

08-95-CD
Norman Dale vs Area Transp. Authority at

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

08-95-CD
No. 07 - - CD

Type of Pleading:

COMPLAINT

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: January 21, 2008

FILED 1CC
01/21/08
JAN 21 2008
S
William A. Shaw
Prothonotary/Clerk of Courts
Atty pd. 95.00

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

NORMAN V. DALE, an *
individual, *
Plaintiff, *
*
v. * No. 07 - - CD
*
AREA TRANSPORTATION AUTHORITY *
OF NORTH CENTRAL PENNSYLVANIA, *
a Pennsylvania corporation, *
Defendants *

NOTICE

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

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

Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

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

NORMAN V. DALE, an
individual, *
Plaintiff, *
*
v. * No. 07 - - CD
*
*
AREA TRANSPORTATION AUTHORITY *
OF NORTH CENTRAL PENNSYLVANIA, *
a Pennsylvania corporation, *
Defendants *

COMPLAINT

NOW COMES the Plaintiff, Norman V. Dale, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff is Norman V. Dale who is a sui
juris, adult individual who resides at 1221 Leonard Street,
Clearfield, Pennsylvania 16830.

2. That the Defendant is Area Transportation Authority of North Central Pennsylvania, and is a Pennsylvania corporation with a principal office located at 178 Spider Lake Road, DuBois, Pennsylvania 15801.

3. That on or about May 30, 2007 at approximately 11:15 a.m., E.D.S.T., the Plaintiff was struck by a bus owned and operated by Area Transportation Authority of Northwestern Pennsylvania, in particular bus number 711.

4. That the incident as described in paragraph three occurred in the parking lot of the Clearfield Medical Arts

Building located at 807 Turnpike Avenue, Clearfield, Pennsylvania.

5. That on said date, at or about said time, Plaintiff parked in a handicapped parking space and proceeded to walk toward the main entrance of the Clearfield Medical Arts Building.

6. That Clearfield Medical Arts Building is adjacent to the Clearfield Hospital and its parking lot is located South of the Medical Arts Building and the Hospital.

7. That on the aforesaid date and at or about the said time, Plaintiff was walking North in a crosswalk marked for pedestrians approaching the main entrance of the Clearfield Medical Arts Building.

8. That on the aforesaid date and at or about the said time, ATA Bus No. 711, on information and belief being operated by an employee of the defendant, was traveling West through the parking lot at the same location where Plaintiff was walking.

9. That on the aforesaid date and at or about the said time, ATA Bus No. 711, struck the Plaintiff on his right side.

10. That on the aforesaid date and at or about the said time, it was daylight and there were no averse weather conditions.

11. That as a result of the collision described in Paragraph 9 hereof which is incorporated herein by reference, the Plaintiff was spun and thrown approximately six-eight feet.

12. That the collision described in Paragraph 9 hereof which is incorporated herein by reference caused bruises and contusions and serious injuries to Plaintiff as hereinafter set forth.

13. That the Defendant was guilty of the following negligence, recklessness and carelessness which was the proximate cause of the accident and the injuries to the Plaintiff as follows:

A. That the Defendant failed to maintain a proper lookout while traveling in a parking lot;

B. That the Defendant failed to yield the right-of-way to a pedestrian;

C. That the Defendant violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3542, 75 Pa. C.S.A. Section 3714 and supplements thereto in that it operated a vehicle upon the parking lot of Clearfield Medical Arts Building, with careless disregard for the safety of the Plaintiff.

E. That the Defendant violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3361, 75 Pa. C.S.A. Section 3361, and supplements thereto, in that it

operated a vehicle upon the parking lot of Clearfield Medical Arts Building at a speed exceeding that which was safe and reasonable with regard to the circumstances then existing.

F. That the Defendant violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3309, 75 Pa.C.S.A. Section 3542, and supplements thereto, in that it failed to yield the right-of-way to an individual walking in a marked crosswalk.

14. That as a result of the collision described in Paragraph 9 hereof, the Plaintiff suffered the following injuries which may and probably will be permanent:

A. Injury to his neck and cervical spine, being a ruptured and/or herniated disc,

B. Injury to his right wrist and arm, causing degenerative changes and arthritic symptoms, and including a scar to his right forearm where the bus struck the Plaintiff.

15. That as a result of the injuries referred to in Paragraph 14 hereof, the Plaintiff was unable to engage in certain of his regular household duties.

16. That as a result of the injuries referred to in Paragraph 14 hereof, the Plaintiff may incur medical expenses

for the treatment of his injuries in excess of his available first party medical benefits.

17. That the Plaintiff claims a reasonable amount for the following:

- A. Pain and suffering: past, present and future;
- B. Privation and inconvenience: past, present and future;
- C. Future medical expenses
- D. All other damages allowable by law.

WHEREFORE, the Plaintiff claims damages from the Defendant, in excess of Twenty Five Thousand (\$25,000.00) Dollars. Jury Trial Demanded.

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

V E R I F I C A T I O N

I, Norman V. Dale, Plaintiff, verify that the statements made in the foregoing Complaint are true and correct upon my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

By: Norman V. Dale
Norman V. Dale
Plaintiff

Dated: 1.9-08

FILED
M 18:39 AM NO C
APR 03 2008 GP

William A. Shaw
Prothonotary/Clerk of Courts

NORMAN V. DALE	:	IN THE COURT OF COMMON PLEAS
Plaintiff	:	CLEARFIELD COUNTY, PENNSYLVANIA
V.	:	CIVIL - ACTION
:		
AREA TRANSPORTATION	:	
AUTHORITY,	:	
Defendant,	:	NO.: 08-95-CD
:		

NOTICE TO PLEAD

You are hereby notified to file a written response to the enclosed New Matter to Plaintiff's Complaint within twenty (20) days from date of service hereof or judgment may be entered against you.

Richard L. Orwig
Richard L. Orwig, Esq.
I.D. No. 22371
Attorney for Defendant, ATA

Dated: 3/31/08

NORMAN V. DALE	:	IN THE COURT OF COMMON PLEAS
	Plaintiff	: CLEARFIELD COUNTY, PENNSYLVANIA
V.	:	CIVIL - ACTION
	:	
AREA TRANSPORTATION	:	
AUTHORITY,	:	NO.: 08-95-CD
Defendant	:	

**ANSWER OF DEFENDANT, AREA TRANSPORTATION AUTHORITY,
TO PLAINTIFF'S COMPLAINT WITH NEW MATTER**

AND NOW, this 31st day of March, 2008 comes Defendant Area Transportation Authority, (hereinafter referred to as "ATA") by and through its counsel, Orwig Law Offices, and files the following Answer to Plaintiff Norman V. Dale (hereinafter referred to as "Dale") Complaint with New Matter:

1. Denied. Defendant, ATA, is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 1 of Plaintiff's Complaint.
2. Admitted in part, denied in part. It is admitted that ATA is the named Defendant and has an office located at 44 Transportation Center, Johnsonburg, Pennsylvania. It is denied that ATA is a Pennsylvania corporation. It is further averred that ATA is a local agency incorporated via the Pennsylvania Municipalities Authorities

Act, and entitled to governmental immunity pursuant to the Pennsylvania Political Subdivision Tort Claims Act.

3. Denied. Defendant, ATA, is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 3 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

4. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 4 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

5. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 5 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

6. Admitted.

7. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 7 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

8. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 8 of Plaintiff's

Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

9. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 9 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

10. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 10 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

11. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 11 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

12. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 12 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

13. Denied. Paragraph 13 of Plaintiff's Complaint constitutes conclusions of law to which no responsive pleading is required. To the extent the same may be material, strict proof thereof is demanded at the time of trial. The Defendant at all times

acted reasonably, carefully and prudently according to the laws of the Commonwealth of Pennsylvania. Further, Answering Defendant specifically denies the following:

- a. Answering Defendant denies that it failed to maintain a proper lookout while traveling a parking lot;
- b. Answering Defendant denies that it failed to yield the right-of-way to a pedestrian;
- c. Answering Defendant denies that it violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3542, 75 Pa.C.S.A. Section 3714 and supplements thereto. Answering Defendant further denies that it operated a vehicle on the parking lot of Clearfield Medical Arts Building with careless disregard for the safety of the Plaintiff.
- e. Answering Defendant denies that it violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3361, 75 Pa. C.S.A. Section 3361, and supplements thereto. Answering Defendant further denies that it operated a vehicle on the parking lot of Clearfield Medical Arts Building at a speed exceeding that was safe and reasonable with regard to the circumstances then existing.
- f. Answering Defendant denies that it violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3309, 75 Pa. C.S.A. Section 3542, and supplements thereto, and further deny that Defendant

failed to yield the right-of-way to an individual walking in a marked crosswalk.

14. Denied. The allegations set forth in Paragraph 14 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent the same may be material, strict proof thereof is demanded at trial. Further, Defendant is without information or knowledge sufficient to form a belief as to the damages allegedly suffered by Plaintiff. Finally, Defendant hereby avers that at all times they acted reasonably, carefully and prudently pursuant to the laws of the Commonwealth of Pennsylvania.

15. Denied. The allegations set forth in Paragraph 15 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent the same may be material, strict proof thereof is demanded at trial. Further, Defendant is without information or knowledge sufficient to form a belief as to the damages and losses allegedly suffered by Plaintiff. Defendant hereby avers that at all times they acted reasonably, carefully and prudently pursuant to the laws of the Commonwealth of Pennsylvania. By way of further response, the damages with regard to mental anguish as alleged in Paragraph 15 of Plaintiff's Complaint are not losses for which a local agency may be liable pursuant to Section 8553 of the Political Subdivision Tort Claims Act.

16. Denied. The allegations set forth in Paragraph 16 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent

the same may be material, strict proof thereof is demanded at trial. Further, Defendant is without information or knowledge sufficient to form a belief as to the damages or medical expenses allegedly suffered by Plaintiff. Finally, Defendant hereby avers that at all times they acted reasonably, carefully and prudently pursuant to the laws of the Commonwealth of Pennsylvania.

17. Denied. The allegations set forth in Paragraph 17 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent the same may be material, strict proof thereof is demanded at trial. Further, Defendant is without information or knowledge sufficient to form a belief as to the damages allegedly suffered by Plaintiff. Finally, Defendant hereby avers that at all times they acted reasonably, carefully and prudently pursuant to the laws of the Commonwealth of Pennsylvania. By way of further response, the damages alleged in Paragraph 17 (B) and (D) of Plaintiff's Complaint are not losses for which a local agency may be liable pursuant to Section 8553 of the Political Subdivision Tort Claims Act.

NEW MATTER

DEFENDANT ATA'S NEW MATTER IN THE FORM OF AFFIRMATIVE DEFENSES

18. Defendant ATA incorporates paragraphs 1 through 17 as if more fully set forth below.

19. All or portions of Plaintiff's claim are or may be barred by the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Act, 75 Pa.C.S.A. §1701 et seq.

and/or the statutes of the Commonwealth of Pennsylvania, and Defendant incorporates all defenses available under said Act or Statutes as though more fully set forth at length herein.

20. Any and all claims of Plaintiff for products, services and accommodation relative to (a) professional medical treatment and care; (b) emergency health services; (c) medical and vocational rehabilitation services; and (d) work losses (past, present or future), if any, are not recoverable from Defendant under the provisions of the foregoing Pennsylvania Motor Vehicle Financial Responsibility Act unless Plaintiff's first party benefits have been exhausted.

21. Plaintiff fails to state a claim upon which relief may be granted.

22. Plaintiff's claims are barred by the applicable statute of limitation.

23. Plaintiff's claims are barred by a failure to provide the appropriate notice requirements applicable to actions against local governmental agencies and/or commonwealth agencies pursuant to the Act governing Limitations of Time in Civil Actions and Proceedings of October 5, 1980, PL 693, No. 142, §22(i)(1) as amended December 20, 1982, PL 1409, No. 326, art. II, §201, 42 Pa.C.S.A. §5522(a). Defendant incorporates the aforementioned Act as though the same were set forth herein at length.

24. Defendant ATA is organized under the Pennsylvania Municipality Authorities Act of 1945, 53 P.S. §301 et seq., and as such is a local agency pursuant to the Governmental Immunity Act of October 5, 1980, P.L. 693, No. 142 §221(I), et al., 42 Pa.C.S.A. §8541 et seq., and is entitled to municipal immunity pursuant to 42 Pa.C.S.A.

§8542, et seq., and raises all defenses available under said Governmental Immunity Act, including the limitation on maintaining a cause of action for only those acts for which a local agency can be responsible. Defendant incorporates the aforementioned Act as though the same were set forth herein at length.

25. The recovery of damages by Plaintiff against Defendant, as a "local agency", is barred in whole or in part by the application of section 8553 of the Governmental Immunity Act. 42 Pa.C.S.A. §8553. Defendant incorporates the aforementioned Act as though the same were set forth herein at length.

26. Plaintiffs failed to aver facts concerning the movement of a motor vehicle or its parts as required in order to sustain an action relative to the "Motor Vehicle" exception of the Tort Claims Act.

27. Defendant also denies that it is susceptible to Rule 238 delay damages based upon the constitutionality of the same.

28. Plaintiff's claims are or may be barred in whole or in part by operation of the doctrine of assumption of risk and may be applied to the facts disclosed in discovery or at trial.

29. Plaintiff's claims may be barred in whole or in part by application of the Pennsylvania Comparative Negligent Law, 42 Pa.C.S.A. §7102.

30. The accident and damages as alleged in Plaintiff's Complaint were caused in whole or in part by the actions of the Plaintiff.

31. The Plaintiff has not set forth facts that would indicate a causal link

between actions of the Answering Defendant and the Plaintiff's injuries.

32. Any losses, damages or injuries alleged in Plaintiff's Complaint were a result of the carelessness and negligence of Plaintiffs.

33. Answering Defendant avers that if negligence is found to exist on its part, said negligence was not the proximate cause of Plaintiffs' injuries.

WHEREFORE, Defendant, ATA, demands judgment in its favor and against the Plaintiff, including counsel fees and costs and such other and further relief as might be just and appropriate.

Respectfully submitted,



Richard L. Orwig, Esq.

Jill E. Nagy, Esq.

Attorney for Defendant ATA

VERIFICATION

I, MICHAEL E. IMBROGNO, Executive Director of Area Transportation Authority ("ATA"), verify that the statements made in Defendant's Answer to Plaintiff's Complaint with New Matter are true and correct. I further understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.



Michael E. Imbrogno

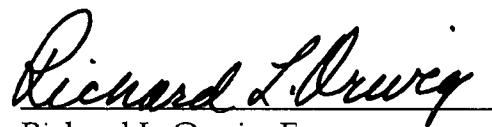
Dated: 3-18-08

NORMAN V. DALE	Plaintiff	:	IN THE COURT OF COMMON PLEAS
		:	CLEARFIELD COUNTY, PENNSYLVANIA
V.		:	CIVIL - ACTION
		:	
AREA TRANSPORTATION		:	
AUTHORITY,		:	NO.: 08-95-CD
	Defendant	:	

CERTIFICATE OF SERVICE

I, RICHARD L. ORWIG, ESQ., on this March 31, 2008, hereby certify that a true and correct copy of Defendant's Answer to Plaintiff's Complaint with New Matter was served upon the following party, via first class mail, postage prepaid:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC.
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830


Richard L. Orwig, Esq.
Attorney for Defendant, ATA

FILED NO
7/18/08
APR 03 2008
(GK)

William A. Shaw
Prothonotary/Clerk of Courts

NORMAN V. DALE : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
V. : CIVIL - ACTION
: :
AREA TRANSPORTATION : :
AUTHORITY, : NO.: 08-95-CD
Defendant : :

PROOF OF SERVICE

I, Gwen W. Sittler, being duly sworn according to law, deposes and says that she served a certified true and correct copy of Answer of Defendant, ATA, to Plaintiff's Complaint with New Matter, by mailing the same on this 31st day of March 2008, upon the following parties or counsel of record:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC.
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830

Gwen W. Sittler
(Gwen W. Sittler)

Sworn and subscribed before me
this 31st day of March, 2008.

