

05-1813-CD
Daniel Hibbard vs Theodore Fitzler al

Daniel Hibbard vs Theodore Fitzler al
05-1813-CD

Current Judge: Fredric Joseph Ammerman

Daniel Hibbard vs. Theodore Fitzer, Laureen Fitzer, Joe's Tux Shop

Civil Other

Date	Judge
11/18/2005	New Case Filed.
	<input checked="" type="checkbox"/> Filing: Praeclipe for Writ of Summons Paid by: Mack, Jonathan B. (attorney for Hibbard, Daniel) Receipt number: 1911365 Dated: 11/18/2005 Amount: \$85.00 (Check) 1CC & 2 Writs to Shff.
1/5/2006	<input checked="" type="checkbox"/> Praeclipe For Entry of Appearance, filed. Kindly enter my appearance for the Defendants in the above captioned matter, filed by s/ Matthe B. Taladay Esq. No CC.
3/1/2006	<input checked="" type="checkbox"/> Sheriff Return, December 2, 2005 at 11:05 am served the within Summons on Theodore Fitzer i/t/d/b/a Joe's Tux Shop. December 2, 2005 at 11:05 am served the within Summons on Laureen Fitzer a/k/a Laurie Fitzer i/t/d/b/a Joe's Tux Shop. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Marcus \$62.43
5/15/2006	<input checked="" type="checkbox"/> Praeclipe to Enter Rule to File Complaint within 20 days after date of service issued. Rule Dated: filed by Atty Taladay. Rule to Atty.
5/30/2006	<input checked="" type="checkbox"/> Notice of Service, filed. This 26th day of May 2006, Defendant's First Set of Discovery Materials to Jonathan B. Mack Esq., filed by s/ Matthew B. Taladay Esq. No CC.
6/5/2006	<input checked="" type="checkbox"/> Complaint in Civil Action, filed by s/ Jonathan B. Mack, Esquire. 1CC to Atty
6/23/2006	<input checked="" type="checkbox"/> Answer and New Matter filed by s/ Matthew B. Taladay Esq. No CC.
7/6/2006	<input checked="" type="checkbox"/> Plaintiff's Reply to Defendants' New Matter, filed by s/ Jonathan B. Mack Esq. No CC.
	<input checked="" type="checkbox"/> Notice of Service, filed. That a true and correct copy of the foregoing Plaintiff's Set of Interrogatories and First request for Production of Documents directed to defendants were mailed on the 5th day of July 2006, to Matthew B. Taladay Esq., filed. No CC.
7/10/2006	<input checked="" type="checkbox"/> Notice of Service, filed. That a true and correct copy of the foregoing Plaintiff's First Set of Interrogatories and First Request for Production of Documents Directed to Defendants were mailed on the 7th day of July 2006 to Matthew B. Taladay Esq., filed. 1CC atty
7/27/2006	<input checked="" type="checkbox"/> Certificate of Service, filed. That on the 26th day of July 2006, an original Notice of Deposition, copy of which is attached hereto was sent to Jonathan B. Mack Esq., filed by s/ Matthew B. Taladay Esq. No CC.
8/1/2006	<input checked="" type="checkbox"/> Notice of Deposition of Defendant, Theodore Fitzer, filed by s/ Jonathan B. Mack Esq. 1CC Atty.
8/10/2006	<input checked="" type="checkbox"/> Notice of Service, served upon Jonathan B. Mack, Esquire Defendants' Answers to Plaintiff's First Set of Discovery Materials by US mail, first class, on the 9th day of August, 2006. filed by s/ Matthew B. Taladay, Esquire. No CC
4/19/2007	<input checked="" type="checkbox"/> Notice of Deposition of Sean D. Overholser, filed by s/ Jonathan B. Mack Esq. NO CC.
	<input checked="" type="checkbox"/> Notice of Deposition of Allison Lynn Donahue, filed by s/ Jonathan B. Mack Esq. No CC.
5/11/2007	<input checked="" type="checkbox"/> Certificate of Readiness for Jury Trial, filed by s/ Jonathan B. Mack, Esquire. 1CC Atty. Mack

Date: 1/9/2008
Time: 11:36 AM
Page 2 of 2

Clearfield County Court of Common Pleas
ROA Report
Case: 2005-01813-CD

User: LMILLER

Current Judge: Fredric Joseph Ammerman

Daniel Hibbard vs. Theodore Fitzer, Laureen Fitzer, Joe's Tux Shop

Civil Other

Date	Judge
7/27/2007	✓ Order, this 27th day of July, 2007, it is Ordered that a Pre-Trial Conference shall be held on the 24th day of august, 2007, in Chambers at 11:30 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Mack, Taladay
8/27/2007 as of 1-9-08	✓ Order, this 24th day of August, 2007, it is Ordered that the matter be continued. The Court Administrator shall list the case for jury trial in the Winter Term, 2008 of Court. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: J. Mack,.. Taladay
10/15/2007	✓ Order, this 12th day of Oct., 2007, it is Ordered that a pre-trial conference has been scheduled for Nov. 15, 2007 at 10:30 a.m. in Judges Chambers. Jury Selection will be held on Jan. 3, 2008. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Taladay, Mack
11/29/2007	✓ Order, this 15th day of Nov., 2007, it is Ordered: Jury Selection will be held on Jan. 3, 2008 at 10:00 a.m. in Courtroom 1. Jury Trial is scheduled for Jan. 30, 31 and Feb. 1, 2008 at 9:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Mack, Taladay
12/14/2007	✓ Notice of Video Tape Deposition of Dr. Glenn A. Buterbaugh, filed by s/ Bryan S. Neiderhiser, Esquire. No CC
12/20/2007	✓ Plaintiff's Motions In Limine, filed by s/ Bryan S. Neiderhiser, Esquire. 1CC Atty. Neiderhiser
12/24/2007	✓ Scheduling Order, NOW, this 21st day of Dec., 2007, it is Ordered that a hearing is scheduled on the Plaintiff's Motions in Limine on the 15th day of Jan, 2008, at 11:00 a.m. in Courtroom 1. By The court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Atty
1/3/2008	✓ Certificate of Service, filed. That a true and correct copy of the foregoing Scheduling Order was mailed, by first class mail on this 2nd day of January 2008 to Matthew B. Taladay Esq., filed by s/ Bryan S. Neiderhiser Esq. NO CC.

1-22-08 Order, dated 1-15-2008
1-23-08 Notice to Attend & Testify

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

DANIEL HIBBARD,
(Plaintiff)

332 Olive Avenue
(Street Address)
Dubois, PA 15801
(City, State ZIP)

CIVIL ACTION

No. 05-1813-CD

Type of Case: Civil Action

Type of Pleading: Praeclipe for Writ
of Summons

Filed on Behalf of:

VS.
THEODORE FITZER AND LAUREEN FITZER,
a/k/a LAURIE FITZER, i/t/d/b/a
(Defendant)

JOE'S TUX SHOP
412 South Main Street
(Street Address)

Dubois, PA 15801
(City, State ZIP)

Daniel Hibbard
(Plaintiff/Defendant) Daniel Hibbard

Jonathan B. Mack, Esquire
Marcus & Mack, P.C.
(Filed by)
57 South Sixth Street, P. O. Box 1107
Indiana, PA 15701

(Address)

(724) 349-5602
(Phone)

Jonathan B. Mack
(Signature)

FILED Atty pd.
m 11:32 AM 85.00
NOV 18 2005 LCF 2 Writs
to Shft
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No.

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

PRAECIPE FOR WRIT OF SUMMONS

Filed on behalf of Plaintiff

Jonathan B. Mack, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No.

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY OF SAID COURT:

Please issue a Writ of Summons in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____


Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #38970

November 16, 2005

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

 COPY

SUMMONS

Daniel Hibbard

Vs.

NO.: 2005-01813-CD

**Theodore Fitzer and Laureen Fitzer,
a/k/a Laurie Fitzer, i/t/d/b/a Joe's Tux Shop**

TO: THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE FITZER,
i/t/d/b/a JOE'S TUX SHOP

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 11/18/2005

William A. Shaw
Prothonotary

Issuing Attorney:

Jonathan B. Mack
57 South 6th Street
Indiana, PA 15701
(724) 349-5602

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,
Plaintiff
-vs-
THEODORE FITZER and
LAUREEN FITZER, a/k/a
LAURIE FITZER, i/t/d/b/a
JOE'S TUX SHOP,
Defendants

Type of Case: Civil Action

No. 2005-1813-CD

Type of Pleading:

Praecipe for
Entry of Appearance

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

Dated: January 4, 2006

FILED NO CC
M 11:19 AM
JAN 05 2006 JS

William A. Shaw
Prothonotary/Clerk of Courts

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

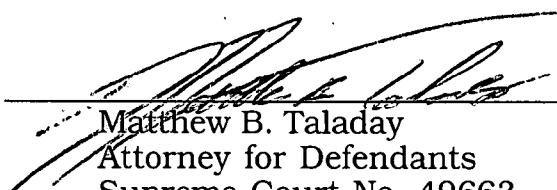
DANIEL HIBBARD, :
Plaintiff :
:
-vs- :
No. 2005-1813-CD
THEODORE FITZER and :
LAUREEN FITZER, a/k/a :
LAURIE FITZER, i/t/d/b/a :
JOE'S TUX SHOP, :
Defendants :
:

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance for the Defendants in the
above captioned matter.

