

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

FRANK A. LINDEMUTH, an adult
individual; and CYRSTAL S. LINDEMUTH,
his wife,

Plaintiff,

v.

MICKEY L. HOOVER, an adult individual,

Defendant.

No.: 06- 2096 -CD

Type of Pleading:

CIVIL COMPLAINT

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED 3CC Atty
9/12' 00Lm Noble
DEC 18 2006 pd \$85.00 Atty

William A. Shaw
Prothonotary/Clerk of Courts

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

FRANK A. LINDEMUTH, an adult)	
individual; and CYRSTAL S. LINDEMUTH,)	
his wife,)	
)	
Plaintiff,	)	No.: 06-_____ -CD
v.)	
)	
MICKEY L. HOOVER, an adult individual,)	
)	
Defendant.)	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIM 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 CLAIM IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF(S). 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 AN ATTORNEY, OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
c/o Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830
(814)-765-2641

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

FRANK A. LINDEMUTH, an adult)	
individual; and CYRSTAL S. LINDEMUTH,)	
his wife,)	
Plaintiff,	)	No.: 06-_____ -CD
v.)	
)	
MICKEY L. HOOVER, an adult individual,)	
)	
Defendant.)	

CIVIL COMPLAINT

NOW COMES the Plaintiffs, Frank A. Lindemuth and Crystal S. Lindemuth, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their CIVIL COMPLAINT:

The Parties

1. That Plaintiffs are Frank A. Lindemuth and Crystal S. Lindemuth, husband and wife and who at all relevant and material times were husband and wife living as such at the address of 5713 Irishtown Rd., Grampian Borough, Clearfield County, Pennsylvania 16838.
2. That defendant is Mickey L. Hoover, hereinafter "Hoover", who upon information and belief, does currently reside at and at all relevant and material times did reside at 1610 Ridge Ave. Extension, Curwensville, Clearfield County, Pennsylvania 16833.

Background

3. That on October 10, 2005, and for sometime prior thereto, Mr. Lindemuth was employed by Strishock Coal Company as a load operator.
4. That on said date Mr. Lindemuth was engaged in employment activities at the storage

yard for the Huey and Shaffer jobs when at around 11:30 A.M. he was summoned by Mark Strishock, upon information and belief, an owner/officer for Strishock Coal Company, who ordered Mr. Lindemuth, and another employee Jeffrey S. Siple, to go to the coal crusher which had become jammed and get it operational.

5. Mr. Lindemuth along with Mr. Siple did as instructed, proceeded to the coal crusher and dislodged the material which had so jammed the machine.

6. After unjamming the coal crusher, Mr. Lindemuth attempted to start the coal crusher, which "turned over" but stopped and automatically and numerous times repeated the cycle of trying to turn over.

7. Unknown to Mr. Lindemuth and Mr. Siple, the coal crusher was left in an "engaged position" such that it would not start.

8. As a result of the numerous repeated attempts to turn over while engaged, the battery supplying the initial power source to the coal crusher overheated and the cables attached to the battery started to arch.

9. Mr. Siple went to the truck to get some tools while Mr. Lindemuth remained behind and attempted to remove the cables from the battery which were arcing.

10. The coal crusher was manufactured with a kill switch, or a manual disconnect, on it but it was not connected, which would have stopped the power supply to the machine had it been available and activated by either Mr. Lindemuth or Mr. Siple.

11. However, when Mr. Lindemuth removed the battery cover and examined the cables which were arcing, the battery exploded causing injuries to Mr. Lindemuth including severe injuries to his eyes, broken nose and eye socket, and cuts about his face.

12. As a direct and proximate result of these injuries, Mr. Lindemuth has received

medical treatment, and continues to receive medical treatment which has or does include from Drs. Tuller, Gray, Fabre, Wirths, DiGilarimo, Osundeko, Rice and Miller as well as from DRMC and Susquehanna Health System (Muncy) Hospitals, in an amount to be determined at time of trial.

13. That as a direct and proximate result of his injuries, including the lose of eyesight in both eyes, which upon information and belief is permanent and renders Mr. Lindemuth legally blind, Mr. Lindemuth has lost income and will continue to lose, in an amount to be determined at time of trial.

14. That as a direct and proximate result of his injuries, Mr. Lindemuth has suffered and continues to suffer great pain for which he should be compensated in an amount to be determined at time of trial.

15. That as a direct and proximate result of his injuries, Mr. Lindemuth has lost an ability to enjoy life to the same capacity he had prior to his horrific injuries and for which he should be compensated in an amount to be determined at time of trial.

16. That as a direct and proximate result of his injuries, Mr. Lindemuth has suffered and continues to suffer emotional distress which he should be compensated in an amount to be determined at time of trial.

17. That as a direct and proximate result of his injuries, Mr. Lindemuth has suffered scarring, upon information and belief, to be permanent in nature, which is embarrassing and humiliating and for which he should be compensated in an amount to be determined at time of trial.

**Count I: v. Defendant Hoover;
Negligence**

18. That the averments of paragraphs 1 - 17, inclusive are hereby incorporated as if again fully set forth at length.

19. That, upon information and belief, Defendant Hoover did repair work on the coal crusher in the summer of 2005, a few months before the incident of herein complained.

20. That upon information and belief, Defendant Hoover does perform mechanical type work on equipment routinely used in coal jobs in the Clearfield County and surrounding areas.

21. That Defendant Hoover knew, or should have known, that the coal crusher worked on for Strishock Coal Company was intended to be used in its coal operations.

22. That Defendant Hoover owed Strishock Coal Company and its employees a duty to repair the coal crusher such that when it was placed in service the same was in a reasonably safe condition with its safety features in due and proper working condition.

23. That Defendant Hoover knew, or should have known, that it was a serious safety issue to have installed the engine to said coal crusher and put it back in service without a properly working "kill switch" or manual disconnect switch.

24. That Defendant Hoover was negligent in his repairs by repairing and placing the coal crusher into service without a properly working "kill switch" or manual disconnect switch.

25. That as a direct and proximate result of Defendant Hoover's aforementioned negligence, Mr. Lindemuth suffered and continues to suffer the aforementioned injuries and resulting damages for which Defendant Hoover should be liable to Mr. Lindemuth.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendant, in an amount in excess of \$25,000, together with costs and interest, to be determined at time of trial.

**Count II: v. Defendant Hoover;
Recklessness**

26. That the averments of paragraphs 1 - 25, inclusive, are hereby incorporated as if again fully set forth at length.

27. That the act of placing the coal crusher back into service without a properly working "kill switch" or "manual disconnect switch" is also reckless or grossly negligent in that Defendant Hoover disregarded a substantial and unjustifiable risk of injury to others which was reasonably foreseeable, more so than just mere negligence.