Carol E. Stitzman

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
CAROL E. STITZMAN, NOTARY PUBLIC
CITY OF READING, BERKS COUNTY
MY COMMISSION EXPIRES SEPT. 27, 2011

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

* Nc. 08-95-CD

* Type of Pleading:

* **REPLY TO NEW MATTER**

* Filed on behalf of:

* Plaintiff

* Counsel of Record for
this party:

* James A. Naddeo, Esq.

* Pa I.D. 06820

*

* Trudy G. Lumadue, Esq.

* Pa I.D. 202049

* NADDEO & LEWIS, LLC.

* 207 E. Market Street

* P.O. Box 552

* Clearfield, PA 16830

* (814) 765-1601

Dated: April 18, 2008

FILED
04/18/2008 APR 18 2008
Atty Naddeo
GE

William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

*

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*

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No. 08-95-CD

*

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendant.

*

*

*

*

REPLY TO NEW MATTER

NOW COMES the Plaintiff, Norman V. Dale, and by his attorney, James A. Naddeo, Esquire, sets forth the following in reply to the new matter filed by Defendant:

18. No answer is required.

19. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

20. States a hypothetical conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

21. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

22. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

23. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied, and to the contrary, Plaintiff provided appropriate notice on September 24, 2007 as evidenced by true and correct copies of letters to Defendant which are attached hereto as Exhibit "A" and Exhibit "B."

24. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of whether or not Defendant is organized under the Pennsylvania Municipality Authorities Act of 1945. The remainder of said averment states a conclusion of law to which no answer is required. To the extent an answer may be required the remainder of said averment is denied.

25. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

26. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

27. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

28. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

29. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

30. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied, and to the contrary, no action by Plaintiff contributed to the cause of the accident and/or the damages in whole or in part.

31. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

32. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

33. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

WHEREFORE, the Plaintiff requests this Honorable Court
enter judgment in his favor and against the Defendant.

NADDEO & LEWIS, LLC

By

James A. Naddeo

James A. Naddeo
Attorney for Plaintiff

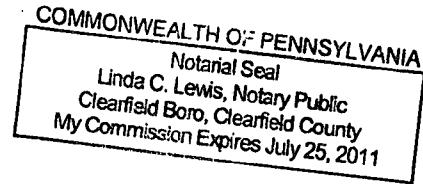
COMMONWEALTH OF PENNSYLVANIA)
SS.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared NORMAN V. DALE, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Answer to New Matter are true and correct to the best of his knowledge, information and belief.

Norman V Dale
Norman V. Dale

SWORN and SUBSCRIBED before me this 15th day of April, 2008.

Linda C Lewis



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

NORMAN V. DALE, an *
individual, *
Plaintiff, *
*
v. * No. 08-95-CD
*
AREA TRANSPORTATION AUTHORITY *
OF NORTH CENTRAL PENNSYLVANIA, *
a Pennsylvania corporation, *
Defendants *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Reply to New Matter was served on the following and in the following manner on the 18th day of April, 2008:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, Pennsylvania 19604

NADDEO & LEWIS, LLC

By: 
James A. Naddeo
Attorney for Plaintiff

JAMES A. NADDEO
LINDA C. LEWIS
Trudy G. Lumadue

NADDEO & LEWIS, LLC
ATTORNEYS AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-1601
FAX: (814) 765-8142
naddeolaw@atlanticbbn.net

September 24, 2007

Area Transportation Authority of North Central PA
44 Transportation Center
Johnsonburg, PA 15845

RE: Norman V. Dale
Accident: May 30, 2007

Gentlemen:

I represent Norman V. Dale. My client was injured on May 30, 2007 when he was struck by an ATA bus in Clearfield County. This notice is provided to you as required by 42 Pa. C.S. 5522 (a). Information required by this notice is as follows:

1. The person to whom the cause of action has accrued is Norman V. Dale who resides at 1221 Leonard Street, Clearfield, PA 16830.
2. The party injured was Norman V. Dale who resides at 1221 Leonard Street, Clearfield, PA 16830.
3. The accident occurred on May 30, 2007 at approximately 11:15 a.m.
4. The names and addresses of the injured party's attending physicians at this present time are as follows:
 - A. Clearfield Hospital Emergency Room - treated on date of the incident.
 - B. Dr. Polintan - other treating physician of injured party.
 - C. Dr. Richard Johnson - primary care physician.

Exhibit "A"

D. Drayer Physical Therapy - treatment injured party has received as a result of this incident.

This same notification is being mailed on today's date to the Clearfield County office of the Area Transportation Authority of North Central Pennsylvania.

Sincerely,



A handwritten signature in black ink, appearing to read "James A. Naddeo".

James A. Naddeo

JAN/tgl

Cc: Norman V. Dale

NADDEO & LEWIS, LLC
ATTORNEYS AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

JAMES A. NADDEO
LINDA C. LEWIS
Trudy G. Lumadue

(814) 765-1601
FAX: (814) 765-8142
naddeolaw@atlanticbbn.net

September 24, 2007

Area Transportation Authority of North Central PA
Clearfield County Office
P.O. Box 1071
DuBois, PA 15801

RE: Norman V. Dale
Accident: May 30, 2007

Gentlemen:

I represent Norman V. Dale. My client was injured on May 30, 2007 when he was struck by an ATA bus in Clearfield County. This notice is provided to you as required by 42 Pa. C.S. 5522 (a). Information required by this notice is as follows:

1. The person to whom the cause of action has accrued is Norman V. Dale who resides at 1221 Leonard Street, Clearfield, PA 16830.
2. The party injured was Norman V. Dale who resides at 1221 Leonard Street, Clearfield, PA 16830.
3. The accident occurred on May 30, 2007 at approximately 11:15 a.m.
4. The names and addresses of the injured party's attending physicians at this present time are as follows:
 - A. Clearfield Hospital Emergency Room - treated on date of the incident.
 - B. Dr. Polintan - injured party's family physician.
 - C. Dr. Richard Johnson - primary care physician.

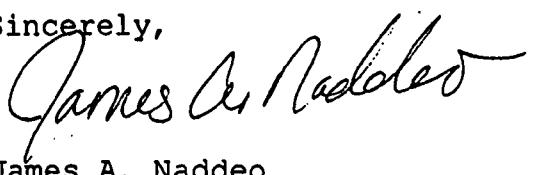
Exhibit "B"

Area Transportation Authority, September 24, 2007
Page 2

D. Drayer Physical Therapy - treatment injured party
has received as a result of this incident.

This same notification is being mailed on today's date to
the Johnsonburg office of the Area Transportation Authority of
North Central Pennsylvania.

Sincerely,



James A. Naddeo

JAN/tgl

Cc: Norman V. Dale

NORMAN V. DALE : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
V. : CIVIL - ACTION
:
AREA TRANSPORTATION :
AUTHORITY, : NO.: 08-95-CD
Defendant :

PROOF OF SERVICE

COMMONWEALTH OF PENNSYLVANIA :
ss:
COUNTY OF BERKS :
:

I, Gwen W. Sittler, being duly sworn according to law, deposes and says that she served an original and a certified true and correct copy of ATA's General and Expert Interrogatories addressed to Plaintiff, and ATA's Request for Production of Documents addressed to Plaintiff by mailing the same on this 24th day of April, 2008, to:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC.
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830

Gwen W. Sittler
Gwen W. Sittler

Sworn and subscribed before me
this 24th day of April, 2008.

Carol E. Stitzman
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
CAROL E. STITZMAN, NOTARY PUBLIC
CITY OF READING, BERKS COUNTY
MY COMMISSION EXPIRES SEPT. 27, 2011

FILED
m 13:28 PM
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NO CC
LAW

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103660
NO: 08-95-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: NORMAN V. DALE, an ind.

VS.

DEFENDANT: AREA TRANSPORTATION AUTHORITY OF NORTH CENTRAL PENNSYLVANIA, A Penna. Corp.

SHERIFF RETURN

NOW, January 25, 2008 AT 2:00 PM SERVED THE WITHIN COMPLAINT ON AREA TRANSPORTATION AUTHORITY OF NORTH CENTRAL PENNSYLVANIA A Penna. corp DEFENDANT AT WORK 178 SPIDER LAKE ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO KATHY UPDYKE, DIVISION CLERK A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING /

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	NADDEO	001089	10.00
SHERIFF HAWKINS	NADDEO	001089	37.60

FILED

013:00 LM
MAY 12 2008

William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

____ Day of _____ 2008

So Answers,

*Chester A. Hawkins
by Marilyn H. Hause*
Chester A. Hawkins
Sheriff

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

* No. 08-95-CD

* Type of Pleading:

* **CERTIFICATE OF SERVICE**

* Filed on behalf of:

* Plaintiff

* Counsel of Record for
this party:

* James A. Naddeo, Esq.
* Pa I.D. 06820

* &
* Trudy G. Lumadue, Esq.
* Pa I.D. 202049

* NADDEO & LEWIS, LLC.
* 207 E. Market Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

Dated: May 13, 2008

FILED NOCC
05/13/2008
MAY 13 2008
CM
William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

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No. 08-95-CD

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
true and correct copy of Interrogatories Addressed to Defendant
was served on the following and in the following manner on the
13th day of May, 2008:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, Pennsylvania 19604

NADDEO & LEWIS, LLC

By: James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

* No. 08-95-CD

* Type of Pleading:

* **CERTIFICATE OF SERVICE**

* Filed on behalf of:

* Plaintiff

* Counsel of Record for
this party:

* James A. Naddeo, Esq.

* Pa I.D. 06820

*

* Trudy G. Lumadue, Esq.

* Pa I.D. 202049

* NADDEO & LEWIS, LLC.

* 207 E. Market Street

* P.O. Box 552

* Clearfield, PA 16830

* (814) 765-1601

*

*

Dated: November 6, 2008

*

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William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

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No. 08-95-CD

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiff's Answers to Interrogatories was served on the following and in the following manner on the 6th day of November, 2008:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, Pennsylvania 19604

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

* No. 08-95-CD

* Type of Pleading:

* **CERTIFICATE OF SERVICE**

* Filed on behalf of:

* Plaintiff

* Counsel of Record for
this party:

* James A. Naddeo, Esq.
* Pa I.D. 06820

* &
* Trudy G. Lumadue, Esq.
* Pa I.D. 202049

* NADDEO & LEWIS, LLC.
* 207 E. Market Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

Dated: November 6, 2008

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William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

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No. 08-95-CD

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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CERTIFICATE OF SERVICE

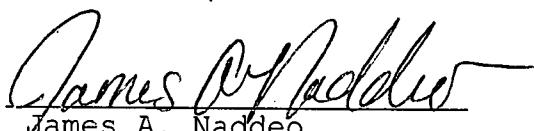
I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiff's Responses to Request for Production of Documents was served on the following and in the following manner on the 6th day of November, 2008:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, Pennsylvania 19604

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

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

NORMAN V. DALE, an
individual,

Plaintiff,

V.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

No. 08-95-CD

* Type of Pleading:

MOTION TO COMPEL

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: November 20, 2008

FILED 10/10/2008 11:55 AM Atty Nadeem
NOV 20 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

*

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No. 08-95-CD

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AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendant.

*

MOTION TO COMPEL

NOW COMES the Plaintiff, Norman V. Dale, and by and through his attorney, James A. Naddeo, requests this Court to enter an Order under Pa.R.C.P. 4003.5(a)(2) directing defendants to provide answers to plaintiff's interrogatories and in support thereof avers as follows:

1. This action was commenced by plaintiff by the filing of a Complaint on January 21, 2008 for injuries sustained in an automobile-pedestrian accident.
2. Defendant filed an Answer with New Matter on March 31, 2008.
3. On or about May 13, 2008, Plaintiff served interrogatories to Defendant. True and correct copy of Interrogatories Addressed to Defendant are attached hereto as Exhibit "A."

4. Having heard no response to the discovery, Plaintiff's counsel wrote to Defendant's counsel regarding the same on October 15, 2008. A true and correct copy of letter dated October 15, 2008 is attached hereto as Exhibit "B."

5. To date Plaintiff has heard no response from Defendant to the discovery or the correspondence addressing the same.

WHEREFORE, Plaintiff NORMAN V. DALE, respectfully requests your Honorable Court issue a rule upon Defendant, Area Transportation Authority of North Central Pennsylvania, to show cause why this Court should not enter an order directing Defendant to answer the same.

Respectfully Submitted,

NADDEO & LEWIS, LLC

By 
James A. Naddeo
Attorney for Plaintiff

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

* No. 08-95-CD

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,

Defendants

INTERROGATORIES ADDRESSED TO DEFENDANT

Demand is hereby made that you answer the following interrogatories under oath or verification pursuant to the Pa. R.C.P. No. 4005 and 4006 within thirty (30) days from service hereof. The answering party is under a duty to supplement their responses under the following conditions:

The party must supplement his response with respect to any question, directly addressed to the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called as an expert witness at trial.

A party or expert witness must amend a prior response if he obtains information upon the basis of which:

(a) He knows that the response was incorrect when made; or,

(b) He knows that the response, though correct when made, is no longer true.

I. DEFINITIONS

The following definitions are usage that applies to all of the Interrogatories contained herein:

A. The singular and masculine form of any noun or pronoun shall embrace, and be read and applied as, the plural or feminine or neuter as circumstances may make appropriate.

Exhibit "A"

B. "Document" refers to all types of written, recorded or graphic matter, however produced or reproduced.

C. "Person" refers to any person, firm, corporation, partnership, proprietorship, association or agency.

D. "Identify" when used:

1. In reference to a person, means to state the full name, full title, last known resident address, last known business address and last known occupation and business affiliation.

2. In reference to documents, means to state with respect to each and every document, the type of document, author's name, recipient's name, date of preparation, present or last known custodian and location, and title and identification code or number of the file in which the document is kept.

II. INTERROGATORIES

1. State:

(a) Your name, age, date and place of birth;

(b) Any other name by which you have ever been known;

(c) Your present address and your address at the time of the accident;

(d) Your marital status at the time of the accident;

(e) Your present marital status;

(f) Your Social Security Number;

(g) Whether you are a licensed driver and, if so, where and when were you first licensed;

(h) Any and all restrictions on your driver's license at the time of the accident and at present;

(i) Your operator's license number;

(j) Whether you have any physical defects, and if so, their nature and duration;

(k) Whether you had taken any medication within the 24 hours preceding the accident. If yes, identify the medication, the amount taken and the condition for which it was taken;

(l) Whether you had taken any other drugs, within the 24 hours preceding the accident. If yes, identify the drugs, the amount taken and the time so taken;

(m) Whether you had consumed any alcoholic beverages within the 8 hours preceding the accident. If yes, state when, what type of alcoholic beverage, where you consumed it and how much you consumed.

(n) Whether you are under the care of a physician, psychiatrist or psychologist at the time of the accident and, if so, the name and address of the physician, psychiatrist or psychologist or other mental health provider.

(o) Whether or not you have ever been convicted of a crime of moral turpitude or crimen falsi, and if

so, please state the county, court, term number and charges;

(p) Whether you ever served in the Armed Forces. If so, state the date, branch, rank at discharge, any infirmities at discharge, any claims made and any benefits received for infirmities, and your Veteran's Administration Claim Number.

