



11:19 A.M.

**Appeal Docket Sheet**

**Docket Number:** 444 WDA 2009

**Page 1 of 4**

**March 18, 2009**

2005-1541-CD  
Superior Court of Pennsylvania



Rodney J. Chiodo, And Carolyn G. Chiodo, Appellants  
V.

Brian Yarger And Rodger L. Kephart Trucking Inc.

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: March 17, 2009

Awaiting Original Record

**FILED**

MAR 20 2009

W/ 12:05 PM  
William A. Shaw  
Prothonotary/Clerk of Courts

Journal Number:

Case Category: Civil

CaseType:

Trespass

**Consolidated Docket Nos.:**

**Related Docket Nos.:**

**SCHEDULED EVENT**

Next Event Type: Case Initiation

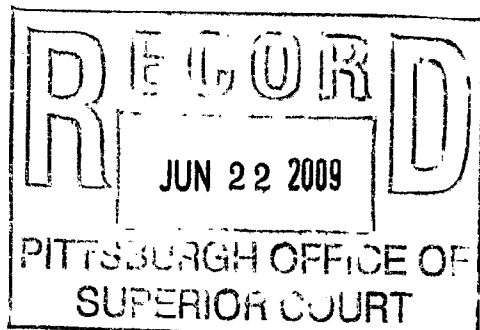
Next Event Type: Receive Docketing Statement

Next Event Type: Original Record Received

Next Event Due Date: March 17, 2009

Next Event Due Date: April 1, 2009

Next Event Due Date: May 18, 2009



Record - 1 part  
Trans. - 2

#44

444 WDA 2009

**Appeal Docket Sheet**

Superior Court of Pennsylvania

**Docket Number: 444 WDA 2009****Page 2 of 4****March 18, 2009****COUNSEL INFORMATION**

**Appellant** Chiodo, Rodney J  
**Pro Se:** Appoint Counsel Status:  
**IFP Status:** No

**Appellant Attorney Information:**

**Attorney:** Hopkins, David J.  
**Bar No.:** 42519 **Law Firm:** Hopkins Heltzel, L.L.P.  
**Address:** 100 Meadow Ln Ste 5  
Du Bois, PA 15801  
**Phone No.:** (814)375-0300 **Fax No.:** (814)375-5035  
**Receive Mail:** No  
**E-Mail Address:** hhlaw@comcast.net  
**Receive E-Mail:** No

**Attorney:** Heltzel, LeaAnn  
**Bar No.:** 83998 **Law Firm:** Hopkins Heltzel, L.L.P.  
**Address:** 100 Meadows Ln Ste 5  
DuBois, PA 15801  
**Phone No.:** (814)375-0300 **Fax No.:** (814)375-5035  
**Receive Mail:** Yes  
**E-Mail Address:** hhlaw@comcast.net  
**Receive E-Mail:** No

**Appellant** Chiodo, Carolyn G  
**Pro Se:** Appoint Counsel Status:  
**IFP Status:**

**Appellant Attorney Information:**

**Attorney:** Hopkins, David J.  
**Bar No.:** 42519 **Law Firm:** Hopkins Heltzel, L.L.P.  
**Address:** 100 Meadow Ln Ste 5  
Du Bois, PA 15801  
**Phone No.:** (814)375-0300 **Fax No.:** (814)375-5035  
**Receive Mail:** No  
**E-Mail Address:** hhlaw@comcast.net  
**Receive E-Mail:** No

**Attorney:** Heltzel, LeaAnn  
**Bar No.:** 83998 **Law Firm:** Hopkins Heltzel, L.L.P.  
**Address:** 100 Meadows Ln Ste 5  
DuBois, PA 15801  
**Phone No.:** (814)375-0300 **Fax No.:** (814)375-5035  
**Receive Mail:** No  
**E-Mail Address:** hhlaw@comcast.net  
**Receive E-Mail:** No

**Appellee** Yarger, Brian

**Appeal Docket Sheet****Docket Number: 444 WDA 2009****Page 3 of 4****March 18, 2009****Superior Court of Pennsylvania**

Pro Se: Appoint Counsel Status:

IFP Status:

**Appellee Attorney Information:**

Attorney: Schmitt, Louis Charles

Bar No.: 52459 Law Firm:

Address: P.O. Box 533  
Hollidaysburg, PA 16648

Phone No.: (814)696-3581 Fax No.:

Receive Mail: No

E-Mail Address:

Receive E-Mail: No

**Appellee** Rodger L. Kephart Trucking Inc

Pro Se: Appoint Counsel Status:

IFP Status:

**Appellee Attorney Information:**

Attorney: Schmitt Jr., Louis Charles

Bar No.: 52459 Law Firm: McIntyre, Hartye &amp; Schmitt

Address: PO Box 533  
Hollidaysburg, PA 16648

Phone No.: (814)696-3581 Fax No.: (814)696-9399

Receive Mail: Yes

E-Mail Address: lschmitt@mhslawoffice.com

Receive E-Mail: No

**FEE INFORMATION**

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
3/16/09	Notice of Appeal	60.00	60.00	2009SPRWD000268

**TRIAL COURT/AGENCY INFORMATION**

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of Order Appealed From: February 13, 2009

Judicial District: 46

Date Documents Received: March 17, 2009

Date Notice of Appeal Filed: March 16, 2009

Order Type: Order

OTN:

Judge: Ammerman, Fredric J.  
President Judge

Lower Court Docket No.: No 2005-1541 CD

**ORIGINAL RECORD CONTENTS**

Original Record Item	Filed Date	Content/Description
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**Date of Remand of Record:**

3/18/2009

3023



11:19 A.M.

**Appeal Docket Sheet**

**Docket Number: 444 WDA 2009**

**Page 4 of 4**

**March 18, 2009**

**Superior Court of Pennsylvania**



**BRIEFS**

**DOCKET ENTRIES**

Filed Date	Docket Entry/Document Name	Party Type	Filed By
March 17, 2009	Notice of Appeal Filed	Appellant Appellant	Chiodo, Rodney J Chiodo, Carolyn G
March 18, 2009	Docketing Statement Exited (Civil)		Western District Filing Office

O                      Q

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA  
RULE OF APPELLATE PROCEDURE 1931(c)

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To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the Court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

05-1541-CD

Rodney J. Chiodo and Carolyn G. Chiodo

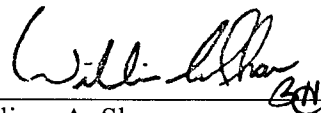
Vs.

Brian Yarger and Rodger L. Kephart Trucking, Inc.

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1** to 49, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is June 19, 2009.



William A. Shaw  
Prothonotary/Clerk of Courts

(seal)

Date: 6/19/2009

Time: 09:30 AM

Page 1 of 4

## Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

## Civil Other

Date		Judge
10/6/2005	New Case Filed.	No Judge
	Filing: Praeipce for Writ of Summons Paid by: Hopkins, David J. (attorney for Chiodo, Rodney J.) Receipt number: 1909683 Dated: 10/06/2005 Amount: \$85.00 (Check) 1CC & Writ to Shff	No Judge
11/10/2005	Praeipce for Appearance, filed. Enter my Appearance on behalf of Defendant, RODGER L. TRUCING INC, filed by s/ Louis C. Schmitt Esq. N CC.	No Judge
	Praeipce for Rule to File Complaint, filed by s/ Louis C. Scmitt Jr. Esq. No CC and 1 Rule to Atty Schmitt.	No Judge
11/16/2005	Certificate of Service of Rule to File Complaint, filed. That on the 14th day November 2005, Defendant, ROGER L KEPHART TRUCKING INC., served RULE upon the Plaintiffs, to David Hopkins Esq., filed by s/ Louis C. Schmitt Jr Esq. NO CC.	No Judge
12/2/2005	Complaint, filed by s/ David J. Hopkins, Esquire. 2CC to Atty.	No Judge
1/11/2006	Notice of Service of Interrogatories and Request for Production of Documents Directed to Plaintiffs-Dated 1/10/06, filed by s/ Louis C. Schmitt Jr Esq. NO CC.	No Judge
1/19/2006	Answer and New Matter filed by s/ Louis C. Schmitt Jr Esq. No CC.	No Judge
1/25/2006	Answer To New Matter, filed by s/ David J. Hopkins, Esquire. No CC	No Judge
2/6/2006	Praeipce to Substitute Verification to Answer and New Matter, filed by s/ Louis C. Schmitt Jr. Esq. No CC.	No Judge
2/9/2006	Sheriff Return, October 21, 2005 at 11:33 am served the within Writ of Summons on Rodger L. Kephart Trucking Inc. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Hopkins \$45.83	No Judge
2/17/2006	Motion to Compel, filed by Atty. Schmitt no cert. copies.	No Judge
2/22/2006	Rule Returnable AND NOW, this 21st day of February 2006, a Rule is hereby granted to show cause why the Motion to Compel filed on behalf of the Defendants, Brian Yarger and Rodger L. Kephart Trucking Inc., should not be granted. This Rule is returnable on the 20th day of March 2006 at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman P. Judge. 1CC Atty Schmitt.	Fredric Joseph Ammerman
2/27/2006	Notice of Service of Answers to Plaintiffs' Interrogatories Directed to Defendants on David Hopkins Esq., filed by s/ Louis C. Schmitt Jr. Esq. No CC.	Fredric Joseph Ammerman
3/9/2006	Answer to Motion to Compel, filed by s/ David J. Hopkins Esq. No CC.	Fredric Joseph Ammerman
3/15/2006	Praeipce to Withdraw Motion to Compel, filed by Atty. Schmitt no cert. copies.	Fredric Joseph Ammerman
7/25/2006	Notice of Service, filed. That on the 21st day of July 2006, Defendant, Brian Yarger and Rodger L. Kephart Trucking Inc. served Supplemental Request Production of Documents Directed to Plaintiffs dated July 21, 2006 by mailing to David Hopkins Esq., filed by s/ Louis C. Schmitt Jr. Esq. No CC.	Fredric Joseph Ammerman
9/8/2006	Defendants' Second Motion to Compel, filed by s/ Louis C. Schmitt, Jr., Esquire. 1CC Atty. Schmitt	Fredric Joseph Ammerman
9/12/2006	Rule Returnable: NOW, this 11th day of Sept., 2006, a rule is granted. Rule returnable on the 13th day of Oct., 2006 at 2:30 p.m. in Courtroom No. 1. By The Court, /s/Fredric J. Ammerman, Pres. Judge. 1CC Atty. Schmitt.	Fredric Joseph Ammerman

Date: 6/19/2009

Time: 09:30 AM

Page 2 of 4

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

Civil Other

Date		Judge
10/13/2006	Order, NOW, this 13th day of Oct., 2006, Ordered that 1. Defendants Second Motion to Compel is withdrawn with regard to the records of Dr. Welch; 2. Plaintiffs shall have 60 days within which to produce the medical records of Dr. Brad Labue and such other physicians as requested by Defendants. by The Court,, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
12/8/2006	Notice of Deposition, filed by s/ Louis C. Schmitt Esq. No CC.	Fredric Joseph Ammerman
1/22/2007	Notice of Rescheduled Deposition, filed by s/ Louis C. Schmitt Jr Esq. (In Re: Rodney J. Chiodo) No CC.	Fredric Joseph Ammerman
4/3/2008	Certificate of Readiness for Jury Trial, filed by s/ Louis C. Schmitt, Jr., Esquire. 1CC Atty. Schmitt	Fredric Joseph Ammerman
4/4/2008	Order, this 4th day of April, 2008, Pre Trial conference shall be held on the 12th day of June, 2008, in Chambers. Jury selection will be held on July 24th, 2008 in Courtroom #1. 2 Cert. to Attys: Hopkins and Schmitt	Fredric Joseph Ammerman
6/12/2008	Order, this 12th day of June, 2008, following pre-trial conference with couns for the parties as set forth above, it is Ordered: Jury Selection will be held on July 24, 2008 at 9:00 a.m. in Courtroom 1. Jury Trial is scheduled for Dec. 3, 4, and 5, 2008 at 9:00 a.m. in Courtroom 1. (see original) By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
6/19/2008	Notice of Service of Supplemental Request For Production of Documents With Regard to Earnings Impairment Claims, on the 18th day of June, 2008. Defendants Brian Yarger and Rodger L. Kephart Trucking Inc., served Supplemental Request for Production of Documents with Regard to Earning Impairment Claim, by mailing the original of same via First Class U.S. Mail to David Hopkins, Esquire. Filed by s/ Louis C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
9/15/2008	Notice of Videotape Trial Deposition, filed by s/ Louis C. Schmitt, Jr., Esquire. no CC	Fredric Joseph Ammerman
10/28/2008	Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert, filed by s/ David J. Hopkins, Esquire. 1CC Atty. Hopkins	Fredric Joseph Ammerman
10/31/2008	Order, this 29th day of Oct., 2008, upon consideration of the Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as Medical Expert, it is Ordered: A Rule is issued upon Respondent. Argument shall be held on the 12th day of Nov., 2008 at 10:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hopkins	Fredric Joseph Ammerman
11/3/2008	Praecept For Argument List, filed by s/ Louis C. Schmitt, Jr., Esquire. 2CC Atty. Schmitt	Fredric Joseph Ammerman
	Motion to Strike Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert, filed by s/ Louis C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
	Objection to Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O., as a Medical Expert, filed by s/ Louis C. Schmitt, Jr., Esquire. no CC	Fredric Joseph Ammerman
11/6/2008	Order, this 6th day of Nov., 2008, it is Ordered: Oral argument upon the Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert will be held on the 12th day of Nov., 2008 at 10:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Schmitt	Fredric Joseph Ammerman

Date: 6/19/2009

Time: 09:30 AM

Page 3 of 4

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

Civil Other

Date		Judge
11/12/2008	Nunc Pro Tunc Motion to Extend Time to File Motions in Limine, filed by s/David J. Hopkins, Esq. Three CC Attorney Hopkins	Fredric Joseph Ammerman
	Answer to Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a medical expert. filed by s/ David J. Hopkins, Esquire. 3CC Atty. Hopkins	Fredric Joseph Ammerman
11/14/2008	Order, this 13th day of Nov., 2008, it is ordered that Plaintiffs' Nunc Pro Tun Motion to Extend Time to File Motions in Limine is granted and the Court hereby extends the time for filing Motions in Limine through Oct. 28, 2008. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC atty. Hopkins	Fredric Joseph Ammerman
12/1/2008	Order, NOW, this 26th day of November, 2008, Order that the Motion in Limine filed October 28, 2008, on behalf of the Plaintiffs be and is hereby Dismissed. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys: Hopkins, Schmitt	Fredric Joseph Ammerman
12/4/2008	Details of Trial/Members of the Jury, held Dec. 3-5, filed.	Fredric Joseph Ammerman
	Jury Verdict Slip, no damages sustained by the Plaintiffs as a result of the Dec. 29, 2003 accident. Signed, Foreperson.	Fredric Joseph Ammerman
12/15/2008	Motion For Post Trial Relief, filed by s/ David J. Hopkins, Esquire. 2CC Atty Hopkins	Fredric Joseph Ammerman
12/16/2008	Order, this 16th day of Dec., 2008, upon consideration of the Motion for Pos Trial Relief it is Ordered: 1. Rule is issued upon Respondent. 2. Argument shall be held on the 12th day of Feb., 2009 at 9:00 a.m. in Courtroom 3. 3. Notice of the entry of this Order shall be provided to all parties by the moving party. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Hopkins	Fredric Joseph Ammerman
12/22/2008	Objection to Plaintiffs' Motion For Post-Trial Relief, filed by s/ Louis C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
12/23/2008	Order AND NOW, this 23rd day of December 2008, upon consideration of th Objections to Plaintiff's Motion for Post-Trial Relief, it is hereby ORDERED as follows: Oral argument upon the Objection to Plaintiff's Motion for Post-Trial Relief will be held on February 12, 2008 at 9:00 a.m. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Schmitt.	Fredric Joseph Ammerman
2/13/2009	Order, this 13th day of Feb., 2009, Plaintiffs' Motion for Post Trial Relief is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
2/20/2009	Filing: Praeipce for Entry of Judgment (On Verdict) Paid by: Schmitt, Louis C. Jr. (attorney for Yarger, Brian) Receipt number: 1928126 Dated: 2/20/2009 Amount: \$20.00 (Check) For: Yarger, Brian (defendant) No CC	Fredric Joseph Ammerman
3/16/2009	Filing: Appeal to High Court Paid by: Hopkins, David J. (attorney for Chiodo Rodney J.) Receipt number: 1928563 Dated: 3/16/2009 Amount: \$50.00 (Check) For: Chiodo, Rodney J. (plaintiff) Notice of Appeal, filed by s/ Lea Ann Heltzel, Esquire. 1CC & check for \$60.00 to Superior Court; 3CC Atty. Heltzel	Fredric Joseph Ammerman
3/18/2009	Order, this 18th day of March, 2009, this Court having been notified of Appe to the Superior Court of Pennsylvania, it is Ordered that Rodney J. Chiodo and Carolyn G. Chiodo, Appellants, file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Cour /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Hopkins, Schmitt	Fredric Joseph Ammerman

Date: 6/19/2009

Time: 09:30 AM

Page 4 of 4

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

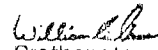
Civil Other

Date		Judge
3/20/2009	Appeal Docket Sheet, filed Superior Court # 444 WDA 2009	Fredric Joseph Ammerman
4/7/2009	Concise Statement of Matters Complained of Pursuant to Pa. R.C.P. 1925(b), filed by s/ David J. Hopkins, Esquire. No CC	Fredric Joseph Ammerman
6/18/2009	Opinion, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys Hopkins and Schmitt One CC D. Mikesell and Law Library Transcript of Proceedings, Jury Trial, Day 1 of 2, Testimony Only, held before the Honorable Fredric J. Ammerman, P.J., December 3, 2008, filed. Transcript of Proceedings, Jury Trial, Day 2 of 2, Testimony Only, held before the Honorable Fredric J. Ammerman, P.J., December 4, 2008, filed.	Fredric Joseph Ammerman
6/19/2009	June 19, 2009, Mailed Appeal to Superior Court. June 19, 2009, Letters, Re: Notification of mailing appeal mailed to David J. Hopkins, Esq. and Louis C. Schmitt, Jr., Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	Fredric Joseph Ammerman

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

JUN 19 2009

Attest.

  
Prothonotary/  
Clerk of Courts

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

**No. 05-1541-CD**

**Rodney J. Chiodo and Carolyn G. Chiodo**

**Vs.**

**Brian Yarger and Rodger L. Kephart Trucking, Inc.**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	10/06/05	Praeipe for Writ of Summons	02
02	11/10/05	Praeipe for Appearance	02
03	11/10/05	Praeipe for Rule to File Complaint	03
04	11/16/05	Certificate of Service, Rule to File Complaint	02
05	12/02/05	Complaint	10
06	01/11/06	Notice of Service of Interrogatories and Request for Production of Documents	02
07	01/19/06	Answer and New Matter	08
08	01/25/06	Answer to New Matter	03
09	02/06/06	Praeipe to Substitute Verification to Answer and New Matter	03
10	02/09/06	Sheriff Return	01
11	02/17/06	Motion to Compel with Rule Returnable filed February 22, 2006	08
12	02/27/06	Notice of Service of Answers to Plaintiffs' Interrogatories Directed to Defendants.	02
13	03/09/06	Answer to Motion to Compel	05
14	03/15/06	Praeipe to Withdraw Motion to Compel	02
15	07/25/06	Notice of Service	02
16	09/08/06	Defendants' Second Motion to Compel with Rule Returnable filed September 12, 2006	12
17	10/13/06	Order, Re: Defendants' Second Motion to Compel withdrawn; medical records to be produced	01
18	12/08/06	Notice of Deposition	03
19	01/22/07	Notice of Rescheduled Deposition	03
20	04/03/08	Certificate of Readiness for Jury Trial	02
21	04/04/08	Order, Re: Pre-Trial conference and Jury selection scheduled	01
22	06/12/08	Order, Re: Jury Selection and Jury Trial scheduled	02
23	06/19/08	Notice of Service of Supplemental Request for Production of Documents With Regard to Earnings Impairment Claims	02
24	09/15/08	Notice of Videotape Trial Deposition	03
25	10/28/08	Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert	09
26	10/31/08	Order, Re: Rule issued. Argument scheduled on Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert.	02
27	11/03/08	Praeipe for Argument List	01
28	11/03/08	Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert	06
29	11/03/08	Objection to Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert	82
30	11/06/08	Order, Re: Oral Argument scheduled on Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert	01
31	11/12/08	Nunc Pro Tunc Motion to Extend Time to File Motions in Limine	04
32	11/12/08	Answer to Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert	04
33	11/14/08	Order, Re: Plaintiff's Nunc Pro Tunc Motion	01
34	12/01/08	Order, Re: Motion in Limine	01
35	12/04/08	Details of Trial/Members of the Jury, December 3-5, 2008	01
36	12/04/08	Jury Verdict Slip	01
37	12/15/08	Motion for Post Trial Relief	06
38	12/16/08	Order, Re: Motion for Post Trial Relief	01
39	12/22/08	Objection to Plaintiffs' Motion for Post-Trial Relief with Order filed December 23, 2008	09
40	02/13/09	Order, Plaintiff's Motion for Post Trial Relief is Denied	01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 05-1541-CD

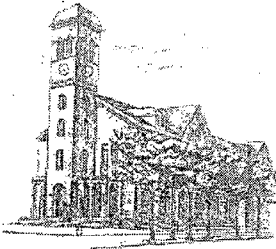
Rodney J. Chiodo and Carolyn G. Chiodo

Vs.

Brian Yarger and Rodger L. Kephart Trucking, Inc.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
41	02/20/09	Praecipe for Entry of Judgment (On Verdict)	02
42	03/16/09	Appeal to High Court	08
43	03/18/09	Order, Re: Concise statement to be filed	01
44	03/20/09	Appeal Docket Sheet, Superior Court Docket Number 444 WDA 2009	04
45	04/07/09	Concise Statement of Matters Complained of Pursuant to Pa.R.C.P. 1925(b)	05
46	06/18/09	Opinion	05
47	06/18/09	Transcript of Proceedings, Jury Trial, Day 1 of 2, Testimony Only, held before the Honorable President Judge Fredric J. Ammerman, December 3, 2008	Separate Cover
48	06/18/09	Transcript of Proceedings, Jury Trial, Day 2 of 2, Testimony Only, held before the Honorable President Judge Fredric J. Ammerman, December 4, 2008	Separate Cover
49	06/19/09	Letters, Re: Notification of mailing appeal mailed to David J. Hopkins, Esq. and Louis C. Schmitt, Jr., Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c)	07





Clearfield County Office of the Prothonotary and Clerk of Courts

COPY

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

**Jacki Kendrick**  
Deputy Prothonotary/Clerk of Courts

**Bonnie Hudson**  
Administrative Assistant

**David S. Ammerman**  
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ [www.clearfieldco.org](http://www.clearfieldco.org)

Fredric J. Ammerman, P.J.  
Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

David J. Hopkins, Esq.  
100 Meadow Lane, Ste. 5  
DuBois, PA 15801

Louis C. Schmitt, Jr., Esq.  
PO Box 533  
Holidaysburg, PA 16648

Rodney J. Chiodo and  
Carolyn G. Chiodo  
Vs.  
Brian Yarger and  
Rodger L. Kephart Trucking, Inc.

Court No. 05-1541-CD; Superior Court No. 444 WDA 2009

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on June 19, 2009.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**  
019:33/301  
JUN 19 2009

 William A. Shaw  
Prothonotary/Clerk of Courts

249

Date: 6/19/2009

## Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:01 AM

ROA Report

Page 1 of 4

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

Civil Other

Date		Judge
10/6/2005	New Case Filed.	No Judge
	Filing: Praeipce for Writ of Summons Paid by: Hopkins, David J. (attorney for Chiodo, Rodney J.) Receipt number: 1909683 Dated: 10/06/2005 Amount: \$85.00 (Check) 1CC & Writ to Shff	No Judge
11/10/2005	Praeipce for Appearance, filed. Enter my Appearance on behalf of Defendant, RODGER L. TRUCING INC, filed by s/ Louis C. Schmitt Esq. N CC.	No Judge
	Praeipce for Rule to File Complaint, filed by s/ Louis C. Scmitt Jr. Esq. No CC and 1 Rule to Atty Schmitt.	No Judge
11/16/2005	Certificate of Service of Rule to File Complaint, filed. That on the 14th day November 2005, Defendant, ROGER L KEPHART TRUCKING INC., served RULE upon the Plaintiffs, to David Hopkins Esq., filed by s/ Louis C. Schmitt Jr Esq. NO CC.	No Judge
12/2/2005	Complaint, filed by s/ David J. Hopkins, Esquire. 2CC to Atty.	No Judge
1/11/2006	Notice of Service of Interrogatories and Request for Production of Documen Directed to Plaintiffs-Dated 1/10/06, filed by s/ Louis C. Schmitt Jr Esq. NO CC.	No Judge
1/19/2006	Answer and New Matter filed by s/ Louis C. Schmitt Jr Esq. No CC.	No Judge
1/25/2006	Answer To New Matter, filed by s/ David J. Hopkins, Esquire. No CC	No Judge
2/6/2006	Praeipce to Substitute Verification to Answer and New Matter, filed by s/ Louis C. Schmitt Jr. Esq. No CC.	No Judge
2/9/2006	Sheriff Return, October 21, 2005 at 11:33 am served the within Writ of Summons on Rodger L. Kephart Trucking Inc. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Hopkins \$45.83	No Judge
2/17/2006	Motion to Compel, filed by Atty. Schmitt no cert. copies.	No Judge
2/22/2006	Rule Returnable AND NOW, this 21st day of February 2006, a Rule is hereby granted to show cause why the Motion to Compel filed on behalf of the Defendants, Brian Yarger and Rodger L. Kephart Trucking Inc., should not be granted. This Rule is returnable on the 20th day of March 2006 at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammermar P. Judge. 1CC Atty Schmitt.	Fredric Joseph Ammerman
2/27/2006	Notice of Service of Answers to Plaintiffs' Interrogatories Directed to Defendants on David Hopkins Esq., filed by s/ Louis C. Schmitt Jr. Esq. No CC.	Fredric Joseph Ammerman
3/9/2006	Answer to Motion to Compel, filed by s/ David J. Hopkins Esq. No CC.	Fredric Joseph Ammerman
3/15/2006	Praeipce to Withdraw Motion to Compel, filed by Atty. Schmitt no cert. copies.	Fredric Joseph Ammerman
7/25/2006	Notice of Service, filed. That on the 21st day of July 2006, Defendant, Brian Yarger and Rodger L. Kephart Trucking Inc. served Supplemental Request Production of Documents Directed to Plaintiffs dated July 21, 2006 by mailing to David Hopkins Esq., filed by s/ Louis C. Schmitt Jr. Esq. No CC.	Fredric Joseph Ammerman
3/8/2006	Defendants' Second Motion to Compel, filed by s/ Louis C. Schmitt, Jr., Esquire. 1CC Atty. Schmitt	Fredric Joseph Ammerman
3/12/2006	Rule Returnable: NOW, this 11th day of Sept., 2006, a rule is granted. Rule returnable on the 13th day of Oct., 2006 at 2:30 p.m. in Courtroom No. 1. By The Court, /s/Fredric J. Ammerman, Pres. Judge. 1CC Atty. Schmitt.	Fredric Joseph Ammerman

## Civil Other

Date		Judge
10/13/2006	Order, NOW, this 13th day of Oct., 2006, Ordered that 1. Defendants Second Motion to Compel is withdrawn with regard to the records of Dr. Welch; 2. Plaintiffs shall have 60 days within which to produce the medical records of Dr. Brad Labue and such other physicians as requested by Defendants. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
12/8/2006	Notice of Deposition, filed by s/ Louis C. Schmitt Esq. No CC.	Fredric Joseph Ammerman
1/22/2007	Notice of Rescheduled Deposition, filed by s/ Louis C. Schmitt Jr Esq. (In Re: Rodney J. Chiodo) No CC.	Fredric Joseph Ammerman
4/3/2008	Certificate of Readiness for Jury Trial, filed by s/ Louis C. Schmitt, Jr., Esquire. 1CC Atty. Schmitt	Fredric Joseph Ammerman
4/4/2008	Order, this 4th day of April, 2008, Pre Trial conference shall be held on the 12th day of June, 2008, in Chambers. Jury selection will be held on July 24th, 2008 in Courtroom #1. 2 Cert. to Attys: Hopkins and Schmitt	Fredric Joseph Ammerman
3/12/2008	Order, this 12th day of June, 2008, following pre-trial conference with couns for the parties as set forth above, it is Ordered: Jury Selection will be held on July 24, 2008 at 9:00 a.m. in Courtroom 1. Jury Trial is scheduled for Dec. 3, 4, and 5, 2008 at 9:00 a.m. in Courtroom 1. (see original) By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
3/19/2008	Notice of Service of Supplemental Request For Production of Documents With Regard to Earnings Impairment Claims, on the 18th day of June, 2008. Defendants Brian Yarger and Rodger L. Kephart Trucking Inc., served Supplemental Request for Production of Documents with Regard to Earning Impairment Claim, by mailing the original of same via First Class U.S. Mail to David Hopkins, Esquire. Filed by s/ Louis C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
3/15/2008	Notice of Videotape Trial Deposition, filed by s/ Louis C. Schmitt, Jr., Esquire. no CC	Fredric Joseph Ammerman
10/28/2008	Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert, filed by s/ David J. Hopkins, Esquire. 1CC Atty. Hopkins	Fredric Joseph Ammerman
10/31/2008	Order, this 29th day of Oct., 2008, upon consideration of the Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as Medical Expert, it is Ordered: A Rule is issued upon Respondent. Argument shall be held on the 12th day of Nov., 2008 at 10:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hopkins	Fredric Joseph Ammerman
11/3/2008	Praeipce For Argument List, filed by s/ Louis C. Schmitt, Jr., Esquire. 2CC Atty. Schmitt	Fredric Joseph Ammerman
	Motion to Strike Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert, filed by s/ Louis C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
	Objection to Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O., as a Medical Expert, filed by s/ Louis C. Schmitt, Jr., Esquire. no CC	Fredric Joseph Ammerman
11/6/2008	Order, this 6th day of Nov., 2008, it is Ordered: Oral argument upon the Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert will be held on the 12th day of Nov., 2008 at 10:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Schmitt	Fredric Joseph Ammerman

## Civil Other

Date		Judge
11/12/2008	Nunc Pro Tunc Motion to Extend Time to File Motions in Limine, filed by s/David J. Hopkins, Esq. Three CC Attorney Hopkins	Fredric Joseph Ammerman
	Answer to Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a medical expert. filed by s/ David J. Hopkins, Esquire. 3CC Atty. Hopkins	Fredric Joseph Ammerman
11/14/2008	Order, this 13th day of Nov., 2008, it is ordered that Plaintiffs' Nunc Pro Tunc Motion to Extend Time to File Motions in Limine is granted and the Court hereby extends the time for filing Motions in Limine through Oct. 28, 2008. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC atty. Hopkins	Fredric Joseph Ammerman
12/1/2008	Order, NOW, this 26th day of November, 2008, Order that the Motion in Limine filed October 28, 2008, on behalf of the Plaintiffs be and is hereby Dismissed. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys: Hopkins, Schmitt	Fredric Joseph Ammerman
12/4/2008	Details of Trial/Members of the Jury, held Dec. 3-5, filed.	Fredric Joseph Ammerman
	Jury Verdict Slip, no damages sustained by the Plaintiffs as a result of the Dec. 29, 2003 accident. Signed, Foreperson.	Fredric Joseph Ammerman
12/15/2008	Motion For Post Trial Relief, filed by s/ David J. Hopkins, Esquire. 2CC Atty Hopkins	Fredric Joseph Ammerman
12/16/2008	Order, this 16th day of Dec., 2008, upon consideration of the Motion for Post Trial Relief it is Ordered: 1. Rule is issued upon Respondent. 2. Argument shall be held on the 12th day of Feb., 2009 at 9:00 a.m. in Courtroom 3. 3. Notice of the entry of this Order shall be provided to all parties by the moving party. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Hopkins	Fredric Joseph Ammerman
12/22/2008	Objection to Plaintiffs' Motion For Post-Trial Relief, filed by s/ Louis C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
12/23/2008	Order AND NOW, this 23rd day of December 2008, upon consideration of the Objections to Plaintiff's Motion for Post-Trial Relief, it is hereby ORDERED as follows: Oral argument upon the Objection to Plaintiff's Motion for Post-Trial Relief will be held on February 12, 2009 at 9:00 a.m. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Schmitt.	Fredric Joseph Ammerman
2/13/2009	Order, this 13th day of Feb., 2009, Plaintiffs' Motion for Post Trial Relief is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
2/20/2009	Filing: Praecipe for Entry of Judgment (On Verdict) Paid by: Schmitt, Louis C. Jr. (attorney for Yarger, Brian) Receipt number: 1928126 Dated: 2/20/2009 Amount: \$20.00 (Check) For: Yarger, Brian (defendant) No CC	Fredric Joseph Ammerman
3/16/2009	Filing: Appeal to High Court Paid by: Hopkins, David J. (attorney for Chiodo, Rodney J.) Receipt number: 1928563 Dated: 3/16/2009 Amount: \$50.00 (Check) For: Chiodo, Rodney J. (plaintiff)	Fredric Joseph Ammerman
	Notice of Appeal, filed by s/ Lea Ann Heltzel, Esquire. 1CC & check for \$60.00 to Superior Court; 3CC Atty. Heltzel	Fredric Joseph Ammerman
3/18/2009	Order, this 18th day of March, 2009, this Court having been notified of Appeal to the Superior Court of Pennsylvania, it is Ordered that Rodney J. Chiodo and Carolyn G. Chiodo, Appellants, file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Hopkins, Schmitt	Fredric Joseph Ammerman

Date: 6/19/2009

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:01 AM

ROA Report

Page 4 of 4

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

Civil Other

Date		Judge
3/20/2009	Appeal Docket Sheet, filed Superior Court # 444 WDA 2009	Fredric Joseph Ammerman
4/7/2009	Concise Statement of Matters Complained of Pursuant to Pa. R.C.P. 1925(b), filed by s/ David J. Hopkins, Esquire. No CC	Fredric Joseph Ammerman
6/18/2009	Opinion, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys Hopkins and Schmitt One CC D. Mikesell and Law Library Transcript of Proceedings, Jury Trial, Day 1 of 2, Testimony Only, held before the Honorable Fredric J. Ammerman, P.J., December 3, 2008, filed. Transcript of Proceedings, Jury Trial, Day 2 of 2, Testimony Only, held before the Honorable Fredric J. Ammerman, P.J., December 4, 2008, filed.	Fredric Joseph Ammerman

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

JUN 19 2009

Attest.

*William A. Brown*  
Prothonotary  
Clerk of Courts

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

**No. 05-1541-CD**

**Rodney J. Chiodo and Carolyn G. Chiodo**

**Vs.**

**Brian Yarger and Rodger L. Kephart Trucking, Inc.**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	10/06/05	Praecipe for Writ of Summons	02
02	11/10/05	Praecipe for Appearance	02
03	11/10/05	Praecipe for Rule to File Complaint	03
04	11/16/05	Certificate of Service, Rule to File Complaint	02
05	12/02/05	Complaint	10
06	01/11/06	Notice of Service of Interrogatories and Request for Production of Documents	02
07	01/19/06	Answer and New Matter	08
08	01/25/06	Answer to New Matter	03
09	02/06/06	Praecipe to Substitute Verification to Answer and New Matter	03
10	02/09/06	Sheriff Return	01
11	02/17/06	Motion to Compel with Rule Returnable filed February 22, 2006	08
12	02/27/06	Notice of Service of Answers to Plaintiffs' Interrogatories Directed to Defendants	02
13	03/09/06	Answer to Motion to Compel	05
14	03/15/06	Praecipe to Withdraw Motion to Compel	02
15	07/25/06	Notice of Service	02
16	09/08/06	Defendants' Second Motion to Compel with Rule Returnable filed September 12, 2006	12
17	10/13/06	Order, Re: Defendants' Second Motion to Compel withdrawn; medical records to be produced	01
18	12/08/06	Notice of Deposition	03
19	01/22/07	Notice of Rescheduled Deposition	03
20	04/03/08	Certificate of Readiness for Jury Trial	02
21	04/04/08	Order, Re: Pre-Trial conference and Jury selection scheduled	01
22	06/12/08	Order, Re: Jury Selection and Jury Trial scheduled	02
23	06/19/08	Notice of Service of Supplemental Request for Production of Documents With Regard to Earnings Impairment Claims	02
24	09/15/08	Notice of Videotape Trial Deposition	03
25	10/28/08	Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert	09
26	10/31/08	Order, Re: Rule issued. Argument scheduled on Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert.	02
27	11/03/08	Praecipe for Argument List	01
28	11/03/08	Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert	06
29	11/03/08	Objection to Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert	82
30	11/06/08	Order, Re: Oral Argument scheduled on Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert	01
31	11/12/08	Nunc Pro Tunc Motion to Extend Time to File Motions in Limine	04
32	11/12/08	Answer to Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert	04
33	11/14/08	Order, Re: Plaintiff's Nunc Pro Tunc Motion	01
34	12/01/08	Order, Re: Motion in Limine	01
35	12/04/08	Details of Trial/Members of the Jury, December 3-5, 2008	01
36	12/04/08	Jury Verdict Slip	01
37	12/15/08	Motion for Post Trial Relief	06
38	12/16/08	Order, Re: Motion for Post Trial Relief	01
39	12/22/08	Objection to Plaintiffs' Motion for Post-Trial Relief with Order filed December 23, 2008	09
40	02/13/09	Order, Plaintiff's Motion for Post Trial Relief is Denied	01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 05-1541-CD

Rodney J. Chiodo and Carolyn G. Chiodo

Vs.

Brian Yarger and Rodger L. Kephart Trucking, Inc.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
41	02/20/09	Praecipe for Entry of Judgment (On Verdict)	02
42	03/16/09	Appeal to High Court	08
43	03/18/09	Order, Re: Concise statement to be filed	01
44	03/20/09	Appeal Docket Sheet, Superior Court Docket Number 444 WDA 2009	04
45	04/07/09	Concise Statement of Matters Complained of Pursuant to Pa.R.C.P. 1925(b)	05
46	06/18/09	Opinion	05
47	06/18/09	Transcript of Proceedings, Jury Trial, Day 1 of 2, Testimony Only, held before the Honorable President Judge Fredric J. Ammerman, December 3, 2008	Separate Cover
48	06/18/09	Transcript of Proceedings, Jury Trial, Day 2 of 2, Testimony Only, held before the Honorable President Judge Fredric J. Ammerman, December 4, 2008	Separate Cover

CA

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

RODNEY J. CHIDO and CAROLYN G.  
CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005-1541-CD

**OPINION**

The facts giving rise to this action are generally undisputed. On December 29, 2003, Plaintiff Rodney J. Chido ("Husband") was stopped in traffic on State Route 255 in or near Force, Pennsylvania. His car was struck from behind by a coal truck, loaded with gravel and weighing about 70,000 pounds, owned by Defendant Kephart Trucking; the truck was operated by Defendant Brian Yarger in the course of his employment by Defendant Kephart Trucking. Estimates place Defendant Yarger's speed at the time of impact at forty (40) to fifty (50) miles per hour; Plaintiff Husband's car was severely damaged. Plaintiff Husband sought compensatory damages for his injuries in the form of future wage loss, as well as for enduring pain and suffering. Plaintiff Carolyn G. Chido ("Wife") sought compensatory damages for loss of consortium.

In the course of trial the Defendants conceded liability; the trial was for damages only. After a two day jury trial on December 3-4, 2008, the jury awarded damages to the plaintiffs in the amount of exactly zero dollars (\$0.00).

