

07-909-CD
Paris Cleaners vs Anderson & Kime

Paris Cleaners vs Anderson & Kime
2007-909-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

PARIS CLEANERS, INC.
(Plaintiff)

CIVIL ACTION

67 Hoover Ave., P.O. Box 1043
(Street Address)

No. 07-909-CD

DuBois, PA 15801
(City, State Zip)

Type of Case: Civil Action

VS.

Filed on Behalf of:

ANDERSON & KIME INSURANCE, INC.
(Defendant)

Paris Cleaners, Inc.

212 Main Street, P.O. Box 507
(Street Address)

Ridgway, PA 15853
(City, State Zip)

Christopher J. Shaw, Esq.
(Filed by)

67 Hoover Ave., PO Box 1043
DuBois, PA 15801
(Address)

(814) 375-9700 x 706
(Phone)

Christopher J Shaw
(Signature)

FILED

09:35 AM
JUN 08 2007

ICC#1 Summons
to Atty C. Shaw

Atty pd. 85.00

William A. Shaw
Prothonotary/Clerk of Courts

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

PARIS CLEANERS, INC.,
d/b/a PARIS COMPANIES
Plaintiff

VS.

ANDERSON & KIME INSURANCE, INC.,
Defendant

:
:
:
:
: NO. 07 - - CD
:
:
:

PRAECIPE FOR WRIT OF SUMMONS

To: William A. Shaw, Prothonotary

Please issue a writ of summons against the defendant, Anderson & Kime
Insurance, Inc.

6 / 7 / 2007
Date

Christopher J. Shaw
Christopher J. Shaw, Esquire
Corporate Counsel
Paris Cleaner's, Inc.
67 Hoover Avenue, P.O. Box 1043
DuBois, PA 15801
(814) 375 - 9700 ext. 706

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

COPY

PARIS CLEANERS, INC.,
d/b/a PARIS COMPANIES
Plaintiff

VS.

ANDERSON & KIME INSURANCE, INC.,
Defendant

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:
:
:
: NO. 07-909 CD
:
:
:

WRIT OF SUMMONS

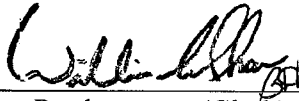
To: Anderson & Kime Insurance, Inc.
212 Main Street
P.O. Box 507
Ridgway, Pennsylvania 15853

You are hereby notified that the following Plaintiff

Paris Cleaners, Inc.
d/b/a Paris Companies
67 Hoover Avenue, P.O. Box 67
DuBois, Pennsylvania 15801

Has commenced an action against you.

Date: 6/8/07


Prothonotary (Clerk)

By _____
Deputy

FILED

JUN 18 2007

m/g:so h

William A. Shaw

Prothonotary/Clerk of Courts

1 cent. to Att

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PARIS CLEANERS, INC.,

CIVIL ACTION

Plaintiff,

No. 07-909-CD

vs.

PRAECIPE FOR APPEARANCE

ANDERSON & KIME INSURANCE, INC.,

Filed on behalf of Defendant:
Anderson & Kime Insurance, Inc.

Defendant.

Counsel of Record for This Party:

Sheila M. Burke, Esquire
Pa. ID No. 79207

Allan J. Wertz, Esquire
Pa. ID No. 85571

BURNS, WHITE & HICKTON
Firm No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Telephone: (412) 995-3000

Original

No. 07-909-CD

Allan J. Wert, Esquire
Attorneys for Defendant
Anderson & Kime Insurance, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Praecipe for Appearance** was served upon the following counsel of record for Plaintiff, by first-class United States Mail, postage prepaid, this 13th day of June, 2007:

Christopher J. Shaw, Esquire
Paris Cleaners, Inc.
67 Hoover Avenue, PO Box 1043
DuBois, PA 15801

BURNS, WHITE & HICKTON

By: Sheila M. Burke
Sheila M. Burke, Esquire
Attorneys for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102878
NO: 07-909-CD
SERVICE # 1 OF 1
WRIT OF SUMMONS

PLAINTIFF: PARIS CLEANERS, INC.
vs.
DEFENDANT: ANDERSON & KIME INSURANCE, INC.

FILED
07/31/07
OCT 19 2007
William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF RETURN

NOW, June 08, 2007, SHERIFF OF ELK CO. COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN WRIT OF SUMMONS ON ANDERSON & KIME INSURANCE, INC..

NOW, June 11, 2007 AT 2:50 PM SERVED THE WITHIN WRIT OF SUMMONS ON ANDERSON & KIME INSURANCE, INC., DEFENDANT. THE RETURN OF ELK CO. COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102878
NO: 07-909-CD
SERVICES 1
WRIT OF SUMMONS

PLAINTIFF: PARIS CLEANERS, INC.
vs.
DEFENDANT: ANDERSON & KIME INSURANCE, INC.

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	SHAW	122	10.00
SHERIFF HAWKINS	SHAW	122	18.82
ELK CO.	SHAW	123	21.00

Sworn to Before Me This

_____ Day of _____ 2007

So Answers,



Chester A. Hawkins
Sheriff

Affidavit of Service

Paris Cleaners, Inc.

vs.

Anderson & Kime Insurance, Inc.

No. 909 Term, 2007

Returnable within _____ days
from date of service hereof.

NOW June 11 20 07 at 2:50 o'clock P.M.

served the within Summons on Anderson & Kime Insurance, Inc.
of 212 Main St., Ridgway, Elk County, PA

at Elk County Sheriff's Office, Main St., Ridgway, Elk County, PA

by handing to Gennaro Aiello, President of Anderson & Kime Insurance, Inc.

a true and attested copy of the original Summons and made

known to him the contents thereof. Sheriff's Costs - \$21.00 PAID

Sworn to before me this 18th

day of June A.D. 20 07

Margaret J. Fitzgerald
Dyck Prothonotary

118.11-010

My Commission Expires
January 7, 2008

So answers,

Thomas C. Korte

Sheriff

Earl C. Pontious

Deputy

ADDRESS: 212 MAIN ST., PO BOX 507, RIDGWAY, PA 15853

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF ELK CO. COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, June 08, 2007.

RESPECTFULLY,

Chester A. Hawkins

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED

OCT 19 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

FILED

PARIS CLEANERS, INC.
(Plaintiff)

CIVIL ACTION

67 Hoover Ave., P.O. Box 1043
(Street Address)

No. 07-909-CD

DuBois, PA 15801
(City, State Zip)

Type of Case: Civil Action

VS.

Filed on Behalf of:

ANDERSON & KIME INSURANCE, INC.
(Defendant)

Paris Cleaners, Inc.

212 Main Street, P.O. Box 507
(Street Address)

Ridgway, PA 15853
(City, State Zip)

Christopher J. Shaw, Esq.
(Filed by)

67 Hoover Ave., PO Box 1043
DuBois, PA 15801
(Address)

(814) 375-9700 x 706
(Phone)

Christopher J. Shaw
(Signature)

NOV 27 2007
D/3:15/W (GR)
William A. Shaw
Prothonotary/Clerk of Courts
1 Cent to Att

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

PARIS CLEANERS, INC.,
d/b/a PARIS COMPANIES
Plaintiff

VS.

ANDERSON & KIME INSURANCE, INC.,
Defendant

: No. 07 – 909 - CD
:
: TYPE OF CASE:
: Civil Action
:
: TYPE OF PLEADING:
: Complaint
:
:
: FILED ON BEHALF OF:
: Plaintiff
:
: COUNSEL OF RECORD :
: FOR THIS PARTY:
:
: CHRISTOPHER J. SHAW
: Pa. Sup. Ct. I.D. #46836
:
: Corporate Counsel
: Paris Companies
: 67 Hoover Avenue
: P.O. Box 1043
: DuBois, PA 15801
: (814) 375 – 9700 ext. 706

Jury Trial Demanded

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

PARIS CLEANERS, INC.,	:	
d/b/a PARIS COMPANIES	:	
Plaintiff	:	
	:	
VS.	:	NO. 07 - 909 - CD
	:	
ANDERSON & KIME INSURANCE, INC.,	:	
Defendant	:	

NOTICE TO DEFEND

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:**

**COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
TELEPHONE: (814) 765-2641 Ext. 50-51**

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

PARIS CLEANERS, INC.,
d/b/a PARIS COMPANIES
Plaintiff

VS.

ANDERSON & KIME INSURANCE, INC.,
Defendant

:
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: NO. 07 - 909 - CD
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COMPLAINT

AND NOW, comes the Plaintiff, PARIS CLEANERS INC., by and through its attorney, Christopher J. Shaw, Esquire, and files the following Complaint against the Defendant, ANDERSON & KIME INSURANCE, INC. and in support thereof avers as follows:

1. The Plaintiff, PARIS CLEANERS, INC., is a Pennsylvania Business Corporation having a principle business location of 67 Hoover Avenue, P.O. Box 1043, DuBois, Clearfield County, Pennsylvania 15801.

2. The Defendant, ANDERSON & KIME INSURANCE, INC., is a Pennsylvania Business Corporation having a principle business location of 212 Main Street, P.O. Box 507, Ridgway, Elk County, Pennsylvania 15853.

3. During the Fall of 1998, Plaintiff engaged the services of the Defendant as its exclusive insurance broker.

4. As exclusive insurance broker, Defendant obtained insurers for all of Plaintiff's insurance needs including liability insurance, worker's compensation insurance, automobile and vehicle insurance, etc. from January 1, 1999 through December 31, 2005 for all of Plaintiff's facilities.

5. Before procuring any insurance coverage for Plaintiff, Defendant did a comprehensive review of Plaintiff's insurance needs, and suggest the types and amounts of coverage that Plaintiff should consider so that Plaintiff was "fully" protected at least insofar as Plaintiff's risk tolerance warranted.

6. Defendant became aware that Plaintiff had a low risk tolerance, and as such purchased insurance in a manner that Plaintiff was "fully" protected against insurable risks.

7. Annually, the Defendant would meet with Plaintiff, and conduct a risk assessment and audit of both the existing coverage Plaintiff had and would be up for renewal and to discuss additional insurance available to Plaintiff to meet Plaintiff's goal of being "fully" insured.

8. In 2003, Paris began the construction of a new production facility in Ravenna Ohio.

9. This facility began operation in February 2004.

10. Defendant was aware of this facility and in fact provided the premises liability insurance for this facility.

11. Although Defendant procured worker's compensation insurance for Plaintiff's other locations, Defendant did not provide the worker's compensation

insurance for the Ravenna facility as Ohio has its own state run worker's compensation system.

12. Although Defendant did not provide the worker's compensation insurance for the Ravenna facility, Defendant was fully aware that Plaintiff had various employees working at the Ravenna facility and that these workers were protected by the State run worker's compensation program.

13. At all times relevant hereto, Plaintiff relied on Defendant to provide information about the insurance requirements in the various states Plaintiff operated in and to assist Plaintiff to procure the appropriate insurance policies consistent with Plaintiff's risk tolerance.

14. Defendant knew or should have known that in Ohio there was a developing law where employees could sue employers for intentional torts despite the immunity from suit ordinarily provided by worker's compensation insurance laws.

15. Plaintiff was unaware of this developing area of law in Ohio and to the contrary believed that Ohio like all other locations Plaintiff conducted business in virtually prevented suits by employees against their employer because of the immunity provided by the worker's compensation laws in the various states.

16. Defendant never discussed the fact that insurers routinely make "stop gap" coverage available to Ohio employers so that the employer could be insured against such intentional tort suits routinely brought by Ohio employees against their employers.

17. During the times relevant hereto, Plaintiff did not purchase so called "stop gap" insurance because Plaintiff was unaware of the need or advisability of obtaining such coverage.

18. When Plaintiff changed insurance brokers, in January 2006, the new exclusive insurance broker retained by Plaintiff immediately inquired as to whether or not Plaintiff had the "stop gap" insurance knowing Plaintiff's low risk tolerance and over concern for this potential gap in coverage in Ohio due to the routine suits brought by employees against their employer for the "intentional tort" in Ohio.

19. The regular liability insurance policy procured for Plaintiff by both the Defendant and its new broker had identical language that effectively excluded coverage for suits brought by employees against their employer for "intentional torts"

20. On June 24, 2004, one of Plaintiff's employees, Raymond Parker, was injured when he fell approximately 20 feet from the roof of the so called OR Room to the production floor of the Ravenna facility while in the course of his employment with Plaintiff.

21. On May 15, 2006, a lawsuit was filed against Plaintiff, as an additional Defendant, by said injured employee, Raymond Parker alleging that Plaintiff had committed an intentional tort against said employee arising out of the June 24, 2004 incident.

22. When Plaintiff was notified of this lawsuit, Plaintiff notified Harleysville Mutual Insurance Company, the insurer through which Defendant

had provided the premises and general liability insurance for Plaintiff including the coverage for the Plaintiff's Ohio facility.

23. Harleysville Mutual Insurance Company filed a declaratory judgment action against the Plaintiff seeking judicial interpretation that Harleysville Mutual Insurance Company would have neither an obligation to defend Plaintiff nor to provide liability coverage for any injuries sustained by Mr. Parker under the policies of insurance procured by Defendant.

24. In the declaratory judgment suit filed by Harleysville Mutual Insurance Company, the Court entered a judgment effectively determining that Plaintiff had no insurance protection against the claim being brought against it by its employee Raymond Parker.