CIRCUMSTANCES SURROUNDING THE ACCIDENT

2. State the date, time and exact location of the accident.

3. With reference to the trip you were taking at the time of the accident herein, state:

(a) Where it started;

(b) When it started;

- (c) Where it was scheduled to end;
- (d) The route followed to the accident scene and any stops made along the way;
- (e) The purpose of the trip;

4. Did you have passenger in your vehicle at the time of the accident? If so state:

- (a) Their names and addresses;
- (b) Their relationship to you; and
- (c) Where they were located in your vehicle at the time of the accident;

5. State as to the motor vehicle involved in the accident;

- (a) The make, model and year;
- (b) The serial number;
- (c) The mileage at the time of the accident;
- (d) Whether it had previously been in any accidents, indicating the date thereof and the parts damaged;
- (e) The type of brakes, their condition and the date they were last repaired or adjusted;
- (f) Whether the horn was in operating condition and when it was last used before the accident;
- (g) Whether the windows were open or closed and whether you were able to see through them clearly;

6. As to the road on which your vehicle was being operated at the time of the accident, state:

- (a) The type of road surface, i.e. concrete, blacktop, etc.;
- (b) The surface condition, i.e. dry, wet, muddy, etc.;
- (c) Whether there were any defects in the road. If so, describe the same;
- (d) Whether the road was a one-way or a two way street;

- (e) The number of lanes;
- (f) Whether the road was a divided highway;
- (g) Whether any buildings were located on either side of the road;
- (h) Whether there was any road construction, and if so, describe the same;
- (i) The grade of the road;
- (j) The straightness or curve of the road;
- (k) The lighting conditions at the time of the accident.

7. State:

- (a) The weather conditions prevailing at the time of the accident;
- (b) The exact intersection or highway where the accident occurred;
- (c) The position of all vehicles and the Plaintiff at the time of the accident;
- (d) The distance from you when you first observed the Plaintiff;
- (e) When and where you applied your brakes;
- (f) The distance traveled between the point when the brakes were applied and the point of impact;
- (g) An estimate of the respective speed of your vehicle at the time of impact;
- (h) The initial point of impact.

8. Describe how the accident occurred, including the actions of the respective parties and particularly describe any action you took to avoid the accident.

9. At what point in time did you first realize that the accident was going to occur?

10. State the name and address of the owner or owners of the motor vehicle you operated or occupied at the time of the accident.

11. State whether or not you were acting on behalf of your employer or in the course of your employment at the time of the accident referred to in the Complaint.

12. Did your vehicle carry any cargo and/or loads? If so, describe:

- (a) What the cargo or the load was; and
- (b) Its location in the vehicle.

13. Do you wear glasses or contact lenses? If so, state:

- (a) Whether you were wearing them at the time of the accident;
- (b) As accurately as you can, the condition for which they were prescribed;
- (c) Your visual acuity without glasses; and
- (d) Your visual acuity with glasses.

14. State:

(a) Whether there were any obstructions in your view when approaching the scene of the accident, and, if so, please describe each such obstruction in detail, giving its location with relation to the site of the accident;

(b) Whether at the time of the accident your vision was impaired or obscured in any manner, either from inside of the vehicle or from external factors and, if so, in what manner your vision was impaired or obscured.

15. State whether or not prior to the time of the accident you had traveled the road upon which the accident occurred. If so, please state the frequency and last time that you traveled the road prior to the accident.

16. Where were you looking just prior to the time of the accident?

(a) Were you on or using a cellular device at the time the accident occurred?

17. State where the point of impact was, giving the distance in feet with reference to the nearest intersection and/or other established points.

18. Describe the movement of your motor vehicle within the last 30 seconds immediately prior to the occurrence.

19. State whether you gave any warning of your approach. If so, state in detail the nature of the said warning.

20. Describe all physical evidence, including its location, which you observed at the scene of the accident after the collision, including but not limited to dirt, debris, etc.

21. State whether any skid marks were made by you. If so, state:

- (a) The length and direction of the said skid marks;
- (b) The point of beginning and ending of the said skid marks.

22. State the type and color of any traffic signal controlling the street on which your vehicle was traveling when you first noticed it and;

- (a) The distance in feet the traffic light was from the vehicle at the time;
- (b) Whether or not the signal had changed between the time you first observed it and the accident;

- (c) If the light did change, from what color to what color did it change;
- (d) The exact location of all traffic signals.

23. At or immediately following the time of the accident, was there any conversation relevant to the accident or injuries sustained which you engaged in or heard? If yes, state:

- (a) The identity of the speaker;
- (b) The substance of what was said;
- (c) The identity of all persons within hearing distance.

24. State how all the parties involved in the accident were removed from the accident, including the name, address, present whereabouts and job classification of all persons assisting in their removal.

25. State whether the accident was caused by any broken, defective or unworkable device, or by the breaking, absence, misplacement or malfunction of any equipment, or of any similar condition. If so, state:

- (a) The particular things involved and the precise nature of the defect;
- (b) When the defect first arose;
- (c) What caused the defect;
- (d) When you learned of the defect for the first time;
- (e) If the said defect existed prior to the accident, state how long it existed prior thereto;
- (f) What, if anything, was done to remedy this defect after the accident?

PROPERTY DAMAGE

26. State the condition of your vehicle at the time of the accident, describing specifically any damage which existed prior to the accident.

27. When and where was that vehicle last inspected prior to the accident in question and what, if any, repairs were made or parts replaced at the time of the inspection.

28. Describe specifically what parts of your vehicle were damaged in the accident, listing the damage to each of those parts.

29. Did you obtain estimates for the repairs of these damages? If so, give the names and addresses of the repair shops and the amounts of the estimates.

30. If the damages were repaired, state:

(a) The date or dates on which repairs were made;

(b) The name and address of the person who made the repairs;

(c) The total cost of repairs.

31. Please attach a copy of all repair bills or estimates.

32. State whether any damage to property other than the motor vehicle involved resulted from the accident, and if so, describe such damage.

INJURIES RELATING TO THE ACCIDENT

33. State in detail all injuries you sustained in the accident or as a result thereof.

34. Have you contacted anyone regarding injuries sustained by any other party in this action? If so, state the name of such persons and the substance of any information received from said person.

35. State whether you saw plaintiff subsequent to this accident in question and, if your answer is in the affirmative, set forth:

- (a) the date you saw plaintiff;
- (b) the places at which you saw either plaintiff; and
- (c) The identity and condition of the plaintiff at this time.

WITNESSES AND THOSE WITH KNOWLEDGE OF THE ACCIDENT

36. State the names and addresses of all persons who you or anyone acting on your behalf, including but not limited to attorneys and insurance adjusters, whom you know or believe:

(a) Actually witnessed the accident;

(b) Were present at the scene of the accident immediately after its occurrence;

(c) Were within sight or hearing of the accident.

STATEMENTS

37. Please state the nature of any oral statements made by any witness to the accident (including yourself) concerning the occurrence. Please state when, where and to whom the statements were made.

38. Did you report the accident to any person or entity? If so:

- (a) To whom was the report made;
- (b) What are the contents of the report;
- (c) State the date and time that the report was made;
- (d) Please provide a copy of said report.

39. Have you or anyone acting on your behalf obtained from any person any statement (as defined by the Rules of Civil Procedure) concerning this action or its subject matter?

If so:

(a) names and addresses of each such person;

(b) State when, where, by whom and to whom each statement was made, and whether it was reduced to writing or otherwise recorded;

(c) State the names and addresses of each person who has custody of any such statements that were reduced to writing or otherwise recorded;

(e) Attach a copy of each such statement to these Interrogatories.

40. Do you have knowledge of any transcript or of testimony in any proceeding arising out of the occurrence? If so, please identify it.

STATEMENTS MADE BY PARTY TO WHOM INTERROGATORY IS ADDRESSED

41. Have you given any statement as defined by the Rules of Civil Procedure concerning this action or its subject matter?

If so, please:

(a) State the names and addresses of each person to whom a statement was given;

(b) State when and where each statement was given;

(c) State the names and addresses of each person who has custody of any such statements that were reduced to writing or otherwise recorded.

(d) Attach a copy of each such statement to these Interrogatories.

DEMONSTRATIVE EVIDENCE

42. Are you or anyone in your behalf in possession of maps, models, plans, diagrams or drawings relating to the accident complained of, showing the locale or surrounding area of the site of the accident or any other matters involved in the accident. If so, attach a copy of said map, plan or diagrams to these Interrogatories and state:

- (a) The date(s) when such maps, models, plans, diagrams or drawings were taken or made and what they are;
- (b) The names and addresses of the person or persons taking or making the same;
- (c) The subject that each represents or portrays;
- (d) The name, address and job classification of the person having possession or custody of the same.

43. Are you or anyone acting in your behalf, including but not limited to attorneys and insurance adjusters, in possession of any photographs, motion pictures or video recordings relating to the accident complained of, showing the local or surrounding area of the site of the accident or any other matters or things involved in the accident? If so, attach a copy and state:

- (a) The dates when such photographs, motion pictures or video recordings were taken or made;
- (b) The names, addresses and job classifications of the person or persons taking the same;
- (c) The subject that each represents or portrays;
- (d) What location each was taken from;
- (e) The name, address and job classification of the person having possession or custody of the same.

TRIAL PREPARATION MATERIAL

44. Have you or anyone on your behalf including but not limited to attorneys and insurance adjusters, conducted any investigation of the accident which is the subject matter of the complaint? If the answer is in the affirmative, please:

- (a) State the names and addresses of each such person, and the employer of each person, who conducted any investigation;
- (b) State the subject matter of the investigation;
- (c) State the dates of the investigation;
- (d) Describe all notes, reports, or other documents prepared during or as a result of the investigations and the identity of the person who have possession thereof;
- (e) Attach copies of any and all documents, memoranda, notes, photographs and statements as a result of the investigation.

EXPERTS

45. Identify by name and address any experts with whom you have consulted who will not be called upon to testify.

46. Identify by name and address any experts with whom you have consulted who will be called upon to testify at trial.

47. As to the experts in question No. 45 state:

- (a) The background and qualifications of each said expert, listing the schools attended, years of attendance, degrees received, and experience in any particular field of specialization or expertise.
- (b) The subject matter upon which each expert will testify;
- (c) The substance of all the facts and all the opinions to which each expert will testify;
- (d) The grounds for each expert's opinion.

INSURANCE

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

If the answer is affirmative, state the following with respect to each policy:

- (a) The name of the insurance carrier(s) that issued each policy of insurance;
- (b) The named insured under each policy and the policy number;
- (c) The type of each policy and the effective dates;
- (d) The amount of coverage provided for injury to each person for each occurrence, and in the aggregate for each policy;
- (e) Each exclusion, if any, in the policy which is applicable to any claim there under and the reasons why you or the company claims the exclusion is applicable;
- (f) Whether you have made a claim under the policy and if so set forth the nature of the claim, the amount recovered and the date of recovery;

49. Did you make any oral or written report or give any other notice of the accident to any insurance company or agent or broker? If so:

- (a) State if the report was written or oral;
- (b) Please attach copies and/or transcriptions of said reports.

50. State whether or not any insurer has a file on the accident herein and, if so where the file is located.

51. Did you receive any compensation from, or make a claim under any Workers' Compensation Insurance Plans as a result of the accident in question? If your answer is in the affirmative, please state:

- (a) The name of the insurance company or companies providing such coverage;
- (b) The date of the claim and policy or claim number involved;
- (c) The name of the insurance adjuster or supervisor handling the claim and his office address;
- (d) If any claim was disallowed, please state the specific nature of the claim made and the reason(s) given by the insurance company for the denial.

52. Identify and give the home and business addresses of all witnesses who you anticipate will testify at the trial of this matter.

53. If you are not the registered owner of the motor vehicle you were driving at the time of the accident, state by what authority you were driving the said motor vehicle.

54. Were you performing any duties or acts on behalf of any person or entity other than yourself at the time of the accident?

55. If the answer to the preceding interrogatory is yes, state the name, home address and business address of each person and/or entity.

56. Identify and give the home and business addresses of all persons having knowledge of any discovery matters.

NADDEO & LEWIS, LLC

By _____
James A. Naddeo, Esquire

VERIFICATION

I verify that the statements made in the foregoing answers to interrogatories are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

AREA TRANSPORTATION AUTORITY
OF NORTH CENTRAL PENNSYLVANIA

BY: _____

Dated

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

NORMAN V. DALE, an
individual, Plaintiff,

v

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

No. 08-95-CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Interrogatories Addressed to Defendant was served on the following and in the following manner on the 13th day of May, 2008:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, Pennsylvania 19604

NADDEO & LEWIS, LLC

By:

James A. Naddeo
Attorney for Plaintiff

JAMES A. NADDEO
LINDA C. LEWIS
Trudy G. Lumadue

NADDEO & LEWIS, LLC
ATTORNEYS AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-1601
FAX: (814) 765-8142
naddeolaw@atlanticbbn.net

October 15, 2008

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, PA 19604

RE: Dale v. ATA
No. 2008-95-CD

Dear Mr. Orwig:

My records indicate that you were served with Interrogatories on May 13, 2008. I will be filing a motion to compel by close of business on October 22, 2008.

Sincerely,

James A. Naddeo
James A. Naddeo

JAN/arb

Cc: Norman Dale

Exhibit "B"

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

*

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No. 08-95-CD

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendant.

*

*

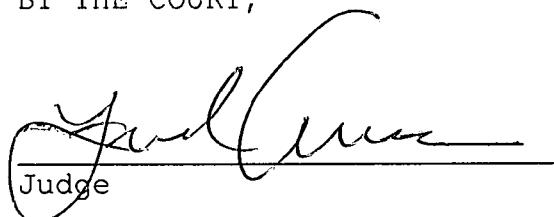
*

RULE

AND NOW, this 21 day of Nov, 2008, upon
consideration Motion to Compel filed on behalf of Plaintiff, it
is hereby ORDERED that a Rule be granted upon the Defendant,
Area Transportation Authority of North Central Pennsylvania, to
show cause why the relief requested by Plaintiff should not be
granted.

Rule Returnable and argument thereon to be held the 17th
of December, 2008, at 11:30 A.M., in Courtroom 1 of
the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



Judge

FILED
01/08/2009
NOV 21 2008
cc Atty Nadeau
60

William A. Shaw
Prothonotary/Clerk of Courts

FILED

NOV 21 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/21/08

You are responsible for serving all appropriate parties.
 The Prothonotary's office has provided services to the following parties:
 Plaintiff(s) _____ Plaintiff(s) Attorney _____ Other _____
 Defendant(s) _____ Defendant(s) Attorney _____ Other _____
 Special Instructions:

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

* No. 08-95-CD

* Type of Pleading:

* **CERTIFICATE OF SERVICE**

* Filed on behalf of:
* Plaintiff

* Counsel of Record for
* this party:

* James A. Naddeo, Esq.

* Pa I.D. 06820

&

* Trudy G. Lumadue, Esq.
* Pa I.D. 202049

* NADDEO & LEWIS, LLC.

* 207 E. Market Street

* P.O. Box 552

* Clearfield, PA 16830

* (814) 765-1601

5
FILED NOCC
03.30pm
NOV 25 2008
WAS
Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

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No. 08-95-CD

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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CERTIFICATE OF SERVICE

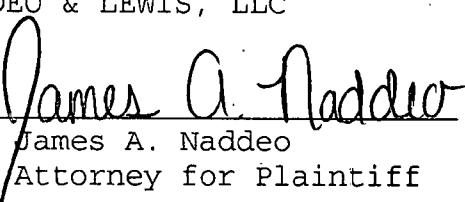
I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Motion to Compel and Rule was served on the following and in the following manner on the 25th day of November, 2008:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, Pennsylvania 19604

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

FILED

DEC 15 2008

12:15 PM

William A. Shaw

Prothonotary/Clerk of Courts (60)

12/15/08

I CAME TO ATF

NORMAN V. DALE
Plaintiff
V.
AREA TRANSPORTATION
AUTHORITY,
Defendant

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
: CIVIL - ACTION
:
:
: NO.: 08-95-CD
:

PROOF OF SERVICE

COMMONWEALTH OF PENNSYLVANIA :
ss:
COUNTY OF BERKS :

I, Gwen W. Sittler, being duly sworn according to law, deposes and says that she served ATA's Answers to Plaintiff's Interrogatories by mailing the same on this 10th day of December, 2008, to:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC.
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830

Gwen W. Sittler
Gwen W. Sittler

Sworn and subscribed before me
this 11th day of December, 2008.

