

06-1321-CD

Philip Tabone vs Dr. Michael Peck et al

No

Used

✓

2006-1321-CD  
Philip Tabone vs Michael Peck et al

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an individual, Plaintiff : CIVIL ACTION - AT LAW  
vs. : No. 06-1321 CD  
DR. MICHAEL PECK and TODD MICHAEL PECK, Defendants : Type of pleading: COMPLAINT  
: Filed on behalf of:  
: Plaintiff  
: Counsel of Record for This Party:  
: S. Casey Bowers, Esq.  
: Supreme Court No. 89032  
: Hanak, Guido and Taladay  
: 3 S. Brady St., Suite 300  
: P. O. Box 487  
: DuBois, PA 15801  
: 814-371-7768

Date: August 17, 2006

FILED pd \$85.00 Atty  
0/12/05 cm cc Atty Bowers  
AUG 17 2006 2cc Shff.

William A. Shaw  
Prothonotary

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

PHILIP P. TABONE, JR., an :  
individual, :  
Plaintiff :  
: :  
vs. : No. \_\_\_\_\_  
: :  
DR. MICHAEL PECK and :  
TODD MICHAEL PECK, :  
Defendants :  
:

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

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

PHILIP P. TABONE, JR., an :  
individual, :  
Plaintiff :  
vs. : No. \_\_\_\_\_  
DR. MICHAEL PECK and :  
TODD MICHAEL PECK, :  
Defendants :  
:

**COMPLAINT**

AND NOW, comes the Plaintiff, Philip P. Tabone, Jr., by and  
through his Attorneys, Hanak, Guido and Taladay, and hereby brings  
this Complaint against the Defendants averring as follows:

1. Plaintiff, Philip P. Tabone, Jr., is an adult individual, and resident of DuBois, Clearfield County, Pennsylvania, with a business address of 723 S. Brady Street, DuBois, Clearfield County, Pennsylvania 15801.
2. Defendant, Dr. Michael Peck, is an adult individual, with who resides at 3858 Hamme Road, Glenville, York County, Pennsylvania, 17329.
3. Defendant, Todd Michael Peck, is an adult individual, who resides at 3854 Hamme Road, Glenville, York County, Pennsylvania 17329.

4. At all times pertinent hereto, Defendants have acted as partners with each other in the buying and selling of race cars and race car components.

5. On or about July 10, 2006, in Clearfield County, Pennsylvania, the parties entered an oral agreement whereby Defendants agreed to sell and Plaintiff agreed to purchase two Pro Cup Hooters Cars.

6. The specific cars subject to the agreement are:

(a) One LRP 8063 Laughlin 2003 Pro Cup Hooters

Car with 2004 Update;

(b) One Predator 0060 - 2006 Pro Cup Hooters Car;

7. The 2006 Predator Car was to include a Tiger rear gear differential and axle tubes and a Turn One eight to one ratio steering box.

8. Under the terms of the subject agreement, Plaintiff was to make payment to Defendants in the amount of \$10,000.00 upon delivery of the subject cars.

#### **COUNT I - BREACH OF EXPRESS WARRANTY**

9. Plaintiff incorporates all prior paragraphs herein.

10. As a basis of the bargain, and to induce Plaintiff to purchase the subject cars, Defendants made representations to Plaintiff that the 2006 Predator Car was in excellent condition and was free from latent defect. Specifically, Defendants made representations to Plaintiff

that the 2006 Predator car was not bent or twisted in any appreciable way.

11. Relying on Defendants' representations, Plaintiff purchased the cars and made payment to the Defendants in the amount of \$10,000.00 when Defendants delivered the subject cars to Plaintiff's facility in Clearfield County, Pennsylvania. A copy of the invoice dated July 10, 2006 evidencing said payment is attached hereto and marked as Exhibit A.

12. On July 12, 2006, just two days after taking delivery of the subject cars, Plaintiff put the 2006 Predator car on the alignment rack. At that time, Plaintiff discovered that the Predator chassis was bent and twisted to the extent that the car is undriveable. Plaintiff believes and, therefore, avers that the cost to repair the bent chassis greatly exceeds the purchase price of both vehicles.

13. This latent defect is not detectable by the naked eye.

14. Despite Plaintiff's repeated requests to refund his money and offer to reimburse Defendants for their transportation costs, Defendants have continually refused to refund Plaintiff the purchase price of the vehicles.

15. Defendants' actions set forth above constitute a breach of the express warranty set forth in Paragraph 10 herein.

16. As a direct result of Defendants' breach of express warranty, Plaintiff will suffer damages in excess of \$25,000.00.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendants, jointly and severally, in an amount in excess of \$25,000.00, together with interest, costs of suit, and any further relief this Court deems just and equitable.

**COUNT II - BREACH OF CONTRACT**

17. Plaintiff incorporates all prior paragraphs herein.

18. Under the terms of the oral agreement between the parties to purchase the subject cars, the 2006 Predator Car was to include the following components:

- (a) A Tiger rear gear differential and axle tubes; and
- (b) A Turn One eight to one ratio steering box.

The values of these components are \$3,780.00 and \$2,200.00 respectively.

19. After taking delivery of the subject cars, the Plaintiff discovered that the aforementioned components were not included in the 2006 Predator Car.

20. The Defendants' failure to include the aforementioned components constitutes a breach of the oral agreement between the parties.

21. As a direct or proximate result of Defendants' breach of contract, Plaintiff has suffered damages in excess of \$5,980.00.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendants, jointly and severally, in the amount of \$5,980.00, together with interest, costs of suit and any further relief this Court deems just and equitable.

**COUNT III - FRAUD/FRAUDULENT MISREPRESENTATION**

22. Plaintiff incorporates all prior paragraphs herein.

23. At all times pertinent hereto, Defendants intended to deceive and defraud Plaintiff out of the sales price of the cars by falsely and fraudulently representing that the 2006 Predator Car was free from defect.

24. Plaintiff justifiably relied on Defendants' representations which were intended to induce, and did induce Plaintiff to purchase the subject cars.

25. At the time that Defendants delivered the subject cars to Plaintiff, the 2006 Predator Car was bent and twisted such that it was undriveable and unrepairable.

26. Defendants knew, or had reason to know that the 2006 Predator Car was bent and twisted to the extent set forth above.

27. Upon taking delivery of the subject cars, Plaintiff did not know, nor did he have reasonable cause to know, that the 2006 Predator Car was bent and twisted as set forth above.

28. As a result of Defendants' fraudulent conduct, Plaintiff sustained substantial monetary losses including, but not limited to, the loss of the \$10,000.00 purchase price and interest.

29. Defendants' actions as set forth herein, constitute outrageous conduct. Therefore, Plaintiff is entitled to punitive damages and attorney fees.

WHEREFORE, Plaintiff demands judgment be entered in his favor and against the Defendants, jointly and severally, for compensatory damages and punitive damages in an amount in excess of \$25,000.00, together with interest, costs of suit, attorney fees and any further relief this Court deems just and equitable.

