

06-1988-CD
Douglas Swearer et al vs Todd McCool et al

Douglas Swearer et al vs Todd McCool et al
2006-1988-CD

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

DOUGLAS W. SWEARER
309 BRANDYCAMP CIRCLE
RIDGWAY, PA 15853

AND

DEBRA SWEARER
309 BRANDYCAMP CIRCLE
RIDGWAY, PA 15853

H/W
Plaintiffs

-vs-

TODD H. MCCOOL
414 NICHOLS STREET
CLEARFIELD, PA 16830

AND

MID-STATE AMUSEMENT CO., INC.
1117 S. MAIN STREET
DUBOIS, PA 15801

Defendants

FILED *Feed*

NOV 29 2006

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William A. Shaw
Prothonotary/Clerk of Courts

No. 2006-1988-CD *no court calendar*
JURY TRIAL DEMANDED *Issue 2*

writs to

ATTY

Type of Pleading:
Praeclipe to Issue
Writ of Summons

Filed on Behalf of:
Douglas & Debra Swearer,
husband & wife

Counsel of Record for this
Party:

Samuel Cohen, Esquire
Supreme Court I.D. 27544

Katz, Cohen & Price
117 S. 17th Street, Ste. 2010
Philadelphia, PA 19103
(215) 636-0400

THE LAW OFFICES OF
RICHARD H. MILGRUB
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

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

DOUGLAS W. SWEARER *
309 BRANDYCAMP CIRCLE *
RIDGWAY, PA 15853 *
*
AND *
*
DEBRA SWEARER *
309 BRANDYCAMP CIRCLE *
RIDGWAY, PA 15853 *
*
H/W *
Plaintiffs *
*
-vs- * No.
* JURY TRIAL DEMANDED
TODD H. MCCOOL *
414 NICHOLS STREET *
CLEARFIELD, PA 16830 *
*
AND *
*
MID-STATE AMUSEMENT CO., INC. *
1117 S. MAIN STREET *
DUBOIS, PA 15801 *
*
Defendants *

PRAECIPE TO ISSUE WRIT OF SUMMONS

TO THE PROTHONOTARY:

Please issue a Writ of Summons upon the above
captioned Defendants, Todd H. McCool at 414 Nichols Street,
Clearfield, Pennsylvania 16830 and Mid-State Amusement Co.,
Inc., 1117 S. Main Street, DuBois, Pennsylvania 15801. A jury
trial is demanded.

THE LAW OFFICES OF
RICHARD H. MILGRUB
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

Date: 11/20/06



Samuel Cohen, Esquire

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

SUMMONS

**Douglas W. Swearer
Debra Swearer**

Vs.

NO.: 2006-01988-CD

**Todd H. McCool
Mid-State Amusement**

**TO: TODD H. MCCOOL
MID-STATE AMUSEMENT**

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

Date: 11/29/2006

William A. Shaw
Prothonotary

Issuing Attorney:

Samuel Cohen
Suite 2010
Philadelphia, PA 19103-5020

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOUGLAS W. SWEARER and
DEBRA SWEARER,

Plaintiffs,

v.

TODD H. MCCOOL and MID-STATE
AMUSEMENT,

Defendants.

CIVIL DIVISION

Docket No.: 2006-01988-CD

PRAECIPE FOR APPEARANCE
(Jury Trial Demanded)

Filed on Behalf of the Defendants

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

STEVEN L. MINNICH, ESQUIRE
PA I.D. # 67655

WALSH, COLLIS & BLACKMER, P.C.
The Gulf Tower, Suite 1400
707 Grant Street
Pittsburgh, PA 15219

(412) 258-2255

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FILED NO CC
m 12 14 2006
DEC 20 2006 (6K)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DOUGLAS W. SWEARER and
DEBRA SWEARER,

Docket No.: 2006-01988-CD

Plaintiffs,

v.

TODD H. MCCOOL and MID-STATE
AMUSEMENT,

Defendants.

PRAECIPE FOR APPEARANCE

TO: THE PROTHONOTARY

Kindly enter the Appearance of the undersigned, Paul J. Walsh III, Esquire, and Steven L. Minnich, Esquire, of the law firm of Walsh, Collis & Blackmer, P.C., on behalf of the Defendants, Todd H. McCool and Mid-State Amusement, in the above case.

