

**COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA**

Clearfield Bank & Trust Company
11 N Second St., P.O. Box 171
Clearfield, PA 16830

CIVIL ACTION

No. 2007-385-CD

Type of Case: District Justice

Type of Pleading: _____

VS.

Filed on Behalf of:

Clearfield Bank & Trust Company
Plaintiff

Harry J. Myers III
Defendant

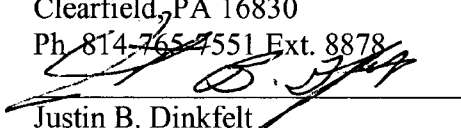
5970 Keating Mt. Road
Street Address

Pottersdale, PA 15871
City, State, Zip

FILED pd \$20.00 PAF
9/12:12 am Notice to
MAR 13 2007 each deft
(um) Statement to
William A. Shaw Piff
Prothonotary/Clerk of Courts

Clearfield Bank & Trust Company
Justin B. Dinkfelt, Collector
Filed by

11 N Second St., P.O. Box 171
Clearfield, PA 16830
Ph 814-765-7551 Ext. 8878


Justin B. Dinkfelt

**COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA**

Clearfield Bank & Trust Company
11 N Second St., P.O. Box 171
Clearfield, PA 16830

CIVIL ACTION

No. _____

Type of Case: District Justice

Type of Pleading: _____

VS.

Filed on Behalf of:

Clearfield Bank & Trust Company
Plaintiff

Rebecca S. Smith
Defendant

5970 Keating Mt. Road
Street Address

Pottersdale, PA 15871
City, State, Zip

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Clearfield Bank & Trust Company
Plaintiff

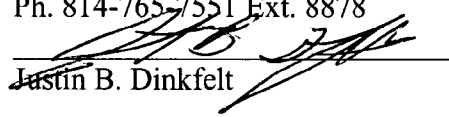
Kenneth M. Smith Sr.
Defendant

5970 Keating Mt. Road
Street Address

Pottersdale, PA 15871
City, State, Zip

Clearfield Bank & Trust Company
Justin B. Dinkfelt, Collector
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Ph. 814-765-7551 Ext. 8878


Justin B. Dinkfelt

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dis. No.: **46-3-02**
MDJ Name: Hon.
RICHARD A. IRELAND
Address: **650 LEONARD ST**
STE 113
CLEARFIELD, PA
Telephone: **(814) 765-5335** **16830**

RICHARD A. IRELAND
650 LEONARD ST
STE 113
CLEARFIELD, PA 16830

NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE

PLAINTIFF: **CLEARFIELD BANK & TRUST CO**
PO BOX 171
CLEARFIELD, PA 16830
VS.
DEFENDANT: **SMITH, SR., KENNETH M, ET AL.**
5970 KEATING MT ROAD
POTTERSDALE, PA 15871

Docket No.: **CV-0000410-06**
Date Filed: **12/21/06**



THIS IS TO NOTIFY YOU THAT:

Judgment: **DEFAULT JUDGMENT PLTF** (Date of Judgment) **2/05/07**

- ☒ Judgment was entered for: (Name) **CLEARFIELD BANK & TR, UST CO**
- ☒ Judgment was entered against: (Name) **MYERS III, HARRY J**
in the amount of \$ **2,618.18**
- ☐ Defendants are jointly and severally liable.
- ☐ Damages will be assessed on Date & Time _____
- ☐ This case dismissed without prejudice.
- ☐ Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127
\$ _____
- ☐ Portion of Judgment for physical damages arising out of
residential lease \$ _____

Amount of Judgment	\$ 2,509.18
Judgment Costs	\$ 109.00
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 2,618.18
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total	\$ _____

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR MAGISTERIAL DISTRICT JUDGES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE MAGISTERIAL DISTRICT JUDGE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

FILED

MAR 13 2007

William A. Shaw
Prothonotary/Clerk of Courts
_____, Magisterial District Judge

FEB 05 2007

Date *Richard Ireland*

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

MAR 08 2007

Date *Richard Ireland*, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag Dist No.	46-3-02
MDJ Name, Hor.	RICHARD A. IRELAND
Address:	650 LEONARD ST STE 113 CLEARFIELD, PA
Telephone: (814) 765-5335	16830

**RICHARD A. IRELAND
650 LEONARD ST
STE 113
CLEARFIELD, PA 16830**

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF: **CLEARFIELD BANK & TRUST CO**
PO BOX 171
CLEARFIELD, PA 16830

VS.