25. As a result of having no insurance protection against the claim presented by its employee, Raymond Parker for the intentional tort, Plaintiff was put in the position of having to defend itself against the claim brought by Mr. Parker and against damages payable to Mr. Parker if it were to be determined that Plaintiff had liability for the same.

26. To defend itself on this claim, Plaintiff was forced to retain the services of an attorney licensed to practice law in Ohio, and did so by retaining the services of Kevin Roberts, Esquire of the law firm of Dyson, Schmidlin, & Foulds, L.P.A. in Cleveland, Ohio, the firm Harleysville Mutual Insurance Company originally obtained to represent Plaintiff under reservation of rights pending the decision on the declaratory judgment action.

27. Although ultimately Plaintiff was granted summary judgment and the court determined that Plaintiff was not liable for the injuries sustained by Mr. Parker, Plaintiff incurred attorney's fees in the amount of \$20,389.04, copies of which are attached hereto as Exhibit "A".

28. In addition to the attorney's fees incurred, Plaintiff may still be required to expend additional attorney's fees defending an appeal of this case, and could have liability in the event the summary judgment previously granted is overturned on appeal.

Count I-Negligence

29. Defendant incorporates by reference the allegations of paragraphs 1 through 28 of the within complaint as though set forth at length herein.

30. Defendant, as a duly licensed insurance broker, and the exclusive insurance broker used by Plaintiff, knew or should have known that there was a gap in the insurance coverage of Plaintiff and that Plaintiff was exposed to potentially significant loss in liability for and even to defend a cause of action brought by one of its employees in Ohio for an intentional tort claim.

31. Defendant as the exclusive insurance broker used by Plaintiff had the duty to advise Plaintiff of this potential gap in coverage and significant risk, yet Defendant failed to do so.

32. As a result of Defendant's failure to advise Plaintiff of this risk and the resultant gap in insurance coverage, Plaintiff had to defend itself against the suit brought by its employee, Raymond Parker.

33. As a result of Defendant's failure to advise Plaintiff of the gap in insurance, Plaintiff incurred damages in the form of attorney's fees in the amount of at least \$20,389.04.

34. These damages were the foreseeable consequence of Defendant's actions in not advising Plaintiff of the need to protect itself against this gap in coverage.

WHEREFORE, Plaintiff request judgment against the Defendant in the amount of \$20,389.04 plus any additional attorney's fees incurred and or liability proven against Plaintiff to the date this action is resolved, together with interest plus costs of suit..

Count II-Breach of Fiduciary Duty

35. Defendant incorporates by reference the allegations of paragraphs 1 through 28 and Count I of the within complaint as though set forth at length herein

36. The relationship between the Plaintiff and the Defendant as its exclusive insurance broker was one in which the Defendant held itself out as having special expertise in all areas of business insurance and one which Defendant encouraged, and Plaintiff did in fact rely upon Defendant's expertise in deciding the types and amounts of insurance coverage Plaintiff should purchase to protect itself against foreseeable risks.

37. By conducting the annual audit of Plaintiff's insurance coverage, Defendant perpetuated the reliance by the Plaintiff on the expertise of the Defendant and thereby continued the special fiduciary relationship between the parties.

38. Because of this higher fiduciary duty, Defendant had the duty to advise Plaintiff of the potential gap in its insurance coverage as set forth herein.

39. Despite knowing that Plaintiff was actively conducting business in Ohio and the fact that Defendant, as an expert in insurance coverage, knew or should have known of the gap in insurance coverage and the foreseeable risk, Defendant failed to counsel Plaintiff that consistent with Plaintiff's known risk tolerance, Plaintiff should purchase the "stop gap" coverage.


40. As a result of Defendant's failure to advise Plaintiff of the gap in insurance, Plaintiff incurred damages in the form of attorney's fees in the amount of at least \$20,389.04.

41. These damages were the foreseeable consequence of Defendant's actions in not advising Plaintiff of the need to protect itself against this gap in coverage.

WHEREFORE, Plaintiff request judgment against the Defendant in the amount of \$20,389.04 plus any additional attorney's fees incurred and or liability proven against Plaintiff to the date this action is resolved, together with interest plus costs of suit.

Jury Trial Demanded

Respectfully,




Christopher J. Shaw
Attorney for Plaintiff

VERIFICATION

I, Jason G. McCoy, am the Secretary/Treasurer and CFO of the Plaintiff, Paris Cleaner's Inc. As such, I am duly authorized to make this verification on behalf of the Plaintiff. I have read the foregoing Complaint and affirm that the statements therein are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.



Jason G. McCoy

Dated: 11/27/87

DYSON, SCHMIDLIN & FOULDS, L.P.A.
Attorneys at Law
5843 Mayfield Road
Cleveland, OH 44124
P 440-461-9000 F 440-461-6108

Invoice submitted to:
Paris Companies
67 Hoover Avenue
P.O. Box 1043
Dubois, Pennsylvania 15801

PAST DUE

Tax I.D. # 34-1171244

July 17, 2007
In Reference To: Re: Parker v. Jensen USA, Inc., Portage County Common
Pleas, Case No: 2005-CV-00543

Invoice #11734

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
2/7/2007	KR Receive and review Shaw correspondence regarding personnel files of Olesky, Goodman and Corcoran; prepare response to Jensen's request; send information to Tasse regarding same.	0.40 225.00/hr	90.00
2/15/2007	KR Receive and review letter request from Wakefield regarding site inspection and send to and communication with Shaw; correspondence with Tasse regarding same; telephone conference with Tasse; draft response letter to Wakefield; draft report to Shaw.	0.50 225.00/hr	112.50
	KR Prepare file for motion for summary judgment; review deposition transcript of Plaintiff.	2.00 225.00/hr	450.00
2/16/2007	KR Telephone conference with Shaw regarding coverage issues and representation; receive and review correspondence regarding expert inspection; respond to email inquiries; prepare file for motion for summary judgment; receive and review inquiry regarding site inspection.	0.50 225.00/hr	112.50
2/28/2007	KR Receive and review Wakefield's proposed stipulation regarding court extensions; correspondence with Shaw; draft consent letter to Wakefield.	0.40 225.00/hr	90.00
3/1/2007	KR Telephone conference with Tasse regarding inspections and IME; receive and review Shaw correspondence regarding site inspection; telephone conference with Wakefield regarding inspection; prepare file for motion for summary judgment.	1.20 225.00/hr	270.00
3/6/2007	KR Receive and review correspondence from Tasse regarding discovery deadlines and stipulation.	0.10 225.00/hr	22.50

		<u>Hrs/Rate</u>	<u>Amount</u>
3/7/2007	KR Receive and review memo from Shaw regarding experts and inspection at Ravenna.	0.10 225.00/hr	22.50
3/15/2007	KR Receive and review filed stipulation regarding experts and motion for summary judgment; letter to Shaw regarding stipulation for extension of time to submit expert reports and dispositive motions.	0.30 225.00/hr	67.50
3/19/2007	KR Receive and review Tasse's correspondence regarding documents identified at inspection, summary judgment and court deadlines.	0.10 225.00/hr	22.50
3/23/2007	KR Receive and review Tasse and Shaw correspondence regarding securing copies of onsite documents and schematics.	0.10 225.00/hr	22.50
3/26/2007	KR Receive and review stipulation entry from Tasse; draft letter to Shaw regarding stipulation and court order.	0.20 225.00/hr	45.00
3/30/2007	KR Receive and review Shaw correspondence regarding his Eleventh District case law research; review cases; correspondence to Shaw.	1.00 225.00/hr	225.00
4/2/2007	KR Review of Plaintiff's expert report; draft opinion letter to Shaw regarding expert report.	1.60 225.00/hr	360.00
4/3/2007	KR Receive and review Tasse correspondence regarding document requests and further depositions.	0.10 225.00/hr	22.50
4/6/2007	KR Review file regarding experts and court order; review docket.	0.10 225.00/hr	22.50
4/16/2007	KR Receive and review Wakefield's supplemental document requests to Jensen.	0.10 225.00/hr	22.50
4/17/2007	KR Review/analyze deposition transcripts of party representatives; review Eleventh District case law regarding intentional tort.	6.00 225.00/hr	1,350.00
4/18/2007	KR Receive and review Shaw correspondence regarding Plaintiff's liability expert; draft response to Shaw regarding opinion of expert report.	0.30 225.00/hr	67.50
4/20/2007	KR Draft/revise motion for summary judgment; further review of deposition transcripts.	4.00 225.00/hr	900.00
4/23/2007	KR Draft/revise motion for summary judgment; review of case law.	3.00 225.00/hr	675.00
	MF Review, update and Sheppardize case law (paralegal rate).	1.00 100.00/hr	100.00
4/27/2007	KR Receive and review correspondence from Wakefield and Tasse regarding motion for summary judgment and stipulation; telephone conference with counsel regarding same.	0.30 225.00/hr	67.50
	KR Further case law analysis for motion for summary judgment; additional research; draft/revise motion for summary judgment.	4.00 225.00/hr	900.00

		<u>Hrs/Rate</u>	<u>Amount</u>	
4/30/2007	KR	Receive and review draft stipulation; telephone conference with Tasse and court; review docket; draft/revise motion for summary judgment.	1.00 225.00/hr	225.00
5/2/2007	KR	Draft/revise motion for summary judgment; telephone conference with court regarding filing.	8.00 225.00/hr	1,800.00
5/3/2007	MF	Prepare exhibits to motion for summary judgment; Sheppardize case law; pull and sort unreported cases to attach to motion for summary judgment; proofread motion; organize deposition transcripts to file with court; review docket; draft service copies (paralegal rate).	2.00 100.00/hr	200.00
5/4/2007	KR	Final revisions and drafting of motion for summary judgment.	2.00 225.00/hr	450.00
5/9/2007	KR	Receive and review Jensen's motion to continue; receive and review Paris time-stamped copy of motion for summary judgment; draft letter/report to Shaw regarding Jensen's motion for continuance.	0.20 225.00/hr	45.00
5/18/2007	KR	Receive and review Jensen's motion for summary judgment; receive and review Jensen's expert report; draft opinion report to Shaw regarding Jensen's motion for summary judgment and expert report.	1.50 225.00/hr	337.50
6/4/2007	KR	Receive and review Jensen's notice of A. Rauck's deposition; receive and review Tasse's letter regarding D. Grover deposition.	0.10 225.00/hr	22.50
6/5/2007	KR	Receive and review Shaw's correspondence regarding expert depositions.	0.10 225.00/hr	22.50
6/13/2007	KR	Receive and review correspondence from counsel regarding Plaintiff's and Jensen expert depositions; draft report to Shaw; telephone conference with Wakefield regarding liability, settlement and trial matters.	0.40 225.00/hr	90.00
6/14/2007	KR	Telephone conferences with Wakefield and Tasse regarding expert discovery; prepare for depositions and pretrial matters; telephone conferences with Court Magistrate Steinle; draft and receive correspondence to and from counsel regarding above.	0.60 225.00/hr	135.00
6/15/2007	KR	Conference call with court Magistrate Steinle and all counsel regarding discovery, motions and trial matters; review docket, trial orders, local rules and correspondence; prepare for D. Grover's deposition, A. Rauck's deposition and Dr. Myer's deposition and mediation.	1.20 225.00/hr	270.00
6/19/2007	KR	Telephone conference with Shaw regarding expert depositions, D. Grover's deposition, mediation, trial and dispositive motions; review and prepare for D. Grover's deposition in Chicago; correspondence and telephone conferences to and from Tasse and Wakefield regarding D. Grover's deposition.	2.00 225.00/hr	450.00
6/20/2007	KR	Receive and review correspondence from counsel regarding D. Grover deposition; respond to correspondence; receive and review Jensen's supplemental document production to Plaintiff's requests and review documents produced; receive and review Plaintiff's briefs in	5.00 225.00/hr	1,125.00

		<u>Hrs/Rate</u>	<u>Amount</u>
	opposition to both Paris Cleaners and Jensen's motions for summary judgment; prepare for D. Grover's deposition and review discovery, document production, previous deposition transcripts and motions in preparation.		
6/21/2007	KR Travel to and from Chicago for D. Grover deposition.	7.00 112.50/hr	787.50
	KR Attend and conduct discovery deposition and trial videotape testimony of D. Grover.	4.50 225.00/hr	1,012.50
6/22/2007	KR Conference call with court Magistrate regarding reply brief in response to Plaintiff's brief in opposition; further review of Plaintiff's brief in opposition; prepare and review case law and Plaintiff's brief for reply.	2.00 225.00/hr	450.00
6/27/2007	KR Draft and revise reply brief; further review and analysis of all deposition transcripts; annotate C. Corcoran's deposition transcript.	3.00 225.00/hr	675.00
6/29/2007	KR Draft/revise reply brief.	2.50 225.00/hr	562.50
7/2/2007	MF Prepare/organize exhibits to reply brief; draft service letters to court and counsel; file with court (paralegal rate).	0.50 100.00/hr	50.00
	KR Final revisions and drafting of reply brief.	7.00 225.00/hr	1,575.00
7/11/2007	KR Telephone conference with Wakefield from court regarding new trial schedule.	0.10 225.00/hr	22.50
7/12/2007	KR Receive and review Wakefield's confirmation of new trial schedule; report to Shaw.	0.10 225.00/hr	22.50
	For professional services rendered	78.20	\$16,370.00
	Additional Charges :		
6/21/2007	KR Airfare to and from Chicago.		306.80
	KR Parking at Airport.		15.00
	KR Food/coffee.		10.00
	Total costs		\$331.80
	Total amount of this bill		\$16,701.80
	COURTESY DISCOUNT:		\$ 500.00
	TOTAL AMOUNT OF THIS INVOICE:		\$16,201.80