JURY TRIAL DEMANDED

Respectfully submitted,

WALSH, COLLIS & BLACKMER, P.C.

By


Paul J. Walsh III, Esquire
Steven L. Minnich, Esquire
Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Praecipe for Appearance** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 18th day of December, 2006.

Samuel Cohen, Esquire
117 South 17th Street; Suite 2010
Philadelphia, PA 19103-5020

WALSH, COLLIS & BLACKMER, P.C.

By 
Paul J. Walsh III, Esquire
Steven L. Minnich, Esquire
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOUGLAS W. SWEARER and
DEBRA SWEARER,

Plaintiffs,

v.

TODD H. MCCOOL and MID-STATE
AMUSEMENT,

Defendants.

CIVIL DIVISION

Docket No.: 2006-01988-CD

**PRAECIPE FOR RULE TO FILE
COMPLAINT
(Jury Trial Demanded)**

Filed on Behalf of the Defendants

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

STEVEN L. MINNICH, ESQUIRE
PA I.D. # 67655

WALSH, COLLIS & BLACKMER, P.C.
The Gulf Tower, Suite 1400
707 Grant Street
Pittsburgh, PA 15219

(412) 258-2255

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FILED
NOV 21 2006
DEC 20 2006 Rule issued
to Atty. Welsh
William A. Shaw
Prothonotary/Clerk of Courts
GK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Praecipe for Rule to File Complaint** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 18th day of December, 2006.

Samuel Cohen, Esquire
117 South 17th Street; Suite 2010
Philadelphia, PA 19103-5020

WALSH, COLLIS & BLACKMER, P.C.

By


Paul J. Walsh III, Esquire
Steven L. Minnich, Esquire
Counsel for Defendants

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

Douglas W. Swearer and
Debra Swearer

Vs.
Todd H. McCool and
Mid-State Amusement Co. Inc.

Case No. 2006-01988-CD

RULE TO FILE COMPLAINT

TO: Douglas W. Swearer and Debra Swearer

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



William A. Shaw, Prothonotary

Dated: December 20, 2006

**THIS IS NOT AN ARBITRATION MATTER - JURY TRIAL DEMANDED
AN ASSESSMENT OF DAMAGES HEARING WILL BE NECESSARY
RULE 238 DELAY DAMAGES REQUIRED**

DOULAS W. SWEARER
309 BRANDYCAMP CIRCLE
RDGWAY, PA 15853

AND

DEBRA SWEARER
309 BRANDYCAMP CIRCLE
RDGWAY, PA 15853

H/W

Plaintiffs

Vs

TODD H. MCCOOL
414 NICHOLS STREET
CLEARFIELD, PA 16830

AND

MID-STATE AMUSEMENT CO, INC.
1117 S. MAIN STREET
DUBOIS, PA 15801

Defendants

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

No. : 2006-01988-CD

Civil Action Complaint

FILED

MAR 02 2007

M 11:00 a.m.
William A. Shaw
Prothonotary/Clerk of Courts
(LW)
1 cent to Att'y

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 defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

LAWYER REFERRAL SERVICE
Pennsylvania Bar Association
P. O. Box 186
Harrisburg, Pennsylvania 17108
(800) 692 7375

THIS IS NOT AN ARBITRATION
MATTER
JURY TRIAL DEMANDED
AN ASSESSMENT OF DAMAGES HEARING
WILL BE NECESSARY
RULE 238 DELAY DAMAGES REQUIRED

DOULAS W. SWEARER
309 BRANDYCAMP CIRCLE
RIDGWAY, PA 15853

AND

DEBRA SWEARER
309 BRANDYCAMP CIRCLE
RIDGWAY, PA 15853

H/W

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

Plaintiffs

No.: 2006-01988-CD

Vs

TODD H. MCCOOL
414 NICHOLS STREET
CLEARFIELD, PA 16830

AND

MID-STATE AMUSEMENT CO, INC.
1117 S. MAIN STREET
DUBOIS, PA 15801

Defendants : :

