

07-1731-CD
Pedro Santiago vs Comm of PA

Date: 8/15/2008

Time: 01:58 PM

Page 1 of 1

Clearfield County Court of Common Pleas

User: GLKNISLEY

ROA Report

Case: 2007-01731-CD

Current Judge: Fredric Joseph Ammerman

Pedro Santiago vs. Commonwealth of Pennsylvania

Civil Other-COUNT

Date		Judge
10/25/2007	New Case Filed. Case Transferred from Philadelphia County, Case Number 070600921. Filing fee of \$70.00 billed to Attorney Gary Brownstein.	No Judge
11/5/2007	Filing: Civil Complaint - Transfer from Another County Paid by: Brownstein, Gary Esq (attorney for Santiago, Pedro) Receipt number: 1921327 Dated: 11/05/2007 Amount: \$70.00 (Check)	No Judge
1/22/2008	X Certificate of Merit, filed by Atty. Brownstein 1 Cert. to Atty.	No Judge
2/29/2008	X Filing: Praecipe to enter Default Judgment Paid by: Brownstein Vitale & Weiss, P.C. Receipt number: 1922876 Dated: 2/29/2008 Amount: \$20.00 (Check) Judgment by Default entered against the Defendant with damages to be assessed at a later date. Cert. copy of Praecipe with notice to Defendant and Atty. Geer.	No Judge
3/10/2008	X Petition of Defendant Commonwealth of Pennsylvania, Dept. of Corrections, Pursuant to PA. R.C.P. 237.3 for Relief from Judgment by Default Entered Pursuant to PA. R.C.P. 237.1, filed By Atty. Geer. no Cert. copies.	No Judge
3/14/2008	X Verification Pursuant to PA. R.C.P. No. 1024(c), (Re: Petition of Defendant for Relief from Judgment), filed by s/Richard C. Geer, Esq. No CC	No Judge
3/25/2008	X Order, this 18th day of March, 2008, upon consideration of the within Petition of Defendant, for relief from Judgment, it is Ordered that a rule is issued upon the respondent. The respondent shall file an answer to the petition within twenty days of service upon the respondent; the argument shall be held on April 22, 2008 at 11:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 1CC Atty. Geer.	Fredric Joseph Ammerman
4/22/2008	X Commonwealth Defendant's Answer and New Matter to Plaintiff's Complaint, filed by Atty. Geer no cert. copies.	Fredric Joseph Ammerman

CLEARFIELD

REPORT DCT
USER IDFirst Judicial District
CIVIL DOCKET REPORT
CASE ID 070600921PAGE 1
RUN DATE 10/09/07
RUN TIME 02:58 PM

07-1731-CD

<u>CASE NU</u>	<u>CASE CAPTION</u>		
0706009	SANTIAGO VS COMMONWEALTH OF PA DEPT OF CORRECTIONS		

<u>FILING D</u>	<u>COURT</u>	<u>LOCATION</u>	<u>JURY</u>
11-JUN-07	MN	CH	N

CASE TYISNAL INJURY - OTHER
STATUS: TRNSF OTHER JURISDICTION

<u>Seq #</u>	<u>Aspn Date</u>	<u>Type</u>	<u>ID</u>	<u>Party Name / Address & Phone No.</u>
1		APLF	A36431	BROWNSTEIN, GARY BROWNSTEIN VITALE & WEISS PC TWO PENN CENTER PLAZA 1500 JFK BLVD SUITE 1020 PHILADELPHIA PA 19102 (215) 751-1600 (215) 751-1660 - FAX
2	1	PLF	@5794435	SANTIAGE, PEDRO 317 E SOMERSET ST PHILADELPHIA PA 19134
3	4	DFT	@5794438	COMMONWEALTH OF PENNA DEPT OF CORR 2520 LISBURN RD CAMP HILL PA 17001
4		ADFT	A78624	GEER, RICHARD C 21 SOUTH 12TH STREET 3RD FLOOR DEPUTY ATTORNEY GENERAL PHILADELPHIA PA 19107 (215) 560-2966

<u>Filing Datime</u>	<u>Docket Entry</u>	<u>Date Entered</u>
11-JUN-07 :52	ACTIVE CASE	11-JUN-07
11-JUN-07 :05	COMMENCEMENT OF CIVIL ACTION	15-JUN-07
11-JUN-07 :05	PRAE TO ISSUE WRIT OF SUMMONS PRAECIPE TO ISSUE WRIT OF SUMMONS FILED. WRIT OF SUMMONS ISSUED. DISCOVERY DEADLINE 03/03/2008	15-JUN-07 BROWNSTEIN, GARY
11-JUN-07 :05	SHERIFF'S SURCHARGE 1 DEFT	15-JUN-07 BROWNSTEIN, GARY

FILED \$70.00
 11-11-07 filing fee
 OCT 25 2007 billable to
 Atty G. Brownstein
 William A. Shaw
 Prothonotary/Clerk of Courts

REPORT : ZDRDOCT
USER ID: JPM

First Judicial District
CIVIL DOCKET REPORT
CASE ID 070600921

PAGE 2
RUN DATE 10/09/07
RUN TIME 02:58 PM

<u>Filing Date / Time</u>	<u>Docket Entry</u>	<u>Date Entered</u>
11-JUN-07 15:46:05	WAITING TO LIST STATUS CONF	15-JUN-07 BROWNSTEIN, GARY
15-JUN-07 12:29:10	AFFIDAVIT OF SERVICE FILED OF COMPLAINT BY PERSONAL SERVICE UPON DEFENDANT COMMONWEALTH OF PA DEPT OF CORRECTIONS ON 6-13-07.	18-JUN-07
29-JUN-07 14:15:19	AFFIDAVIT OF SERVICE FILED OF SUMMONS BY PERSONAL SERVICE UPON COMM OF PA DEPT OF CORRCTIONS ON 20JUN-07.	06-JUL-07
10-JUL-07 15:08:00	ENTRY OF APPEARANCE FILED ENTRY OF APPEARANCE OF RICHARD C. GEER, DEPUTY ATTORNEY GENERAL FILED ON BEHALF OF DFT. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF CORRECTIONS.	11-JUL-07 GEER, RICHARD C
10-JUL-07 15:08:01	RULE TO FILE COMPLAINT PRAECIPE AND RULE FILED UPON PLAINTIFF(S) TO FILE A COMPLAINT WITHIN TWENTY (20) DAYS OR SUFFER JUDGMENT OF NON PROS FILED BY DEFENDANTS, COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF CORRECTIONS.	11-JUL-07 GEER, RICHARD C
16-JUL-07 16:09:16	COMPLAINT FILED NOTICE GIVEN COMPLAINT WITH NOTICE TO DEFEND WITHIN TWENTY (20) DAYS AFTER SERVICE IN ACCORDANCE WITH RULE 1018.1 FILED.	17-JUL-07
23-JUL-07 16:06:34	AFFIDAVIT OF SERVICE FILED OF COMPLAINT VIA FIRST CLASS MAIL UPON DEFENDANT COMMONWEALTH OF PA DEPT OF CORRECTIONS ON 7-18-07.	26-JUL-07
29-AUG-07 14:36:04	MOTION TO DETERMINE P O FILED COMMONWEALTH OF PENNA DEPT OF CORRECTIONS, 39-07082239 REONSE DATE: 9-18-07	04-SEP-07
29-AUG-07 14:59:00	PRELIMINARY OBJECTIONS FILED PRELIMINARY OBJECTIONS TO PLAINTIFF(S) COMPLAINT FILED BY DEFENDANT COMMONWEALTH.	30-AUG-07 GEER, RICHARD C
05-SEP-07 12:13:42	LISTED FOR STATUS CONFERENCE	05-SEP-07
07-SEP-07 00:01:24	NOTICE GIVEN	07-SEP-07
17-SEP-07 09:49:43	ANSWER (MOTION/PETITION) FILED 39-07082239 ANS FILED TO MOTION FOR P.O.'S.	18-SEP-07 SANTIAGE, PEDRO
24-SEP-07 10:31:46	MOTION ASSIGNED 39-07082239 MOTION TO DETERMINE PRELIMINARY OBJECTIONS ASSIGNED TO JUDGE TERESHKO ON 9-25-07.	24-SEP-07

REPORT : ZDRDOCT
USER ID: JPM

First Judicial District
CIVIL DOCKET REPORT
CASE ID 070600921

PAGE 3
RUN DATE 10/09/07
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Filing Date / Time Docket Entry

Date Entered

27-SEP-07 10:19:27 ORDER/TRNSF_OTHER_JURISDICTION

27-SEP-07

[TERESHKO, ALLAN L]

39-07082239 [IT IS ORDERED THAT, DEFT'S PRELIMINARY
OBJECTIONS ARE SUSTAINED AND [VENUE IS TRANSFERRED TO]
[THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PLTF
TO PAY ALL EXPENSES. SEE ORDER. [BY THE COURT
.....TERESHKO, J 9/26/07]

09-OCT-07 13:58:00 PRAECIPE/TRNSFER_OUT_OF_COUNTY

09-OCT-07

[BROWNSTEIN, GARY]

[PRAECIPE_TO_TRANSFER_THE ABOVE_CAPTIONED MATTER_TO
CLEARFIELD COUNTY COURT FILED. J. M.]

* * * End of Docket * * *

OCT 19 2007
CERTIFIED FROM THE RECORD ON
JOSEPH H. EVERIS
PROTHONOTARY OF PHILADELPHIA COUNTY

BY:



Court of Common Pleas of Philadelphia County

Trial Division

Civil Cover Sheet

			For Prothonotary Use Only (Docket Number)		
			JUNE 2007		
			000921		
PLAINTIFF'S NAME Pedro Santiago		DEFENDANT'S NAME Commonwealth of PA, Dept. of Corrections			
PLAINTIFF'S ADDRESS 317 E. Somerset Street Philadelphia, PA 19102		DEFENDANT'S ADDRESS 2520 Lisburn Road Camp Hill, PA 17001-0598			
PLAINTIFF'S NAME		DEFENDANT'S NAME			
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS			
PLAINTIFF'S NAME		DEFENDANT'S NAME			
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS			
TOTAL NUMBER OF PLAINTIFFS 1		TOTAL NO. OF DEFENDANTS 1			
		COMMENCEMENT OF ACTION			
		<input checked="" type="checkbox"/> Complaint <input checked="" type="checkbox"/> Writ of Summons	<input type="checkbox"/> Petition Action <input type="checkbox"/> Transfer From Other Jurisdictions	<input type="checkbox"/> Notice of Appeal	
AMOUNT IN CONTROVERSY		COURT PROGRAMS			
<input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00		<input type="checkbox"/> Arbitration <input type="checkbox"/> Jury <input checked="" type="checkbox"/> Non-Jury <input type="checkbox"/> Other: _____	<input type="checkbox"/> Mass Tort <input type="checkbox"/> Savings Action <input type="checkbox"/> Petition	<input type="checkbox"/> Commerce <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Statutory Appeals	<input type="checkbox"/> Settlement <input type="checkbox"/> Minors <input type="checkbox"/> W/D/Survival
CASE TYPE AND CODE (SEE INSTRUCTIONS)					
20 and 2M					
STATUTORY BASIS FOR CAUSE OF ACTION (SEE INSTRUCTIONS)					
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)					IS CASE SUBJECT TO COORDINATION ORDER?
					Yes <input type="checkbox"/> No <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: Papers may be served at the address set forth below.					
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY Gary Brownstein, Esquire			ADDRESS (SEE INSTRUCTIONS) Two Penn Ctr Plaza, 1500 JFK Blvd, Suite 1020 Philadelphia, PA 19102		
PHONE NUMBER (215) 751-1600		FAX NUMBER (215) 751-1660			
SUPREME COURT IDENTIFICATION NO. <i>36431</i>			E-MAIL ADDRESS		
SIGNATURE <i>[Signature]</i>			DATE <i>6/11/07</i>		

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

DISCOVERY DEADLINE: **MAR 3 2008**

ATTORNEY FOR PLAINTIFF

Pedro Santiago
317 East Somerset Street
Philadelphia, PA 19134

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

v.

JUNE TERM, 2007
NO:

000921

**Commonwealth of Pennsylvania, Department
of Corrections**
2520 Lisburn Road
Camp Hill, PA 17001-0598

PRAECIPE TO ISSUE WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in the above-captioned matter.

BROWNSTEIN VITALE & WEISS, P.C.

By: Gary Brownstein, Esquire
Attorney for Plaintiff

~~278-30~~ PRESENTED FOR REVIEW
~~278-30~~ 2007 JUN 11 PM 1:31
PRO PROTHY

DATE: 02/11/07 TIME: 01:36
TICKET NO: 98009
CASE NO: 070600921
TOTAL AMT: \$ 278.39
REGISTER: Register 1 282 SH
CASHIER: PM
CUSTOMER: Czech walk-in customer

HOLY TRINITY

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

37.80
J. Mangini
RECEIVED OCT 9 2007
2007 OCT -9 PM 1:58
PROTHY

ATTORNEY FOR PLAINTIFF

Pedro Santiago

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

v.

JUNE TERM, 2007
NO: 921

Department of Corrections,
Commonwealth of Pennsylvania

PRAECIPE TO TRANSFER

TO THE PROTHONOTARY:

Kindly transfer the above captioned matter to the Court of Common Pleas of Clearfield County in accordance with the Order dated September 26, 2007, attached hereto as Exhibit "A".

RESPECTFULLY SUBMITTED,

BROWNSTEIN VITALE & WEISS, P.C.

By: Gary Brownstein, Esquire
Attorney for Plaintiff

RECEIVED: 10/29/07 FILED: 02/07
TICKET NO.: 53376
CASE NO.: 0704C3921
TOTAL AMT: \$ 37.83
REGISTER: Register 2 282 CH
CASHIER: LC
CUSTOMER: Cash walk-in customer

VERIFICATION

PEDRO SANTIAGO : COURT OF COMMON PLEAS
vs. : OF PHILADELPHIA COUNTY
DEPARTMENT OF CORRECTIONS : JUNE TERM, 2007
COMMONWEALTH OF PENNSYLVANIA : NO. 0921

082239

ORDER

AND NOW, this 26⁺ day of Sept 2007, upon consideration of

the Preliminary Objections of the Commonwealth Defendant and responses thereto, it is hereby
ORDERED and DECREED that: 1) said Preliminary Objections are **SUSTAINED** and that venue
in this action is transferred to the Court of Common Pleas of Clearfield County; 2) that Plaintiff is to
effectuate the transfer of this case within twenty (20) days hereof, with all expenses for such transfer
to be borne by plaintiff pursuant to Pa. R.C.P. 1006(e), including the transfer fee and filing fees
required by Clearfield County, or risk the imposition of the sanction of Non Pros for failure to
comply; 3) that Subparagraphs (b), (c), and (d) of Paragraph 21 of Plaintiff's Complaint are
dismissed for failing to state a claim upon which relief can be granted; and 4) that Subparagraphs (d)
and (e) of Paragraph 12, and Subparagraphs (e) and (f) of Paragraph 21 shall be stricken for failing to
conform to rule of court.

DOCKETED
COMPLEX LIT CENTER

SEP 27 2007

BY THE COURT:

J. STEWART

Tereshko

J.

COPIES SENT
PURSUANT TO Pa.R.C.P. 236(b)
SEP 27 2007

FIRST JUDICIAL DISTRICT OF PA
USER I.D.: 2

A n

PEDRO SANTIAGO : COURT OF COMMON PLEAS
VS. : OF PHILADELPHIA COUNTY
DEPARTMENT OF CORRECTIONS : JUNE TERM, 2007
COMMONWEALTH OF PENNSYLVANIA : NO. 0921

082239

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and (e) of Paragraph 12, and Subparagraphs (e) and (f) of Paragraph 21 shall be stricken for failing to
conform to rule of court.

DOCKETED
COMPLEX LIT CENTER

SEP 27 2007

BY THE COURT:

J. STEWART

Tereshko
J.

COPIES SENT
PURSUANT TO Pa.R.C.P. 236(b)
SEP 27 2007

FIRST JUDICIAL DISTRICT OF PA
USER I.D.: 3

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

2007 JUL 18 PM/12:52
PRO PRO
ATTORNEY FOR PLAINTIFF

Pedro Santiago
317 East Somerset Street
Philadelphia, PA 19134

v.

Commonwealth of Pennsylvania, Department
of Corrections
2520 Lisburn Road
Camp Hill, PA 17001-0598

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY**

**JUNE TERM, 2007
NO: 921**

**FILED
PRO PROTHY**

JUL 17 2007

D. GRAHAM

IMPORTANT NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY AN 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 THIS CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE OF 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 HELP.

AVISO IMPORTANTE

LE HAN DEMANDADO A USTED EN LA CORTE. SI USTED QUIERE DEFENDERSE DE ESTAS DEMANDAS EXPUESTAS EN LAS PAGINAS SIGUIENTES, USTED TIENE VEINTE (20) DIAS DE PLAZO AL PARTIR DE LA FECHA DE LA DEMANDA Y LA NOTIFICACION. HACA FALTA ASENTAR UNA COMPARENCIA ESCRITA O EN PERSONA O CON UN ABOGADO Y ENTREGAR A LA CORTE EN FORMA ESCRITA SUS DEFENSAS O SUS OBJECCIONES A LAS DEMANDAS EN CONTRA DE SU PERSONA. SEA AVISADO QUE SI USTED NO SE DEFIENDE, LA CORTE TOMARA MEDIDAS Y PUEDE CONTINUAR LA DEMANDA EN CONTRA SUYA SIN PREVIO AVISO O NOTIFICACION. ADEMÁS, LA CORTE PUEDE DECIDIR A FAVOR DEL DEMANDANTE Y REQUIERE QUE USTED CUMPLA CON TODAS LAS PROVISIONES DE ESTA DEMANDA. USTED PUEDE PERER DINERO O SUS PROPIEDADES U OTROS DERECHOS IMPORTANTES PARA USTED. LIEVA ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA A LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Lawyer Reference Center
One Reading Center
Philadelphia, PA 19107
(215) 238-1701

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

ATTORNEY FOR PLAINTIFF

Pedro Santiago
317 East Somerset Street
Philadelphia, PA 19134

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

v.

JUNE TERM, 2007
NO: 921

Commonwealth of Pennsylvania, Department
of Corrections
2520 Lisburn Road
Camp Hill, PA 17001-0598

CIVIL ACTION COMPLAINT

1. Pedro Santiago is an adult individual residing at 317 East Somerset Street, Philadelphia, PA 19134.
2. Defendant, Commonwealth of Pennsylvania, Department of Corrections is a state agency organized and existing under the laws of the Commonwealth of Pennsylvania and the ordinances of the City and County of Philadelphia, with places of business throughout the Commonwealth, as well as the County of Philadelphia, who at all times material herein had a principal business address at 2520 Lisburn Road, Camp Hill, PA 17001.
3. At all times material herein, Defendant, Commonwealth of Pennsylvania, Department of Corrections was acting by and through their agents, servants, workmen and/or employees and/or apparent and/or extensible agents, servants, workmen and/or employees, who were acting in the course of their employment and within the scope of their authority.

4. At all times material herein Defendant, Commonwealth of Pennsylvania, Department of Corrections owned, controlled, managed, possessed and/or maintained detention facilities throughout the Commonwealth of Pennsylvania, including Quehanna Boot Camp Institution, State Correctional Institute at Houtzdale, State Correctional Institution at Fayette and the State Correctional Institution at Greensburg, all institutions located in the Commonwealth of Pennsylvania.
5. At all times material herein, Defendant, through its agents, knew or should have known of Plaintiff's pre-existing medical condition prior to his assignment for incarceration, including, but not limited, insulin dependent diabetes, which made him far more susceptible to serious injuries in the event of a minor injury to his lower extremities.
6. Notwithstanding the above, in or about June of 2005, Plaintiff, Pedro Santiago was placed by Defendant as an inmate in the Quehanna Boot Camp, where he was required, as part of his "rehabilitation", to actively and aggressively participate in a military boot camp like setting, where supervised vigorous exercise was mandatory.
7. On or about June or July 2005, while Plaintiff was participating in a supervised exercise activity at the boot camp, he was caused to sustain a left lower leg injury, for which he had to rely upon Defendant's agents or extensible agents for proper medical treatment.
8. Subsequently, Plaintiff had to rely upon the treatment of the nurse on duty at the Quehanna Boot Camp to address his left leg injury. Despite following said treatment on his left lower leg and foot, the injury became very swollen and infected.
9. Subsequent, in a desperate attempt to address Plaintiff's injured left lower leg and foot, he was transferred to medical facilities at the State Correctional Institute at Houtzdale, the State Correctional Institute at Fayette, and the State Correctional Institute at Greensburg. Despite the "treatment" afforded the Plaintiff at these institutions, his injuries only worsened.

10. Subsequent, in or around July 2006, after Plaintiff had been discharged by Defendant to a halfway house, he was able to secure treatment from an outside facility as a result of which he underwent emergency surgery in the form of surgical excision of the 5th metatarsal bone impacted by the infection. Due to the severity of the infection, his treating surgeon also contemplated amputating digits 4 and 5 of the left foot, which surgery still remains available to Plaintiff to address conditions caused by the Defendant's negligence.

COUNT I

Pedro Santiago

**v. Commonwealth of Pennsylvania,
Department of Corrections**

11. Plaintiff, Pedro Santiago, incorporates by reference the allegations contained in paragraphs 1 through 10 above, as if same were set forth herein at length.
12. The carelessness, recklessness and/or negligence of the Defendant, Commonwealth of Pennsylvania, Department of Corrections, by and through their agents, servants, workmen and/or employees, consisted, *inter alia* of the following:
 - a. Failing to take into account Plaintiff's prior medical condition before deciding to place him at the Quehanna Boot Camp, where supervised vigorous exercise was part of the required regimen for rehabilitation, and lower extremity injuries was foreseeable;
 - b. Negligently, carelessly and/or recklessly failing to properly monitor Plaintiff's participation in the exercise program at the Quehanna Boot Camp to prevent foreseeable injuries;
 - c. Ordering Plaintiff to aggressively perform exercises in close quarters where an injury to a lower extremity is highly foreseeable, despite knowledge of his pre-existing medical condition;

- d. Otherwise failing to exercise due and proper care under the circumstances.
 - e. As otherwise may be shown through discovery or at the trial on this case.
- 13. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant set forth hereinabove, the Plaintiff, Pedro Santiago has sustained permanent injuries, including, but not limited to traumatic infection of the left leg and foot, requiring resection of the 5th metatarsal joint, and possible amputation of digits 4 and 5 of the left foot, chronic and progressive osteomyelitis of the left foot and exacerbation to pre-existing degenerative conditions of the foot and ankle, gait abnormalities related to the aforesaid injuries to the left foot and other injuries, the full extent of which is not yet known. The Plaintiff believes and therefore avers that he injuries are permanent in nature.
- 14. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant as set forth hereinabove, the Plaintiff, Pedro Santiago has incurred and continues to incur financial expenses for medicine and medical care, in order to effectuate a cure for the aforementioned injuries, and may be compelled to expend sums of money for the same purposes in the future and for the rest of his life.
- 15. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant as set forth hereinabove, the Plaintiff, Pedro Santiago had undergone and is undergoing great physical pain and mental anguish, and may continue to endure same for an indefinite period of time in the future, and for the rest of his life, all to his great detriment and loss.
- 16. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant set forth hereinabove, the Plaintiff, Pedro Santiago has suffered a loss of the enjoyment of life's pleasures, and may continue to suffer such losses in the future, all to his great detriment and loss.

17. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant as set forth hereinabove, the Plaintiff, Pedro Santiago has been unable to attend to his daily chores, duties and activities, resulting in losses, including loss of earnings and earnings power, which losses may continue for an indefinite period of time into the future, to his great detriment and loss.

WHEREFORE, the Plaintiff, Pedro Santiago claims damages from the Defendant in an amount in excess of Fifty Thousand (\$50,000) Dollars.

COUNT I

Pedro Santiago

**v. Commonwealth of Pennsylvania,
Department of Corrections**

18. Plaintiff, Pedro Santiago, incorporates by reference the allegations contained in paragraphs 1 through 17 above, as if same were set forth herein at length.

19. Defendant has a duty and responsibility to its patients and inmates to furnish appropriate and competent medical care in situations such as that presented by the Plaintiff herein.

20. As part of its duties and responsibilities, Defendant has an obligation to establish appropriate policies and procedures, and have competent medical people who will guarantee the quality of medical practice which is conducted within institutions under the ownership and control of the Defendant.

21. The negligence, carelessness and/or recklessness of the Defendant, Commonwealth of Pennsylvania, Department of Corrections, by and through its agents, servants, workmen and/or employees, and/or those who appear to have been its agents, servants, workmen and/or employees, consisted, *inter alia*, the following:

a. Untimely, improper, inadequate and/or negligent medical care at the aforesaid premises during the time that Plaintiff, Pedro Santiago was treated.

- b. Failing to direct or require the attention or advice and instructions of qualified specialists for the diagnosis, evaluation and treatment of the condition of the Plaintiff, Pedro Santiago, which developed while incarcerated at Defendant's institutions;
- c. Failing to have present competent medical personnel to monitor, diagnose and treat Plaintiff's condition promptly, and to competently and/or adequately monitor all follow up treatment to properly address the progress of Plaintiff's injuries caused while incarcerated at Defendant's institution.
- d. Failing to monitor all acts of its physicians, nurses and/or other agents, servants and/or employees during Plaintiff's incarceration and treatment.
- e. Being otherwise negligent, careless or reckless under the circumstances.
- f. Being otherwise negligent, careless and reckless as may be shown through the course of discovery or at the time of trial.