**FILED**

014:00371  
JUN 18 2009

William A. Shaw  
Prothonotary/Clerk of Courts

Attys:  
Hopkins  
Schmitt

ICC: D. M. Kesell  
Law Library  
(without memo)



On December 15, 2008, Plaintiffs filed a Motion for Post-Trial Relief seeking a new trial on the issue of damages; this motion was denied on February 13, 2009. On March 16, 2009, Plaintiffs timely filed a Notice of Appeal.<sup>1</sup> The issues raised in the Plaintiffs' appeal may be summarized as asserting the following:

1. The jury's verdict in awarding no damages is against the weight of the evidence as to the injuries sustained by Plaintiff Husband, his ongoing medical care, and as to Plaintiff Wife's loss of consortium claim.
2. The jury's verdict in awarding no damages is so contrary to the evidence as to shock one's sense of justice as to the injuries sustained by Plaintiff Husband, his ongoing medical care, and as to Plaintiff Wife's loss of consortium claim.

A trial court's decision not to grant a new trial is reviewed for an error of law which controlled the outcome of the case, or for abuse of discretion. Hilliard v. Anderson, 440 Pa. 625, 627-28, 271 A.2d 227, 228 (1970) (citing Getz v. Balliet, 431 Pa. 441, 246 A.2d 108 (1968)). When reviewing such a case for abuse of discretion, the jury winner is entitled to every fact and inference which may reasonably be deduced from the evidence. Gregorius v. Safeway Steel Scaffolds Co. of Pittsburgh, 409 Pa. 578, 582, 187 A.2d 646, 648 (1963) (citing Metro v. Long Transp. Co., 387 Pa. 354, 127 A.2d 716 (1956)). A new trial will be granted only when the verdict is so contrary to the evidence it shocks one's sense of justice. Watson v. Am. Home Assurance Co., 454 Pa. Super. 293, 301-02, 685 A.2d 194, 198 (1996), appeal denied, 549 Pa. 704, 700 A.2d 443 (1997). A new trial will not be granted on the

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<sup>1</sup> Pennsylvania Rule of Appellate Procedure 903(a) provides for a thirty (30) day time period for filing an appeal as of right. Rule 107 incorporates the rules put forth in the Statutory Construction Act, 1 Pa. Cons. Stat. §§ 1901-1991 (2009). Section 1908 provides for omitting Saturday, Sunday, or holidays falling on the end of a statutory time period from computation of the time period. Although Plaintiffs filed their Notice of Appeal on the 32nd day after the Order of February 13, 2009, the 30th day was a Saturday, making the Notice timely.

ground that the verdict was against the weight of the evidence when the evidence was conflicting and the fact-finder could have decided either way. Id.

The Plaintiffs' appeal asserts only an abuse of discretion, not that an error of law controlled the outcome of the case. Because no damages were awarded by the jury, the verdict is in favor of the Defendants; all reasonable inferences from the evidence are therefore to be drawn in favor of the Defendants. Gregorius, supra. Such a consideration must be borne in mind while examining whether the verdict is against the weight of the evidence. Watson, supra. If the evidence, viewed in the light most favorable to the Defendants, is merely conflicting, a new trial is not to be granted. Id.

In the instant case, testimony by medical experts tended to show that Plaintiff Husband was in fact injured in the collision. Transcript of Record 12/04/08 at 10; Transcript of Videotape Deposition of Fred K. Khalouf 10/03/08 at 31. The Defendants did not deny liability at trial. T.R. 12/03/08 at 10-11. The opposing sides' experts differed on whether the symptoms Plaintiff Husband experienced in the years after the accident were caused by the accident or whether his difficulties preceded the accident and he would have experienced such symptoms anyway. T.R. 12/04/08 at 11; T.V.D. 10/03/08 at 33-34.

Evidence and testimony showed that Plaintiff Husband had experienced pain as a result of various accidents and sports injuries in the decades prior to the accident. T.R. 12/03/08 at 73-84. Defendants' expert opined that, despite likely being injured in the accident complained of, Plaintiff Husband would have experienced the exact same pain even if the accident had not occurred. T.V.D. 10/03/08 at 27-28. Plaintiffs' expert agreed that Plaintiff Husband was undoubtedly injured in the accident, but testified it was his opinion that Husband's current pain was a result of the accident. T.R. 12/04/08 at 11. This created a

factual dispute for the jury to resolve.

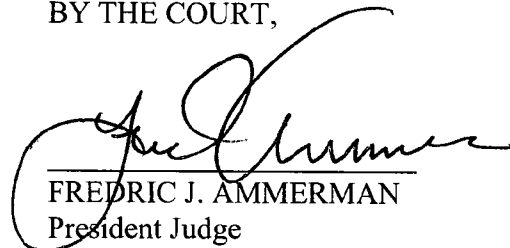
The jury resolved the conflict in favor of the Defendants by awarding no compensatory damages. This may be because it found the Plaintiffs' expert not credible, because it found the Plaintiff Husband not credible, or perhaps because it simply felt that the Defendants' expert was more persuasive than the Plaintiffs' expert. The jury was asked by Plaintiff Husband to award damages for wages to be lost in the future due to a (supposed) shortened work life, but at the same time the Husband had been travelling extensively and working harder and had in fact doubled his salary to over \$200,000 since the accident. Despite the Defendants' stipulation as to liability the jury may have simply rejected this claim of future wage losses. These are all plausible, and as the evidence must be viewed in the light most favorable to the verdict winner, Gregorius, supra, the verdict must stand.

Plaintiff Wife's claim meets the same fate. She testified that, prior to the accident, Husband helped her around the house and that she and her Husband shared a healthy love life. T.R. 12/03/08 at 131-32. She further testified that, following the accident, Husband was unable to help around the house and that their love life was nonexistent. Id. at 139-42. Plaintiff Wife's testimony was unchallenged, and the defense declined to cross-examine her. Id. at 142. However, the jury again declined to award damages; perhaps it thought Plaintiff Wife was not credible, that her losses were a result of Husband's ongoing deteriorating health (if indeed it so resolved that issue), or that the decreased love life was a result of Husband's increased work load and travel both domestically and abroad. As these are all plausible, and as the evidence must be viewed in the light most favorable to the verdict winner, the verdict must stand. Plaintiffs may argue that the failure of the jury to award at least nominal damages in light of Defendants' stipulation to liability is sufficient to warrant a

new trial on damages. However, the Superior Court has held that the award of nominal damages is not required when the jury finds that a plaintiff did not sustain a compensable injury. Bezerra v. Nat'l R.R. Passenger Corp., 760 A.2d 56, 61-62 (Pa. Super. Ct. 2000) (citing Holland v. Zelnick, 329 Pa. Super. 469, 475, 478 A.2d 885, 888 (1984)); accord Gigliotti v. Machuca, 409 Pa. Super. 50, 58, 597 A.2d 655, 659 (1991).

Because the verdict is not against the weight of the evidence, the verdict does not "shock" this court's "sense of justice." Therefore, this court finds that it did not abuse its discretion in denying Plaintiffs' Motion for Post Trial Relief.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

June 17, 2009

FILED

JUN 18 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 6/18/09

       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 DIVISION)

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,  
Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

No. 2005-1541 CD

FILED  
APR 07 2009

William A. Shaw  
Prothonotary/Clerk of Courts

Type of Pleading: Concise Statement  
of Matters Complained of Pursuant to  
Pa.R.C.P. 1925(b)

Filed on behalf of Rodney J. Chido and  
Carolyn G. Chido, Plaintiffs.

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
PA I.D. No. 42519

LEA ANN HELTZEL, ESQUIRE  
Attorney at Law  
PA I.D. No. 83998

100 Meadow Lane, Suite 5  
DuBois, Pennsylvania 15801

(814) 375-0300

#45

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

No. 2005-1541 CD

**CONCISE STATEMENT OF MATTERS COMPLAINED ON APPEAL**  
**PURSUANT TO Pa.R.A.P. 1925(b)**

AND NOW, comes Plaintiffs, Rodney J. Chiodo and Carolyn G. Chiodo, by and through their attorneys, Hopkins Heltzel LLP, and files the within Concise Statement of Matters Complained Appeal of Pursuant to Pa.R.A.P. 1925(b).

1. The jury's verdict in awarding no damages is against the weight of the evidence in as much as uncontroverted evidence was that Plaintiff Rodney Chiodo was struck from behind by a coal truck traveling between 40 and 50 miles per hour loaded with gravel weighing 70,000 pounds. Plaintiff's vehicle was pushed forward and struck the vehicle that was stopped in front of his vehicle. Damage to plaintiff's vehicle was severe. See Trial Exhibit 1. Plaintiff was taken by ambulance to DuBois Regional Medical Center. One week later he followed up with his family physician and thereafter was under a steady course of treatment with various health care providers including physical therapists, rheumatologists and chiropractors. Plaintiff's prior medical treatment was sporadic. Both plaintiffs' expert and defendants' expert agreed plaintiff was injured in the motor vehicle collision.

2. The jury's verdict in awarding no damages is so contrary to the evidence as to shock one's sense of justice in as much as uncontroverted evidence was that Plaintiff Rodney Chiodo was struck from behind by a coal truck traveling between 40 and 50 miles per hour loaded with gravel weighing 70,000 pounds. Plaintiff's vehicle was pushed forward and struck the vehicle that was stopped in front of his vehicle. Damage to Plaintiff's vehicle was severe. See Trial Exhibit 1. Plaintiff was taken by ambulance to DuBois Regional Medical Center. One week later he followed up with his family physician and thereafter was under a steady course of treatment with various health care providers including physical therapists, rheumatologists and chiropractors. Plaintiff's prior medical treatment was sporadic. Both Plaintiff's expert and Defendants' expert agreed plaintiff was injured in the motor vehicle collision.

3. The jury's verdict in awarding no damages is against the weight of the evidence inasmuch as Plaintiff's long course of continual treatment beginning with his treatment at DuBois Regional Medical Center, subsequent follow up care with his family physician and other healthcare providers, including physical therapist, rheumatologists and chiropractors cannot be considered "rub of life" issues. Both Plaintiff's expert and Defendants' expert agreed Plaintiff was injured in the collision.

4. The jury's verdict in awarding no damages is so contrary to the evidence as to shock one's sense of justice inasmuch as Plaintiff's long course of continual treatment beginning with his treatment at DuBois Regional Medical Center, subsequent follow up care with his family physician and other healthcare providers, including physical therapist, rheumatologists and chiropractors cannot be considered "rub of life" issues. Both Plaintiff's expert and Defendant's expert agreed Plaintiff was injured in the collision.



5. For the reasons set forth above, the jury's verdict in awarding no damages to Plaintiff Carolyn Chiodo in her consortium claim is against the weight of the evidence. Carolyn Chiodo testified prior to the motor vehicle collision Plaintiff Rodney Chiodo was a helpful husband and good father. She testified their love life was satisfying. Plaintiff Carolyn Chiodo testified subsequent to the accident she is now mother and father. Rodney Chiodo is not able to help her. She testified their love life is non-existent. Her testimony was not questioned. She was not even cross examined.

6. For the reasons set forth above, the jury's verdict that Mrs. Chiodo suffered no damages in her consortium claim is so contrary to the evidence as to shock one's sense of justice inasmuch as Carolyn Chiodo testified prior to the motor vehicle collision Plaintiff Rodney Chiodo was a helpful husband and good father. She testified their love life was satisfying. Plaintiff Carolyn Chiodo testified subsequent to the accident she is now mother and father. Rodney Chiodo is not able to help her. She testified their love life is non-existent. Her testimony was not questioned. She was not even cross examined.

Respectfully submitted,

  
David J. Hopkins, Esquire

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

RODNEY J. CHIODO,  
and CAROLYN G. CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.


Defendants

No. 2005-1541 CD

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the foregoing Concise Statement of Matters Complaint on Appeal Pursuant to Pa.R.A.P. 1925(b), filed on behalf of Plaintiffs, Rodney J. Chiodo and Carolyn G. Chiodo, was forwarded on the 6<sup>th</sup> day of April, 2009, by U.S. Mail, postage prepaid, to all counsel of record, addressed as follows:

Louis C. Schmitt, Jr., Esquire  
McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533

  
David J. Hopkins, Esquire  
Attorney for Plaintiffs

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 444 WDA 2009

Page 1 of 4

March 18, 2009



Rodney J. Chiodo, And Carolyn G. Chiodo, Appellants

/.

Brian Yarger And Rodger L. Kephart Trucking Inc.

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: March 17, 2009

Awaiting Original Record

**COPIED**  
MAR 20 2009  
12:05 PM  
William A. Shaw  
Prothonotary/Clerk of Courts

Journal Number:

Case Category: Civil

CaseType:

Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

## SCHEDULED EVENT

Next Event Type: Case Initiation

Next Event Due Date: March 17, 2009

Next Event Type: Receive Docketing Statement

Next Event Due Date: April 1, 2009

Next Event Type: Original Record Received

Next Event Due Date: May 18, 2009

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 444 WDA 2009

Page 2 of 4

March 18, 2009



## COUNSEL INFORMATION

**Appellant** Chiodo, Rodney J  
**Pro Se:** Appoint Counsel Status:  
**IFP Status:** No

**Appellant Attorney Information:**

**Attorney:** Hopkins, David J.  
**Bar No.:** 42519 **Law Firm:** Hopkins Heltzel, L.L.P.  
**Address:** 100 Meadow Ln Ste 5  
Du Bois, PA 15801  
**Phone No.:** (814)375-0300 **Fax No.:** (814)375-5035  
**Receive Mail:** No  
**E-Mail Address:** hhlaw@comcast.net  
**Receive E-Mail:** No

**Attorney:** Heltzel, LeaAnn  
**Bar No.:** 83998 **Law Firm:** Hopkins Heltzel, L.L.P.  
**Address:** 100 Meadows Ln Ste 5  
DuBois, PA 15801  
**Phone No.:** (814)375-0300 **Fax No.:** (814)375-5035  
**Receive Mail:** Yes  
**E-Mail Address:** hhlaw@comcast.net  
**Receive E-Mail:** No

**Appellant** Chiodo, Carolyn G  
**Pro Se:** Appoint Counsel Status:  
**IFP Status:**

**Appellant Attorney Information:**

**Attorney:** Hopkins, David J.  
**Bar No.:** 42519 **Law Firm:** Hopkins Heltzel, L.L.P.  
**Address:** 100 Meadow Ln Ste 5  
Du Bois, PA 15801  
**Phone No.:** (814)375-0300 **Fax No.:** (814)375-5035  
**Receive Mail:** No  
**E-Mail Address:** hhlaw@comcast.net  
**Receive E-Mail:** No

**Attorney:** Heltzel, LeaAnn  
**Bar No.:** 83998 **Law Firm:** Hopkins Heltzel, L.L.P.  
**Address:** 100 Meadows Ln Ste 5  
DuBois, PA 15801  
**Phone No.:** (814)375-0300 **Fax No.:** (814)375-5035  
**Receive Mail:** No  
**E-Mail Address:** hhlaw@comcast.net  
**Receive E-Mail:** No

**Appellee** Yarger, Brian

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 444 WDA 2009

Page 3 of 4

March 18, 2009



Pro Se: Appoint Counsel Status:

IFP Status:

**Appellee Attorney Information:**

Attorney: Schmitt, Louis Charles  
 Bar No.: 52459 Law Firm:  
 Address: P.O. Box 533  
 Hollidaysburg, PA 16648  
 Phone No.: (814)696-3581 Fax No.:  
 Receive Mail: No  
 E-Mail Address:  
 Receive E-Mail: No

**Appellee** Rodger L. Kephart Trucking Inc  
 Pro Se: Appoint Counsel Status:

IFP Status:

**Appellee Attorney Information:**

Attorney: Schmitt Jr., Louis Charles  
 Bar No.: 52459 Law Firm: McIntyre, Hartye & Schmitt  
 Address: PO Box 533  
 Hollidaysburg, PA 16648  
 Phone No.: (814)696-3581 Fax No.: (814)696-9399  
 Receive Mail: Yes  
 E-Mail Address: lschmitt@mhsllawoffice.com  
 Receive E-Mail: No

**FEE INFORMATION**

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
3/16/09	Notice of Appeal	60.00	60.00	2009SPRWD000268

**TRIAL COURT/AGENCY INFORMATION**

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Date of Order Appealed From: February 13, 2009

Date Documents Received: March 17, 2009

Order Type: Order

Judge: Ammerman, Fredric J.  
 President Judge

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: March 16, 2009

OTN:

Lower Court Docket No.: No 2005-1541 CD

**ORIGINAL RECORD CONTENTS**

Original Record Item	Filed Date	Content/Description
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Date of Remand of Record:

3/18/2009

## Appeal Docket Sheet

Docket Number: 444 WDA 2009

Superior Court of Pennsylvania

Page 4 of 4

March 18, 2009



## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
March 17, 2009	Notice of Appeal Filed	Appellant	Chiodo, Rodney J
		Appellant	Chiodo, Carolyn G
March 18, 2009	Docketing Statement Exited (Civil)		Western District Filing Office

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

RODNEY J. CHIDO and CAROLYN G. CHIDO,  
Plaintiffs

vs.

BRIAN YARGER and RODGER L. KEPHART  
TRICKING, INC.,  
Defendants

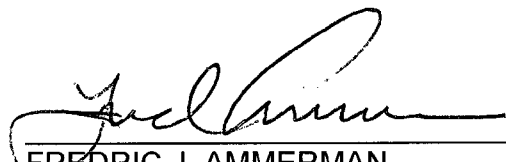
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NO. 05-1541-CD

**ORDER**

NOW, this 18th day of March, 2009, this Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter; it is the ORDER of this Court that RODNEY J. CHIDO and CAROLYN G. CHIDO, Appellants, file a concise statement of the matters complained of on said Appeal no later than twenty-one (21) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

**FILED** <sup>100</sup>

*02:21/BJ*  
MAR 18 2009

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

*Atty: Hopkins  
Schmitt*

*(60)*

*#43*

FILED

MAR 18 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 3/18/09

☐ 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)

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,  
Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

No. 2005-1541 CD

Type of Pleading: Notice of Appeal

Filed on behalf of: Rodney J. Chido  
and Carolyn G. Chido, Plaintiffs

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS  
Attorney at Law  
Supreme Court No. 42519

LEA ANN HELTZEL  
Attorney at Law  
Supreme Court No. 83998

100 Meadow Lane, Suite 5  
DuBois, Pennsylvania 15801

(814) 375-0300

**FILED** 3CC Atty Helzel  
012:5584  
MAR 10 2009  
\$100.00 to Superior Court  
William A. Shaw  
Prothonotary/Clerk of Courts

611

412

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,  
Plaintiffs

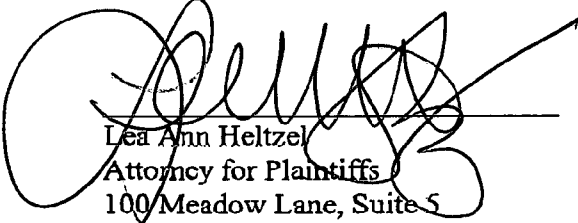
vs.

No. 2005-1541 CD

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that Rodney J. Chido and Carolyn G. Chioco, Plaintiffs above named, hereby appeal to the Superior Court of Pennsylvania from the Order entered on this matter on the 13th day of February, 2009. This Order has been entered in the docket as of February 13, 2009, as evidenced by the attached copy of the docket entry.



Lea Ann Heltzel  
Attorney for Plaintiffs  
100 Meadow Lane, Suite 5  
DuBois, PA 15801  
Supreme Court I.D. No. 42519

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO.

Plaintiffs

vs.

No. 2005-1541 CD

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of March, 2009, I served a true copy of Notice of Appeal, upon the person and in the manner as indicated below which service satisfies the requirements of Pa. R.A.P. 121:

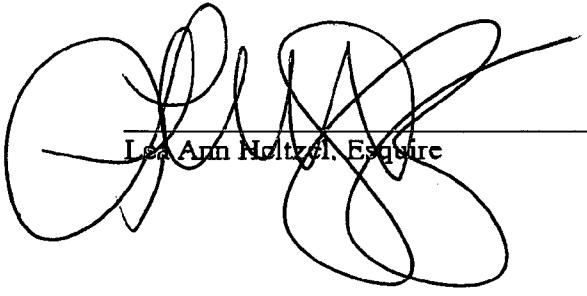
**First class mail, postage prepaid:**

Honorable Fredric J. Ammerman  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830

Court Administrator  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830

Court Reporter  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830

Louis C. Schmitt, Jr., Esquire  
McIntyre, Dugas, Hartyc & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533

  
\_\_\_\_\_  
Lea Ann Noltzel, Esquire

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

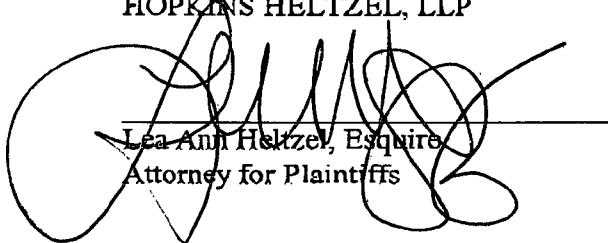
No. 2005-1541 CD

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

**REQUEST FOR TRANSCRIPT**

A Notice of Appeal having been filed in this matter, the official court reporter is hereby requested to produce, certify and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

HOPKINS HELTZEL, LLP

  
\_\_\_\_\_  
Lea Ann Heltzel, Esquire  
Attorney for Plaintiffs

CA

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

RODNEY J. CHIODO and  
CAROLYN G. CHIODO,

Plaintiffs

vs.

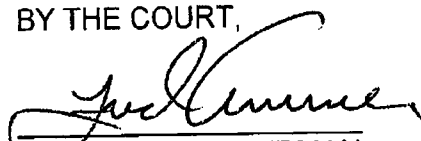
BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,  
Defendants

NO. 05-1541-CD

**ORDER**

NOW, this 13<sup>th</sup> day of February, 2009, following argument on the Plaintiffs' Motion for Post Trial Relief with counsel being present and upon review of the submitted briefs; it is the ORDER of this Court that the Plaintiffs' Motion for Post Trial Relief be and is hereby DENIED.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED  
FEB 13 2009

William A. Shaw  
Prothonotary/Clerk of Courts

2cc  
03:07 PM  
Atty's Hopkins  
Schmitt

(61)

Date: 3/16/2009

## Clearfield County Court of Common Pleas

User: BILLSHAW

Time: 02:33 PM

ROA Report

Page 1 of 3

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

Civil Other

Date		Judge
10/6/2005	New Case Filed.	No Judge
	Filing: Praecipe for Writ of Summons Paid by: Hopkins, David J. (attorney for Chiodo, Rodney J.) Receipt number: 1909683 Dated: 10/06/2005 Amount: \$85.00 (Check) 1CC & Writ to Shff	No Judge
11/10/2005	Praecipe for Appearance, filed. Enter my Appearance on behalf of Defendant, RODGER L. TRUCING INC, filed by s/ Louis C. Schmitt Esq. N CC.	No Judge
	Praecipe for Rule to File Complaint, filed by s/ Louis C. Scmitt Jr. Esq. No CC and 1 Rule to Atty Schmitt.	No Judge
11/16/2005	Certificate of Service of Rule to File Complaint, filed. That on the 14th day November 2005, Defendant, ROGER L KEPHART TRUCKING INC., served RULE upon the Plaintiffs, to David Hopkins Esq., filed by s/ Louis C. Schmitt Jr Esq. NO CC.	No Judge
12/2/2005	Complaint, filed by s/ David J. Hopkins, Esquire. 2CC to Atty.	No Judge
1/11/2006	Notice of Service of Interrogatories and Request for Production of Documents Directed to Plaintiffs-Dated 1/10/06, filed by s/ Louis C. Schmitt Jr Esq. NO CC.	No Judge
1/19/2006	Answer and New Matter filed by s/ Louis C. Schmitt Jr Esq. No CC.	No Judge
1/25/2006	Answer To New Matter, filed by s/ David J. Hopkins, Esquire. No CC	No Judge
2/6/2006	Praecipe to Substitute Verification to Answer and New Matter, filed by s/ Louis C. Schmitt Jr. Esq. No CC.	No Judge
2/9/2006	Sheriff Return, October 21, 2005 at 11:33 am served the within Writ of Summons on Rodger L. Kephart Trucking Inc. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Hopkins \$45.83	No Judge
2/17/2006	Motion to Compel, filed by Atty. Schmitt no cert. copies.	No Judge
2/22/2006	Rule Returnable AND NOW, this 21st day of February 2006, a Rule is hereby granted to show cause why the Motion to Compel filed on behalf of the Defendants, Brian Yarger and Rodger L. Kephart Trucking Inc., should not be granted. This Rule is returnable on the 20th day of March 2006 at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman P. Judge. 1CC Atty Schmitt.	Fredric Joseph Ammerman
2/27/2006	Notice of Service of Answers to Plaintiffs' Interrogatories Directed to Defendants on David Hopkins Esq., filed by s/ Louis C. Schmitt Jr. Esq. No CC.	Fredric Joseph Ammerman
3/9/2006	Answer to Motion to Compel, filed by s/ David J. Hopkins Esq. No CC.	Fredric Joseph Ammerman
3/15/2006	Praecipe to Withdraw Motion to Compel, filed by Atty. Schmitt no cert. copies.	Fredric Joseph Ammerman
7/25/2006	Notice of Service, filed. That on the 21st day of July 2006, Defendant, Brian Yarger and Rodger L. Kephart Trucking Inc. served Supplemental Request Production of Documents Directed to Plaintiffs dated July 21, 2006 by mailing to David Hopkins Esq., filed by s/ Louis C. Schmitt Jr. Esq. No CC.	Fredric Joseph Ammerman
9/8/2006	Defendants' Second Motion to Compel, filed by s/ Louis C. Schmitt, Jr., Esquire. 1CC Atty. Schmitt	Fredric Joseph Ammerman
9/12/2006	Rule Returnable: NOW, this 11th day of Sept., 2006, a rule is granted. Rule returnable on the 13th day of Oct., 2006 at 2:30 p.m. in Courtroom No. 1. By The Court, /s/Fredric J. Ammerman, Pres. Judge. 1CC Atty. Schmitt.	Fredric Joseph Ammerman

Date: 3/16/2009

Time: 02:33 PM

Page 2 of 3

Clearfield County Court of Common Pleas

ROA Report

Case: 2005-01541-CD

User: BILLSHAW

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

Civil Other

Date		Judge
10/13/2006	Order, NOW, this 13th day of Oct., 2006, Ordered that 1. Defendants Second Motion to Compel is withdrawn with regard to the records of Dr. Welch; 2. Plaintiffs shall have 60 days within which to produce the medical records of Dr. Brad Labue and such other physicians as requested by Defendants. by The Court,, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
12/8/2006	Notice of Deposition, filed by s/ Louis C. Schmitt Esq. No CC.	Fredric Joseph Ammerman
1/22/2007	Notice of Rescheduled Deposition, filed by s/ Louis C. Schmitt Jr Esq. (In Re: Rodney J. Chiodo) No CC.	Fredric Joseph Ammerman
4/3/2008	Certificate of Readiness for Jury Trial, filed by s/ Louis C. Schmitt, Jr., Esquire. 1CC Atty. Schmitt	Fredric Joseph Ammerman
4/4/2008	Order, this 4th day of April, 2008, Pre Trial conference shall be held on the 12th day of June, 2008, in Chambers. Jury selection will be held on July 24th, 2008 in Courtroom #1. 2 Cert. to Attys: Hopkins and Schmitt	Fredric Joseph Ammerman
6/12/2008	Order, this 12th day of June, 2008, following pre-trial conference with couns for the parties as set forth above, it is Ordered: Jury Selection will be held on July 24, 2008 at 9:00 a.m. in Courtroom 1. Jury Trial is scheduled for Dec. 3, 4, and 5, 2008 at 9:00 a.m. in Courtroom 1. (see original) By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
6/19/2008	Notice of Service of Supplemental Request For Production of Documents Regards to Earnings Impairment Claims, on the 18th day of June, 2008, Defendants Brian Yarger and Rodger L. Kephart Trucking Inc., served Supplemental Request for Production of Documents with Regard to Earning Impairment Claim, by mailing the original of same via First Class U.S. Mail to David Hopkins, Esquire. Filed by s/ Louis C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
9/15/2008	Notice of Videotape Trial Deposition, filed by s/ Louis C. Schmitt, Jr., Esquire. no CC	Fredric Joseph Ammerman
10/28/2008	Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a medical expert, filed by s/ David J. Hopkins, Esquire. 1CC Atty. Hopkins	Fredric Joseph Ammerman
10/31/2008	Order, this 29th day of Oct., 2008, upon consideration of the Motion in limine to Exclude Testimony of Fred K. Khalouf, D.O. as Medical Expert, it is Ordered: A Rule is issued upon Respondent. Argument shall be held on the 12th day of Nov., 2008 at 10:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hopkins	Fredric Joseph Ammerman
11/3/2008	Praeipie For Argument List, filed by s/ Louis C. Schmitt, Jr., Esquire. 2CC. Atty. Schmitt	Fredric Joseph Ammerman
	Motion to Strike Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert, filed by s/ Louis C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
	Objection to Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O., as a Medical Expert, filed by s/ Louis C. Schmitt, Jr., Esquire. no CC	Fredric Joseph Ammerman
11/6/2008	Order, this 6th day of Nov., 2008, it is Ordered: Oral argument upon the Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert will be held on the 12th day of Nov., 2008 at 10:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Schmitt	Fredric Joseph Ammerman

Date: 3/16/2009

Time: 02:33 PM

Page 3 of 3

Clearfield County Court of Common Pleas

ROA Report

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

User: BILLSHAW

Civil Other

Date		Judge
11/12/2008	Nunc Pro Tunc Motion to Extend Time to File Motions in Limine, filed by s/David J. Hopkins, Esq. Three CC Attorney Hopkins	Fredric Joseph Ammerman
	Answer to Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a medical expert. filed by s/ David J. Hopkins, Esquire. 3CC Atty. Hopkins	Fredric Joseph Ammerman
11/14/2008	Order, this 13th day of Nov., 2008, it is ordered that Plaintiffs' Nunc Pro Tun Motion to Extend Time to File Motions in Limine is granted and the Court hereby extends the time for filing Motions in Limine through Oct. 28, 2008. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC atty. Hopkins	Fredric Joseph Ammerman
12/1/2008	Order, NOW, this 26th day of November, 2008, Order that the Motion in Limine filed October 28, 2008, on behalf of the Plaintiffs be and is hereby Dismissed. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys: Hopkins, Schmitt	Fredric Joseph Ammerman
12/4/2008	Details of Trial held Dec. 3-5, filed.	Fredric Joseph Ammerman
	Jury Verdict Slip, no damages sustained by the Plaintiffs as a result of the Dec. 29, 2003 accident. Signed, Foreperson.	Fredric Joseph Ammerman
12/15/2008	Motion For Post Trial Relief, filed by s/ David J. Hopkins, Esquire. 2CC Atty Hopkins	Fredric Joseph Ammerman
12/16/2008	Order, this 16th day of Dec., 2008, upon consideration of the Motion for Pos Trial Relief it is Ordered: 1. Rule is issued upon Respondent. 2. Argument shall be held on the 12th day of Feb., 2009 at 9:00 a.m. in Courtroom 3. 3. Notice of the entry of this Order shall be provided to all parties by the moving party. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Hopkins	Fredric Joseph Ammerman
12/22/2008	Objection to Plaintiffs' Motion For Post-Trial Relief, filed by s/ Louis C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
12/23/2008	Order AND NOW, this 23rd day of December 2008, upon consideration of th Objections to Plaintiff's Motion for Post-Trial Relief, it is hereby ORDERED as follows: Oral argument upon the Objection to Plaintiff's Motion for Post-Trial Relief will be held on February 12, 2008 at 9:00 a.m. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Schmitt.	Fredric Joseph Ammerman
2/13/2009	Order, this 13th day of Feb., 2009, Plaintiffs' Motion for Post Trial Relief is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
2/20/2009	Filing: Praecipe for Entry of Judgment (On Verdict) Paid by: Schmitt, Louis C. Jr. (attorney for Yarger, Brian) Receipt number: 1928126 Dated: 2/20/2009 Amount: \$20.00 (Check) For: Yarger, Brian (defendant) No CC	Fredric Joseph Ammerman



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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

**ISSUE:**

**PRAECIPE FOR ENTRY OF JUDGMENT**

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 19<sup>TH</sup> DAY OF FEBRUARY, 2009.

Attorneys for Named Defendants

**FILED**

m/11:58/61  
FEB 20 2009

Any Schmitt  
pd. 20.00

No cc

William A. Shaw  
Prothonotary/Clerk of Courts

(No notices or  
envelopes submitted)

#41

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**PRAECIPE FOR ENTRY OF JUDGMENT**

**TO: WILLIAM A. SHAW, PROTHONOTARY**

Please enter Judgment in favor of Defendants on the Jury's verdict of December 4, 2008.

Respectfully submitted,

McINTYRE, HARTYE & SCHMITT

Attorneys for Defendant

LOUIS C. SCHMITT, JR., ESQUIRE  
PA I.D.#: 52459  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581

UN

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

RODNEY J. CHIDO and  
CAROLYN G. CHIDO,

Plaintiffs

vs.

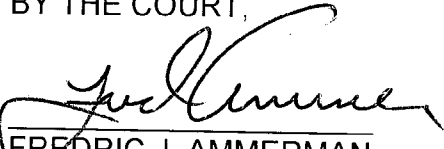
BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,  
Defendants

NO. 05-1541-CD

ORDER

NOW, this 13<sup>th</sup> day of February, 2009, following argument on the Plaintiffs' Motion for Post Trial Relief with counsel being present and upon review of the submitted briefs; it is the ORDER of this Court that the Plaintiffs' Motion for Post Trial Relief be and is hereby DENIED.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED  
2009 FEB 13  
2009

William A. Shaw  
Prothonotary/Clerk of Courts

(610)

#40

FILED

FEB 13 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 2/13/09

\_\_\_ 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  
DEC 23 2008  
3CC  
Amy Schmitt  
William A. Shaw  
Prothonotary/Clerk of Courts

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

RODNEY J. CHIODO and CAROLYN G. CHIODO, : No. 2005 – 1541 – CD  
Plaintiffs :  
vs. :  
BRIAN YARGER and :  
RODGER L. KEPHART TRUCKING, INC., :  
Defendants : JURY TRIAL DEMANDED

ORDER

AND NOW, this 23<sup>rd</sup> day of December, 2008, upon consideration of the Objection to Plaintiffs' Motion for Post-Trial Relief filed on behalf of defendants, Brian Yarger and Rodger L. Kephart Trucking, Inc., and any response thereto, it is hereby ORDERED as follows:

1. Oral argument upon the Objection to Plaintiffs' Motion for Post-Trial Relief will be held on February, 12, 2009, at 9:00 A.M. in Courtroom No. 1 of the Clearfield County Courthouse in Clearfield, Pennsylvania;
2. Plaintiff/Respondent shall file a response concerning the issues raised in the Objection to Plaintiffs' Motion for Post-Trial Relief on or before \_\_\_\_\_, 2009.

BY THE COURT,

*Judith J. Cunningham*

FILED

DEC 23 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 12/23/08

☒ 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

DEC 22 2008

ml 11:30 / m

William A. Shaw  
Prothonotary/Clerk of Courts

no c/c

et

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 - 1541 - CD

ISSUE:  
OBJECTION TO PLAINTIFFS'  
MOTION FOR POST-TRIAL REIEF

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 19<sup>TH</sup> DAY OF DECEMBER, 2008.

Attorneys for Named Defendants

#39

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

RODNEY J. CHIDO and CAROLYN G.  
CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**PROPOSED ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2009, upon consideration of the Motion for Post-Trial Relief filed on behalf of plaintiffs Rodney J. Chido and Carolyn G. Chido, and defendants' objection thereto, it is hereby ORDERED, ADJUDGED and DECREED that the plaintiffs' Motion for Post-Trial Relief is DENIED.

By the Court

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



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

RODNEY J. CHIODO and CAROLYN G. CHIODO,	:	No. 2005 – 1541 – CD
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC.,	:	
	:	
Defendants	:	JURY TRIAL DEMANDED

**OBJECTION TO MOTION FOR POST-TRIAL RELIEF**

AND NOW, come defendants, BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC., by and through their attorneys, McINTYRE, HARTYE & SCHMITT, and file the following Objection to Plaintiffs' Motion for Post-Trial relief, saying as follows:

1. The allegations contained in paragraph 1 of plaintiffs' Motion for Post-Trial Relief are admitted in part and denied in part. It is admitted that on December 3 and December 4, 2008, a jury trial was held in this matter during which seven witnesses testified. It is denied that the facts contained in paragraph 2 of the Motion for Post-Trial Relief were uncontroverted.

2. The allegations contained in paragraph 2 of plaintiffs' Motion for Post-Trial Relief are admitted in part and denied in part. It is admitted that on December 29, 2003, Rodney Chiodo was driving a motor vehicle north on Route 255 and was struck from behind by a loaded coal truck weighing approximately 70,000lbs while he was stopped in a line of traffic. It is denied that the vehicle was traveling between 40 and 50 mph when it stuck Mr. Chiodo's stopped motor vehicle, as defendant Brian Yarger had applied his

brakes and slowed his vehicle prior to impact. It is admitted that Mr. Chiodo's vehicle was pushed forward and struck the vehicle stopped in front of it, and that damage to Mr. Chiodo's vehicle was significant.

3. The allegations contained in paragraph 3 of plaintiffs' Motion for Post-Trial Relief are admitted in part and denied in part. It is admitted that Mr. Chiodo was taken by ambulance to DuBois Regional Medical Center, and then followed up approximately one week later with his family physician. It is denied that he has been under a steady course of treatment with various healthcare providers including physical therapists, rheumatologists, and chiropractors for any injuries from the motor vehicle accident. To the contrary, at trial Mr. Chiodo admitted that he was not treating with any physical therapist, rheumatologists, physician, chiropractor, or any other healthcare provider, nor had he been treating with any of those healthcare providers on a regular basis leading up to the time of trial, for injuries from the accident.

4. The allegations contained in paragraph 4 of plaintiffs' Motion for Post-Trial Relief are admitted in part and denied part. It is admitted that witness Jeffrey Herzig had no knowledge of Mr. Chiodo's injuries. It is denied that defendant Brian Yarger had no knowledge of Mr. Chiodo's injuries. To the contrary, Mr. Yarger testified that following the collision and while still at the scene of the accident, Mr. Chiodo approached Mr. Yarger and advised Mr. Yarger to take the first waiting ambulance due to the fact that Mr. Yarger was injured, and Mr. Chiodo apparently was not.

5. Denied. To the contrary, every single witness called by the plaintiffs conceded that husband-plaintiff Rodney J. Chiodo had suffered numerous prior injuries to his neck, shoulders, and back, as far into the distant past as the late 1980s.

6. The allegations contained in paragraph 6 of plaintiffs' Motion for Post-Trial Relief are admitted in part and denied in part. It is admitted that defendants produced Fred K. Khalouf, D.O. as their medical expert, and that Dr. Khalouf conceded husband-plaintiff Rodney J. Chiodo suffered a cervical soft-tissue injury as a result of the December 29, 2003 collision. It is further admitted that Dr. Khalouf at his trial deposition admitted that numerous injury processes could possibly result from a motor vehicle accident, including muscle sprains, muscle tears, avulsion fractures, and even a broken neck. However, nowhere did Dr. Khalouf concede that husband-plaintiff Rodney J. Chiodo in fact sustained any of those injury processes as a result of his cervical soft-tissue injury from the December 29, 2003, motor vehicle accident. To the contrary, Dr. Khalouf saw no injury process at all as a result of the motor vehicle accident:

I personally could not see any injury process from the reported accident of December 29, 2003 to give him any deficit or ongoing reason for these complaints or for any losses that were any different than multiple prior similar episodes. (Page 27, lines 17 -21 of trial deposition of Fred K. Khalouf, D.O.)

7. The allegations contained in paragraph 7 of plaintiffs' Motion for Post-Trial Relief are admitted in part and denied in part. It is admitted that wife-plaintiff Carolyn Chiodo testified Rodney Chiodo was a helpful husband and good father, and that their love life was satisfying. It is denied that Carolyn Chiodo testified that her husband suffered no ill effects prior to the motor vehicle collision. To the contrary, she admitted that Mr. Chiodo had injuries to his neck, back, and shoulders prior to the December 29, 2003 motor vehicle accident.

8. Denied.

9. Denied. To the contrary, there was testimony regarding a knee injury suffered by Mr. Chiodo in the summer of 2004 while playing softball, and another knee injury he suffered in November of 2007 while hunting pheasants, both of which resulted in knee surgery.