CIVIL ACTION COMPLAINT

COME NOW Plaintiffs Douglas W. Swearer and Debra Swearer by their attorneys Katz, Cohen & Price, P.C. by Samuel Cohen, Esquire and Richard H. Milgrub, Esquire and desiring to recover compensation for injuries, losses and damages sustained by them as a result of the negligence and carelessness of Defendants aver in support thereof the following:

1. Plaintiff Douglas W. Swearer and Debra Swearer are adult individuals who are husband and wife and who are citizens and residents of the Commonwealth of Pennsylvania residing therein at 309 Brandycamp Circle Ridgway, Elk County.
2. Defendant Todd H. McCool is an adult individual who is a citizen and resident of the Commonwealth of Pennsylvania residing therein at 414 Nichols Street. Clearfield, Clearfield County.
3. Defendant Mid-State Amusement Co., Inc. is a corporation

organized and existing under the laws of the Commonwealth of Pennsylvania having a regular place of business at 1117 S. Main Street, Dubois, Clearfield County.

4. At all times material hereto, Defendant Mid-State Amusement Co., Inc. had by and through its authorized agents, servants, workmen and/employees including, but not limited to, Defendant Todd H. McCool.

5. On or about December 6, 2004, Plaintiff Douglas W. Swearer was operating a motor vehicle owned by DL. Peteson Trust in a southwardly direction on State Route 219 in Brockway Borough, Jefferson County near its intersection with Record Street.

6. On or about the aforementioned date, at or about the aforementioned time, Defendant Todd H. McCool was operating a motor vehicle in a southwardly direction to the rear of the Swearer vehicle on SR 219 near its intersection with Record Street in Brockway, Jefferson County.

7. On or about the aforementioned date at or about the aforementioned time, the motor vehicle being driven by Defendant Todd H. McCool within the course and scope of his agency and/or employment with Defendant Mid-State Amusement Co., Inc. was so negligently and carelessly operated so as to cause it to strike and collide with the rear of the vehicle being driven by Douglas Swearer which then and there stopped at a

pedestrian crossing governed by a traffic signal which was red for vehicles traveling in a southwardly direction on SR 219 at, as a result, Plaintiffs sustained serious and painful personal injuries, losses and damages more particularly set forth hereafter.

8. No act or failure to act on the parts of Plaintiffs caused or contributed to the happening of the incident or to the nature and/or extent of their injuries, losses and/or damages.

9. The injuries, losses and damages were caused as a result of the negligence and carelessness of Defendants in some or all of the following respects;

- a. In operating a vehicle at an excessive rate of speed;
- b. In following too closely;
- c. In operating at an excessive rate of speed under the circumstances;
- d. In failing to keep a proper lookout;
- e. In failing to keep a proper following distance;
- f. In failing to operate a vehicle so as to be able to bring it to a stop within the assured clear distance ahead;
- g. In failing to sound a warning of approach;
- h. In failing to observe the laws regarding a red traffic signal;

- i. In failing to take into account the rights, safety and position of Plaintiff;
- j. In violation of the Pennsylvania Motor Vehicle Law;

COUNT I - PLAINTIFF DOUGLAS SWEARER V DEFENDANTS

10. Plaintiff, **DOUGLAS SWEARER**, incorporates herein by reference each and every averment contained in paragraphs 1 through 9 as though same were fully set forth herein at length.

11. By reason of the said wrongful acts of Defendants, the Plaintiffs have suffered various injuries, including, but not limited to, cervico cranial syndrome, cervico brachial syndrome, cervico myofascitis, cervico segmental dysfunction with sublexation, thoracic spine pain, thoracic myofascitis, thoracic segmental dysfunction with subluxation, lumbar pain, lumbar myofascitis, lumbar segmental subluxation together with a severe shock to his nerves and nervous system, an aggravation and activation of pre-existing conditions and he was otherwise injured some or all of which injuries are or may be serious or permanent in nature.

12. As a further result of the aforementioned negligence and carelessness of Defendants, the Plaintiff has sustained great physical pain, mental suffering and humiliation and will continue to endure said pain, suffering mental anguish and humiliation for an indefinite time in the future.

13. As a further result of the aforementioned negligence and carelessness and of Defendants, the Plaintiff has been obliged and will in the future be obliged to expend various sums of money for medicine and medical expenses in and above endeavoring to treat and cure his injuries much to his financial damage and loss.