22. As a result of the aforesaid actions, the Plaintiff has been caused to sustain severe and permanent injuries as aforesaid.

WHEREFORE, Plaintiff, Pedro Santiago demands damages of Defendant in an amount in excess of \$50,000.00.

RESPECTFULLY SUBMITTED,

BROWNSTEIN VITALE & WEISS, P.C.

By: Gary Brownstein, Esquire
Attorney for Plaintiff

VERIFICATION

Piero Santiago, hereby states that he/she is the Plaintiff in this action and verifies that the statements made in the foregoing are true and correct to the best of her knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties relating to the unsworn falsification to authorities.

DATED: 7-3-07

A handwritten signature in black ink, appearing to read "Piero Santiago", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized 'P' at the beginning.

PSE Services
2370 Rebecca Drive
Hatfield, PA 19440
215.996.0931

AFFIDAVIT OF SERVICE

<u>Plaintiff(s)</u> Pedro Santiago	<u>Court Term & No.</u> 0706-921
<u>Defendant(s)</u> Commonwealth of PA Department of Corrections	<u>County</u> Philadelphia
<u>Served at</u> 21 S 12th Street - Attorney General of PA office	<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> Subpoena <input type="checkbox"/> Summons <input type="checkbox"/> Other <input type="checkbox"/> Writ of

Served and made known to Commonwealth of PA Department of Corrections on the 13th day of June 2007 at 2:00 PM at 21 S 12th Street - 3rd Floor in the manner described below:

Defendant(s) personally served
 Adult family member with whom said defendant(s) reside(s). Relationship is
 Adult in charge of Defendant's residence who refused to give name or relationship
 Agent or person in charge of Defendant's office or usual place of business - Alton G Grube
 Other

Description

Age:

Height :

Weight :

Race :

Sex :

FILED
PRO PROT/HY
JUN 18 2007
E. HUSTON

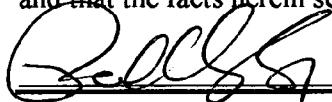
PRESENTED FOR FILE
2007 JUN 15 PH/2:45
PRO PROT/HY

On the day of , 2007 at

Defendant not found because: Moved, Unknown, No Answer, Vacant, Other

Name of Server

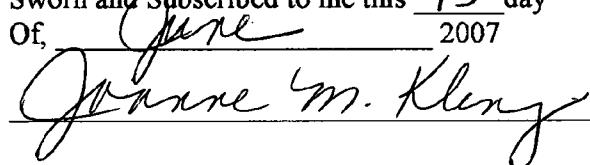
Paul Kling Sr, Being duly sworn according to law, deposes and says that he is the process server herein named and that the facts herein set forth above are true and correct to the best of his knowledge, information and belief.



Process Server

Law Firm: Brownstein, Vitale & Weiss
Attorney: Gary Brownstein, Esq
Address: 1500 JFK Blvd, Suite 1020
Telephone: 215.751.1600

Sworn and Subscribed to me this 13th day
Of June 2007



NOTARIAL SEAL
Joanne M. Kling, Notary Public
Hatfield Township, Montgomery County
My Commission Expires on December 13, 2010

SHERIFF'S RETURN - REGULAR

CASE NO: 2007-00427 T

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF CUMBERLAND

SANTIAGO PEDRO

0706-921

VS

COMM OF PA DEPT OF CORRECTIONS

2007 JUN 29 PM 2:43

PRO PROTHY

MICHAEL BARRICK, Sheriff or Deputy Sheriff of Cumberland County, Pennsylvania, who being duly sworn according to law, says, the within WRIT OF SUMMONS was served upon COMM OF PA DEPT OF CORRECTIONS the DEFENDANT, at 0015:52 HOURS, on the 20th day of June, 2007 at 55 UTLEY DRIVE CAMP HILL, PA 17001-0528 by handing to TRACEY MCCOLLOUGH (ADMIN ASST) a true and attested copy of WRIT OF SUMMONS together with

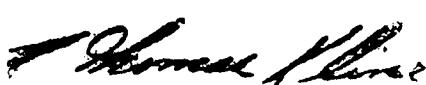
and at the same time directing Her attention to the contents thereof.

FILED
PRO PROTHY
JUL 06 2007
D. BUSH

Sheriff's Costs:

Docketing	18.00
Service	13.44
Affidavit	2.50
Surcharge	.00
	.00
	33.94

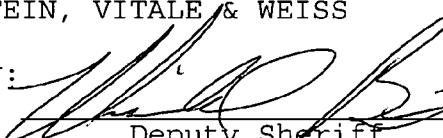
So Answers:


R. Thomas Kline

06/21/2007
BROWNSTEIN, VITALE & WEISS

Sworn and Subscribed to

before me this 26th dayof June, 2007 A.D.

By: 
Deputy Sheriff

Claudia Brewbaker

NOTARIAL SEAL
CLAUDIA A. BREWBAKER, NOTARY PUBLIC
Carlisle Boro. Cumberland County
My Commission Expires April 4, 2009

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
BY: RICHARD C. GEER
Deputy Attorney General
ATTORNEY I.D. NO.: 78624
21 South 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
(215) 560-2966

ATTORNEY FOR:
Commonwealth of Pennsylvania
Department of Corrections

Pedro Santiago

vs.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

: COURT OF COMMON PLEAS
: OF PHILADELPHIA COUNTY
: June 2007
: No. 0921

131.40
PRESENTED FOR REVIEW
07 JUL 10 PM 3:08
PRO PROTHTY

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance in the above-captioned case on behalf of the Commonwealth
of Pennsylvania, Department of Corrections.

FILED
PRO PROTHTY
JUL 11 2007
M. YOUNG
By:

THOMAS W. CORBETT, JR.
ATTORNEY GENERAL



RICHARD C. GEER
Deputy Attorney General

Date:

VALIDATION

DATE: 07/10/07 TIME: 03:11
TICKET NO: 112021
CASE NO: 070600921
TOTAL AMT: \$ 131.40
REGISTER: Register 2 282 CH
CASHIER: LC
CUSTOMER: Cash walk-in customer

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

BY: RICHARD C. GEER
Deputy Attorney General
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ATTORNEY FOR:
Commonwealth of Pennsylvania
Department of Corrections

Pedro Santiago

vs.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

: COURT OF COMMON PLEAS
: OF PHILADELPHIA COUNTY
: :
: :
: June 2007
: No. 0921

PRESENTED FOR REVIEW
07 JUL 10 PM 3:08
PRO PROT/HY

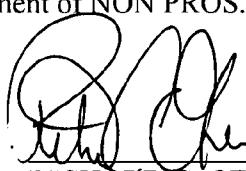
PRAECIPE FOR RULE TO FILE COMPLAINT

TO THE PROTHONOTARY:

Kindly enter a Rule upon the plaintiff Pedro Santiago to file a Complaint within twenty (20) days after service of the Rule or suffer entry of judgment of NON PROS. SEC. REG.

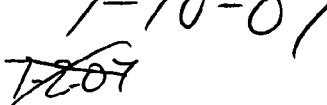
PRO PROT/HY
JUL 11 2007

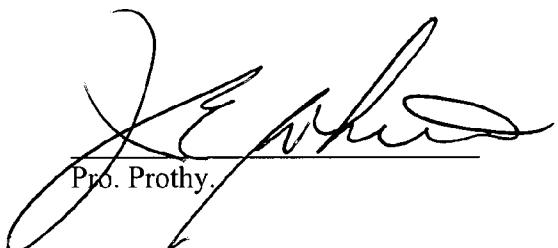
RE: VOTING


RICHARD C. GEER
Deputy Attorney General

TO THE PLAINTIFF:

You are ruled to file a Complaint within twenty (20) days of service hereof, or suffer the entry of JUDGMENT OF NON PROS.

Date: 
7-10-07


Pro. Prothy.

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

ATTORNEY FOR PLAINTIFF

Pedro Santiago

v.

Commonwealth of Pennsylvania, Department
of Corrections

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JUNE TERM, 2007
NO: 921

CERTIFICATE OF SERVICE

Gary Brownstein, Esquire, Attorney for Plaintiff in the above matter certifies and says that he did serve a true and correct copy of Plaintiff's Civil Action Complaint upon the Commonwealth of Pennsylvania, Department of Corrections by U.S. First Class Mail on July 18, 2007.

RESPECTFULLY SUBMITTED,

BROWNSTEIN VITALE & WEISS, P.C.

By: Gary Brownstein, Esquire
Attorney for Plaintiff

FILED
PRO PROTY
JUL 26 2007
E. HUSTON

PHILADELPHIA COURT OF COMMON PLEAS
PETITION/MOTION COVER SHEET

FOR COURT USE ONLY	
ASSIGNED TO JUDGE: OLIVITO	ANSWER/RESPONSE DATE: 9/18
<p><i>Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained online at http://courts.phila.gov</i></p>	

freshko
CONTROL NUMBER: **082239**

(RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

June Term. 2007
Month Year
No. 0921

Pedro Santiago

vs.
Commonwealth of Pennsylvania Department of Corrections

INDICATE NATURE OF DOCUMENT FILED:

Petition (Attach Rule to Show Cause) Motion
 Answer to Petition Response to Motion

Has another petition/motion been decided in this case? Yes No
Is another petition/motion pending? Yes No
If the answer to either question is yes, you must identify the judge(s):

TYPE OF PETITION/MOTION (see list on reverse side)	PETITION/MOTION CODE (see list on reverse side)
Commonwealth of Pennsylvania Department of Corrections	
DPROB	

ANSWER/RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding):

I. CASE PROGRAM

Is this case in the (answer all questions):

A. COMMERCE PROGRAM

Name of Judicial Team Leader: _____

Applicable Petition/Motion Deadline: _____

Has deadline been previously extended by the Court?

Yes No

B. DAY FORWARD/MAJOR JURY PROGRAM — Year _____

Name of Judicial Team Leader: **N/A**

Applicable Petition/Motion Deadline: _____

Has deadline been previously extended by the Court?

Yes No

C. NON JURY PROGRAM

Date Listed: **N/A**

D. ARBITRATION PROGRAM

Arbitration Date: _____

E. ARBITRATION APPEAL PROGRAM

Date Listed: _____

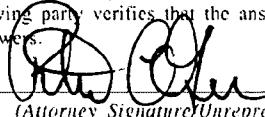
F. OTHER PROGRAM: _____

Date Listed: _____

III. OTHER

RECEIVED
SEP 24 2007
HONORABLE ALLAN L. FRESHKO

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party certifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.


(Attorney Signature/Unrepresented Party)

8-29-07

(Date)

RICHARD C. GEER, ESQUIRE #78624

(Print Name)

(Attorney I.D. No.)

The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date.
No extension of the Answer/Response Date will be granted even if the parties so stipulate.

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
EASTERN REGIONAL OFFICE

BY: RICHARD C. GEER
DEPUTY ATTORNEY GENERAL
IDENTIFICATION NO. 78624
21 South 12th Street, Third Floor
Philadelphia, PA 19107-3603
Telephone: (215) 560-2966

ATTEST

Attorney for:
AUG 29 2007 Commonwealth Defendant

J. WHITE
PRO. PROTHY

PEDRO SANTIAGO : COURT OF COMMON PLEAS
vs. : OF PHILADELPHIA COUNTY
DEPARTMENT OF CORRECTIONS : JUNE TERM, 2007
COMMONWEALTH OF PENNSYLVANIA : NO. 0921

COMMONWEALTH DEFENDANT'S PRELIMINARY OBJECTION
TO PLAINTIFF'S COMPLAINT

I. PRELIMINARY OBJECTION RAISING A QUESTION OF VENUE

1. Plaintiff, Pedro Santiago, filed the above-captioned lawsuit against the Commonwealth Defendant, seeking to recover damages as the result of an exercise injury which allegedly occurred while an inmate at the Quehanna Motivational Boot Camp, 4395 Quehanna Highway, Karthaus, Clearfield County, Pennsylvania. A true and correct copy of Plaintiff's Complaint is attached hereto as Exhibit "A".

2. The Complaint alleges further acts of negligence on the part of the Commonwealth Party, including negligent medical treatment at the State Correctional Institute at Houtzdale, Houtzdale, Clearfield County, Pennsylvania; also, at the State Correctional Institute at Fayette, Fayette County, Pennsylvania; as well as, the State Correctional Institute at Greensburg, Westmoreland County, Pennsylvania..

3. Venue in actions for claims against a Commonwealth Party is regulated by 42 Pa. C.S. §8523, which states that actions against a Commonwealth Party may be brought in,

and only in, a county in which the principal or local office of the Commonwealth Party is located, or in which the cause of action arose, or where a transaction or occurrence took place out of which the cause of action arose.

4. Pursuant to §3(b) of the Act of September 28, 1978, P.L. 788, No. 152, the Attorney General has the authority to promulgate rules and regulations to implement the intent of the Sovereign Immunity Act.

5. Specifically included within the above-mentioned statutory grant, is the authority to establish rules and regulations pertaining to the designation of local and principal offices for Commonwealth agencies.

6. On April 26, 1986, the Office of Attorney General published rules and regulations, attached hereto as Exhibit "B", which define the local office of a Commonwealth party as:

...the local office located in that county where the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose.

37 Pa. Code 111.4(c).

7. In this case, venue is proper for the Commonwealth of Pennsylvania, Department of Corrections, in only Cumberland County, the location of the principal office of the Commonwealth Party, or in Clearfield County, the location of the Department of Corrections' Quehanna Motivational Boot Camp and the State Correctional Institution at Houtzdale's local office; as well as, the location of the accident. Venue could also lie in Fayette County, the location of the Department of Corrections' State Correctional Institution at Fayette's local office, or in Westmoreland County, the location of the Department of Corrections' State Correctional Institution at Greensburg's local office.

8. Under no circumstances is Philadelphia County an appropriate county for this action as none of the statutory prerequisites for venue against the Commonwealth Party are available in Philadelphia County.

WHEREFORE, defendant Department of Corrections Commonwealth of Pennsylvania respectfully requests this Honorable Court transfer this matter to the Court of Common Pleas of Clearfield County.

II. PRELIMINARY OBJECTIONS IN THE NATURE OF THE DEMURRER

**CLAIMS AGAINST THE COMMONWEALTH DEFENDANT FOR
IMPROPER TRAINING AND/OR SUPERVISION ARE BARRED AS
SOVEREIGN IMMUNITY HAS NOT BEEN WAIVED FOR SUCH
CLAIMS**

9. To state a personal injury claim against a Commonwealth Party, a plaintiff is required to bring an action for which damages would be recoverable at Common Law which also falls within one of the enumerated exceptions to sovereign immunity set forth in Section 8522 (b) of the Judicial Code, 42 Pa. C.S. §8522 (b). See 42 Pa. C.S. §8521 and §8522(a).

10. Among its allegations of negligence against the Commonwealth Defendant, Plaintiff alleges in Subparagraphs (b), (c), and (d) of Paragraph 21 that the Commonwealth was negligent for:

- 21 (b) Failing to direct or require the attention or advice and instructions of qualified specialists...;
- 21 (c) Failing to have present competent medical personnel to monitor, diagnose and treat Plaintiff's condition...and to competently and/or adequately monitor all follow up treatment...
- 21 (d) Failing to monitor all acts of it physicians, nurses and/or other agents...

11. Sovereign immunity has only been waived in a few limited areas, specifically, the nine (9) enumerated exceptions that are set forth in 42 Pa.C.S.A. §8522, et sec.,

and a cursory review of Section 8522 shows that negligent or improper training and/or supervising is not one, nor can it colorably fall within one, of the exceptions for which the General Assembly of the Commonwealth has waived sovereign immunity. *See*, 42 Pa.C.S.A. §8522 attached hereto as Exhibit "C" and incorporated herein by reference.

12. The Report of the Joint State Government Commission of Sovereign Immunity, which forms the basis for 42 Pa.C.S.A. 8522(b)(1) through (9) states, "the task force specifically rejected waiving sovereign immunity for claims arising out of... (9) improper licensing..." Joint State Government Commission, Sovereign Immunity, pp.15-16, attached hereto as Exhibit "D".

13. Pursuant to the sovereign immunity statute and controlling case law, the Commonwealth Defendant is not subject to liability for claims of negligent training and licensing or supervising/monitoring as sovereign immunity has not been waived for such claims.

14. Accordingly, even accepting as true all well pleaded facts and all reasonable inferences derived therefrom in favor of the plaintiffs, the complaint nonetheless fails to state a claim within any of the recognized exceptions to sovereign immunity and consequently fails to state a claim for which relief may be granted.

WHEREFORE, it is respectfully requested that this Honorable Court sustain the Commonwealth Party's Preliminary Objection and dismiss Subparagraphs (b), (c) and (d) of Paragraph 21 of Plaintiff's Complaint, with prejudice, for failing to state a claim upon which relief may be granted.

III. PRELIMINARY OBJECTION IN THE NATURE OF A MOTION TO STRIKE PORTIONS OF THE PLAINTIFFS' COMPLAINT

15. Plaintiff was allegedly injured during an boot camp exercise at Quehanna Motivational Boot Camp, in , Clearfield County, Pennsylvania.

16. The allegations of negligence with respect to the Commonwealth

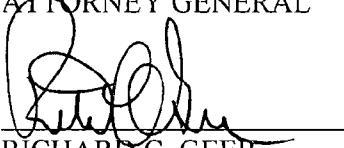
Defendant are set forth in Paragraphs 12 and 21 in which it is alleged that the Commonwealth Defendant's negligence consisted of, *inter alia*:

- 12 (d) Otherwise failing to exercise due and proper care under the circumstances;
- 12 (e) As otherwise may be shown through discovery or at the trial of this case;
- 21 (e) Being otherwise negligent, careless or reckless under the circumstances;
- 21 (f) Being otherwise negligent, careless and reckless as may be shown through the course of discovery or at the time of trial.

17. The Pennsylvania Rules of Civil Procedure require that pleadings, such as the Complaint herein, set forth the material facts upon which the cause of action is predicated. Pa. R.C.P. 1019(a).

18. The aforesaid allegations fail to set forth the material facts upon which the plaintiff's claim is predicated as required by the Rules of Civil Procedure, and should be stricken from the Complaint as violative of a rule of court.

WHEREFORE, the Commonwealth Defendant respectfully requests that this Court strike Subparagraphs (d) and (e) of Paragraph 12 and Subparagraphs (e) and (f) of Paragraph 21 as violative of a rule of court.

THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

By: _____
RICHARD C. GEER
DEPUTY ATTORNEY GENERAL

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
EASTERN REGIONAL OFFICE

BY: RICHARD C. GEER
DEPUTY ATTORNEY GENERAL
IDENTIFICATION NO. 78624

21 South 12th Street, Third Floor
Philadelphia, PA 19107-3603
Telephone: (215) 560-2966

Attorney for:
Commonwealth Defendant

PEDRO SANTIAGO	:	COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
vs.	:	JUNE TERM, 2007
DEPARTMENT OF CORRECTIONS COMMONWEALTH OF PENNSYLVANIA	:	NO. 0921

**MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY OBJECTION
TO PLAINTIFF'S COMPLAINT**

I. MATTER BEFORE THE COURT

Plaintiff filed the instant lawsuit seeking to recover damages against various the Commonwealth Defendant as the result of an alleged June, 2005, injury incurred while an inmate at the Quehanna Motivational Boot Camp, in Karthaus, Clearfield County.

II. STATEMENT OF QUESTIONS INVOLVED

1. Pursuant to 42 Pa. C.S. §8523, and 37 Pa. Code §111.4(a), should the Court transfer venue to Clearfield County as the proper venue for Plaintiff's civil action against the Commonwealth party for alleged injuries sustained in an alleged accident occurring at Quehanna Motivational Boot Camp, Karthaus, Clearfield County, Pennsylvania and subsequent alleged negligence at the Houtzdale State Correctional Institute in Clearfield County, the Fayette State Correctional Institute in Fayette County, and the Greensburg State Correctional Institute in Westmoreland County?

Suggested Answer- YES

2. Pursuant to the provisions of the Sovereign Immunity Act, 42 Pa. C.S. §8501-8528 and relevant case law, should the Court dismiss subparagraphs of Plaintiff's Complaint alleging, *inter alia*, negligent licensing, training, monitoring and supervision, for which relief cannot be granted?

Suggested Answer- YES

3. Pursuant to Pa. Rule of Civil Procedure Rule 1019(a) , should the Court strike subparagraphs of Plaintiff's Complaint for lacking specific factual allegations so as to satisfy the rule's requirement regarding notice pleading and allow the Defendant a fair opportunity to defend?

Suggested Answer- YES

III. FACTS

Plaintiff, Pedro Santiago, filed the above-captioned lawsuit against the Commonwealth Defendant, seeking to recover damages as the result of an exercise injury which allegedly occurred while an inmate at the Quehanna Motivational Boot Camp, 4395 Quehanna Highway, Karthaus, Clearfield County, Pennsylvania. Plaintiff alleges further negligence as a result of medical treatment received at the Houtzdale State Correctional Institute in Clearfield County, the Fayette State Correctional Institute in Fayette County, and the Greensburg State Correctional Institute in Westmoreland County. A true and correct copy of Plaintiff's Complaint is attached hereto as Exhibit "A".

IV. ARGUMENT

PRELIMINARY OBJECTION RAISING A QUESTION OF VENUE

Plaintiff, Pedro Santiago from Philadelphia County, commenced suit in Philadelphia County for injuries received in a slip and fall accident occurring in a Department Corrections facility located in Karthaus, Clearfield County , Pennsylvania.

The location of the principal office of the Commonwealth of Pennsylvania, Department of Corrections is a proper basis for establishing venue in accordance with 42 Pa. C.S. §8523, and 37 Pa. Code §111.4(a). The address or the locale of the principal offices of the Department of Corrections is in Cumberland County.

In accordance with Section 8523 of the Judicial Code and 37 Pa. Code §111.4, other than the location of the principal office, venue is proper *only* in the county in which the local office of the agency is located or where the cause of action arose. Said statutory sections and regulations and rules pursuant to them are in accord with Article I, Section 11 of the Pennsylvania Constitution, which provides that:

Suits may be brought against the Commonwealth in such a manner, in such courts and in such cases as the Legislature may by law direct.

In the present case, the accident giving rise to this cause of action occurred in Clearfield County. Moreover, the only local office with the responsibility for the maintenance of the situs of the alleged accident is the Quehanna Motivational Boot Camp at Karthaus itself, located at 4395 Quehanna Highway, Karthaus, Clearfield County, Pennsylvania.

Moreover, Plaintiff's further claims of negligence occurred respectively at the State Correctional Institution at Houtzdale, whose local office is also in Clearfield County; the State Correctional Institution at Fayette, located in Fayette County; and the State Correctional Institution at Greensburg's, located in Westmoreland County.

Thus, venue in this case is improper since the suit is set in Philadelphia County and none of the statutory provisions for venue against Commonwealth parties are set in Philadelphia County.

In Bortulin v. Harley-Davidson, 115 Pa.Cmwlth. 42, 539 A.2d 906 (1988), the Commonwealth Court upheld the aforesaid venue regulations promulgated by the Attorney General.

The Bortulin Court specifically noted that, for venue purposes, the Pennsylvania Department of Transportation's principal office is, pursuant to 37 Pa. Code §§111.1 and 111.4, located in Harrisburg, Dauphin County. The Commonwealth Court further noted that Section 111.4(c) of the regulations provides:

[t]hat the local office of the Commonwealth party shall be the local office located in that county where the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose. Under these provisions, then, venue ... is proper in either Dauphin County, the location of its principal office or in ..., the cause of action county.

539 A.2d at 909.

Furthermore, in the holding in the case Bogetti v. Pennsylvania Dept. of Transp., 144 Pa. Commonwealth Ct. 180, 601 A.2d 421 (1991), the Commonwealth Court added that for purposes of determining venue within which the Commonwealth may be subject to suit, "local office" is defined so as to restrict venue to the county where the cause of action arose, not simply any county within which the Commonwealth had an office. See also, 37 Pa. Code §111.4 (Notes of Decisions, *Local Office*).

Accordingly, controlling appellate law requires that this Honorable Court give full force and effect to the pertinent and valid regulations governing venue against Commonwealth parties. Under these regulations, therefore, only Cumberland or Luzerne County can be a proper venue for this cause of action.

The Bogetti Court also upheld the venue regulations promulgated by the Attorney General in the Pennsylvania Code against an attack that they were invalid as an usurpation of the intent of the Legislature, and upheld a transfer of venue based upon the regulations. Thus, it is clear that the venue regulations in the Code are to be followed by the Courts of Common Pleas in Pennsylvania.

Pursuant to Pa. R.C.P. 1006(e), when improper venue is raised by Preliminary Objections and

the matter is transferred to the appropriate Court where venue is proper, the costs and fees for transfer and removal of the record *shall* be paid by the plaintiff. (Emphasis added.)

Counsel, therefore, requests that this Honorable Court, besides transferring venue to Clearfield County, order that the costs of said transfer be paid by plaintiff.

PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER

CLAIMS AGAINST THE COMMONWEALTH DEFENDANT FOR
IMPROPER TRAINING AND/OR SUPERVISION ARE BARRED AS
SOVEREIGN IMMUNITY HAS NOT BEEN WAIVED FOR SUCH
CLAIMS

The Plaintiffs' theory of liability against the Commonwealth Defendant set forth in paragraph 21 of its Complaint is predicated upon the Defendants' alleged negligence in failing to train, license, monitor and/or supervise their employees.

