

Date: 7/19/2007

Clearfield County Court of Common Pleas

User: LMILLER

Time: 01:57 PM

ROA Report

Page 1 of 2

Case: 2007-00558-CD

Current Judge: Fredric Joseph Ammerman

Frank A. Lindemuth, Crystal S. Lindemuth vs. Stephen A. Strishock Jr., Daniel Peters

Civil Other

Date		Judge
4/10/2007	New Case Filed.	No Judge
	X Filing: Civil Complaint Paid by: Noble, Theron G. (attorney for Lindemuth, Frank A.) Receipt number: 1918506 Dated: 4/10/2007 Amount: \$85.00 (Check) 5CC Atty Noble.	No Judge
5/3/2007	X Praecipe For Entry of Appearance, enter appearance of Wayne A. Kablack, Esquire, on behalf of defendant, Daniel Peters. Filed by s/ Wayne A. Kablack, Esquire. No CC	No Judge
5/11/2007	X Notice of Service, filed. This 10th day of May 2007 Plaintiffs First Request for Production for Documents to Wayne Kablack Esq., and Mr. Stephen A. Strishock Jr, filed by s/ Theron G. Noble Esq. No CC.	No Judge
5/16/2007	X Praecipe For Entry of Appearance, filed on behalf of Defendant Stephen A. Strishock, Jr. Enter appearance of our firm: Grogan Graffam, P.C.; Attys: Holly M. Whalen and Dennis A. Watson. Filed by s/ Holly M. Whalen, Esquire. No CC	No Judge
	X Preliminary Objections of Defendant Stephen A. Strishock, Jr. Filed by s/ Holly M. Whalen, Esquire. No CC	No Judge
	X Praecipe for Argument on Preliminary Objections, filed by s/ Holly M. Whalen, Esquire. No CC	No Judge
5/22/2007	X Order AND NOW, this 22nd day of May 2007, it is the ORDER of the Court that argument on Defendant's Preliminary Objections in the above-captioned matter be and are hereby scheduled for Thursday, June 14, 2007 at 9:30 a.m. in Courtroom No. 1. It is the responsibility of the Petitioner to serve certified copy of said scheduling Order on the Plaintiffs Counsel. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Whalen.	Fredric Joseph Ammerman
6/6/2007	X Preliminary Objections of the Defendant, Daniel Peters, filed by s/ Wayne A. Kablack, Esquire. 1CC Atty.	Fredric Joseph Ammerman
	X Praecipe for Argument filed. By s/ Wayne A. Kablack, Esquire. 1CC Atty	Fredric Joseph Ammerman
	X Certificate of Service, filed. That a copy of the Preliminary Objections of the Defendant, Daniel Peters, Brief in Support of Preliminary Objections, and Praecipe for Argument was served on this 4th day of June 2007 to Theron G. Noble Esq. and Dennis A. Watson Esq. filed by s/ Wayne A. Kablack Esq. 1CC Atty.	Fredric Joseph Ammerman
6/12/2007	X Motion to Consolidate, filed by Atty. Noble no cert. copies.	Fredric Joseph Ammerman
6/13/2007	X Order, this 13th day of June, 2007, it is Ordered that argument on the Preliminary Objections filed by Defendant, Daniel Peters, to Plaintiffs' Complaint is scheduled for the 10th day of July, 2007 at 10:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: T. Noble, H. Whalen, D. Watson, W. Kablack	Fredric Joseph Ammerman
	X Order, this 13th day of June, 2007, it is Ordered that argument on the Motion to Consolidate filed by Plaintiffs' counsel, Theron G. Noble, Esquire, is scheduled for the 10th day of July, 2007 at 10:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, H. Whalen, D. Watson, W. Kablack	Fredric Joseph Ammerman
6/25/2007	X Motion to Preserve Evidence, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
	X Motion to Compel, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman

Date: 7/19/2007

Clearfield County Court of Common Pleas

User: LMILLER

Time: 01:57 PM

ROA Report

Page 2 of 2

Case: 2007-00558-CD

Current Judge: Fredric Joseph Ammerman

Frank A. Lindemuth, Crystal S. Lindemuth vs. Stephen A. Strishock Jr., Daniel Peters

Civil Other

Date		Judge
6/26/2007	X Order, this 25th day of June, 2007, Plaintiffs Motion to Compel is granted and defendant Stephen A. Strishock, Jr., shall produce the requested documents within 30 days hereof. By The Court, Fredric J. Ammerman, Pres. Judge. 1CC Atty. Noble	Fredric Joseph Ammerman
6/28/2007	X Notice of Service of Defendant Stephen A. Strishock, Jr's Response to Plaintiffs' First Request for Production of Documents to Theron G. Noble Esq., and Wayne Kablack Esq. on the 26th day of June 2007, filed by s/ Holly M. Whalen Esq. No CC.	Fredric Joseph Ammerman
6/29/2007	X Order, NOW, this 29th day of June, 2007, after review of Plaintiff's Motion to Consolidate, said Motion is Granted. The above captioned actions shall be consolidated to No. 07-558-CD. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, Kablack	Fredric Joseph Ammerman
	X Notice of Service, filed. That I did propound upon the Defendants in the above captioned matter, to Wayne Kablack Esq. and Holly M. Whallen Esq, this 28th day of June 2007 Order entered upon Plaintiffs' Motion to Compel (directed to Defendant Stephen A. Strishock Jr), filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman
7/2/2007	X Rule to Show Cause, NOW, this 28th day of June, 2007, upon consideration of the Motion to Preserve Evidence, Rule issued upon Defendant Strishock to show cause. Rule returnable for filing written response the 20th day of July, 2007, and hearing will be held the 6th day of August, 2007, commencing at 9:00 a.m. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney Noble	Fredric Joseph Ammerman
7/5/2007	X Notice of Service, filed by Atty. Noble Served copy of Notice of Deposition on Atty's Kablack and Whallen. no cert. copies.	Fredric Joseph Ammerman
7/9/2007	X Notice of Service, filed. This 6th day of July 2007 the Rule Returnable issued to Plaintiff's Motion to Preserve Evidence (directed to Defendant Strishock) to Wayne Kablack Esq., Holly M. Whallen Esq. and James A. Naddeo Esq., filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman
7/13/2007	X Order, this 29th day of June, 2007, upon consideration of Objecting Defendant's Stephen A. Strishock, Jr., Preliminary Objections and following argument on June 14, 2007, this Court hereby Sustains Defendant's Preliminary Objections. Plaintiffs' Count I is Dismissed with prejudice. This Court does not need to examine the Defendant's other Preliminary Objections as they are now moot. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: T. Noble, H. Whalen, D. Watson, W. Kablack	Fredric Joseph Ammerman
7/16/2007	X Order, this 3rd day of July, 2007, the Court Dismisses Defendant Daniel Peters's Preliminary Objection with regard to Punitive Damages. The Court Sustains Defendant's Preliminary Objection with regard to attorney's fees and the Plaintiffs' claim for attorney's fees is dismissed. The Defendant's Third Preliminary Objections is now moot, as this Court issued an Order dated June 29, 2007 that consolidated this action with the action that Plaintiff has against Mickey Hoover. By The Court, /s/ Fredric J. ammerman, Pres. Judge.	Fredric Joseph Ammerman

7-20-07 Response to Rule to show Cause & Motion to Preserve Evidence
7-26-07 Notice of Service

IN THE COURT OF COMMON PLEAS, 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.

No.: 07- 558 -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 *pd \$85.00 ATty*
0/8:50 am 50c ATty
APR 10 2007 *Noble*
um

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 CRYSTAL S. LINDEMUTH,)	
his wife,)	
Plaintiff,	)	No.: 07- _____-CD
v.)	
)	
STEPHEN A. STRISHOCK, Jr., an adult)	
individual, and DANIEL PETERS, an)	
adult individual,)	
)	
Defendants.)	

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 CRYSTAL S. LINDEMUTH,)	
his wife,)	
Plaintiff,	)	No.: 07-_____ -CD
v.)	
)	
STEPHEN A. STRISHOCK, Jr., an adult)	
individual, and DANIEL PETERS, an)	
adult individual,)	
)	
Defendants.)	

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 first defendant is Stephen A. Strishock, Jr., hereinafter "Strichock", who upon information and belief, does currently reside at and at all relevant and material times did reside at Clay Plant Rd., Brockway, Jefferson County, Pennsylvania 15824.
3. That second defendant is Daniel Peters, hereinafter "Peters", upon information and belief, does reside and at all material and relevant times did reside at 616 Grayhampton Rd., Woodland, Clearfield County, Pennsylvania.

Background

4. That Defendant Strishock is engaged in the coal mining business and is employed by Strishock Coal Company, upon information and belief, a family owned and operated business.
5. That Strishock Coal Company, upon information and belief, at the relevant time period, being October 10, 2005, was mining coal at jobsites known as the “Huey and Shaffer” jobs.
6. That on October 10, 2005, and for sometime prior thereto, Mr. Lindemuth was employed by Strishock Coal Company as a load operator.
7. 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, the brother of Defendant Strishock and also employed by 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.
8. Mr. Lindemuth along with Mr. Siple did as instructed, proceeded to the coal crusher and dislodged the material which had so jammed the machine.
9. 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.
10. Unknown to Mr. Lindemuth and Mr. Siple, the coal crusher was left in an “engaged position” such that it would not start.
11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

18. That despite being manufactured with a “kill switch” or “manual disconnect switch”, the same was not connected because Defendant Strishock ordered the same not to be connected.

19. That upon information and belief, Defendant Peters is an electrician.

20. That upon information and belief Defendant Peters was hired by Strishock Coal Company numerous times to perform routine electrical inspections of its heavy equipment on a monthly basis as per applicable safety regulations.

21. That upon information and belief, the “kill switch” or “manual disconnect switch” was not operational on the coal crusher during many of the inspections performed by Defendant Peters and despite the same Defendant Peters never failed to pass the coal crusher and permitted its continued use despite the hazards created by not having the kill switch/manual disconnect switch available.

**Count I: v. Defendant Strishock;
Recklessness & Intentional Tort**

22. That the averments of paragraphs 1 - 21, inclusive are hereby incorporated as if again fully set forth at length.

23. That Defendant Strishock knew, or should have known, that the coal crusher was required per applicable safety regulations and principles to have a working kill switch/manual disconnect switch.

24. That despite such knowledge, Defendant Strishock had ordered that the "kill switch" not be made operational when the engine to the coal crusher was rebuilt in August, 2005, by Mickey Hoover, since the kill switch had not been operational for years.

25. That Defendant Strishock was reckless, if not acting with specific knowledge, when he ordered that the kill switch not be connected for the coal crusher in August, 2005.

