

06-901-CD

William Emigh vs Tracey McCartney et al

William Emigh vs Tracey McCartney et al
2006-901-CD

WILLIAM A. EMIGH, III,
Plaintiff

vs.

TRACEY A. McCARTNEY
and DAVID WEITOISH,
Defendants

: IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED
:
: NO. 06-901-CD

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY, C.C.P.:

Kindly issue a Writ of Summons upon the above-named Defendants at the following addresses:

Tracey A. McCartney
1317 Walton Street
Philipsburg, PA 16866

David Weitoish
P.O. Box 171
Telcott Street
Morrisdale, PA 16858

ELION, WAYNE, GRIECO, CARLUCCI,
SHIPMAN & IRWIN, P.C.

By

Robert B. Elion, I.D. #21030
Attorney for Plaintiff
125 East Third Street
Williamsport, PA 17701
(570) 326-2443 (phone)
(570) 326-1585 (fax)

Dated: June 1, 2006

FILED Atty pd. 85.00
M 11:15 6/1/06 ccw 2 wnts to Shif
JUN 05 2006
W.A. Shaw

William A. Shaw
Prothonotary/Clerk of Courts

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

CC
r

SUMMONS

William A. Emigh III

Vs.

NO.: 2006-00901-CD

**Tracey A. McCartney
David Weitoish**

**TO: TRACEY A. MCCARTNEY
DAVID WEITOISH**

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: 06/05/2006



William A. Shaw
Prothonotary

Issuing Attorney:
Robert B. Elion
125 E. Third Street
Williamsport, PA 17701
(570) 326-2443

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

WILLIAM A. EMIGH, III,

No. 2006-00901-CD

Plaintiff,

vs.

TRACEY A. McCARTNEY and
DAVID WEITOISH,

Defendants.

ISSUE:
Praecipe for Rule to File
Complaint

Filed on Behalf of Defendants:
TRACEY A. McCARTNEY and
DAVID WEITOISH

Counsel of Record:
LOUIS C. SCHMITT, JR., ESQUIRE
PA. ID. No. 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
June, 2006.

Attorney for Defendants

FILED

JUN 16 2006

ml:sl/1ccatty Schmitt
William A. Shaw
Prothonotary/Clerk of Courts

u Rule

⑥

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION**

WILLIAM A. EMIGH, III,	:	No. 2006-00901-CD
Plaintiff,	:	
vs.	:	
TRACEY A. McCARTNEY and	:	
DAVID WEITOISH,	:	
Defendants.	:	JURY TRIAL DEMANDED

PRAECIPE FOR RULE TO FILE COMPLAINT

TO: PROTHONOTARY

Please enter a Rule upon the Plaintiff, WILLIAM A. EMIGH, III, to file a Complaint
in the above-captioned matter within twenty (20) days from service of said Rule.

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, PA
CIVIL ACTION

WILLIAM A. EMIGH, III,

No. 2006-00901-CD

Plaintiff,

vs.

TRACEY A. McCARTNEY and
DAVID WEITOISH,

Defendants.

JURY TRIAL DEMANDED

RULE TO FILE COMPLAINT

AND NOW, this 16th day of June, 2006, Rule is entered on the
Plaintiff to file a Complaint.



Prothonotary

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

WILLIAM A. EMIGH, III,

No. 2006-00901-CD

Plaintiff,

vs.

TRACEY A. McCARTNEY and
DAVID WEITOISH,

Defendants.

ISSUE:

**CERTIFICATE OF SERVICE OF
RULE TO FILE COMPLAINT**

Filed on Behalf of Defendants:
TRACEY A. McCARTNEY and
DAVID WEITOISH

Counsel of Record:
LOUIS C. SCHMITT, JR., ESQUIRE
PA. ID. No. 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
June, 2006.

Attorney for Defendants

FILED
MAY 20 2006
JUN 20 2006
NO CC
LAW OFFICES OF
LOUIS C. SCHMITT, JR.
HOLLIDAYSBURG, PA
814/696-3581

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURTS OF COMMON PLEAS OF CUMBERLAND COUNTY, PA
CIVIL ACTION

No. 2009-00801-CD

WILHELM V. EMIGH, III

Plaintiff

v.