28. That as a result of Defendant Hoover's act as herein described, he should also be liable to Plaintiffs for punitive damages and reasonable attorney's, in an amount to be determined at time of trial.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendant, in an amount in excess of \$25,000, together with costs, punitive damages, reasonable attorney's fees and interest, to be determined at time of trial.

**Count III: v. Defendant Hoover;
Loss of Consortium**

29. That the averments of paragraphs 1 - 28, inclusive, are hereby incorporated as if again fully set forth at length.

30. That as a direct and proximate result of the injuries suffered by Mr. Lindemuth, he is unable to perform certain routine and customary services to his lawful wife in the manner in which he did so prior to his injuries herein described, for which she should be compensated for in an amount to be determined at time of trial.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendant, in an amount in excess of \$25,000, together with costs and interest, to be determined at time of trial.

Miscellaneous Averments

31. That jurisdiction is proper.

32. That venue is proper.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendant, in an amount in excess of \$25,000, together with costs, punitive damages, reasonable attorney's fees and interest, to be determined at time of trial.

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

Crystal S. Lindemuth, Plaintiff

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

FRANK A. LINDEMUTH, an adult
Individual; and CRYSTAL S.
LINDEMUTH, his wife
Plaintiffs,

v.

MICKEY L. HOOVER, an adult
Individual,
Defendant.

No. 06 - 2096 - CD

Type of Pleading:

ENTRY OF APPEARANCE

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: January 15, 2007

FILED ^{icc}
01/3:40 PM
JAN 15 2007
Amy Naddeo
(6K)

William A. Shaw
Prothonotary/Clerk of Courts

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

FRANK A. LINDEMUTH, an adult *
Individual; and CRYSTAL S. *
LINDEMUTH, his wife *
Plaintiffs, *

v. *

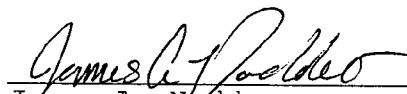
No. 06 - 2096 - CD

MICKEY L. HOOVER, an adult *
Individual, *
Defendant. *

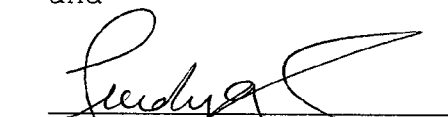
PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter our appearance on behalf of the Defendant,
Mickey L. Hoover, in the above-captioned matter.


James A. Naddeo

and


Trudy G. Lumadue
Attorneys for Defenant

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

FRANK A. LINDEMUTH, an adult
Individual; and CRYSTAL S.
LINDEMUTH, his wife
Plaintiffs,

v.

MICKEY L. HOOVER, an adult
Individual,
Defendant.

*
*
*
*
*
*
*
*
*
*

FILED

JAN 19 2007

6/3:35/

William A. Shaw

Prothonotary/Clerk of Courts

No. 06 - 2096 - CD

2 CENTS TO App

RULE

AND NOW, this 19 day of Jan, 2007, it is hereby
ORDERED that a Rule be granted upon the Plaintiffs, Frank A.
Lindemuth and Crystal S. Lindemuth, to show cause why the
preliminary objections filed by the Defendant, Mickey Hoover,
should not be granted.

Rule Returnable and argument thereon to be held the 16th of
February, 2007, at 9:30 A.m., in Courtroom 1 of the
Clearfield County Courthouse, Clearfield, Pennsylvania.

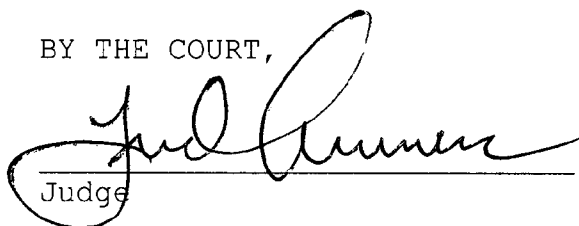
NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH
TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION,
YOU MUST TAKE ACTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY
OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES
OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED
THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN
ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER
NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY
LOSE RIGHTS IMPORTANT TO YOU.

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

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PA 16830
(814) 765-2641, Ext. 5982

BY THE COURT,


Judge

DATE: 1-14-07
☒ 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
JAN 19 2007
William A. Shaw
Prothonotary/Clerk of Courts

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

FRANK A. LINDEMUTH, an adult
Individual; and CRYSTAL S.
LINDEMUTH, his wife
Plaintiffs,

v.

MICKEY L. HOOVER, an adult
Individual,
Defendant.

No. 06 - 2096 - CD

Type of Pleading:

**DEFENDANT'S PRELIMINARY
OBJECTIONS TO PLAINTIFFS'
COMPLAINT**

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: January 18, 2007

FILED DEC
01/10:56 AM
JAN 18 2007 Amy Naddeo
GR

William A. Shaw
Prothonotary/Clerk of Courts

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

FRANK A. LINDEMUTH, an adult *
Individual; and CRYSTAL S. *
LINDEMUTH, his wife *
Plaintiffs, *

v. *

No. 06 - 2096 - CD

MICKEY L. HOOVER, an adult *
Individual, *
Defendant. *

DEFENDANT'S PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

NOW COMES the Defendant, Mickey L. Hoover, and by his attorney, James A. Naddeo, Esquire, preliminarily objects to Plaintiffs' Complaint pursuant to Pa. R.C.P. 1028 as follows:

PRELIMINARY OBJECTION FOR FAILURE TO STATE A CLAIM

1. Plaintiffs, Frank A. Lindemuth and Crystal S. Lindemuth, husband and wife, initiated this lawsuit by filing a Complaint on December 18, 2006. A true and correct copy of the Complaint is attached as Exhibit "A."

2. The Complaint alleges, in summary, that the Defendant, was negligent by failing to return a machine (a coal crusher) he was hired to repair in a reasonably safe condition with its safety features in due and proper working condition, and that as a result of a failure of a safety feature the Plaintiff was injured.

3. The Complaint alleges specifically at paragraph 22 that the Defendant, as a hired mechanic of the company (Strishock Coal Company) Plaintiff worked for, owed "the Strishock Coal Company and **its employees**" a duty to repair the coal crusher such that when it was placed in service the same was in a reasonably safe condition with its safety features in due and proper working condition.

4. The allegation as described in paragraph 3 is an improper conclusion of law by the Plaintiff and a false allegation.

5. Under Pennsylvania law, a mechanic owes a duty to perform the services requested of him by the entity hiring his service in a manner free from negligence.¹ In particular, one who undertakes for consideration to provide a service owes a duty to perform his contractual undertaking in such manner that third persons who were strangers to the contract will not be injured thereby. Prost v. Caldwell Store, Inc., 409 Pa. 421 (Pa. 1963). The mechanic cannot owe a duty beyond that which he was contracted to perform. Although this contract for services, is

¹ The duty suggested by Plaintiff would be such that any person hired to repair equipment would be liable for all damage to any person resulting from failure of safety features of that equipment.

one upon which any claim for relief must lie, it was not pled by Plaintiff, Defendant has attached hereto a true and correct copy of his Invoice to Strishock Coal Company as Exhibit "B." The Invoice identifies the service to be performed by Defendant as repair of the coal crusher engine that "developed a noise like a ticking sound."