26. That Mr. Lindemuth suffered the aforementioned injuries and damages as a direct and proximate result of the reckless/specific knowledge acts of Defendant Strishock by ordering the that the kill switch on the coal crusher not be made operational.

27. 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 punitive damages, reasonable attorney's fees, costs and interest, to be determined at time of trial.

**Count II: v. Defendant Peters;
Negligence**

28. That the averments of paragraphs 1 - 27, inclusive, are hereby incorporated as if again fully set forth at length.

29. That upon information and belief, Defendant Peters does perform electrical inspections on equipment routinely used in coal jobs in the Clearfield County and surrounding areas.

30. That Defendant Peters knew, or should have known, that the coal crusher inspected for Strishock Coal Company was intended to be used in its coal operations.

31. That Defendant Peters owed Strishock Coal Company and its employees a duty to inspect the coal crusher such that when it passed inspection it was compliant with all safety rules, regulations and principles and that it was not given that the kill switch/manual disconnect switch was not operational and had not been operational for many years.

32. That Defendant Peters knew, or should have known, that it was a serious safety issue to have passed the coal crusher, on numerous occasions, without a properly working "kill switch" or manual disconnect switch.

33. That Defendant Peters was negligent in his inspections by keeping the coal crusher in service without a properly working "kill switch" or manual disconnect switch.

34. That as a direct and proximate result of Defendant Peters' aforementioned negligence, Mr. Lindemuth suffered and continues to suffer the aforementioned injuries and resulting damages for which Defendant Peters 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 III: v. Defendant Peters;
Recklessness**

35. That the averments of paragraphs 1 - 34, inclusive, are hereby incorporated as if again fully set forth at length.

36. That the act of passing the coal crusher for its electrical inspections without a properly working "kill switch" or "manual disconnect switch" is also reckless or grossly negligent in that Defendant Peters disregarded a substantial and unjustifiable risk of injury to others which was reasonably foreseeable, more so than just mere negligence.

37. 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 IV: v. All Defendants Hoover;
Loss of Consortium**

38. That the averments of paragraphs 1 - 37, inclusive, are hereby incorporated as if again fully set forth at length.

39. 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 Defendants, in an amount in excess of \$25,000, together with costs and interest, to be determined at time of trial.

Miscellaneous Averments

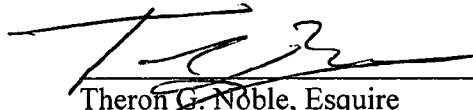
40. That the liability of Defendants to the Plaintiffs is joint and several.

41. That jurisdiction is proper.

42. That venue is proper.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendants, jointly and severally, 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


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

No.: 07- -CD

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

VERIFICATION

So made this 2nd day of April, 2007.


Frank A. Lindemuth, Plaintiff


Crystal S. Lindemuth, Plaintiff

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

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

vs.

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

CIVIL DIVISION

No. 07-558-CD

TYPE OF PLEADING:
PRAECIPE

FILED ON BEHALF OF:
DANIEL PETERS
Defendant

COUNSEL OF RECORD

Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559

Attorney's State ID#: 73227

Attorney's Firm ID#: 25-0918627

FILED *no cc*
MAY 03 2007 *CK*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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

vs.

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


No. 97-558-CD

Civil Division

PRAECIPE

TO THE PROTHONOTARY:

Please enter our appearance on behalf of the above named defendant, Daniel Peters.



Wayne A. Kablack, Esq.
Attorney for Defendant

JURY TRIAL DEMANDED

WAK:sn
1171-39

IN THE COURT OF COMMON PLEAS, 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.

No.: 07- 558 -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
MAY 11 2007

William A. Shaw
Notary Public/Clerk of Courts

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

No.: 07-558-CD

STEPHEN A. STRISHOCK, Jr., an adult)
individual, and DANIEL PETERS, an)
adult individual,)

NOTICE OF SERVICE

Wayne Kablack, Esquire
Simpson, Kablack & Ball
834 Philadelphia St., Suite 200
Indiana, PA 15701

Mr. Stephen A. Strishock, Jr.
Clay Plant Rd.
Brockway, PA 15824

By, Theron G. Noble
Theron G. Noble, Esquire

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 OF CLEARFIELD COUNTY, PENNSYLVANIA

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

Plaintiffs,

v.

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

Defendants.

) CIVIL DIVISION

) No. 07-558-CD

) Code:

) **PRAECIPE FOR APPEARANCE**

) Filed on behalf of Defendant
) Stephen A. Strishock, Jr.,

) Counsel of Record for this Party:

) DENNIS A. WATSON
) Pa. I.D. #25500

) HOLLY M. WHALEN
) Pa. I.D. #84878

) GROGAN GRAFFAM, P.C.
) Firm I.D. No. 072
) Four Gateway Center
) Twelfth Floor
) Pittsburgh, PA 15222
) (412) 553-6300

) Our File No. 69595-07045

) **JURY TRIAL DEMANDED**

FILED *NOCC*
m/11:02/30
MAY 16 2007 *(6K)*
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

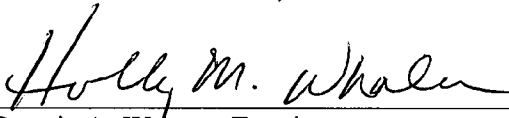
FRANK A. LINDEMUTH, an adult	)	CIVIL DIVISION
individual, and CRYSTAL S.)	
LINDEMUTH, his wife,	)	No. 07-558-CD
)	
Plaintiffs,)	
)	
v.)	
)	
STEPHEN A. STRISHOCK, JR., an adult)	
individual, and DANIEL PETERS, an)	
adult individual,)	
)	
Defendants.		

PRAECIPE FOR APPEARANCE

TO: Prothonotary

Kindly enter our firm's appearance in the above action on behalf of the Defendant,
Stephen A. Strishock, Jr., an adult individual.

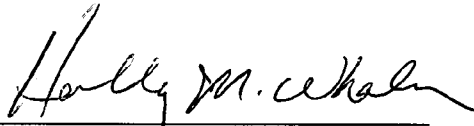
GROGAN GRAFFAM, P.C.


Dennis A. Watson, Esquire
Holly M. Whalen, Esquire
Attorneys for Defendant,
Stephen A. Strishock, Jr.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the within Praeipe for Appearance of Defendant, Stephen A. Strichock, Jr., was served upon Plaintiffs' counsel of record via U.S. mail, postage prepaid, first class, on this 15th day of May, 2007.

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



Dennis A. Watson, Esquire
Holly M. Whalen, Esquire

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

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

Plaintiffs,

v.

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

Defendants.

) CIVIL DIVISION

) No. 07-558-CD

) **PRELIMINARY OBJECTIONS OF**
) **DEFENDANT STEPHEN A.**
) **STRISHOCK, JR.**

) Filed on Behalf of Defendant:
) Stephen A. Strishock, Jr.

) Counsel of Record for This Party:

) **Dennis A. Watson, Esquire**
) Pa. I.D. No.: 25500

) **Holly M. Whalen, Esquire**
) Pa. I.D. No.: 84878

) **Grogan Graffam, P.C.**
) Firm I.D. No.: 072

) Four Gateway Center
) 12th Floor
) Pittsburgh, Pennsylvania 15222

) (412) 553-6300

) File No.: Z9999-00123

) **JURY TRIAL DEMANDED**

FILED No cc
m/j:02/01
MAY 16 2007 @k

William A. Shaw
Prothonotary/Clerk of Courts

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

FRANK A. LINDEMUTH, an adult	)	CIVIL DIVISION
individual, and CRYSTAL S. LINDEMUTH,)	
his wife,	)	No. 07-558-CD
)	
Plaintiffs,)	
)	
v.)	
)	
STEPHEN A. STRISHOCK, JR., an adult)	
individual, and DANIEL PETERS, an adult)	
individual)	
)	
Defendants.)	

PRELIMINARY OBJECTIONS OF DEFENDANT STEPHEN A. STRISHOCK, JR.

Defendant Stephen A. Strishock, Jr., by his counsel Dennis A. Watson, Esquire, Holly M. Whalen, Esquire, and Grogan Graffam, P.C., respectfully files his preliminary objections to the Complaint pursuant to Pa.R.C.P. 1028 stating as follows:

1. Plaintiffs Frank A. Lindemuth (hereinafter "Lindemuth") and Crystal S. Lindemuth, his wife, filed their Civil Complaint on April 10, 2007. Therein, Plaintiffs make the following claims specifically against Defendant Stephen A. Strishock, Jr.: in Count I Recklessness and Intentional Tort and in Count IV Loss of Consortium.
2. Plaintiffs allege that Lindemuth sustained personal injury while performing his duties as a load operator in the course of his employment with Strishock Coal Company.
3. Plaintiffs allege that such injury occurred when Lindemuth attempted to start a coal crusher and the battery supplying the initial power source to the coal crusher overheated and exploded.

4. As to Defendant Strishock, Plaintiffs assert that Strishock, a co-employee of Lindemuth ordered that the “kill switch” or “manual disconnect switch” on the coal crusher not be connected when the coal crusher was rebuilt in August 2005 in violation of applicable safety regulations.

I. Demurrer - Lack of Jurisdiction Over the Subject Matter of the Action – Legal Insufficiency of the Pleading - No Viable Cause of Action Against Defendant Stephen A. Strishock, Jr.

5. In Count I of the Complaint, Plaintiffs allege a claim for recklessness and intentional tort against Defendant Strishock.

6. To the contrary, Plaintiffs claims against Defendant Strishock are barred by the exclusivity provisions of the Pennsylvania Workers’ Compensation Act, Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.1; 2501-2626.

7. Pursuant to Section 205 of the Act, 77 P.S. §72, “a person shall not be liable to anyone at common law or otherwise on account of such disability or death for any act or omission occurring while such person was in the same employ as the person disabled or killed, except for intentional wrong.”

8. As to Defendant Strishock, Plaintiffs assert only that he ordered that the “kill switch” not be made operational when the engine to the coal crusher was rebuilt in August 2005 in violation of applicable safety regulations and principles.

9. Contrary to Plaintiffs’ allegations, a violation of safety provisions, even if willful and unlawful, does not rise to the level of an intentional wrong. *See Higgins v. Clearing Machine Corporation*, 496 A.2d 818, 821 (Pa. Super. 1985); *see also, Evans v. Allentown Portland Cement Company*, 433 Pa. 595, 252 A.2d 646 (1969).

10. Instead, an “intentional wrong” for purposes of imposing liability on a co-worker must be a wrong that is not normally expected to be present in the workplace. McGinn v. Valloti, 525 A.2d 732 (Pa. Super. 1987), *alloc. den.* 517 Pa. 618, 538 A.2d 500 (1988).