TRACEY A. McCARTNEY and DAVID MELTON, III, Defendants

JURY TRIAL DEMANDED

Debtors

CERTIFICATE OF SERVICE OF RULE TO FILE COMPLAINT

TO: PROTHONOTARY

You are hereby notified that on the 25 day of June, 2009, Defendants,
TRACEY A. McCARTNEY and DAVID MELTON, III, RULE upon the Plaintiff, PA
mailing the original of cause via First Class Mail, postage prepaid, addressed to Plaintiff's
counsel

Robert G. E. Jr., Esquire
1275 Main Street
Allentown, PA 18101

WILHELM, HARTY & SCHMITT

Attn: Attorney for Defendants

James C. Schmitz, Jr., Esquire
PA I.D. #525450
P.O. Box 533
Hollidaysburg, PA 16038-0533
(814) 608-3381

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

WILLIAM A. EMIGH, III, : No. 2006-00901-CD
Plaintiff, :
vs. :
TRACEY A. McCARTNEY and :
DAVID WEITOISH, :
Defendants. : JURY TRIAL DEMANDED

RULE TO FILE COMPLAINT

AND NOW, this 16th day of June, 2006, Rule is entered on the
Plaintiff to file a Complaint.



Prothonotary

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION**

WILLIAM A. EMIGH, III,

No. 2006-00901-CD

Plaintiff,

vs.

TRACEY A. McCARTNEY and
DAVID WEITOISH,

Defendants.

ISSUE:

Notice of Service of
Interrogatories and Request for
Production of Documents
Directed to Plaintiff Dated
June 21, 2006

Filed on Behalf of Defendants:
TRACEY A. McCARTNEY and
DAVID WEITOISH

Counsel of Record:
LOUIS C. SCHMITT, JR., ESQUIRE
PA. ID. No. 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
June, 2006.

Attorney for Defendants

FILED *NOCC*
JUN 22 2006 *11:13 AM*
cm

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION**

WILLIAM A. EMIGH, III,	:	No. 2006-00901-CD
Plaintiff,	:	
vs.	:	
TRACEY A. McCARTNEY and	:	
DAVID WEITOISH,	:	
Defendants.	:	JURY TRIAL DEMANDED

**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF DATED JUNE 21, 2006**

TO: PROTHONOTARY

You are hereby notified that on the 21st day of June, 2006, Defendants, TRACEY A. McCARTNEY and DAVID WEITOISH, served Interrogatories and Request for Production of Documents Directed to Plaintiff Dated June 21, 2006, by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

Robert B. Elion, Esquire
125 E. Third Street
Williamsport, PA 17701


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

WILLIAM A. EMIGH, III,
Plaintiff

vs.

TRACEY A. McCARTNEY
and DAVID WEITOISH,
Defendants

: IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION -- LAW
:
: JURY TRIAL DEMANDED
:
: NO. 2006-00901-CD

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served by entering a written appearance personally or by an 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 CONTACT:

David S. Meholic, Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641, ext. 5982

IF YOU CANNOT AFFORD A LAWYER CONTACT:

MidPenn Legal Services, Inc.
211 ½ East Locust Street
Clearfield, PA 16830
(800) 326-9177/765-9646

ELION, WAYNE, GRIECO, CARLUCCI,
SHIPMAN & IRWIN, P.C.

By 

Robert B. Elion, I.D. #21030
Attorney for Plaintiff
125 East Third Street
Williamsport, PA 17701
(570) 326-2443 (phone)
(570) 326-1585 (fax)

FILED NO
M 11:41 AM
JUN 29 2006
Clerk of Courts
William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM A. EMIGH, III,
Plaintiff

vs.

TRACEY A. McCARTNEY
and DAVID WEITOISH,
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED
:
: NO. 2006-00901-CD

COMPLAINT

1. Plaintiff William A. Emigh, III is an adult individual residing at 150 Peterson Street, Philipsburg, Centre County, Pennsylvania 16866.
2. Defendant Tracey A. McCartney is an adult individual whose last known address is 1317 Walton Street, Philipsburg, Centre County, Pennsylvania 16866.
3. Defendant David Weitoish is an adult individual whose last known address is P.O. Box 171, Telcott Street, Morrisdale, Clearfield County, Pennsylvania 16858.
4. On September 18, 2004, Plaintiff William A. Emigh, III was a passenger in a vehicle operated by his mother, Marilyn Emigh.
5. On September 18, 2004, Plaintiff Tracey A. McCartney was operating a vehicle owned by Defendant David Weitoish.
6. On September 18, 2004, Marilyn Emigh was stopped at a red light at the junction of 53N and SR322 in Philipsburg, Clearfield County, Pennsylvania. While waiting for the light to turn green, the vehicle operated by Defendant Tracey A. McCartney and owned Defendant by David Weitoish violently collided with the rear of Plaintiff's vehicle.