Plaintiff alleges, *inter alia*, in Paragraph 21 of their Complaint that the Commonwealth was negligent in its:

- 21 (b) Failing to direct or require the attention or advice and instructions of qualified specialists...;
- 21 (c) Failing to have present competent medical personnel to monitor, diagnose and treat Plaintiff's condition...and to competently and/or adequately monitor all follow up treatment...
- 21 (d) Failing to monitor all acts of it physicians, nurses and/or other agents...

The Commonwealth Defendant is, of course, a "Commonwealth Party" pursuant to the statutory definitions set forth in Section 8501 of the Judicial Code, 42 Pa. C.S. §8501.

Pursuant to Section 2 of Article 1 of the Pennsylvania Constitution, with the General Assembly's intention that the Commonwealth would continue to enjoy sovereign and official immunity and remain immune from suit except as waived by the General Assembly. And, where the General Assembly specifically waived sovereign immunity, claims were to be brought against the Commonwealth only in such manner and in such cases as directed by the provisions of Title 42 unless otherwise specifically authorized by statute. 1 Pa. C.S. §2310.

The General Assembly has specifically addressed the contours of sovereign immunity and its waiver in Sections 8501 through 8528 of the Judicial Code, 42 Pa. C.S. §8501-8528. These provisions pertinently reaffirm sovereign immunity, 42 Pa. C.S. §8521 except as set forth in the nine enumerated exceptions to immunity in Section 8522(b). 42 Pa. C.S. §8522(b)(1)-(9). Those nine exceptions, do not, however, make any provision for maintaining a cause of action based upon negligent monitoring, supervision, or training. See, Exhibits "B" and "C" attached hereto.

Sovereign immunity is an absolute defense which is not waivable nor subject to any procedural device which would render a government agency liable beyond the exceptions created by the Legislature. In re: Upset Sale of Properties (Skibo), 522 Pa. 230, 560 A.2d 1388 (1989). Moreover, assertion of sovereign immunity may be raised by preliminary objection. Miller v. Kistler, et al., 135 Pa. Commonwealth Court 647, 582 A.2d 416 (1990).

The Appellate Courts have accordingly indicated that actions brought outside the enumerated exceptions to immunity will not lie. Cotter v. School District of Philadelphia, 128 Pa. Commonwealth Court 159, 562 A.2d 1029 (1989). (No claim may be maintained for negligent supervision of employees). See also, Scott v. Willis, 116 Pa. Commonwealth Court 327, 543 A.2d 165 (1988). (No waiver of immunity applicable to allegations of negligence in hiring employee who sexually assaulted young students).

Likewise, in actions brought against a Commonwealth Party for damages arising out of a building fire, the Commonwealth Party could not be liable for failing to inspect the dwelling unit as would disclose violations of the Fire Code. Crosby v. Kotch, 135 Pa. Commonwealth Court 470, 580 A.2d 1190 (1991).

In Shakoor v. Department of Transportation, 63 Pa. Commonwealth Ct. 571, 440 A.2d 647 (1981), the Commonwealth Court rejected the argument that the Commonwealth Department of Transportation had created a dangerous condition of the highways within the meaning of 42 Pa.C.S. § 8522(b)(4) by failing to revoke the operating privileges of an uninsured

driver. Notably, the Court held that "the negligent actions averred by the appellant constitute[d] negligent policies or activities as opposed to 'a dangerous condition of Commonwealth ... highways under the jurisdiction of Commonwealth agencies.' " Id. at 574, 440 A.2d at 649. Accord Ruff v. Baum's Bologna, Inc., 97 Pa. Commonwealth Ct. 611, 510 A.2d 391 (1986), petition for allowance of appeal denied, 514 Pa. 651, 524 A.2d 497 (1987); Walters v. Department of Transportation, 81 Pa. Commonwealth Ct. 478, 474 A.2d 66 (1984).

Guided by Shakoor and progeny, and construing Section 8522(b)(3) narrowly pursuant to Mascaro v. Youth Studies Center, 514 Pa. 351, 523 A.2d 1118 (1987), the Commonwealth Court concluded that appellants' allegations of the Department's negligent inspection and regulatory enforcement constitute "negligent policies or activities" and not circumstances encompassed by the exception to sovereign immunity pertaining to the care, custody and control of real property. Kline v. Pennsylvania Mines Corporation, 120 Pa. Cmwlth. 7, *12, 547 A.2d 1276, **1278.

Indeed, even where a Commonwealth entity has breached a clear statutory duty resulting in damages to an innocent person, no claim may be maintained if the action does not fall squarely within one of the enumerated exceptions to immunity. Nicholson v. M and S Detective Agency, 94 Pa. Commonwealth Court 521, 503 A.2d 1106 (1986). (In action for personal damages brought by victim of robbery committed by a bank guard, state police's breach of statutory duty to report security guard's criminal record to employer detective agency did not fall within any statutory waiver of sovereign immunity). See also, Serrano v. Pennsylvania State Police, 130 Pa. Commonwealth Court 531, 568 A.2d 1006 (1990); and Conrail v. Ingersoll-Rand Corp., 47 Pa. Commonwealth Court 304, 408 A.2d 183 (1979). (A claim for damages sustained when oversized load traveling under a special hauling permit struck an overhead bridge while traveling on route approved by Commonwealth Defendant does not fall into any category of claim as to which sovereign immunity was waived).

In this lawsuit, plaintiffs are claiming damages on account of the Commonwealth

Party's alleged negligence in purportedly failing to train, license, monitor and/or supervise, or improperly training, licensing, monitoring and/or supervising their employees who rendered services to plaintiff. Because there is no statutory exception providing for the maintenance of a claim based on negligent training, licensing, monitoring or supervision, plaintiff's claim against the Commonwealth Party should be dismissed.

OBJECTION TO STRIKE PORTIONS OF PLAINTIFF'S COMPLAINT AS VIOLATIVE OF A RULE OF COURT

Paragraph 9 (k) of Plaintiff's Complaint sets forth plaintiff's allegations purporting to state a cause of action for the Commonwealth Defendants' negligence. Paragraph 9 (a) through (j) state specifically certain facts as the basis for the cause of action for which the Commonwealth Defendant can frame an answer. However, other averments set forth in Paragraphs 9 allege that the negligent conduct of the Commonwealth Defendant consisted of:

(k) Otherwise controlling and maintaining said premises in violation of the laws and ordinances of the Commonwealth of Pennsylvania;

As the Court is aware, Pennsylvania Rules of Civil Procedure pertinently provide that:

... The material facts upon which a cause of action is based shall be stated in concise and summary form. Pa. R.C.P. 1019(a).

The Subparagraphs to which this Preliminary Objection is directed violate Rule 1019 in that they fail to inform the defendants of any acts or omissions on which the plaintiff bases his demand for relief. The averments are conclusory allegations of a failure to exercise proper care without stating any material facts. Clearly, to allow such an averment to stand prejudices the defendant, in that it subjects the defendant to a variety of claims for which it cannot prepare a defense.

Rule 1019(a) is satisfied if the allegations in the pleadings contain averments of all facts which a plaintiff will eventually have to prove in order to recover, and are sufficiently specific to enable the party served to prepare a defense. Commonwealth, Department of Transportation v. Shipley Humble, 29 Pa. Commonwealth Ct. 171, 370 A.2d 438 (1977).

It is clear under the case law that a complaint must summarize the facts necessary

to support a claim. Burnside v. Abbott Laboratories, 351 Pa. Super. 264, 505 A.2d 973 (1975).

It must be remembered that Pennsylvania is a fact-pleading jurisdiction in which the complaint must go beyond giving mere notice of a claim and should formulate issues by fully summarizing material facts essential to support the claim. General State Authority v. Sutter Corp., 44 Pa. Commonwealth Ct. 156, 403 A.2d 1022 (1979); Alpha Tau Omega Fraternity v. University of Pennsylvania, 318 Pa. Super. 293, 464 A.2d 1349 (1983).

In short, the standard in this Commonwealth is that liability cannot be predicated upon facts which are not set forth in the complaint, and otherwise, the complaint is subject to a request for a more specific pleading or a motion to strike. Connor v. Allegheny General Hospital, 501 Pa. 306, note 3, 461 A.2d 600, note 3 (1983).

Counsel would submit that the Subparagraph at issue here is nothing more than "boilerplate" allegations not meeting the standard of the rule and the case law. In compiling other allegations of Paragraph 9, the plaintiff indicated that the cause of action is based on allegations which at least set forth facts relating to a negligent maintenance and/or failing to warn. The plaintiff had almost two years to investigate the basis for his cause of action and the facts which support it. It appears, from other Subparagraphs, that plaintiff knows the basis for his cause of action. Thus, the failure to state facts upon which the cause of action is based in Subparagraphs (k) of Paragraph 9 is apparent.

Counsel therefore requests that Paragraph 9 (k) be stricken from the Complaint because the Subparagraphs fail to conform to Rule of Civil Procedure 1019.

V. RELIEF

For all of the aforesaid reasons, Commonwealth Defendant, Commonwealth of Pennsylvania, Department of Corrections, respectfully requests that this Honorable Court transfer venue in this

case to Clearfield County; dismiss the allegations of Plaintiff's Complaint for which relief cannot be granted, and strike the provisions of Plaintiff's Complaint that violate the Rules of Civil Procedure.

Respectfully submitted,

THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

By: _____
RICHARD C. GEER
DEPUTY ATTORNEY GENERAL

VERIFICATION

RICHARD C. GEER hereby states that he is the Attorney for the Commonwealth Defendant in this action and verifies that the statements made in the foregoing are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



RICHARD C. GEER
Deputy Attorney General

Dated: August 29, 2007

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

BY: RICHARD C. GEER
Deputy Attorney General
ATTORNEY I.D. NO.: 78624
21 South 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
(215) 560-2966

ATTORNEY FOR:
Commonwealth of Pennsylvania
Department of Corrections

Pedro Santiago

: COURT OF COMMON PLEAS
: OF PHILADELPHIA COUNTY

vs.

:

:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

: June 2007
: No. 0921

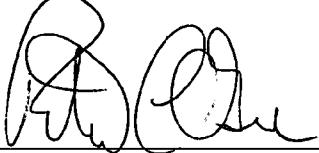
CERTIFICATE OF SERVICE

I, Richard C. Geer, Deputy Attorney General hereby certify that a true and correct copy of the within Preliminary Objections to Plaintiff's Complaint was mailed on Wednesday, August 29, 2007, by first class mail, postage prepaid, to counsel of record:

Gary Brownstein, Esquire
BROWNSTEIN VITALE &
WEISS, P.C.
Two Penn Center
1500 JFK Boulevard, Suite 1020
Philadelphia, PA 19102

THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

By:


RICHARD C. GEER
Deputy Attorney General

Date:

Exhibit "A"

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
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RECEIVED
MAY 14 2007
ATTORNEY FOR PLAINTIFF

Pedro Santiago
317 East Somerset Street
Philadelphia, PA 19134

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

v.

Commonwealth of Pennsylvania, Department
of Corrections
2520 Lisburn Road
Camp Hill, PA 17001-0598

JUNE TERM, 2007
NO: 921

FILED
PRO PROTYPY

JUL 17 2007

D. GRAHAM

IMPORTANT NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY AN 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 THIS CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE OF 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 HELP.

AVISO IMPORTANTE

LE HAN DEMANDADO A USTED EN LA CORTE. SI USTED QUIERE DEFENDERSE DE ESTAS DEMANDAS EXPUESTAS EN LAS PAGINAS SIGUIENTES, USTED TIENE VEINTE (20) DIAS DE PLAZO AL PARTIR DE LA FECHA DE LA DEMANDA Y LA NOTIFICACION. HACA FALTA ASENTAR UNA COMPARENCIA ESCRITA O EN PERSONA O CON UN ABOGADO Y ENTREGAR A LA CORTE EN FORMA ESCRITA SUS DEFENSAS O SUS OBJECCIONES A LAS DEMANDAS EN CONTRA DE SU PERSONA. SEA AVISADO QUE SI USTED NO SE DEFIENDE, LA CORTE TOMARA MEDIDAS Y PUEDE CONTINUAR LA DEMANDA EN CONTRA SUYA SIN PREVIO AVISO O NOTIFICACION. ADEMOS, LA CORTE PUEDE DECIDIR A FAVOR DEL DEMANDANTE Y REQUIERE QUE USTED CUMPLA CON TODAS LAS PROVISIONES DE ESTA DEMANDA. USTED PUEDE PERER DINERO O SUS PROPIEDADES U OTROS DERECHOS IMPORTANTES PARA USTED. LIEVA ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA A LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DOND S SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Lawyer Reference Center
One Reading Center
Philadelphia, PA 19107
(215) 238-1701

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
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ATTORNEY FOR PLAINTIFF

Pedro Santiago
317 East Somerset Street
Philadelphia, PA 19134

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

v.

JUNE TERM, 2007
NO: 921

Commonwealth of Pennsylvania, Department
of Corrections
2520 Lisburn Road
Camp Hill, PA 17001-0598

CIVIL ACTION COMPLAINT

1. Pedro Santiago is an adult individual residing at 317 East Somerset Street, Philadelphia, PA 19134.
2. Defendant, Commonwealth of Pennsylvania, Department of Corrections is a state agency organized and existing under the laws of the Commonwealth of Pennsylvania and the ordinances of the City and County of Philadelphia, with places of business throughout the Commonwealth, as well as the County of Philadelphia, who at all times material herein had a principal business address at 2520 Lisburn Road, Camp Hill, PA 17001.
3. At all times material herein, Defendant, Commonwealth of Pennsylvania, Department of Corrections was acting by and through their agents, servants, workmen and/or employees and/or apparent and/or extensible agents, servants, workmen and/or employees, who were acting in the course of their employment and within the scope of their authority.

4. At all times material herein Defendant, Commonwealth of Pennsylvania, Department of Corrections owned, controlled, managed, possessed and/or maintained detention facilities throughout the Commonwealth of Pennsylvania, including Quehanna Boot Camp Institution, State Correctional Institute at Houtzdale, State Correctional Institution at Fayette and the State Correctional Institution at Greensburg, all institutions located in the Commonwealth of Pennsylvania.
5. At all times material herein, Defendant, through its agents, knew or should have known of Plaintiff's pre-existing medical condition prior to his assignment for incarceration, including, but not limited, insulin dependent diabetes, which made him far more susceptible to serious injuries in the event of a minor injury to his lower extremities.
6. Notwithstanding the above, in or about June of 2005, Plaintiff, Pedro Santiago was placed by Defendant as an inmate in the Quehanna Boot Camp, where he was required, as part of his "rehabilitation", to actively and aggressively participate in a military boot camp like setting, where supervised vigorous exercise was mandatory.
7. On or about June or July 2005, while Plaintiff was participating in a supervised exercise activity at the boot camp, he was caused to sustain a left lower leg injury, for which he had to rely upon Defendant's agents or extensible agents for proper medical treatment.
8. Subsequently, Plaintiff had to rely upon the treatment of the nurse on duty at the Quehanna Boot Camp to address his left leg injury. Despite following said treatment on his left lower leg and foot, the injury became very swollen and infected.
9. Subsequent, in a desperate attempt to address Plaintiff's injured left lower leg and foot, he was transferred to medical facilities at the State Correctional Institute at Houtzdale, the State Correctional Institute at Fayette, and the State Correctional Institute at Greensburg. Despite the "treatment" afforded the Plaintiff at these institutions, his injuries only worsened.

10. Subsequent, in or around July 2006, after Plaintiff had been discharged by Defendant to a halfway house, he was able to secure treatment from an outside facility as a result of which he underwent emergency surgery in the form of surgical excision of the 5th metatarsal bone impacted by the infection. Due to the severity of the infection, his treating surgeon also contemplated amputating digits 4 and 5 of the left foot, which surgery still remains available to Plaintiff to address conditions caused by the Defendant's negligence.

COUNT I

Pedro Santiago

v. **Commonwealth of Pennsylvania,
Department of Corrections**

11. Plaintiff, Pedro Santiago, incorporates by reference the allegations contained in paragraphs 1 through 10 above, as if same were set forth herein at length.

12. The carelessness, recklessness and/or negligence of the Defendant, Commonwealth of Pennsylvania, Department of Corrections, by and through their agents, servants, workmen and/or employees, consisted, *inter alia* of the following:

- a. Failing to take into account Plaintiff's prior medical condition before deciding to place him at the Quehanna Boot Camp, where supervised vigorous exercise was part of the required regimen for rehabilitation, and lower extremity injuries was foreseeable;
- b. Negligently, carelessly and/or recklessly failing to properly monitor Plaintiff's participation in the exercise program at the Quehanna Boot Camp to prevent foreseeable injuries;
- c. Ordering Plaintiff to aggressively perform exercises in close quarters where an injury to a lower extremity is highly foreseeable, despite knowledge of his pre-existing medical condition;

- d. Otherwise failing to exercise due and proper care under the circumstances.
 - e. As otherwise may be shown through discovery or at the trial on this case.
- 13. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant set forth hereinabove, the Plaintiff, Pedro Santiago has sustained permanent injuries, including, but not limited to traumatic infection of the left leg and foot, requiring resection of the 5th metatarsal joint, and possible amputation of digits 4 and 5 of the left foot, chronic and progressive osteomyelitis of the left foot and exacerbation to pre-existing degenerative conditions of the foot and ankle, gait abnormalities related to the aforesaid injuries to the left foot and other injuries, the full extent of which is not yet known. The Plaintiff believes and therefore avers that he injuries are permanent in nature.
- 14. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant as set forth hereinabove, the Plaintiff, Pedro Santiago has incurred and continues to incur financial expenses for medicine and medical care, in order to effectuate a cure for the aforementioned injuries, and may be compelled to expend sums of money for the same purposes in the future and for the rest of his life.
- 15. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant as set forth hereinabove, the Plaintiff, Pedro Santiago had undergone and is undergoing great physical pain and mental anguish, and may continue to endure same for an indefinite period of time in the future, and for the rest of his life, all to his great detriment and loss.
- 16. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant set forth hereinabove, the Plaintiff, Pedro Santiago has suffered a loss of the enjoyment of life's pleasures, and may continue to suffer such losses in the future, all to his great detriment and loss.

17. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant as set forth hereinabove, the Plaintiff, Pedro Santiago has been unable to attend to his daily chores, duties and activities, resulting in losses, including loss of earnings and earnings power, which losses may continue for an indefinite period of time into the future, to his great detriment and loss.

WHEREFORE, the Plaintiff, Pedro Santiago claims damages from the Defendant in an amount in excess of Fifty Thousand (\$50,000) Dollars.

COUNT I

Pedro Santiago

**v. Commonwealth of Pennsylvania,
Department of Corrections**

18. Plaintiff, Pedro Santiago, incorporates by reference the allegations contained in paragraphs 1 through 17 above, as if same were set forth herein at length.
19. Defendant has a duty and responsibility to its patients and inmates to furnish appropriate and competent medical care in situations such as that presented by the Plaintiff herein.
20. As part of its duties and responsibilities, Defendant has an obligation to establish appropriate policies and procedures, and have competent medical people who will guarantee the quality of medical practice which is conducted within institutions under the ownership and control of the Defendant.
21. The negligence, carelessness and/or recklessness of the Defendant, Commonwealth of Pennsylvania, Department of Corrections, by and through its agents, servants, workmen and/or employees, and/or those who appear to have been its agents, servants, workmen and/or employees, consisted, *inter alia*, the following:
 - a. Untimely, improper, inadequate and/or negligent medical care at the aforesaid premises during the time that Plaintiff, Pedro Santiago was treated.

- b. Failing to direct or require the attention or advice and instructions of qualified specialists for the diagnosis, evaluation and treatment of the condition of the Plaintiff, Pedro Santiago, which developed while incarcerated at Defendant's institutions;
- c. Failing to have present competent medical personnel to monitor, diagnose and treat Plaintiff's condition promptly, and to competently and/or adequately monitor all follow up treatment to properly address the progress of Plaintiff's injuries caused while incarcerated at Defendant's institution.
- d. Failing to monitor all acts of its physicians, nurses and/or other agents, servants and/or employees during Plaintiff's incarceration and treatment.
- e. Being otherwise negligent, careless or reckless under the circumstances.
- f. Being otherwise negligent, careless and reckless as may be shown through the course of discovery or at the time of trial.

22. As a result of the aforesaid actions, the Plaintiff has been caused to sustain severe and permanent injuries as aforesaid.

WHEREFORE, Plaintiff, Pedro Santiago demands damages of Defendant in an amount in excess of \$50,000.00.

RESPECTFULLY SUBMITTED,
BROWNSTEIN VITALE & WEISS, P.C.

By: Gary Brownstein, Esquire
Attorney for Plaintiff

VERIFICATION

Pedro Santiago, hereby states that he/she is the Plaintiff in this action and verifies that the statements made in the foregoing are true and correct to the best of her knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties relating to the unsworn falsification to authorities.

DATED: 7-3-07

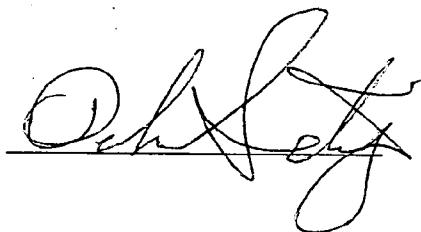
A handwritten signature in black ink, appearing to read "Pedro Santiago", is written over a horizontal line. The signature is fluid and cursive, with a prominent 'P' at the beginning and a 'J' at the end.

Exhibit "B"

§ 111.2. [Reserved].

§ 111.3. [Reserved].

§ 111.4. Venue.

(a) Venue in actions for claims against a Commonwealth party as defined in 42 Pa.C.S. § 8501 (relating to definitions) shall be in the county in which one of the following exists:

- (1) The cause of action arose.
- (2) A transaction or occurrence took place out of which the cause of action arose.
- (3) The principal office of the Commonwealth party is located.
- (4) The local office of the Commonwealth party is located.

(b) The principal offices of Commonwealth parties are the same as those offices designated in § 111.1(b) and (c) (relating to service of process).

(c) For purposes of subsection (a)(4), the local office of the Commonwealth party is the local office located in that county where the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose.

(d) Nothing in this section shall be deemed to change or alter the judicial discretion granted under 42 Pa.C.S. § 8523 (relating to venue and process) which permits a Judge of the Court of Common Pleas of Dauphin County to transfer an action to an appropriate county where venue would otherwise lie, if venue is obtained in the Twelfth Judicial District (Dauphin County) solely because the principal office of a Commonwealth party is located there.

Notes of Decisions

Local Office

For purposes of determining venue within which the Commonwealth may be subject to suit, a "local office" was defined so as to restrict venue to the county where the cause of action arose, not simply any county within which the Commonwealth had an office. *Bogert v. Department of Transportation*, 601 A.2d 421 (Pa. Cmwlth. 1991).

Third-Party Proceedings

Section 8523 of the Judicial Code, 42 Pa.C.S. § 8523, which required actions against a Commonwealth party be brought in and only in a county in which the principal or local office of the party was located, was not applicable to third-party proceedings in which the Commonwealth was joined as a defendant by the original defendants against whom the action was brought. *Chen v. Philadelphia Elec. Co.*, 661 A.2d 25 (Pa. Cmwlth. 1995).

Cross References

This section cited in 37 Pa. Code § 111.1 (relating to service of process).

Exhibit "C"

Westlaw.

Page 1

Effective: [See Text Amendments]

Purdon's Pennsylvania Statutes and Consolidated Statutes Annotated Currentness
 Title 42 Pa.C.S.A. Judiciary and Judicial Procedure (Refs & Annos)
 Part VII. Civil Actions and Proceedings
 Chapter 85. Matters Affecting Government Units (Refs & Annos)
 → Subchapter B. Actions Against Commonwealth Parties (Refs & Annos)
 Sovereign Immunity

§ 8521. Sovereign immunity generally

(a) General rule.--Except as otherwise provided in this subchapter, no provision of this title shall constitute a waiver of sovereign immunity for the purpose of 1 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed; specific waiver) or otherwise.

(b) Federal courts.--Nothing contained in this subchapter shall be construed to waive the immunity of the Commonwealth from suit in Federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.

Effective: [See Text Amendments]**§ 8522. Exceptions to sovereign immunity**

(a) Liability imposed.--The General Assembly, pursuant to section 11 of Article I of the Constitution of Pennsylvania, does hereby waive, in the instances set forth in subsection (b) only and only to the extent set forth in this subchapter and within the limits set forth in section 8528 (relating to limitations on damages), sovereign immunity as a bar to an action against Commonwealth parties, for damages arising out of a negligent act where the damages would be recoverable under the common law or a statute creating a cause of action if the injury were caused by a person not having available the defense of sovereign immunity.

(b) Acts which may impose liability.--The following acts by a Commonwealth party may result in the imposition of liability on the Commonwealth and the defense of sovereign immunity shall not be raised to claims for damages caused by:

(1) **Vehicle liability.**--The operation of any motor vehicle in the possession or control of a Commonwealth party. As used in this paragraph, "motor vehicle" means any vehicle which is self-propelled and any attachment thereto, including vehicles operated by rail, through water or in the air.

(2) **Medical-professional liability.**--Acts of health care employees of Commonwealth agency medical facilities or institutions or by a Commonwealth party who is a doctor, dentist, nurse or related health care personnel.

(3) **Care, custody or control of personal property.**--The care, custody or control of personal property in the possession or control of Commonwealth parties, including Commonwealth-owned personal property and property of persons held by a Commonwealth agency, except that the sovereign immunity of the Commonwealth is retained as a bar to actions on claims arising out of Commonwealth agency activities involving the use of nuclear and other radioactive equipment, devices and materials.

