having fights with his wife, with his wife wanting to separate, until he got back on track. He acknowledged that his wife advising him, that she wanted to separate, in and of itself, caused some stress, which he discussed with Ms. Williams. He acknowledged his wife moved out in December of 2003. He acknowledged discussing with Ms. Williams on a number of occasions in his sessions with her, that he had worries about his ability to be

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a good husband and father, but denied having any such fears prior to August of 2002. He acknowledged having a lot of problems with his stepson, his current wife's son. When questioned as to also having some problems with his stepson, prior to his marriage to his current wife, the Claimant responded it was not necessarily just him, just with his current wife's ideas of what the rules should be and what his were, so they tried to reach a happy medium. The Claimant indicated that he had very few, if any, arguments with his stepson prior to his accident. He acknowledged reporting to Ms. Williams, that his own son was having problems in school and this caused a lot of tension for him, with his having started his son with counseling with Cen-Clear and at Clearfield-Jefferson. The Claimant acknowledged that his father passed away in January of 2004, and according to Ms. Williams, that such caused a lot of anxiety for him, because he felt he left his father down during the last two years of his life. The Claimant acknowledged having arguments with a sister of his, who drinks, and he does not, and he has a problem with that. (08/10/05 Hearing N.T., pp. 23-29)

- i) With respect to his physical condition, the Claimant testified that he has continuing problems with pain in his right wrist, left shoulder, right shoulder, neck, middle of his back, lower back, hips, knees and ankles. He testified that he has been receiving treatment on a once every four-week basis with a Dr. Drass, at Allegheny Pain Management. He acknowledged seeing a Dr. Ferraro as well. The Claimant testified he did not feel he was capable of returning to work in any capacity from either a physical or mental standpoint. The Claimant testified he has not worked anywhere since August of 2002. (08/10/05 Hearing N.T., pp. 29-32)
- j) The Claimant testified that with respect to his current daily activities, he tries to stay busy, but does not perform any yard work. He indicated he is able to work around the house, with a lot of breaks, as well as having to lie down during the course of the day. He denies having any injuries to his back or hips or arms since August of 2002. He acknowledged having fallen several times when his legs have given out on him, but nothing new or no new injuries or anything substantial. (08/10/05 Hearing N.T., pp. 32-34)
- k) Upon redirect examination, the Claimant testified that following his sixteen-year-old daughter's committing of suicide, he only missed the day

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that such occurred and the day of the funeral from work, working straight through otherwise. He testified the only problem he had subsequent to such time was with the rage towards his ex-wife and her boyfriend. He indicated that with respect to his second wife, he called her his second wife, but they never really married, but did live together from 1988 until she died on May 31, 1998. He indicated that during such period of time, he never had any real serious problems, other than normal differences of opinion on how to raise children, with his second wife, the mother of his son, having two sons as well. The Claimant testified that after the two events in 1992 and 1998, that he would consider his life normal, prior to the accident in August of 2002. With respect to describing his present pain, the Claimant indicated that his neck and lower back hurt very badly, with such being a constant ache and every once in a while, a sharp burning jab. (08/10/05 Hearing N.T., pp. 34-38)

5. Additionally at the time of the August 10, 2005 hearing, in support of the Claimant's Petition, the Claimant has presented the testimony of Joette R. Williams, a psychotherapist, employed at Clearfield-Jefferson Community Mental Health, Inc. Counsel stipulated, that Ms. Williams is not a licensed medical practitioner, with her testimony being relative to her being the individual who would meet with the Claimant on a regular basis, with any diagnoses relative to the Claimant's condition to be presented through medical testimony. Ms. Williams otherwise testified in pertinent part as follows:

- a) Ms. Williams testified as to beginning to see the Claimant in October of 2002, with the Claimant having previously been seen by a Ms. Jill Stewart. She began seeing the Claimant on a weekly basis, with the Claimant presenting being very depressed, anxious, having panic attacks and angry outbreaks. Ms. Williams indicated that she started seeing improvement in the Claimant's mood, anger, depression symptoms, with less problems with anxiety and panic attacks, several months after she began seeing him. She indicated that several months after she started seeing him, the Claimant also saw Dr. Valles, with Dr. Valles prescribing medication. Ms. Williams indicated that within approximately six weeks of the Claimant beginning medication, the Claimant was reporting sleeping better, as well as there being an improvement in his anger with his anger coming under control. She testified that such improvement continued, right up until the point in time where the Claimant's medication was stopped. She indicated

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approximately a month after his medication was stopped, the Claimant began decompensating. (08/10/05 Hearing N.T., pp. 41-44)

- b) Ms. Williams testified that the Center is able to provide the Claimant with some samples of Welbutrin and Abilify, but not other medication, which the Claimant had been prescribed. She testified that she has noticed a change in the Claimant's behaviors since the stopping or reduction of his medication, with the Claimant being more depressed and not sleeping, with the Claimant reporting feeling more angry, irritable, depressed and tearful. (08/10/05 Hearing N.T., pp. 44-47)
- c) Upon cross-examination, Ms. Williams acknowledged that she was not licensed in psychiatry or psychology, with there being no licensure for a psychotherapist within Pennsylvania. Ms. Williams acknowledged that there is a small notation in her chart, that the Claimant had been seen very briefly at the Center prior to August of 2002. She does not recall specifically whether such treatment was for depression. She acknowledged that she does not know whether the Claimant had any of the symptoms which she noted, prior to August of 2002. She acknowledged that she did not have any of Dr. Robinson's records for review, with Dr. Robinson, the Claimant's family physician, having referred the Claimant to the Center. Ms. Williams acknowledged that there are a number of references in her notes, to some family problems and marital problems that the Claimant was having. She acknowledged that it would be fair to say that the Claimant reported to her that those problems were in and of themselves creating some stress and anxiety for him. She acknowledged that those types of problems can lead to depression in and of themselves. She acknowledged the Claimant reporting a prior history of physical and verbal abuse from his father, which is something that can result in depression. Ms. Williams acknowledged, that with respect to the Claimant decompensating, that additional pressures at home can cause decompensation. (08/10/05 Hearing N.T., pp. 47-55)
- d) Upon redirect examination, Ms. Williams acknowledged that the Claimant has mentioned the work accident to her, describing such in detail, with the Claimant reporting that most of his depression symptoms and anxiety and post-traumatic stress coming from the accident. (08/10/05 Hearing N.T., pp. 55-57)

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6. On November 23, 2005, Defendant/Employer filed a Termination Petition, asserting that effective November 7, 2005, the Claimant had fully recovered from his work injury of August 17, 2002, and could return to work without restrictions. Such Petition was assigned to this Workers' Compensation Judge by Notice of Assignment of November 30, 2005. Thereafter, the Claimant filed a timely Answer denying the material averments of Defendant/Employer's Petition.
7. An additional hearing was held in this matter on December 21, 2005, relative to the new Petition filing. As of such time, it was confirmed with counsel, that whereas the prior Petitions pending had been seeking the payment of medical benefits for psychiatric treatment, with the medical evidence anticipated as being submitted by way of report, with the Termination Petition pending, as well as an additional assertion that the psychiatric aspect of the Claimant's Petitions were being asserted as an independent basis for disability, that medical depositions would be required, with hearsay objections being preserved and sustained, relative to previously submitted medical reports and records. A Scheduling Order was subsequently issued for the parties' completion of respective medical depositions, together with the re-listing of this matter for additional testamentary hearing.
8. In support of its Termination Petition, Defendant/Employer has submitted the deposition testimony of Jack D. Smith, M.D., obtained January 13, 2006. Dr. Smith, who is Board Certified in orthopedic surgery, testified in pertinent part as follows:
 - a) Dr. Smith performed an Independent Medical Examination upon the Claimant on November 7, 2005. He indicated that in conjunction with such examination, he was provided with and had an opportunity to review medical records relative to the Claimant's care and treatment. He indicated that in addition to such medical records, since the time of his examination, and prior to his deposition, he had an opportunity to review additional update records from both the Allegheny Pain Management and Dr. Li, for the period of April 2005 through June 2005. Dr. Smith noted that in reviewing Dr. Li's physical examination findings, he did not note any objective abnormalities noted with respect to Dr. Li's examination of the Claimant. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 10-12)

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- b) Dr. Smith further noted obtaining a history from the Claimant, as of the time of his examination. The Claimant reported having sustained an injury in August of 2002, when he attempted to jump from a basket type crane bucket, which had malfunctioned with the bucket beginning to drop. The Claimant reported injuring his neck, posterior shoulder area, mid portion of his back, as well as reporting that he had a number of rib fractures, in addition to injuries to his lower back, back and buttocks, hip areas and both of his knees. Upon asking the Claimant if he was hospitalized, the Claimant indicated that he was not. The Claimant reported seeing a number of physicians, with such treatment being conservative in nature, without any surgical intervention undertaken or recommended. The Claimant reported that he believed he had been advised that he had problems with several discs in his neck, several hairline cracks in his neck, multiple rib fractures near where the ribs attach to the spine, as well as problems at several disc areas in the lower back as well. He reported undergoing a number of diagnostic tests, including X-rays and MRIs, with some of the tests being repeated. The Claimant reported being seen by a Dr. Wirths, his family physician, a Dr. Robinson, with a referral to a Dr. Drass, at a pain center, being seen by a Dr. Li, as well as a Dr. Ferraro, as well as with a referral to a Dr. Kivitz, with some mention of sending the Claimant to a Pain Management Center in Maryland. The Claimant reported complaints of pain in the neck area, including a sharp pain running across the posterior aspect of both shoulders, with numbness involving the ring and small fingers of the left hand. The Claimant reported having headaches associated with that pain. He also described tenderness and pain in the mid portions of his back in the thoracolumbar junction. He further reported pain in the lower back radiating into the posterior buttock area of the hip, with pain in the hips themselves. He also reported pain in both of his knees. At the time of the examination, the Claimant was walking with a walking stick, which the Claimant reported generally carrying when he was in a crowd. The Claimant made no complaints relative to his right wrist or left arm, other than complaints of numbness involving the left hand. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 13-20)
- c) Dr. Smith performed a physical examination of the Claimant. Relative to the physical examination of the Claimant's neck, all the Claimant's attempts made at movement were done in a hesitating fashion with a

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groaning accompanying virtually all movements attempted in the neck area. Dr. Smith described the halting movement as a non-physiologic-type of movement. Dr. Smith commented, that checking to see however, if there was any spasm that accompanied the end points of movement, that the neck did not spasm or tighten in any fashion. The Claimant also did not show any abnormal mechanics. Dr. Smith commented that the fact that the Claimant voluntarily terminated movements, having a non-physiologic-type of movement, makes it subjective and somewhat suspect. In the thoracic spine, the Claimant had normally maintained thoracic kyphosis, or a normal roundness. There was no spasm noted upon range of motion testing. There were no objective abnormalities. The Claimant did make a complaint of tenderness about the area of T11/T12, which would be a subjective type of finding, with no accompanying spasm or abnormal mechanics. In the lumbar area, the Claimant voluntarily flexed to forty degrees. Dr. Smith commented that when the Claimant did that movement, he reversed the lumbar lordosis, which again, is normal mechanics, expected to be seen in a normal back. The Claimant had no paravertebral spasm with that associated movement. Upon lateral bending, the Claimant only went to fifteen degrees to each side. Upon hyperextension, the Claimant just went to the straight upright position to neutral. None of these movements were accompanied with any spasm or abnormal mechanics. They were all voluntarily terminated. Upon performance of straight leg raise testing, it was found to be positive both with the knees flexed and extended. Dr. Smith noted that when such finding is positive with both the knees flexed and extended, it basically negates such finding as an objective finding and can be seen with magnification of symptoms. Upon performing hip range of motion, the Claimant did not make any complaints of pain in the hip area, but rather described pain in the low back area. Dr. Smith commented that there would not be any anatomic basis for such complaint. Upon neurologic testing of both the upper and lower extremities, such were found to be normal, with reflexes all intact. Sensation examination showed no area of sensory loss to pinprick sensation. The one area where the Claimant was found to have an abnormality, was that he had global weakness of all muscle groups tested. Dr. Smith commented that such definitely would be a non-physiologic finding because it would require a very bazaar impact with neurologic lesion, probably something of the central nervous system to produce such finding, but it does not indicate any pathology in the back or

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spine. Dr. Smith commented that it is a potential sign of magnification of symptoms. Dr. Smith checked the Claimant's knees, with such showing no effusion or swelling. Dr. Smith performed ligament testing for stability, with such being normal. There was no crepitation palpable as range of motion was accomplished. Dr. Smith noted that basically the knee showed no objective findings of any crepitation or mechanical symptoms with no effusion or instability. Dr. Smith summarized his physical examination, indicating that he found no evidence of any neurologic deficits, no abnormalities or pathology relative to the Claimant's upper extremities, including his right wrist or left arm, no pathology involving the Claimant's hips, and on an objective basis, there were no residuals that he identified in either the cervical, thoracic, lumbar areas or in the knees at the time of his examination of the Claimant. He found no objective evidence to substantiate or support the Claimant's ongoing subjective complaints. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 20-30)

- d) Dr. Smith testified having an opportunity to review diagnostic studies. A report of a CT scan of the Claimant's cervical spine obtained shortly after the accident on August 27 was normal. X-rays of the lumbar spine, wrist and cervical spine were done on the same date, and by report were normal. A bone scan was obtained, which showed some mild uptake in the right ribcage, but otherwise was unremarkable. Dr. Smith noted that such bone scan was obtained approximately a month or a little bit more after the accident, and the mild uptake certainly would not be a pattern that would be seen with a fracture of the ribs. An MRI of the cervical spine was obtained September 7, 2002, as well as an MRI of the lumbar spine done the same date. The report of the MRI of the cervical spine showed some spurs and disc bulges at C5/6, which seemed to be chronic, with no evidence of any disc herniation or any fractures or acute trauma. The MRI of the lumbar spine was reported as seeming to be basically normal. A CAT scan of the pelvis and abdomen were normal. An MRI obtained in April of 2003 of the lumbar spine showed some disc bulging at three levels, L2/3, L3/4 and L4/5, but with no evidence of any disc herniation. Such report commented that when compared to a prior MRI, likely the one obtained in September of 2002, that there was no interval change, appearing to be the same. Dr. Smith noted that he was actually provided with the films of the most recent MRI of the thoracic lumbar areas, with Dr. Smith noting some very mild disc bulges at L2/3, L3/4 and L4/5, but

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with no evidence of any disc herniation or any other pathology in the low back. In the thoracic area, the findings were essentially within normal limits. Dr. Smith commented that there was nothing that he could identify, evidencing any traumatic injury, with any findings being consistent with normal wear and tear and degenerative changes. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 30-34)

- e) Dr. Smith testified providing an opinion that as of the date of his examination of the Claimant, he did not identify any residual objective findings in either the cervical, thoracic, lumbar or knee areas, or for that matter the hip areas, to suggest any residuals of injury, with there being no objective residuals, such that he believes the Claimant had fully recovered as of such date from his work injury. It was his opinion there would be reason to place any restrictions upon the Claimant at such point, nor no need for any additional medical treatment. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 34-36)
- f) Upon cross-examination, Dr. Smith acknowledged that he did not perform a Functional Capacity Evaluation as part of his examination of the Claimant. He acknowledged he did not order or obtain any additional X-rays or MRIs. Dr. Smith acknowledged in his report, that Dr. Li had provided a diagnosis of fibromyalgia, among other diagnoses with respect to the Claimant. When questioned as to whether any of his testing of the Claimant would rule out such diagnoses, Dr. Smith explained that fibromyalgia is a clinical diagnoses based most often on a series of complaints, as opposed to on any objective findings. When questioned with respect to the Claimant's halting in his movements during the range of motion testing of the Claimant's neck, Dr. Smith testified that the way the Claimant moved was a very uncommon physiologic type of movement pattern, with there being no objectivity to it. Dr. Smith acknowledged that the MRI of September 7, 2006 reported discs bulging in the C5/6 level. Dr. Smith noted that disc bulges do not all cause pain, and can exist asymptotically. He acknowledged that speculatively, a disc bulge can cause pain, but such can also exist asymptotically. Dr. Smith acknowledged that orthopedically, there was no explanation behind the Claimant having a global weakness of his musculature. He explained that such finding was in both the upper and lower extremities, and that in order to have every muscle weak, an individual would have to have a disc at every

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single level in the neck, and lower back, with some type of compressive neuropathy, or generalized muscular dystrophy or multiple sclerosis, something that would not be in the way of a traumatic finding, or a central nervous system lesion to get that type of global weakness. Dr. Smith noted that or, it can just be effort dependent. He further explained that it is almost impossible for all of such musculature to be weak with any type of traumatic problem. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 37-47)

- g) Dr. Smith acknowledged that the April 21, 2003 MRI reported disc bulging at the L2/3, L3/4 and L4/5 levels. When questioned as to whether two areas of disc bulging at the C5/6, and the L2/3 through L4/5 levels were areas that the Claimant showed or exhibited pain, Dr. Smith acknowledged that to the extent that the Claimant complained of pain generically from his neck to his low back, such was accurate, but in terms of specifically to those levels, no. Dr. Smith acknowledged that he was not disputing that the Claimant had injuries to the bodily areas described, if he sustained a traumatic injury at the time, but as of the time of his examination of the Claimant, he could not identify any residual injuries existing nor residual symptoms. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 47-51)
 - h) Upon redirect examination, Dr. Smith indicated that in his opinion, the findings of the disc bulges on both the cervical and MRI were not related to the Claimant's original work injury. He testified that he could find no correlation between those findings, or that which he would attribute to the original work injury. On additional cross-examination, Dr. Smith acknowledged that he would categorize the Claimant's initial injury as probably a soft tissue injury, based on the way that he has reviewed the records. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 51-53)
9. In further support of Defendant/Employer's Petition, and in opposition to the Claimant's, Defendant/Employer has presented the deposition testimony of Stuart Burstein, M.D., obtained October 18, 2005. Dr. Burstein, who is Board Certified by the American Board of Psychiatry and Neurology, as well as Board Certified in forensic psychiatry, maintaining a licensed practice treating mental disorders, testified in pertinent part as follows:

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- a) Dr. Burstein performed an Independent Psychiatric Examination upon the Claimant on August 2, 2005, indicating that such interview took two hours and forty minutes. Pursuant to such examination, Dr. Burstein was provided with and had an opportunity to review medical records regarding the Claimant's treatment following the work injury of August 17, 2002, including records from the Claimant's treatment at the Clearfield-Jefferson Community Mental Health Center. He additionally obtained a history from the Claimant, with the Claimant reporting that on August 17, 2002 while in a basket or cage at work, at an estimated twenty to twenty-five feet, the basket at the end of a crane boom caught on a guide wire, with the Claimant falling to the ground. The Claimant reported landing on his feet but suffering significant pain in his legs and back at the time. He did not immediately go to the hospital emergency room, going home with his wife, who had initially planned on picking him up for lunch. The Claimant reported that as a result of such injury, he sustained a cervical sprain, wrist injury, fractured ribs, possible compression fractures, possible herniated disc and multiple aches and bruises. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 11-15)
- b) Dr. Burstein noted that the Claimant at some point in time began treating at the Clearfield-Jefferson Mental Health Center, first seeking treatment following his injury on May 7, 2003 with the Claimant reporting bad dreams and sleeplessness after the accident, with his primary care physician having placed him on anti-depressants. Such treatment was on an outpatient psychotherapy basis, with the Claimant continuing on additional anti-depressant medication. As of such time the Claimant was under the care of a Dr. Sapra, as well as seeing a psychotherapist, a Ms. Joette Williams. During the course of such treatment, the Claimant underwent the Minnesota Multiphasic Personality Inventory, Second Edition. The Claimant was noted as scoring higher than normal on scales which indicate a tendency towards suggestibility, anxiety, depression, hypochondriasis, pre-occupation with physical aches and pains and anger. Dr. Burstein noted that pursuant to the Claimant's reported history, he had also sustained several additional emotional blows earlier in his life, including the suicide of his daughter from his first marriage in 1992, with the Claimant still harboring a great deal of anger towards his first wife, the mother of that child, for contributing to his daughters suicide. In 1998, his second wife died of colon cancer in the Claimant's arms, with the Claimant's second

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wife being the one who had given him a good deal of emotional support. Subsequently, the Claimant was started on an anti-depressant by his primary care physician, taking such for approximately six weeks. The Claimant reported that he really had never resolved all the mourning for his second wife. The Claimant's father then died of cancer in January of 2004. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 15-22)

