

NOT
Used

06-1892-CD
Cowen Truck Lines vs Merit Transp.

Cowen Truck vs Merit Transportation
2006-1892-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

Plaintiff,

v.

MERIT TRANSPORTATION,

Defendant.

CIVIL DIVISION

No. 2006-1892-C1

Issue No.

COMPLAINT

Code:

Filed on behalf of Plaintiff

Counsel of record for this party:

John T. Pion, Esquire
PA I.D. # 43675

David J. Morgan, Esquire
PA I.D. # 201201

DICKIE, MCCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED pd \$85.00 A44
M/11/30 cm ICC A44 Pion
NOV 15 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

G.D. No.

v.

MERIT TRANSPORTATION,

Defendant.

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 CLAIM OR RELIEF REQUESTED BY THE DEFENDANT. 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 OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Second & Market Street
Clearfield, PA 16830
(814) 765-2641, ext. 50-51

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

G.D. No.

v.

MERIT TRANSPORTATION,

Defendant.

COMPLAINT

AND NOW, comes the Defendant, Cowen Truck Line, Inc., by and through its counsel, Dickie, McCamey & Chilcote, P.C. and files the following Complaint:

PARTIES AND FACTUAL BACKGROUND

1. Plaintiff, Cowen Truck Line, Inc. ("Cowen") is an Ohio Corporation with its principle place of business at 2697 St. Rt. 39, P.O. Box 480, Perrysville, Ohio 44864.
2. Defendant, Merit Transportation Company, LLC ("Merit") is a Nebraska Corporation with its principle place of business at 10330 South 152nd Street, Omaha, Nebraska 68138.
3. On or about December 17, 2005, David Savine, a driver for Plaintiff's company was sitting in Defendant's vehicle at a truck stop parking lot.
4. While Plaintiff's vehicle was parked in the truck stop parking lot, a driver for Defendant's company, while in the course and scope of his employment, was operating a tractor trailer owned by Defendant.
5. While operating Defendant's vehicle and attempting to turn Defendant's vehicle around, Defendant's employee backed into Plaintiff's vehicle, causing damage.

COUNT I - NEGLIGENCE

6. Plaintiff restates all of the allegations set forth as if fully rewritten herein.
7. At all times relevant to the events set forth in this Complaint, Defendant Merit owned and controlled the vehicle driven by their employee.
8. At all times relevant to the events set forth in this Complaint, Defendant's employee was within the course and scope of agency and/or employment with Defendant Merit.
9. As such Defendant Merit is liable for the tortious acts committed by its employee and all damages as set forth in this Complaint.
10. Defendant's employee negligently operated Defendant's tractor trailer in such a way that it struck the vehicle owned by Plaintiff.
11. As a direct and proximate result of Defendant's employees' negligence and as a direct and proximate result of the collision described above, Plaintiff's vehicle suffered damages.
12. As a direct and proximate result of Defendant's employee's negligence and as a direct and proximate result of the collision described above, Plaintiff's vehicle suffered damages in the amount of \$3,893.78 for labor and repairs.
13. As a direct and proximate result of Defendant's employee's negligence and as a direct and proximate result of the collision described above, Plaintiff's vehicle suffered damages in the amount of \$6,133.09 for replacement parts.
14. As a direct and proximate result of Defendant's employees, negligence and as a direct and proximate result of the collision described above, Plaintiff suffered damages in the amount of \$13,733.00 for downtime to the subject vehicle.

WHEREFORE, Plaintiff Cowen Truck Lines, Inc. prays for judgment on its claims against Defendant, for the amount of \$23,759.84. Additionally, Plaintiff demands

interest, its costs incurred herein and any and all other just and equitable relief to which it is entitled.

JURY TRIAL DEMANDED

Respectfully submitted,

Dickie, McCamey & Chilcote, P.C.

By 
John T. Pion, Esquire

Attorney for Plaintiff

VERIFICATION

I, Tim Cowen, of Cowen Truck Lines, 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 is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

Tim Cowen
Tim Cowen

DATED 11/2/06

Dickie McCamey

David J. Morgan
Attorney-at-Law
Admitted in PA

Direct Fax: 412-392-5367
dmorgan@dmclaw.com

November 10, 2006

William Shaw, Prothonotary
Clearfield County Courthouse
230 E. Market Street
P.O. Box 549
Clearfield, PA 16830

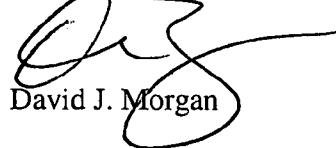
RE: Cowen Truck Lines v. Merit Transportation

Dear Mr. Shaw:

Enclosed please find the Complaint which I am requesting to be filed in the above captioned matter. I have enclosed our firm's draft in the amount of \$85.00 for filing of the Complaint. Also enclosed is a self-addressed stamped envelope for return of the Complaint to me so that I may have it served on the Defendants.

If you should have any questions, please feel free to contact me.

Very truly yours,



David J. Morgan

DJM/dmvw
Enclosure

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

No. 2006-1892 CD

v.

Issue No.

MERIT TRANSPORTATION,

PROOF OF SERVICE

Defendant.

Code:

Filed on behalf of Plaintiff

Counsel of record for this party:

John T. Pion, Esquire
PA I.D. # 43675

David J. Morgan, Esquire
PA I.D. # 201201

DICKIE, MCCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED NO CC
M 10:37 AM
NOV 30 2006
[Signature]

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

G.D. No.

v.

MERIT TRANSPORTATION,

Defendant.

PROOF OF SERVICE

JOHN T. PION, being duly sworn, does depose and say that he served the original within Complaint on Merit Transport Company on or about November 24, 2006, by certified mail. The original return receipt is attached hereto as Exhibit "A".

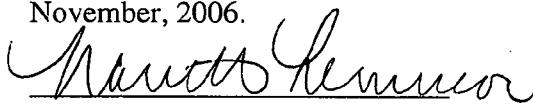
DICKIE, McCAMEY & CHILCOTE, P.C.

By: 
John T. Pion, Esquire
Attorneys for Plaintiff

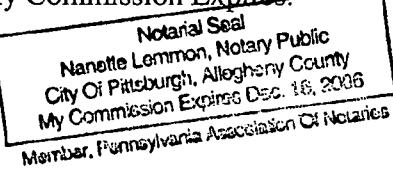
Sworn to and subscribed

before me this 28 day of

November, 2006.


Nanette Lemmon
Notary Public

My Commission Expires:



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY							
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input checked="" type="checkbox"/> <i>Susie Huff</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) SUSIE HUFF C. Date of Delivery 11-24-06</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>							
<p>1. Article Addressed to:</p> <p><i>Merit Transport Co. 10330 South 152nd St. Omaha NE 68138</i></p>		<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Certified Mail</td> <td><input type="checkbox"/> Express Mail</td> </tr> <tr> <td><input type="checkbox"/> Registered</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td><input type="checkbox"/> C.O.D.</td> </tr> </table> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>		<input type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail	<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.
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<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise								
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.								
<p>2. Article Number <i>(Transfer from service label)</i></p> <table border="1" style="display: inline-table; vertical-align: middle;"> <tr> <td>7005</td> <td>1820</td> <td>0002</td> <td>1114</td> <td>9212</td> </tr> </table>		7005	1820	0002	1114	9212			
7005	1820	0002	1114	9212					
PS Form 3811, February 2004		Domestic Return Receipt							
		102595-02-M-1540							

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

No. 2006-1892 CD

v.

