

07-687-CD  
Richard Carbo et al vs Wendy's et al

Richard Carbo et al vs Wendy's  
2007-687-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

Richard Carbo and Ann Carbo, h/w

(Plaintiff)

498 Jefferson Street

(Street Address)

Plymouth Meeting, PA 19462

(City, State ZIP)

CIVIL ACTION

No.

07-487-CD

Type of Case: Fall Down

Type of Pleading: Complaint

VS.

Wendy's Old Fashioned Hamburgers

(Defendant)

Route 255 North Rd 3 - Sandy Plaza

(Street Address)

Dubois, PA 15904

(City, State ZIP)

and Wendy's Old Fashioned Hamburgers

4000 Columbus Avenue

Sandusky, Ohio 44870

Filed on Behalf of:

Richard Carbo and Ann Carbo

(Plaintiff/Defendant)

Robert S. Lucarini

(Filed by)

2101 Pine Street

Philadelphia, PA 19103

(Address)

(215) 790-9300

(Phone)



(Signature)

FILED Atty pd.  
APR 30 2007 85.00  
1CC Sheriff  
WM

William A. Shaw  
Prothonotary/Clerk of Courts

LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiff

Richard Carbo and  
Ann Carbo, his wife  
498 Jefferson Street  
Plymouth Meeting, PA 19462  
Plaintiffs  
V.

Wendy's Old Fashioned Hamburgers  
Route 255 North Road 3 – Sandy Plaza  
Dubois, PA 15904  
And  
Wendy's Old Fashioned Hamburgers  
4000 Columbus Avenue  
Sandusky, Ohio 44870  
Defendants.

: CLEARFIELD COUNTY  
: COURT OF COMMON PLEAS

: NO.  
: Jury Trial Demanded  
: Amount in controversy  
: exceeds \$50,000

## COMPLAINT – CIVIL ACTION

### NOTICE TO PLEAD

#### **"NOTICE**

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

Philadelphia Bar Association  
Lawyer Referral and Information Service  
One Reading Center  
Philadelphia, Pennsylvania 19107  
(215) 238-6333  
TTY (215) 451-6197

#### **"AVISO**

"Le han demandado a usted en la corte. Si usted quiere defendarse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días, de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Se agradece que si usted no se defiende, la corte toma<sup>r</sup>á medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Asociación De Licenciados De Filadelfia  
Servicio De Referencia E Información Legal  
One Reading Center  
Filadelfia, Pennsylvania 19107  
Teléfono: (215) 238-6333  
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LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiff

---

Richard Carbo and	:	CLEARFIELD COUNTY
Ann Carbo, his wife	:	COURT OF COMMON PLEAS
Plaintiffs	:	
V.	:	
Wendy's Old Fashioned Hamburgers	:	NO.
And	:	Jury Trial Demanded
Wendy's Old Fashioned Hamburgers	:	Amount in controversy
Defendants.	:	exceeds \$50,000
	:	

#### CIVIL ACTION

#### **COUNT I** **RICHARD CARBO V. WENDY'S OLD FASHIONED HAMBURGERS(Dubois)**

1. Plaintiff, Richard Carbo is an individual residing at 498 Jefferson Street, Plymouth Meeting, PA 19462.
2. Plaintiff, Ann Carbo is an individual residing at 498 Jefferson Street, Plymouth Meeting, PA 19462.
3. Defendant, Wendy's Old Fashioned Hamburgers, hereinafter "Wendy's Dubois" is a corporation or other business entity with a business location of Route 255 North Road 3, Sandy Plaza, Dubois, PA.

4. Defendant, Wendy's Old Fashioned Hamburgers, hereinafter "Wendy's Sandusky" is a corporation or other business entity with an office located at 4000 Columbia Avenue, Sandusky, Ohio.
5. On or about June 2, 2005, and for a long time prior thereto the defendant, "Wendy's Dubois", did own, possess and control the property and restaurant located at Route 255 North Road 3 – Sandy Plaza, Dubois, PA.
6. On or about June 2, 2005, agents, servants, workmen or employees of the defendant, "Wendy's Dubois", did negligently and carelessly cause or create a dangerous condition to exist in the men's room of said restaurant.
7. The said dangerous, slippery and hazardous condition consisted of water or other liquid on the floor of the men's rest room which the defendant's employees created or allowed to accumulate.
8. On or about said date, the plaintiff, RICHARD CARBO, was legally on the premises of the defendant, "Wendy's Dubois" as a business invitee.
9. On or about said date, the plaintiff, RICHARD CARBO, had the occasion to enter the men's room on the premises of the defendant. As he attempted to transverse the floor of the men's room he was caused to slip and fall on the dangerous, slippery and hazardous condition which was negligently and carelessly created by the employees of the defendant.
10. At all times herein, the employees of the defendant "Wendy's Dubois" were acting within the course and scope of their employment.

11. The accident was caused solely through the negligence of the defendant, "Wendy's Dubois", and in no way through any act or failure to act on the part of the plaintiff.
12. At the time of the aforesaid occurrence, the carelessness, recklessness, negligence, willfulness and wantonness of the defendant, "Wendy's Dubois", consisted of the following:
  - (a) The defendant created the said dangerous and defective condition;
  - (b) The defendant, with the exercise of reasonable care, knew or should have known of the dangerous and hazardous condition;
  - (c) The defendant failed to warn the plaintiff and others of the said dangerous and hazardous condition;
  - (d) The defendant failed to protect the plaintiff from the dangerous, hazardous and defective conditions;
  - (e) The defendant failed to take the necessary precautions or to do the necessary procedures to make said area safe for use by the plaintiff and the public in general;
  - (f) The defendant failed to inspect the said area to determine whether it was safe and not dangerous;
  - (g) The defendant failed to provide a safe place to walk; and
  - (h) Such other acts or omissions constituting negligence as may appear during the course of discovery or at the trial of this case.

13. As a result of the negligence of the defendant, "Wendy's Dubois", through its agents, servants, workmen and employees, the plaintiff, RICHARD CARBO, sustained injuries to, on about his head neck body and limbs, and more particularly he sustained bruises and contusions of his head, back, neck and shoulders; a tear of the rotator cuff of the left shoulder; a partial tear of the rotator cuff of the right shoulder; aggravation of arthritis of the cervical spine; cervical radiculopathy; bruises and contusions of the spinal cord; herniated cervical discs; aggravation of cervical stenosis; decompression of the cervical spine; together with shock and injury to her nerves and nervous system, some or all of which being permanent in nature.
14. As a result of the negligence of the defendant, "Wendy's Dubois", the plaintiff, RICHARD CARBO, suffered great pain and mental anguish, some or all of which being permanent in nature.
15. By reason of the aforesaid occurrence and resultant injuries to the plaintiff, RICHARD CARBO, he has been and/or may in the future be, forced to expend various sums of money as well as the expenditure of time for medical services, x-rays, medications, hospitalizations and other various expenses all in an effort to treat and cure himself of the injuries which he sustained as a result of the incident previously described.
16. As a result of the negligence of defendant, "Wendy's Dubois", the plaintiff was unable to perform his usual duties and occupation for an extended period of time and may be unable to perform said duties and occupation for an indefinite period of time into the future.

WHEREFORE, the plaintiff, RICHARD CARBO, demands judgment in his favor and against defendant, "Wendy's Dubois", in an amount in excess of \$50,000.00.

**COUNT II**  
**ANN CARBO V. WENDY'S OLD FASHIONED HAMBURGERS(Dubois)**

17. Plaintiff, ANN CARBO, incorporates by reference, paragraphs 1 through 16 of this complaint as if each were set forth herein at length.
18. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and/or may be compelled to expend monies for medical aid and medicines in an effort to assist her husband.
19. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and/or may be compelled to expend monies for hiring help to perform duties of the household previously performed by her husband.
20. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and will be deprived of her husband's aid, comfort, society, companionship and affection.

WHEREFORE, the plaintiff, ANN CARBO, demands judgment in her favor and against defendant, "Wendy's Dubois", in an amount in excess of \$50,000.00.

**COUNT III**  
**RICHARD CARBO V. WENDY'S OLD FASHIONED**  
**HAMBURGERS(Sandusky)**

21. Plaintiff, RICHARD CARBO, incorporates by reference, paragraphs 1 through 16 of this complaint as if each were set forth herein at length.
22. Defendant "Wendy's Sandusky" is the main office for the Wendy's restaurant identified in this complaint.

23. The employees referred to and identified in this complaint are also employees of "Wendy's Sandusky" acting within the course and scope of their employment.

24. "Wendy's Sandusky" is responsible for the injuries and damages set forth herein and is jointly and/or severally liable along with "Wendy's Dubois" for the injuries and damages which have been incorporated herein.

WHEREFORE, the plaintiff, RICHARD CARBO, demands judgment in his favor and against defendant, "Wendy's Sandusky", in an amount in excess of \$50,000.00.

**COUNT IV**  
**ANN CARBO V. WENDY'S OLD FASHIONED**  
**HAMBURGERS(Sandusky)**

25. Plaintiff, ANN CARBO, incorporates by reference, paragraphs 1 through 16 and 22 and 23 of this complaint as if each were set forth herein at length.

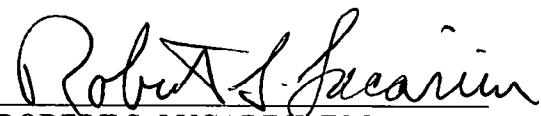
26. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and/or may be compelled to expend monies for medical aid and medicines in an effort to assist her husband.

27. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and/or may be compelled to expend monies for hiring help to perform duties of the household previously performed by her husband.

28. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and will be deprived of her husband's aid, comfort, society, companionship and affection.

WHEREFORE, the plaintiff, ANN CARBO, demands judgment in her favor and against defendant, "Wendy's Sandusky", in an amount in excess of \$50,000.00.

LUCARINI & LUCARINI

BY:   
ROBERT S. LUCARINI, ESQUIRE

## VERIFICATION

I, ROBERT S. LUCARINI, ESQUIRE, verify that I am counsel for the plaintiffs, Richard Carbo and Ann Carbo; that I am authorized to make this affidavit on behalf of said plaintiff(s); that the facts set forth in this Complaint are true and correct to the best of my knowledge, information and belief; and that this verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

DATED: April 27, 2007

  
Robert S. Lucarini  
ROBERT S. LUCARINI, ESQUIRE

GEKOSKI & BOGDANOFF, P.C.  
BY: Charles Jay Bogdanoff, Esquire  
Attorney ID 02657  
42 South Fifteenth Street, Suite 1414  
Philadelphia, PA 19102  
215-563-2511

Attorney for Defendant Wendy's Old  
Fashioned Hamburgers (Dubois) and  
Wendy's Old Fashioned Hamburgers  
(Sandusky)

RICHARD CARBO and ANN CARBO, his  
wife

Plaintiffs

v.

WENDY'S OLD FASHIONED  
HAMBURGERS (Dubois)  
and  
WENDY'S OLD FASHIONED  
HAMBURGERS (Sandusky)

Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

No. 07-687-CD

FILED NOCC  
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JUN 04 2007  
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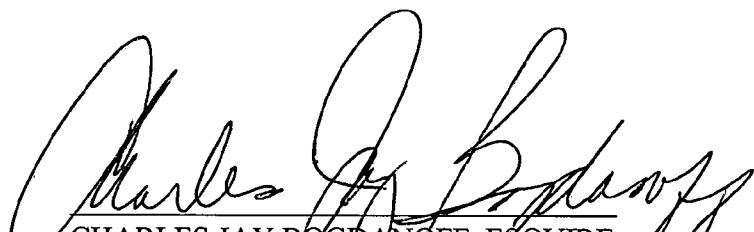
William A. Shaw  
Prothonotary/Clerk of Courts

**ENTRY OF APPEARANCE**

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of Defendants' Wendy's Old Fashioned  
Hamburgers (Dubois) and Wendy's Old Fashioned Hamburgers (Sandusky) only in the above-  
captioned matter.

Date: 5/31/07



CHARLES JAY BOGDANOFF, ESQUIRE  
Attorney for Defendants  
Wendy's Old Fashioned Hamburgers (Dubois) and  
Wendy's Old Fashioned Hamburgers (Sandusky)

GEKOSKI & BOGDANOFF, P.C.  
BY: Charles Jay Bogdanoff, Esquire  
Attorney ID 02657  
42 South Fifteenth Street, Suite 1414  
Philadelphia, PA 19102  
215-563-2511

Attorney for Defendant Wendy's Old  
Fashioned Hamburgers (Dubois) and  
Wendy's Old Fashioned Hamburgers  
(Sandusky)

RICHARD CARBO and ANN CARBO, his  
wife

Plaintiffs

v.

WENDY'S OLD FASHIONED  
HAMBURGERS (Dubois)  
and  
WENDY'S OLD FASHIONED  
HAMBURGERS (Sandusky)

Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

No. 07-687-CD

FILED NO CC  
M 10:34 AM  
JUN 04 2007  
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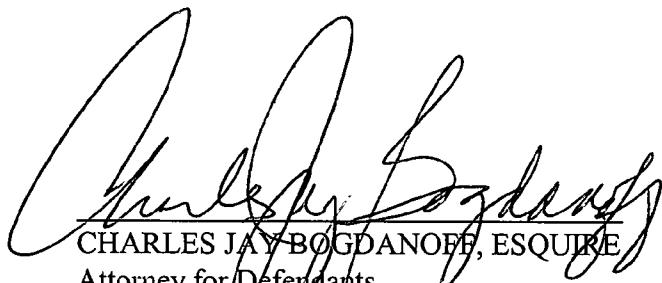
William A. Shaw  
Prothonotary/Clerk of Courts

**JURY DEMAND**

TO THE PROTHONOTARY:

Kindly enter a demand for a jury on behalf of Defendants' Wendy's Old Fashioned  
Hamburgers (Dubois) and Wendy's Old Fashioned Hamburgers (Sandusky) only in the above-  
captioned matter.