11. “An employee does not normally expect a physical assault, and an employee does not normally expect infliction of emotional distress, therefore these intentional torts have been found to be actionable. In contrast, an employee might expect the condition of the workplace itself to be unsafe; for example, where there has been a knowing neglect of safety regulations. Therefore, these intentional torts have been found to be nonactionable. Id. at 735 (citations omitted).

12. Because Plaintiffs’ claims against Defendant Strishock arise solely out of Strishock’s alleged violation of safety regulations and failure to ensure a safe workplace, Plaintiffs’ claims must fail as barred by the exclusivity provisions of the Workers’ Compensation Act.

WHEREFORE, Defendant Stephen A. Strishock, Jr. respectfully requests that Plaintiffs’ Complaint be dismissed with prejudice.

II. Legal Insufficiency of the Pleading – Failure of Pleading to Conform to Law – Motion to Strike - No Viable Claim for Punitive Damages.

13. In Count I of the Complaint as well as the final *ad damnum* clause of the Complaint, Plaintiffs seek compensatory damages for alleged personal injury and also punitive damages against Defendant Strishock.

14. The facts alleged in Plaintiffs’ Complaint, even if accepted as true for purposes of Preliminary Objections, do not warrant the imposition of punitive damages.

15. Punitive damages may be awarded only if the defendant's conduct was malicious, wanton, reckless, willful or oppressive.

16. Section 908(2) of the Restatement (Second) of Torts describes the nature of behavior for which punitive damages may properly be considered:

Since the purpose of punitive damages is not compensation of the plaintiff, but punishment of the defendant and deterrence, these damages can be awarded only for conduct for which the remedy is appropriate, which is to say, conduct involving some element of outrage similar to that usually found in crime. The conduct must be outrageous, either because the defendant's acts are done with an evil motive or because they are done with reckless indifference to the rights of others.

Restatement (Second) of Torts, § 908, Comment b.

17. Section 908 of the Restatement (Second) of Torts has been recognized and applied as Pennsylvania law in numerous cases. *See, e.g., SHV Coal v. Continental Grain Co.*, 526 Pa. 702, 587 A.2d 702 (1991); *Feld v. Merriam*, 506 Pa. 383, 485 A.2d 742 (1984); *Martin v. Johns-Manville Corp.*, 508 Pa. 154, 494 A.2d 1088, 1097 (1985).

18. Since punitive damages are meant as a deterrent, they are only proper for truly outrageous conduct, done with bad motive or reckless indifference to the interest of others. *Id.* at 1097. "Punitive damages must be based on conduct which is malicious, wanton, reckless, willful, or oppressive." *Hall v. Jackson*, 788 A.2d 390, 403 (Pa. Super. 2001). The conduct must be especially egregious. *Id.* In determining whether punitive damages are appropriate, the defendant's state of mind is vital, and there must be an appreciation of the risk and the failure to act must be intentional, reckless or malicious. *Feld, supra*.

19. No where in their Complaint do Plaintiffs assert that Defendant Strishock appreciated the risk of failing to maintain a working kill switch/manual disconnect switch or that

he otherwise knew that any injury such that Mr. Lindemuth sustained could be caused by failing to maintain a working kill switch/manual disconnect switch.

20. Thus, Plaintiffs' allegations as set forth in the Complaint, do not and cannot constitute a basis for the imposition of punitive damages against Defendant Strishock as a matter of law.

21. Therefore, Plaintiffs' claim for punitive damages should be stricken from the Complaint.

WHEREFORE, Defendant Stephen A. Strishock, Jr. respectfully requests that Plaintiffs' claim for punitive damages be dismissed with prejudice and/or stricken from the Complaint.

III. Legal Insufficiency of the Pleading – Failure of Pleading to Conform to Law – Motion to Strike - No Viable Claim for Attorney Fees.

22. In Count I of the Complaint as well as the final *ad damnum* clause of the Complaint, Plaintiffs seek attorney's fees incurred in pursuing the present action.

23. Under Pennsylvania law, a party cannot recover attorney's fees unless there is express statutory authorization, clear agreement of the parties, or other established exception. See Snyder v. Snyder, 533 Pa. 203, 620 A.2d 1133 (1993). See also Slappo v. J's Development Associates, Inc., 791 A.2d 409 (Pa. Super. 2002).

24. This rule, sometimes referred to as the "American Rule," is applicable in Pennsylvania and clearly states that absent statutory or contractual authorization, a litigant may not recover attorney's fees or expenses associated with litigation. See Gardener v. Clark, 503 A.2d 8, 16 (Pa. Super. 1986).

25. Further, the party claiming costs or expenses bears the burden of pleading and proving a right to reimbursement under Pennsylvania law. See Krassnoski v. Rosey, 684 A.2d

635, 637 (Pa. Super. 1996); Commonwealth of Pennsylvania, Dept. of Transportation v. Smith, 602 A.2d 499, 401 (Pa. Cmwlth. 1992).

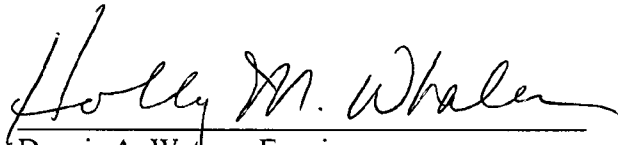
26. Plaintiffs fail to allege any contractual or statutory basis that would permit an award of attorney's fees and/or expenses in their favor.

27. As a result, Plaintiffs' unsupported claims for attorney's fees and expenses, as asserted in Paragraph 27 of Plaintiffs' Complaint and the *ad damnum* clause of Count I of the Complaint, should be dismissed with prejudice, and/or stricken.

WHEREFORE, Defendant Stephen A. Strishock, Jr. respectfully requests that Plaintiffs' claim for attorneys fees be dismissed with prejudice and/or stricken from the Complaint.

Respectfully Submitted,

Grogan Graffam, P.C.

A handwritten signature in cursive script, reading "Holly M. Whalen". The signature is written in dark ink and is positioned above a horizontal line.

Dennis A. Watson, Esquire

Holly M. Whalen, Esquire

Counsel for Stephen A. Strishock, Jr.

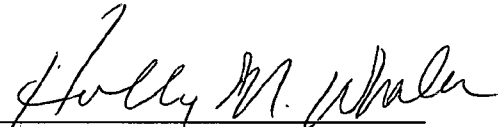
FRANK A. LINDEMUTH, an adult) CIVIL DIVISION
individual, and CRYSTAL S. LINDEMUTH,)
his wife,) No. 07-588-CD
)
Plaintiffs,)
)
v.)
)
STEPHEN A. STRISHOCK, JR., an adult)
individual, and DANIEL PETERS, an adult)
individual)
)
Defendants.)

J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Preliminary Objections of Defendant Stephen A. Strishock, Jr. to the Civil Complaint was served upon the following parties of record on this 15th day of May, 2007 by United States mail, first-class, postage prepaid:

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



Dennis A. Watson, Esquire
Holly M. Whalen, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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

Plaintiffs,

v.

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

Defendants.

) CIVIL DIVISION

) No. 07-558-CD

) Code:

) **PRAECIPE FOR ARGUMENT ON**
) **PRELIMINARY OBJECTIONS**

) Filed on behalf of Defendant
) Stephen A. Strishock, Jr.,

) Counsel of Record for this Party:

) DENNIS A. WATSON
) Pa. I.D. #25500

) HOLLY M. WHALEN
) Pa. I.D. #84878

) GROGAN GRAFFAM, P.C.
) Firm I.D. No. 072
) Four Gateway Center
) Twelfth Floor
) Pittsburgh, PA 15222
) (412) 553-6300

) Our File No. 69595-07045

) **JURY TRIAL DEMANDED**

FILED *no cc*
m/jl:02/04
MAY 16 2007 *GW*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

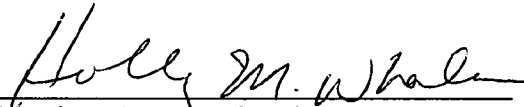
FRANK A. LINDEMUTH, an adult	)	CIVIL DIVISION
individual, and CRYSTAL S.)	
LINDEMUTH, his wife,	)	No. 07-558-CD
)	
Plaintiffs,)	
)	
v.)	
)	
STEPHEN A. STRISHOCK, JR., an adult)	
individual, and DANIEL PETERS, an)	
adult individual,)	

Defendants.

PRAECIPE FOR ARGUMENT ON PRELIMINARY OBJECTIONS

Kindly schedule an argument on the Preliminary Objections filed on behalf of Defendant,
Stephen A. Strishock, Jr., in the above-captioned action.

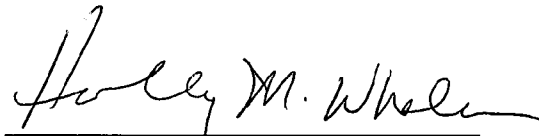
GROGAN GRAFFAM, P.C.


Dennis A. Watson, Esquire
Holly M. Whalen, Esquire
Attorneys for Defendant,
Stephen A. Strishock, Jr.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the within Praeipe for Argument of Preliminary Objections was served upon Plaintiffs' counsel of record via U.S. mail, postage prepaid, first class, on this 15th day of May, 2007.

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



Dennis A. Watson, Esquire
Holly M. Whalen, Esquire

UM

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

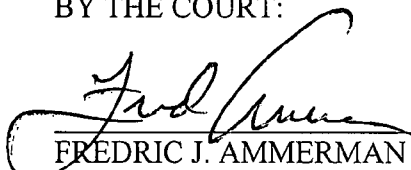
FRANK A. LINDEMUTH, an individual, :
and CRYSTAL S. LINDEMUTH, his wife :
: :
vs. : No. 07-558-CD
: :
STEPHEN A. STRISHOCK, JR., an adult :
individual, and DANIEL PETERS, an :
adult individual :

ORDER

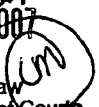
AND NOW, this 22 day of May, 2007, it is the ORDER of the
Court that argument on Defendant's Preliminary Objections in the above-captioned
matter be and are hereby scheduled for **Thursday, June 14, 2007 at 9:30 A.M.**, in
Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

It is the responsibility of the Petitioner to serve certified copy of said
scheduling Order on the Plaintiffs Counsel.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

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0114534
MAY 22 2007


William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAY 22 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/22/07

X 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:

ORIGINAL

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

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

vs.

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

CIVIL DIVISION

No. 07-558-CD

TYPE OF PLEADING:
PRELIMINARY OBJECTIONS
OF THE DEFENDANT, DANIEL
PETERS

FILED ON BEHALF OF:
DANIEL PETERS
Defendant

COUNSEL OF RECORD

Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559
Email: wkablack@skblawyers

Attorney's State ID#: 73227

Attorney's Firm ID#: 25-0918627

FILED ^{ICC}
JUN 06 2007
@

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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

vs.