- c) Dr. Burstein further testified that in obtaining a history from the Claimant, he found it significant that the Claimant described himself as a pressured kind of guy, always preoccupied with performance. There was a tendency on his part to get irritable when things were not going the way he would like. The Claimant had one failed marriage, a loss of his second wife, together with the relationship with his third wife, whom he had married shortly before the work injury, giving him a lot of problems, with his third wife having brought to the marriage a teenage son by an earlier relationship. The Claimant described such son as very uppity, unwilling to follow directions and frequently contemptuous of the Claimant, being readily willing to engage in an argument or ignore any of the Claimant's requests of him. There have been some strong clashes, and the Claimant's third wife had left the marriage several times, with such being an ongoing source of irritation to the Claimant. Dr. Burstein explained that these other background issues indicate that the Claimant had two scenarios going on in his mind. One was the understandable anxiety experienced after the work injury, falling a distance of twenty-five feet, fearing for his life, such that he would be inclined to be anxious afterwards and have sleepless nights and restless dreams. However, the second scenario is the ongoing irritability prior to the work injury and additional factors added on with the problems that he encountered in his relationships. Dr. Burstein further explained that the Claimant's psychological status prior to his work injury would fall into a syndrome called a Dysthymic disorder, a very mild low-grade level of depressive illness or depressive attitude, referred to by Dr. Sapra as depressive disorder. Dr. Burstein noted that it is possible for any individual to have more than one psychiatric disorder, and such happened to be the case for the Claimant, who; in addition to the underlying depressive disorder; did develop acute symptoms of an anxiety disorder subsequent to the work injury. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 22-25)

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- d) Dr. Burstein testified that he further obtained a history from the Claimant relative to his physical status, as well as a complete psychological history, including reviewing the Claimant's treatment records. Dr. Burstein noted that the Claimant had been seen by Dr. Liefeld, an orthopedic surgeon, for a second opinion, who, after doing a physical examination, suggested that there was symptom magnification on the Claimant's part, with the Claimant's subjective complaints exceeding any objective findings. Relative to his review of the Clearfield-Jefferson Community Health Center records, that it appeared to be the staff's impression in reviewing the records, that the Claimant had been doing better, making progress, but nevertheless the Claimant claimed that he was still very badly off, not managing to handle his emotions, not withstanding what appears to be evidence to the contrary from the medical records. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 29-34)
- e) Dr. Burstein testified as to further performing a Mental Status Examination with respect to the Claimant. Dr. Burstein was of the impression that the Claimant does engage in what is called pain behaviors in the course of moving in and out of the office, clutching at his right leg, while walking in, wincing, grimacing, and sighing. Once the Claimant was seated in his chair, he moved around restlessly, occasionally getting up, turning his head, turning his neck and closing his eyes, repeatedly complaining of pain. Notwithstanding all of that, the Claimant remained focused on the task at hand. Even while he was complaining, the Claimant indicated or suggested he suffered from pain, but remained very obsessional in his speech, very focused in his thought. The Claimant did tend to be circumstantial, meaning he would talk around a point and give a long history, rather than get directly to the point, but nonetheless, he got to the point, with there being no tangentiality or wondering such as making him miss the mark. Dr. Burstein explained that such is a clear indication of anger, and of anger fueling an attitude which makes the individual want to explain his point to an extreme degree, with the person having the attitude that it will not work to just make the statement a simple straightforward manner. Rather, the individual has to emphasize all of their complaints and go around the circle 360 degrees to drag in every item that they can think of to emphasize some complaint that they are setting forth as the cause of a matter. Dr. Burstein testified that there was, however, no indication of any type of more serious pathology such as hearing voices, having visions, paranoia or suicidal

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ideations, nor indication of depersonalization phenomenon, generally classified with post traumatic stress disorder. Dr. Burstein noted that during the course of such Mental Status Examination, the Claimant also reported the circumstances involved in the Claimant's efforts to return to work, after his injury as a water operator for a local water authority, the type of employment which the Claimant had preformed for approximately ten years prior to going to work for Defendant/Employer Able Company. The Claimant reported leaving the office of the local water authority in a huff when he took exception to the practices of the individual who employed him at the water company. The Claimant had reported to the psychotherapist, Ms. Williams, that he needed to get five votes from the water authority in order to be accepted for the job. The Claimant reported to Dr. Burstein that he did not get the necessary number of five votes. The Claimant was also noted as reporting to Ms. Williams that he knew going back to work would in his words, "screw up his lawsuit", but wanted to get back to work and earn some money. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 34-40)

- f) Upon performance of cognitive function testing, Dr. Burstein found the Claimant's cognitive functions to be entirely intact, with the Claimant being alert, and oriented to time person and place. His memory was intact for immediate, recent or remote events. His intelligence was estimated as better than average. Concentration was normal. The Claimant provided appropriate answers and testing of his judgment when it came to insight. The Claimant's major observation at the end of the interview was, in his words, "I'm still fighting bitterness towards the owner and operator of the crane and now on top of it, I'm fighting bitterness towards the compensation company." Dr. Burstein further performed a global assessment of mental function, finding the Claimant to fall at the high end of the scale, indicative of the Claimant having a well-controlled mental state with highly effective adaptation methods. It is also recognized that when the Claimant is annoyed or irritated, he can transiently get angry, but he would readily recover from any disruption, not affecting his mental function. Dr. Burstein noted that even when the Claimant is talking about his anger towards all of the people, who he feels have done him wrong, he is able to concentrate, focus on the task at hand and continue to give a clear history. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 39-44)

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- g) Dr. Burstein provided an opinion as the Claimant's diagnoses, that he believed the Claimant had a brief episode of post-traumatic stress disorder, an anxiety disorder connected with a lift-threatening event such as the work injury. He acknowledged that the Claimant's initial treatment with Elavil, an older anti-depressant had limited effectiveness. However, once the Claimant began receiving treatment at the Clearfield-Jefferson Community Mental Health Center, with new and improved medications being provided, the Claimant promptly responded with significant improvement, such that by the time of Dr. Burstein's examination, it was Dr. Burstein's opinion that the Claimant had fully recovered from the post-traumatic stress disorder syndrome. The Claimant showed no signs of still being disturbed by recalling the accident, revisiting it in his mind or replaying the experience. The Claimant did still have a Dysthymic disorder, which in Dr. Burstein's opinion, existed prior to the work injury, being expressed in the Claimant's irritability, difficulty with his marriages, unresolved mourning or depressed mood connected to the loss of his daughter, the death of his second wife, and of his father. Dr. Burstein explained that as of the time of his examination of the Claimant, he did not find any evidence of ongoing post-traumatic stress disorder attributable to the work injury of August 17, 2002. The Claimant was not suffering from any dissociative phenomenon. He did not have nightmares. He could clearly revisit the scene, which is one of the major criteria. An individual who is still disturbed by an event, comparable to the Claimant's fall at work, is going to lose concentration and fail to effectively communicate when they start talking about the event with someone else. That was not the case for the Claimant. Dr. Burstein was of the opinion that he saw no evidence of any psychologic or psychiatric disability or impairment, which he would relate to the original work injury, as of the time he examined the Claimant. In his opinions, the Claimant's evidence of ongoing Dysthymic disorder, was not in any way attributable to the work injury, but rather reflects the Claimant's feelings, status and attitudes which have built up in the Claimant, either pre-existing the work injury, or relating to other events and situations in his life. Dr. Burstein further found no objective basis to substantiate the Claimant's ongoing subjective complaints. Dr. Burstein noted that the Claimant simply did not demonstrate the kind of distraction due to pain, anxiety or depression that would be expected with anyone suffering from active symptoms. Dr. Burstein did note, that there were findings that

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caused him to question the validity of the Claimant's subjective complaints as well. He explained, that first of all, the Claimant presented for the examination, dragging himself in, looking bedraggled and overburdened by pain. Secondly, he insisted on there being anxiety and depression which would bog him down or result in him not being able to carry out activities which he carried out in the past. Dr. Burstein further noted potential issues of secondary gain, meaning benefits the Claimant could anticipate from continuing to complain to an extreme degree about physical and mental pain attributable to the work injury. The Claimant reported an additional lawsuit having been filed, with the Claimant also indicating the anger he felt towards the crane operator, his boss at Defendant/Employer, as well as towards the Workers' Compensation carrier. Dr. Burstein provided a summary of his opinions, indicating that he felt to a reasonable degree of medical certainty that the Claimant had fully recovered from a transient or temporary post-traumatic stress disorder as a result of the work injury, and was fully capable of undertaking any sort of work that he could undertake prior to the work injury. There was no indication of the Claimant suffering from any kind of psychological problem that he was not suffering from prior to the work injury, or that he could not handle in terms of his existing mental state. Dr. Burstein was of the opinion that the Claimant does not require any further treatment as a result of the work injury. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 43-53)

- h) Upon cross-examination, Dr. Burstein acknowledged that he performs approximately eight to ten Independent Medical Examinations per month, with the vast majority being on behalf of either insurance carriers or defense counsel. He acknowledged approximately ten percent would be on behalf of Claimants/Plaintiffs or their counsel. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 55-57)
- i) Dr. Burstein agreed that he would describe the Claimant as a type A personality type of person. He acknowledged that it would be fair to say that if such type of person suffers a debilitating injury, it may be harder on them mentally than on someone that does not lead such an active lifestyle. Dr. Burstein acknowledged that he would agree that such did contribute for awhile, Dr. Burstein believes approximately the first six months or year following the work injury, due to the Claimant having additional anger, irritability and depression as a result of not being able to conduct the

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lifestyle that he had become accustomed to. He acknowledged that it is his opinion that following the Claimant's having an opportunity to proceed through therapy with Ms. Williams, that he no longer suffers from the post-traumatic stress disorder or depression associated with the work injury, but continues to be subject to his underlying, pre-existing Dysthymic disorder, a mild depressive illness. Dr. Burstein acknowledged that during his interview of the Claimant, the Claimant reported having feelings of experiencing some sleeplessness, bad dreams, or other symptoms that can be associated with post-traumatic stress disorder. Dr. Burstein explained, that with respect to the Claimant, who was not working regularly, and has not fatigued in the same way that someone would be if they put in eight hours a day on a job, the Claimant tends to lie awake longer at night and to brood more about his circumstances in general, having more opportunity to reflect on his experience. He noted the Claimant has normal memories fueled by a certain amount of anger as reflected in the claims he has made that keep him preoccupied with the work injury. Dr. Burstein indicated, however, that such is different from post-traumatic stress disorder, with the Claimant not suffering from the symptoms of post-traumatic stress disorder, and does not have the type of mental blocking with the difficulty of concentration, let alone anxiety and recall that you would see with someone suffering from post-traumatic stress disorder. Dr. Burstein further noted that within six months to one year, most individuals recover from post-traumatic stress disorder. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 68-72)

- j) Dr. Burstein acknowledged that the Claimant was still suffering from some level of depression, which Dr. Burstein would attribute more to the Claimant's family situation than to the work injury. Dr. Burstein acknowledged that the Claimant suggests that his family situation has deteriorated as a result of the work injury, but Dr. Burstein does not see such to be the case in terms of the history of the Claimant's complaints. He explained what the Claimant describes is sort of a lesser tolerance for relationships in general, both before and since the work injury. He noted that the son of the Claimant's third wife seems to reflect the kinds of problems a teenage son would bring to a mother's remarriage. And what the Claimant describes is a mother going to bat for the son and acting in an alienated fashion towards the Claimant. Dr. Burstein did acknowledge that the Claimant reported having a dampening of his libido, attributed to the

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medications, as well as pain preventing sexual relations with his wife, which conceivably could contribute to the marital discourse, as well as it being conceivable that the pain could magnify the Claimant's anger and irritability. He acknowledged that the Claimant's financial problems as a result of the injury, could also lead to a depressed and anxious state. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 72-76)

- k) Dr. Burstein acknowledged that his opinions as to the Claimant amplifying his pain behaviors through his actions were based upon his observation and interview of the Claimant, as opposed to his reviewing any diagnostic studies or physical examination of the Claimant. He acknowledged it was his opinion that the Claimant was exaggerating his symptoms in order to prove that he was actually experiencing that pain. Dr. Burstein acknowledged that he was crediting the Claimant with having some pain, be it thought that the Claimant's degree of contortion and hugging his leg was an exaggeration of such symptoms, which Dr. Burstein did not see as justified by the rest of his clinical presentation. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 77-84)
10. In opposition to Defendant/Employer's Petition and in support of his own, the Claimant has presented the deposition testimony of Manish Sapra, M.D., obtained February 28, 2006. Dr. Sapra, who is Board Certified in psychiatry, testified in pertinent part as follows:
- a) Dr. Sapra indicated that the Claimant began treatment at the Clearfield-Jefferson Community Mental Health Center in April of 2003, with Dr. Sapra assuming treatment of the Claimant on October 11, 2004. As of October 11, 2004, the Claimant presented being depressed, with his depression having worsened, complaining of symptoms related to the accident, including nightmares and flashbacks, revisiting the accident. Dr. Sapra noted that as of such time, he switched the Claimant to a different anti-depressant, believing that the anti-depressant, which the Claimant had been on, was not helping him. The Claimant was also having some sexual side effects from the medicine, with his anti-depressant being changed to try to alleviate some of those conditions as well. Dr. Sapra indicated that thereafter, he would see the Claimant on an approximately every two to three month basis. Dr. Sapra noted that during the course of his treatment of the Claimant, he also had an opportunity to review the therapy notes of

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Ms. Williams. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 11-16)

- b) Dr. Sapra provided an opinion that his diagnosis for the Claimant was that he was suffering from post-traumatic stress disorder because of the work accident, and that is what Dr. Sapra was providing treatment for. Dr. Sapra acknowledged that the Claimant did have a condition of depression existing prior to the accident, with the Claimant having first been treated for depression in 1993, but those symptoms had suddenly worsened after the accident. Dr. Sapra testified that the Claimant has continued to have symptoms of depression and anxiety, as well as post-traumatic stress disorder. Dr. Sapra indicated that overall he does not believe the Claimant has had a significant improvement in his symptoms since the initiation of his treatment. Dr. Sapra further indicated that as a result of the Claimant's financial situations, together with the secession of payment by compensation for the Claimant's medications, the Claimant has not been able to take all of such medications and he has had significant deterioration during that time, having more symptoms of anxiety, disturbed sleep, and worsening of his depression. Dr. Sapra noted that the Claimant was back on some of his medications as of the time of his deposition. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 16-19)
- c) Dr. Sapra summarized his opinion, indicating that the Claimant has pre-existing depression for which he started treatment in 1993. The Claimant then had his work accident, and since then he has developed post-traumatic stress disorder, with the Claimant presently having a diagnosis of post-traumatic stress disorder and depression. Dr. Sapra indicated that as far as the Claimant's mental health is concerned, his function is certainly limited because of those reasons, such that he does not believe the Claimant would be capable of holding a normal job working a regular eight hour shift, and not believing the Claimant could take the pressures of a job at this point in time. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 19-21)
- d) Upon cross-examination, Dr. Sapra acknowledged that to his understanding the Claimant did have symptoms of depression, including disturbance of sleeping, and a depressed mood prior to the work related injury. He acknowledged the Claimant had treated for anxiety and depression prior to the August 2002 work injury, with a past history which

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would be deemed significant. Dr. Sapra acknowledged that he did not recall the specific history, or what lead the Claimant to treatment for depression in 1992 or 1993. When advised as to the Claimant's testimony that he had been treating at that time for depression as a result of a suicide of his daughter, Dr. Sapra acknowledged that certainly such event could be traumatic enough, standing alone, to result in a depression or post-traumatic stress disorder. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 27-30)

- e) Dr. Sapra acknowledged that such prior treatment is the only time that he was aware of the Claimant having treated for depression. He acknowledged he was not aware of any other specific history of the Claimant prior to the work injury, other than having treated off and on until the year 2003, when he started coming back again. He acknowledged he was not aware of any history of any particular event occurring in 1998 that lead to continued depression of the Claimant. He acknowledged that such type of history would be helpful with respect to his rendering of opinions. Dr. Sapra acknowledged that marital problems and significant family problems standing alone can lead to depression, as well as angry outbursts and continued anger caused by marital problems. Dr. Sapra acknowledged the Claimant's records are replete with instances of the Claimant experiencing marital problems with a number of his spouses over the years, as well as separating from his present wife in 2005. He acknowledged that such circumstances can lead to a depression. Dr. Sapra acknowledged that from his notes, the Claimant and his wife were going to be divorced, and all the most recent treatment records reflect an anger over his marital problems. Dr. Sapra acknowledged that is something that can lead to depression as well as sleep disturbances. Dr. Sapra acknowledged that he was not aware of any reference in the Claimant's records to anxiety and stress as a result of the Claimant's father's death. He acknowledged the death of a close family member is something that could also lead to ongoing depression. Dr. Sapra also acknowledged that he was not aware or could not recall any history through review of the records that the Claimant had continuous problems with his son or stepson. He acknowledged that is something that would be significant in determining the cause of the Claimant's problems (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 27-35)

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- f) Upon additional cross-examination, Dr. Sapra acknowledged, that the Claimant could have depression and anxiety due to multiple psychosocial stresses that he is facing, including his family marital problems, but he does not think that those contribute or caused the post-traumatic stress disorder. He acknowledged he could not rule out that the other social factors, including the various histories that he was previously unaware of, as a causative factor in the Claimant's circumstances, relative to causing depression. Dr. Sapra acknowledged that it was difficult to state with certainty that the Claimant's current depression continues to be related to an incident occurring at work in 2002, acknowledging that he cannot say that is related to the injury. Dr. Sapra indicated that, in his opinion, he does not believe that the Claimant's post-traumatic stress syndrome has subsided, with the Claimant reporting specifics such as nightmares about the accident and sudden avoidant behavior. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 35-38)
11. An additional hearing was held in this matter on March 14, 2006. At such time, in opposition to Defendant/Employer's Termination Petition, additional testimony of the Claimant was presented in pertinent part as follows:
- a) The Claimant testified that as of the time of his fall and accident in August of 2002, when he jumped he sustained a severe whiplash, hurting his ankles, knees, hips and lower back, ribs and vertebra. He acknowledged he did not seek medical attention immediately after the accident, thinking that he could walk it off, and return to work Monday, following the weekend. However, he still hurt over the weekend, and could hardly move by Monday morning, seeking medical treatment as of that time. He testified as to undergoing ten months of therapy; seeking chiropractic treatment; as well as undergoing injections in his neck and lower back. The Claimant testified as to having continuing pain in his neck, left shoulder, middle of his back, lower back and left knee. As of such time, the Claimant's Petition to Review was amended to include an assertion of an injury to the Claimant's neck, with a comparable amendment of Defendant/Employer's Answer to include a denial of the same. Each counsel were notified as to an opportunity to obtain an extension to the close of the record, in order to complete any additional medical evidence necessary in supporting and/or opposing such amended Petition. (03/14/06 Hearing N.T., pp. 5-19)

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- b) The Claimant testified that as of the time of the hearing, the pain which he was continuing to have was mostly in his neck and behind his left shoulder, as well as being in the middle of his back, lower back, hips and left knee, with his having frequent muscle spasms and headaches, with pain which he would rate on a varying scale from a four to an eight, on a one to ten scale. The Claimant testified that he has difficulty standing for any length of time, with the longest period that he would be able to stand is for approximately two hours, but fifteen to twenty minutes is more comfortable, before sitting for five minutes or so. He indicated he has difficulty sitting for any length of time, only able to sit in one place for approximately a half hour interval before having to get up. He indicated that he is only able to walk between one hundred to two hundred feet, before being played out. He testified that the most he is able to lift and carry is a gallon of milk, weighing eight to nine pounds, and then only able to carry such from his car to the house, not being able to carry it from the store to the car. The Claimant testified as to also having numbness in his right finger and middle finger on his left hand, as well as difficulties with his left wrist. He testified that he is not able to cut the grass, shovel snow, only being able to perform some light housekeeping at home. (03/14/06 Hearing N.T., pp. 19-28)
 - c) Upon cross-examination, the Claimant does not believe he is able to work in any capacity. (03/14/06 Hearing N.T., pg. 31)
12. In further opposition to Defendant/Employer's Petition and in support of his own, the Claimant has presented the deposition testimony of Zhenhui Li, M.D., obtained September 25, 2006. Dr. Li, who is Board Certified by the American Board of Neurology and Psychiatry, with his practice focused of treating patients from a neurologic standpoint, testified in pertinent part as follows:
- a) Dr. Li first began seeing the Claimant on March 23, 2005, with the Claimant presenting with a severe generalized pain, with his symptoms starting after a work accident of August 17, 2002. Dr. Li indicated that he obtained a history from the Claimant as to the Claimant's subsequent medical treatment, with the Claimant presenting with severe headaches, and depression, as well as generalized pain from the neck into the back and limbs. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 12-15)

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- b) Dr. Li testified as to reviewing diagnostic studies, which the Claimant had previously undergone, including an MRI, several scans and X-rays. He indicated that the spine film was actually pretty good, with no evidence of fracture, disc bulging or major problem. Dr. Li ordered a CAT scan of the Claimant's head, as well as an EMG nerve conduction study, testifying that he has seen the Claimant seven times total in his office. Dr. Li indicated that after reviewing the Claimant's CAT scan and EMG, with both being normal, he was pretty much convinced that the Claimant had a chronic pain syndrome or fibromyalgia, as well as post-traumatic stress disorder. He testified that he prescribed the Claimant medication as well as making a referral for pain management treatment, with a Dr. Drass at Allegheny Pain Management. Dr. Li indicated that the results were not very good, with his making an additional referral of the Claimant to a rheumatologist. Dr. Li testified that the Claimant has not really responded at all to any of these treatments, with the pain basically being the same, including same severity. Dr. Li indicated that he did not believe the Claimant's prognosis was very good, with the Claimant's problems starting in 2002 after the severe injury, having not gone away in over more than three years. Dr. Li noted that the Claimant's depression still was not under control very well, and over time he has also had a lot of problems at home with his wife which would not help him. Dr. Li indicated that he did not have much hope of the Claimant returning to work at any time soon. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 15-20)
- c) Dr. Li testified that he has not ordered any Functional Capacity type of examination for the Claimant, with the Claimant's physical examination really not indicating any severe motor or sensory deficit, with the Claimant still being pretty strong, with his motor strength being fine, and showing a little bit more range of motion. Dr. Li indicated that for the Claimant, depression is a major issue. Dr. Li was of the opinion that he did not think the Claimant was capable of employment as of the present time, noting that the Claimant's depression is really not under control. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 19-22)
- d) Upon cross-examination, Dr. Li acknowledged he did not have any records from the Claimant's treating physicians, Drs. Robinson or Hall. He did indicate in his computer he has some records from Alleghany Pain Clinic. He acknowledged he did not have any records in his file from the

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Washington-Jefferson Mental Health Clinic. (09/25/06 Deposition
 Testimony of Dr. Zhenhui Li, pp. 23-25)

- e) Dr. Li acknowledged that throughout his visits, the Claimant has had very generalized chronic pain complaints, not limited to one spot. He acknowledged a lot of the Claimant's chief complaints were about depression. Dr. Li acknowledged that the MRI of the Claimant's cervical spine was normal, and he has never formally made a diagnosis with respect to the Claimant's neck. He acknowledged his generalized diagnosis as to a chronic pain condition is based upon the Claimant's subjective complaints of pain. He acknowledged that with respect to the Claimant's diagnosis of fibromyalgia, that such is also based upon the Claimant's subjective complaints, with there not being any objective testing for fibromyalgia, although the Rheumatologist's records did note findings of trigger points. Dr. Li acknowledged that he was primarily providing treatment for the Claimant for physical complaints, with his treatment not focusing on the mental aspect. He acknowledged he did not perform any complete psychological examination of the Claimant. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 25-30)
- f) Dr. Li acknowledged that in examining the Claimant, the Claimant has had normal deep tendon reflexes with both lower and upper extremities. He acknowledged he has presented consistently with a normal sensory examination. He acknowledged the Claimant has had normal motor examination of both the lower and upper extremities, without evidence of any neurologic deficits. Dr. Li acknowledged that the EMG studies did not reveal any evidence of neuropathy. He acknowledged that the MRI studies performed over time were all normal. He acknowledged that the Claimant has presented with a normal neurologic examination, and just strictly speaking from a physical or neurologic standpoint, objectively the Claimant really does not have any functional impairment. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 30-36)

13. Based upon the foregoing and review of the record in its entirety, it is further found as follows:

- a) Effective November 7, 2005, the date of Dr. Smith's Independent Medical Examination of the Claimant, the Claimant is found to have fully recovered

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from the physical aspects of his August 17, 2002 injury, accepted by way of the Notice of Compensation Payable describing the nature of the injury as: "upper left arm, right wrist, back, both hips, bruises and contusions."