DEFENDANT: **SMITH, SR., KENNETH M, ET AL.**
5970 KEATING MT ROAD
POTTERSDALE, PA 15871

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FEB 05 2007 Date *Richard A. Ireland*, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

MAR 08 2007 Date *Richard Ireland*, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF **CLEARFIELD**

Mag. Dist. No.: **46-3-02**
MDJ Name: Hon. **RICHARD A. IRELAND**
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PLAINTIFF: **CLEARFIELD BANK & TRUST CO**
PO BOX 171
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5970 KEATING MT ROAD
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FEB 05 2007 Date *Richard A. Ireland*, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

MAR 08 2007 Date *Rebecca Ireland*, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

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

Clearfield Bank & Trust Co.
PO BOX 171
CLEARFIELD PA 16830-0171

No. _____

VS.

Harry J. Myers III
5970 Keating Mt. Road
Pottersdale, PA 15871

Notice is given that a **JUDGEMENT** in the above captioned matter
has been entered against you in the amount of \$2,618.18

On March 13, 2007.



William A. Shaw, Prothonatary

By _____
Deputy

COPY

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

**Clearfield Bank & Trust Co.
PO BOX 171
CLEARFIELD PA 16830-0171**

No. _____

VS.

**Kenneth M. Smith Sr.
5970 Keating Mt. Road
Pottersdale, PA 15871**

Notice is given that a **JUDGEMENT** in the above captioned matter
has been entered against you in the amount of **\$2,618.18**

On March 13, 2007.



William A. Shaw, Prothonatary

By _____
Deputy

COPY

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

**Clearfield Bank & Trust Co.
PO BOX 171
CLEARFIELD PA 16830-0171**

No. _____

VS.

**Rebecca S. Smith
5970 Keating Mt. Road
Pottersdale, PA 15871**

Notice is given that a **JUDGEMENT** in the above captioned matter
has been entered against you in the amount of \$2,618.18

On March 13, 2007.



William A. Shaw, Prothonatary

By _____
Deputy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
STATEMENT OF JUDGMENT

COPY

Clearfield Bank & Trust Company
Plaintiff(s)

No.: 2007-00385-CD

Real Debt: \$2618.18

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Harry J. Myers III
Rebecca S. Smith
Kenneth M. Smith Sr.
Defendant(s)

Entry: \$20.00

Instrument: District Justice Judgment

Date of Entry: March 13, 2007

Expires: March 13, 2012

Certified from the record this March 13, 2007



William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment,
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

vs.

BARRY M. NEFF,

Defendant.

No. 07-583-CD

**PLAINTIFFS' RESPONSE TO
DEFENDANT'S MOTION IN LIMINE**

Filed on behalf of:
Plaintiffs

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE
PA I.D. No. 34620

CHRISTOPHER MILLER, ESQUIRE
PA I.D. No. 79533

EDGAR SNYDER & ASSOCIATES, LLC
Regency Square
2900 Old Route 220
Suite 201
Altoona, PA 16601

(814) 942-3699

JURY TRIAL DEMANDED

FILED Ice Atty
0/10.30 am dsavick
APR 22 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

CIVIL DIVISION

No. 07-583-CD

vs.

BARRY M. NEFF,

Defendant.

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION IN LIMINE

AND NOW, come the Plaintiffs Elizabeth A. Nelson and Kenneth Nelson, by and through their attorneys, Edgar Snyder & Associates, LLC, Gregory S. Olsavick, Esquire and Christopher Miller, Esquire and file the following Response to Defendant's Motion in Limine as follows:

MOTION TO LIMIT TESTIMONY OF DR. POLINTAN

To begin with, the videotape deposition of Rodolfo S. Polintan, M.D. for use at trial, was taken on April 6, 2009. It is submitted that Defense counsel, Attorney Steven Dugas, had every opportunity and did in fact fully participate in Dr. Polintan's deposition. This included the ability of Defense counsel to conduct a thorough and complete cross-examination of Dr. Polintan. Accordingly, it is Plaintiffs' position that the Motions in Limine concerning Dr. Polintan's deposition should be deemed to have been waived, and/or these specific Motions in Limine should be considered moot.