Respectfully submitted,

HANAK, GUIDO AND TALADAY

By: S. Casey Bowers  
S. Casey Bowers  
Attorney for Plaintiff

**VERIFICATION**

I, **PHILIP P. TABONE, JR.**, do hereby verify that I have read the foregoing Complaint. 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: 8/1/06



Philip P. Tabone, Jr.

SOLD To -

Philip P Tabone

**SNOW KING**

MOBILE HOME ROOFS & WINDOWS  
723 S. BRADY STREET  
DuBOIS, PA 15801

BUYER

(814) 371-9099

SELLER Todd & Michael Peck  
of  
CAR<sup>s</sup> 3854 Hamme Road  
Glenville, PA 17329

# STATEMENT

DATE

7/10/06

NUMBER

717-235-7713

TERMS:

CASH

PLEASE DETACH AND RETURN WITH YOUR REMITTANCE

\$ 10,000 -

DATE	CHARGES AND CREDITS	BALANCE
	Philip P TABONE	
	INVOICE FOR LRP 8063 Laughlin 2003 Pro Cup Hooters Car with 2004 Update	
	Predator 0060 Car	10000.00
	2006 Pro Cup Hooters Car	
	LESS PAID DOWN PAYMENT	10000.00
	BALANCE DUE	00.00
	<i>TODD PECK JR</i>	
	To be picked up at Radford, VA race 7/15/2006 12:1 Steering Box in Good Condition If not picked up will be shipped UPS - payment due on pick up	

*Rod D. in  
full*

**SNOW KING**  
(814) 371-9099

*Thank You*

PAY LAST AMOUNT  
IN THIS COLUMN

EXHIBIT "A"

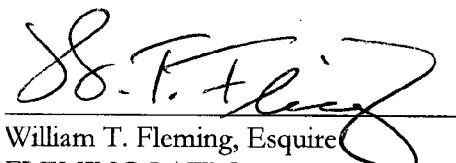
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PHILIP P. TABONE, JR., an : CIVIL ACTION- AT LAW  
Individual, : No. 06-1321-CD  
PLAINTIFF :  
vs. : Counsel for Defendants  
DR. MICHAEL PECK, and : FLEMING LAW OFFICES  
TODD MICHAEL PECK, : WILLIAM T. FLEMING, ESQ.  
DEFENDANTS : 204 Calder Way, Suite 304  
 : State College, PA 16801  
 : 814.278.5280  
 : [wtfleming@fleminglaw.info](mailto:wtfleming@fleminglaw.info)  
 : S.Ct. I.D. No. 39563

PRAECIPE FOR ENTRY OF APPEARANCE

To the Prothonotary:

Please enter my appearance on behalf of the above named Defendants.



William T. Fleming, Esquire  
FLEMING LAW OFFICES  
204 Calder Way, Suite 304  
State College, PA 16801  
814.278.5280  
S.Ct. I.D. No. 39563  
[wtfleming@fleminglaw.info](mailto:wtfleming@fleminglaw.info)

Date: September 18, 2006

FILED

SEP 19 2006

11:50 AM

William A. Shaw  
Prothonotary/Clerk of Courts

to 4C copy to CJA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PHILIP P. TABONE, JR., an Individual,	:	CIVIL ACTION- AT LAW
PLAINTIFF	:	No. 06-1321-CD
vs.	:	Counsel of Record for Defendants:
DR. MICHAEL PECK, and TODD MICHAEL PECK, DEFENDANTS	:	FLEMING LAW OFFICES WILLIAM T. FLEMING, ESQ. 204 Calder Way, Suite 304 State College, PA 16801 814.278.5280 <a href="mailto:wtfleming@fleminglaw.info">wtfleming@fleminglaw.info</a> S.Ct. I.D. No. 39563

CERTIFICATE OF SERVICE

I, William T. Fleming, Esquire, hereby certify that a true and correct copy of the attached document/pleading, was sent to the following:

S. Casey Bowers, Esquire  
Law Offices  
3 South Brady Street, Suite 300  
P.O. Box 487  
DuBois, PA 15801

This certificate is given pursuant to the penalties contained in 18 Pa.C.S.A  
Section 4904 pertaining to Unsworn Falsification to Authorities.

  
\_\_\_\_\_  
William T. Fleming, Esquire  
FLEMING LAW OFFICES  
204 Calder Way, Suite 304  
State College, PA 16801  
814.278.5280  
S.Ct. I.D. No. 39563  
[wtfleming@fleminglaw.info](mailto:wtfleming@fleminglaw.info)

Date: September 18, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101834  
NO: 06-1321-CD  
SERVICE # 1 OF 2  
COMPLAINT

PLAINTIFF: PHILIP P. TABONE JR.

vs.

DEFENDANT: DR. MICHAEL PECK and TODD MICHAEL PECK

**SHERIFF RETURN**

---

NOW, August 17, 2006, SHERIFF OF YORK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON DR. MICHAEL PECK.

NOW, September 06, 2006 AT 1:40 PM SERVED THE WITHIN COMPLAINT ON DR. MICHAEL PECK, DEFENDANT. THE RETURN OF YORK COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

**FILED**  
09/06/06 cm  
SEP 26 2006 (S)

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101834  
NO. 06-1321-CD  
SERVICE # 2 OF 2  
COMPLAINT

PLAINTIFF: PHILIP P. TABONE JR.

vs.

DEFENDANT: DR. MICHAEL PECK and TODD MICHAEL PECK

**SHERIFF RETURN**

---

NOW, August 17, 2006, SHERIFF OF YORK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON TODD MICHAEL PECK.

NOW, September 06, 2006 AT 1:40 PM SERVED THE WITHIN COMPLAINT ON TODD MICHAEL PECK, DEFENDANT. THE RETURN OF YORK COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101834  
NO: 06-1321-CD  
SERVICES 2  
COMPLAINT

PLAINTIFF: PHILIP P. TABONE JR.  
vs.  
DEFENDANT: DR. MICHAEL PECK and TODD MICHAEL PECK

**SHERIFF RETURN**

---

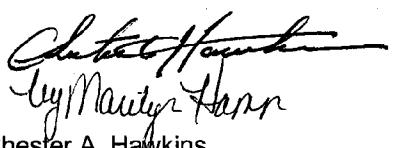
**RETURN COSTS**

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	HANAK	14975	20.00
SHERIFF HAWKINS	HANAK	14975	21.00
YORK CO.	HANAK	14970	75.50

Sworn to Before Me This

So Answers,

\_\_\_\_ Day of \_\_\_\_\_ 2006

  
Chester A. Hawkins  
Sheriff

## OFFICE OF THE SHERIFF

45 N. GEORGE ST., YORK, PA 17401

SERVICE CALL  
(717) 771-9601SHERIFF SERVICE  
PROCESS RECEIPT and AFFIDAVIT OF RETURNINSTRUCTIONS  
PLEASE TYPE ONLY LINE 1 THRU 12  
DO NOT DETACH ANY COPIES

1. PLAINTIFF/S/

Philip P. Tabone Jr.