Date: 5-31-07

  
CHARLES JAY BOGDANOFF, ESQUIRE  
Attorney for Defendants  
Wendy's Old Fashioned Hamburgers (Dubois) and  
Wendy's Old Fashioned Hamburgers (Sandusky)

GEKOSKI & BOGDANOFF, P.C.  
BY: Charles Jay Bogdanoff, Esquire  
Attorney ID 02657  
42 South Fifteenth Street, Suite 1414  
Philadelphia, PA 19102  
215-563-2511

Attorney for Defendant Wendy's Old Fashioned Hamburgers (Dubois) and Wendy's Old Fashioned Hamburgers (Sandusky)

RICHARD CARBO and ANN CARBO, his wife

## Plaintiffs

1

WENDY'S OLD FASHIONED  
HAMBURGERS (Dubois)  
and  
WENDY'S OLD FASHIONED  
HAMBURGERS (Sandusky)

## Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

No. 07-687-CD

## **ORDER**

day of

, 2007, upon consideration

of the Preliminary Objections of the Defendants to the Plaintiffs' Complaint, and any response thereto, it is hereby

ORDERED and DECREED that Paragraphs 12(d), 12(e), 12(g) and 12(h) of the

Plaintiffs' Complaint are Dismissed.. Furthermore, the Plaintiffs are ordered to file and serve a verification to the Plaintiffs' Complaint within twenty (20) days of the date of this Order. The time for the Defendants to answer the Plaintiffs' Complaint shall not begin to run until the Defendants have been served with Plaintiffs' verification of their Complaint.

BY THE COURT

---

J.

GEKOSKI & BOGDANOFF, P.C.  
BY: Charles Jay Bogdanoff, Esquire  
Attorney ID 02657  
42 South Fifteenth Street, Suite 1414  
Philadelphia, PA 19102  
215-563-2511

Attorney for Defendant Wendy's Old Fashioned Hamburgers (Dubois) and Wendy's Old Fashioned Hamburgers (Sandusky)

RICHARD CARBO and ANN CARBO, his wife

## Plaintiffs

1

WENDY'S OLD FASHIONED  
HAMBURGERS (Dubois)  
and  
WENDY'S OLD FASHIONED  
HAMBURGERS (Sandusky)

## Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

No. 07-687-CD

## **ORDER**

day of

, 2007, upon consideration

of the Preliminary Objections of the Defendants to the Plaintiffs' Complaint, and any response thereto, it is hereby

ORDERED and DECREED that Paragraphs 12(d), 12(e), 12(g) and 12(h) of the Plaintiffs' Complaint are Stricken. The Plaintiffs are Ordered to file a More Specific Complaint within twenty (20) days, which alleges in the factual manner required by Pa. R.C.P. 1019(a) all

conduct, including omissions, of the Objecting Defendants constituting carelessness, recklessness, negligence, willfulness and/or wantonness which the Plaintiffs will attempt to prove during this litigation. Furthermore, the Plaintiffs are ordered to file and serve a verification by the Plaintiffs to the Plaintiffs' More Specific Complaint.

BY THE COURT

---

J.

10:30 AM  
JUN 04 2007  
FILED  
GK

William A. Shaw  
Prothonotary/Clerk of Courts

GEKOSKI & BOGDANOFF, P.C.  
BY: Charles Jay Bogdanoff, Esquire  
Attorney ID 02657  
42 South Fifteenth Street, Suite 1414  
Philadelphia, PA 19102  
215-563-2511

Attorney for Defendant Wendy's Old  
Fashioned Hamburgers (Dubois) and  
Defendant Wendy's Old Fashioned  
Hamburger

RICHARD CARBO and ANN CARBO, his  
wife

Plaintiffs

v.

WENDY'S OLD FASHIONED  
HAMBURGERS (Dubois)  
and  
WENDY'S OLD FASHIONED  
HAMBURGERS (Sandusky)

Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

No. 07-687-CD

**PRELIMINARY OBJECTIONS OF DEFENDANTS TO THE PLAINTIFFS'**  
**COMPLAINT**

Defendants, sometimes hereinafter called the Objecting Defendant, hereby Preliminarily  
Object to the Plaintiffs' Complaint as follows:

**I. FAILURE OF PLAINTIFFS' COMPLAINT TO CONFORM TO LAW OR RULE OF COURT AND/OR INCLUSION OF SCANDALOUS AND/OR IMPERTINENT MATERIALS (MOTION TO STRIKE PLAINTIFFS' COMPLAINT)**

**A. The Plaintiffs' Complaint Contains Overly General Allegations of Carelessness, Recklessness, Negligence, Willfulness and Wanton Conduct**

1. Plaintiffs Richard and Ann Carbo have filed a Complaint, a copy of which is attached hereto marked as Exhibit A, without adopting any of the allegations thereof.

2. The Plaintiffs' Complaint names two defendants, but gives both of them the same name - Wendy's Old Fashioned Hamburgers.

3. The Plaintiffs' Complaint alleges that Plaintiff Richard Carbo was on the premises of Wendy's Dubois when he fell on the floor as the result of the presence of water or another liquid on the floor of the men's room.

4. In their Complaint, the Plaintiffs alleged that the fall resulted from the carelessness, recklessness, negligence, willfulness and wantoness of Defendant Wendy's Dubois (i.e., the Objecting Defendant, Wendy's Old Fashioned Hamburgers (Dubois))(Paragraph 12 of the Plaintiffs' Complaint).

5. The subparagraphs of Paragraph 12 of the Plaintiffs' Complaint are said by the Plaintiffs to contain the list of conduct of the Objecting Defendant which was careless, reckless, negligence, wilfulness and wantoness.

6. Pennsylvania Rule of Civil Procedure 1019(a) requires the Plaintiffs to plead in a factual manner all of the material facts which form the basis of their cause or causes of action.

7. The conduct of a defendant which constitutes carelessness, recklessness, negligence, willfulness and/or wantonness is a material fact which Pa. R.C.P. 1019(a) requires to be pled.

8. Some of those specific items of conduct alleged in Paragraph 12 of the Plaintiffs'

Complaint violate Pa. R.C.P. 1019(a) or are impertinent repetitions of other items.

9. In Paragraph 12(d) of the Plaintiffs' Complaint, the Plaintiffs alleged that Defendant Wendy's Dubois was careless, reckless, negligent, willful and wanton in that

(d) The defendant failed to protect the plaintiff from the dangerous, hazardous and defective conditions

10. In other portions of Paragraph 12, the Plaintiffs' have alleged that the Objecting Defendant failed to warn (12(b)), failed to inspect (12(f)) and created the condition.(12(a)).

11. Paragraph 12(d) of the Plaintiffs' Complaint is ambiguous because it does not identify in the factual manner required by Pa. R.C.P. 1019(a) any alleged conduct of the Objecting Defendant other than failing to inspect, failure to warn and creating the condition

12. Paragraph 12(d) of the Plaintiffs' Complaint violates Pa. R.C.P. 1019(a) because it fails to allege conduct in a factual manner and therefore should be stricken.

13. In the alternative, or in addition thereto, Paragraph 12(d) of the Plaintiffs' Complaint is impertinent surplusage, because it does not allege any specific conduct in addition to the conduct alleged more specifically elsewhere in Paragraph 12 and therefore should be stricken.

14. In Paragraph 12(e) of the Plaintiffs' Complaint, the Plaintiffs alleged that Defendant Wendy's Dubois was careless, reckless, negligent, willful and wanton in that

(e) The defendant failed to take the necessary precautions or to do the necessary procedures to make said area safe for use by the plaintiff and the public in general.

15. Paragraph 12(d) of the Plaintiffs' Complaint is ambiguous because it does not identify in the factual manner required by Pa. R.C.P. 1019(a) any alleged specific conduct of the Objecting Defendant. It does not allege what precautions should have been taken or what procedures should have been followed, even in a general manner.

16. Paragraph 12(d) of the Plaintiffs' Complaint violates Pa. R.C.P. 1019(a) by failing to

allege the conduct of the Objecting Defendant in a factual manner and therefore should be stricken.

17. In the alternative, or in addition thereto, Paragraph 12(d) of the Plaintiffs' Complaint is merely a repetition of other more specific allegations contained elsewhere in Paragraph 12 of the Plaintiffs' Complaint and should therefore be stricken.

18. In Paragraph 12(g) of the Plaintiffs' Complaint, the Plaintiffs alleged that Defendant Wendy's Dubois was careless, reckless, negligent, willful and wanton in that

(g) The defendant failed to provide a safe place to walk

19. Paragraph 12(g) of the Plaintiffs' Complaint violates Pa..R.C.P. 1019(a) because it merely alleges a breach of a duty of care and does not itself allege any conduct beyond that pled elsewhere in the Plaintiffs' Complaint and beyond that pled in other portions of Paragraph 12 of the Plaintiffs' Complaint. It should therefore be stricken either as a violation of Pa. R.C.P. 1019(a) or as impertinent surplusage.

20. In Paragraph 12(h) of the Plaintiffs' Complaint, the Plaintiffs alleged that Defendant Wendy's Dubois was careless, reckless, negligent, willful and wanton consisted of

(h) Such other acts or omissions constituting negligence as may appear during the course of discovery or at the trial of this case.

21. Paragraph 12(h) of the Plaintiffs' Complaint violates Pa. R.C.P. 1019(a) because it does not allege any conduct in a factual manner and states an explicit intent to attempt to prove conduct and omissions which are not pled in the Plaintiffs' Complaint.

22. Counts Three and Four of the Plaintiffs' Complaint are directed against a Defendant called Wendy's Old Fashioned Hamburgers (Sandusky) which is alleged to be the "main office" of the Wendy's restaurant which is the subject of this action.

23. The Plaintiffs have incorporated the allegations of Paragraph 12 into Counts Three and Four of the Plaintiffs' Complaint.

24. To the extent that Paragraphs 12(d), 12(e), 12(g) and 12(h) of the Plaintiffs' Complaint were intended to allege conduct constituting carelessness, recklessness, negligence, willfulness and/or wantonness beyond that pled in a factual manner in other portions of the Plaintiffs' Complaint, these paragraphs violate Pa. R.C.P. 1019(a) and should be stricken.

25. To the extent that Paragraphs 12(d), 12(e), 12(g) and 12(h) of the Plaintiffs' Complaint were not intended to allege conduct constituting carelessness, recklessness, negligence, willfulness and/or wantonness beyond that pled in a factual manner in other portions of the Plaintiffs' Complaint, they are impertinent surplusage and should be stricken.

WHEREFORE the Defendants respectfully pray the Court to strike Paragraphs 12(d), 12(e), 12(g) and 12(h) of the Plaintiffs' Complaint. The Defendants also request such other and further relief as may be appropriate under the circumstances.

**B. The Plaintiffs' Complaint Was Not Verified by the Plaintiffs**

26. Paragraphs 1 through 25 of these Preliminary Objections are incorporated herein by reference as fully as though here set forth at length.

27. Pennsylvania Rule of Civil Procedure 1024 required that the Plaintiffs' Complaint be verified by one or more of the parties filing the pleading.

28. The Plaintiffs' Complaint was not verified by any of the Plaintiffs' Complaint.

29. The Plaintiffs' Complaint was verified by counsel for the Plaintiffs.

30. The Plaintiffs should be ordered to comply with Pa. R.C.P. 1024 by verifying the Plaintiffs' Complaint.

WHEREFORE the Defendants pray the Court to Order the Plaintiffs to file and serve a

verification to the Plaintiffs' Complaint, signed and verified by one or more of the Plaintiffs, within twenty (20) days of the Court's Order. The Defendants also request such other and further relief as may be appropriate under the circumstances.

## **II.     LEGAL INSUFFICIENCY OF PLAINTIFF'S COMPLAINT (DEMURRER)**

31. Paragraphs 1 through 30 of these Preliminary Objections are incorporated herein by reference as fully as though here set forth at length.

32. Paragraphs 12(d), 12(e), 12(g) and 12(h) of the Plaintiffs' Complaint do not state a cause of action nor do they contribute towards stating a cause of action against the Objecting Defendants.

WHEREFORE the Defendants respectfully pray the Court to dismiss Paragraphs 12(d), 12(e), 12(g) and 12(h) of the Plaintiffs' Complaint. The Defendants also request such other and further relief as may be appropriate under the circumstances.

## **III.    INSUFFICIENT SPECIFICITY IN PLAINTIFFS' COMPLAINT (MOTION FOR A MORE SPECIFIC COMPLAINT)**

33. Paragraphs 1 through 32 of these Preliminary Objections are incorporated herein by reference as fully as though here set forth at length.

34. Paragraphs 12(d), 12(e), 12(g) and 12(h) of the Plaintiffs' Complaint fail to provide the Objecting Defendants with sufficient information to formulate a meaningful answer because they do not alleged conduct of the Objecting Defendants in the factual manner required by Pa. R.C.P. 1019(a).

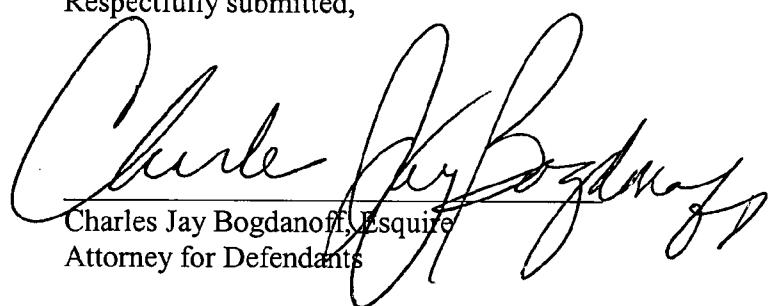
35. In the alternative to merely striking the improper subparagraphs of Paragraph 12 of

the Plaintiffs' Complaint, the Court has the authority to couple such an Order with a direction to the Plaintiffs to file and serve a more specific complaint, which alleges in the factual manner required by Pa. R.C.P. 1019(a) all conduct, including omissions, of the Objecting Defendants constituting carelessness, recklessness, negligence, willfulness and/or wantonness which the Plaintiffs will attempt to prove during this litigation.