Carol E. Stitzman

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
CAROL E. STITZMAN, NOTARY PUBLIC
CITY OF READING, BERKE COUNTY
MY COMMISSION EXPIRES SEP 27, 2011

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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No. 08-95-CD

Type of Pleading:

**PRAECIPE TO WITHDRAW
MOTION TO COMPEL**

Filed on behalf of:

Plaintiff

*

Counsel of Record for
this party:

*

*

James A. Naddeo, Esq.

Pa I.D. 06820

*

&

Trudy G. Lumadue, Esq.

Pa I.D. 202049

*

NADDEO & LEWIS, LLC.

207 E. Market Street

*

P.O. Box 552

*

Clearfield, PA 16830

*

(814) 765-1601

*

*

FILED

O 3:30P.M. 6/6

DEC 16 2008

ICC Atty, Naddeo

S

William A. Shaw
Prothonotary/Clerk of Courts

(6/10)

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

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No. 08-95-CD

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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PRAECIPE TO WITHDRAW MOTION TO COMPEL

TO THE PROTHONOTARY:

Please withdraw the Motion to Compel filed on behalf
of Norman V. Dale.

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Plaintiff

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

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No. 08-95-CD

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AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Praeclipe to Withdraw Motion to Compel was served on the following and in the following manner on the 16th day of December, 2008:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, Pennsylvania 19604

NADDEO & LEWIS, LLC

By: James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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*
* No. 08-95-CD
*

FILED ICC ATT
013:35 Naddeo
JAN 08 2009
S William A. Shaw
Prothonotary/Clerk of Courts
Type of Filing

* PRAECIPE FOR STATUS
CONFERENCE

* Filed on behalf of:
* Plaintiff
*
* Counsel of Record for
* this party:

* James A. Naddeo, Esq.
* Pa I.D. 05820
* &
* Trudy G. Lumadue, Esq.
* Pa I.D. 202049

* NADDEO & LEWIS, LLC.
* 207 E. Market Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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No. 08-95-CD

PRAECIPE FOR STATUS CONFERENCE

Please schedule a status conference in the above-
captioned case.

James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

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No. 08-95-CD

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

*

O R D E R

AND NOW, this 9th day of January, 2009, it is the
ORDER of this Court that a hearing is scheduled upon Plaintiff's
Praecipe for Status Conference for the 26th day of January,
2009, at 2:00 p.m. in Courtroom No. 1, Clearfield County
Courthouse, Clearfield, Pennsylvania. Judges Chambers

BY THE COURT,

Judges Chambers

FILED ^{1cc}
01/23/2009 Atty Naddoo
JAN 09 2009

S William A. Shaw
Prothonotary/Clerk of Courts

60

FILED

JAN 09 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/09

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

* No. 08-95-CD

* Type of Pleading:

CERTIFICATE OF SERVICE

* Filed on behalf of:

* Plaintiff

* Counsel of Record for
this party:

* James A. Naddeo, Esq.

* Pa I.D. 06820

* &

* Trudy G. Lumadue, Esq.

* Pa I.D. 202049

* NADDEO & LEWIS, LLC.

* 207 E. Market Street

* P.O. Box 552

* Clearfield, PA 16830

* (814) 765-1601

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FILED
01/04/04
JAN 13 2004
N6 PC

William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an *
individual, *
Plaintiff, *
*
v. * No. 08-95-CD
*
AREA TRANSPORTATION AUTHORITY *
OF NORTH CENTRAL PENNSYLVANIA, *
a Pennsylvania corporation, *
Defendants *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Praeclipe for Status Conference was served on the following and in the following manner on the 9th day of January, 2009:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, Pennsylvania 19604

NADDEO & LEWIS, LLC

By: James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

FILED NO CC
JAN 23 2009 6:10
AM 13:33 PM

5 William A. Shaw
Prothonotary/Clerk of Courts

NORMAN V. DALE : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
V. : CIVIL - ACTION
:
AREA TRANSPORTATION :
AUTHORITY, : NO.: 08-95-CD
Defendant :
:

NOTICE OF VIDEO/ORAL DEPOSITION

TO: James A. Naddeo, Esq., Naddeo & Lewis, LLC., 207 E. Market Street,
Clearfield, PA 16830

PLEASE TAKE NOTICE that the Defendant above named will take in the above action, for use as authorized by the Pennsylvania Rules of Civil Procedure, the video deposition of:

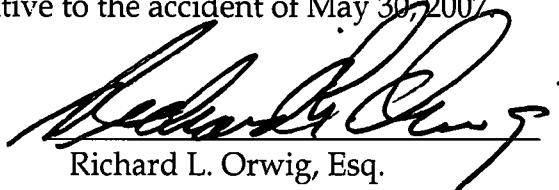
Norman V. Dale

before a Notary Public at Naddeo & Lewis, LLC., 207 E. Market Street, Clearfield, PA 16830 telephone 814.756.1601 on **Tuesday, February 3, 2009**, beginning at **1:30 P.M.**, and thereafter from day to day as the taking of deposition may be adjourned at which time and place you are hereby notified to appear and take such part in said examination as you may be advised and as shall be fit and proper.

The videotape portion of the deposition will be conducted by Blanchard's Video Service, RR 4, Box 286, Towanda, PA 18848 and conducted by Thomas Blanchard or his designee, simultaneously with stenographic recording.

Please bring with you any documentation, correspondence, memorandums, diaries, photographs and any other materials relative to the accident of May 30, 2007.

Dated: 1.19.09



Richard L. Orwig, Esq.
Attorney for Defendant

NORMAN V. DALE
Plaintiff
V.

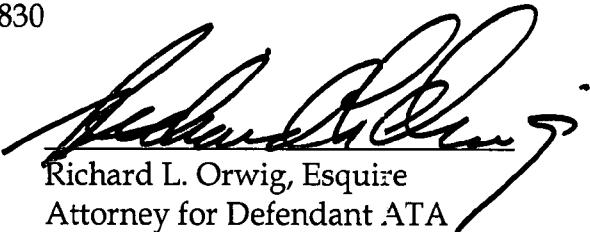
AREA TRANSPORTATION
AUTHORITY,
Defendant

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
: CIVIL - ACTION
:
:
: NO.: 08-95-CD
:

CERTIFICATE OF SERVICE

I, Richard L. Orwig, Esq., hereby certify that on this 19th day of January, 2009, I served a true and correct copy of Defendant's Notice of Video/Oral Deposition upon the following parties or counsel of record, via first class mail, postage prepaid:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC.
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830


Richard L. Orwig, Esquire
Attorney for Defendant ATA

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

NORMAN V. DALE, an individual, * NO. 08-95-CD
Plaintiff *

vs. *
AREA TRANSPORTATION AUTHORITY OF *
NORTH CENTRAL PENNSYLVANIA, a *
PENNSYLVANIA CORPORATION, *
Defendant *

ORDER

S **FILED**

JAN 26 2009

013:36 AM
William A. Shaw

Prothonotary/Clerk of Courts

CHART TO ATTY

NA 0060

Open

AND NOW, this 26th day of January, 2009, following status conference among
counsel and the Court and upon agreement of the parties, it is the ORDER of this Court
as follows:

1. The parties shall have no more than 60 days from this date in which to
complete discovery and to complete depositions including but not
necessarily limited to depositions of the Plaintiff and the driver of the bus
in question.
2. Following the completion of discovery under the terms as set forth herein,
the Defense shall have no more than an additional 60 days in which to
complete an independent medical examination of the Plaintiff. Thereafter,
either party may list the case for jury trial.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

JAN 26 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1-26-09

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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* No. 08-95-CD

* Type of Pleading:

* **CERTIFICATE OF SERVICE**

* Filed on behalf of:

* Plaintiff

*

* Counsel of Record for
this party:

*

*

* James A. Naddeo, Esq.

* Pa I.D. 06820

* &

* Trudy G. Lumadue, Esq.

* Pa I.D. 202049

*

* NADDEO & LEWIS, LLC.

* 207 E. Market Street

* P.O. Box 552

* Clearfield, PA 16830

* (814) 765-1601

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03:3530 2CC
JAN 30 2009

Atty Naddeo

William A. Shaw
Prothonotary/Clerk of Courts

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

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Taking Deposition served on the following and in the following manner on the 30th day of January, 2009:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, PA 19604

Boring Court Reporting
121 Charles Street
Centre Hall, PA 16823

NADDEO & LEWIS, LLC

By: James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

FILED
M 12 17 2009
MAR 02 2009
cc

William A. Shaw
Prothonotary/Clerk of Courts

5

60

NORMAN V. DALE : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
V. : CIVIL - ACTION
:
AREA TRANSPORTATION :
AUTHORITY, : NO.: 08-95-CD
Defendant :
:

**PROOF OF SERVICE OF PREREQUISITE TO SERVE A SUBPOENA TO
PRODUCE DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF BERKS :
:

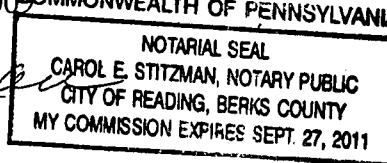
I, Gwen W. Sittler, being duly sworn according to law, deposes and says that she served a certified true and correct copy of Defendant ATA Notice of Prerequisite to Serve a Subpoena to Produce Documents And Things For Discovery Pursuant to Rule 4009.22, upon Clearfield Hospital and Rodolfo S. Polintan, M.D. by mailing the same on this 26th day of February, 2009, via first class mail postage prepaid upon the following counsel of record addressed as follows:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830

Gwen W. Sittler
Gwen W. Sittler

Sworn and subscribed before me
this 26th day of February, 2009, in the COMMONWEALTH OF PENNSYLVANIA

Carole E. Stitzman



FILED

MAR 11 2009

5 M/2-30/09
William A. Shaw
Prothonotary/Clerk of Courts

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1 Cen & to Attn

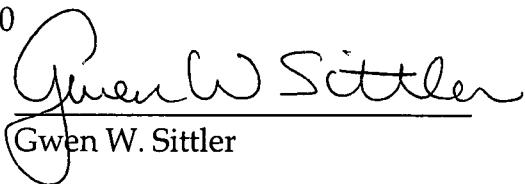
NORMAN V. DALE : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
V. : CIVIL - ACTION
:
AREA TRANSPORTATION :
AUTHORITY, : NO.: 08-95-CD
Defendant :
:

PROOF OF SERVICE

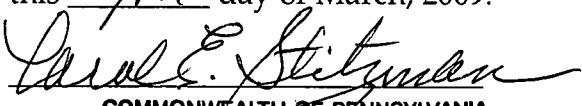
COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF BERKS :
:

I, Gwen W. Sittler, being duly sworn according to law, deposes and says that she served a certified true and correct copies of Notice of Intent to Serve Subpoena to Produce Documents or Things Pursuant to Rule 4009.21, to Clearfield Hospital by mailing the same via first class mail on this 9th day of March, 2009.

James A. Naddeo, Esq.
Naddeo & Lewis, LLC
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830


Gwen W. Sittler

Sworn and subscribed before me
this 9th day of March, 2009.


Carol E. Stitzman

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
CAROL E. STITZMAN, NOTARY PUBLIC
CITY OF READING, BERKS COUNTY
MY COMMISSION EXPIRES SEPT. 27, 2011



FILED
MJD:50801
MAR 13 2009
610
NOCC

William A. Shaw
Prothonotary/Clerk of Courts

NORMAN V. DALE
Plaintiff
V.

AREA TRANSPORTATION
AUTHORITY,
Defendant

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

: NO.: 08-95-CD

NOTICE OF ORAL DEPOSITION

TO: James A. Naddeo, Esq., Naddeo & Lewis, LLC., 207 E. Market Street,
Clearfield, PA 16830

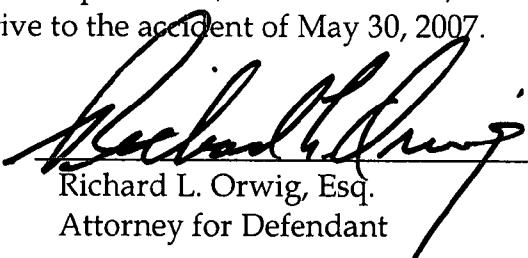
PLEASE TAKE NOTICE that the Defendant above named will take in the above action, for use as authorized by the Pennsylvania Rules of Civil Procedure, the depositions of:

Mary Wighamian - 9:00 a.m.
Lou Ann Shiner - 9:30 a.m.
David Bunnell - 11:00 a.m.
Suzette Heise - 1:00 p.m.

before a Notary Public at Naddeo & Lewis, LLC., 207 E. Market Street, Clearfield, PA 16830 telephone 814.756.1601 on **Friday, March 20, 2009**, beginning at **9:00 A.M.**, and thereafter from day to day as the taking of deposition may be adjourned at which time and place you are hereby notified to appear and take such part in said examination as you may be advised and as shall be fit and proper.

Please bring with you any documentation, correspondence, memorandums, diaries, photographs and any other materials relative to the accident of May 30, 2007.

Dated: March 11, 2009

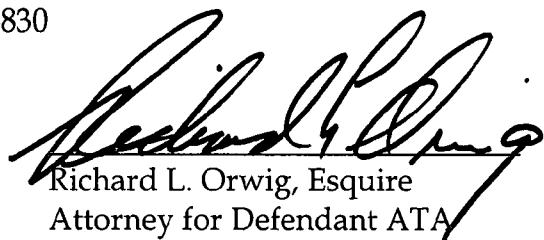

Richard L. Orwig, Esq.
Attorney for Defendant

NORMAN V. DALE : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
V. : CIVIL - ACTION
:
AREA TRANSPORTATION :
AUTHORITY, : NO.: 08-95-CD
Defendant :
:

CERTIFICATE OF SERVICE

I, Richard L. Orwig, Esq., hereby certify that on this 11th day of March, 2009, I served a true and correct copy of Defendant's Notice of Video/Oral Deposition upon the following parties or counsel of record, via first class mail, postage prepaid:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC.
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830



Richard L. Orwig, Esquire
Attorney for Defendant ATA

FILED

APR 01 2009
m / 1:50 pm
William A. Shaw
Prothonotary/Clerk of Courts

I went to Atty,

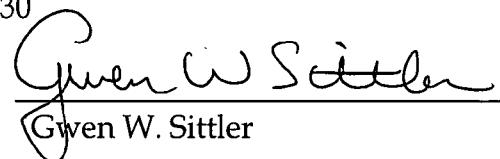
NORMAN V. DALE : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
V. : CIVIL - ACTION
:
AREA TRANSPORTATION :
AUTHORITY, : NO.: 08-95-CD
Defendant :
:

**PROOF OF SERVICE OF PREREQUISITE TO SERVE A SUBPOENA TO
PRODUCE DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

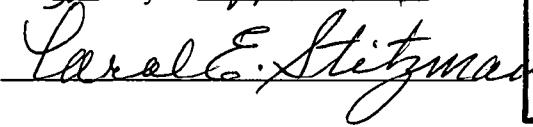
COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF BERKS :
:

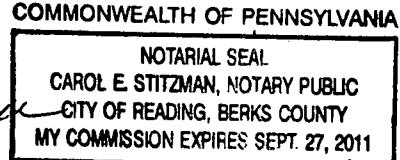
I, Gwen W. Sittler, being duly sworn according to law, deposes and says that she served a certified true and correct copy of Defendant ATA Notice of Prerequisite to Serve a Subpoena to Produce Documents And Things For Discovery Pursuant to Rule 4009.22, upon Clearfield Hospital by mailing the same on this 30th day of March, 2009, via first class mail postage prepaid upon the following counsel of record addressed as follows:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830



Gwen W. Sittler

Sworn and subscribed before me
this 30th day of March, 2009




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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

* No. 08-95-CD

* Type of Pleading:

* **PRAECIPE TO LIST
FOR TRIAL**

* Filed on behalf of:
* Plaintiff

* Counsel of Record for
* this party:

* James A. Naddeo, Esq.
* Pa I.D. 06820

* &
* Trudy G. Lumadue, Esq.
* Pa I.D. 202049

* NADDEO & LEWIS, LLC.
* 207 E. Market Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

5 **FILED** ICC
07/31/09 *Atty Naddeo*
JUL 20 2009
William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an individual.