MERIT TRANSPORTATION,

Defendant.

PRAECIPE FOR APPEARANCE

Filed on behalf of the Defendant,
MERIT TRANSPORTATION

Counsel of Record for this Party:

Susan D. Garrard, Esquire
PA I.D. 73727

Law Office of Joseph S. Weimer
Firm #301
975 Two Chatham Center
Pittsburgh, PA 15219

(412) 338-3245

JURY TRIAL DEMANDED

FILED NO CC
11/5/06
DEC 18 2006
JW

William A. Shaw
Prothonotary/Clerk of Courts

No. 2006-1892 CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

No. 2006-1892 CD

Plaintiff,

v.

MERIT TRANSPORTATION,

Defendant.

PRAECIPE FOR APPEARANCE

TO: WILLIAM A. SHAW, SR., PROTHONOTARY

Kindly enter my appearance on behalf of Defendant, Merit Transportation.

Papers may be served at the address set forth below:

Susan D. Garrard, Esquire
PA I.D. 73727
Law Office of Joseph S. Weimer
975 Two Chatham Center
Pittsburgh, PA 15219
(412) 338-3245
Fax: (412) 471-8748

Date: December 12, 2006



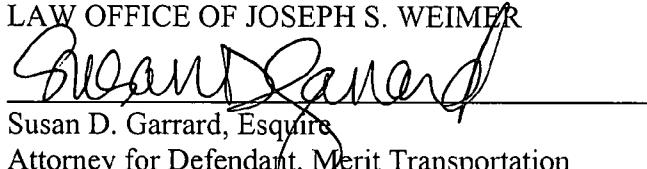
Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

CERTIFICATE OF SERVICE

I, Susan D. Garrard, Esquire, do hereby certify that I have mailed a true and correct copy of the within Praeclipe for Appearance by regular mail, postage pre-paid, to the following on this 18th day of December, 2006:

John T. Pion, Esquire
DICKIE MCCAMEY & CHILCOTE, P.C.
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

BY:

LAW OFFICE OF JOSEPH S. WEIMER

Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

FILED

DEC 18 2006

William A. Shaw
Prothonotary/Clerk of Courts

CM

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

Plaintiff,

v.

MERIT TRANSPORTATION,

Defendant.

CIVIL DIVISION

No. 2006-1892 CD

PRELIMINARY OBJECTIONS

Filed on behalf of the Defendant:

MERIT TRANSPORTATION

Counsel of Record for this Party:

Susan D. Garrard, Esquire
PA I.D. 73727

Law Office of Joseph S. Weimer
Firm #301
975 Two Chatham Center
Pittsburgh, PA 15219

(412) 338-3245

JURY TRIAL DEMANDED

TO THE PLAINTIFF ABOVE NAMED:

YOU ARE HEREBY NOTIFIED TO PLEAD TO
THE WITHIN PRELIMINARY OBJECTIONS
WITHIN TWENTY (20) DAYS FROM THE
DATE OF SERVICE HEREOF.

Susan D. Garrard

Attorney for Defendant

FILED No cc.
M 3:25 pm
FEB 14 2007
WAM

William A. Shaw
Prothonotary/Clerk of Courts

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

AND NOW, comes the Defendant, MERIT TRANSPORTATION, by and through its counsel, **SUSAN D. GARRARD, ESQUIRE**, and the Law Offices of Joseph S. Weimer, and files these Preliminary Objections to Plaintiff's Complaint and in support thereof, Defendant avers as follows:

**MOTION TO STRIKE
GENERAL ALLEGATIONS OF NEGLIGENCE
OR IN THE ALTERNATIVE,
A MOTION FOR A MORE SPECIFIC PLEADING**

1. Plaintiff's filed a Complaint against the Defendant, Merit Transportation, alleging that on December 17, 2005, that while Plaintiff's vehicle was parked in a truck stop parking lot, an employee who was in the course and scope of employment with the Defendant, struck Plaintiff's vehicle. See copy of Plaintiff's Complaint attached hereto, made a part hereof and marked Exhibit "A".
2. In its present form, Plaintiff's Complaint fails to set forth sufficient facts to permit Defendant to respond to the Complaint.
3. Plaintiff's Complaint fails to identify the exact location of the accident proving proper jurisdiction/venue of this lawsuit, the time of the alleged accident, the identification of the driver/employee of Defendant's motor vehicle as well as identification of the tractor trailer which allegedly struck Plaintiff's vehicle.
4. Plaintiff's Complaint only sets forth boilerplate allegations which does not meet the requirements of fact pleading as mandated by Pennsylvania Rule of Civil Procedure 1019(a) and should be stricken from the Complaint.

5. Pennsylvania Rule of Civil Procedure 1019(a) requires that “[t]he material facts on which a cause of action . . . is based shall be stated in a concise and summary form”.

6. Pennsylvania Rule of Civil Procedure 1028(a)(1) permits the filing of Preliminary Objections when a pleading lacks the jurisdiction over the subject matter of the action, especially since Plaintiff's Complaint fails to state the location of the alleged accident.

7. Pennsylvania Rule of Civil Procedure 1028(a)(3) permits the filing of Preliminary Objections when a pleading lacks insufficient specificity in a pleading.

8. Under Pennsylvania law, the purpose of a pleading is to notify defendants of the claims upon which they will defend. McClellan v. Health Maintenance Org. of Pennsylvania, 413 Pa. Super. 128, 604 A.2d 1053 (1992). See also: Rachlin v. Edmison, 2002 Pa. Super. 387, 813 A.2d 862, 870 (2002).

9. As a result of Plaintiff's Complaint failing to state with specificity the claims against Defendant and facts upon which those claims are based, Plaintiff's Complaint must be stricken, dismissed, or in the alternative, Plaintiff must be directed to file a more specific pleading.

WHEREFORE, Defendant, Merit Transportation, respectfully requests that this Honorable Court sustain the Preliminary Objections and strike Plaintiff's Complaint as to Defendant, Merit Transportation, or, in the alternative, require the filing of a more specific pleading pursuant to Pennsylvania Rules of Civil Procedure 1028 and 1019 as described above.

DEMURRER

10. Plaintiff's Complaint in its present form is vague and does not aver enough specificity in order to establish a cause of action against the Defendant, Merit Transportation.

11. Pennsylvania Rule of Civil Procedure 1019(f) requires that “averments of time, place and . . . shall be specifically stated” in a pleading.

12. Under Pennsylvania law, claims against a party must be concise and state specifics or they fail.

13. Plaintiff's Complaint in its present form fails to meet such specificity as described above.

WHEREFORE, Defendant, Merit Transportation, respectfully requests that Plaintiff's Complaint be dismissed.