(4) Commonwealth real estate, highways and sidewalks.--A dangerous condition of Commonwealth agency real estate and sidewalks, including Commonwealth-owned real property, leaseholds in the possession of a Commonwealth agency and Commonwealth-owned real property leased by a Commonwealth agency to private persons, and highways under the jurisdiction of a Commonwealth agency, except conditions described in paragraph (5).

(5) Potholes and other dangerous conditions.--A dangerous condition of highways under the jurisdiction of a Commonwealth agency created by potholes or sinkholes or other similar conditions created by natural elements, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the Commonwealth agency had actual written notice of the dangerous condition of the highway a sufficient time prior to the event to have taken measures to protect against the dangerous condition. Property damages shall not be recoverable under this paragraph.

(6) Care, custody or control of animals.--The care, custody or control of animals in the possession or control of a Commonwealth party, including but not limited to police dogs and horses and animals incarcerated in Commonwealth agency laboratories. Damages shall not be recoverable under this paragraph on account of any injury caused by wild animals, including but not limited to bears and deer, except as otherwise provided by statute.

(7) Liquor store sales.--The sale of liquor at Pennsylvania liquor stores by employees of the Pennsylvania Liquor Control Board created by and operating under the act of April 12, 1951 (P.L. 90, No. 21), known as the "Liquor Code," [FN1] if such sale is made to any minor, or to any person visibly intoxicated, or to any insane person, or to any person known as an habitual drunkard, or of known intemperate habit.

(8) National Guard activities.--Acts of a member of the Pennsylvania military forces.

(9) Toxoids and vaccines.--The administration, manufacture and use of a toxoid or vaccine not manufactured in this Commonwealth under the following conditions:

- (i) The toxoid or vaccine is manufactured in, and available only from, an agency of another state.
- (ii) The agency of the other state will not make the toxoid or vaccine available to private persons or corporations, but will only permit its sale to another state or state agency.
- (iii) The agency of the other state will make the toxoid or vaccine available to the Commonwealth only if the Commonwealth agrees to indemnify, defend and save harmless that agency from any and all claims and losses which may arise against it from the administration, manufacture or use of the toxoid or vaccine.
- (iv) A determination has been made by the appropriate Commonwealth agency, approved by the Governor and published in the Pennsylvania Bulletin, that the toxoid or vaccine is necessary to safeguard and protect the health of the citizens or animals of this Commonwealth.
- (v) The toxoid or vaccine is distributed by a Commonwealth agency to qualified persons for ultimate use.

The Commonwealth shall make the toxoid or vaccine available to a qualified person only if the person agrees to indemnify, defend and save harmless the Commonwealth from any and all claims and losses which may arise against the Commonwealth from the manufacture, distribution, administration or use of the toxoid or vaccine.

[FN1] 47 P.S. § 1-101 et seq.

Effective: [See Text Amendments]

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Exhibit "D"

Sovereign Immunity



General Assembly of the Commonwealth of Pennsylvania

JOINT STATE GOVERNMENT COMMISSION / MAY 1978

In addition to the constitutional authority,¹⁰ strong public policy dictates this conclusion. In the case of a suit against an individual or a corporation, recovery in most instances is effectively limited by the insurance coverage of the defendant; where the ultimate recovery exceeds insurance coverage, a further practical limitation exists to the extent of any defendant's resources. In the case of a sovereign with public taxing powers, the absence of a statutory limitation on recovery would make the liability exposure in each individual case theoretically unlimited. While it could be argued that the court's power to reduce excessive verdicts would act as a restraint, the effect of relying upon judicial oversight would be to transfer the exclusive authority over the public purse from the Legislature to the judiciary.

Other states have enacted limitations on recoveries.¹¹ Some have authorized recovery only to the extent that the sovereign had purchased insurance. As was noted, present insurance limits obtain in the Commonwealth for automobile liability and medical malpractice. The task force recommends that uniform maximums of recovery should be adopted at this time. Experience under these limits will be beneficial in future legislative consideration of limitations.

Types of Damages Recoverable

The task force determined to specifically set forth the types of damages recoverable against the Commonwealth. Only damages for loss of past, present and future income and earning capacity, pain and suffering, medical and dental expenses and loss of consortium are recoverable for personal injuries. Other possible damages such as punitive and

10. Statutory waiver in contract cases contains threshold limitation of \$300; this threshold appears to have never been challenged since the creation of the Board of Arbitration of Claims in 1937.

11. The limits vary from state to state, ranging from \$10,000 per claimant to \$300,000 for injury or death of one person and \$5 million for injury and death in the aggregate. Another group of states has waived sovereign immunity in areas in which the state has purchased insurance; the majority of these states explicitly provide that liability is limited to the amount of coverage involved. Some of these states limit the amount of insurance coverage purchased, either specifying minimum amounts which must be purchased or maximum limitations up to which the state may insure, although the amounts may differ depending on the type of injury.

awards of attorneys' fees were specifically rejected. In the case of property losses, all property losses are recoverable except those incurred under conditions described in Section 5110(a)(5), pp. 34-35, relating to potholes, sinkholes and other dangerous conditions caused by natural elements. As explained, *supra*, pp. 13-14, it was determined that in this instance, the funds necessary to reimburse for property damage would be better spent in highway repair work.

Nothing in this enumeration of recoverable damages was intended to exclude the assessment of costs against the Commonwealth in a proper case nor to prevent recovery of a defendant's attorneys' fees in certain specified cases, see Section 5110(c), p. 36

PROCEDURES

Original Jurisdiction

After considering the alternatives of providing for original trial jurisdiction in an administrative or quasi-judicial administrative agency or in the Commonwealth Court under existing statutory jurisdictional provisions,¹² the task force chose to place original jurisdiction in the courts of common pleas. In addition to the specific authority of Article I, Section 11, the task force was aware of its exclusive prerogatives over court jurisdiction contained in Article V, Section 10(c), of the Pennsylvania Constitution.¹³

This grant of jurisdiction was intended neither to remove original jurisdiction from the Commonwealth Court for suits brought against Commonwealth agencies, officials or employees for causes of action other than tort nor to affect the jurisdiction of the Board of Arbitration of Claims over contract cases.

12. The latter was the result reached by the Supreme Court in *Freach v. Commonwealth*, 471 Pa. 558 (1977).

13. Also see Pa. Const. Sch. §§ 4, 16 and 17.

in the Supreme Court the power to establish "general rules governing practice"; the latter power being specifically limited to the promulgation of such rules as "are consistent with this Constitution."

Service of process under the suggested legislation would be required to be made at either the principal or local office of the involved Commonwealth agency and the office of the attorney general. This dual service is consistent with the rationale for the requirement that notice be given to the attorney general in addition to the Commonwealth agency involved. See Section 5522(a), pp. 37-38.

The power granted to the attorney general to promulgate reasonable regulations pursuant to this act is particularly important in this context. Such regulations could define the situs of "a local office," thereby preventing plaintiffs from attempting to effectuate service of process upon local installations such as a highway shed or repair station.

Counterclaim

Under the proposed legislation any individual who brings suit against the Commonwealth will be subject to such claims as the Commonwealth shall have against him. This is consistent with present practice,¹⁵ and the policy that once two parties are before a court that body should adjudicate all claims between the parties in one proceeding.¹⁶

Appeal to Commonwealth Court

Appeals from the decisions of the courts of common pleas under the proposed legislation will be taken initially to Commonwealth Court and then to the Supreme Court, consistent with other appeals. The Commonwealth Court was chosen as the forum for appeals to assure utilization of that court's expertise concerning governmental matters.

Notice of Claims

Consistent with the present provisions of 42 Pa.C.S. § 5522, potential plaintiffs will be required to notify

15. Pa.R.C.P. No. 1031.

16. Also see § 1004 of The Fiscal Code, supra.

Commonwealth agencies within six months of the time any injury is sustained or cause of action has accrued. The current law is amended to require that notice be given to the attorney general in addition to the Commonwealth agency involved. In this manner the litigating office of the Commonwealth government as well as the affected Commonwealth agency will be assured timely notification of personal action.

Previously this provision required notification for claims concerning personal injuries only. However, the proposed legislation will expand the required notification to include all claims against government units as defined under 42 Pa.C.S. § 102, thereby affecting local government units. The task force decided it inadvisable to bifurcate the section, since that would create unnecessary confusion in the law. Notification to the attorney general is not required for suits concerning local government units.

Five states require that a claim or notice of the cause be filed within a shortened period of time compared with general statutes of limitation.¹⁷

States with Special Notice Requirements for Tort Claims

State	Notice due after cause of action	With whom filed
California	100 days	State Board of Control
Colorado	90 days	Attorney General
Idaho	120 days	Secretary of State
Indiana	180 days	Attorney General
South Carolina	3 months	Governmental entity

17. Similar provisions in Michigan and Nevada have been declared by state courts to be violative of the equal protection clause of both state and federal constitutions: In Reich v. State Highway Department, 386 Mich. 617, 194 N.W. 2d 700 (1972) (sixty-day requirement), and Turner v. Staggs, 89 Nev. 230, 510 P.2d 879 (1973), cert. den. 414 U.S. 1079 (1974) (six-month requirement).

negligence per se, with liability attaching if proximate cause is proven; also see Section 497 of the Liquor Code for applicable limitations.

(8) National Guard Activities--This area of waiver acknowledges present provisions of the Military Code, August 1, 1975, P.L. 233, No. 92, 51 Pa.C.S. § 4108, with which it should be read in pari materia. That section provides that

The Commonwealth of Pennsylvania shall be responsible for the payment of all judgments and costs secured against a member of the Pennsylvania Military Forces on State duty who was acting under lawful orders or who in good faith relied on an order which a reasonable person would consider to be unlawful under the circumstances.⁶

Areas of Liability not Waived

In developing the eight previously discussed areas of liability in which waiver of sovereign immunity is proposed, the task force considered other areas of potential waiver and determined to retain sovereign immunity. In evaluating the areas rejected, the task force reviewed among other materials the statutory exceptions provided in other jurisdictions.

The task force specifically rejected waiving sovereign immunity for claims arising out of:

- (1) Intentional torts such as assault and battery, false imprisonment, false arrest, malicious prosecution, abuse of privacy, libel and slander, misrepresentation, deceit, interference with contract rights, fraud and invasion of privacy.
- (2) The improper assessment of taxes.
- (3) Seizure and detention of personal property.
- (4) Product liability.
- (5) Civil rights and constitutional violations.

6. For a definition of Pennsylvania Military Forces, see 51 Pa.C.S. § 102.

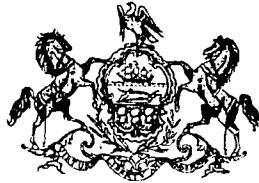
- (6) Quarantine restrictions.
- (7) Adverse possession against the Commonwealth.
- (8) Negligence of private independent contractors.
- (9) Improper licensing or delay in granting of licenses, permits, etc.
- (10) Failure to inspect or improper inspection.

The task force considered at length and rejected a proposal to waive sovereign immunity for acts or omissions which could be covered under a standard "errors and omissions" insurance policy. In this connection, see 1976 Attorney General's Opinion No. 25, at 78, where the Department of General Services was advised that it could establish an employees' liability self-insurance fund pursuant to the authority of Section 2404(b) of The Administrative Code of 1929. The opinion notes, and the Department of General Services confirms, that it was unable to procure such insurance because of the potential exposure and the uncertainty of the risk management function.

The task force in rejecting a general "errors and omissions liability" at this time, noted that such a waiver would in effect result in a general waiver rather than a retention of sovereign immunity with specified limited waiver. California, which adopted the same approach, explained its rationale for listing exceptions to immunity: "This will provide a better basis upon which the financial burden of liability may be calculated, since each enactment imposing liability can be evaluated in terms of the potential cost of such liability."⁷

Defenses Retained

The correlative common law "official immunity" defense has been specifically retained by the proposed legislation, § 5110(b)(1), p.35. In addition, the proposed legislation expressly retains defenses developed by case law or specified by statute for employees and officials acting pursuant to a duty required by statute or regulation or acting within the bounds of discretion granted by a statute or regulation, § 5110(b)(2), (3), pp. 35-36.



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

August 29, 2007

TOM CORBETT
ATTORNEY GENERAL

21 S. 12th Street, Third Floor
Philadelphia, PA 19107-3603
(215) 560-2966
FAX (215) 560-2202

Gary Brownstein, Esquire
BROWNSTEIN VITALE &
WEISS, P.C.
Two Penn Center
1500 JFK Boulevard, Suite 1020
Philadelphia, PA 19102

RE: P. Santiago vs. Commonwealth of Pennsylvania, Department of
Corrections
Phila. Court of Common Pleas; June 2007, No. 0921

Dear Mr. Brownstein:

I am enclosing herewith a true and correct copy of the Commonwealth of Pennsylvania
Department of Correction's Preliminary Objections to Plaintiff's Complaint, the original of
which is, today, being filed of record.

Very truly yours,
A handwritten signature in black ink, appearing to read "RCG".
Richard C. Geer
Deputy Attorney General

RCG:jrg
Enclosure(s)

CONTROL NO. _____

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
EASTERN REGIONAL OFFICE
BY: RICHARD C. GEER
DEPUTY ATTORNEY GENERAL
IDENTIFICATION NO. 78624
21 South 12th Street, Third Floor
Philadelphia, PA 19107-3603
Telephone: (215) 560-2966

FILED
PRO PROTHY
AUG 3, 0 2007
Attorney for: **E. HUSTON**
Commonwealth Defendant

PEDRO SANTIAGO	:	COURT OF COMMON PLEAS
	:	OF PHILADELPHIA COUNTY
vs.	:	
	:	JUNE TERM, 2007
DEPARTMENT OF CORRECTIONS	:	
COMMONWEALTH OF PENNSYLVANIA	:	NO. 0921

COMMONWEALTH DEFENDANT'S PRELIMINARY OBJECTION
TO PLAINTIFF'S COMPLAINT

I. PRELIMINARY OBJECTION RAISING A QUESTION OF VENUE

1. Plaintiff, Pedro Santiago, filed the above-captioned lawsuit against the Commonwealth Defendant, seeking to recover damages as the result of an exercise injury which allegedly occurred while an inmate at the Quehanna Motivational Boot Camp, 4395 Quehanna Highway, Karthaus, Clearfield County, Pennsylvania. A true and correct copy of Plaintiff's Complaint is attached hereto as Exhibit "A".

2. The Complaint alleges further acts of negligence on the part of the Commonwealth Party, including negligent medical treatment at the State Correctional Institute at Houtzdale, Houtzdale, Clearfield County, Pennsylvania; also, at the State Correctional Institute at Fayette, Fayette County, Pennsylvania; as well as, the State Correctional Institute at Greensburg, Westmoreland County, Pennsylvania..

3. Venue in actions for claims against a Commonwealth Party is regulated by 42 Pa. C.S. §8523, which states that actions against a Commonwealth Party may be brought in



and only in, a county in which the principal or local office of the Commonwealth Party is located, or in which the cause of action arose, or where a transaction or occurrence took place out of which the cause of action arose.

4. Pursuant to §3(b) of the Act of September 28, 1978, P.L. 788, No. 152, the Attorney General has the authority to promulgate rules and regulations to implement the intent of the Sovereign Immunity Act.

5. Specifically included within the above-mentioned statutory grant, is the authority to establish rules and regulations pertaining to the designation of local and principal offices for Commonwealth agencies.

6. On April 26, 1986, the Office of Attorney General published rules and regulations, attached hereto as Exhibit "B", which define the local office of a Commonwealth party as:

...the local office located in that county where the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose.

37 Pa. Code 111.4(c).

7. In this case, venue is proper for the Commonwealth of Pennsylvania, Department of Corrections, in only Cumberland County, the location of the principal office of the Commonwealth Party, or in Clearfield County, the location of the Department of Corrections' Quehanna Motivational Boot Camp and the State Correctional Institution at Houtzdale's local office; as well as, the location of the accident. Venue could also lie in Fayette County, the location of the Department of Corrections' State Correctional Institution at Fayette's local office, or in Westmoreland County, the location of the Department of Corrections' State Correctional Institution at Greensburg's local office.

8. Under no circumstances is Philadelphia County an appropriate county for this action as none of the statutory prerequisites for venue against the Commonwealth Party are available in Philadelphia County.

WHEREFORE, defendant Department of Corrections Commonwealth of Pennsylvania respectfully requests this Honorable Court transfer this matter to the Court of Common Pleas of Clearfield County.

II. PRELIMINARY OBJECTIONS IN THE NATURE OF THE DEMURRER

CLAIMS AGAINST THE COMMONWEALTH DEFENDANT FOR IMPROPER TRAINING AND/OR SUPERVISION ARE BARRED AS SOVEREIGN IMMUNITY HAS NOT BEEN WAIVED FOR SUCH CLAIMS

9. To state a personal injury claim against a Commonwealth Party, a plaintiff is required to bring an action for which damages would be recoverable at Common Law which also falls within one of the enumerated exceptions to sovereign immunity set forth in Section 8522 (b) of the Judicial Code, 42 Pa. C.S. §8522 (b). See 42 Pa. C.S. §8521 and §8522(a).

10. Among its allegations of negligence against the Commonwealth Defendant, Plaintiff alleges in Subparagraphs (b), (c), and (d) of Paragraph 21 that the Commonwealth was negligent for:

- 21 (b) Failing to direct or require the attention or advice and instructions of qualified specialists...;
- 21 (c) Failing to have present competent medical personnel to monitor, diagnose and treat Plaintiff's condition...and to competently and/or adequately monitor all follow up treatment...
- 21 (d) Failing to monitor all acts of it physicians, nurses and/or other agents...

11. Sovereign immunity has only been waived in a few limited areas, specifically, the nine (9) enumerated exceptions that are set forth in 42 Pa.C.S.A. §8522, et sec.,

and a cursory review of Section 8522 shows that negligent or improper training and/or supervising is not one, nor can it colorably fall within one, of the exceptions for which the General Assembly of the Commonwealth has waived sovereign immunity. *See*, 42 Pa.C.S.A. §8522 attached hereto as Exhibit “C” and incorporated herein by reference.

12. The Report of the Joint State Government Commission of Sovereign Immunity, which forms the basis for 42 Pa.C.S.A. 8522(b)(1) through (9) states, “the task force specifically rejected waiving sovereign immunity for claims arising out of... (9) improper licensing...” Joint State Government Commission, Sovereign Immunity, pp.15-16, attached hereto as Exhibit “D”.

13. Pursuant to the sovereign immunity statute and controlling case law, the Commonwealth Defendant is not subject to liability for claims of negligent training and licensing or supervising/monitoring as sovereign immunity has not been waived for such claims.

14. Accordingly, even accepting as true all well pleaded facts and all reasonable inferences derived therefrom in favor of the plaintiffs, the complaint nonetheless fails to state a claim within any of the recognized exceptions to sovereign immunity and consequently fails to state a claim for which relief may be granted.

WHEREFORE, it is respectfully requested that this Honorable Court sustain the Commonwealth Party’s Preliminary Objection and dismiss Subparagraphs (b), (c) and (d) of Paragraph 21 of Plaintiff’s Complaint, with prejudice, for failing to state a claim upon which relief may be granted.

III. PRELIMINARY OBJECTION IN THE NATURE OF A MOTION TO STRIKE PORTIONS OF THE PLAINTIFFS’ COMPLAINT

15. Plaintiff was allegedly injured during an boot camp exercise at Quehanna Motivational Boot Camp, in , Clearfield County, Pennsylvania.

16. The allegations of negligence with respect to the Commonwealth

Defendant are set forth in Paragraphs 12 and 21 in which it is alleged that the Commonwealth

Defendant's negligence consisted of, *inter alia*:

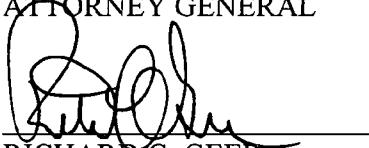
- 12 (d) Otherwise failing to exercise due and proper care under the circumstances;
- 12 (e) As otherwise may be shown through discovery or at the trial of this case;
- 21 (e) Being otherwise negligent, careless or reckless under the circumstances;
- 21 (f) Being otherwise negligent, careless and reckless as may be shown through the course of discovery or at the time of trial.

17. The Pennsylvania Rules of Civil Procedure require that pleadings, such as the Complaint herein, set forth the material facts upon which the cause of action is predicated. Pa. R.C.P. 1019(a).

18. The aforesaid allegations fail to set forth the material facts upon which the plaintiff's claim is predicated as required by the Rules of Civil Procedure, and should be stricken from the Complaint as violative of a rule of court.

WHEREFORE, the Commonwealth Defendant respectfully requests that this Court strike Subparagraphs (d) and (e) of Paragraph 12 and Subparagraphs (e) and (f) of Paragraph 21 as violative of a rule of court.

By:

THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

RICHARD C. GEER
DEPUTY ATTORNEY GENERAL

PHILADELPHIA COURT OF COMMON PLEAS
PETITION/MOTION COVER SHEET

FOR COURT USE ONLY	
ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE:
<p><i>Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained online at http://courts.phila.gov</i></p>	

CONTROL NUMBER:

082239

(RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

June Term, 2007
Month Year
No. 00921

PEDRO SANTIAGO

vs.
COMMONWEALTH OF PA, DEPT. OF CORRECTIONS

INDICATE NATURE OF DOCUMENT FILED:

Petition (Attach Rule to Show Cause) Motion
 Answer to Petition Response to Motion

Has another petition/motion been decided in this case?

Yes No

Is another petition/motion pending?

Yes No

If the answer to either question is yes, you must identify the judge(s):

TYPE OF PETITION/MOTION (see list on reverse side)

PETITION/MOTION CODE
(see list on reverse side)

DPROB

ANSWER/RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding):

Preliminary Objections

I. CASE PROGRAM

Is this case in the (answer all questions):

A. COMMERCE PROGRAM

Name of Judicial Team Leader: _____

Applicable Petition/Motion Deadline: _____

Has deadline been previously extended by the Court?

Yes No

B. DAY FORWARD/MAJOR JURY PROGRAM — Year _____

Name of Judicial Team Leader: _____

Applicable Petition/Motion Deadline: _____

Has deadline been previously extended by the Court?

Yes No

C. NON JURY PROGRAM

Date Listed: _____

D. ARBITRATION PROGRAM

Arbitration Date: _____

E. ARBITRATION APPEAL PROGRAM

Date Listed: _____

F. OTHER PROGRAM:

Date Listed: _____

III. OTHER

II. PARTIES (required for proof of service)

(Name, address and telephone number of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)

Richard C. Greer, Esquire
Office of Attorney General
21 South 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
215-560-2966

2007 SEP 17 1:2:32 PM

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

(Attorney Signature/Unrepresented Party)

9-17-07

(Date)

Gary Brownstein

36431

(Print Name)

(Attorney I.D. No.)

The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date. No extension of the Answer/Response Date will be granted even if the parties so stipulate.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA-CIVIL TRIAL DIVISION

PEDRO SANTIAGO	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	
	:	JUNE TERM, 2007
COMMONWEALTH OF PA,	:	NO.: 921
DEPT. OF CORRECTIONS	:	

ORDER

J.

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No.: 36431
Two Penn Center Plaza
1500 JFK Blvd. Suite 1020
Philadelphia, PA 19102
215-751-1600

Attorney(s) for Plaintiff(s)

PEDRO SANTIAGO	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	
	:	JUNE TERM, 2007
COMMONWEALTH OF PA,	:	NO.: 921
DEPT. OF CORRECTIONS	:	

PLAINTIFF'S REPLY IN OPPOSITION TO DEFENDANTS'
MOTION TO DETERMINE PRELIMINARY OBJECTIONS

I. VENUE

1. Admitted.
2. Denied. Plaintiff's Complaint is a document which speaks for itself.
3. Denied as a conclusion of law to which no response is required by the applicable Pennsylvania Rules of Civil Procedure.
4. Denied as a conclusion of law to which no response is required by the applicable Pennsylvania Rules of Civil Procedure.
5. Denied as a conclusion of law to which no response is required by the applicable Pennsylvania Rules of Civil Procedure.
6. Admitted. It is admitted that the document attached to Defendant's Preliminary Objections as Exhibit "B" contains language which purportedly identifies the local office of a Commonwealth party as is indicated in the instant Paragraph.
7. Denied as a conclusion of law to which no response is required by the applicable

Pennsylvania Rules of Civil Procedure.

8. Denied as a conclusion of law to which no response is required by the applicable Pennsylvania Rules of Civil Procedure. By way of further answer, it is specifically denied that venue is not proper in Philadelphia County; to the contrary and as cited by Defendants, venue against a Commonwealth party is proper in a county in which a local office of the Commonwealth party is located. As Plaintiff believes, and therefore avers, that there is indeed such a local office located in Philadelphia County, venue within that County is unquestionably proper.

WHEREFORE, Plaintiff requests this Honorable Court overrule Defendants' Preliminary Objection as to venue.

II. CLAIMS FOR IMPROPER TRAINING AND/OR SUPERVISION

9. Denied as a conclusion of law to which no response is required by the applicable Pennsylvania Rules of Civil Procedure.

10. Denied. Plaintiff's Complaint is a document which speaks for itself.

11. Denied as a conclusion of law to which no response is required by the applicable Pennsylvania Rules of Civil Procedure.

12. Admitted. It is admitted that the document attached to Defendant's Preliminary Objections as Exhibit "D" contains the language cited in the instant Paragraph.