DYSON, SCHMIDLIN & FOULDS, L.P.A.
Attorneys at Law
5843 Mayfield Road
Cleveland, OH 44124
P 440-461-9000 F 440-461-6108

Invoice submitted to:
Paris Companies
67 Hoover Avenue
P.O. Box 1043
Dubois, Pennsylvania 15801

Tax I.D. # 34-1171244

September 10, 2007
In Reference To: Re: Parker v. Jensen USA, Inc., Portage County Common
Pleas, Case No: 2005-CV-00543

Invoice #11876

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
7/13/2007 KR	Receive and review Court journal entry regarding hearing and trial schedule; draft report to C. Shaw regarding above and future activity; attention to file and scheduling.	0.30 225.00/hr	67.50
7/20/2007 KR	Receive and review Jensen's July 17, 2007 motion; receive and review Plaintiff's filing regarding Jensen's motion for summary judgment; draft report to C. Shaw regarding these filings.	0.30 225.00/hr	67.50
7/23/2007 KR	Receive and review Plaintiff's filing regarding D. Grover deposition; review file and deposition testimony; draft report to C. Shaw regarding D. Grover's testimony and supplementing motion for summary judgment.	0.40 225.00/hr	90.00
8/29/2007 KR	Receive and review Court's ruling regarding Defendants' motions for summary judgment; review briefs and evidence; forward Court ruling to C. Shaw with memorandum; prepare for mediation.	0.60 225.00/hr	135.00
8/30/2007 KR	Further review of Court ruling; draft/revise report summary to C. Shaw; prepare for mediation.	0.80 225.00/hr	180.00
9/4/2007 KR	Review file, medical records and Plaintiff's audit regarding Dr. Myer trial testimony; telephone conferences with J. Tasse regarding Dr. Myer and Plaintiff's medical specials; forward documentation to J. Tasse regarding Plaintiff's lost wage information; correspondence with C. Shaw regarding Dr. Myer trial testimony.	0.60 225.00/hr	135.00
For professional services rendered		3.00	\$675.00

DYSON, SCHMIDLIN & FOULDS, L.P.A.
Attorneys at Law
5843 Mayfield Road
Cleveland, OH 44124
P 440-461-9000 F 440-461-6108

PAST DUE

Invoice submitted to:
Paris Companies
67 Hoover Avenue
P.O. Box 1043
Dubois, Pennsylvania 15801

Tax I.D. # 34-1171244

September 27, 2007
In Reference To: Re: Parker v. Jensen USA, Inc., Portage County Common
Pleas, Case No: 2005-CV-00543

Invoice #11902

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
9/10/2007	KR Telephone conference with C. Shaw regarding case evaluation, settlement offer discussions, preparation for mediation hearing and summary judgment issues; review file in preparation of mediation hearing and in preparation of mediation case summary to submit to Court Mediator.	1.50 225.00/hr	337.50
9/11/2007	KR Further review of file and draft/edit mediation case summary; draft letter to Court Mediator.	1.70 225.00/hr	382.50
9/17/2007	KR Receive and review Plaintiff's mediation case summary, updated specials audit with additional medical records regarding follow-up out-patient surgery and counsel's correspondence; analyze Plaintiff's summary and evidence; analyze additional medical records from St. Thomas Medical Center; draft/revise report of above to C. Shaw.	1.80 225.00/hr	405.00
9/18/2007	KR Receive and review Jensen's mediation case summary; draft report to C. Shaw regarding above; review summary judgment briefing, deposition testimony, pleadings and other evidentiary matters in preparation for mediation.	2.80 225.00/hr	630.00
9/19/2007	KR Further review in preparation of mediation hearing; conferences with C. Shaw at Courthouse regarding evaluation; attend mediation hearing; draft report summary to C. Shaw documenting mediation hearing proceedings and further litigation plans.	3.20 225.00/hr	720.00
	KR Travel to and from Ravenna to attend mediation hearing.	2.00 112.50/hr	225.00

		<u>Hrs/Rate</u>	<u>Amount</u>
9/20/2007	KR Telephone conference with Jensen's counsel regarding mediation, further ex- Paris witnesses (Goodman & Olesky) and deposition/questioning; report to C. Shaw regarding above.	0.30 225.00/hr	67.50
9/21/2007	KR Review correspondence file and records regarding future activities.	0.10 225.00/hr	22.50
9/26/2007	KR Receive and review Plaintiff's correspondence and notice of Jensen's expert deposition in Chicago (Barnett); review Mr. Barnett's May 15, 2007 expert report; draft report regarding Barnett testimony and deposition; receive and review correspondence regarding Plaintiff's expert deposition (Rauck); draft memorandum to C. Shaw regarding Rauck deposition.	0.80 225.00/hr	180.00
For professional services rendered		14.20	\$2,970.00
Additional Charges :			
9/19/2007	KR Travel to and from Ravenna for mediation.		42.24
Total costs			\$42.24
Total amount of this bill			\$3,012.24

DuBois
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1 cent to Atty

HOLD CENT. FOR FRI.

William A. Shaw
Prothonotary/Clerk of Courts

NOV 27 2007

FILED

UPA

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

PARIS CLEANERS, INC.,

Plaintiff,

CIVIL ACTION

vs.

No. 07-909-CD

ANDERSON & KIME INSURANCE,
INC.,

Defendant.

**PRAECIPE FOR ORAL ARGUMENT FOR
PRELIMINARY OBJECTIONS**

Filed on behalf of Defendant:
Anderson & Kime Insurance, Inc.

Counsel of Record for This Party:

Sheila M. Burke, Esquire
Pa. ID No. 79207

Allan J. Wertz, Esquire
Pa. ID No. 85571

BURNS, WHITE & HICKTON
Firm No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Telephone: (412) 995-3000

FILED NO CC
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DEC 10 2007 (GR)

William A. Shaw
Prothonotary/Clerk of Courts

PARIS CLEANERS, INC.,

VS.

Defendant.

No. 07-909-CD

By:

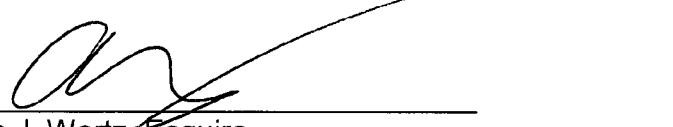
Dated: December 7, 2007

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Praeceptum for Oral Argument** was served upon the following counsel of record by first class United States Mail, postage prepaid, this 7th day of December, 2007:

Christopher J. Shaw, Esquire
Paris Cleaners, Inc.
67 Hoover Avenue, PO Box 1043
DuBois, PA 15801

Burns, White & Hickton

By: 
Allan J. Wertz, Esquire

UNX

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PARIS CLEANERS, INC.,

Plaintiff,

vs.

ANDERSON & KIME INSURANCE, INC.,

Defendant.

CIVIL ACTION

No. 07-909-CD

**DEFENDANT'S, PRELIMINARY
OBJECTIONS TO PLAINTIFF'S
COMPLAINT**

Filed on behalf of Defendant:
Anderson & Kime Insurance, Inc.

Counsel of Record for This Party:

Sheila M. Burke, Esquire
Pa. ID No. 79207

Allan J. Wertz, Esquire
Pa. ID No. 85571

BURNS, WHITE & HICKTON
Firm No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Telephone: (412) 995-3000

JURY TRIAL DEMANDED

FILED

NO CC
m/11/27/07
DEC 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PARIS CLEANERS, INC.,

Plaintiff,

vs.

ANDERSON & KIME INSURANCE, INC.,

Defendant.

CIVIL ACTION

No. 07-909-CD

DEFENDANT'S, PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

AND NOW, here comes, Defendant, Anderson & Kime Insurance, Inc., (hereinafter "Anderson & Kime"), by and through its attorneys, BURNS, WHITE & HICKTON, LLC, and file the within Preliminary Objections to Plaintiff's Complaint, pursuant to Rule 1028 of the Pennsylvania Rules of Civil Procedure, and in support thereof Defendant avers the following:

1. Plaintiffs filed a Praecipe for Writ of Summons on June 8, 2007.
2. On or about November 27, 2007, Plaintiff filed a Complaint sounding in liability pursuant to negligence and breach of fiduciary duty against Anderson & Kime. (A true and correct copy of Plaintiff's Complaint is attached hereto as Exhibit "A").
3. Plaintiff's alleged claims arise out an accident that occurred on June 24, 2004, at Plaintiff's Ravenna, OH, facility when an employee fell during the scope of his employment. Plaintiff's employee sued Plaintiff and Plaintiff did not have "stop gap" coverage. Plaintiff alleges that Anderson & Kime was negligent in failing to procure "stop gap" coverage for the Plaintiff which required Plaintiff to defend itself in the action filed by its employee. (See, Ex. "A").

4. As to this Defendant, Plaintiff alleges that Martin & Nettrour failed to accurately evaluate the replacement value of Plaintiffs' property and failed to assist Plaintiffs in making their fire and theft claims against Defendant Encompass. (See, Ex. "A").

**PRELIMINARY OBJECTIONS IN THE NATURE OF A DEMURRER, OR IN
THE NATURE OF A MOTION TO STRIKE**

Defendant respectfully moves this Honorable Court for an Order dismissing Count II of Plaintiff's Complaint pursuant to Rules 1028 (a)(2) and (4) of the Pennsylvania Rules of Civil Procedure, on the grounds of Plaintiff's failure to state a claim upon which relief may be granted against Defendant and/or Plaintiff's failure to properly plead a cause of action under Pennsylvania law. In the alternative, in each instance in which this Honorable Court declines to dismiss Count II of Plaintiff's Complaint the Defendant respectfully moves this Honorable Court for an Order striking Count II of Plaintiffs' Complaint, pursuant to Rule 1028 (a)(3) of the Pennsylvania Rules of Civil Procedure, on the grounds of Plaintiff's failure to plead with the requisite specificity any claims which are cognizable in the Courts of the Commonwealth of Pennsylvania.

**A. DEMURRER TO COUNT II OF PLAINTIFFS' COMPLAINT
OR, IN THE NATURE OF A MOTION TO STRIKE
(BREACH OF FIDUCIARY DUTY).**

5. Defendant Anderson & Kime, hereby incorporates its allegations set forth in Paragraphs 1 through 5 as though set forth at length herein.

6. In Count II of the Complaint, Plaintiff alleges a cause of action sounding in breach of fiduciary duty as against Defendant.

7. Plaintiff's breach of fiduciary duty claim fails as a matter of law because Anderson & Kime was nothing more than the insurance broker and had no agency, special, or confidential relationship with the Plaintiff which would give rise to any fiduciary duty.

8. For the forgoing reasons, and as more fully set forth in Defendant Anderson & Kime's Memorandum of Law in Support of Preliminary Objections, Count II of Plaintiff's Complaint should be dismissed with prejudice.


WHEREFORE, in accordance with to Rules 1028(a)(2) and (4), Defendant respectfully submits that Count II of Plaintiff's Complaint should be dismissed for failure to state a cause of action upon which relief can be granted, stricken for failure to properly plead claims cognizable in the Courts of the Commonwealth of Pennsylvania.

WHEREFORE, Defendant, Anderson & Kime Insurance, Inc., respectfully requests that this Honorable Court sustain Defendant's Preliminary Objections.

Respectfully submitted,

BURNS, WHITE & HICKTON, LLC

By: _____


Allan J. Wertz, Esquire
Attorneys for Defendant
Anderson & Kime Insurance, Inc.,

ORAL ARGUMENT REQUESTED

Order

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PARIS CLEANERS, INC.,

Plaintiff,

vs.

ANDERSON & KIME INSURANCE, INC.,

Defendant.

CIVIL ACTION

No. 07-909-CD

ORDER OF COURT

AND NOW, to-wit, this ____ day of _____, 2008, upon
consideration of Defendant Anderson & Kime Insurance, Inc., Preliminary Objections, it
is hereby ORDERED, ADJUDGED and DECREED that:

- 1) Count II of Plaintiff's Complaint is DISMISSED WITH PREJUDICE.

BY THE COURT:

_____. J.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PARIS CLEANERS, INC.,

Plaintiff,

vs.

ANDERSON & KIME INSURANCE,
INC.,

Defendant.

CIVIL ACTION

No. 07-909-CD

**DEFENDANT'S, MEMORANDUM
OF LAW IN SUPPORT OF
PRELIMINARY OBJECTIONS TO
PLAINTIFF'S COMPLAINT**

Filed on behalf of Defendant:
Anderson & Kime Insurance, Inc.

Counsel of Record for This Party:

Sheila M. Burke, Esquire
Pa. ID No. 79207

Allan J. Wertz, Esquire
Pa. ID No. 85571

BURNS, WHITE & HICKTON
Firm No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Telephone: (412) 995-3000

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

PARIS CLEANERS, INC.,)	
)	
Plaintiff,)	
)	
vs.)	No. 07-909-CD
)	
ANDERSON & KIME INSURANCE,)	
INC.,)	
)	
Defendant.)	