- b) It is further found, that the Claimant's work injury of August 17, 2002 also resulted in the Claimant's development of post-traumatic stress disorder. However, it is found that effective August 2, 2005, the date of Dr. Burstein's Independent Psychiatric Evaluation of the Claimant, that the Claimant had fully recovered from such post-traumatic stress disorder, as related to his work injury, with any continuing symptomatology, including Dysthymic disorder or depression, and any asserted associated disability not being causally related to the Claimant's work injury of August 17, 2002, but rather resulting from numerous non-work related stressors in the Claimant's life.
- c) In reaching these findings, relative to the physical aspect of the Claimant's work injury, the testimony and opinions of Dr. Smith are found to be credible, probative and persuasive and are found to be more credible, probative, persuasive and unequivocal than those of Dr. Li. Dr. Smith's findings upon physical examination, as to there being no objective findings upon physical examination supporting the Claimant's subjective complaints, are not only not refuted by the testimony and opinions of Dr. Li, but actually supported by the same, with Dr. Li admitting that objectively speaking, the Claimant demonstrated no real functional impairment. Dr. Li further admitted that all the Claimant's diagnostic studies undertaken, including MRIs, CAT scans, and EMG studies were either normal or unremarkable. Dr. Li testified as to the Claimant having very generalized pain complaints, without any specific etiology for such symptoms, other than Dr. Li's impression that the Claimant's depression was not very well controlled. Additionally, although Dr. Li provides a general diagnoses of the Claimant having chronic pain syndrome or fibromyalgia, which he indicated started after the work injury of August 17, 2002, he does not otherwise provide a specific opinion that such diagnoses were causally related to the Claimant's original work injury of August 17, 2002.
- d) In reaching these findings, relative to the Claimant's post-traumatic stress disorder and/or depression, the testimony and opinions of Dr. Burstein are

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found to be credible, probative and persuasive and moreso than those of Dr. Sapra, with Dr. Sapra's opinions found to be less credible, probative and persuasive, and rejected. In reaching these findings, it is initially noted that as the original Notice of Compensation Payable did not accept a psychological component to the Claimant's work injury, it would be the Claimant's Burden of Proof through the submission of unequivocal medical evidence, establishing such causal relationship. With respect to the Claimant's underlying depression, although Dr. Sapra initially testified that the Claimant's depression was exacerbated by his work injury of August 17, 2002, he subsequently acknowledged that it was difficult to state with certainty, that the Claimant's current depression continued to be related to an incident occurring at work in 2002, acknowledging that he cannot say that such is related to the injury. Such would actually be consistent and corroborative of Dr. Burstein's testimony and opinions, with Dr. Burstein acknowledging that the Claimant's work injury, and subsequent disability and financial difficulties may have contributed initially to the Claimant's depression, but at least as of the time of his examination, such was no longer the case, with the Claimant's continuing depression being causally related to the multiple psychosocial non-work related stresses that the Claimant has experienced or is facing, including his family marital problems, as well as his pre-existing condition. With respect to the diagnosis of post-traumatic stress disorder, Dr. Burstein and Dr. Sapra are in agreement, that the Claimant did develop symptoms of post-traumatic stress disorder subsequent to his August 17, 2002 injury. The difference in their opinions, is whether the Claimant continues to have symptoms from such diagnoses, relating to his work injury. On this issue, the testimony and opinions of Dr. Burstein are found to be credible, probative and persuasive and are accepted. The testimony and opinions of Dr. Sapra are not found to be credible, probative and persuasive, and are found to be less credible, probative and persuasive than those of Dr. Burstein and are rejected. In so finding, it is noted that although Dr. Burstein performed his examination of the Claimant on an independent psychiatric basis, as opposed to a treating basis, his actual knowledge and familiarity with the Claimant's psychological history was actually much more thorough and detailed than that of Dr. Sapra. Dr. Sapra acknowledged having an understanding as to the Claimant having a significant prior history of depression and non-work related stresses, but then acknowledged that he was not aware of the Claimant's sixteen year old daughter's suicide in 1992 or 1993, which event

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that there were no such abnormalities found upon diagnostic study or physical examination of the Claimant.

- f) In reaching these findings, the testimony of Ms. Williams is accepted in part and rejected in part. The testimony of Ms. Williams as to the Claimant having continuing symptoms of depression is found to be credible. Such is not specifically in dispute. However, such is not accepted as unequivocal medical testimony as to a causal relationship between the Claimant's assertions of depression, or post-traumatic stress disorder, and his work injury, and/or is found to be less credible, probative and persuasive and less unequivocal than the credible testimony of Dr. Burstein, who is Board Certified in psychiatry and neurology, as to the etiology or causal relatedness of such symptomatology to the Claimant's work injury.
14. Counsel for the Claimant has submitted a Fee Agreement, providing for attorney's fees in the amount of twenty percent of any amounts recovered hereunder.
15. Counsel for the Claimant has further submitted a Bill of Costs, setting forth the Claimant's Costs of Litigation as follows:

01/13/06	Deposition Transcript of Dr. Smith	\$ 132.85
02/28/06	Deposition Transcript of Dr. Sapra	219.75
03/14/06	Hearing Transcript	/ 50.73
09/25/06	Deposition Fee & Transcript of Dr. Li	1,450.85
Total Costs:		\$1,854.18

Counsel for the Claimant, in his Proposed Findings, has additionally submitted a listing of costs of the Claimant in appearing for hearing and meeting with counsel, specifically the mileage associated with the Claimant's travel for hearings, meeting with counsel and attendance at Independent Medical Examinations. It is found that with the exception of the Claimant's round trip to Pittsburgh for Defendant's medical examination on August 2, 2005, and November 7, 2005 round trip examination with Dr. Smith, that all of such other listings are local mileage, for the Claimant's traveling within Clearfield County, and as such, are not reimbursable under the Pennsylvania Workers' Compensation Act. The Claimant shall be reimbursed by Defendant/Employer for mileage to attend Defendant/Employer's medical examinations.

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he acknowledged could be traumatic enough, standing alone, to result in a depression or post-traumatic stress disorder. Dr. Sapra acknowledged he was not aware of the history of the Claimant's second wife dying in his arms from cancer in 1998. Although Dr. Sapra stated that he had access to the Claimant's treatment records, he then acknowledged that he was not aware of any reference in those records to anxiety and stress as a result of the Claimant's father's death in 2004. He acknowledged he was not aware or could not recall any history regarding the Claimant's continuous problems with his son or stepson. He acknowledged that such are factors that would be significant in determining the cause of the Claimant's problems. It is presently found, in light of it being the Claimant's Burden of Proof of establishing a causal relationship between such diagnoses, and any continuing disability associated with the same, as such diagnoses was not part of the accepted work injury, that Dr. Sapra's opinions premised upon a generalized understanding as to the Claimant's subjective symptoms, without specific knowledge as to such significant contributing factors, is not found to be credible under the circumstances, and certainly less credible, probative and persuasive than Dr. Burstein's, who testified as to obtaining a thorough understanding as to all of such conditions.

- e) In reaching these findings, the testimony of the Claimant is accepted in part and rejected in part. The testimony of the Claimant as to having continuing symptoms of depression is accepted, with such not being dispute. However, his placing the focus or basis for such condition primarily upon the work injury, is not found to be credible and is rejected, with such being inconsistent with and rejected by the credible testimony of Dr. Burstein. The testimony of the Claimant as to his physical ailments is not found to be credible and is rejected. In so finding, it was noted by both Drs. Smith and Burstein, that the Claimant engaged in symptom magnifications or inappropriate pain behavior unsupported by any objective findings upon examination or from review of the medical records. Moreover, the Claimant presented specific testimony as to the fairly all-encompassing nature of his symptoms, including testimony that to his understanding, he had injuries to several discs in his neck, with hairline cracks, cracked vertebra, fractured ribs, problems with discs in his lower back, muscle spasms and problems with his knees. Such assertions are not only refuted by the credible testimony of Dr. Smith, but in no manner supported by the testimony of his own treating physician, Dr. Li, with Dr. Li acknowledging

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CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, review of the evidence in its entirety, and appurtenant law, this adjudicator concludes as follows:

1. At all times hereto, the parties were bound by the respective provisions of the Pennsylvania Workers' Compensation Act, as amended.
2. Defendant/Employer has sustained its Burden of Proof, that effective November 7, 2005, the date of Dr. Smith's Independent Medical Examination of the Claimant, the Claimant had fully recovered from his work related injury of August 17, 2005, and specifically the physical aspects of such injury as accepted in the Notice of Compensation Payable.
3. The Claimant has sustained his Burden of Proof relative to the Petition for Review in part, that the accepted description of injury as set forth in the Notice of Compensation Payable included the diagnoses of post-traumatic stress disorder. However, the Claimant has failed to sustain his Burden of Proof, that such condition or diagnoses continued to exist, subsequent to August 2, 2005, the date of Dr. Burstein's Independent Psychiatric Examination. In the alternative, Defendant/Employer has sustained its Burden of Proof that effective August 2, 2005, the Claimant had fully recovered from the post-traumatic stress disorder aspect of his work injury of August 17, 2005. To the extent that there are any unpaid medical costs or expenses for the Claimant's receipt of treatment for post-traumatic stress disorder, for services provided prior to August 2, 2005, Defendant/Employer shall be responsible for making payment of such, conditioned upon such medical costs and expenses, having been properly submitted, as well as the reasonableness and necessity of such, being subject to the Cost Containment Provisions of the Pennsylvania Workers' Compensation Act, as amended.
4. The Claimant has failed to sustain his Burden of Proof that Defendant/Employer violated the provisions of the Pennsylvania Workers' Compensation Act, as amended. In so finding, it is noted that as of the time of the filing of the Petition, the accepted description of injury did not include either a diagnosis of post-

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traumatic stress disorder or depression. Although ultimately, it has been found that the Claimant's work injury did include a diagnosis of post-traumatic stress disorder, from which the Claimant is found to have fully recovered as of August 2, 2005, the date of Dr. Burstein's deposition, from review of the significant packet of medical bills and reports submitted, there is no clear breakdown or means of readily distinguishing from the present record, between the treatment provided to the Claimant for post-traumatic stress disorder and his underlying depression. As noted by Dr. Sapra, he could not specifically relate the Claimant's continuing depression as causally related to the work injury. Accordingly, Defendant/Employer/Insurer shall be responsible for timely making payment of the Claimant's medical costs and treatment for post-traumatic stress disorder through August 2, 2005, upon re-submission of such bills, consistent with the Cost Containment Provisions of the Pennsylvania Workers' Compensation Act, with the bills for treatment of the post-traumatic stress disorder being differentiated from the Claimant's treatment for depression.

5. It is found that Defendant/Employer has sustained its Burden of Proof that its contest of this matter was reasonable. Accordingly, no award of attorney's fees is made against Defendant/Employer.
6. It is found that as the Claimant has been successful in his proceedings in part, Defendant/Employer shall be responsible for reimbursement of the Claimant's Costs of Litigation, as set forth in the Claimant's Bill of Costs, in a total amount of \$1,854.18, together with reimbursement of the Claimant's mileage for attendance at the two Independent Medical Examinations to Pittsburgh and Greensburg, or an additional amount of \$168.97.
7. The Fee Agreement entered into between the Claimant and his counsel, providing for attorney's fees in the amount of twenty percent of any amounts awarded hereunder is hereby approved. However, as there is no further award of indemnity benefits hereunder, based upon the termination of the Claimant's compensation benefits, such is not further addressed herein.

Accordingly, the following Order is entered.

VERIFICATION

I, Dana Null, state that I am the authorized representative of Appalachian Wood Products, a Defendant herein. I aver that the statements of fact contained in the attached AMENDED ANSWER, NEW MATTER AND CROSS CLAIM are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

APPALACHIAN WOOD PRODUCTS

BY:

Dana Null
DANA NULL, Authorized Representative

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing AMENDED ANSWER
NEW MATTER AND CROSSCLAIM FILED ON BEHALF OF DEFENDANT
APPALACHIAN WOOD PRODUCTS, INC. was served via U.S. First Class Mail, postage pre-
paid this 10th day of ^{July}~~May~~, 2007 upon the following counsel of record:

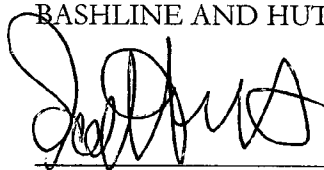
Frederick M. Neiswender, Esquire
211 ½ North Second Street
Clearfield, PA 16830

(Attorney for Plaintiff)

John C. Dennison, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825

(Attorney for BJR, Inc. d/b/a Conservco Construction)

BASHLINE AND HUTTON



GERALD J. HUTTON, ESQUIRE
Attorney for Defendant,
APPALACHIAN WOOD PRODUCTS, INC.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER

-VS-

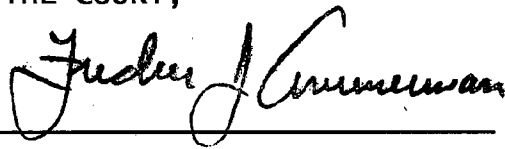
No. 04-1246-CD

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and
APPALACHIAN WOOD PRODUCTS,
INC.

O R D E R

AND NOW, this 10th day of July, 2007, following
argument relative the Motion to Amend New Matter, it is the
ORDER of this Court that said Motion be and is hereby
granted and Defendants shall have no more than ten (10)
days from this date in which to file an Amended Answer and
New Matter.

BY THE COURT,



President Judge

FILED

of 10.15.07
JUL 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

2CC Attys:
Neiswender
J. Dennison
W. Gallishen

(GK)

DATE: 7-16-07

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

FILED

JUL 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

CIVIL DIVISION

No. 04-1246

AMENDED NEW MATTER

Filed on Behalf of Defendant:
BJR, INC. d/b/a CONSERVCO
CONSTRUCTION

Counsel of Record for these Parties:

JOHN C. DENNISON
PA. I.D. No. 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825

FILED NO CC
JUL 17 2007
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William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM McCUSKER and BEVERLY
I. McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

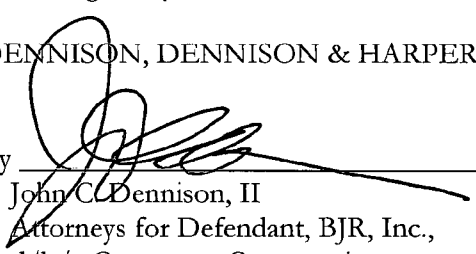
* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 04 - 1246

NOTICE TO PLEAD

TO: William McCusker and Beverly I. McCusker, Plaintiffs

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

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for Defendant, BJR, Inc.,
d/b/a Conservco Construction

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

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

CIVIL DIVISION

No. 04-1246

Plaintiffs,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants.

AMENDED NEW MATTER DIRECTED TO PLAINTIFFS

And now, comes the Defendant, BJR, INC., d/b/a CONSERVCO CONSTRUCTION, by its attorneys, Dennison, Dennison & Harper, who file the following Amended New Matter directed to Plaintiffs:

1. Plaintiff, William J. McCusker, allegedly sustained injuries on August 17, 2002, as a result of the work-related accident which occurred on the premises of Appalachian Wood Products when a crane allegedly failed permitting Plaintiff to fall to the ground and sustain injury.

2. At the time of the aforesaid accident, the Plaintiff, William J. McCusker, was employed by Able Company I, then and there engaged in the scope of his employment.

3. The Plaintiff, William J. McCusker, thereafter filed a claim for Workman's Compensation, and was collecting both wage and medical benefits from Rockwood Insurance Company, the workman's compensation carrier for Able Company I.

4. Attached hereto, marked as Exhibit A and made part hereof is an adjudication, which is now final, of a decision by The Honorable Michael E. Koll, Judge, in the Workman's Compensation case filed by the Plaintiff, William J. McCusker.

5. Plaintiff in the Worker's Compensation matter had filed various petitions with the Pennsylvania Bureau of Labor and Industry, Worker's Compensation Department, including a Petition to Reinstate Compensation Benefits and a Petition to Review Medical Treatment. Further, Plaintiff's employer had filed petitions including a Petition to Review Medical Treatment and a Petition to Terminate Compensation Benefits.

6. Plaintiff was represented in the Worker's Compensation claim by current counsel Frederick Neiswender, Esquire, who also represents the Plaintiff in this personal injury suit.

7. After testimony from the claimant and witnesses including the deposition testimony of Dr. Manish Sapra, Dr. Zhenhui Li, Dr. Stuart Burstein, Dr. Jack Smith, and therapist Jill Stewart, all as set forth in the attached adjudication, Exhibit "A", Judge Koll entered a written adjudication in conformity with the Pennsylvania Worker's Compensation Act that effective November 7, 2005, the date of Dr. Smith's independent medical examination, Mr. McCusker was found to have been fully recovered from the physical aspects of his August 17, 2002, injury.

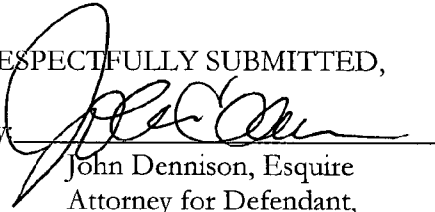
8. It was further found that by August 2, 2005, Mr. McCusker had fully recovered from any post-traumatic stress disorder as related to his work injury, and that any ongoing symptomatology including a depression disorder, and any asserted associated disability, was not related to Plaintiff's work injury of August 17, 2002, but resulted from numerous non-work related stressors in the claimant's life.

9. The decision of the Pennsylvania Worker's Compensation Judge, as set forth in the attached Exhibit "A", is a binding adjudication regarding the Plaintiff's claim and, under doctrine of collateral estoppel, precludes Plaintiff from relitigating issues regarding any claim for ongoing disability whether physical or psychological.

WHEREFORE, Defendant, BJR, Inc., d/b/a Conservco Construction, demands judgment against the Plaintiff.

RESPECTFULLY SUBMITTED,

By

A handwritten signature in black ink, appearing to read "John Dennison", is written over a horizontal line.

John Dennison, Esquire
Attorney for Defendant,
Conservco, Inc.