Dated: January 4, 2006


Matthew B. Taladay
Attorney for Defendants
Supreme Court No. 49663
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801
(814) 371-7768

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

DANIEL HIBBARD,

Plaintiff

-vs-

No. 2005-1813-CD

THEODORE FITZER and

LAUREEN FITZER, a/k/a

LAURIE FITZER, i/t/d/b/a

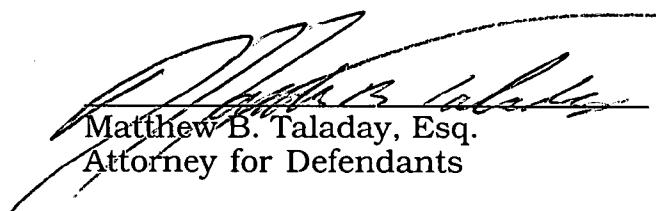
JOE'S TUX SHOP,

Defendants

CERTIFICATE OF SERVICE

I certify that on the 4th day of January, 2006, a true and correct copy of the foregoing Praeclipe for Entry of Appearance was sent via first class mail, postage prepaid, to the following:

Jonathan B. Mack, Esq.
Attorney for Plaintiff
Marcus & Mack, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701


Matthew B. Taladay, Esq.
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101022
NO: 05-1813-CD
SERVICE # 1 OF 2
SUMMONS

PLAINTIFF: DANIEL HIBBARD

vs.

DEFENDANT: THEODORE FITZER and LAUREEN FITZER, a/k/a
LAURIE FITZER i t/d/b/a JOE'S TUX SHOP

SHERIFF RETURN

NOW, December 02, 2005 AT 11:05 AM SERVED THE WITHIN SUMMONS ON THEODORE FITZER i/t/d/b/a JOE'S TUX SHOP DEFENDANT AT 412 SOUTH MAIN ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO THEODORE FITZER, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

FILED
01/14/06
MAR 01 2006
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101022
NO: 05-1813-CD
SERVICE # 2 OF 2
SUMMONS

PLAINTIFF: DANIEL HIBBARD

vs.

DEFENDANT: THEODORE FITZER and LAUREEN FITZER, a/k/a
LAURIE FITZER i/t/d/b/a JOE'S TUX SHOP

SHERIFF RETURN

NOW, December 02, 2005 AT 11:05 AM SERVED THE WITHIN SUMMONS ON LAUREEN FITZER aka LAURIE FITZER i/t/d/b/a JOE'S TUX SHOP DEFENDANT AT 412 SOUTH MAIN ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO THEODORE FITZER, HUSBAND A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101022
NO: 05-1813-CD
SERVICES 2
SUMMONS

PLAINTIFF: DANIEL HIBBARD

vs.

DEFENDANT: THEODORE FITZER and LAUREEN FITZER, a/k/a
LAURIE FITZER i t/d/b/a JOE'S TUX SHOP

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	MARCUS	35527	20.00
SHERIFF HAWKINS	MARCUS	35527	42.43

Sworn to Before Me This

So Answers,

____ Day of _____ 2006


Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD, : Type of Case: Civil Action
Plaintiff :
: No. 2005-1813-CD
-vs- :
: Type of Pleading:
THEODORE FITZER and :
LAUREEN FITZER, a/k/a : Praecepice for
LAURIE FITZER, i/t/d/b/a : Rule to File Complaint
JOE'S TUX SHOP, :
Defendants : Filed on Behalf of:
: Defendants
: Counsel of Record for This
: Party:
: Matthew B. Taladay, Esq.
: Supreme Court No. 49663
: Hanak, Guido and Taladay
: 498 Jeffers Street
: P.O. Box 487
: DuBois, PA 15801
: (814) 371-7768

Dated: May 12, 2006

FILED

MAY 15 2006
11/8:30 PM
William A. Shaw
Prothonotary/Clerk of Courts

NO C/C

RULE TO ATTY.

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

DANIEL HIBBARD,	:	
Plaintiff	:	
:		
-vs-	:	No. 2005-1813-CD
THEODORE FITZER and	:	
LAUREEN FITZER, a/k/a	:	
LAURIE FITZER, i/t/d/b/a	:	
JOE'S TUX SHOP,	:	
Defendants	:	

PRAECIPE FOR RULE TO FILE COMPLAINT

TO THE PROTHONOTARY:

Please enter a rule upon Plaintiff to file a Complaint within twenty (20) days of service thereof or suffer the entry of a judgment of non pros.

Dated: May 12, 2006

Matthew B. Taladay
Matthew B. Taladay, Esq. (2)
Attorney for Defendants
Supreme Court No. 49663
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801
(814) 371-7768

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

Daniel Hibbard

Vs.
Theodore Fitzer and
Laureen Fitzer, a/k/a Laurie,
i/t/d/b/a Joe's Tux Shop

Case No. 2005-01813-CD

RULE TO FILE COMPLAINT

TO: Daniel Hibbard

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: May 15, 2006

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,
Plaintiff

-vs-

THEODORE FITZER and
LAUREEN FITZER, a/k/a
LAURIE FITZER, i/t/d/b/a
JOE'S TUX SHOP,
Defendants

Type of Case: Civil Action

No. 2005-1813-CD

Type of Pleading:

Notice of
Service

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

Dated: May 26, 2006

FILED

MAY 30 2006

8:30 AM
William A. Shaw
Prothonotary/Clerk of Courts
n o c/c

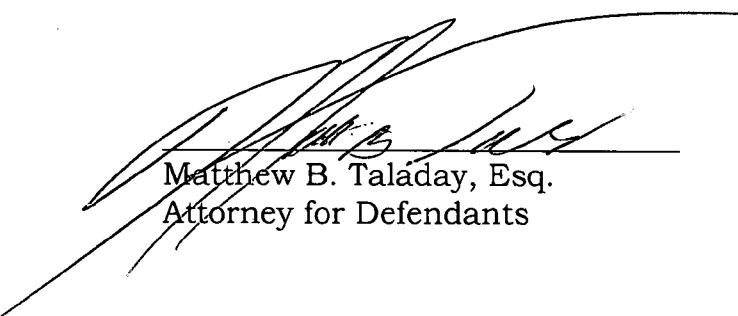
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

DANIEL HIBBARD, :
Plaintiff :
:
-vs- :
No. 2005-1813-CD
THEODORE FITZER and :
LAUREEN FITZER, a/k/a :
LAURIE FITZER, i/t/d/b/a :
JOE'S TUX SHOP, :
Defendants :
:

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being
counsel of record for Defendants, do hereby certify that I propounded on
Plaintiff, via United States mail, first class, postage pre-paid, this 26th
day of May, 2006, Defendants' FIRST SET OF DISCOVERY MATERIALS
to the below indicated person, at said address, being counsel of record
for the Plaintiff:

Jonathan B. Mack, Esq.
Attorney for Plaintiff
Marcus & Mack, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701


Matthew B. Taladay, Esq.
Attorney for Defendants

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

**COMPLAINT IN CIVIL ACTION
JURY TRIAL DEMANDED**

Filed on behalf of Plaintiff

Jonathan B. Mack, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

FILED

JUN 05 2006

m 12:40 pm
William A. Shaw
Prothonotary/Clerk of Courts
1 CENT TO ATT² *(6K)*

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD, No. 2005-1813-CD
Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,
Defendants.

NOTICE TO DEFEND

TO: THEODORE FITZER and LAUREEN FITZER, a/k/a
LAURIE FITZER, i/t/d/b/a JOE'S TUX SHOP, 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 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.

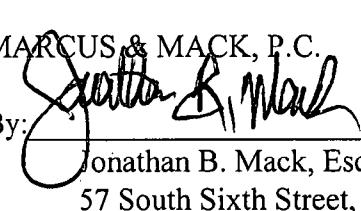
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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

David S. Meholic, Court Administrator
CLEARFIELD County Courthouse
230 E. Market Street
CLEARFIELD, PA 16830
(814) 765-2641 Ext. 5982

MARCUS & MACK, P.C.

By:


Jonathan B. Mack, Esquire
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD, No. 2005-1813-CD

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

COMPLAINT

AND NOW, comes the Plaintiff, Daniel Hibbard, by and through his attorneys, Jonathan B. Mack, Esquire, and Marcus & Mack, P.C., and files the following Complaint:

COUNT I - NEGLIGENCE

1. The Plaintiff is an adult individual who resides in Punxsutawney, Jefferson County, Pennsylvania.
2. The Defendants, Theodore Fitzer and Laureen Fitzer, a/k/a Laurie Fitzer, are adult individuals, i/t/d/b/a Joe's Tux Shop, with an address of 412 South Main Street, DuBois, Clearfield County, Pennsylvania.
3. On or about December 22, 2003, at approximately 6:30 p.m., Plaintiff was traveling eastbound on Maple Avenue, in DuBois, Clearfield County, Pennsylvania when he attempted to make a left turn onto Third Street. At the same time and place the Defendant, Theodore Fitzer,

was operating Defendants' vehicle westbound on Maple Avenue at its intersection with Third Street without the use of its headlights. As Plaintiff made his turn, he was unable to see Defendants' vehicle due to its failure to have its headlights on, which caused Defendants' vehicle to collide with Plaintiff's vehicle.