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

No. 97-558-CD

Civil Division

PRELIMINARY OBJECTIONS OF THE DEFENDANT, DANIEL PETERS

The Defendant, Daniel Peters, by and through his attorney, Wayne A. Kablack, and Simpson, Kablack & Bell, respectfully files these Preliminary Objections to the Complaint, pursuant to Pa.R.C.P. 1028.

1. The Plaintiffs instituted an action by the filing of a Civil Complaint on April 10, 2007, regarding the industrial accident that occurred on October 10, 2005.
2. The Plaintiffs allege that Frank A. Lindemuth suffered personal injuries in this action.
3. This accident allegedly occurred as a result of cables from the battery arcing and the Plaintiff, Frank A. Lindemuth, tried to remove the battery cover, at which point the battery exploded.
4. The Plaintiffs allege negligence against this Defendant, and also claim on account of recklessness that he is liable for punitive damages and attorney's fees.
5. There is a Count IV against all Defendants. It references Hoover who is believed to be a subject of other litigation. This is a claim for loss of consortium.

I. INSUFFICIENCY OF PLEADING

1. There is a request for punitive damages.
2. The facts alleged in the Complaint do not warrant the imposition of punitive damages.
3. There is no basis in the Complaint for awarding punitive damages.

WHEREFORE, this Defendant prays this Honorable Court dismiss the Plaintiffs' Complaint for punitive damages.

II. LEGAL INSUFFICIENCY OF A PLEADING

1. The Complaint prays for attorney's fees.
2. There is no basis in the Complaint for an award of attorney's fees.

WHEREFORE, this Defendant prays this Honorable Court dismiss the Plaintiffs' Complaint.

III. FAILURE TO JOIN INDISPENSABLE PARTY

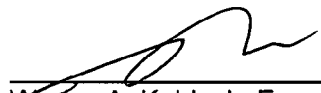
1. The Plaintiffs allege that Defendant Strishock ordered the kill switch not be made operational when the coal crusher engine was rebuilt in August of 2005 by Mickey Hoover. It is further alleged that the kill switch had not been operational for years.

2. Paragraph 27 states that as a result of Defendant Hoover's acts he should also be liable to the Plaintiffs for punitive damages and reasonable attorney's fees.

3. Hoover is not a named defendant in this action.
4. Hoover is listed as a Defendant in the Consortium Claim, Count IV.
5. Based on the allegations in the Complaint, Hoover is an indispensable party.

WHEREFORE, this Defendant prays this Honorable Court dismiss the Plaintiffs' Complaint or order the Plaintiffs to join Hoover as a party in this action.

Respectfully submitted,



Wayne A. Kablack, Esquire
Attorney for Defendant, Daniel Peters

UA

ORIGINAL

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW**

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

vs.

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

CIVIL DIVISION

No. 07-558-CD

**TYPE OF PLEADING:
PRAECIPE FOR ARGUMENT**

**FILED ON BEHALF OF:
DANIEL PETERS
Defendant**

COUNSEL OF RECORD

**Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559**

Attorney's State ID#: 73227

Attorney's Firm ID#: 25-0918627

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JUN 06 2007
⑥

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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

vs.

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

Defendants

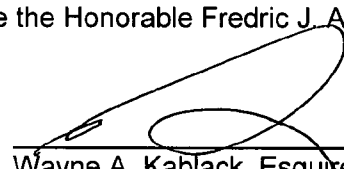
No. 97-558-CD

Civil Division

PRAECIPE FOR ARGUMENT

TO THE PROTHONOTARY:

Kindly schedule an argument on the Preliminary Objections filed on behalf of Defendant, Daniel Peters, in the above-captioned action before the Honorable Fredric J. Ammerman.



Wayne A. Kablack, Esquire
Attorney for Defendant, Daniel Peters

WAK/gbd
1171-39

ORIGINAL

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

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

vs.

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

CIVIL DIVISION

No. 07-558-CD

TYPE OF PLEADING:
CERTIFICATE OF SERVICE

FILED ON BEHALF OF:
DANIEL PETERS
Defendant

COUNSEL OF RECORD

Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559

Attorney's State ID#: 73227

Attorney's Firm ID#: 25-0918627

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10:10 AM
JUN 06 2007
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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

vs.

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

Defendants

No. 97-558-CD

Civil Division

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Preliminary Objections of the Defendant, Daniel Peters, Brief in Support of Preliminary Objections, and Praecipe for Argument was served on the following persons listed below, by first class, United States Mail, postage prepaid, from Indiana, Pennsylvania, this 4th day of June, 2007.

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

Dennis A. Watson, Esquire
Grogan Graffam, P.C.
Four Gateway Center, 12th Floor
444 Liberty Avenue
Pittsburgh, PA 15222


Wayne A. Kablack, Esq.
Attorney for Defendant, Daniel Peters

IN THE COURT OF COMMON PLEAS, 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.

No.: 07- 558 -CD

FILED

JUN 12 2007

2/10/30/W

William A. Shaw
Prothonotary/Clerk of Courts

NO 9/6

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:

IN THE COURT OF COMMON PLEAS, 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; DANIEL PETERS, an adult
individual; and MICKEY L. HOOVER, an
adult individual.

Defendants.

)
)
)
) No.: 07- 558 -CD
)
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)

By the Court,

Fredric J. Ammerman, PJ

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.)	

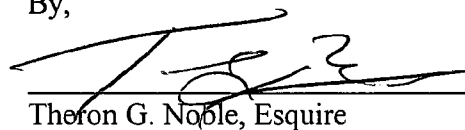
NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for the Plaintiffs, does hereby certify that I did propound upon the Defendants, in the above captioned matter, to the below identified persons, being either counsel of record or a Defendant for whom no counsel of record has entered an appearance of record, this 11th day of June, 2007, via United States Mail, first class, postage prepaid, Plaintiffs' MOTION TO CONSOLIDATE as follows:

Wayne Kablack, Esquire
Simpson, Kablack & Ball
834 Philadelphia St., Suite 200
Indiana, PA 15701

Holly M. Whallen, Esquire
c/o Gorgan Graffam, P.C.
Four Gateway Center, 12th Floor
Pittsburgh, PA 15222

By,



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

CA

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.

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


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*
*
*
*

NO. 07-558-CD

ORDER

NOW, this 13th day of June, 2007, it is the ORDER of this Court that argument
on the Preliminary Objections filed by Defendant, Daniel Peters, to Plaintiffs' Complaint
be and is hereby scheduled for the 10th day of July, 2007 at 10:00 AM in
Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT


FREDRIC J. AMMERMAN
President Judge

FILED
9:21am
JUN 13 2007
ICC Attys:
T. Noble
H. Whalen
D. Watson
W. Kablack

William A. Shaw
Prothonotary/Clerk of Courts

(GR)

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,
Plaintiffs

vs.

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

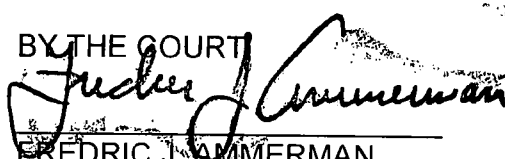
Defendants

NO. 07-558-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 ICC Alys:
92:15 cm Noble
JUN 13 2007 H. Whalen
D. Watson
W. Kablack
@CR

William A. Shaw
Prothonotary/Clerk of Courts

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

UP

IN THE COURT OF COMMON PLEAS, 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.

No.: 07- 558 -CD

Type of Pleading:

MOTION TO PRESERVE EVIDENCE

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
m/11:17/07
JUN 25 2007
cc
GR

William A. Shaw
Prothonotary/Clerk of Courts

Judge...

DATE 7-2-2007

☒ 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

JUL 02 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 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.)	

MOTION TO PRESERVE EVIDENCE

AND NOW, comes the Plaintiffs, Frank A. Lindemuth and Crystal S.

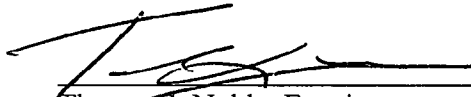
**Lindemuth, by and through their counsel of record, Theron G. Noble, Esquire, of
Ferraraccio & Noble, who avers as follows in support of their MOTION TO
PRESERVE EVIDENCE:**

1. That by letter of June 13th, counsel for Defendant Stephen A. Strishock, Jr., informed Plaintiffs' counsel that the battery cables involved in the battery explosion are still available for inspection. (See Exhibit "A").
2. That by letter of June 19th, counsel for Plaintiffs requested written assurance that the battery cables would be preserved. (See Exhibit "B").
3. That by letter of June 22, 2007, counsel for Defendant Strishock refused to agree to preserve the battery cables. (See Exhibit "C").
4. That the battery cables are most likely damaged by the explosion and therefore of no value except for evidence in this case.

5. That Defendant Strishock is an officer of the "company" referred to by his counsel and as such with little effort agree to preserve the battery cables.

WHEREFORE, Plaintiff requests that their MOTION TO PRESERVE EVIDENCE be GRANTED.

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
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No. 55942

**GROGAN
GRAFFAM**

A PROFESSIONAL CORPORATION

June 13, 2007

Holly M. Whalen
Phone: 412-553-6372
Fax: 412-553-6416
E-mail: hwhalen@grogangraffam.com

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

Exhibit "A"

RE: Frank A. Lindemuth et. al. v. Stephen A. Strishock, Jr.
No. 07-558-CD
Our File No. 69595-07045

Dear Mr. Noble:


I write in response to your correspondence of May 19, 2007, regarding your request to inspect the equipment at issue in the above-referenced case. I have forwarded your request to counsel for Strishock Coal Company and have been informed that the machine is available for examination. I am told that the machine is still in service and is used approximately three days per week. Please contact me to set up a mutually agreeable time to examine the machine. I will also need to know whether you wish to view the machine while it is in operation.

I have been further informed that the battery in question is no longer available. It was discarded almost immediately after the accident as it is not the company's policy to maintain used batteries. The battery cables, however, are still available for inspection.

Please contact me with any questions you may have.

Very truly yours,

Grogan Graffam, P.C.



Holly M. Whalen

GROGAN GRAFFAM, P.C.
FOUR GATEWAY CENTER, 12TH FLOOR, PITTSBURGH, PA 15222
412-553-6300 FAX: 412-642-2601 www.grogangraffam.com
ATTORNEYS

FERRARACCIO & NOBLE

301 East Pine Street
Clearfield, PA 16830
(814) 765-4990
(814) 375-2221
FAX: (814) 765-9377

Holly M. Whalen, Esquire
c/o Gorgan Graffam, P.C.
Four Gateway Center
12th Floor
Pittsburgh, PA 15222

Exhibit "B"

June 19, 2007

Re: Lindemuth v. Strichock, et.al.;
Confirmation of Machine Visual Inspection

COPY

Dear Ms. Whalen:

Thank you for your letter of June 13th. This will confirm that we have agreed to visually inspect the coal crusher on June 25th, meeting at 10:00 A.M.. My recommendation is to meet at the Sheetz store located at the intersection of Rts 322 and 119 (near DuBois) given its location to your arrival point and the coal crusher.