Plaintiff,

1

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

No. 08-95-CD

PRAECLPCE TO LIST FOR TRIAL

TO THE PROTHONOTARY:

Please place the above-captioned matter on the next list for trial. In support thereof I certify the following:

1. There are no Motions outstanding.
2. Discovery has been completed and the case is ready for trial.
3. The case is to be heard by jury.
4. Notice of the Praecept has been given to opposing counsel.
5. The time for trial is estimated at two (2) days.

Date: July 20, 2009

James A. Naddeo, Esquire
Attorney for Plaintiff

James A. Naddeo, Esquire
Attorney for Plaintiff

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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No. 08-95-CD

CERTIFICATE OF SERVICE

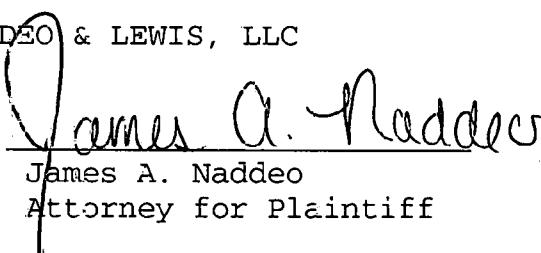
I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Praesipe to List for Trial was served on the following and in the following manner on the 20th day of July, 2009:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, PA 19604

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

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

NORMAN V. DALE, an individual :
:
vs. : No. 08-95-CD
:
AREA TRANSPORTATION :
AUTHORITY OF NORTH CENTRAL :
PENNSYLVANIA, a Pennsylvania :
corporation :
:

O R D E R

AND NOW, this 21st day of July, 2009, it is the Order of the Court that a pre-trial conference in the above-captioned matter shall be and is hereby scheduled for Wednesday, October 7, 2009 at 3:00 P.M. in Judges Chambers, Clearfield County Courthouse, Clearfield, PA.

Additionally, Jury Selection in this matter shall be and is hereby scheduled for January 5, 2010 at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED
01/10/05/09
JUL 22 2009
S
William A. Shaw
Prothonotary/Clerk of Courts
ICC Atty's:
Naddoo
Orwig
GLO

FILED

JUL 22 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/22/09

✓ You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other
Defendant(s) Defendant(s) Attorney
Special Instructions:

FILED

AUG, 20 2009

11-15 (w)
William A. Shaw

William A. Shaw
Notary/Clerk of Courts

No C/L

By: Richard L. Orwig, Esq.
I.D. no. 22371

Attorneys for Defendant Area Transit Authority

NORMAN DALE,	:	IN THE COURT OF COMMON PLEAS,
Plaintiff	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	
AREA TRANSIT AUTHORITY	:	NO.: 08-95-CD
and RANDY TURNER,	:	
Defendants	:	

**DEFENDANT AREA TRANSIT AUTHORITY'S AND RANDY TURNER'S
MOTION FOR SUMMARY JUDGMENT**

AND NOW, this ____ day of August, 2009, Defendants Area Transit Authority and Randy Turner (hereinafter collectively referred to as "ATA"), by and through their counsel, Orwig Law Offices, hereby file this Motion for Summary Judgement, per the provisions of Pennsylvania Rule of Civil Procedure 1035.2, and in support thereof, aver the following:

1. Plaintiff filed a Complaint against ATA seeking damages stemming from a municipal transit bus incident occurring on or about May 30, 2007, while Plaintiff was walking in the parking lot area of the Clearfield Medical Arts Building in Clearfield,

PA. A true and correct copy of Plaintiff's Complaint is attached hereto and marked as Exhibit "A".

2. On or about April 3, 2008 ATA filed an Answer to Plaintiff's Complaint denying all material actions and setting forth New Matter. A true and correct copy of Defendants' Answer and New Matter is attached hereto and marked as Exhibit "B".

3. The Defendants' New Matter sets forth various defenses or limitations on actions including but not limited to all the Defenses provided through governmental immunity and limitations as to the recovery of damages as set forth in the Pennsylvania Political Subdivision Tort Claims Act. 42 Pa.C.S.A. § 8541 et seq. . See, Exhibit "B," paragraphs 23-26.

4. According to Plaintiff's Complaint, Norman Dale ("Dale") was a pedestrian walking in the parking lot of the Clearfield Medical Arts Building parking lot in the City of Clearfield. See, Exhibit "A," paragraph 5.

5. Plaintiff avers that as an ATA bus approached the crosswalk entrance of the Clearfield Medical Arts Building wherein Plaintiff was walking, the bus allegedly came into contact with the Plaintiff. See Exhibit "A" paragraphs 3-7.

6. The Plaintiff alleges that as a result of said action he came into contact with the bus and sustained permanent injuries (See, Exhibit "A," paragraphs 9 & 14), specifically:

A. Injury to his neck and cervical spine, being a ruptured

and/or herniated disc.

B. Injury to his wrist and arm, causing degenerative changes and arthritic symptoms, and including a scar to his right forearm where the bus struck the Plaintiff.

7. In addition, Plaintiff avers that he is/was unable to engage in certain of his regular household activities as a result of the injuries referred to above. (See Exhibit "A", paragraph 15).

8. Defendant ATA answered Plaintiff's Complaint by denying all material allegations. A true and correct copy of Defendants' Answer to Plaintiff's Complaint and New Matter is attached hereto and marked as Exhibit "B."

9. Defendants' Answer to Plaintiff's Complaint included New Matter setting forth various affirmative defenses including the averment that ATA is a local agency entitled to Governmental Immunity pursuant to the Political Subdivision Tort Claims Act. 42 Pa. C.S.A. § 8541 et. seq. See Exhibit "B," paragraphs 24-25.

10. On or about April 18, 2008, Plaintiff replied to Defendant ATA's New Matter and specifically denied that Defendant ATA is a local agency. A true and correct copy of Plaintiff's Answer to Defendant's New Matter is attached hereto and marked as Exhibit "C." See Exhibit "C", paragraph 24.

**DAMAGE LIMITATIONS UNDER LOCAL
AGENCY/GOVERNMENTAL IMMUNITY**

11. Paragraphs 1 through 10 of Defendant's Motion for Summary Judgement are incorporated herein as though more fully set forth at length below.

12. Paragraph 2 of Plaintiff's Complaint avers:

"That the Defendant is Area Transportation Authority of North Central Pennsylvania, and is a Pennsylvania corporation with a principal office located at 178 Spider Lake Road, DuBois, Pennsylvania 15801."

13. Defendant Area Transportation Authority is a municipal authority and local governmental agency established under its enabling legislation, the Municipality Authorities Act of 1945, 53 P.S. §301 et seq.. Defendant incorporates the aforementioned Act as though the same were set forth herein at length. A true and correct copy of Defendant Area Transportation Authority's Certificate of Incorporation and Articles of Incorporation are attached hereto, made a part hereof and marked as Exhibit "D".

14. ATA operates as a public transportation authority in Clearfield County.

15. A "local agency" is defined in the Pennsylvania Governmental Immunity Act as "a government unit other than the Commonwealth government." 42 Pa. C.S. §8501.

16. It is respectfully submitted that ATA was established as a municipal authority under the provisions of the Municipality Authorities Act of 1945, (53 P.S. §301 et seq.) from which it receives its powers and duties.

17. Clearfield County created ATA under the provisions of the Municipality Authorities Act, to provide public transportation to that county's residents.

18. Clearfield County is a 6th Class County pursuant to the laws of the Commonwealth and census results.

19. As an authority created under and in accordance with the Municipal Authorities Act by Clearfield County, which by definition is not part of the Commonwealth government, Defendant ATA is therefore classified as a "local agency" pursuant to the Pennsylvania Political Subdivision Torts Claim Act. 42 Pa. C.S.A. § 8541 et. seq. (hereinafter referred to as the "Torts Claim Act")

20. The Political Subdivision Tort Claims Act provides that "no local agency shall be liable for any damages on account of injury to a person or property caused by any act of the local agency or an employee thereof or any other person," except as provided within that subchapter. 42 Pa. C.S. §8541.

21. As a local governmental agency, ATA is entitled to the protections set forth in the Governmental Immunity Act of October 5, 1980, P.L. 693, No. 142 §221(I), et al. 42 Pa. C.S.A. §8541 et seq., and is specifically entitled to governmental immunity as a local agency provided under the Tort Claims Act. 42 Pa. C.S.A. §8542, et seq. Defendants incorporate the aforementioned Act as though the same were set forth herein at length.

22. As such, Plaintiff's failure to identify ATA as a "local agency"

entitled to Governmental Immunity both paragraph 2 of Plaintiff's Complaint (See Exhibit "A") and paragraph 24 of Plaintiff's Answer to New Matter (See Exhibit "C") are rendered legally insufficient.

23. As set forth above in the New Matter portion of its Answer, ATA asserted its status as a "local agency" pursuant to the Governmental Immunities Act of Pennsylvania, Act of October 5, 1980, P.L. 693, No. 142, § 221(1), et al., and averred its entitlement to governmental immunity pursuant to 42 Pa.C.S.A. § 8541 et seq. (the Political Subdivision Tort Claims Act), as well as its ability to raise all defenses available pursuant to the Governmental Immunity Act. See Exhibit "B," paragraphs 23-26.

24. ATA also averred the bar, in whole or in part, to the recovery of damages sought by Plaintiff pursuant to application of 42 Pa.C.S.A. § 8553 of the Governmental Immunity Act. See Exhibit "B," paragraph 23-26. Said Section 8553 limits the extent of damages available under the Political Subdivision Tort Claims Act, specifically the limitations relative to pain and suffering.

25. In order to maintain a negligence action against a local agency under the provisions of the Political Subdivision Tort Claims Act, Plaintiff must first prove that the claimed damages would normally be recoverable under common law or a statute creating a cause of action even if the injury was caused by a person who could not use the defense of governmental or official immunity. 42 Pa.C.S.A. § 8542(a)(1).

26. Second, Plaintiff must prove that the alleged negligent acts of the local

agency or its employee fall within one of the following eight (8) enumerated categories that impose liability upon a local agency under Political Subdivision Tort Claims Act, 42 Pa. CS. § 8542 (a)(2) which include:

- a. Vehicle liability
- b. Care, custody or control of personal property
- c. Real property
- d. Trees traffic controls and street lighting
- e. Utility service facilities
- f. Streets
- g. Sidewalks
- h. Care, custody or control of animals

Defendant ATA contests whether its agent's, servant's and/or employee's actions with regard to the events of May 30, 2007 were actually negligent.

27. In addition to the establishment of the aforementioned requirements to bring a claim against a local agency under the provisions of the Political Subdivision Tort Claims Act, Plaintiff must also allege recoverable damages. 42 Pa. CS. §8553.

28. The Political Subdivision Tort Claims Act 42 Pa. CS. §8553(c) limits available types of damages to only the following six (6) enumerated categories of loss:

- a. Past and future loss of earnings and earning capacity
- b. Pain and suffering
- c. Medical and dental expenses
- d. Loss of consortium
- e. Loss of support
- f. Property losses

29. Employees of local agencies are governed by the same threshold as a local agency, and are entitled to similar protections.

I. RECOVERY FOR PAIN AND SUFFERING

30. The recovery for any form of "pain and suffering" against a local agency is also limited by the Political Subdivision Tort Claims Act to the following circumstances:

(D) Damages shall only be recoverable for:

(2) Pain and suffering in the following instances:

- (I) Death: or
- (ii) Only in cases of *permanent loss of a bodily function*, permanent disfigurement, or permanent dismemberment. . . . 42 Pa.C.S.A. § 8553 (c)(2)(I) (emphasis added)

31. ATA avers that Plaintiff did not sustain a permanent loss of bodily function and therefore any claim for pain and suffering must be dismissed.

32. In the instant case, Plaintiff testified, "There's are a lot of things I can't do on account of my neck and my arm" (See Exhibit "E" p. 36, ln 8-9), which he attributes to the May 2007 incident.

33. When asked to specify and provide examples of activities in which he could no longer participate after the May 2007 incident he stated "[W]ell, golf. I can't bowl. I can't do a lot of things." See Exhibit "E" p.36, ln. 11-12.

34. However, Plaintiff later testified, "Well I quit bowling about the same time I

quit golf." See Exhibit "E" p.37 ln 2-3. Plaintiff stated that part of the reason he quit golf and bowling were due to pre-existing lumbar disc problems (See Exhibit "E" p.37 ln. 6.).

35. Plaintiff further states in response to when he quit golf and bowling, "Probably in the 90s someplace, '93-'94" (See Exhibit "E" p. 37 ln. 7-11), which was 13-14 years before the incident in question.

36. In response to the question, "You still drive your own car?", Plaintiff testified, "Yes". See Exhibit "E" p.37, ln. 12-13.

37. Plaintiff testified, "I can go grocery shopping, but I can't carry the heavy stuff to my apartment . . . I can (lift) light stuff, but the heavy stuff my cleaning lady brings up . . . I can't lug anything with this hand and the fact that I can't go up steps." See Exhibit "E" p. 37, ln. 14-25.

38. Plaintiff attributes his inability to go up the steps to his pre-existing lumbar back issues. In response to the question, "And does that (lumbar back issues) make it difficult to walk up the steps?" Plaintiff responded, "Yes". See Exhibit "E" p.38 ln. 1-4.

39. Plaintiff testified that he is having left hand problems as a result of a previous carpal tunnel surgery. In response to the question, "Are you having any problems with your left hand as a result of the carpal tunnel surgery you had some time ago?" Plaintiff answered, "Yes, I do." In response to the question, "And the problem that you have with the right hand, wrist specifically, do you have any pain in your wrist from this?" Plaintiff answered, "Yes, I do." See Exhibit "E" p.40 ln. 2-9.

40. Plaintiff testified that he was unable to specifically recall any of the things he cannot do presently that he could before May 30, 2007. Claimant testified, "Well there's a few things I can't do, but I can't name them right now." See, Exhibit "F," p. 38, ln. 17-25.

41. Plaintiff testified that the contact between he and the bus did not cause his skin to break. Plaintiff testified, "It skipped the skin, but it didn't break or anything, just skin it, and the mark is still there where it hit." See, Exhibit "F," p. 40, ln. 15-17.

42. In response to the question, "Did the doctors ever tell you if you injured the bone or tendons or muscles or anything in particular?" Plaintiff answered, "No". See Exhibit "E" p.40, ln. 18-20.

43. Plaintiff testified that he saw Dr. Johnson because, "[I] had a heart attack, and my kidneys quit. And that's the reason I was there. . ." Plaintiff testified that his heart attack occurred, "Just before the 4th of July '08" . . . and that (the kidney problem) started when I had the heart attack." Plaintiff also testified, "I was (already) in the hospital when it happened. . .(because of). . . (pre-existing lumbar) back." See Exhibit "E" p. 42, ln. 5-23.

44. On April 30, 2009, Dr. David H. Johe, at the request of the Defendants, performed an Independent Medical Examination of the Plaintiff and concluded that the plaintiff did not sustain any permanent injury or loss of bodily function due to the bus incident of May 30, 2007. A true and correct copy of Dr. Johe's IME Report is attached

hereto and marked as Exhibit "F."