10. The allegations contained in paragraph 10 of plaintiffs' Motion for Post-Trial Relief are admitted in part and denied in part. It is admitted that the defendants admitted negligence at the time of trial, admitted that the negligence of the defendants was the sole cause of the December 29, 2003 motor vehicle accident, and further admitted that Mr. Chiodo suffered a soft-tissue cervical injury at the time of the December 29, 2003 motor vehicle accident.

11. Admitted.

12. Denied. To the contrary, although there was admittedly a cervical soft-tissue injury, the return of a zero verdict was not against the weight of the evidence, as the jury decided the cervical soft-tissue injury did not result in compensable damages.

13. Denied for the reasons set forth previously.

14. Denied due to the fact that Mrs. Chiodo's consortium claim is derivative of Mr. Chiodo's damages claims, and to the extent the jury did not find Mr. Chiodo's injury to be compensable, it could not award any consortium damages to Mrs. Chiodo. Additionally, the jury is free to reject even uncontradicted testimony that it finds not credible.

15. Denied. To the contrary the jury's verdict awarding zero damages was well-founded, given husband-plaintiff Rodney J. Chiodo's nearly twenty year history of identical pre-existing neck, shoulder, and back complaints arising from numerous prior injuries.

WHEREFORE, defendants Brian Yarger and Rodger L. Kephart Trucking, Inc., respectfully request that this Honorable Court deny plaintiffs' Motion for Pos-Trial Relief.

Respectfully submitted,

McINTYRE, HARTYE & SCHMITT

---

Attorneys for Defendants

Louis C. Schmitt, Jr., Esquire  
PA ID# 52459  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581  
(814) 696-9399 FAX

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**PRAECIPE FOR ARGUMENT LIST**

**TO: PROTHONOTARY**

Kindly list the above-captioned matter on the next available argument list. The matter to be argued is Objection to Plaintiffs' Motion for Post-Trial Relief filed on behalf of defendants, Brian Yarger and Rodger L. Kephart Trucking, Inc.

Respectfully submitted,

McINTYRE, HARTYE & SCHMITT

---

Attorney for Defendants

LOUIS C. SCHMITT, JR., ESQUIRE  
PA ID. No. 52459  
P. O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581  
(814) 696-9399 - FAX

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,  
Plaintiffs

vs.

No. 2005-1541 CD

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

**SCHEDULING ORDER**

AND NOW, this 16<sup>th</sup> day of December, 2008, upon consideration of the  
Motion for Post Trial Relief it is hereby ORDERED that:

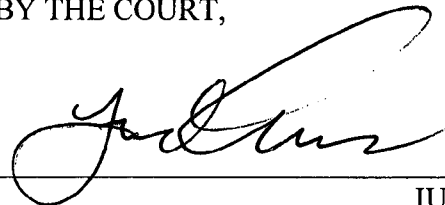
1. A Rule is issued upon Respondent to show cause why the moving party is  
not entitled to the relief requested.

2. The Respondent shall file an Answer to the Motion within \_\_\_\_\_ days of  
this date;

3. Argument shall be held on the 12<sup>th</sup> day of February,  
2009 at 9:00 o'clock A.M., in Courtroom No. 3 of the Clearfield  
County Courthouse, Clearfield, Pennsylvania; and

4. Notice of the entry of this Order shall be provided to all parties by the  
moving party.

BY THE COURT,



JUDGE

FILED

DEC 16 2008

William A. Shaw  
Prothonotary/Clerk of Courts

#38

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,  
Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

No. 2005-1541 CD

Type of Pleading:  
Motion For Post Trial Relief

Filed on behalf of Rodney J. Chiodo and  
Carolyn G. Chiodo, Plaintiffs.

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
Supreme Court No. 42519

100 Meadow Lane, Suite 5  
DuBois, Pennsylvania 15801

(814) 375-0300

**FILED**  
DEC 15 2008

William A. Shaw  
Prothonotary/Clerk of Courts

*2cc*  
*Atty Hopkins*  
*cd*

*#37*



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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

No. 2005-1541 CD

**MOTION FOR POST TRIAL RELIEF**

AND NOW, comes the plaintiffs Rodney J. Chiodo and Carolyn G. Chiodo, by and through their attorneys, Hopkins Heltzel LLP, and files for post trial relief and in support thereof says as follows:

1. On December 3, 2008 and December 4, 2008, a jury trial was held in the above-captioned matter. Seven (7) witnesses testified. The following facts were uncontroverted.

2. On December 29, 2003, Rodney Chiodo was driving a motor vehicle north on Route 255. He was stopped in a line of traffic. He was struck from behind by a coal truck loaded with gravel. The approximate loaded weight of the vehicle was 70,000 pounds. The vehicle was traveling between 40 and 50 miles per hour when it struck Chiodo's stopped motor vehicle. Mr. Chiodo's vehicle was pushed forward and struck the vehicle that was stopped in front of his vehicle. Damage to Chiodo's vehicle was severe. See Trial Exhibit 1.

3. Mr. Chiodo was taken by ambulance to DuBois Regional Medical Center. One week later he followed up with his family physician and thereafter has been under a steady course

of treatment with various health care providers including physical therapists, rheumatologists and chiropractors.

4. Two witnesses Jeffrey Herzing and defendant Brian Yarger had no knowledge of Mr. Chiodo's injuries. Their testimony was limited solely to the events concerning the December 29, 2003 collision.

5. Plaintiff produced three witnesses each of whom testified Mr. Chiodo did not have injuries prior to the collision and all of his treatment subsequent to December 29, 2003 was related to the motor vehicle collision.

6. Defendant produced one witness, Fred K. Khalouf, D.O. Dr. Khalouf admitted Mr. Chiodo was injured in the December 29, 2003 collision.

Q. From your review of the records, you don't disagree that  
Mr. Chiodo was injured in this December 29, 2003 ...

A. Oh, no.

Q. -- collision?

A. Not at all.

Q. Okay. You agree that he was injured?

A. Oh, yeah.

Q. Okay. And what injuries did he suffer?

A. Well, the only thing you can really call it would be blunt force  
deceleration of the opposing force. ...

I mean it's just basically a sudden stoppage of a major impact  
in velocity against a stopped object. So it causes the body to ...

it's a sudden whiplash, you know.

Q. Okay. And what does a – what does a whiplash – when you say whiplash, what does that mean?

A. Just a rapid force of deceleration against a fixed object. ...

Q. Okay. And when his seatbelt stopped him and in the usual course of events his head and neck would have continued to move forward; right?

A. Right.

Q. Okay. And what does that do to the back muscles and to the neck muscles when that happens?

A. It causes a whiplash.

Q. Okay. And what do you mean by a whiplash?

A. It whips and then comes back to its position.

Q. What happens to the muscles themselves when that head goes forward?

A. It could be sprained – it could be strained, sprained, torn, damaged.

7. Carolyn Chiodo testified her husband suffered no ill effects prior to the motor vehicle collision. She testified Rodney Chiodo was a helpful husband and good father. She testified their love life was satisfying.

8. Carolyn Chiodo further testified subsequent to the accident she is now mother and father. Rodney Chiodo is not able to help her. She testified their love life is non-existent.

9. There was no testimony of any post December 29, 2003 injuries to Mr. Chiodo.

10. The Defendant admitted negligence at the trial and their negligence was the sole cause of the accident. Defendants further admitted their negligence was a substantial factor in causing Mr. Chiodo's injuries.

11. The jury awarded no damages.

12. The jury's verdict in awarding no damages is against the weight of the evidence inasmuch the plaintiffs' expert and the defendants' expert both agreed Mr. Chiodo was injured in the motor vehicle collision.

13. The jury's verdict in awarding no damages is against the weight of the evidence inasmuch as Mr. Chiodo was struck from behind by a 70,000 pound coal truck traveling between 40 and 50 miles per hour.

14. The jury's verdict that Mrs. Chiodo suffered no damages in her consortium claim is against the weight of the evidence. Her testimony was not questioned. She was not even cross examined.

15. The jury's verdict is so contrary to the evidence as to shock one's sense of justice.

WHEREFORE, Plaintiff prays this Honorable Court grant Plaintiff a new trial on the issues of damages.

Respectfully submitted,

HOPKINS HELTZEL LLP

By:

  
David J. Hopkins, Esquire  
Attorney for Plaintiffs

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

No. 2005-1541 CD

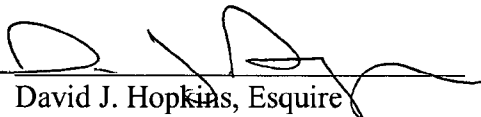
BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of Plaintiffs' Motion for Post Trial Relief filed on behalf of Rodney Chido and Carolyn Chido, was forwarded by first class mail, postage prepaid on the 15th day of December, 2008, to Louis C. Schmitt, Jr., Esquire, addressed as follows:

Louis C. Schmitt, Jr., Esquire  
McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533

  
David J. Hopkins, Esquire  
Attorney for Plaintiffs

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,  
Plaintiffs

vs.

No. 2005-1541 CD

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

FILED

DEC 04 2008

William A. Shaw  
Prothonotary/Clerk of Courts

JURY VERDICT SLIP

State the amount of damages, if any, sustained by the Plaintiffs as a result of the  
December 29, 2003 accident.

\$ 0.00

December 4, 2008

*Christopher J. Wesely*  
Foreperson

#36

COURT OF COMMON PLEAS, CLEARFELD COUNTY  
PENNSYLVANIA

CASE NO. 2005-1541-CD

Date of Jury Selection: July 24, 2008

Presiding Judge: Fredric J. Ammerman, P. Judge

Rodney J. Chiodo & Carolyn G. Chiodo

Court Reporter: Kathy Provost

VS

Date of Trial: December 3-5, 2008

Rodger L. Kephart Trucking Inc. and  
Brian Yarger

Date Trial Ended: 12-4-08

MEMBERS OF THE JURY

FILED

014:0061  
DEC 04 2008

William A. Shaw  
Prothonotary/Clerk of Courts

1. William Dufour
2. Ruth Smulik
3. Nanette Miceli
4. Raymond Owens
5. Barbara Ceprish
6. Ferman Hipps

7. Donna Rummings
8. Phyllis Holmes
9. Herman Wisor
10. Robert Karp
11. Christopher Wesesky
12. Agnes Hubler

~~ALT #1 Helen Kephart~~ Excused. ill

ALT #2 Adam Carr TO ALT #1

PLAINTIFF'S WITNESSES:

1. Jeffrey Herzog
2. Brian Yarger on cross
3. Rodney Chiodo
4. John Risser
5. Carolyn Chiodo
6. Richard Bonfiglio

DEFENDANT'S WITNESSES:

1. DR. FRED Khalouf - video tape
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

PLAINTIFF'S ATTY: David J. Hopkins Esq

DEFENDANT'S ATTY: Louis C. Schmitt Jr Esq

ADDRESS TO JURY: 1:30 pm

ADDRESS TO JURY: 1:12 pm

JUDGE'S ADDRESS TO JURY: 2:04 pm JURY OUT: 2:35 pm JURY IN: 3:14 pm

VERDICT: DAMAGES = \$ 0

FOREPERSON: # 11

#35

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

RODNEY J. CHIODO and  
CAROLYN G. CHIODO,

Plaintiffs

vs.

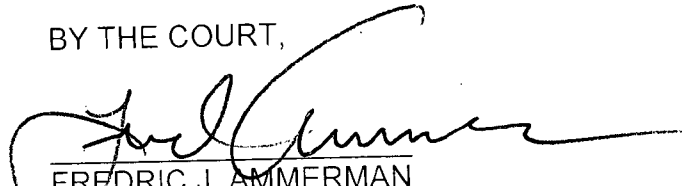
BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,  
Defendants

NO. 05-1541-CD

ORDER

NOW, this 26<sup>th</sup> day of November, 2008, it is the ORDER of this Court that the Motion in Limine filed on October 28, 2008 on behalf of the Plaintiffs be and is hereby DISMISSED.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

**FILED** 2cc Attys:  
01/4:00/301 Hopkins  
DEC 01 2008 Schmitt

William A. Shaw  
Prothonotary/Clerk of Courts  
Faxed to Hopkins &  
Schmitt by Judge Ammerman's  
Office.

#321



FILED

DEC 01 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 12/1/08

☐ 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)

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,  
Plaintiffs

vs.

No. 2005-1541 CD

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

**ORDER**

AND NOW, this 13 day of November, 2008, it is ORDERED and ADJUDGED that Plaintiffs' Nunc Pro Tunc Motion to Extend Time to File Motions in Limine is hereby granted and the Court hereby extends the time for filing Motions in Limine through October 28, 2008.

BY THE COURT,

  
JUDGE

FILED  
019:41/30  
NOV 14 2008

400  
Amy Hopkins

William A. Shaw  
Prothonotary/Clerk of Courts

#33

FILED

NOV 14 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 11/14/08

☒ 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)

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

No. 2005-1541 CD

Type of Pleading: Answer to Motion  
to Strike Plaintiffs' Motion in Limine to  
Exclude Testimony of Fred K.  
Khalouf, D.O. as a medical expert

Filed on behalf of Rodney J. Chiodo and  
Carolyn G. Chiodo, Plaintiffs.

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
Supreme Court No. 42519

100 Meadow Lane, Suite 5  
DuBois, Pennsylvania 15801

(814) 375-0300

FILED 3cc  
01/09/08  
NOV 12 2008

William A. Shaw  
Prothonotary/Clerk of Courts

Attly Hopkins  
(GK)

#32

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,  
Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

No. 2005-1541 CD

**ANSWER TO MOTION STRIKE PLAINTIFFS' MOTION IN LIMINE  
TO EXCLUDE TESTIMONY OF  
FRED K. KHALOUF, D.O. AS A MEDICAL EXPERT**

AND NOW, comes the Plaintiffs, Rodney J. Chido and Carolyn G. Chido, by and through their attorneys, Hopkins Heltzel LLP, and answer the Motion to Strike Plaintiffs' Motion in Limine, saying as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

5. Admitted. By way of further answer, the Court's purpose in setting a date for Motions in Limine to be filed was to allow the Court sufficient time to schedule and consider such motions with the thoughtfulness the motions deserve and so not to delay the jury trial or inconvenience the individual jurors. In the case at bar, the Motions for Limine were filed within a few days of receiving the transcript of Dr. Khalouf's testimony. The Court has scheduled a hearing three (3) weeks prior to the start of the trial and therefore has sufficient time to thoughtfully consider the motions without delaying the trial or the jurors.

6. Admitted in part and denied in part. Plaintiffs admit filing the motion on October 28, 2008. Plaintiffs repeat their answer to paragraph 5 above.

WHEREFORE, Defendants' Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a medical expert should be denied.

Respectfully submitted,

HOPKINS HELTZEL LLP

  
David J. Hopkins, Esquire  
Attorney for Plaintiffs

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

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No. 2005-1541 CD

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of Plaintiffs' Answer to Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert, filed on behalf of Rodney Chiodo and Carolyn Chiodo, was hand delivered on the 12th day of November, 2008, to all counsel of record, as follows:

Louis C. Schmitt, Jr., Esquire  
McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533



David J. Hopkins, Esquire  
Attorney for Plaintiffs

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

No. 2005-1541 CD

Type of Pleading: Nunc Pro Tunc  
Motion to Extend Time to File  
Motions in Limine

Filed on behalf of Rodney J. Chiodo and  
Carolyn G. Chiodo, Plaintiffs.

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
Supreme Court No. 42519

100 Meadow Lane, Suite 5  
DuBois, Pennsylvania 15801

(814) 375-0300

5  
FILED 3cc  
09:40/521 Amy Hopkins  
NOV 12 2008

William A. Shaw  
Prothonotary/Clerk of Courts

#31



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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

No. 2005-1541 CD

**NUNC PRO TUNC MOTION TO  
EXTEND TIME TO FILE MOTIONS IN LIMINE**

AND NOW, comes the Plaintiffs, Rodney J. Chido and Carolyn G. Chido, by and through their attorneys, Hopkins Heltzel LLP and David J. Hopkins, Esquire, and files the within Nunc Pro Tunc Motion to Extend Time to File Motions in Limine and in support thereof says as follows:

1. This lawsuit arises out of a motor vehicle accident that occurred on December 29, 2003, in Jay Township, Pennsylvania, at approximately 12:20 p.m. At that time and place, Plaintiff, Rodney Chido was operating his Cadillac motor vehicle northbound on State Route 255, traveling in the center lane of three lanes.
2. A Pre-Trial Conference took place in this matter on June 12, 2008.
3. This Honorable Court, issued a Pre-Trial Order dated June 12, 2008.
4. The jury trial in this matter is scheduled to commence on December 3, 2008.
5. The June 12, 2008 Order set a deadline for the filing of Motions in Limine to be not later than 45 days prior to the December 3, 2008 trial date.

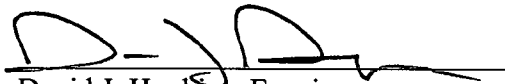
6. Plaintiffs received the transcript testimony of Fred K. Khalouf, D.O. and require a short extension to consider the transcript and file such Motions in Limine as may be required.

7. The Court's purpose in setting a date for Motions in Limine to be filed was to allow the Court sufficient time to schedule and consider such motions with the thoughtfulness the motions deserve and so not to delay the jury trial or inconvenience the individual jurors.

8. There is no prejudice to the Defendants in extending the date to file Motions in Limine.

WHEREFORE, Plaintiffs, Rodney J. Chiodo and Carolyn G. Chiodo, respectfully request this Honorable Court to extend the time for filing Motions in Limine through October 28, 2008.

Respectfully submitted,

  
David J. Hopkins, Esquire  
Attorney for Plaintiffs

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

No. 2005-1541 CD

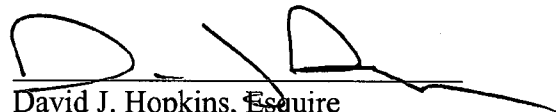
BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of Plaintiffs' Nunc Pro Tunc Motion to Extend Time to File Motions in Limine, filed on behalf of Rodney Chiodo and Carolyn Chiodo, was hand delivered on the 12th day of November, 2008, to all counsel of record, as follows:

Louis C. Schmitt, Jr., Esquire  
McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533

  
David J. Hopkins, Esquire  
Attorney for Plaintiffs

ORIGINAL

FILED

NOV 06 2008

William A. Shaw  
Prothonotary/Clerk of Courts

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

RODNEY J. CHIDO and CAROLYN G.  
CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 - 1541 - CD

JURY TRIAL DEMANDED

ORDER

AND NOW, this 6<sup>th</sup> day of November, 2008, upon consideration of the Motion to Strike Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert filed on behalf of defendants, Brian Yarger and Rodger L. Kephart Trucking, Inc., and any response thereto, it is hereby ORDERED as follows:

1. Oral argument upon the Motion to Strike Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as an Medical Expert will be held on 12<sup>th</sup> day of November, 2008, at 10:30 A.M. in Courtroom No. 1 of the Clearfield County Courthouse in Clearfield, Pennsylvania.

2. Plaintiff/Respondent shall file a response concerning the issues raised in the Motion to Strike Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as an Medical Expert on or before \_\_\_\_\_, 2008.

~~3. Notice of the entry of this Order shall be served by the Prothonotary.~~

BY THE COURT,

[Signature]  
PRESIDENT JUDGE

30

FILED

NOV 06 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 11/16/08

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

10/16/08

10/16/08

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

**ISSUE:**

OBJECTION TO PLAINTIFFS' MOTION  
IN LIMINE TO EXCLUDE TESTIMONY  
OF FRED K. KHALOUF, D.O., AS A  
MEDICAL EXPERT

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 31<sup>ST</sup> DAY OF OCTOBER, 2008.

Attorneys for Named Defendants

FILED

NOV 03 2008

William A. Shaw  
Prothonotary/Clerk of Courts

#29

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

RODNEY J. CHIODO and CAROLYN G. CHIODO, : No. 2005 – 1541 – CD

Plaintiffs :

vs. :

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC., :

Defendants :

JURY TRIAL DEMANDED

**PROPOSED ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2008, upon consideration of  
Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical  
Expert, and defendants' objections thereto, and it is hereby ORDERED, ADJUDGED  
and DECREED that the Motion In Limine is denied.

By the Court

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

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

RODNEY J. CHIDO and CAROLYN G.  
CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**PRAECIPE FOR ARGUMENT LIST**

**TO: PROTHONOTARY**

Kindly list the above-captioned matter on the next available argument list. The matter to be argued is Objection to Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert filed on behalf of defendants, Brian Yarger and Rodger L. Kephart Trucking, Inc.

Respectfully submitted,

McINTYRE, HARTYE & SCHMITT

Attorney for Defendants

LOUIS C. SCHMITT, JR., ESQUIRE

PA ID. No. 52459

P. O. Box 533

Hollidaysburg, PA 16648

(814) 696-3581

(814) 696-9399 - FAX



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

RODNEY J. CHIDO and CAROLYN G.  
CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2008, upon consideration of the Objection to Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert filed on behalf of defendants, Brian Yarger and Rodger L. Kephart Trucking, Inc., and any response thereto, it is hereby ORDERED as follows:

1. Oral argument upon the Objection to Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as an Medical Expert will be held on \_\_\_\_\_, 2008, at \_\_\_\_\_ M. in Courtroom No. \_\_\_\_\_ of the Clearfield County Courthouse in Clearfield, Pennsylvania.
2. Plaintiff/Respondent shall file a response concerning the issues raised in the Objection to Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as an Medical Expert on or before \_\_\_\_\_, 2008.
3. Notice of the entry of this Order shall be served by the Prothonotary.

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

RODNEY J. CHIODO and CAROLYN G. CHIODO,	:	No. 2005 – 1541 – CD
	:	
Plaintiffs	:	
	:	
. vs.	:	
	:	
BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC.,	:	
	:	
Defendants	:	JURY TRIAL DEMANDED

**OBJECTION TO PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE TESTIMONY OF  
DR. KHALOUF AS A MEDICAL EXPERT**

AND NOW, come defendants, BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC., by and through their attorneys, McINTYRE, HARTYE & SCHMITT, and respectfully request that this Honorable Court deny plaintiffs' Motion in Limine to Exclude testimony of Fred K. Khalouf, D.O. as a medical expert, saying as follows:

1. Admitted.
2. Admitted. By way of further answer, the record in this matter reveals that husband-plaintiff Rodney J. Chiodo for many years prior to the December 29, 2003 motor vehicle accident made identical complaints to various health care providers.
3. Admitted. By way of further answer, the record in this matter reveals that husband-plaintiff Rodney J. Chiodo for many years prior to the December 29, 2003 motor vehicle accident made identical complaints to various health care providers.

4. Admitted. By way of further answer, the record in this matter reveals that husband-plaintiff Rodney J. Chiodo for many years prior to the December 29, 2003 motor vehicle accident made identical complaints to various health care providers.

5. Admitted. By way of further answer, a review of Dr. Bonfiglio's Curriculum Vitae shows that he is not board-certified in pain medicine.

6. Admitted. By way of further answer, the record in this matter reveals that husband-plaintiff Rodney J. Chiodo for many years prior to the December 29, 2003 motor vehicle accident made identical complaints to various health care providers.

7. Admitted.

8. It is admitted that Dr. Khalouf renders treatment to patients who complain of chronic pain, as does Dr. Bonfiglio, the plaintiffs' medical expert in this case. By way of further answer, Dr. Khalouf-unlike Dr. Bonfiglio- has a long history of treating patients with acute pain as well as chronic pain. In fact, Dr. Khalouf previously was employed as an emergency room physician at Parkview Hospital in Philadelphia, Pennsylvania. (See page 2 of Curriculum Vitae of Fred K. Khalouf, D.O., attached as exhibit No. 1 to the transcript of Dr. Khalouf's trial deposition recorded on October 3, 2008, which is itself attached hereto as Exhibit "A".) As an emergency room physician, Dr. Khalouf would have treated nothing but acute pain and symptomatology.

9. Admitted.

10. It is admitted that neither Dr. Khalouf nor Dr. Bonfiglio is a neurologist. However, as set forth above, Dr. Khalouf has actually worked as a physician rendering acute care to emergency room patients at Parkview Hospital in Philadelphia, Pennsylvania.

11. It is admitted that neither Dr. Khalouf nor Dr. Bonfiglio is a neurologist. However, as set forth above, Dr. Khalouf has actually worked as a physician rendering acute care to emergency room patients at Parkview Hospital in Philadelphia, Pennsylvania.

12. Denied. Dr. Khalouf is not board-certified as an orthopedic surgeon, but as his attached Curriculum Vitae demonstrates, he has many years of training in orthopedics and acute and chronic pain management, including the assessment, diagnosis, and treatment of orthopedic, neurological, and acute pain conditions and has served as an emergency room physician in the past.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Denied. To the contrary, Dr. Khalouf is the only board-certified medical pain specialist expert in this case, and is one of the few physicians in the Commonwealth of Pennsylvania holding a medical board certification in the sub-specialty of pain management. Additionally, Dr. Khalouf has been qualified and testified in Court in the past as a medical expert with regard to pain issues. (See page 6, lines 20-23 of Dr. Khalouf's trial deposition transcript.)

WHEREFORE, defendants respectfully request that this Honorable Court deny plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a medical expert.

**MOTION II**

18. Denied. To the contrary, Dr. Khalouf's answer was in fact responsive to defense counsel's inquiry, when placed into the context of his deposition testimony. Additionally, only the attorney posing a question to a witness can object to the witness's testimony as "unresponsive." Since Attorney Hopkins did not ask the question that elicited Dr. Khalouf's referenced testimony, he cannot object to it as "unresponsive" to the question, but must state some other objectionable basis, which Attorney Hopkins failed to do.

WHEREFORE, defendants Brian Yarger and Rodger L. Kephart Trucking, Inc., respectfully request that this Honorable Court deny plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a medical expert in this matter.

Respectfully submitted,

MCINTYRE, HARTYE & SCHMITT

\_\_\_\_\_  
Attorneys for Defendants

Louis C. Schmitt, Jr., Esquire  
PA ID# 52459  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581  
(814) 696-9399 FAX

BY THE COURT,

---

J.

MLP REPORTING, INC. (570) 748-1041

I N D E XBY DEFENDANTSEXAMINATION

FRED K. KHALOUF, D.O.

on qualifications

By MR. SCHMITT

3

By MR. HOPKINS

7

FRED K. KHALOUF, D.O.

By MR. SCHMITT

10

By MR. HOPKINS

28

E X H I B I T SEXHIBITSMARKED

No. 1 - CURRICULUM VITAE

7

No. 2 - 9/3/08 REPORT

11



1 FRED K. KHALOUF, D.O., called as a witness, being  
2 sworn, testified as follows:

3

4

EXAMINATION ON QUALIFICATIONS

5

6 BY MR. SCHMITT:

7

8

Q. Doctor, would you please introduce yourself to  
the jury in this case?

9

A. I'm Fred Khalouf.

10

Q. And, Dr. Khalouf, at my request, did you perform  
11 a physical examination of Rodney Chiodo and also review his  
12 medical records and reports?

13

A. Yes, I did.

14

Q. And before we get into that, I would like to  
15 take you a little bit through your qualifications and let  
16 the jury know about your professional background. Where  
17 did you attend college?

18

A. I did my premedical studies at Saint Francis  
19 University with a biology major and then attended medical  
20 school at the Philadelphia College of Osteopathic Medicine;  
21 followed by an internal medicine internship at Pittsburgh's  
22 Allegheny General Hospital; followed by my anesthesia  
23 residency at the Hospital University of Pennsylvania;  
24 followed by staff appointment and medical school clinical  
25 associate professorship at the University of Pittsburgh's

1 School of Medicine where I practiced for approximately five  
2 years before returning to central Pennsylvania to Altoona  
3 and specializing in my subspecialty of anesthesia pain  
4 medicine.

5 Q. Doctor, are you licensed to practice medicine in  
6 the State of Pennsylvania?

7 A. I am.

8 Q. How long have you held that license?

9 A. Since 1981.

10 Q. Are you board certified in any medical  
11 specialties?

12 A. I hold the American Board of Anesthesia -- I'm  
13 diplomate of the American Board of Anesthesia, I'm  
14 diplomate of the American Board of Pain Medicine and a  
15 diplomate of the American Board of Anesthesia subspecialty  
16 certification in pain medicine.

17 Q. Now, Doctor, a lot of folks understand an  
18 anesthesiologist as someone when you go to the hospital and  
19 you're undergoing surgery or some procedure anesthesia will  
20 kind of put you to sleep and that's a lot of what  
21 anesthesiologists do. Can you explain to the jury in  
22 particular what your field is as an anesthesiologist?

23 A. In brief summary, there are several  
24 subspecialties under anesthesia, just like there are  
25 subspecialties under internal medicine. For example,

5

1 cardiology, pulmonology, diabetes, endocrinology, they're  
2 all subspecialties of internal medicine. Pain medicine is  
3 board certified by the American Board of Anesthesia as one  
4 of its four subspecialties. Such as cardiac anesthesia,  
5 obstetric anesthesia, critical care medicine and  
6 interventional pain medicine are the recognized and  
7 certified subspecialties of anesthesia. So to become a  
8 true -- there are a lot of people who hang shingles, but to  
9 be a pain -- interventional pain physician, you need to  
10 first be a board certified anesthesiologist.

11 Q. And your practice -- medical practice is  
12 centered here at the HealthSouth Rehabilitation Hospital of  
13 Altoona?

14 A. Correct.

15 Q. And just describe for the jury if you would what  
16 sort of patients do you see? What kind of complaints do  
17 you deal with in your practice?

18 A. I personally only see spine patients. I mean I  
19 see occasional something that comes with a spine patient,  
20 but I'm mostly all neurologic involving the spine.  
21 Cervical, thoracic, lumbar spine problems from herniated  
22 discs to facet joint disease, failed back syndromes, et  
23 cetera.

24 Q. Are these folks who have in general developed  
25 what we would call chronic pain?

1           A.     Correct. I don't do any acute pain. Now, acute  
2 pain really refers to perioperative pain, which is also an  
3 anesthesiologist's role for perioperative/postoperative so  
4 to speak pain management. And acute pain also may be pain  
5 that is involving the first 12 weeks of an injury process.  
6 Chronic pain is that which is thought to be and defined as  
7 being that which persists after the injury has healed and  
8 usually beyond the 12-week mark.

9           Q.     And so there are a number of your patients you  
10 see that have been in pain for years and years sometimes?

11          A.     Yes, most of them have been.

12          Q.     And could you just give the jury an idea how  
13 many patients do you typically see? And you can put it  
14 into whatever time frame is easiest for you to describe.

15          A.     More than I want to be. That's why I'm late for  
16 this deposition on a Friday. On my average day, I see  
17 between 20 and 30 patients per day.

18          Q.     And that would be every day?

19          A.     Pretty much every day.

20          Q.     Okay. And have you previously been qualified  
21 and testified as an expert medical witness in cases pending  
22 in courts in the State of Pennsylvania?

23          A.     Yes.

24          Q.     I'm going to hand you what -- a document. I  
25 would just like you if you could just identify what that

1 document is?

2 A. That's my curriculum vitae.

3 Q. And that lists your qualifications and  
4 background?

5 A. Yes.

6 Q. And is that an updated curriculum vitae?

7 A. Yes.

8 Q. And is all the information contained in there  
9 accurate?

10 A. Yes.

11 MR. SCHMITT: Okay. I would like to offer that  
12 as an exhibit, Exhibit 1 to Dr. Khalouf's deposition. And  
13 I will let Attorney Hopkins ask you any questions that he  
14 might have with regard your qualifications, Doctor, before  
15 we get into your testimony in this case.

16 (Deposition Exhibit No. 1 was marked for  
17 identification.)

18

19 EXAMINATION ON QUALIFICATIONS

20

21 BY MR. HOPKINS:

22 Q. Doctor, when I look at your curriculum vitae,  
23 you're not a neurologist, are you?

24 A. No, I'm not.

25 Q. And you're not a neurosurgeon?

1 A. That's correct.

2 Q. And do you have any training in orthopedics?

3 A. No, I'm not an orthopedist either.

4 Q. Okay. And can I assume that you're not board  
5 certified as a neurologist?

6 A. That's correct.

7 Q. Okay. And you're not board certified as an  
8 orthopedic surgeon either?

9 A. That's correct.

10 Q. So what you're board certified in is a -- as an  
11 anesthesiologist?

12 A. And anesthesiology subspecialty in chronic pain  
13 medicine.

14 Q. Okay. So is it a fair statement, Doctor, to say  
15 that when you evaluate patients, and I think you said you  
16 evaluate 20 to 30 a day, 100 to 150 a week, you rely on the  
17 reports of other doctors and physicians?

18 A. To some degree. I am -- I am mostly physician  
19 referred. So the majority of the patients that I see  
20 present with past histories that are detailed in medical  
21 reports and previous treatment plans that have been offered  
22 or rendered by other physicians. I use those as background  
23 supporting information, but I determine my own opinion of  
24 these cases when I see them.

25 MR. HOPKINS: That's all I have.

1 MR. SCHMITT: At this time, I would like to  
2 offer in this case Dr. Khalouf as a medical expert in the  
3 field of chronic pain and --

4 MR. HOPKINS: I'm --

5 MR. SCHMITT: Sorry.

6 MR. HOPKINS: Go ahead, finish. I'm sorry.

7 MR. SCHMITT: That -- that was it.

8 MR. HOPKINS: I'm going to object.

9 MR. SCHMITT: And what is the basis for the  
10 objection?

11 MR. HOPKINS: The basis for the objection is  
12 that Dr. Khalouf, while he may be a specialist for the  
13 pain, he's not a board certified -- or a specialist in the  
14 field of orthopedics or neurology. And as such, is not an  
15 expert to testify as to the relationship between this  
16 automobile collision that Mr. Chiodo suffered and the  
17 medical abnormalities that resulted from it.

18 MR. SCHMITT: Okay. And I would like to say for  
19 the record that I understand Dr. Bonfiglio, who is the  
20 Plaintiff's medical expert, is also not board certified in  
21 neurology or orthopedics. Furthermore, Dr. Khalouf is well  
22 qualified to testify as to the chronic pain complaints that  
23 are being made by Mr. Chiodo and his testimony does not  
24 have to be in any certain specialty as a medical expert.  
25 It merely has to be helpful to the jury and I think he has

1 passed that test with flying colors. So that's the  
2 position on the record.

3 And I'll move on now and wait just a second or  
4 two before I get into Dr. Khalouf's testimony so that we  
5 have a little pause so that the videotape can be edited if  
6 necessary before I get into Dr. Khalouf's testimony.

7

8 EXAMINATION

9

10 BY MR. SCHMITT:

11 Q. Dr. Khalouf, as we stated earlier, you have at  
12 my request examined Mr. Rodney Chiodo and reviewed his  
13 medical records; is that correct?

14 A. That's correct.

15 Q. And as a result of your review of Mr. Chiodo's  
16 medical case, did you prepare a report dated September the  
17 3rd, 2008?

18 A. I did.

19 Q. And let me just hand you a copy of that. Does  
20 that appear to be the report that you prepared?

21 A. Yes.

22 Q. And is that your signature on the last page?

23 A. Yes.

24 Q. And, Doctor, did you prepare that report in the  
25 course and scope of your normal practice of medicine in



1 reviewing these sorts of cases?

2 A. Yes.

3 Q. And that was prepared by you in the normal  
4 course of that practice?

5 A. Correct.

6 MR. SCHMITT: I would like to offer at this time  
7 Dr. Khalouf's September 3, 2008 report as Exhibit 2 of this  
8 deposition.

9 (Deposition Exhibit No. 2 was marked for  
10 identification.)

11 BY MR. SCHMITT:

12 Q. And, Doctor, please feel free, do feel free to  
13 review -- to refer to your report as we go through this. I  
14 know you see a lot of patients. Just let the jury know  
15 when you saw Dr. Chiodo what date was that that you saw  
16 him?

17 A. September 3rd, 2008.

18 Q. So that was exactly one month ago?

19 A. Correct.

20 Q. And at that time, did you talk to Mr. Chiodo  
21 about the past history of his problems?

22 A. I did. It was mentioned as part of his initial  
23 intake that he did have -- he admitted to having had an  
24 auto accident or a vehicular accident when he was stopped  
25 waiting I believe to turn and was struck from behind by a

1 coal truck.

2 Q. And what did he tell you about the development  
3 of his problems then after that motor vehicle accident?

4 A. This problem occurred -- this accident occurred  
5 December 29 of 2003, so nearly five years previous, and he  
6 was again injured when struck from behind and was able to  
7 self-extricate himself from the vehicle, taken to a local  
8 emergency room, evaluated and released. He was initially  
9 studied with x-rays and was not found to have any traumatic  
10 damages, et cetera that would have required  
11 hospitalization. So he was released.

12 He was seen thereafter by his own family  
13 physician approximately one week later. From what I gather  
14 from trying to put the chronology and the timing of all  
15 this together was approximately six -- or about a week  
16 later. He saw his family physician because he was  
17 continuing to have neck pain and pain all the way through  
18 his back along his spine down to his lumbar region. He was  
19 also having sinus problems at that time that he -- that  
20 were in the doctor's notes from that office visit. He was  
21 treated conservatively and continued regular visits  
22 thereafter with his family physician and with a  
23 chiropractor.

24 Over the next several months, he had seen his  
25 family physician, Dr. Scerbo, on several occasions and had

1 a number of complaints that included neck and back pain,  
2 chest pressure, indigestion, nasal congestion, stress and  
3 tension and headaches as described on his physician's  
4 notes. Dr. Scerbo described this as ligamentous strain and  
5 irritation and also stress and tension, but admitted that  
6 he would not take any antianxiety drugs. He subsequently  
7 sent him for an MRI, which was performed on the cervical  
8 spine March 30, 2004, which showed a very small midline  
9 disc bulge at C5-6 with no other findings of injury or  
10 degeneration.

11 Over the next several months, there were  
12 multiple entries in Dr. Scerbo's notes of describing  
13 ongoing pain and discomfort in his neck, along with  
14 headaches and other medical problems; such as nasal  
15 congestion, allergies, hypercholesterolemia, weight  
16 problems, chest symptoms, acid reflux and right knee pain.  
17 These visits were continued with Dr. Scerbo into April of  
18 2005.

19 Because of these additional ailments and  
20 complaints that the patient had described, at that point,  
21 Dr. Scerbo had referred him to see Dr. Elizabeth Young, who  
22 is a rheumatologist in Pittsburgh.

23 Q. What's a rheumatologist, Doctor?

24 A. A rheumatologist would be a subspecialty of  
25 internal medicine, a physician who basically treats non --

1 nonoperative bone and joint disease.

2 Q. Okay. Thank you.

3 A. She concluded that his pain was related to  
4 myofascial pain and her examination described tender points  
5 in the paraspinous muscles, which she injected and also  
6 treated him with medications. She saw Mr. Chiodo on March  
7 3rd and from what I can see there were no other entries for  
8 any additional follow-up visits with her.

9 Q. Now, this myofascial pain, could you explain to  
10 the jury this diagnosis that was given by -- by the  
11 physician, what that is?

12 A. Well, myofascial pain is pain involving muscle  
13 and tendon sheaths of muscles.

14 Q. Is that something that you frequently see in  
15 your medical practice?

16 A. Yes, I do.

17 Q. Is that a condition you frequently treat in your  
18 medical practice?

19 A. Not frequently. I try to stay away from it. I  
20 try to refer that to the -- I see some of it as it comes  
21 part of the spine problems, but I -- most of my work is in  
22 and around the spine and I mean I practice -- treated  
23 myofascial pain for years, but I'm now trying to evolve  
24 more into interventional spine type therapies.

25 Q. Got you.

1 A. But it's a big part of chronic pain medicine,  
2 yes.

3 Q. So you see that all the time in your practice?

4 A. Yes.

5 Q. If you could then -- I'm sorry to interrupt the  
6 narrative of the treatment. You had mentioned the  
7 rheumatologist and please pick up from there.

8 A. So the patient had not returned I don't believe  
9 other than that one visit and was then involved in physical  
10 therapy and chiropractic encounters throughout January of  
11 2004 through various times in the subsequent months. And  
12 they involved treatments at the Western Reserve Therapists,  
13 which were in Ohio as he was living there or spending a lot  
14 of work time there.