3. DEFENDANT/S/

Dr. Michael Peck et

2. COURT NUMBER

06-1321-CD

4. TYPE OF WRIT OR COMPLAINT

CICA

SERVE



5. NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO BE LEVIED, ATTACHED, OR SOLD

Todd Michael Peck

6. ADDRESS (STREET OR RFO WITH BOX NUMBER, APT. NO., CITY, BORO, TWP., STATE AND ZIP CODE)

3854 Hammie Rd Glenville Pa 17329

7. INDICATE SERVICE:  PERSONAL  PERSON IN CHARGE  DEPUTIZE  CERT. MAIL  1ST CLASS MAIL  POSTED  OTHERNOW Aug 17, 2006 I, SHERIFF OF YORK COUNTY, PA, do hereby depose the sheriff of YORK COUNTY to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff.

SHERIFF OF YORK COUNTY

8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE

OUT OF COUNTY  
CLEARFIELD

ADVANCE FEE PAID BY ATTY.

NOTE: ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction, or removal of any property before sheriff's sale thereof.

9. TYPE NAME and ADDRESS of ATTORNEY / ORIGINATOR and SIGNATURE S. CASEY BOWERS, ESQ. 10. TELEPHONE NUMBER 814-371-7768 11. DATE FILED 8/17/2006  
 3 SOUTH BRADY ST., STE., 300, PO BOX 487, DUBOIS, PA 15801

12. SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW: (This area must be completed if notice is to be mailed)

CLEARFIELD CO. SHERIFF

## SPACE BELOW FOR USE OF THE SHERIFF - DO NOT WRITE BELOW THIS LINE

13. I acknowledge receipt of the writ or complaint as indicated above. MJMCGILL, YCSO 14. DATE RECEIVED 8/21/2006 15. Expiration/Hearing Date 9/16/2006

16. HOW SERVED: PERSONAL  RESIDENCE  POSTED  POE  SHERIFF'S OFFICE  OTHER  SEE REMARKS BELOW

17.  Thereby certify and return a NOT FOUND because I am unable to locate the individual, company, etc. named above. (See remarks below.)  
Robert B. Hardman Robert B. Bowman 18. NAME AND TITLE OF INDIVIDUAL SERVED LIST ADDRESS HERE IF NOT SHOWN ABOVE (Relationship to Defendant) 19. Date of Service 9-6-06 20. Time of Service 1400h

21. ATTEMPTS 9/28/12/06 50 JDM 50 22. REMARKS:

23. Advance Costs 24. Service Costs 25. N/F 26. Mileage 27. Postage 28. Sub Total 29. Pound 30. Notary 31. Surchg. 32. Tot. Costs 33. Costs Due or Refund 34. Check No.

34. Foreign County Costs 35. Advance Costs 36. Service Costs 37. Notary Cert. 38. Mileage/Postage/Not Found 39. Total Costs 40. Costs Due or Refund

41. AFFIRMED and subscribed before me on the 12th day of Sept 2006 in the Commonwealth of Pennsylvania  
 42. day of SEPT, 2006 notarial seal present  
 LISA L. BOWMAN, NOTARY PUBLIC  
 CITY OF YORK, YORK COUNTY  
 MY COMMISSION EXPIRES AUG. 12, 2009

SO ANSWERS

43. Signature of Dep. Sheriff William M. Hose 44. Signature of York County Sheriff James V. Janque 45. DATE 9-6-06  
 46. Signature of York County Sheriff James V. Janque 47. DATE 9-6-06  
 FOR WILLIAM M HOSE, SHERIFF acting 48. Signature of Foreign County Sheriff James V. Janque 49. DATE 9/8/06

50. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE  
 OF AUTHORIZED ISSUING AUTHORITY AND TITLE 51. DATE RECEIVED

## OFFICE OF THE SHERIFF

45 N. GEORGE ST., YORK, PA 17401

SERVICE CALL  
(717) 771-9601SHERIFF SERVICE  
PROCESS RECEIPT and AFFIDAVIT OF RETURNINSTRUCTIONS  
PLEASE TYPE ONLY LINE 1 THRU 12  
DO NOT DETACH ANY COPIES

## 1. PLAINTIFF/S/

Philip P. Tabone Jr.

2. COURT NUMBER  
06-1321-C0 06-1321-C0

## 3. DEFENDANT/S/

Dr. Michael Peck a1

4. TYPE OF WRIT OR COMPLAINT

Complaint CICA

## SERVE



5. NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO BE LEVIED, ATTACHED, OR SOLD

Dr. Michael Peck

## 6. ADDRESS (STREET OR RFO WITH BOX NUMBER, APT NO., CITY, BORO, TWP., STATE AND ZIP CODE)

3858 Hammie Road, Glenville Pa. 17329

7. INDICATE SERVICE:  PERSONAL  PERSON IN CHARGE  DEPUTIZE  CERT. MAIL  1ST CLASS MAIL  POSTED  OTHER

NOW Aug 17, 2006 I, SHERIFF OF YORK COUNTY, PA, do hereby depose the sheriff of York COUNTY to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff.

SHERIFF OF YORK COUNTY

## 8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

OUT OF COUNTY

CLEARFIELD

## ADVANCE FEE PAID BY ATTY.

NOTE: ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction, or removal of any property before sheriff's sale thereof.

9. TYPE NAME and ADDRESS of ATTORNEY / ORIGINATOR and SIGNATURE S. CASEY BOWERS, ESQ. 10. TELEPHONE NUMBER 11. DATE FILED

3 S. BRADY ST., STE., 300, PO BOX 487, DUBOIS, PA 15801 814-371-7768 8/17/2006

## 12. SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW: (This area must be completed if notice is to be mailed)

CLEARFIELD CO. SHERIFF

## SPACE BELOW FOR USE OF THE SHERIFF - DO NOT WRITE BELOW THIS LINE

13. I acknowledge receipt of the writ or complaint as indicated above. MJ MCGILL, YCSO 14. DATE RECEIVED 8/21/2006 15. Expiration/Hearing Date 9/16/2006

16. HOW SERVED: PERSONAL ( ) RESIDENCE (X) POSTED ( ) POE ( ) SHERIFF'S OFFICE ( ) OTHER ( ) SEE REMARKS BELOW

17.  I hereby certify and return a NOT FOUND because I am unable to locate the individual, company, etc. named above. (See remarks below.)

18. NAME AND TITLE OF INDIVIDUAL SERVED / LIST ADDRESS HERE IF NOT SHOWN ABOVE (Relationship to Defendant) 19. Date of Service 9-6-06 20. Time of Service 140pm

X Robert P. Bradman, DPO, L. Bowman, T. F. 21. ATTEMPTS Date Time Miles Int. Date Time Miles Int. Date Time Miles Int. Date Time Miles Int. Date Time Miles Int.