LAW OFFICE OF JOSEPH S. WEIMER

BY:

Susan D. Garrard
Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

CERTIFICATE OF SERVICE

I, Susan D. Garrard, Esquire, do hereby certify that I have mailed a true and correct copy of the within **PRELIMINARY OBJECTIONS** by regular mail, postage pre-paid, to the following on this 12th day of February, 2007:

John T. Pion, Esquire
DICKIE MCCAMEY & CHILCOTE, P.C.
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

LAW OFFICE OF JOSEPH S. WEIMER
BY: Susan D. Garrard
Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

From:

11/6 15:02

#730 P.003/008

No.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

No. 2006-1892-CJ

v.

Issue No.

MERIT TRANSPORTATION,

COMPLAINT

Defendant.

Code:

Filed on behalf of Plaintiff

Counsel of record for this party:

John T. Pion, Esquire
PA LD. # 43675

David J. Morgan, Esquire
PA LD. # 201201

DICKIE, MCCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

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

NOV 15 2006

Attest

John J. Morgan
Prothonotary/
Clerk of Courts

DEFENDANT'S
EXHIBIT

A

ALL-STATE LEGAL®

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

G.D. No.

v.

MERIT TRANSPORTATION,

Defendant.

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 CLAIM OR RELIEF REQUESTED BY THE DEFENDANT. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

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Court Administrator
Clearfield County Courthouse
Second & Market Street
Clearfield, PA 16830
(814) 765-2641, ext. 50-51

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

G.D. No.

v.

MERIT TRANSPORTATION,

Defendant.

COMPLAINT

AND NOW, comes the Defendant, Cowen Truck Line, Inc., by and through its counsel, Dickie, McCamey & Chilcote, P.C. and files the following Complaint:

PARTIES AND FACTUAL BACKGROUND

- NAD* 1. Plaintiff, Cowen Truck Line, Inc. ("Cowen") is an Ohio Corporation with its principle place of business at 2697 St. Rt. 39, P.O. Box 480, Perrysville, Ohio 44864.
2. Defendant, Merit Transportation Company, LLC ("Merit") is a Nebraska Corporation with its principle place of business at 10330 South 152nd Street, Omaha, Nebraska 68138.

- NAD* 3. On or about December 17, 2005, David Savine, a driver for Plaintiff's company was sitting in Defendant's vehicle at a truck stop parking lot.

- LC* 4. While Plaintiff's vehicle was parked in the truck stop parking lot, a driver for Defendant's company, while in the course and scope of his employment, was operating a tractor trailer owned by Defendant.

- LC* 5. While operating Defendant's vehicle and attempting to turn Defendant's vehicle around, Defendant's employee backed into Plaintiff's vehicle, causing damage.

COUNT I - NEGLIGENCE

6. Plaintiff restates all of the allegations set forth as if fully rewritten herein.
At all times relevant to the events set forth in this Complaint, Defendant Merit owned and controlled the vehicle driven by their employee.

7. At all times relevant to the events set forth in this Complaint, Defendant's employee was within the course and scope of agency and/or employment with Defendant Merit.

8. As such Defendant Merit is liable for the tortious acts committed by its employee and all damages as set forth in this Complaint.

9. Defendant's employee negligently operated Defendant's tractor trailer in such a way that it struck the vehicle owned by Plaintiff.

10. As a direct and proximate result of Defendant's employees' negligence and as a direct and proximate result of the collision described above, Plaintiff's vehicle suffered damages.

11. As a direct and proximate result of Defendant's employee's negligence and as a direct and proximate result of the collision described above, Plaintiff's vehicle suffered damages in the amount of \$3,893.78 for labor and repairs.

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13. As a direct and proximate result of Defendant's employees' negligence and as a direct and proximate result of the collision described above, Plaintiff suffered damages in the amount of \$13,733.00 for downtime to the subject vehicle.

WHEREFORE, Plaintiff Cowen Truck Lines, Inc. prays for judgment on its claims against Defendant, for the amount of \$23,759.84. Additionally, Plaintiff demands

From:

11/17/2006 15:03

#790 P.007/008

No.

interest, its costs incurred herein and any and all other just and equitable relief to which it is entitled.

JURY TRIAL DEMANDED

Respectfully submitted,

Dickie, McCamey & Chilcote, P.C.

By 
John T. Pion, Esquire

Attorney for Plaintiff

From:

11/2

15:03

#730 P.008/008

VERIFICATION

I, Tim Cowen, of Cowen Truck Lines, 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 is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

Tim Cowen
Tim Cowen

DATED 11/2/06

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

No. 2006-1892 CD

v.

MERIT TRANSPORTATION,

Defendant.

ORDER OF COURT

AND NOW, to-wit, upon consideration of Defendant Merit Transportation's Preliminary Objections, it is hereby **ORDERED, ADJUDGED** and **DECREED** that the within Preliminary Objections are **GRANTED**. Plaintiff's Complaint is dismissed against Defendant, Merit Transportation; or, in the alternative, require the filing of a more specific pleading by Plaintiff pursuant to Pennsylvania Rules of Civil Procedure 1028 and 1019.

BY THE COURT:

J.

LAW OFFICE OF
JOSEPH S. WEIMER
975 TWO CHATHAM CENTER
PITTSBURGH, PENNSYLVANIA 15219
(412) 338-3184
FAX (412) 471-8748

Writer's Direct Dial: (412) 338-3245

JOSEPH S. WEIMER
WALTER C. FADEREWSKI
DANIEL T. MOSKAL
F. DAVID DERMOTTA
MICHAEL E. RELICH
EDMOND R. JOYAL, JR.
SUSAN D. GARRARD
DAVID J. NICHOLS

February 12, 2007

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

**RE: Cowen Truck Lines v. Merit Transportation
No. 2006-1892 CD / Clearfield County**

Dear Sir:

Kindly file the enclosed Preliminary Objections, Brief in Support of Preliminary Objections and Praeclipe for Argument on behalf of the Defendant, Merit Transportation, pertaining to the above-captioned case. Please time stamp the extra cover sheets and return to me in the enclosed self-addressed, stamped envelope provided.

I am providing a copy of this letter and enclosures to the Court Administrator. I would request the Court Administrator to place this matter on the next available argument list for the Preliminary Objections.

If you have any questions, kindly contact my paralegal, Gina Petrulli, at 412/338-3186. Thank you for your assistance herein.

Very truly yours,


Susan D. Garrard

SDG/gmp
Enclosures

cc: David S. Meholic, Court Administrator (w/encl.)
John T. Pion, Esquire (w/encl.)
Merit Transportation, Attn: Linda (w/encl.)
Craig Perleberg, Northland Insurance Co. (w/encl.)
Claim #21 TF462197

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

No. 2006-1892 CD

v.

MERIT TRANSPORTATION,

Defendant.