6. Even if all facts are taken as true and all reasonable inferences are made in Plaintiffs' favor there is no duty on the part of the Defendant to provide a general safety inspection of the equipment involved. To the contrary, he was hired specifically to repair an engine.

7. No recovery can lie against Defendant, in the absence of a legal duty owed to the injured party.

8. Plaintiff also has failed to establish causation in that Plaintiff never attempted to make use of the safety device which he claims was not available.

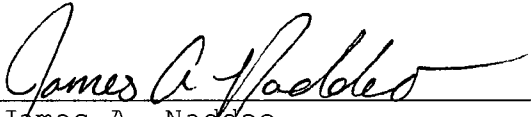
9. At paragraph 10 of Plaintiff's complaint states "The coal crusher was manufactured with a kill switch, or a manual disconnect, on it but was not connected, which **would have stopped** the power supply to the machine **had it been** available and **activated by Mr. Lindemuth or Mr. Siple.**"

10. Therefore, Plaintiff started the coal crusher without making an attempt to engage the safety and there is no causal

connection between the safety device that was not working and the injury to Plaintiff.

11. Plaintiff has failed to establish a cause of action against the Defendant.

WHEREFORE, Defendant respectfully requests this Court to grant his preliminary objection by way of demurrer and dismiss Plaintiffs Complaint.


James A. Nadeo
Attorney for Defendant

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

FRANK A. LINDEMUTH, an adult
individual; and CYRSTAL S. LINDEMUTH,
his wife,

Plaintiff,

v.

MICKEY L. HOOVER, an adult individual,

Defendant.

No.: 06- 2096 -CD

Type of Pleading:

CIVIL COMPLAINT

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

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

DEC 18 2006

Attest.

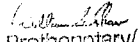

Notary Public/
Clerk of Courts

Exhibit A

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

FRANK A. LINDEMUTH, an adult)	
individual; and CYRSTAL S. LINDEMUTH,)	
his wife,)	
Plaintiff,	)	No.: 06-_____ -CD
v.)	
)	
MICKEY L. HOOVER, an adult individual,)	
)	
Defendant.)	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIM 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 CLAIM IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF(S). 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 AN ATTORNEY, OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
c/o Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830
(814)-765-2641

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

FRANK A. LINDEMUTH, an adult)	
individual; and CYRSTAL S. LINDEMUTH,)	
his wife,)	
Plaintiff,	)	No.: 06-_____-CD
v.)	
)	
MICKEY L. HOOVER, an adult individual,)	
)	
Defendant.)	

CIVIL COMPLAINT

NOW COMES the Plaintiffs, Frank A. Lindemuth and Crystal S. Lindemuth, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their CIVIL COMPLAINT:

The Parties

1. That Plaintiffs are Frank A. Lindemuth and Crystal S. Lindemuth, husband and wife and who at all relevant and material times were husband and wife living as such at the address of 5713 Irishtown Rd., Grampian Borough, Clearfield County, Pennsylvania 16838.
2. That defendant is Mickey L. Hoover, hereinafter "Hoover", who upon information and belief, does currently reside at and at all relevant and material times did reside at 1610 Ridge Ave. Extension, Curwensville, Clearfield County, Pennsylvania 16833.

Background

3. That on October 10, 2005, and for sometime prior thereto, Mr. Lindemuth was employed by Strishock Coal Company as a load operator.
4. That on said date Mr. Lindemuth was engaged in employment activities at the storage

yard for the Huey and Shaffer jobs when at around 11:30 A.M. he was summoned by Mark Strishock, upon information and belief, an owner/officer for Strishock Coal Company, who ordered Mr. Lindemuth, and another employee Jeffrey S. Siple, to go to the coal crusher which had become jammed and get it operational.

5. Mr. Lindemuth along with Mr. Siple did as instructed, proceeded to the coal crusher and dislodged the material which had so jammed the machine.

6. After unjamming the coal crusher, Mr. Lindemuth attempted to start the coal crusher, which "turned over" but stopped and automatically and numerous times repeated the cycle of trying to turn over.

7. Unknown to Mr. Lindemuth and Mr. Siple, the coal crusher was left in an "engaged position" such that it would not start.

8. As a result of the numerous repeated attempts to turn over while engaged, the battery supplying the initial power source to the coal crusher overheated and the cables attached to the battery started to arch.

9. Mr. Siple went to the truck to get some tools while Mr. Lindemuth remained behind and attempted to remove the cables from the battery which were arcing.

10. The coal crusher was manufactured with a kill switch, or a manual disconnect, on it but it was not connected, which would have stopped the power supply to the machine had it been available and activated by either Mr. Lindemuth or Mr. Siple.

11. However, when Mr. Lindemuth removed the battery cover and examined the cables which were arcing, the battery exploded causing injuries to Mr. Lindemuth including severe injuries to his eyes, broken nose and eye socket, and cuts about his face.

12. As a direct and proximate result of these injuries, Mr. Lindemuth has received

medical treatment, and continues to receive medical treatment which has or does include from Drs. Tuller, Gray, Fabre, Wirths, DiGilarmo, Osundeko, Rice and Miller as well as from DRMC and Susquehanna Health System (Muncy) Hospitals, in an amount to be determined at time of trial.

13. That as a direct and proximate result of his injuries, including the lose of eyesight in both eyes, which upon information and belief is permanent and renders Mr. Lindemuth legally blind, Mr. Lindemuth has lost income and will continue to lose, in an amount to be determined at time of trial.

14. That as a direct and proximate result of his injuries, Mr. Lindemuth has suffered and continues to suffer great pain for which he should be compensated in an amount to be determined at time of trial.

15. That as a direct and proximate result of his injuries, Mr. Lindemuth has lost an ability to enjoy life to the same capacity he had prior to his horrific injuries and for which he should be compensated in an amount to be determined at time of trial.

16. That as a direct and proximate result of his injuries, Mr. Lindemuth has suffered and continues to suffer emotional distress which he should be compensated in an amount to be determined at time of trial.

17. That as a direct and proximate result of his injuries, Mr. Lindemuth has suffered scarring, upon information and belief, to be permanent in nature, which is embarrassing and humiliating and for which he should be compensated in an amount to be determined at time of trial.

**Count I: v. Defendant Hoover;
Negligence**

18. That the averments of paragraphs 1 - 17, inclusive are hereby incorporated as if again fully set forth at length.

19. That, upon information and belief, Defendant Hoover did repair work on the coal crusher in the summer of 2005, a few months before the incident of herein complained.