LTR-025 REV 09/05/00



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION OFFICE OF ADJUDICATION
814-765-6398

Circulation Date: 02/28/2007

ROCKWOOD CASUALTY INSURANCE CO
654 MAIN ST
ROCKWOOD PA 15557

DECISION RENDERED COVER LETTER

Bureau Claim Number: 2430013

Injury Date: 08/17/2002

Insurer Claim Number: 244473

Petitions:

Penalty-Pet

Pet-To Reinstate Compensation Benefits

Pet-To Reinstate Compensation Benefits

Pet-To Review Medical Treatment

Pet-To Review Medical Treatment

Pet-To Terminate Compensation Benefits

WILLIAM J MCCUSKER
555 MARKET ST
RR1 BOX 111
COALPORT, PA 16627-0000

FREDERICK M NEISWENDER ATTY AT LAW
501 E MARKET ST STE 3
CLEARFIELD, PA 16830

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

The attached Decision of the Judge is final unless an appeal is taken to the Workers' Compensation Appeal Board as provided by law.

If you do not agree with this Decision, an appeal must be filed with the Workers' Compensation Appeal Board within 20 days from but not including the date of this notice.

Forms for an appeal may be obtained from the Workers' Compensation Appeal Board, Capital Associates Building
901 North Seventh Street
Third Floor South
Harrisburg, PA 17102

Vs

ABLE COMPANY I
930-950 W HANNA ST RTE 53
HOUTZDALE, PA 16651

ROCKWOOD CASUALTY INSURANCE CO
654 MAIN ST
ROCKWOOD, PA 15557

WAGNER & FINN ATTYS AT LAW
107 LAKEMONT PARK BLVD
ALTOONA, PA 16602

EXHIBIT "A"

03/01/2007 10:18 AM

WILLIAM J MCCUSKER - 2430013

COMMONWEALTH OF PENNSYLVANIA
EWC LEGAL DIV
1171 S. CAMERON STREET
ROOM 327
HARRISBURG, PA 17104-2501

Employee Witnesses & Exhibits:

Joette Williams (08-10-05)

William McCusker (08-10-05; 03-14-06)

- 1- Joette Williams Progress Record Notes
- 10- 02-28-06 Depo Dr. Sapra
- 11- 09/25/06 Depo Dr. Zhenhui Li
- 2- 08-09-05 Report Dr. Sapra
- 3- Lisitng of Paid Bills
- 4- Denial letters
- 5- 02-25-05 Report Dr. Sapra
- 6- Affidavit of Claimant
- 7- Allegheny Surgery Center/Allegheny Pain Mgt Reports
- 8- Blair Medical Associates Records
- 9- Fee Agreement

Employer Witnesses & Exhibits:

- A- Selected pages of Joette Williams notes
- B- Notes of Jill Stewart, Therapist
- C- 10/18/05 Depo Dr. Burstein
- D- 11-07-05 Report Dr. Smith
- E- 01-13-06 Depo Dr. Smith

Judge Witnesses & Exhibits:

- J1- Notice of Temporary Compensation Payable

Hearings:

7/12/2006 14:30:00	Held
3/14/2006 10:00:00	Held
12/21/2005 10:15:00	Held
8/10/2005 13:00:00	Held
7/27/2005 13:00:00	Canceled by Employer Counsel on 06/28/05
5/25/2005 09:00:00	Held

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FINDINGS OF FACT

1. The Claimant, William J. McCusker, sustained an injury on August 17, 2002, during the course and scope of his employment with Defendant/Employer Able Company 1, insured for Workers' Compensation purposes by Rockwood Casualty Insurance Company. Pursuant to a Notice of Temporary Compensation Payable subsequently converted, such work injury was described as "upper left arm, right back, back, both hips, bruises, contusions", with the Claimant receiving compensation at the weekly rate of \$184.42, based on an average weekly wage of \$204.91.
2. On April 12, 2005, the Claimant filed a Penalty Petition, together with a Reinstatement and Review Medical Treatment Petition, asserting that Defendant/Insurer had stopped paying for the Claimant's medical costs and expenses associated with psychological therapy and medication, under the theory the Claimant's condition was not related to his work injury. Such Petitions were assigned to this Workers' Compensation Judge by Notice of Assignment of April 15, 2005. Defendant/Employer, through counsel, filed a timely Answer denying the material averments of the Claimant's Petition.
3. An initial pre-trial conference was held in this matter on May 25, 2005. At such time it was confirmed, that as the Notice of Temporary Compensation Payable issued in this matter did not accept a psychological injury as part of the described work injury, the pending Petitions would be deemed, in the alternative, a Petition to Review the description of injury, as set forth in the Notice of Temporary Compensation Payable. A Scheduling Order was subsequently issued for the parties' completion of respective medical evidence, together with the re-listing of this matter for full testamentary hearing.
4. An additional hearing was held in this matter on August 10, 2005. At the time of such hearing, in support of the Claimant's Petition, the testimony of the Claimant was presented in pertinent part as follows:
 - a) The Claimant testified as to being fifty years of age at the time of the hearing. He testified that he was not currently employed, with Workers' Compensation being his sole source of income. The Claimant testified that as of the time of his injury, he had been employed by Defendant/Employer

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as a technician's assistant, for approximately one year and two months. In such position, he would travel to different businesses, inspecting the businesses' fire suppression systems and security systems, together with providing whatever manner of assistance he was capable of. On August 17, 2002, he had just finished installing a fire suppression nozzle on a sawdust duct, at Appalachian Wood Products. Such entailed his being hoisted by a crane to approximately eighty feet into the air. He testified that while being lowered to the ground, the cage that he was in started spinning. He testified that at such time he whistled to his boss, signaling to his boss to have the crane operator put him down, so he would not land on a piece of equipment, and the next thing he knew, he was free-falling while spinning. He indicated he looked up, saw the boom of the cab coming down on him, and jumped right before he hit the ground. He testified that when he jumped, the boom missed him, but he jarred himself very badly. (08/10/05 Hearing N.T., pp. 4-5)

- b) The Claimant testified as to initially seeking treatment at the Coalport Medical Center with a Dr. Robinson. At some time subsequently, he was referred by Dr. Robinson to the Clearfield-Jefferson Mental Health Center, believing such treatment began in May of 2003. He testified that prior to August 17, 2002, he would describe himself as a healthy, active, happy individual, with no sleeping disorders, being active in the care of his then fourteen year old stepson and eleven, going on twelve year old son, engaging in outdoor activities and sports, with no difficulties or problems at work. He described his prior general mood as being content and excited, having just invested three thousand five hundred dollars in equipment to attempt to establish a stone carving business. He testified that prior to the injury, he was slow to anger unless someone got right in his face and threatened him, with no nervousness or panic attacks. He testified that he was happy the majority of the time prior to the accident, having been active, physical, and outgoing all of his life and not afraid to be around people or speak in front of people. He indicated that he had his second wife die in his arms on May 31, 1998, being left with a seven-year-old son to raise. At such time he was a water operator for a small company, supplying over eight hundred homes. He testified at such time, he took a weeks vacation, went to Dr. Robinson, who prescribed Zoloft for him. The next week he went back to work, taking Zoloft for approximately six weeks, never missing work, and going on with his life. He testified that things kept

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getting better, remarrying in May of 2002. He testified that the work accident then occurred in August of 2002. He continued having pain, despite ten months of therapy, which made him worse. He testified that he can no longer do the things he used to do with his son, wife and step children, as well as not bringing in the income of what he used to, such that he was steadily falling behind on bills. He testified that subsequently, he started snapping at everybody, becoming very angry and yelling over small reasons. He testified that his relationship with his new wife has been steadily deteriorating, with more arguments and fights since the accident, with his wife having moved out, despite their undergoing of counseling. (08/10/05 Hearing N.T., pp. 5-11)

- c) The Claimant testified that he has additionally had difficulty sleeping, having frequent bad dreams, including of the work injury. He testified that since the time of the accident, he additionally had trouble focusing, with difficulty with his memory. He testified that since the time of the accident, he has had a fear of heights, which he did not have prior to the time of the work accident. He indicated that he additionally has become paranoid about being jostled in a crowd. He testified that he is also depressed over his physical limitations, including not being able to carry a gallon of milk out of the store. (08/10/05 Hearing N.T., pp. 11-15)
- d) The Claimant testified that after the accident he started being seen at the Clearfield-Jefferson Mental Health beginning in May of 2003, being prescribed three different anti-depressants. He indicated that subsequent to such treatment, he was doing better with his family, and was a lot more able to control his anger. He testified that such treatment included therapy sessions with a Ms. Joette Williams. He testified that he has been continuing therapy with Ms. Williams, as well as having received samples of some of the anti-depressants, but had to stop taking some anti-depressants, because he could not afford those, after being notified by the pharmacy that Workers' Compensation would not pay for such anymore. (08/10/05 Hearing N.T., pp. 15-18)
- e) Upon cross-examination, the Claimant acknowledged that the accident report that he filled out at the time of the injury indicates that he, at the time, reported he fell approximately twenty-five feet after jumping out of the cage. He acknowledged, that with respect to the symptoms that he

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testified to having, following the accident, that such mental symptoms did not begin immediately, with such being a slow building process, other than the bad dreams which started almost immediately. He testified that the longer he proceeded with physical therapy, with no sleep and constant pain, the depression kept growing. (08/10/05 Hearing N.T., pp. 18-20)

- f) The Claimant acknowledged receiving treatment for depression prior to August of 2002. He acknowledged that his sixteen-year-old daughter had been living with his ex-wife, who he had been divorced from. He testified that in February of 1992, his daughter had a fight with his ex-wife, and committed suicide. He subsequently went to Dr. Robinson, being referred to the Clearfield-Jefferson Mental Health. He testified at such time he felt rage, not having wanted his children living with his ex-wife, his first wife, who the Claimant testified left him for a long haired biker druggie. He believes at that time he received treatment at the Clearfield-Jefferson Mental Health facility for six weeks to two months. He denied at such time having any difficulties with nightmares, or episodes of panic. (08/10/05 Hearing N.T., pp. 18-22)
- g) The Claimant testified that the second time he sought treatment for depression was when his second wife died in 1998, with Dr. Robinson for approximately four to six weeks. He denied at such time, having problems with co-workers or seeking additional help for depression or anger management. (08/10/05 Hearing N.T., pp. 22-23)
- h) The Claimant acknowledged having some minor marital problems with his current wife, whom he married in May of 2002, with such beginning before they were married. He indicated that such problems were over differences of opinions, upon discussing rules and regulations for the children. He testified that they did not have problems, did not seek any counseling or need for counseling, just saw things differently, relative to disciplinary rules for the children, but worked them out. He indicated that after the accident, he began having fights with his wife, with his wife wanting to separate, until he got back on track. He acknowledged that his wife advising him, that she wanted to separate, in and of itself, caused some stress, which he discussed with Ms. Williams. He acknowledged his wife moved out in December of 2003. He acknowledged discussing with Ms. Williams on a number of occasions in his sessions with her, that he had worries about his ability to be

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a good husband and father, but denied having any such fears prior to August of 2002. He acknowledged having a lot of problems with his stepson, his current wife's son. When questioned as to also having some problems with his stepson, prior to his marriage to his current wife, the Claimant responded it was not necessarily just him, just with his current wife's ideas of what the rules should be and what his were, so they tried to reach a happy medium. The Claimant indicated that he had very few, if any, arguments with his stepson prior to his accident. He acknowledged reporting to Ms. Williams, that his own son was having problems in school and this caused a lot of tension for him, with his having started his son with counseling with Cen-Clear and at Clearfield-Jefferson. The Claimant acknowledged that his father passed away in January of 2004, and according to Ms. Williams, that such caused a lot of anxiety for him, because he felt he left his father down during the last two years of his life. The Claimant acknowledged having arguments with a sister of his, who drinks, and he does not, and he has a problem with that. (08/10/05 Hearing N.T., pp. 23-29)

- i) With respect to his physical condition, the Claimant testified that he has continuing problems with pain in his right wrist, left shoulder, right shoulder, neck, middle of his back, lower back, hips, knees and ankles. He testified that he has been receiving treatment on a once every four-week basis with a Dr. Drass, at Allegheny Pain Management. He acknowledged seeing a Dr. Ferraro as well. The Claimant testified he did not feel he was capable of returning to work in any capacity from either a physical or mental standpoint. The Claimant testified he has not worked anywhere since August of 2002. (08/10/05 Hearing N.T., pp. 29-32)
- j) The Claimant testified that with respect to his current daily activities, he tries to stay busy, but does not perform any yard work. He indicated he is able to work around the house, with a lot of breaks, as well as having to lie down during the course of the day. He denies having any injuries to his back or hips or arms since August of 2002. He acknowledged having fallen several times when his legs have given out on him, but nothing new or no new injuries or anything substantial. (08/10/05 Hearing N.T., pp. 32-34)
- k) Upon redirect examination, the Claimant testified that following his sixteen-year-old daughter's committing of suicide, he only missed the day

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that such occurred and the day of the funeral from work, working straight through otherwise. He testified the only problem he had subsequent to such time was with the rage towards his ex-wife and her boyfriend. He indicated that with respect to his second wife, he called her his second wife, but they never really married, but did live together from 1988 until she died on May 31, 1998. He indicated that during such period of time, he never had any real serious problems, other than normal differences of opinion on how to raise children, with his second wife, the mother of his son, having two sons as well. The Claimant testified that after the two events in 1992 and 1998, that he would consider his life normal, prior to the accident in August of 2002. With respect to describing his present pain, the Claimant indicated that his neck and lower back hurt very badly, with such being a constant ache and every once in a while, a sharp burning jab. (08/10/05 Hearing N.T., pp. 34-38)

5. Additionally at the time of the August 10, 2005 hearing, in support of the Claimant's Petition, the Claimant has presented the testimony of Joette R. Williams, a psychotherapist, employed at Clearfield-Jefferson Community Mental Health, Inc. Counsel stipulated, that Ms. Williams is not a licensed medical practitioner, with her testimony being relative to her being the individual who would meet with the Claimant on a regular basis, with any diagnoses relative to the Claimant's condition to be presented through medical testimony. Ms. Williams otherwise testified in pertinent part as follows:

- a) Ms. Williams testified as to beginning to see the Claimant in October of 2002, with the Claimant having previously been seen by a Ms. Jill Stewart. She began seeing the Claimant on a weekly basis, with the Claimant presenting being very depressed, anxious, having panic attacks and angry outbreaks. Ms. Williams indicated that she started seeing improvement in the Claimant's mood, anger, depression symptoms, with less problems with anxiety and panic attacks, several months after she began seeing him. She indicated that several months after she started seeing him, the Claimant also saw Dr. Valles, with Dr. Valles prescribing medication. Ms. Williams indicated that within approximately six weeks of the Claimant beginning medication, the Claimant was reporting sleeping better, as well as there being an improvement in his anger with his anger coming under control. She testified that such improvement continued, right up until the point in time where the Claimant's medication was stopped. She indicated

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approximately a month after his medication was stopped, the Claimant began decompensating. (08/10/05 Hearing N.T., pp. 41-44)

- b) Ms. Williams testified that the Center is able to provide the Claimant with some samples of Welbutrin and Abilify, but not other medication, which the Claimant had been prescribed. She testified that she has noticed a change in the Claimant's behaviors since the stopping or reduction of his medication, with the Claimant being more depressed and not sleeping, with the Claimant reporting feeling more angry, irritable, depressed and tearful. (08/10/05 Hearing N.T., pp. 44-47)
- c) Upon cross-examination, Ms. Williams acknowledged that she was not licensed in psychiatry or psychology, with there being no licensure for a psychotherapist within Pennsylvania. Ms. Williams acknowledged that there is a small notation in her chart, that the Claimant had been seen very briefly at the Center prior to August of 2002. She does not recall specifically whether such treatment was for depression. She acknowledged that she does not know whether the Claimant had any of the symptoms which she noted, prior to August of 2002. She acknowledged that she did not have any of Dr. Robinson's records for review, with Dr. Robinson, the Claimant's family physician, having referred the Claimant to the Center. Ms. Williams acknowledged that there are a number of references in her notes, to some family problems and marital problems that the Claimant was having. She acknowledged that it would be fair to say that the Claimant reported to her that those problems were in and of themselves creating some stress and anxiety for him. She acknowledged that those types of problems can lead to depression in and of themselves. She acknowledged the Claimant reporting a prior history of physical and verbal abuse from his father, which is something that can result in depression. Ms. Williams acknowledged, that with respect to the Claimant decompensating, that additional pressures at home can cause decompensation. (08/10/05 Hearing N.T., pp. 47-55)
- d) Upon redirect examination, Ms. Williams acknowledged that the Claimant has mentioned the work accident to her, describing such in detail, with the Claimant reporting that most of his depression symptoms and anxiety and post-traumatic stress coming from the accident. (08/10/05 Hearing N.T., pp. 55-57)

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6. On November 23, 2005, Defendant/Employer filed a Termination Petition, asserting that effective November 7, 2005, the Claimant had fully recovered from his work injury of August 17, 2002, and could return to work without restrictions. Such Petition was assigned to this Workers' Compensation Judge by Notice of Assignment of November 30, 2005. Thereafter, the Claimant filed a timely Answer denying the material averments of Defendant/Employer's Petition.
7. An additional hearing was held in this matter on December 21, 2005, relative to the new Petition filing. As of such time, it was confirmed with counsel, that whereas the prior Petitions pending had been seeking the payment of medical benefits for psychiatric treatment, with the medical evidence anticipated as being submitted by way of report, with the Termination Petition pending, as well as an additional assertion that the psychiatric aspect of the Claimant's Petitions were being asserted as an independent basis for disability, that medical depositions would be required, with hearsay objections being preserved and sustained, relative to previously submitted medical reports and records. A Scheduling Order was subsequently issued for the parties' completion of respective medical depositions, together with the re-listing of this matter for additional testamentary hearing.
8. In support of its Termination Petition, Defendant/Employer has submitted the deposition testimony of Jack D. Smith, M.D., obtained January 13, 2006. Dr. Smith, who is Board Certified in orthopedic surgery, testified in pertinent part as follows:
 - a) Dr. Smith performed an Independent Medical Examination upon the Claimant on November 7, 2005. He indicated that in conjunction with such examination, he was provided with and had an opportunity to review medical records relative to the Claimant's care and treatment. He indicated that in addition to such medical records, since the time of his examination, and prior to his deposition, he had an opportunity to review additional update records from both the Allegheny Pain Management and Dr. Li, for the period of April 2005 through June 2005. Dr. Smith noted that in reviewing Dr. Li's physical examination findings, he did not note any objective abnormalities noted with respect to Dr. Li's examination of the Claimant. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 10-12)

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- b) Dr. Smith further noted obtaining a history from the Claimant, as of the time of his examination. The Claimant reported having sustained an injury in August of 2002, when he attempted to jump from a basket type crane bucket, which had malfunctioned with the bucket beginning to drop. The Claimant reported injuring his neck, posterior shoulder area, mid portion of his back, as well as reporting that he had a number of rib fractures, in addition to injuries to his lower back, back and buttocks, hip areas and both of his knees. Upon asking the Claimant if he was hospitalized, the Claimant indicated that he was not. The Claimant reported seeing a number of physicians, with such treatment being conservative in nature, without any surgical intervention undertaken or recommended. The Claimant reported that he believed he had been advised that he had problems with several discs in his neck, several hairline cracks in his neck, multiple rib fractures near where the ribs attach to the spine, as well as problems at several disc areas in the lower back as well. He reported undergoing a number of diagnostic tests, including X-rays and MRIs, with some of the tests being repeated. The Claimant reported being seen by a Dr. Wirths, his family physician, a Dr. Robinson, with a referral to a Dr. Drass, at a pain center, being seen by a Dr. Li, as well as a Dr. Ferraro, as well as with a referral to a Dr. Kivitz, with some mention of sending the Claimant to a Pain Management Center in Maryland. The Claimant reported complaints of pain in the neck area, including a sharp pain running across the posterior aspect of both shoulders, with numbness involving the ring and small fingers of the left hand. The Claimant reported having headaches associated with that pain. He also described tenderness and pain in the mid portions of his back in the thoracolumbar junction. He further reported pain in the lower back radiating into the posterior buttock area of the hip, with pain in the hips themselves. He also reported pain in both of his knees. At the time of the examination, the Claimant was walking with a walking stick, which the Claimant reported generally carrying when he was in a crowd. The Claimant made no complaints relative to his right wrist or left arm, other than complaints of numbness involving the left hand. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 13-20)
- c) Dr. Smith performed a physical examination of the Claimant. Relative to the physical examination of the Claimant's neck, all the Claimant's attempts made at movement were done in a hesitating fashion with a