As indicated, this case was subject to two pretrial conferences, which were separated by some fourteen months as a consequence of the intervening appeal to the Pennsylvania Superior

Court. Following the initial pretrial conference with Senior Judge Reilly, the order granting Defendant's Motion for Summary Judgment was entered by the Court on January 17, 2008. Plaintiffs filed a Notice of Appeal to Superior Court, and the matter remained pending there, until the Superior Court Opinion and Order overruling the Summary Judgment was filed in Superior Court on December 16, 2008. The matter was then subsequently scheduled for pretrial conference before the Honorable Paul E. Cherry on February 17, 2009.

Attorney Dugas states that he was provided the initial hospital and treatment record for Elizabeth Nelson, including the office records of Dr. Polintan, but then states that he was not provided any later records from Dr. Polintan. However, during Dr. Polintan's videotape deposition, the only objection made by defense counsel was that he was not provided with Dr. Polintan's note of October 5, 2007. Undersigned counsel for Plaintiffs reviewed with Dr. Polintan each of his remaining office notes/records, and there was no objection interposed with respect to these. Further, following direct examination, Attorney Dugas reviewed Dr. Polintan's entire chart/record, and then proceeded during the course of cross-examination to specifically question him relative to that particular office visit. Plaintiffs submit that the remainder of Dr. Polintan's records, including his office note of January 6, 2009, as well as his narrative report, were supplied to Defense counsel prior to Dr. Polintan's deposition. If indeed the October 5, 2007 office note of Dr. Polintan was not provided to Attorney Dugas, then it was a matter of inadvertence, and it is submitted was likely as a consequence of the approximate fourteen month period in which the case was on appeal to the Superior Court. Plaintiffs' further submit that under the circumstances, there was no harm or prejudice to the Defendant, with regard to the testimony of Dr. Polintan, and Defense counsel's ability to effectively cross-examine him.

Defense counsel also takes issue with the timeliness of being supplied with Dr. Polintan's narrative report. Plaintiffs submit that Dr. Polintan's narrative report was timely filed and submitted to Defense counsel, pursuant to your Honor's Order (as amended) providing that all outstanding discovery should be supplied no later than 30 days prior to trial, which it was. Defense counsel states in his motion that he received the narrative report on April 2, 2009. Dr. Polintan's videotape deposition was scheduled and did take place on April 6, 2009, again pursuant to the Court's directive that the videotape deposition be accomplished no later than 30 days prior to trial. Defense counsel in his motion also takes issue with Dr. Polintan expressing any opinions with regard to any permanent restrictions as to motion and/or strength, as well as periodic complaints of pain; together with objection as to any opinion concerning loss of earnings/earnings impairment, the issue of an impact upon Plaintiff's condition of the pre-existing left rotator cuff injury, as well as an opinion relative to the need for future medical care/treatment. It is Defendant's position that these matters should be precluded as a consequence of his late receipt of Dr. Polintan's narrative report. By way of response, once again it is submitted that these matters were properly addressed and/or dealt with during the course of Dr. Polintan's deposition. Dr. Polintan did not express any opinion with regard to loss of earnings/earnings impairment either in his narrative report nor at the time of his deposition. Likewise, Dr. Polintan could not state to a reasonable degree to medical certainty that Plaintiff would require future medical care/treatment. With regard to the issue of the pre-existing rotator cuff problem, Dr. Polintan was questioned extensively on this on direct and cross-examination, and it is submitted agreed in part with the position being put forth by Defense counsel. As to the remaining matters, specifically limitations/restrictions with regard to range of motion, impact/limit upon activities, as well as periodic pain, these matters were clearly addressed and

set forth in Dr. Polintan's narrative report. In addition, these matters were specifically addressed in various of Dr. Polintan's office notes and records, and thus clearly the Defendant would have been put on notice as to opinions being expressed with regard to such matters by Dr. Polintan during the course of his deposition for use at trial.

MOTION TO EXCLUDE/LIMIT TESTIMONY FROM RONALD W. ECK, P.E.