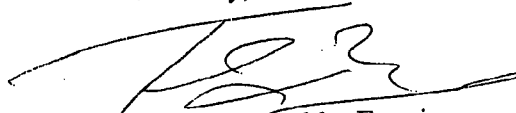
This will further confirm that I would like to observe the coal crusher being turned on and off.

Lastly, as to the battery cables, I would request that either your client agree to retain custody of them pending this lawsuit whether he is or is not a party, or relinquish custody upon mutually agreeable terms. We can further discuss this upon your arrival back in the office or at our meeting on the 25th.

Thank you for your consideration.

With regards, I am

Sincerely,



Theron G. Noble, Esquire

tn/TGN
cc: Mr. and Mrs. Frank Lindemuth w.encl.

**GROGAN
GRAFFAM**

A PROFESSIONAL CORPORATION

Exhibit "C"

Fax

To:	Theron G. Noble, Esquire	From:	Holly M. Whalen, Esquire
Fax:	(814) 765-9377	Pages:	3, including this cover page
cc:	Wayne Kablack, Esq. (724.465.2046) James A. Naddo, Esq. (814.765.8142) Robert M. Hanak, Esq. (814.371.1974)	Date:	June 22, 2007
Re:	Frank A. Lindemuth v. Stephen Strishock	File No.	69595-07045

☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle**Message:**

Four Gateway Center, 12th Floor, Pittsburgh, PA 15222
(412) 553-6310 • Fax: (412) 553-6880

CONFIDENTIALITY NOTE

The materials transmitted by this facsimile are sent by an attorney or his/her agent, and are considered confidential and are intended only for the use of the individual or entity named. If the addressee is a client, these materials may also be subject to applicable privileges. If the recipient of these materials is not the addressee, or the employee or agent responsible for the delivery of these materials to the addressee, you should be aware that any dissemination, distribution and/or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us at 412-553-6300 and return the transmitted materials to us at the above address via the U.S. Postal Service. Thank you.

{69595-07045 WD188520.1}

**GROGAN
GRAFFAM**

A PROFESSIONAL CORPORATION

June 22, 2007

Holly M. Whalen
Phone: 412-553-6372
Fax: 412-553-6416
E-mail: hwhalen@grogangraffam.com

VIA FACSIMILE: (814) 765-9377 and Regular Mail

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

RE: Frank A. Lindemuth et. al. v. Stephen A. Strishock, Jr.
No. 07-558-CD
Our File No. 69595-07045

Dear Mr. Noble:

I am in receipt of your June 19, 2007 correspondence regarding your request to view the equipment at issue in the above-referenced case on this coming Monday, June 25, 2007. While Strishock Coal Company has agreed to make the equipment available for view without a subpoena or motion as required by Pa.R.C.P. 4009.21 and/or Pa.R.C.P. 4009.31, it is only appropriate that the view be scheduled when all interested parties have the opportunity to attend the view. There is no indication that either Mr. Kablack or Mr. Naddeo have been notified of your request to view the equipment or been provided the opportunity to participate in any such view. As such, the view will need to be rescheduled to a later date in order to provide such notice and opportunity to attend as required by the applicable rules.

Further, as the Motion to Consolidate filed on behalf of the Lindemuths and Preliminary Objections filed by Mr. Strishock are currently pending before the Court, I request that all discovery be deferred until rulings on the preliminary objections and motion are issued or until August 1, 2007. Such deferment will ensure that the appropriate parties and counsel are in attendance at all discovery proceedings. I have every confidence that Judge Ammerman will rule on the preliminary objections in a prompt and timely manner and that such deferment will not result in any undue delay as this lawsuit was initiated approximately two months ago.

Finally, in response to your request to depose employees of Strishock Coal Company and to retain the battery cables, as I informed you during our conversation on May 31, 2007, 2007, I represent only Stephen A. Strishock, Jr., individually, and do not represent Strishock Coal Company. As such, I am not authorized by the company to offer any

GROGAN GRAFFAM, P.C.

FOUR GATEWAY CENTER, 12TH FLOOR, PITTSBURGH, PA 15222
412-553-6300 FAX: 412-642-2601 www.grogangraffam.com

ATTORNEYS

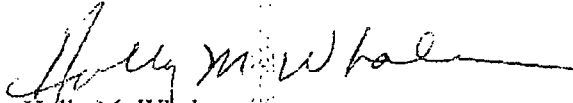
(69595-07045 W01RWS07.1)

employees as witnesses in this matter. Further, I have no authority to speak to issues regarding documents or things over which my client, Mr. Strishock, does not have custody or control. I have forwarded your request to maintain the battery cables to the company's legal counsel.

Thank you for your attention to this matter. Please contact me with any questions you may have.

Very truly yours,

Grogan Graffam, P.C.



Holly M. Whalen

cc: (All via facsimile)
Wayne Kablack, Esquire (724.465.2046)
James A. Naddeo, Esquire (814.765.8142)
Robert M. Hanak, Esquire (814.371.1974)

(89595-07043 W01RG509 L ;

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.)	

ORDER

AND NOW this _____ day of _____, 2007, Plaintiffs MOTION TO PRESERVE EVIDENCE is hereby GRANTED and Defendant Stephen A. Strishock, Jr., shall preserve the battery cables involved in the accident of October 10, 2005, until further of this Court or until all parties agree to change the custody of the same.

By the Court,

Fredric J. Ammerman, PJ

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.)	

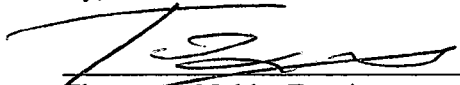
NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for the Plaintiffs, does hereby certify that I did propound upon the Defendants, in the above captioned matter, to the below identified persons, being counsel of record for each Defendant, this 23rd day of June, 2007, via United States Mail, first class, postage prepaid, Plaintiffs' MOTION TO PRESERVE EVIDENCE (directed to Defendant Strishock) as follows:

Wayne Kablack, Esquire
Simpson, Kablack & Ball
834 Philadelphia St., Suite 200
Indiana, PA 15701

Holly M. Whallen, Esquire
c/o Gorgan Graffam, P.C.
Four Gateway Center, 12th Floor
Pittsburgh, PA 15222

By,



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

FILED

JUN 25 2007

**William A. Shaw
Prothonotary/Clerk of Courts**

CA

IN THE COURT OF COMMON PLEAS, 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.

No.: 07- 558 -CD

Type of Pleading:

MOTION TO COMPEL

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 NO
JUN 25 2007 CC
(CR)

William A. Shaw
Prothonotary/Clerk of Courts


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

No.: 07-558-CD

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

ORDER

By the Court,

By the Court,

Fredric J. Ammerman, PJ

019:45/BD
JUN 26 2007

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUN 26 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 06/26/07

☒ 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, 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.)	

PLAINTIFFS' MOTION TO COMPEL
(concerning Defendant Strishock)

AND NOW, comes the Plaintiffs, Frank A. Lindemuth and Crystal S.

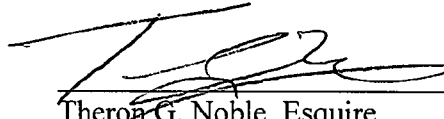
**Lindemuth, by and through their counsel of record, Theron G. Noble, Esquire, of
Ferraraccio & Noble, who pursuant to Pa. R. Civ.P. 4000, et.seq., avers as follows in
support of their MOTION TO COMPEL:**

1. That this matter was commenced by the filing of a CIVIL COMPLAINT, on April 10, 2007, concerning injuries sustained by Plaintiff Fran Lindemuth in an "industrial type" accident on October 10, 2005, in which Plaintiff suffered serious injury, leaving him permanently blind.
2. That on May 10, 2007, Plaintiffs propounded a REQUEST FOR PRODUCTION OF DOCUMENTS on each defendant. (See Exhibit "A").
3. That the initial discovery request sought rudimentary documents concerning the machine involved in this accident and is the foundation for depositions which are being established for mid-July.

4. That at the time Plaintiffs propounded this request, counsel for Defendant Strishock had not entered an appearance of record.
5. That on May 19th, counsel for Defendant Strishock had entered an appearance of record and Plaintiff's counsel faxed to her the discovery requests. (See Exhibit "B").
6. That counsel subsequently had a conversation concerning responses to the requests which resulted in an understanding that Defendant Strishock would respond despite having filed Preliminary Objections which might result in his dismissal from this action.
7. That whether Defendant Strishock is or is not a party the information requested is needed to proceed with this case and he would be compelled to provide the same either as a witness or as a party.
8. Despite assurances that Defendant Strishock would respond to the initial discovery request he has not so responded.
9. That at argument on the Preliminary Objections, held on June 14, 2007, Plaintiffs counsel again inquired about the responses and was assured responses were forthcoming.
10. That Defendant Peters has so responded.
11. That counsel for Defendant Strishock has now reneged on other matters which require Plaintiffs to request the Court's assistance in this matter.

WHEREFORE, Plaintiffs request this Court to enter an ORDER compelling Defendant Strishock to produce the documents requested in their REQUEST FOR PRODUCTION OF DOCUMENTS.

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

IN THE COURT OF COMMON PLEAS, 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,)

Exhibit "A"

Defendants.

PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
(directed to each Defendant)

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 pursuant to Pa. R. Civ.P. 4000, et.seq., demands production of the following documents within thirty (30) days of the following:

As to the "coal crusher", used by Strishock Coal Company, on October 10, 2005, used in its mining operations for the "Huey" and "Shaffer" jobs

1. All documents, including but not limited to, invoices, cancelled checks, bill of sale, contracts or the like, documenting the purchase and/or lease of the same;
2. All documents, including but not limited to, owners' manual, operating instructions of the like, depicting in any manner the characteristics, functions or maintenance requirements of the same;
3. All documents, including but not limited to, invoices, cancelled checks, contracts or the like, documenting the dates, times, results and who performed any inspections relating to the same;
4. All documents, including but not limited to, invoices, cancelled checks, contracts or the like, documenting the dates, times, results and who performed any maintenance and/or repairs relating to the same;
5. Any photographs of the same;

6. Any reports, memorandums or the like concerning the incident complained of, or investigation thereof, in the above captioned matter; and

7. Any reports and/or citations issued by any governmental entity or agency, or any person or entity acting in compliance of any governmental or agency requirement, regarding either (i) the incident complained of; or (ii) the condition of the "coal crusher".