## 22. REMARKS:

23. Advance Costs \$100.00 24. Service Costs \$4.00 25. N/F 26. Mileage 14.50 27. Postage 68.50 28. Sub Total 68.50 29. Pound 7.00 30. Notary 7.00 31. Surchg 75.50 32. Tot. Costs 75.50 33. Costs Due or Refund 24.50 Check No. 10460

34. Foreign County Costs 35. Advance Costs 36. Service Costs 37. Notary Cert. 38. Mileage/Postage/Not Found 39. Total Costs 40. Costs Due or Refund

41. AFFIRMED COMMUNICATED to before me this 8TH  
42. day of SEPT. 20 07 BY *Lisa L. Bowman*  
LISA L. BOWMAN, NOTARY PUBLIC  
CITY OF YORK, YORK COUNTY  
MY COMMISSION EXPIRES AUG. 12, 200944. Signature of  
Dep. Sheriff *Jeff Boddie* 12-17 45. DATE 9-6-06  
46. Signature of York  
County Sheriff *James W. Vargas* 47. DATE  
FOR WILLIAM M HOSE, SHERIFF *Acting* 9/8/06  
48. Signature of Foreign  
County Sheriff50. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE  
OF AUTHORIZED ISSUING AUTHORITY AND TITLE

51. DATE RECEIVED



CHESTER A. HAWKINS  
SHERIFF

Sheriff's Office  
Clearfield County

COURTHOUSE  
1 NORTH SECOND STREET, SUITE 116  
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986

FAX (814) 765-5915

ROBERT SNYDER  
CHIEF DEPUTY

MARILYN HAMM  
DEPT. CLERK

CYNTHIA AUGHENBAUGH  
OFFICE MANAGER

KAREN BAUGHMAN  
CLERK TYPIST

PETER F. SMITH  
SOLICITOR

**DEPUTATION**

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

PAGE 101834

TERM & NO. 06-1321-CD

PHILIP P. TABONE JR.

COMPLAINT

VS.

DR. MICHAEL PECK and TODD MICHAEL PECK

**SERVE BY: 09/16/06**

**MAKE REFUND PAYABLE TO HANAK, GUIDO & TALADAY, ESQ.**

**SERVE:** DR. MICHAEL PECK

**ADDRESS:** 3858 HAMME ROAD, GLENVILLE, PA 17329

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF YORK COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, August 17, 2006.

RESPECTFULLY,

A handwritten signature in black ink, appearing to read "Chester A. Hawkins".

CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

RECEIVED  
OFFICE OF THE SHERIFF  
YORK, PA  
2006 AUG 21 P 2:02



CHESTER A. HAWKINS  
SHERIFF

# Sheriff's Office Clearfield County

COURTHOUSE  
1 NORTH SECOND STREET, SUITE 116  
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986

FAX (814) 765-5915

ROBERT SNYDER

CHIEF DEPUTY

MARILYN HAMM

DEPT. CLERK

CYNTHIA AUGHENBAUGH  
OFFICE MANAGER

KAREN BAUGHMAN  
CLERK TYPIST

PETER F. SMITH  
SOLICITOR

## DEPUTATION

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

PAGE 101834

TERM & NO. 06-1321-CD

PHILIP P. TABONE JR.

COMPLAINT

vs.

DR. MICHAEL PECK and TODD MICHAEL PECK

**SERVE BY: 09/16/06**

### MAKE REFUND PAYABLE TO HANAK, GUIDO & TALADAY, ESQ.

**SERVE:** TODD MICHAEL PECK

**ADDRESS:** 3854 HAMME ROAD, GLENVILLE, PA 17329

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF YORK COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, August 17, 2006.

RESPECTFULLY,

A handwritten signature in black ink, appearing to read "Chester A. Hawkins".

CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PHILIP P. TABONE, JR., an : CIVIL ACTION- AT LAW  
Individual, : No. 06-1321-CD  
:  
:  
:  
PLAINTIFF : PRELIMINARY OBJECTIONS  
:  
vs. : Counsel for Defendants  
: FLEMING LAW OFFICES  
DR. MICHAEL PECK, and : WILLIAM T. FLEMING, ESQ.  
TODD MICHAEL PECK, : 204 Calder Way, Suite 304  
DEFENDANTS : State College, PA 16801  
: 814.278.5280  
: [wtfleming@fleminglaw.info](mailto:wtfleming@fleminglaw.info)  
: S.Ct. I.D. No. 39563

RULE TO SHOW CAUSE

AND NOW, this 23 day of October, 2006, upon consideration of the Defendant's Preliminary Objections, a Rule is hereby issued to show cause as to why the relief claimed therein should not be granted. Rule returnable on the 15<sup>th</sup> day of December, 2006, at 9:00 o'clock A.m. in Courtroom 1 of the Clearfield County Courthouse.

By the Court:



FILED  
07/15/07  
OCT 24 2006  
3cc  
Atty W. Fleming  
GK

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 10/24/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

**FILED**

OCT 24 2006

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PHILIP P. TABONE, JR., an : CIVIL ACTION- AT LAW  
Individual, : No. 06-1321-CD  
: :  
PLAINTIFF : PRELIMINARY OBJECTIONS  
: :  
vs. : Counsel for Defendants  
: FLEMING LAW OFFICES  
DR. MICHAEL PECK, and : WILLIAM T. FLEMING, ESQ.  
TODD MICHAEL PECK, : 204 Calder Way, Suite 304  
DEFENDANTS : State College, PA 16801  
: 814.278.5280  
: [wtfleming@fleminglaw.info](mailto:wtfleming@fleminglaw.info)  
: S.Ct. I.D. No. 39563

NOTICE TO PLEAD

To: Philip P. Tabone, Jr.

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE  
ENCLOSED PRELIMINARY OBJECTIONS WITHIN TWENTY (20) DAYS FROM  
SERVICE HEREOF OR JUDGEMENT MAY BE ENTERED AGAINST YOU.

William T. Fleming, Esquire  
FLEMING LAW OFFICES  
204 Calder Way, Suite 304  
State College, PA 16801  
Attorney for Defendants  
S.Ct. I.D. No. 39563  
[wtfleming@fleminglaw.info](mailto:wtfleming@fleminglaw.info)

DATE: October 19, 2006

FILED 3CC  
M 11:50 AM OCT 20 2006 Atty W. Fleming  
ER

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PHILIP P. TABONE, JR., an Individual,	:	CIVIL ACTION- AT LAW
	:	No. 06-1321-CD
	:	
	:	
PLAINTIFF	:	PRELIMINARY OBJECTIONS
	:	
vs.	:	Counsel for Defendants
	:	FLEMING LAW OFFICES
DR. MICHAEL PECK, and	:	WILLIAM T. FLEMING, ESQ.
TODD MICHAEL PECK,	:	204 Calder Way, Suite 304
DEFENDANTS	:	State College, PA 16801
	:	814.278.5280
		<u>wtfleming@fleminglaw.info</u>
		S.Ct. I.D. No. 39563

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PHILIP P. TABONE, JR., an Individual,	:	CIVIL ACTION- AT LAW
	:	No. 06-1321-CD
	:	
	:	
PLAINTIFF	:	PRELIMINARY OBJECTIONS
	:	
vs.	:	Counsel for Defendants
	:	FLEMING LAW OFFICES
DR. MICHAEL PECK, and	:	WILLIAM T. FLEMING, ESQ.
TODD MICHAEL PECK,	:	204 Calder Way, Suite 304
DEFENDANTS	:	State College, PA 16801
	:	814.278.5280
	:	<a href="mailto:wtfleming@fleminglaw.info">wtfleming@fleminglaw.info</a>
	:	S.Ct. I.D. No. 39563

PRELIMINARY OBJECTIONS

AND NOW comes the Defendants, Michael Peck and Todd Michael Peck, by and through their attorney, William T. Fleming, Esquire, pursuant to Pa.R.C.P. 1028 (a)(2)(3) and (4), and presents the within Preliminary Objections:

I. FAILURE OF PLEADING TO CONFORM TO LAW OR RULE OF COURT-

PA.R.C.P. 1028 (a)(2)

1. Plaintiff has filed a complaint against the above named defendants, alleging three counts in this contract action- to wit: Count 1- Breach of Express Warranty; Count 2- Breach of Contract; Count 3- Fraud/Fraudulent Misrepresentation.
2. All counts of this action are an action specifically framed in an action at law.
3. In all three counts, Plaintiff has included a prayer for relief, requesting an award of monetary damages, but also a claim for "any other relief this court deems just and equitable."