4. The aforesaid accident was caused by the negligence of the Defendant in general and in the following particulars:

- a. In operating his motor vehicle upon Maple Avenue at night without lights;
- b. In operating the vehicle at a high, dangerous and reckless speed under the circumstances;
- c. In operating the vehicle in a dangerous and reckless manner under the circumstances;
- d. In failing to have the vehicle under proper control;
- e. In continuing to operate the vehicle in a direction toward the Plaintiff's vehicle when the Defendant saw or in the exercise of reasonable care should have seen that further operation in that direction would result in a collision;
- f. In failing to pay proper attention and failing to maintain an appropriate lookout of the road and surrounding traffic conditions;
- g. In failing to sound a horn or give other warning of the approach of the vehicle;
- h. In failing to operate the brakes in such a manner so that the vehicle could be stopped in time to avoid the collision;

- i. In violating the various statutes and municipal ordinances pertaining to the operation of motor vehicles on public thoroughfares under the circumstances;
- j. In failing to stop before striking the Plaintiff's vehicle;
- k. In failing to maintain a reasonable lookout for the presence of other motor vehicles on the road;
- l. In failing to avoid hitting the Plaintiff's vehicle when the Defendant saw or should have seen that the Plaintiff's vehicle was on the road in full view of the Defendant;
- m. In failing to drive around the Plaintiff's vehicle instead of colliding with it;
- n. In failing to take proper note of, and precautions for, the configuration of the roadway; and
- o. In failing to take measures to avoid the crash or lessen its severity.

5. As a result of the aforesaid accident, Plaintiff, Daniel Hibbard, has suffered, among other things, the following injuries:

- a. Subluxation/dislocation of the left acromioclavicular joint;
- b. Allodynia pain disorder;
- c. Bilateral carpal tunnel syndrom;
- d. Cervical sprain/strain;
- e. Thoracic sprain and subluxation at 4 and 10.
- f. Right sacroilioc joint sprain and subluxation;
- g. Hypertension/post-traumatic depression, anxiety and nervousness;

- h. Headaches;
- i. Dizziness; and
- j. Impaired sleep.

6. As a result of the aforesaid injuries, the Plaintiff has suffered the following damages:

- a. He has incurred in the past, and will incur in the future, substantial medical expenses;
- b. He has suffered in the past, and will suffer in the future, substantial pain, suffering and inconvenience and the loss of certain of the ordinary pleasures of life;
- c. He has sustained in the past, and will sustain in the future, loss of earnings and/or earning capacity;
- d. He has sustained in the past, and will sustain in the future, other emotional, economic and physical harm.

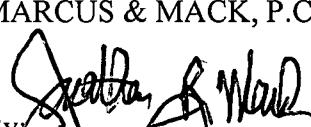
WHEREFORE, the Plaintiff, Daniel Hibbard, demands judgment against the Defendants in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

Respectfully submitted,

MARCUS & MACK, P.C.

By:


Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

VERIFICATION

I, Daniel Hibbard, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.



Daniel Hibbard

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD, No. 2005 - 1813 - CD

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **COMPLAINT** was mailed, U.S. First Class mail, to the following this 2nd day of June, 2006:

Matthew B. Taladay, Esquire
HANAK, GUIDO AND TALADAY
498 Jeffers Street
PO Box 487
DuBois, PA 15801

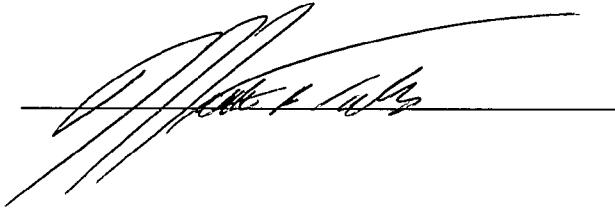
Candy J. Holesta

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD, : Type of Case: Civil Action
Plaintiff :
: No. 2005-1813-CD
-vs- :
: Type of Pleading:
THEODORE FITZER and :
LAUREEN FITZER, a/k/a : Answer and
LAURIE FITZER, i/t/d/b/a : New Matter
JOE'S TUX SHOP, :
Defendants : Filed on Behalf of:
: Defendants
: Counsel of Record for This
: Party:
: Matthew B. Taladay, Esq.
: Supreme Court No. 49663
: Hanak, Guido and Taladay
: 498 Jeffers Street
: P.O. Box 487
: DuBois, PA 15801
: (814) 371-7768

Dated: June 22, 2006

You are hereby notified to plead
to the within pleading within twenty
(20) days of service thereof or default
judgment may be entered against you.



FILED NO
M110-5681 CC
JUN 23 2006
S

William A. Shaw
Prothonotary/Clerk of Courts

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

DANIEL HIBBARD, :
Plaintiff :
:
-vs- :
No. 2005-1813-CD
THEODORE FITZER and :
LAUREEN FITZER, a/k/a :
LAURIE FITZER, i/t/d/b/a :
JOE'S TUX SHOP, :
Defendants :
:

ANSWER

AND NOW, come the Defendants, Thoedore Fitzer and Laureen Fitzer, a/k/a Laurie Fitzer, i/t/d/b/a Joe's Tux Shop, by and through their attorneys, Hanak, Guido and Taladay, and hereby respond to Plaintiff's Complaint as follows:

1. Upon information and belief, admitted.
2. Denied as stated. Defendant, Theodore Fitzer and Laureen Fitzer, a/k/a Laurie Fitzer are adult individuals who reside at 412 South Main Street, DuBois, Clearfield County, Pennsylvania. Joe's Tux Shop is a sole proprietorship of Laureen Fitzer, a/k/a Laurie Fitzer, who trades and does business under that name.
3. Admitted in part and denied in part. It is admitted that on or about December 22, 2003 at approximately 6:30 p.m. Plaintiff was traveling eastbound on Maple Avenue, DuBois, Clearfield County, Pennsylvania, and at the same time, Defendant Theordore Fitzer was

traveling westbound on Maple Avenue. With regard to the remaining allegations of paragraph 3 of Plaintiff's Complaint, the Defendants are, after reasonable investigation, without information sufficient to form a belief as to the truth, therefore they are denied and strict proof is demanded at the time of trial.

4. Denied pursuant to Pa.R.C.P. Rule 1029(e).

5. After reasonable investigation, Defendants are without information sufficient to form a belief as to the truth of the averments of paragraph 5 of Plaintiff's Complaint, therefore the same are denied and strict proof thereof is demanded at the time of trial.

6. After reasonable investigation, Defendants are without information sufficient to form a belief as to the truth of the averments of paragraph 6 of Plaintiff's Complaint, therefore the same are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendants demand judgment in their favor.

NEW MATTER

7. Plaintiff's claims are barred or limited by application of the Doctrine of Comparative Negligence.

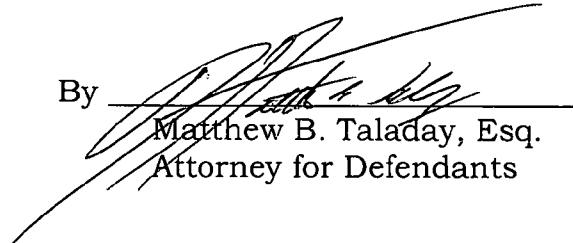
8. Plaintiff's claims are barred or limited by application of the Pennsylvania Motor Vehicle Financial Responsibility Law.

WHEREFORE, Defendants demand judgment in their favor.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

Hanak, Guido and Taladay

By 

Matthew B. Taladay, Esq.
Attorney for Defendants

VERIFICATION

I, **Theodore Fitzer** and **Laureen Fitzer**, i/t/d/b/a Joe's Tux Shop, 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.

Date: 6/14/06

Theodore R. Fitzer
Theodore Fitzer

Laureen Fitzer
Laureen Fitzer

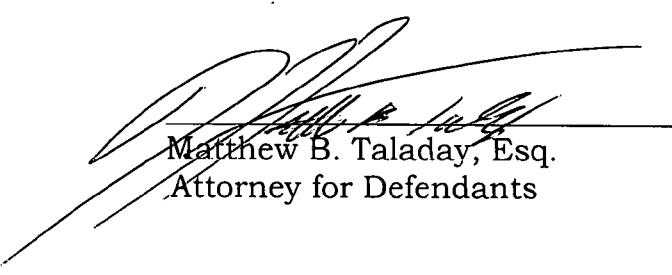
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

DANIEL HIBBARD, :
Plaintiff :
:
-vs- :
No. 2005-1813-CD
THEODORE FITZER and :
LAUREEN FITZER, a/k/a :
LAURIE FITZER, i/t/d/b/a :
JOE'S TUX SHOP, :
Defendants :
:

CERTIFICATE OF SERVICE

I certify that on the 22nd day of June, 2006, a true and correct copy of Defendants' Answer and New Matter was sent via first class mail, postage prepaid, to the following:

Jonathan B. Mack, Esq.
Marcus & Mack
P.O. Box 1107
Indiana, PA 15701


Matthew B. Taladay, Esq.
Attorney for Defendants

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

**PLAINTIFF'S REPLY TO
DEFENDANTS' NEW MATTER**

Filed on behalf of Plaintiff

Jonathan B. Mack, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

FILED *WCC*
M 11 30 04
JUL 06 2005
CR

William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD, No. 2005 - 1813 - CD
Plaintiff,
vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,
Defendants.