WHEREFORE the Defendant respectfully pray the Court to strike Paragraphs 12(d), 12(e), 12(g) and 12(h) of the Plaintiffs' Complaint and to Order the Plaintiffs to file and serve a More Specific Complaint within twenty(20) days of the Order of the Court, which alleges in the factual manner required by Pa. R.C.P. 1019(a) all conduct, including omissions, of the Objecting Defendants constituting carelessness, recklessness, negligence, willfulness and/or wantonness which the Plaintiffs will attempt to prove during this litigation. The Objecting Defendants also requests such other and further relief as may be appropriate under the circumstances.

Respectfully submitted,

Charles Jay Bogdanoff, Esquire  
Attorney for Defendants

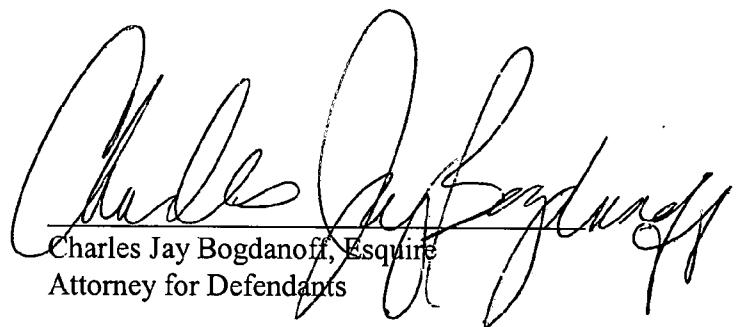
A handwritten signature in black ink, appearing to read "Charles Jay Bogdanoff".

**VERIFICATION**

I, Charles Jay Bogdanoff, Esquire, do hereby verify that I am the attorney for Defendants that I am authorized to take this verification on their behalf and that the facts set forth in the foregoing Preliminary Objections are true and correct to the best of my information, knowledge and belief. I understand that any false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date

5.31.07

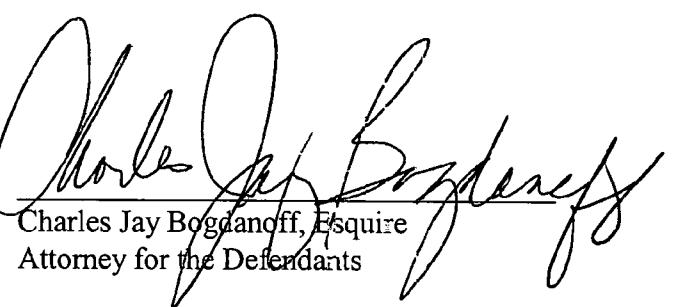


Charles Jay Bogdanoff, Esquire  
Attorney for Defendants

**CERTIFICATION OF SERVICE**

I, Charles Jay Bogdanoff, Esquire, do hereby certify that I did serve the Defendants' Preliminary Objections to the Plaintiffs' Complaint by mailing a true and correct copy thereof by First Class Mail, Postage Prepaid, on May 31, 2007, addressed to Plaintiffs' Counsel as follows:

Robert S. Lucarini, Esquire  
Lucarini and Lucarini  
2101 Pine Street  
Philadelphia, PA 19103



Charles Jay Bogdanoff, Esquire  
Attorney for the Defendants

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

Richard Carbo and Ann Carbo, h/w

(Plaintiff)

498 Jefferson Street

(Street Address)

Plymouth Meeting, PA 19462

(City, State ZIP)

CIVIL ACTION

No. 07-687-CD

Type of Case: Fall Down

Type of Pleading: Complaint

vs.

Filed on Behalf of:

Richard Carbo and Ann Carbo

(Plaintiff/Defendant)

(Defendant)

Route 255 North Rd 3 - Sandy Plaza

(Street Address)

Dubois, PA 15904

(City, State ZIP)

and Wendy's Old Fashioned Hamburgers

4000 Columbus Avenue

Sandusky, Ohio 44870

Robert S. Lucarini

(Filed by)

2101 Pine Street

Philadelphia, PA 19103

(Address)

(215) 790-9300

(Phone)



(Signature)



LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiff

Richard Carbo and  
Ann Carbo, his wife  
498 Jefferson Street  
Plymouth Meeting, PA 19462  
Plaintiffs  
v.

: CLEARFIELD COUNTY  
: COURT OF COMMON PLEAS

Wendy's Old Fashioned Hamburgers  
Route 255 North Road 3 - Sandy Plaza  
Dubois, PA 15904  
And  
Wendy's Old Fashioned Hamburgers  
4000 Columbus Avenue  
Sandusky, Ohio 44870  
Defendants.

: NO.  
: Jury Trial Demanded  
: Amount in controversy  
: exceeds \$50,000

(Corporate)

### COMPLAINT - CIVIL ACTION

### NOTICE TO PLEAD

#### "NOTICE

"You have been sued in court. If you wish to defend against the claims set forth in the following paper, you must take action within twenty (20) days after this complaint and notice are served, by sending a written answer personally or by attorney and being in writing with the court. Your defense or objection is the defendant's last defense against you. You are warned that if you fail to do so, the court may proceed without you and a judgment may be entered against you by the court without further notice for any claim claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

Philadelphia Bar Association  
Lawyer Referral and Information Service  
One Reading Center  
Philadelphia, Pennsylvania 19107  
(215) 238-6333  
TTY (215) 451-6197

#### "AVISO

"Le han demandado en el caso. Si usted quiere defenderse de estos demandados acuñados en los documentos que se le han servido (20) días. Debe enviar el escrito de la demanda y la contestación. Mande la demanda y la contestación escrita a un abogado y entregarla a la corte en forma escrita (en persona) o con un abogado y entregarla a la corte en forma escrita (en persona) o con su abogado o al demandado en contra de su demandado. Si no cumple con lo establecido en la demanda, la corte (poder judicial) puede constituir la demanda en contra de su demandado o demandante. Además, la corte puede dictar la sentencia que el demandado cumpla con todas las provisiones de esta demanda. Usted puede pagar el abogado o sus propios abogados importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA A UN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Asociación De Licenciados De Filadelfia  
Servicio De Referencia E Información Legal  
One Reading Center  
Filadelfia, Pennsylvania 19107  
Teléfono: (215) 238-6333  
TTY (215) 451-6197

LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiff

Richard Carbo and Ann Carbo, his wife Plaintiffs V.	:	CLEARFIELD COUNTY COURT OF COMMON PLEAS
Wendy's Old Fashioned Hamburgers And Wendy's Old Fashioned Hamburgers Defendants.	:	NO. Jury Trial Demanded Amount in controversy exceeds \$50,000

CIVIL ACTION

COUNT I

RICHARD CARBO V. WENDY'S OLD FASHIONED HAMBURGERS(Dubois)

1. Plaintiff, Richard Carbo is an individual residing at 498 Jefferson Street,  
Plymouth Meeting, PA 19462.
2. Plaintiff, Ann Carbo is an individual residing at 498 Jefferson Street,  
Plymouth Meeting, PA 19462.
3. Defendant, Wendy's Old Fashioned Hamburgers, hereinafter "Wendy's  
Dubois" is a corporation or other business entity with a business location of  
Route 255 North Road 3, Sandy Plaza, Dubois, PA.

4. Defendant, Wendy's Old Fashioned Hamburgers, hereinafter "Wendy's Sandusky" is a corporation or other business entity with an office located at 4000 Columbia Avenue, Sandusky, Ohio.
5. On or about June 2, 2005, and for a long time prior thereto the defendant, "Wendy's Dubois", did own, possess and control the property and restaurant located at Route 255 North Road 3 - Sandy Plaza, Dubois, PA.
6. On or about June 2, 2005, agents, servants, workmen or employees of the defendant, "Wendy's Dubois", did negligently and carelessly cause or create a dangerous condition to exist in the men's room of said restaurant.
7. The said dangerous, slippery and hazardous condition consisted of water or other liquid on the floor of the men's rest room which the defendant's employees created or allowed to accumulate.
8. On or about said date, the plaintiff, RICHARD CARBO, was legally on the premises of the defendant, "Wendy's Dubois" as a business invitee.
9. On or about said date, the plaintiff, RICHARD CARBO, had the occasion to enter the men's room on the premises of the defendant. As he attempted to transverse the floor of the men's room he was caused to slip and fall on the dangerous, slippery and hazardous condition which was negligently and carelessly created by the employees of the defendant.
10. At all times herein, the employees of the defendant "Wendy's Dubois" were acting within the course and scope of their employment.

11. The accident was caused solely through the negligence of the defendant, "Wendy's Dubois", and in no way through any act or failure to act on the part of the plaintiff.
12. At the time of the aforesaid occurrence, the carelessness, recklessness, negligence, willfulness and wantonness of the defendant, "Wendy's Dubois", consisted of the following:
  - (a) The defendant created the said dangerous and defective condition;
  - (b) The defendant, with the exercise of reasonable care, knew or should have known of the dangerous and hazardous condition;
  - (c) The defendant failed to warn the plaintiff and others of the said dangerous and hazardous condition;
  - (d) The defendant failed to protect the plaintiff from the dangerous, hazardous and defective conditions;
  - (e) The defendant failed to take the necessary precautions or to do the necessary procedures to make said area safe for use by the plaintiff and the public in general;
  - (f) The defendant failed to inspect the said area to determine whether it was safe and not dangerous;
  - (g) The defendant failed to provide a safe place to walk; and
  - (h) Such other acts or omissions constituting negligence as may appear during the course of discovery or at the trial of this case.

13. As a result of the negligence of the defendant, "Wendy's Dubois", through its agents, servants, workmen and employees, the plaintiff, RICHARD CARBO, sustained injuries to, on about his head neck body and limbs, and more particularly he sustained bruises and contusions of his head, back, neck and shoulders; a tear of the rotator cuff of the left shoulder; a partial tear of the rotator cuff of the right shoulder; aggravation of arthritis of the cervical spine; cervical radiculopathy; bruises and contusions of the spinal cord; herniated cervical discs; aggravation of cervical stenosis; decompression of the cervical spine; together with shock and injury to her nerves and nervous system, some or all of which being permanent in nature.

14. As a result of the negligence of the defendant, "Wendy's Dubois", the plaintiff, RICHARD CARBO, suffered great pain and mental anguish, some or all of which being permanent in nature.

15. By reason of the aforesaid occurrence and resultant injuries to the plaintiff, RICHARD CARBO, he has been and/or may in the future be, forced to expend various sums of money as well as the expenditure of time for medical services, x-rays, medications, hospitalizations and other various expenses all in an effort to treat and cure himself of the injuries which he sustained as a result of the incident previously described.

16. As a result of the negligence of defendant, "Wendy's Dubois", the plaintiff was unable to perform his usual duties and occupation for an extended period of time and may be unable to perform said duties and occupation for an indefinite period of time into the future.

WHEREFORE, the plaintiff, RICHARD CARBO, demands judgment in his favor and against defendant, "Wendy's Dubois", in an amount in excess of \$50,000.00.

COUNT II

ANN CARBO V. WENDY'S OLD FASHIONED HAMBURGERS(Dubois)

17. Plaintiff, ANN CARBO, incorporates by reference, paragraphs 1 through 16 of this complaint as if each were set forth herein at length.
18. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and/or may be compelled to expend monies for medical aid and medicines in an effort to assist her husband.
19. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and/or may be compelled to expend monies for hiring help to perform duties of the household previously performed by her husband.
20. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and will be deprived of her husband's aid, comfort, society, companionship and affection.

WHEREFORE, the plaintiff, ANN CARBO, demands judgment in her favor and against defendant, "Wendy's Dubois", in an amount in excess of \$50,000.00.

COUNT III

RICHARD CARBO V. WENDY'S OLD FASHIONED  
HAMBURGERS(Sandusky)

21. Plaintiff, RICHARD CARBO, incorporates by reference, paragraphs 1 through 16 of this complaint as if each were set forth herein at length.
22. Defendant "Wendy's Sandusky" is the main office for the Wendy's restaurant identified in this complaint.

23. The employees referred to and identified in this complaint are also employees of "Wendy's Sandusky" acting within the course and scope of their employment.

24. "Wendy's Sandusky" is responsible for the injuries and damages set forth herein and is jointly and/or severally liable along with "Wendy's Dubois" for the injuries and damages which have been incorporated herein.

WHEREFORE, the plaintiff, RICHARD CARBO, demands judgment in his favor and against defendant, "Wendy's Sandusky", in an amount in excess of \$50,000.00.

COUNT IV  
ANN CARBO V. WENDY'S OLD FASHIONED  
HAMBURGERS(Sandusky)

25. Plaintiff, ANN CARBO, incorporates by reference, paragraphs 1 through 16 and 22 and 23 of this complaint as if each were set forth herein at length.

26. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and/or may be compelled to expend monies for medical aid and medicines in an effort to assist her husband.

27. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and/or may be compelled to expand monies for hiring help to perform duties of the household previously performed by her husband.

28. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and will be deprived of her husband's aid, comfort, society, companionship and affection.

WHEREFORE, the plaintiff, ANN CARBO, demands judgment in her favor and against defendant, "Wendy's Sandusky", in an amount in excess of \$50,000.00.