15 He also attended chiropractic treatments in  
16 DuBois with Dr. LaBue. There were also chiropractic  
17 narrative reports that I reviewed from Dr. Sesny from  
18 January of 2004 and that he concluded that this patient  
19 suffers from sprain and strain injuries, although he  
20 described that they had healed and he felt that the small  
21 midline disc bulge at C5-6 was a cause of his symptoms and  
22 he felt that that was related to the accident noting that  
23 he did not have any types of complaints like this prior to  
24 December of 2003. The chiropractor was unaware of Mr.  
25 Chiodo having had problems that did, in fact, preexist

1 prior to that.

2 I also then saw a report from Dr. Richard  
3 Bonfiglio, and he is a physical medicine and rehabilitation  
4 specialist in the Pittsburgh area. And he also concluded  
5 that Mr. Chiodo had suffered multiple cervical spine,  
6 myofascial cervical, thoracic and lumbar problems, and that  
7 he also had chronic recurrent headaches. He described  
8 these as being related to the auto accident of December 29,  
9 2003. In his report, he did not describe any past medical  
10 history of Mr. Chiodo having any similar problems before  
11 this.

12 He had also concurred that his problems of -- or  
13 his studies I should say were relatively normal and that  
14 the only finding that was seen was a small midline disc  
15 bulge at C5-6. It was described as -- he also exhibited  
16 mild degenerative early spondylosis changes that were  
17 reported from chiropractic films that had been performed in  
18 Ohio, but there were no updated studies of that type of  
19 medical or hospital input that we had seen. His studies  
20 from the time of the injury, which were the x-rays from the  
21 actual hospital studies, were all normal.

22 There were also a number of records that I  
23 reviewed that were from the Elk Regional Health Center and  
24 from a physical therapist in that area named Robert  
25 Mollica.

1 Q. Okay. Great. As part of your review of this  
2 case, did you perform a physical examination on Mr. Chiodo?

3 A. I did.

4 Q. Describe for the jury what you did when you laid  
5 your hands on Mr. Chiodo and did the physical examination.

6 A. Well, Mr. -- Mr. Chiodo was I think a very  
7 straightforward presentation. He had an isolated area that  
8 really bothered him and that was -- it was a segmental exam  
9 as I referred to it. He was -- apparently is very healthy,  
10 mildly overweight, appeared his stated age. He was very  
11 articulate, well dressed and appropriate with myself and  
12 all of our office staff. He did he not walk with any  
13 antalgia or exhibit unnecessary or purposeful painful  
14 gestures or responses.

15 An examination of his affected area, would have  
16 been the cervical spine, that was the motion was reduced  
17 with his active voluntary movement noting 45 degrees  
18 rotation to the left with a normal 90 degree rotation to  
19 the right. So for example, he had full range of motion to  
20 the right side, but to the left he had stiffness and  
21 limitation at 45 degrees. He had unremarkable flexion of  
22 the neck and he was able to extend well beyond midline  
23 without any restriction in that forward and backward plane.

24 He complained of restricted movement and pain  
25 with left lateral flexion, which we referred to as -- I

1 feel like I'm giving a live video here for the jury, but  
2 lateral flexion is to the sides like this. And to the one  
3 side he was okay, but to the other side, to that same side,  
4 he was stiff. He was limited. He was restricted there.

5 He did not exhibit any Spurling's response with  
6 encroachment attempts to reproduce radicular pain in either  
7 arm. And that's showing that he did not have any nerve  
8 root involvement or intrinsic spine involvement itself of  
9 the nerves, the discs, et cetera, where he could not  
10 impinge one of the exiting nerve roots and cause symptoms  
11 into either arm. He had no radicular pain. It means no  
12 nerve root pain from the neck out into either arm. Nor did  
13 he exhibit any upper extremity paresthesias, abnormal  
14 feelings, dysesthesias, anything going on or atrophy  
15 wasting, et cetera. He was actually a very well exercised  
16 and strong appearing man.

17 His reflexes were intact and his sensory  
18 patterns were full throughout both upper extremities. He  
19 did not complain of any midthoracic or lumbar pain. He did  
20 state that he had headaches and he had left-sided neck pain  
21 that extended no further than the trapezius and levator  
22 scapulae. So the pain was in the side of his neck and into  
23 this like shoulder blade area, it would refer to that.

24 I did not see any isolated evidence of trigger  
25 point or segmental cervical spasm. He did not have any



1 spasm tissue or abnormal tissue densities. It was all  
2 pretty symmetric, his left and right on feeling. His  
3 muscles in his neck and shoulder masses, they were  
4 symmetric in their girth and in their tissue turgor.

5 At no time did the patient exhibit any  
6 embellishment of symptoms or any untoward behavioral outcry  
7 or grimace of pain. It was just very matter-of-factly it  
8 hurt and -- and that was it.

9 Q. So he wasn't exaggerating when he told you that  
10 he was in this pain?

11 A. No, I don't believe he was.

12 Q. And I know you mentioned in your report that you  
13 believe he is very genuine in complaining about this pain?

14 A. Yes.

15 Q. Okay. Did you -- Doctor, as a result of  
16 reviewing the medical records, examining Mr. Chiodo, did  
17 you come up with an impression as to what you -- your  
18 diagnosis and your thoughts were about his medical case?

19 A. Well, after reviewing his -- his history of what  
20 happened and after reviewing the studies that were  
21 performed from the time of the injury to the entries from  
22 subsequent follow ups or tests from various sorts, along  
23 with the -- as I say the physical exam of the affected  
24 areas, I described him as having cervicalgia, which is  
25 basically a generic term for neck pain, and chronic somatic

1 cervical parascapular complaints that were very subjective,  
2 pain in and around the shoulder blade area that's very  
3 subjective, which he described as being present ever since  
4 he was rear ended in a motor vehicle accident on December  
5 29, 2003. It was my -- do you want me to continue on  
6 with --

7 Q. Sure. Absolutely.

8 A. After reviewing this and making this conclusion,  
9 again, there's part of the -- part of the specialty that  
10 we're involved in is trying to put all the pieces of the  
11 puzzle together to tie in the past and the present and make  
12 an organized sense of anatomic and physiologic relationship  
13 to how do you describe that complaint. And I -- in fact, I  
14 actually enjoyed seeing this very nice patient. I -- I  
15 told him that I really did not see anything that was, you  
16 know, missed or missing or there's tissue damage, et  
17 cetera. And although he has a number of complaints in  
18 there, he still functions well and he's maintained his  
19 strength, et cetera. I also did not feel that there was  
20 any real tissue damage.

21 I would have to describe that these types of  
22 complaints in this area were out of proportion to the  
23 objective findings. And that's the way that we do see  
24 these; subjective complaints being out of proportion to  
25 objective findings because there was a real paucity of any

1 findings.

2 Q. So basically what he's saying are his subjective  
3 complaints, that's what he's telling?

4 A. Correct.

5 Q. And the objective findings would be medical  
6 tests and MRIs and those sorts of things?

7 A. Right, some -- some objective actual factual  
8 physical evidence of abnormalities.

9 Q. And as a -- as a chronic pain doctor, one of the  
10 things you do as you mentioned was to sort of put the  
11 pieces of the puzzle together. You put together the  
12 subjective complaints and also the objective tests and  
13 those sorts of things. And there's another piece of the  
14 puzzle though that I would like you to remark on and that  
15 you addressed in your report, and that would be complaints  
16 before this motor vehicle accident.

17 A. Well, that's -- you know, again, that was an  
18 important part of what I had studied through here because I  
19 -- I was just trying to look for how could this all be. I  
20 really didn't see that much going on here. And even Dr.  
21 Bonfiglio's records, which he described the event and he  
22 described the history of what he had done with treatments  
23 thereafter, he did not note any prior medical situations  
24 that were very similar. He felt that this was -- in fact,  
25 that it all started in December of 2003.

1 Dr. Bonfiglio interestingly also did not find  
2 any objective abnormalities other than a very small which I  
3 think is an irrelevant C5-6 central disc bulge. We all  
4 have disc bulges. The bulged discs are cartilaginous  
5 tissue and they bulge. That's what they do. It should  
6 move and bulge.

7 I looked into this and as I explained to the  
8 patient, you know, I'm -- I am objective regardless of who  
9 asked me to do the examination. It's not like I state a  
10 different opinion and I want patients that come for IMEs,  
11 because I don't do many IMEs at all, that's not -- that's  
12 not what I do, but I want them to know that I'm not here as  
13 representing someone's behalf. I'm here to stay in the  
14 middle of the table and say hey, this is what I think you  
15 have, period. I get the same pay either way. I have no  
16 influence. I don't know whose -- who the person is.  
17 There's no personal interest there.

18 But I try to look at it from what I call a  
19 nonpartisan standpoint, a purely objective outsider looking  
20 in. And I could not find a structural deficit or a  
21 causation for his complaint. With what was being described  
22 is all -- with all this paperwork there that I could see  
23 the reports of analyses that were done, et cetera and I  
24 knew there was legal stuff involved or there wouldn't be a  
25 deposition or an IME, but I really couldn't see a cause for

1 such a profound loss of current and future potential of  
2 this -- this patient.

3 He was -- seemed to be a good family man, a  
4 working successful guy and he was functioning well. He was  
5 not receiving any treatment at the present time nor was he  
6 seeking any medications or other forms of established  
7 medical care. I knew that and I stated that, that there  
8 was -- this is a case that was involved in litigation, such  
9 as why we're here today I guess and if he didn't have  
10 subjective complaints, that there wouldn't be any claim for  
11 loss, et cetera. So --

12 MR. HOPKINS: Objection.

13 THE WITNESS: So --

14 MR. HOPKINS: It's unresponsive.

15 THE WITNESS: -- these subjective complaints  
16 support ongoing complaints, which I suspect are -- were  
17 purely subjective because I could not find something  
18 objective.

19 BY MR. SCHMITT:

20 Q. Now, Doctor, you did look at some additional  
21 records that were from before this accident. I think if  
22 you look at the last paragraph on I think the third page of  
23 your report, you did mention a few of those things. If you  
24 could just let the jury know some of the things that you  
25 looked at that -- that were medical documents from before

1 this accident?

2 A. Right. Again, I -- I actually told the patient  
3 that I really couldn't find any findings of abnormalities.  
4 Although he was injured, it appeared that he recovered from  
5 that and that his current complaints however I did not see  
6 as causally related to December 29 of 2003 because there  
7 were a number of records.

8 And, in fact, the more I started reading, the  
9 more I was surprised that many reports from different  
10 sources, including his chiropractor Dr. LaBue from January  
11 31 of 1995, all the way back into '95, eight years prior to  
12 the accident, through June 30 of '95, from October of '98  
13 through January of 2001, in May of 2002, and in March  
14 through November of 2003.

15 Spanning these entire eight years, there were  
16 numerous entries in these records where there were many  
17 descriptions of Mr. Chiodo presenting through these time  
18 periods with the same, same, same pattern of restricted  
19 cervical motion in this area; cervical pain, shoulder blade  
20 pain, low back pain, low back pain with prolonged sitting,  
21 such as when he's driving, left paracervical pain radiating  
22 into the left shoulder and left scapular area, pain in the  
23 left shoulder blade and down in the mid -- midthoracic area  
24 behind the neck and shoulders.

25 There was also a report of a whiplash injury

1 that occurred in the week prior to May 1, 1995. There was  
2 also reports of left and right-sided neck pain, patient's  
3 complaints of work stress contributing to recurrent  
4 flare-ups of neck and shoulder pain, flare-ups of low back  
5 and leg pain.

6 And lastly, there were cervical spine  
7 chiropractic records from November 21, 2003, that's just  
8 one month prior to the injury, describing pain with  
9 movement of his head, and records from January 9, 2004 that  
10 acknowledged the injury which occurred but were no  
11 different than preexisting records of the same from two  
12 months prior. So in other words, the same -- the same  
13 physician's notes described Mr. Chiodo's presentation in  
14 January, a month after the accident, with the same verbiage  
15 and the same things he's complaining about and the same  
16 findings as two months before.

17 I also had the privilege of reading a record  
18 from July 12, 2003 from the DuBois Regional Medical Center  
19 emergency room where the patient presented to the emergency  
20 room some five months or six months before this injury with  
21 left neck and shoulder pain. It was so bad that he went to  
22 the emergency room.

23 This was the same exact pattern that was  
24 described during the previous eight years, if not more.  
25 And in this case, was related to worsening of neck and

1 shoulder pain over here that began three days -- for about  
2 three days prior to when he was moving boxes -- after  
3 moving boxes, I'm sorry. His symptoms began after moving  
4 boxes. So he saw his chiropractor and it did not help. So  
5 he went to the emergency room for treatment and was  
6 released.

7 I also saw another report from the Elk County  
8 Regional Medical Health Center emergency room from July 5,  
9 2001 where the patient presented with left-sided low back  
10 and hip pain after an auto accident. He was also released.  
11 Additional records of Dr. Scerbo, his family doctor,  
12 revealed that this patient either calls or visits his  
13 office relatively frequently for an otherwise young and  
14 healthy person.

15 One such entry was on May 14, 2002 where I -- I  
16 saw that he went to his doctor with persistent back pain  
17 after having an auto accident the year prior. Another such  
18 encounter was on May 26, 1995 when he described a motor  
19 vehicular accident that occurred April 20, 2005 when he had  
20 a whiplash injury and wore a cervical collar.

21 Q. Now, it looks like we have '95 and 2005. Are  
22 those the right dates? Is one of those -- should one of  
23 them be -- should they both be 2005 or both be 1995?

24 A. If I'm not mistaken, I think he had multiple  
25 auto accidents and similar complaints. These are -- I



1 believe these dates are very accurate.

2 Q. Okay. Great.

3 A. There are numerous encounters over this entire  
4 eight-year period of very similar complaints and similar  
5 episodes of occurrences to necessitate seeking medical care  
6 on multiple occasions and including emergency room care.

7 Q. And this was all before this motor vehicle  
8 accident?

9 A. That's correct.

10 Q. And your final conclusion, medical conclusion,  
11 that you set forth at the end of your report, Doctor, if  
12 you just share that with the jury?

13 A. Well, I concluded that this patient has had  
14 multiple visits and multiple complaints over multiple years  
15 to multiple providers and multiple emergency rooms. And  
16 this must be considered when a case such as this is being  
17 reviewed. I personally could not see any injury process  
18 from the reported accident of December 29, 2003 to give him  
19 any deficit or ongoing reason for these complaints or for  
20 any losses that were any different than multiple prior  
21 similar episodes.

22 I believe that his complaints of chronic pain  
23 and earning limitations are very real to him, but I cannot  
24 objectively find a relationship to December 29, 2003 as  
25 this is just one more encounter and one more description in

1 the medical records of the very same complaint that he had  
2 before.

3 Q. Doctor, have all your opinions here today been  
4 stated to a reasonable degree of medical certainty?

5 A. Yes.

6 MR. SCHMITT: I will turn you over to Attorney  
7 Hopkins for his questioning. Thank you, Doctor.

8 THE WITNESS: Okay.

9

10 EXAMINATION

11

12 BY MR. HOPKINS:

13 Q. Thank you, Doctor. I have a number of  
14 questions, but I just want to be clear on a couple of the  
15 things that you just said a second ago, and that was you  
16 said multiple complaints to multiple emergency rooms -- or  
17 presenting himself to multiple emergency rooms.

18 MR. SCHMITT: I think he said multiple  
19 providers.

20 MR. HOPKINS: He also said multiple emergency  
21 rooms.

22 MR. SCHMITT: Right.

23 BY MR. HOPKINS:

24 Q. And it's a true statement that he's only  
25 presented himself to DuBois Regional Medical Center and Elk

1 County Regional Medical Center; is that correct?

2 A. That's correct.

3 Q. Okay.

4 A. That's multiple.

5 Q. All right. That's two; right?

6 A. Yes.

7 Q. Okay. Do you know that Mr. Chiodo lives halfway  
8 between DuBois Regional Medical Center and Elk County  
9 Regional Medical Center?

10 A. Somewhere up in there. That seems pretty  
11 accurate, right.

12 Q. And you also said he presents himself to  
13 multiple health care providers, but he's treated with Dr.  
14 Scerbo, who has been his family physician; right?

15 A. Correct. I think that's his main base, but yet  
16 he was out of town for a while or something like that.

17 Q. But notwithstanding him being out of town, he's  
18 treated with Dr. Scerbo since at least the mid 1990s;  
19 right?

20 A. Right.

21 Q. Okay. And that whenever he had a complaint,  
22 that's where he went and then Dr. Scerbo would send him  
23 someplace else; correct?

24 A. Well, except for he had these same presentations  
25 and complaints I think in several different chiropractic

1 records as well and to physical therapies and things like  
2 that.

3 Q. Doctor, did you see any photographs -- did Mr.  
4 Schmitt provide you with any photographs of the accident --

5 A. No, the patient --

6 Q. -- of the accident scene?

7 A. No, Mr. Chiodo told me it was a total crunch. I  
8 can imagine it was. It sounds horrible.

9 Q. Did he tell you that the coal truck that hit him  
10 was full of gravel?

11 A. I believe it was, right.

12 Q. Did you make any analysis as to the force with  
13 which that coal struck -- coal truck struck Mr. Chiodo's  
14 vehicle?

15 A. No, no.

16 Q. Okay. You said here that he self-extricated  
17 himself from the vehicle and wait for arrival of emergency  
18 room personnel. Did Mr. Chiodo tell you that he sat on the  
19 concrete beside his car because that's all the further he  
20 could get?

21 A. He was really stunned. He -- he said -- I  
22 believe he said he was able to get out of the car on his  
23 own just that he had the fear it was going -- I think he  
24 was shell-shocked of course. I mean it was a major hit.  
25 There's no question about it. I think he was afraid that

1 there was going to be a fire or something.

2 Q. From your review of the records, you don't  
3 disagree that Mr. Chiodo was injured in this December 29th,  
4 2003 --

5 A. Oh, no.

6 Q. -- collision?

7 A. Not at all.

8 Q. Okay. You agree that he was injured?

9 A. Oh, yeah.

10 Q. Okay. And what injuries did he suffer?

11 A. Well, the only thing you can really call it  
12 would be a blunt force deceleration.

13 Q. And what do you mean by that?

14 A. An impact that caused rapid deceleration of the  
15 opposing force.

16 Q. Well, why don't you -- could you walk us through  
17 the mechanics of what happens when someone is if you will  
18 rear ended in a motor vehicle collision?

19 A. Well, I can't really walk you through the  
20 mechanics because first of all I wouldn't know where to  
21 start walking here, but it's -- I mean it's just basically  
22 a sudden stoppage of a major impact and the velocity  
23 against a stopped object. So it causes the body to -- it's  
24 a sudden whiplash, you know.

25 Q. Okay. And what does a -- what does a whiplash

1 -- when you said whiplash, what does that mean?

2 A. Just a rapid force of deceleration against a  
3 fixed object.

4 Q. All right. And Mr. Chiodo was a restrained  
5 motor vehicle; right?

6 A. Correct.

7 Q. Wearing his seat belt?

8 A. Correct.

9 Q. And so when he -- when he was struck from  
10 behind, he went forward; right?

11 A. Correct.

12 Q. Okay. And then his seat belt stopped him and in  
13 the usual course of events his head and neck would have  
14 continued to move forward; right?

15 A. Right.

16 Q. Okay. And what does that do to the back muscles  
17 and to the neck muscles when that happens?

18 A. It causes a whiplash.

19 Q. Okay. And what do you mean by a whiplash?

20 A. It whips and then comes back to its position.

21 Q. What happens to the muscles themselves when that  
22 head goes forward?

23 A. It could be sprained -- it could be strained,  
24 sprained, torn, damaged.

25 Q. That's right. They're stretched, right --

1 A. Correct.

2 Q. -- until they either tear or -- or sprained or  
3 -- or just stretched?

4 A. Or just stretched or sprained.

5 Q. Okay.

6 A. Right.

7 Q. Okay. Now, when he went to the emergency room  
8 on December 29th, 2003, no one took an MRI, did they?

9 A. I don't believe at the time, no.

10 Q. Okay.

11 A. They wouldn't do that in the emergency room  
12 unless there was internal organ damage or something.

13 Q. Okay. So the very -- the very next time that  
14 they take an MRI they report a midline disc bulge at C5 and  
15 C6 --

16 A. Correct.

17 Q. -- right? And that's consistent with this kind  
18 of injury or this kind of collision; right?

19 A. Not really, no.

20 Q. You're going to tell me -- is it your testimony  
21 before the jury today that a bulging disc or a herniated  
22 disc is not a injury that you would routinely see when  
23 being rear ended by a motor vehicle or by a coal truck?

24 A. Now, you must understand that that's -- you're  
25 saying two completely different things. A bulging disc is

1 a very normal finding. Everybody has a bulging disc. A  
2 herniated disc could come from an accident, could come from  
3 a whiplash injury, but he doesn't have a herniated disc.

4 Q. You're saying a bulging disc doesn't come from  
5 an automobile accident?

6 A. A bulging disc is very normal. A small midline  
7 disc bulge is a very normal finding. From an auto accident  
8 such as one of this magnitude, I would be expecting more  
9 traumatic bone injuries and structural injuries,  
10 ligamentous tears, avulsions of muscles and ligaments from  
11 bone. That's what you see with a whiplash injury such as  
12 this, and we frequently see those fractures of the  
13 pedicles.

14 See, all these muscles and ligaments that you're  
15 talking about are intrinsically wrapped and bound into the  
16 bones of the vertebral column. Especially in the case of a  
17 neck where there's so much mobility as compared to the  
18 other portions of the spine and the chest and the low back,  
19 the neck is a bowling ball sitting on a stalk so to speak.  
20 Whereas the rest of the spine is -- especially the thoracic  
21 spine, it's protected to some degree by the ribs on both  
22 sides. So there's -- it's one big contiguous case.

23 So when you have a whiplash injury in the neck  
24 where there's real true rapid velocity changes in position,  
25 it's very common to see avulsions where bone is actually



1 cracked or severed, you see fractures. Basically that's  
2 why fractured necks are so common after these because the  
3 muscles that are attached to them pull off. So you'll see  
4 detachments, avulsions, fractures, dislocations.

5 Fortunately he was very lucky. Someone was looking after  
6 this guy that day.

7 Q. Doctor, then Mr. Chiodo treated with his family  
8 physician, Dr. Scerbo; correct?

9 A. That's correct.

10 Q. And then Dr. Scerbo sent Mr. Chiodo to Elizabeth  
11 Young, who you referred to; correct?

12 A. Yes.

13 Q. Okay. And you reviewed that, referral letter;  
14 correct?

15 A. The one that came from Dr. Young back to --

16 Q. No, from Dr. Scerbo to Dr. Young.

17 A. I most likely did. I'd have to look through  
18 here and see which one that was. If you have it readily  
19 available that might save time.

20 Q. Let me read it to you. It says Mr. Chiodo is a  
21 36-year-old gentleman I'm referring to you --

22 A. Yeah, here I found it.

23 Q. -- with cervical and left thoracic pain.

24 A. Yes.

25 Q. It says patient had a prior history of right

1 shoulder pain. He went through myofascial release with  
2 improvement; correct?

3 A. Uh-huh.

4 Q. Again we thought it was a rotator cuff strain.  
5 He then was involved in a motor vehicle accident. He had  
6 his seat belt on. This was one year ago in December 2003.  
7 So that's the accident that we're here on today; correct?

8 A. Yes. Yes, because this letter is authored  
9 December of 2004. That is a year later.

10 Q. So he was left with pain in his left -- help me  
11 with that word --

12 A. Paraspinous.

13 Q. -- paraspinous muscles in the cervical and  
14 thoracic area. And that's what you described; right?

15 A. Correct.

16 Q. It says he had pain, spasm and discomfort;  
17 right?

18 A. That's what he said, but by the time I saw him,  
19 there wasn't any spasm, but he had pain and discomfort.

20 Q. Well, that's what his doctor said a year later;  
21 correct?

22 A. Yes, yes, right.

23 Q. Okay.

24 A. Uh-huh.

25 Q. And I thought you were -- when you were talking

1 about your qualifications earlier, you were talking about  
2 the difference between acute pain -- pain care and -- which  
3 I thought you said was an area of the first 12 weeks or  
4 something post --

5 A. That's generally accepted as when does acute  
6 pain stop and what we call chronic pain begin, correct.

7 Q. Okay. So a year later when this letter was  
8 written by Dr. Scerbo, Dr. Scerbo recognized that he had  
9 chronic pain at that point?

10 A. Well, he should -- I mean, yeah, I mean he had  
11 chronic pain for the eight years that Dr. Scerbo had seen  
12 him before, but --

13 Q. But Dr. Scerbo said he had myofascial release  
14 with improvement for some kind of prior right shoulder  
15 pain; correct?

16 A. No, uh-uh. There are --

17 Q. Well --

18 A. That's what he said in this letter, but most of  
19 Dr. Scerbo's notes all say left-sided neck and shoulder  
20 pain. There were entries where he had both, but if you  
21 want to look back into Dr. Scerbo's office notes, they're  
22 all predominantly left sided, including the one that was  
23 just a month before his injury.

24 Q. Okay. How about when he says -- how about when  
25 he says the -- he, being Mr. Chiodo, went through

1 myofascial release with improvement and he talks about a  
2 rotator cuff strain?

3 A. Well, that's probably right because, again, the  
4 right-sided involvement was very minimal in all of his  
5 eight years prior. It was mostly all left. So that would  
6 make sense that the right side did improve, but his left  
7 side really never did.

8 Q. Uh-huh. Dr. Scerbo doesn't refer to any of  
9 those prior incidents, does he, when he refers Mr. Chiodo  
10 to Dr. Young?

11 A. Not with this one letter of this one day --

12 Q. Okay.

13 A. -- one year later, correct. There weren't  
14 any --

15 Q. Go ahead.

16 A. Sorry. There weren't any -- there wasn't any  
17 acknowledgement of having any prior history by Dr. Young in  
18 response to that either. So in other words, she thought  
19 that this was all something very new.

20 Q. You don't really know what Dr. Young thought and  
21 what records that Dr. Young had, do you? As you sit here  
22 today, you really don't know that, do you?

23 A. Sure I do. This is all Dr. Scerbo sent. That's  
24 why it was here.

25 Q. Do you know -- do you know if Mr. Chiodo took

1 his records with him when he saw Dr. Young?

2 A. No, I don't know that.

3 Q. You don't know that?

4 A. He probably didn't though or I would imagine she  
5 would have seen it. She's probably a pretty sharp lady  
6 being part of this university group here at Saint  
7 Margaret's.

8 Q. As we sit here today, you don't know; that's a  
9 fair statement?

10 A. I don't know that, correct.

11 Q. And then just so I am clear here, Mr. Chiodo  
12 presented himself to you and you thought he was --  
13 presented himself honestly; right?

14 A. Yes, uh-huh.

15 Q. Okay. And he didn't say anything to you that  
16 made you think that he was here to fool you; right?

17 A. Oh, no, not at all.

18 Q. Okay. And then you did a -- an objective test  
19 on him and when you did your objective test on him you said  
20 that he could only move his neck 45 degrees with rotation;  
21 right?

22 A. Correct.

23 Q. Okay. As opposed to what normal -- normally you  
24 can move it 90 degrees; right?

25 A. Pretty much so, uh-huh. His other side was

1 definitely more mobile than the affected left side, but  
2 that was the same side that was described for years past as  
3 being restricted. I mean, again, this is -- just remember  
4 when you're testing someone's cervical range of motion,  
5 there's a lot of voluntary input into that. We don't  
6 physically grab them and tie them down and --

7 Q. You didn't see though --

8 A. -- crank them.

9 Q. -- you didn't see -- you're kind of insinuating  
10 here that maybe Mr. Chiodo didn't move his neck all the way  
11 to the left?

12 MR. SCHMITT: I'm objecting to the form of the  
13 question as argumentative.

14 THE WITNESS: Not at all. Not at all.

15 BY MR. HOPKINS:

16 Q. Well, what do you mean when you say subjective?  
17 When you ask him to move --

18 A. I'm --

19 Q. Let me finish first. You asked him to move his  
20 neck in one direction and then the other; right?

21 A. Correct. And I'm saying -- I'm acknowledging  
22 that to his good side, he's able to turn basically to 90  
23 degrees, but to the affected side, it became stiff and  
24 limited and caused discomfort when he turned to 45 degrees.

25 Q. Okay. And your report says that you believe

1 that he does have pain. You say -- you write here I  
2 believe that he does have pain, but you dispute the  
3 relationship between the injury which occurred on December  
4 29th, 2003 causing him the pain?

5 A. Yes.

6 Q. Okay.

7 A. Yes.

8 Q. And then you referred also to some records of  
9 Dr. LaBue, who is a chiropractor; right?

10 A. Correct.

11 Q. Did you ever review a report from Dr. LaBue that  
12 said Mr. -- Mr. Chiodo's current complaints as a result of  
13 this December 29, 2003 accident are unrelated to what Mr.  
14 LaBue -- Dr. LaBue treated him before?

15 A. You know, as a matter of fact, I did see that.  
16 That was -- that was something that was surprising because  
17 -- actually I'm glad you brought that up because I wondered  
18 where that came from because it's actually contradictory to  
19 what Dr. LaBue's office notes say repeatedly year after  
20 year -- visit after visit I should say. Excuse me on the  
21 year after year thing.

22 For example -- well, first of all, that I find  
23 -- the thing I find different here or somewhat -- it's not  
24 different, I'll just use that word -- number one, it's a  
25 letter that has nothing to do with his treatments of him.

1 It's a letter that's written to you, his attorney. I knew  
2 it was written to an attorney. I had not met you before.  
3 So it's the attorney for the patient. And it was written  
4 in December of 2007 and he is trying to -- he is writing  
5 this in request -- or in response to information that you,  
6 Mr. Hopkins, must have directly asked him to clarify his  
7 current condition as compared to his past complaints for  
8 which Dr. LaBue treated him in his office.

9 And he did acknowledge that he first evaluated  
10 and treated him in January of '95 for complaints of left  
11 neck pain radiating into the left scapular area and he also  
12 did have some right shoulder stuff then. And his neck  
13 complaint was of unknown etiology and his shoulder pain  
14 they thought was due to a baseball injury from years  
15 before. And that he had received several visits on an  
16 inconsistent basis throughout -- through June of '95. And  
17 he thought that his inconsistency was due to his work  
18 schedule. I don't think that's too relevant there.

19 He attended -- but then he didn't attend again  
20 until '98 when he presented with neck pain into the left  
21 trapezius area, again same thing here, and he also had some  
22 low back pain then and he thought they were due to a fall.  
23 And then he had treatments that also were five times  
24 through January of 2001 and -- but he said he then next  
25 presented with a new complaint of low back pain with



1 radiation into the left leg from a lawnmower and then there  
2 were no complaints of neck pain during those visits in '02.  
3 And then in '03 he had low back pain again from long  
4 driving.

5 Then one time again into '03 in which he had  
6 acute neck pain of three days' duration from working at his  
7 camp where he strained his neck. And then he was seen  
8 again one more time for neck pain on November 21, 2003.  
9 Then he went on and said he was only treated one other time  
10 in '04 and that was neck pain that were from an auto  
11 accident December 29, 2003, and he said although no medical  
12 claim had been initiated at the time of that visit. So  
13 then he went on to say that his neck complaints in January  
14 of '04 were consistent with an acute cervical strain  
15 injury.

16 Q. And you agree with that; correct?

17 A. Well, I mean they were consistent with having  
18 neck pain one week after his injury; however, these are the  
19 same neck complaints that are just so numerous elsewhere.  
20 Let me just finish about Dr. LaBue. I'm just really  
21 describing and summarizing his commentary here.

22 And he said although Mr. Chiodo had complaints  
23 -- quote, although Mr. Chiodo had complaints of neck pain  
24 in the past, comma, they were more self-limiting in nature  
25 as he would experience a flare-up from time, which

1 responded favorably to care. The particular injury that  
2 Mr. Chiodo presented with was more acute and consistent  
3 with a hyperextension/flexion, quote, whiplash, unquote,  
4 injury.

5 Q. And, again, you don't disagree with that?  
6 That's what you described earlier; correct?

7 A. End of quotation. That was all one big quote  
8 there. That was all. I don't disagree with that.

9 Q. Okay.

10 A. He described having had a whiplash, but -- but I  
11 really can't -- he did not go on to differ. He said I've  
12 not treated him since '04 and, therefore, unable to comment  
13 on his current course of symptoms or response to treatment,  
14 which would be nearly four years later when he authored  
15 this letter.

16 So he's saying I hope this can be helpful, but  
17 he really didn't say other than -- I mean his opinion in  
18 the past it seemed like his neck pain was more  
19 self-limiting, he's really not saying that it's any  
20 different either. He just went on to conclude that in  
21 January I suspect it was due to the whiplash injury a week  
22 prior, but again, if you read the entries and you read --  
23 if you rely and read all of the records of Dr. Scerbo and  
24 Dr. LaBue, this time was no different than the ones before.

25 Q. Did Mr. Chiodo tell you when you were giving him

1 this evaluation of the headaches that he suffers?

2 A. Oh, he did mention the headaches and, again,  
3 that was -- you know, it's all part of that I hurt up in  
4 here thing and down into his shoulder and he's a  
5 headache-type sufferer, but he was a headache sufferer and  
6 he had a lot of sinus and allergy problems in his past as  
7 well.

8 Q.. Did he tell you they were related to his driving  
9 a motor vehicle and did he tell you that they were  
10 debilitating?

11 A. His headaches?

12 Q. Yes.

13 A. I don't really recall that.

14 Q. Doctor, you made a -- you kind of went out of  
15 your way in answering Mr. Schmitt's --

16 MR. SCHMITT: Objection. That's not a question,  
17 it's a statement and it's argumentative, and I object to  
18 it. If you want to ask a question, that's fine. If you  
19 want to characterize his testimony, you can do that in your  
20 closing argument.

21 BY MR. HOPKINS:

22 Q. Doctor, I think you went out of your way to tell  
23 us how you do an objective evaluation; is that correct?

24 A. No, I didn't go out of my way. I went through  
25 my normal what I do when I look over a case and try to as I

1 said put all the pieces of the puzzles together.

2 Q. Okay.

3 A. My objective evaluation is to review that  
4 patient that day and all the things that are here for  
5 supporting evidence and lab work, documents, records,  
6 x-rays, anything that I can get my hands on.

7 Q. Okay. And those items that you look at are all  
8 prepared by other people and other doctors; correct?

9 A. Well, sure. That's the only way to recreate the  
10 past.

11 Q. Uh-huh. And those people have -- in this  
12 particular case, have a history with Mr. Chiodo; right?

13 A. Correct.

14 Q. Okay. So when they make an analysis and they  
15 make a determination that something is related to the  
16 December 29, 2003 accident, they were the ones who were  
17 closest involved with it, weren't they?

18 A. I see where you're trying to come. Obviously I  
19 disagree with that because --

20 Q. Okay. Well, what do you disagree with, that  
21 they weren't -- that they aren't the closest --

22 MR. SCHMITT: I'd appreciate it if you'd let the  
23 doctor answer the question without interrupting.

24 MR. HOPKINS: He said he disagreed and now I'm  
25 going on to the next question.

1 MR. SCHMITT: Well, no, no, he -- I want him to  
2 be able to explain his answers to your questions.

3 MR. HOPKINS: Well, I'm going to ask him.

4 MR. SCHMITT: Please explain, Doctor, why you  
5 disagree.

6 THE WITNESS: Well, because I mean you're --  
7 okay. As far as those past providers, they're the ones  
8 that do provide the past history, just like history books  
9 tell us about Abe Lincoln because you and I have never met  
10 him. Dr. LaBue's report to you that he authored was in  
11 response to your request and it was a report that was  
12 generated almost to the day four years since he had last  
13 seen him.

14 Now, how can he -- if he's that close to him  
15 with day-to-day care, how can -- that doesn't -- again,  
16 this is contradictory to what you're trying to create. As  
17 -- I mean he admits I only saw him one time after that  
18 accident, but there's a booklet of times before that  
19 accident.

20 So I don't know that you want to go there,  
21 because this is -- if this is the guy you're saying is  
22 closest to him, then he's telling you buddy, he had this a  
23 whole bunch of times prior to the accident.

24 BY MR. HOPKINS:

25 Q. How about Dr. Scerbo?

1           A.     Hold on now. Along that line -- well, yeah,  
2 same with Dr. Scerbo, I mean --

3           Q.     Hold on. I get to ask the questions.

4           A.     Okay.

5           Q.     Okay.

6           A.     Well, I wasn't finished with my answer though.  
7 So if you want me to just finish my answer, if I may do  
8 that?

9           Q.     Go ahead.

10          A.     So that was about Dr. LaBue. And, again, you're  
11 asking about the past providers and they're the closest to  
12 his care and how do I account for their -- for their  
13 conclusions.

14                 Well, then there was Dr. Elizabeth Young, who  
15 again only saw him on one occasion and wasn't part of his  
16 care for years prior and she saw him, in fact, one year and  
17 three months after the injury on one occasion only and she  
18 had no knowledge or certainly did not report any past  
19 knowledge of ever having any cervical complaints. And  
20 additionally, that's correct, she listed his entire medical  
21 history, but there's not one complaint of a spine past  
22 history there. So naturally it was her conclusion to say  
23 this guy has neck pain related to December of 2003 because  
24 that was kind of skipped.

25                 And additionally, Dr. Bonfiglio's record, which

1 would also be an important part of the past in trying to  
2 recreate that for a timeline, I'm not aware that he saw him  
3 more than one time either. So if you're using this as  
4 someone who is so close to his care and providing an expert  
5 testimony of -- of conclusive evidence about his problem,  
6 number one, he only saw him on one occasion and he only saw  
7 him on one occasion four years and five months after the  
8 injury. And additionally, there isn't one entry whatsoever  
9 in this report about any past medical history that included  
10 any neck pain, but there were numerous other records of  
11 some eight years of multiple entries regarding similar neck  
12 pain.

13 Q. And you saw -- just so I'm clear, you saw Mr.  
14 Chiodo one day, right, one time?

15 A. That's correct. That was all I was asked to see  
16 him was on one time.

17 Q. And when you talk about past providers, we're  
18 really talking about people who provided current treatment  
19 to Mr. Chiodo. That's really who we're talking about,  
20 people like Dr. Scerbo who treated him on a day in, day out  
21 basis since the mid '90s.

22 A. No.

23 MR. SCHMITT: I'm going to object to the form of  
24 the question. There's no evidence whatsoever that Dr.  
25 Scerbo treated Mr. Chiodo on a day in and day out basis

1 since the mid 1990s.

2 BY MR. HOPKINS:

3 Q. It's a fair statement to say, isn't it, Doctor,  
4 that Dr. Scerbo was Mr. Chiodo's primary care physician  
5 since the mid '90s?

6 MR. SCHMITT: Objection, asked and answered.

7 BY MR. HOPKINS:

8 Q. You can answer.

9 A. He was -- he was his family physician and his  
10 PCP, who like I said before had multiple entries in his  
11 records of this very same complaint and very same  
12 presentation on numerous times throughout those eight  
13 years.

14 Q. Okay. And when he wrote to Elizabeth Young in  
15 December 1 of 2004, he was the person closest to Mr.  
16 Chiodo, closest to his care and he made the analysis that  
17 his pain in his left paraspinous muscles in the cervical  
18 and thoracic area were damaged as a result of this  
19 accident. He's the one that reported pain, spasms and  
20 discomfort; correct?

21 A. Yes, and that's kind of unusual because, again,  
22 that was one day's note or one letter, but there were  
23 multiple entries that he had much, much more involved on  
24 the left side in the past.

25 Q. But nobody -- there's no physician who has



1 examined Mr. Chiodo of all the people that you referred to  
2 who have treated him on a longer, more consistent basis  
3 than Dr. Scerbo, is there?

4 A. Well, Dr. LaBue as well.

5 Q. Okay.

6 A. And I think actually there was one more. Would  
7 that have been -- I thought there was -- no, maybe Dr.  
8 Sesny only saw him -- no, he had only seen him after the  
9 accident too, if I'm not mistaken, the chiropractor that  
10 was in Macedonia, Ohio.