PLAINTIFF'S REPLY TO DEFENDANTS' NEW MATTER

AND NOW comes the Plaintiff, Daniel Hibbard, by and through his attorneys, Jonathan B. Mack, Esquire, and Marcus & Mack, P.C., and files the following Reply to Defendants' New Matter:

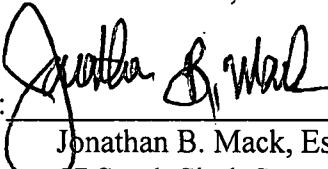
7. Denied. All of the averments set forth in Paragraph 7 are denied as conclusions of law which require no response.
8. Denied. All of the averments set forth in Paragraph 8 are denied as conclusions of law which require no response.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court dismiss Defendants' New Matter and judgment be entered in his favor.

Respectfully submitted,

MARCUS & MACK, P.C.

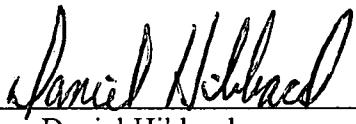
By:



Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

VERIFICATION

I, Daniel Hibbard, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.



Daniel Hibbard

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD, No. 2005 - 1813 - CD

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFF'S REPLY TO
DEFENDANTS' NEW MATTER** was mailed, U.S. First Class mail, to the following this 5th
day of July, 2006:

Matthew B. Taladay, Esquire
HANAK, GUIDO AND TALADAY
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Cathy J. Wolanta

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,
vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFF'S FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS** were mailed, U.S. First Class mail, to the following this 5th day of July, 2006:

Matthew B. Taladay, Esquire
HANAK, GUIDO AND TALADAY
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Conrad J. Holatz

FILED
MILLION
JUL 06 2006
5
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,
vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFF'S FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS** were mailed, U.S. First Class mail, to the following this 7th day of July, 2006:

Matthew B. Taladay, Esquire
HANAK, GUIDO AND TALADAY
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Candy & Holata

FILED

JUL 10 2006
m (11:55 AM)
William A. Shaw
Prothonotary/Clerk of Courts
1 CENT TO FILE

ORIGINAL

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD, : Type of Case: Civil Action
Plaintiff :
: No. 2005-1813-CD
-vs- :
: Type of Pleading:
THEODORE FITZER and :
LAUREEN FITZER, a/k/a : Certificate of
LAURIE FITZER, i/t/d/b/a : Service
JOE'S TUX SHOP, :
Defendants : Filed on Behalf of:
: Defendants
: Counsel of Record for This
: Party:
: Matthew B. Taladay, Esq.
: Supreme Court No. 49663
: Hanak, Guido and Taladay
: 498 Jeffers Street
: P.O. Box 487
: DuBois, PA 15801
: (814) 371-7768

Dated: July 26, 2006

FILED NO
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William A. Shaw
Prothonotary/Clerk of Courts

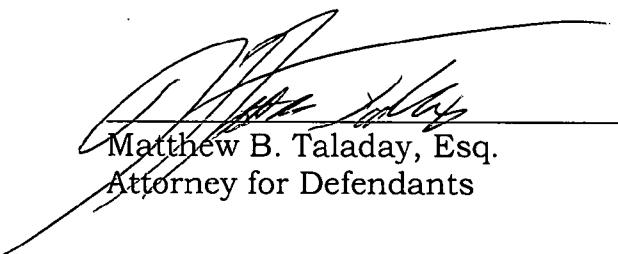
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

DANIEL HIBBARD, :
Plaintiff :
: :
-vs- : No. 2005-1813-CD
THEODORE FITZER and :
LAUREEN FITZER, a/k/a :
LAURIE FITZER, i/t/d/b/a :
JOE'S TUX SHOP, :
Defendants :
:

CERTIFICATE OF SERVICE

I certify that on the 26th day of July, 2006, an original
Notice of Deposition, copy of which is attached hereto, was sent via first
class mail, postage prepaid, to the following:

Jonathan B. Mack, Esq.
Attorney for Plaintiff
Marcus & Mack, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701


Matthew B. Taladay, Esq.
Attorney for Defendants

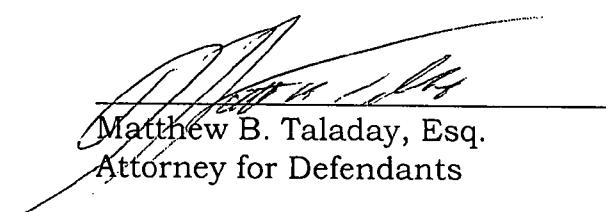
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

DANIEL HIBBARD, :
Plaintiff :
: :
-vs- : No. 2005-1813-CD
THEODORE FITZER and :
LAUREEN FITZER, a/k/a :
LAURIE FITZER, i/t/d/b/a :
JOE'S TUX SHOP, :
Defendants :
:

NOTICE OF DEPOSITION

TO: DANIEL HIBBARD
c/o Jonathan B. Mack, Esq.

TAKE NOTICE that your deposition by oral examination will be taken on **Tuesday, October 3, 2006 at 10:00 a.m.** at the law office of Hanak, Guido and Taladay, First Commonwealth Bank Building, Suite 238, 3 S. Brady Street, DuBois, Pennsylvania. This deposition is being taken for the purpose of discovery and for use at trial, pursuant to the Pennsylvania Rules of Civil Procedure regarding Discovery.


Matthew B. Taladay, Esq.
Attorney for Defendants

cc: Schreiber Reporting Service

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

NOTICE OF DEPOSITION OF
DEFENDANT, THEODORE FITZER

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Jonathan B. Mack, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701

Telephone: 724-349-5602
Sup. Ct. ID 38970

FILED
AUG 01 2006
M/12:05
William A. Shaw
Prothonotary/Clerk of Courts
14 Encl to Atty
ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

NOTICE OF DEPOSITION OF
DEFENDANT, THEODORE FITZER

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Filed on behalf of Plaintiff

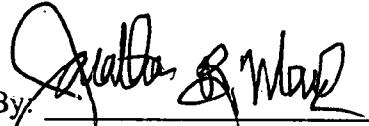
Defendants.

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF
DEFENDANT, THEODORE FITZER** to Counsel for Defendant, Matthew B. Taladay,
Esquire, HANAK, GUIDO AND TALADAY, 498 Jeffers Street, PO Box 487, DuBois, PA
15801, on behalf of the Plaintiff in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: 

Jonathan B. Mack, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602

Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

**NOTICE OF DEPOSITION OF
DEFENDANT, THEODORE FITZER**

vs.

Filed on behalf of Plaintiff

**THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,**

Defendants.

**NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1**

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **THEODORE FITZER** will be taken on oral examination at the law office of **Matthew B. Taladay, Esquire, HANAK, GUIDO AND TALADAY**, First Commonwealth Bank Building, Suite 238, 3 South Brady Street, DuBois, Pennsylvania, October 3, 2006, at 11:00 a.m. and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: 

**Jonathan B. Mack, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602**

Sup. Ct. ID 38970

Dated: July 31, 2006

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

**THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,**

Defendants.