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groaning accompanying virtually all movements attempted in the neck area. Dr. Smith described the halting movement as a non-physiologic-type of movement. Dr. Smith commented, that checking to see however, if there was any spasm that accompanied the end points of movement, that the neck did not spasm or tighten in any fashion. The Claimant also did not show any abnormal mechanics. Dr. Smith commented that the fact that the Claimant voluntarily terminated movements, having a non-physiologic-type of movement, makes it subjective and somewhat suspect. In the thoracic spine, the Claimant had normally maintained thoracic kyphosis, or a normal roundness. There was no spasm noted upon range of motion testing. There were no objective abnormalities. The Claimant did make a complaint of tenderness about the area of T11/T12, which would be a subjective type of finding, with no accompanying spasm or abnormal mechanics. In the lumbar area, the Claimant voluntarily flexed to forty degrees. Dr. Smith commented that when the Claimant did that movement, he reversed the lumbar lordosis, which again, is normal mechanics, expected to be seen in a normal back. The Claimant had no paravertebral spasm with that associated movement. Upon lateral bending, the Claimant only went to fifteen degrees to each side. Upon hyperextension, the Claimant just went to the straight upright position to neutral. None of these movements were accompanied with any spasm or abnormal mechanics. They were all voluntarily terminated. Upon performance of straight leg raise testing, it was found to be positive both with the knees flexed and extended. Dr. Smith noted that when such finding is positive with both the knees flexed and extended, it basically negates such finding as an objective finding and can be seen with magnification of symptoms. Upon performing hip range of motion, the Claimant did not make any complaints of pain in the hip area, but rather described pain in the low back area. Dr. Smith commented that there would not be any anatomic basis for such complaint. Upon neurologic testing of both the upper and lower extremities, such were found to be normal, with reflexes all intact. Sensation examination showed no area of sensory loss to pinprick sensation. The one area where the Claimant was found to have an abnormality, was that he had global weakness of all muscle groups tested. Dr. Smith commented that such definitely would be a non-physiologic finding because it would require a very bazaar impact with neurologic lesion, probably something of the central nervous system to produce such finding, but it does not indicate any pathology in the back or

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spine. Dr. Smith commented that it is a potential sign of magnification of symptoms. Dr. Smith checked the Claimant's knees, with such showing no effusion or swelling. Dr. Smith performed ligament testing for stability, with such being normal. There was no crepitation palpable as range of motion was accomplished. Dr. Smith noted that basically the knee showed no objective findings of any crepitation or mechanical symptoms with no effusion or instability. Dr. Smith summarized his physical examination, indicating that he found no evidence of any neurologic deficits, no abnormalities or pathology relative to the Claimant's upper extremities, including his right wrist or left arm, no pathology involving the Claimant's hips, and on an objective basis, there were no residuals that he identified in either the cervical, thoracic, lumbar areas or in the knees at the time of his examination of the Claimant. He found no objective evidence to substantiate or support the Claimant's ongoing subjective complaints. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 20-30)

- d) Dr. Smith testified having an opportunity to review diagnostic studies. A report of a CT scan of the Claimant's cervical spine obtained shortly after the accident on August 27 was normal. X-rays of the lumbar spine, wrist and cervical spine were done on the same date, and by report were normal. A bone scan was obtained, which showed some mild uptake in the right ribcage, but otherwise was unremarkable. Dr. Smith noted that such bone scan was obtained approximately a month or a little bit more after the accident, and the mild uptake certainly would not be a pattern that would be seen with a fracture of the ribs. An MRI of the cervical spine was obtained September 7, 2002, as well as an MRI of the lumbar spine done the same date. The report of the MRI of the cervical spine showed some spurs and disc bulges at C5/6, which seemed to be chronic, with no evidence of any disc herniation or any fractures or acute trauma. The MRI of the lumbar spine was reported as seeming to be basically normal. A CAT scan of the pelvis and abdomen were normal. An MRI obtained in April of 2003 of the lumbar spine showed some disc bulging at three levels, L2/3, L3/4 and L4/5, but with no evidence of any disc herniation. Such report commented that when compared to a prior MRI, likely the one obtained in September of 2002, that there was no interval change, appearing to be the same. Dr. Smith noted that he was actually provided with the films of the most recent MRI of the thoracic lumbar areas, with Dr. Smith noting some very mild disc bulges at L2/3, L3/4 and L4/5, but

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with no evidence of any disc herniation or any other pathology in the low back. In the thoracic area, the findings were essentially within normal limits. Dr. Smith commented that there was nothing that he could identify, evidencing any traumatic injury, with any findings being consistent with normal wear and tear and degenerative changes. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 30-34)

- e) Dr. Smith testified providing an opinion that as of the date of his examination of the Claimant, he did not identify any residual objective findings in either the cervical, thoracic, lumbar or knee areas, or for that matter the hip areas, to suggest any residuals of injury, with there being no objective residuals, such that he believes the Claimant had fully recovered as of such date from his work injury. It was his opinion there would be reason to place any restrictions upon the Claimant at such point, nor no need for any additional medical treatment. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 34-36)
- f) Upon cross-examination, Dr. Smith acknowledged that he did not perform a Functional Capacity Evaluation as part of his examination of the Claimant. He acknowledged he did not order or obtain any additional X-rays or MRIs. Dr. Smith acknowledged in his report, that Dr. Li had provided a diagnosis of fibromyalgia, among other diagnoses with respect to the Claimant. When questioned as to whether any of his testing of the Claimant would rule out such diagnoses, Dr. Smith explained that fibromyalgia is a clinical diagnoses based most often on a series of complaints, as opposed to on any objective findings. When questioned with respect to the Claimant's halting in his movements during the range of motion testing of the Claimant's neck, Dr. Smith testified that the way the Claimant moved was a very uncommon physiologic type of movement pattern, with there being no objectivity to it. Dr. Smith acknowledged that the MRI of September 7, 2006 reported discs bulging in the C5/6 level. Dr. Smith noted that disc bulges do not all cause pain, and can exist asymptotically. He acknowledged that speculatively, a disc bulge can cause pain, but such can also exist asymptotically. Dr. Smith acknowledged that orthopedically, there was no explanation behind the Claimant having a global weakness of his musculature. He explained that such finding was in both the upper and lower extremities, and that in order to have every muscle weak, an individual would have to have a disc at every

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single level in the neck, and lower back, with some type of compressive neuropathy, or generalized muscular dystrophy or multiple sclerosis, something that would not be in the way of a traumatic finding, or a central nervous system lesion to get that type of global weakness. Dr. Smith noted that or, it can just be effort dependent. He further explained that it is almost impossible for all of such musculature to be weak with any type of traumatic problem. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 37-47)

- g) Dr. Smith acknowledged that the April 21, 2003 MRI reported disc bulging at the L2/3, L3/4 and L4/5 levels. When questioned as to whether two areas of disc bulging at the C5/6, and the L2/3 through L4/5 levels were areas that the Claimant showed or exhibited pain, Dr. Smith acknowledged that to the extent that the Claimant complained of pain generically from his neck to his low back, such was accurate, but in terms of specifically to those levels, no. Dr. Smith acknowledged that he was not disputing that the Claimant had injuries to the bodily areas described, if he sustained a traumatic injury at the time, but as of the time of his examination of the Claimant, he could not identify any residual injuries existing nor residual symptoms. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 47-51)
 - h) Upon redirect examination, Dr. Smith indicated that in his opinion, the findings of the disc bulges on both the cervical and MRI were not related to the Claimant's original work injury. He testified that he could find no correlation between those findings, or that which he would attribute to the original work injury. On additional cross-examination, Dr. Smith acknowledged that he would categorize the Claimant's initial injury as probably a soft tissue injury, based on the way that he has reviewed the records. (01/13/06 Deposition Testimony of Dr. Jack D. Smith, pp. 51-53)
9. In further support of Defendant/Employer's Petition, and in opposition to the Claimant's, Defendant/Employer has presented the deposition testimony of Stuart Burstein, M.D., obtained October 18, 2005. Dr. Burstein, who is Board Certified by the American Board of Psychiatry and Neurology, as well as Board Certified in forensic psychiatry, maintaining a licensed practice treating mental disorders, testified in pertinent part as follows:

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- a) Dr. Burstein performed an Independent Psychiatric Examination upon the Claimant on August 2, 2005, indicating that such interview took two hours and forty minutes. Pursuant to such examination, Dr. Burstein was provided with and had an opportunity to review medical records regarding the Claimant's treatment following the work injury of August 17, 2002, including records from the Claimant's treatment at the Clearfield-Jefferson Community Mental Health Center. He additionally obtained a history from the Claimant, with the Claimant reporting that on August 17, 2002 while in a basket or cage at work, at an estimated twenty to twenty-five feet, the basket at the end of a crane boom caught on a guide wire, with the Claimant falling to the ground. The Claimant reported landing on his feet but suffering significant pain in his legs and back at the time. He did not immediately go to the hospital emergency room, going home with his wife, who had initially planned on picking him up for lunch. The Claimant reported that as a result of such injury, he sustained a cervical sprain, wrist injury, fractured ribs, possible compression fractures, possible herniated disc and multiple aches and bruises. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 11-15)
- b) Dr. Burstein noted that the Claimant at some point in time began treating at the Clearfield-Jefferson Mental Health Center, first seeking treatment following his injury on May 7, 2003 with the Claimant reporting bad dreams and sleeplessness after the accident, with his primary care physician having placed him on anti-depressants. Such treatment was on an outpatient psychotherapy basis, with the Claimant continuing on additional anti-depressant medication. As of such time the Claimant was under the care of a Dr. Sapra, as well as seeing a psychotherapist, a Ms. Joette Williams. During the course of such treatment, the Claimant underwent the Minnesota Multiphasic Personality Inventory, Second Edition. The Claimant was noted as scoring higher than normal on scales which indicate a tendency towards suggestibility, anxiety, depression, hypochondriasis, pre-occupation with physical aches and pains and anger. Dr. Burstein noted that pursuant to the Claimant's reported history, he had also sustained several additional emotional blows earlier in his life, including the suicide of his daughter from his first marriage in 1992, with the Claimant still harboring a great deal of anger towards his first wife, the mother of that child, for contributing to his daughters suicide. In 1998, his second wife died of colon cancer in the Claimant's arms, with the Claimant's second

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wife being the one who had given him a good deal of emotional support. Subsequently, the Claimant was started on an anti-depressant by his primary care physician, taking such for approximately six weeks. The Claimant reported that he really had never resolved all the mourning for his second wife. The Claimant's father then died of cancer in January of 2004. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 15-22)

- c) Dr. Burstein further testified that in obtaining a history from the Claimant, he found it significant that the Claimant described himself as a pressured kind of guy, always preoccupied with performance. There was a tendency on his part to get irritable when things were not going the way he would like. The Claimant had one failed marriage, a loss of his second wife, together with the relationship with his third wife, whom he had married shortly before the work injury, giving him a lot of problems, with his third wife having brought to the marriage a teenage son by an earlier relationship. The Claimant described such son as very uppity, unwilling to follow directions and frequently contemptuous of the Claimant, being readily willing to engage in an argument or ignore any of the Claimant's requests of him. There have been some strong clashes, and the Claimant's third wife had left the marriage several times, with such being an ongoing source of irritation to the Claimant. Dr. Burstein explained that these other background issues indicate that the Claimant had two scenarios going on in his mind. One was the understandable anxiety experienced after the work injury, falling a distance of twenty-five feet, fearing for his life, such that he would be inclined to be anxious afterwards and have sleepless nights and restless dreams. However, the second scenario is the ongoing irritability prior to the work injury and additional factors added on with the problems that he encountered in his relationships. Dr. Burstein further explained that the Claimant's psychological status prior to his work injury would fall into a syndrome called a Dysthymic disorder, a very mild low-grade level of depressive illness or depressive attitude, referred to by Dr. Sapra as depressive disorder. Dr. Burstein noted that it is possible for any individual to have more than one psychiatric disorder, and such happened to be the case for the Claimant, who, in addition to the underlying depressive disorder, did develop acute symptoms of an anxiety disorder subsequent to the work injury. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 22-25)

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- d) Dr. Burstein testified that he further obtained a history from the Claimant relative to his physical status, as well as a complete psychological history, including reviewing the Claimant's treatment records. Dr. Burstein noted that the Claimant had been seen by Dr. Liefeld, an orthopedic surgeon, for a second opinion, who, after doing a physical examination, suggested that there was symptom magnification on the Claimant's part, with the Claimant's subjective complaints exceeding any objective findings. Relative to his review of the Clearfield-Jefferson Community Health Center records, that it appeared to be the staff's impression in reviewing the records, that the Claimant had been doing better, making progress, but nevertheless the Claimant claimed that he was still very badly off, not managing to handle his emotions, not withstanding what appears to be evidence to the contrary from the medical records. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 29-34)
- e) Dr. Burstein testified as to further performing a Mental Status Examination with respect to the Claimant. Dr. Burstein was of the impression that the Claimant does engage in what is called pain behaviors in the course of moving in and out of the office, clutching at his right leg, while walking in, wincing, grimacing, and sighing. Once the Claimant was seated in his chair, he moved around restlessly, occasionally getting up, turning his head, turning his neck and closing his eyes, repeatedly complaining of pain. Notwithstanding all of that, the Claimant remained focused on the task at hand. Even while he was complaining, the Claimant indicated or suggested he suffered from pain, but remained very obsessional in his speech, very focused in his thought. The Claimant did tend to be circumstantial, meaning he would talk around a point and give a long history, rather than get directly to the point, but nonetheless, he got to the point, with there being no tangentiality or wondering such as making him miss the mark. Dr. Burstein explained that such is a clear indication of anger, and of anger fueling an attitude which makes the individual want to explain his point to an extreme degree, with the person having the attitude that it will not work to just make the statement a simple straightforward manner. Rather, the individual has to emphasize all of their complaints and go around the circle 360 degrees to drag in every item that they can think of to emphasize some complaint that they are setting forth as the cause of a matter. Dr. Burstein testified that there was, however, no indication of any type of more serious pathology such as hearing voices, having visions, paranoia or suicidal

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ideations, nor indication of depersonalization phenomenon, generally classified with post traumatic stress disorder. Dr. Burstein noted that during the course of such Mental Status Examination, the Claimant also reported the circumstances involved in the Claimant's efforts to return to work, after his injury as a water operator for a local water authority, the type of employment which the Claimant had preformed for approximately ten years prior to going to work for Defendant/Employer Able Company. The Claimant reported leaving the office of the local water authority in a huff when he took exception to the practices of the individual who employed him at the water company. The Claimant had reported to the psychotherapist, Ms. Williams, that he needed to get five votes from the water authority in order to be accepted for the job. The Claimant reported to Dr. Burstein that he did not get the necessary number of five votes. The Claimant was also noted as reporting to Ms. Williams that he knew going back to work would in his words, "screw up his lawsuit", but wanted to get back to work and earn some money. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 34-40)

- f) Upon performance of cognitive function testing, Dr. Burstein found the Claimant's cognitive functions to be entirely intact, with the Claimant being alert, and oriented to time person and place. His memory was intact for immediate, recent or remote events. His intelligence was estimated as better than average. Concentration was normal. The Claimant provided appropriate answers and testing of his judgment when it came to insight. The Claimant's major observation at the end of the interview was, in his words, "I'm still fighting bitterness towards the owner and operator of the crane and now on top of it, I'm fighting bitterness towards the compensation company." Dr. Burstein further performed a global assessment of mental function, finding the Claimant to fall at the high end of the scale, indicative of the Claimant having a well-controlled mental state with highly effective adaptation methods. It is also recognized that when the Claimant is annoyed or irritated, he can transiently get angry, but he would readily recover from any disruption, not affecting his mental function. Dr. Burstein noted that even when the Claimant is talking about his anger towards all of the people, who he feels have done him wrong, he is able to concentrate, focus on the task at hand and continue to give a clear history. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 39-44)

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- g) Dr. Burstein provided an opinion as the Claimant's diagnoses, that he believed the Claimant had a brief episode of post-traumatic stress disorder, an anxiety disorder connected with a lift-threatening event such as the work injury. He acknowledged that the Claimant's initial treatment with Elavil, an older anti-depressant had limited effectiveness. However, once the Claimant began receiving treatment at the Clearfield-Jefferson Community Mental Health Center, with new and improved medications being provided, the Claimant promptly responded with significant improvement, such that by the time of Dr. Burstein's examination, it was Dr. Burstein's opinion that the Claimant had fully recovered from the post-traumatic stress disorder syndrome. The Claimant showed no signs of still being disturbed by recalling the accident, revisiting it in his mind or replaying the experience. The Claimant did still have a Dysthymic disorder, which in Dr. Burstein's opinion, existed prior to the work injury, being expressed in the Claimant's irritability, difficulty with his marriages, unresolved mourning or depressed mood connected to the loss of his daughter, the death of his second wife, and of his father. Dr. Burstein explained that as of the time of his examination of the Claimant, he did not find any evidence of ongoing post-traumatic stress disorder attributable to the work injury of August 17, 2002. The Claimant was not suffering from any dissociative phenomenon. He did not have nightmares. He could clearly revisit the scene, which is one of the major criteria. An individual who is still disturbed by an event, comparable to the Claimant's fall at work, is going to lose concentration and fail to effectively communicate when they start talking about the event with someone else. That was not the case for the Claimant. Dr. Burstein was of the opinion that he saw no evidence of any psychologic or psychiatric disability or impairment, which he would relate to the original work injury, as of the time he examined the Claimant. In his opinions, the Claimant's evidence of ongoing Dysthymic disorder, was not in any way attributable to the work injury, but rather reflects the Claimant's feelings, status and attitudes which have built up in the Claimant, either pre-existing the work injury, or relating to other events and situations in his life. Dr. Burstein further found no objective basis to substantiate the Claimant's ongoing subjective complaints. Dr. Burstein noted that the Claimant simply did not demonstrate the kind of distraction due to pain, anxiety or depression that would be expected with anyone suffering from active symptoms. Dr. Burstein did note, that there were findings that

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caused him to question the validity of the Claimant's subjective complaints as well. He explained, that first of all, the Claimant presented for the examination, dragging himself in, looking bedraggled and overburdened by pain. Secondly, he insisted on there being anxiety and depression which would bog him down or result in him not being able to carry out activities which he carried out in the past. Dr. Burstein further noted potential issues of secondary gain, meaning benefits the Claimant could anticipate from continuing to complain to an extreme degree about physical and mental pain attributable to the work injury. The Claimant reported an additional lawsuit having been filed, with the Claimant also indicating the anger he felt towards the crane operator, his boss at Defendant/Employer, as well as towards the Workers' Compensation carrier. Dr. Burstein provided a summary of his opinions, indicating that he felt to a reasonable degree of medical certainty that the Claimant had fully recovered from a transient or temporary post-traumatic stress disorder as a result of the work injury, and was fully capable of undertaking any sort of work that he could undertake prior to the work injury. There was no indication of the Claimant suffering from any kind of psychological problem that he was not suffering from prior to the work injury, or that he could not handle in terms of his existing mental state. Dr. Burstein was of the opinion that the Claimant does not require any further treatment as a result of the work injury. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 43-53)

- h) Upon cross-examination, Dr. Burstein acknowledged that he performs approximately eight to ten Independent Medical Examinations per month, with the vast majority being on behalf of either insurance carriers or defense counsel. He acknowledged approximately ten percent would be on behalf of Claimants/Plaintiffs or their counsel. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 55-57)
- i) Dr. Burstein agreed that he would describe the Claimant as a type A personality type of person. He acknowledged that it would be fair to say that if such type of person suffers a debilitating injury, it may be harder on them mentally than on someone that does not lead such an active lifestyle. Dr. Burstein acknowledged that he would agree that such did contribute for awhile, Dr. Burstein believes approximately the first six months or year following the work injury, due to the Claimant having additional anger, irritability and depression as a result of not being able to conduct the

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lifestyle that he had become accustom to. He acknowledged that it is his opinion that following the Claimant's having an opportunity to proceed through therapy with Ms. Williams, that he no longer suffers from the post-traumatic stress disorder or depression associated with the work injury, but continues to be subject to his underlying, pre-existing Dysthymic disorder, a mild depressive illness. Dr. Burstein acknowledged that during his interview of the Claimant, the Claimant reported having feelings of experiencing some sleeplessness, bad dreams, or other symptoms that can be associated with post-traumatic stress disorder. Dr. Burstein explained, that with respect to the Claimant, who was not working regularly, and has not fatigued in the same way that someone would be if they put in eight hours a day on a job, the Claimant tends to lie awake longer at night and to brood more about his circumstances in general, having more opportunity to reflect on his experience. He noted the Claimant has normal memories fueled by a certain amount of anger as reflected in the claims he has made that keep him preoccupied with the work injury. Dr. Burstein indicated, however, that such is different from post-traumatic stress disorder, with the Claimant not suffering from the symptoms of post-traumatic stress disorder, and does not have the type of mental blocking with the difficulty of concentration, let alone anxiety and recall that you would see with someone suffering from post-traumatic stress disorder. Dr. Burstein further noted that within six months to one year, most individuals recover from post-traumatic stress disorder. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 68-72)

- j) Dr. Burstein acknowledged that the Claimant was still suffering from some level of depression, which Dr. Burstein would attribute more to the Claimant's family situation than to the work injury. Dr. Burstein acknowledged that the Claimant suggests that his family situation has deteriorated as a result of the work injury, but Dr. Burstein does not see such to be the case in terms of the history of the Claimant's complaints. He explained what the Claimant describes is sort of a lesser tolerance for relationships in general, both before and since the work injury. He noted that the son of the Claimant's third wife seems to reflect the kinds of problems a teenage son would bring to a mother's remarriage. And what the Claimant describes is a mother going to bat for the son and acting in an alienated fashion towards the Claimant. Dr. Burstein did acknowledge that the Claimant reported having a dampening of his libido, attributed to the