As indicated, Defendant seeks to exclude or limit the testimony of Plaintiffs' expert, Ronald W. Eck, a professional engineer. Dr. Eck proceeded to the subject residence and inspected the interior steps on June 4, 2007, and proceeded to photograph, make various measurements, and otherwise proceeded with an investigation of the subject stairway. Dr. Eck then issued a written report, which was provided to Defense counsel as an attachment to the initial Pre-Trial Statement filed in this case.

With regard to the matters set forth in this particular Motion in Limine, Plaintiffs would first submit that the vast majority of the matters alleged and/or contentions being made constitute issues and areas of relevant cross-examination by Defense counsel. Thus, they are not proper subjects of a Motion in Limine. Dr. Eck is a qualified expert with extensive background, experience and possesses credentials to express expert conclusions and opinions relative to the subject stairway. This would include of course the issues of the applicability of specific standards and codes, as well as relevant expert textbooks and publications. Certainly, Dr. Eck can and will be cross-examined about such matters during his testimony at trial. This would include questions with regard to whether such sources and text are authoritative, as well as whether or not they were applicable to the circumstances existing with regard to the subject stairway as of the time of this incident.

Defense counsel is in effect asking the Court to rule as a matter of law that Dr. Eck can or cannot make reference to and express opinions about such standards and codes. It is submitted that this is clearly within the purview of Dr. Eck as an expert witness. Defense counsel has in no manner stated or suggested that Dr. Eck does not possess the qualifications and credentials to express opinions with respect to the subject stairway and Plaintiff's fall incident.

On the other hand, Defense counsel then asserts in his Motion in Limine that no expert opinion/testimony is necessary given the nature of the fall-down incident and that this is a determination which falls within the province of the jury. Plaintiffs submit that this case is one where expert testimony is most appropriate. Clearly, Dr. Eck possesses scientific, technical and specialized knowledge which will assist the trier of fact in the determination of the liability issues involved in this case. Moreover, the Defendant has seen fit to himself retain the services of an expert witness to address the liability issues and to counter the opinions and views of Dr. Eck.

In his Motion in Limine, Defense counsel takes issue with Dr. Eck's conclusion that there was inadequate lighting and in this regard makes reference to the testimony of Plaintiff at the time of her deposition. To begin with, it is submitted that Dr. Eck certainly possesses the expertise to express opinions as to the adequacy or inadequacy of the lighting conditions in the subject stairway, particularly where he made a site visit and conducted an inspection of this area. Moreover, Plaintiffs take issue with the characterization of Plaintiff's testimony as establishing that there was adequate lighting. It is submitted that the only time Plaintiff states that she had adequate lighting was after her fall down the stairs, and Ms. Nelson stating that she was able to find her keys and glasses (Plaintiff's deposition pp. 39-40). In addition, counsel for Defendant asked Plaintiff if the lighting was darker at the bottom or top of the stairs and Plaintiff stated that

as she recalls it was darker at the bottom (Plaintiff's deposition, pp. 38-39). However this does not establish that there was adequate lighting at the top of the stairway, or for that matter anywhere in the stairway. Prior to this, Ms. Nelson was asked whether there was "sufficient illumination to make out the steps?"; and her response was, "I don't know if there was or not." (Plaintiff's deposition p. 21).

Defendant also alleges in his Motion in Limine that the absence of a handrail on the subject stairway has been held to be irrelevant as a matter of law. In so doing, Defendant cites to the Wisniewski v. Chestnut Hill Hospital decision at 403 Pa. 610, 170 A.2d 595 (1961). This case is easily distinguishable from the case at bar. In the Wisniewski case, the Plaintiff began to proceed down a stairway at the hospital (which she had traversed several times recently) starting down the stairway on the left side **which had a handrail**, and then put her right foot down on the first step, but then fell as she proceeded further, and as she was falling attempted to reach for a handrail on the right side, but there was no such handrail.

Again, the case at bar is a perfect example where the scientific, technical and other specialized knowledge of an expert, with respect to this specific issue, will assist the trier of fact. Dr. Eck states in his report:

"In combination, these defects interfere with Mrs. Nelson's ability to monitor the relationship between her feet and the edges of the stair treads and with the ability to catch herself as she fell. Had a compliant handrail been in place, she would have had the opportunity to arrest her fall by grabbing the handrail." (Ronald W. Eck report, p. 8.)