7. As a result of the aforementioned motor vehicle collision, Plaintiff William A. Emigh, III sustained bodily injuries that include, but are not limited to:

- (a) Lumbar radiculitis
- (b) Grade I spondylolisthesis L5-S1
- (c) Bilateral pars defect
- (d) Cervical myofascial pain
- (e) Lower extremity radiculitis
- (f) Bilateral sciatica
- (g) Chronic spinal pain syndrome
- (h) Whiplash

8. As a result of the aforementioned motor vehicle collision, Plaintiff William A. Emigh, III incurred medical expenses that have or may in the future exceed sums recoverable pursuant to the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. §1711, *et seq.*

9. As a result of the aforementioned motor vehicle collision, Plaintiff William A. Emigh, III has incurred income loss that has or may in the future exceed sums recoverable pursuant to the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. §1711, *et seq.*

10. As a result of the aforementioned motor vehicle collision, Plaintiff William A. Emigh, III has suffered and continues to experience significant physical pain and emotional suffering.

11. As a result of the aforementioned motor vehicle collision, Plaintiff William A. Emigh, III has suffered permanent disfigurement.

12. As a result of the aforementioned motor vehicle collision, Plaintiff William A. Emigh, III has or may in the future become permanently disabled.

13. As a result of the aforementioned motor vehicle collision, Plaintiff William A. Emigh, III has or may in the future incur other consequential damages resulting in additional financial loss as a consequence of any disability created by his bodily injuries.

14. As a result of the aforementioned motor vehicle collision, Plaintiff William A. Emigh, III has suffered and continues to experience a diminution in his ability to enjoy life and life's pleasures.

15. As a result of the aforementioned motor vehicle collision, Plaintiff William A. Emigh, III experienced embarrassment and humiliation.

16. As a result of the aforementioned motor vehicle collision, Plaintiff William A. Emigh, III suffered psychological and emotional trauma.

17. As a result of the aforementioned motor vehicle collision, Plaintiff William A. Emigh, III has incurred a serious injury as defined by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. §1705, *et seq*, entitling him to be compensated for all non-economic damages associated with his loss.

COUNT I

Plaintiff William A. Emigh, III vs. Defendant Tracey A. McCartney (Negligence)

18. Paragraphs 1 – 17 of Plaintiff's Complaint are incorporated herein by reference as though fully set forth at length.

19. Defendant Tracey A. McCartney owed a legal duty to individuals on the roadway, and in particular to Plaintiff William A. Emigh, III, to operate her vehicle in a safe and prudent manner in order to avoid injuring other individuals on the roadway such as Plaintiff William A. Emigh, III, and Defendant Tracey A. McCartney breached this duty.

20. The negligence and carelessness of Defendant Tracey A. McCartney consisted of the following:

- (a) Violating §3714 of the Pennsylvania Motor Vehicle Code as it relates to careless driving;
- (b) Was inattentive to traffic conditions in her path;
- (c) Failing to apply her brakes in time to avoid a collision;
- (d) Failing to control her vehicle and prevent it from coming into contact with Plaintiff's vehicle;

- (e) Traveling at a speed in excess of that which would have allowed her to avoid colliding with Plaintiff's vehicle;
- (f) Traveling at a speed in excess of that which would have allowed her to stop within the assured clear distance ahead;
- (g) Failing to act with due care and regard for the position and safety of others and in particular, Plaintiff William A. Emigh, III;
- (h) Careless and recklessly operating her motor vehicle.

21. Plaintiff William A. Emigh, III suffered the aforementioned injuries and damages as a direct, proximate, and/or substantial result of the negligence of Defendant Tracey A. McCartney.

WHEREFORE, Plaintiff William A. Emigh, III demands judgment against Defendant Tracey A. McCartney in an amount in excess of the jurisdictional requirements for compulsory arbitration.

COUNT II

Plaintiff William A. Emigh, III v. Defendant David Weitoish (Negligent Entrustment)

22. Paragraphs 1 – 21 of Plaintiff's complaint are incorporated herein by reference as though fully set forth at length.

23. Defendant David Weitoish owed a legal duty to individuals on the roadway, and specifically to Plaintiff William A. Emigh, III, to not allow individuals to drive his motor vehicle when he knew or had reason to know that they are careless and reckless drivers and Defendant David Weitoish breached this legal duty.

24. Defendant David Weitoish was negligent in the entrustment of his vehicle unto Defendant Tracey A. McCartney in that he knew or had reason to know that Defendant Tracey A. McCartney was a careless and reckless driver and he nonetheless permitted her to operate his vehicle.

WHEREFORE, Plaintiff William A. Emigh, III, demands judgment against Defendant David Weitoish in an amount in excess of the jurisdictional requirements for compulsory arbitration.

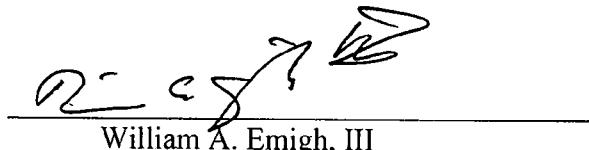
ELION, WAYNE, GRIECO, CARLUCCI,
SHIPMAN & IRWIN, P.C.