Respectfully Submitted,

S/

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

FERRARACCIO & NOBLE

301 East Pine Street
Clearfield, PA 16830
(814) 765-4990
(814) 375-2221
FAX: (814) 765-9377

Holly M. Whalen, Esquire
c/o Gorgan Graffam, P.C.
Four Gateway Center
12th Floor
Pittsburgh, PA 15222

COPY

May 19, 2007

Re: Lindemuth v. Peters, et.al.;
Request for Information

Exhibit "B"

Dear Ms. Whalen:

This letter follows our conversation of yesterday wherein I acknowledged receipt of your PRELIMINARY OBJECTIONS and accompanying materials. I also faxed you a copy of the REQUEST FOR PRODUCTION OF DOCUMENTS previously propounded on your client prior to your entry of appearance.

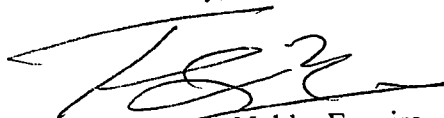
The purpose of this letter is two fold. First, I would like to observe the "coal crusher" and take some photos. If that is possible, please advise and we can make the necessary arrangements. Second, I would like to know if your client still have in his (or the company's) possession the battery and any other items which were damaged in the explosion of October 10, 2005. If not, does he know what happened to these items.

Please advise if you want a more formal discovery request.

I await to hear from you on these matters.

With regards, I am

Sincerely,



Theron G. Noble, Esquire

tn/TGN

cc: Mr. and Mrs. Frank A. Lindemuth

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.)	


NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for the Plaintiffs, does hereby certify that I did propound upon the Defendants, in the above captioned matter, to the below identified persons, being counsel of record for each Defendant, this 23rd day of June, 2007, via United States Mail, first class, postage prepaid, Plaintiffs' MOTION TO COMPEL (directed to Defendant Strishock) as follows:

Wayne Kablack, Esquire
Simpson, Kablack & Ball
834 Philadelphia St., Suite 200
Indiana, PA 15701

Holly M. Whallen, Esquire
c/o Gorgan Graffam, P.C.
Four Gateway Center, 12th Floor
Pittsburgh, PA 15222

By,



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 OF CLEARFIELD COUNTY,
PENNSYLVANIA**

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

Plaintiffs,

v.

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

Defendants.

) CIVIL DIVISION

) No. 07-558-CD

) **NOTICE OF SERVICE OF**
) **DEFENDANT STEPHEN A.**
) **STRISHOCK, JR.'S RESPONSE TO**
) **PLAINTIFFS' FIRST REQUEST**
) **FOR PRODUCTION OF**
) **DOCUMENTS**

) Served on Behalf of Defendant:
) Stephen A. Strishock, Jr.

) Counsel of Record for This Party:

) **Dennis A. Watson, Esquire**
) Pa. I.D. No.: 25500

) **Holly M. Whalen, Esquire**
) Pa. I.D. No.: 84878

) **Grogan Graffam, P.C.**
) Firm I.D. No.: 072

) Four Gateway Center
) 12th Floor
) Pittsburgh, Pennsylvania 15222

) (412) 553-6300

) File No.: 69595-07045

) **JURY TRIAL DEMANDED**

FILED *npcc*
m11:05/01
JUN 28 2007
William A. Shaw
Prothonotary/Clerk of Courts

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

FRANK A. LINDEMUTH, an adult	)	CIVIL DIVISION
individual, and CRYSTAL S. LINDEMUTH,)	
his wife,	)	No. 07-558-CD
)	
Plaintiffs,)	
)	
v.)	
)	
STEPHEN A. STRISHOCK, JR., an adult)	
individual, and DANIEL PETERS, an adult)	
individual)	
)	
Defendants.)	

**NOTICE OF SERVICE OF DEFENDANT STEPHEN A. STRISHOCK, JR.'S
RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS**


I certify that Defendant Stephen A. Strishock, Jr.'s Response to Plaintiffs' First Request for Production of Documents were delivered via U.S. Mail, first-class, postage pre-paid to the counsel of record indicated below on the 26th day of June, 2007.

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

Wayne Kablack, Esquire
Simpson, Kablack & Ball
834 Philadelphia Street, Suite 200
Indiana, PA 15701

Respectfully Submitted,

Grogan, Graffam, P.C.



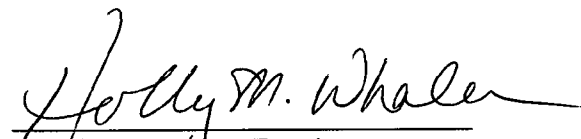
Dennis A. Watson, Esquire
Holly M. Whalen, Esquire
Counsel for Stephen A. Strishock, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Notice of Service of Response to Request for Production of Documents of Defendant Stephen A. Strishock, Jr. was served upon the following parties of record on this 26th day of June, 2007 by United States mail, first-class, postage prepaid:

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

Wayne Kablack, Esquire
Simpson, Kablack & Ball
834 Philadelphia Street, Suite 200
Indiana, PA 15701



Dennis A. Watson, Esquire
Holly M. Whalen, Esquire

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.

No. 07-558-CD

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.

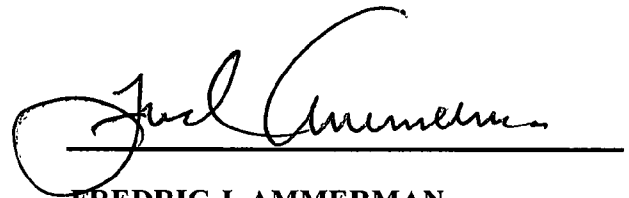
No. 06-2096-CD

MICKEY L. HOOVER, an adult
individual,
Defendants

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

FILED

01:16p.m. CK ICC ATTYS
JUN 29 2007 WHEAT
Kableck NOBLE
William A. Shaw c.r.s. &c
Prothonotary/Clerk of Courts 07-558

DATE: 6-29-07

☐ 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, 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.

No.: 07-558-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 NO cc
JUN 29 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 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.)	

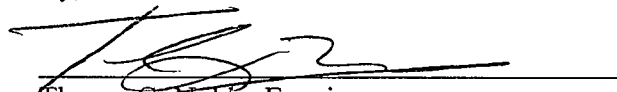
NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for the Plaintiffs, does hereby certify that I did propound upon the Defendants, in the above captioned matter, to the below identified persons, being counsel of record for each Defendant, this 28th day of June, 2007, via United States Mail, first class, postage prepaid, the ORDER entered upon Plaintiffs' MOTION TO COMPEL (directed to Defendant Stephen A. Strishock, Jr.) follows:

Wayne Kablack, Esquire
Simpson, Kablack & Ball
834 Philadelphia St., Suite 200
Indiana, PA 15701

Holly M. Whallen, Esquire
c/o Gorgan Graffam, P.C.
Four Gateway Center, 12th Floor
Pittsburgh, PA 15222

By,



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,

v.

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

Defendants.

No.: 07- 558 -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 *Fe*
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JUL 05 2007 *no cc*

William A. Shaw
Prothonotary/Clerk of Courts

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

V.

Defendants.

No.: 07-558-CD

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

Holly M. Whallen, Esquire
c/o Gorgan Graffam, P.C.
Four Gateway Center, 12th Floor
Pittsburgh, PA 15222

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

FILED

JUL 09 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 CRYSTAL S. LINDEMUTH,
his wife,

Plaintiff,

v.

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

Defendants.

No.: 07- 558 -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

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.)	

NOTICE OF SERVICE

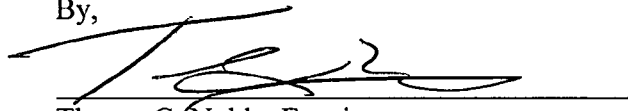
I, Theron G. Noble, Esquire, counsel for the Plaintiffs, does hereby certify that I did serve upon the Defendants, in the above captioned matter, to the below identified persons, being counsel of record for each Defendant, this 6th day of July, 2007, via United States Mail, first class, postage prepaid, the RULE RETURNABLE issued to Plaintiff's MOTION TO PRESERVE EVIDENCE (directed to Defendant Strishock), as follows:

Wayne Kablack, Esquire
Simpson, Kablack & Ball
834 Philadelphia St., Suite 200
Indiana, PA 15701

Holly M. Whallen, Esquire
c/o Gorgan Graffam, P.C.
Four Gateway Center, 12th Floor
Pittsburgh, PA 15222

James A. Naddeo, Esquire
207 E. Market Street
Clearfield, PA 16830

By,



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 OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

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

Plaintiff,

v.

No. 07-558-CD

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

Defendants

ORDER

cc. Arty's
T. Noble
H. Whalen
D. Watson
W. Kablack
FILED
JUL 13 2007
William A. Shaw
Prothonotary/Clerk of Courts

NOW, this 29th day of June, 2007, upon consideration of Objecting Defendant's, Stephen A. Strishock, Jr. (hereafter Defendant), Preliminary Objections and following argument on June 14, 2007, this Court hereby **SUSTAINS** Defendant's Preliminary Objections. Plaintiffs' Count I is **HEREBY DISMISSED** with prejudice. This Court does not need to examine the Defendant's other Preliminary Objections as they are now moot.

Plaintiff, Frank Lindemuth (hereafter Plaintiff), sustained injuries while performing his duties as a load operator in the course of his employment with Strishock Coal Company. Plaintiff's injury allegedly occurred when the Plaintiff tried to start a coal crusher and the battery supplying the initial power source to the coal crusher overheated and exploded. Plaintiff asserts that the Defendant, a co-employee of Lindemuth, ordered that the manual disconnect switch (also referred to as the "kill switch") on the coal crusher not be connected when the coal crusher was rebuilt in August 2005 in violation of applicable safety regulations.

This Court will note that "[a] preliminary objection in the nature of a demurrer is properly granted where the contested pleading is legally insufficient. *Cardenas v. Schober*, 783 A.2d 317, 321 (Pa.Super.2001) citations omitted. Additionally, "[p]reliminary objections in the

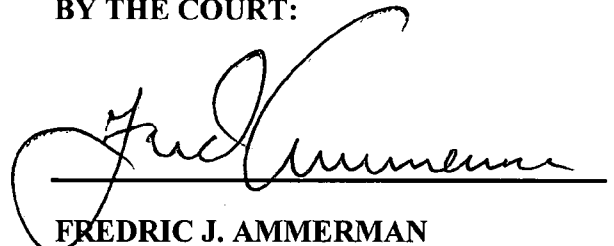
nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer.” *Id.* at 321-22 citation omitted. “Since sustaining the demurrer results in a denial of the pleader’s claim or dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted.... If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected....” *Willet v. Pennsylvania Medical Catastrophe Loss Fund* 702 A.2d 850, 853 (Pa. 1997) citations omitted. Finally, “where doubt exists as to whether a demurrer should be sustained, the doubt should be resolved in favor of overruling it.” *Id.* citations omitted.