Dr. Eck went on to state:

"Because the stair in question was used by unfamiliar pedestrians who were exposed to serious safety hazards, it is my opinion that the owner of the home was negligent in failing to use reasonable care and follow prudent practices relative to the design, construction, inspection and maintenance of the stairs in question. Mrs. Nelson's fall was a direct result of this lack of adequate design, construction,

inspection and maintenance in contravention of accepted safety standards and practices.” (Ronald W. Eck report, p. 8)

Finally, Defense counsel states, without any supporting authority, that Dr. Eck cannot express his opinion/conclusion as an expert as to the ultimate issue of liability in this case. At one time, there was a common law rule which forbid such an expression/opinion by an expert, though Pennsylvania never followed this legal principle. Lewis v. Mellor, 259 Pa. Super 509, 393 A.2d 941 (1978). However, to the extent that there was ever any doubt, present Pennsylvania Rule of Evidence 704 states in crystal clear fashion: “Testimony in the form of an opinion or inference is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.”

MOTION TO PRECLUDE EVIDENCE RELATED TO EXTERIOR
CONDITIONS OF THE PREMISES

Defendant takes issue with, and seeks to preclude any testimony/evidence being elicited from Defendant concerning his replacement of an exterior porch and a set of exterior stairs. Defendant contends that because this occurred outside of the premises, and the incident here involves an interior stairway, that there is no relevance to such testimony.

Plaintiffs contend that indeed such testimony/evidence is relevant and accordingly Plaintiffs should be able to elicit this testimony from Defendant at the time of trial. This is particularly so where as here the Plaintiff enjoys the status of an invitee or business visitor. As such, the Defendant as owner has an affirmative duty to keep the premises in a reasonably safe condition, and further that the owner will inspect and/or otherwise exercise reasonable care to discover the actual condition of the premises, and to make them safe or to warn of any dangerous conditions, as well as to remedy the unsafe/dangerous condition. Restatement (2nd) Torts Section

343, 343 A. It is submitted that the aforesaid evidence is relevant and pertinent to the issues concerning the requisite duty of care and responsibility owed by Defendant to the Plaintiff and other similarly situated.

Such testimony also demonstrates that Defendant had sufficient knowledge and expertise to not only recognize the dangerous/unsafe condition, but also was in the position to remedy and cure dangerous condition.

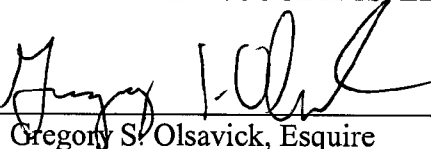
Such testimony and evidence on part of Defendant also goes to the issue set forth in § II above that Defendant did not have any responsibility for the dangerous condition of the subject interior stairs due to the fact that he was a subsequent purchaser of property and was not in possession of the property when the interior stairway was constructed.

Furthermore, the said testimony of Defendant as to the exterior repair of his porch and stairway is also relevant to the issue of notice and/or constructive notice. That is, Plaintiffs can establish liability on the part of the Defendant, if they can establish that the Defendant either had actual notice of the defect or had constructive notice, i.e. that Defendant should have known of the defect under the circumstances, Pastuszek v. Murphy Plywood Company, 219 Pa. Super 59, 280 A.2d 644 (1971). Accordingly, Plaintiffs submit that they are entitled to elicit testimony from Defendant concerning this matter and circumstances, as well as to put forth arguments to the jurors with regard to the same.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

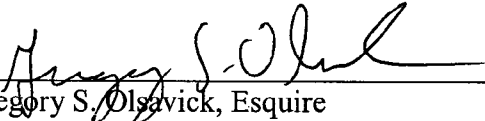
By: _____


Gregory S. Olsavick, Esquire
Christopher Miller, Esquire
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION IN LIMINE was served on The Honorable Paul E. Cherry, Judge, and Steven L. Dugas, Esquire, by fax delivery, on this 21st day of April, 2009.

EDGAR SNYDER & ASSOCIATES LLC



Gregory S. Olsavick, Esquire
Christopher Miller, Esquire
Attorneys for Plaintiffs