4. Claims for equitable relief in actions at law are not in conformity with law and/or rules of court.

Wherefore, Defendants request that this Court dismiss Plaintiff's complaint for failure to comply with law and/or rule of court.

II. INSUFFICIENCY SPECIFICITY IN PLEADING – PA.R.C.P. 1028 (a)(3)

5. Plaintiff has filed a claim for Breach of Express Warranty (Count 1), and a claim for Fraud/Fraudulent Misrepresentation (Count 3).

6. Both counts assert allegations of compensatory damages in excess of \$25,000.00.

7. Plaintiff's complaint fails to state, with specificity how Plaintiff's damages accrued to the levels claimed, and as such, Defendant cannot prepare an adequate defense to such claims of damages without more particularized information as to the calculation of damages.

Wherefore, Defendants request that this Court dismiss Plaintiff's complaint for failure to provide specificity in damages claimed.

III. LEGAL INSUFFICIENCY OF A PLEADING (DEMURRER) – PA.R.C.P.

1028 (a)(3)

8. Plaintiff's Count 3- Fraud/Fraudulent Misrepresentation- alleges in paragraph 29 that Defendants conduct constitutes "outrageous" conduct, and further alleges that Plaintiff is entitled to punitive damages, and attorney's fees.

9. Plaintiff's complaint fails to state sufficient grounds for an award of punitive damages, in that Plaintiff has not alleged facts or made allegations that Defendant's conduct rises to the level of a claim for punitive damages.

10. A claim for punitive damages is not a valid claim for damages in a contract/fraud/misrepresentation action.

11. Plaintiff's complaint also fails to allege facts sufficient to support a claim for attorneys' fees, and also, such fees are not recoverable in an action as filed by Plaintiff.

Wherefore, Defendant's demur to Plaintiff's allegations as aforesated, and requests this Honorable Court to dismiss Plaintiff's complaint.

Respectfully Submitted,



By: William T. Fleming, Esquire  
FLEMING LAW OFFICES  
204 Calder Way, Suite 304  
State College, PA 16801  
Attorney for Defendants  
S.Ct. I.D. No. 39563  
[wtfleming@fleminglaw.info](mailto:wtfleming@fleminglaw.info)

DATE: October 19, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PHILIP P. TABONE, JR., an Individual,	:	CIVIL ACTION- AT LAW
	:	No. 06-1321-CD
	:	
	:	
PLAINTIFF	:	PRELIMINARY OBJECTIONS
	:	
vs.	:	Counsel for Defendants
	:	FLEMING LAW OFFICES
DR. MICHAEL PECK, and TODD MICHAEL PECK, DEFENDANTS	:	WILLIAM T. FLEMING, ESQ.
	:	204 Calder Way, Suite 304
	:	State College, PA 16801
	:	814.278.5280
	:	<a href="mailto:wtfleming@fleminglaw.info">wtfleming@fleminglaw.info</a>
		S.Ct. I.D. No. 39563

CERTIFICATE OF SERVICE

I, William T. Fleming, Esquire, attorney for Defendants in the above entitled action, hereby certify that an original copy of the within Preliminary Objections has been filed of record in the office of the Prothonotary of Clearfield County, and that a true and correct copy of the same was served on counsel for Plaintiff at the following address, by United States Mail on October 19, 2006:

S. Casey Bowers, Esquire  
Hanak, Guido and Taladay  
3 South Brady Street- Suite 300  
P.O. Box 487  
DuBois, PA 15801

William T. Fleming, Esquire  
FLEMING LAW OFFICES  
204 Calder Way, Suite 304  
State College, PA 16801  
Attorney for Defendants  
S.Ct. I.D. No. 39563  
[wtfleming@fleminglaw.info](mailto:wtfleming@fleminglaw.info)

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an individual, Plaintiff : CIVIL ACTION - AT LAW  
vs. : No. 06-1321-CD  
DR. MICHAEL PECK and TODD MICHAEL PECK, Defendants : Type of pleading:  
Defendants : AMENDED COMPLAINT  
: Filed on behalf of:  
: Philip P. Tabone, Jr., Plaintiff  
: Counsel of Record for This Party:  
: S. Casey Bowers, Esq.  
: Supreme Court No. 89032  
: Hanak, Guido and Taladay  
: 3 S. Brady St., Suite 300  
: P. O. Box 487  
: DuBois, PA 15801  
: 814-371-7768

Date: November \_\_\_, 2006

FILED  
01/11/2007  
NOV 09 2006  
AAG  
100

William A. Shaw  
Prothonotary/Clerk of Courts

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

PHILIP P. TABONE, JR., an individual,	:	
Plaintiff	:	
vs.	:	No. _____
DR. MICHAEL PECK and TODD MICHAEL PECK, Defendants	:	
	:	

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

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

**AMENDED COMPLAINT**

AND NOW, comes the Plaintiff, Philip P. Tabone, Jr., by and through his Attorneys, Hanak, Guido and Taladay, and hereby brings this Amended Complaint against the Defendants averring as follows:

1. Plaintiff, Philip P. Tabone, Jr., is an adult individual, and resident of DuBois, Clearfield County, Pennsylvania, with a business address of 723 S. Brady Street, DuBois, Clearfield County, Pennsylvania 15801.

2. Defendant, Dr. Michael Peck, is an adult individual, with  
who resides at 3858 Hamme Road, Glenville, York County, Pennsylvania,  
17329.

3. Defendant, Todd Michael Peck, is an adult individual, who resides at 3854 Hamme Road, Glenville, York County, Pennsylvania 17329.

4. At all times pertinent hereto, Defendants have acted as partners with each other in the buying and selling of race cars and race car components.

5. On or about July 10, 2006, in Clearfield County, Pennsylvania, the parties entered an oral agreement whereby Defendants agreed to sell and Plaintiff agreed to purchase two Pro Cup Hooters Cars.

6. The specific cars subject to the agreement are:

(a) One LRP 8063 Laughlin 2003 Pro Cup Hooters

Car with 2004 Update;

(b) One Predator 0060 - 2006 Pro Cup Hooters Car;

7. The 2006 Predator Car was to include a Tiger rear gear differential and axle tubes and a Turn One eight to one ratio steering box.