By 

Robert B. Elion, I.D. #21030
Attorney for Plaintiff
125 East Third Street
Williamsport, PA 17701
(570) 326-2443 (phone)
(570) 326-1585 (fax)

VERIFICATION

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



William A. Emigh, III

Dated: 6-23-06

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101608
NO. 06-901-CD
SERVICE # 1 OF 2
SUMMONS & PLFF. 1st SET OF

INTERROGATORIES

PLAINTIFF: WILLIAM A. EMIGH III
vs.
DEFENDANT: TRACEY A. MCCARTNEY and DAVID WEITOISH

SHERIFF RETURN

NOW, June 07, 2006 AT 1:50 PM SERVED THE WITHIN SUMMONS & PLFF. 1st SET OF INTERROGATORIES ON TRACEY A. MCCARTNEY DEFENDANT AT 3687 MORRISDALE ALLPORT HWY., MORRISDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO TRACEY A. MCCARTNEY, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS & PLFF. 1st SET OF INTERROGATORIES AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER /

FILED
01/31/06
JUL 12 2006
ws
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101608
NO: 06-901-CD
SERVICE # 2 OF 2
SUMMONS & PLFF. 1st SET OF

INTERROGATORIES

PLAINTIFF: WILLIAM A. EMIGH III

vs.

DEFENDANT: TRACEY A. MCCARTNEY and DAVID WEITOISH

SHERIFF RETURN

NOW, June 07, 2006 AT 1:40 PM SERVED THE WITHIN SUMMONS & PLFF. 1st SET OF INTERROGATORIES ON DAVID WEITOISH DEFENDANT AT P.O. BOX 171, TELCOTT ST., MORRISDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DAVID WEITOISH, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS & PLFF. 1st SET OF INTERROGATORIES AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101608
NO: 06-901-CD
SERVICES 2
SUMMONS & PLFF. 1st SET OF

INTERROGATORIES

PLAINTIFF: WILLIAM A. EMIGH III

vs.

DEFENDANT: TRACEY A. MCCARTNEY and DAVID WEITOISH

SHERIFF RETURN

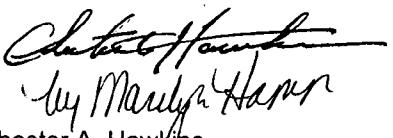
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	ELION	28083	20.00
SHERIFF HAWKINS	ELION	28083	35.96

Sworn to Before Me This

So Answers,

____ Day of _____ 2006


Chester A. Hawkins
Sheriff

WILLIAM A. EMIGH, III,
Plaintiff

vs.

TRACEY A. McCARTNEY
and DAVID WEITOISH,
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED
:
: NO. 2006-00901-CD

ACCEPTANCE OF SERVICE

I accept service of the *Complaint* on behalf of Tracey A. McCartney and David Weitoish and certify that I am authorized to do so.

McINTYRE, HARTYE & SCHMITT

By Louis C. Schmitt, Jr.
Louis C. Schmitt, Jr., I.D. #52450
Attorney for Defendants
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

Dated: 7-3-06

FILED ^{10cc}
JUL 14 2006
311-3886

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUL 14 2006

*William A. Shaw
Prothonotary/Clerk of Courts*

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

WILLIAM A. EMIGH, III,

No. 2006-00901-CD

Plaintiff,

vs.

TRACEY A. McCARTNEY and
DAVID WEITOISH,

Defendants.

**ISSUE: PRELIMINARY
OBJECTIONS**

Filed on Behalf of Defendants:
TRACEY A. McCARTNEY and
DAVID WEITOISH

Counsel of Record:
LOUIS C. SCHMITT, JR., ESQUIRE
PA. ID. No. 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
July, 2006.

Heather A. Harrington/mad
Attorney for Defendants

FILED ^{rec}
MFT:59/04
JUL 12 2006

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION**

WILLIAM A. EMIGH, III,

No. 2006-00901-CD

Plaintiff,

vs.

TRACEY A. McCARTNEY and
DAVID WEITOISH,

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 Preliminary Objections filed on behalf of defendants, Tracey A. McCartney and David Weitoish.

Respectfully submitted,

McINTYRE, HARTYE & SCHMITT

Heather A. Harrington
Attorney for Defendants

LOUIS C. SCHMITT, JR., ESQUIRE
PA ID. No. 52459

HEATHER A. HARRINGTON, ESQUIRE
PA ID. No. 62977

P. O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581
(814) 696-9399 - FAX

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

WILLIAM A. EMIGH, III,

No. 2006-00901-CD

Plaintiff,

vs.

TRACEY A. McCARTNEY and
DAVID WEITOISH,

Defendants.

