

05-1541-CD
R. Chioldo vs R. Kephart Trucking Inc

Rodney Chioldo vs Rodger L. Kephart Truck.
2005-1541-CD

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

12.05/09
S my
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

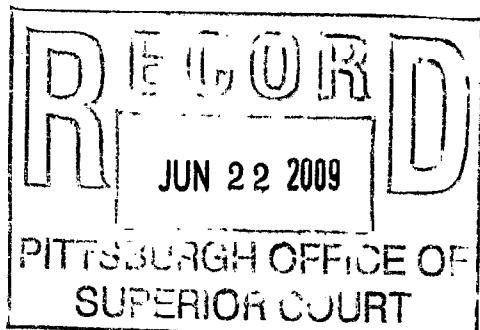
Next Event Due Date: March 17, 2009

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



Record - 1 part
Trans. - 2

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

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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 & 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 OrderAppealed 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. Lower Court Docket No.: No 2005-1541 CD
President Judge**ORIGINAL RECORD CONTENTS**

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

3/18/2009

3023

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

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

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

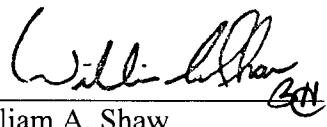
THE UNDERSIGNED, Clerk (or Prothonotary) of the Court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the 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

Cle~~o~~ Old County Court of Common Pleas

User: BHUDSON

Time: 09:30 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: Prae c ipe for Writ of Summons Paid by: Hopkins, David J. (attorney for Chiodo, Rodney J.) Receipt number: 1909683 Dated: 10/06/2005 No Judge Amount: \$85.00 (Check) 1CC & Writ to Shff
11/10/2005	Prae c ipe 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 Prae c ipe 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 Document. No Judge Directed to Plaintiffs-Dated 1/10/06, filed by s/ Louis C. Schmitt Jr Esq. NO CC.
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	Prae c ipe 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	Prae c ipe 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 Fredric Joseph Ammerman 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.

Date: 6/19/2009

Time: 09:30 AM

Page 2 of 4

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

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 Atty: 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 Chamers. Jury selection will be held on July 24th, 2008 in Courtroom #1. 2 Cert. to Atty: 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 Atty: 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 Earnings 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	Praecipe For Argument List, filed by s/ Louis C. Schmitt, Jr., Esquire. 2CC Atty. Schmitt 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
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Clearfield County Court of Common Pleas
ROA Report
Case: 2005-01541-CD

User: BHUDSON

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 Answer to Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony Fredric Joseph Ammerman of Fred K. Khalouf, D.O. as a medical expert. filed by s/ David J. Hopkins, Esquire. 3CC Atty. Hopkins
11/14/2008	Order, this 13th day of Nov., 2008, it is ordered that Plaintiffs' Nunc Pro Tun Fredric Joseph Ammerman 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
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
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.
12/15/2008	Motion For Post Trial Relief, filed by s/ David J. Hopkins, Esquire. 2CC Atty Fredric Joseph Ammerman Hopkins
12/16/2008	Order, this 16th day of Dec., 2008, upon consideration of the Motion for Pos Fredric Joseph Ammerman 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
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 t Fredric Joseph Ammerman 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.
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 Atty: Hopkins, Schmitt
2/20/2009	Filing: Praeclipe for Entry of Judgment (On Verdict) Paid by: Schmitt, Louis Fredric Joseph Ammerman C. Jr. (attorney for Yarger, Brian) Receipt number: 1928126 Dated: 2/20/2009 Amount: \$20.00 (Check) For: Yarger, Brian (defendant) No CC
3/16/2009	Filing: Appeal to High Court Paid by: Hopkins, David J. (attorney for Chiodo Fredric Joseph Ammerman 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
3/18/2009	Order, this 18th day of March, 2009, this Court having been notified of App Fredric Joseph Ammerman 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 Atty: Hopkins, Schmitt

Date: 6/19/2009
Time: 09:30 AM
Page 4 of 4

Clearfield County Court of Common Pleas
ROA Report
Case: 2005-01541-CD

User: BHUDSON

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
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
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.
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).

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

JUN 19 2009

Attest.

William L. Hause
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

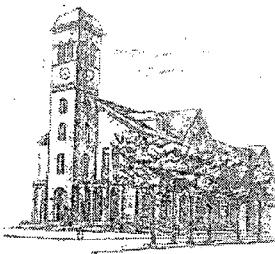
No. 05-1541-CD
 Rodney J. Chiodo and Carolyn G. Chiodo
 Vs.
 Brian Yarger and Rodger L. Kephart Trucking, Inc.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
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
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



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

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 AM
JUN 19 2009

William A. Shaw
Prothonotary/Clerk of Courts

249

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: Praeclipe for Writ of Summons Paid by: Hopkins, David J. (attorney for Chiodo, Rodney J.) Receipt number: 1909683 Dated: 10/06/2005 No Judge
	Amount: \$85.00 (Check) 1CC & Writ to Shff
11/10/2005	Praeclipe 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
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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
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1/25/2006	Answer To New Matter, filed by s/ David J. Hopkins, Esquire. No CC No Judge
2/6/2006	Praeclipe 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	Praeclipe 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 Fredric Joseph Ammerman 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

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:01 AM

ROA Report

Page 2 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
10/13/2006	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
12/8/2006	Notice of Deposition, filed by s/ Louis C. Schmitt Esq. No CC.
1/22/2007	Notice of Rescheduled Deposition, filed by s/ Louis C. Schmitt Jr Esq. (In Re: Rodney J. Chiodo) No CC.
4/3/2008	Certificate of Readiness for Jury Trial, filed by s/ Louis C. Schmitt, Jr., Esquire. 1CC Atty. Schmitt
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
5/12/2008	Order, this 12th day of June, 2008, following pre-trial conference with couns Fredric Joseph Ammerman 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
5/19/2008	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
5/15/2008	Notice of Videotape Trial Deposition, filed by s/ Louis C. Schmitt, Jr., Esquire. no CC
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
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
11/3/2008	Praeclipe For Argument List, filed by s/ Louis C. Schmitt, Jr., Esquire. 2CC Fredric Joseph Ammerman Atty. Schmitt 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 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
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

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 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 Fredric Joseph Ammerman 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. Jury Verdict Slip, no damages sustained by the Plaintiffs as a result of the Dec. 29, 2003 accident. Signed, Foreperson.	Fredric Joseph Ammerman Fredric Joseph Ammerman
12/15/2008	Motion For Post Trial Relief, filed by s/ David J. Hopkins, Esquire. 2CC Atty Fredric Joseph Ammerman Hopkins	Fredric Joseph Ammerman
12/16/2008	Order, this 16th day of Dec., 2008, upon consideration of the Motion for Pos Fredric Joseph Ammerman 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 t Fredric Joseph Ammerman 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 Atty: Hopkins, Schmitt	Fredric Joseph Ammerman
2/20/2009	Filing: Praeclipe for Entry of Judgment (On Verdict) Paid by: Schmitt, Louis Fredric Joseph Ammerman C. Jr. (attorney for Yarger, Brian) Receipt number: 1928126 Dated: 2/20/2009 Amount: \$20.00 (Check) For: Yarger, Brian (defendant) No CC	
3/16/2009	Filing: Appeal to High Court Paid by: Hopkins, David J. (attorney for Chiodo Fredric Joseph Ammerman 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 Apppe Fredric Joseph Ammerman 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 Atty: Hopkins, Schmitt	

Date: 6/19/2009

Time: 09:01 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 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.

Wesley J. Hudson
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.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
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

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

RODNEY J. CHIODO and CAROLYN G.
CHIODO,

Plaintiffs

No. 2005-1541-CD

vs.