14. As a further result of the aforementioned negligence and carelessness of Defendants, the Plaintiff has been unable to follow his usual occupation and will be unable to follow same for an indefinite time in the future, has lost the emoluments which would have come to him through his employment and has suffered an impairment of his earning capacity and power, all of which losses are or may be serious and permanent in nature.

15. As a further result of the aforementioned negligence and carelessness of Defendants, the Plaintiff has suffered a loss of the enjoyment of his usual duties, life's pleasures and activities, all to his great detriment and loss and will continue to do so for an indefinite time in the future.

16. As a further result of the aforementioned negligence and carelessness of Defendants, the Plaintiff has or may hereinafter incur various other expenses or losses and may continue to incur same for an indefinite time in the future.

WHEREFORE, Plaintiff demands judgement in his favor and against Defendant for a sum in excess of (twenty five thousand dollars) \$25,000.00

COUNT II- PLAINTIFF DEBRA SWEARER VS DEFENDANT/S

17. Plaintiff, **DEBRA SWEARER** incorporates herein by reference each and every averment contained in paragraphs 1 through 16 as though same were fully set forth herein at length.

18. As a result of the aforesaid occurrence, Plaintiff, **DEBRA SWEARER** has been deprived of the aid, society, care and consortium of her husband, **DOUGLAS** much to her great detriment and loss.

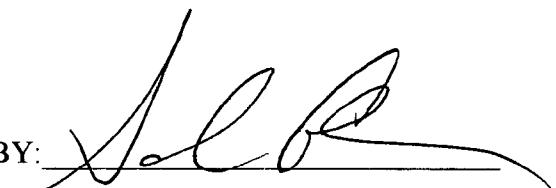
19. As a result of the aforesaid occurrence, the Plaintiff has been obliged and will in the future be obliged to expend various sums of money for medicine and medical expenses in and above endeavoring to treat and cure the injuries to her husband, **DOUGLAS** much to her financial damage and loss.

20. As a further result of the aforesaid occurrence, Plaintiff, **DEBRA SWEARER** has or may incur various other damages and incur other expenses or losses for her husband and may continue to incur same for an indefinite time in the future much to her great financial damage and loss.

WHEREFORE, Plaintiff demands judgement in her favor and against Defendants

for a sum in excess of (twenty five thousand dollars) \$25,000.00.

KATZ, COHEN & PRICE, P.C.

BY: 
SAMUEL COHEN

DATED: 2/27/07

VERIFICATION

I, **DOUGLAS W. SWEARER**, verify that I am the Plaintiff in this matter and that the averments of fact set forth in the foregoing **CIVIL ACTION COMPLAINT** are true and correct to the best of my personal knowledge, information and belief. I understand that this Verification is made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

DATED: 1-18-2007

Douglas W. Swearer
DOUGLAS W. SWEARER

THIS IS NOT AN ARBITRATION
MATTER
JURY TRIAL DEMANDED
AN ASSESSMENT OF DAMAGES HEARING
WILL BE NECESSARY
RULE 238 DELAY DAMAGES REQUIRED

DOULAS W. SWEARER
309 BRANDYCAMP CIRCLE
RIDGWAY, PA 15853

AND

DEBRA SWEARER
309 BRANDYCAMP CIRCLE
RIDGWAY, PA 15853

H/W

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

Plaintiffs

No.: 2006-01988-CD

Vs

TODD H. MCCOOL
414 NICHOLS STREET
CLEARFIELD, PA 16830

AND

MID-STATE AMUSEMENT CO, INC.
1117 S. MAIN STREET
DUBOIS, PA 15801

Defendants :

CERTIFICATION OF SERVICE

I, Samuel Cohen, certify that a true and correct copy of the within Plaintiffs' Civil Action Complaint was forwarded via regular mail through the United States Postal Service on February 28, 2007 to:

Paul J. Walsh III, Esquire
Walsh, Collis & Blalmer, P.C.
The Gulf Tower, Suite 1400
707 Grant Street
Pittsburgh, PA 15219

KATZ, COHEN & PRICE, P.C.