LUCARINI & LUCARINI

BY: Robert S. Lucarini  
ROBERT S. LUCARINI, ESQUIRE

VERIFICATION

I, ROBERT S. LUCARINI, ESQUIRE, verify that I am counsel for the plaintiffs, Richard Carbo and Ann Carbo; that I am authorized to make this affidavit on behalf of said plaintiff(s); that the facts set forth in this Complaint are true and correct to the best of my knowledge, information and belief; and that this verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

DATED: April 27, 2007

Robert S. Lucarini  
ROBERT S. LUCARINI, ESQUIRE

**FILED**

**JUN 04 2007**

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

**FILED**

LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiff

JUN 08 2007  
M 10:20 AM  
William A. Shaw  
Prothonotary/Clerk of Courts  
I VEN to Attn  
CK

Richard Carbo and : CLEARFIELD COUNTY  
Ann Carbo, his wife : COURT OF COMMON PLEAS  
Plaintiffs :  
V. :  
Wendy's Old Fashioned Hamburgers : NO. 07-687-CD  
And :  
Wendy's Old Fashioned Hamburgers :  
Defendants. :  
:

**PRAECIPE TO SUBSITUTE ATTORNEY'S VERIFICATION**

TO THE PROTHONOTARY:

Kindly substitute the attached verifications for the attorney's verification attached to the complaint in the above matter.

LUCARINI & LUCARINI

BY: Robert S. Lucarini  
ROBERT S. LUCARINI, ESQUIRE

LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiff

Richard Carbo and	:	CLEARFIELD COUNTY
Ann Carbo, his wife	:	COURT OF COMMON PLEAS
Plaintiffs	:	
V.	:	
Wendy's Old Fashioned Hamburgers	:	NO. 07-687-CD
And	:	
Wendy's Old Fashioned Hamburgers	:	
Defendants.	:	

#### VERIFICATION

I, RICHARD CARBO, verify that I am the plaintiff in the above matter; that the facts set forth in this Complaint are true and correct to the best of my knowledge, information and belief; and that this verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

DATED:

6/5/07

*Richard Carbo*  
RICHARD CARBO

LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiff

Richard Carbo and	:	CLEARFIELD COUNTY
Ann Carbo, his wife	:	COURT OF COMMON PLEAS
Plaintiffs	:	
V.	:	
Wendy's Old Fashioned Hamburgers	:	NO. 07-687-CD
And	:	
Wendy's Old Fashioned Hamburgers	:	
Defendants.	:	

### **VERIFICATION**

I, ANN CARBO, verify that I am the plaintiff in the above matter; that the facts set forth in this Complaint are true and correct to the best of my knowledge, information and belief; and that this verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

DATED:

6-5-07

Ann Carbo  
ANN CARBO

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

RICHARD CARBO and ANN CARBO, his wife,  
Plaintiffs

vs.

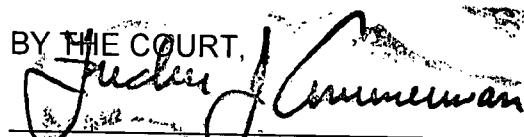
WENDY'S OLD FASHIONED HAMBURGERS (DuBois) and  
WENDY'S OLD FASHIONED HAMBURGERS (Sandusky),  
Defendants

\*  
\*  
\* NO. 07-687-CD  
\*  
\*  
\*

ORDER

NOW, this 13<sup>th</sup> day of June, 2007, it is the ORDER of this Court that argument  
on the Defendants' Preliminary Objections to Plaintiffs' Complaint be and is hereby  
scheduled for the 9<sup>th</sup> day of July, 2007 at 2:00 P.m. in Courtroom No. 1 of the  
Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

FILED *cc Atty's:*  
0/2:30 pm *R. Lucarini*  
JUN 13 2007 *C. Bogdanoff*

William A. Shaw  
Prothonotary/Clerk of Courts

(6)

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

LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiff

Richard Carbo and : CLEARFIELD COUNTY  
Ann Carbo, his wife : COURT OF COMMON PLEAS  
Plaintiffs :  
V. :  
Wendy's Old Fashioned Hamburgers : NO. 07-687-CD  
And :  
Wendy's Old Fashioned Hamburgers :  
Defendants. :  
:

**PRAECIPE TO FILE AMENDED COMPLAINT**

TO THE PROTHONOTARY:

Kindly file the attached Amended Complaint regarding the above matter.

LUCARINI & LUCARINI

BY:   
ROBERT S. LUCARINI, ESQUIRE

**FILED**

JUN 18 2007

4/10:30(0) (GK)  
William A. Shaw  
Prothonotary/Clerk of Courts

I went to Party

LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiff

---

Richard Carbo and	:	CLEARFIELD COUNTY
Ann Carbo, his wife	:	COURT OF COMMON PLEAS
498 Jefferson Street	:	
Plymouth Meeting, PA 19462	:	
Plaintiffs	:	
V.	:	
Wendy's Old Fashioned Hamburgers	:	NO. 07-687-CD
Route 255 North Road 3 – Sandy Plaza	:	Jury Trial Demanded
Dubois, PA 15904	:	Amount in controversy
And	:	exceeds \$50,000
Wendy's Old Fashioned Hamburgers	:	
4000 Columbus Avenue	:	
Sandusky, Ohio 44870	:	
Defendants.	:	

**AMENDED COMPLAINT – CIVIL ACTION**

**NOTICE TO PLEAD**

TO: Wendy's Old Fashioned Hamburgers (Dubois and Sandusky)

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

LUCARINI & LUCARINI

BY:   
ROBERT S. LUCARINI, ESQUIRE

LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiff

---

Richard Carbo and Ann Carbo, his wife	:	CLEARFIELD COUNTY
Plaintiffs	:	COURT OF COMMON PLEAS
V.	:	
Wendy's Old Fashioned Hamburgers	:	NO. 07-687-CD
And	:	Jury Trial Demanded
Wendy's Old Fashioned Hamburgers	:	Amount in controversy
Defendants.	:	exceeds \$50,000
	:	

#### CIVIL ACTION

#### COUNT I

#### **RICHARD CARBO V. WENDY'S OLD FASHIONED HAMBURGERS(Dubois)**

1. Plaintiff, Richard Carbo is an individual residing at 498 Jefferson Street, Plymouth Meeting, PA 19462.
2. Plaintiff, Ann Carbo is an individual residing at 498 Jefferson Street, Plymouth Meeting, PA 19462.
3. Defendant, Wendy's Old Fashioned Hamburgers, hereinafter "Wendy's Dubois" is a corporation or other business entity with a business location of Route 255 North Road 3, Sandy Plaza, Dubois, PA.

4. Defendant, Wendy's Old Fashioned Hamburgers, hereinafter "Wendy's Sandusky" is a corporation or other business entity with an office located at 4000 Columbia Avenue, Sandusky, Ohio.
5. On or about June 2, 2005, and for a long time prior thereto the defendant, "Wendy's Dubois", did own, possess and control the property and restaurant located at Route 255 North Road 3 – Sandy Plaza, Dubois, PA.
6. On or about June 2, 2005, agents, servants, workmen or employees of the defendant, "Wendy's Dubois", did negligently and carelessly cause or create a dangerous condition to exist in the men's room of said restaurant.
7. The said dangerous, slippery and hazardous condition consisted of water or other liquid on the floor of the men's rest room which the defendant's employees created or allowed to accumulate.
8. On or about said date, the plaintiff, RICHARD CARBO, was legally on the premises of the defendant, "Wendy's Dubois" as a business invitee.
9. On or about said date, the plaintiff, RICHARD CARBO, had the occasion to enter the men's room on the premises of the defendant. As he attempted to transverse the floor of the men's room he was caused to slip and fall on the dangerous, slippery and hazardous condition which was negligently and carelessly created by the employees of the defendant.
10. At all times herein, the employees of the defendant "Wendy's Dubois" were acting within the course and scope of their employment.

11. The accident was caused solely through the negligence of the defendant, "Wendy's Dubois", and in no way through any act or failure to act on the part of the plaintiff.
12. At the time of the aforesaid occurrence, the carelessness, recklessness, negligence, willfulness and wantonness of the defendant, "Wendy's Dubois", consisted of the following:
  - (a) The defendant created the said dangerous and defective condition;
  - (b) The defendant, with the exercise of reasonable care, knew our should have known of the dangerous and hazardous condition;
  - (c) The defendant failed to warn the plaintiff and others of the said dangerous and hazardous condition;
  - (d) The defendant failed to place mats on the floor of the men's room to prevent slipping on the wet floor on the day of the accident; and
  - (e) The defendant failed to inspect the said area to determine whether it was safe and not dangerous.
13. As a result of the negligence of the defendant, "Wendy's Dubois", through its agents, servants, workmen and employees, the plaintiff, RICHARD CARBO, sustained injuries to, on about his head neck body and limbs, and more particularly he sustained bruises and contusions of his head, back, neck and shoulders; a tear of the rotator cuff of the left shoulder; a partial tear of the rotator cuff of the right shoulder; aggravation of arthritis of the cervical spine;

cervical radiculopathy; bruises and contusions of the spinal cord; herniated cervical discs; aggravation of cervical stenosis; decompression of the cervical spine; together with shock and injury to her nerves and nervous system, some or all of which being permanent in nature.

14. As a result of the negligence of the defendant, "Wendy's Dubois", the plaintiff, RICHARD CARBO, suffered great pain and mental anguish, some or all of which being permanent in nature.
15. By reason of the aforesaid occurrence and resultant injuries to the plaintiff, RICHARD CARBO, he has been and/or may in the future be, forced to expend various sums of money as well as the expenditure of time for medical services, x-rays, medications, hospitalizations and other various expenses all in an effort to treat and cure himself of the injuries which he sustained as a result of the incident previously described.
16. As a result of the negligence of defendant, "Wendy's Dubois", the plaintiff was unable to perform his usual duties and occupation for an extended period of time and may be unable to perform said duties and occupation for an indefinite period of time into the future.

WHEREFORE, the plaintiff, RICHARD CARBO, demands judgment in his favor and against defendant, "Wendy's Dubois", in an amount in excess of \$50,000.00.

**COUNT II**  
**ANN CARBO V. WENDY'S OLD FASHIONED HAMBURGERS(Dubois)**

17. Plaintiff, ANN CARBO, incorporates by reference, paragraphs 1 through 16 of this complaint as if each were set forth herein at length.

18. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and/or may be compelled to expend monies for medical aid and medicines in an effort to assist her husband.
19. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and/or may be compelled to expend monies for hiring help to perform duties of the household previously performed by her husband.
20. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and will be deprived of her husband's aid, comfort, society, companionship and affection.

WHEREFORE, the plaintiff, ANN CARBO, demands judgment in her favor and against defendant, "Wendy's Dubois", in an amount in excess of \$50,000.00.

**COUNT III**  
**RICHARD CARBO V. WENDY'S OLD FASHIONED**  
**HAMBURGERS(Sandusky)**

21. Plaintiff, RICHARD CARBO, incorporates by reference, paragraphs 1 through 16 of this complaint as if each were set forth herein at length.
22. Defendant "Wendy's Sandusky" is the main office for the Wendy's restaurant identified in this complaint.
23. The employees referred to and identified in this complaint are also employees of "Wendy's Sandusky" acting within the course and scope of their employment.
24. "Wendy's Sandusky" is responsible for the injuries and damages set forth herein and is jointly and/or severally liable along with "Wendy's Dubois" for the injuries and damages which have been incorporated herein.

WHEREFORE, the plaintiff, RICHARD CARBO, demands judgment in his favor and against defendant, "Wendy's Sandusky", in an amount in excess of \$50,000.00.

**COUNT IV**  
**ANN CARBO V. WENDY'S OLD FASHIONED**  
**HAMBURGERS(Sandusky)**

25. Plaintiff, ANN CARBO, incorporates by reference, paragraphs 1 through 16 and 22 and 23 of this complaint as if each were set forth herein at length.
26. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and/or may be compelled to expend monies for medical aid and medicines in an effort to assist her husband.
27. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and/or may be compelled to expend monies for hiring help to perform duties of the household previously performed by her husband.

28. As a result of the injuries to her husband, plaintiff, ANN CARBO, has been and will be deprived of her husband's aid, comfort, society, companionship and affection.

WHEREFORE, the plaintiff, ANN CARBO, demands judgment in her favor and against defendant, "Wendy's Sandusky", in an amount in excess of \$50,000.00.

LUCARINI & LUCARINI

BY:   
ROBERT S. LUCARINI, ESQUIRE

LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiff

Richard Carbo and : CLEARFIELD COUNTY  
Ann Carbo, his wife : COURT OF COMMON PLEAS  
Plaintiffs :  
V. :  
Wendy's Old Fashioned Hamburgers : NO. 07-687-CD  
And :  
Wendy's Old Fashioned Hamburgers :  
Defendants. :

### VERIFICATION

I, RICHARD CARBO, verify that I am the plaintiff in the above matter; that the facts set forth in this Complaint are true and correct to the best of my knowledge, information and belief; and that this verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

DATED:

6/5/07

*Richard Carbo*  
RICHARD CARBO

LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiff

Richard Carbo and : CLEARFIELD COUNTY  
Ann Carbo, his wife : COURT OF COMMON PLEAS  
Plaintiffs  
V.  
Wendy's Old Fashioned Hamburgers : NO. 07-687-CD  
  
And  
Wendy's Old Fashioned Hamburgers  
Defendants.

#### VERIFICATION

I, ANN CARBO, verify that I am the plaintiff in the above matter; that the facts set forth in this Complaint are true and correct to the best of my knowledge, information and belief; and that this verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

DATED:

6-5-07

Ann Carbo  
ANN CARBO

*Plaintiff*  
YOU ARE HEREBY NOTIFIED TO  
FILE A WRITTEN RESPONSE TO THE  
ENCLOSED *New matter*  
WITHIN TWENTY (20) DAYS FROM  
SERVICE HEREOF OR A JUDGEMENT  
MAY BE ENTERED AGAINST YOU

GEKOSKI & BOGDANOFF, P.C.  
BY: Charles Jay Bogdanoff, Esquire  
Attorney ID 02657  
42 South Fifteenth Street, Suite 1414  
Philadelphia, PA 19102  
215-563-2511

Attorney for Defendant Wendy's Old  
Fashioned Hamburgers (Dubois) and  
Wendy's Old Fashioned Hamburgers  
(Sandusky)

RICHARD CARBO and ANN CARBO, his  
wife

Plaintiffs

v.