PRAECLYPE FOR ARGUMENT

Filed on behalf of the Defendant:

MERIT TRANSPORTATION

Counsel of Record for this Party:

Susan D. Garrard, Esquire
PA I.D. 73727

Law Office of Joseph S. Weimer
Firm #301
975 Two Chatham Center
Pittsburgh, PA 15219

(412) 338-3245

JURY TRIAL DEMANDED

FILED NOCC.
M/3:25pm
FEB 14 2007
JW

William A. Shaw
Prothonotary/Clerk of Courts

No. 2006-1892 CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

No. 2006-1892 CD

Plaintiff,

v.

MERIT TRANSPORTATION,

Defendant.

PRAECIPE FOR ARGUMENT

Kindly place the above-captioned case on the next available argument list for consideration of the Preliminary Objections filed on behalf of the Defendant, Merit Transportation.

BY: Susan D. Garrard
LAW OFFICE OF JOSEPH S. WEIMER
Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

CERTIFICATE OF SERVICE

I, Susan D. Garrard, Esquire, do hereby certify that I have mailed a true and correct copy of the within **PRAECIPE FOR ARGUMENT** by regular mail, postage pre-paid, to the following on this 18th day of February, 2007:

John T. Pion, Esquire
DICKIE MCCAMEY & CHILCOTE, P.C.
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

LAW OFFICE OF JOSEPH S. WEIMER
BY: Susan Garrard
Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

No. 2006-1892 CD

v.

MERIT TRANSPORTATION,

SCHEDULING ORDER

Defendant.

Filed on behalf of the Defendant,
MERIT TRANSPORTATION

Counsel of Record for this Party:

Susan D. Garrard, Esquire
PA I.D. 73727

Law Office of Joseph S. Weimer
Firm #301
975 Two Chatham Center
Pittsburgh, PA 15219

(412) 338-3245

JURY TRIAL DEMANDED

FILED
01/24/2007 Atty Garrard
FEB 22 2007
4CC
GK

William A. Shaw
Prothonotary/Clerk of Courts

No. 2006-1892 CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

No. 2006-1892 CD

Plaintiff,

v.

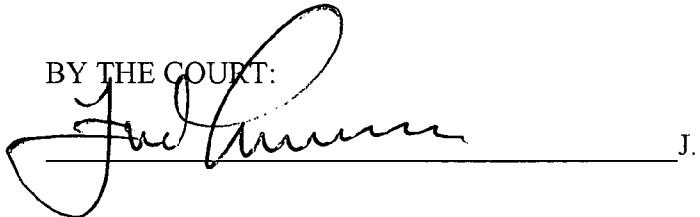
MERIT TRANSPORTATION,

Defendant.

SCHEDULING ORDER

AND NOW, this 22 day of February, 2007, argument on Defendant's Preliminary Objections is scheduled before Judge Ammerman in Courtroom 1 at 10:00 A.M./P.M. for the 14th day of March, 2007 in the Clearfield County Courthouse.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Judge Ammerman", is written over a horizontal line. To the right of the signature, the letter "J." is handwritten.

FILED

FEB 22 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/22/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED

*MAR 01 2007
m/ 10-05/06*

William A. Shaw
Prothonotary/Clerk of Courts
No C/C

(6K)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

No. 2006-1892 CD

v.

Issue No.

MERIT TRANSPORTATION,

AMENDED COMPLAINT

Defendant.

Code:

Filed on behalf of Plaintiff

Counsel of record for this party:

John T. Pion, Esquire
PA I.D. # 43675

Ashley A. Totedo, Esquire
PA I.D. # 89757

DICKIE, MCCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

G.D. No. 2006-1892 CD

v.

MERIT TRANSPORTATION,

Defendant.

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 CLAIM OR RELIEF REQUESTED BY THE DEFENDANT. 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 OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Second & Market Street
Clearfield, PA 16830
(814) 765-2641, ext. 50-51

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

G.D. No. 2006-1892 CD

v.

MERIT TRANSPORTATION,

Defendant.

AMENDED COMPLAINT

AND NOW, comes the Plaintiff, Cowen Truck Lines, Inc., by and through its counsel, Dickie, McCamey & Chilcote, P.C., John T. Pion, Esquire and Ashley A. Totedo, Esquire and files the following Amended Complaint, in support of which it avers as follows:

PARTIES AND FACTUAL BACKGROUND

1. Plaintiff, Cowen Truck Lines, Inc. ("Cowen Truck Lines") is an Ohio Corporation with its principle place of business at 2697 St. Rt. 39, P.O. Box 480, Perrysville, Ohio 44864.

2. Defendant, Merit Transportation Company, LLC ("Merit Transportation") is a Nebraska Corporation with its principle place of business at 10330 South 152nd Street, Omaha, Nebraska 68138.

3. On or about December 17, 2005, David Sovine, an employee of Cowen Truck Lines, was sitting in a vehicle owned by the Plaintiff at the Pilot Truck Stop near Interstate 80, Exit 123 at Route 19, Dubois, Clearfield County, Pennsylvania.

4. While Plaintiff's vehicle was parked in the truck stop parking lot, a driver for Defendant's company, while in the course and scope of his employment, was operating a tractor trailer owned by Defendant. The tractor, a Black Kenworth W900, bearing the Merit

Transportation logo, was identified as Unit #4094. The trailer being hauled also bore the Merit Transportation logo and was identified as Unit #1128, bearing Nebraska license plate number 152241.

5. While operating Defendant's vehicle and attempting to turn Defendant's vehicle around, Defendant's employee/agent/servant backed into Plaintiff's vehicle, causing damage to the front of the Plaintiff's tractor.

6. After the collision, Mr. Sovine approached the Defendant's employee/servant/agent and advised him that he had struck the Plaintiff's vehicle.

7. Thereafter, Defendant's employee/agent/servant left the scene of the accident before the responding police officers arrived, without providing his name or any further identification.

COUNT I – NEGLIGENCE

8. Plaintiff restates all of the allegations set forth as if fully rewritten herein.

9. At all times relevant to the events set forth in this Complaint, Defendant Merit owned and controlled the vehicle driven by their employee.

10. At all times relevant to the events set forth in this Complaint, Defendant's employee was within the course and scope of agency and/or employment with Defendant Merit.

11. As such, Defendant Merit is liable for the tortious acts committed by its employee and all damages as set forth in this Complaint.

12. Defendant's employee negligently operated Defendant's tractor trailer in the following particulars:

(a) Being inattentive and in failing to maintain a sharp observation of the parking lot and surrounding conditions;

- (b) In failing to watch or look where the motor vehicle was being operated;
- (c) In failing to watch the road and/or parking lot in front of him;
- (d) In leaving the scene of the accident;
- (e) Driving carelessly and recklessly;
- (f) In failing to sound warning of impending collision;
- (g) In failing to properly apply his brakes;
- (h) Driving his vehicle while being inattentive or tired; and
- (i) Operating his vehicle in violation of and without regard to the traffic laws and regulations of the local city, county, and/or Commonwealth of Pennsylvania.

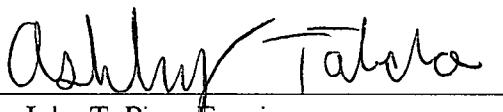
13. The negligence, carelessness and recklessness of Merit Transportation, by and through its employee/agent/servant, as set forth above, was the direct and proximate cause of Plaintiff's damages, totaling \$23,759.84 for labor and repairs, replacement parts, and down time to Plaintiff's vehicle.