13. Denied as a conclusion of law to which no response is required by the applicable Pennsylvania Rules of Civil Procedure.

14. Denied as a conclusion of law to which no response is required by the applicable Pennsylvania Rules of Civil Procedure.

WHEREFORE, Plaintiff requests this Honorable Court overrule Defendants' Preliminary

Objection as the referenced Paragraphs do in fact state a claim upon which relief may be granted.

III. MOTION TO STRIKE

15. Denied. Plaintiff was injured as set forth in his Complaint, which is a document that speaks for itself.

16. Denied. Plaintiff's Complaint is a document which speaks for itself.

17. Denied as a conclusion of law to which no response is required by the applicable Pennsylvania Rules of Civil Procedure.

18. Denied as a conclusion of law to which no response is required by the applicable Pennsylvania Rules of Civil Procedure.

WHEREFORE, Plaintiff requests this Honorable Court overrule Defendants' Preliminary Objection seeking to strike portions of Plaintiff's Complaint.

BROWNSTEIN VITALE & WEISS, P.C.

BY: 
GARY BROWNSTEIN, ESQUIRE
ATTORNEY(S) FOR PLAINTIFF(S)

BROWNSTEIN VITALE & WEISS, P.C.

BY: Gary Brownstein, Esquire

Identification No.: 36431

Two Penn Center Plaza

1500 JFK Blvd. Suite 1020

Philadelphia, PA 19102

215-751-1600

Attorney(s) for Plaintiff(s)

PEDRO SANTIAGO	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	
	:	JUNE TERM, 2007
COMMONWEALTH OF PA,	:	NO.: 921
DEPT. OF CORRECTIONS	:	

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANT'S MOTION TO DETERMINE PRELIMINARY OBJECTIONS**

I. FACTS

The instant action arises from events which occurred at various correctional facilities operated by Defendant. Specifically, Plaintiff injured his left leg as a result of being compelled to participate in military boot camp like activities. He received treatment for the leg injury from staff at those same facilities. Plaintiff contends that the treatment he received negligently rendered by Defendant's staff and as a result his injuries worsened. Plaintiff presently resides in Philadelphia County and subsequent to his release from custody, he received treatment in that County. Defendant preliminarily objects to venue in Philadelphia County, claiming such venue is proper only in those Counties where Plaintiff was incarcerated or where he received the medical treatment complained of. As this objection is without merit, the Court is compelled overrule it.

II. ARGUMENT

As Defendant is indeed a "Commonwealth party" venue as to it is governed by 42 Pa. C.S. § 8523(a). It is clear from reading this statute that venue as to such parties is proper within in a

county where the principal **or** local office is located **or** in the county where the accident occurred. As set forth in Bortulin v. Harley-Davidson Motor Co., Inc., 115 Pa. Commw. 42, 46, 539 A.2d 906, 908 (1988) the Attorney General is only authorized to promulgate regulations and rules necessary for implementing the intent of this statute. These regulations and rules may not, however, be inconsistent with the statute. Such an inconsistency is inherent in any regulation that the local office must also be in the county where the accident occurred as is presently being argued by Defendant.

The plain language of § 8523(a) makes clear that venue is proper in the county where the principal office **or** a local office of the Commonwealth agency are located **or** in the county where the accident actually occurred. The statute clearly does not require the local office to be in the county where the accident occurred as was held in Bortulin and as is now being argued by Defendant. Such a holding and argument is not consistent with the statute and must be rejected by this Court. Plaintiff contends that Defendant does indeed maintain a local office and Defendant has not denied the existence of such an office in that County. The existence of such a local office makes venue within Philadelphia County proper and Defendant's argument to the contrary is without merit. For the reasons set forth herein, Defendant's Preliminary Objection as to venue cannot be sustained as Defendant has improperly interpreted the relevant venue statute.

III. CONCLUSION

For the foregoing reasons, Plaintiff requests this Honorable Court overrule Defendant's Preliminary Objection as to venue.

BROWNSTEIN VITALE & WEISS, P.C.

BY: 

GARY BROWNSTEIN, ESQUIRE
ATTORNEY(S) FOR PLAINTIFF(S)

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No.: 36431
Two Penn Center Plaza
1500 JFK Blvd. Suite 1020
Philadelphia, PA 19102
215-751-1600

Attorney(s) for Plaintiff(s)

PEDRO SANTIAGO	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	
	:	JUNE TERM, 2007
COMMONWEALTH OF PA,	:	NO.: 921
DEPT. OF CORRECTIONS	:	

CERTIFICATE OF SERVICE

I, GARY BROWNSTEIN, VITALE, ESQUIRE, attorney for Plaintiff in the above matter, certify and say that I did serve a true and correct copy of Plaintiff's Reply to Defendants' Preliminary Objections on all counsel of record September 17, 2007, by United States Mail, postage pre-paid.

BROWNSTEIN VITALE & WEISS, P.C.

BY: 

GARY BROWNSTEIN, ESQUIRE
ATTORNEY FOR PLAINTIFF(S)

FILED

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

JAN 22 2008
m/9/30/cw
William A. Shaw
Prothonotary/Clerk of Courts
return to Attn:

ATTORNEY FOR PLAINTIFF

Pedro Santiago

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

v.

**Commonwealth of Pennsylvania, Department
of Corrections**

NO: 07-1731-cd

CERTIFICATE OF MERIT

Gary Brownstein, Esquire, attorney for Plaintiff in the above matter, does hereby certify and say that an appropriate licensed professional has supplied a written statement attesting to the existence of a reasonable probability that the care provided by Defendant during Plaintiff's incarceration fell outside the accepted standards applicable to such care, and was a cause for bringing about harm to Plaintiff.

RESPECTFULLY SUBMITTED,

BROWNSTEIN VITALE & WEISS, P.C.

By: Gary Brownstein, Esquire
Attorney for Plaintiff

FILED
APR 22 2008
WILLIAM A. SHAW
PROSECUTOR OF COMMONS

FILED

FEB 29 2008

M/12:30 PM

William A. Shaw

Prothonotary/Clerk of Courts

CERT W/ NOTICE

TO DEPT + ATTY

GERAL

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

ATTORNEY FOR PLAINTIFF

Pedro Santiago

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

v.

NO: 07-1731-cd

**Commonwealth of Pennsylvania, Department
of Corrections**

NOTICE

Pursuant to Rule 236 of the Supreme Court of Pennsylvania, you are hereby notified that a Judgment has been entered against you in the above proceeding as indicated below.

- Judgment by Default
- Money Judgment
- Judgment in Replevin
- Judgment for Possession
- Judgment on Award of Arbitration
- Judgment on Verdict
- Judgment on Court Findings

IF YOU HAVE ANY QUESTIONS CONCERNING THIS NOTICE, PLEASE CALL:

Gary Brownstein, Esquire
Brownstein Vitale & Weiss, P.C.
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
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1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

ATTORNEY FOR PLAINTIFF

Pedro Santiago

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

v.

NO: 07-1731-cd

Commonwealth of Pennsylvania, Department
of Corrections

PRAECIPE TO ENTER DEFAULT JUDGMENT

TO THE PROTHONOTARY:

Please enter a default judgment in favor of Plaintiff, Pedro Santiago and against Defendant, Commonwealth of Pennsylvania, Department, of Corrections for failure to answer or otherwise respond to the Complaint.

1. This case was commenced by Writ of Summons in Philadelphia County.
2. On July 10, 2007, Richard Geer, Esquire entered his appearance on behalf of Defendant.

See copies of dockets from Philadelphia County attached hereto as Exhibit "A".

3. The Complaint was served upon the Defendant, Commonwealth of Pennsylvania, Department of Corrections and their counsel on July 18, 2007. Proof of service is attached hereto as Exhibit "B".

4. This case was transferred to Clearfield County on 10/25/07.
5. A Notice of Praecipe to Enter Default Judgment, pursuant to Pa. R.C.P. 237.1(2)

was served upon defense counsel by first class mail, postage paid on January 28, 2008, more than 10 days before this Praecipe is being filed. A copy of the Notice is attached hereto as Exhibit "C".

6. A copy of the Certification of Service of the Notice is attached hereto as Exhibit "D".

Pursuant to the Notice and Certification, Defendant had 10 days in which to answer the Complaint.

The ten (10) days expired on February 7, 2008.

Please enter a default judgment against Defendant, Commonwealth of Pennsylvania, Department, of Corrections, with damages to be assessed at a later date, for failing to file an Answer to Plaintiff's Complaint served upon them in excess of seven (7) months ago in violation with the Rules of Civil Procedure.

BROWNSTEIN VITALE & WEISS, P.C.


GARY BROWNSTEIN, ESQUIRE
ATTORNEY FOR PLAINTIFFS

Dated: 2/22/08

Civil Docket Report

Case Description

Case ID: 070600921
Case Caption: SANTIAGO VS COMMONWEALTH OF PA DEPT OF CORRECTIONS
Filing Date: Monday, June 11th, 2007
Court: MN - MAJOR NON JURY
Location: CH - City Hall
Jury: N - NON JURY
Case Type: 20 - PERSONAL INJURY - OTHER
Status: CLWST - WAITING TO LIST STATUS CONF

Related Cases

No related cases were found.

Case Event Schedule

No case events were found.

Case Parties

Seq #	Assoc	Expn Date	Type	ID	Name
1			ATTORNEY FOR PLAINTIFF	A36431	BROWNSTEIN, GARY
Address:	BROWNSTEIN VITALE & WEISS PC TWO PENN CENTER PLAZA 1500 JFK BLVD SUITE 1020 PHILADELPHIA PA 19102 (215)751-1600		Aliases:	<i>none</i>	
2	1		PLAINTIFF	@5794435	SANTIAGE, PEDRO
Address:	317 E SOMERSET ST PHILADELPHIA PA		Aliases:	<i>none</i>	

1A

19134					
3	4		DEFENDANT	@5794438	COMMONWEALTH OF PENNA DEPT OF CORRECTIONS
Address:	2520 LISBURN RD CAMP HILL PA 17001		Aliases:	<i>none</i>	
4			ATTORNEY FOR DEFENDANT	A78624	GEER, RICHARD C
Address:	21 SOUTH 12TH STREET 3RD FLOOR DEPUTY ATTORNEY GENERAL PHILADELPHIA PA 19107 (215)560-2966		Aliases:	<i>none</i>	

Docket Entries

Filing Date/Time	Docket Type	Filing Party	Disposition Amount
11-JUN-2007 01:05 PM	ACTIV - ACTIVE CASE		
Docket Entry:	<i>none.</i>		
11-JUN-2007 03:46 PM	CIVIL - COMMENCEMENT OF CIVIL ACTION	BROWNSTEIN, GARY	
Docket Entry:	<i>none.</i>		
11-JUN-2007 03:46 PM	WRSUM - PRAE TO ISSUE WRIT OF SUMMONS	BROWNSTEIN, GARY	
Docket	PRAECIPE TO ISSUE WRIT OF SUMMONS FILED. WRIT OF		

Entry: SUMMONS ISSUED. DISCOVERY DEADLINE 03/03/2008			
11-JUN-2007 03:46 PM	SSCG1 - SHERIFF'S SURCHARGE 1 DEFT	BROWNSTEIN, GARY	
Docket Entry:	<i>none.</i>		
11-JUN-2007 03:46 PM	CLWST - WAITING TO LIST STATUS CONF	BROWNSTEIN, GARY	
Docket Entry:	<i>none.</i>		
15-JUN-2007 12:29 PM	AFDVT - AFFIDAVIT OF SERVICE FILED		
Docket Entry:	OF COMPLAINT BY PERSONAL SERVICE UPON DEFENDANT COMMONWEALTH OF PA DEPT OF CORRECTIONS ON 6-13-07.		
29-JUN-2007 02:15 PM	AFDVT - AFFIDAVIT OF SERVICE FILED		
Docket Entry:	OF SUMMONS BY PERSONAL SERVICE UPON COMM OF PA DEPT OF CORRCTIONS ON 20JUN-07.		
10-JUL-2007 03:08 PM	ENAPP - ENTRY OF APPEARANCE FILED	GEER, RICHARD C	
Docket Entry:	ENTRY OF APPEARANCE OF RICHARD C. GEER, DEPUTY ATTORNEY GENERAL FILED ON BEHALF OF DFT. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF CORRECTIONS.		
10-JUL-2007 03:08 PM	RULEP - RULE TO FILE COMPLAINT	GEER, RICHARD C	
Docket Entry:	PRAECIPE AND RULE FILED UPON PLAINTIFF(S) TO FILE A COMPLAINT WITHIN TWENTY (20) DAYS OR SUFFER JUDGMENT OF NON PROS FILED BY DEFENDANTS, COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF CORRECTIONS.		
16-JUL-2007 04:09 PM	CMPLT - COMPLAINT FILED NOTICE GIVEN		

Docket Entry:	COMPLAINT WITH NOTICE TO DEFEND WITHIN TWENTY (20) DAYS AFTER SERVICE IN ACCORDANCE WITH RULE 1018.1 FILED.		
23-JUL-2007 04:06 PM	AFDVT - AFFIDAVIT OF SERVICE FILED		
Docket Entry:	OF COMPLAINT VIA FIRST CLASS MAIL UPON DEFENDANT COMMONWEALTH OF PA DEPT OF CORRECTIONS ON 7-18-07.		
29-AUG-2007 02:59 PM	PROBJ - PRELIMINARY OBJECTIONS FILED	GEER, RICHARD C	
Docket Entry:	PRELIMINARY OBJECTIONS TO PLAINTIFF(S) COMPLAINT FILED BY DEFENDANT COMMONWEALTH.		

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► [Related Cases](#) ► [Event Schedule](#) ► [Case Parties](#) ► [Docket Entries](#)

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BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

ATTORNEY FOR PLAINTIFF

Pedro Santiago

v.

Commonwealth of Pennsylvania, Department
of Corrections

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JUNE TERM, 2007
NO: 921

CERTIFICATE OF SERVICE

Gary Brownstein, Esquire, Attorney for Plaintiff in the above matter certifies and says that he did serve a true and correct copy of Plaintiff's Civil Action Complaint upon the Commonwealth of Pennsylvania, Department of Corrections by U.S. First Class Mail on July 18, 2007.

RESPECTFULLY SUBMITTED,

BROWNSTEIN VITALE & WEISS, P.C.

By: Gary Brownstein, Esquire
Attorney for Plaintiff

"B"

BV&W

BROWNSTEIN VITALE & WEISS, P.C.

Attorneys at Law

Gary Brownstein **
Marc D. Vitale *
Edward R. Weiss *

Frank Pollock *

** Also Member NJ & NY Bar
* Also Member NJ Bar

Two Penn Center Plaza
1500 JFK Boulevard, Suite 1020
Philadelphia, Pennsylvania 19102
215-751-1600
215-751-1660 (fax)

Montgomery County Office
11 Bala Avenue
Bala Cynwyd, Pennsylvania 19004
610-668-7955 • 610-667-8229 (fax)

New Jersey Office
402 Kings Highway South, Suite A
Cherry Hill, New Jersey 08034
856-869-9559 • 856-869-9280 (fax)

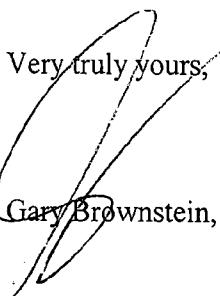
January 28, 2008

Richard Geer, Esquire
Commonwealth of Pennsylvania
Office of the Attorney General
21 South 12th Street, 3rd Floor
Philadelphia, PA 19107-3603

**Re: Santiago v. Commonwealth of Pennsylvania, Dept. of Corrections
CCP Clearfield County, No. 07-1731-cd**

Dear Mr. Geer:

A review of the dockets in the above matter reveal the you never filed an Answer to Plaintiff's Complaint. Please rectify this circumstance, and file an Answer promptly to obviate further action. Enclosed is a ten (10) day notice of intention to take default to facilitate your compliance with this request. Please contact me if you require any further indulgence in this regard. Thank you for your anticipated cooperation.

Very truly yours,

Gary Brownstein, Esquire

GB/tw
Enclosure

BROWNSTEIN VITALE & WEISS, P.C.

BY: Gary Brownstein, Esquire

Identification No. 36431

Two Penn Center

1500 JFK Blvd, Suite 1020

Philadelphia, PA 19102

(215) 751-1600

ATTORNEY FOR PLAINTIFF

Pedro Santiago

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

v.

NO: 07-1731cd

Commonwealth of Pennsylvania, Department
of Corrections

IMPORTANT NOTICE

TO: Richard Geer, Esquire
Commonwealth of Pennsylvania
Office of the Attorney General
21 South 12th Street, 3rd Floor
Philadelphia, PA 19107-3603

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO TAKE ACTION REQUIRED OF YOU IN THIS CASE. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN OBTAIN LEGAL ASSISTANCE:

LAWYER REFERRAL SERVICE

*One Reading Center
Philadelphia, PA 19107
(215) 238-1701*

DATED: 1/28/08

BROWNSTEIN, VITALE & WEISS, P.C.

BY: Gary Brownstein, Esquire
Attorney for Plaintiff

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

ATTORNEY FOR PLAINTIFF

Pedro Santiago

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

v.

NO: 07-1731-cd

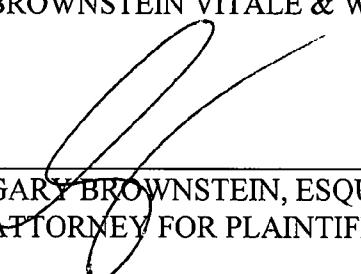
Commonwealth of Pennsylvania, Department
of Corrections

CERTIFICATION OF SERVICE OF NOTICE OF PRAECIPE TO
ENTER JUDGMENT OF DEFAULT

On January 28, 2008, the undersigned caused a copy of the Notice of Praecipe to Enter Judgment of Default to be served by first class mail, postage prepaid upon counsel for Defendant, Commonwealth of Pennsylvania, Department of Corrections.

I verify that the facts are true and correct, and understand that the statements made in this Certification have been made subject to the penalties of 18 Pa. C.S. relating to unsworn falsification to authorities.

BROWNSTEIN VITALE & WEISS, P.C.



GARY BROWNSTEIN, ESQUIRE
ATTORNEY FOR PLAINTIFF

Dated: 2/22/08

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

ATTORNEY FOR PLAINTIFF

Pedro Santiago

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

v.

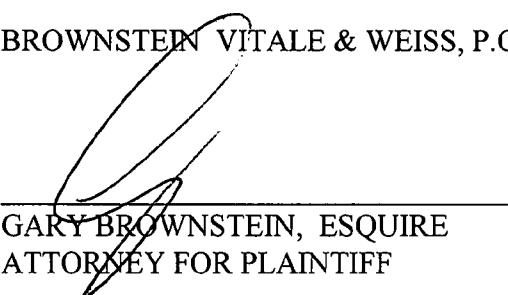
NO: 07-1731-cd

**Commonwealth of Pennsylvania, Department
of Corrections**

CERTIFICATION OF ADDRESS

I hereby certify that the address of the Plaintiff, Pedro Santiago is 317 East Somerset Avenue Philadelphia, PA 19134 and that the address of the Defendant, Commonwealth of Pennsylvania Department of Corrections is 2520 Lisburn Road, Camp Hill, PA 17001-0598 and the address of their counsel, Richard Geer, Esquire is 21 South 12th Street, 3rd Floor, Philadelphia, PA 19107.

BROWNSTEIN VITALE & WEISS, P.C.



GARY BROWNSTEIN, ESQUIRE
ATTORNEY FOR PLAINTIFF

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA:

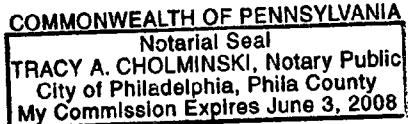
SS:

COUNTY OF PHILADELPHIA:

GARY BROWNSTEIN, ESQUIRE, being duly sworn according to law deposes and says that he is the attorney for the Plaintiff, and that he mailed to the defense counsel on January 28, 2008, a Notice of Intention to take a Default Judgment in the above matter, and that it was sent via first class mail.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 19 DAY
OF February, 2008.

Tracy A. Cholminski
NOTARY



BROWNSTEIN VITALE & WEISS, P.C.



GARY BROWNSTEIN, ESQUIRE
ATTORNEY FOR PLAINTIFFS

AFFIDAVIT OF NON-MILITARY SERVICE

COMMONWEALTH OF PENNSYLVANIA:

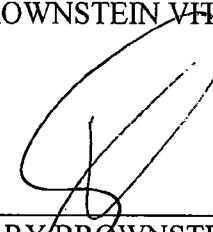
COUNTY OF PHILADELPHIA:

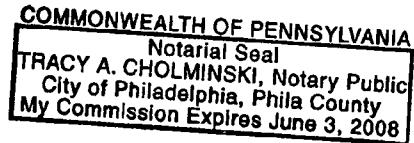
GARY BROWNSTEIN, ESQUIRE, being duly sworn according to law, deposes and says that he is attorney for Plaintiff in the above entitled matter, that the address of the above named Defendant is 2520 Lisburn Road, Camp Hill, PA 17001-0598., and that the Defendant is not in the Military Service of the United States nor any Territory thereof or its allies as defined in the Soldiers' and Sailors' Civil Relief Act of 1940 and the amendments thereto. Deponent also certifies that the address of the Plaintiff is 317 East Somerset Avenue, Philadelphia, PA 19134.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 22 DAY
OF February, 2008

Tracy A. Cholminski
NOTARY

BROWNSTEIN VITALE & WEISS, P.C.


GARY BROWNSTEIN, ESQUIRE
ATTORNEY FOR PLAINTIFFS



07-1731-CD

PARTIES OF RECORD

Gary Brownstein, Esquire
BROWNSTEIN VITALE &
WEISS, P.C.
Two Penn Center
1500 JFK Boulevard, Suite 1020
Philadelphia, PA 19102
(215) 751-1600; FAX (215)
Attorney for Plaintiff, Pedro Santiago

Richard C. Geer, Esquire
Office of Attorney General
21 S. 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
(215) 560-2966; FAX (215) 560-2202
Attorney for Deft. Comm of PA, Dept. of Corr.

U
FILED

MAR 10 2008
m 18:30 fm
William A. Shaw
Prothonotary/Clerk of Courts
No COPIES

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
EASTERN REGIONAL OFFICE
BY: RICHARD C. GEER
DEPUTY ATTORNEY GENERAL
IDENTIFICATION NO. 78624
21 South 12th Street, 3RD Floor
Philadelphia, PA 19107-3603
Telephone: (215) 560-2966

Attorney for:
COMMONWEALTH DEFENDANT

PEDRO SANTIAGO	:	COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
vs.	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF CORRECTIONS	:	NO. 07-1731-cd

**PETITION OF DEFENDANT
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF CORRECTIONS
PURSUANT TO PA. R.C.P. 237.3 FOR RELIEF FROM
JUDGMENT BY DEFAULT ENTERED PURSUANT TO PA. R.C.P 237.1**

NOW COMES defendant, Commonwealth of Pennsylvania,
Department of Corrections, by and through the Office of Attorney
General, and petitions this Honorable Court pursuant to Pa.
R.C.P. 237.3 for relief from Judgment by Default entered
pursuant to Pa. R.C.P. 237.1 against it on February 29, 2008, in
the above-captioned matter, and, in support of such Petition,
respectfully represents that:

1. Plaintiff instituted suit in the above-captioned
action by Writ filed on or about June 11, 2007. Plaintiff
thereafter filed their Complaint on July 16, 2007. A true and
correct copy of the Plaintiff's Complaint is attached hereto as
Exhibit "A".

2. On August 27, the Commonwealth of Pennsylvania, Department of Corrections filed Preliminary Objections to Plaintiff's Complaint, objecting to improper venue, and raising demurrers to certain subparagraphs of Plaintiff's Complaint.

3. On September 26, 2007, the Philadelphia Court of Common Pleas sustained the Commonwealth Defendant's Preliminary Objections and transferred venue of this action to Clearfield County; as well as, struck subparagraphs of Plaintiff's Complaint for failing to state claims upon which relief could be granted and for failing to conform to rules of court. A true and correct copy of the Philadelphia Court of Common Pleas Order dated September 26, 2007 is attached hereto as Exhibit "B".

4. On February 29, 2008, the Plaintiff filed a praecipe to Enter Judgment by Default in favor of the plaintiff and against defendant, Commonwealth of Pennsylvania, Department of Corrections, for failure to file Answer within required time. A true and correct copy of docket is attached hereto at Exhibit "C".

5. Prior to this time, the Commonwealth Defendant had not been notified that Plaintiff had transferred the matter to Clearfield County in accordance with the Court's Order, and had not received the ten day Notice of the Intention to Take Default in Clearfield County. Counsel first became aware of this

Judgment in a fax received from the Department of Corrections on March 5, 2008.

6. Pursuant to Pa. R.C.P. 237.3:

(a) A petition for relief from a judgment of non pros or of default entered pursuant to Pa. R.C.P. 237.1 shall have attached thereto a verified copy of the complaint or answer which the petitioner seeks leave to file.

(b) If the petition is filed within ten days after the entry of judgment on the docket, the court **shall open the judgment** if the proposed complaint or answer states a meritorious cause of action or defense.

(Emphasis added.)

7. Defendant, Commonwealth of Pennsylvania, Department of Corrections is a "Commonwealth party" as defined at 42 Pa. C.S. 38501.

8. According to the Complaint, Plaintiff, Pedro Santiago, brings this action for injuries sustained while an inmate at the Quehanna Boot Camp, when participating performing exercises on or around June or July, 2005. See, Exhibit "A" at paragraphs 6-7.