20. That upon information and belief, Defendant Hoover does perform mechanical type work on equipment routinely used in coal jobs in the Clearfield County and surrounding areas.

21. That Defendant Hoover knew, or should have known, that the coal crusher worked on for Strishock Coal Company was intended to be used in its coal operations.

22. That Defendant Hoover owed Strishock Coal Company and its employees a duty to repair the coal crusher such that when it was placed in service the same was in a reasonably safe condition with its safety features in due and proper working condition.

23. That Defendant Hoover knew, or should have known, that it was a serious safety issue to have installed the engine to said coal crusher and put it back in service without a properly working "kill switch" or manual disconnect switch.

24. That Defendant Hoover was negligent in his repairs by repairing and placing the coal crusher into service without a properly working "kill switch" or manual disconnect switch.

25. That as a direct and proximate result of Defendant Hoover's aforementioned negligence, Mr. Lindemuth suffered and continues to suffer the aforementioned injuries and resulting damages for which Defendant Hoover should be liable to Mr. Lindemuth.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendant, in an amount in excess of \$25,000, together with costs and interest, to be determined at time of trial.

**Count II: v. Defendant Hoover;
Recklessness**

26. That the averments of paragraphs 1 - 25, inclusive, are hereby incorporated as if again fully set forth at length.

27. That the act of placing the coal crusher back into service without a properly working "kill switch" or "manual disconnect switch" is also reckless or grossly negligent in that Defendant Hoover disregarded a substantial and unjustifiable risk of injury to others which was reasonably foreseeable, more so than just mere negligence.

28. That as a result of Defendant Hoover's act as herein described, he should also be liable to Plaintiffs for punitive damages and reasonable attorney's, in an amount to be determined at time of trial.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendant, in an amount in excess of \$25,000, together with costs, punitive damages, reasonable attorney's fees and interest, to be determined at time of trial.

**Count III: v. Defendant Hoover;
Loss of Consortium**

29. That the averments of paragraphs 1 - 28, inclusive, are hereby incorporated as if again fully set forth at length.

30. That as a direct and proximate result of the injuries suffered by Mr. Lindemuth, he is unable to perform certain routine and customary services to his lawful wife in the manner in which he did so prior to his injuries herein described, for which she should be compensated for in an amount to be determined at time of trial.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendant, in an amount in excess of \$25,000, together with costs and interest, to be determined at time of trial.

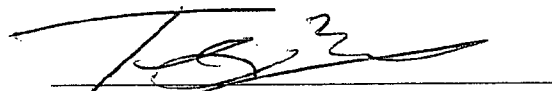
Miscellaneous Averments

31. That jurisdiction is proper.

32. That venue is proper.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendant, in an amount in excess of \$25,000, together with costs, punitive damages, reasonable attorney's fees and interest, to be determined at time of trial.

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

MICKEY HOOVER REPAIRS

1610 RIDGE AVENUE EXT., PO BOX 11
CURWENSVILLE, PA. 16833-0011
814 236 3606 FAX. 814 236 0269

INVOICE

August 8, 2005

Steve Strishock dba;
Strishock Coal Co.
220 Hillcrest Dr.
DuBois, PA 15801

Re; Jeffery Dresser coal crusher model 45 s/n 12553, Engine; Detroit Diesel 4-71, model # 1043-7000 s/n 4A220926 hours 1381

Labor Shop; July 21st- 4hrs, 22nd- 2hrs, 23rd- 8hrs, 24th- 6hrs, 25th- 5hrs,
26th- 9hrs, 28th- 9.5hrs, 29th- 8hrs, 30th- 11.5hrs,
Aug. 1st- 12hrs, 2nd- 9.5hrs, 3rd- 9.5hrs, 4th- 2.5hrs =

96.5hrs. @ \$ 32.50ph = \$ 3,136.25

Labor & Travel; July 20th- 10.5hrs, Aug. 4th- 5.5hrs, 5th- 3.5hrs =
19.5hrs. @ \$ 37.50ph =

\$ 731.25

Parts;

\$ 1,104.93

Sub-total;

\$ 4,972.43

Tax;

\$ 298.35

Total;

\$ 5,270.78

Engine developed a noise, like a ticking sound, after troubling shooting the problem it seemed be in the drive gears for the oil pump and the oil filter revealed slivers of metal when it was cut apart.

Pulled the engine and customer delivered it to my shop. The engine was completely disassembled and the following was found; two teeth were missing from the oil pump drive gear and the idler gear worn heavily, the liners were worn smooth from coal dust entering the intake air system, the rod and main bearings were beginning to show copper, the blower was coated with coal dust, the camshaft tach drive was broken. The engine needed to be major over hauled.

Rebuilt the complete engine and installed a rebuilt PTO clutch drive unit. Installed a rebuilt cylinder head, rebuilt blower, reconditioned oil cooler, rebuilt injectors, reconditioned connecting rods, new oil pump, all new crank bearings and seals, new pistons and sleeves and rings, new belts and filters. Filled coolant system and engine oil pan, started unit and test run it and made required adjustments as needed. Engine runs

Exhibit B

Page Two, August 8, 2005
Mickey Hoover Repairs
Strishock Coal Co.

good and sounds good and starts easy. Had metal fabricated to repair the rusted out corners on the rear section of the motor housing and welded them into place. Sandblasted used hood panels and cut in the required hole for the air cleaner pipe. Replaced a pressure switch and reconnected the engine shut down motor that mounts to the blower and drops the emergency shut down trap door. Removed the rusted one-inch adjusting bolts on each side of the unit that set the belt tension and fabricated new adjusters.

Reinstalled the engine onto the crusher and made all the connections and adjustments and test run the unit and everything seems to be working fine. Customer supplied the major engine parts and listed below are the support parts furnished by Mickey Hoover Repairs. Recommended to customer to have a bracket welded to stabilize the air cleaner, that is shaking and pulling against the intake pipes, when the unit is operating. Checked the air piping with the engine running using starting fluid and found no leaks at this time.

Parts List;

1	6040	reducer	17.44
5	SAE15W40	oil	37.50
1	765-1224	sealant	9.52
2	7226	primer	12.80
1	25-9412	v-belt	18.29
2	25-9420	v-belt	36.58
2	Metal	plates	28.00
1	70000-73708	paint	71.06
1	206546	release sleeve	220.28
1	2-03567	clutch plate	181.07
2	47634	bearing	110.80
2	47620	cone	61.76
1	3-07544	brass	170.76
1	23503533	bearing	93.17
1	Hose	grease	35.90

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

FRANK A. LINDEMUTH, an adult
Individual; and CRYSTAL S.
LINDEMUTH, his wife
Plaintiffs,

v.

MICKEY L. HOOVER, an adult
Individual,
Defendant.