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medications, as well as pain preventing sexual relations with his wife, which conceivably could contribute to the marital discourse, as well as it being conceivable that the pain could magnify the Claimant's anger and irritability. He acknowledged that the Claimant's financial problems as a result of the injury, could also lead to a depressed and anxious state. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 72-76)

- k) Dr. Burstein acknowledged that his opinions as to the Claimant amplifying his pain behaviors through his actions were based upon his observation and interview of the Claimant, as opposed to his reviewing any diagnostic studies or physical examination of the Claimant. He acknowledged it was his opinion that the Claimant was exaggerating his symptoms in order to prove that he was actually experiencing that pain. Dr. Burstein acknowledged that he was crediting the Claimant with having some pain, be it thought that the Claimant's degree of contortion and hugging his leg was an exaggeration of such symptoms, which Dr. Burstein did not see as justified by the rest of his clinical presentation. (10/18/05 Deposition Testimony of Dr. Stuart Burstein, pp. 77-84)

- 10. In opposition to Defendant/Employer's Petition and in support of his own, the Claimant has presented the deposition testimony of Manish Sapra, M.D., obtained February 28, 2006. Dr. Sapra, who is Board Certified in psychiatry, testified in pertinent part as follows:

- a) Dr. Sapra indicated that the Claimant began treatment at the Clearfield-Jefferson Community Mental Health Center in April of 2003, with Dr. Sapra assuming treatment of the Claimant on October 11, 2004. As of October 11, 2004, the Claimant presented being depressed, with his depression having worsened, complaining of symptoms related to the accident, including nightmares and flashbacks, revisiting the accident. Dr. Sapra noted that as of such time, he switched the Claimant to a different anti-depressant, believing that the anti-depressant, which the Claimant had been on, was not helping him. The Claimant was also having some sexual side effects from the medicine, with his anti-depressant being changed to try to alleviate some of those conditions as well. Dr. Sapra indicated that thereafter, he would see the Claimant on an approximately every two to three month basis. Dr. Sapra noted that during the course of his treatment of the Claimant, he also had an opportunity to review the therapy notes of

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Ms. Williams. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 11-16)

- b) Dr. Sapra provided an opinion that his diagnosis for the Claimant was that he was suffering from post-traumatic stress disorder because of the work accident, and that is what Dr. Sapra was providing treatment for. Dr. Sapra acknowledged that the Claimant did have a condition of depression existing prior to the accident, with the Claimant having first been treated for depression in 1993, but those symptoms had suddenly worsened after the accident. Dr. Sapra testified that the Claimant has continued to have symptoms of depression and anxiety, as well as post-traumatic stress disorder. Dr. Sapra indicated that overall he does not believe the Claimant has had a significant improvement in his symptoms since the initiation of his treatment. Dr. Sapra further indicated that as a result of the Claimant's financial situations, together with the secession of payment by compensation for the Claimant's medications, the Claimant has not been able to take all of such medications and he has had significant deterioration during that time, having more symptoms of anxiety, disturbed sleep, and worsening of his depression. Dr. Sapra noted that the Claimant was back on some of his medications as of the time of his deposition. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 16-19)
- c) Dr. Sapra summarized his opinion, indicating that the Claimant has pre-existing depression for which he started treatment in 1993. The Claimant then had his work accident, and since then he has developed post-traumatic stress disorder, with the Claimant presently having a diagnosis of post-traumatic stress disorder and depression. Dr. Sapra indicated that as far as the Claimant's mental health is concerned, his function is certainly limited because of those reasons, such that he does not believe the Claimant would be capable of holding a normal job working a regular eight hour shift, and not believing the Claimant could take the pressures of a job at this point in time. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 19-21)
- d) Upon cross-examination, Dr. Sapra acknowledged that to his understanding the Claimant did have symptoms of depression, including disturbance of sleeping, and a depressed mood prior to the work related injury. He acknowledged the Claimant had treated for anxiety and depression prior to the August 2002 work injury, with a past history which

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would be deemed significant. Dr. Sapra acknowledged that he did not recall the specific history, or what lead the Claimant to treatment for depression in 1992 or 1993. When advised as to the Claimant's testimony that he had been treating at that time for depression as a result of a suicide of his daughter, Dr. Sapra acknowledged that certainly such event could be traumatic enough, standing alone, to result in a depression or post-traumatic stress disorder. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 27-30)

- c) Dr. Sapra acknowledged that such prior treatment is the only time that he was aware of the Claimant having treated for depression.. He acknowledged he was not aware of any other specific history of the Claimant prior to the work injury, other than having treated off and on until the year 2003, when he started coming back again. He acknowledged he was not aware of any history of any particular event occurring in 1998 that lead to continued depression of the Claimant. He acknowledged that such type of history would be helpful with respect to his rendering of opinions. Dr. Sapra acknowledged that marital problems and significant family problems standing alone can lead to depression; as well as angry outbursts and continued anger caused by marital problems. Dr. Sapra acknowledged the Claimant's records are replete with instances of the Claimant experiencing marital problems with a number of his spouses over the years, as well as separating from his present wife in 2005. He acknowledged that such circumstances can lead to a depression. Dr. Sapra acknowledged that from his notes, the Claimant and his wife were going to be divorced, and all the most recent treatment records reflect an anger over his marital problems. Dr. Sapra acknowledged that is something that can lead to depression as well as sleep disturbances. Dr. Sapra acknowledged that he was not aware of any reference in the Claimant's records to anxiety and stress as a result of the Claimant's father's death. He acknowledged the death of a close family member is something that could also lead to ongoing depression. Dr. Sapra also acknowledged that he was not aware or could not recall any history through review of the records that the Claimant had continuous problems with his son or stepson. He acknowledged that is something that would be significant in determining the cause of the Claimant's problems (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 27-35)

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- f) Upon additional cross-examination, Dr. Sapra acknowledged, that the Claimant could have depression and anxiety due to multiple psychosocial stresses that he is facing, including his family marital problems, but he does not think that those contribute or caused the post-traumatic stress disorder. He acknowledged he could not rule out that the other social factors, including the various histories that he was previously unaware of, as a causative factor in the Claimant's circumstances, relative to causing depression. Dr. Sapra acknowledged that it was difficult to state with certainty that the Claimant's current depression continues to be related to an incident occurring at work in 2002, acknowledging that he cannot say that is related to the injury. Dr. Sapra indicated that, in his opinion, he does not believe that the Claimant's post-traumatic stress syndrome has subsided, with the Claimant reporting specifics such as nightmares about the accident and sudden avoidant behavior. (02/28/06 Deposition Testimony of Dr. Manish Sapra, pp. 35-38)
11. An additional hearing was held in this matter on March 14, 2006. At such time, in opposition to Defendant/Employer's Termination Petition, additional testimony of the Claimant was presented in pertinent part as follows:
- a) The Claimant testified that as of the time of his fall and accident in August of 2002, when he jumped he sustained a severe whiplash, hurting his ankles, knees, hips and lower back, ribs and vertebra. He acknowledged he did not seek medical attention immediately after the accident, thinking that he could walk it off, and return to work Monday, following the weekend. However, he still hurt over the weekend, and could hardly move by Monday morning, seeking medical treatment as of that time. He testified as to undergoing ten months of therapy; seeking chiropractic treatment; as well as undergoing injections in his neck and lower back. The Claimant testified as to having continuing pain in his neck, left shoulder, middle of his back, lower back and left knee. As of such time, the Claimant's Petition to Review was amended to include an assertion of an injury to the Claimant's neck, with a comparable amendment of Defendant/Employer's Answer to include a denial of the same. Each counsel were notified as to an opportunity to obtain an extension to the close of the record, in order to complete any additional medical evidence necessary in supporting and/or opposing such amended Petition. (03/14/06 Hearing N.T., pp. 5-19)

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- b) The Claimant testified that as of the time of the hearing, the pain which he was continuing to have was mostly in his neck and behind his left shoulder, as well as being in the middle of his back, lower back, hips and left knee, with his having frequent muscle spasms and headaches, with pain which he would rate on a varying scale from a four to an eight, on a one to ten scale. The Claimant testified that he has difficulty standing for any length of time, with the longest period that he would be able to stand is for approximately two hours, but fifteen to twenty minutes is more comfortable, before sitting for five minutes or so. He indicated he has difficulty sitting for any length of time, only able to sit in one place for approximately a half hour interval before having to get up. He indicated that he is only able to walk between one hundred to two hundred feet, before being played out. He testified that the most he is able to lift and carry is a gallon of milk, weighing eight to nine pounds, and then only able to carry such from his car to the house, not being able to carry it from the store to the car. The Claimant testified as to also having numbness in his right finger and middle finger on his left hand, as well as difficulties with his left wrist. He testified that he is not able to cut the grass, shovel snow, only being able to perform some light housekeeping at home. (03/14/06 Hearing N.T., pp. 19-28)
 - c) Upon cross-examination, the Claimant does not believe he is able to work in any capacity. (03/14/06 Hearing N.T., pg. 31)
12. In further opposition to Defendant/Employer's Petition and in support of his own, the Claimant has presented the deposition testimony of Zhenhui Li, M.D., obtained September 25, 2006. Dr. Li, who is Board Certified by the American Board of Neurology and Psychiatry, with his practice focused of treating patients from a neurologic standpoint, testified in pertinent part as follows:
- a) Dr. Li first began seeing the Claimant on March 23, 2005, with the Claimant presenting with a severe generalized pain, with his symptoms starting after a work accident of August 17, 2002. Dr. Li indicated that he obtained a history from the Claimant as to the Claimant's subsequent medical treatment, with the Claimant presenting with severe headaches, and depression, as well as generalized pain from the neck into the back and limbs. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 12-15)

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- b) Dr. Li testified as to reviewing diagnostic studies, which the Claimant had previously undergone, including an MRI, several scans and X-rays. He indicated that the spine film was actually pretty good, with no evidence of fracture, disc bulging or major problem. Dr. Li ordered a CAT scan of the Claimant's head, as well as an EMG nerve conduction study, testifying that he has seen the Claimant seven times total in his office. Dr. Li indicated that after reviewing the Claimant's CAT scan and EMG, with both being normal, he was pretty much convinced that the Claimant had a chronic pain syndrome or fibromyalgia, as well as post-traumatic stress disorder. He testified that he prescribed the Claimant medication as well as making a referral for pain management treatment, with a Dr. Drass at Allegheny Pain Management. Dr. Li indicated that the results were not very good, with his making an additional referral of the Claimant to a rheumatologist. Dr. Li testified that the Claimant has not really responded at all to any of these treatments, with the pain basically being the same, including same severity. Dr. Li indicated that he did not believe the Claimant's prognosis was very good, with the Claimant's problems starting in 2002 after the severe injury, having not gone away in over more than three years. Dr. Li noted that the Claimant's depression still was not under control very well, and over time he has also had a lot of problems at home with his wife which would not help him. Dr. Li indicated that he did not have much hope of the Claimant returning to work at any time soon. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 15-20)
- c) Dr. Li testified that he has not ordered any Functional Capacity type of examination for the Claimant, with the Claimant's physical examination really not indicating any severe motor or sensory deficit, with the Claimant still being pretty strong, with his motor strength being fine, and showing a little bit more range of motion. Dr. Li indicated that for the Claimant, depression is a major issue. Dr. Li was of the opinion that he did not think the Claimant was capable of employment as of the present time, noting that the Claimant's depression is really not under control. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 19-22)
- d) Upon cross-examination, Dr. Li acknowledged he did not have any records from the Claimant's treating physicians, Drs. Robinson or Hall. He did indicate in his computer he has some records from Alleghany Pain Clinic. He acknowledged he did not have any records in his file from the

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Washington-Jefferson Mental Health Clinic. (09/25/06 Deposition
Testimony of Dr. Zhenhui Li, pp. 23-25)

- e) Dr. Li acknowledged that throughout his visits, the Claimant has had very generalized chronic pain complaints, not limited to one spot. He acknowledged a lot of the Claimant's chief complaints were about depression. Dr. Li acknowledged that the MRI of the Claimant's cervical spine was normal, and he has never formally made a diagnosis with respect to the Claimant's neck. He acknowledged his generalized diagnosis as to a chronic pain condition is based upon the Claimant's subjective complaints of pain. He acknowledged that with respect to the Claimant's diagnosis of fibromyalgia, that such is also based upon the Claimant's subjective complaints, with there not being any objective testing for fibromyalgia, although the Rheumatologist's records did note findings of trigger points. Dr. Li acknowledged that he was primarily providing treatment for the Claimant for physical complaints, with his treatment not focusing on the mental aspect. He acknowledged he did not perform any complete psychological examination of the Claimant. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 25-30)
- f) Dr. Li acknowledged that in examining the Claimant, the Claimant has had normal deep tendon reflexes with both lower and upper extremities. He acknowledged he has presented consistently with a normal sensory examination. He acknowledged the Claimant has had normal motor examination of both the lower and upper extremities, without evidence of any neurologic deficits. Dr. Li acknowledged that the EMG studies did not reveal any evidence of neuropathy. He acknowledged that the MRI studies performed over time were all normal. He acknowledged that the Claimant has presented with a normal neurologic examination, and just strictly speaking from a physical or neurologic standpoint, objectively the Claimant really does not have any functional impairment. (09/25/06 Deposition Testimony of Dr. Zhenhui Li, pp. 30-36)

13. Based upon the foregoing and review of the record in its entirety, it is further found as follows:

- a) Effective November 7, 2005, the date of Dr. Smith's Independent Medical Examination of the Claimant, the Claimant is found to have fully recovered

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from the physical aspects of his August 17, 2002 injury, accepted by way of the Notice of Compensation Payable describing the nature of the injury as: "upper left arm, right wrist, back, both hips, bruises and contusions."

- b) It is further found, that the Claimant's work injury of August 17, 2002 also resulted in the Claimant's development of post-traumatic stress disorder. However, it is found that effective August 2, 2005, the date of Dr. Burstein's Independent Psychiatric Evaluation of the Claimant, that the Claimant had fully recovered from such post-traumatic stress disorder, as related to his work injury, with any continuing symptomatology, including Dysthymic disorder or depression, and any asserted associated disability not being causally related to the Claimant's work injury of August 17, 2002, but rather resulting from numerous non-work related stressors in the Claimant's life.
- c) In reaching these findings, relative to the physical aspect of the Claimant's work injury, the testimony and opinions of Dr. Smith are found to be credible, probative and persuasive and are found to be more credible, probative, persuasive and unequivocal than those of Dr. Li. Dr. Smith's findings upon physical examination, as to there being no objective findings upon physical examination supporting the Claimant's subjective complaints, are not only not refuted by the testimony and opinions of Dr. Li, but actually supported by the same, with Dr. Li admitting that objectively speaking, the Claimant demonstrated no real functional impairment. Dr. Li further admitted that all the Claimant's diagnostic studies undertaken, including MRIs, CAT scans, and EMG studies were either normal or unremarkable. Dr. Li testified as to the Claimant having very generalized pain complaints, without any specific etiology for such symptoms, other than Dr. Li's impression that the Claimant's depression was not very well controlled. Additionally, although Dr. Li provides a general diagnoses of the Claimant having chronic pain syndrome or fibromyalgia, which he indicated started after the work injury of August 17, 2002, he does not otherwise provide a specific opinion that such diagnoses were causally related to the Claimant's original work injury of August 17, 2002.
- d) In reaching these findings, relative to the Claimant's post-traumatic stress disorder and/or depression, the testimony and opinions of Dr. Burstein are

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found to be credible, probative and persuasive and moreso than those of Dr. Sapra, with Dr. Sapra's opinions found to be less credible, probative and persuasive, and rejected. In reaching these findings, it is initially noted that as the original Notice of Compensation Payable did not accept a psychological component to the Claimant's work injury, it would be the Claimant's Burden of Proof through the submission of unequivocal medical evidence, establishing such causal relationship. With respect to the Claimant's underlying depression, although Dr. Sapra initially testified that the Claimant's depression was exacerbated by his work injury of August 17, 2002, he subsequently acknowledged that it was difficult to state with certainty, that the Claimant's current depression continued to be related to an incident occurring at work in 2002, acknowledging that he cannot say that such is related to the injury. Such would actually be consistent and corroborative of Dr. Burstein's testimony and opinions, with Dr. Burstein acknowledging that the Claimant's work injury, and subsequent disability and financial difficulties may have contributed initially to the Claimant's depression, but at least as of the time of his examination, such was no longer the case, with the Claimant's continuing depression being causally related to the multiple psychosocial non-work related stresses that the Claimant has experienced or is facing, including his family marital problems, as well as his pre-existing condition. With respect to the diagnosis of post-traumatic stress disorder, Dr. Burstein and Dr. Sapra are in agreement, that the Claimant did develop symptoms of post-traumatic stress disorder subsequent to his August 17, 2002 injury. The difference in their opinions, is whether the Claimant continues to have symptoms from such diagnoses, relating to his work injury. On this issue, the testimony and opinions of Dr. Burstein are found to be credible, probative and persuasive and are accepted. The testimony and opinions of Dr. Sapra are not found to be credible, probative and persuasive, and are found to be less credible, probative and persuasive than those of Dr. Burstein and are rejected. In so finding, it is noted that although Dr. Burstein performed his examination of the Claimant on an independent psychiatric basis, as opposed to a treating basis, his actual knowledge and familiarity with the Claimant's psychological history was actually much more thorough and detailed than that of Dr. Sapra. Dr. Sapra acknowledged having an understanding as to the Claimant having a significant prior history of depression and non-work related stresses, but then acknowledged that he was not aware of the Claimant's sixteen year old daughter's suicide in 1992 or 1993, which event

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he acknowledged could be traumatic enough, standing alone, to result in a depression or post-traumatic stress disorder. Dr. Sapra acknowledged he was not aware of the history of the Claimant's second wife dying in his arms from cancer in 1998. Although Dr. Sapra stated that he had access to the Claimant's treatment records, he then acknowledged that he was not aware of any reference in those records to anxiety and stress as a result of the Claimant's father's death in 2004. He acknowledged he was not aware or could not recall any history regarding the Claimant's continuous problems with his son or stepson. He acknowledged that such are factors that would be significant in determining the cause of the Claimant's problems. It is presently found, in light of it being the Claimant's Burden of Proof of establishing a causal relationship between such diagnoses, and any continuing disability associated with the same, as such diagnoses was not part of the accepted work injury, that Dr. Sapra's opinions premised upon a generalized understanding as to the Claimant's subjective symptoms, without specific knowledge as to such significant contributing factors, is not found to be credible under the circumstances, and certainly less credible, probative and persuasive than Dr. Burstein's, who testified as to obtaining a thorough understanding as to all of such conditions.

- e) In reaching these findings, the testimony of the Claimant is accepted in part and rejected in part. The testimony of the Claimant as to having continuing symptoms of depression is accepted, with such not being dispute. However, his placing the focus or basis for such condition primarily upon the work injury, is not found to be credible and is rejected, with such being inconsistent with and rejected by the credible testimony of Dr. Burstein. The testimony of the Claimant as to his physical ailments is not found to be credible and is rejected. In so finding, it was noted by both Drs. Smith and Burstein, that the Claimant engaged in symptom magnifications or inappropriate pain behavior unsupported by any objective findings upon examination or from review of the medical records. Moreover, the Claimant presented specific testimony as to the fairly all-encompassing nature of his symptoms, including testimony that to his understanding, he had injuries to several discs in his neck, with hairline cracks, cracked vertebra, fractured ribs, problems with discs in his lower back, muscle spasms and problems with his knees. Such assertions are not only refuted by the credible testimony of Dr. Smith, but in no manner supported by the testimony of his own treating physician, Dr. Li, with Dr. Li acknowledging

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that there were no such abnormalities found upon diagnostic study or physical examination of the Claimant.

- f) In reaching these findings, the testimony of Ms. Williams is accepted in part and rejected in part. The testimony of Ms. Williams as to the Claimant having continuing symptoms of depression is found to be credible. Such is not specifically in dispute. However, such is not accepted as unequivocal medical testimony as to a causal relationship between the Claimant's assertions of depression, or post-traumatic stress disorder, and his work injury, and/or is found to be less credible, probative and persuasive and less unequivocal than the credible testimony of Dr. Burstein, who is Board Certified in psychiatry and neurology, as to the etiology or causal relatedness of such symptomatology to the Claimant's work injury.
14. Counsel for the Claimant has submitted a Fee Agreement, providing for attorney's fees in the amount of twenty percent of any amounts recovered hereunder.
15. Counsel for the Claimant has further submitted a Bill of Costs, setting forth the Claimant's Costs of Litigation as follows:

01/13/06	Deposition Transcript of Dr. Smith	\$ 132.85
02/28/06	Deposition Transcript of Dr. Sapra	219.75
03/14/06	Hearing Transcript	50.73
09/25/06	Deposition Fee & Transcript of Dr. Li	1,450.85
Total Costs:		\$1,854.18

Counsel for the Claimant, in his Proposed Findings, has additionally submitted a listing of costs of the Claimant in appearing for hearing and meeting with counsel, specifically the mileage associated with the Claimant's travel for hearings, meeting with counsel and attendance at Independent Medical Examinations. It is found that with the exception of the Claimant's round trip to Pittsburgh for Defendant's medical examination on August 2, 2005, and November 7, 2005 round trip examination with Dr. Smith, that all of such other listings are local mileage, for the Claimant's traveling within Clearfield County, and as such, are not reimbursable under the Pennsylvania Workers' Compensation Act. The Claimant shall be reimbursed by Defendant/Employer for mileage to attend Defendant/Employer's medical examinations.