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY
OBJECTIONS TO PLAINTIFFS' COMPLAINT**

AND NOW, here comes, Defendant, Anderson & Kime Insurance, Inc., (hereinafter "Anderson & Kime"), by and through its attorneys, BURNS, WHITE & HICKTON, LLC, and file the following Memorandum of Law in Support of Preliminary Objections to Plaintiff's Complaint:

I. FACTS

Plaintiffs filed a Praecipe for Writ of Summons on June 8, 2007. On or about November 27, 2007, Plaintiff filed a Complaint sounding in liability pursuant to negligence and breach of fiduciary duty against Anderson & Kime. (A true and correct copy of Plaintiff's Complaint is attached hereto as Exhibit "A").

Plaintiff's alleged claims arise out an accident that occurred on June 24, 2004, at Plaintiff's Ravenna, OH, facility when an employee fell during the scope of his employment. Plaintiff's employee sued Plaintiff and Plaintiff did not have "stop gap" coverage. Plaintiff alleges that Anderson & Kime was negligent in failing to procure

"stop gap" coverage for the Plaintiff which required Plaintiff to defend itself in the action filed by its employee. (See, Ex. "A").

Defendant now files this Memorandum of Law in Support of Preliminary Objections asserting that Count II of Plaintiff's Complaint should be dismissed for failure to state a cause of action upon which relief can be granted and/or stricken for failure to properly plead claims cognizable in the Courts of the Commonwealth of Pennsylvania.

II. STANDARD OF REVIEW FOR PRELIMINARY OBJECTIONS IN THE NATURE OF A DEMURRER:

Preliminary Objections in the nature of a demurrer may only be sustained if the party has failed to state a claim upon which relief may be granted. *Sevin v. Kelshaw*, 417 Pa. Super. 1, 611 A.2d 1232 (1992). In reviewing the same, every material and relevant fact that was pleaded, and every inference fairly deduced there from must be taken as true. *County of Allegheny v. Commonwealth*, 507 Pa. 360, 490 A.2d 402 (1985); *Gekas v. Shapp*, 469 Pa. 1, 5, 364 A.2d 691, 693 (1976); *Sevin, supra*. However, a court may not accept conclusions or averments of law as true. *Sevin, supra*; *Lumax Industries, Inc. v. Aultman*, 543 Pa. 38, 669 A.2d 893 (1995). Based only on the material and relevant facts pleaded by the Plaintiff, Count II of Plaintiff's Complaint fails to state a cause of action. Therefore, Defendant Anderson & Kime, submits that Count II of Plaintiff's Complaint should be dismissed.

III. DEMURRER TO COUNT II OF PLAINTIFF'S COMPLAINT OR, IN THE NATURE OF A MOTION TO STRIKE (FIDUCIARY DUTY).

In Count II of the Complaint, Plaintiff alleges a cause of action for breach of fiduciary duty. Under Pennsylvania law a fiduciary duty may arise in the context of certain "special" relationships. A "special" relationship is one involving confidentiality,

the repose of special trust or fiduciary responsibility. *eToll, Inc. v. Elias/Savion Advertising, Inc.*, 811 A.2d 10, 22 (Pa. Super. 2002). It generally involves a situation where by virtue of the respective strength and weaknesses of the party, one has the power to take advantage of or exercise undue influence over the other. *Estate of Evasew*, 584 A.2d 910, 913 (Pa. 1990). See e.g., *Maritrans G.P., Inc. v. Pepper, Hamilton and Sheetz*, 602 A.2d 1277, 1283 (Pa. 1992) (special relationship exists between attorney and client); *Frowen v. Blank*, 425 A.2d 412, 418 (Pa. 1981) (special relationship exists between eighty-six year old widow with no formal education and her sole business counselor); *In re: Estate of Thomas*, 344 A.2d 834, 836 (Pa. 1975) (special relationship between attorney-scrivener and testator); *Silver v. Silver*, 219 A.2d 659, 662 (Pa. 1966) (special relationship between widow and sons upon whom she relied to manage her property); *Leedom v. Palmer*, 117 A.2d 410, 412 (Pa. 1922) (special relationship between guardian and ward).

Special relationships are rarely, if ever, found to exist between parties to arms length business contracts. The Superior Court has recognized that if parties to routine, arms length, commercial contracts were held to have a "special relationship" virtually every breach of such a contract would support a tort claim. *eToll, Inc.*, 811 A.2d at 23. See also, *Elliott v. Clawson*, 204 A.2d 272, 273 (Pa. 1964) (no special relationship between parties to arms length business contracts); *Creeger Brick & Bldg Supply, Inc. v. Mid-State Bank and Trust Co.*, 560 A.2d 151, 154 (Pa. Super. 1989) (no special relationship between lender and borrower). Thus, "[t]here is a crucial distinction between surrendering control of ones affairs to a fiduciary or a confidante or party in a position to exercise undue influence in entering into arms length commercial agreement,

however important its performance may be to the success of ones business.” *eToll, Inc.*, 811 A.2d at 23. The *eToll* court recognized:

Most commercial contracts for professional services involve one party relying on the other party’s superior skill or expertise in providing that particular service. Indeed, if a party did not believe that the professional possessed specialized expertise worthy of trust, the contract would most likely never take place. This does not mean, however, that a fiduciary relationship arises merely because one party relies on and pays for the specialized skill or expertise of the other party.

Id. The critical question, therefore, is whether the relationship goes beyond mere reliance on superior skill, and into a relationship characterized by “overmastering influence” on one side or “weakness, dependence or trust justifiably reposed” on the other side. *Id.* (citing *Basile v. H & R Block*, 777 A.2d 95, 101 (Pa. Super. 2001)). “A confidential relationship is marked by such a disparity in position that the inferior party places complete trust in the superior party’s advice and seeks no other counsel, so as to give rise to a potential abuse of power.” *Id.*

Recently, the Pennsylvania Superior Court held that an insurance broker presumptively has an arms length relationship with its client. In *Wisniski & Brown Ins. Co.*, the Plaintiff, Saturn Surplus, brought a negligence action against its insurer and insurance agent, the Brown Agency, for failing to recommend flood insurance. 906 A.2d 571 (Pa. Super. 2006) Specifically, Saturn Surplus claimed that the Brown Agency was negligent for failing to investigate its insurance coverage needs, to inspect its property, to inform it that it did not have flood coverage and to recommend the purchase of flood insurance.

The *Wisniski* Court distinguished an “insurance agent” from a “broker” as follows:

An "insurance broker" is one who acts as a middleman between the insured and the insurer soliciting insurance from the public under no employment from any special company, and upon securing an order, placing it with a company selected by the insured or with a company selected by himself or herself; whereas an "insurance agent" is one who represents an insurer under an employment by it. A broker is, in essence, employed in each instance as a special agent for a single purpose while, the very definition of an agent indicates an ongoing and continuous relationship.

Id. at 578. The Court further explained that "brokers and insureds are ordinarily involved in what could be viewed as a series of discreet transactions while agents and insurers tend to be under some duty to each other during the entire length of the relationship." *Id.*

In examining the relationship between Saturn Surplus and the Brown Agency, the *Wisniski* Court found that the Brown Agency acted as an insurance broker rather than as an insurance agent, because it was not employed exclusively by any one insurance company, it acted as a "middleman" and it used its discretion to select an insurance company and policy for Saturn Surplus, and it offered some advice to Saturn Surplus on the scope of coverage. *Id.* "The record reflects that Saturn Surplus put trust in the Brown Agency's judgment about the scope of coverage. On the other hand, the Brown Agency never had the power to bind Saturn Surplus to any particular insurance contract." *Id.*

As to whether a confidential relationship existed between Saturn Surplus and the Brown Agency, the Court emphasized that a fiduciary relationship does not arise "merely because one party relies on and pays for the specialized skill or expertise of the other party." Rather, "the critical question is whether the relationship goes beyond mere reliance on superior skill, and into a relationship characterized by overmastering

influence on one side or weakness, dependence or trust, justifiably reposed, on the other side. *Id.* at 577. Although the Court declined to hold that the broker/client relationship is always or never a "confidential" one, the Court did hold that it may be presumed that "for the great majority of broker/client interactions, the relationship will not be so extremely one-sided so as to be confidential." *Id.* at 579. At least for purposes of a negligence claim, the Court found that the "relationship between an insurance broker and client is an arms length business relationship." *Id.* Accord *Weisblatt*, 4 F. Supp. 2d at 381-82 (relationship between insured and agent for insurer was "quintessential arms length relationship, that of seller and buyer," and the insured's mere reliance on agents superior knowledge was not enough to create a confidential or fiduciary relationship.)¹

In this case, the Plaintiff has not alleged anything other than it relied on Anderson and Kime's specialized knowledge and expertise in the area of insured's coverage. There are no facts which would indicate that any relationship between Plaintiff and Anderson and Kime was anything other than the typical insurance broker-client relationship which is presumed under *Wisniksi* to be nothing more than an arms length relationship. In addition, Plaintiff is a sophisticated business entity and it did not rely

¹ The *Weisblatt* Court noted that "[p]rior to purchase of insurance and formation of the insurance contract no special duties attached beyond the 'ordinary buyer/seller relationship.'" *Id.* at 382 (citations omitted).

As in every other business, an insurance agent's primary enterprise is to sell insurance, a vocation no adult consumer would confuse with a religious order. Concomitantly, a reasonable buyer of insurance (or any other product) must, at peril of *caveat emptor*, act as a reasonable consumer, *e.g.*, research her needs for multiple sources and price - shop for policies. While a good insurance agent will pay careful attention to the insured's needs in constructing a proposed policy, *he does so not out of a special duty to act to the consumer's exclusive benefit, but rather out of a duty to his employer - and to his own self-interest to sell its product as successfully as possible.*

Id. (emphasis added).

solely on Anderson & Kime's advise as to its insurance needs as Plaintiff obtained its own Ohio insurance compensation insurance coverage without the assistance of Anderson & Kime. The Complaint simply does not allege any facts which would support an inference that the relationship between the Plaintiff and Anderson & Kime went "beyond mere reliance upon superior skill," and into a relationship characterized by "over mastering influence" by Anderson & Kime or extreme weakness and dependence upon the part of Plaintiff.

Because Anderson & Kime was nothing more than the insurance broker no agency, special, or confidential relationship existed between Plaintiff and Anderson & Kime. Therefore, Plaintiff's breach of fiduciary duty claim fails as a matter of law and should be dismissed with prejudice as to Anderson & Kime.

Accordingly, pursuant to Rules 1028(a)(2) and (4), Defendant respectfully submits that Count II of Plaintiff's Complaint should be dismissed for failure to state a cause of action upon which relief can be granted, stricken for failure to properly plead claims cognizable in the Courts of the Commonwealth of Pennsylvania.

WHEREFORE, Defendant, Anderson & Kime Insurance, Inc., respectfully requests that this Honorable Court sustain Defendant's Preliminary Objections.

Respectfully submitted,

BURNS, WHITE & HICKTON, LLC

By: 

Allan J. Wertz, Esquire
Attorneys for Defendant
Anderson & Kime Insurance, Inc.,

ORAL ARGUMENT REQUESTED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

PARIS CLEANERS, INC.
(Plaintiff)

CIVIL ACTION

67 Hoover Ave., P.O. Box 1043
(Street Address)

No. 07 - 909 - CD

DuBois, PA 15801
(City, State Zip)

Type of Case: Civil Action

VS.

Filed on Behalf of:

ANDERSON & KIME INSURANCE, INC.
(Defendant)

Paris Cleaners, Inc.

212 Main Street, P.O. Box 507
(Street Address)

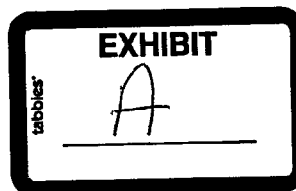
Ridgway, PA 15853
(City, State Zip)

Christopher J. Shaw, Esq.
(Filed by)

67 Hoover Ave., PO Box 1043
DuBois, PA 15801
(Address)

(814) 375-9700 x 706
(Phone)

Christopher J Shaw
(Signature)



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

PARIS CLEANERS, INC.,
d/b/a PARIS COMPANIES
Plaintiff

VS.

ANDERSON & KIME INSURANCE, INC.,
Defendant

: No. 07 – 909 - CD

:
: TYPE OF CASE:
: Civil Action

:
: TYPE OF PLEADING:
: Complaint

:
: FILED ON BEHALF OF:
: Plaintiff

:
: COUNSEL OF RECORD :
: FOR THIS PARTY:

:
: CHRISTOPHER J. SHAW
: Pa. Sup. Ct. I.D. #46836

:
: Corporate Counsel
: Paris Companies
: 67 Hoover Avenue
: P.O. Box 1043
: DuBois, PA 15801
: (814) 375 – 9700 ext. 706

Jury Trial Demanded

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

PARIS CLEANERS, INC.,	:	
d/b/a PARIS COMPANIES	:	
Plaintiff	:	
	:	
VS.	:	NO. 07 - 909 - CD
	:	
ANDERSON & KIME INSURANCE, INC.,	:	
Defendant	:	

NOTICE TO DEFEND

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:**

**COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
TELEPHONE: (814) 765-2641 Ext. 50-51**

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

PARIS CLEANERS, INC.,
d/b/a PARIS COMPANIES
Plaintiff

VS.