**NOTICE OF DEPOSITION OF
DEFENDANT, THEODORE FITZER**

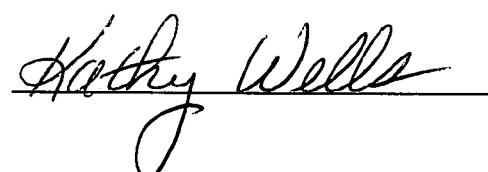
Filed on behalf of Plaintiff

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF
DEPOSITION was served by U.S. First Class Mail, postage prepaid this 31st day of July
2006, upon the following:

Matthew B. Taladay, Esquire
HANAK, GUIDO AND TALADAY
498 Jeffers Street
PO Box 487
DuBois, PA 15801

(814) 371-7768



Nancy Wells

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD, : Type of Case: Civil Action
Plaintiff :
: No. 2005-1813-CD
-vs- :
: Type of Pleading:
THEODORE FITZER and :
LAUREEN FITZER, a/k/a : Notice of
LAURIE FITZER, i/t/d/b/a : Service
JOE'S TUX SHOP, :
Defendants : Filed on Behalf of:
: Defendants
: Counsel of Record for This
: Party:
: Matthew B. Taladay, Esq.
: Supreme Court No. 49663
: Hanak, Guido and Taladay
: 498 Jeffers Street
: P.O. Box 487
: DuBois, PA 15801
: (814) 371-7768

Dated: August 9, 2006

FILED
M 10:59 AM
AUG 10 2006
NO CC
CN

William A. Shaw
Prothonotary/Clerk of Courts

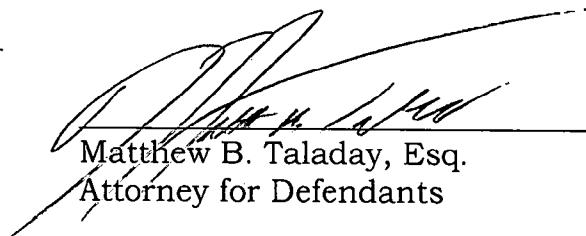
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

DANIEL HIBBARD, :
Plaintiff :
:
-vs- :
No. 2005-1813-CD
THEODORE FITZER and :
LAUREEN FITZER, a/k/a :
LAURIE FITZER, i/t/d/b/a :
JOE'S TUX SHOP, :
Defendants :
:

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being
counsel of record for Defendants, do hereby certify that I propounded on
Plaintiff, via United States mail, first class, postage pre-paid, this 9th day
of August, 2006, Defendants' ANSWERS TO PLAINTIFF'S FIRST SET OF
DISCOVERY MATERIALS to the below indicated person, at said address,
being counsel of record for the Plaintiff:

Jonathan B. Mack, Esq.
Attorney for Plaintiff
Marcus & Mack, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701



Matthew B. Taladay, Esq.
Attorney for Defendants

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,
541 1/2 West Mahoning Street
Punxsutawney, PA 15767

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,
412 South Main Street
DuBois, PA 15801

Defendants.

CIVIL ACTION

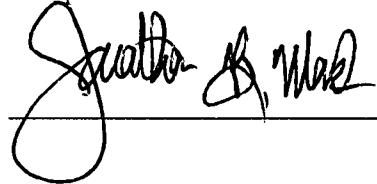
No. 2005 - 1813 - CD

NOTICE OF DEPOSITION OF SEAN D.
OVERHOLSER

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Jonathan B. Mack, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Sup. Ct. ID 38970
Telephone: 724-349-5602



FILED ^{NO CC}
APR 19 2007
WAS
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

NOTICE OF DEPOSITION OF SEAN D.
OVERHOLSER

Filed on behalf of Plaintiff

Defendants.

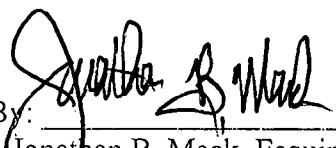
NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF
SEAN D. OVERHOLSER**, to Counsel for Defendant, Matthew B. Taladay, Esquire, HANAK,
GUIDO AND TALADAY, 498 Jeffers Street, PO Box 487, DuBois, PA 15801, on behalf of the
Plaintiff in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____


Jonathan B. Mack, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602

Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

NOTICE OF DEPOSITION OF SEAN D.
OVERHOLSER

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

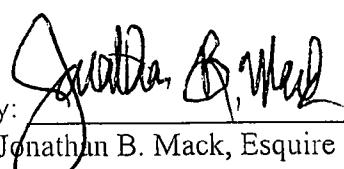
Filed on behalf of Plaintiff

Defendants.

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **SEAN D. OVERHOLSER** will be taken on oral examination at the law office of Matthew B. Taladay, Esquire, HANAK, GUIDO AND TALADAY, 498 Jeffers Street, PO Box 487, DuBois, PA 15801, Pennsylvania, May 3, 2007, at 10:00 a.m. and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: 

Jonathan B. Mack, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602

Sup. Ct. ID 38970

Dated: April 17, 2007

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

NOTICE OF DEPOSITION OF SEAN D.
OVERHOLSER

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Filed on behalf of Plaintiff

Defendants.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF
DEPOSITION was served by U.S. First Class Mail, postage prepaid this 17th day of April 2007,
upon the following:

Matthew B. Taladay, Esquire
HANAK, GUIDO AND TALADAY
498 Jeffers Street
PO Box 487
DuBois, PA 15801

(814) 371-7768

Schreiber Court Reporting
PO Box 997
St. Marys, PA 15857
(814) 834-5337

Kathryn M. Wells

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,
541 1/2 West Mahoning Street
Punxsutawney, PA 15767

CIVIL ACTION

No. 2005 - 1813 - CD

Plaintiff,

vs.

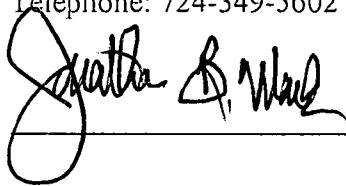
THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,
412 South Main Street
DuBois, PA 15801

Defendants.

NOTICE OF DEPOSITION OF
ALLISON LYNN DONAHUE
Filed on behalf of Plaintiff

Counsel of Record for this Party:

Jonathan B. Mack, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Sup. Ct. ID 38970
Telephone: 724-349-5602



FILED NO CC
APR 19 2007
WM

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

NOTICE OF DEPOSITION OF
ALLISON LYNN DONAHUE

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Filed on behalf of Plaintiff

Defendants.

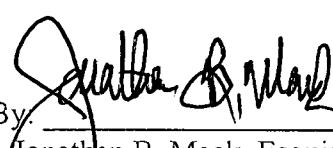
NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF ALLISON LYNN DONAHUE**, to Counsel for Defendant, Matthew B. Taladay, Esquire, HANAK, GUIDO AND TALADAY, 498 Jeffers Street, PO Box 487, DuBois, PA 15801, on behalf of the Plaintiff in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By:



Jonathan B. Mack, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602

Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

NOTICE OF DEPOSITION OF
ALLISON LYNN DONAHUE

vs.

Filed on behalf of Plaintiff

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **ALLISON LYNN DONAHUE** will be taken on oral examination at the law office of Matthew B. Taladay, Esquire, HANAK, GUIDO AND TALADAY, 498 Jeffers Street, DuBois, Pennsylvania, May 3, 2007, at 11:00 a.m. and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: 

Jonathan B. Mack, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602

Sup. Ct. ID 38970

Dated: April 17, 2007

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

NOTICE OF DEPOSITION OF
DEFENDANT, ALLISON LYNN
DONAHUE

Filed on behalf of Plaintiff

Defendants.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF
DEPOSITION was served by U.S. First Class Mail, postage prepaid this 17th day of April 2007,
upon the following:

Matthew B. Taladay, Esquire
HANAK, GUIDO AND TALADAY
498 Jeffers Street
PO Box 487
DuBois, PA 15801

(814) 371-7768

Schreiber Court Reporting
PO Box 997
St. Marys, PA 15857
(814) 834-5337

Kathryn M. Wells

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

**PLAINTIFF'S CERTIFICATE OF
READINESS**

Filed on behalf of Plaintiff

Jonathan B. Mack, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

FILED
MAY 11 2007
William A. Shaw
Prothonotary/Clerk of Courts

CLEARFIELD
COMMONWEALTH

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

CERTIFICATE OF READINESS

Filed on behalf of Plaintiff, Daniel Hibbard

1. Type of Case: Simple () Complex () Companion Case ()
2. Type of Trial: Jury () Non-Jury () Arbitration ()
3. Estimated Trial Time: 3 day(s) hours minutes
Estimated Arbitration: day(s) hours minutes
4. Trial Counsel: (List name, address and telephone number for each party and name, address and telephone number of person responsible for each unrepresented party).

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701

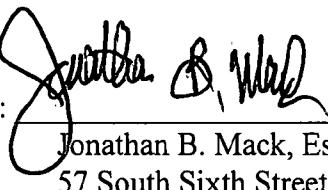
Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street, PO Box 487
DuBois, PA 15801

I certify on behalf of Plaintiff that the pleadings are complete, that all preliminary motions have been resolved, that all substantial discovery has been completed and that the case is in all respects ready for trial except:

a) motions in limine _____ X _____; b) expert depositions _____ X _____;
c) defense medical examinations of Plaintiffs _____.

Respectfully submitted,

MARCUS & MACK, P.C.

By: 

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD, No. 2005 - 1813 - CD

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFF'S**
CERTIFICATE OF READINESS was mailed, U.S. First Class mail, to the following this 10th
day of May, 2007:

Matthew B. Taladay, Esquire
HANAK, GUIDO AND TALADAY
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Andy J Holanta

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

DANIEL HIBBARD
Plaintiff

vs.