WHEREFORE, Plaintiff, Cowen Truck Lines, Inc., prays for judgment on its claims against Defendant, for the amount of \$23,759.84. Additionally, Plaintiff demands interest, its costs incurred herein and any and all other just and equitable relief to which it is entitled.

JURY TRIAL DEMANDED

Respectfully submitted,

Dickie, McCamey & Chilcote, P.C.

By 
John T. Pion, Esquire
Ashley A. Totedo, Esquire

Attorney for Plaintiff

Feb 22 07 02:10p Cowen Truck Line Inc

4199387421

p.3

Feb 22, 2007 9:44AM Second Floor #1

No. 100 R. 1

VERIFICATION

I, Tim Cowen, am in a position to sign this Verification on behalf of Cowen Truck Lines by way of my position as Owner, and have read the foregoing Amended Complaint. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

Tim Cowen

Tim Cowen

DATED 2/22/07

CERTIFICATE OF SERVICE

I, Ashley A. Totedo, Esquire, hereby certify that a true and correct copy of the foregoing Amended Complaint was served upon counsel of record by U.S. mail, postage prepaid, this 27 day of February, 2007, as follow:

Susan DiBiasio Garrard
Law Office of Joseph S. Weimer
Two Chatham Center
112 Washington Place, Suite 975
Pittsburgh, Pennsylvania 15219
(*Counsel for Defendant*)

DICKIE, McCAMEY & CHILCOTE, P.C.

By Ashley Tatedo
John T. Pion, Esquire
Ashley A. Totedo, Esquire

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

Counsel for Plaintiff

William A. Shaw
Prothonotary/Clerk of Courts

MAR 01 2007

FILED

William A. Shaw
Prothonotary/Clerk of Courts

MAR 04 2007

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

Plaintiff,

v.

MERIT TRANSPORTATION,

Defendant.

CIVIL DIVISION

G.D. No. 2006-01892

**CERTIFICATE PREREQUISITE TO
SERVICE OF A SUBPOENA PURSUANT
TO RULE 4009.22**

Code: 011 (Multiple Civil Actions)

Filed on behalf of Plaintiff, Cowen Truck
Lines

Counsel of record for this party:

John T. Pion, Esquire
DC I.D. # 47852

Ashley A. Totedo, Esquire
PA I.D. # 89757

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED
M 10:25 AM
MAR 14 2007
NO CC
WM

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,) CIVIL DIVISION
Plaintiff,)
) G.D. No. 2006-01892
v.)
)
MERIT TRANSPORTATION,)
)
Defendant.)

**CERTIFICATE PREREQUISITE TO SERVICE
OF A SUBPOENA PURSUANT TO RULE 4009.22**

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Defendant certifies that:

- (1) a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
- (2) a copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
- (3) counsel for plaintiff has waived objection to the subpoena per telephone message of March 8, 2007; and
- (4) the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

DICKIE, MCCAMEY & CHILCOTE, P.C.

Date: March 8, 2007

By: Ashley A. Totedo
Ashley A. Totedo, Esquire
John T. Pion, Esquire

Attorneys for Plaintiff,
Cowen Truck Lines

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

Plaintiff,

v.

MERIT TRANSPORTATION,

Defendants.

CIVIL DIVISION

GD 2006-01892

Issue No.

**NOTICE OF INTENT TO SERVE
SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO
RULE 4009.21**

Code: 001

Filed on behalf of Plaintiff

Counsel of record for this party:

John T. Pion, Esquire
PA I.D. # 43675

Ashley A. Totedo, Esquire
PA I.D. # 89757

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,) CIVIL DIVISION
Plaintiff,)
v.) GD 2006-01892
MERIT TRANSPORTATION,)
Defendants.)

**NOTICE OF INTENT TO SERVE SUBPOENAS
TO PRODUCE DOCUMENTS AND THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.21**

TO: Susan D. Garrard, Esquire
Law Office of Joseph S. Weimer
975 Two Chatham Center
Pittsburgh, PA 15219

Plaintiff Cowen Truck Lines by and through their attorneys, John T. Pion, Esquire, Ashley A. Totedo, Esquire and Dickie, McCamey & Chilcote, P.C. intend to serve a subpoena identical to the one attached to this Notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

DICKIE, MCCAMEY & CHILCOTE, P.C.

Date: February 28, 2007

By: Ashley A. Tatedo
Ashley A. Tatedo, Esquire
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Ashley A. Totedo, Esquire, hereby certify that a true and correct copy of foregoing NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21 has been served this 28 day of February, 2007, by U.S. first-class mail, postage prepaid, to counsel of record as follows:

Susan D. Garrard, Esquire
Law Office of Joseph S. Weimer
975 Two Chatham Center
Pittsburgh, PA 15219

Counsel for Defendant

DICKIE, McCAMEY & CHILCOTE, P.C.

By: Ashley Tatedo
Ashley A. Tatedo, Esquire
Attorneys for Plaintiff
Cowen Truck Lines

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Cowen Truck Lines
Plaintiff(s)

Vs.

*

No. 2006-01892-CD

Merit Transportation
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Pennsylvania State Police Commissioner Jeffrey B. Miller
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

Copies of any and all photographs relative to incident No. 20051217M-3307
Copy of the accident report for incident No. 20051217M-3307, any and all
Witness statements, any and all reconstruction reports and all supplement(s) (Address)

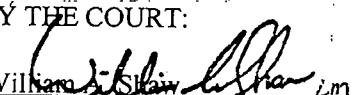
You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Ashley A. Tatedo, Esq.
ADDRESS: Two PPG Place, Ste. 400
Pittsburgh, PA 15222-5402
TELEPHONE: 412-281-7272
SUPREME COURT ID # 89757
ATTORNEY FOR: Plaintiff

BY THE COURT:


William A. Shahan, Jr.
Prothonotary/Clerk, Civil Division

DATE: Monday, February 26, 2007
Seal of the Court

Deputy

CERTIFICATE OF SERVICE

I, Ashley A. Totedo, Esquire, hereby certify that a true and correct copy of the foregoing CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA PURSUANT TO RULE 4009.22 has been served this 9 day of March, 2007, by U.S. first-class mail, postage prepaid, to counsel of record as follows:

Susan D. Garrard, Esquire
Law Office of Joseph S. Weimer
975 Two Chatham Center
Pittsburgh, PA 15219
(Counsel for Merit Transportation)

DICKIE, McCAMEY & CHILCOTE, P.C.

By: Ashley A. Totedo
Ashley A. Totedo, Esquire
John T. Pion, Esquire

Attorneys for Plaintiff,
Cowen Truck Lines

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

No. 2006-1892 CD

v.

MERIT TRANSPORTATION,

**ANSWER AND NEW MATTER
TO AMENDED COMPLAINT**

Defendant.