WENDY'S OLD FASHIONED  
HAMBURGERS (Dubois)  
and

WENDY'S OLD FASHIONED  
HAMBURGERS (Sandusky)

Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

No. 07-687-CD

**FILED**  
MILLER  
JUL 19 2007  
NO CC  
6K

William A. Shaw  
Prothonotary/Clerk of Courts

**DEFENDANTS' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT TOGETHER  
WITH NEW MATTER**

COUNT I

Richard Carbo v. Wendy's Old Fashioned Hamburgers (Dubois)

1. Denied. After reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 1 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

2. Denied. After reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 2 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

3. Admitted in part; denied in part. It is admitted that the entity doing business at Route 255 North Road 3, Sandy Plaza, Dubois, Pennsylvania is a corporation which does business at that location as Wendy's Old Fashioned Hamburgers in Dubois Pennsylvania. It is denied that the name of the entity is "Wendy's Old Fashioned Hamburgers (Dubois)" On the contrary, the name of the corporation is Ryan S Group, Inc. All remaining allegations contained in Paragraph 3 of the Plaintiffs' Amended Complaint are denied.

4. Admitted in part: denied in part. It is admitted that the corporation referred to in Paragraph 3 above has an office located at 4000 Columbus Avenue, Sandusky, Ohio. It is denied that the name of the corporation is Wendy's Old Fashioned Hamburgers (Sandusky). On the contrary, the name of the corporation is Ryan S Group, Inc., There is no entity called Wendy's Old Fashioned Hamburgers (Sandusky). The entity which the Plaintiffs have referred to as Wendy's Sandusky is the same entity as the entity which the Plaintiffs have referred to as Wendy's Dubois. All remaining allegations contained in Paragraph 4 of the Plaintiffs' Amended Complaint are denied.

5. Denied as stated. All conclusions of law contained in paragraph 5 of the Plaintiffs' Amended Complaint are denied without the need of further answer. It is denied as stated that the corporation which the Plaintiffs have called Wendy's Dubois owned the property located at Route 255 North Road 3 - Sandy Plaza, Dubois, PA. It is admitted that the corporation which the Plaintiffs have called Wendy's Dubois possessed and controlled the property. It is admitted that the corporation which the Plaintiffs have called Wendy's Dubois owned, possessed and control

the business known as Wendy's Old Fashioned Hamburgers located at 255 North Road 3 - Sandy Plaza, Dubois, PA. All remaining allegations contained in Paragraph 5 of the Plaintiffs' Amended Complaint are denied.

6. Denied. All conclusions of law contained in Paragraph 6 of the Plaintiffs' Amended Complaint are denied without the need of further answer. To the extent that any answer is required, it is denied that any agents, servants, workmen or employees of the entity referred to by the Plaintiffs as Wendy's Dubois negligently or carelessly caused or created a dangerous condition to exist in the men's room of the restaurant. It is denied that a dangerous condition existed in the men's room of the restaurant. After reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 6 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

7. Denied. All conclusions of law contained in Paragraph 7 of the Plaintiffs' Amended Complaint are denied without the need of further answer. It is denied that a dangerous, slippery or hazardous condition existed. It is denied that there was water or other liquid on the floor of the men's rest room. It is denied that there was water or other liquid on the floor of the men's room which the Defendant's employees created or allowed to accumulate. All remaining allegations contained in Paragraph 7 of the Plaintiffs' Complaint are denied.

8. Admitted in part; denied in part. All conclusions of law contained in Paragraph 8 of the Plaintiffs' Amended Complaint are conclusions of law which are denied without the need of further answer. It is admitted that a person who identified himself as Richard Carbo was present on the premises. After reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in

Paragraph 8 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

9. Denied. All conclusions of law contained in Paragraph 9 of the Plaintiffs' Amended Complaint are denied without the need of further answer. To the extent that any further answer is required, it is denied that there was a dangerous, slippery or hazardous condition in the men's room. It is denied that the employees of the Defendant created a dangerous, slippery or hazardous condition in the men's room. It is denied that the employees of the Defendant negligently or carelessly created a dangerous, slippery or hazardous condition in the men's room. After reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 9 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

10. Denied. The averments contained in Paragraph 10 of the Plaintiffs' Amended complaint are conclusions of law which are denied without the need of further answer. To the extent that any further answer is required, after reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 10 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

11. Denied. All conclusions of law contained in Paragraph 11 of the Plaintiffs' Amended Complaint are denied without the need of further answer. To the extent that any further answer is required, it is denied that any accident was caused solely or in part by any alleged negligence of the Defendant whom the Plaintiffs have referred to as "Wendy's Dubois." It is denied that the entity referred to by the Plaintiffs as "Wendy's Dubois" was negligent. After reasonable investigation, the Defendants are without information or knowledge sufficient to form

a belief as to the truth of the remaining averments contained in Paragraph 11 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

12. Denied. All conclusions of law contained in Paragraph 12 of the Plaintiffs' Amended Complaint are denied without the need of further answer. To the extent that any further answer is required, it is denied that the Defendant referred to by the Plaintiffs as "Wendy's Dubois" engaged in careless, reckless, willfulness or wanton conduct. By way of further answer, the subparagraphs of Paragraph 12 of the Plaintiffs' Amended Complaint are denied as follows:

(a) Denied. All conclusions of law contained in Paragraph 12(a) of the Plaintiffs' Amended Complaint are denied without the need of further answer. To the extent that any further answer is required, it is denied that a dangerous and defective condition existed. It is denied that the Defendant created any alleged dangerous and defective condition. All remaining allegations contained in Paragraph 12(a) of the Plaintiffs' Amended Complaint are denied.

(b) Denied. All conclusions of law contained in Paragraph 12(b) of the Plaintiffs' Amended Complaint are denied without the need of further answer. To the extent that any further answer is required, it is denied that a dangerous and hazardous condition existed. It is denied that the Defendant with the exercise of reasonable care knew or should have known of the alleged dangerous and hazardous condition. All remaining allegations contained in Paragraph 12(b) of the Plaintiffs' Amended Complaint are denied.

(c) Denied. All conclusions of law contained in Paragraph 12(c) of the Plaintiffs' Amended Complaint are denied. It is denied that the floor was wet on the day of the alleged accident. To the extent that any further answer is required, it is denied that the Defendant failed in any duty to place mats of the floor of the mens room. All remaining allegations contained in

Paragraph 12(c) of the Plaintiffs' Amended Complaint are denied.

(d) Denied. All conclusions of law contained in Paragraph 12(d) of the Plaintiffs' Amended Complaint are denied without the need of further answer. It is denied that the Defendant failed to inspect the said area to determine whether it was safe and not dangerous. All remaining allegations contained in Paragraph 12(d) of the Plaintiffs' Amended Complaint are denied without the need of further answer.

13. Denied. All conclusions of law contained in Paragraph 13 of the Plaintiffs' Amended Complaint are denied without the need of further answer. It is denied that the Defendant referred to by the Plaintiff as "Wendy's Dubois" was negligent. After reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 13 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

14. Denied. All conclusions of law contained in Paragraph 14 of the Plaintiffs' Amended Complaint are denied without the need of further answer. It is denied that the Defendant referred to by the Plaintiff as "Wendy's Dubois" was negligent. After reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 14 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

15. Denied. All conclusions of law contained in Paragraph 15 of the Plaintiffs' Amended Complaint are denied without the need of further answer. It is denied that the Defendant referred to by the Plaintiff as "Wendy's Dubois" was negligent. After reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 15 of the Plaintiffs' Amended

Complaint and therefore deny the same and demand proof thereof.

16. Denied. All conclusions of law contained in Paragraph 16 of the Plaintiffs' Amended Complaint are denied without the need of further answer. It is denied that the Defendant referred to by the Plaintiff as "Wendy's Dubois" was negligent. After reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 16 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

WHEREFORE the Defendants pray that judgment be entered in their favor together with costs and interest against Plaintiff Richard Carbo, that the Plaintiffs' Amended Complaint be dismissed with prejudice and that the Defendants be granted such other and further relief as may be appropriate under the circumstances.

COUNT II  
Ann Carbo v. Wendy's Old Fashioned Hamburgers (Dubois)

17. Defendants incorporate by reference their answers to Paragraphs 1 through 16 of the Plaintiffs' Amended Complaint as fully as though here set forth at length.

18. Denied. All conclusions of law contained in Paragraph 18 of the Plaintiffs' Amended Complaint are denied without the need of further answer. To the extent that any answer is required, after reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 18 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

19. Denied. All conclusions of law contained in Paragraph 19 of the Plaintiffs' Amended Complaint are denied without the need of further answer. To the extent that any

answer is required, after reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 19 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

20. Denied. All conclusions of law contained in Paragraph 20 of the Plaintiffs' Amended Complaint are denied without the need of further answer. To the extent that any answer is required, after reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 20 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

WHEREFORE the Defendants pray that judgment be entered in their favor together with costs and interest against Plaintiff Ann Carbo, that the Plaintiffs' Amended Complaint be dismissed with prejudice and that the Defendants be granted such other and further relief as may be appropriate under the circumstances.

COUNT III  
Richard Carbo v. Wendy's Old Fashioned Hamburgers (Sandusky)

21. Defendants incorporate by reference their answers to Paragraphs 1 through 20 of the Plaintiffs' Amended Complaint as fully as though here set forth at length.

22. Denied as stated. All conclusions of law contained in Paragraph 22 of the Plaintiffs' Amended Complaint are denied without the need of further answer. It is denied as stated that "Wendy's Sandusky" is the main office of the Wendy's restaurant identified in the Plaintiffs' Amended Complaint. It is denied that there is such an entity as "Wendy's Sandusky." On the contrary, Ryan S Group, Inc., which operates the restaurant, is a corporation which has an office at 4000 Columbus Avenue, Sandusky, OH 44870. The entity which the Plaintiffs are referring to

as "Wendy's Sandusky" is the same entity that the Plaintiffs have referred to as "Wendy's Dubois."

23. Denied as stated. All conclusions of law contained in Paragraph 23 of the Plaintiffs' Amended Complaint are denied without the need of further answer. To the extent that any answer is required, it is denied as stated that the employees referred to in the Plaintiffs' Amended Complaint are also employees of Wendy's Sandusky. There is no entity called Wendy's Sandusky. The entity which the Plaintiffs are referring to as "Wendy's Sandusky" is the same entity that the Plaintiffs have referred to as "Wendy's Dubois." All remaining allegations contained in Paragraph 23 of the Plaintiffs' Amended Complaint are denied without the need of further answer.

24. Denied. All conclusions of law contained in Paragraph 24 of the Plaintiffs' Amended Complaint are denied without the need of further answer. To the extent that any answer is required, it is denied that "Wendy's Sandusky" is responsible for the injuries and damages set forth. On the contrary, "Wendy's Sandusky" is not responsible for any alleged injuries. It is denied that "Wendy's Sandusky" is jointly and/or severally liable along with "Wendy's Dubois" for any injuries and damages. On the contrary, "Wendy's Sandusky" is not jointly or severally liable. It is denied that there is an entity such as "Wendy's Sandusky." After reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 24 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

WHEREFORE the Defendants pray that judgment be entered in their favor together with costs and interest against Plaintiff Richard Carbo, that the Plaintiffs' Amended Complaint be dismissed with prejudice and that the Defendants be granted such other and further relief as may

be appropriate under the circumstances.

COUNT IV

Ann Carbo v. Wendy's Old Fashioned Hamburgers (Sandusky)

25. Defendants incorporate by reference their answers to Paragraphs 1 through 24 of the Plaintiffs' Amended Complaint as fully as though here set forth at length.

26. Denied. After reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 26 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

27. Denied. After reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 27 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

28. Denied. After reasonable investigation, the Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 28 of the Plaintiffs' Amended Complaint and therefore deny the same and demand proof thereof.

WHEREFORE the Defendants pray that judgment be entered in their favor together with costs and interest against Plaintiff Ann Carbo, that the Plaintiffs' Amended Complaint be dismissed with prejudice and that the Defendants be granted such other and further relief as may be appropriate under the circumstances.

NEW MATTER

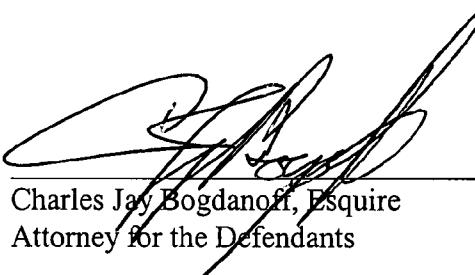
29. The Plaintiffs' claims are barred and/or limited by the doctrine of comparative negligence.

30. The Plaintiffs' claims are barred by the doctrine of assumption of the risk.
31. If some or all of the Plaintiffs' allegations are proved to be correct, the same being denied, then Plaintiff Richard Carbo failed to maintain a proper lookout and failed to choose a proper path.
32. The Plaintiffs' injuries and losses, if any, were caused by the conduct of third persons for whom the Defendants are not legally responsible.
33. In the alternative, or in addition thereto, the Plaintiffs' injuries and losses, if any, were caused by the conduct of Plaintiff Richard Carbo.
34. In the alternative, or in addition thereto, the Plaintiffs' injuries and losses, if any, were caused by the intervening and/or superseding negligent, culpable and/or other conduct of their persons or entities for whom the Defendants are not legally responsible.
35. In the alternative, or in addition thereto, the Plaintiffs' injuries and losses, if any, were caused by their own intervening and/or superseding negligent, culpable and/or other conduct.
36. The Plaintiffs' claims are barred and/or limited by the applicable Statute of Limitations.