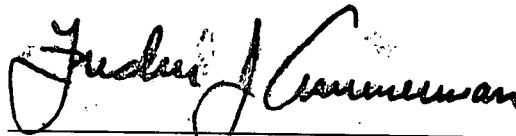
NO. 05-1813-CD

THEODORE FITZER and LAURENN FITZER,
a/k/a LAURIE FITZER, i/t/d/b/a JOE'S TUX SHOP
Defendants

ORDER

AND NOW, this 27th day of July, 2007, it is the ORDER of the Court that a Pre-Trial Conference in the above matter shall be held on the **24th day of August, 2007**, in Chambers at 11:30 o'clock a.m.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED 07/27/2007 10:44 AM 4th Flr
JUL 27 2007 Mack
William A. Shaw Taladay
Prothonotary/Clerk of Courts
GMA

FILED

JUL 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/27/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney Other

Special Instructions:

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

DANIEL HIBBARD

vs. : No. 05-1813-CD

THEODORE FITZER and LAUREEN :
FITZER, a/k/a LAURIE FITZER,
i/t/d/b/a JOES' TUX SHOP

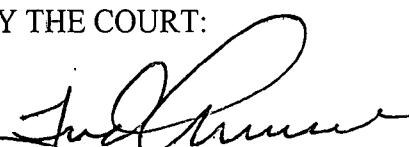
O R D E R

AND NOW, this 12 day of October, 2007, it is the Order of the Court that a pre-trial conference in the above-captioned matter has been scheduled for Thursday, November 15, 2007 at 10:30 A.M. in Judges Chambers, Clearfield County Courthouse, Clearfield, PA. Additionally, Jury Selection in this matter will be held on January 3, 2008.

FILED
OCT 15 2007
William A. Shaw
Prothonotary/Clerk of Courts

CC Attns:
Taladay
Mack
CR

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED

OCT 15 2007

William A Shaw,
Prothonotary/Clerk of Courts

DATE: 10/15/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s), Attorney Other

Defendant(s) Defendant(s), Attorney

Special instructions:

2
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DANIEL HIBBARD,
Plaintiff

vs. * NO. 05-1813-CD

THEODORE FITZER and LAUREEN *
FITZER, a/k/a LAURIE FITZER, i/t/d/b/a *
JOE'S TUX SHOP, *
Defendants

FILED *ICC Atty's:
0/25/07* Mack
NOV 29 2007 Taladay

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

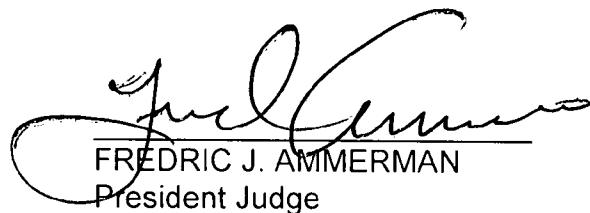
NOW, this 15th day of November, 2007, following pre-trial conference with
counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on January 3, 2008 commencing at 10:00 a.m. in
Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Jury Trial is hereby scheduled for January 30, 31 and February 1, 2008 commencing
at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield,
Pennsylvania.
3. 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 thirty (30) days prior to the commencement of 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 submit
its brief in opposition to said objections no later than fifteen (15) days prior to the
commencement of trial.
4. 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 thirty (30) days prior to the trial date. The

2
B

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 fifteen (15) days prior to trial.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

NOV 29 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/29/07

You are responsible for serving all appropriate parties.
 The Prothonotary's office has provided service to the following parties:
 Plaintiff(s) Plaintiff(s) Attorney Other
 Defendant(s) Defendant(s) Attorney
 Special Instructions:

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

JURY TRIAL DEMANDED

vs.

Filed on behalf of Plaintiff

**THEODORE FITZER and
LAUREEN FITZER, a/k/a
LAURIE FITZER, i/t/d/b/a
JOE'S TUX SHOP,**

Defendant.

**NOTICE OF VIDEO TAPE
DEPOSITION OF DR. GLENN A.
BUTERBAUGH**

Filed on behalf of Plaintiff

Bryan S. Neiderhiser, Esquire
Sup. Ct. ID 81496
Marcus & Mack, P.C.
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701

FILED NO CC
M 12/5 8:34 AM
DEC 14 2007
(GK)

William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

JURY TRIAL DEMANDED

vs.

Filed on behalf of Plaintiff

**THEODORE FITZER and
LAUREEN FITZER, a/k/a
LAURIE FITZER, i/t/d/b/a
JOE'S TUX SHOP,**

Defendant.

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF DR. GLENN A. BUTERGAUGH** to Counsel for Defendant, Matthew B. Taladay, 498 Jeffers Street, PO Box 487, DuBois, PA 15801, on behalf of the Plaintiff in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By:


Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
INDIANA, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

JURY TRIAL DEMANDED

vs.

Filed on behalf of Plaintiff

**THEODORE FITZER and
LAUREEN FITZER, a/k/a
LAURIE FITZER, i/t/d/b/a
JOE'S TUX SHOP,**

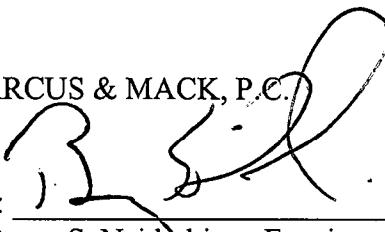
Defendant.

**NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1**

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **DR. GLENN**

A. BUTERBAUGH will be taken on oral and video examination at the Western Pennsylvania Hand Center, 6001 Stonewood Drive, Wexford, PA 15090, at 4:15 p.m. on Monday, January 7, 2008 and at any and all adjournments thereof pursuant to Pa. R.C.P. 4017.1 and 4020. This deposition will be recorded by AKF Court Reporting & Videotech Services, a stenographer and by videotape for use at trial.

MARCUS & MACK, P.C.

By: 

Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
INDIANA, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: December 12, 2007

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

JURY TRIAL DEMANDED

**THEODORE FITZER and
LAUREEN FITZER, a/k/a
LAURIE FITZER, i/t/d/b/a
JOE'S TUX SHOP,**

Filed on behalf of Plaintiff

Defendant.

CERTIFICATE OF SERVICE

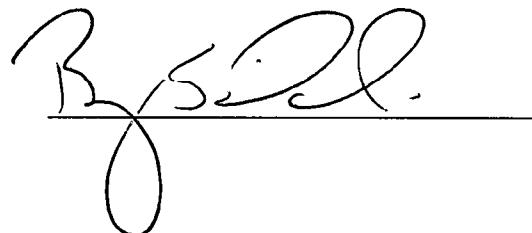
I do hereby certify that a true and correct copy of the foregoing NOTICE OF
DEPOSITION was served by U.S. First Class Mail, postage prepaid this 12th day of December
2007, upon the following:

Matthew B. Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

814-371-7768

Western Pennsylvania Hand Center
Dr. Glenn A. Buterbaugh
6001 Stonewood Drive
Wexford, PA 15090

724-933-3850



IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

JURY TRIAL DEMANDED

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

PLAINTIFF'S MOTIONS IN LIMINE

Filed on behalf of Plaintiff

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

FILED ^{1cc}
m/12/2007 Atty Neiderhiser
DEC 20 2007

William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

JURY TRIAL DEMANDED

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

FILED

DEC 24 2007

5 | 10:00 | 6
William A. Shaw
Prothonotary/Clerk of Courts

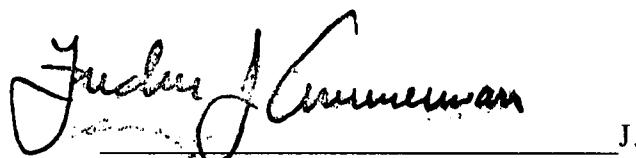
1 Court to App

(6R)

SCHEDULING ORDER

AND NOW, this 21 day of December, 2007, it is hereby
ORDERED, ADJUDGED and DECREED that a hearing is scheduled on the within Plaintiff's
Motions in Limine on the 15th day of January, 2008, at 10:00 a.m. /p.m.
before the Honorable Fredric J. Ammerman in Courtroom No. 1, at
the Clearfield County Courthouse, 230 E. Market Street, Clearfield, Pennsylvania.

BY THE COURT:



J.

FILED
DEC 24 2007
William A. Shaw
Clerk of Courts
Prothonotary/Clerk of Courts

DATE: 12-21-07
You are responsible for serving all appropriate parties.
 The Prothonotary's office has provided service to the following parties:
 Plaintiff(s) Plaintiff(s) Attorney Other
 Defendant(s) Defendant(s) Attorney
 Special Instructions:

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

JURY TRIAL DEMANDED

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

PLAINTIFF'S MOTIONS IN LIMINE

AND NOW, comes the Plaintiff, by and through undersigned counsel, and files the
within Plaintiff's Motions in Limine and in support thereof avers as follows:

I. FACTUAL BACKGROUND

1. This case arises from a motor vehicle accident which occurred on December 22, 2003, at approximately 6:30 p.m.
2. Specifically, Daniel Hibbard, while in the course and scope of his employment with Stello Foods, was traveling eastbound on Maple Avenue in Dubois, Clearfield County, Pennsylvania, when he attempted to make a left turn on to Third Street. At the same time the Defendant, Theodore Fitzer, who was operating a vehicle owned by Joe's Tux Shop, was traveling westbound on Maple Avenue at the intersection of Third Avenue and was not using the headlights on his vehicle. Due to Mr. Fitzer's failure to utilize his headlights, the Plaintiff was unable to see the Defendant's vehicle. Thus, the two vehicles collided as the Plaintiff was effectuating his left-hand turn.