Here, the Plaintiffs allege a violation of safety provisions. Plaintiffs point to the Defendant’s instruction to not make the manual disconnect switch operational as an intentional act that rises to the level as an intentional wrong thereby not barred by the Worker’s Compensation Act (hereafter WCA). The WCA provides “a person shall not be liable to anyone at common law or otherwise on account of such disability or death for any act or omission occurring while such person was in the same employ as the person disabled or killed, except for intentional wrong.” 77 P.S. § 72. The Court has stated that “[t]he legal immunity which is afforded to employers and their compensation insurers extends not only to acts of negligence, but also to claims based on intentional, wanton and willful misconduct...” *Shaffer v. Procter & Gamble*, 604 A.2d 289, 292 (Pa.Super. 1992). Additionally, the Court in *Higgins v. Clearing Machine Corporation* reasoned “[n]o allegation is made that Kelsey-Hayes intended to injure Higgins. Any “intent” on their part develops out of their knowing failure to provide a safe

workplace. We view this case as controlled by the language in *Evans* reiterating that 'even where neglect of a statutory duty is alleged, the employee's only remedy is under the Workman's Compensation Act.'" *Higgins v. Clearing Mach. Corp., Div. of U.S. Industries, Inc.*, 496 A.2d 818, 821 (Pa.Super. 1985) citations omitted. The Court went on to state "the only current exception to injuries 'arising in the course of ... employment', which are compensable under the Act, are injuries 'caused by an act of a third person intended to injure the employee because of reasons personal to him, and not directed against him as an employee or because of his employment.'" *Id.*

Here, the Plaintiff alleges violations of a safety provision but does not allege that the Defendant intended to harm the Plaintiff. Nor does the Plaintiff set forth any reasons personal to the Defendant for wishing to harm the Plaintiff. Therefore, because the Plaintiff's claims arise solely out of Strishock's alleged violation of safety provisions, Plaintiff's claim must fail as barred by the exclusivity provisions of the WCA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED

JUL 13 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/13/07

☐ 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,

Plaintiff,

v.

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

Defendants

No. 07-558-CD

FILED

JUL 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

NOW, this 3rd day of July, 2007, upon consideration of the Preliminary Objections filed on behalf of Defendant Daniel Peters (hereafter Defendant) and following argument on June 14, 2007, this Court hereby **DISMISSES** Defendant's Preliminary Objection with regard to Punitive Damages. Plaintiff, Frank Lindemuth (hereafter Plaintiff), sustained injuries while performing his duties as a load operator in the course of his employment with Strishock Coal Company. Plaintiff's injury allegedly occurred when the Plaintiff tried to start a coal crusher and the battery supplying the initial power source to the coal crusher overheated and exploded. Defendant performs electrical inspections on equipment routinely used in coal jobs in Clearfield County. Plaintiff bases his punitive damages claim on his assertion that Defendant knew or should have known when he passed inspection on the coal crusher that the kill switch/manual disconnect switch was not operational and had not been for many years.

Preliminarily, the Court will note that "[a]ll material facts set forth in the pleading at issue as well as all inferences reasonably deducible therefrom are admitted as true." *Sclabassi v. Nationwide Mut. Fire Ins. Co.*, 789 A.2d 699, 701 (Pa.Super.2001) citations omitted.

Additionally, “[t]he question presented by a demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. *Id.* Finally, [w]here a doubt exists whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.” *Id.*

Regarding when punitive damages are appropriate, the Superior Court has held that:

[T]he purpose of punitive damages is to punish outrageous and egregious conduct done in a reckless disregard of another's rights; it serves a deterrence as well as a punishment function. Therefore, under the law of this Commonwealth, a court may award punitive damages only if an actor's conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others. *Hall v. Jackson*, 788 A.2d 390, 403 (Pa.Super. 2001).

The Superior Court went on to define reckless disregard as:

the actor's conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.

Id.

Here, the Defendant had a duty to inspect the coal crusher. The coal crusher was inspected and passed inspection despite the fact that it did not have a working kill switch/manual disconnect switch. Because the Defendant inspected the coal crusher and passed it despite its inoperable kill switch/manual disconnect switch, a question of fact exists whether the Defendant's conduct rose to the level of a reckless disregard of the safety of another. The preliminary objection must be dismissed.

This Court hereby **SUSTAINS** Defendant's Preliminary Objection with regard to attorney's fees and the Plaintiffs' claim for attorney's fees is dismissed. It has been held that “[a]s a general rule, a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established

exception.” *Snyder v. Snyder*, 620 A.2d 1133, 1138 (Pa. 1993). In Pennsylvania, the parties that have a right to receive counsel fees are set forth in 42 Pa.C.S.A. §2503, they are:

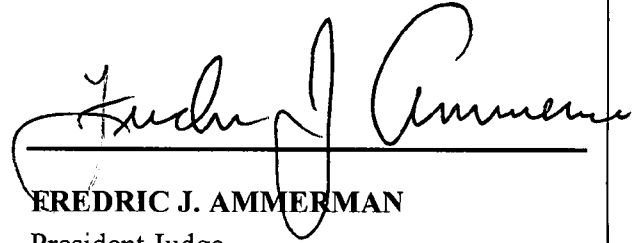
- (1) The holder of bonds of a private corporation who successfully recovers due and unpaid interest, the liability for the payment of which was denied by the corporation.
- (2) A garnishee who enters an appearance in a matter which is discontinued prior to answer filed.
- (3) A garnishee who is found to have in his possession or control no indebtedness due to or other property of the debtor except such, if any, as has been admitted by answer filed.
- (4) A possessor of property claimed by two or more other persons, if the possessor interpleads the rival claimants, disclaims all interest in the property and disposes of the property as the court may direct.
- (5) The prevailing party in an interpleader proceeding in connection with execution upon a judgment.
- (6) Any participant who is awarded counsel fees as a sanction against another participant for violation of any general rule which expressly prescribes the award of counsel fees as a sanction for dilatory, obdurate or vexatious conduct during the pendency of any matter.
- (7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter.
- (8) Any participant who is awarded counsel fees out of a fund within the jurisdiction of the court pursuant to any general rule relating to an award of counsel fees from a fund within the jurisdiction of the court.
- (9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.
- (10) Any other participant in such circumstances as may be specified by statute heretofore or hereafter enacted.

42 Pa.C.S.A. §2503

Here, the Plaintiff does not allege an agreement of the parties showing that he may recover attorney’s fees, nor does he fall into one of the statutory authorizations. Therefore, the Plaintiff’s request for attorney’s fees is **HEREBY DISMISSED**.

Finally, the Defendant's third Preliminary Objections is now moot, as this Court issued an Order dated June 29, 2007 that consolidated this action with the action that Plaintiff has against Mickey Hoover.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

DATE: 7-16-07

____ 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 WPAWU

____ Special Instructions: KABUACK

Prothonotary/Clerk of Courts
William A. Shaw

JUL 16 2007

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

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

v.

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

) CIVIL DIVISION

)

) No. 07-558-CD

)

) **RESPONSE TO RULE TO SHOW**
) **CAUSE AND MOTION TO**
) **PRESERVE EVIDENCE**

)

) Filed on Behalf of Defendant:
) Stephen A. Strishock, Jr.

)

) Counsel of Record for This Party:

) **Dennis A. Watson, Esquire**

) Pa. I.D. No.: 25500

) **Holly M. Whalen, Esquire**

) Pa. I.D. No.: 84878

) **Grogan Graffam, P.C.**

) Firm I.D. No.: 072

) Four Gateway Center

) 12th Floor

) Pittsburgh, Pennsylvania 15222

)

) (412) 553-6300

)

) File No.: 69595-07045

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)

FILED

md:40321
JUL 20 2007

cc
(GR)

William A. Shaw
Prothonotary/Clerk of Courts

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

FRANK A. LINDEMUTH, an adult	)	CIVIL DIVISION
individual, and CRYSTAL S. LINDEMUTH,)	
his wife,	)	No. 07-558-CD
Plaintiffs,)	
)	
v.)	
)	
STEPHEN A. STRISHOCK, JR., an adult)	
individual, and DANIEL PETERS, an adult)	
individual)	
Defendants.)	
)	

RESPONSE TO RULE TO SHOW CAUSE AND MOTION TO PRESERVE EVIDENCE

Pursuant to this Honorable Court's Order of June 28, 2007, Defendant Stephen A. Strishock, Jr., by his counsel Dennis A. Watson, Esquire, Holly M. Whalen, Esquire, and Grogan Graffam, P.C., respectfully files his Response to Rule to Show Cause and Motion to Preserve Evidence.¹ In support thereof, he states as follows:

1. Denied as stated. The June 13, 2007 correspondence attached to Plaintiffs' Motion to Preserve Evidence is a written document which speaks for itself. By way of further response, in the letter dated June 13, 2007, the undersigned counsel related information provided by Strishock Coal Company, a non-party to the present litigation, that the battery cables, and other equipment (hereinafter alternatively, "artifacts") within the care, custody, and control of Strishock Coal Company would be made available for inspection. On July 17, 2007, Strishock Coal Company made the equipment available to all counsel for inspection, photographing and

¹ By Order dated June 29, 2007, this Honorable Court sustained Stephen A. Strishock, Jr.'s Preliminary Objections to the Complaint thereby dismissing Mr. Strishock from this lawsuit with prejudice. Mr. Strishock files this Answer to Rule to Show Cause and Motion to Preserve Evidence in order to provide a formal response to matters on the docket which were outstanding at the time of his receipt of this Court's Order on the Preliminary Objection on July 17, 2007.

videotaping, together with an operator for the equipment. Counsel for Plaintiffs attended the inspection.

2. Denied as stated. By letter dated June 19, 2007, counsel for Plaintiffs requested specifically that Stephen A. Strishock, Jr., an individual, agree to retain custody of the battery cables or relinquish custody of the battery cables. To the contrary, the items requested to be retained as well as the documents requested in Plaintiffs' First Request for Production of Documents are not in the possession, control, or custody of Stephen A. Strishock Jr. Thus, Mr. Strishock has no authority to produce or retain any such items. To the contrary, such documents and things are in the custody of Strishock Coal Company. Further, as set forth in counsel's June 13, 2007 correspondence, Strishock Coal Company has agreed to produce both the equipment and battery cables in its possession for inspection. The equipment at issue in this case was inspected by all counsel in the above-captioned consolidated cases on July 17, 2007.