45. Dr. David H. Johe's Independent Medical Examination of the Plaintiff on April 30, 2009 revealed that Plaintiff "Has not seen any physicians recently." See Exhibit "F", p. 1.

46. Dr. Johe's IME states, "In the past he (Mr. Dale) has had anemia, arthritis, a bleeding disorder, cataracts, diabetes, heart attack, hernia repair, pneumonia, stoke, and a history of tonsillitis. . .He was admitted to the Altoona Hospital in 2008 with heart and kidney problems as will as to the Clearfield Hospital in 2009 for a bleeding stomach on two occasions. He had a heart attack in 2009." See Exhibit "F", p. 2.

47. Dr. Johe's IME states, "The physician who examined him (Dr. Gordon P. Clark) states, 'He was brushed by a bus this morning. He didn't actually fall down but sustained a bruise of right forearm . . . He denies blunt trauma to the head or neck, no paresthesias, numbness'." See Exhibit "F", p. 2.

48. Dr. Johe's IME states, "I tested both of his hands with a JAMAR dynamometer. His readings were consistent for both his right and left hand, and his pattern was consistent and normal. This gentleman is left hand dominant, and injured his right wrist. His right hand showed consistently more strength than the left dominant hand. . .His right thumb showed full range of motion." See Exhibit "F", p.2.

49. Dr. Johe's IME states, "His JAMAR dynamometry testing shows that he does not have a significant problem with his right hand or wrist. His range of motion of

both wrists is the same and although he complains subjectively of pain in the right wrist, there is no anatomic or physiologic reason for this." See Exhibit "F" p. 4.

50. Dr. Johe's IME states, "I reviewed the wrist films, cervical films and a cervical MRI. I did not see any evidence in his wrist film of an acute injury including no apparent fracture. His cervical spine showed significant degenerative disc disease in his neck which pre-existed his injury. There was no significant herniation of a disc." See Exhibit "F" p. 3.

51. Dr. Johe's IME states, "His (Mr. Dale's) mechanism of injury as described by him was minimal. He did not go to the hospital immediately (due to the incident) but instead went home. Later that evening he went to the hospital complaining of wrist and neck pain." See Exhibit "F", p. 3.

52. Dr. David H. Johe's IME stated that Plaintiff's physicians noted that no surgery was indicated, and that no specific diagnosis was given to this gentleman. See Exhibit "F" p. 4.

52. Dr. Johe's IME states, "Even though this gentleman continues to complain of subjective pain in both his right wrist ulnarly, as well as his posterior neck, he has no permanent loss of body function or permanent disfigurement. He has normal bodily functions of the neck and right wrist. The loss of range of motion of his neck is attributed to his cervical osteoarthritis. Furthermore, the range of motion of his wrist and function of his right hand are normal showing no permanent loss of body function." See Exhibit

"F" p.4.

53. As such, Plaintiff is not entitled to recover for any form of pain and suffering.

54. The Plaintiff must show more than just that an injury occurred to recover pain and suffering but also that such injury caused "permanent bodily function loss, dismemberment, or disfigurement . . ." 42 Pa C.S.A. §8553. The Pennsylvania Commonwealth Court, in similar situations have held in accordance with aforementioned provision. See, Dodd v. RRTA (granting summary judgment in favor of RRTA relative to the inability to recover pain and suffering) and Larocca v. RRTA (granting summary judgment in favor of RRTA relative to the inability to recover pain and suffering) and Smith v. Endless Mountain Transportation Authority, 878 A.2d 177 (Pa. Commw. Ct. 2005); See also, Exhibit "G".

55. Additional damages sought by the Plaintiff such as privation and inconvenience losses and loss of usual activities are not among the enumerated damages provided for in the Act, therefore the same are not recoverable against the Defendant ATA as claimed in the Plaintiff's Complaint. See Exhibit "A," paragraphs 15 & 17.

56. Further, Plaintiff is not entitled to recover for inability to engage in daily activities because such items are not among the enumerated damages provided for in the Act, so the same are not recoverable against the Defendant ATA as claimed in the Plaintiff's Complaint. See, also Exhibit "A" paragraphs 15 & 17.

III. OUT OF POCKET MEDICAL EXPENSES

57. As set forth above, the Tort Claims Act provides for the payment of out-of-pocket medical expenses on the Plaintiff's behalf, but in this case no such expenses have been demonstrated and therefore no recovery is permissible.

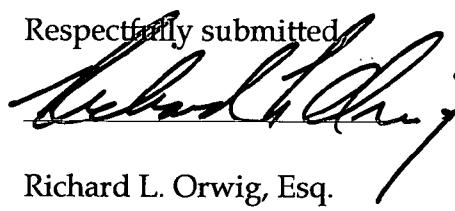
58. No other bills were submitted to demonstrate amount paid by the Plaintiff on his own behalf or that are due and owing by the Plaintiff for non-covered expenses.

59. As such, since no monies have been expended by the Plaintiff and the Plaintiff has confirmed that treatment has ceased, no recovery for out-of-pocket medical expenses is recoverable.

60. Rule 1035.2 of the Pennsylvania Rules of Civil Procedure permits a Motion for Summary Judgment where there is no genuine issue of material fact as to a necessary element of the cause of action.

WHEREFORE, Defendant ATA respectfully requests that this Honorable Court enter Summary Judgement against Plaintiff and in favor of Defendant ATA.

Respectfully submitted,



Richard L. Orwig, Esq.

Dated: 8/18/09

By: Richard L. Orwig, Esq.
I.D. no. 22371
Jill E. Nagy, Esq.
I.D. no. 85858

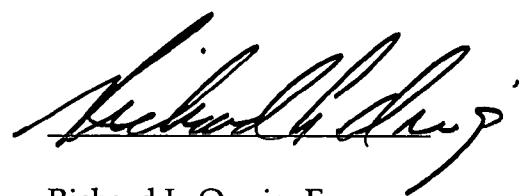
Attorneys for Defendant Area Transit
Authority

NORMAN DALE,	:	IN THE COURT OF COMMON PLEAS,
Plaintiff	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	
AREA TRANSIT AUTHORITY	:	NO.: 08-95-CD
and RANDY TURNER, bus driver,	:	
Defendants	:	Arbitration Matter

CERTIFICATE OF SERVICE

I, Richard L. Orwig, Esq., on this 18th day of August, 2009, hereby certify that I served true and correct copy of Defendants' Motion for Summary Judgement upon the following party, via first class mail, postage prepaid to:

James A. Nadeo, Esq.
Trudy G. Lumadue, Esq.
NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830



Richard L. Orwig, Esq.

By: Richard L. Orwig, Esq.
I.D. no. 22371
Jill E. Nagy, Esq.
I.D. no. 85858

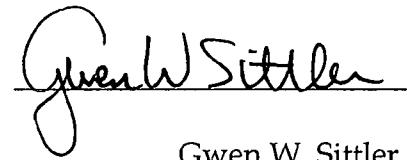
Attorneys for Defendant Area Transit
Authority

NORMAN DALE,	:	IN THE COURT OF COMMON PLEAS,
Plaintiff	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	
AREA TRANSIT AUTHORITY	:	NO.: 08-95-CD
and RANDY TURNER, bus driver,	:	
Defendants	:	Arbitration Matter
	:	

PROOF OF SERVICE OF

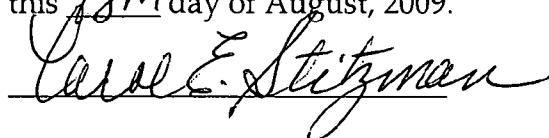
I, Gwen W. Sittler, being duly sworn according to law, deposes and says that she served a certified true and correct copy of Defendants' Motion For Summary Judgment and Brief by mailing the same on 18th of August, 2009 to:

James A. Nadeo, Esq.
Trudy G. Lumadue, Esq.
NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830



Gwen W. Sittler

Sworn and Subscribed before me
this 18th day of August, 2009.



COMMONWEALTH OF PENNSYLVANIA

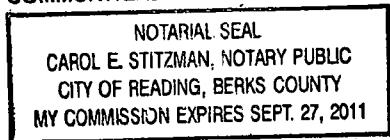


EXHIBIT A

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISIONNORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants* 08-95-CD
* No. 07 - - CD

* Type of Pleading:

* COMPLAINT

* Filed on behalf of:

* Plaintiffs

* Counsel of Record for
* this party:

* James A. Naddeo, Esq.

* Pa I.D. 06820

* &

* Trudy G. Lumadue, Esq.

* Pa I.D. 202049

* NADDEO & LEWIS, LLC.

* 207 E. Market Street

* P.O. Box 552

* Clearfield, PA 16830

* (814) 765-1601

Dated: January 21, 2008

* I hereby certify this to be a true
* and attested copy of the original
* statement filed in this case.

* JAN 21 2008

Attest: - - - - -

William J. *[Signature]*
Prothonotary/
Clerk of Courts

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

NORMAN V. DALE, an *
individual, *
Plaintiff, *
*
v. * No. 07 - - CD
*
*
AREA TRANSPORTATION AUTHORITY *
OF NORTH CENTRAL PENNSYLVANIA, *
a Pennsylvania corporation, *
Defendants *

NOTICE

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

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

Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

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

NORMAN V. DALE, an
individual,
Plaintiff,

۷۰

No. 07 - - CD

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

COMPLAINT

NOW COMES the Plaintiff, Norman V. Dale, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff is Norman V. Dale who is a sui
juris, adult individual who resides at 1221 Leonard Street,
Clearfield, Pennsylvania 16830.

2. That the Defendant is Area Transportation Authority of North Central Pennsylvania, and is a Pennsylvania corporation with a principal office located at 178 Spider Lake Road, DuBois, Pennsylvania 15801.

3. That on or about May 30, 2007 at approximately 11:15 a.m., E.D.S.T., the Plaintiff was struck by a bus owned and operated by Area Transportation Authority of Northwestern Pennsylvania, in particular bus number 711.

4. That the incident as described in paragraph three occurred in the parking lot of the Clearfield Medical Arts

Building located at 807 Turnpike Avenue, Clearfield, Pennsylvania.

5. That on said date, at or about said time, Plaintiff parked in a handicapped parking space and proceeded to walk toward the main entrance of the Clearfield Medical Arts Building.

6. That Clearfield Medical Arts Building is adjacent to the Clearfield Hospital and its parking lot is located South of the Medical Arts Building and the Hospital.

7. That on the aforesaid date and at or about the said time, Plaintiff was walking North in a crosswalk marked for pedestrians approaching the main entrance of the Clearfield Medical Arts Building.

8. That on the aforesaid date and at or about the said time, ATA Bus No. 711, on information and belief being operated by an employee of the defendant, was traveling West through the parking lot at the same location where Plaintiff was walking.

9. That on the aforesaid date and at or about the said time, ATA Bus No. 711, struck the Plaintiff on his right side.

10. That on the aforesaid date and at or about the said time, it was daylight and there were no averse weather conditions.

11. That as a result of the collision described in Paragraph 9 hereof which is incorporated herein by reference, the Plaintiff was spun and thrown approximately six-eight feet.

12. That the collision described in Paragraph 9 hereof which is incorporated herein by reference caused bruises and contusions and serious injuries to Plaintiff as hereinafter set forth.

13. That the Defendant was guilty of the following negligence, recklessness and carelessness which was the proximate cause of the accident and the injuries to the Plaintiff as follows:

A. That the Defendant failed to maintain a proper lookout while traveling in a parking lot;

B. That the Defendant failed to yield the right-of-way to a pedestrian;

C. That the Defendant violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3542, 75 Pa. C.S.A. Section 3714 and supplements thereto in that it operated a vehicle upon the parking lot of Clearfield Medical Arts Building, with careless disregard for the safety of the Plaintiff.

E. That the Defendant violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3361, 75 Pa. C.S.A. Section 3361, and supplements thereto, in that it

operated a vehicle upon the parking lot of Clearfield Medical Arts Building at a speed exceeding that which was safe and reasonable with regard to the circumstances then existing.

F. That the Defendant violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3309, 75 Pa.C.S.A. Section 3542, and supplements thereto, in that it failed to yield the right-of-way to an individual walking in a marked crosswalk.

14. That as a result of the collision described in Paragraph 9 hereof, the Plaintiff suffered the following injuries which may and probably will be permanent:

A. Injury to his neck and cervical spine, being a ruptured and/or herniated disc,

B. Injury to his right wrist and arm, causing degenerative changes and arthritic symptoms, and including a scar to his right forearm where the bus struck the Plaintiff.

15. That as a result of the injuries referred to in Paragraph 14 hereof, the Plaintiff was unable to engage in certain of his regular household duties.

16. That as a result of the injuries referred to in Paragraph 14 hereof, the Plaintiff may incur medical expenses

for the treatment of his injuries in excess of his available first party medical benefits.

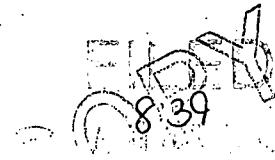
17. That the Plaintiff claims a reasonable amount for the following:

- A. Pain and suffering: past, present and future;
- B. Privation and inconvenience: past, present and future;
- C. Future medical expenses
- D. All other damages allowable by law.

WHEREFORE, the Plaintiff claims damages from the Defendant, in excess of Twenty Five Thousand (\$25,000.00) Dollars. Jury Trial Demanded.

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Plaintiff



William A. Shaw
Prostetary/Clerk of Courts

NORMAN V. DALE
Plaintiff
V.
AREA TRANSPORTATION
AUTHORITY,
Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL - ACTION
NO.: 08-95-CD

**ANSWER OF DEFENDANT, AREA TRANSPORTATION AUTHORITY,
TO PLAINTIFF'S COMPLAINT WITH NEW MATTER**

AND NOW, this 31st day of March, 2008 comes Defendant Area Transportation Authority, (hereinafter referred to as "ATA") by and through its counsel, Orwig Law Offices, and files the following Answer to Plaintiff Norman V. Dale (hereinafter referred to as "Dale") Complaint with New Matter:

1. Denied. Defendant, ATA, is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 1 of Plaintiff's Complaint.
2. Admitted in part, denied in part. It is admitted that ATA is the named Defendant and has an office located at 44 Transportation Center, Johnsonburg, Pennsylvania. It is denied that ATA is a Pennsylvania corporation. It is further averred that ATA is a local agency incorporated via the Pennsylvania Municipalities Authorities

NORMAN V. DALE
Plaintiff
V.

AREA TRANSPORTATION
AUTHORITY,
Defendant

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

NO.: 08-95-CD

NOTICE TO PLEAD

You are hereby notified to file a written response to the enclosed New Matter to Plaintiff's Complaint within twenty (20) days from date of service hereof or judgment may be entered against you.

Richard L. Orwig
Richard L. Orwig, Esq.
I.D. No. 22371
Attorney for Defendant, ATA

Dated: 3/31/08

NORMAN V. DALE	IN THE COURT OF COMMON PLEAS
Plaintiff	CLEARFIELD COUNTY, PENNSYLVANIA
V.	CIVIL - ACTION
AREA TRANSPORTATION	
AUTHORITY,	
Defendant	NO.: 08-95-CD

**ANSWER OF DEFENDANT, AREA TRANSPORTATION AUTHORITY,
TO PLAINTIFF'S COMPLAINT WITH NEW MATTER**

AND NOW, this 21st day of March, 2008 comes Defendant Area Transportation Authority, (hereinafter referred to as "ATA") by and through its counsel, Orwig Law Offices, and files the following Answer to Plaintiff Norman V. Dale (hereinafter referred to as "Dale") Complaint with New Matter:

1. Denied. Defendant, ATA, is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 1 of Plaintiff's Complaint.
2. Admitted in part, denied in part. It is admitted that ATA is the named Defendant and has an office located at 44 Transportation Center, Johnsonburg, Pennsylvania. It is denied that ATA is a Pennsylvania corporation. It is further averred that ATA is a local agency incorporated via the Pennsylvania Municipalities Authorities.