3. As a result of the collision, Daniel Hibbard suffered serious injuries and damages as set forth with specificity in Plaintiff's Complaint in Civil Action.

II. FIRST MOTION IN LIMINE

I. Defendants should be precluded from entering any evidence, testimony, reference or allusion to the fact that Daniel Hibbard was involved in, injured in and/or treated as a result of, a prior motor vehicle accident.

1. Daniel Hibbard was deposed by counsel for the Defendant on October 3, 2006. During his deposition, he was questioned about prior motor vehicle accidents. Daniel testified that he sought treatment for some muscular injuries as a result of a prior accident. He further testified that his treatment had resolved prior to the happening of the subject incident. (See transcript of Deposition of Daniel Hibbard recorded October 3, 2006, at Page 12 through Page 15, Line 3, attached hereto as Exhibit "A").

2. The defense has not presented any evidence to indicate that Mr. Hibbard was suffering any effects of that prior accident as of the date of the subject incident.

3. No medical expert has opined that Mr. Hibbard was suffering from the effects of the prior motor vehicle accident.

4. No medical expert has opined that the prior accident, or any prior injuries, have played any role in regard to the injuries sustained by Daniel Hibbard in the subject motor vehicle accident.

5. As such, any evidence regarding Mr. Hibbard's prior motor vehicle accident, the injuries sustained therein, and/or the treatment received as a result thereof, is irrelevant to the instant matter.

6. Pennsylvania law is quite clear that only relevant evidence is admissible. Pa.R.E. 402.

7. Relevant evidence is defined as "...evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable whatever it would be without the evidence". Pa.R.E.401.

8. Therefore, any reference to the above issues is not relevant to the present matter.

9. The introduction of any such evidence, testimony, allusion or intimation would tend to mislead and/or confuse the jury.

10. The prejudicial value of any such evidence greatly outweighs any probative value of said evidence. Pa.R.E.403.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant the within Plaintiff's First Motion in Limine and enter an appropriate Order.

III. SECOND MOTION IN LIMINE

I. **The Defendants should be precluded from entering any evidence, testimony or allusion to the fact that Daniel Hibbard was involved in a subsequent motor vehicle accident.**

1. The deposition of Daniel Hibbard was recorded on October 3, 2006. During that deposition, Mr. Hibbard testified that he was involved in a motor vehicle accident after the incident which is the subject of this litigation.

2. Specifically, he testified that his vehicle was struck from behind by a motorcycle in front of the Dairy Queen in Dubois, Pennsylvania.

3. As a result of this accident, Daniel Hibbard was treated and released at Dubois Regional Medical Center. Mr. Hibbard did not seek any further medical treatment related to that accident.

4. The Defense has not presented any evidence to indicate that this subsequent motor vehicle accident aggravated, worsened or exacerbated any injury sustained in the subject motor vehicle accident.

5. Further, no medical expert has opined that the subsequent motor vehicle accident has had any effect upon the injuries that Mr. Hibbard sustained in the subject incident.

6. As such, any evidence regarding the subsequent motor vehicle accident is irrelevant to the instant matter.

7. Pennsylvania law is quite clear that only relevant evidence is admissible. Pa.R.E. 402.

8. Relevant evidence is defined as "...evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable whatever it would be without the evidence". Pa.R.E.401.

9. Therefore, any reference to the above issue is not relevant to the present matter.

10. The introduction of any such evidence, testimony, allusion or intimation would tend to mislead and/or confuse the jury.

11. The prejudicial value of any such evidence greatly outweighs any probative value of said evidence. Pa.R.E.403.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant the within Plaintiff's Second Motion in Limine and enter an appropriate Order.

IV. THIRD MOTION IN LIMINE

I. Plaintiff respectfully requests an Order of Court precluding Defendants from discussing Defendants' net worth and/or from creating the impression that the tortfeasors are responsible for paying any damages the jury may return.

1. In this matter, the Defendants are covered by an appropriate policy of insurance to cover any award that may be rendered in this matter.

2. Since an appropriate policy of insurance exists to cover any verdict that the jury may return, the Defendants should not be allowed to discuss or enter evidence concerning their assets, net worth or the absence thereof.

3. While Pennsylvania law prevents disclosure of the fact that the Defendants have liability insurance coverage, this is not a license to perpetrate a fraud on the jury and, as such, Defendants should not be permitted to use the rights confirmed by the Pennsylvania law to mislead the jury concerning the Defendants' responsibility for payments.

4. As a separate but closely related matter, the Defendants should not be permitted to engage in the practice of discussing their assets, or the absence thereof, for the purpose of persuading the jury that the Defendants cannot pay a substantial verdict.

5. The introduction of any such evidence, testimony, allusion, intimation or reference would tend to mislead and/or confuse the jury.

6. The introduction of any such evidence, testimony, reference or allusion to the above outlined issue is not relevant to any issue in the case at bar.

7. The prejudicial value of any such evidence greatly outweighs any alleged probative value of said evidence. Pa.R.E. 403.

8. For any or all of the above reasons, any evidence, testimony, allusion, reference or intimation of the Defendants' assets, net worth or means of paying any verdict that may be rendered in the case should be excluded at trial.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant the within Plaintiff's Third Motion in Limine and enter an appropriate Order.

Respectfully submitted,

MARCUS & MACK, P.C.

BY: 

Bryan S. Neiderhiser, Esquire
57 South 6th Street
PO Box 1107
Indiana, PA 15701
724-349-5602
Sup Ct. ID 81496

1 and then going to the second.

2 A Well, the first one I was in the first delivery
3 van that we had. I was hit from behind by a lady.

4 Q Where was that?

5 A That was -- to be honest, I don't remember where
6 that was at.

7 Q That would have been in 2003?

8 A I don't remember the exact date, no.

9 Q It was while you were working for Stella Foods?

10 A Yes, yes.

11 Q How badly was the van damaged?

12 A It was completely totalled from behind.

13 Q Did you seek medical attention as a result of that
14 accident?

15 A Yes.

16 Q Where did the accident take place?

17 A To be honest, like I said, I don't remember what
18 town it was.

19 Q Where did you seek medical attention initially?

20 A Well, I was taken to the hospital of the town
21 where I was at. And then I had to go through some rehab -- it
22 was just muscular -- here in Punxsutawney.

23 Q Do you remember the hospital that you went to
24 immediately after the accident?

25 A No, I don't.



1 Q Did you make a claim for Worker's Compensation
2 arising out of that incident?

3 A To be honest, I -- I don't remember what happened.
4 That's been so long ago. I know I was off a little bit of
5 time, but I don't exactly remember how long.

6 Q You missed some work because of that first
7 accident?

8 A Um-hum.

9 Q Are you telling me you did physical therapy in
10 Punxsutawney?

11 A Yes.

12 Q At the Punxsutawney Hospital?

13 A I believe that's where it was.

14 Q Did you have a local doctor overseeing your
15 treatment and physical therapy following that first accident?

16 A I believe it was Dr. Krot.

17 Q Dr. Alex Krot?

18 A Yes.

19 Q And he's an orthopedic surgeon?

20 A I believe so.

21 Q How long were you under Dr. Krot's care following
22 that first work-related accident?

23 A The exact time, I don't recall.

24 Q Were you still under Dr. Krot's care when this
25 accident happened in December 2003?

1 A No.

2 Q Were you still going to physical therapy when this
3 December accident happened?

4 A No.

5 Q Did you make a claim for personal injuries against
6 the person that hit you in that rear-end collision?

7 A Yes, I did.

8 Q Do you remember the name of the person you made
9 the claim against?

10 A No, I don't.

11 Q Do you remember the name of the insurance company?

12 A No. I didn't handle any of that.

13 Q Were you represented by an attorney for that
14 claim?

15 A Marcus & Mack.

16 Q And did you ultimately obtain a settlement arising
17 out of that accident?

18 A Yes, I did.

19 Q When was the claim settled? Was it before or
20 after the wreck that brings us here today?

21 A There was nothing to do with that first case
22 until -- while this happened here.

23 Q Are you telling me that you didn't make a claim
24 out of the first accident until the second accident occurred?

25 A No. Everything was completed.

1 Q Okay. You had it all settled by the time the
2 second accident occurred?

3 A Yes.

4 Q All right. You said you were in two accidents
5 before the one that brings us here. Tell me about the second
6 one.

7 A I had a motorcycle hit me from behind also in
8 DuBois right in front of the Dairy Queen.

9 Q What type of vehicle were you driving when the
10 motorcycle hit you?

11 A That was my personal vehicle.

12 Q What kind of car was that?

13 A It was a '94 Grand Prix.

14 Q And do you remember when this accident happened?

15 A The exact date I don't.

16 Q Can you tell me the year?

17 I'm assuming it's in between the time you went to
18 work for Stella Foods --

19 A Yeah.

20 Q -- and the time this accident happened?

21 A Yeah -- well, it was after this past -- after the
22 2003 wreck. I believe it was the following July.

23 Q Okay. So it would have been after the 2003 wreck?

24 A Yes.

25 Q And you said a motorcycle struck you from behind?

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

JURY TRIAL DEMANDED

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

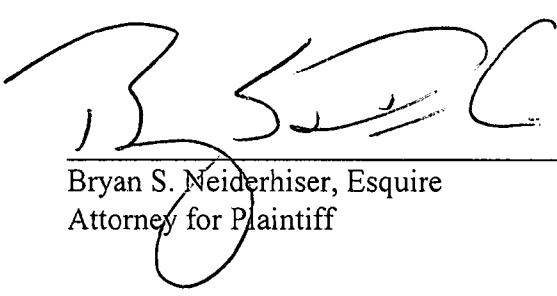
Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFF'S MOTIONS IN
LIMINE** was sent via U.S. First Class mail to the following this 19th day of December, 2007:

The Honorable Frederic J. Ammerman, P.J.
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

Matthew B. Taladay, Esquire
HANAK, GUIDO AND TALADAY
498 Jeffers Street
PO Box 487
DuBois, PA 15801



Bryan S. Neiderhiser, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

JURY TRIAL DEMANDED

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

ORDER OF COURT

AND NOW, to wit, the _____ day of _____, 20_____, it is hereby
ORDERED, ADJUDGED and DECREED that Plaintiff's Motions in Limine are hereby
GRANTED as follows:

1. The Defendants are hereby precluded from entering any evidence, testimony, reference or allusion to the fact that Daniel Hibbard was involved in, injured in and/or treated as a result of, a prior motor vehicle accident;
2. The Defendants are hereby precluded from entering any evidence, testimony or allusion to the fact that Daniel Hibbard was involved in a subsequent motor vehicle accident; and
3. The Defendants are hereby precluded from discussing Defendants' net worth and/or from creating the impression that the tortfeasors are responsible for paying any damages the jury may return.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

JURY TRIAL DEMANDED

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

CERTIFICATE OF SERVICE

Filed on behalf of Plaintiff

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

ORIGINAL

FILED NO CC
M 11/04/04
JAN 03 2005
LS

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

JURY TRIAL DEMANDED

vs.

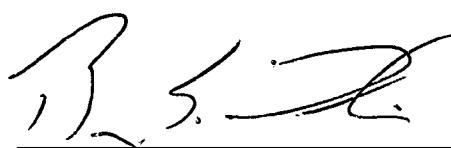
THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **SCHEDULING ORDER**
was mailed, U.S. First Class mail, to the following this 2nd day of January, 2008:

Matthew B. Taladay, Esquire
HANAK, GUIDO AND TALADAY
498 Jeffers Street
PO Box 487
DuBois, PA 15801



Bryan S. Neiderhiser, Esquire
Attorney for Plaintiff

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

DANIEL HIBBARD,

Plaintiff

vs.

THEODORE FITZER and LAUREEN
FITZER, i/t/d/b/a JOE'S TUX SHOP,
Defendants

NO. 2005-1813-CD

FILED

JAN 22 2008

61 (2:50) (W) (GP)
William A. Shaw
Prothonotary/Clerk of Courts

2 CERT to Pennsylvania

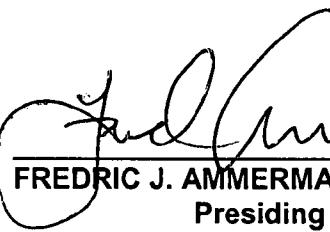
TALAVAN
&
MACK.

ORDER OF COURT

AND NOW, this 15th day of January, 2008, following argument on the Plaintiff's Motions in Limine, **IT IS THE ORDER** of this Court as follows:

1. By agreement of counsel, the second and third Motions in Limine are hereby granted. Defense counsel has been precluded from raising the issues described in the second and third Motions in Limine during the jury trial;
2. In regard to the first Motion in Limine, counsel for the parties shall have until no later than January 22, 2008, to provide the Court with letter brief. It shall be acceptable for letter brief to be faxed to the Court.

BY THE COURT:


FREDRIC J. AMMERMAN, President Judge
Presiding

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

NOTICE TO ATTEND AND TESTIFY

FILED ON BEHALF OF PLAINTIFF

COUNSEL OF RECORD FOR THIS
PARTY:

Bryan S. Neiderhiser, Esquire
Sup. Ct. ID 81496
Marcus & Mack, P.C.
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701

FILED NOCC
M 10:40 AM
JAN 23 2009
(lm)

William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

NOTICE TO ATTEND AND TESTIFY

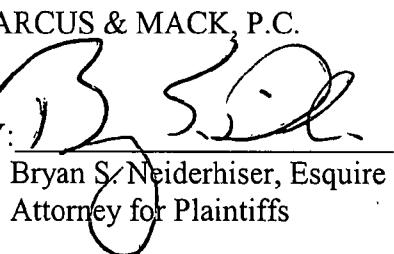
TO: Theodore Fitzer
c/o Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street, PO Box 487
DuBois, PA 15801

1. You are hereby directed to come to the Clearfield County Courthouse, 230 E. Market Street, Clearfield, Pennsylvania, on January 30, 2008, at 9:00 a.m. to testify in the above case and to remain until conclusion of trial or until excused.
2. If you fail to attend as required by this Notice to Attend and Testify, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

MARCUS & MACK, P.C.

BY:


Bryan S. Neiderhiser, Esquire
Attorney for Plaintiffs

Date: 01-21-08

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

DANIEL HIBBARD,

No. 2005 - 1813 - CD

Plaintiff,

vs.

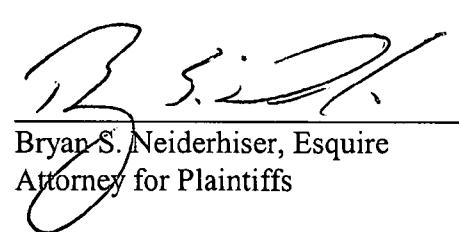
THEODORE FITZER and
LAUREEN FITZER, a/k/a LAURIE
FITZER, i/t/d/b/a JOE'S TUX SHOP,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE TO ATTEND AND TESTIFY** was sent via facsimile transmission and U.S. First Class mail to the following this 21st day of January, 2008:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street, PO Box 487
DuBois, PA 15801



Bryan S. Neiderhiser, Esquire
Attorney for Plaintiffs

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

DANIEL HIBBARD, *
Plaintiff *
vs. * NO. 05-1813-CD
THEODORE FITZER and LAUREEN *
FITZER, a/k/a LAURIE FITZER, i/t/d/b/a *
JOE'S TUX SHOP, *
Defendants

ORDER

NOW, this 28th day of January, 2008, it is the ORDER of this Court that Plaintiff's
First Motion in Limine filed December 20, 2007 be and is hereby DENIED.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED
01/28/2008
JAN 28 2008

William A. Shaw
Prothonotary/Clerk of Courts
1CC Atty: Mack & Neiderhiser
Taladay
(6K)

FILED

JAN 28 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/28/08

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

DANIEL HIBBARD, : Type of Case: Civil Action
Plaintiff :
: No. 2005-1813-CD
-vs- :
: Type of Pleading:
THEODORE FITZER and : Praecipe to
LAUREEN FITZER, a/k/a : Discontinue
LAURIE FITZER, i/t/d/b/a :
JOE'S TUX SHOP, :
Defendants : Filed on Behalf of:
: Plaintiff
: Counsel of Record for This
: Party:
: Bryan S. Neiderhiser, Esq.
: Supreme Court No. 81496
: Marcus & Mack, P.C.
: 57 South Sixth Street
: P.O. Box 1107
: Indiana, PA 15701
: (724) 349-5602

Dated:

2/14/08

FILED No CC
m/11/2008 Cert of
FEB 20 2008 disc issued
to Atty Taladay
WM
William A. Shaw
Prothonotary/Clerk of Courts COPY to C/A

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

DANIEL HIBBARD, :
Plaintiff :
: :
-vs- : No. 2005-1813-CD
: :
THEODORE FITZER and :
LAUREEN FITZER, a/k/a :
LAURIE FITZER, i/t/d/b/a :
JOE'S TUX SHOP, :
Defendants :
:

PRAECIPE TO DISCONTINUE

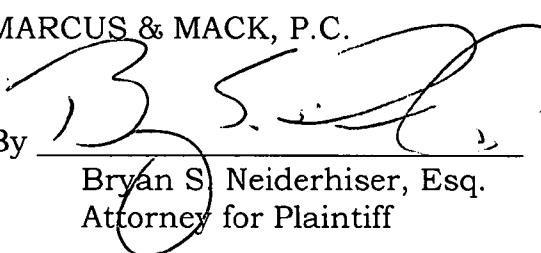
TO THE PROTHONOTARY:

Kindly mark the above case settled, discontinued and ended.

Respectfully submitted,

MARCUS & MACK, P.C.

By


Bryan S. Neiderhiser, Esq.
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Daniel Hibbard

Vs.

No. 2005-01813-CD

Theodore Fitzer
Laureen Fitzer
Joe's Tux Shop

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on February 20, 2008, marked:

Discontinued

Record costs in the sum of \$85.00 have been paid in full by Jonathan B. Mack Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 20th day of February A.D. 2008.



William A. Shaw, Prothonotary