No. 06 - 2096 - CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: January 22, 2007

FILED *no cc*
013:4184
JAN 22 2007 *W*

William A. Shaw
Prothonotary/Clerk of Courts

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

FRANK A. LINDEMUTH, an adult *
Individual; and CRYSTAL S. *
LINDEMUTH, his wife *
Plaintiffs, *

v. *

No. 06 - 2096 - CD

MICKEY L. HOOVER, an adult *
Individual, *
Defendant. *

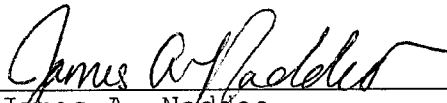
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Rule and Defendant's Preliminary Objections to Plaintiffs' Complaint was served on the following and in the following manner on the 22nd day of January, 2007:

First-Class Mail, Postage Prepaid

Theron G. Noble, Esquire
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By: 
James A. Naddeo
Attorney for Plaintiffs

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

FRANK A. LINDEMUTH, an adult individual;
and CRYSTAL S. LINDEMUTH, his wife,
Plaintiffs

vs.

MICKEY L. HOOVER, an adult individual,
Defendant

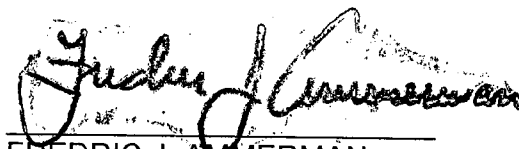
*
*
*
*
*
*

NO. 06-2096-CD

ORDER

NOW, this 16th day of February, 2007, following argument on the Preliminary
Objections filed by the Defendant, it is the ORDER of this Court that said Preliminary
Objections be and are hereby DENIED.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

01:07:04
FEB 20 2007

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atty's:
Noble
Naddeo
T. Lumadue

(60)

FILED

FEB 20 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/20/07

☐ You are responsible for serving all appropriate parties.

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

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

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

FRANK A. LINDEMUTH, an adult
Individual; and CRYSTAL S.
LINDEMUTH, his wife
Plaintiffs,

v.

MICKEY L. HOOVER, an adult
Individual,
Defendant.

No. 06 - 2096 - CD

Type of Pleading:

ANSWER AND NEW MATTER

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: March 12, 2007

FILED

MAR 12 2007

0/10:50/10

William A. Shaw

Prothonotary/Clerk of Courts

1 SENT TO ARTS

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

FRANK A. LINDEMUTH, an adult *
Individual; and CRYSTAL S. *
LINDEMUTH, his wife *
Plaintiffs, *

v. *

No. 06 - 2096 - CD

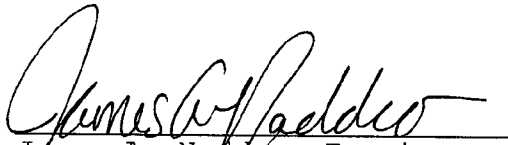
MICKEY L. HOOVER, an adult *
Individual, *
Defendant. *

NOTICE TO PLEAD

TO THE PLAINTIFFS:

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

NADDEO & LEWIS, LLC

By 
James A. Naddeo, Esquire
Attorney for Defendant

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

FRANK A. LINDEMUTH, an adult *
Individual; and CRYSTAL S. *
LINDEMUTH, his wife *
Plaintiffs, *

v. *

No. 06 - 2096 - CD

MICKEY L. HOOVER, an adult *
Individual, *
Defendant. *

ANSWER AND NEW MATTER

NOW COMES the Defendant, Mickey L. Hoover, and by his attorney, James A. Naddeo, Esquire, files the following Answer and New Matter and avers as follows:

1. Admitted.
2. Admitted.
3. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.
4. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.
5. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

6. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

7. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

8. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

9. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

10. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

11. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

12. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

13. Denied. States a conclusion of law to which no answer is required.

14. Denied. States a conclusion of law to which no answer is required.

15. Denied. States a conclusion of law to which no answer is required.

16. Denied. States a conclusion of law to which no answer is required.

17. Denied. States a conclusion of law to which no answer is required.

Count I - Negligence: v. Defendant Hoover

18. No answer is required.

19. Admitted, that Defendant did repair work on the coal crusher in the summer of 2005. In further answer thereto, upon information and belief others also performed repair work on the same coal crusher.

20. Admitted that Defendant does repair work on equipment used in the coal mining industry.

21. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied. In further answer thereto, Defendant is not responsible or obligated to know for what a piece of machinery that he is asked to repair will actually be used.

22. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

23. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied. In further answer thereto, the service Defendant was hired to perform was wholly unrelated to whether or not the "kill switch" was in proper working order. In addition, Defendant was not hired to perform a general safety inspection of the equipment. A true and correct copy of Invoice to Strishock Coal Company, which details the service Defendant performed, is attached hereto as Exhibit "A."

24. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

25. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

WHEREFORE, Defendant requests that judgment be entered in his favor and against the Plaintiffs.

Count II - Recklessness: v. Defendant Hoover

26. No answer is required.

27. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

28. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

WHEREFORE, Defendant requests that judgment be entered in his favor and against the Plaintiffs.

Count III - Loss of Consortium: v. Defendant Hoover

29. No answer is required.

30. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

WHEREFORE, Defendant requests that judgment be entered in his favor and against the Plaintiffs.

Miscellaneous Averments

31. Admitted.

32. Admitted.

WHEREFORE, Defendant requests that judgment be entered in his favor and against the Plaintiffs.

NEW MATTER

I. Assumption of the Risk

33. Defendant incorporates by reference his denials and averments in paragraphs 1 through 32 above as if set forth more fully herein.

34. Plaintiff, Frank A. Lindemuth, by his complaint, seeks to recover for injuries sustained on October 10, 2005 while

operating a coal crusher which had become jammed and thereafter left in an "engaged position" which caused overheating and arcing batteries.

35. As set forth at paragraphs 6 through 11 Plaintiff was ultimately and allegedly injured when he removed a battery cover from the coal crusher battery and examined cables which were arcing within an engine which was overheated because it just had been or was still stuck in an "engaged position."

36. That Plaintiff voluntarily exposed himself to the risks which led to the accident in that he placed his head, face and body directly near to an overheated engine to which Plaintiff knew the power supply had not been cut off and further that he removed the battery cover of the same overheated and arcing battery.

37. By his actions, Plaintiff's cause of action is barred by his assumption of the risk.

38. Furthermore, Plaintiff, Crystal S. Lindemuth's, claim is a derivative of Plaintiff, Frank A. Lindemuth's, claim and therefore is barred by his assumption of the risk.

WHEREFORE, Defendant requests that judgment be entered in his favor and against the Plaintiffs.

///

///

II. Contributory Negligent

39. Defendant incorporates by reference his denials and averments in paragraphs 1 through 38 above as if set forth more fully herein.