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CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, review of the evidence in its entirety, and appurtenant law, this adjudicator concludes as follows:

1. At all times hereto, the parties were bound by the respective provisions of the Pennsylvania Workers' Compensation Act, as amended.
2. Defendant/Employer has sustained its Burden of Proof, that effective November 7, 2005, the date of Dr. Smith's Independent Medical Examination of the Claimant, the Claimant had fully recovered from his work related injury of August 17, 2005, and specifically the physical aspects of such injury as accepted in the Notice of Compensation Payable.
3. The Claimant has sustained his Burden of Proof relative to the Petition for Review in part, that the accepted description of injury as set forth in the Notice of Compensation Payable included the diagnoses of post-traumatic stress disorder. However, the Claimant has failed to sustain his Burden of Proof, that such condition or diagnoses continued to exist, subsequent to August 2, 2005, the date of Dr. Burstein's Independent Psychiatric Examination. In the alternative, Defendant/Employer has sustained its Burden of Proof that effective August 2, 2005, the Claimant had fully recovered from the post-traumatic stress disorder aspect of his work injury of August 17, 2005. To the extent that there are any unpaid medical costs or expenses for the Claimant's receipt of treatment for post-traumatic stress disorder, for services provided prior to August 2, 2005, Defendant/Employer shall be responsible for making payment of such, conditioned upon such medical costs and expenses, having been properly submitted, as well as the reasonableness and necessity of such, being subject to the Cost Containment Provisions of the Pennsylvania Workers' Compensation Act, as amended.
4. The Claimant has failed to sustain his Burden of Proof that Defendant/Employer violated the provisions of the Pennsylvania Workers' Compensation Act, as amended. In so finding, it is noted that as of the time of the filing of the Petition, the accepted description of injury did not include either a diagnosis of post-

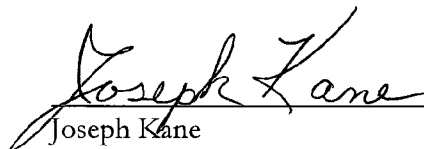
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traumatic stress disorder or depression. Although ultimately, it has been found that the Claimant's work injury did include a diagnosis of post-traumatic stress disorder, from which the Claimant is found to have fully recovered as of August 2, 2005, the date of Dr. Burstein's deposition, from review of the significant packet of medical bills and reports submitted, there is no clear breakdown or means of readily distinguishing from the present record, between the treatment provided to the Claimant for post-traumatic stress disorder and his underlying depression. As noted by Dr. Sapra, he could not specifically relate the Claimant's continuing depression as causally related to the work injury. Accordingly, Defendant/Employer/Insurer shall be responsible for timely making payment of the Claimant's medical costs and treatment for post-traumatic stress disorder through August 2, 2005, upon re-submission of such bills, consistent with the Cost Containment Provisions of the Pennsylvania Workers' Compensation Act, with the bills for treatment of the post-traumatic stress disorder being differentiated from the Claimant's treatment for depression.

5. It is found that Defendant/Employer has sustained its Burden of Proof that its contest of this matter was reasonable. Accordingly, no award of attorney's fees is made against Defendant/Employer.
6. It is found that as the Claimant has been successful in his proceedings in part, Defendant/Employer shall be responsible for reimbursement of the Claimant's Costs of Litigation, as set forth in the Claimant's Bill of Costs, in a total amount of \$1,854.18, together with reimbursement of the Claimant's mileage for attendance at the two Independent Medical Examinations to Pittsburgh and Greensburg, or an additional amount of \$168.97.
7. The Fee Agreement entered into between the Claimant and his counsel, providing for attorney's fees in the amount of twenty percent of any amounts awarded hereunder is hereby approved. However, as there is no further award of indemnity benefits hereunder, based upon the termination of the Claimant's compensation benefits, such is not further addressed herein.

Accordingly, the following Order is entered.

I verify that I am the President of BJR, Inc., d/b/a Conservco Construction, a corporation organized and doing business under the laws of the Commonwealth of Pennsylvania, one of the within Defendants; I make this Affidavit on its behalf being authorized to do so; I verify that the statements made in the foregoing Amended New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements herein made are subject to the penalties of 18 Pa. C. S. Section 4904, relating to unsworn falsification to authorities.



Joseph Kane

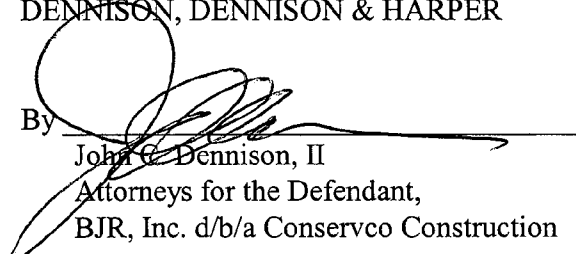
CERTIFICATE OF SERVICE

I certify that a certified copy of the foregoing Amended New Matter was served on the 16th day of July, 2007, by United States Mail, First Class, Postage Prepaid, addressed to the following:

Frederick M. Neiswender, Esquire
NEISWENDER & KUBISTA
211 ½ North Second Street
Clearfield, PA 16830

Gerald J. Hutton, Esquire
BASHLINE & HUTTON
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for the Defendant,
BJR, Inc. d/b/a Conservco Construction

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and BEVERLY
I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,

Defendants.

CIVIL ACTION - LAW

Number 1246 of 2004, C. D.

Type of Case: Civil Division

Type of Pleading: Motions in Limine

Filed on Behalf of: BJR, Inc., d/b/a Conservco
Construction, Defendant

Counsel of Record for this Party:
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED *NO CC*
7/14/07
JUL 19 2007 *GR*

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and BEVERLY I.
McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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*
* Number 1246 of 2004, C. D.

MOTIONS IN LIMINE

AND NOW, comes the Defendant, BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, by its attorneys, Dennison, Dennison & Harper, who file the following
Motions in Limine:

FACTS

On August 17, 2002, William J. McCusker, Defendant, was employed by Able Company
1, Inc. On this date, he was installing a fire suppression system on a silo located on property
owned by Appalachian Wood Products, Inc., Defendant, which is located on Route 879 in
Clearfield, Pennsylvania. The Plaintiff was riding in a man basket and had been positioned on
the silo by a boom truck operated by Joseph Kane, an agent and employee of Defendant, BJR,
Inc., d/b/a Conservco Construction.

After William J. McCusker had completed his work, he was being lowered to the ground.
As William J. McCusker neared the ground, the boom truck started to roll over which caused the
man basket to descend more quickly than normal. The Plaintiff, William J. McCusker, alleges

that the Defendant, BJR, Inc., trading as Conservco Construction, was negligent in the maintenance, repair and operation of the boom truck and that he was injured when the man basket hit the ground.

The case is scheduled for trial on October 17, 18 and 19, 2007.

**MOTION I- EXCLUSION OF LOSS OF FUTURE EARNINGS
ON ACCOUNT OF COLLATERAL ESTOPPEL**

1. As a result of the accident set forth in Plaintiffs' Complaint, the Plaintiff, William J. McCusker, began receiving Workmen's Compensation benefits in the amount \$204.91 a week.

2. By Opinion, which is now a final decision, in the case William J. McCusker v. Able Company 1, and Rockwood Casualty Insurance Co., which is attached hereto as Exhibit A and is made part hereof, The Honorable Michael E. Koll, Workers' Compensation Judge, determined that William J. McCusker had fully recovered from the physical aspects of the injuries which he sustained in the accident as of November 7, 2005.

3. In the same Opinion, The Honorable Michael E. Koll, Workers' Compensation Judge, determined that William J. McCusker had fully recovered from the post-traumatic stress disorder aspect of the injures relating to the accident as of August 17, 2005.

4. The above determinations by The Honorable Michael E. Koll collaterally estop the Plaintiff, William J. McCusker, from introducing any evidence or otherwise mentioning or trying to prove that he was unable to work after November 7, 2005, or that he was suffering from post-traumatic distress disorder as a result of the accident after August 17, 2005.

WHEREFORE, the Defendant, BJR, Inc., trading as Conservco Construction, moves Your Honorable Court in Limine to prevent Plaintiff or his counsel from offering any evidence or otherwise trying to prove that he was unable to work or had not fully recovered from the physical aspects of the injuries which he sustained in the accident as of November 7, 2005, or that he had not fully recovered from the post-traumatic stress disorder aspect of his injuries as of August 17, 2005.

MOTION II- EXCLUSION OF WORK COMP BENEFITS

1. The Plaintiff, William J. McCusker, has received workmen's compensation benefits as a result of the accident described in his Complaint.
2. Any evidence that the Plaintiff, William J. McCusker, is receiving workmen's compensation benefits and the amount of such benefits is irrelevant, immaterial and may only confuse the jury.

WHEREFORE, the Defendant, BJR, Inc., trading as Conservco Construction, moves Your Honorable Court in Limine to prevent the Plaintiff or his counsel from offering any evidence or mentioning the fact that the Plaintiff, William J. McCusker, has received workmen's compensation benefits or the amount of such benefits.

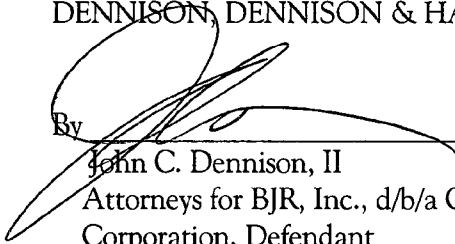
MOTION III- EXCLUSION OF SSD BENEFITS

1. Since the time of the accident set forth in Plaintiff's Complaint, the Plaintiff, William J. McCusker, has begun to receive Social Security disability benefits.

2. Any evidence that the Plaintiff, William J. McCusker, is receiving Social Security Disability benefits and the amount of such benefits is irrelevant, immaterial and may only confuse the jury.

WHEREFORE, the Defendant, BJR, Inc., trading as Conservco Construction, moves Your Honorable Court in Limine to prevent Plaintiff, William J. McCusker, or his counsel from offering any evidence or mentioning the fact that the Plaintiffs is receiving Social Security Disability benefits.

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II
Attorneys for BJR, Inc., d/b/a Conservco
Corporation, Defendant

WILLIAM J. McCUSKER and BEVERLY I.
McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION, and APPALACHIAN
WOOD PRODUCTS, INC.,
Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law
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* Number 1246 of 2004, C. D.

ORDER

AND NOW, this 25 day of July, 2007, after consideration of the Motions in Limine
filed by the Defendants, it is hereby ORDERED AND DECREED as follows:

(1) a Rule is issued upon the Plaintiff to show cause why the Defendants are not entitled
to have their Motions in Limine granted;

(2) the Plaintiff shall file an Answer to these Motions within _____ days of this date;

(3) oral argument shall be held in Courtroom No. 1 of the Clearfield County,
Courthouse on the 24th day of September, 2007, at 11:00 A.m.

BY THE COURT


P.J.

FILED
0/2:38/301
JUL 25 2007

3cc
Amy Dennison

William A. Shaw
Prothonotary/Clerk of Courts

(6K)

FILED

JUL 25 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/25/07

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

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

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiff,

v.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

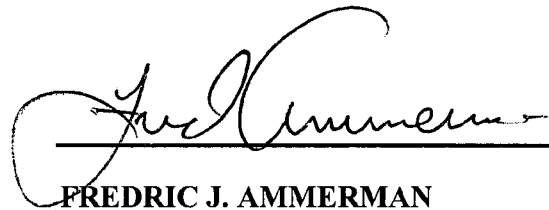
Defendants

No. 04-1246-CD

ORDER

NOW, this 24th day of August, 2007, following argument on July 10, 2007 and review of Defendant's Motion for Summary Judgment and the record, Defendant Appalachian Wood Products, Inc.'s (hereafter Defendant) Motion for Summary Judgment is HEREBY GRANTED. It is the Order of this Court that Appalachian Wood Products, Inc. is HEREBY DISMISSED from the case.

BY THE COURT:



FREDRIC J. AMMERMAN

President Judge

FILED
012:32/504
AUG 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atty's: Neiswender
Dennison
Gallishen

6X

FILED

AUG 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/27/07

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,
vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION,

Defendant.

CIVIL ACTION - LAW

Number 1246 - 2004 CD

Type of Case: Civil Division

Type of Pleading: Notice of Videotape
Deposition of Bill Hennessey, M.D.

Filed on behalf of: Defendant

Counsel of Record for this Party:

John C. Dennison, II
Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED No CC
m/11: 204m
AUG 31 2007
William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM J. McCUSKER and
BEVERLY I. McCUSKER,

Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION,

Defendant.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
*
* Civil Action Law
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*
* Number 1246 - 2004 CD

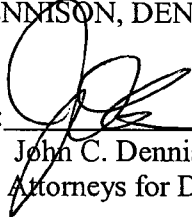
NOTICE OF VIDEOTAPE DEPOSITION

TO: Fred M. Neiswender, Esquire
211 ½ North Second Street
Clearfield, PA 16830

Take notice that the deposition of **BILL HENNESSEY, M.D.** will be taken pursuant to the Pennsylvania Rules of Civil Procedure, as amended, before a Notary Public duly authorized by law to administer oaths, on Friday, September 28, 2007 at 9:30 a.m., at the offices of Bill Hennessey, M.D., 120 Village Drive, Greensburg, Pennsylvania 15601. The deposition will be taken upon oral examination for all purposes provided for and allowed by the Pennsylvania Rules of Civil Procedure.

DENNISON, DENNISON & HARPER

Date: August 29, 2007

By: 

John C. Dennison, II
Attorneys for Defendant

CERTIFICATE OF SERVICE

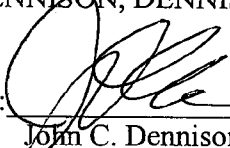
I hereby certify that on the 29th day of August, 2007, a true and correct copy of the foregoing Notice of Videotape Deposition for Bill Hennessey, M.D. was mailed by United States mail, first class, postage prepaid, addressed to the following:

Fred M. Neiswender, Esquire
211 ½ North Second Street
Clearfield, PA 16830

Bill Hennessey, M.D.
120 Village Drive
Greensburg, PA 15601

Sargent's Court Reporting Service, Inc.
210 Main Street
Johnstown, PA 15901

DENNISON, DENNISON & HARPER

By: 

John C. Dennison, II
Attorneys for Defendant

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

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs,

vs.

BJR, INC. d/b/a/ CONSERVCO
CONSTRUCTION,
Defendant.

No. 04-1246-C.D.

Type of case: Civil

Type of pleading: Notice of Videotape
Deposition of Michael J. Drass, M.D.

Filed on behalf of: Plaintiffs,
William J. McCusker and Beverly I.
McCusker

Counsel for Plaintiffs:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED 4cc
013:4764
OCT 09 2007 Amy Neiswender
(GK)

William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,

Plaintiffs,

vs.

BJR, INC. d/b/a/ CONSERVCO
CONSTRUCTION,

Defendant.

No. 04-1246-C.D.

NOTICE OF VIDEOTAPE DEPOSITION

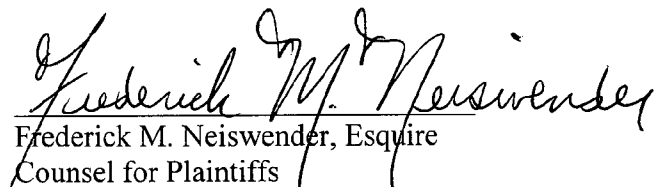
TO: John C. Dennison, II, Esq.
Dennison, Dennison & Harper
293 Main Street
Brookville, PA 15825

Take notice that the deposition of **MICHAEL J. DRASS, M.D.** will be taken pursuant to the Pennsylvania Rules of Civil Procedure, as amended, before a Notary Public duly authorized by law to administer oaths, on Thursday, October 11, 2007 at 4:00 p.m., at the offices of Allegheny Pain Management, 1402 Ninth Avenue, Altoona, Pennsylvania 16602. The deposition will be taken upon oral examination for all purposes provided for and allowed by the Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

NEISWENDER & KUBISTA

Date: October 9, 2007


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs

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

WILLIAM J. MCCUSKER and	:	
BEVERLY I. MCCUSKER,	:	
Plaintiffs,	:	
	:	
vs.	:	No. 04-1246-C.D.
	:	
BJR, INC. d/b/a/ CONSERVCO	:	
CONSTRUCTION,	:	
Defendant.	:	

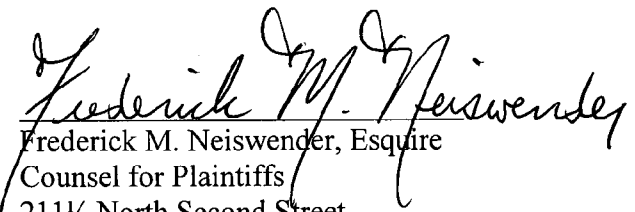
CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing
Notice of Videotape Deposition for Michael J. Drass, M.D. was made on October 9, 2007 by
first-class mailing, postage prepaid, a true copy to the following persons at the following
addresses:

John C. Dennison, II, Esq.
Dennison, Dennison & Harper
293 Main Street
Brookville, PA 15825

Michael J. Drass, M.D.
Allegheny Pain Management
1402 Ninth Avenue
Altoona, PA 16602

Sargent's Court Reporting Service, Inc.
210 Main Street
Johnstown, PA 15901


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs
211½ North Second Street
Clearfield, Pennsylvania 16830

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

WILLIAM McCUSKER and
BEVERLY I. McCUSKER,

Plaintiff,

v.

No. 04-1246-CD

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION and APPALACHIAN
WOOD PRODUCTS, INC.

Defendants

FILED

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William A. Shaw

Prothonotary/Clerk of Courts

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MCKEN

OPINION

William McCusker (hereafter Plaintiff) was employed by Able Company 1, Inc. On August 17, 2002 the Plaintiff was installing a fire suppression system on a silo located on property owned by Appalachian Wood Products, Inc. The Plaintiff was installing this system from a man basket that was positioned on the silo by a boom truck operated by Joseph Kane, an agent and employee of Defendant BJR, Inc. d/b/a Conservco Construction (hereafter Defendant Conservco).

After Plaintiff had completed this task and as he was being lowered to the ground, one of the crane's out riggers failed causing the man basket containing Plaintiff to crash to the ground. The Plaintiff alleges that Defendant Conservco was negligent in the maintenance, repair and operation of the boom truck and that he was injured when the man basket hit the ground.

With respect to the Motion in Limine regarding the exclusion of loss of future earning on account of collateral estoppel, this Court finds that the Plaintiff is estopped from introducing any evidence or otherwise trying to prove that he was unable to work or had not fully recovered from the physical aspects of the injuries which he sustained in the accident as of November 7, 2005, or that he had not fully recovered from the post-traumatic stress disorder aspect of his injuries as of

August 17, 2005. The doctrine of collateral estoppel states "determination of particular questions of fact essential to a judgment which are actually litigated and determined by final judgment are conclusive between parties in any subsequent action on a different cause of action."

Roberts v. Estate of Pursley, 700 A.2d 475, 479-80 (Pa.Super. 1997). For the doctrine of collateral estoppel to apply these five elements must be shown:

1. Identity of the issues decided in the prior adjudication.
 2. Final judgment on the merits in the prior adjudication.
 3. The party against whom the plea is asserted was a party in the prior adjudication.
 4. The party against whom the plea is asserted had a full and fair opportunity to litigate the issue in question in the prior action.
 5. The determination in the prior proceeding was essential to the judgment.
- Id.* at 480.

Here, in the prior adjudication *William J. McCusker vs. Able Company 1, et al.* the Plaintiff presented testimony in an attempt to establish that he was still suffering from post-traumatic stress disorder and his physical disabilities. The Review Petition outlines the extensive testimony presented by the Plaintiff, Joette R. Willaims, a psychotherapist, and Jack D. Smith, M.D. *William J. McCusker v. Able Company 1, et al.* PABWC Claim No. 2430013 pp. 1-13. The Honorable Michael E. Koll, a Worker's Compensation Judge, issued an Opinion, which is now a final decision, finding that the Plaintiff had fully recovered from the physical aspects of the injuries which he sustained as of November 7, 2005. In that Opinion Honorable Michael E. Koll also determined that the Plaintiff had recovered from the post-traumatic stress disorder aspect of the injuries relating to the accident as of August 17, 2005. The determination that the Plaintiff was no longer suffering from any physical or psychological aspects of his injuries was essential to the Honorable Michael E. Koll's Opinion. Therefore, all of the elements that

need to be established for a claim of collateral estoppel have been established and the Plaintiff must be estopped from offering evidence this evidence at trial.

With respect to the Motions in Limine regarding the exclusion of Worker's Compensation benefits and the exclusion of Social Security Disability benefits, this Court finds that no evidence may be introduced at trial showing that the Plaintiff is receiving or did receive either Worker's Compensation benefits or Social Security Disability benefits. Evidence of both Worker's Compensation and Social Security Disability benefits have traditionally been excluded. The Superior Court has stated "such evidence is prejudicial because a jury may conclude that a litigant is seeking double redress for one injury." *Boscia v. Massaro*, 529 A.2d 504, 506 (Pa.Super. 1987) citations omitted.