WHEREFORE the Defendants pray that judgment be entered in their favor together with costs and interest against the Plaintiffs, that the Plaintiffs' Amended Complaint be dismissed

with prejudice and that the Defendants be granted such other and further relief as may be appropriate under the circumstances.

Respectfully submitted,



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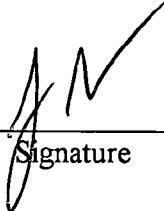
Charles Jay Bogdanoff, Esquire  
Attorney for the Defendants

## VERIFICATION

I, John Stock, do hereby verify that I am the president of/for the Defendants, that I am authorized to take this verification on their behalf and that the facts set forth in the Defendants' Answer to Plaintiffs' Amended Complaint are true and correct to the best of my information, knowledge and belief.

I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsifications to authorities.

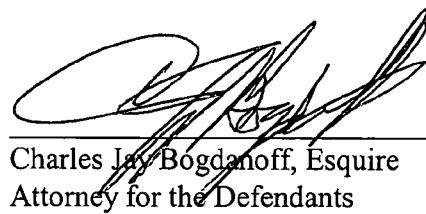
7-16-07  
Date

  
Signature

**CERTIFICATION OF SERVICE**

I, Charles Jay Bogdanoff, Esquire, do hereby certify that I did serve the Defendants' Answer and New Matter to the Plaintiffs' Amended Complaint by mailing a true and correct copy thereof by First Class Mail, Postage Prepaid, on July 17, 2007, addressed to Plaintiffs' Counsel as follows:

Robert S. Lucarini, Esquire  
Lucarini and Lucarini  
2101 Pine Street  
Philadelphia, PA 19103



---

Charles Jay Bogdanoff, Esquire  
Attorney for the Defendants

LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiffs

FILED

JUL 27 2007

PA 1-051W  
William A. Shaw  
Prothonotary/Clerk of Courts

14ENT TO MTHY

Richard Carbo and  
Ann Carbo, his wife  
Plaintiffs  
V.  
Wendy's Old Fashioned Hamburgers  
And  
Wendy's Old Fashioned Hamburgers  
Defendants.

: CLEARFIELD COUNTY  
: COURT OF COMMON PLEAS  
:  
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:  
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**PLAINTIFFS' REPLY TO NEW MATTER OF THE DEFENDANT**

29. Denied. This allegation constitutes a conclusion of law as to which no responsive pleading is required. By way of further answer, plaintiffs' damages should not be barred or limited by the doctrine of comparative negligence.

30. Denied. This allegation constitutes a conclusion of law as to which no responsive pleading is required. By way of further answer, plaintiffs' did not assume the risk in this case.

31. Denied. This allegation constitutes a conclusion of law as to which no responsive pleading is required. By way of further answer, plaintiff did not fail to maintain a proper lookout or to chose a proper path.

32. Denied. This allegation constitutes a conclusion of law as to which no responsive pleading is required. By way of further answer, plaintiffs' injuries were caused by the acts of the defendant.

33. Denied. This allegation constitutes a conclusion of law as to which no responsive pleading is required. By way of further answer, plaintiff's injuries and losses were not caused by his own conduct.

34. Denied. This allegation constitutes a conclusion of law as to which no responsive pleading is required. By way of further answer, plaintiffs' injuries were caused by the acts of the defendant and not by intervening and/or superseding negligent, culpable and/or other conduct of third persons or entities.

35. Denied. This allegation constitutes a conclusion of law as to which no responsive pleading is required. By way of further answer, plaintiffs' injuries and losses were not caused by their own intervening and/or superseding negligent, culpable and/or other conduct.

36. Denied. This allegation constitutes a conclusion of law as to which no responsive pleading is required. By way of further answer, plaintiffs' Complaint is not barred by the applicable Statute of Limitations.

WHEREFORE, plaintiffs demand judgment in their favor.

LUCARINI & LUCARINI

BY:   
ROBERT S. LUCARINI, ESQUIRE

## VERIFICATION

I, ROBERT S. LUCARINI, ESQUIRE, verify that I am counsel for the plaintiffs, RICHARD AND ANN CARBO; that I am authorized to make this affidavit on behalf of said plaintiff(s); that the facts set forth in this Reply to New Matter are true and correct to the best of my knowledge, information and belief; and that this verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

DATED:

July 25, 2007



ROBERT S. LUCARINI, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102746  
NO: 07-687-CD  
SERVICE # 1 OF 1  
COMPLAINT

PLAINTIFF: RICHARD CARBO AND ANN CARBO  
vs.  
DEFENDANT: WENDY'S OLD FASHIONED HAMBURGERS

SHERIFF RETURN

---

NOW, May 09, 2007 AT 11:39 AM SERVED THE WITHIN COMPLAINT ON WENDY'S OLD FASHIONED HAMBURGERS DEFENDANT AT ROUTE 255 NORTH ROAD 3, SANDY PLAZA, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO LARRY BUCHANAN, MANAGER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	LUCARINI	4211	10.00
SHERIFF HAWKINS	LUCARINI	4211	36.43

FILED

03:20pm  
OCT 03 2007

William A. Shaw  
Prothonotary/Clerk of Courts

Sworn to Before Me This

So Answers,

\_\_\_\_ Day of \_\_\_\_\_ 2007

*Chester A. Hawkins*  
*by Marilyn Harris*  
Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD CARBO and ANN CARBO,  
Plaintiffs

Vs.

WENDY'S OLD FASHIONED  
HAMBURGERS,  
Defendant

CIVIL DIVISION

No. 07 - 687 - CD

PRAECIPE TO ENTER APPEARANCE

Filed on Behalf of:

Plaintiffs, RICHARD CARBO and  
ANN CARBO

Counsel of Record for This  
Party:

RICHARD S. LUCARINI, ESQUIRE  
Pa. I.D. #12989

LUCARINI & LUCARINI  
2101 Pine Street  
Philadelphia, PA 19103

PAUL COLAVECCHI, ESQUIRE  
Pa. I.D. #83274

COLAVECCHI & COLAVECCHI  
221 East Market Street  
P.O. Box 131  
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF  
COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

**FILED** No CC  
06/14/08  
JUN 11 2008 Copy to CIA

William A. Shaw  
Prothonotary/Clerk of Courts

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

RICHARD CARBO and ANN CARBO, :  
his wife, :  
Plaintiffs :  
:  
vs. : No. 07 - 687 - CD  
:  
WENDY'S OLD FASHIONED :  
HAMBURGER'S :  
Defendant :  
:

PRAECIPE TO ENTER APPEARANCE

TO: CLEARFIELD COUNTY PROTHONOTARY

Please enter my appearance as Co-Counsel on behalf of Richard Carbo and Ann Carbo, his wife, Plaintiffs in the above-captioned action.

  
PAUL COLAVECCHI, ESQUIRE  
Attorney for Plaintiffs

June 11, 2008

DATE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD CARBO and ANN CARBO,  
his wife,

Plaintiffs

CIVIL DIVISION

No. 07 - 687 - CD

vs.

WENDY'S OLD FASHIONED  
HAMBURGERS (DuBois) and WENDY'S  
OLD FASHIONED HAMBURGERS  
(Sandusky),

Defendants

*MOTION TO COMPEL ANSWERS TO  
INTERROGATORIES and REQUEST  
FOR PRODUCTION OF DOCUMENTS*

Filed on Behalf of:

Plaintiffs, RICHARD CARBO and  
ANN CARBO

Counsel of Record for This  
Party:

PAUL COLAVECCHI, ESQUIRE  
Pa. I.D. #83274

COLAVECCHI & COLAVECCHI  
221 East Market Street  
P.O. Box 131  
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF  
COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

**FILED**  
01:16 P.M. 6K  
JUN 19 2008 4CC ATTY

William A. Shaw  
Prothonotary/Clerk of Courts

6K

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

RICHARD CARBO and ANN CARBO, :  
his wife, : No. 07 - 687 - CD  
Plaintiffs:  
:  
vs. :  
:  
WENDY'S OLD FASHIONED HAMBURGERS :  
(DuBois) and WENDY'S OLD FASHIONED :  
HAMBURGERS (Sandusky), :  
Defendants:

***MOTION TO COMPEL ANSWERS TO  
INTERROGATORIES and REQUEST FOR PRODUCTION OF DOCUMENTS***

NOW COMES, Paul Colavecchi, Esquire, attorney for the Plaintiffs, Richard Carbo and Ann Carbo, and files this Motion to Compel Answers to Interrogatories and respectfully avers as follows:

1. Plaintiffs filed a Complaint on or about April 20, 2007, against Wendy's Old Fashioned Hamburgers.
2. Defendants' Answer to Plaintiffs' Complaint, together with New Matter, was filed on or about July 16, 2007.
3. Plaintiffs' Reply to New Matter was filed on or about July 27, 2007.
4. Plaintiffs served Interrogatories and a Request for Production of Documents on Defendant on or about August 6, 2007, a copy of which are attached hereto and marked Exhibit "A".

5. Defendant failed to file Answers to the Interrogatories and Request for Production of Documents within 30 days as set forth by the Rules of Civil Procedure.

6. Plaintiffs sent reminder letters on September 12, 2007, and December 7, 2007, requesting that Defendants respond to the discovery request. Copies of said letters are attached hereto and marked Exhibit "B".

7. As of this date, Defendants have not provided Answers to the Interrogatories and the Request for Production of Documents.

8. Plaintiffs file this Motion to Compel and seeks an Order of Court compelling the Defendants to provide Answers to the Interrogatories and Request for Production of Documents within 30 days pursuant to Pennsylvania Rule of Civil Procedure 4019.

WHEREFORE, Plaintiffs respectfully requests your Honorable Court to enter an Order compelling the Defendants to file Answers to the Interrogatories and Request for Production within 30 days.

Respectfully submitted,

  
PAUL COLAVECCHI, ESQUIRE  
Attorney for Plaintiffs

LAW OFFICES OF  
COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiffs

Richard Carbo and  
Ann Carbo, his wife  
Plaintiffs  
V.

CLEARFIELD COUNTY  
COURT OF COMMON PLEAS

Wendy's Old Fashioned Hamburgers (Dubois) : NO. 07-687-CD

And  
Wendy's Old Fashioned Hamburgers (Sandusky)  
Defendants.

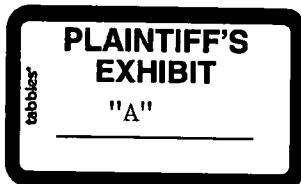
**PLAINTIFF'S INTERROGATORIES ADDRESSED TO DEFENDANT Wendy's  
Old Fashioned Hamburgers (Sandusky)**

TO: Law Office of Gekoski & Bogdanoff, P.C.  
ATTN: GARY KEITH FELDBAUM, ESQUIRE  
Suite 1414, 42 South 15<sup>th</sup> Street  
Philadelphia, PA 19102-2289

You are hereby directed to answer the following Interrogatories under oath, pursuant to the Pennsylvania Rules of Civil Procedure, within (30) days of service hereof. These Interrogatories shall be deemed to be continuing in nature, so as to require supplemental answers as additional information comes within your knowledge and control. These Interrogatories request information known to you or anyone acting on your behalf.

The term "accident" as used in these Interrogatories refers to the accident upon which the Complaint is based. The term "defendant" as used in these Interrogatories refers to the defendant(s), its officers, directors, agents, servants, employees, attorneys, representatives or anyone acting on behalf of the defendant(s).

Any gaps in numbering should be disregarded.



## PLAINTIFF(S) INTERROGATORIES TO DEFENDANT(S)

You are hereby directed to answer the following Interrogatories under oath, pursuant to the Pennsylvania Rules of Civil Procedure, within thirty (30) days of service hereof. These Interrogatories shall be deemed to be continuing in nature, so as to require supplemental answers as additional information comes within your knowledge and belief.

The term "accident" as used in these Interrogatories refers to the accident upon which the Complaint is based. The terms "defendant" and you as used in these Interrogatories, refer to the defendant, its officers, directors, agents, servants, employees, attorneys, representatives or anyone acting on behalf of defendant. The terms "property" and "premises" as used in these Interrogatories refer to the property or premises where the accident occurred.

1. State:

- (a) The name(s), business and residential address(es) and official title(s) of the person(s) answering these Interrogatories, or the person(s) who furnished the information used to prepare the answers to these Interrogatories;
- (b) Where these Interrogatories were answered; and
- (c) The date these Interrogatories were answered.

2. State the name(s), business and residential address(es) and official title(s) of the person(s) who has:

- (a) The most knowledge of the circumstances surrounding this accident, and who is authorized to speak on behalf of the defendant;
- (b) The most knowledge of the information necessary to answer these Interrogatories and who is authorized to speak on behalf of the defendant.

3. Did the defendant own or have any legal, equitable or other interest in the property where the accident occurred on the accident date?

4. If so, what was the nature of the defendant's ownership or interest in that property at that time?

(b) Name and address of lessee;  
(c) Date each lease was executed;  
(d) Consideration for this lease;  
(e) Name and address of each real estate agent or any other person involved with such rentals;  
(f) The date of termination of said lease;  
(g) A description of the portion leased;  
(h) The name and address of the person who has present custody of the lease agreement; and  
(i) Please attach a copy of said lease agreement.