11 Q. Okay. And he also agreed that the -- Mr.  
12 Chiodo's problems and complaints here were -- were related  
13 to the December 29, 2003 accident, didn't he?

14 A. But he was -- again, he was not privy to any of  
15 that previous medical history, nor was --

16 Q. Okay. You really don't know what Dr. Sesny saw,  
17 reviewed or looked at as we sit here today, do you?

18 A. Well, I can conclude within a reasonable degree  
19 of medical certainty that he did not have any of those  
20 records or he would have reported them. I mean that's a  
21 basic part of an evaluation -- in a new patient evaluation  
22 is to report a medical history. And when it's completely  
23 not addressed and it involves -- I'm sorry, I'm wrong. He  
24 did state in his record that Mr. Chiodo reported that he  
25 did not suffer from these complaints prior to the motor

1 vehicle accident of 12/29/03, unquote.

2 Q. Okay.

3 A. So I thought I had that page opened up for a  
4 reason.

5 Q. Okay. And that's consistent with Dr. Scerbo  
6 saying that whatever treatment he had and whatever  
7 complaints he had in the past they had been improved and he  
8 wasn't suffering from them --

9 A. Oh, no --

10 Q. -- correct?

11 A. -- that's not my point, no.

12 Q. No, what I said that's consistent -- I know  
13 that's not your point. That's consistent with what Dr.  
14 Scerbo said; right?

15 A. No, Dr. Scerbo -- that's not consistent. Dr.  
16 Scerbo simply did not address the extensive accumulation of  
17 records that described multiple car accident presentations  
18 with neck pain, a lifting accident with neck pain,  
19 generalized. There were many that weren't provoked by any  
20 type of an event.

21 This Dr. Sesny, the chiropractor from Ohio, he  
22 simply -- this is -- this is false. I mean he's stating --  
23 I don't know who's wrong here, either the doctor typed it  
24 wrong or he's taking -- or Mr. Chiodo did not inform him,  
25 but he's stating, quote, Mr. Chiodo reported. So I must

1 say Mr. Chiodo maybe was not true with him, that he had --  
2 did not suffer from these complaints prior to the motor  
3 vehicle accident of 12/29/03, unquote. So of course he's  
4 going to say this is new, he never had it before.

5 Q. Doctor, were you paid today by Mr. --

6 A. I don't know. I hope so. I'll have to ask my  
7 office. I hope.

8 Q. Did you generate a bill for Mr. Schmitt for  
9 the --

10 A. No, I did this for nothing.

11 Q. Okay. Good.

12 A. This is just humanity. I work for food.

13 Q. Good. And how much food do you work for,  
14 Doctor?

15 A. As much as I can eat.

16 Q. And how much --

17 A. Are you asking how much I charge for a  
18 deposition?

19 Q. How much did you charge for the evaluation of  
20 Mr. Chiodo and to appear here today?

21 A. I charge \$1,500 for an IME and I charge \$1,500  
22 for a deposition. That's my fees and I don't do a lot of  
23 them, but I hear I'm bargain basement.

24 MR. HOPKINS: Thank you, Doctor.

25 THE WITNESS: I'll do it for you for less.

1 MR. SCHMITT: Dr. Khalouf, I have no further  
2 questions for you. I very much appreciate you taking the  
3 time to be with us this afternoon.

4 THE WITNESS: Thank you.

5 THE VIDEOGRAPHER: The videotape deposition of  
6 Dr. Fred K. Khalouf has now concluded. We are going off  
7 the record at 4:59 p.m.

8 (The deposition was concluded at 4:59 p.m.)  
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1 COUNTY OF CENTRE :  
2 COMMONWEALTH OF PENNSYLVANIA : ss  
3 :

4 I, LISA L. RIVERA, RPR-Notary Public, authorized  
5 to administer oaths within and for the Commonwealth of  
6 Pennsylvania and take depositions in the trial of causes,  
7 do hereby certify that the foregoing is the testimony of  
8 FRED K. KHALOUF, D.O., F.A.C.P.M.

9 I further certify that before the taking of said  
10 deposition, the witness was duly sworn; that the questions  
11 and answers were taken down stenographically by the said  
12 LISA L. RIVERA, a RPR-Notary Public, approved and agreed  
13 to, and afterwards reduced to typewriting under the  
14 direction of the said Reporter.

15 I further certify that the proceedings and  
16 evidence are contained fully and accurately in the notes  
17 taken by me in the within deposition, and that this copy is  
18 a correct transcript of the same.

19 In testimony whereof, I have hereunto subscribed  
20 my hand this 8th day of October, 2008.

21  
22 NOTARIAL SEAL  
23 LISA L. RIVERA, Notary Public  
24 Bellefonte, Centre County, PA  
25 My Commission Expires March 24, 2011

  
LISA L. RIVERA, RPR  
Notary Public

My commission expires  
on March 24, 2011

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**EXHIBIT**JF / 10-3-08  
WSP

HONORS

1987-1988	Eye and Ear Hospital of Pittsburgh Pittsburgh, PA	Medical Director Same Day Surgery
1987-1988	Eye and Ear Hospital of Pittsburgh Pittsburgh, PA	Medical Director Blood Gas Laboratory
1987-1988	Eye and Ear Hospital/ Presbyterian-University Hospital of Pittsburgh Pittsburgh, PA	Co-Director of Anesthesia Service, Center for Cranial Base Surgery
1984-1987	Presbyterian-University Hospital Pittsburgh, PA	Director, Division of Regional Anesthesia/Postop Pain Service, Department of Anesthesia
1984-1986	Presbyterian-University Hospital Pittsburgh, PA	Coordinator of Medical Student Education Department of Anesthesia
1984-1987	Presbyterian-University Hospital Pittsburgh, PA Pittsburgh, PA	Medical Coordinator Nurse Anesthetist In- Service Program, Dept. of Anesthesiology
1983-1984	Parkview Hospital Philadelphia, PA	Part-time Staff Physician Emergency Medicine

CERTIFICATION AND LICENSURESPECIALTY CERTIFICATION:

Diplomate of the American Board of Anesthesiology  
Recertification in the Subspecialty of Pain Medicine,  
September 2003

Diplomate of the American Board of Pain Medicine,  
September 1994

Fellow, American College of Pain Medicine, Examination Certified  
March 1994

Diplomate of the American Board of Anesthesiology,  
October 1986

Sept 1997 Chronic Pain: Evaluate and Treat Old Problems. New Ideas  
Case Management Insurance Advisory Board  
HealthSouth Rehabilitation Hospital  
Altoona, PA

May 1997 The Comprehensive Management of Spasticity  
Continuing Medical Education Symposium  
HealthSouth Rehabilitation Hospital  
Altoona, PA

April 1997 Amputation Pain Control. New Treatment For Old Ideas  
Central Pennsylvania Amputee Support Group  
Altoona Hospital Center For Nursing Care  
Altoona, PA

April 1997 Chart Your Course Through Changing Times-Directions For Success  
Regional Case Management Conference  
HealthSouth Rehabilitation Network and the Penn State College  
of Health and Human Development, School of Nursing  
The Penn State Scanticon Conference Center Hotel  
State College, PA

Feb 1997 Pain Control and Occupational Injury  
Blair County Chamber of Commerce Safety/Risk Management Dept.  
Hoss's Restaurant  
Altoona, PA

Nov 1996 Pain Control For Geriatric Spine Disease  
HealthSouth Rehabilitation Hospital Medical Staff Grand Round  
Altoona, PA

Sept 1996 Chronic Pain Management. Cancer Pain Control  
Windber Hospital Medical Staff Grand Rounds  
Windber Hospital, Windber, PA

April 1996 Interventional Pain Management  
Tyrone Hospital Medical Staff Ground Rounds  
Tyrone, PA

March 1995 Spinal Spasticity and Intrathecal Baclofen  
Continuing Education Seminar  
Association of Rehabilitation Nurses, Blair County Chapter  
Altoona, PA

February 1994 Chronic Pain Management Overview  
The PMA Group, Lemoyne, PA

March 1994 Technological Advances in Cancer and Ischemic Pain Syndromes  
HealthSouth Rehabilitation Hospital of Altoona/Altoona Hospital  
Continuing Medical Education, Altoona, PA



March 1994 The Treatment of Cancer and Neuropathic Pain  
Continuing Medical Education Symposium  
Clearfield Hospital, Clearfield, PA

November 1993 Migraine Headaches, Diagnosis and Treating  
Glaxo Pharmaceuticals Continuing Medical Education  
Seminars, Johnstown, PA

October 1993 Cancer Pain Management  
Continuing Medical Education Seminar  
Mercy Hospital of Altoona, Altoona, PA

September 1993 Trigeminal Neuralgia; Pain Management Techniques: A  
Look to the Future  
Three Rivers Dental Conference  
Odontological Society of Western Pennsylvania Annual  
Scientific Program, Pittsburgh, PA

June 1993 Interventional Pain Control: The Anesthesiologist's  
Role in the Psychological Component of Pain Management  
Rehabilitation Hospital of Altoona Continuing Medical  
Education, Altoona, PA

May 1993 Breaking the Pain Cycle: The Pain Clinic's Role in Pain  
Management - A Multidisciplinary Approach: Humor,  
Hi-Tech, and Traditional  
Regional Seminar, American Chronic Pain Support Group,  
Altoona, PA

March 1993 Myofascial Pain Dysfunction Syndrome  
Blair County Dental Society Continuing Medical  
Education Seminar, Altoona, PA

October 1992 Treatment of Office Emergencies  
Western Pennsylvania Podiatric Surgery Annual Meeting  
Sheraton Station Square, Pittsburgh, PA

September 1992 Anesthetic Considerations for the Craniotomy Patient  
American College of Osteopathic Neurosurgery 65th Annual  
Clinical Assembly  
Chicago, IL

September 1992 Anesthetic Considerations for the Spine Surgery Patient  
American College of Osteopathic Neurosurgery 65th Annual  
Clinical Assembly  
Chicago, IL

September 1992 Role of Anesthesiologist in the Care of Patient with Failed  
Back Surgery Syndrome  
American College of Osteopathic Neurosurgery 65th Annual  
Clinical Assembly  
Chicago, IL

September 1992 Chronic Pain Management  
Travelers Insurance Company Annual Inservice Training Conference  
Toftrees Country Club, State College, PA

September 1992 Selected Topics in Cancer Pain Management: Advanced Technologies in Cancer Pain Management  
South Central Pennsylvania Chapter Oncology Nursing Society  
Mercy Hospital, Altoona, PA

June 1992 Pain Control Options for the Diabetic  
Mercy Regional Health System  
Altoona, PA

June 1992 TMJ: "A Lot More Than Just a Pain in the Neck"  
Rehabilitation Hospital of Altoona  
Altoona, PA

March 1992 Interstitial Pain Management, Spinal Cord Stimulator, and Implantable Pumps  
Continental Rehabilitation Resources Company  
Pittsburgh, PA

March 1992 Reflex Sympathetic Dystrophy and Sympathetic Maintained Pain Syndrome  
Blair Chapter, American Association of Rehabilitation Nurses  
Altoona, PA

November 1991 Chronic Pain Management for the '90s: What's Hot and What's Not  
Central and Western Pennsylvania Rehabilitation Consultants  
Rehabilitation Hospital of Altoona, Altoona, PA

August 1991 The Treatment of Chronic Pain  
Jersey Shore Hospital Medical Staff Meeting  
Jersey Shore, PA

May 1991 Chronic Pain: Failed Back Syndrome  
Rehabilitation Hospital of Altoona/Altoona Hospital  
Scotch Valley Country Club, Hollidaysburg, PA

April 1991 Chronic Pain Management  
Blair County Chapter of Medical Assistants  
Altoona Hospital, Altoona, PA

April 1991 Chronic Pain Syndrome and Treatment  
Garrett County Medical Staff  
Garrett County Memorial Hospital  
Deep Creek, MD

March 1991 Injury, Chronic Pain, and Return to Work  
Rehabilitation Nursing Seminar  
Greater Pittsburgh Rehabilitation Hospital,  
Pittsburgh, PA

March 1991 The Treatment of Chronic Pain  
Lock Haven Rotary Club  
Lock Haven, PA

November 1990 Advanced Concepts in Capnography  
American Osteopathic College of Anesthesiologists 38th  
Annual Convention and Continuing Medical Education  
Seminar, Nashville, TN

August 1990 Pain Management/Treatment of Chronic Pain  
Arthritis Foundation, Central Pennsylvania Chapter,  
Sponsored by Pfizer Labs, Altoona, PA

August 1990 The Treatment of Chronic Pain  
Rotary Club of Altoona, Altoona, PA

April 1990 The Injured Worker  
Rehabilitation Nursing Seminar Sponsored by Travelers  
Insurance Company, Pittsburgh, PA

March 1990 Chronic Pain and the Injured Worker  
Pennsylvania Occupational Therapy Association District 4  
Seminar, Altoona, PA

December 1989 Common Pain Syndrome  
Didactic Session, Pain Management Committee,  
Rehabilitation Hospital of Altoona, Altoona, PA

October 1989 The Treatment of Chronic Pain  
Blair County Pain Support Group, Altoona, PA

June 1989 An Overview of Anesthesia and Critical Care Medicine  
Central Pennsylvania Chapter, American Association of  
Critical Care Nurses, Altoona, PA

June 1989 The Treatment of Chronic Pain  
Pain Control Center, Butterworth Hospital, Grand  
Rapids, MI

June 1989 Preoperative Evaluation and Preparation of the  
Surgical Patient  
Resident Lecture Series, Altoona Hospital Family  
Practice Residency Program, Altoona Hospital,  
Altoona, PA

May 1989 The Treatment of Chronic Pain  
Medical Transcription Colloquium, Altoona Hospital

April 1989 Anesthesia for Neurological Surgery  
Didactic Session, Operating Room Nursing Division,  
Altoona Hospital, Altoona, PA

April 1989 Obstetrical Anesthesia  
Maternal-Child Health Update '89, Central Pennsylvania  
Nurses Association of the American College of Obstetricians  
and Gynecologists, Altoona, PA

January  
1989 Postoperative Pain Management with Intrathecal and  
Epidural Opiates  
Department of Anesthesiology and Post Anesthesia Care,  
Altoona Hospital

December  
1988 Problems in the Post Anesthesia Care Unit  
Didactic Sessions, Post Anesthesia Care Division,  
Altoona Hospital

November  
1988 Anesthesia for Neurological Surgery  
Didactic Sessions, Nurse Anesthesia Division,  
Altoona Hospital

October  
1988 Positioning in Anesthesia and Surgery  
Didactic Sessions, Operating Room Nursing Division,  
Altoona Hospital

October  
1988 Anesthesia for Cranial Base Tumors: Diagnosis and  
Treatment  
Symposium by the Center for Cranial Base Surgery  
University of Pittsburgh School of Medicine

August  
1998 Reversal of Neuromuscular Relaxants  
Department of Anesthesia Inservice Lecture  
Altoona Hospital

April  
1998 Anesthesia for Ophthalmologic Surgery  
Pittsburgh Ophthalmology Society, Pittsburgh, PA

December  
1987 Anesthesia for Ophthalmologic Surgery  
Ophthalmologic Surgery Grand Rounds, Department of  
Ophthalmology, University of Pittsburgh, School of Medicine

November  
1987 Anesthesia for Cranial Base Tumor Surgery  
Cranial Base Tumors: Diagnosis and Treatment, Symposium by  
the Center for Cranial Base Surgery, University of Pittsburgh  
School of Medicine

September 1987 Regional vs. General Anesthesia  
Orthopedic Surgery Grand Rounds, Department of Orthopedic Surgery, University of Pittsburgh, School of Medicine

August 1997 Postoperative Pain Management  
Didactic Sessions, University Health Center of Pittsburgh, School of Anesthesia for Nurses

July 1987 Anticoagulation Risks and Spinal/Epidural Anesthesia  
Residents Journal Club, University of Pittsburgh

July 1987 Regional Anesthesia  
Didactic Sessions, University Health Center of Pittsburgh, School of Anesthesia for Nurses

June 1987 Regional Anesthesia and Postoperative Pain Management  
PGY III lecture series, University of Pittsburgh

May 1987 Complications in Cardiovascular Anesthesia  
Didactic sessions, University Health Center of Pittsburgh, School of Anesthesia for Nurses

March 1987 Postoperative Management of Patients Having Regional Anesthesia  
Critical Care Nursing Seminars, Department of Nursing, University of Pittsburgh

November 1986 Postoperative Pain Management with Intrathecal and Epidural Opiates  
Department of Anesthesiology, Veterans Administration Hospital, University of Pittsburgh

September 1986 Regional Anesthesia and Postoperative Pain Management  
PGY III lecture series, University of Pittsburgh

September 1986 Regional Anesthesia -- Clinical Applications  
PGY III lecture series, University of Pittsburgh

August 1986 Postoperative Management of Patients Having Regional Anesthesia  
Critical Care Nursing Seminars, Department of Nursing, University of Pittsburgh

July 1986 Regional Anesthesia  
Residents introductory lecture series, University of Pittsburgh

July 1986 Local Anesthetics  
Residents introductory lecture series, University of Pittsburgh

July 1986 Regional Anesthesia  
Didactic sessions, University Health Center of Pittsburgh,  
School of Anesthesia for Nurses

May 1986 Complications in Cardiovascular Anesthesia  
Didactic sessions, University Health Center of Pittsburgh,  
School of Anesthesia for Nurses

May 1986 Postoperative Pain Management with Epidural Narcotics  
Department of Anesthesia and Medical Staff, CME, Westmoreland  
Hospital, Greensburg, PA

April 1986 Postoperative Pain Management with Epidural Narcotics  
Orthopedic Surgery Grand Rounds, Department of Orthopedic  
Surgery, University of Pittsburgh, School of Medicine

March 1986 Regional Anesthesia - Why?  
Mid-year Conference, American College of Osteopathic  
Anesthesiologists, Chicago, Illinois

March 1986 Moderator, Epidural and Intrathecal Narcotic Session  
American College of Osteopathic Anesthesiologists, Chicago,  
Illinois

January 1986 Epidural and Intrathecal Opiates  
Orthopedic and Plastic Nursing Seminars, Department of  
Nursing, University of Pittsburgh

December 1985 Regional Anesthesia in the Operating Room  
PGY III Lecture Series, University of Pittsburgh

December 1985 Regional Anesthesia and Postop Pain Management  
PGY III Lecture Series, University of Pittsburgh

November 1985 Epidural Narcotics  
Nurse Anesthetist Inservice Lecture, Presbyterian-University  
Hospital

October 1985 Anesthesiology - An Inside Look at the Profession  
Mini series, WTAE Channel 4 News, Pittsburgh, PA

October 1985 Advanced Cardiac Life Support  
University of Pittsburgh School of Medicine in cooperation  
with the Center for Emergency Medicine

October 1985 Pharmacology of Local Anesthetics  
PGY II Lecture Series, University of Pittsburgh

October 1985 Anesthesia for Microvascular Surgery  
Grand Rounds, Department of Plastic and Reconstructive  
Surgery, University of Pittsburgh, School of Medicine

12

August 1985 Advanced Cardiac Life Support  
Children's Hospital of Pittsburgh House Staff in cooperation  
with the Center for Emergency Medicine

July 1985 Regional Anesthesia  
Residents Introductory Lecture Series, University of  
Pittsburgh

June 1985 Myths and Postoperative Management of Spinal Anesthesia  
Orthopedic Nursing Seminar, Department of Nursing, University  
of Pittsburgh

May 1985 Complications in Cardiovascular Anesthesia  
Didactic Sessions, University Health Center of Pittsburgh,  
School of Anesthesia for Nurses

April 1985 Advanced Cardiac Life Support  
University of Pittsburgh School of Medicine in cooperation  
with the Center for Emergency Medicine

March 1985 Perioperative Hypotension  
PGY II Resident Lecture Series, University of Pittsburgh,  
Department of Anesthesiology

December  
1984 Regional Anesthesia -- Why & Patient?  
Surgical Grand Rounds, Department of Surgery, University  
of Pittsburgh, School of Medicine

November  
1984 Premedication -- Art or Science?  
Nurse Anesthetist Inservice Lecture, Presbyterian-  
University Hospital

October 1984 Pharmacology of Local Anesthesia  
PGY II Lecture Series, University of Pittsburgh

September  
1984 Regional Anesthesia, Part I  
PGY III Lecture Series, University of Pittsburgh

September  
1984 Regional Anesthesia, Part II  
PGY III Lecture Series, University of Pittsburgh

October 1983 Post Dural Puncture Cephalgia  
Residents Conference, University of Pennsylvania

August 1983 The Use of Inotropes and Vasodilators after Cardiopulmonary  
Bypass  
Residents Seminary, Deborah Heart and Lung Center, Brown  
Mills, New Jersey

September 1982 Post-Operative Recovery of Pulmonary Function  
In-Service Seminar, Department of Critical Care Nursing  
University of Pennsylvania

September 1982 Anesthetic Management of the Patient with Congenital Dystonia Musculorum Deformans  
Case Conference, University of Pennsylvania

April 1982 Idiopathic Thrombocytopenia Purpura  
Department of Internal Medicine, Allegheny General Hospital

February 1982 Chloride Resistant Metabolic Alkalosis Secondary to ACTH Producing Ovarian Carcinoma  
Residents Conference, Department of Internal Medicine  
Allegheny General Hospital

MEETINGS ATTENDED:

May 1999 Advanced Lumbar Cadaver Workshop  
International Spinal Injection Society  
Washington, DC

Dec 1997 Postgraduate Assembly in Anesthesiology  
The New York State Society of Anesthesiologists  
New York, NY

Oct 1997 Oncologic Rehabilitation Symposium  
HealthSouth Rehabilitation Hospital  
Altoona, PA

May 1997 The Comprehensive Management of Spasticity  
American Sports Medicine Institute  
Birmingham, AL

February 1997 The Comprehensive Management of Spasticity  
HealthSouth Rehabilitation Hospital  
Altoona, PA

February 1997 Multidisciplinary Review and Update in Pain Medicine  
Allegheny General Hospital  
Pittsburgh, PA

January 1997 Brain Attack: Diagnosing and Managing Strokes  
HealthSouth Rehabilitation Hospital  
Altoona, PA

June 1996 Radiofrequency Techniques in the Management of Chronic Pain  
Maricopa Health System  
Philadelphia, PA



February 1996 Review and Update in Pain Medicine  
Allegheny General Hospital  
Pittsburgh, PA

February 1996 The Comprehensive Management of Spasticity  
HealthSouth Medical Center  
Orlando, FL

October 1995 American Society of Anesthesiologists Annual Meeting  
Atlanta, GA

November 1994 American Pain Society 13th Annual Scientific Meeting  
Miami Beach, FL

February 1994 Acute and Chronic Pain Management  
Allegheny General Hospital/Medical College of Pennsylvania  
Pittsburgh, PA

October 1993 American Society of Anesthesiologists Annual Meeting  
Washington, DC

June 1993 Comprehensive Review of Pain Management  
Harvard Medical School  
Boston, MA

February 1993 Selected Issues in Chronic and Acute Pain Management  
Allegheny General Hospital  
Continuing Medical Education  
Pittsburgh, PA

March 1992 Chronic Pain and Stroke  
NME Rehabilitation Hospital Division  
Florida Medical Association  
Naples, FL

October 1991 American Society of Anesthesiology  
Annual Meeting, Review Session and Scientific Seminar  
San Francisco, CA

Aug 1991 Advanced Pain Therapy Workshop  
Mark L. Gostine, MD  
Pain Control Center, Butterworth Hospital  
Grand Rapids, MI

May 1991 Chronic Pain: Failed Back Syndrome  
Rehabilitation Hospital of Altoona/Altoona Hospital  
Scotch Valley Country Club, Hollidaysburg, PA

February 1991 Interventional Pain Management Workshop  
Dannemiller Memorial Educational Foundation  
Scottsdale, AZ

Nov 1990 Robert D. Dripps Memorial Conference  
Department of Anesthesiology, University of Pennsylvania  
School of Medicine, Philadelphia, PA

June 1990 Interventional Technique Workshop  
University of Kentucky and the Saint Anthony Medical  
Center, Columbus, OH

April 1990 Fifth Annual Meeting of the Society for Ambulatory  
Anesthesia, Baltimore, MD

February 1990 16th Annual Vail Conference in Anesthesiology,  
Vail, Colorado

December 1989 Postgraduate Assembly in Anesthesiology, New York  
State Society of Anesthesiologists, New York, New York

August 1989 Pain and Cancer: Innovations in Pain Control,  
University of Pittsburgh Pain Evaluation and Treatment  
Institute, Pittsburgh, PA

June 1989 Anesthesia for the Unstable Cardiovascular Patient,  
American Society of Anesthesiologists, Boston,  
Massachusetts

February 1989 14th Annual Vail Symposium in Intensive Care,  
Vail, Colorado

January 1989 Propofol Symposium: A Comprehensive Review of Its Pharmacology,  
Systemic Effects, and Utility in Anesthesia  
Naples, Florida

December 1988 Postgraduate Assembly in Anesthesiology, New York State  
Society of Anesthesiologists, New York, New York

November 1988 Robert D. Dripps Memorial Conference, University of  
Pennsylvania, School of Medicine, Philadelphia, PA

October 1988 Symposium on Cranial Base Tumor Surgery, Center for Cranial  
Base Surgery, University of Pittsburgh, School of Medicine  
Pittsburgh, PA

November 1987 Symposium on Cranial Base Tumor Surgery, Center for Cranial  
Base Surgery, University of Pittsburgh, School of Medicine  
Pittsburgh, PA

October 1987 American Society of Anesthesiologists, Annual Meeting,  
Atlanta, GA

March 1987 American Society of Regional Anesthesia, Annual Meeting,  
Orlando, FL

- September 1986 Regional Anesthesia Workshop  
American Society of Regional Anesthesia,  
Charleston, South Carolina
- March 1986 Mid-Year Review Conference, American College of Osteopathic  
Anesthesiologists, Chicago, Illinois
- January 1986 Aminoglycosides - Current Trends  
Puerto Vallarta, Mexico
- April 1985 Butopharol Anesthesia - The Use of an Agonist/Antagonist  
Scottsdale, Arizona
- March 1985 American Society of Regional Anesthesia, Annual Meeting,  
Washington, D.C.

PUBLICATIONS:

1. Khalouf FK, Kunkel FA, Freeman J: Stretching with Obstruction of an Epidural Catheter. *Anesthesia and Analgesia*, 66: 1202-1203, 1987.
2. Khalouf FK, Gonzalez RM: Special Anesthesia Challenges in Surgery of the Skull Base. In Surgical Management of Tumors at the Cranial Base, edited by C. G. Jackson, Churchill Livingstone, New York, 1990.

RESEARCH:

Liposome Encapsulation of Local Anesthetics

Free Tissue Transfer using Epidural Anesthesia

Dermatome Somatosensory Evoked Potential Monitoring of Spinal Anesthesia

Rev 3/04

17

2008 7:29 PM FROM: FAX TO: 6-69399 PAGE: 005

Altoona Pain Management Associates, P.C.  
FRED K. KHALOUF, D.O., F.A.C.P.M.  
HEALTHSOUTH REHABILITATION HOSPITAL OF ALTOONA  
2005 VALLEY VIEW BOULEVARD  
ALTOONA, PA 16602  
Telephone: 814-941-3272  
Fax: 814-944-7958  
NPI 1013960777

03.Sep.2008

Louis Schmitt, EsquireMcIntyre, Hartye & Schmitt,  
PO Box 533  
Hollidaysburg, PA 16648

RE: Rodney J. Chiodo (DOB:28.Oct.1968)

Dear Louis Schmitt, Esquire:

I saw Mr. Chiodo during an Independent Medical Examination performed today, September 3, 2008. He presents at this time as a 39-year-old man with left paracervical, trapezius and shoulder pain as well as headaches that he describes being present since an automobile accident which occurred on December 29, 2003. He denied having problems prior to that and states that he has been having severe left neck and shoulder pain since that injury. He was the restrained driver of a Cadillac that was stopped and was struck from behind by a coal truck. His vehicle suffered severe front and rear injuries and he was able to self extricate himself from the vehicle and wait for the arrival of emergency medical personnel. He was subsequently evaluated in the Dubois Regional Medical Center emergency room and released. During his visit, there are entries of him having right sided neck and back pain. X-rays performed that day included cervical thoracic and lumbar spine x-rays which were all completely normal. He was subsequently released with his family in attendance.

He was next seen by his family physician, Dr. James Scerbo on January 5, 2004. He reported having neck pain and pain throughout his back all the way from his thoracic area to his lumbar region. He also complained of sinus problems. He was treated conservatively and continued regular visits thereafter with his family doctor and with a chiropractor. Over the next several months, he had seen Dr. Scerbo on several different intervals and had a number of complaints that not only included neck and back pain but also chest pressure, indigestion, nasal congestion, stress and tension, and headaches. Dr. Scerbo described this as ligamentous strain and irritation and also stress and tension but admitted that he would not take anti-anxiety drugs. He subsequently sent him for an MRI which was performed on March 30, 2004 which showed a very small midline disk bulge at C5-6 with no other findings of injury or degeneration.

Over the next several months there were multiple entries throughout Dr. Scerbo's notes describing ongoing pain and discomfort in his neck, headaches and other medical problems such as nasal congestion, allergies, hypercholesterolemia, weight problems, chest symptoms, acid reflux, and right knee pain. These visits with Dr. Scerbo continued through April of 2005.

Because of persistent complaints, Dr. Scerbo referred Mr. Chiodo to Dr. Elizabeth Young, a

EXHIBIT

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rheumatologist in Pittsburgh. She too described his primary complaint of neck pain as being related to the December 29, 2003 injury. She concluded that his pain was related to myofascial pain and her examination described tender points in the paraspinal muscles which she injected and also had treated him with medications. She saw Mr. Chiodo on March 3, 2005 and from what I can see, he did not return for any follow-up visits.

Physical therapy records were reviewed from several encounters at the Western Reserve Therapists, located in Ohio. These visits were ordered by Dr. Scerbo and performed between January 14, 2004 to January 27, 2004.

Chiropractic records from Dr. Brad LaBue were reviewed along with additional emergency room records from the Dubois Regional Medical Center.

I also reviewed a chiropractic narrative report from Dr. Scott Sesny from January 20, 2004. This report concluded that he had sprain/strain injuries that had healed and he felt that a small midline C5-6 disc bulge was his suspected cause of ongoing symptoms. He felt that his problems were related to the accident noting that he did not suffer from these complaints prior to the accident of December 29, 2003.

I also reviewed a report that was generated by Dr. Richard Bonfiglio, a physical medicine specialist. He also concluded that Mr. Chiodo suffered from multiple cervical spine, myofascial cervical, thoracic, and lumbar problems, and chronic recurrent headaches, as a result of the accident on December 29, 2003. He did not describe him having any pre-existing problems and he felt that his ongoing complaints would be permanent and would limit his capacity. He did conclude that his studies were relatively normal and only showed mild midline disk bulging at C5-6. Mild degenerative early spondylosis changes were re-reported from the chiropractic films that had been performed in Ohio.

Records were also available for review from the Elk Regional Health Center and from physical therapist Robert Mollica.

Past medical history is noteworthy for obesity, Wolfe-Parkinson-White syndrome for which he underwent ablation at age 23, mitral valve prolapse, gastroesophageal reflux, allergic rhinitis, chronic sinusitis, and hypercholesterolemia. He has an allergy to Levaquin.

Social history notes that he is married and lives with his wife and children. He does not smoke and he drinks socially. He is currently working in his own consulting business and he was also previously employed in sales. He is apparently stating that he cannot do certain jobs any longer because he cannot tolerate long-distance travel due to pain that is provoked by certain activities and prolonged positioning such as that which would be required for travel. There appears to be some type of litigation involved for which he has retained an attorney and he states that he has been harmed by this accident and will have ongoing future loss of wages because of this.

I performed a pertinent segmental physical examination of Mr. Chiodo which found a healthy and mildly overweight man who appeared his stated age. He was very articulate, well-dressed and appropriate with myself and the office staff. He did not walk with antalgia or exhibit purposeful painful gestures or responses. His cervical spine range of motion was reduced during active voluntary movement noting 45° rotation to the left with normal 90° rotation to the right. Flexion was unremarkable and he was able to extend to -20°. He complained of restricted movement and pain with left lateral flexion. He did not exhibit any Spurling's response with encroachment attempts to reproduce radicular pain into either arm. He had no radicular pain nor did he exhibit any upper extremity paresthesias, dysesthesias, atrophy or wasting. His reflexes were intact and his sensory patterns were

full and equal throughout. He did not complain of any mid thoracic or lumbar pain. He stated he had headaches and he had left-sided neck pain extending no further than the trapezius and levator scapula area. There was no evidence of any isolated trigger point or segmental cervical spasm. At no time did the patient exhibit any embellishment of symptoms or untoward behavioral outcry or grimace of pain.

There were no spine films available for my review but I did review the reports from the hospital from the day of the injury which were completely normal involving cervical, thoracic and lumbar spine imaging. There was a chiropractor report with self interpretation of films performed on February 7, 2004 in Canton Ohio. He described abnormal alignment of the thoracic vertebrae and early spondylosis in the mid to lower thoracic spine, abnormal alignment of the cervical vertebrae with abnormal intra segmental motion on the extension view compatible with muscle spasm and/or joint dysfunction. He also reported abnormal alignment of the lumbar vertebrae and pelvis with early spondylosis of L4-5 and L5-S1. Cervical and thoracic MRI studies from Dubois performed on March 31, 2004 were normal with a small midline C5-6 disc bulge not causing any nerve root compression, alteration of signal within the cord, nor changes in cord configuration. MRI of the lumbar spine from May 15, 2002 was also noted to be normal as was an MRI of the lumbar spine performed in July of 1997.

Impression: Cervicalgia and chronic somatic cervical parascapular complaints of subjective nature which the patient describes as being present ever since he was rear ended in a motor vehicle accident on December 29, 2003.

Conclusion: Mr. Chiodo presents with a very chronic and subjective soft tissue pain pattern that he describes being related to the vehicular injury on December 29, 2003. He indeed had an injury that day and his vehicle was demolished from behind. He did not have any fractures, deep contusions or lacerations or tissue injury. His reported complaints of pain are consistent with a whiplash injury and he is very sincere in his presentation of that which bothers him.

From my nonpartisan, purely objective review of this case, I cannot find a structural deficit or causation for his complaint in such profound loss of current and future potential. He is working and functioning quite well and is no longer receiving any treatment nor seeking medications or other forms of established medical care. This case is obviously in litigation and if he were to not have any subjective complaints, he would lose that which he is attempting to obtain. The statements that support his ongoing complaints are purely based on his subjective input.

On the opposite side of the coin, I told him point-blank that there are no findings, either from objective testing or from his physical and clinical evaluations that support a structural anatomic or physiologic loss or mechanism of injury. Although it is very sincere in his presentation, and I believe that he does have pain, I dispute the relationship and causality of its presence to the injury which occurred on December 29, 2003.

Careful review of additional records that were presented for my review included reports from his chiropractor, specifically Dr. LaBue from January 31, 1995 through June 30, 1995, October 1998 through January 2001, May 2002, and March through November 2003. There are many descriptions of Mr. Chiodo's presentation's throughout these various time periods that describe the same pattern of restricted cervical motion, cervical pain, periscapular pain, low back pain with prolonged sitting such as when driving, left paracervical pain radiating into the left shoulder and left scapular area, pain in the left shoulder blade and mid thoracic pain, a whiplash injury that occurred in the week prior to May 1, 1995, left and right sided neck pain, patient's complaints of work stress contributing to recurrent flareups of neck and shoulder pain, flareups of low back and leg pain, and lastly cervical spine chiropractic records from November 21, 2003 describing pain with movement of his head and records from January 9, 2004 that acknowledge the injury which occurred but were no different than pre-existing records of the same

from two months prior.

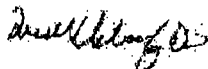
I also had the privilege of reading a record from July 12, 2003 from the Dubois regional medical Center emergency room where the patient presented to the emergency room with left neck and shoulder pain. This was the same exact pattern that was described during the previous eight years, if not more, and in this case was related to worsening of symptoms three days previous when he was moving boxes. He saw his chiropractor which did not help so he went to the emergency room for treatment and was released.

Lastly, I reviewed another report from the Elk Regional Health Center emergency room dated July 5, 2001 when the patient presented with left low back and hip pain after an auto accident. He was released. Additional records of Dr. Scerbo reveal that this patient either calls or visits his office relatively frequently for an otherwise young and healthy person. One such entry on May 14, 2002, notes that he went to see his doctor with persistent back pain after having an auto accident the year prior. Another such encounter on May 26, 1995 described a motor vehicular accident on April 20, 2005 when he had a whiplash injury and wore a cervical collar.

Multiple visits with multiple complaints over multiple years to multiple providers and multiple emergency rooms must be considered when a case such as this is being reviewed. I cannot see any injury process from his reported accident that is giving him any deficit or ongoing reason for complaints or losses that are any different than multiple prior similar episodes. I believe that his complaints of chronic pain and earning limitations are very real to him, but I cannot objectively find a causal relationship to the December 29, 2003 motor vehicle accident.

I hope that this information will be of help to you with further management of this case.

Sincerely,



Fred K. Khalouf, D.O., F.A.B.P.M.

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

RODNEY J. CHIDO and CAROLYN G.  
CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

**ISSUE:**

MOTION TO STRIKE PLAINTIFFS'  
MOTION IN LIMINE TO EXCLUDE  
TESTIMONY OF FRED K. KHALOUF,  
D.O. AS A MEDICAL EXPERT

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 31<sup>ST</sup> DAY OF OCTOBER, 2008.

Attorneys for Named Defendants

**FILED** No. 2005-1541-CD

NOV 03 2008

William A. Shaw  
Prothonotary/Clerk of Courts

28



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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**PROPOSED ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2008, upon consideration of the Motion to Strike Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert, and any response thereto, it is hereby ORDERED, ADJUDGED and DECREED that plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert is stricken.

By the Court

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

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**MOTION TO STRIKE PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE TESTIMONY  
OF FRED K. KHALOUF, D.O. AS A MEDICAL EXPERT**

AND NOW, come defendants, BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC., by and through their attorneys, McINTYRE, HARTYE & SCHMITT, and respectfully request that this Honorable Court strike plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert, saying as follows:

1. This lawsuit arises out of a motor vehicle accident that occurred on December 29, 2003, in Jay Township, Pennsylvania, at approximately 12:20 pm. At that time and place, husband-plaintiff Rodney J. Chiodo was operating his Cadillac motor vehicle northbound on State Route 255, traveling in the center lane of three lanes. While stopped in traffic, Mr. Chiodo's motor vehicle was struck by a truck operated by defendant Brian Yarger and owned by defendant Rodger L. Kephart Trucking, Inc.
2. A Pre-Trial Conference took place in this matter on June 12, 2008.
3. This Honorable Court, issued a Pre-Trial Order dated June 12, 2008.

(See copy of June 12, 2008 Order, attached hereto as exhibit "A".)

4. The jury trial in this matter is scheduled to commence on December 3, 2008.

5. By way of its of June 12, 2008, Order, this Honorable Court set a deadline for the filing of Motions In Limine to be not later than 45 days prior to the December 3, 2008, trial date.

6. Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O., as a Medical Expert was not filed in this matter until October 28, 2008, then days after the deadline set by this Honorable Court. That Motion is therefore violative of the Honorable Court's deadline for the filing of Motions In Limine and must be stricken.

WHEREFORE, defendants Brian Yarger and Rodger L. Kephart Trucking, Inc., respectfully request that this Honorable Court strike as untimely plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert.

Respectfully submitted,

McINTYRE, HARTYE & SCHMITT

---

Attorney for Defendants

Louis C. Schmitt, Jr., Esquire  
PA ID# 52459  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581  
(814) 696-9399 FAX

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

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

RODNEY J. CHIODO and  
CAROLYN G. CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,  
Defendants

JUN 12 2008  
NO. 05-1541-CD

Attest.