Filed on behalf of the Defendant,
MERIT TRANSPORTATION

Counsel of Record for this Party:

Susan D. Garrard, Esquire
PA I.D. 73727

Law Office of Joseph S. Weimer
Firm #301
975 Two Chatham Center
Pittsburgh, PA 15219

(412) 338-3245

JURY TRIAL DEMANDED

TO THE PLAINTIFF:

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE WITHIN
ANSWER AND NEW MATTER WITHIN TWENTY (20) DAYS
FROM THE DATE OF SERVICE HEREOF OR A DEFAULT
JUDGMENT MAY BE ENTERED AGAINST YOU.

LAW OFFICE OF JOSEPH S. WEIMER
BY: *Susan D. Garrard*
SUSAN D. GARRARD, ESQUIRE
ATTORNEY FOR DEFENDANT, MERIT TRANSPORTATION

FILED
MAY 25 2007
APR 30 2007
cc
GK

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

No. 2006-1892 CD

Plaintiff,

v.

MERIT TRANSPORTATION,

Defendant.

ANSWER AND NEW MATTER TO AMENDED COMPLAINT

AND NOW, comes the Defendant, Merit Transportation, by and through their attorneys, Susan D. Garrard, Esquire and the Law Office of Joseph S. Weimer, and hereby files the following Answer and New Matter to the Plaintiff's Amended Complaint and avers as follows:

1. Defendant is without knowledge or information sufficient to ascertain the veracity of the allegations in paragraph 1. Accordingly the same is denied.
2. Admitted.
3. Defendant is without knowledge or information sufficient to ascertain the veracity of the allegation contained in paragraph 3. Accordingly, the same is denied and strict proof demanded at time of trial.
4. Defendant is without knowledge or information sufficient to ascertain the veracity of the allegation contained in paragraph 4. Accordingly, the same is denied and strict proof required at time of trial.
5. This paragraph states a legal conclusion to which no response is required. To the extent a response may be deemed necessary, the same is denied and strict proof required at time of trial.
6. Denied.

7. Denied.

COUNT I - NEGLIGENCE

8. Defendant incorporates 1 through 7 of its Answer and New Matter to Amended Complaint as though specifically restated herein.

9. It is admitted that Defendant Merit owns and controls its vehicles that are driven by its employees. However, it specifically denied that any of its vehicles were involved in an incident/accident as alleged by Plaintiff.

10. This paragraph states a legal conclusion to which no response is required. To the extent a response may be deemed necessary, Plaintiff has not identified the alleged employee and Defendant cannot admit the person is an employee. Further, Defendant denies such an incident took place. Accordingly, this Defendant specifically denies any and all allegations of negligence and damages in accordance with Pa. R.C.P. 1029(e).

11. This paragraph states a legal conclusion to which no response is required. To the extent a response may be deemed necessary, Plaintiff has not identified the alleged employee and therefore Defendant cannot admit the person was an employee. Accordingly, Defendant specifically denies any and all allegations of negligence and damages in accordance with Pa. R.C.P. 1029(e).

12(a) – (i). This paragraph and its sub-paragraphs state legal conclusions to which no response is required. To the extent a response may be deemed necessary, Plaintiff has not identified the driver involved and therefore, this Defendant is unable to ascertain whether or not its driver was actually involved in an accident. Further, it is not believed any such incident occurred as described by Plaintiff. Accordingly, all sub-paragraphs are denied in accordance with Pa. R.C.P. 1029(e). Further, strict proof is required at time of trial.

13. This paragraph states a legal conclusion to which no response is required. To the extent a response may be deemed necessary, this Defendant specifically denies any and all

allegations of negligence, carelessness, recklessness and damages in accordance with Pa. R.C.P. 1029(e). Strict proof is demanded at time of trial.

WHEREFORE, Defendant, Merit Transportation, demands judgment against Plaintiff, plus interest and costs of suit.

NEW MATTER

14. Defendant invokes as an affirmative defense the statute of limitations to the extent the same may be applicable.

15. This Defendant asserts that Plaintiff's alleged damages are due to the actions or inactions of a third party or parties, for whose conduct this Defendant is neither liable nor responsible.

16. Plaintiff's Complaint fails to state a cause of action against this Defendant upon which relief may be granted.

17. Although not necessary to do so, this Defendant pleads the affirmative defenses of comparative negligence, contributory negligence and assumption of the risk as a full and complete bar to Plaintiff's claims against this Defendant.

18. Defendant affirmatively pleads that Plaintiff has failed to mitigate its damages.

19. Plaintiff's alleged damages were pre-existing and not caused by, nor contributed to, by this accident.

20. Plaintiff has failed to join an indispensable party.

WHEREFORE, Defendant, Merit Transportation, demands judgment against Plaintiff, plus interest and costs of suit.

LAW OFFICE OF JOSEPH S. WEIMER
BY: 

Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

VERIFICATION

I, Linda McCollum, as representative of Merit Transportation, Defendant in the within matter, verify that the statements contained in the within Answer and New Matter to Amended Complaint are true and correct to the best of my knowledge, information and belief.

I understand that false statements are made subject to penalty of Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

BY: Linda McCollum

DATE: 4/9/07

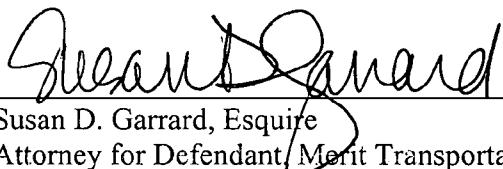
CERTIFICATE OF SERVICE

I, Susan D. Garrard, Esquire, do hereby certify that I have mailed a true and correct copy of the within **ANSWER AND NEW MATTER TO AMENDED COMPLAINT** by regular mail, postage pre-paid, to the following on this 25th day of April, 2007:

Ashley A. Totedo, Esquire
DICKIE MCCAMEY & CHILCOTE, P.C.
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

LAW OFFICE OF JOSEPH S. WEIMER

BY:



Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

FILED

MAY 07 2007
M/11:20/07
William A. Shaw
Prothonotary/Clerk of Courts
No 4C
6K

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

Plaintiff,

v.

MERIT TRANSPORTATION,

Defendant.

CIVIL DIVISION

No. 2006-1892 CD

**AFFIDAVIT OF SERVICE OF FIRST SET
OF INTERROGATORIES AND FIRST
REQUEST FOR PRODUCTION OF
DOCUMENTS DIRECTED TO
PLAINTIFF**

Filed on behalf of the Defendant:

MERIT TRANSPORTATION

Counsel of Record for this Party:

Susan D. Garrard, Esquire
PA I.D. 73727

Law Office of Joseph S. Weimer
Firm #301
975 Two Chatham Center
Pittsburgh, PA 15219

(412) 338-3245

JURY TRIAL DEMANDED

**AFFIDAVIT OF SERVICE OF FIRST SET OF INTERROGATORIES AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

COMMONWEALTH OF PENNSYLVANIA,)
) SS:
COUNTY OF ALLEGHENY,)

BEFORE ME, the undersigned authority, personally appeared SUSAN D. GARRARD,
ESQUIRE, who deposes and says that the First Set of Interrogatories and First Request for
Production of Documents were served on counsel for Plaintiff on the 3rd day of
May, 2007, by regular mail, postage pre-paid, and that the First Set of Interrogatories
and First Request for Production of Documents contained a notice to said counsel to answer the
First Set of Interrogatories and respond to the First Request for Production of Documents within
thirty (30) days of the date of service.