8. Under the terms of the subject agreement, Plaintiff was to make payment to Defendants in the amount of \$10,000.00 upon delivery of the subject cars.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendants, jointly and severally, in an amount in excess of \$10,000.00, together with interest, costs of suit, and any further relief this Court deems just.

**COUNT I - BREACH OF EXPRESS WARRANTY**

9. Plaintiff incorporates all prior paragraphs herein.
10. As a basis of the bargain, and to induce Plaintiff to purchase the subject cars, Defendants made representations to Plaintiff that the 2006 Predator Car was in excellent condition and was free from latent defect. Specifically, Defendants made representations to Plaintiff that the 2006 Predator car was not bent or twisted in any appreciable way.
11. Relying on Defendants' representations, Plaintiff purchased the cars and made payment to the Defendants in the amount of \$10,000.00 when Defendants delivered the subject cars to Plaintiff's facility in Clearfield County, Pennsylvania. A copy of the invoice dated July 10, 2006 evidencing said payment is attached hereto and marked as Exhibit A.
12. On July 12, 2006, just two days after taking delivery of the subject cars, Plaintiff put the 2006 Predator car on the alignment rack. At that time, Plaintiff discovered that the Predator chassis was bent and twisted to the extent that the car is undriveable. Plaintiff believes and, therefore, avers that the cost to repair the bent chassis greatly exceeds the purchase price of both vehicles.
13. This latent defect is not detectable by the naked eye.

14. Despite Plaintiff's repeated requests to refund his money and offer to reimburse Defendants for their transportation costs, Defendants have continually refused to refund Plaintiff the purchase price of the vehicles.

15. Defendants' actions set forth above constitute a breach of the express warranty set forth in Paragraph 10 herein.

16. As a direct result of Defendants' breach of express warranty, Plaintiff will suffer damages in excess of \$10,000.00.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendants, jointly and severally, in an amount in excess of \$10,000.00, together with interest, costs of suit, and any further relief this Court deems just.

#### **COUNT II - BREACH OF CONTRACT**

17. Plaintiff incorporates all prior paragraphs herein.

18. Under the terms of the oral agreement between the parties to purchase the subject cars, the 2006 Predator Car was to include the following components:

- (a) A Tiger rear gear differential and axle tubes; and
- (b) A Turn One eight to one ratio steering box.

The values of these components are \$3,780.00 and \$2,200.00 respectively.

19. After taking delivery of the subject cars, the Plaintiff discovered that the aforementioned components were not included in the 2006 Predator Car.

20. The Defendants' failure to include the aforementioned components constitutes a breach of the oral agreement between the parties.

21. As a direct or proximate result of Defendants' breach of contract, Plaintiff has suffered damages in excess of \$5,980.00.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendants, jointly and severally, in the amount of \$5,980.00, together with interest, costs of suit and any further relief this Court deems just.

### **COUNT III - FRAUD/FRAUDULENT MISREPRESENTATION**

22. Plaintiff incorporates all prior paragraphs herein.

23. At all times pertinent hereto, Defendants intended to deceive and defraud Plaintiff out of the sales price of the cars by falsely and fraudulently representing that the 2006 Predator Car was free from defect.

24. Plaintiff justifiably relied on Defendants' representations which were intended to induce, and did induce Plaintiff to purchase the subject cars.

25. At the time that Defendants delivered the subject cars to Plaintiff, the 2006 Predator Car was bent and twisted such that it was undriveable and unrepairable.

26. Defendants knew, or had reason to know that the 2006 Predator Car was bent and twisted to the extent set forth above.

27. Upon taking delivery of the subject cars, Plaintiff did not know, nor did he have reasonable cause to know, that the 2006 Predator Car was bent and twisted as set forth above.

28. As a result of Defendants' fraudulent conduct, Plaintiff sustained substantial monetary losses including, but not limited to, the loss of the \$10,000.00 purchase price and interest.

29. Defendants' actions as set forth herein, constitute outrageous conduct. Therefore, Plaintiff is entitled to punitive damages and attorney fees.

WHEREFORE, Plaintiff demands judgment be entered in his favor and against the Defendants, jointly and severally, for compensatory damages and punitive damages in an amount in excess of \$10,000.00, together with interest, costs of suit, attorney fees and any further relief this Court deems just.

Respectfully submitted,  
HANAK, GUIDO AND TALADAY



---

By S. Casey Bowers,  
Attorney for Plaintiff

**VERIFICATION**

I, S. CASEY BOWERS, of HANAK, GUIDO and TALADAY, being duly sworn according to law, deposes and says that he is the attorney for the Plaintiff and is authorized to make this Verification on behalf of the Plaintiff; that the facts set forth in the foregoing Amended Complaint in Civil Action at Law are true and correct, not of his own knowledge, but from information supplied to him by the Plaintiff; that the purpose of this Verification is to expedite the litigation and that a Verification of the Plaintiff will be supplied, if demanded; and that this Verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities.

Date: 11-8-06

  
\_\_\_\_\_  
S. Casey Bowers, Esquire

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an individual, Plaintiff : CIVIL ACTION - AT LAW  
vs. : No. 06-1321-CD  
DR. MICHAEL PECK and T. MICHAEL PECK, Defendants : Type of pleading:  
Defendants : RESPONSE TO  
: DEFENDANT'S PRELIMINARY  
: OBJECTIONS  
: Filed on behalf of: Plaintiff  
: Counsel of Record for  
: This Party:  
: S. Casey Bowers, Esq.  
: Supreme Court No. 89032  
: Hanak, Guido and Taladay  
: 3 S. Brady St., Suite 300  
: P. O. Box 487  
: DuBois, PA 15801  
: 814-371-7768

Date: November \_\_\_\_, 2006

FILED *cc*  
*11:19 AM AM*  
NOV 09 2006 *u*

William A. Shaw  
Prothonotary/Clerk of Courts

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

PHILIP P. TABONE, JR., an individual,	:	
Plaintiff	:	
vs.	:	No. 06-1321-CD
DR. MICHAEL PECK and TODD MICHAEL PECK,	:	
Defendants	:	

NOTICE

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 Response and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Response 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.

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230 East Market Street  
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(814) 765-2641 Ext. 1300

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

PHILIP P. TABONE, JR., an individual,	:	
Plaintiff	:	
vs.	:	No. 06-1321-CD
DR. MICHAEL PECK and	:	
TODD MICHAEL PECK,	:	
Defendants	:	

**RESPONSE TO DEFENDANT'S PRELIMINARY  
OBJECTIONS**

AND NOW, comes the Plaintiff, Philip P. Tabone, Jr., by and through his Attorneys, Hanak, Guido and Taladay, and hereby responds to Defendant's Preliminary Objections as follows:

I. FAILURE OF PLEADING TO CONFORM TO LAW OR RULE OF COURT  
PA.R.C.P. 1028(a)(2) and II. INSUFFICIENCY SPECIFICITY IN PLEADING

- PA.R.C.P. 1028(a)(3)

1 - 7. Plaintiff has filed an Amended Complaint of even date herewith addressing the concerns set forth under these subsections of Defendant's Preliminary Objections. Therefore, said Preliminary Objections are moot.