11. Did the men's room of this property need, require or have any repairs or modification between the date the defendant purchased its ownership or interest and the date of the accident herein? If so, state:

(a) Exactly what it was that needed or required repairs or modifications;  
(b) The date when the defendant or defendant's agents, servants, or employees first knew or noticed or had it brought to the defendant's attention, that such repairs or modifications were needed, or required;  
(c) What repairs or modifications were made;  
(d) The date of all such repairs or modifications;  
(e) The name and address of each person or entity making such repairs or modifications; and  
(f) If you did not make or have made any repairs or modifications, state why you did not.

12. Did the local municipality send to, or serve on, the owner or person in possession of this property where the accident occurred and/or anyone else, a notice to repair or modify any defects within five (5) years prior to the date of accident herein?

If such notice was given, state:

(a) The date of notice;  
(b) The method by which said notice was given;  
(c) The repairs or modifications designated to be made in the notice; and  
(d) Whether such repairs or modifications were made and, if so, the date.

13. Did anyone request, within five (5) years prior or at any time subsequent to the accident upon which this suit is based that repairs or modifications be made to the men's room?

If so, for each request, state:

- (a) The nature of the repairs or modifications that were requested;
- (b) The date thereof;
- (c) The name and address of the person giving such instructions;
- (d) The name and address of such persons to whom instructions were given;
- (e) The reason the instructions were given; and
- (f) Whether a record was made of the instructions, and, if so, the name and address of the person who has present custody of each such record.

14. Were any repairs or modifications made to the men's room subsequent to the accident upon which this suit is based?

If so, for each occasion that repairs or modifications were made, state:

- (a) A description of the repairs or modifications made;
- (b) The inclusive dates they were made;
- (c) The place at which they were made;
- (d) The reason they were made;
- (e) At whose request and orders they were made;
- (f) Who was charged with the cost of repairs or modifications; and
- (g) Who paid for the repairs or modifications.

15. For each person/entity who made any repairs or modifications to the men's room subsequent to the accident, state:

- (a) His/her/its name and present address;
- (b) His/her/its occupation and job title;
- (c) The name and address of his/her/its employer;
- (d) A description of the repairs or modifications he/she/it made; and
- (e) The inclusive dates he/she/it worked on the repairs or modifications.

16. State when and how often inspections were made of the premises during the period off one year prior to the accident.

17. If any employees of the defendant undertook the inspection of the premises, state the names and present addresses of the employees responsible for the inspection.

18. State whether or not an inspection of the premises was made after the accident herein occurred.  
If so, state:  
(a) When the inspection was made;  
(b) By whom; and  
(c) Whether or not any defects or conditions were observed at the time of the inspection.

19. State whether, prior or subsequent to the date of the accident in question there were any accidents in the men's room where this accident occurred.  
If so, state:  
(a) The date of said accident;  
(b) The name and last-known address of the person(s) involved; and  
(c) In detail, how the accident occurred.

20. Were there any defects, conditions or hazards prior to the accident in question reported to the defendant?  
If so, for each defect, crack, hole, leak or depression, state the following:  
(a) The date defendant first had notice of such;  
(b) A description of each defect, crack, hole, leak or depression; and  
(c) The location of each on the sidewalk/floor.

21. Did the defects, conditions or hazards referred to in the preceding interrogatory increase in size with the passage of time after it was first noticed by defendant?

22. State how often the defendant or any other person cleaned the area in question within one (1) year prior to the date of the accident herein..

23. State when the area in question was last cleaned prior to the accident.

24. If known to you, your attorney or other representative, state the name(s), last known address(es), home and business, and present whereabouts, of persons who are believed:  
(a) To have witnessed all or any part of the accident;  
(b) To have been present at, near, or within sight or hearing of the scene at the time of the accident;  
(c) To have any knowledge of any facts pertinent to the accident.

25. With respect to each of the persons named in your answer to the preceding Interrogatory, state:

(a) His/her exact location at the time of said accident, or other relevant time; and  
(b) The activity in which (s)he was engaged at the time of said accident, or other relevant time.

26. State the names and addresses of all witnesses or other persons upon whom you intend to rely to prove your case at the trial of this case.

27. State when and how this accident first came to the attention of the defendant, or any representative of defendant, by whom it was reported, and to whom.

28. State whether the defendant, or any of his representatives have obtained any copies of police reports relating to this accident. If so, state whether the defendant was fined for violating any statute or regulation concerning this accident.

29. (a) Describe in detail all cleaning performed in the men's room on the premises from the day preceding the accident through the week after the accident;

cleaning;

- (b) State the names, present addresses, and employers of the persons doing the
- (c) The specific area cleaned; and
- (d) The method used to do the cleaning.
- (e) State whether any warnings are given to patrons during the cleaning process. If so, describe these warnings and the method of presenting them to the public.

30. (a) If known to you, state when, prior to the accident, precipitation last began to fall and stopped falling in the area where the accident occurred; and  
(b) State the type of precipitation that fell during this period.

31. Give the name, address, age and occupation of the individual in charge of cleaning the men's room at the accident site.

32. State the name and address of the person who inspected the men's room at the accident site before and after this accident.

33. State whether you are covered by any type of insurance, including any excess or umbrella insurance, in connection with this accident.

If so, state:

- (a) The name(s) and address(es) of the insurance carrier(s) which issued each policy of insurance;
- (b) The named insured under each policy and the policy number;
- (c) The type of each policy and the effective dates;
- (d) Each exclusion, if any, in the policy which is applicable to any claim thereunder and the reasons why you or the company claims the exclusion is applicable.
- (e) Please state the policy limits of said policy or policies and attach copies.

34. If you, your representative, attorney, consultant, surety, indemnitor, insurer or agent obtained a statement or statements concerning this action and/or its subject matter, from any party to this action, from any witness, or from any person, not a party to this action, then state:

- (a) The name, residence address, and business address of each person who gave such a statement;
- (b) The date each statement was given;
- (c) The name and address of the person who obtained each statement;
- (d) The date when each statement was obtained;
- (e) The place where each statement was obtained;
- (f) Whether each statement is written, signed by the person making it or a stenographic, mechanical, electrical or other recording, or a transcription thereof;
- (g) The name and address of each person and/or entity who presently has custody of each or original statement identified in your answers above;
- (h) The name and address of each person and/or entity who presently has custody of any copy of each statement identified in your answers above; and
- (i) Please attach to your answers to these Interrogatories a photostatic copy or like reproduction of each statement identified in your answer.

35. Did defendant make an oral or written report or give any other notice of the accident to any insurance company, agent or broker?

If so, state:

- (a) Whether the report was written or oral;
- (b) The substance of any report made; and
- (c) Please attach a copy of any written report made.

36. Was any accident report completed by the defendant or its employees following the accident? If so, please attach a copy of the report to your answers.

37. State the name, residential address, business address, employer, and job title of each person whom you intend to call at trial as a factual witness in this matter.

38. Did the police, or any law enforcement agency, investigate the accident?

If so, state:

- (a) The names, badge numbers, district, troop, unit and address of all investigating law enforcement officers or officials; and
- (b) Please attach all police reports.

39. State whether any witness or party, including the defendant or defendant's employees, immediately before, at the time of, or immediately subsequent to the accident, had any conversation or made any statements regarding the accident.

If so:

(a) Set forth the conversation(s) that was/were held and/or statements made;  
(b) Identify all persons who participated in the conversation(s) and/or made the statement(s); and  
(c) Identify all persons in whose presence any of the aforesaid conversations/statements were made.

40. Has the defendant, defendant's insurance carrier, or anyone acting on behalf of the defendant, except defendant's counsel, engaged in or conducted any investigation concerning this incident and relevant facts concerning same?

If so, state the following:

(a) The names and addresses of such persons and/or investigators;  
(b) The subject matter of the investigation; and  
(c) Please produce copies of any and all documents, memoranda, notes, photographs and statements obtained as a result of the investigation.

41. Were any photographs, moving pictures, sketches, charts or maps taken or made, or is this party, or any representative of this party, in possession of any such photographs, moving pictures, sketches, charts or maps, with respect to the following:

(a) The injuries sustained by the plaintiff(s);  
(b) The physical or working ability of any party to this accident;  
(c) The physical characteristics of the scene of the accident before or after the accident; and  
(d) Any other items which are relevant to the accident.

42. Set forth whether the defendant or anyone acting on behalf of defendant saw the plaintiff subsequent to this accident in question, and, if your answer is in the affirmative, set forth:

(a) The date(s) he/she saw said plaintiff;  
(b) The place(s) at which he/she saw said plaintiff; and  
(d) The condition of said plaintiff as to his/her apparent injuries and whether (s)he was walking or in bed when he/she saw him/her on each occasion.

43. Do you know of the existence of any stenographic transcript of any proceeding in any Court, or deposition, having to do primarily or collaterally with the events which are the subject of this cause of action?

If the answer is yes, state:

- (a) The name and address of the stenographic reporter;
- (b) The name of the Court; and
- (c) What particularly was transcribed and the date of transcription.

44. Please attach to these Interrogatories copies of any and all Interrogatories answered by yourself and any other party to this action and copies of any and all Interrogatories answered by any other party to this action as propounded by yourself. Please take notice that this is a continuing demand.

45. State the precise nature of any other legal proceedings known to exist by yourself, whether touching directly or collaterally upon the cause of action asserted herein and give the name of the Court or tribunal before which such proceedings have been taken or are pending, the date of filing such proceedings, the name of each and every attorney and their addresses, representing each and every plaintiff or defendant therein, the docket or recording number of each such proceeding and attach to these Interrogatories copies of any and all pleadings with respect to any such legal proceedings in any other court or jurisdiction.

46. State whether any scientific experiments or tests have been conducted or are anticipated with regard to this litigation.

If so, state:

- (a) The nature of such experiments or testing in detail;
- (b) The name, address, telephone number, professional qualifications and job title or capacity of each person who conducted the experiments or testing, or is expected to conduct such experiments or tests;
- (c) The results of such experiments or tests in detail;
- (d) The date, time and place of such experiments or testing, completed or contemplated;
- (e) Whether the results were recorded in writing or any other manner; and
- (f) Attach a copy of the complete report(s) or any scientific experiments or tests conducted, or advise the date, time and place scheduled or anticipated for such tests, allowing the party propounding these Interrogatories an opportunity to be present.

47. State whether you will utilize any type of scale models, drawings, diagrams, maps or any other type of demonstrative object at trial, in regard to this litigation.

If so, state:

- (a) The nature of the demonstrative object in detail;
- (b) A complete description of such demonstrative object;
- (c) The scale and specific dimensions of each demonstrative object used;
- (d) The producer, manufacturer, or designer of each demonstrative object, including their address and telephone number; and

(e) Where, when and at what location the party propounding these Interrogatories may inspect or conduct non-destructive tests upon any photograph, model, drawing, diagram, map or exhibit referred to in this question.

48. State the name, residential address, and business address of each person whom you expect to call as an expert witness at trial.

49. For each such expert, state his occupation and the specific field or fields of expertise in which you claim he is qualified.

50. Set forth the qualifications of each such expert. In doing so, list: the schools each has attended, including years in attendance and degrees received; experience in particular fields, including names and addresses of employers with inclusive years of employment; and a list of all publications authored by each expert, including the title of the work, the name of the periodical or book in which it was printed, and the date of its printing.

51. Set forth the substance of the facts to which each such expert is expected to testify.

52. Set forth the substance of the opinions to which each such expert is expected to testify.

53. Set forth a summary of the grounds for each such opinion.

54. Set forth in detail the factual information and materials applied to each such expert.

55. Identify by title, author, edition, date of publication page number or other means each passage from each book or other publication which you intend to offer into evidence at the time of trial.

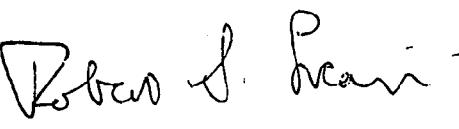
56. Set forth the facts on which you rely to support the allegations asserted in your answer.

57. Set forth the facts on which you rely to support the allegations in your new matter.

58. Has the defendant, or any representative of the defendant, his/her counsel, or his/her insurer performed, or contracted to be performed, or arranged in any way any type of surveillance of the plaintiff or his or her activities at any time? If so, please identify any such persons or entities who have custody of, and attach a complete copy, without editing, of all reports, memoranda, letters, electronic data or information of any type (including computer records) regarding such surveillance activity, along with a copy of any photographs, films, videotapes or other information including, but not limited to videotapes, 8—millimeter film, and handwritten notes.

59. Please list the name, last known address and telephone number of each employee or manager who worked at the premises in question on the day of this accident, June 2, 2005.

8/6/07

  
ROBERT S. LUCARINI, ESQUIRE  
Attorney for Plaintiff

LUCARINI & LUCARINI  
BY: ROBERT S. LUCARINI, ESQUIRE  
I.D. No.: 12989  
2101 Pine Street  
Philadelphia, PA 19103  
(215) 790-9300

Attorney for Plaintiffs

Richard Carbo and  
Ann Carbo, his wife  
Plaintiffs  
V.

: CLEARFIELD COUNTY  
: COURT OF COMMON PLEAS

Wendy's Old Fashioned Hamburgers(Dubois)

: NO. 07-687-CD

And  
Wendy's Old Fashioned Hamburgers(Sandusky)  
Defendants.

**PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS  
FOR DEFENDANT WENDY'S OLD FASHIONED HAMBURGERS (DUBOIS)**

TO: Law Office of Gekoski & Bogdanoff, P.C.  
ATTN: GARY KEITH FELDBAUM, ESQUIRE  
Suite 1414, 42 South 15<sup>th</sup> Street  
Philadelphia, PA 19102-2289

You are hereby requested to produce, in accordance with Rule 4009, the below listed documents and/or items. The below listed documents and/or items are to be produced at the Law Offices of LUCARINI & LUCARINI, 2101 Pine Street, Philadelphia, PA 19103 on or before September 6, 2007:

1. The entire claims and investigation file or files (excluding references to mental impressions, conclusions or opinion representing the value or merit of the claim or defense or respecting strategy or tactics and privileged communication from counsel).
2. All statements of any and all witnesses including any and all statements of plaintiffs and defendants.
3. All photographs and diagrams taken and/or prepared.
4. Any and all documents containing the names and home and business addresses of all individuals contacted as potential witnesses.
5. Reports of any and all experts who will testify at trial.