ORDER

NOW, this 11th day of October, 2007, following argument held on September 24, 2007 and consideration of the briefs, Plaintiff's Motions in Limine are HEREBY GRANTED.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Fredric J. Ammerman", is written over a horizontal line.

FREDRIC J. AMMERMAN
President Judge

WILLIAM J. McCUSKER and BEVERLY I.
McCUSKER,
Plaintiffs,

vs.

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION,

Defendant.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
* Civil Action - Law

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* Number 1246 of 2004, C. D.

FILED

OCT 18 2007

014:101

William A. Shaw
Prothonotary/Clerk of Courts

VERDICT SLIP

AND NOW, October 18, 2007, we, the Jurors impaneled in the above case, find as follows:

- (1) Was the accident involving the Plaintiff, William J. McCusker, a factual cause in causing personal injuries to the Plaintiff, William J. McCusker?

Yes X No

If you answer "No" to question number (1), then you are not to answer question number (2) and you should immediately return to the courtroom. If you answer "Yes" to question number (1), then you should answer question number (2).

- (2) State the amount of damages, if any, sustained by the Plaintiffs, William J. McCusker and Beverly I. McCusker, as a result of the accident.

\$ 100,000.

Your foreperson should sign and date this Verdict Slip in the spaces provided below after you have completed answering it in accordance with instructions provided above. You should then notify the tipstaff that you have reached a verdict and you will be returned to the Courtroom.

Foreperson: [Signature] 10/18/07

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

CASE NO. 04-1246-CD

Date of Jury Selection: August 28, 2007

Presiding Judge: Fredric J. Ammerman, President Judge

William C. McCusker and Beverly I. McCusker

Court Reporter: Tom Snyder

Date of Trial: October 17-19, 2007

VS

Date Trial Ended: OCT 18TH 2007

BJR Inc. and Conservco Construction

MEMBERS OF THE JURY

1. Shannon Maynard
2. Francene Thomas
3. Carla Heitsenrether
4. Randall Shaw
5. Robert Little
6. Grace Smeal
ALT #1 Richard Courtright

7. Robert Malinich
8. Francis Hensal
9. William Miller
10. Susan Bernardo
11. Sarah Thoma
12. Gregory Rothrock
ALT #2 Mary Kephart

PLAINTIFF'S WITNESSES:

1. William McCusker
2. Beverly McCusker
3. ~~Randall Shaw~~ ~~Ext~~
4. DR Michael DRABE videotape
5. DR. Marish Sapra
6. James Rodgers ECONOMIST

DEFENDANT'S WITNESSES:

1. Harold BRATTON
2. DR. William Hennessey
3. —
4. —
5. —
6. —

PLAINTIFF'S ATTY: Frederick M. Neiswender Esq.

DEFENDANT'S ATTY: John C. Dennison II Esq.

ADDRESS TO JURY: 1:19 pm

ADDRESS TO JURY: 1:04 pm

JUDGE'S ADDRESS TO JURY: 1:40 pm

JURY OUT: 2:16 pm JURY IN: 3:55 pm

VERDICT: For Plaintiff \$ 100,000.-

FOREPERSON: #7

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

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION
Defendants.

No. 2004-1246-CD

Type of case: Civil Action

**PLAINTIFF'S MOTION TO
MOLD VERDICT AND FOR
DELAY DAMAGES**

Filed on behalf of: Plaintiffs,
William J. McCusker and
Beverly I. McCusker

Counsel for Plaintiffs:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED
OCT 26 2007

William A. Shaw
Prothonotary/Clerk of Courts

3cc
Atty Neiswender

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

WILLIAM J. MCCUSKER and	:	
BEVERLY I. MCCUSKER,	:	
Plaintiffs,	:	
	:	
vs.	:	No. 2004-1246-CD
	:	
BJR, INC. d/b/a CONSERVCO	:	
CONSTRUCTION	:	
Defendants.	:	

PLAINTIFF'S MOTION TO MOLD VERDICT AND FOR DELAY DAMAGES

NOTICE

You are hereby notified to file a written answer to the attached Motion to Mold Verdict and for Delay Damages with twenty (20) days from the filing of the Motion or the delay damages sought in the Motion may be added to the verdict or decision against you.

AND NOW, comes the Plaintiffs by their counsel FREDERICK M. NEISWENDER, and hereby seeks an ORDER molding the verdict in the above action to include damages for delay, court costs and additional medical expenses and in support thereof states as follows:

1. This action for damages relating to personal injuries was first served upon the Defendants on August 20, 2004, causing delay damage to begin to run on August 20, 2005.
2. Plaintiffs did nothing to cause delay of the trial.
3. Defendants made a written offer of settlement for Thirty Thousand Dollars and 00/100 (\$30,000.00) on September 11, 2007.

4. A jury verdict for One Hundred Thousand Dollars and 00/100 (\$100,000.00) was entered on October 18, 2007.

5. Pursuant to Rule 238(b)(3) Pa. R. Civ. P., Plaintiffs are entitled to delay damages.

6. Computation of applicable damage for delay is as follows:

2005	256/365 x	\$100,000 x .0625	=	\$4,383.56
2006		\$100,000 x .0825	=	\$8,250.00
2007	291/365	\$100,000 x .0925	=	\$7,374.66
TOTAL				= \$20,008.22

7. Plaintiffs under the law are entitled to have their verdict molded to include Twenty Thousand Eight and 22/100 Dollars (\$20,008.22) and hereby request the same.

8. Additionally, Plaintiffs are entitled to recoup record costs of One Hundred Nineteen Dollars and 37/100 (\$119.37) for filing fees and service of process.

9. Additionally, at the time of trial, counsel for the parties entered into a Stipulation regarding medical costs.

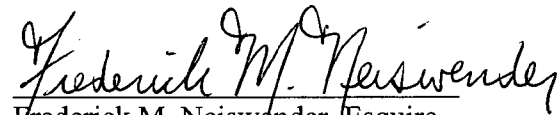
10. The terms of the Stipulation set the medical costs at Forty-one Thousand Eight Hundred Fifty-three Dollars and 58/100 (\$41,853.58) with the added stipulation that if Plaintiffs receive a verdict in excess of this amount and it is determined the medical costs are greater than this amount, the Plaintiffs may petition the Court to mold the verdict to include the additional medical costs.

11. Counsel for Rockwood Casualty Insurance, Christine C. Podrasky, Esq., has informed counsel for Plaintiffs that total medical costs were in fact, Forty-eight Thousand Five Hundred Forty-six and 89/100 Dollars (\$48,546.89). *See attached Exhibit "A"*

12. Plaintiffs request this Court mold the verdict to include an additional Six Thousand Six Hundred Ninety-three and 31/100 Dollars (\$6,693.31) for additional medical damages.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an ORDER molding the verdict to include damages for delay, record costs and additional medical damages.

Respectfully Submitted,


Frederick M. Neiswender, Esquire
Attorney for Plaintiffs

WAGNER & FINN

Attorneys at Law

Michael J. Wagner
Thomas P. Finn
Christine C. Podratsky

107 Lakemont Park Blvd
Altoona, PA 16602
(814) 944-4700
(814) 944-3705 Fax

Please reply to Altoona Office

Ebensburg Office:
103 S. Center St. - 2nd Floor
Ebensburg, PA 15931
(814) 472-7833

October 18, 2007

VIA FACSIMILE 814-765-7205

Frederick M. Neiswender, Esquire
Neiswender & Kubista
211½ N. Second Street
Clearfield, PA 16830

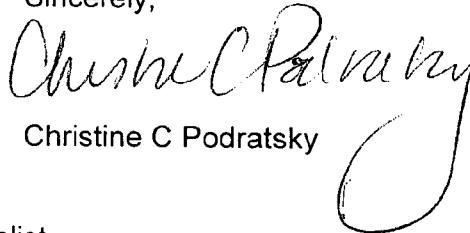
In re: William McCusker v. Able Company 1

Dear Fred:

In follow-up to your discussions with our office yesterday, I did contact Rockwood Casualty for the correct amount of their outstanding lien. It is as follows: \$33,283.62 for wage loss, and \$48,546.89 for medical, for a total of \$81,830.51.

If you should have any further questions, please let me know.

Sincerely,



Christine C Podratsky

CCP/kc

cc: Sandra Klink, WC Claims Specialist
Rockwood Casualty Insurance Co.

Exhibit "A"

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

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,

Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION

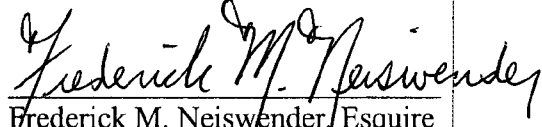
Defendants.

No. 2004-1246-CD

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Plaintiff's Motion to Mold Verdict and for Delay Damages was made upon BJR, Inc. d/b/a Conservco Construction, by first class mail, postage prepaid, a true copy to their attorney of record on October 26, 2007, at the following address:

John C. Dennison, II, Esquire
Dennison, Dennison & Harper
293 Main Street
Brookville, PA 15825


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830

20

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

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION
Defendants

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NO. 04-1246-CD

ORDER

NOW, this 31st day of October, 2007, the Court being in receipt of the Plaintiffs' Motion to Mold Verdict and for Delay Damages, it is the ORDER of this Court that argument on said Motion shall be held on the 15th day of November, 2007 at 9:30 A m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania. Fifteen minutes has been reserved for this matter.

BY THE COURT,

FILED

09:30/64
NOV 01 2007

cc Atty's:

Neiswander
Dennison

William A. Shaw
Prothonotary/Clerk of Courts

(6K)



FREDRIC J. AMMERMAN
President Judge

FILED

NOV 01 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/1/07

== You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

Defendant(s) ☒ Defendant(s) Attorney

Special Instructions:

C9

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER

-VS-

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION

No. 04-1246-CD

O R D E R

AND NOW, this 15th day of November, 2007, in consideration of Plaintiffs' Motion to Mold Verdict and for Delay of Damages, and the parties having entered into a stipulation regarding the same, it is the ORDER of this Court that Plaintiffs' Motion be and is hereby granted. The verdict is hereby molded to the amount of One Hundred Twenty-Four Thousand Seven Hundred Thirty-One Dollars and Eighty-Six (\$124,731.86) Cents in favor of the Plaintiffs, William J. McCusker and Beverly I. McCusker, and against the Defendant, BJR, Inc., d/b/a Conservco Construction.

BY THE COURT,



President Judge

FILED
019:41301
NOV 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

cc: Atty's:
Naswender
Dennison

(6K)

FILED

NOV 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/16/07

 You are responsible for serving all appropriate parties.

 X The Prothonotary's Office has provided service to the following parties:

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION,
Defendant.

No. 04 - 1246 - C.D.

Type of case: Civil

Type of pleading: Stipulation

Filed on behalf of: Plaintiffs,
William J. McCusker and
Beverly I. McCusker

Counsel for Plaintiffs:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED
0133761
NOV 16 2007

2cc
Att'y Neiswender
(EK)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and	:	
BEVERLY I. MCCUSKER,	:	
Plaintiffs,	:	
	:	
vs.	:	No. 04 - 1246 - C.D.
	:	
BJR, INC. d/b/a CONSERVCO	:	
CONSTRUCTION,	:	
Defendant.	:	

STIPULATION

NOW, in consideration of Plaintiffs' Motion to Mold Verdict and for Delay Damages, the parties having reached agreement on the same, they have entered into the following Stipulation:

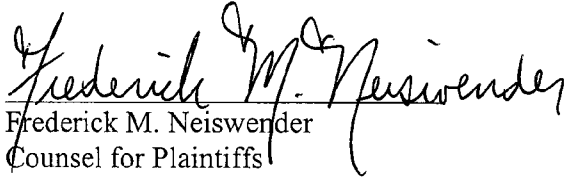
1. Computation of applicable damage for delay is as follows:

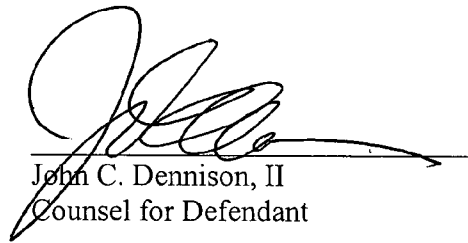
2005	134/365	x	\$100,000.00	x	.0625	=	\$2,294.52
2006			\$100,000.00	x	.0825	=	\$8,250.00
2007	291/365	x	\$100,000.00	x	.0925	=	<u>\$7,374.66</u>
					TOTAL	=	\$17,919.18

2. Plaintiff is entitled to \$119.37 in record costs.
3. Plaintiff is entitled to additional medical damages in the amount of \$6,693.31.
4. The total amount for delay damages, record costs and additional medical damages is \$24,731.86.
5. Verdict in this matter shall be molded to \$124,731.86.

We, the undersigned, do hereby agree and consent to the terms of the foregoing

Stipulation:


Frederick M. Neiswender
Counsel for Plaintiffs


John C. Dennison, II
Counsel for Defendant

FILED

NOV 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

120
ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION,
Defendant.

No. 2004-1246-CD

Type of case: Civil

Type of pleading: **Praeipice to Enter
Judgment**

Filed on behalf of: Plaintiffs,
William J. McCusker and
Beverly I. McCusker

Counsel for Plaintiffs:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED ^{pa \$20.00} ^{Att}
0/3:55 ^{um} 3cc Neiswender
FEB 19 2008
(um)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

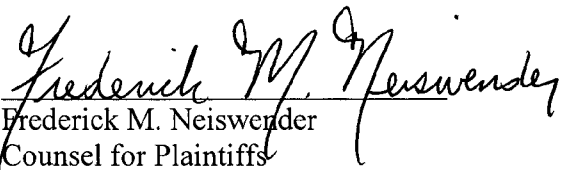
WILLIAM J. MCCUSKER and	:	
BEVERLY I. MCCUSKER,	:	
Plaintiffs,	:	
	:	
vs.	:	No. 2004-1246-CD
	:	
BJR, INC. d/b/a CONSERVCO	:	
CONSTRUCTION,	:	
Defendant.	:	

PRAECIPE TO ENTER JUDGMENT

TO THE PROTHONOTARY:

Please enter judgment in favor of the Plaintiffs against the Defendant as set forth in the attached Order.

Respectfully submitted,


Frederick M. Neiswender
Counsel for Plaintiffs

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

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER

-vs-

BJR, INC., d/b/a CONSERVCO
CONSTRUCTION

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No. 04-1246-CD

O R D E R

AND NOW, this 15th day of November, 2007, in consideration of Plaintiffs' Motion to Mold Verdict and for Delay of Damages, and the parties having entered into a stipulation regarding the same, it is the ORDER of this Court that Plaintiffs' Motion be and is hereby granted. The verdict is hereby molded to the amount of One Hundred Twenty-Four Thousand Seven Hundred Thirty-One Dollars and Eighty-Six (\$124,731.86) Cents in favor of the Plaintiffs, William J. McCusker and Beverly I. McCusker, and against the Defendant, BJR, Inc., d/b/a Conservco Construction.

BY THE COURT,

/s/ Fredric J Ammerman

President Judge and attested copy of the original
statement filed in this case.

NOV 16 2007

Attest.

William L. Brown
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,

Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION,

Defendant.

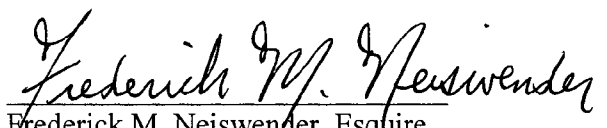
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No. 2004-1246-CD

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Praecipe to Enter Judgment was made on February 19, 2008 upon BJR, Inc. d/b/a Conservco Construction, by mailing, first class, postage prepaid, a true copy to their attorney of record at the following address:

John C. Dennison, II, Esquire
Dennison, Dennison & Harper
293 Main Street
Brookville, Pennsylvania 15825


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,
Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION,
Defendant.

No. 2004-1246-CD

Type of case: Civil

Type of pleading: **Praeipie to Satisfy
Judgment**

Filed on behalf of: Plaintiffs,
William J. McCusker and
Beverly I. McCusker

Counsel for Plaintiffs:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED pd \$7.00 Att'y
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FEB 19 2008 (um) Sat issued
to Att'y Neiswender
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and
BEVERLY I. MCCUSKER,

Plaintiffs,

vs.

BJR, INC. d/b/a CONSERVCO
CONSTRUCTION,

Defendant.

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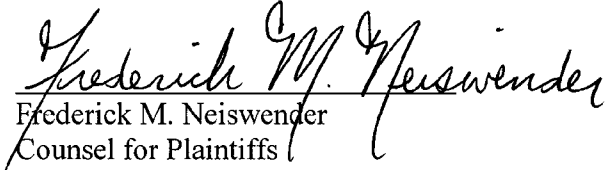
No. 2004-1246-CD

PRAECIPE TO SATISFY JUDGMENT

TO THE PROTHONOTARY:

Please mark judgment entered in the above-captioned matter, SATISFIED.

Respectfully submitted,


Frederick M. Neiswender
Counsel for Plaintiffs

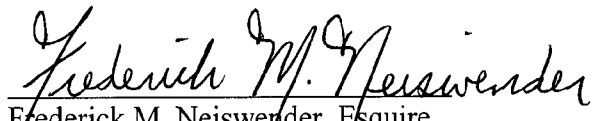
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION)

WILLIAM J. MCCUSKER and	:	
BEVERLY I. MCCUSKER,	:	
Plaintiffs,	:	
	:	
vs.	:	No. 2004-1246-CD
	:	
BJR, INC. d/b/a CONSERVCO	:	
CONSTRUCTION,	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Praecipe to Satisfy Judgment was made on February 19, 2008 upon BJR, Inc. d/b/a Conservco Construction, by mailing, first class, postage prepaid, a true copy to their attorney of record at the following address:

John C. Dennison, II, Esquire
Dennison, Dennison & Harper
293 Main Street
Brookville, Pennsylvania 15825


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CERTIFICATE OF SATISFACTION OF JUDGMENT

No.: 2004-01246-CD

William J. McCusker
Beverly I. McCusker

Vs.

Debt: \$

Atty's Comm.:

BJR, Inc.
Conservco Construction

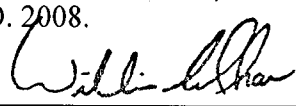
Interest From:

Appalachian Wood Products, Inc.

Cost: \$7.00

NOW, Tuesday, February 19, 2008 , directions for satisfaction having been received, and all costs having been paid, SATISFACTION was entered of record.

Certified from the record this 19th day of February, A.D. 2008.


Prothonotary



Staple

Staple



04-1247-CD
MICHAEL T. ALLMAN VS GRICE GUN SHOP, INC, et al

Michael Allman vs Grice Gun Shop et al
2004-1247-CD

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

MICHAEL T. ALLMAN,

Plaintiff

vs.

No.

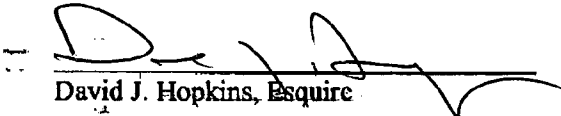
04-1247-CD

GRICE GUN SHOP, INC. and
BURRIS COMPANY, INC. Defendants

PRAECIPE FOR WRIT OF SUMMONS

TO: Prothonotary

Please prepare and issue a Writ of Summons against GRICE GUN SHOP, INC. and
BURRIS COMPANY, INC. above named Defendants.


David J. Hopkins, Esquire

Date: 8-13-2004

FILED
8/13/04
AUG 13 2004

EGK

Atty Hopkins
pd 85.00

William A. Shaw
Prothonotary/Clerk of Courts

COPY

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

MICHAEL T. ALLMAN, :
Plaintiff :

vs. :

No. 04-1247-CJ

GRICE GUN SHOP, INC. and :
BURRIS COMPANY, INC. Defendants :

WRIT OF SUMMONS

TO: GRICE GUN SHOP, INC.
216 Reed Street
Clearfield PA 16830

You are hereby notified that MICHAEL T. ALLMAN has commenced an action against you.

Date: August 13, 2004

Prothonotary

Seal of Court:

04-1247CD

Michael T. Allman

vs

Grice Gun Shop, Inc

Burris & Co. Inc

David Hopkins

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

MICHAEL T. ALLMAN
Plaintiff

vs.

GRICE GUN SHOP,
Defendant

No. 2004-1247 C.D.

Type of Pleading: Praecipe to
Discontinue

Filed on behalf of: Michael T. Allman,
Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE
Supreme Court No. 83998

CARL J. ZWICK, ESQUIRE
Supreme Court No. 306554

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

FILED No CC

01/31/25 cm
APR 04 2013

William A. Shaw
Prothonotary/Clerk of Courts

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

MICHAEL T. ALLMAN
Plaintiff

vs.

GRICE GUN SHOP,
Defendant

No. 2004-1247 C.D.

PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Kindly mark the above-captioned civil action settled and discontinued.

HOPKINS HELTZEL LLP

BY: 

David J. Hopkins, Esquire
Attorney for Plaintiff
Supreme Court No. 42519
100 Meadow Lane, Suite 5
DuBois, PA 15801
(814) 375-0300