III. LEGAL INSUFFICIENCY OF A PLEADING (DEMURRER) - PA.R.C.P.

1028 (a)(4)

8-11. Plaintiff's complaint pleads sufficient facts to support Plaintiff's fraudulent misrepresentation claim.

Pennsylvania law is clear that punitive damages are available in claims of fraudulent misrepresentation. See McClellan, 413 Pa Super 128, 144, 604 A2d 1053, 1061 (1992). Further, the jury may consider Plaintiff's costs of litigation in determining the amount of punitive damages. See Pennsylvania Standard Jury Instruction (Civil) Section 14.02 (3rd Edition, 2005).

WHEREFORE, for reasons stated herein, Plaintiff respectfully requests that this Honorable Court dismiss Defendant's Preliminary Objections.

Respectfully submitted,

HANAK, GUIDO AND TALADAY

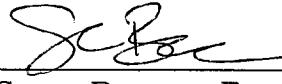
By: \_\_\_\_\_

  
S. Casey Bowers  
Attorney for Plaintiff

**VERIFICATION**

I, S. CASEY BOWERS, of HANAK, GUIDO and TALADAY, being duly sworn according to law, deposes and says that he is the attorney for the Plaintiff and is authorized to make this Verification on behalf of the Plaintiff; that the facts set forth in the foregoing Response to Defendant's Preliminary Objections in Civil Action at Law are true and correct, not of his own knowledge, but from information supplied to him by the Plaintiff; that the purpose of this Verification is to expedite the litigation and that a Verification of the Plaintiff will be supplied, if demanded; and that this Verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities.

Date: 11-8-06

  
\_\_\_\_\_  
S. Casey Bowers, Esquire

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an individual, Plaintiff : CIVIL ACTION - AT LAW  
vs. : No. 06-1321-CD  
DR. MICHAEL PECK and TODD MICHAEL PECK, Defendants : Type of pleading:  
Defendants : CERTIFICATE OF SERVICE  
: Filed on behalf of:  
: Philip P. Tabone, Jr., Plaintiff  
: Counsel of Record for This Party:  
: S. Casey Bowers, Esq.  
: Supreme Court No. 89032  
: Hanak, Guido and Taladay  
: 3 S. Brady St., Suite 300  
: P. O. Box 487  
: DuBois, PA 15801  
: 814-371-7768

Date: November \_\_\_, 2006

FILED *icc*  
*01/11/2007* *Atty*  
*NOV 09 2006* *JK*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an	:	CIVIL ACTION - AT LAW
individual,	:	
Plaintiff	:	No. 06-1321-CD
	:	
vs.	:	
DR. MICHAEL PECK and	:	
TODD MICHAEL PECK,	:	
Defendants	:	

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on the 8th day of November, 2006, a copy of the Response to Defendant's Preliminary Objections was forwarded via first class certified mail, return receipt requested, addressed as follows:

William T. Fleming, Esquire  
Fleming Law Offices  
204 Calder Way, Suite 304  
State College, PA 16801



---

S. Casey Bowers, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an individual, Plaintiff : CIVIL ACTION - AT LAW  
vs. : No. 06-1321-CD  
DR. MICHAEL PECK and TODD MICHAEL PECK, Defendants : Type of pleading:  
Defendants : CERTIFICATE OF SERVICE  
: Filed on behalf of:  
: Philip P. Tabone, Jr., Plaintiff  
: Counsel of Record for This Party:  
: S. Casey Bowers, Esq.  
: Supreme Court No. 89032  
: Hanak, Guido and Taladay  
: 3 S. Brady St., Suite 300  
: P. O. Box 487  
: DuBois, PA 15801  
: 814-371-7768

Date: November \_\_\_, 2006

FILED  
NOV 09 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an individual,	:	CIVIL ACTION - AT LAW
Plaintiff	:	No. 06-1321-CD
:		
vs.	:	
DR. MICHAEL PECK and	:	
TODD MICHAEL PECK,	:	
Defendants	:	

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on the 8th day of November, 2006, a copy of the Amended Complaint was forwarded via first class certified mail, return receipt requested, addressed as follows:

William T. Fleming, Esquire  
Fleming Law Offices  
204 Calder Way, Suite 304  
State College, PA 16801



---

S. Casey Bowers, Esquire  
Attorney for Plaintiff

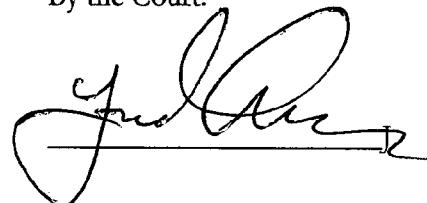
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PHILIP P. TABONE, JR., an  
Individual, : CIVIL ACTION- AT LAW  
PLAINTIFF : No. 06-1321-CD  
vs. :  
DR. MICHAEL PECK, and : PRELIMINARY OBJECTIONS TO  
TODD MICHAEL PECK, : AMENDED COMPLAINT  
DEFENDANTS :  
vs. : Counsel for Defendants  
FLEMING LAW OFFICES  
WILLIAM T. FLEMING, ESQ.  
204 Calder Way, Suite 304  
State College, PA 16801  
814.278.5280  
[wtfleming@fleminglaw.info](mailto:wtfleming@fleminglaw.info)  
S.Ct. I.D. No. 39563

RULE TO SHOW CAUSE

AND NOW, this 4 day of Dec, 2006, upon consideration of  
the Defendant's Preliminary Objections to Amended Complaint, a Rule is hereby issued to  
show cause as to why the relief claimed therein should not be granted. Rule returnable on  
the 3rd day of January, 2007, at 1:30 o'clock P.m. in Courtroom  
1 of the Clearfield County Courthouse.

By the Court:



FILED 3CC  
01/05/2007 Atty Fleming  
DEC 05 2006

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**DEC 05 2006**

William A. Shaw  
Secretary/Clerk of Courts

Special Instructions:

Plaintiff(s) \_\_\_\_\_

Defendant(s) \_\_\_\_\_

Attorney \_\_\_\_\_

Other \_\_\_\_\_

DATE: 10/15/06  
X You are responsible for serving a copy of this paper to the following parties:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PHILIP P. TABONE, JR., an : CIVIL ACTION- AT LAW  
Individual, : No. 06-1321-CD  
PLAINTIFF :  
: :  
: : PRELIMINARY OBJECTIONS TO  
: : AMENDED COMPLAINT  
: :  
vs. : Counsel for Defendants  
: : FLEMING LAW OFFICES  
DR. MICHAEL PECK, and : WILLIAM T. FLEMING, ESQ.  
TODD MICHAEL PECK, : 204 Calder Way, Suite 304  
DEFENDANTS : State College, PA 16801  
: 814.278.5280  
: [wtfleming@fleminglaw.info](mailto:wtfleming@fleminglaw.info)  
: S.Ct. I.D. No. 39563

FILED

NOV 29 2006

WM 1:50/4  
William A. Shaw  
Prothonotary/Clerk of Courts

3 CENS TO ATT (610)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PHILIP P. TABONE, JR., an Individual,	:	CIVIL ACTION- AT LAW
PLAINTIFF	:	No. 06-1321-CD
	:	
	:	
	:	PRELIMINARY OBJECTIONS TO
	:	AMENDED COMPLAINT
	:	
vs.	:	Counsel for Defendants
DR. MICHAEL PECK, and TODD MICHAEL PECK, DEFENDANTS	:	FLEMING LAW OFFICES
	:	WILLIAM T. FLEMING, ESQ.
	:	204 Calder Way, Suite 304
	:	State College, PA 16801
	:	814.278.5280
	:	<u>wtfleming@fleminglaw.info</u>
		S.Ct. I.D. No. 39563

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To: Philip P. Tabone, Jr.