LAW OFFICE OF JOSEPH S. WEIMER
Susan D. Garrard
BY: Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

Sworn to and subscribed before me this

3rd day of May, 2007.


Gina Petrulli
Notary Public

Notarial Seal
Gina M. Petrulli, Notary Public
Pittsburgh, Allegheny County, PA
My Commission Expires July 20, 2009

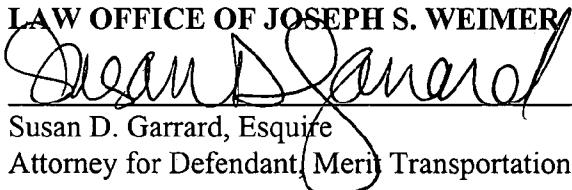
CERTIFICATE OF SERVICE

I, Susan D. Garrard, Esquire, do hereby certify that I have mailed a true and correct copy of the within **AFFIDAVIT OF SERVICE OF FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF** by regular mail, postage pre-paid, to the following on this 3rd day of May, 2007:

Ashley A. Totedo, Esquire
DICKIE MCCAMEY & CHILCOTE, P.C.
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

LAW OFFICE OF JOSEPH S. WEIMER

BY:


Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

Prothonotary/Clerk of Courts
William A. Shaw

MAY 07 2007

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

No. 2006-1892 CD

v.

MERIT TRANSPORTATION,

Defendant.

**AFFIDAVIT OF SERVICE OF SECOND
SET OF INTERROGATORIES
DIRECTED TO PLAINTIFF**

Filed on behalf of the Defendant:

MERIT TRANSPORTATION

Counsel of Record for this Party:

Susan D. Garrard, Esquire
PA I.D. 73727

Law Office of Joseph S. Weimer
Firm #301
975 Two Chatham Center
Pittsburgh, PA 15219

(412) 338-3245

JURY TRIAL DEMANDED

FILED
M 12:30 PM
AUG 29 2007
WCC
LM

William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE OF SECOND SET OF INTERROGATORIES

COMMONWEALTH OF PENNSYLVANIA,)
) SS:
COUNTY OF ALLEGHENY,)

BEFORE ME, the undersigned authority, personally appeared SUSAN D. GARRARD, ESQUIRE, who deposes and says that the Second Set of Interrogatories was served on counsel for Plaintiff on the 27th day of August, 2007, by regular mail, postage pre-paid, and that the Second Set of Interrogatories contained a notice to said counsel to answer the Second Set of Interrogatories within thirty (30) days of the date of service.

BY: Susan D. Garrard
LAW OFFICE OF JOSEPH S. WEIMER
Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

Sworn to and subscribed before me this

27th day of August, 2007.

Gina M. Petrucci
Notary Public

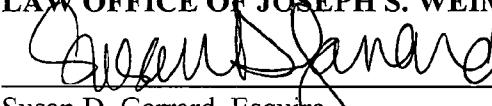
Notarial Seal
Gina M. Petrucci, Notary Public
Pittsburgh, Allegheny County, PA
My Commission Expires July 20, 2009

CERTIFICATE OF SERVICE

I, Susan D. Garrard, Esquire, do hereby certify that I have mailed a true and correct copy of the within **AFFIDAVIT OF SERVICE OF SECOND SET OF INTERROGATORIES DIRECTED TO PLAINTIFF** by regular mail, postage pre-paid, to the following on this 27th day of August, 2007:

Ashley A. Totedo, Esquire
DICKIE MCCAMEY & CHILCOTE, P.C.
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

LAW OFFICE OF JOSEPH S. WEIMER

BY: 

Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

FILED

Plaintiff,

No. 2006-1892 CD

v.

MERIT TRANSPORTATION,

Defendant.

MAR 24 2008

11:30 AM
William A. Shaw
Prothonotary/Clerk of Courts
no. 61C

**NOTICE OF DEPOSITION OF DAVID
SOVINE**

Filed on behalf of the Defendant,
MERIT TRANSPORTATION

Counsel of Record for this Party:

Susan D. Garrard, Esquire
PA I.D. 73727

Law Office of Joseph S. Weimer
Firm #301
975 Two Chatham Center
Pittsburgh, PA 15219

(412) 338-3245

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION

TO: David Sovine
c/o Ashley A. Totedo, Esquire
DICKIE MCCAMEY & CHILCOTE, P.C.
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

PLEASE TAKE NOTICE that the deposition of **David Sovine** has been scheduled to be taken on **Tuesday, April 15, 2008 at 1:30 p.m. at Dickie McCamey & Chilcote, P.C., Two PPG Place, Suite 400, Pittsburgh, PA 15222-5402**, at which time and place you are invited to appear and take part as shall be fitting and proper. The purpose of this deposition is for discovery and possible use at trial.

Respectfully submitted,

LAW OFFICE OF JOSEPH S. WEIMER

BY:



Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

Court Reporter:
Powers, Garrison & Hughes
332 Fifth Avenue
600 Warner Centre
Pittsburgh, PA 15222
(412) 263-2088

CERTIFICATE OF SERVICE

I, Susan D. Garrard, Esquire, do hereby certify that I have mailed a true and correct copy of the within Notice of Deposition of David Sovine by regular mail, postage pre-paid, to the following on this 17th day of March, 2008:

Ashley A. Totedo, Esquire
DICKIE MCCAMEY & CHILCOTE, P.C.
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

LAW OFFICE OF JOSEPH S. WEIMER
BY: Susan D. Garrard
Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

No. 2006-1892 CD

v.

MERIT TRANSPORTATION,

Defendant.

**AMENDED NOTICE OF DEPOSITION
OF DAVID SOVINE**

Filed on behalf of the Defendant,
MERIT TRANSPORTATION

Counsel of Record for this Party:

Susan D. Garrard, Esquire
PA I.D. 73727

Law Office of Joseph S. Weimer
Firm #301
975 Two Chatham Center
Pittsburgh, PA 15219

(412) 338-3245

JURY TRIAL DEMANDED

FILED NO
M 10 50 AM
APR 03 2008
CPL

William A. Shaw
Prothonotary/Clerk of Courts

AMENDED NOTICE OF DEPOSITION

TO: David Sovine
c/o Ashley A. Totedo, Esquire
DICKIE MCCAMEY & CHILCOTE, P.C.
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

PLEASE TAKE NOTICE that the deposition of David Sovine has been rescheduled to be taken on **Monday, April 21, 2008 at 1:30 p.m. at Dickie McCamey & Chilcote, P.C., Two PPG Place, Suite 400, Pittsburgh, PA 15222-5402**, at which time and place you are invited to appear and take part as shall be fitting and proper. The purpose of this deposition is for discovery and possible use at trial.