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

Defendants

OPINION

The facts giving rise to this action are generally undisputed. On December 29, 2003, Plaintiff 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 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. Chiodo ("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 2CC Attns:
014:00:371
JUN 18 2009 Hopkins
Schmitt

William A. Shaw
Prothonotary/Clerk of Courts

CC: D.M. Kegell
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.¹ 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

¹ 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.

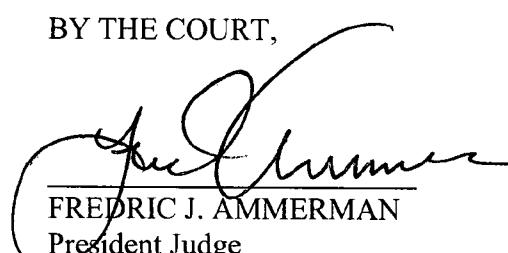
The jury resolved the conflict in favor of the Defendants by awarding no compensatory damages. This may be because it found the Plaintiffs' expert not credible, because it found the Plaintiff Husband not credible, or perhaps because it simply felt that the Defendants' expert was more persuasive than 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.

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. CHIODO,
and CAROLYN G. CHIODO,
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. Chiodo and
Carolyn G. Chiodo, 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. CHIODO, :
and CAROLYN G. CHIODO, :
Plaintiffs :
:
vs. : No. 2005-1541 CD
:
BRIAN YARGER and :
RODGER L. KEPHART TRUCKING, INC. :
Defendants :
:

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.

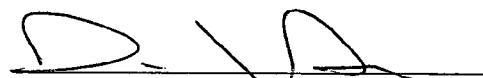
3. The jury's verdict in awarding no damages is against the weight of the evidence inasmuch as Plaintiff's long course of continual treatment beginning with his treatment at DuBois Regional Medical Center, subsequent follow up care with his family physician and other healthcare providers, including physical 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. : 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 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 6th 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

RECEIVED
COURT OF COMMONWEALTH
MAR 20 2009
William A. Shaw
Prothonotary/Clerk of Courts

Journal Number:

Case Category: Civil

Case Type: 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**Docket Number: 444 WDA 2009****Page 2 of 4****March 18, 2009****Superior Court of Pennsylvania****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@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 OrderAppealed 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

Date of Remand of Record:

3/18/2009

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

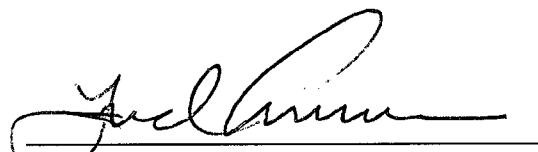
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RODNEY J. CHIODO and CAROLYN G. CHIODO, * NO. 05-1541-CD
Plaintiffs *
*
*
*
*
*
*
*
vs.
BRIAN YARGER and RODGER L. KEPHART
TRICKING, INC.,
Defendants

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. CHIODO and CAROLYN G. CHIODO, 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

03/20/2009
MAR 18 2009

(61)

5 William A. Shaw
Prothonotary/Clerk of Courts

#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. CHIODO,
and CAROLYN G. CHIODO,
Plaintiffs

vs.

No. 2005-1541 CD

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

Type of Pleading: Notice of Appeal

Filed on behalf of: Rodney J. Chiodo
and Carolyn G. Chiodo, 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
03/10/2009
MAR 10 2009 1CC check for
S William A. Shaw \$600.00 to
Prothonotary/Clerk of Courts Superior Court
610 612

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

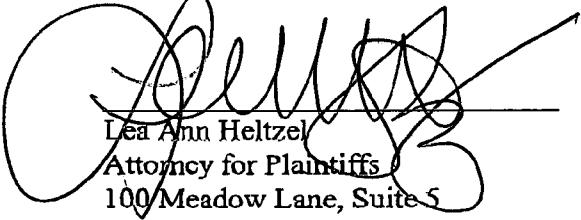
RODNEY J. CHIODO,
and CAROLYN G. CHIODO,
Plaintiffs

vs. : No. 2005-1541 CD

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

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Rodney J. Chiodo 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. CHIODO,
and CAROLYN G. CHIODO.

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:

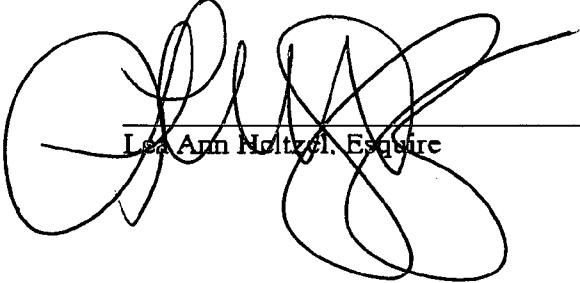
First class mail, postage prepaid:

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, Harty & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648-0533


Lea Ann Noltz, Esquire

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

RODNEY J. CHIODO,
and CAROLYN G. CHIODO,

Plaintiffs

vs.

No. 2005-1541 CD

BRIAN YARGER and

RODGER L. KEPHART TRUCKING, INC.

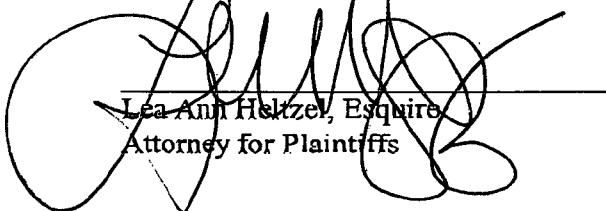
Defendants

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



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

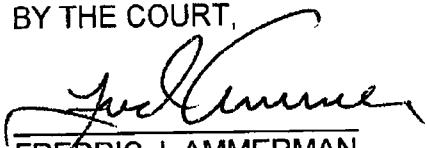
*
*
*
*
*
*

NO. 05-1541-CD

ORDER

NOW, this 13th 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 2CC
03/07/09 Atty's: Hopkins
FEB 13 2009 Schmitt

William A. Shaw
Prothonotary/Clerk of Courts

(61)

Date: 3/16/2009

Time: 02:33 PM

Page 1 of 3

Clearfield County Court of Common Pleas

ROA Report

User: BILLSHAW

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. Filing: Praeclipe 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	Praeclipe for Appearance, filed. Enter my Appearance on behalf of Defendant, RODGER L. TRUCING INC, filed by s/ Louis C. Schmitt Esq. N CC. Praeclipe 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 Document 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	Praeclipe 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	Praeclipe 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 Fredric Joseph Ammerman 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

User: BILLSHAW

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 Atty: '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 Chamers. Jury selection will be held on July 24th, 2008 in Courtroom #1. 2 Cert. to Atty: 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 or July 24, 2008 at 9:00 a.m. in Courtroom 1. Jury Trial is scheduied 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 Atty: 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	Praecipe For Argument List, filed by s/ Louis C. Schmitt, Jr., Esquire. 2CC. Fredric Joseph Ammerman Atty. Schmitt Motion to Strike Plaintiffs' Motion In Limine to Exclude Testimony of Fred K. Fredric Joseph Ammerman 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: 3/16/2009
Time: 02:33 PM
Page 3 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
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
	Answer to Motion to Strike Plaintiffs' Motion in Limine to Exclude Testimony Fredric Joseph Ammerman of Fred K. Khalouf, D.O. as a medical expert. filed by s/ David J. Hopkins, Esquire. 3CC Atty. Hopkins
11/14/2008	Order, this 13th day of Nov., 2008, it is ordered that Plaintiffs' Nunc Pro Tun Fredric Joseph Ammerman 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
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
12/4/2008	Details of Trial held Dec. 3-5, filed.
	Jury Verdict Slip, no damages sustained by the Plaintiffs as a result of the Dec. 29, 2003 accident. Signed, Foreperson.
12/15/2008	Motion For Post Trial Relief, filed by s/ David J. Hopkins, Esquire. 2CC Atty Fredric Joseph Ammerman Hopkins
12/16/2008	Order, this 16th day of Dec., 2008, upon consideration of the Motion for Pos Fredric Joseph Ammerman 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
12/22/2008	Objection to Plaintiffs' Motion For Post-Trial Relief, filed by s/ Louis C. Schmitt, Jr. , Esquire. No CC
12/23/2008	Order AND NOW, this 23rd day of December 2008, upon consideration of t Fredric Joseph Ammerman 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.
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 Atty: Hopkins, Schmitt
2/20/2009	Filing: Praeclipe for Entry of Judgment (On Verdict) Paid by: Schmitt, Louis Fredric Joseph Ammerman C. Jr. (attorney for Yarger, Brian) Receipt number: 1928126 Dated: 2/20/2009 Amount: \$20.00 (Check) For: Yarger, Brian (defendant) No CC

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 19TH DAY OF FEBRUARY, 2009.