ANDERSON & KIME INSURANCE, INC.,
Defendant

:
:
:
:
: NO. 07 - 909 - CD
:
:
:

COMPLAINT

AND NOW, comes the Plaintiff, PARIS CLEANERS INC., by and through its attorney, Christopher J. Shaw, Esquire, and files the following Complaint against the Defendant, ANDERSON & KIME INSURANCE, INC. and in support thereof avers as follows:

1. The Plaintiff, PARIS CLEANERS, INC., is a Pennsylvania Business Corporation having a principle business location of 67 Hoover Avenue, P.O. Box 1043, DuBois, Clearfield County, Pennsylvania 15801.
2. The Defendant, ANDERSON & KIME INSURANCE, INC., is a Pennsylvania Business Corporation having a principle business location of 212 Main Street, P.O. Box 507, Ridgway, Elk County, Pennsylvania 15853.
3. During the Fall of 1998, Plaintiff engaged the services of the Defendant as its exclusive insurance broker.

4. As exclusive insurance broker, Defendant obtained insurers for all of Plaintiff's insurance needs including liability insurance, worker's compensation insurance, automobile and vehicle insurance, etc. from January 1, 1999 through December 31, 2005 for all of Plaintiff's facilities.

5. Before procuring any insurance coverage for Plaintiff, Defendant did a comprehensive review of Plaintiff's insurance needs, and suggest the types and amounts of coverage that Plaintiff should consider so that Plaintiff was "fully" protected at least insofar as Plaintiff's risk tolerance warranted.

6. Defendant became aware that Plaintiff had a low risk tolerance, and as such purchased insurance in a manner that Plaintiff was "fully" protected against insurable risks.

7. Annually, the Defendant would meet with Plaintiff, and conduct a risk assessment and audit of both the existing coverage Plaintiff had and would be up for renewal and to discuss additional insurance available to Plaintiff to meet Plaintiff's goal of being "fully" insured.

8. In 2003, Paris began the construction of a new production facility in Ravenna Ohio.

9. This facility began operation in February 2004.

10. Defendant was aware of this facility and in fact provided the premises liability insurance for this facility.

11. Although Defendant procured worker's compensation insurance for Plaintiff's other locations, Defendant did not provide the worker's compensation

insurance for the Ravenna facility as Ohio has its own state run worker's compensation system.

12. Although Defendant did not provide the worker's compensation insurance for the Ravenna facility, Defendant was fully aware that Plaintiff had various employees working at the Ravenna facility and that these workers were protected by the State run worker's compensation program.

13. At all times relevant hereto, Plaintiff relied on Defendant to provide information about the insurance requirements in the various states Plaintiff operated in and to assist Plaintiff to procure the appropriate insurance policies consistent with Plaintiff's risk tolerance.

14. Defendant knew or should have known that in Ohio there was a developing law where employees could sue employers for intentional torts despite the immunity from suit ordinarily provided by worker's compensation insurance laws.

15. Plaintiff was unaware of this developing area of law in Ohio and to the contrary believed that Ohio like all other locations Plaintiff conducted business in virtually prevented suits by employees against their employer because of the immunity provided by the worker's compensation laws in the various states.

16. Defendant never discussed the fact that insurers routinely make "stop gap" coverage available to Ohio employers so that the employer could be insured against such intentional tort suits routinely brought by Ohio employees against their employers.

17. During the times relevant hereto, Plaintiff did not purchase so called "stop gap" insurance because Plaintiff was unaware of the need or advisability of obtaining such coverage.

18. When Plaintiff changed insurance brokers, in January 2006, the new exclusive insurance broker retained by Plaintiff immediately inquired as to whether or not Plaintiff had the "stop gap" insurance knowing Plaintiff's low risk tolerance and over concern for this potential gap in coverage in Ohio due to the routine suits brought by employees against their employer for the "intentional tort" in Ohio.

19. The regular liability insurance policy procured for Plaintiff by both the Defendant and its new broker had identical language that effectively excluded coverage for suits brought by employees against their employer for "intentional torts"

20. On June 24, 2004, one of Plaintiff's employees, Raymond Parker, was injured when he fell approximately 20 feet from the roof of the so called OR Room to the production floor of the Ravenna facility while in the course of his employment with Plaintiff.

21. On May 15, 2006, a lawsuit was filed against Plaintiff, as an additional Defendant, by said injured employee, Raymond Parker alleging that Plaintiff had committed an intentional tort against said employee arising out of the June 24, 2004 incident.

22. When Plaintiff was notified of this lawsuit, Plaintiff notified Harleysville Mutual Insurance Company, the insurer through which Defendant

had provided the premises and general liability insurance for Plaintiff including the coverage for the Plaintiff's Ohio facility.

23. Harleysville Mutual Insurance Company filed a declaratory judgment action against the Plaintiff seeking judicial interpretation that Harleysville Mutual Insurance Company would have neither an obligation to defend Plaintiff nor to provide liability coverage for any injuries sustained by Mr. Parker under the policies of insurance procured by Defendant.

24. In the declaratory judgment suit filed by Harleysville Mutual Insurance Company, the Court entered a judgment effectively determining that Plaintiff had no insurance protection against the claim being brought against it by its employee Raymond Parker.

25. As a result of having no insurance protection against the claim presented by its employee, Raymond Parker for the intentional tort, Plaintiff was put in the position of having to defend itself against the claim brought by Mr. Parker and against damages payable to Mr. Parker if it were to be determined that Plaintiff had liability for the same.

26. To defend itself on this claim, Plaintiff was forced to retain the services of an attorney licensed to practice law in Ohio, and did so by retaining the services of Kevin Roberts, Esquire of the law firm of Dyson, Schmidlin, & Foulds, L.P.A. in Cleveland, Ohio, the firm Harleysville Mutual Insurance Company originally obtained to represent Plaintiff under reservation of rights pending the decision on the declaratory judgment action.

27. Although ultimately Plaintiff was granted summary judgment and the court determined that Plaintiff was not liable for the injuries sustained by Mr. Parker, Plaintiff incurred attorney's fees in the amount of \$20,389.04, copies of which are attached hereto as Exhibit "A".

28. In addition to the attorney's fees incurred, Plaintiff may still be required to expend additional attorney's fees defending an appeal of this case, and could have liability in the event the summary judgment previously granted is overturned on appeal.

Count I-Negligence

29. Defendant incorporates by reference the allegations of paragraphs 1 through 28 of the within complaint as though set forth at length herein.

30. Defendant, as a duly licensed insurance broker, and the exclusive insurance broker used by Plaintiff, knew or should have known that there was a gap in the insurance coverage of Plaintiff and that Plaintiff was exposed to potentially significant loss in liability for and even to defend a cause of action brought by one of its employees in Ohio for an intentional tort claim.

31. Defendant as the exclusive insurance broker used by Plaintiff had the duty to advise Plaintiff of this potential gap in coverage and significant risk, yet Defendant failed to do so.

32. As a result of Defendant's failure to advise Plaintiff of this risk and the resultant gap in insurance coverage, Plaintiff had to defend itself against the suit brought by its employee, Raymond Parker.

33. As a result of Defendant's failure to advise Plaintiff of the gap in insurance, Plaintiff incurred damages in the form of attorney's fees in the amount of at least \$20,389.04.

34. These damages were the foreseeable consequence of Defendant's actions in not advising Plaintiff of the need to protect itself against this gap in coverage.

WHEREFORE, Plaintiff request judgment against the Defendant in the amount of \$20,389.04 plus any additional attorney's fees incurred and or liability proven against Plaintiff to the date this action is resolved, together with interest plus costs of suit..

Count II-Breach of Fiduciary Duty

35. Defendant incorporates by reference the allegations of paragraphs 1 through 28 and Count I of the within complaint as though set forth at length herein

36. The relationship between the Plaintiff and the Defendant as its exclusive insurance broker was one in which the Defendant held itself out as having special expertise in all areas of business insurance and one which Defendant encouraged, and Plaintiff did in fact rely upon Defendant's expertise in deciding the types and amounts of insurance coverage Plaintiff should purchase to protect itself against foreseeable risks.

37. By conducting the annual audit of Plaintiff's insurance coverage, Defendant perpetuated the reliance by the Plaintiff on the expertise of the Defendant and thereby continued the special fiduciary relationship between the parties.

38. Because of this higher fiduciary duty, Defendant had the duty to advise Plaintiff of the potential gap in its insurance coverage as set forth herein.

39. Despite knowing that Plaintiff was actively conducting business in Ohio and the fact that Defendant, as an expert in insurance coverage, knew or should have known of the gap in insurance coverage and the foreseeable risk, Defendant failed to counsel Plaintiff that consistent with Plaintiff's known risk tolerance, Plaintiff should purchase the "stop gap" coverage.

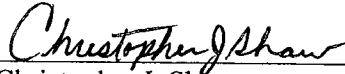
40. As a result of Defendant's failure to advise Plaintiff of the gap in insurance, Plaintiff incurred damages in the form of attorney's fees in the amount of at least \$20,389.04.

41. These damages were the foreseeable consequence of Defendant's actions in not advising Plaintiff of the need to protect itself against this gap in coverage.

WHEREFORE, Plaintiff request judgment against the Defendant in the amount of \$20,389.04 plus any additional attorney's fees incurred and or liability proven against Plaintiff to the date this action is resolved, together with interest plus costs of suit.

Jury Trial Demanded

Respectfully,




Christopher J. Shaw
Attorney for Plaintiff

VERIFICATION

I, Jason G. McCoy, am the Secretary/Treasurer and CFO of the Plaintiff, Paris Cleaner's Inc. As such, I am duly authorized to make this verification on behalf of the Plaintiff. I have read the foregoing Complaint and affirm that the statements therein are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.



Jason G. McCoy

Dated: 11/27/87

DYSON, SCHMIDLIN & FOULDS, L.P.A.
Attorneys at Law
5843 Mayfield Road
Cleveland, OH 44124
P 440-461-9000 F 440-461-6108

Invoice submitted to:
Paris Companies
67 Hoover Avenue
P.O. Box 1043
Dubois, Pennsylvania 15801

PAST DUE

Tax I.D. # 34-1171244

July 17, 2007
In Reference To: Re: Parker v. Jensen USA, Inc., Portage County Common
Pleas, Case No: 2005-CV-00543

Invoice #11734

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
2/7/2007 KR	Receive and review Shaw correspondence regarding personnel files of Olesky, Goodman and Corcoran; prepare response to Jensen's request; send information to Tasse regarding same.	0.40 225.00/hr	90.00
2/15/2007 KR	Receive and review letter request from Wakefield regarding site inspection and send to and communication with Shaw; correspondence with Tasse regarding same; telephone conference with Tasse; draft response letter to Wakefield; draft report to Shaw.	0.50 225.00/hr	112.50
KR	Prepare file for motion for summary judgment; review deposition transcript of Plaintiff.	2.00 225.00/hr	450.00
2/16/2007 KR	Telephone conference with Shaw regarding coverage issues and representation; receive and review correspondence regarding expert inspection; respond to email inquiries; prepare file for motion for summary judgment; receive and review inquiry regarding site inspection.	0.50 225.00/hr	112.50
2/28/2007 KR	Receive and review Wakefield's proposed stipulation regarding court extensions; correspondence with Shaw; draft consent letter to Wakefield.	0.40 225.00/hr	90.00
3/1/2007 KR	Telephone conference with Tasse regarding inspections and IME; receive and review Shaw correspondence regarding site inspection; telephone conference with Wakefield regarding inspection; prepare file for motion for summary judgment.	1.20 225.00/hr	270.00
3/6/2007 KR	Receive and review correspondence from Tasse regarding discovery deadlines and stipulation.	0.10 225.00/hr	22.50

		<u>Hrs/Rate</u>	<u>Amount</u>
3/7/2007	KR	0.10 225.00/hr	22.50
	Receive and review memo from Shaw regarding experts and inspection at Ravenna.		
3/15/2007	KR	0.30 225.00/hr	67.50
	Receive and review filed stipulation regarding experts and motion for summary judgment; letter to Shaw regarding stipulation for extension of time to submit expert reports and dispositive motions.		
3/19/2007	KR	0.10 225.00/hr	22.50
	Receive and review Tasse's correspondence regarding documents identified at inspection, summary judgment and court deadlines.		
3/23/2007	KR	0.10 225.00/hr	22.50
	Receive and review Tasse and Shaw correspondence regarding securing copies of onsite documents and schematics.		
3/26/2007	KR	0.20 225.00/hr	45.00
	Receive and review stipulation entry from Tasse; draft letter to Shaw regarding stipulation and court order.		
3/30/2007	KR	1.00 225.00/hr	225.00
	Receive and review Shaw correspondence regarding his Eleventh District case law research; review cases; correspondence to Shaw.		
4/2/2007	KR	1.60 225.00/hr	360.00
	Review of Plaintiff's expert report; draft opinion letter to Shaw regarding expert report.		
4/3/2007	KR	0.10 225.00/hr	22.50
	Receive and review Tasse correspondence regarding document requests and further depositions.		
4/6/2007	KR	0.10 225.00/hr	22.50
	Review file regarding experts and court order; review docket.		
4/16/2007	KR	0.10 225.00/hr	22.50
	Receive and review Wakefield's supplemental document requests to Jensen.		
4/17/2007	KR	6.00 225.00/hr	1,350.00
	Review/analyze deposition transcripts of party representatives; review Eleventh District case law regarding intentional tort.		
4/18/2007	KR	0.30 225.00/hr	67.50
	Receive and review Shaw correspondence regarding Plaintiff's liability expert; draft response to Shaw regarding opinion of expert report.		
4/20/2007	KR	4.00 225.00/hr	900.00
	Draft/revise motion for summary judgment; further review of deposition transcripts.		
4/23/2007	KR	3.00 225.00/hr	675.00
	Draft/revise motion for summary judgment; review of case law.		
	MF	1.00 100.00/hr	100.00
	Review, update and Sheppardize case law (paralegal rate).		
4/27/2007	KR	0.30 225.00/hr	67.50
	Receive and review correspondence from Wakefield and Tasse regarding motion for summary judgment and stipulation; telephone conference with counsel regarding same.		
	KR	4.00 225.00/hr	900.00
	Further case law analysis for motion for summary judgment; additional research; draft/revise motion for summary judgment.		