9. The Commonwealth Party was named as a defendant in the above-captioned action on allegations, *inter alia*, that it violated duties of care owed to plaintiff in failing to take into account Plaintiff's prior medical condition, failing to

monitor Plaintiff's participation, negligently ordering Plaintiff to perform exercise in close quarters, and negligently treating Plaintiff's injuries. See, Exhibit "A" at paragraphs 12, 21.

10. Pursuant to the provisions of the Judicial Code, actions for personal injuries against Commonwealth Parties may be maintained only where an action exists at common law and the claim is one falling within one of the enumerated exceptions to sovereign immunity set forth in Section 8522(b) of the Judicial Code. 42 Pa.C.S. § 8521, § 8522(a) and (b)(1)-(9). As such, the Commonwealth party now raise the doctrine of sovereign immunity as a meritorious defense to Plaintiff's claim.

11. In addition to the immunity defenses referenced above and set forth in the Commonwealth party's proposed Answer and New Matter, attached hereto as Exhibit "D", the Commonwealth parties are also alleging as a meritorious defense, that at all times material hereto, they acted carefully, reasonably, and prudently under the circumstances, and were not negligent in any way whatsoever, and that they did not breach any duty of care. See, proposed Answer and New Matter of Commonwealth parties attached hereto as Exhibit "D".

12. In addition to the unlikelihood of proving that the Defendant was negligent, as herein above averred, the Defendant

may properly assert other *bona fide* defenses based on, sovereign immunity, assumption of risk, and/or contributory and/or comparative negligence.

13. A true and correct copy of the Commonwealth Party's proposed Answer and New Matter to Plaintiff's Complaint is attached hereto as Exhibit "D", and incorporated herein by reference.

14. Even if otherwise inexcusable, which your petitioner expressly denies, the failure of defendant, Commonwealth of Pennsylvania, Department of Corrections to file its Answer and New Matter within the alleged time allowed, cannot, as a matter of law, effect a waiver of its sovereign immunity defenses.

15. A meritorious defense need only be alleged, not proven, in order to support the opening of a default judgment. See, *Provident Credit Corp. v. Young*, 300 Pa. Superior Ct. 117, 128, 440 A. 2d 257, 263 (1982); *Shainline v. Alberti Builders, Inc.*, 266 Pa. Superior Ct. 129, , 4303 A. 2d 577, 580 (1979).

16. It is submitted that the alleged defenses more than amply satisfy the meritorious defense criterion for opening a judgment by default.

17. Because his burden of establishing liability and damages in the above-captioned action is unaffected by the judgment by default obtained against the petitioner as he will

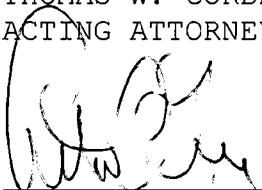
still have an opportunity to prove his case on the merits, the plaintiff would in no way be prejudiced by the opening of the said judgment; but if the judgment is allowed to stand, the petitioner will be severely prejudiced by not being able to present lawful defenses which may negate its liability and/or reduce or eliminate the assessment of any damages against it.

18. Because the Commonwealth Defendant is filing this Petition within 10 days of the entry of Default on February 29, 2008, with a verified copy of the Answer it intends to file alleging a meritorious defense to Plaintiff's claims, Pa R.C.P. 237.3 provides that the Court SHALL open the Judgment. (emphasis added).

WHEREFORE, your petitioner, defendants Commonwealth of Pennsylvania, Department of Corrections, respectfully request that this Honorable Court enter an Order pursuant to PaR.C.P. 237.3 opening the default judgment entered February 29, 2008, pursuant to Pa. R.C.P. 237.1 against the Commonwealth Defendant and in favor of the plaintiff in the above-captioned action, and allow said defendant leave to file its Answer and New Matter within ten (10) days of the entry of said Order.

THOMAS W. CORBETT, JR.
ACTING ATTORNEY GENERAL

By:


RICHARD C. GEER
DEPUTY ATTORNEY GENERAL

VERIFICATION
PURSUANT TO PA. R.C.P. NO. 1024(c)

RICHARD C. GEER hereby states that he is the attorney for the party filing the foregoing document; that he makes this verification as an attorney because the party he represents lacks sufficient knowledge or information upon which to make a verification and/or because he has greater personal knowledge of the information and belief than that of the party for whom he makes this verification; and/or because the party for whom he makes this verification for is outside the jurisdiction of the Court and verification cannot be obtained within the time allowed for the filing of the pleading; and that he has sufficient knowledge or information and belief, based upon his investigation of the matters averred or denied in the foregoing document; and that this statement is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

RICHARD C. GEER
Deputy Attorney General

Dated: March 5, 2008

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
EASTERN REGIONAL OFFICE
BY: RICHARD C. GEER
DEPUTY ATTORNEY GENERAL
IDENTIFICATION NO. 78624
21 South 12th Street, 3RD Floor
Philadelphia, PA 19107-3603
Telephone: (215) 560-2966

Attorney for:
COMMONWEALTH DEFENDANT

PEDRO SANTIAGO : COURT OF COMMON PLEAS
vs. : OF CLEARFIELD COUNTY
: :
COMMONWEALTH OF PENNSYLVANIA, : :
DEPARTMENT OF CORRECTIONS : NO. 07-1731-cd

**MEMORANDUM OF LAW IN SUPPORT OF PETITION OF DEFENDANT
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF CORRECTIONS
PURSUANT TO PA. R.C.P. 237.3 FOR RELIEF FROM
JUDGMENT BY DEFAULT ENTERED PURSUANT TO PA. R.C.P 237.1**

Plaintiff instituted suit in the above-captioned action by Writ filed on or about June 11, 2007. Plaintiff thereafter filed their Complaint on July 16, 2007. Thereafter, on August 27, the Commonwealth of Pennsylvania, Department of Corrections filed Preliminary Objections to Plaintiff's Complaint, objecting to improper venue, and raising demurrers to certain subparagraphs of Plaintiff's Complaint.

On September 26, 2007, the Philadelphia Court of Common Pleas sustained the Commonwealth Defendant's Preliminary Objections and transferred venue of this action to Clearfield County; as well as, struck subparagraphs of Plaintiff's Complaint for failing to state claims upon which relief could be granted and for failing to conform to rules of court

On February 29, 2008, the Plaintiff filed a praecipe to

Enter Judgment by Default in favor of the plaintiff and against defendant, Commonwealth of Pennsylvania, Department of Corrections, for failure to file Answer within required time.

Prior to this date, the Commonwealth Defendant, nor counsel, had been notified that Plaintiff had transferred the matter to Clearfield County in accordance with the Court's Order, nor had received the ten day Notice of the Intention to Take Default in Clearfield County. Counsel first became aware of this Judgment in a fax received from the Department of Corrections on March 5, 2008.

Pursuant to Pa. R.C.P. 237.3:

(a) A petition for relief from a judgment of non pros or of default entered pursuant to Pa. R.C.P. 237.1 shall have attached thereto a verified copy of the complaint or answer which the petitioner seeks leave to file.

(b) If the petition is filed within ten days after the entry of judgment on the docket, the court **shall open the judgment** if the proposed complaint or answer states a meritorious cause of action or defense.

(Emphasis added.)

Defendant, Commonwealth of Pennsylvania, Department of Corrections is a "Commonwealth party" as defined at 42 Pa. C.S. § 8501. According to the Complaint, Plaintiff, Pedro Santiago, brings this action for injuries sustained while an inmate at the Quehanna Boot Camp, when participating performing exercises on or around June or July, 2005, alleging that the Commonwealth Defendant was negligent, for *inter alia*, failing to take into

account Plaintiff's prior medical condition, failing to monitor Plaintiff's participation, negligently ordering Plaintiff to perform exercise in close quarters, and negligently treating Plaintiff's injuries.

Pursuant to the provisions of the Judicial Code, actions for personal injuries against Commonwealth Parties may be maintained only where an action exists at common law and the claim is one falling within one of the enumerated exceptions to sovereign immunity set forth in Section 8522(b) of the Judicial Code. 42 Pa.C.S. § 8521, § 8522(a) and (b)(1)-(9). As such, the Commonwealth party now raises the doctrine of sovereign immunity as a meritorious defense to Plaintiff's claim.

Moreover, in addition to the immunity defenses referenced above and set forth in the Commonwealth party's proposed Answer and New Matter, the Commonwealth party also alleges as a meritorious defense, that at all times material hereto, it acted carefully, reasonably, and prudently under the circumstances, and was not negligent in any way whatsoever, and that it did not breach any duty of care. See, proposed Answer and New Matter of Commonwealth parties attached hereto as Exhibit "D".

In addition to the unlikelihood of proving that the Defendant was negligent, as herein above averred, the Defendant may properly assert other *bona fide* defenses based on, sovereign immunity, assumption of risk, and/or contributory and/or comparative negligence.

Even if otherwise inexcusable, which your petitioner

expressly denies, the failure of defendant, Commonwealth of Pennsylvania, Department of Corrections to file its Answer and New Matter within the alleged time allowed, cannot, as a matter of law, effect a waiver of its sovereign immunity defenses.

It should also be noted that the courts have held that a meritorious defense need only be alleged, not proven, in order to support the opening of a default judgment. See, *Provident Credit Corp. v. Young*, 300 Pa. Superior Ct. 117, 128, 440 A. 2d 257, 263 (1982); *Shainline v. Alberti Builders, Inc.*, 266 Pa. Superior Ct. 129, , 4303 A. 2d 577, 580 (1979).

It is respectfully submitted that the alleged defenses more than amply satisfy the meritorious defense criterion for opening a judgment by default.

Because his burden of establishing liability and damages in the above-captioned action is unaffected by the judgment by default obtained against the petitioner as he will still have an opportunity to prove his case on the merits, the plaintiff would in no way be prejudiced by the opening of the said judgment; but if the judgment is allowed to stand, the petitioner will be severely prejudiced by not being able to present lawful defenses which may negate its liability and/or reduce or eliminate the assessment of any damages.

In accordance with PA R.C.P. 237.3, because the Commonwealth Defendant is filing this Petition within 10 days of the entry of Default on February 29, 2008, with a verified copy of the Answer it intends to file alleging meritorious defenses

to Plaintiff's claims, and because Pa R.C.P. 237.3 provides that under such circumstance, the Court SHALL open the Judgment. (emphasis added), the Commonwealth Defendant hereby respectfully requests the default Judgment in this matter be opened accordingly.

WHEREFORE, your petitioner, defendant Commonwealth of Pennsylvania, Department of Corrections, respectfully requests that this Honorable Court enter an Order pursuant to PA R.C.P. 237.3 opening the default judgment entered February 29, 2008, pursuant to Pa. R.C.P. 237.1 against the Commonwealth Defendant and in favor of the plaintiff in the above-captioned action, and allow said defendant leave to file its Answer and New Matter within ten (10) days of the entry of said Order.

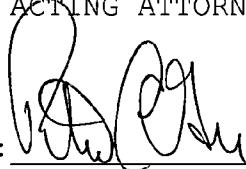
THOMAS W. CORBETT, JR.
ACTING ATTORNEY GENERAL

By: _____
RICHARD C. GEER
DEPUTY ATTORNEY GENERAL

EXHIBIT "A"

BROWNSTEIN VITALE & WEISS, P.C.
 BY: Gary Brownstein, Esquire
 Identification No. 36431
 Two Penn Center
 1500 JFK Blvd, Suite 1020
 Philadelphia, PA 19102
 (215) 751-1600

Pedro Santiago
 317 East Somerset Street
 Philadelphia, PA 19134

v.

Commonwealth of Pennsylvania, Department
 of Corrections
 2520 Lisburn Road
 Camp Hill, PA 17001-0598

ATTORNEY FOR PLAINTIFF

COURT OF COMMON PLEAS
 PHILADELPHIA COUNTY

JUNE TERM, 2007
 NO: 921

FILED
 PRO PROTHY

JUL 17 2007

D. GRAHAM

IMPORTANT NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY AN 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 THIS CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE OF 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 HELP.

AVISO IMPORTANTE

LE HAN DEMANDADO A USTED EN LA CORTE. SI USTED QUIERE DEFENDERSE DE ESTAS DEMANDAS EXPUESTAS EN LAS PAGINAS SIGUIENTES, USTED TIENE VEINTE (20) DIAS DE PLAZO AL PARTIR DE LA FECHA DE LA DEMANDA Y LA NOTIFICACION. HACA FALTA ASENTAR UNA COMPARENCIA ESCRITA O EN PERSONA O CON UN ABOGADO Y ENTREGAR A LA CORTE EN FORMA ESCRITA SUS DEFENSAS O SUS OBJECCIONES A LAS DEMANDAS EN CONTRA DE SU PERSONA. SEA AVISADO QUE SI USTED NO SE DEFENDE, LA CORTE TOMARA MEDIDAS Y PUEDE CONTINUAR LA DEMANDA EN CONTRA SUYA SIN PREVIO AVISO O NOTIFICACION. ADEMÁS, LA CORTE PUEDE DECIDIR A FAVOR DEL DEMANDANTE Y REQUIERE QUE USTED CUMPLA CON TODAS LAS PROVISIONES DE ESTA DEMANDA. USTED PUEDE PERER DINERO O SUS PROPIEDADES U OTROS DERECHOS IMPORTANTES PARA USTED. LIEVA ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA A LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDOS SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Lawyer Reference Center
 One Reading Center
 Philadelphia, PA 19107
 (215) 238-1701

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

ATTORNEY FOR PLAINTIFF

Pedro Santiago
317 East Somerset Street
Philadelphia, PA 19134

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

v.

Commonwealth of Pennsylvania, Department
of Corrections
2520 Lisburn Road
Camp Hill, PA 17001-0598

JUNE TERM, 2007
NO: 921

CIVIL ACTION COMPLAINT

1. Pedro Santiago is an adult individual residing at 317 East Somerset Street, Philadelphia, PA 19134.
2. Defendant, Commonwealth of Pennsylvania, Department of Corrections is a state agency organized and existing under the laws of the Commonwealth of Pennsylvania and the ordinances of the City and County of Philadelphia, with places of business throughout the Commonwealth, as well as the County of Philadelphia, who at all times material herein had a principal business address at 2520 Lisburn Road, Camp Hill, PA 17001.
3. At all times material herein, Defendant, Commonwealth of Pennsylvania, Department of Corrections was acting by and through their agents, servants, workmen and/or employees and/or apparent and/or extensible agents, servants, workmen and/or employees, who were acting in the course of their employment and within the scope of their authority.

4. At all times material herein Defendant, Commonwealth of Pennsylvania, Department of Corrections owned, controlled, managed, possessed and/or maintained detention facilities throughout the Commonwealth of Pennsylvania, including Quehanna Boot Camp Institution, State Correctional Institute at Houtzdale, State Correctional Institution at Fayette and the State Correctional Institution at Greensburg, all institutions located in the Commonwealth of Pennsylvania.
5. At all times material herein, Defendant, through its agents, knew or should have known of Plaintiff's pre-existing medical condition prior to his assignment for incarceration, including, but not limited, insulin dependent diabetes, which made him far more susceptible to serious injuries in the event of a minor injury to his lower extremities.
6. Notwithstanding the above, in or about June of 2005, Plaintiff, Pedro Santiago was placed by Defendant as an inmate in the Quehanna Boot Camp, where he was required, as part of his "rehabilitation", to actively and aggressively participate in a military boot camp like setting, where supervised vigorous exercise was mandatory.
7. On or about June or July 2005, while Plaintiff was participating in a supervised exercise activity at the boot camp, he was caused to sustain a left lower leg injury, for which he had to rely upon Defendant's agents or extensible agents for proper medical treatment.
8. Subsequently, Plaintiff had to rely upon the treatment of the nurse on duty at the Quehanna Boot Camp to address his left leg injury. Despite following said treatment on his left lower leg and foot, the injury became very swollen and infected.
9. Subsequent, in a desperate attempt to address Plaintiff's injured left lower leg and foot, he was transferred to medical facilities at the State Correctional Institute at Houtzdale, the State Correctional Institute at Fayette, and the State Correctional Institute at Greensburg. Despite the "treatment" afforded the Plaintiff at these institutions, his injuries only worsened.

10. Subsequent, in or around July 2006, after Plaintiff had been discharged by Defendant to a halfway house, he was able to secure treatment from an outside facility as a result of which he underwent emergency surgery in the form of surgical excision of the 5th metatarsal bone impacted by the infection. Due to the severity of the infection, his treating surgeon also contemplated amputating digits 4 and 5 of the left foot, which surgery still remains available to Plaintiff to address conditions caused by the Defendant's negligence.

COUNT I

Pedro Santiago

**v. Commonwealth of Pennsylvania,
Department of Corrections**

11. Plaintiff, Pedro Santiago, incorporates by reference the allegations contained in paragraphs 1 through 10 above, as if same were set forth herein at length.

12. The carelessness, recklessness and/or negligence of the Defendant, Commonwealth of Pennsylvania, Department of Corrections, by and through their agents, servants, workmen and/or employees, consisted, *inter alia* of the following:

- a. Failing to take into account Plaintiff's prior medical condition before deciding to place him at the Quehanna Boot Camp, where supervised vigorous exercise was part of the required regimen for rehabilitation, and lower extremity injuries was foreseeable;
- b. Negligently, carelessly and/or recklessly failing to properly monitor Plaintiff's participation in the exercise program at the Quehanna Boot Camp to prevent foreseeable injuries;
- c. Ordering Plaintiff to aggressively perform exercises in close quarters where an injury to a lower extremity is highly foreseeable, despite knowledge of his pre-existing medical condition;

~~Otherwise failing to exercise due and proper care under the circumstances.~~ *stricken*

~~As otherwise may be shown through discovery or at the trial on this case.~~

13. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant set forth hereinabove, the Plaintiff, Pedro Santiago has sustained permanent injuries, including, but not limited to traumatic infection of the left leg and foot, requiring resection of the 5th metatarsal joint, and possible amputation of digits 4 and 5 of the left foot, chronic and progressive osteomyelitis of the left foot and exacerbation to pre-existing degenerative conditions of the foot and ankle, gait abnormalities related to the aforesaid injuries to the left foot and other injuries, the full extent of which is not yet known. The Plaintiff believes and therefore avers that he injuries are permanent in nature.

14. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant as set forth hereinabove, the Plaintiff, Pedro Santiago has incurred and continues to incur financial expenses for medicine and medical care, in order to effectuate a cure for the aforementioned injuries, and may be compelled to expend sums of money for the same purposes in the future and for the rest of his life.

15. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant as set forth hereinabove, the Plaintiff, Pedro Santiago had undergone and is undergoing great physical pain and mental anguish, and may continue to endure same for an indefinite period of time in the future, and for the rest of his life, all to his great detriment and loss.

16. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant set forth hereinabove, the Plaintiff, Pedro Santiago has suffered a loss of the enjoyment of life's pleasures, and may continue to suffer such losses in the future, all to his great detriment and loss.

17. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant as set forth hereinabove, the Plaintiff, Pedro Santiago has been unable to attend to his daily chores, duties and activities, resulting in losses, including loss of earnings and earnings power, which losses may continue for an indefinite period of time into the future, to his great detriment and loss.

WHEREFORE, the Plaintiff, Pedro Santiago claims damages from the Defendant in an amount in excess of Fifty Thousand (\$50,000) Dollars.

COUNT I

Pedro Santiago

v. **Commonwealth of Pennsylvania,
Department of Corrections**

18. Plaintiff, Pedro Santiago, incorporates by reference the allegations contained in paragraphs 1 through 17 above, as if same were set forth herein at length.
19. Defendant has a duty and responsibility to its patients and inmates to furnish appropriate and competent medical care in situations such as that presented by the Plaintiff herein.
20. As part of its duties and responsibilities, Defendant has an obligation to establish appropriate policies and procedures, and have competent medical people who will guarantee the quality of medical practice which is conducted within institutions under the ownership and control of the Defendant.
21. The negligence, carelessness and/or recklessness of the Defendant, Commonwealth of Pennsylvania, Department of Corrections, by and through its agents, servants, workmen and/or employees, and/or those who appear to have been its agents, servants, workmen and/or employees, consisted, inter alia, the following:

- a. Untimely, improper, inadequate and/or negligent medical care at the aforesaid premises during the time that Plaintiff, Pedro Santiago was treated.

b. Failing to direct or require the attention or advice and instructions of qualified specialists for the diagnosis, evaluation and treatment of the condition of the Plaintiff, Pedro Santiago, which developed while incarcerated at Defendant's institutions;

c. Failing to have present competent medical personnel to monitor, diagnose and treat Plaintiff's condition promptly, and to competently and/or adequately monitor all follow up treatment to properly address the progress of Plaintiff's injuries caused while incarcerated at Defendant's institution.

d. Failing to monitor all acts of its physicians, nurses and/or other agents, servants and/or employees during Plaintiff's incarceration and treatment.

e. Being otherwise negligent, careless or reckless under the circumstances.

f. Being otherwise negligent, careless and reckless as may be shown through the course of discovery or at the time of trial.

22. As a result of the aforesaid actions, the Plaintiff has been caused to sustain severe and permanent injuries as aforesaid.

WHEREFORE, Plaintiff, Pedro Santiago demands damages of Defendant in an amount in excess of \$50,000.00.

RESPECTFULLY SUBMITTED,
BROWNSTEIN VITALE & WEISS, P.C.

By: Gary Brownstein, Esquire
Attorney for Plaintiff

VERIFICATION

Pilar Santiago, hereby states that he/she is the Plaintiff in this action and verifies that the statements made in the foregoing are true and correct to the best of her knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties relating to the unsworn falsification to authorities.

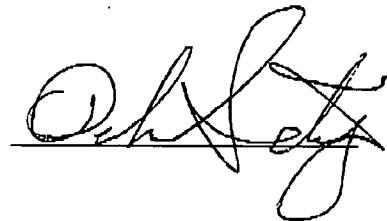
DATED: 7-3-07A handwritten signature in black ink, appearing to read "Pilar Santiago". The signature is fluid and cursive, with "Pilar" on the top line and "Santiago" on the bottom line.

EXHIBIT "B"

PEDRO SANTIAGO
vs.
DEPARTMENT OF CORRECTIONS
COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
JUNE TERM, 2007
NO. 0921

082239

AND NOW, this

26⁺

day of Sept, 2007

, upon consideration of

the Preliminary Objections of the Commonwealth Defendant and responses thereto, it is hereby
ORDERED and **DECREED** that: 1) said Preliminary Objections are **SUSTAINED** and that venue
in this action is transferred to the Court of Common Pleas of Clearfield County; 2) that Plaintiff is to
effectuate the transfer of this case within twenty (20) days hereof, with all expenses for such transfer
to be borne by plaintiff pursuant to Pa. R.C.P. 1006(e), including the transfer fee and filing fees
required by Clearfield County, or risk the imposition of the sanction of Non Pros for failure to
comply; 3) that Subparagraphs (b), (c), and (d) of Paragraph 21 of Plaintiff's Complaint are
dismissed for failing to state a claim upon which relief can be granted; and 4) that Subparagraphs (d)
and (e) of Paragraph 12, and Subparagraphs (e) and (f) of Paragraph 21 shall be stricken for failing to
conform to rule of court.

DOCKETED
COMPLEX LIT CENTER

SEP 27 2007

BY THE COURT:

J. STEWART

T. Stewart

J.

COPIES SENT
PURSUANT TO Pa.R.C.P. 236(b)
SEP 27 2007
FIRST JUDICIAL DISTRICT OF PA
USER I.D.: 1

OCT 24 2007
JOSEPH H. EVERIS
PROTECTOR OF PHILADELPHIA COUNTY
Joseph H. Everis

EXHIBIT “C”

Date: 3/5/2008
Time: 02:39 PM
Page 1 of 1

Clearfield County Court of Common Pleas
ROA Report
Case: 2007-01731-CD
Current Judge: No Judge
Pedro Santiago vs. Commonwealth of Pennsylvania

User: BHUDSON

Civil Other-COUNT

Date		Judge
10/25/2007	New Case Filed. Case Transferred from Philadelphia County, Case Number 070600921. Filing fee of \$70.00 billed to Attorney Gary Brownstein.	No Judge
11/5/2007	Filing: Civil Complaint - Transfer from Another County Paid by: Brownstein, Gary Esq (attorney for Santiago, Pedro) Receipt number: 1921327 Dated: 11/05/2007 Amount: \$70.00 (Check)	No Judge
1/22/2008	Certificate of Merit, filed by Atty. Brownstein 1 Cert. to Atty.	No Judge
2/29/2008	Filing: Praecipe to enter Default Judgment Paid by: Brownstein Vitale & Weiss, P.C. Receipt number: 1922876 Dated: 2/29/2008 Amount: \$20.00 (Check) Judgment by Default entered against the Defendant with damages to be assessed at a later date. Cert. copy of Praecipe with notice to Defendant and Atty. Geer.	No Judge

EXHIBIT "D"

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
EASTERN REGIONAL OFFICE
BY: RICHARD C. GEER
DEPUTY ATTORNEY GENERAL
IDENTIFICATION NO. 78624
21 South 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
Telephone: (215) 560-2966

Attorney for:
Commonwealth Defendant

To the within named defendant-plaintiff
You are hereby notified,
A) to plead to the within
matter within 20 days from service hereof
B) that the within matter is a true and correct
copy of the original on file
C) that a jury trial by 12 members is demanded
D) that judgment may be entered against you if you
do not plead within 20 days

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
TORT LITIGATION UNIT
By: 

PEDRO SANTIAGO)	COURT OF COMMON PLEAS
)	CLEARFIELD COUNTY
VS.)	
)	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF CORRECTIONS)	NO. 2007-1731-CD

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

And now comes the Commonwealth Defendant, by and through the Office of Attorney General, and hereby files the following Answer to Plaintiff's Complaint:

1. Denied. After reasonable investigation, the Commonwealth Defendant is without sufficient knowledge or information to form a belief as to the truth of these averments.
2. Admitted in part. Denied in part. It is admitted only that the Commonwealth Defendant is an agency of the Commonwealth of Pennsylvania and maintains an office at the address set forth in Plaintiff's Complaint. The remaining allegations set forth in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of this paragraph could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial.