Atorneys for Named Defendants

FILED Atty Schmitt
m/158/09 pd.20.00
S FEB 20 2009 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, : No. 2005 - 1541 - CD

Plaintiffs

vs.

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

Defendants : 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

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

O R D E R

NOW, this 13th 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 2CC
FEB 13 2009 Atty's Hopkins
Schmitt

5
William A. Shaw
Prothonotary/Clerk of Courts

(611)

#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

01/2/2009
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. : No. 2005 - 1541 - CD
CHIODO,

Plaintiffs

vs.

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

Defendants

JURY TRIAL DEMANDED

ORDER

AND NOW, this 23rd 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,

Judie Kennedy

105

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 Other

Special Instructions:

u
FILED

DEC 22 2008

111-301
William A. Shaw
Prothonotary/Clerk of Courts
no clc

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 RELIEF

: 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 19TH DAY OF DECEMBER, 2008.

Atorneys for Named Defendants

43

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

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

Plaintiffs

vs.

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

Defendants

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. Chiodo and Carolyn G. Chiodo, 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. : No. 2005 – 1541 – CD
CHIODO,

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 uncontested.

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 struck 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 Post-Trial Relief.

Respectfully submitted,

MCINTYRE, HARTYE & SCHMITT

Atorneys 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. : No. 2005 - 1541 - CD
CHIODO,

Plaintiffs

vs.

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

Defendants

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)

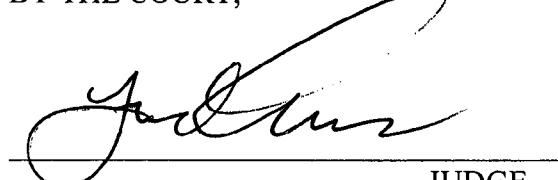
RODNEY J. CHIODO, :
and CAROLYN G. CHIODO, :
Plaintiffs :
vs. : No. 2005-1541 CD
BRIAN YARGER and :
RODGER L. KEPHART TRUCKING, INC. :
Defendants :
JPS

SCHEDULING ORDER

AND NOW, this 16th 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 12th 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 3CC
014-00671 Atty Hopkins
DEC 16 2008
S William A. Shaw
Prothonotary/Clerk of Courts
C 610

#38

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

RODNEY J. CHIODO,
and CAROLYN G. CHIODO,

Plaintiffs

vs.

No. 2005-1541 CD

BRIAN YARGER and
RODGER L. KEPHART TRUCKING, INC.

Defendants

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 2CC
01341671 Atty Hopkins
DEC 15 2008

S William A. Shaw
Prothonotary/Clerk of Courts

at 37

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

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

vs. No. 2005-1541 CD

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

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.

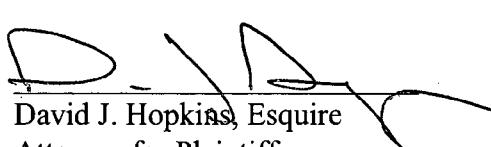
15. The jury's verdict is so contrary to the evidence as to shock one's sense of justice.

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. CHIODO,
and CAROLYN G. CHIODO,

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 Chiodo and Carolyn Chiodo, 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. CHIODO,
and CAROLYN G. CHIODO,
Plaintiffs

vs.

No. 2005-1541 CD

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

FILED

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S 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 S. Neasey
Foreperson

230

COURT COMMON PLEAS, CLEARFIELD 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

04/00/08
DEC 04 2008

(610)
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

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

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

ALT #2 Adam Carr TO ALT #1

PLAINTIFF'S WITNESSES:

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

PLAINTIFF'S ATTY: David J. Hopkins Esq

ADDRESS TO JURY: 1:30 pm

JUDGE'S ADDRESS TO JURY: 2:04 pm

VERDICT: DAMAGES = \$ 0

DEFENDANT'S WITNESSES:

1. DR. Fred Khalouf - video tape
2. _____
3. _____
4. _____
5. _____
6. _____

DEFENDANT'S ATTY: Louis C. Schmitt Jr Esq

ADDRESS TO JURY: 1:12 pm

JURY OUT: 2:35 pm JURY IN: 3:14 pm

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

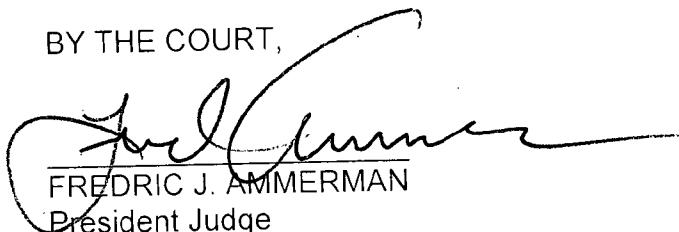
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NO. 05-1541-CD

ORDER

NOW, this 26th 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 Attns:
014:00 PM
DEC 01 2008 Hopkins
Schmitt

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

#34

FILED

DEC 01 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/10/08

____ 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 _____ Other _____

____ Special Instructions:

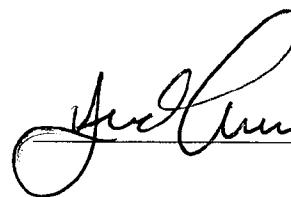
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

RODNEY J. CHIODO, :
and CAROLYN G. CHIODO, :
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 400
019-41-001 NOV 14 2008 Atty Hopkins
S

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. CHIODO,
and CAROLYN G. CHIODO,

Plaintiffs

vs.

No. 2005-1541 CD

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

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
01/10/09
NOV 12 2008
Amy Hopkins
GK

William A. Shaw
Prothonotary/Clerk of Courts

#32

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

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

ANSWER TO MOTION STRIKE PLAINTIFFS' MOTION IN LIMINE
TO EXCLUDE TESTIMONY OF
FRED K. KHALOUE, 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 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

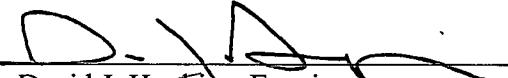
Motions in Limine to be filed was to allow the Court sufficient time to schedule and consider such motions with the thoughtfulness the motions deserve and so not to delay the jury trial or inconvenience the individual jurors. In the case at bar, the Motions for Limine were filed within a few days of 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. CHIODO, :
and CAROLYN G. CHIODO, :
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' 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. CHIODO,
and CAROLYN G. CHIODO,

Plaintiffs

vs.

No. 2005-1541 CD

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

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

S, FILED 3cc
09:40 5/21 2008
NOV 12 2008
William A. Shaw
Prothonotary/Clerk of Courts

(A31)

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

RODNEY J. CHIODO,
and CAROLYN G. CHIODO,

Plaintiffs

vs.