JURY TRIAL DEMANDED

FILED

01/11/13/54
JUL 18 2006

William A. Shaw
Prothonotary/Clerk of Courts

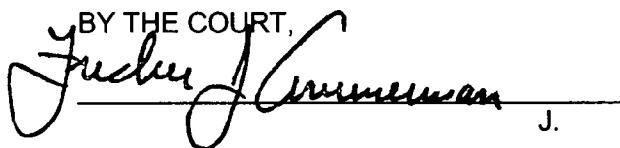
cc Atty Etion
Harrington

ORDER

AND NOW, this 17th day of JULY, 2006, upon

consideration of the Preliminary Objections filed on behalf of defendants, Tracey A. McCartney and David Weitoish, and any response thereto, it is hereby ORDERED as follows:

1. Oral argument upon the Preliminary Objections will be held on September 1, 2006, 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 Preliminary Objections on or before August 7, 2006.
3. Notice of the entry of this Order shall be served by the Prothonotary.

BY THE COURT,

J. C. Zimmerman J.

DATE: 7/18/06

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

JUL 18 2006

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION**

WILLIAM A. EMIGH, III,

No. 2006-00901-CD

Plaintiff,

vs.

TRACEY A. McCARTNEY and
DAVID WEITOISH,

Defendants.

JURY TRIAL DEMANDED

ORDER

AND NOW, this _____ day of _____, 2006, it is hereby

ORDERED, DIRECTED AND DECREED that the Preliminary Objections in the nature of Demurrer are granted. Count II (Negligent Entrustment) is hereby dismissed, with prejudice. In addition, the defendants' Motion to Strike as it pertains to Paragraph 20 (h) is granted, and that paragraph is dismissed with prejudice.

BY THE COURT:

J.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION**

WILLIAM A. EMIGH, III,

..... No. 2006-00901-CD

Plaintiff,

..... vs.

TRACEY A. McCARTNEY and
DAVID WEITOISH,

..... Defendants.

..... JURY TRIAL DEMANDED

PRELIMINARY OBJECTIONS

AND NOW, come defendants **Tracey A. McCartney and David Weitoish**, by and through their counsel, McIntyre, Hartye & Schmitt, and files the within Preliminary Objections to the plaintiff's Complaint, as follows:

1. Plaintiff has filed a Complaint alleging personal injuries resulting from an automobile accident which occurred on September 18, 2004.
2. In his Complaint, the plaintiff alleges that defendant Tracey A. McCartney was operating a vehicle owned by defendant David Weitoish, and that Ms. McCartney struck the rear of the vehicle in which the plaintiff was a passenger.

DEMURRER

3. Defendants Tracey A. McCartney and David Weitoish hereby incorporate by reference Paragraphs 1 through 2 of the Preliminary Objections, as if more fully set forth at length.

4. Count II of plaintiffs' Complaint reads, in its entirety:

COUNT II

Plaintiff William A. Emigh, III v. Defendant David Weitoish (Negligent Entrustment)

22. Plaintiffs 1 - 21 of plaintiffs' Complaint are incorporated herein by reference as though fully set forth at length.

23. David Weitoish owed a legal duty to individuals on the roadway, and specifically to plaintiff William A. Emigh, III, not to allow individuals to drive his motor vehicle when he knew or had reason to know that they are careless and reckless drivers and defendant David Weitoish breached his legal duty.

24. Defendant David Weitosh was negligent in the entrustment of his vehicle unto defendant Tracey A. McCartney in that he knew or had reason to know that defendant Tracy A. McCartney was a careless and reckless driver and he nonetheless permitted her to operate his vehicle.

4. The only factual allegations in the Complaint as to the alleged "careless and reckless" actions of defendant McCartney are found in Count I, Paragraph 20, wherein the plaintiff outlines the basis for direct liability against defendant McCartney.

5. However, there are absolutely no facts pled in the Complaint which would indicate that David Weitoish knew or had any reason to know that defendant McCartney was generally a careless or reckless driver, or that she would be careless or reckless in driving the vehicle on the date in question.

6. Liability for negligent entrustment of a vehicle has, as a necessary element, knowledge of general propensities of the driver, or of specific limitations that would give notice to the owner of the vehicle on the particular date in question.

7. There simply are no facts in the Complaint to support either of these conclusions.

8. Therefore, plaintiff's claim for negligent entrustment against defendant David Weitoish fails to state a cause for which relief can be granted, and a demurrer to the same is proper.

WHEREFORE, defendant David Weitoish respectfully requests that this Honorable Court grant his Preliminary Objections in the nature of a Demurrer and dismiss Count II of the plaintiff's Complaint, and/or any and all claims of negligent entrustment against him, with prejudice.

MOTION TO STRIKE

9. Defendants Tracey A. McCartney and David Weitoish hereby incorporate by reference Paragraphs 1 through 8, as if fully set forth at length.