Moreover, Strishock Coal Company agreed to produce the battery cables for review and inspection prior to the filing of Plaintiffs' Motion to Preserve Evidence. Thus, there was no reason for Plaintiffs to file such a motion with this Honorable Court. On several occasions prior to Plaintiffs' filing of the Motion to Preserve Evidence on Saturday, June 23, 2007, the undersigned counsel both verbally and in writing notified Plaintiffs' counsel that Mr. Strishock was not in possession of the documents and things requested by Plaintiff. Rather, such requests should properly be directed to Strishock Coal Company as provided under the Pennsylvania Rules of Civil Procedure. Upon information and belief, Plaintiffs' counsel did in fact, informally request such documents and things from Strishock Coal Company through its counsel. Strishock Coal Company voluntarily complied with such request on July 17, 2007.

Based on the foregoing, Plaintiffs' Motion to Preserve Evidence is without foundation and could only be sought in an effort to cause unreasonable annoyance, embarrassment, oppression, burden or expense on Mr. Strishock in contravention of the Rules of Civil Procedure.

3. Denied as stated. The June 22, 2007 correspondence is a written document and speaks for itself. In that correspondence the undersigned counsel again informed Plaintiffs' counsel that the requested documents and things were not in the possession of Mr. Strishock and that such request should be directed to Strishock Coal Company. Upon information and belief, Plaintiffs' counsel did in fact, informally request such documents and things from Strishock Coal Company through its counsel. Strishock Coal Company voluntarily complied with such request on July 17, 2007.

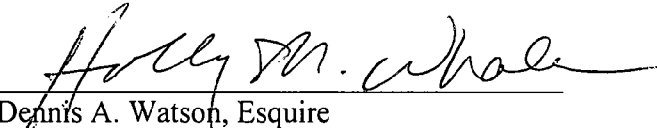
4. Denied. Depositions of various witnesses were conducted in these consolidated matters on July 17 and 18, 2007. During those depositions, various witnesses testified that the battery cables were not damaged beyond repair and were, in fact, placed back on the equipment at issue in this case following the accident and continued to be used.

5. Denied as stated. Mr. Strishock is not an "officer" of Strishock Coal Company. To the contrary, Mr. Strishock explained his position at Strishock Coal Company during his deposition on July 17, 2007, which is primarily limited to maintenance and repairs of machinery and equipment at Strishock Coal Company. Moreover, Mr. Strishock's role at Strishock Coal Company is irrelevant to Plaintiffs' request to preserve evidence in this lawsuit. Mr. Strishock was sued in his individual capacity. *See* Complaint filed at No. 07-558-CD. Because Mr. Strishock was sued in his individual capacity, he is only able and required to produce documents and things within his personal possession, custody or control.

WHEREFORE, Respondent requests that Plaintiff's Motion to Preserve Evidence be denied.

Respectfully Submitted,

Grogan Graffam, P.C.


Dennis A. Watson, Esquire
Holly M. Whalen, Esquire
Counsel for Stephen A. Strishock, Jr.

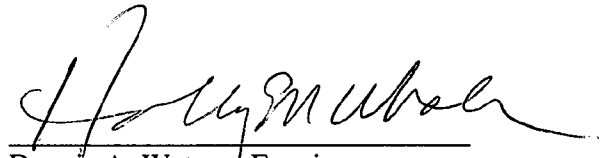
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Response to Rule to Show Cause and Motion to Preserve Evidence of Defendant Stephen A. Strishock, Jr. was served upon the following parties of record on this 19th day of July, 2007 by United States mail, first-class, postage prepaid:

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

Wayne Kablack, Esquire
Simpson, Kablack & Ball
834 Philadelphia Street, Suite 200
Indiana, PA 15701

James Naddeo, Esquire
Trudy Lumadue, Esquire
207 E. Market Street
Clearfield, PA 16830



Dennis A. Watson, Esquire
Holly M. Whalen, Esquire

IN THE COURT OF COMMON PLEAS, 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.

No.: 07- 558 -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
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JUL 26 2007
NO CC
(initials)

William A. Shaw
Prothonotary/Clerk of Courts

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

No.: 07- 558 -CD

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

NOTICE OF SERVICE

Wayne Kablack, Esquire
Simpson, Kablack & Ball
834 Philadelphia St., Suite 200
Indiana, PA 15701

Holly M. Whallen, Esquire
c/o Gorgan Graffam, P.C.
Four Gateway Center, 12th Floor
Pittsburgh, PA 15222

James A. Naddeo, Esquire
207 E. Market Street
Clearfield, PA 16830

By,

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 OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102671
NO: 07-558-CD
SERVICE # 1 OF 2
COMPLAINT

PLAINTIFF: FRANK A. LINDEMUTH, an adult indiv.; and CRYSTAL S. LINDEMUTH, his wife

vs.

DEFENDANT: STEPHEN A. STRISHOCK, JR., an adult indiv. and DANIEL PETERS, an adult ind.

SHERIFF RETURN

NOW, April 19, 2007, SHERIFF OF JEFFERSON COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON STEPHEN A. STRISHOCK JR. an adult ind..

NOW, April 26, 2007 AT 9:25 AM SERVED THE WITHIN COMPLAINT ON STEPHEN A. STRISHOCK JR. an adult ind., DEFENDANT. THE RETURN OF JEFFERSON COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED
012403
SEP 12 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102671
NO: 07-558-CD
SERVICE # 2 OF 2
COMPLAINT

PLAINTIFF: FRANK A. LINDEMUTH, an adult indiv.; and CRYSTAL S. LINDEMUTH, his wife
vs.

DEFENDANT: STEPHEN A. STRISHOCK, JR., an adult indiv. and DANIEL PETERS, an adult ind.

SHERIFF RETURN

NOW, April 25, 2007 AT 3:00 PM SERVED THE WITHIN COMPLAINT ON DANIEL PETERS, an adult ind.
DEFENDANT AT Meeting place: HARBOR INN, RTS. 53 & 322, PHILIPSBURG, CLEARFIELD COUNTY,
PENNSYLVANIA, BY HANDING TO DANIEL PETERS, DEFENDANT A TRUE AND ATTESTED COPY OF THE
ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102671
NO: 07-558-CD
SERVICES 2
COMPLAINT

PLAINTIFF: FRANK A. LINDEMUTH, an adult indiv.; and CRYSTAL S. LINDEMUTH, his wife
vs.
DEFENDANT: STEPHEN A. STRISHOCK, JR., an adult indiv. and DANIEL PETERS, an adult ind.

SHERIFF RETURN

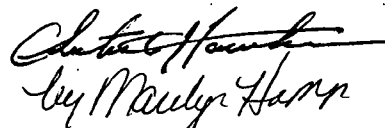
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	NOBLE	2738	20.00
SHERIFF HAWKINS	NOBLE	2738	60.07
JEFFERSON CO.	NOBLE	2739	41.34

Sworn to Before Me This

_____ Day of _____ 2007

So Answers,



Chester A. Hawkins
Sheriff

No. 07-558 C.D.

Personally appeared before me, Bill Dombrowski, Deputy for Thomas A. Demko, Sheriff of Jefferson County, Pennsylvania, who according to law deposes and says that on April 26, 2007 at 9:25 o'clock A.M. served the Notice and Complaint upon STEPHEN A. STRISHOCK, Defendant, at the address of Clay Plant Road, Brockway, Township of Snyder, County of Jefferson, State of Pennsylvania, by handing to Eugene, brother of the defendant and adult person in charge at time of service, a true copy of the Notice and Complaint and by making known to him the contents thereof.

Advance Costs Received:	\$125.00	
My Costs:	39.34	Paid
Prothy:	2.00	
Total Costs:	41.34	
REFUNDED:	\$ 83.69	

Sworn and subscribed

to before me this

day of

By

My Commission Expires the
1st Monday, January 2010

So Answers,

Bill Dombrowski Deputy

Thomas A. Demko Sheriff

JEFFERSON COUNTY, PENNSYLVANIA

FILED

SEP 12 2007

William A. Shaw
Prothonotary/Clerk of Courts

30
01

IN THE COURT OF COMMON PLEAS, 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.

No.: 07- 558 -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/3:50 um no request
SEP 20 2007 for COA of disc.
um
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 CRYSTAL S. LINDEMUTH,)
his wife,)

Plaintiff,)

v.)

No.: 07- 558 -CD

STEPHEN A. STRISHOCK, Jr., an adult)
individual, and DANIEL PETERS, an)
adult individual,)

Defendants.)

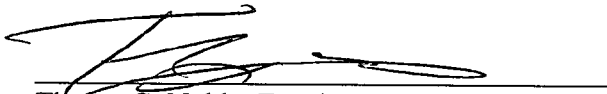
PRAECIPE TO DISCONTINUE

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 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.)	

NOTICE OF SERVICE

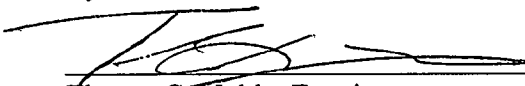
I, Theron G. Noble, Esquire, counsel for the Plaintiffs, does hereby certify that I did serve upon the Defendant Daniel Peters, in the above captioned matter, to the below identified persons, being counsel of record for Defendant Peters, and providing a true and correct copy to the others, this 19th day of September, 2007, via United States Mail, first class, postage prepaid, Plaintiffs' PRAECIPE TO DISCONTINUE, as follows:

Wayne Kablack, Esquire
Simpson, Kablack & Ball
834 Philadelphia St., Suite 200
Indiana, PA 15701

Holly M. Whallen, Esquire
c/o Gorgan Graffam, P.C.
Four Gateway Center, 12th Floor
Pittsburgh, PA 15222

James A. Naddeo, Esquire
207 E. Market Street
Clearfield, PA 16830

By,



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 OF
CLEARFIELD COUNTY, PENNSYLVANIA**

CIVIL DIVISION

**Frank A. Lindemuth
Crystal S. Lindemuth**

Vs.

No. 2007-00558-CD

**Stephen A. Strishock Jr.
Daniel Peters**

CERTIFICATE OF DISCONTINUATION

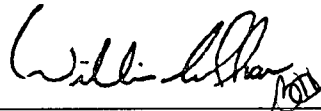
Commonwealth of PA
County of Clearfield

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 September 20, 2007, marked:

As to all defendants, Case is Settled, Ended and Forever Discontinued with Prejudice

Record costs in the sum of \$85.00 have been paid in full by Theron G. Noble, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 4th day of October A.D. 2007.

A handwritten signature in cursive script, appearing to read 'William A. Shaw', is written over a horizontal line. To the right of the signature, there is a small, circular embossed seal.

William A. Shaw, Prothonotary