No. 2005-1541 CD

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

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

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 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 Chiodo 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. CHIODO,
and CAROLYN G. CHIODO,
Plaintiffs

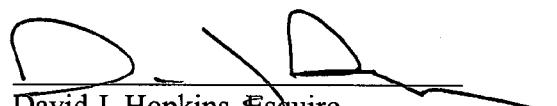
vs. No. 2005-1541 CD

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

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Atty Schmitt

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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. : No. 2005 - 1541 - CD
CHIODO,

Plaintiffs

vs.

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

Defendants

JURY TRIAL DEMANDED

ORDER

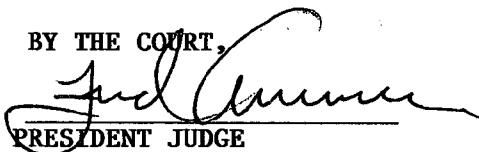
AND NOW, this 6th day of November, 2008, upon
consideration of the Motion to Strike Plaintiffs' Motion In Limine to Exclude Testimony of
Fred K. Khalouf, D.O. as a Medical Expert filed on behalf of defendants, Brian Yarger
and Rodger L. Kephart Trucking, Inc., and any response thereto, it is hereby ORDERED
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
12th 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,


President Judge

30

FILED

NOV 06 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/06/08

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 _____ Other _____

Special Instructions:

11/06/08

11/06/08

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

RODNEY J. CHIODO and CAROLYN G.
CHIODO,

Plaintiffs

: No. 2005 - 1541 - CD

ISSUE:

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

VS.

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

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 31ST DAY OF OCTOBER, 2008.

Atorneys for Named Defendants

FILED NOCC
M 12:52PM
NOV 03 2008 GIO
S

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. : No. 2005 - 1541 - CD
CHIODO,

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. CHIODO and CAROLYN G. : No. 2005 - 1541 - CD
CHIODO,

Plaintiffs

vs.

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

Defendants

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. CHIODO and CAROLYN G. : No. 2005 - 1541 - CD
CHIODO,

Plaintiffs

vs.

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

Defendants

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. : No. 2005 - 1541 - CD
CHIODO,

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.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

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

VIDEOTAPE
DEPOSITION OF: FRED K. KHALOUF, D.O., F.A.C.P.M.
TAKEN BY: DEFENDANTS
BEFORE: LISA L. RIVERA, RPR
NOTARY PUBLIC
SAMANTHA CAREY, VIDEOGRAPHER
DATE: OCTOBER 3, 2008; 3:53 P.M.
PLACE: HEALTHSOUTH REHABILITATION HOSPITAL
2005 VALLEY VIEW BOULEVARD
ALTOONA, PA 16602

APPEARANCES:

HOPKINS HELTZEL LLP
BY: DAVID J. HOPKINS, ESQUIRE
100 Meadow Lane, Suite 5
DuBois, PA 15801

FOR - PLAINTIFFS

MCINTYRE, HARTYE & SCHMITT
BY: LOUIS C. SCHMITT, JR., ESQUIRE
P.O. Box 533
Hollidaysburg, PA 16648

FOR - DEFENDANTS

COPY

EXHIBIT

tabbed

"A"

1	<u>I N D E X</u>	2
2		
3	<u>BY DEFENDANTS</u>	<u>EXAMINATION</u>
4	FRED K. KHALOUF, D.O. on qualifications By MR. SCHMITT By MR. HOPKINS	3 7
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6	FRED K. KHALOUF, D.O. By MR. SCHMITT By MR. HOPKINS	10 28
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11	<u>E X H I B I T S</u>	
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13	<u>EXHIBITS</u>	<u>MARKED</u>
14	No. 1 - CURRICULUM VITAE No. 2 - 9/3/08 REPORT	7 11
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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 Q. Doctor, would you please introduce yourself to
8 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.

9

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. Chioldo 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
LISA L. RIVERA, Notary Public
Bellefonte, Centre County, PA
My Commission Expires March 24, 2011

23
24 
25 LISA L. RIVERA, RPR
Notary Public

My commission expires
on March 24, 2011

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BIRTHDATE: September 18, 1954
 BIRTHPLACE: Altoona, PA
 CITIZENSHIP: U.S.A.

EDUCATION AND TRAININGUNDERGRADUATE:

1976 Saint Francis College
 Loretto, PA B.S.
 Biology

GRADUATE:

1981 Philadelphia College of
 Osteopathic Medicine
 Philadelphia, PA D.O.

POSTGRADUATE:

1982-1984 Hospital of the University
 of Pennsylvania
 Philadelphia, PA Residency

1981-1982 Allegheny General Hospital
 Pittsburgh, PA Internship
 Internal Medicine

APPOINTMENTS AND POSITIONSACADEMIC:

1988-1998 University of Pittsburgh
 School of Medicine
 Pittsburgh, PA Clinical Associate Professor
 of Anesthesiology

1986-1988 University of Pittsburgh
 School of Medicine
 Pittsburgh, PA Assistant Professor
 of Anesthesiology

1

EXHIBIT

JF / 10-3-08
 LSR

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 Inc. 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 Grand 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 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

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 My 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, Millidaysburg, 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 Butophanol 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

Dermatomal Somatosensory Evoked Potential Monitoring of Spinal Anesthesia

Rev 3/04

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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 1013960177

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

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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 paraspineus 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 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

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full and equal throughout. He did not complain of any midthoracic 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 inward 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, parascapular 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 midthoracic 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

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from two months prior.

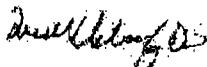
I also had the privilege of reading a record from July 12, 2003 from the Dubois regional medical Center emergency room where the patient presented to the emergency room with left neck and shoulder pain. This was the same exact pattern that was described during the previous eight years, if not more, and 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. CHIODO and CAROLYN G.
CHIODO,

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 31ST DAY OF OCTOBER, 2008.

Atorneys for Named Defendants

FILED ^{No} _{cc}
Nov 03 2008 ^{5:20 PM} ₆₁₀

William A. Shaw
Prothonotary/Clerk of Courts

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

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

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 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. : No. 2005 – 1541 – CD
CHIODO,

Plaintiffs

vs.

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

Defendants

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.

Wm. A. Kephart
Prothonotary/
Clerk of Courts

ORDER

NOW, this 12th 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

EXHIBIT

"A"

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. : No. 2005 - 1541 - CD
CHIODO,

Plaintiffs

vs.

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

Defendants

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 *acc*
m/12/52824 Atty Schmitt
NOV 03 2008 *(GW)*

William A. Shaw
Prothonotary/Clerk of Courts

#27

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

RODNEY J. CHIODO,
and CAROLYN G. CHIODO,

Plaintiffs

vs.

No. 2005-1541 CD

BRIAN YARGER and
RODGER L. KEPHART TRUCKING, INC.

Defendants

FILED

01/02/09

OCT 31 2008

William A. Shaw
Prothonotary/Clerk of Courts

cc: Atty Hopkins

SCHEDULING ORDER

AND NOW, this 29th 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:

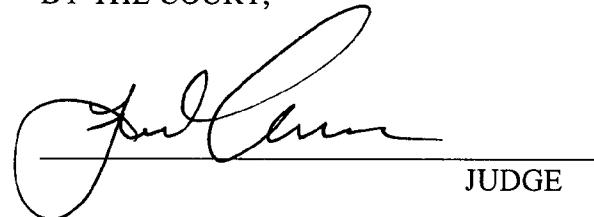
1. A Rule is issued upon Respondent to show cause why the moving party is not entitled to the relief requested.
2. The Respondent shall file an Answer to the Motion within ____ days of this date;
3. The Motion shall be decided under Pa.R.C.P. §206.7;
4. Depositions and all other discovery shall be completed 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 12th 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 "John C. Cawley". The signature is fluid and cursive, with a horizontal line drawn underneath it.