10. In Paragraphs 23 and 24 of the Complaint, the plaintiff sets forth legal conclusions to allege a claim of negligent entrustment against defendant David Weitosh, with no factual allegations to support them.

11. Paragraphs 23 and 24 contain bald allegations of a conclusory nature, and violate Pa. R.C.P. 1019(a) by failing to set forth in a concise and summary form the facts upon which a claim of negligent entrustment is based.

12. Paragraph 20 (h) alleges that defendant Tracey A. McCartney was "carelessly and recklessly operating her motor vehicle."

13. Prior to this subparagraph plaintiff has provided seven specific bases for the alleged negligence of defendant Tracey A. McCartney.

13. Paragraph 20 (h) is a vague "catch all" allegation.

14. It does not provide the defendant with sufficient information to be able to respond or defend.

WHEREFORE, defendants Tracey A. McCartney and David Weitoish respectfully request that this Honorable Court strike Paragraphs 20 (h), 23 and 24 from the Complaint.

MOTION FOR MORE SPECIFIC PLEADING

15. Defendants Tracey A. McCartney and David Weitoish hereby incorporate by reference Paragraphs 1 through 14 of these Preliminary Objections, as if fully set forth herein at length.

16. In the alternative to the above requested relief, the defendants would request that this court direct the plaintiff to provide specific factual allegations to support his claim of negligent entrustment against defendant Davie Weitoish, and specifically outline the manner in which Defendant Tracey A. McCartney was careless or reckless in operating the motor vehicle beyond the allegations found in Paragraphs 20 (a) through 20 (g).

WHEREFORE, the defendants Tracey A. McCartney and David Weitoish, respectfully request that this Honorable Court, in the alternative to the Demurrer and

Motion to Strike, direct the plaintiff to more specifically plead all facts necessary to support the claims made in his Complaint.

Respectfully submitted,

McINTYRE, HARTYE & SCHMITT

Heather A. Harrington/ma
Attorney for Defendant

LOUIS C. SCHMITT, JR., ESQUIRE
PA ID. No. 52459

HEATHER A. HARRINGTON, ESQUIRE
PA ID. No. 62977

P. O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581
(814) 696-9399 - FAX

Notice to Plead

To: PRELIMINARY OBJECTIONS

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

Heather A. Harrington/ma
Attorney for Defendants

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

WILLIAM A. EMIGH, III,

No. 2006-00901-CD

Plaintiff,

vs.

TRACEY A. McCARTNEY and
DAVID WEITOISH,

Defendants.

ISSUE: NOTICE OF DEPOSITION
OF PLAINTIFF, WILLIAM A. EMIGH, III

Filed on Behalf of Defendants:
TRACEY A. McCARTNEY and
DAVID WEITOISH

Counsel of Record:
LOUIS C. SCHMITT, JR., ESQUIRE
PA. ID. No. 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
July, 2006.

Attorney for Defendants

FILED

JUL 27 2006
m 12:55 PM
William A. Shaw
Prothonotary/Clerk of Courts
no C/C

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION**

WILLIAM A. EMIGH, III,

No. 2006-00901-CD

Plaintiff,

vs.

TRACEY A. McCARTNEY and
DAVID WEITOISH.

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION

TO: William A. Emigh, III
c/o Robert B. Elion, Esquire
125 E. Third Street
Williamsport, PA 17701

Please take notice that the deposition of **William A. Emigh, III** shall be taken upon oral examination by an official Court Reporter at the offices of **McINTYRE, HARTYE & SCHMITT**, 1816 Old Route 220 North Business, Duncansville, PA (Across from the Hollidaysburg Veteran's Home) on the 14th day of September, 2006, commencing at 11:00 a.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 Defendant
Tracey A. McCartney
Louis C. Schmitt, Jr., Esquire
PA I.D. #52459
P.O. Box 533
Hollidaysburg, PA 16648-053
(814) 696-3581

FILED
JUL 27 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAM A. EMIGH, III,

No. 2006-00901-CD

Plaintiff,

vs.

TRACEY A. McCARTNEY and
DAVID WEITOISH,

Defendants.

**ISSUE: Praeclipe to Withdraw
Preliminary Objections**

Filed on Behalf of Defendants:
TRACEY A. McCARTNEY and
DAVID WEITOISH

Counsel of Record:
LOUIS C. SCHMITT, JR., ESQUIRE
PA. ID. No. 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 26th day of
July, 2006.

Attorney for Defendants

FILED
M 11 27 2006
JUL 28 2006
NOCC

W.A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAM A. EMIGH, III,	:	No. 2006-00901-CD
Plaintiff,	:	
vs.	:	
TRACEY A. McCARTNEY and	:	
DAVID WEITOISH,	:	
Defendants.	:	JURY TRIAL DEMANDED

PRAECIPE TO WITHDRAW PRELIMINARY OBJECTIONS

TO: Prothonotary

Kindly withdraw the Preliminary Objections filed on behalf of defendants, Tracey A. McCartney and David Weitosh in the above captioned matter.