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

ORDER

NOW, this 12<sup>th</sup> day of June, 2008, following pre-trial conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on July 24, 2008 commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Jury Trial is hereby scheduled for December 3, 4 and 5, 2008, commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse.
3. All depositions which are to be used for trial presentation purposes shall be completed by absolutely no later than sixty (60) days prior to the commencement of trial or the same will not be available for use at trial. A copy of the transcript of any such deposition(s) shall be provided to opposing counsel within no more that ten (10) days following completion of the deposition(s).
4. The written report of any expert who will testify at trial which has not previously been provided to opposing counsel shall be delivered within no more than ninety (90) days from this date. Failure to comply will result in the witness not being available for use at trial.
5. Any party making objections relative the testimony to be provided by any witness in the form of a deposition at the time of trial shall submit said objections to the Court, in writing, no later than forty-five (45) days prior to the commencement of

EXHIBIT

"A"

tabbles

- trial. All objections shall reference specific page and line numbers within the deposition(s) in question along with that party's brief relative same. The opposing party shall file an Answer thereto and submit its brief in opposition to said objections no later than thirty (30) days prior to the commencement of trial.
6. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than forty-five (45) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than thirty (30) days prior to trial.
  7. The parties hereby agree to the authenticity of any and all medical records and bills which were previously provided through the discovery process. No party shall be required to produce a Medical Records witness for purposes of authentication.
  8. Copies of any exhibits to be offered at time of trial which have not been previously listed in the parties' discovery process or in pre-trial statements shall be provided to opposing counsel by no later than sixty (60) days prior to trial.

BY THE COURT,

/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN  
President Judge

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 - 1541 - CD

JURY TRIAL DEMANDED

PRAECIPE FOR ARGUMENT LIST

TO: PROTHONOTARY

Kindly list the above-captioned matter on the next available argument list. The matter to be argued is Motion to Strike Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert filed on behalf of defendants, Brian Yarger and Rodger L. Kephart Trucking, Inc.

Respectfully submitted,

McINTYRE, HARTYE & SCHMITT

Attorney for Defendants

LOUIS C. SCHMITT, JR., ESQUIRE

PA ID. No. 52459

P. O. Box 533

Hollidaysburg, PA 16648

(814) 696-3581

(814) 696-9399 - FAX

FILED

NOV 03 2008

William A. Shaw  
Prothonotary/Clerk of Courts

#27

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

No. 2005-1541 CD

FILED  
010:0230  
OCT 31 2008

William A. Shaw  
Prothonotary/Clerk of Courts

ICC Amy Hopkins

**SCHEDULING ORDER**

AND NOW, this 29<sup>th</sup> day of October, 2008, upon consideration of the Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert it is hereby ORDERED that:

1. A Rule is issued upon Respondent to show cause why the moving party is not entitled to the relief requested.

2. The Respondent shall file an Answer to the Motion within \_\_\_\_ days of this date;

3. The Motion shall be decided under Pa.R.C.P. §206.7;

4. Depositions and all other discovery shall be completed within \_\_\_\_ days of this date;

5. An Evidentiary Hearing on disputed issues of material fact shall be held on the \_\_\_\_ day of \_\_\_\_, 2008, at \_\_\_\_ o'clock \_\_\_\_ M., in Courtroom No. \_\_\_\_ of the Clearfield County Courthouse, Clearfield, Pennsylvania;

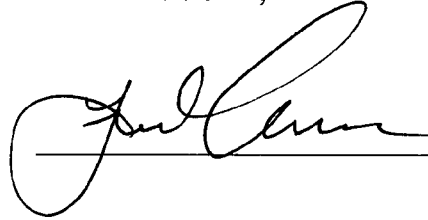
6. Argument shall be held on the 12<sup>th</sup> day of November, 2008 at 10:30 o'clock A M., in Courtroom No. 1 of the Clearfield

#26

County Courthouse, Clearfield, Pennsylvania; and

7. Notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT,

A handwritten signature in black ink, appearing to read "Paul C. ...", is written over a horizontal line.

JUDGE



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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

No. 2005-1541 CD

Type of Pleading: Motion in Limine  
to Exclude Testimony of  
Fred K. Khalouf, D.O. as a medical expert

Filed on behalf of Rodney J. Chiodo and  
Carolyn G. Chiodo, Plaintiffs.

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE

Attorney at Law

Supreme Court No. 42519

100 Meadow Lane, Suite 5

DuBois, Pennsylvania 15801

(814) 375-0300

FILED <sup>ICC</sup>

10/11/52/2008  
OCT 28 2008

William A. Shaw  
Prothonotary/Clerk of Courts

6K  
#25

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

No. 2005-1541 CD

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

**MOTION IN LIMINE TO EXCLUDE TESTIMONY OF  
FRED K. KHALOUF, D.O. AS A MEDICAL EXPERT**

AND NOW, comes the Plaintiffs, Rodney J. Chiodo and Carolyn G. Chiodo, by and through their attorneys, Hopkins Heltzel LLP and files the within Motion to Exclude Testimony of Fred K. Khalouf, D.O. as a medical expert and in support thereof says as follows:

**MOTION I**

1. Plaintiffs are Rodney J. Chiodo and Carolyn G. Chiodo, husband and wife. Defendants are Brian Yarger and Roger L. Kephart Trucking, Inc. Plaintiff's cause of action results from injuries Mr. Chiodo suffered when his stopped motor vehicle was struck from behind by a coal truck loaded with limestone on December 29, 2003.

2. Immediately following the collision Mr. Chiodo was taken by ambulance to the DuBois Regional Medical Center. Diagnostic X-rays were obtained including cervical, thoracic and lumbar spine X-rays that were normal. Mr. Chiodo was discharged to home. The following day Mr. Chiodo could barely move. He was seen by James Scerbo, M.D., his primary care physician, on January 5, 2004 and reported neck and lower back pain with radiation to both shoulders. Dr. Scerbo prescribed outpatient physical therapy. Dr. Scott Sesny, a chiropractor

evaluated Mr. Chiodo on January 20, 2004. He diagnosed cervical, thoracic, and lumbosacral sprain/strain and cervical neuralgia. Chiropractic treatment provided some, temporary improvement in Mr. Chiodo's symptoms, but no return to his pre-injury status. Cervical spine X-rays including flexion and extension views obtained on January 20, 2004 showed abnormal intersegmental motion on extension compatible with muscle spasm and/or joint dysfunction. Thoracic spine X-rays showed early spondylosis in mid to lower thoracic spine. Lumbar spine X-rays showed early spondylosis at L4-5 and L5-S1. Cervical and thoracic spine MRIs were obtained on March 30, 2004 and showed a posterior midline disc bulge at C5-6 with minimal thecal sac indentation.

3. Elizabeth A. Young, M.D., a rheumatologist saw Mr. Chiodo on March 3, 2005 and diagnosed posttraumatic myofascial pain syndrome. Her treatment of the patient included injections of three trigger points with steroids and Xylocaine.

4. Josh Click, D.C. evaluated Mr. Chiodo on January 3, 2007. He found Mr. Chiodo had multiple subluxations and provided conservative chiropractic care with some improvement in Mr. Chiodo's symptoms. However, Dr. Click noted that Mr. Chiodo was not expected to fully recover from his injuries from the motor vehicle collision of December 29, 2003; instead Dr. Click anticipated ongoing pain and suffering from his injuries.

5. Plaintiff has produced Richard B. Bonfiglio, M.D. as a medical expert. Dr. Bonfiglio is a University of Michigan Medical School graduate who was chief resident of physical medicine and rehabilitation at the Ohio State University Hospital. Dr. Bonfiglio's curriculum vitae is attached to plaintiff's pretrial memorandum.

6. Dr. Bonfiglio diagnosed Mr. Chiodo with multiple traumas due to a motor vehicle collision on December 29, 2003. Dr. Bonfiglio determined that as a direct result of the motor

vehicle collision, Mr. Chiodo has developed multiple chronic pain problems including neck and back pain and headaches. Despite extensive treatment measures that have included various medications, physical modalities, chiropractic measures and trigger point injections, Mr. Chiodo has residual ongoing chronic pain problems.

7. Defendant has produced Fred K. Khalouf, D.O. as a medical expert. Dr. Khalouf is a diplomat of the American Board of Anesthesia. He is a diplomat of the American Board of Pain Medicine and a diplomat of the American Board of Anesthesia subspecialty certification in Pain Medicine and is board-certified by the American Board of Anesthesia as one of its four subspecialties. (Deposition Page 4, Line 12-16 and Page 5, Line 2-10)

8. Dr. Khalouf "treats folks" who have developed chronic pain. He does not treat acute pain. (Deposition Page 5, Line 24 - Page 6, Line 1)

9. Acute pain is pain that is involved in the first 12 weeks of an injury process. Chronic pain is that which is thought to be and defined as being that which persists after the injury has healed and usually beyond the 12-week mark. (Deposition Page 6, Line 4-8)

10. Dr. Khalouf is not a neurologist. (Deposition Page 7, Line 22-24)

11. Dr. Khalouf is not a neurosurgeon. (Deposition Page 7, Line 25-Page 8, Line 1)

12. Dr. Khalouf does not have any training in orthopedics. (Deposition Page 8, Line 2-3)

13. Defendant proffers Dr. Khalouf as a medical expert in the field of chronic pain and plaintiff objects to the testimony of Dr. Khalouf inasmuch as the question is not whether Mr. Chiodo suffers from chronic pain but rather did his chronic pain result from the December 29, 2003 automobile accident.

14. Dr. Khalouf examined Mr. Chiodo on September 3, 2008. The examination of the affected area was the cervical spine. Mr. Chiodo had only 45 degrees rotation to the left and normal 90 degree rotation to the right. (Deposition Page 17, Line 15-19) Mr. Chiodo complained of restricted movement in pain with left lateral flexion. "On one side he was okay but to the other he was stiff. He was limited. He was restricted there." (Deposition Page 17, Line 24-Page 18, Line 4)

15. Mr. Chiodo stated he had headaches and he had left-sided neck pain that extended no further than the trapezius and levator scapulae. The pain was in the side of his neck and into the shoulder blade area. (Deposition Page 18, Line 19-24)

16. Dr. Khalouf told plaintiff that he couldn't find any findings of abnormalities. Although Mr. Chiodo was injured, it appeared to Dr. Khalouf that he recovered from that and his current complaints were not casually related to December 29, 2003, because there were a number of other injuries that Mr. Chiodo had suffered. (Deposition Page 24, Line 2-7) Dr. Khalouf then went through a list of other injuries and complaints that Mr. Chiodo had made to other healthcare professionals prior to the December 29, 2003 motor vehicle collision which is at issue in this case.

17. Dr. Khalouf's training as an anesthesiologist with an expertise in pain medicine is not an expert to identify the source of Mr. Chiodo's complaints.

WHEREFORE, Fred K. Khalouf, D.O should be excluded as a medical expert.

## MOTION II

18. Page 22, Line 7-Page 23, Line 19 of Dr. Khalouf's deposition testimony should be stricken as unresponsive to the question presented by defense counsel and were inappropriate in that they refer to other portions of this case that were beyond Dr. Khalouf's knowledge and refer to Mr. Chiodo's litigation.

19. Rather than repeat three (3) pages of deposition testimony the deposition of Dr. Khalouf is attached on the following page. Mr. Schmidt asked Dr. Khalouf a question on Page 21, Line 9. Plaintiffs submit that Page 22, Line 7 through Page 23, Line 19 should be stricken from the deposition transcript and DVD.

WHEREFORE, Page 22, Line 7 through Page 23, Line 19 of Dr. Fred K. Khalouf's deposition should be stricken.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. J. Hopkins', written over a horizontal line.

David J. Hopkins, Esquire  
Attorney for Plaintiffs

21

1 findings.

2 Q. So basically what he's saying are his subjective  
3 complaints, that's what he's telling?

4 A. Correct.

5 Q. And the objective findings would be medical  
6 tests and MRIs and those sorts of things?

7 A. Right, some -- some objective actual factual  
8 physical evidence of abnormalities.

9 Q. And as a -- as a chronic pain doctor, one of the  
10 things you do as you mentioned was to sort of put the  
11 pieces of the puzzle together. You put together the  
12 subjective complaints and also the objective tests and  
13 those sorts of things. And there's another piece of the  
14 puzzle though that I would like you to remark on and that  
15 you addressed in your report, and that would be complaints  
16 before this motor vehicle accident.

17 A. Well, that's -- you know, again, that was an  
18 important part of what I had studied through here because I  
19 -- I was just trying to look for how could this all be. I  
20 really didn't see that much going on here. And even Dr.  
21 Bonfiglio's records, which he described the event and he  
22 described the history of what he had done with treatments  
23 thereafter, he did not note any prior medical situations  
24 that were very similar. He felt that this was -- in fact,  
25 that it all started in December of 2003.

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22

1 Dr. Bonfiglio interestingly also did not find  
2 any objective abnormalities other than a very small which I  
3 think is an irrelevant C5-6 central disc bulge. We all  
4 have disc bulges. The bulged discs are cartilaginous  
5 tissue and they bulge. That's what they do. It should  
6 move and bulge.

7 I looked into this and as I explained to the  
8 patient, you know, I'm -- I am objective regardless of who  
9 asked me to do the examination. It's not like I state a  
10 different opinion and I want patients that come for IMEs,  
11 because I don't do many IMEs at all, that's not -- that's  
12 not what I do, but I want them to know that I'm not here as  
13 representing someone's behalf. I'm here to stay in the  
14 middle of the table and say hey, this is what I think you  
15 have, period. I get the same pay either way. I have no  
16 influence. I don't know whose -- who the person is.  
17 There's no personal interest there.

18 But I try to look at it from what I call a  
19 nonpartisan standpoint, a purely objective outsider looking  
20 in. And I could not find a structural deficit or a  
21 causation for his complaint. With what was being described  
22 is all -- with all this paperwork there that I could see  
23 the reports of analyses that were done, et cetera and I  
24 knew there was legal stuff involved or there wouldn't be a  
25 deposition or an IME, but I really couldn't see a cause for

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23

1 such a profound loss of current and future potential of  
2 this -- this patient.

3 He was -- seemed to be a good family man, a  
4 working successful guy and he was functioning well. He was  
5 not receiving any treatment at the present time nor was he  
6 seeking any medications or other forms of established  
7 medical care. I knew that and I stated that, that there  
8 was -- this is a case that was involved in litigation, such  
9 as why we're here today I guess and if he didn't have  
10 subjective complaints, that there wouldn't be any claim for  
11 loss, et cetera. So --

12 MR. HOPKINS: Objection.

13 THE WITNESS: So --

14 MR. HOPKINS: It's unresponsive.

15 THE WITNESS: -- these subjective complaints  
16 support ongoing complaints, which I suspect are -- were  
17 purely subjective because I could not find something  
18 objective.

19 BY MR. SCHMITT:

20 Q. Now, Doctor, you did look at some additional  
21 records that were from before this accident. I think if  
22 you look at the last paragraph on I think the third page of  
23 your report, you did mention a few of those things. If you  
24 could just let the jury know some of the things that you  
25 looked at that -- that were medical documents from before

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24

1 this accident?

2 A. Right. Again, I -- I actually told the patient  
3 that I really couldn't find any findings of abnormalities.  
4 Although he was injured, it appeared that he recovered from  
5 that and that his current complaints however I did not see  
6 as causally related to December 29 of 2003 because there  
7 were a number of records.

8 And, in fact, the more I started reading, the  
9 more I was surprised that many reports from different  
10 sources, including his chiropractor Dr. LaBue from January  
11 31 of 1995, all the way back into '95, eight years prior to  
12 the accident, through June 30 of '95, from October of '98  
13 through January of 2001, in May of 2002, and in March  
14 through November of 2003.

15 Spanning these entire eight years, there were  
16 numerous entries in these records where there were many  
17 descriptions of Mr. Chiodo presenting through these time  
18 periods with the same, same, same pattern of restricted  
19 cervical motion in this area; cervical pain, shoulder blade  
20 pain, low back pain, low back pain with prolonged sitting,  
21 such as when he's driving, left paracervical pain radiating  
22 into the left shoulder and left scapular area, pain in the  
23 left shoulder blade and down in the mid -- midthoracic area  
24 behind the neck and shoulders.

25 There was also a report of a whiplash injury  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants


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No. 2005-1541 CD

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of Plaintiffs' Motion to Exclude Testimony of Fred K. Khalouf, D.O. as a medical expert, filed on behalf of Rodney Chiodo and Carolyn Chiodo, was forwarded by first class mail, postage prepaid and facsimile on the 28th day of October 2006, to all counsel of record, addressed as follows:

Louis C. Schmitt, Jr., Esquire  
McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533

  
\_\_\_\_\_  
David J. Hopkins, Esquire  
Attorney for Plaintiffs

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

ISSUE:

NOTICE OF VIDEOTAPE  
TRIAL DEPOSITION

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

FILED

SEP 15 2008  
m 11:50/w  
William A. Shaw  
Prothonotary/Clerk of Courts  
w/c 510

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 11<sup>TH</sup> DAY OF September, 2008.

Attorneys for Named Defendants

524

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

RODNEY J. CHIODO and CAROLYN G. CHIODO,	:	No. 2005 – 1541 – CD
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
BRIAN YARGER and	:	
RODGER L. KEPHART TRUCKING, INC.,	:	
	:	
Defendants	:	JURY TRIAL DEMANDED

**NOTICE OF VIDEOTAPE DEPOSITION FOR USE AT TRIAL**

TO: David J. Hopkins, Esquire  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

Fred K. Khalouf, D.O., F. A. C. P. M.  
HealthSouth Rehabilitation Hospital of Altoona  
2005 Valley View Boulevard  
Altoona, PA 16602

Please take notice that pursuant to Pa.R.C.P. 4017. 5, the videotape deposition of **FRED K. KHALOUF, D.O., F.A.C.P.M.** shall be taken upon oral examination by an official Court Reporter/Videographer at **HealthSouth Rehabilitation Hospital of Altoona, 2005 Valley View Boulevard, Altoona, PA 16602** on the **3<sup>rd</sup>** day of **October, 2008**, commencing at **3:00 p.m.**

Said videotape deposition shall be taken by MLP Reporting, Inc., 413 North Vesper Street, Lock Haven, PA 17745 and is being taken for use at trial in open court.

You are invited to attend and participate.

**McINTYRE, HARTYE & SCHMITT**

Attorney for Defendants

**LOUIS C. SCHMITT, JR., ESQUIRE**

Pa. I.D. #52459

P.O. Box 533

Hollidaysburg, PA 16648-0533

(814) 696-3581

**FILED**

M 10:43 a.m. OK

JUN 19 2008 NO CC

William A. Shaw  
Prothonotary/Clerk of Courts

(60)

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

**ISSUE:**

NOTICE OF SERVICE OF  
SUPPLEMENTAL REQUEST  
FOR PRODUCTION OF DOCUMENTS  
REGARDS TO EARNINGS  
IMPAIRMENT CLAIMS

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 18<sup>TH</sup> DAY OF JUNE, 2008.

\_\_\_\_\_  
Attorneys for Named Defendants

23

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**NOTICE OF SERVICE OF SUPPLEMENTAL REQUEST FOR  
PRODUCTION OF DOCUMENTS WITH REGARD TO EARNINGS IMPAIRMENT  
CLAIM**

TO: PROTHONOTARY

You are hereby notified that on the 18<sup>TH</sup> day of JUNE, 2008, Defendants, BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC., served Supplemental Request for Production of Documents with Regard to Earnings Impairment Claim, by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

David Hopkins, Esquire  
900 Beaver Drive  
DuBois, PA 15801

**McINTYRE, HARTYE & SCHMITT**

Attorney for Defendants

Louis C. Schmitt, Jr., Esquire  
PA I.D. No. 52459  
P. O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581

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

RODNEY J. CHIODO and  
CAROLYN G. CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,  
Defendants

NO. 05-1541-CD

**FILED**

0/3:00 (w) 6K  
JUN 12 2008  
CENTRAL ATTORNEY

**ORDER**

William A. Shaw  
Prothonotary/Clerk of Courts  
HOPKINS & SCHMITT

NOW, this 12<sup>th</sup> day of June, 2008, following pre-trial conference with counsel for

the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on July 24, 2008 commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Jury Trial is hereby scheduled for December 3, 4 and 5, 2008, commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse.
3. All depositions which are to be used for trial presentation purposes shall be completed by absolutely no later than sixty (60) days prior to the commencement of trial or the same will not be available for use at trial. A copy of the transcript of any such deposition(s) shall be provided to opposing counsel within no more than ten (10) days following completion of the deposition(s).
4. The written report of any expert who will testify at trial which has not previously been provided to opposing counsel shall be delivered within no more than ninety (90) days from this date. Failure to comply will result in the witness not being available for use at trial.
5. Any party making objections relative the testimony to be provided by any witness in the form of a deposition at the time of trial shall submit said objections to the Court, in writing, no later than forty-five (45) days prior to the commencement of

#22

trial. All objections shall reference specific page and line numbers within the deposition(s) in question along with that party's brief relative same. The opposing party shall file an Answer thereto and submit its brief in opposition to said objections no later than thirty (30) days prior to the commencement of trial.

6. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than forty-five (45) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than thirty (30) days prior to trial.
7. The parties hereby agree to the authenticity of any and all medical records and bills which were previously provided through the discovery process. No party shall be required to produce a Medical Records witness for purposes of authentication.
8. Copies of any exhibits to be offered at time of trial which have not been previously listed in the parties' discovery process or in pre-trial statements shall be provided to opposing counsel by no later than sixty (60) days prior to trial.

BY THE COURT,

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

FREDRIC J. AMMERMAN  
President Judge



DATE: 6-12-08

☐ 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:

William A. Shaw  
Prothonotary/Clerk of Courts

FILED  
JUN 12 2008

JA

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

RODNEY J. CHIDO and CAROLYN G. CHIDO,  
Plaintiffs

vs.

BRIAN YARGER and RODGER L. KEPHART  
TRUCKING, INC.,

Defendants

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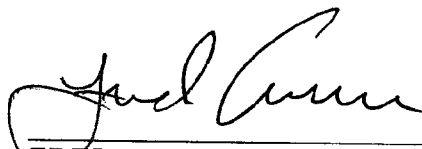
NO. 05-1541-CD

ORDER

AND NOW, this 4<sup>th</sup> day of April, 2008, it is the ORDER of this Court that Pre-trial conference in the above matter shall be held on the 12<sup>th</sup> day of June, 2008 in Chambers at 10:00 a.m.

Jury selection in this matter will be held on July 24, 2008 in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

4 FILED 2cc  
08:52 AM  
APR 04 2008  
Hops  
Schmitt  
William A. Shaw  
Prothonotary/Clerk of Courts  
GP

#21

FILED

APR 04 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 4/4/08

     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:

ORIGINAL

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

**ISSUE:** Praecipe to List  
Matter for Trial

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 2<sup>nd</sup> DAY OF APRIL, 2007

Attorneys for Named Defendants

FILED 1cc  
m/12:52 PM Any Schmitt  
APR 03 2008

William A. Shaw  
Prothonotary/Clerk of Courts

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**TO THE PROTHONOTARY:**

Arbitration Limits: \_\_\_\_\_

Type of Trial Requested:  X  Jury   Non-Jury   Arbitration

Estimated Trial Time:  2 days

Jury Demand Filed By:  Plaintiff

Date Jury Demand Filed:  12/02/05

Please place the above-captioned case on the trial list. 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.

Date:  April 2, 2008

(Signature)

For the Plaintiff:  David J. Hopkins, Esquire

(814) 375-0300  Telephone Number

For the Defendant:  Louis C. Schmitt, Jr., Esquire

(814) 696-3581  Telephone Number

For the Additional Defendant: \_\_\_\_\_

Certification of Current Address for all parties or counsel of record:

David J. Hopkins, Esquire, 100 Meadow Lane, Suite 5, DuBois, PA 15801

Louis C. Schmitt, Jr., Esquire, P.O. Box 533, Hollidaysburg, PA 16648

Name

Address

City/State/Zip

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

RODNEY J. CHIDO and CAROLYN G.  
CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

**ISSUE:**  
NOTICE OF RESCHEDULED  
DEPOSITION

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 17<sup>TH</sup> DAY OF JANUARY, 2007.

Louis C. Schmitt, Jr./ma  
Attorneys for Named Defendants

4  
**FILED** NO CC  
JAN 22 2007  
William A. Shaw  
Prothonotary/Clerk of Courts

#19

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

RODNEY J. CHIODO and CAROLYN G. CHIODO,	:	No. 2005 – 1541 – CD
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
BRIAN YARGER and	:	
RODGER L. KEPHART TRUCKING, INC.,	:	
	:	
Defendants	:	JURY TRIAL DEMANDED

**NOTICE OF RESCHEDULED DEPOSITION**

TO: David J. Hopkins, Esquire  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

Please take notice that the deposition of **Plaintiff, RODNEY J. CHIODO** shall be taken upon oral examination by an official Court Reporter at the offices of **David J. Hopkins, Esquire, Hopkins Heltzel, LLP, 100 Meadow Lane, Suite 5, DuBois, PA** on the **7<sup>th</sup> day of February, 2007**, commencing at **2:00 p.m.**

The scope of said deposition testimony will include inquiry into all facts concerning the happening of the incident complained of and all other matters relevant to the issues raised in the case.

You are invited to attend and participate.

**McINTYRE, HARTYE & SCHMITT**

Louis C. Schmitt, Jr.  
Attorney for Defendants

Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581



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

RODNEY J. CHIDO and CAROLYN G.  
CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

**ISSUE:**  
NOTICE OF DEPOSITION

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 6<sup>TH</sup> DAY OF DECEMBER, 2006.

Attorneys for Named Defendants

FILED  
m 11:20 AM  
DEC 08 2006  
cc

William A. Shaw  
Prothonotary/Clerk of Courts

#18

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**NOTICE OF DEPOSITION**

TO: David J. Hopkins, Esquire  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

Please take notice that the deposition of **Plaintiff, RODNEY J. CHIODO** shall be taken upon oral examination by an official Court Reporter at the offices of **David J. Hopkins, Esquire, Hopkins Heltzel, LLP, 100 Meadow Lane, Suite 5, DuBois, PA** on the **19<sup>th</sup> day of January, 2007**, commencing at **2:00 p.m.**

The scope of said deposition testimony will include inquiry into all facts concerning the happening of the incident complained of and all other matters relevant to the issues raised in the case.

You are invited to attend and participate.

**McINTYRE, HARTYE & SCHMITT**

\_\_\_\_\_  
Attorney for Defendants

Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

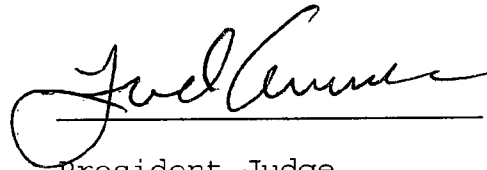
RODNEY J. CHIODO and :  
CAROLYN G. CHIODO :  
VS. : NO. 05-1541-CD  
BRIAN YARGER and RODGER L. :  
KEPHART TRUCKING, INC. :

O R D E R

AND NOW, this 13th day of October, 2006, in  
consideration of the agreement of counsel, it is hereby ORDERED,  
ADJUDGED and DECREED as follows:

1. Defendants Second Motion to Compel is withdrawn  
with regard to the records of Dr. Welch;
2. Plaintiffs shall have sixty (60) days within  
which to produce the medical records of Dr. Brad LaBue and such  
other physicians as requested by Defendants.

BY THE COURT,



President Judge

**FILED**  
03:37 PM  
OCT 13 2006

cc Atty's:  
Hopkins  
Schmitt  
(CR)

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 10/13/06

       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:

**FILED**

OCT 13 2006

William A. Shaw  
Prothonotary/Clerk of Courts

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

RODNEY J. CHIDO and CAROLYN G.  
CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

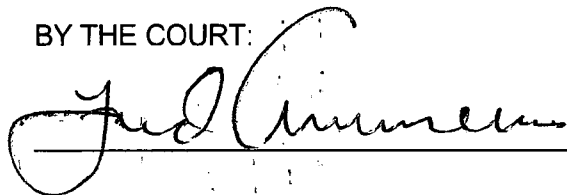
JURY TRIAL DEMANDED

RULE RETURNABLE

AND NOW, this 11<sup>th</sup> day of September, 2006, a Rule is hereby granted to show cause why the Defendants' Second Motion to Compel filed on behalf of the defendants, Brian Yarger and Rodger L. Kephart Trucking, Inc., should not be granted.

This Rule is returnable on the 13<sup>th</sup> day of October, 2006, at 2:30 ~~PM~~ /p.m. in Courtroom No. 1.

BY THE COURT:



**FILED**  
SEP 12 2006  
100  
Amy Schmitt

William A. Shaw  
Prothonotary/Clerk of Courts

FILE

DATE: 9/12/06

☒ You are responsible for serving all appropriate parties.

☐ The Probationary's office has provided service to the following parties:

\_\_\_\_ Plaintiff(s) \_\_\_\_ Plaintiff(s) Attorney \_\_\_\_ Other

\_\_\_\_ Defendant(s) \_\_\_\_ Defendant(s) Attorney

\_\_\_\_ Special Instructions:

**FILED**

SEP 12 2006

William A. Shaw  
Prothonotary/Clerk of Courts

RODNEY J. CHIODO and CAROLYN G. CHIODO,	:	No. 2005 – 1541 – CD
	:	
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
BRIAN YARGER and	:	
RODGER L. KEPHART TRUCKING, INC.,	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2006, upon consideration of the Second Motion to Compel filed on behalf of defendants, BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC., and any response thereto, it is hereby ORDERED, ADJUDGED, and DECREED that the plaintiffs shall within twenty (20) days:

- BY THE COURT:



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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

**ISSUE:**

Defendants' Second Motion to  
Compel

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 6th DAY OF SEPTEMBER, 2006.

Attorneys for Named Defendants

**FILED** 1cc  
SEP 08 2006  
Atty Schmitt

William A. Shaw  
Prothonotary/Clerk of Courts

#116

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

RODNEY J. CHIODO and CAROLYN G. CHIODO,	:	No. 2005 – 1541 – CD
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
BRIAN YARGER and	:	
RODGER L. KEPHART TRUCKING, INC.,	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

**RULE RETURNABLE**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2006, a Rule is hereby granted to show cause why the Defendants' Second Motion to Compel filed on behalf of the defendants, Brian Yarger and Rodger L. Kephart Trucking, Inc., should not be granted.

This Rule is returnable on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, at \_\_\_\_\_ a.m./p.m. in Courtroom No. \_\_\_\_\_.

BY THE COURT:

\_\_\_\_\_

BY THE COURT:

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

RODNEY J. CHIODO and CAROLYN G. CHIODO,	:	No. 2005 – 1541 – CD
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC.,	:	
	:	
Defendants	:	JURY TRIAL DEMANDED

**DEFENDANTS' SECOND MOTION TO COMPEL**

AND NOW, come defendants, BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC., by and through their attorneys, McINTYRE, HARTYE & SCHMITT, and respectfully request that this Honorable Court order the plaintiffs to within twenty (20) days respond to Defendants' Supplemental Request for Production of Documents, saying as follows:

1. This lawsuit arises out of a motor vehicle accident that occurred on or about December 29, 2003, on State Route 255 in or about Force, Pennsylvania. At that time and place, it is alleged that defendant Brian Yarger was operating a commercial coal truck owned by defendant Rodger L. Kephart Trucking, Inc. that struck the rear of an automobile operated by wife-plaintiff, Carolyn G. Chiodo, allegedly resulting in her personal injuries.

2. On July 21, 2006, defendants served a Supplemental Request for Production of Documents directed to the plaintiffs. (See copy of Supplemental Request for Production of Documents, attached hereto as Exhibit "A.")

3. To date, the plaintiffs have failed and/or refused in any manner whatsoever to respond to the defendants' Supplemental Request for Production of Documents, in direct violation of the Pennsylvania Rules of Civil Procedure applicable to discovery.

4. The information and documentation sought by way of defendants' Supplemental Request for Production of Documents are vital to the further evaluation and defense of this matter, and to the extent the defendants are deprived of that information and documentation, they are irremediably prejudiced.

WHEREFORE, defendants, BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC., respectfully request that this Honorable Court order the plaintiffs to within twenty (20) days file a full, complete, and responsive answer to defendants' Supplemental Request for Production of Documents.

Respectfully submitted,

McINTYRE, HARTYE & SCHMITT

By

Attorneys for Defendants

Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

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

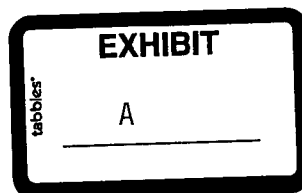
RODNEY J. CHIODO and CAROLYN G. CHIODO,	:	No. 2005 – 1541 – CD
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
BRIAN YARGER and	:	
RODGER L. KEPHART TRUCKING, INC.,	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

**SUPPLEMENTAL REQUEST FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO PLAINTIFFS – DATED 7-21-06**

AND NOW, come Defendants, BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC., by their attorneys, McINTYRE, HARTYE & SCHMITT, and pursuant to the Pennsylvania Rules of Civil Procedure propounds the following Interrogatories to be answered by Plaintiffs within thirty (30) days after service hereof:

**INSTRUCTIONS AND DEFINITIONS**

- A. When used herein, the term "Plaintiff(s)", "you" or "your" means the Plaintiff(s) to whom these Interrogatories are directed, his/her employees, officers, representatives, agents and attorneys, or any other persons working for Plaintiff(s).
- B. If additional space is required in order to give complete answers, attach additional pages to the pages containing the corresponding Interrogatory.
- C. If you are unable to answer any Interrogatory completely, so state, answer to the extent possible, set forth the reasons for your inability to answer more fully, and state whatever knowledge or information you have concerning the unanswered portion.



D. If you object to any Interrogatory herein, or any subparagraph or subpart of any Interrogatory, on the claim of privilege (attorney-client communications, work product or any other alleged privilege), for each such claim state:

- (1) the date and place of the communication;
- (2) the identity of each person who was present at or who participated in such communication;
- (3) the type of communication;
- (4) the general subject matter of the communication;
- (5) the Interrogatory seeking the communication; and
- (6) the privilege claimed.

E. "And" or "or" shall be construed conjunctively or disjunctively as necessary to make the Interrogatory inclusive rather than exclusive.

F. As used herein, words written in the singular include the plural and vice versa, words written in the masculine include the feminine and vice versa, and words written in the present tense include the past and future and vice versa.

G. These Interrogatories shall be deemed continuing in nature so as to require you to file supplemental answers should you obtain, directly or indirectly, additional or different information of the nature sought herein.

H. Each Interrogatory is intended to, and does, request that each and every particular and part thereof be answered with the same force and effect as if each part in particular were the subject of and were asked by a separate Interrogatory.

I. The term "document" as used herein is defined to include any and all manner of written, typed, reproduced, filmed, recorded or computer-stored material, and all photographs, pictures, plans or other representations or any kind or anything

pertaining, describing, referring or relating, directly or indirectly, in whole or in part, to the subject matter of each paragraph or part of these Interrogatories, and the term includes, without limitation:

- (1) papers, records, books, journals, ledgers, accounts, statements, memoranda, reports, invoices, worksheets, workpapers, notes, transcriptions of notes, letters correspondence, communications, abstracts, checks, diagrams, plans, blueprints, specifications, pictures, drawings, films, photographs, graphic representations, diaries, calendars, desk calendars, pocket calendars, lists, logs, publications, advertisements, press releases, instructions, minutes, orders, bills, purchase orders, messages, resumes, summaries, forecasts, graphs, charts, appraisals, analytical records, consultants' reports, brochures, pamphlets, circulars, trade letters, agreements, contracts, letters of intent, telegraphs, telexes, cables, recordings, audio tapes, magnetic tapes, visual tapes, transcriptions of tapes or recordings, computer tapes and cards or any other writings or tangible things on which any handwriting, typing, printing, audio, visual, photographic, or other forms of communication or information are recorded or reproduced, as well as all notations on the foregoing;
- (2) originals and all other copies not absolutely identical; and
- (3) all drafts (whether typed, handwritten or otherwise) made or prepared in connection with any document. For the purposes of the foregoing, "drafts" means any earlier part of a document whether or not such draft was superseded by a later draft or versions, and whether or not the terms of the draft are the same or different from the terms of the final document.

J. "Identity" or "the identity of" when used in connection with a natural person, means to state the full name, present business address, present home address, and the business capacity of that person during the time period that person was involved in the communications or events, or had knowledge or information of the facts, described in answer to these Interrogatories.

K. "Identify" or "the identity of" when used in connection with documents, means to state, in a form adequate for specific demand for production, information including the author(s), address(es), subject matter, date, custodian and location.

Documents to be identified shall include documents in your possession, custody or



control wherever located and other documents of which you or your representatives, subsidiaries or affiliates have knowledge.

**Please note that any and all information obtained via these discovery requests shall be used and maintained pursuant to the requirements of the Health Insurance Portability and Accountability Act, otherwise known as HIPAA.**

**REQUESTS**

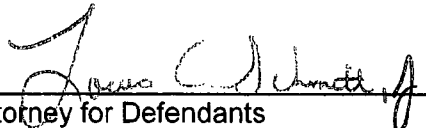
1. All medical records/medical reports of Robert J. Mollica, P.T. relating to husband-plaintiff Rodney J. Chiodo prior to and subsequent to the December 29, 2003 motor vehicle accident.

2. All medical records/medical reports of William C. Welch, M.D. relating to husband-plaintiff Rodney J. Chiodo prior to and subsequent to the December 29, 2003 motor vehicle accident.

3. All medical records/medical reports of Dr. Brad Labue relating to husband-plaintiff Rodney J. Chiodo prior to and subsequent to the December 29, 2003 motor vehicle accident.

Respectfully submitted,

McINTYRE, HARTYE & SCHMITT

  
Attorney for Defendants

LOUIS C. SCHMITT, JR., ESQUIRE  
PA ID. No. 52459

P. O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581  
(814) 696-9399 - FAX

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

**ISSUE:**

NOTICE OF SERVICE OF  
SUPPLEMENTAL REQUEST  
FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO PLAINTIFFS -  
DATED: 7/21/06

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 21<sup>ST</sup> DAY OF JULY, 2006.

Attorneys for Named Defendants

FILED NO cc  
JUL 25 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

15

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**NOTICE OF SERVICE OF SUPPLEMENTAL REQUEST FOR  
PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS - DATED: 7/21/06**

TO: PROTHONOTARY

You are hereby notified that on the 21<sup>ST</sup> day of **JULY, 2006**, Defendants, BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC., served Supplemental Request for Production of Documents Directed to Plaintiffs Dated July 21, 2006, by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

David Hopkins, Esquire  
900 Beaver Drive  
DuBois, PA 15801

**McINTYRE, HARTYE & SCHMITT**

Attorney for Defendants

Louis C. Schmitt, Jr., Esquire  
PA I.D. No. 52459  
P. O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581

**FILED**

**JUL 25 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

**ISSUE:**

PRAECIPE TO WITHDRAW  
MOTION TO COMPEL

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 14<sup>th</sup> DAY OF MARCH, 2006.

Attorneys for Named Defendants

FILED *Em*  
MAR 15 2006  
*m/2:15/6*  
William A. Shaw  
Prothonotary/Clerk of Courts  
*no cert.*

#14

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**PRAECIPE TO WITHDRAW MOTION TO COMPEL**

TO: PROTHONOTARY

Please withdraw the **Motion to Compel** filed on behalf of Defendants, Brian Yarger and Rodger L. Kephart Trucking, Inc. which is scheduled before the Honorable Frederic J. Ammerman, P.J. on March 20, 2006 at 11:00 a.m.

McINTYRE, HARTYE & SCHMITT

By

Attorneys for Defendants

Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

MAR 15 2006

FILED



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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,  
Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

No. 2005-1541 CD

Type of Pleading: Answer to Motion  
to Compel

Filed on behalf of Rodney J. Chiodo and  
Carolyn G. Chiodo, Plaintiffs.