JUDGE

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

RODNEY J. CHIODO,
and CAROLYN G. CHIODO,
Plaintiffs
vs.
No. 2005-1541 CD

BRIAN YARGER and
RODGER L. KEPHART TRUCKING, INC.
Defendants
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 *10/15/2008* *Atty Hopkins*
Oct 28 2008
S *William A. Shaw* *6K*
Prothonotary/Clerk of Courts
at 25

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

RODNEY J. CHIODO, :
and CAROLYN G. CHIODO, :
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,



David J. Hopkins, Esquire
Attorney for Plaintiffs

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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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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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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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. CHIODO, :
and CAROLYN G. CHIODO, :
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 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

SEP 15 2008
M 11:50 AM
William A. Shaw
Prothonotary/Clerk of Courts
W-4/C 60

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 11TH DAY OF September, 2008.

Attnorneys for Named Defendants

424

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

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

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 **3rd 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

FD ED

M 10:43 a.m. OK

JUN 19 2008

NO CC

William A. Shaw
Prothonotary/Clerk of Courts

(6K)

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 18TH DAY OF JUNE, 2008.

Atorneys for Named Defendants

623

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

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

Plaintiffs

vs.

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

Defendant

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 18TH 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

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

0/3/08 (60)
JUN 12 2008

CENTER ATTY

William A. Shaw
Prothonotary/Clerk of Courts
HORNIGS 5CMM

ORDER

NOW, this 12th day of June, 2008, following pre-trial conference with counsel for

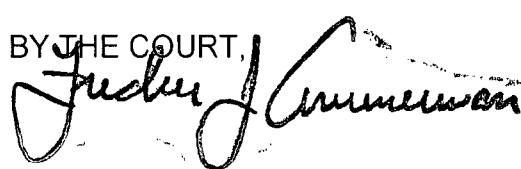
the parties as set forth above, it is the ORDER of this Court as follows:

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,

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

JUN 12 2008

FILED

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

RODNEY J. CHIODO and CAROLYN G. CHIODO,
Plaintiffs
vs.

*
*
* NO. 05-1541-CD
*
*
*

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

*

ORDER

AND NOW, this 4th day of April, 2008, it is the ORDER of this Court that Pre-trial conference in the above matter shall be held on the 12th 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

FILED 2CC
04/08/2008 AMYS.
APR 04 2008 Hopkins
Schmitt

William A. Shaw
Prothonotary/Clerk of Courts
(62)

(62)

FILED

APR 04 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/4/08

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:

118
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: Praeclipe 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 2nd DAY OF APRIL, 2007

Attnorneys for Named Defendants

'FILED 1CC
APR 12 2008 Amy Schmitt
APR 03 2008
(620)

William A. Shaw
Prothonotary/Clerk of Courts

520

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

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

Plaintiffs

vs.

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

Defendants

JURY TRIAL DEMANDED

TO THE PROTHONOTARY:

Arbitration Limits: _____
Type of Trial Requested: 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.

(Signature)

Date: April 2, 2008

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. CHIODO and CAROLYN G.
CHIODO,

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 17TH DAY OF JANUARY, 2007.

Louis C. Schmitt Jr./mas
Atorneys for Named Defendants

4
FILED
M 11:54 AM NO
JAN 22 2007
2007
S

William A. Shaw
Prothonotary/Clerk of Courts

179

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 **7th 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**

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 6TH DAY OF DECEMBER, 2006.

Attorneys for Named Defendants

4
FILED NO
m 11 2008 cc
DEC 08 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,	:	No. 2005 – 1541 – CD
Plaintiffs	:	
vs.	:	
BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC.,	:	
Defendants	:	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 **19th 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

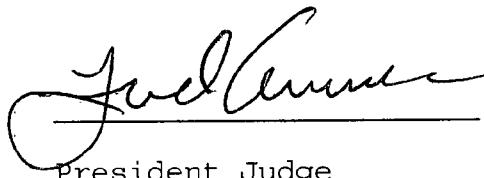
RODNEY J. CHIODO and :
CAROLYN G. CHIODO :
VS. : NO. 05-1541-CD
BRIAN YARGER and RODGER L. :
KEPHART TRUCKING, INC. :

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 ICC Atty's:
0133761 Hopkins
OCT 13 2006 Schmitt

William A. Shaw
Prothonotary/Clerk of Courts
CR

#17

DATE: 10/13/06

 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

OCT 13 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, : No. 2005 - 1541 - CD

Plaintiffs

vs.

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

Defendant

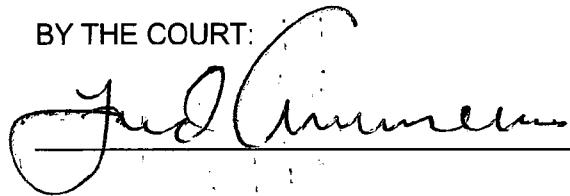
JURY TRIAL DEMANDED

RULE RETURNABLE

AND NOW, this 11th 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 13th day of October, 2006, at 2:30 ~~—~~/p.m. in Courtroom No. 1.

BY THE COURT:



FILED
0144764 1CC
SEP 12 2006 Amy Schmitt

William A. Shaw
Prothonotary/Clerk of Courts



DATE: September

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
SEP 12 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. : No. 2005 - 1541 - CD
CHIODO,

Plaintiffs

vs.

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

Defendant

JURY TRIAL DEMANDED

PROPOSED ORDER

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:

1. File a full, complete, and responsive written answer to defendants'
Supplemental Request for Production of Documents; and
2. Produce all documents sought by way of defendants' Supplemental
Request for Production of Documents.

BY THE COURT:

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

RODNEY J. CHIODO and CAROLYN G.
CHIODO,

Plaintiffs

No. 2005 - 1541 - CD

ISSUE:

Defendants' Second Motion to
Compel

vs.

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

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 6th DAY OF SEPTEMBER, 2006.

Attnys for Named Defendants

FILED 1cc
M 11:18 AM SEP 08 2006 Atty Schmitt
#16

William A. Shaw
Prothonotary/Clerk of Courts

#16

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

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

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:

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

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

Plaintiffs

vs.

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

Defendant

JURY TRIAL DEMANDED

PROPOSED ORDER

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:

1. File a full, complete, and responsive written answer to defendants' Supplemental Request for Production of Documents; and
2. Produce all documents sought by way of defendants' Supplemental Request for Production of Documents.

BY THE COURT:

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

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

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

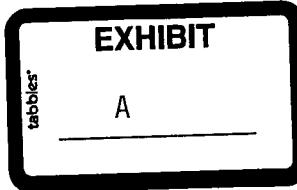
RODNEY J. CHIODO and CAROLYN G. CHIODO,	:	No. 2005 - 1541 - CD
Plaintiffs	:	
vs.	:	
BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC.,	:	
Defendant	:	JURY TRIAL DEMANDED

**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

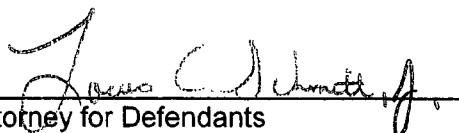
1. All medical records/medical reports of Robert J. Mollica, P.T. relating to husband-plaintiff Rodney J. Chiodo prior to and subsequent to the December 29, 2003 motor vehicle accident.

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, : No. 2005 - 1541 - CD
Plaintiffs :
VS. :
BRIAN YARGER and RODGER L. KEPHART TRUCKING, INC., :
Defendants :
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 21ST DAY OF JULY, 2006.

Atorneys for Named Defendants

FILED
M. Shaw
JUL 25 2006
15

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. : No. 2005 – 1541 – CD
CHIODO,

Plaintiffs

vs.