BY / SAMUEL COHEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102195
NO: 06-1988-CD
SERVICE # 1 OF 2
SUMMONS

PLAINTIFF: DOUGLAS W. SWEARER and DEBRA SWEARER
vs.
DEFENDANT: TODD H. MCCOOL and MID-STATE AMUSEMENT

FILED
03:00 PM
MAR 06 2006
S

William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF RETURN

NOW, December 01, 2006 AT 2:35 PM SERVED THE WITHIN SUMMONS ON TODD H. MCCOOL DEFENDANT AT 414 NICHOLS ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO TAMMY SNYDER, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN / HUNTER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102195
NO: 06-1988-CD
SERVICE # 2 OF 2
SUMMONS

PLAINTIFF: DOUGLAS W. SWEARER and DEBRA SWEARER
vs.
DEFENDANT: TODD H. MCCOOL and MID-STATE AMUSEMENT

SHERIFF RETURN

NOW, December 01, 2006 AT 2:37 PM SERVED THE WITHIN SUMMONS ON MID-STATE AMUSEMENT DEFENDANT AT 1117 S MAIN ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO SHIRLEY VARGAS, OFFICE MANAGER A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / NEVLING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102195
NO: 06-1988-CD
SERVICES 2
SUMMONS

PLAINTIFF: DOUGLAS W. SWEARER and DEBRA SWEARER

vs.

DEFENDANT: TODD H. MCCOOL and MID-STATE AMUSEMENT

SHERIFF RETURN

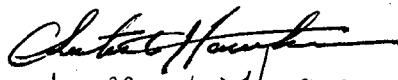
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	MILGRUB	1554	20.00
SHERIFF HAWKINS	MILGRUB	1554	43.30

Sworn to Before Me This

So Answers,

____ Day of _____ 2007



Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOUGLAS W. SWEARER and
DEBRA SWEARER,

Plaintiffs,

v.

TODD H. MCCOOL and MID-STATE
AMUSEMENT,

Defendants.

CIVIL DIVISION

Docket No.: 2006-01988-CD

**NOTICE OF SERVICE OF
INTERROGATORIES AND
REQUEST FOR PRODUCTION
OF DOCUMENTS DIRECTED
TO THE PLAINTIFFS**

(Jury Trial Demanded)

Filed on Behalf of the Defendants

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

STEVEN L. MINNICH, ESQUIRE
PA I.D. # 67655

WALSH, COLLIS & BLACKMER, P.C.
The Gulf Tower, Suite 1400
707 Grant Street
Pittsburgh, PA 15219

(412) 258-2255

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FILED NO CC
MARCH 15 2007
MAR 15 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOUGLAS W. SWEARER and
DEBRA SWEARER,

Plaintiffs,

CIVIL DIVISION

Docket No.: 2006-01988-CD

v.

TODD H. MCCOOL and MID-STATE
AMUSEMENT,

Defendants.

NOTICE OF SERVICE

TO: PROTHONOTARY

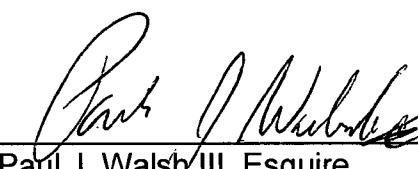
I hereby certify that the original of Defendants' Interrogatories and Request for Production of Documents was served upon counsel for Plaintiffs by mailing the same via U.S. first class mail, postage pre-paid, this 13th day of March, 2007.

JURY TRIAL DEMANDED

Respectfully submitted,

WALSH, COLLIS & BLACKMER, P.C.

By:


Paul J. Walsh III, Esquire
Steven L. Minnich, Esquire
Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Notice of Service of Interrogatories and Request for Production of Documents Directed to the Plaintiffs** has been mailed to counsel of record via U.S. first class mail, postage pre-paid, this 13th day of March, 2007.

Samuel Cohen, Esquire
117 South 17th Street
Suite 2010
Philadelphia, PA 19103-5020

WALSH, COLLIS & BLACKMER, P.C.

By: 

Paul J. Walsh III, Esquire
Steven L. Minnich, Esquire
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOUGLAS W. SWEARER and
DEBRA SWEARER,
Plaintiffs,

v.

TODD H. MCCOOL and MID-STATE
AMUSEMENT,

Defendants.