Act, and entitled to governmental immunity pursuant to the Pennsylvania Political Subdivision Tort Claims Act.

3. Denied. Defendant, ATA, is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 3 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

4. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 4 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

5. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 5 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

6. Admitted.

7. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 7 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

8. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 8 of Plaintiff's

Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

9. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 9 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

10. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 10 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

11. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 11 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

12. Denied. Defendant ATA is without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 12 of Plaintiff's Complaint. To the extent the same may be material, strict proof thereof is demanded at trial.

13. Denied. Paragraph 13 of Plaintiff's Complaint constitutes conclusions of law to which no responsive pleading is required. To the extent the same may be material, strict proof thereof is demanded at the time of trial. The Defendant at all times

acted reasonably, carefully and prudently according to the laws of the Commonwealth of Pennsylvania. Further, Answering Defendant specifically denies the following:

- a. Answering Defendant denies that it failed to maintain a proper lookout while traveling a parking lot;
- b. Answering Defendant denies that it failed to yield the right-of-way to a pedestrian;
- c. Answering Defendant denies that it violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3542, 75 Pa.C.S.A. Section 3714 and supplements thereto. Answering Defendant further denies that it operated a vehicle on the parking lot of Clearfield Medical Arts Building with careless disregard for the safety of the Plaintiff.
- e. Answering Defendant denies that it violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3361, 75 Pa. C.S.A. Section 3361, and supplements thereto. Answering Defendant further denies that it operated a vehicle on the parking lot of Clearfield Medical Arts Building at a speed exceeding that was safe and reasonable with regard to the circumstances then existing.
- f. Answering Defendant denies that it violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3309, 75 Pa. C.S.A. Section 3542, and supplements thereto, and further deny that Defendant

failed to yield the right-of-way to an individual walking in a marked crosswalk.

14. Denied. The allegations set forth in Paragraph 14 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent the same may be material, strict proof thereof is demanded at trial. Further, Defendant is without information or knowledge sufficient to form a belief as to the damages allegedly suffered by Plaintiff. Finally, Defendant hereby avers that at all times they acted reasonably, carefully and prudently pursuant to the laws of the Commonwealth of Pennsylvania.

15. Denied. The allegations set forth in Paragraph 15 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent the same may be material, strict proof thereof is demanded at trial. Further, Defendant is without information or knowledge sufficient to form a belief as to the damages and losses allegedly suffered by Plaintiff. Defendant hereby avers that at all times they acted reasonably, carefully and prudently pursuant to the laws of the Commonwealth of Pennsylvania. By way of further response, the damages with regard to mental anguish as alleged in Paragraph 15 of Plaintiff's Complaint are not losses for which a local agency may be liable pursuant to Section 8553 of the Political Subdivision Tort Claims Act.

16. Denied. The allegations set forth in Paragraph 16 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent

the same may be material, strict proof thereof is demanded at trial. Further, Defendant is without information or knowledge sufficient to form a belief as to the damages or medical expenses allegedly suffered by Plaintiff. Finally, Defendant hereby avers that at all times they acted reasonably, carefully and prudently pursuant to the laws of the Commonwealth of Pennsylvania.

17. Denied. The allegations set forth in Paragraph 17 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent the same may be material, strict proof thereof is demanded at trial. Further, Defendant is without information or knowledge sufficient to form a belief as to the damages allegedly suffered by Plaintiff. Finally, Defendant hereby avers that at all times they acted reasonably, carefully and prudently pursuant to the laws of the Commonwealth of Pennsylvania. By way of further response, the damages alleged in Paragraph 17 (B) and (D) of Plaintiff's Complaint are not losses for which a local agency may be liable pursuant to Section 8553 of the Political Subdivision Tort Claims Act.

NEW MATTER

DEFENDANT ATA'S NEW MATTER IN THE FORM OF AFFIRMATIVE DEFENSES

18. Defendant ATA incorporates paragraphs 1 through 17 as if more fully set forth below.

19. All or portions of Plaintiff's claim are or may be barred by the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Act, 75 Pa.C.S.A. §1701 et seq.

and/or the statutes of the Commonwealth of Pennsylvania, and Defendant incorporates all defenses available under said Act or Statutes as though more fully set forth at length herein.

20. Any and all claims of Plaintiff for products, services and accommodation relative to (a) professional medical treatment and care; (b) emergency health services; (c) medical and vocational rehabilitation services; and (d) work losses (past, present or future), if any, are not recoverable from Defendant under the provisions of the foregoing Pennsylvania Motor Vehicle Financial Responsibility Act unless Plaintiff's first party benefits have been exhausted.
21. Plaintiff fails to state a claim upon which relief may be granted.
22. Plaintiff's claims are barred by the applicable statute of limitation.
23. Plaintiff's claims are barred by a failure to provide the appropriate notice requirements applicable to actions against local governmental agencies and/or commonwealth agencies pursuant to the Act governing Limitations of Time in Civil Actions and Proceedings of October 5, 1980, PL 693, No. 142, §22(i)(1) as amended December 20, 1982, PL 1409, No. 326, art. II, §201, 42 Pa.C.S.A. §5522(a). Defendant incorporates the aforementioned Act as though the same were set forth herein at length.
24. Defendant ATA is organized under the Pennsylvania Municipality Authorities Act of 1945, 53 P.S. §301 et seq., and as such is a local agency pursuant to the Governmental Immunity Act of October 5, 1980, P.L. 693, No. 142 §221(I), et al., 42 Pa.C.S.A. §8541 et seq., and is entitled to municipal immunity pursuant to 42 Pa.C.S.A.

§8542, et seq., and raises all defenses available under said Governmental Immunity Act, including the limitation on maintaining a cause of action for only those acts for which a local agency can be responsible. Defendant incorporates the aforementioned Act as though the same were set forth herein at length.

25. The recovery of damages by Plaintiff against Defendant, as a "local agency", is barred in whole or in part by the application of section 8553 of the Governmental Immunity Act. 42 Pa.C.S.A. §8553. Defendant incorporates the aforementioned Act as though the same were set forth herein at length.

26. Plaintiffs failed to aver facts concerning the movement of a motor vehicle or its parts as required in order to sustain an action relative to the "Motor Vehicle" exception of the Tort Claims Act.

27. Defendant also denies that it is susceptible to Rule 238 delay damages based upon the constitutionality of the same.

28. Plaintiff's claims are or may be barred in whole or in part by operation of the doctrine of assumption of risk and may be applied to the facts disclosed in discovery or at trial.

29. Plaintiff's claims may be barred in whole or in part by application of the Pennsylvania Comparative Negligent Law, 42 Pa.C.S.A. §7102.

30. The accident and damages as alleged in Plaintiff's Complaint were caused in whole or in part by the actions of the Plaintiff.

31. The Plaintiff has not set forth facts that would indicate a causal link

between actions of the Answering Defendant and the Plaintiff's injuries.

32. Any losses, damages or injuries alleged in Plaintiff's Complaint were a result of the carelessness and negligence of Plaintiffs.

33. Answering Defendant avers that if negligence is found to exist on its part, said negligence was not the proximate cause of Plaintiffs' injuries.

WHEREFORE, Defendant, ATA, demands judgment in its favor and against the Plaintiff, including counsel fees and costs and such other and further relief as might be just and appropriate.

Respectfully submitted,



Richard L. Orwig, Esq.

Jill E. Nagy, Esq.

Attorney for Defendant ATA

VERIFICATION

I, MICHAEL E. IMBROGNO, Executive Director of Area Transportation Authority ("ATA"), verify that the statements made in Defendant's Answer to Plaintiff's Complaint with New Matter are true and correct. I further understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.



Michael E. Imbrogno

Dated: 3-18-08

NORMAN V. DALE

Plaintiff

v.

AREA TRANSPORTATION
AUTHORITY,

Defendant

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

: NO.: 08-95-CD

CERTIFICATE OF SERVICE

I, RICHARD L. ORWIG, ESQ., on this March 31, 2008, hereby certify that a true and correct copy of Defendant's Answer to Plaintiff's Complaint with New Matter was served upon the following party, via first class mail, postage prepaid:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC.
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830

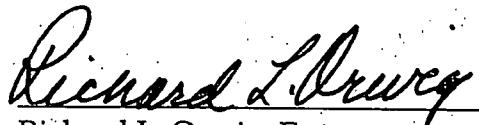

Richard L. Orwig, Esq.
Attorney for Defendant, ATA

EXHIBIT C

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

* Nc. 08-95-CD

* Type of Pleading:

* REPLY TO NEW MATTER

* Filed on behalf of:
* Plaintiff

* Counsel of Record for
* this party:

* James A. Naddeo, Esq.
* Pa I.D. 06820

* &
* Trudy G. Lumadue, Esq.
* Pa I.D. 202049

* NADDEO & LEWIS, LLC.
* 207 E. Market Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

Dated: April 18, 2008

* I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

APR 18 2008

Attest.

William J. H.
Prothonotary/
Clerk of Courts

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

NORMAN V. DALE, an
individual,
Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendant.

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No. 08-95-CD

REPLY TO NEW MATTER

NOW COMES the Plaintiff, Norman V. Dale, and by his attorney, James A. Naddeo, Esquire, sets forth the following in reply to the new matter filed by Defendant:

18. No answer is required.
19. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.
20. States a hypothetical conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.
21. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

22. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

23. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied, and to the contrary, Plaintiff provided appropriate notice on September 24, 2007 as evidenced by true and correct copies of letters to Defendant which are attached hereto as Exhibit "A" and Exhibit "B."

24. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of whether or not Defendant is organized under the Pennsylvania Municipality Authorities Act of 1945. The remainder of said averment states a conclusion of law to which no answer is required. To the extent an answer may be required the remainder of said averment is denied.

25. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

26. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

27. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

28. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

29. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

30. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied, and to the contrary, no action by Plaintiff contributed to the cause of the accident and/or the damages in whole or in part.

31. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

32. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

33. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

WHEREFORE, the Plaintiff requests this Honorable Court
enter judgment in his favor and against the Defendant.

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

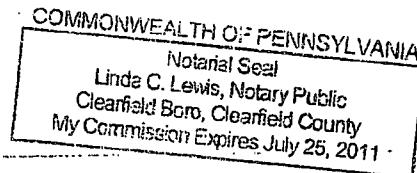
COMMONWEALTH OF PENNSYLVANIA)
SS.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared NORMAN V. DALE, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Answer to New Matter are true and correct to the best of his knowledge, information and belief.

Norman V. Dale
Norman V. Dale

SWORN and SUBSCRIBED before me this 15th day of April, 2008.

Jinda C. Lewis



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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

*
*
*
*
*
*

No. 08-95-CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Reply to New Matter was served on the following
and in the following manner on the 18th day of April, 2008:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, Pennsylvania 19604

NADDEO & LEWIS, LLC

By:


James A. Naddeo

Attorney for Plaintiff

JAMES A. NADDEO
LINDA C. LEWIS
Trudy G. Lumadue

NADDEO & LEWIS, LLC
ATTORNEYS AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-1601
FAX: (814) 765-8142
naddeolaw@atlanticbbn.net

September 24, 2007

Area Transportation Authority of North Central PA
44 Transportation Center
Johnsonburg, PA 15845

RE: Norman V. Dale
Accident: May 30, 2007

Gentlemen:

I represent Norman V. Dale. My client was injured on May 30, 2007 when he was struck by an ATA bus in Clearfield County. This notice is provided to you as required by 42 Pa. C.S. 5522 (a). Information required by this notice is as follows:

1. The person to whom the cause of action has accrued is Norman V. Dale who resides at 1221 Leonard Street, Clearfield, PA 16830.
2. The party injured was Norman V. Dale who resides at 1221 Leonard Street, Clearfield, PA 16830.
3. The accident occurred on May 30, 2007 at approximately 11:15 a.m.
4. The names and addresses of the injured party's attending physicians at this present time are as follows:
 - A. Clearfield Hospital Emergency Room - treated on date of the incident.
 - B. Dr. Polintan - other treating physician of injured party.
 - C. Dr. Richard Johnson - primary care physician.

Exhibit "A"

Area Transportation Authority, September 24, 2007
Page 2

D. Drayer Physical Therapy - treatment injured party has received as a result of this incident.

This same notification is being mailed on today's date to the Clearfield County office of the Area Transportation Authority of North Central Pennsylvania.

Sincerely,


James A. Naddeo

JAN/tgl

Cc: Norman V. Dale

NADDEO & LEWIS, LLC
ATTORNEYS AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

JAMES A. NADDEO
LINDA C. LEWIS
Trudy G. Lumadue

(814) 765-1601
FAX: (814) 765-8142
naddeolaw@atlanticbbn.net

September 24, 2007

Area Transportation Authority of North Central PA
Clearfield County Office
P.O. Box 1071
DuBois, PA 15801

RE: Norman V. Dale
Accident: May 30, 2007

Gentlemen:

I represent Norman V. Dale. My client was injured on May 30, 2007 when he was struck by an ATA bus in Clearfield County. This notice is provided to you as required by 42 Pa. C.S. 5522 (a). Information required by this notice is as follows:

1. The person to whom the cause of action has accrued is Norman V. Dale who resides at 1221 Leonard Street, Clearfield, PA 16830.
2. The party injured was Norman V. Dale who resides at 1221 Leonard Street, Clearfield, PA 16830.
3. The accident occurred on May 30, 2007 at approximately 11:15 a.m.
4. The names and addresses of the injured party's attending physicians at this present time are as follows:
 - A. Clearfield Hospital Emergency Room - treated on date of the incident.
 - B. Dr. Polintan - injured party's family physician.
 - C. Dr. Richard Johnson - primary care physician.

Exhibit "B"

Area Transportation Authority, September 24, 2007
Page 2

D. Drayer Physical Therapy - treatment injured party
has received as a result of this incident.

This same notification is being mailed on today's date to
the Johnsonburg office of the Area Transportation Authority of
North Central Pennsylvania.

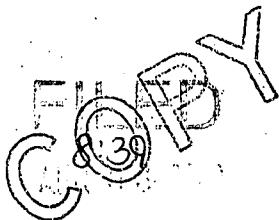
Sincerely,



James A. Naddeo

JAN/tgl

Cc: Norman V. Dale



William A. Shaw
Prothonotary/Clerk of Courts

NORMAN V. DALE
Plaintiff
V.
AREA TRANSPORTATION
AUTHORITY,
Defendant

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

NO.: 08-95-CD

PROOF OF SERVICE

I, Gwen W. Sittler, being duly sworn according to law, deposes and says that she served a certified true and correct copy of Answer of Defendant, ATA, to Plaintiff's Complaint with New Matter, by mailing the same on this 31st day of March 2008, upon the following parties or counsel of record:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC.
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830

Gwen W. Sittler
(Gwen W. Sittler)

Sworn and subscribed before me
this 31st day of March, 2008.

Carol E. Stitzman

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
CAROL E. STITZMAN, NOTARY PUBLIC
CITY OF READING, BERKS COUNTY
MY COMMISSION EXPIRES SEPT. 27, 2011

NORMAN V. DALE	:	IN THE COURT OF COMMON PLEAS
Plaintiff	:	CLEARFIELD COUNTY, PENNSYLVANIA
V.	:	CIVIL - ACTION
AREA TRANSPORTATION	:	
AUTHORITY,	:	NO.: 08-95-CD
Defendant	:	

PROOF OF SERVICE

I, Gwen W. Sittler, being duly sworn according to law, deposes and says that she served a certified true and correct copy of Answer of Defendant, ATA, to Plaintiff's Complaint with New Matter, by mailing the same on this _____ day of
2008, upon the following parties or counsel of record:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC.
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830

(Gwen W. Sittler)

Sworn and subscribed before me
this _____ day of _____, 2008.