Respectfully submitted,

McINTYRE, HARTYE & SCHMITT

Date: July 26, 2006

Attorney for Defendants
Tracey A. McCartney and
David Weitosh

LOUIS C. SCHMITT, JR., ESQUIRE
PA ID. No. 52459

P. O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581
(814) 696-9399 - FAX

FILED

JUL 28 2006

William A. Shaw
Prothonotary/Clerk of Courts

MH&S

McIntyre, Hartye & Schmitt
LAW OFFICES

July 26, 2006

Our Reference: PG 260 NH

Prothonotary
Court of Common Pleas
Of Clearfield County
Courthouse
230 East Market Street
Clearfield, PA 16830

Re: William A. Emigh, III vs. Tracey A. McCartney and David Weitoish
No. 2006 – 901 C.D.

Dear Prothonotary:

Please find enclosed for filing the Praeclipe to Withdraw Preliminary Objections filed on behalf of defendants above. Please cancel the Argument hearing which has been set for September 1, 2006 at 10:30 a.m. in Courtroom No. 1.

By copy of this letter counsel for plaintiff and the Court Administrator is being advised of same.

Thank you.

Sincerely,

Louis C. Schmitt, Jr.

LCS:lg
Enclosure

cc: Robert B. Elion, Esquire
Court Administrator
(both w/enclosure)

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

WILLIAM A. EMIGH, III,

: No. 2006-00901-CD

Plaintiff,

VS.

TRACEY A. McCARTNEY and
DAVID WEITOISH,

Defendants.

ISSUE:
Stipulation to Discontinue

Filed on Behalf of Defendants:
TRACEY A. McCARTNEY and
DAVID WEITOISH

Counsel of Record:
LOUIS C. SCHMITT, JR., ESQUIRE
PA. ID. No. 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
August, 2006.

Attorney for Defendants

FILED
M/1:55pm
AUG 15 2006
No CC.
S

William A. Shaw
Prothonotary

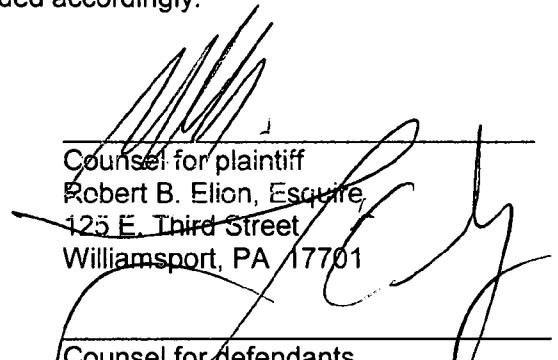
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.
CIVIL ACTION

WILLIAM A. EMIGH, III,
Plaintiff,
vs.
TRACEY A. McCARTNEY and
DAVID WEITOISH,
Defendants. JURY TRIAL DEMANDED

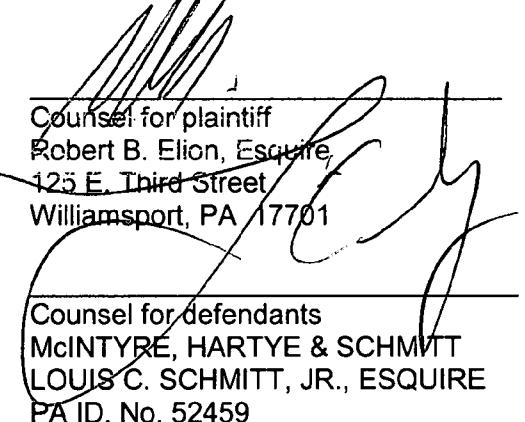
STIPULATION TO DISCONTINUE

AND NOW, come the parties to this matter, by and through their respective
counsel, and pursuant to Pa. R.C.P. 229(b)(1) hereby stipulate and agree that all claims
of plaintiff William A. Emigh, III, as to defendant David Weitoish, *only*, are discontinued.
The docket in this matter may be amended accordingly.

Date: 7/28/06


Counsel for plaintiff
Robert B. Elion, Esquire
125 E. Third Street
Williamsport, PA 17701

Date: 8/7/06


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

MH&S
McIntyre, Hartye & Schmitt
LAW OFFICES

August 11, 2006

Our Reference: PG 260 NH

Prothonotary
Court of Common Pleas
Of Clearfield County
Courthouse
230 East Market Street
Clearfield, PA 16830

Re: William A. Emigh, III vs. Tracey A. McCartney and David Weitoish
No. 2006 – 901 C.D.