40. At the time and place of Plaintiff, Frank A. Lindemuth's, injuries, Plaintiff acted or failed to act in the following manner: Plaintiff approached an overheated engine which he knew the power supply was still connected to and that the battery was arcing and proceeded to place his head, face and body near to the overheated engine and arcing battery despite the danger and inherent risk at hand; Plaintiff failed to remove himself and place himself at a safe distance away from an overheated engine and arcing battery that he knew the power supply was still connected to; Plaintiff further removed the battery cover from a battery that was arcing and contained within an overheated engine to which a power supply was still connected to, thus himself increasing the danger and inherent risk at hand; Plaintiff by further removing the battery cover from the battery that was arcing and contained within an overheated engine to which a power supply was still connected by his own acts caused the battery to explode and cause the injuries he sustained.

41. By his foregoing actions and omissions, Plaintiff, Frank A. Lindemuth, exposed himself to a risk of harm of which he would have been aware had he used due care.

42. By his foregoing actions and omissions Plaintiff, Frank A. Lindemuth, was contributory negligent in that he failed to use and exercise ordinary and reasonable care under the circumstances and as a result caused and/or contributed to the aforesaid incident and his injuries.

43. Plaintiff, Frank A. Lindemuth's, contributory negligence acts to bar and/or offset any recovery against Defendant.

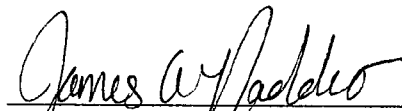
44. Furthermore, Plaintiff, Crystal S. Lindemuth's, claim is a derivative of Plaintiff, Frank A. Lindemuth's, claim and therefore is barred and/or offset by his contributory negligence.

WHEREFORE, Defendant requests that judgment be entered in his favor and against the Plaintiffs and in the alternative that Plaintiffs' claims be offset by said contributory negligence.

Respectfully submitted,

NADDEO & LEWIS, LLC

By



James A. Naddeo
Attorney for Defendant

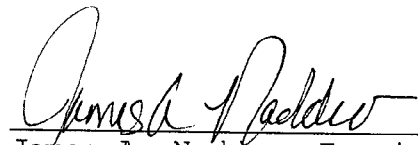
V E R I F I C A T I O N

I, James A. Naddeo, attorney for defendant, have read the foregoing Answer and New Matter. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

I am authorized to make this verification on behalf of Defendant because of my position as counsel of record.

By:



James A. Naddeo, Esquire
Attorney for Defendant

Dated:

March 9, 2007

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

FRANK A. LINDEMUTH, an adult *
Individual; and CRYSTAL S. *
LINDEMUTH, his wife *
Plaintiffs, *

v. *

No. 06 - 2096 - CD

MICKEY L. HOOVER, an adult *
Individual, *
Defendant. *

CERTIFICATE OF SERVICE

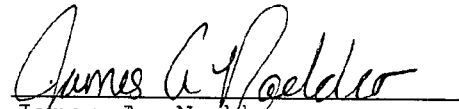
I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Answer and New Matter was served on the
following and in the following manner on the 12th day of March,
2007:

First-Class Mail, Postage Prepaid

Theron G. Noble, Esquire
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102260
NO: 06-2096-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: FRANK A. LINDEMUTH an adult ind & CYRSTAL S. LINDEMUTH, his wife
vs.
DEFENDANT: MICKEY L. HOOVER, an adult individual

SHERIFF RETURN

NOW, December 29, 2006 AT 11:50 AM SERVED THE WITHIN COMPLAINT ON MICKEY L. HOOVER
DEFENDANT AT 1610 RIDGE AVE. EXT., CURWENSVILLE, CLEARFIELD COUNTY, PENNSYLVANIA, BY
HANDING TO MICKEY L. HOOVER, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL
COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING /

FILED
073:00301
MAR 13 2007
William A. Shaw
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	NOBLE	2578	10.00
SHERIFF HAWKINS	NOBLE	2578	23.73

Sworn to Before Me This

_____ Day of _____ 2007

So Answers,


Chester A. Hawkins
Sheriff

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

FRANK A. LINDEMUTH, an adult
individual; and CYRSTAL S. LINDEMUTH,
his wife,

Plaintiff,

v.

MICKEY L. HOOVER, an adult individual,

Defendant.

:

:

:

:

:

No.: 06- 2096 -CD

:

:

:

:

:

:

:

:

:

:

:

Type of Pleading:

REPLY TO NEW MATTER

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

APR 09 2007

2/12:30/00

William A. Shaw
Prothonotary/Clerk of Courts

no C/C

(6K)

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

FRANK A. LINDEMUTH, an adult)	
individual; and CYRSTAL S. LINDEMUTH,)	
his wife,)	
Plaintiff,	)	No.: 06- <u>2096</u> -CD
v.)	
)	
MICKEY L. HOOVER, an adult individual,)	
)	
Defendant.)	

REPLY TO NEW MATTER

NOW COMES the Plaintiffs, Frank A. Lindemuth and Crystal S. Lindemuth, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their REPLY TO NEW MATTER:

33. That Plaintiffs hereby incorporate the averments of paragraph 1 - 32, inclusive, as if the same were again fully set forth at length.

34. That Plaintiffs' CIVIL COMPLAINT speaks for itself, as such there is no need to file a response hereto.

35. That Plaintiffs' CIVIL COMPLAINT speaks for itself, as such there is no need to file a response hereto.

36. Denied. It is first DENIED that Plaintiff voluntarily placed his head, face and body directly near to an overheated engine but only did so as part of his employment duties as directed by his immediate supervisor. Furthermore, Plaintiff was not trained for the particular task he was performing and failed to immediately recognize the danger which suddenly confronted him, all of which is reasonable under the attenuate facts and circumstances. For these reasons it is DENIED that Plaintiff assumed such risk and strict

proof is demanded at time of trial.

37. The same is a legal conclusion for which no response is required.

38. The same is a legal conclusion for which no response is required.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendant as prayed for in their CIVIL COMPLAINT.

39. That Plaintiffs hereby incorporate the averments of paragraph 1 - 38, inclusive, as if the same were again fully set forth at length.

40. Admitted in part, Denied in part. Given the attenuate facts and circumstances, Plaintiff acted at all times in a reasonable manner considering that the machine failed to have an active manual disconnect switch. It is specifically DENIED that Plaintiff's actions substantially increased the risk of harm or legally caused such injuries. Strict proof of the same is demanded at time of trial.

41. Denied. For the reasons previously set forth it is DENIED that Plaintiff Mr. Lindemuth negligently exposed himself to risk of harm, was fully aware of such harm, or that under the attenuate facts and circumstances failed to used due care. Strict proof of the same is deamnded at time of trial.