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
Supreme Court No. 42519

900 Beaver Drive  
DuBois, Pennsylvania 15801

(814) 375-0300

FILED  
m12:59/12 cc  
MAR 09 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

#13

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,  
Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

No. 2005-1541 CD

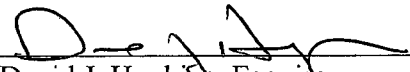
**ANSWER TO MOTION TO COMPEL**

AND NOW, comes the Plaintiffs, Rodney J. Chiodo and Carolyn G. Chiodo, by and through their attorneys, Hopkins Heltzel LLP and David J. Hopkins, Esquire, and files the within Answer to Defendants' Motion to Compel as follows:

1. Admitted.
2. Admitted.
3. Admitted in part and denied in part. It is admitted that after receiving a letter from defense counsel attached hereto as Exhibit "A", Plaintiffs' counsel wrote to defense counsel suggesting defense counsel "go fuck [himself]". It is denied Plaintiffs' have not responded to Defendants' outstanding discovery request. On March 7, 2006, Plaintiffs answered Defendants' Interrogatories and Request for Production of Documents. Defendants' Motion is now moot.
4. Denied. Prior to commencing this action, Plaintiffs provided representatives of Defendants a complete package of information concerning Plaintiff's injuries.

WHEREFORE, Plaintiffs, Rodney J. Chiodo and Carolyn G. Chiodo, respectfully request  
this Honorable Court dismiss Defendants' Motion to Compel with prejudice.

Respectfully submitted,

  
\_\_\_\_\_  
David J. Hopkins, Esquire  
Attorney for Plaintiffs

LAW OFFICES  
**McINTYRE, HARTYE & SCHMITT**

P. O. BOX 533

HOLLIDAYSBURG, PA 16648-0533

JOHN L. McINTYRE  
FRANK J. HARTYE  
LOUIS C. SCHMITT, JR.  
HEATHER A. HARRINGTON  
MICHAEL A. SOSNOWSKI

(814) 696-3581

FAX (814) 696-9399

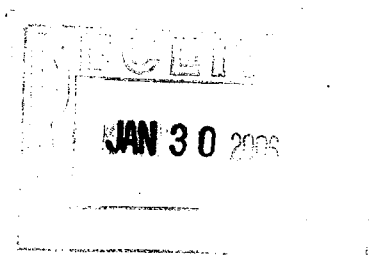
[www.mhslawoffice.com](http://www.mhslawoffice.com)

January 27, 2006

**Our Reference: PG 237 NH**

David Hopkins, Esquire  
900 Beaver Drive  
DuBois, PA 15801

Re: Rodney J. Chiodo and Carolyn G. Chiodo vs.  
Brian Yarger and Rodger L. Kephart Trucking, Inc.  
No. 2005 – 1541 CD (Clearfield Co.)



Dear Mr. Hopkins:

I received your Notices of Intent to Take Default Judgment dated January 17, 2006.

Perhaps I am confused. I wrote to you on December 13, 2005 requesting a reasonable extension of time within which to file an Answer and New Matter on behalf of the defendants. I indicated in that letter that if a reasonable extension of time was acceptable, you did not need to contact me back. You did not.

Imagine my surprise when I then subsequently received your Notices of Intent to Take Default Judgment against my clients.

I served Interrogatories and a Request for Production of Documents on you on January 10, 2006. If I do not have full, complete, and responsive answers to my discovery, you can bet the farm that I will file a Motion to Compel on February 9, 2006. You can also bet that I will never again grant you the courtesy of any extension with regard to any issue in any case we have together. I do not care if your are dead, your family's dead, or your house burns to the ground. Every single response that I am entitled to from your clients will be provided to me strictly within the time frame set within the Pennsylvania Rules of Civil Procedure. Count on it.

Sincerely,

  
Louis C. Schmitt, Jr.

LCS/lag

EXHIBIT "A"

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.


Defendants

No. 2005-1541 CD

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of Plaintiffs' Answer to Defendants' Motion to Compel, filed on behalf of Rodney Chido and Carolyn Chido, was forwarded by first class mail, postage prepaid, on the 8th day of March, 2006, to all counsel of record, addressed as follows:

Louis C. Schmitt, Jr., Esquire  
McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533

  
David J. Hopkins, Esquire  
Attorney for Plaintiffs

ORIGINAL

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

**ISSUE:**

NOTICE OF SERVICE OF ANSWERS  
TO PLAINTIFFS' INTERROGATORIES  
DIRECTED TO DEFENDANTS

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 24<sup>th</sup> DAY OF February, 2006.

Attorneys for Named Defendants

FILED <sup>no</sup> <sup>cc</sup>  
m 12 3 16 06  
FEB 27 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

#12

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**NOTICE OF SERVICE OF ANSWERS TO PLAINTIFFS' INTERROGATORIES  
DIRECTED TO DEFENDANTS**

TO: PROTHONOTARY

You are hereby notified that on the 24<sup>TH</sup> day of **February, 2006**, Defendants,  
BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC., served Answers to  
Plaintiffs' Interrogatories Directed to Defendant Brian Yarger and Answers to Plaintiffs'  
Interrogatories Directed to Defendant Rodger L. Kephart Trucking, Inc., by mailing the  
original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

David Hopkins, Esquire  
900 Beaver Drive  
DuBois, PA 15801

**McINTYRE, HARTYE & SCHMITT**

Attorney for Defendants

Louis C. Schmitt, Jr., Esquire  
PA I.D. No. 52459  
P. O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581

RECEIVED  
FEB 27 2006  
CLERK OF COURTS

**FILED**

**FEB 27 2006**

William A. Shaw  
Prothonotary/Clerk of Courts



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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

**ISSUE:**  
MOTION TO COMPEL

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2006.

Attorneys for Named Defendants

**FILED** (Fw)  
FEB 17 2006  
W/1:55/6  
William A. Shaw  
Prothonotary/Clerk of Courts  
No c/c

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

RODNEY J. CHIODO and CAROLYN G. CHIODO, : No. 2005 - 1541 - CD

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendant

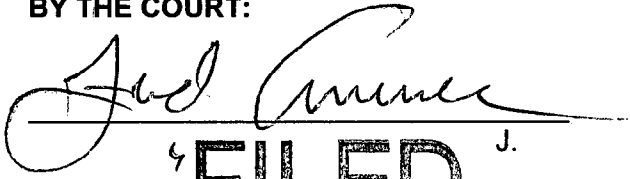
JURY TRIAL DEMANDED

RULE RETURNABLE

AND NOW, this 21 day of February, 2006, a Rule is  
hereby granted to show cause why the Motion to Compel filed on behalf of the  
Defendants, Brian Yarger and Rodger L. Kephart Trucking, Inc., should not be granted.

This Rule is returnable on the 20th day of March,  
2006, at 11:00 (a.m.) p.m. in Courtroom No. 1.

BY THE COURT:



**FILED**  
01/16/25cm  
FEB 22 2006

ICC to AAty Schmitt  
(initials)

William A. Shaw  
Prothonotary

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**PROPOSED ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2006, upon  
consideration of the Motion to Compel filed on behalf of Defendants, Brian Yarger and  
Rodger L. Kephart Trucking, Inc., and any response thereto, it is hereby ORDERED,  
ADJUDGED AND DECREED that the plaintiff shall within twenty (20) days:

1. File full, complete, and responsive answers to defendants' Interrogatories;
2. File a full, complete, and responsive written answer to defendants'  
Request for Production of Documents; and
3. Produce all documents sought by way of defendants' Request for  
Production of Documents.

**BY THE COURT:**

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

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

RODNEY J. CHIODO and CAROLYN G. CHIODO,	:	No. 2005 – 1541 – CD
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
BRIAN YARGER and	:	
RODGER L. KEPHART TRUCKING, INC.,	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

**MOTION TO COMPEL**

AND NOW, come Defendants, BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC., by and through their attorneys, McINTYRE, HARTYE & SCHMITT, and respectfully request that this Honorable Court order the plaintiffs to within twenty (20) days file full, complete, and responsive answers to defendants' outstanding discovery requests, saying as follows:

1. This lawsuit arises out of a motor vehicle accident that occurred on or about December 29, 2003, on State Route 255 in or about Force, PA. At that time and place, it is alleged that Defendant Brian Yarger was operating a commercial coal truck owned by Defendant Rodger L. Kephart Trucking, Inc. that struck the rear of an automobile operated by wife-plaintiff, Carolyn G. Chiodo, allegedly resulting in her personal injuries.
2. On January 10, 2006, defendants served Interrogatories and a Request for Production of Documents upon the plaintiffs.

3. In response to the filing of defendants' discovery requests, plaintiffs' counsel wrote to defense counsel and told defense counsel "go fuck yourself". (See copy of January 30, 2006 correspondence from David J. Hopkins, Esquire, to Louis C. Schmitt, Jr., Esquire attached hereto as Exhibit "A".) Needless to say, the plaintiffs have not responded to the defendants' outstanding discovery requests, in direct violation of the Pennsylvania Rules of Civil Procedure applicable to discovery.

4. The information and documentation sought by way of defendants' discovery requests are vital to the further evaluation and defense of this matter, and to the extent the defendants are deprived of that information and documentation, they are irremediably prejudiced.

WHEREFORE, Defendants, Brian Yarger and Rodger L. Kephart Trucking, Inc., respectfully request that this Honorable Court order the plaintiffs to within twenty (20) days file full, complete, and responsive answers to defendants' outstanding discovery requests.

Respectfully submitted,

MCINTYRE, HARTYE & SCHMITT .

By

Attorneys for Defendants

Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

96 237NH  
JAN 31 2003

HOPKINS HELTZEL LLP

900 Beaver Drive • DuBois, PA 15801

**David J. Hopkins**  
Licensed in PA & NJ  
Masters in Taxation

**Lea Ann Heltzel**  
Licensed in PA

- Voice: (814) 375 - 0300
- Fax: (814) 375 - 5035
- Email: hopkinslaw@adelphia.net

January 30, 2006

Louis C. Schmitt, Jr., Esquire  
McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648

Re: Rodney J. Chiodo vs. Carolyn G. Chiodo  
vs. Brian Yarger and Rodger L. Kephart Trucking, Inc.


Dear Mr. Schmitt:

Thank you for your letter of January 27, 2006. Perhaps I was confused. I received your letter of December 13, 2005 requesting a reasonable extension of time to file an Answer and New Matter. As I always do, I agreed to same.

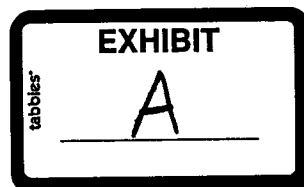
Imagine my surprise when I then received Interrogatories and Request for Production of Documents prior to the filing of an Answer. I scratched my head and wondered whether the person who had propounded the discovery was the same person to whom I had recently granted an extension to file an Answer.

With reference to the remainder of your letter, go fuck yourself and make sure the Answer to Plaintiffs' Interrogatories and Request for Production of Documents for both Brian Yarger and Rodger L. Kephart Trucking, Inc. are filed on the date they are due with full, complete and responsive answers.

Very truly yours,

  
David J. Hopkins  
Attorney at Law

DJH/bjr



LAW OFFICES  
**McINTYRE, HARTYE & SCHMITT**

P. O. BOX 533

HOLLIDAYSBURG, PA 16648-0533

JOHN L. McINTYRE  
FRANK J. HARTYE  
LOUIS C. SCHMITT, JR.  
HEATHER A. HARRINGTON  
MICHAEL A. SOSNOWSKI

(814) 696-3581

FAX (814) 696-9399

[www.mhslawoffice.com](http://www.mhslawoffice.com)

February 16, 2006

Our Reference: PG 237 NH

Office of the Prothonotary  
Court of Common Pleas of  
Clearfield County  
Courthouse  
230 East Market Street  
Clearfield, PA 16830

Re: Rodney J. Chiodo and Carolyn G. Chiodo vs. Brian Yarger  
and Rodger L. Kephart Trucking, Inc.  
No. 2005 - 1541 CD (Clearfield Co.)

Dear Prothonotary:

Kindly file the enclosed **Motion to Compel** on behalf of the Defendants in the above-captioned matter. I have attached a **Rule Returnable** for your convenience in scheduling this matter. Please advise the undersigned of the date and time this matter is scheduled.

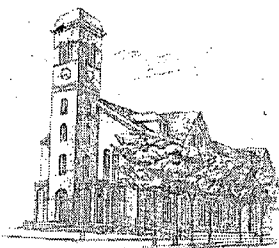
Thank you.

Sincerely,

Louis C. Schmitt, Jr.

LCS/eh  
Enclosure

cc: David Hopkins, Esquire  
(w/Enclosure)



## Clearfield County Office of the Prothonotary and Clerk of Courts

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

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary


**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

  
William A. Shaw  
Prothonotary

DATE: 2-22-2006

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s)/Attorney(s)

☐ Defendant(s)/Attorney(s)

☐ Other

☐ Special Instructions:



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100886  
NO: 05-1541-CD  
SERVICE # 1 OF 1  
WRIT OF SUMMONS

PLAINTIFF: RODNEY J. CHIODO and CAROLYN G. CHIODO  
vs.  
DEFENDANT: RODGER L. KEPHART TRUCKING INC.

SHERIFF RETURN

NOW, October 21, 2005 AT 11:33 AM SERVED THE WITHIN WRIT OF SUMMONS ON RODGER L. KEPHART TRUCKING INC DEFENDANT AT RR#1 BOX 298, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO ANNA MAE KEPHART, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF SUMMONS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	HOPKINS	15816	10.00
SHERIFF HAWKINS	HOPKINS	15813	35.83

FILED

FEB 09 2006

6/8/05  
William A. Shaw  
Prothonotary/Clerk of Courts

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2006

So Answers,

*Chester A. Hawkins*  
*by M. A. Harris*

Chester A. Hawkins  
Sheriff

#10

ORIGINAL

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

RODNEY J. CHIDO and CAROLYN G.  
CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 - 1541 - CD

ISSUE: PRAECIPE TO SUBSTITUTE  
VERIFICATION

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 3rd DAY OF February, 2006.

Attorneys for Named Defendants

7 FILED NO CC  
MTT:39/21  
FEB 06 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

#9

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**PRAECIPE TO SUBSTITUTE  
VERIFICATION TO ANSWER AND NEW MATTER**

TO: PROTHONOTARY

Kindly substitute the attached Verification to the previously filed Answer and New  
Matter submitted on behalf of Defendant Brian Yarger.

Respectfully submitted:

McINTYRE, HARTYE & SCHMITT

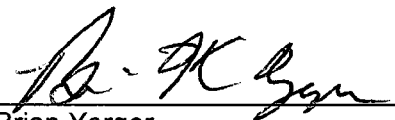
\_\_\_\_\_  
Attorney for Defendants  
Rodger L. Kephart Trucking, Inc., a/k/a  
Roger L. Kephart Trucking, Inc. and  
Brian Yarger

**LOUIS C. SCHMITT, JR., ESQUIRE**  
**PA I.D. No. 52459**  
P. O. Box 533  
Hollidaysburg, PA 16648  
Ph: (814) 696-3581

**VERIFICATION**

I, **Brian Yarger**, do hereby verify that I have read the foregoing **Answer and New Matter**. The statements therein are correct to the best of my personal knowledge or information and belief.

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

  
\_\_\_\_\_  
Brian Yarger

Date: 1-31-06

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,  
Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

No. 2005-1541 CD

Type of Pleading: Answer to New Matter

Filed on behalf of Rodney J. Chiodo and  
Carolyn G. Chiodo, Plaintiffs.

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
Supreme Court No. 42519

900 Beaver Drive  
DuBois, Pennsylvania 15801

(814) 375-0300

January 24<sup>th</sup> 2006

**FILED**

**JAN 25 2006**

m/1:30 (C) GK  
William A. Shaw  
Prothonotary/Clerk of Courts

no 9c

#8

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants


No. 2005-1541 CD

**ANSWER TO NEW MATTER**

AND NOW, comes the Plaintiffs, Rodney J. Chiodo and Carolyn G. Chiodo, by and through their attorneys, Hopkins Heltzel LLP and David J. Hopkins, Esquire, and files the within Answer to New Matter as follows:

21. Plaintiffs admit the Pennsylvania Motor Vehicle Financial Responsibility Act 75 P.S. §1701 is applicable. However, Plaintiffs deny that the Pennsylvania Motor Vehicle Financial Responsibility Act provides any privileges, defenses or immunities to the Defendant in this action.

Respectfully submitted,

  
David J. Hopkins, Esquire  
Attorney for Plaintiffs

David J. Hopkins, Esquire  
Attorney for Plaintiff

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 – 1541 – CD

**ISSUE:**  
ANSWER AND NEW MATTER

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 18<sup>TH</sup> DAY OF JANUARY, 2006.

Attorneys for Named Defendants

**FILED**  
m/11:39/64  
JAN 19 2006

William A. Shaw  
Prothonotary/Clerk of Courts

#7



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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**ANSWER AND NEW MATTER**

AND NOW, come defendants **Brian Yarger and Rodger L. Kephart Trucking, Inc.**, by and through their attorneys, McIntyre, Dugas, Hartye & Schmitt, and file the following Answer and New Matter in response to plaintiffs' Complaint, saying as follows:

1. Defendants are without sufficient knowledge or information, after reasonable investigation, to form a belief as to the truth of the allegations contained in Paragraph 1 of the plaintiffs' Complaint; those allegations are therefore denied, and strict proof thereof is demanded at the time of trial.

2. Admitted.

3. Admitted.

4. Admitted.

5. Defendants are without sufficient knowledge or information, after reasonable investigation, to form a belief as to the truth of the allegations contained in Paragraph 5 of the plaintiffs' Complaint; those allegations are therefore denied, and strict proof thereof is demanded at the time of trial.

6. The allegations contained in Paragraph 6 are admitted in part and denied in part. It is admitted only that the truck operated by defendant Brian Yarger made contact with another motor vehicle at the time and place referenced in plaintiffs' Complaint. The remaining allegations contained in Paragraph 6 of plaintiffs' Complaint constitute conclusions of fact and/or law to which no response is required. In the event a response may be required, those allegations are denied, and strict proof thereof is demanded at the time of trial.

7. Denied. (a) through (f) denied.

8. The allegations contained in Paragraph 8 of plaintiffs' Complaint constitute conclusions of fact and/or law to which no response is required. In the event a response may be required, those allegations are denied, and strict proof thereof is demanded at the time of trial.

#### **COUNT I**

9. By way of response to the allegations contained in Paragraph 9 of plaintiffs' Complaint, defendants hereby incorporate by reference their responses to Paragraphs 1 through 8 thereof, as if fully set forth herein.

10. The allegations contained in Paragraph 10 of plaintiffs' Complaint constitute conclusions of fact and/or law to which no response is required. In the event a response may be required, those allegations are denied, and strict proof thereof is demanded at the time of trial.

11. Defendants are without sufficient knowledge or information, after reasonable investigation, to form a belief as to the truth of the allegations contained in Paragraph 11 of the plaintiffs' Complaint; those allegations are therefore denied, and strict proof thereof is demanded at the time of trial.

12. The allegations contained in Paragraph 12 of plaintiffs' Complaint constitute conclusions of fact and/or law to which no response is required. In the event a response may be required, those allegations are denied, and strict proof thereof is demanded at the time of trial.

13. The allegations contained in Paragraph 13 of plaintiffs' Complaint constitute conclusions of fact and/or law to which no response is required. In the event a response may be required, those allegations are denied, and strict proof thereof is demanded at the time of trial.

14. The allegations contained in Paragraph 14 of plaintiffs' Complaint constitute conclusions of fact and/or law to which no response is required. In the event a response may be required, those allegations are denied, and strict proof thereof is demanded at the time of trial.

15. The allegations contained in Paragraph 15 of plaintiffs' Complaint constitute conclusions of fact and/or law to which no response is required. In the event a response may be required, those allegations are denied, and strict proof thereof is demanded at the time of trial.

16. The allegations contained in Paragraph 16 of plaintiffs' Complaint constitute conclusions of fact and/or law to which no response is required. In the event a response may be required, those allegations are denied, and strict proof thereof is demanded at the time of trial.

17. The allegations contained in Paragraph 17 of plaintiffs' Complaint constitute conclusions of fact and/or law to which no response is required. In the event a response may be required, those allegations are denied, and strict proof thereof is demanded at the time of trial.

WHEREFORE, defendants Brian Yager and Rodger L. Kephart Trucking, Inc. deny any and all liability to the plaintiffs' upon Count I of their Complaint, and respectfully requests that this Honorable Court enter judgment in their favor, with prejudice.

**COUNT II**

18. By way of response to the allegations contained in Paragraph 18 of plaintiffs' Complaint, defendants hereby incorporate by reference their responses to Paragraphs 1 through 17 thereof, as if fully set forth herein.

19. The allegations contained in Paragraph 19 of plaintiffs' Complaint constitute conclusions of fact and/or law to which no response is required. In the event a response may be required, those allegations are denied, and strict proof thereof is demanded at the time of trial.

20. Defendants are without sufficient knowledge or information, after reasonable investigation, to form a belief as to the truth of the allegations contained in Paragraph 20 of the plaintiffs' Complaint; those allegations are therefore denied, and strict proof thereof is demanded at the time of trial.

WHEREFORE, defendants Brian Yager and Rodger L. Kephart Trucking, Inc. deny any and all liability to the plaintiffs upon Count II of their Complaint, and respectfully requests that this Honorable Court enter judgment in their favor, with prejudice.

**NEW MATTER**

By way of further answer to the allegations contained in plaintiffs' Complaint, and in support of their defenses against those allegations, defendants Brian Yager and Rodger L. Kephart Trucking, Inc. set forth the following statements in New Matter:

21. Defendants hereby raise and assert the rights, privileges, defenses, and immunities provided to them within the Pennsylvania Motor Vehicle Financial Responsibility Act, 75 Pa. C.S.A. §1701, et seq.

WHEREFORE, defendants Brian Yarger and Rodger L. Kephart Trucking, Inc. deny any and all liability to the plaintiffs upon their Complaint, and respectfully requests that this Honorable Court enter judgment in their favor, with prejudice.

Respectfully submitted,

McINTYRE, HARTYE & SCHMITT

\_\_\_\_\_  
Attorney for Defendants

LOUIS C. SCHMITT, JR., ESQUIRE  
PA ID. No. 52459  
P. O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581  
(814) 696-9399 - FAX

**Notice to Plead**

To: Plaintiffs

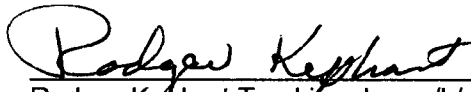
You are hereby notified to file a written response to the enclosed **NEW MATTER** within twenty (20) days from service hereof or a judgment may be entered against you.

\_\_\_\_\_  
Attorney for Defendants

**VERIFICATION**

I, **Rodger Kephart Trucking, Inc. a/k/a Roger Kephart Trucking, Inc.**, do hereby verify that I have read the foregoing **Answer and New Matter**. The statements therein are correct to the best of my personal knowledge or information and belief.

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

  
Rodger Kephart Trucking, Inc. a/k/a  
Roger Kephart Trucking, Inc.

Date: 12/21/05

**VERIFICATION**

I, **LOUIS C. SCHMITT, JR., ESQUIRE**, being the attorney of record for  
**Defendant, BRIAN YARGER**, verify that I am authorized to make this verification on behalf of  
Defendant in the within action, and that the statements made in the foregoing **ANSWER AND**  
**NEW MATTER** are true and correct to the best of my knowledge, information, and belief.



**LOUIS C. SCHMITT, JR., ESQUIRE**

Date: January 18, 2006

William A. Shaw  
Prothonotary/Clerk of Courts

JAN 19 2006

FILED



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

RODNEY J. CHIDO and CAROLYN G.  
CHIDO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendants

No. 2005 - 1541 - CD

**ISSUE:**

NOTICE OF SERVICE OF  
INTERROGATORIES and REQUEST  
FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO PLAINTIFFS -  
DATED: 1/10/06

Filed on behalf of Defendants

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 10<sup>TH</sup> DAY OF JANUARY, 2006.

Attorneys for Named Defendants

FILED No cc  
m11:13/06  
JAN 11 2006

William A. Shaw  
Prothonotary/Clerk of Courts

#Lo

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR  
PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS - DATED: 1/10/06**

TO: PROTHONOTARY

You are hereby notified that on the 10<sup>TH</sup> day of **January, 2006**, Defendants,  
BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC., served Interrogatories  
and Request for Production of Documents Directed to Plaintiffs Dated January 10, 2006,  
by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to  
the following:

David Hopkins, Esquire  
900 Beaver Drive  
DuBois, PA 15801

**MCINTYRE, HARTYE & SCHMITT**

Attorney for Defendants

Louis C. Schmitt, Jr., Esquire  
PA I.D. No. 52459  
P. O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581

**FILED**  
**JAN 11 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,  
Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

No. 2005-1541 CD

Type of Pleading: Complaint

Filed on behalf of Rodney J. Chiodo and  
Carolyn G. Chiodo, Plaintiffs.

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE  
Attorney at Law  
Supreme Court No. 42519

900 Beaver Drive  
DuBois, Pennsylvania 15801

(814) 375-0300

December 2, 2005

FILED

DEC 02 2005

8/23/05  
William A. Shaw

Prothonotary/Clerk of Courts

2 CERT TO ATA

#5

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

RODNEY J. CHIODO,  
and CAROLYN G. CHIODO,

Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

No. 2005-1541 CD

**NOTICE**

TO DEFENDANTS:

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.

Office of the Court Administrator  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, Pennsylvania 16830  
(814) 765-2641

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,  
Plaintiffs

vs.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.  
Defendants

No. 2005-1541 CD

**COMPLAINT**

AND NOW, comes the Plaintiffs, Rodney J. Chiodo and Carolyn G. Chiodo, by and through their attorneys, Hopkins Heltzel LLP and David J. Hopkins, Esquire, appearing and says as follows:

1. Plaintiffs, Rodney J. Chiodo and Carolyn G. Chiodo, are adult individuals who are residents of the Commonwealth of Pennsylvania, presently residing at Grove City, Mercer County, Pennsylvania 16127.

2. Defendant, Brian Yarger, is an adult individual, who is a resident of the Commonwealth of Pennsylvania, believed to be residing at 1313 Mease Road, Osceola Mills, Pennsylvania 16666.

3. Defendant, Rodger L. Kephart Trucking, Inc., is a Pennsylvania corporation who maintains a business address at R.R. #1, Box 298, Houtzdale, Pennsylvania 16651.

4. At all material times hereto, Defendant, Brian Yarger, was operating a commercial "coal truck" owned by Defendant, Rodger L. Kephart Trucking, Inc., and at all material times hereto, was operating the vehicle with the permission of Defendant Rodger L. Kephart, Inc. and as its employee, agent and or servant.

5. On or about December 29, 2003, Plaintiff, Rodney Chiodo, was operating a motor vehicle northbound on State Route 255 in or about Force, Pennsylvania. Plaintiff was stopped in a line of traffic.

6. Defendant, Brian Yarger, operated the truck he was operating to crash into the rear of Plaintiff's automobile causing the vehicle to be driven forward into a vehicle owned and operated by Douglas Engle of 159 College Avenue, Factoryville, Pennsylvania 18419.

7. The negligence, carelessness and recklessness of Defendant, Brian Yarger, consisted of the following:

a. Traveling at a rate of speed in excess of the permitted speed limit in the aforesaid area;

b. Operating the coal truck without due regard to the rights, safety, well being and position of Plaintiff under the then current circumstances;

c. Operating the coal truck without regard to the current weather and/or road conditions;

d. Failing to control or stop the coal truck prior to striking Plaintiff's motor vehicle;

e. Violating the Motor Vehicle Code of the Commonwealth of Pennsylvania so as to cause Citation No. M0004324-5 to be issued by the Pennsylvania State Police;

f. Violating the Motor Vehicle Code of the Commonwealth of Pennsylvania so as to cause Citation No. M0004325-6 to be issued by the Pennsylvania State Police.

8. At all material times hereto, Defendant, Brian Yarger, was performing for profit work on behalf of Defendant, Rodger L. Kephart Trucking, Inc., and as such, Defendant, Rodger L. Kephart Trucking, Inc., is liable to Plaintiff under the theory of agency and respondeat superior.

## COUNT I

9. The Plaintiffs incorporate paragraphs 1 through 8 of this Complaint by reference and makes them a part hereof.

10. As a direct, proximate, natural, foreseeable and probable consequence of Defendants' negligence, carelessness and reckless conduct, Plaintiff, Rodney Chiodo was placed in a position of immediate peril and was struck by Defendant's coal truck, causing Plaintiff, Rodney Chiodo, to severe thoracic and lumbar sprain and strain and a posterior midline disc bulge at C5-C6.

11. As a result of the aforesaid collision, Plaintiff, Rodney Chiodo, continues to suffer cervical strain, disc bulge at C5-C6, headaches and myofacial pain syndrome. He may also develop other ailments.

12. As a direct and proximate result of Defendant's negligence, carelessness and reckless conduct, Plaintiff has suffered, and will suffer in the future, great pain, agony and inconvenience.

13. As a direct and proximate result of Defendant's negligence, carelessness and reckless conduct, Plaintiff suffered loss of income and in the future will suffer a reduction in his future earning power.

14. As a direct and proximate result of Defendant's negligence, carelessness and reckless conduct, Plaintiff has incurred, and will in the future incur, expenses for medical treatment and physical therapy in an amount not yet ascertained.

15. As a direct and proximate result of Defendant's negligence, carelessness and reckless conduct, Plaintiff has suffered loss in the quality of his life.



16. As a direct and proximate result of Defendant's negligence, carelessness and reckless conduct, Plaintiff has suffered serious injuries within the meaning of Commonwealth of Pennsylvania statutes.

17. Defendant, Brian Yarger, and Defendant, Rodger L. Kephart Trucking, Inc., are liable for Plaintiff's injuries described herein inasmuch as Plaintiff's injuries are the direct, proximate, natural, foreseeable and probable consequences of Defendant, Brian Yarger's, negligence, carelessness and reckless conduct while an agent, employee or servant of Defendant, Rodger L. Kephart Trucking, Inc.

WHEREFORE, Plaintiff, Rodney Chiodo, respectfully demands judgment against Defendants, jointly and severally, for compensatory damages in an amount exceeding \$20,000.00, costs of suit, interest and such further relief as the Court may deem just and equitable.

## **COUNT II**

18. The Plaintiffs incorporate paragraphs 1 through 17 of this Complaint by reference and makes them a part hereof.

19. Solely because of Defendant's negligence, Plaintiff, Carolyn G. Chiodo, as wife of Rodney J. Chiodo, has been obliged, and probably will in the future be obliged, to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure her husband of his injuries.

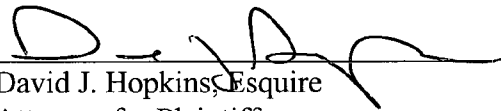
20. By reason of her husband's injuries, Plaintiff, Carolyn G. Chiodo, has been, and probably will in the future be, deprived of the assistance, society, and consortium of her husband, all of which has been, and probably will in the future be, to her great financial damage and loss.

WHEREFORE, Plaintiff, Carolyn G. Chiodo, claims damages from Defendants in an amount in excess of \$20,000.00, costs of suit, interest and such other and further relief as the Court deems fair, just and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiffs, Rodney J. Chiodo and Carolyn G. Chiodo, by their undersigned counsel, hereby demand a trial by jury of twelve people.

Respectfully submitted,

  
David J. Hopkins, Esquire  
Attorney for Plaintiffs

VERIFICATION

With full understanding that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities, I verify that the statements made in this pleading are true and correct.

A handwritten signature in black ink, appearing to read 'Rodney J. Chiodo', written over a horizontal line.

RODNEY J. CHIODO

Dated: December 1, 2005

VERIFICATION

With full understanding that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities, I verify that the statements made in this pleading are true and correct.

Carolyn G. Chiodo  
CAROLYN G. CHIODO

Dated: December 2, 2005

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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO,

Plaintiffs

vs.

No. 2005-1541 CD

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.

Defendants

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of Plaintiffs' Complaint, filed on behalf of Rodney Chiodo and Carolyn Chiodo, was forwarded by first class mail, postage prepaid, on the 2<sup>nd</sup> day of December, 2005, to all counsel of record, addressed as follows:

Louis C. Schmitt, Jr., Esquire  
McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533

  
David J. Hopkins, Esquire  
Attorney for Plaintiff

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

VS.

RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

**ISSUE:**

CERTIFICATE OF SERVICE OF  
RULE TO FILE COMPLAINT

Filed on behalf of Defendant

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, DUGAS, HARTYE &  
SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2005.

Attorneys for Named Defendant

FILED *NRCC*  
NOV 16 2005 *11:44 AM*

William A. Shaw  
Prothonotary/Clerk of Courts

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

RODNEY J. CHIDO and CAROLYN G.  
CHIDO,

Plaintiffs

vs.

RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE OF RULE TO FILE COMPLAINT**

TO: PROTHONOTARY

You are hereby notified that on the 14<sup>th</sup> day of **November, 2005**, Defendant,  
RODGER L. KEPHART TRUCKING, INC., served a RULE upon the Plaintiffs, by mailing  
the original of same via First Class Mail, postage prepaid, addressed to Plaintiffs'  
counsel:

David Hopkins, Esquire  
900 Beaver Drive  
DuBois, PA 15801

McINTYRE, DUGAS, HARTYE & SCHMITT

Attorneys for Defendant,  
RODGER L. KEPHART TRUCKING, INC.

Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581

NOV 16 2005  
FROTHNOTARY/C  
WILLIAM A. SHAW

NOV 16 2005  
FROTHNOTARY/C

FILED

NOV 16 2005

William A. Shaw  
Frothnotary/Clerk of Courts



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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

**ISSUE:**

PRAECIPE FOR RULE TO FILE  
COMPLAINT

Filed on behalf of Defendant

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, DUGAS, HARTYE &  
SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 9<sup>TH</sup> DAY OF NOVEMBER, 2005.

Attorneys for Named Defendant

5 FILED <sup>no cc</sup>  
m/13:09/1 Rule to  
NOV 10 2005 (LP) Atty Schmitt  
William A. Shaw  
Prothonotary/Clerk of Courts

(3)

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 - 1541 - CD

JURY TRIAL DEMANDED

**PRAECIPE FOR RULE TO FILE COMPLAINT**

**TO: PROTHONOTARY**

Please enter a Rule upon the Plaintiffs, RODNEY J. CHIODO and CAROLYN G. CHIODO, to file a Complaint in the above-captioned matter within twenty (20) days from service of said Rule.

McINTYRE, DUGAS, HARTYE & SCHMITT

By

Attorneys for Defendant

Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

CAUTION: THIS DOCUMENT IS UNCLASSIFIED  
DATE 11/10/05 BY 60322 UCBAW

FILED

NOV 10 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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



COPY

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 - 1541 - CD

JURY TRIAL DEMANDED

**RULE TO FILE COMPLAINT**

AND NOW, this 10<sup>th</sup> day of November, 2005, Rule is entered on the  
Plaintiffs to file a Complaint.

\_\_\_\_\_  
Prothonotary

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

**ISSUE:**  
PRAECIPE FOR APPEARANCE

Filed on behalf of Defendant

Counsel of Record for This Party:  
Louis C. Schmitt, Jr., Esquire  
PA I.D. #52459

McINTYRE, DUGAS, HARTYE &  
SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 9<sup>TH</sup> DAY OF NOVEMBER, 2005.

\_\_\_\_\_  
Attorneys for Named Defendant

FILED NO cc  
m1309 Bdl  
NOV 10 2005

William A. Shaw  
Prothonotary/Clerk of Courts

2

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

RODNEY J. CHIODO and CAROLYN G.  
CHIODO,

Plaintiffs

vs.

RODGER L. KEPHART TRUCKING, INC.,

Defendant

No. 2005 – 1541 – CD

JURY TRIAL DEMANDED

**PRAECIPE FOR APPEARANCE**

TO: PROTHONOTARY

Enter my Appearance on behalf of Defendant, RODGER L. KEPHART  
TRUCKING, INC.

Papers may be served at the address set forth below.

Attorneys for Defendant

**McINTYRE, DUGAS, HARTYE & SCHMITT**

Louis C. Schmitt, Jr., Esquire

PA I.D. #52459

P.O. Box 533

Hollidaysburg, PA 16648-0533

PH: (814) 696-3581

FAX: (814) 696-9399

Date: November 9, 2005

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

**FILED**

NOV 10 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

RODNEY J. CHIODO,  
and CAROLYN G. CHIODO,  
Plaintiffs

vs.


RODGER L. KEPHART TRUCKING, INC.  
Defendant

No. 05-1541-CD

PRAECIPE FOR WRIT OF SUMMONS

TO: Prothonotary

Please prepare and issue a Writ of Summons against RODGER L. KEPHART  
TRUCKING, INC., the above named Defendant.

  
David J. Hopkins, Esquire

Date: 10-5-05

FILED 100-1 writ to  
01/10:30 01/10:30 Shff  
OCT 06 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
85.00



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

RODNEY J. CHIDO,  
and CAROLYN G. CHIDO

Plaintiffs

vs.

RODGER L. KEPHART TRUCKING, INC.

Defendant

No. 05-1541-CD

**WRIT OF SUMMONS**

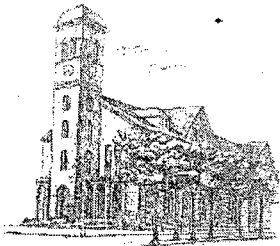
TO: RODGER L. KEPHART TRUCKING, INC.  
R.R. #1, Box 298  
Houtzdale, PA 16651

You are hereby notified that RODNEY J. CHIDO has commenced an action against  
you.

Date: 10/6/05

William L. Shanahan  
Prothonotary

Seal of Court:



# COPY

## Clearfield County Office of the Prothonotary and Clerk of Courts

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

**Jacki Kendrick**  
Deputy Prothonotary/Clerk of Courts

**Bonnie Hudson**  
Administrative Assistant

**David S. Ammerman**  
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ [www.clearfieldco.org](http://www.clearfieldco.org)

June 19, 2009

Superior Court of Pennsylvania  
Office of the Prothonotary  
600 Grant Building  
Pittsburgh, PA 15219

RE: Rodney J. Chiodo and Carolyn G. Chiodo

vs

Rodger L. Kephart Trucking, inc. and Brian Yarger  
No. 05-1541-CD  
Superior Court No. 444 WDA 2009

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Please also find enclosed two transcripts.

Sincerely,

William A. Shaw  
Prothonotary

FILED  
010:08:01  
JUN 19 2009

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PENNSYLVANIA

Rodney J. Chiodo and Carolyn G. Chiodo

Vs.

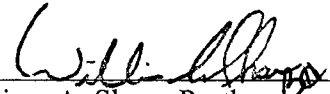
Case No. 2005-01541-CD

Rodger L. Kephart Trucking, Inc.  
and Brian Yarger

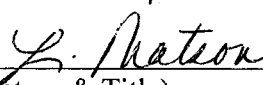
CERTIFICATE OF CONTENTS

NOW, this 19th day of June, 2009, the undersigned, Prothonotary or Deputy Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania, the said Court of record, does hereby certify that attached is the original record of the case currently on Appeal.

An additional copy of this Certificate is enclosed with the original hereof and the Clerk or Prothonotary of the Superior Court is hereby directed to acknowledge receipt of the Appeal Record by executing such copy at the place indicated by forthwith returning the same to this Court.

By:   
William A. Shaw, Prothonotary

Record, Etc. Received:

Date: 6/22/09  
  
(Signature & Title)

<sup>6</sup>FILED

m/10:34am  
JUN 24 2009

William A. Shaw  
Prothonotary/Clerk of Courts



Superior Court of Pennsylvania

Western District

Karen Reid Bramblett, Esq.  
Prothonotary  
Eleanor R. Valecko  
Deputy Prothonotary

FILED

APR 07 2010

William A. Shaw  
Prothonotary/Clerk of Courts  
copy to S/C

310 Grant Street, Suite 600  
Pittsburgh, PA 15219-2297  
(412) 565-7592  
www.superior.court.state.pa.us

CERTIFICATE OF REMITTAL/REMAND OF RECORD

TO: Mr. Shaw  
Prothonotary

RE: Chiodo, R. v. Yarger, B.  
444 WDA 2009  
Trial Court: Clearfield County Court of Common Pleas  
Trial Court Docket No: No 2005-1541 CD

Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2572 is the entire record for the above matter.