Dear Prothonotary:

Enclosed please find a Stipulation to Discontinue to be filed in the above action.

Thank you.

Sincerely,

Louis C. Schmitt, Jr.

LCS:slh
Enclosure

cc: Robert B. Elion, Esquire
(w/enclosure)

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

WILLIAM A. EMIGH, III,

No. 2006-00901-CD

Plaintiff,

vs.

TRACEY A. McCARTNEY and
DAVID WEITOISH,

Defendants.

ISSUE: NOTICE OF SERVICE
OF ANSWERS TO PLAINTIFF'S
SECOND SET OF INTERROGATORIES
ANSWERS TO FIRST SET OF EXPERT
INTERROGATORIES AND RESPONSE
TO SECOND REQUEST FOR
PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT TRACEY
A. McCARTNEY

Filed on Behalf of Defendants:
TRACEY A. McCARTNEY and
DAVID WEITOISH

Counsel of Record:
LOUIS C. SCHMITT, JR., ESQUIRE
PA. ID. No. 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
September, 2006.

Attorney for Defendants

FILED
MTH 02006
SEP 21 2006
NOCC

William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAM A. EMIGH, III,	:	No. 2006-00901-CD
Plaintiff,	:	
vs.	:	
TRACEY A. McCARTNEY and	:	
DAVID WEITOISH,	:	
Defendants.	:	JURY TRIAL DEMANDED

**NOTICE OF SERVICE OF ANSWERS TO PLAINTIFF'S SECOND SET OF
INTERROGATORIES, ANSWERS TO PLAINTIFF'S FRIST SET OF EXPERT
INTERROGATORIES, AND RESPONSE TO PLAINTIFF'S SECOND REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT,
TRACEY A. McCARTNEY**

TO: PROTHONOTARY

You are hereby notified that on the 19TH day of September, 2006, Defendant,
TRACEY A. McCARTNEY, served Answers to plaintiff's Second Set of Interrogatories,
Answers to plaintiff's First Set of Expert Interrogatories, and Response to Second
Request for Production of Documents Directed to defendant, Tracey A. McCartney, by
mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the
following:

Robert B. Elion, Esquire
125 E. Third Street
Williamsport, PA 17701

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

WILLIAM A. EMIGH, III,
Plaintiff

vs.

TRACEY A. McCARTNEY
and DAVID WEITOISH,
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED
:
: NO. 2006-00901-CD

PRAECIPE TO SETTLE AND DISCONTINUE

TO THE PROTHONOTARY, C.C.P.:

Kindly mark the record in the above-captioned matter settled and discontinued with prejudice.

ELION, WAYNE, GRIECO, CARLUCCI,
SHIPMAN & IRWIN, P.C.

By


Robert B. Elion, I.D. #21030
Attorney for Plaintiff
125 East Third Street
Williamsport, PA 17701
(570) 326-2443 (phone)
(570) 326-1585 (fax)

Dated: January 25, 2007

FILED 1004 1004 of
M 1:50 pm disc issued to
FEB 02 2007 Atty Elion
CC CJA
Un

William A. Shaw
Prothonotary/Clerk of Courts

LAW OFFICES
ELION, WAYNE, GRIECO, CARLUCCI, SHIPMAN & IRWIN, P.C.

570-326-2443

WILLIAM P. CARLUCCI
CHRISTINA L. DINGES
ROBERT B. ELION
ANTHONY J. GRIECO II
DAVID K. IRWIN
DAVID C. SHIPMAN
KRISTINE L. WALTZ
ROBERT B. WAYNE

FAX
570-326-1585

January 31, 2007

William A. Shaw, Sr., Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

***RE: Emigh v. McCartney and Weitoish
No. 2006-00901-CD***

Dear Mr. Shaw:

Enclosed please find the original and one copy of a Praecept to Settle and Discontinue. Please file the original, time stamp the copy, and return it to me in the pre-addressed, stamped envelope enclosed for your convenience.

Thank you for your cooperation.

Very truly yours,

ELION, WAYNE, GRIECO, CARLUCCI,
SHIPMAN & IRWIN, P.C.

Marianne Rupert

Marianne Rupert, Legal Assistant
to Robert B. Elion

/mr

Enclosures

cc: William Emigh
Jeffrey Catanzarite, Esquire (w/enc.)
Louis Schmitt, Jr., Esquire (w/enc.)

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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

William A. Emigh III

Vs.

No. 2006-00901-CD

Tracey A. McCartney
David Weitoish

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 2, 2007, marked:

Settled, discontinued with prejudice

Record costs in the sum of \$85.00 have been paid in full by Elion, Wayne, Grieco, Carlucci, Shipman & Irwin P.C..

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 2nd day of February A.D. 2007.



William A. Shaw, Prothonotary