			<u>Hrs/Rate</u>	<u>Amount</u>
4/30/2007	KR	Receive and review draft stipulation; telephone conference with Tasse and court; review docket; draft/revise motion for summary judgment.	1.00 225.00/hr	225.00
5/2/2007	KR	Draft/revise motion for summary judgment; telephone conference with court regarding filing.	8.00 225.00/hr	1,800.00
5/3/2007	MF	Prepare exhibits to motion for summary judgment; Sheppardize case law; pull and sort unreported cases to attach to motion for summary judgment; proofread motion; organize deposition transcripts to file with court; review docket; draft service copies (paralegal rate).	2.00 100.00/hr	200.00
5/4/2007	KR	Final revisions and drafting of motion for summary judgment.	2.00 225.00/hr	450.00
5/9/2007	KR	Receive and review Jensen's motion to continue; receive and review Paris time-stamped copy of motion for summary judgment; draft letter/report to Shaw regarding Jensen's motion for continuance.	0.20 225.00/hr	45.00
5/18/2007	KR	Receive and review Jensen's motion for summary judgment; receive and review Jensen's expert report; draft opinion report to Shaw regarding Jensen's motion for summary judgment and expert report.	1.50 225.00/hr	337.50
6/4/2007	KR	Receive and review Jensen's notice of A. Rauck's deposition; receive and review Tasse's letter regarding D. Grover deposition.	0.10 225.00/hr	22.50
6/5/2007	KR	Receive and review Shaw's correspondence regarding expert depositions.	0.10 225.00/hr	22.50
6/13/2007	KR	Receive and review correspondence from counsel regarding Plaintiff's and Jensen expert depositions; draft report to Shaw; telephone conference with Wakefield regarding liability, settlement and trial matters.	0.40 225.00/hr	90.00
6/14/2007	KR	Telephone conferences with Wakefield and Tasse regarding expert discovery; prepare for depositions and pretrial matters; telephone conferences with Court Magistrate Steinle; draft and receive correspondence to and from counsel regarding above.	0.60 225.00/hr	135.00
6/15/2007	KR	Conference call with court Magistrate Steinle and all counsel regarding discovery, motions and trial matters; review docket, trial orders, local rules and correspondence; prepare for D. Grover's deposition, A. Rauck's deposition and Dr. Myer's deposition and mediation.	1.20 225.00/hr	270.00
6/19/2007	KR	Telephone conference with Shaw regarding expert depositions, D. Grover's deposition, mediation, trial and dispositive motions; review and prepare for D. Grover's deposition in Chicago; correspondence and telephone conferences to and from Tasse and Wakefield regarding D. Grover's deposition.	2.00 225.00/hr	450.00
6/20/2007	KR	Receive and review correspondence from counsel regarding D. Grover deposition; respond to correspondence; receive and review Jensen's supplemental document production to Plaintiff's requests and review documents produced; receive and review Plaintiff's briefs in	5.00 225.00/hr	1,125.00

		<u>Hrs/Rate</u>	<u>Amount</u>
	opposition to both Paris Cleaners and Jensen's motions for summary judgment; prepare for D. Grover's deposition and review discovery, document production, previous deposition transcripts and motions in preparation.		
6/21/2007	KR Travel to and from Chicago for D. Grover deposition.	7.00 112.50/hr	787.50
	KR Attend and conduct discovery deposition and trial videotape testimony of D. Grover.	4.50 225.00/hr	1,012.50
6/22/2007	KR Conference call with court Magistrate regarding reply brief in response to Plaintiff's brief in opposition; further review of Plaintiff's brief in opposition; prepare and review case law and Plaintiff's brief for reply.	2.00 225.00/hr	450.00
6/27/2007	KR Draft and revise reply brief; further review and analysis of all deposition transcripts; annotate C. Corcoran's deposition transcript.	3.00 225.00/hr	675.00
6/29/2007	KR Draft/revise reply brief.	2.50 225.00/hr	562.50
7/2/2007	MF Prepare/organize exhibits to reply brief; draft service letters to court and counsel; file with court (paralegal rate).	0.50 100.00/hr	50.00
	KR Final revisions and drafting of reply brief.	7.00 225.00/hr	1,575.00
7/11/2007	KR Telephone conference with Wakefield from court regarding new trial schedule.	0.10 225.00/hr	22.50
7/12/2007	KR Receive and review Wakefield's confirmation of new trial schedule; report to Shaw.	0.10 225.00/hr	22.50
	For professional services rendered	78.20	\$16,370.00
	Additional Charges :		
6/21/2007	KR Airfare to and from Chicago.		306.80
	KR Parking at Airport.		15.00
	KR Food/coffee.		10.00
	Total costs		\$331.80
	Total amount of this bill		\$16,701.80
	COURTESY DISCOUNT:		\$ 500.00
	TOTAL AMOUNT OF THIS INVOICE:		\$16,201.80

DYSON, SCHMIDLIN & FOULDS, L.P.A.
Attorneys at Law
5843 Mayfield Road
Cleveland, OH 44124
P 440-461-9000 F 440-461-6108

Invoice submitted to:
Paris Companies
67 Hoover Avenue
P.O. Box 1043
Dubois, Pennsylvania 15801

Tax I.D. # 34-1171244

September 10, 2007
In Reference To: Re: Parker v. Jensen USA, Inc., Portage County Common
Pleas, Case No: 2005-CV-00543

Invoice #11876

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
7/13/2007 KR	Receive and review Court journal entry regarding hearing and trial schedule; draft report to C. Shaw regarding above and future activity; attention to file and scheduling.	0.30 225.00/hr	67.50
7/20/2007 KR	Receive and review Jensen's July 17, 2007 motion; receive and review Plaintiff's filing regarding Jensen's motion for summary judgment; draft report to C. Shaw regarding these filings.	0.30 225.00/hr	67.50
7/23/2007 KR	Receive and review Plaintiff's filing regarding D. Grover deposition; review file and deposition testimony; draft report to C. Shaw regarding D. Grover's testimony and supplementing motion for summary judgment.	0.40 225.00/hr	90.00
8/29/2007 KR	Receive and review Court's ruling regarding Defendants' motions for summary judgment; review briefs and evidence; forward Court ruling to C. Shaw with memorandum; prepare for mediation.	0.60 225.00/hr	135.00
8/30/2007 KR	Further review of Court ruling; draft/revise report summary to C. Shaw; prepare for mediation.	0.80 225.00/hr	180.00
9/4/2007 KR	Review file, medical records and Plaintiff's audit regarding Dr. Myer trial testimony; telephone conferences with J. Tasse regarding Dr. Myer and Plaintiff's medical specials; forward documentation to J. Tasse regarding Plaintiff's lost wage information; correspondence with C. Shaw regarding Dr. Myer trial testimony.	0.60 225.00/hr	135.00
For professional services rendered		3.00	\$675.00

DYSON, SCHMIDLIN & FOULDS, L.P.A.
Attorneys at Law
5843 Mayfield Road
Cleveland, OH 44124
P 440-461-9000 F 440-461-6108

PAST DUE

Invoice submitted to:
Paris Companies
67 Hoover Avenue
P.O. Box 1043
Dubois, Pennsylvania 15801

Tax I.D. # 34-1171244

September 27, 2007
In Reference To: Re: Parker v. Jensen USA, Inc., Portage County Common
Pleas, Case No: 2005-CV-00543

Invoice #11902

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
9/10/2007	KR Telephone conference with C. Shaw regarding case evaluation, settlement offer discussions, preparation for mediation hearing and summary judgment issues; review file in preparation of mediation hearing and in preparation of mediation case summary to submit to Court Mediator.	1.50 225.00/hr	337.50
9/11/2007	KR Further review of file and draft/edit mediation case summary; draft letter to Court Mediator.	1.70 225.00/hr	382.50
9/17/2007	KR Receive and review Plaintiff's mediation case summary, updated specials audit with additional medical records regarding follow-up out-patient surgery and counsel's correspondence; analyze Plaintiff's summary and evidence; analyze additional medical records from St. Thomas Medical Center; draft/revise report of above to C. Shaw.	1.80 225.00/hr	405.00
9/18/2007	KR Receive and review Jensen's mediation case summary; draft report to C. Shaw regarding above; review summary judgment briefing, deposition testimony, pleadings and other evidentiary matters in preparation for mediation.	2.80 225.00/hr	630.00
9/19/2007	KR Further review in preparation of mediation hearing; conferences with C. Shaw at Courthouse regarding evaluation; attend mediation hearing; draft report summary to C. Shaw documenting mediation hearing proceedings and further litigation plans.	3.20 225.00/hr	720.00
	KR Travel to and from Ravenna to attend mediation hearing.	2.00 112.50/hr	225.00

		<u>Hrs/Rate</u>	<u>Amount</u>
9/20/2007 KR	Telephone conference with Jensen's counsel regarding mediation, further ex- Paris witnesses (Goodman & Olesky) and deposition/questioning; report to C. Shaw regarding above.	0.30 225.00/hr	67.50
9/21/2007 KR	Review correspondence file and records regarding future activities.	0.10 225.00/hr	22.50
9/26/2007 KR	Receive and review Plaintiff's correspondence and notice of Jensen's expert deposition in Chicago (Barnett); review Mr. Barnett's May 15, 2007 expert report; draft report regarding Barnett testimony and deposition; receive and review correspondence regarding Plaintiff's expert deposition (Rauck); draft memorandum to C. Shaw regarding Rauck deposition.	0.80 225.00/hr	180.00
For professional services rendered		14.20	\$2,970.00
Additional Charges :			
9/19/2007 KR	Travel to and from Ravenna for mediation.		42.24
Total costs			\$42.24
Total amount of this bill			\$3,012.24

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Preliminary Objections, Proposed Order of Court and Memorandum of Law in Support of the Same** has been served upon all counsel of record by Electronic Mail and U.S. first-class mail, postage prepaid, this 7th day of December 2007, addressed as follows:

Christopher J. Shaw, Esquire
Paris Cleaners, Inc.
67 Hoover Avenue, PO Box 1043
DuBois, PA 15801


Allan J. Wertz, Esquire

CA

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

PARIS CLEANERS, INC.,
Plaintiff

vs.

ANDERSON and KIME INSURANCE,
Defendants

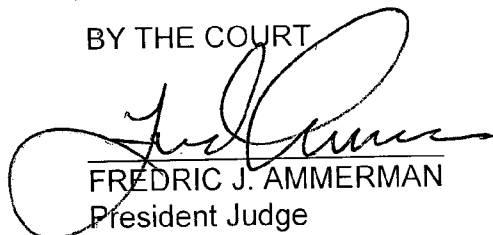
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*

NO. 07-909-CD

ORDER

NOW, this 19th day of December, 2007, upon receipt of the Defendant's Preliminary Objections to Plaintiff's Complaint, it is the ORDER of this Court that argument on the said Preliminary Objections be and is hereby scheduled for the 4th day of February, 2008 at 10:00 A. m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, PA 16830.

BY THE COURT


FREDRIC J. AMMERMAN
President Judge

FILED
DEC 21 2007

William A. Shaw
Prothonotary/Clerk of Courts

3cc
10/2:44/301 Atty Allan Westz
(6K)

FILED

DEC 21 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 01/21/07

X You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PARIS CLEANERS, INC.,

Plaintiff,

vs.

ANDERSON & KIME INSURANCE, INC.,

Defendant.

CIVIL ACTION

No. 07-909-CD

**DEFENDANT'S MOTION TO
CONTINUE ORAL ARGUMENT
FOR PRELIMINARY
OBJECTIONS**

Filed on behalf of Defendant:
Anderson & Kime Insurance, Inc.

Counsel of Record for This Party:

Sheila M. Burke, Esquire
Pa. ID No. 79207

Allan J. Wertz, Esquire
Pa. ID No. 85571

BURNS, WHITE & HICKTON
Firm No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Telephone: (412) 995-3000

JURY TRIAL DEMANDED

FILED
m11:0781
JAN 14 2008

icc
Atty Wertz

(6K)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PARIS CLEANERS, INC.,

Plaintiff,

vs.

ANDERSON & KIME INSURANCE, INC.,

Defendant.

CIVIL ACTION

No. 07-909-CD

**DEFENDANT'S MOTION TO CONTINUE ORAL ARGUMENT FOR
PRELIMINARY OBJECTIONS**

AND NOW, here comes, Defendant, Anderson & Kime Insurance, Inc., (hereinafter "Anderson & Kime"), by and through its attorneys, BURNS, WHITE & HICKTON, LLC, and file the within Motion to Continue Oral Argument for Preliminary Objections an in support thereof Defendant avers the following:

1. Plaintiff filed a Praecipe for Writ of Summons on June 8, 2007.
2. On or about November 27, 2007, Plaintiff filed a Complaint sounding in liability pursuant to negligence and breach of fiduciary duty against Anderson & Kime.
3. On or about December 7, 2007, Defendant filed Preliminary Objections to Plaintiff's Complaint.
4. On December 19, 2007, this Honorable Court scheduled oral argument for the Preliminary Objections for February 4, 2008.
5. Due to a previously scheduled arbitration in Allegheny County, Pennsylvania, the undersigned is unavailable for the Preliminary Objections oral argument.