3-10. The allegations set forth in these paragraphs of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of this paragraph could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial. By way of further denial, the Commonwealth Defendant does not own the situs of the incident or the instrumentalities involved therein. Strict proof thereof is demanded at the time of trial. Moreover, it is specifically denied that any agency relationship existed between the Commonwealth Defendant and those alleged to be agents, servants, workmen and/or employees of the Commonwealth Defendant. Furthermore, it is specifically denied that Commonwealth Defendant, and/or any of its agents, servants, workmen and/or employees, were in any fashion or manner negligent with respect to the instant cause of action. Also, the incident was not the result of the acts or omissions of the Commonwealth Defendant's agents, servants or employees. The Commonwealth Defendant did not have notice, written or otherwise, of the allegedly dangerous condition, or in the alternative, if said notice was received, it was not received in sufficient time prior to the alleged accident for the Commonwealth Defendant to have corrected or to have warned the traveling public of the allegedly dangerous condition. Furthermore, it is specifically denied that any alleged damages, injuries and/or losses were caused by any negligence or carelessness on the part of the Commonwealth Defendant and/or any of its agents, servants, workmen and/or employees.

COUNT I

Pedro Santiago

v.

**Commonwealth of Pennsylvania,
Department of Corrections**

11. The Commonwealth Defendant incorporates herein by reference its answers to paragraphs 1 through 10 of Plaintiff's Complaint as though fully set forth herein at length.

12. (a-c) Denied. The allegations set forth in paragraph 12 of Plaintiff's Complaint,

including subparts (a) through (c), constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of paragraph 12 could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial. In further response to paragraph 6 of Plaintiff's Complaint, it is specifically denied that Commonwealth Defendant, and/or any of its agents, servants, workmen and/or employees, were in any fashion or manner negligent with respect to the instant cause of action. Furthermore, it is specifically denied that any alleged damages, injuries and/or losses were caused by any negligence or carelessness on the part of the Commonwealth Defendant and/or any of their agents, servants, workmen and/or employees.

(d) Stricken by September 26, 2007 Order of Court. No response required.

(e) Stricken by September 26, 2007 Order of Court. No response required.

13-17. The allegations set forth in these paragraphs of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of this paragraph could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial. By way of further denial, the Commonwealth Defendant does not own the situs of the incident or the instrumentalities involved therein. Strict proof thereof is demanded at the time of trial. Moreover, it is specifically denied that any agency relationship existed between the Commonwealth Defendant and those alleged to be agents, servants, workmen and/or employees of the Commonwealth Defendant. Furthermore, it is specifically denied that Commonwealth Defendant, and/or any of its agents, servants, workmen and/or employees, were in any fashion or manner negligent with respect to the instant cause of action. Also, the incident was not the result of the acts or omissions of the Commonwealth Defendant's agents, servants or employees. The Commonwealth Defendant did not have notice, written or otherwise, of the allegedly dangerous condition, or in the alternative, if said notice was received,

it was not received in sufficient time prior to the alleged accident for the Commonwealth Defendant to have corrected or to have warned the traveling public of the allegedly dangerous condition. Furthermore, it is specifically denied that any alleged damages, injuries and/or losses were caused by any negligence or carelessness on the part of the Commonwealth Defendant and/or any of their agents, servants, workmen and/or employees.

COUNT I (sic)

Pedro Santiago v. **Commonwealth of Pennsylvania,
Department of Corrections**

18. The Commonwealth Defendant incorporates herein by reference its answers to paragraphs 1 through 17 of Plaintiff's Complaint as though fully set forth herein at length.

19-20. The allegations set forth in these paragraphs of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of this paragraph could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial. By way of further denial, the Commonwealth Defendant does not own the situs of the incident or the instrumentalities involved therein. Strict proof thereof is demanded at the time of trial. Moreover, it is specifically denied that any agency relationship existed between the Commonwealth Defendant and those alleged to be agents, servants, workmen and/or employees of the Commonwealth Defendant. Furthermore, it is specifically denied that Commonwealth Defendant, and/or any of its agents, servants, workmen and/or employees, were in any fashion or manner negligent with respect to the instant cause of action. Also, the incident was not the result of the acts or omissions of the Commonwealth Defendant's agents, servants or employees. The Commonwealth Defendant did not have notice, written or otherwise, of the allegedly dangerous condition, or in the alternative, if said notice was received, it was not received in sufficient time prior to the alleged accident for the Commonwealth

Defendant to have corrected or to have warned the traveling public of the allegedly dangerous condition. Furthermore, it is specifically denied that any alleged damages, injuries and/or losses were caused by any negligence or carelessness on the part of the Commonwealth Defendant and/or any of their agents, servants, workmen and/or employees.

21. (a) The allegations set forth in paragraph 21 of Plaintiff's Complaint, including subpart (a), constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of paragraph 21 could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial. In further response to paragraph 6 of Plaintiff's Complaint, it is specifically denied that Commonwealth Defendant, and/or any of its agents, servants, workmen and/or employees, were in any fashion or manner negligent with respect to the instant cause of action. Furthermore, it is specifically denied that any alleged damages, injuries and/or losses were caused by any negligence or carelessness on the part of the Commonwealth Defendant and/or any of their agents, servants, workmen and/or employees.

(b) Stricken by September 26, 2007 Order of Court. No response required.

(c) Stricken by September 26, 2007 Order of Court. No response required.

(d) Stricken by September 26, 2007 Order of Court. No response required.

(e) Stricken by September 26, 2007 Order of Court. No response required.

(f) Stricken by September 26, 2007 Order of Court. No response required.

22. The allegations set forth in these paragraphs of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of this paragraph could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial. By way of further denial, the Commonwealth Defendant does not own the situs of the incident or the instrumentalities involved therein. Strict proof thereof is

demanded at the time of trial. Moreover, it is specifically denied that any agency relationship existed between the Commonwealth Defendant and those alleged to be agents, servants, workmen and/or employees of the Commonwealth Defendant. Furthermore, it is specifically denied that Commonwealth Defendant, and/or any of its agents, servants, workmen and/or employees, were in any fashion or manner negligent with respect to the instant cause of action. Also, the incident was not the result of the acts or omissions of the Commonwealth Defendant's agents, servants or employees. The Commonwealth Defendant did not have notice, written or otherwise, of the allegedly dangerous condition, or in the alternative, if said notice was received, it was not received in sufficient time prior to the alleged accident for the Commonwealth Defendant to have corrected or to have warned the traveling public of the allegedly dangerous condition. Furthermore, it is specifically denied that any alleged damages, injuries and/or losses were caused by any negligence or carelessness on the part of the Commonwealth Defendant and/or any of their agents, servants, workmen and/or employees.

WHEREFORE, the Commonwealth Defendant demands judgment in its favor.

NEW MATTER

23. The Commonwealth Defendant incorporates herein by reference its answers to paragraphs 1 through 22 of Plaintiff's Complaint as though fully set forth herein at length.

24. The present action is controlled by the provisions of 1 Pa. C.S. §.2310 and Act No. 1980-142, set forth in 42 Pa. C.S. §. 8501, et seq., which Acts are incorporated herein and pled by reference. The Commonwealth Defendant asserts all the defenses contained therein.

25. The Commonwealth Defendant did not have notice, written or otherwise, of the allegedly dangerous condition, or in the alternative, if said notice was received, it was not received in sufficient time prior to the alleged accident for the Commonwealth Defendant to have corrected or to have warned the traveling public of the allegedly dangerous condition.

26. The Commonwealth Defendant has immunity for any claims premised upon theories of

apparent or ostensible agency and/or corporate liability, as immunity has not been waived for either of these classes of claims.

27. There is no cause of action based upon a failure to inspect or improper inspection in that sovereign immunity has not been waived for such claims.

28. The Commonwealth Defendant is immune from suit pursuant to 1 Pa. C.S § 2310, and this action is not within any of the exceptions to immunity as set forth in 42 Pa. C.S § 8522, and therefore this action is barred.

29. The Commonwealth Defendant is immune from claims grounded upon negligence of independent contractors.

30. The location of the alleged accident is not under the jurisdiction or control of the Commonwealth Defendant, and as such, the Commonwealth is not responsible for said situs.

31. The accident situs was not owned, possessed or controlled by the Defendant, and the Defendant owed no duty to keep and maintain the accident situs in a reasonably safe condition.

32. The Commonwealth Defendant maintains that it cannot be sued for discretionary functions, and therefore these causes of action are barred.

33. The Commonwealth Defendant has no duty with respect to the Plaintiff.

34. Should liability be found on the part of the Commonwealth Defendant, the amounts and types of damages recoverable in the present action are limited and controlled by 42 Pa. C.S. § 8528.

35. This action is barred by the applicable statute of limitations.

36. The Judicial Code at 42 Pa.C.S. § 5522(a), which section is incorporated herein and pled by reference, provides that the Commonwealth and the Attorney General must have received written notice of intent to sue within six (6) months from the date the cause of action accrues. In the absence of such notice, this action is barred.

37. This action is barred by the doctrines of res judicata and/or collateral estoppel.

38. The alleged conduct of the Commonwealth Defendant, standing alone, did not cause the

Plaintiff's harm; therefore, the Commonwealth Defendant cannot be held liable for the Plaintiff's alleged injuries.

39. If the accident occurred as alleged, then the condition complained of did not cause the accident or the injuries complained of.

40. Plaintiff's injuries, as alleged, were caused by other persons or parties which were contributory and/or intervening, superseding causes of Plaintiff's alleged injuries.

41. The Commonwealth Defendant may not be held responsible for injuries incurred by third parties which were allegedly caused by the acts of another.

42. The Commonwealth Defendant avers that if negligence is found to exist on its part, said negligence was not the proximate cause of Plaintiff's injuries.

43. If the accident occurred as alleged, then the condition complained of did not create a reasonably foreseeable risk of the accident or the injuries complained of.

44. The Commonwealth Defendant is absolved from liability because any negligence alleged on its part merely facilitated the Plaintiff's injuries.

45. The Plaintiff's injuries were caused by the intentional and/or reckless acts of third persons or parties, and the Commonwealth Defendant cannot be held jointly liable with said persons or parties based upon mere negligence, which negligence is nevertheless denied.

46. Plaintiff's knowing and conscious assumption of the risk led to the resulting injuries and is a bar to recovery.

47. The Plaintiff was contributorily negligent and/or failed to mitigate the claimed damages, thereby limiting and/or barring any recovery.

48. The causal negligence of the Plaintiff is greater than any negligence on the part of the Commonwealth Defendant, and Plaintiff's recovery is therefore barred, or, in the alternative, must be

diminished in accordance with the Pennsylvania Comparative Negligence Act.

49. Plaintiff is barred from recovery by reason of the fact that her conduct was reckless and wanton under the circumstances then and there existing.

50. The causal negligence of the Plaintiff included, without limitation, the following:

- (a) Failing to carefully exercise;
- (b) Inattentively exercising on the premises;

51. The causal negligence of the Plaintiff is greater than any negligence on the part of the Commonwealth Defendant, or the combined negligence of the Defendant, and therefore Plaintiff's recovery is barred pursuant to 42 Pa. C.S § 7102; in the alternative, any recovery must be diminished in accordance with the Pennsylvania Comparative Negligence Act.

52. The causal negligence of each and all other Defendant is asserted and requires that any recovery against the Commonwealth Defendant be diminished in accordance with the Pennsylvania Comparative Negligence Act.

53. If the Plaintiff is entitled to recover for any or all of the damages set forth in the Complaint, which is specifically denied, then the responsibility for said damages rests with persons over whom the responding Defendant has no control and for whom the responding Defendant is not legally responsible.

WHEREFORE, the Commonwealth Defendant demands judgment in its favor.

THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

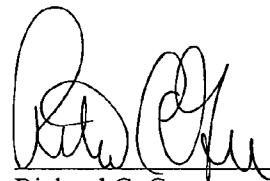
By:



RICHARD C. GEER
DEPUTY ATTORNEY GENERAL

VERIFICATION
PURSUANT TO PA. R.C.P. NO. 1024(c)

RICHARD C. GEER hereby states that he is the Attorney for the party filing the foregoing document; that he makes this verification as an attorney because the party he represents lacks sufficient knowledge or information upon which to make a verification and/or because he has greater personal knowledge of the information and belief than that of the party for whom he makes this verification; and/or because the party for whom he makes this verification for is outside the jurisdiction of the Court and verification cannot be obtained within the time allowed for the filing of the pleading; and that he has sufficient knowledge or information and belief, based upon his investigation of the matters averred or denied in the foregoing document; and that this statement is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



Richard C. Geer
Deputy Attorney General

Dated: March 5, 2008

VERIFICATION
PURSUANT TO PA. R.C.P. NO. 1024(c)

RICHARD C. GEER hereby states that he is the attorney for the party filing the foregoing document; that he makes this verification as an attorney because the party he represents lacks sufficient knowledge or information upon which to make a verification and/or because he has greater personal knowledge of the information and belief than that of the party for whom he makes this verification; and/or because the party for whom he makes this verification for is outside the jurisdiction of the Court and verification cannot be obtained within the time allowed for the filing of the pleading; and that he has sufficient knowledge or information and belief, based upon his investigation of the matters averred or denied in the foregoing document; and that this statement is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



RICHARD C. GEER
Deputy Attorney General

Dated: March 5, 2008

FILED
MARCH 14 2008 NO. 001
cc

BS
William A. Shaw
Prothonotary/Clerk of Courts

PEDRO SANTIAGO : COURT OF COMMON PLEAS
vs. : OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF CORRECTIONS : NO. 07-1731-cd

O R D E R

AND NOW, this day of , 2008
upon consideration of the within Petition of Defendant,
Commonwealth of Pennsylvania, Department of Corrections for
Relief from Judgment by Default pursuant to Pa. R.C.P. 237.3 and
all responses thereto, it is hereby **ORDERED** and **DECREED** that the
PETITION TO OPEN JUDGMENT is **GRANTED**; and

The Judgment by Default entered in favor of the Plaintiff and against defendant, Commonwealth of Pennsylvania, Department of Corrections filed on February 29, 2008, is hereby **OPENED**, and defendant, Commonwealth of Pennsylvania, Department of Corrections is hereby granted leave to leave to file their Answer and New Matter within ten (10) days of the date of this Order.

BY THE COURT:

J.

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

**Clearfield County
Courthouse**

Fax

To: Richard C. Geer, Esq.

From: William A. Shaw

Fax: 215-560-2202

Date: 3/11/08

Phone: 215-560-2966

Pages: 1

Re: 07-1731-CD; Pedro Santiago vs. Dept. of Corrections **CC:**

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

Comments:

On March 11, 2008, your Petition for Relief from Judgment in the above-referenced case was returned to me by the Court Administrator's office. Judge Ammerman has noted that a Rule to Show Cause is required for your Petition to be addressed. Additionally, I would like to bring to your attention that your Verification to the Petition, page 7, is not signed. Please forward to my office a proposed Rule to Show Cause along with a minimum of one copy; please also enclose a signed verification to the Petition.

On March 11, 2008, I phoned your office to inform you of these requirements and reached a voice messaging system. The system indicated that your mailbox was full and did not allow me to leave a voice message. Please acknowledge receipt of this fax by telephoning me at (814) 765-2641, ext. 1330, or by return fax at (814) 765-7659. Please note that your pleadings cannot be submitted by fax but must be received via mail or personal delivery. If you have any questions, please call me at the phone number indicated above. Thank you.

WAP

*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO. 1024
DESTINATION ADDRESS 12155602202
PSWD/SUBADDRESS
DESTINATION ID
ST. TIME 03/11 10:01
USAGE T 00' 14
PGS. 1
RESULT OK

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

**Clearfield County
Courthouse**

Fax

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Re: 07-1731-CD; Pedro Santiago vs. Dept. of Corrections **CC:**

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

Comments:

On March 11, 2008, your Petition for Relief from Judgment in the above-referenced case was returned to me by the Court Administrator's office. Judge Ammerman has noted that a Rule to Show Cause is required for your Petition to be addressed. Additionally, I would like to bring to your attention that your Verification to the Petition, page 7, is not signed. Please forward to my office a proposed Rule to Show Cause along with a minimum of one copy; please also enclose a signed verification to the Petition.

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LA

PEDRO SANTIAGO : COURT OF COMMON PLEAS
vs. : OF CLEARFIELD COUNTY
vs. :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF CORRECTIONS : NO. 07-1731-cd

FILED ^{CC}
01943/04 Atty
MAR 25 2008 Beer
6P

William A. Shaw
Prothonotary/Clerk of Courts

O R D E R

AND NOW, this 18 day of March, 2008
upon consideration of the within Petition of Defendant,
Commonwealth of Pennsylvania, Department of Corrections for
Relief from Judgment by Default pursuant to Pa. R.C.P. 237.3, it
is hereby **ORDERED** that

- (1) a rule is issued upon the respondent to show
cause why the petitioner is not entitled to the relief
requested;
- (2) the respondent shall file an answer to the
petition within twenty days of service upon the respondent;
- (3) the petition shall be decided under Pa.R.C.P.
206.7;
- (4) the argument shall be held on April 22, 2008 at 11:30 A.M.
in Courtroom 1 of the Clearfield County Courthouse; and
- (5) notice of the entry of this order shall be
provided to all parties by the petitioner.

NOTICE

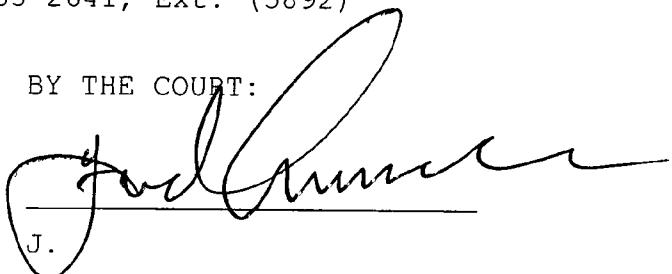
A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF
YOU WISH TO DEFEND AGAINST THE MATTERS SET FORTH IN THE
FOLLOWING PETITION, YOU MUST ENTER A WRITTEN APPEARANCE
PERSONALLY OR BY ATTORNEY AND FILE AN ANSWER IN WRITING WITH THE
PROTHONOTARY SETTING FORTH YOUR DEFENSES OR OBJECTIONS TO THE
MATTER SET FORTH AGAINST YOU AND SERVE A COPY ON THE ATTORNEY OR
PERSON FILING THE PETITION. YOU ARE WARNED THAT IF YOU FAIL TO

DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR THE RELIEF REQUESTED BY THE PETITIONER. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. (5892)

BY THE COURT:



J. Paul Turner

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
EASTERN REGIONAL OFFICE
BY: RICHARD C. GEER
DEPUTY ATTORNEY GENERAL
IDENTIFICATION NO. 78624
21 South 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
Telephone: (215) 560-2966

Attorney for:
Commonwealth Defendant

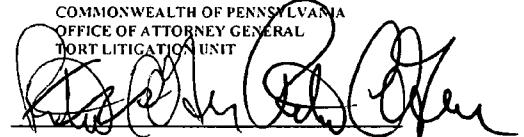
To the within named defendant-plaintiff

You are hereby notified,

- A) to plead to the within matter within 20 days from service hereof
- B) that the within matter is a true and correct copy of the original on file
- C) that a jury trial by 12 members is demanded
- D) that judgment may be entered against you if you do not plead within 20 days

FILED *Fm*

APR 22 2008
01/11:50 PM
William A. Shaw
Prothonotary/Clerk of Courts
No. 4/C

By: 

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
TORT LITIGATION UNIT

PEDRO SANTIAGO)	COURT OF COMMON PLEAS
)	CLEARFIELD COUNTY
VS.)	
)	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF CORRECTIONS)	NO. 2007-1731-CD

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

And now comes the Commonwealth Defendant, by and through the Office of Attorney General, and hereby files the following Answer to Plaintiff's Complaint:

1. Denied. After reasonable investigation, the Commonwealth Defendant is without sufficient knowledge or information to form a belief as to the truth of these averments.
2. Admitted in part. Denied in part. It is admitted only that the Commonwealth Defendant is an agency of the Commonwealth of Pennsylvania and maintains an office at the address set forth in Plaintiff's Complaint. The remaining allegations set forth in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of this paragraph could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial.

3-10. The allegations set forth in these paragraphs of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of this paragraph could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial. By way of further denial, the Commonwealth Defendant does not own the situs of the incident or the instrumentalities involved therein. Strict proof thereof is demanded at the time of trial. Moreover, it is specifically denied that any agency relationship existed between the Commonwealth Defendant and those alleged to be agents, servants, workmen and/or employees of the Commonwealth Defendant. Furthermore, it is specifically denied that Commonwealth Defendant, and/or any of its agents, servants, workmen and/or employees, were in any fashion or manner negligent with respect to the instant cause of action. Also, the incident was not the result of the acts or omissions of the Commonwealth Defendant's agents, servants or employees. The Commonwealth Defendant did not have notice, written or otherwise, of the allegedly dangerous condition, or in the alternative, if said notice was received, it was not received in sufficient time prior to the alleged accident for the Commonwealth Defendant to have corrected or to have warned the traveling public of the allegedly dangerous condition. Furthermore, it is specifically denied that any alleged damages, injuries and/or losses were caused by any negligence or carelessness on the part of the Commonwealth Defendant and/or any of its agents, servants, workmen and/or employees.

COUNT I

Pedro Santiago

v.

**Commonwealth of Pennsylvania,
Department of Corrections**

11. The Commonwealth Defendant incorporates herein by reference its answers to paragraphs 1 through 10 of Plaintiff's Complaint as though fully set forth herein at length.
12. (a-c) Denied. The allegations set forth in paragraph 12 of Plaintiff's Complaint,

including subparts (a) through (c), constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of paragraph 12 could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial. In further response to paragraph 6 of Plaintiff's Complaint, it is specifically denied that Commonwealth Defendant, and/or any of its agents, servants, workmen and/or employees, were in any fashion or manner negligent with respect to the instant cause of action. Furthermore, it is specifically denied that any alleged damages, injuries and/or losses were caused by any negligence or carelessness on the part of the Commonwealth Defendant and/or any of their agents, servants, workmen and/or employees.

(d) Stricken by September 26, 2007 Order of Court. No response required.

(e) Stricken by September 26, 2007 Order of Court. No response required.

13-17. The allegations set forth in these paragraphs of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of this paragraph could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial. By way of further denial, the Commonwealth Defendant does not own the situs of the incident or the instrumentalities involved therein. Strict proof thereof is demanded at the time of trial. Moreover, it is specifically denied that any agency relationship existed between the Commonwealth Defendant and those alleged to be agents, servants, workmen and/or employees of the Commonwealth Defendant. Furthermore, it is specifically denied that Commonwealth Defendant, and/or any of its agents, servants, workmen and/or employees, were in any fashion or manner negligent with respect to the instant cause of action. Also, the incident was not the result of the acts or omissions of the Commonwealth Defendant's agents, servants or employees. The Commonwealth Defendant did not have notice, written or otherwise, of the allegedly dangerous condition, or in the alternative, if said notice was received,

it was not received in sufficient time prior to the alleged accident for the Commonwealth Defendant to have corrected or to have warned the traveling public of the allegedly dangerous condition. Furthermore, it is specifically denied that any alleged damages, injuries and/or losses were caused by any negligence or carelessness on the part of the Commonwealth Defendant and/or any of their agents, servants, workmen and/or employees.

COUNT I (sic)

Pedro Santiago v. **Commonwealth of Pennsylvania,
Department of Corrections**

18. The Commonwealth Defendant incorporates herein by reference its answers to paragraphs 1 through 17 of Plaintiff's Complaint as though fully set forth herein at length.

19-20. The allegations set forth in these paragraphs of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of this paragraph could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial. By way of further denial, the Commonwealth Defendant does not own the situs of the incident or the instrumentalities involved therein. Strict proof thereof is demanded at the time of trial. Moreover, it is specifically denied that any agency relationship existed between the Commonwealth Defendant and those alleged to be agents, servants, workmen and/or employees of the Commonwealth Defendant. Furthermore, it is specifically denied that Commonwealth Defendant, and/or any of its agents, servants, workmen and/or employees, were in any fashion or manner negligent with respect to the instant cause of action. Also, the incident was not the result of the acts or omissions of the Commonwealth Defendant's agents, servants or employees. The Commonwealth Defendant did not have notice, written or otherwise, of the allegedly dangerous condition, or in the alternative, if said notice was received, it was not received in sufficient time prior to the alleged accident for the Commonwealth

Defendant to have corrected or to have warned the traveling public of the allegedly dangerous condition. Furthermore, it is specifically denied that any alleged damages, injuries and/or losses were caused by any negligence or carelessness on the part of the Commonwealth Defendant and/or any of their agents, servants, workmen and/or employees.