Respectfully submitted,

LAW OFFICE OF JOSEPH S. WEIMER

BY:



Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

Court Reporter:
Pittsburgh Reporting Service
1900 Lawyers Building
Pittsburgh, PA 15219
(412) 575-5830

CERTIFICATE OF SERVICE

I, Susan D. Garrard, Esquire, do hereby certify that I have mailed a true and correct copy of the within Amended Notice of Deposition of David Sovine by regular mail, postage pre-paid, to the following on this 18th day of April, 2008:

Ashley A. Totedo, Esquire
DICKIE MCCAMEY & CHILCOTE, P.C.
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

LAW OFFICE OF JOSEPH S. WEIMER
BY: 
Susan D. Garrard, Esquire
Attorney for Defendant, Merit Transportation

FILED

AUG 01 2008

M 19:45 1
William A. Shaw
Prothonotary/Clerk of Courts
No C/C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

No. 2006-1892 CD

v.

Issue No.

MERIT TRANSPORTATION,

PRAECIPE FOR TRIAL

Defendant.

Code:

Filed on behalf of Plaintiff

Counsel of record for this party:

John T. Pion, Esquire
PA I.D. # 43675

Ashley A. Totedo, Esquire
PA I.D. # 89757

DICKIE, MCCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,)	CIVIL DIVISION
)	
Plaintiff,)	No. 2006-1892 CD
)	
v.)	
)	
MERIT TRANSPORTATION,)	
)	
Defendant.)	

PRAECIPE FOR TRIAL

TO: Prothonotary

Kindly list the above-captioned matter for trial. The undersigned represents that no Motions are outstanding and discovery has been completed and the case is ready for trial. Plaintiff requests that this matter be heard by a jury. Counsel for the Defendant has received a copy of this Praecipe for Trial.

Respectfully submitted,

Dickie, McCamey & Chilcote, P.C.

By Ashley A. Totedo
John T. Pion, Esquire
Ashley A. Totedo, Esquire

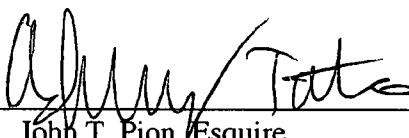
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Ashley A. Totedo, Esquire, hereby certify that a true and correct copy of the foregoing
Praecipe for Trial was served upon counsel of record by U.S. mail, postage prepaid, this 31
day of July, 2008, as follow:

Susan D. Garrard, Esquire
Law Office of Joseph S. Weimer
975 Two Chatham Center
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

By 

John T. Pion, Esquire
Ashley A. Totedo, Esquire

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

Counsel for Plaintiff

William A. Shaw
Prothonotary/Clerk of Courts

Aug 01 2008

FILED

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

COWEN TRUCK LINES,

Plaintiff

vs.

NO. 06-1892-CD

MERIT TRANSPORTATION,

Defendant

ORDER

AND NOW, this 7th day of August, 2008, it is the ORDER of this Court that Pre-trial conference in the above matter shall be held on the **12th day of September, 2008** in Chambers at 2:00 p.m.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED
14,000
AUG 07 2008
1CC Atty's:
Pion
Garrard

William A. Shaw
Prothonotary/Clerk of Courts

GIC

FILED

AUG 07 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/10/08

You are responsible for serving all appropriate parties.
____ The Prothonotary's Office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

____ Special Instructions:

FILED

AUG 04 2008
10:45 AM

William A. Shaw
Prothonotary/Clerk of Courts
No C/C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

CIVIL DIVISION

Plaintiff,

No. 2006-1892 CD

v.

Issue No.

MERIT TRANSPORTATION,

AMENDED PRAECIPE FOR TRIAL

Defendant.

Code:

Filed on behalf of Plaintiff

Counsel of record for this party:

John T. Pion, Esquire
PA I.D. # 43675

Ashley A. Totedo, Esquire
PA I.D. # 89757

DICKIE, MCCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,) CIVIL DIVISION
)
 Plaintiff,) No. 2006-1892 CD
)
 v.)
)
 MERIT TRANSPORTATION,)
)
 Defendant.)

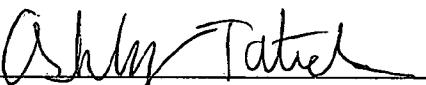
AMENDED PRAECIPE FOR TRIAL

TO: Prothonotary

Kindly list the above-captioned matter for trial. The undersigned represents that no Motions are outstanding and discovery has been completed and the case is ready for trial. Plaintiff does not request a jury trial. Counsel for the Defendant has received a copy of this Praecipe for Trial.

Respectfully submitted,

Dickie, McCamey & Chilcote, P.C.

By 
John T. Pion, Esquire
Ashley A. Totedo, Esquire

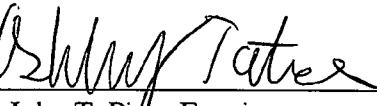
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Ashley A. Totedo, Esquire, hereby certify that a true and correct copy of the foregoing Amended Praeclipe for Trial was served upon counsel of record by U.S. mail, postage prepaid, this 1 day of August, 2008, as follow:

Susan D. Garrard, Esquire
Law Office of Joseph S. Weimer
975 Two Chatham Center
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
John T. Pion, Esquire
Ashley A. Totedo, Esquire

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

Counsel for Plaintiff

FILED
AUG 04 2008
William A. Straw
Prothonotary/Clerk of Courts
Commonwealth of Massachusetts
Boston, Massachusetts 02108

S
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m 11:10 LM disc issued to
OCT 27 2008 Atty Totedo
LS
William A. Shaw
Prothonotary/Clerk of Courts
Copy to CIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,

Plaintiff,

v.

MERIT TRANSPORTATION,

Defendant.

CIVIL DIVISION

No. 2006-1892 CD

Issue No.

**PRAECIPE TO SETTLE AND
DISCONTINUE**

Code:

Filed on behalf of Plaintiff

Counsel of record for this party:

John T. Pion, Esquire
PA I.D. # 43675

Ashley A. Totedo, Esquire
PA I.D. # 89757

DICKIE, MCCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COWEN TRUCK LINES,) CIVIL DIVISION
)
Plaintiff,) No. 2006-1892 CD
)
v.)
)
MERIT TRANSPORTATION,)
)
Defendant.)

PRAECIPE TO SETTLE AND DISCONTINUE

Kindly mark the docket settled and discontinued in regards to the above-referenced matter.

Respectfully submitted,

Dickie, McCamey & Chilcote, P.C.

By Ashley Tatedo
John T. Pion, Esquire
Ashley A. Tatedo, Esquire

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the foregoing Praeclipe to Settle and Discontinue was served upon counsel of record by U.S. mail, postage prepaid, this 24 day of October, 2008, as follows:

Susan D. Garrard, Esquire
Law Office of Joseph S. Weimer
975 Two Chatham Center
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

By John T. Pion
John T. Pion, Esquire
Ashley A. Totedo, Esquire

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Cowen Truck Lines

Vs.
Merit Transportation

No. 2006-01892-CD

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 October 27, 2008, marked:

Settled and Discontinued

Record costs in the sum of \$85.00 have been paid in full by John T. Pion Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 27th day of October A.D. 2008.


lm

William A. Shaw, Prothonotary