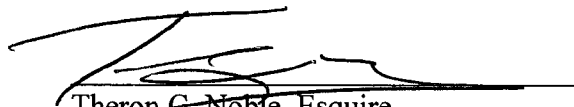
42. The same is a legal conclusion to which no response is deemed necessary. To the extent such a response might be deemed necessary, the same is denied and strict proof demanded at time of trial.

43. The same is a legal conclusion to which no response is deemed necessary. To the extent such a response might be deemed necessary, the same is denied and strict proof demanded at time of trial.

44. The same is a legal conclusion to which no response is deemed necessary. To the extent such a response might be deemed necessary, the same is denied and strict proof demanded at time of trial.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendant as prayed for in their CIVIL COMPLAINT.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Theron G. Noble', is written over a horizontal line.

Theron G. Noble, Esquire
Attorney for Plaintiffs
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942


FRANK A. LINDEMUTH, an adult)
individual; and CYRSTAL S. LINDEMUTH,)
his wife,)

No.: 06- 2096 -CD

MICKEY L. HOOVER, an adult individual,)

VERIFICATION

So made this 30th day of March, 2007.


Frank A. Lindemuth, Plaintiff


Crystal S. Lindemuth, Plaintiff

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

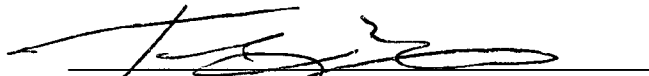
FRANK A. LINDEMUTH, an adult)	
individual; and CYRSTAL S. LINDEMUTH,)	
his wife,)	
)	
Plaintiff,	)	No.: 06- <u>2096</u> -CD
v.)	
)	
MICKEY L. HOOVER, an adult individual,)	
)	
Defendant.)	

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Defendant, does hereby certify that I did serve upon Defendant Plaintiffs' REPLY TO NEW MATTER in the above captioned matter, to the below identified person, being counsel of record for the Defendant, this 5th day of April, 2007, via United States Mail, first class, postage prepaid as follows:

James Naddeo, Attorney at Law
207 E. Market Street
Clearfield, PA 16830

By,



Theron G. Noble, Esquire
Attorney for Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No. 55942

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

FRANK A. LINDEMUTH, an adult
Individual; and CRYSTAL S.
LINDEMUTH, his wife
Plaintiffs,

v.

MICKEY L. HOOVER, an adult
Individual,
Defendant.

No. 06 - 2096 - CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: May 2, 2007

FILED cc.
0/3:55um Naddeo
MAY 02 2007
LM

William A. Shaw
Prothonotary/Clerk of Courts

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

FRANK A. LINDEMUTH, an adult *
Individual; and CRYSTAL S. *
LINDEMUTH, his wife *
Plaintiffs, *

v. *

No. 06 - 2096 - CD

MICKEY L. HOOVER, an adult *
Individual, *
Defendant. *

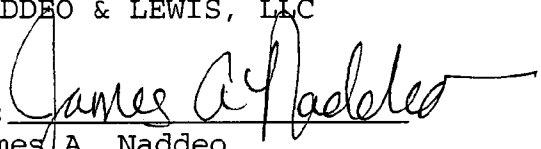
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Notice of Taking Deposition was served on the
following and in the following manner on the 2nd day of May, 2007:

First-Class Mail, Postage Prepaid

Theron G. Noble, Esquire
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By: 
James A. Naddeo
Attorney for Defendant

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

FRANK A. LINDEMUTH, an adult
Individual; and CRYSTAL S.
LINDEMUTH, his wife
Plaintiffs,

v.

MICKEY L. HOOVER, an adult
Individual,
Defendant.

No. 06 - 2096 - CD

Type of Pleading:

**AMENDED CERTIFICATE
OF SERVICE**

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: May 3, 2007

FILED

MAY 03 2007

0/12:05/0

William A. Shaw
Prothonotary/Clerk of Courts

1 CENT TO ATTORNEY

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

FRANK A. LINDEMUTH, an adult *
Individual; and CRYSTAL S. *
LINDEMUTH, his wife *
Plaintiffs, *

v. *

No. 06 - 2096 - CD

MICKEY L. HOOVER, an adult *
Individual, *
Defendant. *

AMMENDED CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Notice of Taking Deposition was served on the
following and in the following manner on the 3rd day of May, 2007:

First-Class Mail, Postage Prepaid

Theron G. Noble, Esquire
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By: James A. Naddeo
James A. Naddeo
Attorney for Defendant

18

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

FRANK A. LINDEMUTH, an adult
individual; and CYRSTAL S. LINDEMUTH,
his wife,

Plaintiff,

v.

MICKEY L. HOOVER, an adult individual,

Defendant.

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

No.: 06- 2096 -CD

FILED

JUN 12 2007

William A. Shaw

Prothonotary/Clerk of Courts

no c/c

Type of Pleading:

MOTION TO CONSOLIDATE

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire

Ferraraccio & Noble

301 East Pine Street

Clearfield, PA 16830

(814)-375-2221

PA I.D.#: 55942

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

FRANK A. LINDEMUTH, an adult)	
individual; and CRYSTAL S. LINDEMUTH,)	
his wife,)	
Plaintiff,	)	No.: 07- <u>558</u> -CD
v.)	
)	
STEPHEN A. STRISHOCK, Jr., an adult)	
individual, and DANIEL PETERS, an)	
adult individual,)	
)	
Defendants.)	

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

FRANK A. LINDEMUTH, an adult)	
individual; and CYRSTAL S. LINDEMUTH,)	
his wife,)	
Plaintiff,	)	No.: 06- <u>2096</u> -CD
v.)	
)	
MICKEY L. HOOVER, an adult individual,)	
)	
Defendant.)	

MOTION TO CONSOLIDATE

AND NOW, comes the Plaintiffs, Frank A. Lindemuth and Crystal S. Lindemuth, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their MOTION TO CONSOLIDATE:

1. That these cases were commenced by the filing of CIVIL COMPLAINTS.
2. That each CIVIL COMPLAINT has been duly served on all parties and responsive

Theron G. Noble, Esquire
Attorney for Plaintiff
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No. 55942

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

FRANK A. LINDEMUTH, an adult)	
individual; and CRYSTAL S. LINDEMUTH,)	
his wife,)	
Plaintiff,	)	No.: 07- <u>558</u> -CD
v.)	
)	
STEPHEN A. STRISHOCK, Jr., an adult)	
individual, and DANIEL PETERS, an)	
adult individual,)	
)	
Defendants.)	

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

FRANK A. LINDEMUTH, an adult)	
individual; and CYRSTAL S. LINDEMUTH,)	
his wife,)	
Plaintiff,	)	No.: 06- <u>2096</u> -CD
v.)	
)	
MICKEY L. HOOVER, an adult individual,)	
)	
Defendant.)	