This request is deemed to be continuing insofar that if any of the above is secured subsequent to the date herein for the production of same said documents, photographs, statements, reports, etc. are to be provided to plaintiff's counsel within thirty (30) days of receipt of same.

LUCARINI & LUCARINI

BY:

  
ROBERT S. LUCARINI, ESQUIRE

DATE: Aug. 6, 2007

LAW OFFICES  
LUCARINI & LUCARINI  
2101 PINE STREET  
PHILADELPHIA, PA 19103  
(215) 790-9300  
FAX (215) 790-1839

ROBERT S. LUCARINI, SR.  
ROBERT S. LUCARINI, JR.\*

\*ALSO MEMBER OF NJ BAR

NEW JERSEY OFFICE:  
1160 S. BLACK HORSE PIKE  
BLACKWOOD, NJ 08012  
(609) 227-2434

September 12, 2007

Law Office of Gekoski & Bogdanoff, P.C.  
ATTN: GARY KEITH FELDBAUM, ESQUIRE  
Suite 1414, 42 South 15<sup>th</sup> Street  
Philadelphia, PA 19102-2289

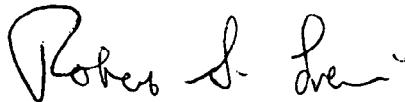
RE: Richard Carbo et al. v. Wendy's Old Fashioned Hamburgers, et al.  
Clearfield County, No. 07-687-cd

Dear Mr. Feldbaum:

Please respond to our discovery requests which were forwarded to you on August 6, 2007. In addition, I will be making arrangements to take the deposition of witness, Morlen Rolen in Ohio.

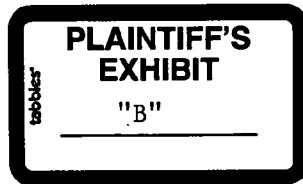
Your cooperation is appreciated.

Very truly yours,



Robert S. Lucarini, Esquire

RSL/rl



LAW OFFICES  
LUCARINI & LUCARINI  
2101 PINE STREET  
PHILADELPHIA, PA 19103  
(215) 790-9300  
FAX (215) 790-1839

ROBERT S. LUCARINI, SR.  
ROBERT S. LUCARINI, JR.  
\*ALSO MEMBER OF NJ BAR

NEW JERSEY OFFICE:  
1160 S. BLACK HORSE PIKE  
BLACKWOOD, NJ 08012  
(609) 227-2434

December 7, 2007

Law Office of Gekoski & Bogdanoff, P.C.  
ATTN: GARY KEITH FELDBAUM, ESQUIRE  
Suite 1414, 42 South 15<sup>th</sup> Street  
Philadelphia, PA 19102-2289

RE: Richard Carbo et al. v. Wendy's Old Fashioned Hamburgers, et al.  
Clearfield County, No. 07-687-cd

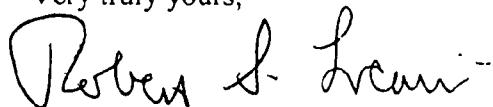
Dear Mr. Feldbaum:

I have made repeated calls requesting responses to our discovery request and have not received anything. Please be advised that we are preparing a Motion to Compel which will be filed shortly.

Also, please provide the name of the attorney in Columbus, Ohio who will represent the defendant at the deposition of Morlen Rowland to be held in the office of Jeff Liston, Esquire, 536 High Street, Columbus, Ohio. Mr. Liston's telephone number is (614) 221-1341. Please provide this information to your attorney so that the deposition can be scheduled.

Your cooperation is anticipated.

Very truly yours,



Robert S. Lucarini, Esquire

RSL/r1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD CARBO and ANN CARBO,  
his wife,

Plaintiffs

CIVIL DIVISION

No. 07 - 687 - CD

vs.

WENDY'S OLD FASHIONED  
HAMBURGERS (DuBois) and WENDY'S  
OLD FASHIONED HAMBURGERS  
(Sandusky),

Defendants

**RULE**

Filed on Behalf of:

Plaintiffs, RICHARD CARBO and  
ANN CARBO

Counsel of Record for This  
Party:

PAUL COLAVECCHI, ESQUIRE  
Pa. I.D. #83274

COLAVECCHI & COLAVECCHI  
221 East Market Street  
P.O. Box 131  
Clearfield, PA 16830

814/765-1566

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

RICHARD CARBO and ANN CARBO, :  
his wife, : No. 07 - 687 - CD  
Plaintiffs:  
:  
vs. :  
:  
WENDY'S OLD FASHIONED HAMBURGERS :  
(DuBois) and WENDY'S OLD FASHIONED :  
HAMBURGERS (Sandusky), :  
Defendants:

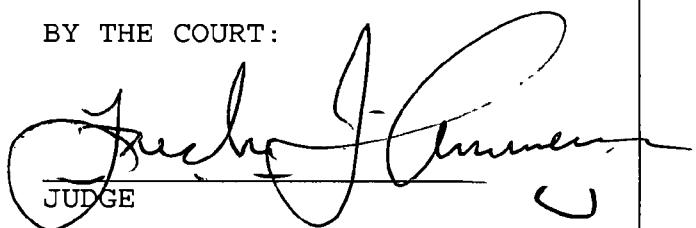
**RULE**

AND NOW, this 19<sup>th</sup> day of June, 2008,  
upon consideration of the foregoing Motion to Compel Answers to  
Interrogatories and Request for Production of Documents, a Rule is  
hereby issued on the Defendants to appear and show cause why the  
Relief requested should not be granted.

Rule made returnable the 23<sup>rd</sup> day of July,  
2008, at 10:30 A.M., Clearfield County Courthouse, Courtroom No.  
1.

A total of one-half hour has been set aside for this hearing.

BY THE COURT:



J. Colavecchi  
JUDGE

**FILED**

JUN 23 2008  
9:30 AM 60  
William A. Shaw  
Prothonotary/Clerk of Courts

4 CERT TO AP

FILED  
William A. Stein  
Probate Court Clerks  
JUN 23 2008

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

RICHARD CARBO and ANN CARBO, :  
his wife, : No. 07 - 687 - CD  
Plaintiffs:  
:  
vs. :  
:  
WENDY'S OLD FASHIONED HAMBURGERS :  
(DuBois) and WENDY'S OLD :  
FASHIONED HAMBURGERS (Sandusky), :  
Defendants:  
610

FILED  
01340801  
JUN 26 2008  
No CC

**CERTIFICATE OF SERVICE**

William A. Shaw  
Prothonotary/Clerk of Courts

I hereby certify that a true and correct copy of the Motion to  
Compel Answers to Interrogatories and Request for Production of  
Documents and Rule Returnable in the above-captioned action was  
mailed by First Class Mail, postage prepaid, the 25<sup>th</sup> day of June  
2008, to the attorney of record:

Gary Keith Feldbaum  
Attorney at Law  
42 S 15<sup>th</sup> Street, Suite 1414  
Philadelphia, PA 19102-2289

  
PAUL COLAVECCHI, ESQUIRE  
Attorney for Defendant  
221 East Market Street  
P.O. Box 131  
Clearfield, PA 16830  
814/765-1566

LAW OFFICES OF  
COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

Dated: 6/27/08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD CARBO and ANN CARBO,  
his wife,

Plaintiffs

CIVIL DIVISION

No. 07 - 687 - CD

vs.

WENDY'S OLD FASHIONED  
HAMBURGERS (DuBois) and WENDY'S  
OLD FASHIONED HAMBURGERS  
(Sandusky),

Defendants

**PRAECIPE TO WITHDRAW  
MOTION TO COMPEL ANSWERS TO  
INTERROGATORIES and REQUEST  
FOR PRODUCTION OF DOCUMENTS**

Filed on Behalf of:

Plaintiffs, RICHARD CARBO and  
ANN CARBO

Counsel of Record for This  
Party:

PAUL COLAVECCHI, ESQUIRE  
Pa. I.D. #83274

COLAVECCHI & COLAVECCHI  
221 East Market Street  
P.O. Box 131  
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF  
COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

FILED NO  
10/14/08 CC  
JUL 21 2008 6K

William A. Shaw  
Prothonotary/Clerk of Courts

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

RICHARD CARBO and ANN CARBO, :  
his wife, : No. 07 - 687 - CD  
Plaintiffs:  
:  
vs. :  
:  
WENDY'S OLD FASHIONED HAMBURGERS :  
(DuBois) and WENDY'S OLD FASHIONED :  
HAMBURGERS (Sandusky), :  
Defendants:

**PRAECIPE TO WITHDRAW  
MOTION TO COMPEL ANSWERS TO  
INTERROGATORIES and REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: WILLIAM SHAW, PROTHONOTARY

Please withdraw the Motion to Compel Answers to  
Interrogatories and Request for Productions of Documents as filed  
in the above-captioned action.

Respectfully submitted,

  
PAUL COLAVECCHI, ESQUIRE  
Attorney for Plaintiffs

07-687-CD

**SERVICE**

On the 10th day of November, 2009, Paul Colavecchi, Esquire  
served Gary Keith Feldbaum with the foregoing subpoena by:

Manner of Service:

       Hand Delivered       X       U.S. Mail-First Class-Postage Prepaid

I verify that the statements in this return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Date: 11/10/09

Service by:

Paul Colavecchi  
Signature

FILED NO CC  
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William A. Shaw  
Prothonotary/Clerk of Courts  
WAT

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

RICHARD CARBO and ANN CARBO, his  
wife, Plaintiffs : No. 07 - 687 - CD  
vs. :  
WENDY'S OLD FASHIONED HAMBURGERS :  
(DuBois) and WENDY'S OLD FASHIONED :  
HAMBURGERS (Sandusky), Defendants :

**SUBPOENA TO ATTEND AND TESTIFY**

TO: DANIEL KASS

c/o Gary K. Feldbaum, Esquire  
42 S. 15th St., Suite 1414 Philadelphia, PA 19102-2289

1. You are ORDERED by the Court to come to the office of Paul Colavecchi, Esquire,  
at 221 East Market Street

at Clearfield, County, Pennsylvania, on December 15, 2009  
at 9:00 o'clock, A. M. to testify on behalf of the Plaintiff in  
the above case and to remain until excused.

2. And bring with you the following:

Any and all documents relevant to the above-captioned action

See attached Notice of Deposition

If you fail to attend or to produce the documents or things required by this Subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney's fees and imprisonment.

ISSUED BY A PARTY/COUNSEL IN COMPLIANCE WITH PA.R.C.P. No. 234.2(a)

NAME: Paul Colavecchi, Esquire

ADDRESS: 221 East Market Street  
Clearfield, PA 16830

TELEPHONE 814/765-1566

SUPREME COURT I.D. # 83274

BY THE COURT:

Date: November 5, 2009  
Seal of the Court

  
PROTHONOTARY/CLERK OF COURTS

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2010  
Clearfield Co., Clearfield, PA

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

RICHARD CARBO and ANN CARBO, :  
his wife, : No. 07 - 687 - CD  
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:  
vs. :  
WENDY'S OLD FASHIONED HAMBURGERS :  
(DuBois) and WENDY'S OLD FASHIONED :  
HAMBURGERS (Sandusky), :  
Defendants:

**NOTICE OF TAKING DEPOSITION ON ORAL EXAMINATION  
UNDER RULE 4007.1**

TO: DANIEL KASS  
c/o Gary K. Feldbaum, Esquire  
42 S. 15<sup>th</sup> Street, Suite 1414  
Philadelphia, PA 19102-2289

Notice is given herewith that, pursuant to Rule 4007.1 of the Pennsylvania Rules of Civil Procedure, the deposition of Daniel Kass, will be taken on oral examination at the office of Paul Colavecchi, Esquire, at 221 East Market Street, Clearfield, Pennsylvania, on the morning of December 15, 2009, commencing at 9:00 o'clock a.m. and at any and all adjournments.

The scope of the deposition will encompass the witness's knowledge of the case. The purpose is to aid in the preparation of this action for trial by Plaintiffs. This witness will also be interrogated as to his knowledge of the identities and whereabouts of any other witnesses having information relevant to this action.

Said witness should bring with him to the deposition any and all documents relevant to this legal action.



PAUL COLAVECCHI, ESQUIRE  
Attorney for Plaintiffs

11/5/09  
DATE

LAW OFFICES OF  
COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD CARBO and ANN CARBO,  
his wife,

Plaintiffs

CIVIL DIVISION

No. 07 - 687 - CD

vs.

WENDY'S OLD FASHIONED  
HAMBURGERS (DuBois) and WENDY'S  
OLD FASHIONED HAMBURGERS  
(Sandusky),

Defendants

**PRAECIPE TO DISCONTINUE**

Filed on Behalf of:

Plaintiffs, RICHARD CARBO and  
ANN CARBO

Counsel of Record for This  
Party:

PAUL COLAVECCHI, ESQUIRE  
Pa. I.D. #83274

COLAVECCHI & COLAVECCHI  
221 East Market Street  
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COURTHOUSE)  
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CLEARFIELD, PA

**FILED** *1cc Atty  
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Colavecchi*  
*APR 05 2013*  
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William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
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(DuBois) and WENDY'S OLD FASHIONED :  
HAMBURGERS (Sandusky), :  
Defendants:

**PRAECIPE TO DISCONTINUE**

TO: WILLIAM SHAW, PROTHONOTARY

Please mark the record in the above-captioned action settled,  
discontinued, and ended.

  
PAUL COLAVECCHI, ESQUIRE

Attorney for Plaintiff

4-4-13

DATE