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE  
ENCLOSED PRELIMINARY OBJECTIONS WITHIN TWENTY (20) DAYS FROM  
SERVICE HEREOF OR JUDGEMENT MAY BE ENTERED AGAINST YOU.

William T. Fleming, Esquire  
FLEMING LAW OFFICES  
204 Calder Way, Suite 304  
State College, PA 16801  
Attorney for Defendants  
S.Ct. I.D. No. 39563  
wtfleming@fleminglaw.info

DATE: November 28, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PHILIP P. TABONE, JR., an Individual,	:	CIVIL ACTION- AT LAW
PLAINTIFF	:	No. 06-1321-CD
	:	
	:	PRELIMINARY OBJECTIONS TO
	:	AMENDED COMPLAINT
	:	
vs.	:	Counsel for Defendants
DR. MICHAEL PECK, and TODD MICHAEL PECK,	:	FLEMING LAW OFFICES
DEFENDANTS	:	WILLIAM T. FLEMING, ESQ.
	:	204 Calder Way, Suite 304
	:	State College, PA 16801
	:	814.278.5280
	:	<a href="mailto:wtfleming@fleminglaw.info">wtfleming@fleminglaw.info</a>
		S.Ct. I.D. No. 39563

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

AND NOW comes the Defendants, Michael Peck and Todd Michael Peck, by and through their attorney, William T. Fleming, Esquire, pursuant to Pa.R.C.P. 1028 (a)(3), and presents the within Preliminary Objections to Plaintiff's Amended Complaint:

I. LEGAL INSUFFICIENCY OF A PLEADING (DEMURRER) – PA.R.C.P.

1028 (a)(3)

1. Plaintiff's Count 3- Fraud/Fraudulent Misrepresentation- alleges in paragraph 29 that Defendants conduct constitutes "outrageous" conduct, and further alleges that Plaintiff is entitled to punitive damages, and attorney's fees.
2. Plaintiff's complaint fails to state sufficient grounds for an award of punitive damages, in that Plaintiff has not alleged facts or made allegations that Defendant's conduct rises to the level of a claim for punitive damages.

3. A claim for punitive damages is not a valid claim for damages in a contract/fraud/misrepresentation action.

4. Plaintiff's complaint also fails to allege facts sufficient to support a claim for attorneys' fees, and also, such fees are not recoverable in an action as filed by Plaintiff.

Wherefore, Defendant's demur to Plaintiff's allegations as aforestated, and requests this Honorable Court to dismiss Plaintiff's complaint.

Respectfully Submitted,



By: William T. Fleming, Esquire  
FLEMING LAW OFFICES  
204 Calder Way, Suite 304  
State College, PA 16801  
Attorney for Defendants  
S.Ct. I.D. No. 39563  
[wtfleming@fleminglaw.info](mailto:wtfleming@fleminglaw.info)

DATE: November 28, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

PHILIP P. TABONE, JR., an Individual,	:	CIVIL ACTION- AT LAW
PLAINTIFF	:	No. 06-1321-CD
	:	
	:	
	:	PRELIMINARY OBJECTIONS TO
	:	AMENDED COMPLAINT
vs.	:	
DR. MICHAEL PECK, and TODD MICHAEL PECK, DEFENDANTS	:	Counsel for Defendants
	:	FLEMING LAW OFFICES
	:	WILLIAM T. FLEMING, ESQ.
	:	204 Calder Way, Suite 304
	:	State College, PA 16801
	:	814.278.5280
	:	<a href="mailto:wtfleming@fleminglaw.info">wtfleming@fleminglaw.info</a>
		S.Ct. I.D. No. 39563

CERTIFICATE OF SERVICE

I, William T. Fleming, Esquire, attorney for Defendants in the above entitled action, hereby certify that an original copy of the within Preliminary Objections has been filed of record in the office of the Prothonotary of Clearfield County, and that a true and correct copy of the same was served on counsel for Plaintiff at the following address, by United States Mail on November 28, 2006:

S. Casey Bowers, Esquire  
Hanak, Guido and Taladay  
3 South Brady Street- Suite 300  
P.O. Box 487  
DuBois, PA 15801

William T. Fleming, Esquire  
FLEMING LAW OFFICES  
204 Calder Way, Suite 304  
State College, PA 16801  
Attorney for Defendants  
S.Ct. I.D. No. 39563  
[wtfleming@fleminglaw.info](mailto:wtfleming@fleminglaw.info)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
(Civil Division)

PHILIP P. TABONE, JR., an individual, Plaintiff : CIVIL ACTION - AT LAW  
vs. : No. 06-1321-CD  
DR. MICHAEL PECK and TODD MICHAEL PECK, Defendants : Type of pleading:  
Defendants : **PRAECIPE TO MARK MATTER  
SETTLED, DISCONTINUED AND  
ENDED**  
: Filed on behalf of:  
: Philip P. Tabone, Jr., Plaintiff  
: Counsel of Record for This Party:  
: S. Casey Bowers, Esq.  
: Supreme Court No. 89032  
: Hanak, Guido and Taladay  
: 3 S. Brady St., Suite 300  
: P. O. Box 487  
: DuBois, PA 15801  
: 814-371-7768

**FILED** 3CC#3  
01859734 Certificates to  
MAR 06 2007 Atty  
William A. Shaw  
Prothonotary/Clerk of Courts  
6K

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an individual,	:	CIVIL ACTION - AT LAW
Plaintiff	:	No. 06-1321-CD
vs.	:	
DR. MICHAEL PECK and TODD MICHAEL PECK, Defendants	:	

**PRAECIPE TO MARK MATTER SETTLED, DISCONTINUED AND ENDED**

TO THE PROTHONOTARY:

Kindly mark this matter settled, discontinued and ended.



---

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
P. O. Box 487  
DuBois, PA 15801

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

**Philip P. Tabone Jr.**

Vs.

**No. 2006-01321-CD**

**Michael Peck Dr.**

**Todd Michael Peck**

**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 March 6, 2007, marked:

Settled, Discontinued and Ended

Record costs in the sum of \$85.00 have been paid in full by S. Casey Bowers, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 6th day of March A.D. 2007.



\_\_\_\_\_  
William A. Shaw, Prothonotary