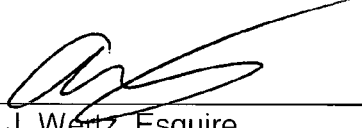
6. The undersigned contacted Plaintiff's counsel on Thursday, January 10, 2008, and advised Plaintiff's counsel of the conflict. Plaintiff's counsel consented to continuing the Preliminary Objections oral argument in this matter.

7. Defendant respectfully requests that this Honorable Court continue the Preliminary Objections oral argument to a later date.

WHEREFORE, Defendant, Anderson & Kime Insurance, Inc., respectfully requests that this Honorable Court grant Defendant's Motion to Continue Oral Argument for Preliminary Objections.

Respectfully submitted,


BURNS, WHITE & HICKTON, LLC

By: 
Allan J. Wertz, Esquire
Attorneys for Defendant
Anderson & Kime Insurance, Inc.,

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Motion to Continue Oral Argument for Preliminary Objections** has been served upon all counsel of record by U.S. first-class mail, postage prepaid, this 10th day of January 2008, addressed as follows:

Christopher J. Shaw, Esquire
Paris Cleaners, Inc.
67 Hoover Avenue, PO Box 1043
DuBois, PA 15801



Allan J. Weitz, Esquire

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PARIS CLEANERS, INC.,

Plaintiff,

vs.

ANDERSON & KIME INSURANCE, INC.,

Defendant.

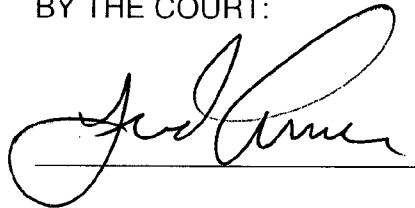
CIVIL ACTION

No. 07-909-CD

ORDER OF COURT

AND NOW, to-wit, this 15 day of January, 2008, upon consideration of Defendant Anderson & Kime Insurance, Inc., Motion to Continue Oral Argument for Preliminary Objections, it is hereby ORDERED, ADJUDGED and DECREED that Defendant's Motion is GRANTED. It is hereby rescheduled for the 19th of February, 2008 at 9:00 A.M. in Courtroom No. 1 of the Clearfield County, Courthouse, Clearfield, PA 16830.

BY THE COURT:

 J.

FILED

01:56 PM
JAN 15 2008

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JAN 15 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/15/08

☒ You are responsible for serving all appropriate parties.

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

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

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PARIS CLEANERS, INC.,

Plaintiff,

vs.

ANDERSON & KIME INSURANCE, INC.,

Defendant.

CIVIL ACTION

No. 07-909-CD

**DEFENDANT'S MOTION TO
CONTINUE ORAL ARGUMENT
FOR PRELIMINARY
OBJECTIONS**

Filed on behalf of Defendant:
Anderson & Kime Insurance, Inc.

Counsel of Record for This Party:

Sheila M. Burke, Esquire
Pa. ID No. 79207

Allan J. Wertz, Esquire
Pa. ID No. 85571

BURNS, WHITE & HICKTON
Firm No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Telephone: (412) 995-3000

JURY TRIAL DEMANDED

FILED

m/12:53/21
JAN 24 2008

icc
Any Wertz
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PARIS CLEANERS, INC.,

Plaintiff,

vs.

ANDERSON & KIME INSURANCE, INC.,

Defendant.

CIVIL ACTION

No 07-909-CD

**DEFENDANT'S MOTION TO CONTINUE ORAL ARGUMENT FOR
PRELIMINARY OBJECTIONS**

AND NOW, here comes, Defendant, Anderson & Kime Insurance, Inc., (hereinafter "Anderson & Kime"), by and through its attorneys, BURNS, WHITE & HICKTON, LLC, and file the within Motion to Continue Oral Argument for Preliminary Objections and in support thereof Defendant avers the following:

1. Plaintiff filed a Praecipe for Writ of Summons on June 8, 2007.
2. On or about November 27, 2007, Plaintiff filed a Complaint sounding in liability pursuant to negligence and breach of fiduciary duty against Anderson & Kime.
3. On or about December 7, 2007, Defendant filed Preliminary Objections to Plaintiff's Complaint.
4. On December 19, 2007, this Honorable Court scheduled oral argument for the Preliminary Objections for February 4, 2008.
5. Due to a previously scheduled arbitration in Allegheny County, Pennsylvania on February 4, 2008, the undersigned filed a Motion to Continue Oral Argument.

6. On or about January 15, 2008, this Honorable Court granted Defendant's Motion and continued the Preliminary Objections oral argument and continued the argument until February 19, 2008.

7. Unfortunately, the undersigned is unavailable on February 19, 2008, as the undersigned will be out of the Commonwealth that day.

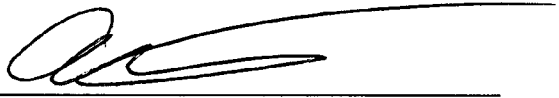
8. The undersigned contacted Plaintiff's counsel on Tuesday, January 22, 2008, and advised Plaintiff's counsel of the conflict. Plaintiff's counsel consented to continuing the Preliminary Objections oral argument in this matter.

9. Defendant respectfully requests that this Honorable Court continue the Preliminary Objections oral argument to a later date.

WHEREFORE, Defendant, Anderson & Kime Insurance, Inc., respectfully requests that this Honorable Court grant Defendant's Motion to Continue Oral Argument for Preliminary Objections.

Respectfully submitted,

BURNS, WHITE & HICKTON, LLC

By: 

Allan J. Wertz, Esquire
Attorneys for Defendant
Anderson & Kime Insurance, Inc.,

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Motion to Continue Oral Argument for Preliminary Objections** has been served upon all counsel of record by U.S. first-class mail, postage prepaid, this 22nd day of January 2008, addressed as follows:

Christopher J. Shaw, Esquire
Paris Cleaners, Inc.
67 Hoover Avenue, PO Box 1043
DuBois, PA 15801



Allan J. Wertz, Esquire

27

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

PARIS CLEANERS, INC.,
Plaintiff

vs.

ANDERSON & KIME INSURANCE, INC.,
Defendant

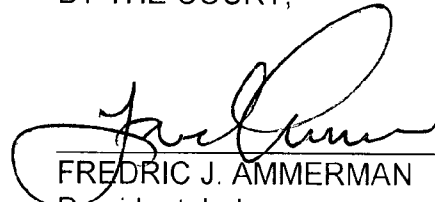
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NO. 07-909-CD

ORDER

NOW, this 25th day of January, 2008, the Court being in receipt of and having reviewed the Defendant's Motion to Continue Oral Argument for Preliminary Objections, it is the ORDER of this Court that the said Motion be and is hereby DENIED.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

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Atty West + Z
GK
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

FILED

JAN 28 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/28/08

☒ 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:

5

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

PARIS CLEANERS, INC.,
Plaintiff

vs.

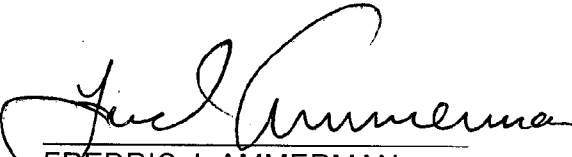
NO. 07-909-CD

ANDERSON & KIME INSURANCE, INC.,
Defendant

ORDER

NOW, this 20th day of February, 2008, following argument on the Defendant's Preliminary Objections and the Court's review of the case law, and in reliance upon the authority set forth in Wisniski v. Brown & Brown Ins. Co., 906 A2d 571 (Pa.Super. 2006) it is the ORDER of this Court that the Defendant's Preliminary Objections be and are hereby GRANTED. Count II of the Plaintiff's Complaint is hereby DISMISSED.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

014:00/201
FEB 20 2008

William A. Shaw
Prothonotary/Clerk of Courts

1 cc Amy C. Shaw

2cc Atty's: Burke, Wertz

FILED

FEB 20 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/20/08

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) Y Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PARIS CLEANERS, INC.,

Plaintiff,

CIVIL ACTION

vs.

No. 07-909-CD

ANDERSON & KIME INSURANCE,
INC.,

Defendant.

**NOTICE OF SERVICE OF DEFENDANT'S
FIRST SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF
DOCUMENTS DIRECTED TO PLAINTIFF**

Filed on behalf of Defendant:
Anderson & Kime Insurance, Inc.

Counsel of Record for This Party:

Sheila M. Burke, Esquire
Pa. ID No. 79207

Allan J. Wertz, Esquire
Pa. ID No. 85571

BURNS, WHITE & HICKTON
Firm No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Telephone: (412) 995-3000

JURY TRIAL DEMANDED

FILED

m/fy: 30/3/11
MAR 03 2008

no cc

Wm

William A. Shaw
Prothonotary/Clerk of Courts

PARIS CLEANERS, INC.,

Plaintiff,

ANDERSON & KIME INSURANCE,
INC.,

Defendant.

No. 07-909-CD

By:

Allan J. Wertz, Esquire
Attorneys for Defendant
Anderson & Kime Insurance, Inc.

CERTIFICATE OF SERVICE

I, Allan J. Wertz, Esquire, certify that a true and correct copy of Notice of Service of Defendants' First Set of Interrogatories and Request for Production of Documents to Plaintiff was served upon all counsel/parties of record via first class U.S. Mail, postage prepaid this 28th day of February, 2008.

Christopher J. Shaw, Esquire
Paris Cleaners
67 Hoover Avenue
PO Box 1043
DuBois, PA 15801

BURNS, WHITE & HICKTON

By: _____

Allan J. Wertz, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PARIS CLEANERS, INC.,

Plaintff,

vs.

ANDERSON & KIME INSURANCE,
INC.,

Defendant.

CIVIL ACTION

No. 07-909-CD

**ANSWER AND NEW MATTER TO
PLAINTIFF'S COMPLAINT**

NOTICE TO PLEAD:

To all parties:

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


Attorneys' for Defendant,
Anderson & Kime Insurance, Inc.

Filed on behalf of Defendant:
Anderson & Kime Insurance, Inc.

Counsel of Record for This Party:

Sheila M. Burke, Esquire
Pa. ID No. 79207

Allan J. Wertz, Esquire
Pa. ID No. 85571

BURNS, WHITE & HICKTON
Firm No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Telephone: (412) 995-3000

JURY TRIAL DEMANDED

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MAR 06 2008 10:53 AM
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PARIS CLEANERS, INC.,

CIVIL ACTION

Plaintiff,

No. 07-909-CD

vs.

ANDERSON & KIME INSURANCE,
INC.,

Defendant.

ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT

AND NOW, here comes, Defendant, Anderson & Kime Insurance, Inc., (hereinafter "Anderson & Kime") by and through its attorneys, BURNS, WHITE & HICKTON, LLC, and file the within Answer and New Matter to Plaintiff's Complaint:

ANSWER

1. After reasonable investigation, this Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the averments contained within Paragraph 1 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial.

2. Admitted.

3. The averments contained within Paragraph 3 of the Plaintiff's Complaint are denied. It is denied that during the fall of 1998, Plaintiff engaged the services of Responding Defendant. By way of further response, Plaintiff engaged the services of Responding Defendant in the spring of 1999. After reasonable investigation, this

Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the remaining averments contained within Paragraph 3 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial.

4. The averments contained within Paragraph 4 of the Plaintiff's Complaint are denied. By way of further response, Responding Defendant assisted Plaintiff in procuring insurance including liability insurance, worker's compensation insurance, automobile and vehicle insurance from February 1, 1999 through December 31, 2005 for Plaintiff's facilities. By way of further response, Defendant at all times relevant acted as prudent insurance agent and/or broker in assisting Plaintiff in obtaining insurance coverage.

5. The averments contained within Paragraph 5 of the Plaintiff's Complaint are specifically denied. Strict proof thereof is demanded at time of trial. By way of further response, Plaintiff requested specific coverages and Responding Defendant assisted Plaintiff in obtaining the requested coverages. It is specifically denied that this Responding Defendant represented that Plaintiff was "fully" protected. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 4, of Plaintiff's Complaint as though the same were set forth at length herein.

6. The averments contained within Paragraph 6 of the Plaintiff's Complaint are specifically denied. It is specifically denied that this Responding Defendant represented that Plaintiff was "fully" protected against insurable risks. Strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant

incorporates herein by reference its responses to Paragraphs 1 through 5, of Plaintiff's Complaint as though the same were set forth at length herein.

7. The averments contained within Paragraph 6 of the Plaintiff's Complaint are specifically denied. Strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant would annually provide quotes to Plaintiff. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 6, of Plaintiff's Complaint as though the same were set forth at length herein.

8. Admitted. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 7, of Plaintiff's Complaint as though the same were set forth at length herein.

9. Admitted. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 8, of Plaintiff's Complaint as though the same were set forth at length herein.