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

Defendant

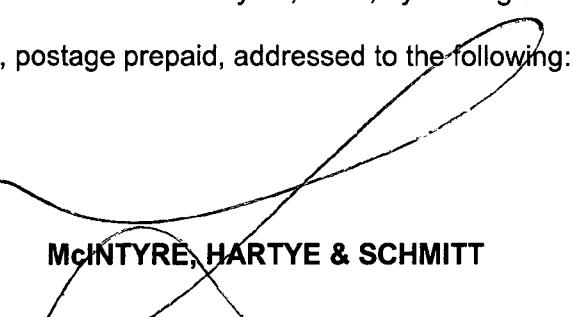
JURY TRIAL DEMANDED

**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 21ST 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 14th DAY OF MARCH, 2006.

Atorneys for Named Defendants

FILED

MAR 15 2006

W/2:15L
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. : No. 2005 - 1541 - CD
CHIODO, :
Plaintiffs :
vs. :
BRIAN YARGER and :
RODGER L. KEPHART TRUCKING, INC., :
Defendant : 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

William A. Shaw
Prothonotary/Clerk of Courts

MAR 15 2006

FILED

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

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
m12:59pm
MAR 09 2006
WM

William A. Shaw
Prothonotary/Clerk of Courts

#13

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

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

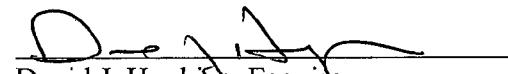
ANSWER TO MOTION TO COMPEL

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

(814) 696-3581

FAX (814) 696-9399

www.mhslawoffice.com

JOHN L. MCINTYRE
FRANK J. HARTYE
LOUIS C. SCHMITT, JR.
HEATHER A. HARRINGTON
MICHAEL A. SOSNOWSKI

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. CHIODO, :
and CAROLYN G. CHIODO, :
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' Answer to Defendants' Motion to Compel, filed on behalf of Rodney Chiodo and Carolyn Chiodo, 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

: No. 2005 - 1541 - CD

ISSUE:

NOTICE OF SERVICE OF ANSWERS
TO PLAINTIFFS' INTERROGATORIES
DIRECTED TO DEFENDANTS

vs.

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

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 24th DAY OF February, 2006.

Attnorneys for Named Defendants

FILED
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. : No. 2005 - 1541 - CD
CHIODO,

Plaintiffs

vs.

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

Defendant

JURY TRIAL DEMANDED

**NOTICE OF SERVICE OF ANSWERS TO PLAINTIFFS' INTERROGATORIES
DIRECTED TO DEFENDANTS**

TO: PROTHONOTARY

You are hereby notified that on the 24TH 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

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 16TH DAY OF FEBRUARY, 2006.


Attorneys for Named Defendants

FILED 

FEB 17 2006

1:55 PM
William A. Shaw
Prothonotary/Clerk of Courts

No C/C

#11

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

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

Plaintiffs

vs.

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

Defendant

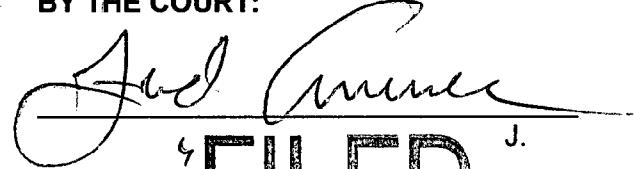
JURY TRIAL DEMANDED

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:



J.

FILED

0/62.25cm
FEB 22 2006

CM

CC to Atty Schmitt

William A. Shaw
Prothonotary

#11

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

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

Plaintiffs

vs.

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

Defendant

: 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 irreremediably 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

JAN 3 1 2003

HOPKINS HELTZEL LLP

900 Beaver Drive • DuBois, PA 15801

David J. HopkinsLicensed 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.

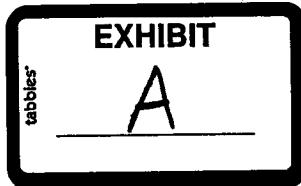
Imagine my surprise when I then received Interrogatories and Request for Production of Documents prior to the filing of an Answer. I scratched my head and wondered whether the person who had propounded the discovery was the same person to whom I had recently granted an extension to file an Answer.

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

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

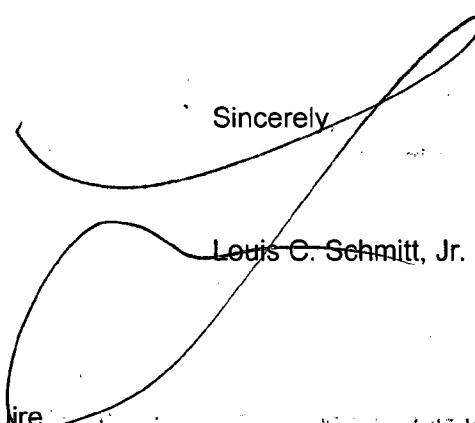
Re: Rodney J. Chiodo and Carolyn G. Chiodo vs. Brian Yarger
and Rodger L. Kephart Trucking, Inc.
No. 2005 - 1541 CD (Clearfield Co.)

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)

Keep a copy of this document for your records. Please attach the original to the document in the space below.

CCP: JH/MS/2006-02

RECEIVED
FEB 16 2006
HOLLIDAYSBURG, PA
U.S. POSTAL SERVICE
U.S. MAIL



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

6/8/45/c
William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

So Answers,

____ Day of _____ 2006

*Chester A. Hawkins
by Marlyn Hahn*
Chester A. Hawkins
Sheriff

#10

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 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 NOCC
M 11:39 AM
FEB 06 2006
WPA
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. : No. 2005 - 1541 - CD
CHIODO,

Plaintiffs

vs.

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

Defendant

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
Rodger 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. CHIODO,
and CAROLYN G. CHIODO,
Plaintiffs

vs.

No. 2005-1541 CD

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

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 24th 2006

FILED

JAN 25 2006
m/1-30(60)
William A. Shaw
Prothonotary/Clerk of Courts
No. 9C

108

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

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

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

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

RODNEY J. CHIODO, :
and CAROLYN G. CHIODO, :
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' Answer to New Matter, filed on behalf of Rodney Chiodo and Carolyn Chiodo, was forwarded by first class mail, postage prepaid, on the 24th day of January, 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 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 18TH DAY OF JANUARY, 2006.

Atorneys for Named Defendants

FILED NO
M 11:39 AM
JAN 19 2006
cc

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. : No. 2005 – 1541 – CD
CHIODO,

Plaintiffs

vs.

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

Defendant

: 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 corporate 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 Yarger 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 Yarger 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

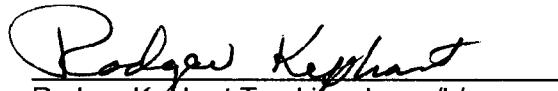
You are hereby notified to file a written response to the enclosed **NEW MATTER** within twenty (20) days from service hereof or a judgment may be entered against you.

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.

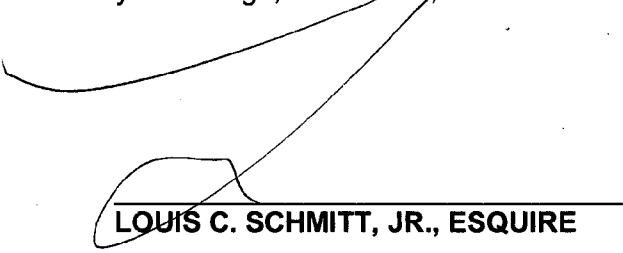


Rodger Kephart Trucking, Inc. a/k/a
Roger Kephart Trucking, Inc.

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

FILED

JAN 19 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:

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 10TH DAY OF JANUARY, 2006.

Atorneys for Named Defendants

FILED NO CC
M 11:30 AM
JAN 11 2006
R

William A. Shaw
Prothonotary/Clerk of Courts

#16

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

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

Plaintiffs

vs.