21. (a) The allegations set forth in paragraph 21 of Plaintiff's Complaint, including subpart (a), constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of paragraph 21 could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial. In further response to paragraph 6 of Plaintiff's Complaint, it is specifically denied that Commonwealth Defendant, and/or any of its agents, servants, workmen and/or employees, were in any fashion or manner negligent with respect to the instant cause of action. Furthermore, it is specifically denied that any alleged damages, injuries and/or losses were caused by any negligence or carelessness on the part of the Commonwealth Defendant and/or any of their agents, servants, workmen and/or employees.

- (b) Stricken by September 26, 2007 Order of Court. No response required.
- (c) Stricken by September 26, 2007 Order of Court. No response required.
- (d) Stricken by September 26, 2007 Order of Court. No response required.
- (e) Stricken by September 26, 2007 Order of Court. No response required.
- (f) Stricken by September 26, 2007 Order of Court. No response required.

22. The allegations set forth in these paragraphs of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of this paragraph could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial. By way of further denial, the Commonwealth Defendant does not own the situs of the incident or the instrumentalities involved therein. Strict proof thereof is

demanded at the time of trial. Moreover, it is specifically denied that any agency relationship existed between the Commonwealth Defendant and those alleged to be agents, servants, workmen and/or employees of the Commonwealth Defendant. Furthermore, it is specifically denied that Commonwealth Defendant, and/or any of its agents, servants, workmen and/or employees, were in any fashion or manner negligent with respect to the instant cause of action. Also, the incident was not the result of the acts or omissions of the Commonwealth Defendant's agents, servants or employees. The Commonwealth Defendant did not have notice, written or otherwise, of the allegedly dangerous condition, or in the alternative, if said notice was received, it was not received in sufficient time prior to the alleged accident for the Commonwealth Defendant to have corrected or to have warned the traveling public of the allegedly dangerous condition. Furthermore, it is specifically denied that any alleged damages, injuries and/or losses were caused by any negligence or carelessness on the part of the Commonwealth Defendant and/or any of their agents, servants, workmen and/or employees.

WHEREFORE, the Commonwealth Defendant demands judgment in its favor.

NEW MATTER

23. The Commonwealth Defendant incorporates herein by reference its answers to paragraphs 1 through 22 of Plaintiff's Complaint as though fully set forth herein at length.

24. The present action is controlled by the provisions of 1 Pa. C.S. §. 2310 and Act No. 1980-142, set forth in 42 Pa. C.S. §. 8501, et seq., which Acts are incorporated herein and pled by reference. The Commonwealth Defendant asserts all the defenses contained therein.

25. The Commonwealth Defendant did not have notice, written or otherwise, of the allegedly dangerous condition, or in the alternative, if said notice was received, it was not received in sufficient time prior to the alleged accident for the Commonwealth Defendant to have corrected or to have warned the traveling public of the allegedly dangerous condition.

26. The Commonwealth Defendant has immunity for any claims premised upon theories of

apparent or ostensible agency and/or corporate liability, as immunity has not been waived for either of these classes of claims.

27. There is no cause of action based upon a failure to inspect or improper inspection in that sovereign immunity has not been waived for such claims.

28. The Commonwealth Defendant is immune from suit pursuant to 1 Pa. C.S § 2310, and this action is not within any of the exceptions to immunity as set forth in 42 Pa. C.S § 8522, and therefore this action is barred.

29. The Commonwealth Defendant is immune from claims grounded upon negligence of independent contractors.

30. The location of the alleged accident is not under the jurisdiction or control of the Commonwealth Defendant, and as such, the Commonwealth is not responsible for said situs.

31. The accident situs was not owned, possessed or controlled by the Defendant, and the Defendant owed no duty to keep and maintain the accident situs in a reasonably safe condition.

32. The Commonwealth Defendant maintains that it cannot be sued for discretionary functions, and therefore these causes of action are barred.

33. The Commonwealth Defendant has no duty with respect to the Plaintiff.

34. Should liability be found on the part of the Commonwealth Defendant, the amounts and types of damages recoverable in the present action are limited and controlled by 42 Pa. C.S. § 8528.

35. This action is barred by the applicable statute of limitations.

36. The Judicial Code at 42 Pa.C.S. §5522(a), which section is incorporated herein and pled by reference, provides that the Commonwealth and the Attorney General must have received written notice of intent to sue within six (6) months from the date the cause of action accrues. In the absence of such notice, this action is barred.

37. This action is barred by the doctrines of res judicata and/or collateral estoppel.

38. The alleged conduct of the Commonwealth Defendant, standing alone, did not cause the

Plaintiff's harm; therefore, the Commonwealth Defendant cannot be held liable for the Plaintiff's alleged injuries.

39. If the accident occurred as alleged, then the condition complained of did not cause the accident or the injuries complained of.

40. Plaintiff's injuries, as alleged, were caused by other persons or parties which were contributory and/or intervening, superseding causes of Plaintiff's alleged injuries.

41. The Commonwealth Defendant may not be held responsible for injuries incurred by third parties which were allegedly caused by the acts of another.

42. The Commonwealth Defendant avers that if negligence is found to exist on its part, said negligence was not the proximate cause of Plaintiff's injuries.

43. If the accident occurred as alleged, then the condition complained of did not create a reasonably foreseeable risk of the accident or the injuries complained of.

44. The Commonwealth Defendant is absolved from liability because any negligence alleged on its part merely facilitated the Plaintiff's injuries.

45. The Plaintiff's injuries were caused by the intentional and/or reckless acts of third persons or parties, and the Commonwealth Defendant cannot be held jointly liable with said persons or parties based upon mere negligence, which negligence is nevertheless denied.

46. Plaintiff's knowing and conscious assumption of the risk led to the resulting injuries and is a bar to recovery.

47. The Plaintiff was contributorily negligent and/or failed to mitigate the claimed damages, thereby limiting and/or barring any recovery.

48. The causal negligence of the Plaintiff is greater than any negligence on the part of the Commonwealth Defendant, and Plaintiff's recovery is therefore barred, or, in the alternative, must be

diminished in accordance with the Pennsylvania Comparative Negligence Act.

49. Plaintiff is barred from recovery by reason of the fact that her conduct was reckless and wanton under the circumstances then and there existing.

50. The causal negligence of the Plaintiff included, without limitation, the following:

- (a) Failing to carefully exercise;
- (b) Inattentively exercising on the premises;

51. The causal negligence of the Plaintiff is greater than any negligence on the part of the Commonwealth Defendant, or the combined negligence of the Defendant, and therefore Plaintiff's recovery is barred pursuant to 42 Pa. C.S. § 7102; in the alternative, any recovery must be diminished in accordance with the Pennsylvania Comparative Negligence Act.

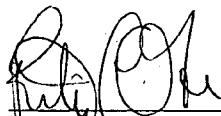
52. The causal negligence of each and all other Defendant is asserted and requires that any recovery against the Commonwealth Defendant be diminished in accordance with the Pennsylvania Comparative Negligence Act.

53. If the Plaintiff is entitled to recover for any or all of the damages set forth in the Complaint, which is specifically denied, then the responsibility for said damages rests with persons over whom the responding Defendant has no control and for whom the responding Defendant is not legally responsible.

WHEREFORE, the Commonwealth Defendant demands judgment in its favor.

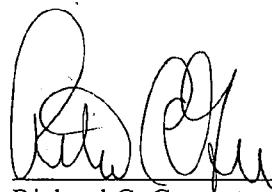
THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

By:


RICHARD C. GEER
DEPUTY ATTORNEY GENERAL

VERIFICATION
PURSUANT TO PA. R.C.P. NO. 1024(c)

RICHARD C. GEER hereby states that he is the Attorney for the party filing the foregoing document; that he makes this verification as an attorney because the party he represents lacks sufficient knowledge or information upon which to make a verification and/or because he has greater personal knowledge of the information and belief than that of the party for whom he makes this verification; and/or because the party for whom he makes this verification for is outside the jurisdiction of the Court and verification cannot be obtained within the time allowed for the filing of the pleading; and that he has sufficient knowledge or information and belief, based upon his investigation of the matters averred or denied in the foregoing document; and that this statement is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



Richard C. Geer
Deputy Attorney General

Dated: March 5, 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PEDRO SANTIAGO

VS. : NO. 07-1731-CD

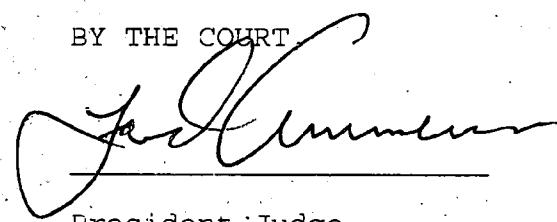
COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF CORRECTIONS

ORDER

AND NOW, this 22nd day of April, 2008, this being the date set for hearing on the Defendant's Motion for Relief of Judgment, with the Court noting that counsel for the Plaintiff has failed to appear and did not file an answer to the Petition as required by the Court's Order of March 18, 2008; based upon the Court's review of the record, it is the ORDER of this Court that the Defendant's Motion be and is hereby granted. The judgment entered February 29, 2008, is hereby opened. The Defendant shall file its Answer and New Matter within no more than ten (10) days from this date.

BY THE COURT



President Judge

FILED

acc

04/08/08
AUG 19 2008

Atty's:

Brownstein

Geer

William A. Shaw
Prothonotary/Clerk of Courts

(date received in
Prothonotary's office)

60

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

ATTORNEY FOR PLAINTIFF

Pedro Santiago

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

v.

NO: 2007-1731-cd

**Commonwealth of Pennsylvania, Department
of Corrections**

PLAINTIFF'S REPLY TO NEW MATTER

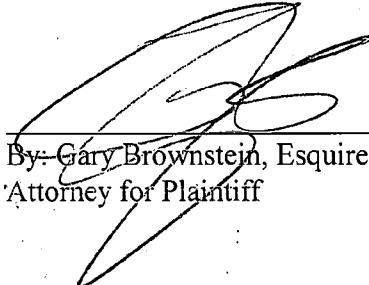
23. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 22 of Plaintiff's Complaint as if same were fully set forth herein at length.
- 24-45. Denied as conclusions of law to which no responsive pleading is required under the Rules of Civil Procedure.
- 46-52. Denied for the same reasons set forth in Paragraphs 24-45 above. By way of further answer, at all times material herein, Plaintiff was proceeding prudently and cautiously, and simply following the directions of the Commonwealth party, through their agents. His actions, at all times material herein, were free from negligence and he could not possibly have assumed the risk of his actions by simply following Defendant's directions, as a matter of law.
53. Denied for the same reasons set forth in paragraphs 24-45 above.

FILED
09/10/2008
SEP 10 2008
NO CC
GR
William A. Shaw
Prothonotary/Clerk of Courts

WHEREFORE, Plaintiff demands Judgment against Defendant in the amount stated in Plaintiff's Complaint.

RESPECTFULLY SUBMITTED,

BROWNSTEIN VITALE & WEISS, P.C.



By: Gary Brownstein, Esquire
Attorney for Plaintiff

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

Pedro Santiago

v.

Commonwealth of Pennsylvania, Department
of Corrections

ATTORNEY FOR PLAINTIFF

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

1731-cd
Docket No. 07-2731cc

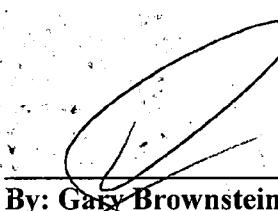
PRAECIPE FOR DETERMINATION

TO THE PROTHONOTARY/CLERK OF COURT:

Kindly submit the following matter to the assigned Judge for determination of Plaintiff's

Motion to Compel Discovery.

BROWNSTEIN VITALE & WEISS, P.C.


By: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center Plaza
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

FILED
OCT 22 2009
S
William A. Shaw
Prothonotary/Clerk of Courts
cc 10/4/09 Atty Brownstein

66

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

ATTORNEY FOR PLAINTIFF

Pedro Santiago

v.

**Commonwealth of Pennsylvania, Department
of Corrections**

**COURT OF COMMON PLEAS
CLEARFIELD COUNTY**

**1731-CD
Docket No. 07-2731ee**

**PLAINTIFFS' MOTION TO COMPEL DEFENDANTS
ANSWERS TO DISCOVERY**

Plaintiff files the following Motion to Compel Defendants' Answers to Interrogatories and Request for Production of Documents, and in support thereof aver the following:

1. On or about January 23, 2008, Plaintiff served upon counsel for Defendant a set of Interrogatories and a Request for Production of Documents in the above case.
2. Pursuant to the Pennsylvania Rules of Civil Procedure, Defendants' Answers to said discovery was due on or before February 23, 2008, and has not been extended.
3. Defendant's failure to timely state any objections to the aforesaid discovery, or file for a protection Order constitutes a waiver, and thereby requires Defendant to provide full and complete answers to said discovery.
4. It is essential to the preparation for trial of this matter, that Plaintiff receive full and complete answers to her outstanding discovery requests promptly. Plaintiff's counsel has prompted defense counsel by phone and letter for these Answers, and despite the expiration of in excess of twenty (20) months days since same were served, no answers have been forthcoming.

WHEREFORE, Plaintiff request this Honorable Court enter an Order compelling Defendant's full and complete Answers to said Interrogatories and Request for Production of Documents withing ten (10) days of this Order or suffer the imposition of sanctions that the Court may deem appropriate.

RESPECTFULLY SUBMITTED,

BROWNSTEIN VITALE & WEISS, P.C.

By: Gary Brownstein, Esquire
Attorney for Plaintiff

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

ATTORNEY FOR PLAINTIFF

Pedro Santiago

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

v.

Docket No. 07-2731cc

**Commonwealth of Pennsylvania, Department
of Corrections**

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL
DEFENDANTS' ANSWERS TO DISCOVERY**

I. FACTS

Plaintiff propounded Interrogatories and Request for Production of Documents upon Defendant on or about January 23, 2008. To date, Defendant has failed to provide any answers or objections to Plaintiff's Request for Production of Documents and Interrogatories, although Plaintiff has diligently attempted to obtain this discovery from Defendant. Therefore, Plaintiff has no alternative but to file a Motion to Compel Defendant's Answers to Plaintiff's Interrogatories and Request for Production of Documents.

II. LEGAL ARGUMENTS

Pennsylvania Rule of Civil Procedure 4009(a)(1) provides that any party may serve on any other party a Request to Produce. Specifically, this Rule permits the party making the request, or someone acting on his behalf, to inspect and copy, test or sample any tangible thing which constitutes or contains matters within the scope of Rule 4003.1 through 4003.5 inclusive, and which are in the possession, custody or control of the party upon whom the request is served. Rule 4009(b)(2) provides that the party upon whom the request is served shall serve a written response

within thirty (30) days after service of the request. This Rule further provides that the party submitting the request may move for an Order under Rule 4019(a) with respect to any objection or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. Pennsylvania Rule of Civil Procedure 4019(a)(vii) provides that the Court may, on Motion, make an appointment Order, if a party, in response to a request for production or inspection made under Rule 4005 and 4009, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested.

Pennsylvania Rule of Civil Procedure 4005 provides that any party may serve upon any other party in litigation, written Interrogatories concerning the subject matter of that litigation. Pennsylvania Rule of Civil Procedure 4006 provides that the party so served must file answers and/or objections to the Interrogatories within thirty (30) days after service thereof. Where, as here, objections are not timely stated to written discovery, they are deemed waived. See Mountain View Condominium Owners v. Mountain View Agents, 9 D&C 4th 81 (1991). Despite the repeated requests of Plaintiff, to date, Defendant has failed to respond in any way to Plaintiff's Interrogatories and Request for Production of Documents within thirty (30) days as required by the PA Rules of Civil Procedure.

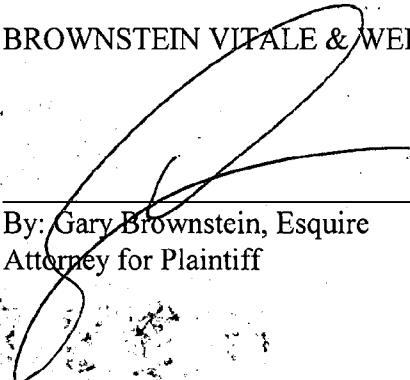
Defendant's Answers to Plaintiff's Request for Production of Documents and Interrogatories are now long overdue and therefore, Defendant's failure to answer Plaintiff's Interrogatories and Request for Production of Documents is a blatant violation of the Pennsylvania Rules of Civil Procedure. Further, Defendant's failure to answer Plaintiffs' Request for Production of Documents and Interrogatories works a severe prejudice on Plaintiff's preparation of his case for trial.

WHEREFORE, based upon the foregoing, Plaintiff requests that this Honorable Court enter the proposed Order.

Respectfully Submitted,

BROWNSTEIN VITALE & WEISS, P.C.

By: Gary Brownstein, Esquire
Attorney for Plaintiff



BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

ATTORNEY FOR PLAINTIFF

Pedro Santiago

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

v.

Docket No. 07-2731cc

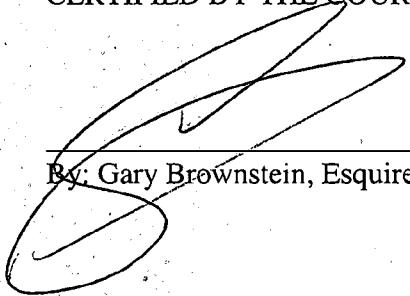
Commonwealth of Pennsylvania, Department
of Corrections

ATTORNEY CERTIFICATION OF GOOD FAITH

The undersigned counsel for Plaintiffs hereby certifies and attests that he has attempted to resolve this issue with defense counsel by numerous telephone promptings and by letter dated December 8, 2008 and that despite my good faith attempt to resolve the dispute(s), I have been unable to do so.

CERTIFIED BY THE COURT,

DATED: 10/20/09


By: Gary Brownstein, Esquire

DATED: _____


By: Richard Geer, Esquire
Attorney for Defendant

BROWNSTEIN VITALE & WEISS, P.C.
BY: Gary Brownstein, Esquire
Identification No. 36431
Two Penn Center
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
(215) 751-1600

ATTORNEY FOR PLAINTIFF

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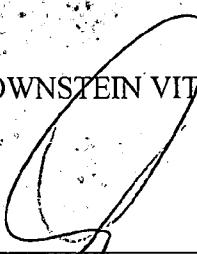
**Commonwealth of Pennsylvania, Department
of Corrections**

CERTIFICATE OF SERVICE

I, Gary Brownstein, Esquire, attorney for Plaintiffs hereby certify that I served a true and correct copy of the within Motion to Compel Discovery by regular United States Mail on October 20, 2009 upon counsel of record as follows:

Richard Geer, Esquire
21 South 12th Street, 3rd Floor
Philadelphia, PA 19107-3603

BROWNSTEIN VITALE & WEISS, P.C.


By: Gary Brownstein, Esquire
Attorney for Plaintiff

Pedro Santiago

v.

Commonwealth of Pennsylvania, Department
of Corrections

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

1731CD
Docket No. 07-2731cc

ORDER

AND NOW, this 26 day of October, 2009 upon consideration of

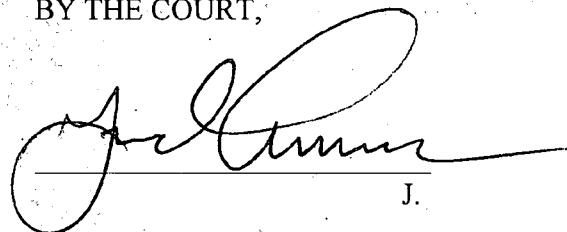
Plaintiff's Motion to Compel Discovery, and any replies thereto it is hereby ORDERED that said

Motion is granted. Defendant shall provide full and complete Answers to Interrogatories and

Request for Production of Documents, and produce all documents responsive thereto within ten (10)

days, or suffer sanctions upon further application to the Court.

BY THE COURT,



J.

FILED

OCT 27 2009

William A. Shaw
Prothonotary/Clerk of Courts

200
01015801
Amy Brownstein

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PEDRO SANTIAGO,

Plaintiff,

VS.

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
CORRECTIONS,

Defendant.

CIVIL ACTION – LAW

No. 2007-1731-CD

PRAECIPE FOR APPEARANCE

Filed on behalf of Defendant:

Commonwealth of Pennsylvania,
Department of Corrections.

COUNSEL OF RECORD:

Henry James Salvi, Esquire
Deputy Attorney General
PA Id #73945

Torts Litigation Unit
564 Forbes Avenue
Manor Complex
Pittsburgh, PA 15219
412-565-5446
Fax: 412-565-3022
hsalvi@attorneygeneral.gov

FILED NO CC
M 12/4/2011
DEC 28 2009 Copy to
S William A. Shaw
Prothonotary/Clerk of Courts
CIA

PRAECIPE FOR APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance in the above-referenced case on behalf of the defendant, Commonwealth of Pennsylvania, Department of Corrections. The defendant, Commonwealth of Pennsylvania, Department of Corrections, hereby demands a trial by a jury of twelve.

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: 

HENRY J. SALVI
Deputy Attorney General

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, via first-class mail, postage pre-paid on December 23, 2009:

Gary Brownstein, Esq.
Two Penn Center
1500 JFK Blvd., Suite 1020
Philadelphia, PA 19102
(Counsel for Plaintiff)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:


HENRY J. SALVI
Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PEDRO SANTIAGO,

Plaintiff,

vs.

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
CORRECTIONS

Defendant.

CIVIL ACTION – LAW

No. 2007-1731-CD

**WITHDRAWAL/ENTRY OF
APPEARANCE**

Filed on behalf of Defendant:

Commonwealth of Pennsylvania,
Department of Corrections

COUNSEL OF RECORD:

Richard C. Geer
Deputy Attorney General
PA Id #

Torts Litigation Unit
564 Forbes Avenue
Manor Complex
Pittsburgh, PA 15219
412-565-5446
Fax: 412-565-3022
hsalvi@attorneygeneral.gov

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Copy to CIA
William A. Shaw
Prothonotary/Clerk of Courts

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
BY: RICHARD C. GEER

Deputy Attorney General
ATTORNEY I.D. NO.: 78624
21 South 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
(215) 560-2966

ATTORNEY FOR:
Commonwealth of Pennsylvania
Department of Corrections

Pedro Santiago

: COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY

vs.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

: No. 2007-1731-CD

WITHDRAWAL/ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly withdraw my appearance in the above-captioned case on behalf of the
Commonwealth of Pennsylvania, Department of Corrections.

THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

By:


RICHARD C. GEER
Deputy Attorney General

Date: 12-11-09

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing
WITHDRAWAL/ENTRY OF APPEARANCE was served upon the following counsel of
record, via first-class mail, postage pre-paid on December 23, 2009:

Gary Brownstein, Esq.
BROWNSTEIN VITALE & WEISS, P.C.
Two Penn Center
1500 JFK Blvd., Suite 1020
Philadelphia, PA 19102
(Counsel for Plaintiff)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY


HENRY J. SALVI
Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PEDRO SANTIAGO,

Plaintiff,

vs.

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
CORRECTIONS,

Defendant.

CIVIL ACTION – LAW

No. 2007-1731-CD

**NOTICE OF SERVICE OF FIRST SET
OF INTERROGATORIES, FIRST
REQUEST FOR PRODUCTION OF
DOCUMENTS AND REQUEST TO
PLAINTIFF FOR PRODUCTION OF
EXPERT REPORTS**

Filed on behalf of Defendant:

Pennsylvania Department of
Transportation

COUNSEL OF RECORD:

Henry James Salvi, Esquire
Deputy Attorney General
PA Id #73945

Torts Litigation Unit
564 Forbes Avenue
Manor Complex
Pittsburgh, PA 15219
412-565-5446
Fax: 412-565-3022
hsalvi@attorneygeneral.gov

FILED

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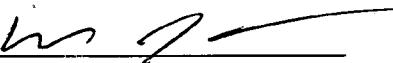
William A. Shaw
Prothonotary/Clerk of Courts

NOTICE OF SERVICE

Please take note that the undersigned has served upon Plaintiff First Set of Interrogatories, First Request for Production of Documents and Request for Production of Expert Reports and copies sent to all counsel of record, on behalf of Commonwealth of Pennsylvania, Department of Corrections, in the above- referenced case.

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: 
HENRY J. SALVI
Deputy Attorney General

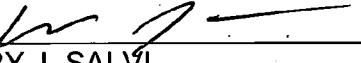
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF SERVICE OF FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST TO PLAINTIFF FOR PRODUCTION OF EXPERT REPORTS** was served upon the following counsel of record, via first-class mail, postage pre-paid on January 15, 2010:

Gary Brownstein, Esq.
BROWNSTEIN VITALE & WEISS, P.C.
Two Penn Center
1500 JFK Blvd., Suite 1020
Philadelphia, PA 19102
(Counsel for Plaintiff)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: 
HENRY J. SALVI
Deputy Attorney General

FILED

OCT 21 2013

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William A. Shaw
Prothonotary/Clerk of Courts

BROWNSTEIN VITALE & WEISS, P.C.

BY: Gary Brownstein, Esquire

Identification No. 36431

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1500 JFK Blvd, Suite 1020

Philadelphia, PA 19102

(215) 751-1600

Pedro Santiago

v.

Commonwealth of Pennsylvania, Department
of Corrections

ATTORNEY FOR PLAINTIFF

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

NO: 07-1731-cd

TO THE PROTHONOTARY:

The undersigned, being counsel for the Plaintiff in the above matter regretfully suggests the death of the Plaintiff as of July 12, 2013.

RESPECTFULLY SUBMITTED,
BROWNSTEIN VITALE & WEISS, P.C.

By: Gary Brownstein, Esquire
Attorney for Plaintiff