ORDER

AND NOW this _____ day of June, 2007, the above captioned matters shall be consolidated for all purposes and all documents hereinafter shall be filed to the following case number using said caption:

Fredric J. Ammerman, PJ

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

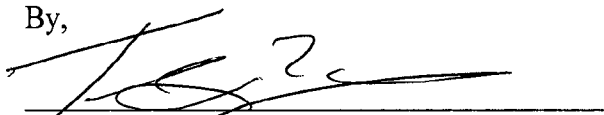
FRANK A. LINDEMUTH, an adult)	
individual; and CYRSTAL S. LINDEMUTH,)	
his wife,)	
Plaintiff,	)	No.: 06- <u>2096</u> -CD
v.)	
)	
MICKEY L. HOOVER, an adult individual,)	
)	
Defendant.)	

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Defendant, does hereby certify that I did serve upon Defendant Plaintiffs' MOTION TO CONSOLIDATE in the above captioned matter, to the below identified person, being counsel of record for the Defendant, this 11th day of June, 2007, via United States Mail, first class, postage prepaid as follows:

James Naddeo, Attorney at Law
207 E. Market Street
Clearfield, PA 16830

By,



Theron G. Noble, Esquire
Attorney for Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No. 55942

1A

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

FRANK A. LINDEMUTH, an adult individual and
CRYSTAL S. LINDEMUTH, his wife,
Plaintiffs

vs.

MICKEY L. HOOVER, an adult individual,
Defendant

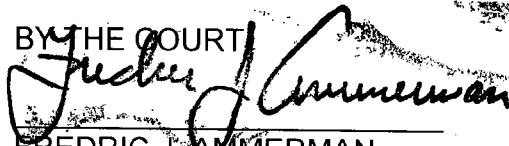
*
*
*
*
*
*

NO. 06-2096-CD

ORDER

NOW, this 13th day of June, 2007, it is the ORDER of this Court that argument on the Motion to Consolidate filed by Plaintiffs' counsel, Theron G. Noble, Esquire, be and is hereby scheduled for the 10th day of July, 2007 at 10:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT



FREDRIC J. AMMERMAN
President Judge

FILED

0/2:15pm
JUN 13 2007

William A. Shaw
Prothonotary/Clerk of Courts

ICC Attys:

Noble
Naddes
Lumadue

CK

DATE 6-13-2007

☐ 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

JUN 13 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

FRANK A. LINDEMUTH, an adult
Individual; and CRYSTAL S.
LINDEMUTH, his wife,

Plaintiff,

v.

STEPHEN A. STRISHOCK, JR.,
an adult individual, and DANIEL
PETERS, an adult individual,

Defendants

FRANK A. LINDEMUTH, an adult
Individual; and CRYSTAL S.
LINDEMUTH, his wife,

Plaintiff,

v.

MICKEY L. HOOVER, an adult
individual,

Defendants

No. 07-558-CD

FILED

JUN 29 2007

William A. Shaw
Prothonotary/Clerk of Courts

*ILL TO ATTYs
Noble, Naddes*

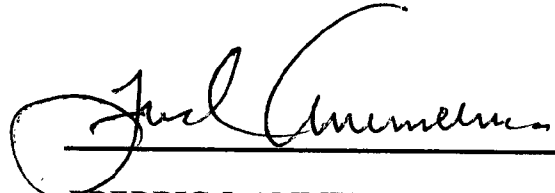
original to 07-558-CD

No. 06-2096-CD

ORDER

NOW, this 29th day of June, 2007, after review of Plaintiff's Motion to Consolidate, said Motion is HEREBY GRANTED. The above captioned actions shall be consolidated to No. 07-558-CD.

BY THE COURT:



FREDRIC J. AMMERMAN

President Judge

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

FRANK A. LINDEMUTH, an adult
individual; and CYRSTAL S. LINDEMUTH,
his wife,

Plaintiff,

v.

MICKEY L. HOOVER, an adult individual,

Defendant.

No.: 06- 2096 -CD

Type of Pleading:

NOTICE OF SERVICE

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED
M12:42 PM
JUL 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

FRANK A. LINDEMUTH, an adult)	
individual; and CYRSTAL S. LINDEMUTH,)	
his wife,)	
Plaintiff,	)	No.: 06- <u>2096</u> -CD
v.)	
)	
MICKEY L. HOOVER, an adult individual,)	
)	
Defendant.)	

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did serve upon Defendant Plaintiffs' NOTICE OF DEPOSITION in the above captioned matter, to the below identified person, being counsel of record for the Defendant, this 30th day of June, 2007, via United States Mail, first class, postage prepaid as follows:

James Naddeo, Attorney at Law
207 E. Market Street
Clearfield, PA 16830

By,



Theron G. Noble, Esquire
Attorney for Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No. 55942

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

FRANK A. LINDEMUTH, an adult
individual; and CYRSTAL S. LINDEMUTH,
his wife,

Plaintiff,

v.

MICKEY L. HOOVER, an adult individual,

Defendant.

No.: 06-__2096__-CD

Type of Pleading:

PRAECIPE TO DISCONTINUE

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED NOCC.

m/3:50pm

SEP 20 2007

no request
for cert of disc

William A. Shaw
Prothonotary/Clerk of Courts

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

FRANK A. LINDEMUTH, an adult)	
individual; and CYRSTAL S. LINDEMUTH,)	
his wife,)	
)	
Plaintiff,	)	No.: 06- <u>2096</u> -CD
v.)	
)	
MICKEY L. HOOVER, an adult individual,)	
)	
Defendant.)	

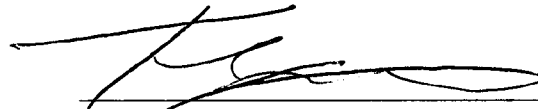
PRAECIPE TO DISCONTINUE

To William A. Shaw, Prothonotary

Date: September 19, 2007

Please mark the above captioned case, as to all defendants, settled, ended and forever
DISCONTINUED, with prejudice.

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No. 55942

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

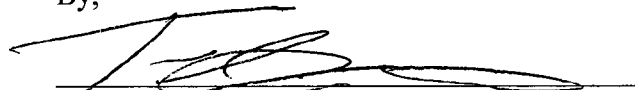
FRANK A. LINDEMUTH, an adult)	
individual; and CYRSTAL S. LINDEMUTH,)	
his wife,)	
Plaintiff,	)	No.: 06- <u>2096</u> -CD
v.)	
)	
MICKEY L. HOOVER, an adult individual,)	
)	
Defendant.)	

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did serve upon Defendant Plaintiffs' PRAECIPE FOR DISCONTINUANCE in the above captioned matter, to the below identified person, being counsel of record for the Defendant, this 19th day of September, 2007, via United States Mail, first class, postage prepaid as follows:

James Naddeo, Attorney at Law
207 E. Market Street
Clearfield, PA 16830

By,



Theron G. Noble, Esquire
Attorney for Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No. 55942