Original Record contents:

Item	Filed Date	Description
Original Record	June 22, 2009	1 Part
Transcripts	June 22, 2009	2

Additional Item(s): Superior Court Memorandum

Remand/Remittal Date: 04/06/2010

ORIGINAL RECIPIENT ONLY - Please acknowledge receipt by signing, dating, and returning the enclosed copy of this certificate to our office. Copy recipients (noted below) need not acknowledge receipt.

Very truly yours,

Eleanor R. Valecko

Eleanor R. Valecko  
Deputy Prothonotary

/bnl

Enclosure

cc: The Honorable Fredric J. Ammerman, President Judge  
LeaAnn Heltzel, Esq.  
Louis Charles Schmitt, Jr., Esq.

Chiodo, R. v. Yarger, B.  
444 WDA 2009

Letter to: Mr. William A. Shaw

**Acknowledgement of Certificate of Remittal/Remand of Record (to be returned):**

  
\_\_\_\_\_  
Signature

4-7-10  
\_\_\_\_\_  
Date

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan, 2014  
Clearfield Co., Clearfield, PA  
\_\_\_\_\_  
Printed Name

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

RODNEY J. CHIDO and  
CAROLYN G. CHIDO,

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellants

v.

BRIAN YARGER and  
RODGER L. KEPHART TRUCKING, INC.,

Appellees

No. 444 WDA 2009

**FILED**

APR 07 2010

W/12-30/0  
William A. Shaw  
Prothonotary/Clerk of Courts  
no c/c

Appeal from the Judgment of February 20, 2009,  
in the Court of Common Pleas of Clearfield County,  
Civil Division at No. 2005-1541 CD

BEFORE: PANELLA, SHOGAN and COLVILLE\*, JJ.

MEMORANDUM:

FILED: MARCH 1, 2010

Appellants appeal from a judgment entered in favor of Appellees.<sup>1</sup> We affirm.

The background underlying this matter can be summarized in the following manner.

<sup>1</sup> Appellants purport to appeal from the order entered on February 13, 2009. That order denied Appellants' motion for post-trial relief. Orders denying post-trial motions are not appealable; instead, a subsequently entered judgment is the appealable order when a trial has occurred. **Harvey v. Rouse Chamberlin, Ltd.**, 901 A.2d 523, 524 n.1 (Pa. Super. 2006).

On February 20, 2009, Appellees filed a praecipe for the entry judgment. The record does not indicate whether judgment was entered. However, because the prothonotary should have entered judgment, Pa.R.C.P. 227.4, we will treat as done that which ought to have been done. **McCormick v. Northeastern Bank of Pa.**, 561 A.2d 328, 329 n.1 (Pa. 1989). We, thus, will consider judgment to have been entered on the day Appellees filed their praecipe, i.e., February 20, 2009.

\*Retired Senior Judge assigned to the Superior Court.

The facts giving rise to this action are generally undisputed. On December 29, 2003, [Appellant] Rodney J. Chiodo ("Husband") was stopped in traffic on State Route 255 in or near Force, Pennsylvania. His car was struck from behind by a coal truck, loaded with gravel and weighing about 70,000 pounds, owned by [Appellee] Kephart Trucking; the truck was operated by [Appellee] Brian Yarger in the course of his employment by [Appellee] Kephart Trucking. Estimates place [Appellee] Yarger's speed at the time of the impact at forty (40) to fifty (50) miles per hour; [ ] Husband's car was severely damaged. [ ] Husband sought compensatory damages for his injuries in the form of future wage loss, as well as for enduring pain and suffering. [Appellant] Carolyn G. Chiodo ("Wife") sought compensatory damages for loss of consortium.

In the course of trial[,] [Appellees] conceded liability; the trial was for damages only. After a two day jury trial on December 3-4, 2008, the jury awarded damages to [Appellants] in the amount of exactly zero dollars (\$0.00).

Trial Court Opinion, 06/18/09, at 1.

Appellants filed a motion for post-trial relief wherein they sought a new trial on the issue of damages. Appellants contended that the jury's decision not to award damages was against the weight of the evidence. Appellants primarily based this contention on the fact that both Appellants' expert witness and Appellees' expert witness agreed that Husband was injured in the accident. The trial court denied Appellants' motion, and this appeal followed.

In their brief to this Court, Appellants ask us to consider the following question:

I. Did the trial court abuse its discretion in not awarding a new trial because the jury verdict failed to compensate [Appellants]

for any damages notwithstanding both [Appellants'] and [Appellees'] experts agreed [Husband] was injured in the collision.

Appellants' Brief at 4.

The general principles of law which guide our review of this matter have been summarized as follows:

In reviewing an order denying a motion for a new trial, an appellate court should not set aside a trial court's decision unless the trial court's decision was an abuse of discretion. A new trial should be granted only where the verdict is so contrary to the evidence as to shock one's sense of justice [and not] where the evidence is conflicting [or] where the trial judge would have reached a different conclusion on the same facts.

We have held that it is the duty of the trial court to control the amount of the verdict; it is in possession of all the facts as well as the atmosphere of the case, which will enable it to do more evenhanded justice between the parties than can an appellate court. Thus, a jury verdict is set aside for inadequacy when it appears to have been the product of passion, prejudice, partiality, or corruption, or where it clearly appears from uncontradicted evidence that the amount of the verdict bears no reasonable relation to the loss suffered by the plaintiff. Hence, a reversal on grounds of inadequacy of the verdict is appropriate only where the injustice of the verdict [stands] forth like a beacon.

***Davis v. Mullen***, 773 A.2d 764, 766 (Pa. 2001) (citations and quotation marks omitted).

On appeal, Appellants explain that both their expert and Appellees' expert, Fred K. Khalouf, D.O., agreed that Husband was injured in the accident. According to Appellants, due to this agreement, the jury was required to award damages for Appellants' injuries. We disagree.



In the context of personal injury cases, when both parties' experts agree that an accident caused the plaintiff to be injured and the jury determines that the defendant's negligence caused the accident, the weight of the evidence requires the jury to conclude that the defendant's negligence was a substantial factor in causing harm to the plaintiff. **See *Andrews v. Jackson***, 800 A.2d 959, 962 (Pa. Super. 2002) ("Where there is no dispute that the defendant is negligent and both parties' medical experts agree the accident caused **some** injury to the plaintiff, the jury may not find the defendant's negligence was not a substantial factor in bringing about at least **some** of plaintiff's injuries. Such a verdict is contrary to the weight of the evidence adduced at trial.") (emphasis in original) (citations omitted). Yet, under such circumstances, the jury is not required to award the plaintiff any damages. **See *id.*** at 965 ("[W]e hold a jury may not disregard the uncontradicted testimony of both party's medical experts that Appellant suffered some injury in the accident, although the jury may then deny damages on the basis that the injury was not serious enough to warrant compensation.").

In this case, Appellees admitted that Appellee Yarger's negligence caused the December 29, 2003, accident and conceded that his negligence was a substantial factor in causing harm to Husband. Indeed, as Appellants correctly point out, Dr. Khalouf testified that Husband was injured as a result

of the accident. Dr. Khalouf and Appellants' expert shared this opinion. Importantly, however, at trial, Appellees did contest whether the damages Husband sought were causally related to the injury Husband sustained as a result of the accident. As to this issue, the experts did not agree.

While Husband and his medical expert testified at length as to the pain Husband has experienced as a result of the December 29, 2003, accident, Dr. Khalouf testified that, prior to this accident, Husband was injured several times and continually complained of pain of the same ilk as that which he now associates with the December 2003 accident. For example, Dr. Khalouf explained:

Well, I concluded that this patient has had multiple visits and multiple complaints over multiple years to multiple providers and multiple emergency rooms. And this must be considered when a case such as this is being reviewed. I personally could not see any injury process from the reported accident of December 29, 2003 to give him any deficit or ongoing reason for these complaints or for any losses that were any different than multiple prior similar episodes.

I believe his complaints of chronic pain and earning limitations are very real to him, but I cannot objectively find a relationship to December 29, 2003 as this is just one more encounter and one more description in the medical records of the same complaint that he had before.

Objection to [Appellants'] Motion in Limine to Exclude Testimony of Dr. Khalouf as a Medical Expert, 11/03/08, Exhibit A, at 27-28.<sup>2</sup> **See id.** at 41

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<sup>2</sup> It is undisputed that the jury was presented with this deposition testimony from Dr. Khalouf.

("Q. . . . You say - - you write here I believe that he does have pain, but you dispute the relationship between the injury which occurred on December 29<sup>th</sup>, 2003 causing him the pain? A. Yes.").

"[W]here a defendant concedes liability and his or her expert concedes injury resulting from the accident that would reasonably be expected to cause **compensable** pain and suffering, the jury's verdict is against the weight of the evidence where it finds for the defendant." **Majczyk v. Oesch**, 789 A.2d 717, 722 (Pa. Super. 2001) (emphasis in original). "[T]he determination of what is a compensable injury is uniquely within the purview of the jury." **Id.** at 726. Moreover, when an injury has occurred, a jury can nonetheless conclude that the injury was so minor as to be noncompensable. **See Andrews**, 800 A.2d at 965 ("Had the jury found the accident caused some injury to Appellee, but declined to award damages because the jury concluded the injury was so minor as to be noncompensable, we would not have disturbed their verdict.").

Here, the jury clearly determined that Husband did not suffer a compensable injury. As the trial court highlighted:

In the instant case, testimony by medical experts tended to show that [ ] Husband was in fact injured in the collision. [Appellees] did not deny liability. The opposing sides' experts differed on whether the symptoms [ ] Husband experienced in the years after the accident were caused by the accident or whether his difficulties preceded the accident and he would have experienced such symptoms anyway.

Evidence and testimony showed that [ ] Husband had experienced pain as a result of various accidents and sports injuries in the decades prior to the accident. [Appellees'] expert opined that, despite likely being injured in the accident complained of, [ ] Husband would have experienced the exact same pain even if the accident had not occurred. [Appellants'] expert agreed that [ ] Husband was undoubtedly injured in the accident, but testified it was his opinion that Husband's current pain was a result of the accident. This created a factual dispute for the jury to resolve.

The jury resolved the conflict in favor of [Appellees] by awarding no compensatory damages. This may be because it found [Appellants'] expert not credible, because it found [ ] Husband not credible, or perhaps because it simply felt that [Appellees'] expert was more persuasive than [Appellants'] expert. The jury was asked by [ ] Husband to award damages for wages to be lost in the future due to a (supposed) shortened work life, but at the same time [ ] Husband had been travelling [sic] extensively and working harder and had in fact doubled his salary to over \$200,000 since the accident. Despite [Appellees'] stipulation as to liability the jury may have simply rejected this claim of future wage losses. These are all plausible, and . . . the verdict must stand.

Trial Court Opinion, 06/18/09, at 3-4 (citations omitted).

A review of the record confirms the trial court's analysis. As the court's opinion adequately conveys, the jury's verdict does not appear to have been the product of passion, prejudice, partiality, or corruption; moreover, the uncontradicted evidence does not evince a verdict with no reasonable relation to the loss suffered by Husband. Consequently, the trial

court properly refused to find the verdict inadequate and, in turn, did not abuse its discretion by refusing to grant Appellants' request for a new trial.<sup>3</sup>

Judgment affirmed.

FILED

APR 07 2010

William A. Shaw  
Prothonotary/Clerk of Courts

Judgment Entered:

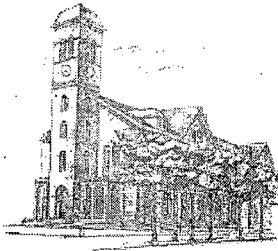
Eleanor K. Valecko

Deputy Prothonotary

DATE: March 1, 2010

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<sup>3</sup> Appellants do not directly or adequately attack the verdict as it relates to Wife's claim for loss of consortium. We nonetheless note that, much like Husband's claim, Wife's claim essentially turned upon credibility determinations. As the trial court stated, such determinations are solely within the purview of the jury as factfinder. **See** Trial Court Opinion, 06/18/09, at 4-5 (rejecting Wife's claim of loss of consortium).



# COPY

## Clearfield County Office of the Prothonotary and Clerk of Courts

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

**Jacki Kendrick**  
Deputy Prothonotary/Clerk of Courts

**Bonnie Hudson**  
Administrative Assistant

**David S. Ammerman**  
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ [www.clearfieldco.org](http://www.clearfieldco.org)

Fredric J. Ammerman, P.J.  
Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

David J. Hopkins, Esq.  
100 Meadow Lane, Ste. 5  
DuBois, PA 15801

Louis C. Schmitt, Jr., Esq.  
PO Box 533  
Holidaysburg, PA 16648

Rodney J. Chiodo and  
Carolyn G. Chiodo  
Vs.  
Brian Yarger and  
Rodger L. Kephart Trucking, Inc.

Court No. 05-1541-CD; Superior Court No. 444 WDA 2009

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on June 19, 2009.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

## Civil Other

Date		Judge
10/6/2005	New Case Filed.	No Judge
	Filing: Praeipe for Writ of Summons Paid by: Hopkins, David J. (attorney for Chiodo, Rodney J.) Receipt number: 1909683 Dated: 10/06/2005 Amount: \$85.00 (Check) 1CC & Writ to Shff	No Judge
11/10/2005	Praeipe for Appearance, filed. Enter my Appearance on behalf of Defendant, RODGER L. TRUCING INC, filed by s/ Louis C. Schmitt Esq. N CC.	No Judge
	Praeipe for Rule to File Complaint, filed by s/ Louis C. Schmitt Jr. Esq. No CC and 1 Rule to Atty Schmitt.	No Judge
11/16/2005	Certificate of Service of Rule to File Complaint, filed. That on the 14th day November 2005, Defendant, ROGER L KEPHART TRUCKING INC., served RULE upon the Plaintiffs, to David Hopkins Esq., filed by s/ Louis C. Schmitt Jr Esq. NO CC.	No Judge
12/2/2005	Complaint, filed by s/ David J. Hopkins, Esquire. 2CC to Atty.	No Judge
1/11/2006	Notice of Service of Interrogatories and Request for Production of Documents Directed to Plaintiffs-Dated 1/10/06, filed by s/ Louis C. Schmitt Jr Esq. NO CC.	No Judge
1/19/2006	Answer and New Matter filed by s/ Louis C. Schmitt Jr Esq. No CC.	No Judge
1/25/2006	Answer To New Matter, filed by s/ David J. Hopkins, Esquire. No CC	No Judge
2/6/2006	Praeipe to Substitute Verification to Answer and New Matter, filed by s/ Louis C. Schmitt Jr. Esq. No CC.	No Judge
2/9/2006	Sheriff Return, October 21, 2005 at 11:33 am served the within Writ of Summons on Rodger L. Kephart Trucking Inc. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Hopkins \$45.83	No Judge
2/17/2006	Motion to Compel, filed by Atty. Schmitt no cert. copies.	No Judge
2/22/2006	Rule Returnable AND NOW, this 21st day of February 2006, a Rule is hereby granted to show cause why the Motion to Compel filed on behalf of the Defendants, Brian Yarger and Rodger L. Kephart Trucking Inc., should not be granted. This Rule is returnable on the 20th day of March 2006 at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman P. Judge. 1CC Atty Schmitt.	Fredric Joseph Ammerman
2/27/2006	Notice of Service of Answers to Plaintiffs' Interrogatories Directed to Defendants on David Hopkins Esq., filed by s/ Louis C. Schmitt Jr. Esq. No CC.	Fredric Joseph Ammerman
3/9/2006	Answer to Motion to Compel, filed by s/ David J. Hopkins Esq. No CC.	Fredric Joseph Ammerman
3/15/2006	Praeipe to Withdraw Motion to Compel, filed by Atty. Schmitt no cert. copies.	Fredric Joseph Ammerman
7/25/2006	Notice of Service, filed. That on the 21st day of July 2006, Defendant, Brian Yarger and Rodger L. Kephart Trucking Inc. served Supplemental Request Production of Documents Directed to Plaintiffs dated July 21, 2006 by mailing to David Hopkins Esq., filed by s/ Louis C. Schmitt Jr. Esq. No CC.	Fredric Joseph Ammerman
3/8/2006	Defendants' Second Motion to Compel, filed by s/ Louis C. Schmitt, Jr., Esquire. 1CC Atty. Schmitt	Fredric Joseph Ammerman
3/12/2006	Rule Returnable: NOW, this 11th day of Sept., 2006, a rule is granted. Rule returnable on the 13th day of Oct., 2006 at 2:30 p.m. in Courtroom No. 1. By The Court, /s/Fredric J. Ammerman, Pres. Judge. 1CC Atty. Schmitt.	Fredric Joseph Ammerman

## Civil Other

Date		Judge
10/13/2006	Order, NOW, this 13th day of Oct., 2006, Ordered that 1. Defendants Second Motion to Compel is withdrawn with regard to the records of Dr. Welch; 2. Plaintiffs shall have 60 days within which to produce the medical records of Dr. Brad Labue and such other physicians as requested by Defendants. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
12/8/2006	Notice of Deposition, filed by s/ Louis C. Schmitt Esq. No CC.	Fredric Joseph Ammerman
1/22/2007	Notice of Rescheduled Deposition, filed by s/ Louis C. Schmitt Jr Esq. (In Re: Rodney J. Chiodo) No CC.	Fredric Joseph Ammerman
4/3/2008	Certificate of Readiness for Jury Trial, filed by s/ Louis C. Schmitt, Jr., Esquire. 1CC Atty. Schmitt	Fredric Joseph Ammerman
4/4/2008	Order, this 4th day of April, 2008, Pre Trial conference shall be held on the 12th day of June, 2008, in Chambers. Jury selection will be held on July 24th, 2008 in Courtroom #1. 2 Cert. to Attys: Hopkins and Schmitt	Fredric Joseph Ammerman
3/12/2008	Order, this 12th day of June, 2008, following pre-trial conference with couns for the parties as set forth above, it is Ordered: Jury Selection will be held on July 24, 2008 at 9:00 a.m. in Courtroom 1. Jury Trial is scheduled for Dec. 3, 4, and 5, 2008 at 9:00 a.m. in Courtroom 1. (see original) By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
3/19/2008	Notice of Service of Supplemental Request For Production of Documents With Regard to Earnings Impairment Claims, on the 18th day of June, 2008. Defendants Brian Yarger and Rodger L. Kephart Trucking Inc., served Supplemental Request for Production of Documents with Regard to Earning Impairment Claim, by mailing the original of same via First Class U.S. Mail to David Hopkins, Esquire. Filed by s/ Louis C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
3/15/2008	Notice of Videotape Trial Deposition, filed by s/ Louis C. Schmitt, Jr., Esquire. no CC	Fredric Joseph Ammerman
10/28/2008	Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert, filed by s/ David J. Hopkins, Esquire. 1CC Atty. Hopkins	Fredric Joseph Ammerman
10/31/2008	Order, this 29th day of Oct., 2008, upon consideration of the Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as Medical Expert, it is Ordered: A Rule is issued upon Respondent. Argument shall be held on the 12th day of Nov., 2008 at 10:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hopkins	Fredric Joseph Ammerman
11/3/2008	Praeipce For Argument List, filed by s/ Louis C. Schmitt, Jr., Esquire. 2CC Atty. Schmitt	Fredric Joseph Ammerman
	Motion to Strike Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert, filed by s/ Louis C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
	Objection to Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O., as a Medical Expert, filed by s/ Louis C. Schmitt, Jr., Esquire. no CC	Fredric Joseph Ammerman
11/6/2008	Order, this 6th day of Nov., 2008, it is Ordered: Oral argument upon the Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert will be held on the 12th day of Nov., 2008 at 10:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Schmitt	Fredric Joseph Ammerman



## Civil Other

Date		Judge
11/12/2008	Nunc Pro Tunc Motion to Extend Time to File Motions in Limine, filed by s/David J. Hopkins, Esq. Three CC Attorney Hopkins	Fredric Joseph Ammerman
	Answer to Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a medical expert. filed by s/ David J. Hopkins, Esquire. 3CC Atty. Hopkins	Fredric Joseph Ammerman
11/14/2008	Order, this 13th day of Nov., 2008, it is ordered that Plaintiffs' Nunc Pro Tunc Motion to Extend Time to File Motions in Limine is granted and the Court hereby extends the time for filing Motions in Limine through Oct. 28, 2008. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC atty. Hopkins	Fredric Joseph Ammerman
12/1/2008	Order, NOW, this 26th day of November, 2008, Order that the Motion in Limine filed October 28, 2008, on behalf of the Plaintiffs be and is hereby Dismissed. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys: Hopkins, Schmitt	Fredric Joseph Ammerman
12/4/2008	Details of Trial/Members of the Jury, held Dec. 3-5, filed.	Fredric Joseph Ammerman
	Jury Verdict Slip, no damages sustained by the Plaintiffs as a result of the Dec. 29, 2003 accident. Signed, Foreperson.	Fredric Joseph Ammerman
12/15/2008	Motion For Post Trial Relief, filed by s/ David J. Hopkins, Esquire. 2CC Atty Hopkins	Fredric Joseph Ammerman
12/16/2008	Order, this 16th day of Dec., 2008, upon consideration of the Motion for Post Trial Relief it is Ordered: 1. Rule is issued upon Respondent. 2. Argument shall be held on the 12th day of Feb., 2009 at 9:00 a.m. in Courtroom 3. 3. Notice of the entry of this Order shall be provided to all parties by the moving party. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Hopkins	Fredric Joseph Ammerman
12/22/2008	Objection to Plaintiffs' Motion For Post-Trial Relief, filed by s/ Louis C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
12/23/2008	Order AND NOW, this 23rd day of December 2008, upon consideration of the Objections to Plaintiff's Motion for Post-Trial Relief, it is hereby ORDERED as follows: Oral argument upon the Objection to Plaintiff's Motion for Post-Trial Relief will be held on February 12, 2008 at 9:00 a.m. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Schmitt.	Fredric Joseph Ammerman
2/13/2009	Order, this 13th day of Feb., 2009, Plaintiffs' Motion for Post Trial Relief is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
2/20/2009	Filing: Praecipe for Entry of Judgment (On Verdict) Paid by: Schmitt, Louis C. Jr. (attorney for Yarger, Brian) Receipt number: 1928126 Dated: 2/20/2009 Amount: \$20.00 (Check) For: Yarger, Brian (defendant) No CC	Fredric Joseph Ammerman
3/16/2009	Filing: Appeal to High Court Paid by: Hopkins, David J. (attorney for Chiodo, Rodney J.) Receipt number: 1928563 Dated: 3/16/2009 Amount: \$50.00 (Check) For: Chiodo, Rodney J. (plaintiff)	Fredric Joseph Ammerman
	Notice of Appeal, filed by s/ Lea Ann Heltzel, Esquire. 1CC & check for \$60.00 to Superior Court; 3CC Atty. Heltzel	Fredric Joseph Ammerman
3/18/2009	Order, this 18th day of March, 2009, this Court having been notified of Appeal to the Superior Court of Pennsylvania, it is Ordered that Rodney J. Chiodo and Carolyn G. Chiodo, Appellants, file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Hopkins, Schmitt	Fredric Joseph Ammerman

Date: 6/19/2009

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:01 AM

ROA Report

Page 4 of 4

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

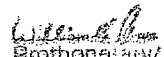
Civil Other

Date		Judge
3/20/2009	Appeal Docket Sheet, filed Superior Court # 444 WDA 2009	Fredric Joseph Ammerman
4/7/2009	Concise Statement of Matters Complained of Pursuant to Pa. R.C.P. 1925(b), filed by s/ David J. Hopkins, Esquire. No CC	Fredric Joseph Ammerman
6/18/2009	Opinion, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys Hopkins and Schmitt One CC D. Mikesell and Law Library Transcript of Proceedings, Jury Trial, Day 1 of 2, Testimony Only, held before Fredric Joseph Ammerman the Honorable Fredric J. Ammerman, P.J., December 3, 2008, filed. Transcript of Proceedings, Jury Trial, Day 2 of 2, Testimony Only, held before Fredric Joseph Ammerman the Honorable Fredric J. Ammerman, P.J., December 4, 2008, filed.	Fredric Joseph Ammerman

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

JUN 19 2009

Attest.

  
Prothonotary/  
Clerk of Courts

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

**No. 05-1541-CD**

**Rodney J. Chiodo and Carolyn G. Chiodo**

**Vs.**

**Brian Yarger and Rodger L. Kephart Trucking, Inc.**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	10/06/05	Praeipce for Writ of Summons	02
02	11/10/05	Praeipce for Appearance	02
03	11/10/05	Praeipce for Rule to File Complaint	03
04	11/16/05	Certificate of Service, Rule to File Complaint	02
05	12/02/05	Complaint	10
06	01/11/06	Notice of Service of Interrogatories and Request for Production of Documents	02
07	01/19/06	Answer and New Matter	08
08	01/25/06	Answer to New Matter	03
09	02/06/06	Praeipce to Substitute Verification to Answer and New Matter	03
10	02/09/06	Sheriff Return	01
11	02/17/06	Motion to Compel with Rule Returnable filed February 22, 2006	08
12	02/27/06	Notice of Service of Answers to Plaintiffs' Interrogatories Directed to Defendants	02
13	03/09/06	Answer to Motion to Compel	05
14	03/15/06	Praeipce to Withdraw Motion to Compel	02
15	07/25/06	Notice of Service	02
16	09/08/06	Defendants' Second Motion to Compel with Rule Returnable filed September 12, 2006	12
17	10/13/06	Order, Re: Defendants' Second Motion to Compel withdrawn; medical records to be produced	01
18	12/08/06	Notice of Deposition	03
19	01/22/07	Notice of Rescheduled Deposition	03
20	04/03/08	Certificate of Readiness for Jury Trial	02
21	04/04/08	Order, Re: Pre-Trial conference and Jury selection scheduled	01
22	06/12/08	Order, Re: Jury Selection and Jury Trial scheduled	02
23	06/19/08	Notice of Service of Supplemental Request for Production of Documents With Regard to Earnings Impairment Claims	02
24	09/15/08	Notice of Videotape Trial Deposition	03
25	10/28/08	Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert	09
26	10/31/08	Order, Re: Rule issued. Argument scheduled on Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert.	02
27	11/03/08	Praeipce for Argument List	01
28	11/03/08	Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert	06
29	11/03/08	Objection to Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert	82
30	11/06/08	Order, Re: Oral Argument scheduled on Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, DO, as a Medical Expert	01
31	11/12/08	Nunc Pro Tunc Motion to Extend Time to File Motions in Limine	04
32	11/12/08	Answer to Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert	04
33	11/14/08	Order, Re: Plaintiff's Nunc Pro Tunc Motion	01
34	12/01/08	Order, Re: Motion in Limine	01
35	12/04/08	Details of Trial/Members of the Jury, December 3-5, 2008	01
36	12/04/08	Jury Verdict Slip	01
37	12/15/08	Motion for Post Trial Relief	06
38	12/16/08	Order, Re: Motion for Post Trial Relief	01
39	12/22/08	Objection to Plaintiffs' Motion for Post-Trial Relief with Order filed December 23, 2008	09
40	02/13/09	Order, Plaintiff's Motion for Post Trial Relief is Denied	01

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

**No. 05-1541-CD**

**Rodney J. Chiodo and Carolyn G. Chiodo**

**Vs.**

**Brian Yarger and Rodger L. Kephart Trucking, Inc.**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
41	02/20/09	Praecipe for Entry of Judgment (On Verdict)	02
42	03/16/09	Appeal to High Court	08
43	03/18/09	Order, Re: Concise statement to be filed	01
44	03/20/09	Appeal Docket Sheet, Superior Court Docket Number 444 WDA 2009	04
45	04/07/09	Concise Statement of Matters Complained of Pursuant to Pa.R.C.P. 1925(b)	05
46	06/18/09	Opinion	05
47	06/18/09	Transcript of Proceedings, Jury Trial, Day 1 of 2, Testimony Only, held before the Honorable President Judge Fredric J. Ammerman, December 3, 2008	Separate Cover
48	06/18/09	Transcript of Proceedings, Jury Trial, Day 2 of 2, Testimony Only, held before the Honorable President Judge Fredric J. Ammerman, December 4, 2008	Separate Cover

Date: 6/18/2009

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 04:49 PM

ROA Report

Page 1 of 1

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

Civil Other

Date	Selected Items	Judge
3/16/2009	Notice of Appeal, filed by s/ Lea Ann Heltzel, Esquire. 1CC & check for \$60.00 to Superior Court; 3CC Atty. Heltzel	Fredric Joseph Ammerman
3/18/2009	Order, this 18th day of March, 2009, this Court having been notified of Appeal to the Superior Court of Pennsylvania, it is Ordered that Rodney J. Chiodo and Carolyn G. Chiodo, Appellants, file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
3/20/2009	Appeal Docket Sheet, filed Superior Court # 444 WDA 2009	Fredric Joseph Ammerman
4/7/2009	Concise Statement of Matters Complained of Pursuant to Pa. R.C.P. 1925(b), filed by s/ David J. Hopkins, Esquire. No CC	Fredric Joseph Ammerman
6/18/2009	Opinion, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys Hopkins and Schmitt One CC D. Mikesell and Law Library	Fredric Joseph Ammerman
	Transcript of Proceedings, Jury Trial, Day 1 of 2, Testimony Only, held before the Honorable Fredric J. Ammerman, P.J., December 3, 2008, filed.	Fredric Joseph Ammerman
	Transcript of Proceedings, Jury Trial, Day 2 of 2, Testimony Only, held before the Honorable Fredric J. Ammerman, P.J., December 4, 2008, filed.	Fredric Joseph Ammerman

Date: 3/17/2009

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:11 AM

ROA Report

Page 1 of 3

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

Civil Other

Date		Judge
10/6/2005	New Case Filed.	No Judge
	(1) Filing: Praeipce for Writ of Summons Paid by: Hopkins, David J. (attorney for Chiodo, Rodney J.) Receipt number: 1909683 Dated: 10/06/2005 Amount: \$85.00 (Check) 1CC & Writ to Shff	No Judge
11/10/2005	(2) Praeipce for Appearance, filed. Enter my Appearance on behalf of Defendant, RODGER L. TRUCING INC, filed by s/ Louis C. Schmitt Esq. N CC.	No Judge
	(3) Praeipce for Rule to File Complaint, filed by s/ Louis C. Scmitt Jr. Esq. CC and 1 Rule to Atty Schmitt.	No Judge
11/16/2005	(4) Certificate of Service of Rule to File Complaint, filed. That on the 14th day November 2005, Defendant, ROGER L KEPHART TRUCKING INC., server RULE upon the Plaintiffs, to David Hopkins Esq., filed by s/ Louis C. Schmitt Jr Esq. NO CC.	No Judge
12/2/2005	(5) Complaint, filed by s/ David J. Hopkins, Esquire. 2CC to Atty.	No Judge
1/11/2006	(6) Notice of Service of Interrogatories and Request for Production of Documen Directed to Plaintiffs-Dated 1/10/06, filed by s/ Louis C. Schmitt Jr Esq. NO CC.	No Judge
1/19/2006	(7) Answer and New Matter filed by s/ Louis C. Schmitt Jr Esq. No CC.	No Judge
1/25/2006	(8) Answer To New Matter, filed by s/ David J. Hopkins, Esquire. No CC	No Judge
2/6/2006	(9) Praeipce to Substitute Verification to Answer and New Matter, filed by s/ Louis C. Schmitt Jr. Esq. No CC.	No Judge
2/9/2006	(10) Sheriff Return, October 21, 2005 at 11:33 am served the within Writ of Summons on Rodger L. Kephart Trucking Inc. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Hopkins \$45.83	No Judge
2/17/2006	(11) Motion to Compel, filed by Atty. Schmitt no cert. copies.	No Judge
2/22/2006	(12) Rule Returnable AND NOW, this 21st day of February 2006, a Rule is hereby granted to show cause why the Motion to Compel filed on behalf of the Defendants, Brian Yarger and Rodger L. Kephart Trucking Inc., should not be granted. This Rule is returnable on the 20th day of March 2006 at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammermar P. Judge. 1CC Atty Schmitt.	Fredric Joseph Ammerman
2/27/2006	(13) Notice of Service of Answers to Plaintiffs' Interrogatories Directed to Defendants on David Hopkins Esq., filed by s/ Louis C. Schmitt Jr. Esq. No CC.	Fredric Joseph Ammerman
3/9/2006	(14) Answer to Motion to Compel, filed by s/ David J. Hopkins Esq. No CC.	Fredric Joseph Ammerman
3/15/2006	(15) Praeipce to Withdraw Motion to Compel, filed by Atty. Schmitt no cert. copies.	Fredric Joseph Ammerman
7/25/2006	(16) Notice of Service, filed. That on the 21st day of July 2006, Defendant, Brian Yarger and Rodger L. Kephart Trucking Inc. served Supplemental Request Production of Documents Directed to Plaintiffs dated July 21, 2006 by mailing to David Hopkins Esq., filed by s/ Louis C. Schmitt Jr. Esq. No CC.	Fredric Joseph Ammerman
9/8/2006	(17) Defendants' Second Motion to Compel, filed by s/ Louis C. Schmitt, Jr., Esquire. 1CC Atty. Schmitt	Fredric Joseph Ammerman
9/12/2006	(18) Rule Returnable: NOW, this 11th day of Sept., 2006, a rule is granted. Rule returnable on the 13th day of Oct., 2006 at 2:30 p.m. in Courtroom No. 1. By The Court, /s/Fredric J. Ammerman, Pres. Judge. 1CC Atty. Schmitt.	Fredric Joseph Ammerman

Date: 3/17/2009

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:11 AM

ROA Report

Page 2 of 3

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

Civil Other

Date		Judge
10/13/2006	Order, NOW, this 13th day of Oct., 2006, Ordered that 1. Defendants Second Motion to Compel is withdrawn with regard to the records of Dr. Welch; 2. Plaintiffs shall have 60 days within which to produce the medical records of Dr. Brad Labue and such other physicians as requested by Defendants. by The Court,, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
12/8/2006	Notice of Deposition, filed by s/ Louis C. Schmitt Esq. No CC.	Fredric Joseph Ammerman
1/22/2007	Notice of Rescheduled Deposition, filed by s/ Louis C. Schmitt Jr Esq. (In Re: Rodney J. Chiodo) No CC.	Fredric Joseph Ammerman
4/3/2008	Certificate of Readiness for Jury Trial, filed by s/ Louis C. Schmitt, Jr. Esquire. 1CC Atty. Schmitt	Fredric Joseph Ammerman
4/4/2008	Order, this 4th day of April, 2008, Pre Trial conference shall be held on the 12th day of June, 2008, in Chambers. Jury selection will be held on July 24th, 2008 in Courtroom #1. 2 Cert. to Attys: Hopkins and Schmitt	Fredric Joseph Ammerman
6/12/2008	Order, this 12th day of June, 2008, following pre-trial conference with couns for the parties as set forth above, it is Ordered: Jury Selection will be held on July 24, 2008 at 9:00 a.m. in Courtroom 1. Jury Trial is scheduled for Dec. 3, 4, and 5, 2008 at 9:00 a.m. in Courtroom 1. (see original) By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Attys: Hopkins, Schmitt	Fredric Joseph Ammerman
6/19/2008	Notice of Service of Supplemental Request For Production of Documents Regarding to Earnings Impairment Claims, on the 18th day of June, 2008, Defendants Brian Yarger and Rodger L. Kephart Trucking Inc., served Supplemental Request for Production of Documents with Regard to Earning Impairment Claim, by mailing the original of same via First Class U.S. Mail to David Hopkins, Esquire. Filed by s/ Louis C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
9/15/2008	Notice of Videotape Trial Deposition, filed by s/ Louis C. Schmitt, Jr. Esquire. no CC	Fredric Joseph Ammerman
10/28/2008	Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a medical expert, filed by s/ David J. Hopkins, Esquire. 1CC Atty. Hopkins	Fredric Joseph Ammerman
10/31/2008	Order, this 29th day of Oct., 2008, upon consideration of the Motion in limine to Exclude Testimony of Fred K. Khalouf, D.O. as Medical Expert, it is Ordered: A Rule is issued upon Respondent. Argument shall be held on the 12th day of Nov., 2008 at 10:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hopkins	Fredric Joseph Ammerman
11/3/2008	Praeipce For Argument List, filed by s/ Louis C. Schmitt, Jr., Esquire. 2CC Atty. Schmitt	Fredric Joseph Ammerman
	Motion to Strike Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert, filed by s/ Lousi C. Schmitt, Jr., Esquire. No CC	Fredric Joseph Ammerman
	Objection to Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Khalouf, D.O., as a Medical Expert, filed by s/ Louis C. Schmitt, Jr., Esquire. no CC	Fredric Joseph Ammerman
11/6/2008	Order, this 6th day of Nov., 2008, it is Ordered: Oral argument upon the Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a Medical Expert will be held on the 12th day of Nov., 2008 at 10:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Schmitt	Fredric Joseph Ammerman

Date: 3/17/2009

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:11 AM

ROA Report

Page 3 of 3

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

Rodney J. Chiodo, et al vs. Rodger L. Kephart Trucking, Inc., et al

Civil Other

Date		Judge
11/12/2008	(31) Nunc Pro Tunc Motion to Extend Time to File Motions in Limine, filed by s/David J. Hopkins, Esq. Three CC Attorney Hopkins 4	Fredric Joseph Ammerman
	(32) Answer to Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony of Fred K. Khalouf, D.O. as a medical expert. filed by s/ David J. Hopkins, Esquire. 3CC Atty. Hopkins 4	Fredric Joseph Ammerman
11/14/2008	(33) Order, this 13th day of Nov., 2008, it is ordered that Plaintiffs' Nunc Pro Tunc Motion to Extend Time to File Motions in Limine is granted and the Court hereby extends the time for filing Motions in Limine through Oct. 28, 2008. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC atty. Hopkins 1	Fredric Joseph Ammerman
12/1/2008	(34) Order, NOW, this 26th day of November, 2008, Order that the Motion in Limine filed October 28, 2008, on behalf of the Plaintiffs be and is hereby Dismissed. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys: Hopkins, Schmitt 1	Fredric Joseph Ammerman
12/4/2008	(35) Details of Trial held Dec. 3-5, filed. - members of the Jury 1	Fredric Joseph Ammerman
	(36) Jury Verdict Slip, no damages sustained by the Plaintiffs as a result of the Dec. 29, 2003 accident. Signed, Foreperson. 1	Fredric Joseph Ammerman
12/15/2008	(37) Motion For Post Trial Relief, filed by s/ David J. Hopkins, Esquire. 2CC Atty Hopkins 6	Fredric Joseph Ammerman
12/16/2008	Order, this 16th day of Dec., 2008, upon consideration of the Motion for Post Trial Relief it is Ordered: 1. Rule is issued upon Respondent. (38) 2. Argument shall be held on the 12th day of Feb., 2009 at 9:00 a.m. in Courtroom 3. 1 3. Notice of the entry of this Order shall be provided to all parties by the moving party. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Hopkins	Fredric Joseph Ammerman
12/22/2008	(39) Objection to Plaintiffs' Motion For Post-Trial Relief, filed by s/ Louis C. Schmitt, Jr., Esquire. No CC 9	Fredric Joseph Ammerman
12/23/2008	(40) Order AND NOW, this 23rd day of December 2008, upon consideration of the Objections to Plaintiff's Motion for Post-Trial Relief, it is hereby ORDERED as follows: Oral argument upon the Objection to Plaintiff's Motion for Post-Trial Relief will be held on February 12, 2008 at 9:00 a.m. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Schmitt.	Fredric Joseph Ammerman
2/13/2009	(40) Order, this 13th day of Feb., 2009, Plaintiffs' Motion for Post Trial Relief is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Hopkins, Schmitt 1	Fredric Joseph Ammerman
2/20/2009	(41) Filing: Praecipe for Entry of Judgment (On Verdict) Paid by: Schmitt, Louis C. Jr. (attorney for Yarger, Brian) Receipt number: 1928126 Dated: 2/20/2009 Amount: \$20.00 (Check) For: Yarger, Brian (defendant) No CC 2	Fredric Joseph Ammerman
3/16/2009	(42) Filing: Appeal to High Court Paid by: Hopkins, David J. (attorney for Chiodo, Rodney J.) Receipt number: 1928563 Dated: 3/16/2009 Amount: \$50.00 (Check) For: Chiodo, Rodney J. (plaintiff) 8	Fredric Joseph Ammerman

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