CIVIL DIVISION

Docket No.: 2006-01988-CD

**DEFENDANTS' ANSWER AND NEW
MATTER TO PLAINTIFFS' COMPLAINT**

(Jury Trial Demanded)

Filed on Behalf of the Defendants,
Todd H. McCool and Mid-State
Amusement

Counsel of Record for These Parties:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

STEVEN L. MINNICH, ESQUIRE
PA I.D. # 67655

WALSH, COLLIS & BLACKMER, P.C.
The Gulf Tower, Suite 1400
707 Grant Street
Pittsburgh, PA 15219

(412) 258-2255

656

FILED
MAY 18 2007
110-42361
NO CC
(EK)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOUGLAS W. SWEARER and
DEBRA SWEARER,

Plaintiffs,

CIVIL DIVISION

Docket No.: 2006-01988-CD

v.

TODD H. MCCOOL and MID-STATE
AMUSEMENT,

Defendants.

DEFENDANTS' ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT

AND NOW, come the Defendants, Todd H. McCool and Mid-State Amusement, by and through their undersigned attorneys, Walsh, Collis & Blackmer, P.C., Paul J. Walsh III, Esquire, and Steven L. Minnich, Esquire, and file the following Answer and New Matter to Complaint and, in support thereof, avers as follows:

I. ANSWER

1. The averment contained in paragraph No. 1 of Plaintiffs' Complaint is admitted.
2. The averment contained in paragraph No. 2 of Plaintiffs' Complaint is admitted.
3. The averment contained in paragraph No. 3 of Plaintiffs' Complaint is admitted.
4. Paragraph No. 4 of Plaintiffs' Complaint contains no factual averment to which to respond. To the extent a response is deemed necessary, said averment is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e).

5. The averment contained in paragraph No. 5 of Plaintiffs' Complaint is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

6. The averment contained in paragraph No. 6 of Plaintiffs' Complaint is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

7. Paragraph No. 7 of Plaintiffs' Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

8. Paragraph No. 8 of Plaintiffs' Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said

averment is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

9. Paragraph No. 9 of Plaintiffs' Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

**II. COUNT I – PLAINTIFF DOUGLAS W. SWEARER V.
TODD H. MCCOOL AND MID-STATE AMUSEMENT**

10. Paragraph No. 10 of Plaintiffs' Complaint requires no response. However, to the extent that a response is deemed necessary, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

11. Paragraph No. 11 of Plaintiffs' Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict

proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

12. Paragraph No. 12 of Plaintiffs' Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

13. Paragraph No. 13 of Plaintiffs' Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

14. Paragraph No. 14 of Plaintiffs' Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict

proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

15. Paragraph No. 15 of Plaintiffs' Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

16. Paragraph No. 16 of Plaintiffs' Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

WHEREFORE, the Defendants, Todd H. McCool and Mid-State Amusement, deny they are liable to the Plaintiff, Douglas W. Swearer, in the sum demanded or for any sum whatsoever and, therefore, request this Honorable Court enter judgment in their favor and against the Plaintiffs, Douglas W. Swearer and Debra Swearer, with costs and prejudice imposed.

**III. COUNT II – PLAINTIFF DEBRA SWEARER V.
TODD H. MCCOOL and MID-STATE AMUSEMENT**

17. Paragraph No. 17 of Plaintiffs' Complaint requires no response. However, to the extent that a response is deemed necessary, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

18. Paragraph No. 18 of Plaintiffs' Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

19. Paragraph No. 19 of Plaintiffs' Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

20. Paragraph No. 20 of Plaintiffs' Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied pursuant to Pa.R.C.P. 1029(c) and Pa.R.C.P. 1029(e). After a

reasonable investigation, these Defendants have insufficient knowledge or information as to the truth or falsity of said averments and, therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, the Defendants herein refer to and incorporate their previously set forth answers, hereinafter set forth answers, and hereinafter set forth New Matter.

WHEREFORE, the Defendants, Todd H. McCool and Mid-State Amusement, deny they are liable to the Plaintiff, Debra Swearer, in the sum demanded or for any sum whatsoever and, therefore, request this Honorable Court enter judgment in their favor and against the Plaintiffs, Douglas W. Swearer and Debra Swearer, with costs and prejudice imposed.