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

Defendant

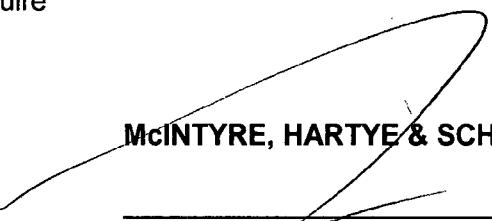
JURY TRIAL DEMANDED

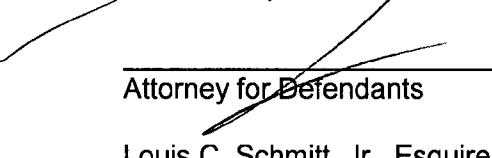
**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS - DATED: 1/10/06**

TO: PROTHONOTARY

You are hereby notified that on the 10TH 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. CHIODO,
and CAROLYN G. CHIODO,

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

8/2/05

William A. Shaw

⑥

Prothonotary/Clerk of Courts

2 CENT TO FILE

#5

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

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

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. CHIODO, :
and CAROLYN G. CHIODO, :
Plaintiffs :
vs. : No. 2005-1541 CD
BRIAN YARGER and :
RODGER L. KEPHART TRUCKING, INC. :
Defendants :

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.

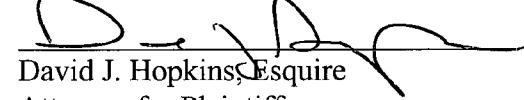
20. By reason of her husband's injuries, Plaintiff, Carolyn G. Chiodo, has been, and probably will in the future be, deprived of the assistance, society, and consortium of her husband, all of which has been, and probably will in the future be, to her great financial damage and loss.

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.

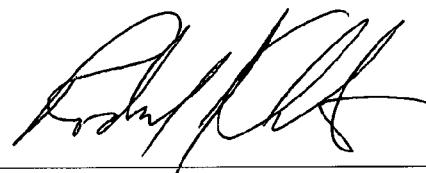
Respectfully submitted,



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.



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

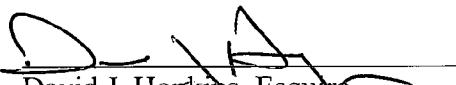
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

RODNEY J. CHIODO, :
and CAROLYN G. CHIODO, :
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 2nd 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,

No. 2005 - 1541 - CD

ISSUE:
CERTIFICATE OF SERVICE OF
RULE TO FILE COMPLAINT

Plaintiffs

vs.

RODGER L. KEPHART TRUCKING, INC.,

Defendant

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 14TH DAY OF NOVEMBER, 2005.

Atorneys for Named Defendant

FILED NOC
11:44 AM
NOV 16 2005

William A. Shaw
Prothonotary/Clerk of Courts

84

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

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

Plaintiffs

vs.

RODGER L. KEPHART TRUCKING, INC.,

Defendant

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE OF RULE TO FILE COMPLAINT

TO: PROTHONOTARY

You are hereby notified that on the 14th 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

Atorneys 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

FILED

NOV 16 2005

William A. Shaw
Prothonotary/Clerk of Courts

CLERK OF COURT FOR THE STATE OF PENNSYLVANIA

100 MARKET ST. PHILADELPHIA, PA 19106

724-233-1100 FAX 724-233-1101

CLERK OF COURT FOR THE STATE OF PENNSYLVANIA
100 MARKET ST. PHILADELPHIA, PA 19106
724-233-1100 FAX 724-233-1101

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

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

No. 2005 - 1541 - CD

ISSUE:

**PRAECLPICE FOR RULE TO FILE
COMPLAINT**

Plaintiffs

vs.

Filed on behalf of Defendant

RODGER L. KEPHART TRUCKING, INC.,

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

Defendant

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 9TH DAY OF NOVEMBER, 2005.

~~Attorneys for Named Defendant~~

5 **FILED** NO cc
m 13 09 AM 1 Rule to
NOV 10 2005 Atty Schmitt
William A. Shan
Prothonotary/Clerk of Courts

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

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

Plaintiffs

vs.

RODGER L. KEPHART TRUCKING, INC.,

Defendant

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

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. : No. 2005 - 1541 - CD
CHIODO,

Plaintiffs

vs.

RODGER L. KEPHART TRUCKING, INC.,

Defendant

JURY TRIAL DEMANDED

RULE TO FILE COMPLAINT

AND NOW, this 10th 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,

No. 2005 - 1541 - CD

ISSUE:
PRAECIPE FOR APPEARANCE

Plaintiffs

vs.

RODGER L. KEPHART TRUCKING, INC.,

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 9TH DAY OF NOVEMBER, 2005.

Atorneys for Named Defendant

FILED NO cc
m130930
NOV 10 2005
2

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. : No. 2005 - 1541 - CD
CHIODO,

Plaintiffs

vs.

RODGER L. KEPHART TRUCKING, INC.,

Defendant

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

RECEIVED, WISCONSIN STATE ATTORNEY'S OFFICE, MILWAUKEE, NOVEMBER 10, 2005
10:10 AM

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. : No. 05-1541-CD
RODGER L. KEPHART TRUCKING, INC. :
Defendant :
:

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, cc wnto
01/10/2006 Shff
OCT 06 2005
William A. Shaw
Atty pd.
Prothonotary/Clerk of Courts
85.00

#1

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

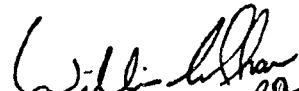
RODNEY J. CHIODO, :
and CAROLYN G. CHIODO :
Plaintiffs :
vs. : No. 05-1541-CD
RODGER L. KEPHART TRUCKING, INC. :
Defendant :
:

WRIT OF SUMMONS

TO: RODGER L. KEPHART TRUCKING, INC.
R.R. #1, Box 298
Houtzdale, PA 16651

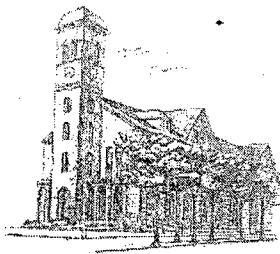
You are hereby notified that RODNEY J. CHIODO has commenced an action against
you.

Date: 10/16/05



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

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
01/10/08
JUN 19 2009

WAS
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
William A. Shaw, Prothonotary

Record, Etc. Received:

Date: 6/22/09

L. Mation
(Signature & Title)

FILED
M 10:34 AM
JUN 24 2009
15
William A. Shaw
Prothonotary/Clerk of Courts



Superior Court of Pennsylvania

Karen Reid Bramblett, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

Western District

FILED

APR 07 2010

5
m 12.15 L
William A. Shaw
Prothonotary/Clerk of Courts
com to SJC

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 2005-1541CD

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
Deputy Prothonotary

/bml

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. CHIODO and : IN THE SUPERIOR COURT OF
CAROLYN G. CHIODO, : PENNSYLVANIA

Appellants

v.

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

FILED

APR 07 2010

4112-301
William A. Shaw
Prothonotary/Clerk of Courts
cc

Appellees

No. 444 WDA 2009

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.¹ We affirm.

The background underlying this matter can be summarized in the following manner.

¹ 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 27-28.² **See id.** at 41

² 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 29th, 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.³

Judgment affirmed.