10. The averments contained within Paragraph 10 of the Plaintiff's Complaint are admitted in part and denied in part. It is admitted that Responding Defendant was aware of the facility. The remaining averments are denied as stated. It is further denied that Responding Defendant provided premises liability insurance for the facility. By way of further response, Responding Defendant does not provide insurance coverage. Responding Defendant is not an insurance company and does not provide insurance coverage. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 9, of Plaintiff's Complaint as though the same were set forth at length herein.

11. The averments contained within Paragraph 11 of the Plaintiff's Complaint are admitted in part and denied in part. It is admitted that Ohio has its own state run worker's compensation system. The remaining averments are denied as stated. It is further denied that Responding Defendant procured worker's compensation insurance for Plaintiff's other locations. By way of further response, Responding Defendant assisted Plaintiff in procuring worker's compensation insurance for Plaintiff's other locations. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 10, of Plaintiff's Complaint as though the same were set forth at length herein.

12. The averments contained within Paragraph 12 of the Plaintiff's Complaint are admitted in part and denied in part. It is admitted that Responding Defendant was aware that Plaintiff had various employees working at the Ravenna facility. The remaining averments are denied as stated. By way of further response, Responding Defendant does not provide worker's compensation insurance. Responding Defendant is not an insurance company and does not provide insurance coverage. Since Responding Defendant did not assist Plaintiff in procuring Ohio worker's compensation pursuant to the specific instructions of the Plaintiff, Responding Defendant is unable to admit or deny as to whether or not the employees were protected by the Ohio state run worker's compensation program. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 11, of Plaintiff's Complaint as though the same were set forth at length herein.

13. After reasonable investigation, this Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the averments contained within Paragraph 13 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial. By way of further response, it is impossible for Responding Defendant to know what Plaintiff relied or did not rely on when purchasing insurance. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 12, of Plaintiff's Complaint as though the same were set forth at length herein.

14. The averments set forth in Paragraph 14 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, said averments are specifically denied. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 13, of Plaintiff's Complaint as though the same were set forth at length herein.

15. After reasonable investigation, this Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the averments contained within Paragraph 15 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 11, of Plaintiff's Complaint as though the same were set forth at length herein.

16. To the extent the averments set forth in Paragraph 16 of Plaintiff's Complaint constitute conclusions of law no responsive pleading is required. To the extent a response is deemed required, said averments are specifically denied. The remaining averments set forth in Paragraph 16 of Plaintiff's Complaint are denied as stated. By way of further response, Plaintiff never requested Responding Defendant's assistance in procuring Ohio workers' compensation insurance coverage despite Responding Defendant's offer to assist. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 15, of Plaintiff's Complaint as though the same were set forth at length herein.

17. After reasonable investigation, this Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the averments contained within Paragraph 17 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 16, of Plaintiff's Complaint as though the same were set forth at length herein.

18. After reasonable investigation, this Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the averments contained within Paragraph 18 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 17, of Plaintiff's Complaint as though the same were set forth at length herein.

19. The averments contained within Paragraph 19 of the Plaintiff's Complaint reference a specific written document, i.e., insurance policies, said documents speak for themselves and therefore no responsive pleading is required. To the extent that averments contained within Paragraph 19 of the Plaintiff's Complaint, misstate, misinterpret or misconstrue the actual terms and conditions of the written documents or any relationship associated there with, the same are specifically denied. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 18, of Plaintiff's Complaint as though the same were set forth at length herein.

20. After reasonable investigation, this Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the averments contained within Paragraph 20 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 19, of Plaintiff's Complaint as though the same were set forth at length herein.

21. The averments contained within Paragraph 21 of the Plaintiff's Complaint reference a specific written document, i.e., complaint, said document speaks for itself and therefore no responsive pleading is required. To the extent that averments contained within Paragraph 21 of the Plaintiff's Complaint, misstate, misinterpret or misconstrue the actual terms and conditions of the written document or any relationship associated there with, the same are specifically denied. By way of further response,

Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 20, of Plaintiff's Complaint as though the same were set forth at length herein.

22. The averments contained within Paragraph 22 of the Plaintiff's Complaint are denied as stated. It is denied that Defendant had provided premises liability and general liability insurance for Plaintiff through Harleysville Mutual Insurance Company. By way of further response, Responding Defendant assisted Plaintiff in procuring premises liability and general liability insurance through Harleysville Mutual Insurance Company. After reasonable investigation, this Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the remaining averments contained within Paragraph 22 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 21, of Plaintiff's Complaint as though the same were set forth at length herein.

23. After reasonable investigation, this Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the averments contained within Paragraph 23 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 22, of Plaintiff's Complaint as though the same were set forth at length herein.

24. After reasonable investigation, this Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the averments

contained within Paragraph 24 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 23, of Plaintiff's Complaint as though the same were set forth at length herein.

25. After reasonable investigation, this Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the averments contained within Paragraph 25 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 24, of Plaintiff's Complaint as though the same were set forth at length herein.

26. After reasonable investigation, this Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the averments contained within Paragraph 26 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 25, of Plaintiff's Complaint as though the same were set forth at length herein.

27. The averments contained within Paragraph 27 of the Plaintiff's Complaint are admitted in part and denied in part. It is admitted that ultimately Plaintiff was granted summary judgment. After reasonable investigation, the Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the

remaining averments contained within Paragraph 26 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial. To the extent the averments contained within Paragraph 27 of the Plaintiff's Complaint reference a specific written document, i.e., Exhibit "A", said document speaks for itself and therefore no responsive pleading is required. To the extent that averments contained within Paragraph 27 of the Plaintiff's Complaint, misstate, misinterpret or misconstrue the actual terms and conditions of the written document or any relationship associated there with, the same are specifically denied. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 26, of Plaintiff's Complaint as though the same were set forth at length herein.

28. After reasonable investigation, this Responding Defendant is without sufficient knowledge, information or belief as to the truth or falsity of the averments contained within Paragraph 28 of Plaintiff's Complaint. Therefore, all said averments are specifically denied in its entirety, and strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 27, of Plaintiff's Complaint as though the same were set forth at length herein.

WHEREFORE, this Defendant, Anderson & Kime Insurance, Inc., denies that it is liable to the Plaintiff for any sums whatsoever, and respectfully requests that the Plaintiff's Complaint be dismissed in its entirety, with prejudice.

Count I - Negligence

29. Defendant incorporates herein by reference its responses to Paragraphs 1 through 28, including all subparagraphs associated therewith as though the same were set forth at length herein.

30. The averments set forth in Paragraph 30 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, said averments are specifically denied. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 29, of Plaintiff's Complaint as though the same were set forth at length herein.

31. The averments set forth in Paragraph 31 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, said averments are specifically denied. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 30, of Plaintiff's Complaint as though the same were set forth at length herein.

32. To the extent the averments set forth in Paragraph 32 of Plaintiff's Complaint constitute conclusions of law no responsive pleading is required. To the extent a response is deemed required, said averments are specifically denied. The remaining averments set forth in Paragraph 32 of Plaintiff's Complaint are specifically denied. Strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 31, of Plaintiff's Complaint as though the same were set forth at length herein.

33. To the extent the averments set forth in Paragraph 33 of Plaintiff's Complaint constitute conclusions of law no responsive pleading is required. To the extent a response is deemed required, said averments are specifically denied. The remaining averments set forth in Paragraph 33 of Plaintiff's Complaint are specifically denied. Strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 32, of Plaintiff's Complaint as though the same were set forth at length herein.

34. To the extent the averments set forth in Paragraph 34 of Plaintiff's Complaint constitute conclusions of law no responsive pleading is required. To the extent a response is deemed required, said averments are specifically denied. The remaining averments set forth in Paragraph 34 of Plaintiff's Complaint are specifically denied. Strict proof thereof is demanded at time of trial. By way of further response, Responding Defendant incorporates herein by reference its responses to Paragraphs 1 through 33, of Plaintiff's Complaint as though the same were set forth at length herein.

WHEREFORE, this Defendant, Anderson & Kime Insurance, Inc., denies that it is liable to the Plaintiff for any sums whatsoever, and respectfully requests that the Plaintiff's Complaint be dismissed in its entirety, with prejudice.

Count II – Breach of Fiduciary Duty

35. Defendant incorporates herein by reference its responses to Paragraphs 1 through 34, including all subparagraphs associated therewith as though the same were set forth at length herein.

36-41. The Court sustained Responding Defendant's Preliminary Objections to Count II sounding in Breach of Fiduciary Duty. The Court ultimately dismissed Count II

from Plaintiff's Complaint so no response is required. By way of further response, Responding Defendant incorporate herein by reference its responses to Paragraphs 1 through 53, of Plaintiff's Complaint and Complaint as though the same were set forth at length herein.

WHEREFORE, this Defendant, Anderson & Kime Insurance, Inc., denies that it is liable to the Plaintiff for any sums whatsoever, and respectfully requests that the Plaintiff's Complaint be dismissed in its entirety, with prejudice.

NEW MATTER

42. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted against this Defendant.

43. This Defendant hereby asserts the legal doctrine of waiver and estoppel as a complete and/or partial bar to the entirety of Plaintiff's claims.

44. This Defendant hereby asserts the legal doctrine of consent as a complete and/or partial bar to the entirety of Plaintiff's claims.

45. This Defendant hereby asserts the legal doctrine of accord and satisfaction as a complete and/or partial bar to the entirety of Plaintiff's claims.

46. This Defendant asserts the Doctrines of Comparative Negligence, Contributory Negligence and the Assumption of the Risk as complete and/or partial bars to the entirety of Plaintiff's claims.

47. This Defendant asserts the legal principles of compromise and release as a complete and/or partial bar to the entirety of Plaintiff's claims.

48. This Defendant asserts the Economic Loss Doctrine as a complete and/or partial bar to the entirety of Plaintiff's claim.

49. This Defendant sets forth all applicable statutes of limitation, which operate as a complete and/or partial bar to the entirety of Plaintiff's claims.

50. The alleged injuries and/or damages suffered by the Plaintiff are due solely to the conduct of entities and/or parties over whom this answering Defendant had no legal responsibility or control.

51. In as much as Pennsylvania Rule of Civil Procedure 1032 provides that a party waives all defenses not presented by way of answer, answering Defendant, upon the advice of counsel, hereby assert all affirmative defenses not otherwise enumerated herein as those are set forth in Pennsylvania Rule of Civil Procedure 1030. Said affirmative defenses are subject to demonstration during discovery process and proof at time of trial.

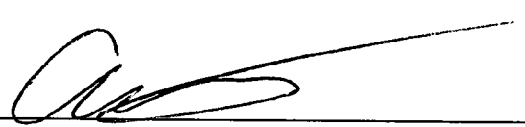
WHEREFORE, this Defendant, Anderson & Kime Insurance, Inc., denies that it is liable to the Plaintiff for any sums whatsoever, and respectfully requests that the Plaintiff's Complaint be dismissed in its entirety, with prejudice.

JURY TRIAL DEMANDED

Respectfully submitted,

BURNS, WHITE & HICKTON, LLC

By: _____


Allan J. Wertz, Esquire
Attorneys for Defendant
Anderson & Kime Insurance, Inc.

VERIFICATION

I, Gennaro Aiello, hereby verify that the averments contained in the foregoing Defendant's Answer, New Matter and Cross-Claim to Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief. This Verification is made subject to the provisions of 18 Pa. C.S.A. §4904 relating to unsworn falsifications to authorities.

Dated: 2-28-08



Gennaro Aiello

CERTIFICATE OF SERVICE

I, Allan J. Wertz, Esquire, certify that a true and correct copy of Defendant's Answer, New Matter and Cross-Claim to Plaintiff's Complaint was served upon all counsel/parties of record via first class U.S. Mail, postage prepaid this 4th day of March, 2008.

Christopher J. Shaw, Esquire
Paris Cleaners, Inc.
67 Hoover Avenue, PO Box 1043
DuBois, PA 15801

BURNS, WHITE & HICKTON

By: _____


Allan J. Wertz, Esquire

FILED

MAR 06 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION-LAW)

PARIS CLEANERS, INC.,
d/b/a PARIS COMPANIES,
Plaintiff

VS.

ANDERSON & KIME INSURANCE, INC.
Defendant

:
:
:
:
: NO. 2007 - 909 - CD
:
:
:

PRAECIPE TO DISCONTINUE & END

TO: William A. Shaw, Prothonotary

Please mark the above captioned matter discontinued and ended. Pursuant to PA.R.C.P. Rule 229, the Plaintiff has elected to voluntarily discontinue the action. As there is only one Defendant and the Defendant has not filed a claim against the Plaintiff or any additional defendants, Plaintiff can voluntarily discontinue the action pursuant to this Rule. All costs associated with the action have been paid.

6/6/2008
Date

Christopher J. Shaw
Christopher J. Shaw, Esquire
Corporate Counsel
Paris Cleaner's, Inc.
67 Hoover Avenue, P.O. Box 1043
DuBois, PA 15801
(814) 375 - 9700 ext. 706

FILED 2CC & 2 Cert. of
0/12:09 PM Disc. to Atty Shaw
JUN 06 2008 (62)
William A. Shaw
Prothonotary/Clerk of Courts

64

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Paris Cleaners, Inc., d/b/a
Paris Companies

Vs.

No. 2007-00909-CD

Anderson & Kim Insurance, Inc.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on June 6, 2008 marked:

Discontinued and Ended

Record costs in the sum of \$85.00 have been paid in full by Christopher J. Shaw, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 6th day of June A.D. 2008.



William A. Shaw, Prothonotary