IV. NEW MATTER

21. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, these Defendants aver that the Plaintiffs have failed to state a claim for which relief may be granted.

22. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, the Plaintiffs' Complaint is barred in whole or in part by the applicable provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law.

23. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, these Defendants plead the contributory, causal negligence of the Plaintiffs and the provisions of the Pennsylvania Comparative Negligence Act as a complete or partial bar to any recovery by the Plaintiffs in this action.

24. To the extent justified by evidence developed in discovery or the testimony at the time of trial, these Defendants plead the voluntary assumption of the risk of the Plaintiff as a complete or partial bar to any recovery by the Plaintiff in this action.

25. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, these Defendants plead the accident involved herein was the direct, sole, and proximate result of the Plaintiffs' own negligence generally and in the following particulars:

- a. In failing to maintain a proper and adequate look-out for the roadway and traffic conditions;
- b. In bringing their vehicle to a sudden, abrupt, and unexpected halt without regard to traffic and roadway conditions;
- c. In operating their vehicle at an excessive rate of speed;
- d. In violating the Motor Vehicle Code and local ordinances; and,
- e. In otherwise being negligent under the circumstances.

26. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, these Defendants aver the sudden emergency doctrine as an affirmative defense.

27. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, any injuries and/or damages alleged by the Plaintiffs were the result of superseding, intervening, and/or independent causes over which these Defendants had no control and in no way participated.

28. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, these Defendants raise all affirmative defenses set forth in Pa.R.C.P. 1030 to the Plaintiffs' claims, including the legal doctrines of payment, accord and satisfaction, release, waiver, estoppel, and the statute of limitations.

29. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, these Defendants reserve the right to assert any and all other affirmative defenses which discovery may reveal appropriate and/or proper.

30. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, these Defendants aver the injuries and damages alleged by the Plaintiffs were the result of a pre-existing condition unrelated to this accident and/or occurrence.

31. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, these Defendants aver that Plaintiffs failed to mitigate their damages by ignoring the advice of medical providers.

32. To the extent justified by the evidence developed in discovery of the testimony of the time of trial, these Defendants aver that the Plaintiffs may not recover any medical expenses that were paid or payable pursuant to 75 Pa. C.S.A. Section 1722.

33. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, these Defendants aver that the Plaintiffs may not recover any medical expense reimbursements in excess of amounts accepted as full payment in satisfaction by medical providers pursuant to Moorhead v. Crozer Chester Medical Center, 564 Pa. 156, 765 A.2d 786 (2001).

34. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, these Defendants aver that any medical expenses not precluded per 75 Pa.C.S.A. §1722 must be reduced in accordance with Moorhead v. Crozer Chester Medical Center, 564 Pa. 156, 765 A.2d 786 (2001).

35. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, these Defendants aver that the Plaintiffs are bound by the limited tort option and attendant rules governing the same in the Pennsylvania Motor Vehicle Financial Responsibility Law as set forth 75 Pa.C.S.A. §1701 et. seq.

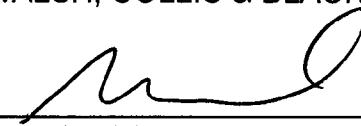
36. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, these Defendants aver that the Plaintiffs did not sustain a serious injury as defined in 75 Pa.C.S.A. §1702.

WHEREFORE, the Defendants, Todd H. McCool and Mid-State Amusement, deny that they are liable to the Plaintiffs in the sum demanded or for any sum whatsoever and, therefore, requests this Honorable Court to enter judgment in their favor and against Plaintiffs, Douglas W. Swearer and Debra Swearer, with costs and prejudice imposed.

JURY TRIAL DEMANDED

Respectfully submitted,

WALSH, COLLIS & BLACKMER, P.C.

By: 

Paul J. Walsh III, Esquire
Steven L. Minnich, Esquire
Counsel for Defendants

VERIFICATION

GENERAL

I, Todd H. McCool, verify that I am a MANAGER with Defendant, Mid-State Amusement, and I am authorized to execute this verification on its behalf and the statements made in the foregoing **Answer and New Matter to Plaintiffs' Complaint** are true and correct to the best of my knowledge, information and belief. To the extent that the content of this **Answer and New Matter to Plaintiffs' Complaint** is permitted by Pennsylvania Rules of Civil Procedure and that of counsel, I have relied upon counsel in verifying the same.