FILED
APR 07 2010

William A. Shaw
Prothonotary/Clerk of Courts

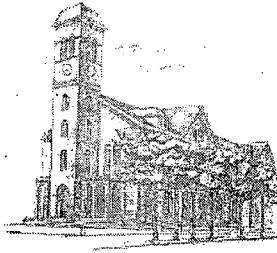
Judgment Entered:

Eleanor R. Valecko

Deputy Prothonotary

DATE: March 1, 2010

³ 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

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

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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

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: Praeclipe for Writ of Summons Paid by: Hopkins, David J. (attorney for Chiodo, Rodney J.) Receipt number: 1909683 Dated: 10/06/2005 No Judge
	Amount: \$85.00 (Check) 1CC & Writ to Shff
11/10/2005	Praeclipe 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
	Praeclipe 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 Document 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	Praeclipe 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	Praeclipe 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 Fredric Joseph Ammerman 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

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:01 AM

ROA Report

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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 Atty: Hopkins, Schmitt
12/8/2006	Notice of Deposition, filed by s/ Louis C. Schmitt Esq. No CC.
1/22/2007	Notice of Rescheduled Deposition, filed by s/ Louis C. Schmitt Jr Esq. (In Re: Rodney J. Chiodo) No CC.
4/3/2008	Certificate of Readiness for Jury Trial, filed by s/ Louis C. Schmitt, Jr., Esquire. 1CC Atty. Schmitt
4/4/2008	Order, this 4th day of April, 2008, Pre Trial conference shall be held on the 12th day of June, 2008, in Chamers. Jury selection will be held on July 24th, 2008 in Courtroom #1. 2 Cert. to Atty: Hopkins and Schmitt
5/12/2008	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 or 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 Atty: Hopkins, Schmitt
5/19/2008	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
5/15/2008	Notice of Videotape Trial Deposition, filed by s/ Louis C. Schmitt, Jr., Esquire. no CC
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
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
11/3/2008	Praecipe For Argument List, filed by s/ Louis C. Schmitt, Jr., Esquire. 2CC Atty. Schmitt 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 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
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

Date: 6/19/2009

Time: 09:01 AM

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Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

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 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 Fredric Joseph Ammerman 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. 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 Fredric Joseph Ammerman Hopkins	Fredric Joseph Ammerman
12/16/2008	Order, this 16th day of Dec., 2008, upon consideration of the Motion for Pos Fredric Joseph Ammerman 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 Atty: Hopkins, Schmitt	Fredric Joseph Ammerman
2/20/2009	Filing: Praeclipe 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 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 Atty: Hopkins, Schmitt	Fredric Joseph Ammerman

Date: 6/19/2009

Time: 09:01 AM

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Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2005-01541-CD

Current Judge: Fredric Joseph Ammerman

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

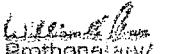
Civil Other

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,


William J. 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.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
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

Date: 6/18/2009

Time: 04:49 PM

Page 1 of 1

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

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 Atty: 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 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.	Fredric Joseph Ammerman
	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.	SJC
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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: Praecipe for Writ of Summons Paid by: Hopkins, David J. (attorney for Chiodo, Rodney J.) Receipt number: 1909683 Dated: 10/06/2005 No Judge Amount: \$85.00 (Check) 1CC & Writ to Shff
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 No Judge
②	Praecipe for Rule to File Complaint, filed by s/ Louis C. Scmitt Jr. Esq. No CC and 1 Rule to Atty Schmitt.
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.
③	Complaint, filed by s/ David J. Hopkins, Esquire. 2CC to Atty.
12/2/2005	No Judge
1/11/2006	Notice of Service of Interrogatories and Request for Production of Document. No Judge
④	Directed to Plaintiffs-Dated 1/10/06, filed by s/ Louis C. Schmitt Jr Esq. NO CC.
1/19/2006	Answer and New Matter filed by s/ Louis C. Schmitt Jr Esq. No CC.
1/25/2006	⑤ Answer To New Matter, filed by s/ David J. Hopkins, Esquire. No CC
2/6/2006	Praecipe to Substitute Verification to Answer and New Matter, filed by s/ Louis C. Schmitt Jr. Esq. No CC.
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
2/17/2006	⑥ Motion to Compel, filed by Atty. Schmitt no cert. copies.
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.
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.
3/9/2006	⑦ Answer to Motion to Compel, filed by s/ David J. Hopkins Esq. No CC
3/15/2006	Praecipe to Withdraw Motion to Compel, filed by Atty. Schmitt no cert. copies.
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.
9/8/2006	⑨ Defendants' Second Motion to Compel, filed by s/ Louis C. Schmitt, Jr., Esquire. 1CC Atty. Schmitt
9/12/2006	Rule Returnable: NOW, this 11th day of Sept., 2006, a rule is granted. Rule Fredric Joseph Ammerman 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.

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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	Fredric Joseph Ammerman
⑪ 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 Atty: Hopkins, Schmitt	
12/8/2006	Fredric Joseph Ammerman
⑫ Notice of Deposition, filed by s/ Louis C. Schmitt Esq. No CC. 3	
1/22/2007	Fredric Joseph Ammerman
⑬ Notice of Rescheduled Deposition, filed by s/ Louis C. Schmitt Jr Esq. (In Re: Rodney J. Chiodo) No CC. 3	
4/3/2008	Fredric Joseph Ammerman
⑭ Certificate of Readiness for Jury Trial, filed by s/ Louis C. Schmitt, Jr. Esquire. 1CC Atty. Schmitt	
4/4/2008	Fredric Joseph Ammerman
⑮ Order, this 4th day of April, 2008, Pre Trial conference shall be held on the 12th day of June, 2008, in Chamers. Jury selection will be held on July 24th, 2008 in Courtroom #1. 2 Cert. to Atty: Hopkins and Schmitt	
6/12/2008	Fredric Joseph Ammerman
⑯ Order, this 12th day of June, 2008, following pre-trial conference with couns Fredric Joseph Ammerman 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 Atty: Hopkins, Schmitt	2
6/19/2008	Fredric Joseph Ammerman
⑰ 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	2
9/15/2008	Fredric Joseph Ammerman
⑱ Notice of Videotape Trial Deposition, filed by s/ Louis C. Schmitt, Jr. Esquire. no CC	3
10/28/2008	Fredric Joseph Ammerman
⑲ 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	9
10/31/2008	Fredric Joseph Ammerman
⑳ 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	2
11/3/2008	Fredric Joseph Ammerman
㉑ Praeclipe For Argument List, filed by s/ Louis C. Schmitt, Jr., Esquire. 2CC Atty. Schmitt	1
㉒ 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. 1 No CC	1
㉓ 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. 82 Esquire. no CC	82
11/6/2008	Fredric Joseph Ammerman
㉔ 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	

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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	Fredric Joseph Ammerman ④
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	Fredric Joseph Ammerman ④
11/14/2008 ③3 Order, this 13th day of Nov., 2008, it is ordered that Plaintiffs' Nunc Pro Tun Fredric Joseph Ammerman 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. 1 by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC atty. Hopkins	Fredric Joseph Ammerman 1
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	Fredric Joseph Ammerman 1
12/4/2008 ③5 Details of Trial held Dec. 3-5, filed. ~ Members of the Jury 1 ③6 Jury Verdict Slip, no damages sustained by the Plaintiffs as a result of the Dec. 29, 2003 accident. Signed, Foreperson.	Fredric Joseph Ammerman Fredric Joseph Ammerman 1
12/15/2008 ③7 Motion For Post Trial Relief, filed by s/ David J. Hopkins, Esquire. 2CC Atty Hopkins	Fredric Joseph Ammerman ⑥
12/16/2008 ③8 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 1
12/22/2008 ③9 Objection to Plaintiffs' Motion For Post-Trial Relief, filed by s/ Louis C. Schmitt, Jr. , Esquire. No CC	Fredric Joseph Ammerman ⑨
12/23/2008 ④0 Order AND NOW, this 23rd day of December 2008, upon consideration of t1 Fredric Joseph Ammerman 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 1
2/13/2009 ④1 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 Atty: Hopkins, Schmitt	Fredric Joseph Ammerman 1
2/20/2009 ④2 Filing: Praeclipe 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 2
3/16/2009 ④3 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 8

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