I understand false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

05-08-07
(Date)


TODD H. MCCOOL

#656

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Defendants' Answer and New Matter to Plaintiffs' Complaint** has been mailed to counsel of record via U.S. first class mail, postage pre-paid, this 16th day of May, 2007.

Samuel Cohen, Esquire
117 South 17th Street
Suite 2010
Philadelphia, PA 19103-5020
(*Counsel for Plaintiffs*)

WALSH, COLLIS & BLACKMER, P.C.

By: 

Paul J. Walsh III, Esquire
Steven L. Minnich, Esquire
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOUGLAS W. SWEARER and
DEBRA SWEARER,

Plaintiffs,

v.

TODD H. MCCOOL and MID-STATE
AMUSEMENT,

Defendants.

CIVIL DIVISION

Docket No.: 2006-01988-CD

**PRAECIPE TO SETTLE,
DISCONTINUE AND END**

(Jury Trial Demanded)

Filed on Behalf of the Defendants,
Todd H. McCool and Mid-State
Amusement

Counsel of Record for These Parties:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

STEVEN L. MINNICH, ESQUIRE
PA I.D. # 67655

WALSH, COLLIS & BLACKMER, P.C.
The Gulf Tower, Suite 1400
707 Grant Street
Pittsburgh, PA 15219

(412) 258-2255

656

FILED ^{No CC}
M 12:41 6/12
JUL 03 2007 Cert. of Disc.
WM to Atty Walsh
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOUGLAS W. SWEARER and
DEBRA SWEARER,

Plaintiffs,

CIVIL DIVISION

Docket No.: 2006-01988-CD

v.

TODD H. MCCOOL and MID-STATE
AMUSEMENT,

Defendants.

PRAECIPE TO SETTLE, DISCONTINUE AND END

TO THE PROTHONOTARY:

Kindly mark the above case as settled, discontinued and ended as referenced by the attached Order. Please also send to the undersigned counsel for Defendants a certificate of costs indicating that all costs are paid.

JURY TRIAL DEMANDED.

Respectfully submitted,

WALSH, COLLIS & BLACKMER, P.C.

By:

Paul J. Walsh III, Esquire
Steven L. Minnich, Esquire
Counsel for Defendants

KATZ, COHEN & PRICE, P.C.
By: SAMUEL COHEN, ESQUIRE
Attorney I.D. #27544
117 S. 17th Street
Suite 1500
Philadelphia, Pa. 19102
(215) 545-2201

Attorney for Plaintiffs

DOUGLAS W. SWEARER and DEBRA SWEARER, h/w	:	COURT OF COMMON PLEAS CLEARFIELD COUNTY
VS.	:	
TODD H. McCOOL and MID-STATE AMUSEMENT CO., INC.	:	NO.: 2006-01988-CD

ORDER TO SETTLE, DISCONTINUE and END

TO THE PROTHONOTARY:

Kindly mark the captioned matter settled, discontinued and ended upon
payment of your costs only.



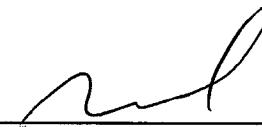
SAMUEL COHEN, ESQUIRE
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Praecipe to Settle, Discontinue and End** has been mailed to counsel of record via U.S. first class mail, postage pre-paid, this 29th day of June, 2007.

Samuel Cohen, Esquire
117 South 17th Street
Suite 2010
Philadelphia, PA 19103-5020
(*Counsel for Plaintiffs*)

WALSH, COLLIS & BLACKMER, P.C.

By: 

Paul J. Walsh III, Esquire
Steven L. Minnich, Esquire
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

~OPY

CIVIL DIVISION

Douglas W. Swearer
Debra Swearer

Vs. No. 2006-01988-CD
Todd H. McCool
Mid-State Amusement Co. Inc.

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 July 3, 2007, marked:

Settled, Discontinued, and Ended

Record costs in the sum of \$85.00 have been paid in full to the Prothonotary's office by Richard H. Milgrub, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 3rd day of July A.D. 2007.



William A. Shaw, Prothonotary