Commonwealth of Pennsylvania 633044

Department of State



IN THE COURT OF COMMON PLEAS
OF FIFTY-NINTH JUDICIAL DISTRICT
ELK COUNTY BRANCH-CIVIL ACTION-LAW
No. 85-313

Office of The
Secretary of the Commonwealth

To all to whom these Presents shall come, Greeting:

WHEREAS, In and by the provisions of the Municipality Authorities Act approved May 2, 1945, P. L. 382, as amended, the Secretary of the Commonwealth is authorized and required to issue a

CERTIFICATE OF INCORPORATION

evidencing the incorporation of an authority under the provisions of said Act.

AND WHEREAS, The stipulations and conditions of said Act have been fully complied with by the Municipal Authorities of the Cameron County, Clearfield County, Elk County, Jefferson County, McKean County and Potter County

Commonwealth of Pennsylvania desiring the organization of

AREA TRANSPORTATION AUTHORITY OF NORTH CENTRAL PENNSYLVANIA

THEREFORE, KNOW YE, That subject to the Constitution of this Commonwealth, and under the authority of Act No. 164, approved the second day of May, Anno Domini one thousand nine hundred and forty-five, P. L. 382, as amended, I DO BY THESE PRESENTS, which I have caused to be sealed with the Great Seal of the Commonwealth, declare and certify the creation, erection and incorporation of

AREA TRANSPORTATION AUTHORITY OF NORTH CENTRAL PENNSYLVANIA into a body politic and corporate in deed and in law by the name chosen hereinbefore specified, now to become operative with authority to transact business, and which shall exist for a term of fifty years unless sooner dissolved according to law.

Such corporation shall have and enjoy and shall be the subject to all the powers, duties, requirements, and restrictions, specified and enjoined in and by the above Act of Assembly and all other applicable laws of this Commonwealth.

GIVEN under my Hand and the Great Seal of the Commonwealth, at the City of Harrisburg, this 19th day of May, in the year of our Lord one thousand nine hundred and seventy-six and of the Commonwealth the two hundredth

Ch. N. E. L. L. Tucker

Secretary of the Commonwealth
ec

ARTICLES OF INCORPORATION
AREA TRANSPORTATION AUTHORITY OF NORTH CENTRAL PENNSYLVANIA

TO: THE SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA

In compliance with the requirements of the Act of May 2, 1945, P.L. 382, as amended, the Boards of County Commissioners for Cameron County, Clearfield County, Elk County, Jefferson County, McKean County and Potter County, all of the aforesaid counties being municipal corporations in the State of Pennsylvania, having adopted resolutions signifying the desire to organize a joint transportation authority thereunder, do hereby certify:

1. The name of the Authority is AREA TRANSPORTATION AUTHORITY OF NORTH CENTRAL PENNSYLVANIA.

2. Said Authority is formed under the Act of May 2, 1945, P. L. 382, as amended and supplemented.

3. (a) Previous authorities organized by the County of Cameron and presently existing under the provisions of the said Act are as follows: Cameron County Industrial Development Authority.

(b) Previous authorities organized by the County of Clearfield and presently existing under the terms of said Act are as follows: Clearfield County Housing Authority, Clearfield County Industrial Development Authority, Clearfield Transportation Authority, and Clearfield County Redevelopment Authority.

(c) Previous authorities organized by the County of Elk and presently existing under the provisions of the said Act are as follows: Elk County Redevelopment Authority, Elk County Industrial Development Authority, Elk County Solid Waste Authority, and Elk County Housing Authority.

(d) Previous authorities organized by the County of Jefferson and presently existing under the provisions of the said Act are as follows: Jefferson County Industrial Development Authority, Jefferson County Municipal Authority, Jefferson County Housing Authority, Jefferson County Redevelopment Authority, and Reynlow Park Authority.

(e) Previous authorities organized by the County of McKean and presently existing under the provisions of the said Act are as follows: McKean County Redevelopment Authority, McKean County Solid Waste Authority, McKean County Industrial Authority, and McKean County Airport Authority.

(f) Previous authorities organized by the County of Potter and presently existing under the provisions of the said Act are as follows: Potter County Hospital Authority, Potter County Housing Authority, Potter County Solid Waste Authority, Potter County Redevelopment Authority, and Potter County Industrial Development Authority.

4. The names of the Incorporating Municipalities which are all located in Pennsylvania are as follows: Cameron County, Clearfield County, Jefferson County, McKean County, Potter County, and Elk County.

5. The names and addresses of the municipal authorities of the incorporators are as follows:

(a) CAMERON COUNTY - COMMISSIONERS AND HOME ADDRESSES:

Francis Higgins, Chairman	South Park	Emporium, Pa. 15834
George Callahan		Driftwood, Pa. 15832
David Drakula	R. D. 1, Clear Creek	Emporium, Pa. 15834

(b) CLEARFIELD COUNTY - COMMISSIONERS AND HOME ADDRESSES:

Richard Lininger, Chairman	608 Filbert Street	Curwensville, Pa. 16833
Harris G. Breth	830 Ogden Avenue	Clearfield, Pa. 16830
Kenneth A. Bundy	R. D. 1	Penfield, Pa. 15849

(c) ELK COUNTY - COMMISSIONERS AND HOME ADDRESSES:

Ronald T. Beimel, Chairman	Box 53	Kersey, Pa. 15846
George Lavella	Fairview Road	Kersey, Pa. 15846
Francis L. Kuntz	532 Church Street	St. Marys, Pa. 15857

(d) JEFFERSON COUNTY - COMMISSIONERS AND HOME ADDRESSES:

Andrew S. Laska, Chairman	R. D. 4	Punxsutawney, Pa. 15767
Mark S. Wildauer	504 Grant Street	Reynoldsville, Pa. 15851
John R. Caldwell	332 Taylor Avenue	Falls Creek, Pa. 15840

(e) McKEAN COUNTY - COMMISSIONERS AND HOME ADDRESSES

Raymond J. Curtis, Chairman	R. D.	Eldred, Pa. 16731
Russell J. Weston	52 Lake Circle Drive	Bradford, Pa. 16801
Loretta Harrington	R. D.	Smethport, Pa. 16749

(f) POTTER COUNTY - COMMISSIONERS AND HOME ADDRESSES:

Eugene Erway, Chairman	Port Allegany Road	Coudersport, Pa. 16915
Emmaline Perry	R. D.	Genesee, Pa. 16923
Robert Rankin	113 First Street	Galeton, Pa. 16922

6. The names, addresses and the terms of office of the first members of the Board of said authority to be formed are as follows:

<u>NAME</u>	<u>ADDRESS</u>	<u>TERM OF OFFICE</u>
-------------	----------------	-----------------------

(a) CAMERON COUNTY

James Miller	110 Willowood Court	3 years
	Emporium, Pa. 15834	

(b) CLEARFIELD COUNTY

Warren Preiss	Penfield, Pa. 15849	4 years
---------------	---------------------	---------

John Riddle	Filbert Street	5 years
	Curwensville, Pa. 16833	

F. L. Owen	128 W. Sherman Ave.	1 year
	DuBois, Pa. 15801	

(c) ELK COUNTY

Richard Viglione 523 North Broad Street 4 years
Ridgway, Pa. 15853

Leonard Curci 356 Brusselles Street 1 year
St. Marys, Pa. 15857

(d) JEFFERSON COUNTY

William E. McGranor R. D. 1 1 year
Reynoldsville, Pa. 15851

Edward J. McCarey, Jr. 1101 Main Street 2 years
Brockway, Pa. 15824

(e) McKEAN COUNTY

Margaret Burlingame 7 Rose Hill Avenue 2 years
Smethport, Pa. 16749

Michael Reda R. D. 1, Box 699 5 years
Kane, Pa. 16735

(f) POTTER COUNTY

Michael Hoza 11 Third Street 3 years
Galeton, Pa. 16922

IN WITNESS WHEREOF, the applicants have caused these Articles of Incorporation to be executed by their proper municipal officers and their corporate seals, duly attested, to be hereunto affixed as of the day of April, 1976.

ATTEST:

Terrie Jack

COUNTY OF CAMERON

By Francis J. Higgins

ATTEST:

Maryael Morris

COUNTY OF CLEARFIELD

By Richard L. Lanning

ATTEST:

W. R. Happy

COUNTY OF ELK

By Kenneth A. Kean

ATTEST:

Glenn Laley

COUNTY OF JEFFERSON

By Andrew S. Laska

ATTEST:

H. E. Bushweller

COUNTY OF MC KEAN

By Raymond J. Curtis

ATTEST:

Theresa Jung

COUNTY OF POTTER

By Eugene Ercoy

3-1-76:21

717

Approved and filed in the Department of State on the
19th day of May, A.D. 1976.

C. McLean Tucker

Secretary of the Commonwealth
ec

Prosecutor/Clerk of Courts
William A. Shaw

AUG 20 2009

FILED

Claims Act are restricted to recovery of reasonable hospital, nursing and medical expenses which were not paid by Plaintiff's insurance and/or Defendant's insurance;

BY THE COURT:

Paul K. Allision

J.

ENTERED AND FILED
02 JUL 17 PM 4:28
PROTHONOTARY'S OFFICE
PROTHONOTARY
LANCASTER, PA.

NOTICE OF ENTRY OF ORDER OR DECREE
PURSUANT TO PA. R.C.P. NO: 236
NOTIFICATION - THE ATTACHED DOCUMENT
HAS BEEN FILED IN THIS CASE
PROTHONOTARY OF LANCASTER CO., PA
DATE:

JUL 18 2002

MARGARET S. LAROCCA, : IN THE COURT OF COMMON PLEAS
Plaintiff, : LANCASTER COUNTY, PENNSYLVANIA
: CIVIL ACTION - LAW
v. :
DAVID WILLIAMS :
RED ROSE TRANSIT AUTHORITY, : No. CI-99-12147
Defendants. :

ORDER

AND NOW this 17th day of July, 2002, upon consideration of Defendant Red Rose
Transit Authority and David Williams' Motion for Partial Summary
Judgment and Brief in Support thereof it is hereby ORDERED and
DECREED that:

1. Defendant's Motion for Partial Summary Judgment is hereby GRANTED;
2. Plaintiff's claim for past, present and future loss of earnings and impairment of earning capacity is hereby stricken;
3. Plaintiff's claim for pain and suffering is hereby stricken as a recoverable damage because Plaintiff cannot show the threshold level of impairment of a bodily function as required by the Political Subdivision Tort Claims Act.
4. Plaintiff's claim for losses such as loss of usual and daily activities, and emotional upset and anguish are hereby stricken because they are not an enumerated recoverable damage under the Political Subdivision Tort Claims Act.
6. Plaintiff's damages pursuant Political Subdivision Tort

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

TRACEE DODD

v.

No. CI-00-12275

RED ROSE TRANSIT AUTHORITY

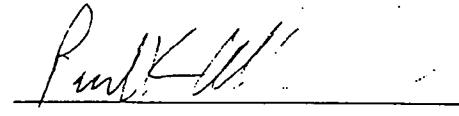
ORDER

ENTERED AND FILED
01 FEB 28 PM 1:55
NOTARY'S OFFICE
LANCASTER, PA.

AND NOW, this 28th day of February, 2001, Defendant's preliminary objections are sustained and Plaintiff is directed as follows:

1. File an amended complaint recognizing the Defendant's status as a "local agency" with governmental immunity;
2. Paragraphs 5(d), (e) and (f) and 8 are stricken;
3. The damages sought in the amended complaint shall be limited to those allowed under the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8541 *et seq.*

BY THE COURT:



PAUL K. ALLISON

JUDGE

Attest:
ATTEST
EDNA COLON
CLERK

Copies to:

Milton J. Frank, Esquire
1831 Chestnut St., Ste. 302, Philadelphia, PA 19103
Richard L. Orwig, Esquire and Jill E. Nagy, Esquire
1940 North 13th St., Ste. 215, Reading, PA 19604

NOTICE OF ENTRY OF ORDER OF DECREE
PURSUANT TO PA.R.C.P. NO.236
SPECIFICATION THE ATTACHED DOCUMENT
IS BEING FILED IN THIS CASE
NOTARY OF LANCASTER CO., PA
ATE
FEB 28 2001

AND NOW, this 5th day of July, 2005, the November 2, 2004 order of the Court of Common Pleas of Tioga County is hereby AFFIRMED.

Pa.Cmwth.,2005.
Smith v. Endless Mountain Transp. Authority
878 A.2d 177

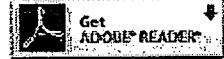
Briefs and Other Related Documents ([Back to top](#))

- [2005 WL 3862779](#) (Appellate Brief) Brief for Appellee (Jan. 7, 2005)  [Original Image of this Document with Appendix \(PDF\)](#)
- [2004 WL 3735011](#) (Appellate Brief) Brief for Appellant (Dec. 20, 2004)  [Original Image of this Document with Appendix \(PDF\)](#)
- [2017 CD 2004](#) (Docket) (Sep. 21, 2004)

END OF DOCUMENT

 [West Reporter Image \(PDF\)](#)

Adobe Reader is required to view PDF images.



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(Pa.Cmwlth.1997), where the court of common pleas granted the city's request for a compulsory non-suit on the basis that the plaintiff's medical witness equivocated regarding the issue of permanent loss of a bodily function. We reversed, finding that the plaintiff presented sufficient evidence to allow the jury to determine that issue. However, *Boyer* is distinguishable because the evidence in that case, namely a physician's testimony that the plaintiff's neck injury resolved but that the plaintiff suffered worsening arthritis in his back that might interfere with his ability to perform certain activities, presented a factual dispute regarding whether the plaintiff suffered permanent loss of a bodily function as a proximate result of the accident. Thus, we found that the issue should have been resolved by the jury.

Here, there is simply no evidence in the record creating a dispute of material fact regarding whether Smith suffered permanent loss of a bodily function. Dr. Rajjoub's deposition testimony establishes the following: (1) as a result of the accident, Smith fractured her C-1 vertebrae, *181 (2) Smith was required to wear a halo device from October 17, 2001 through January 15, 2002 to stabilize the fracture, and (3) the bone healed but Smith will always have an abnormality in the form of a callous. Smith highlights the following testimony of Dr. Rajjoub as raising a fact issue regarding permanent loss of a bodily function:

Q. Okay, so the bone had healed?

A. The bone healed. There would be callus. There would be callus around where the bone is healing. It will never go back to normal, never, ever. It's the same thing if you break your arm. If you put the external device you would have callus. If you break your clavicle you would have callus. It never goes back straight. (R.R. 122a)

Without evidence suggesting that the callus attributable to the accident somehow prevents Smith from performing a bodily function that she was able to perform before the injury, this testimony fails to raise a question of fact sufficient to survive summary judgment on the issue of damages.

Smith further maintains that her own deposition testimony indicating that she: (1) continues to suffer neck pain associated with the fracture and (2), voluntarily wears a neck brace to alleviate that pain, raises material questions of fact regarding permanent loss. We again disagree.

[5] The Supreme Court in *Walsh* interpreted Section 8553(c)(2)(ii) of the Code to require that any residual pain be manifested as a permanent loss of bodily function to qualify for pain and suffering damages against a local agency. The statutory provisions limiting damages recoverable from local agencies should be interpreted broadly. Gloffke v. Robinson, 575 Pa. 193, 835 A.2d 1288 (2003); Walsh.

Smith, who has suffered from multiple sclerosis for 30 years, was significantly restricted in the activities she could perform *before* the accident, including walking and dressing herself. There is nothing in the record indicating that Smith experienced a loss in her ability to perform any bodily function after the incident that she had been able to perform before the accident. In fact, Dr. Rajjoub testified that Smith has resumed her normal activities and that he no longer treats her for the cervical injury. Smith's sisters testified that Smith enjoys the same level of activity and lifestyle as she did prior to the accident. Smith herself admitted that she suffered no loss of bodily function, and has not altered her lifestyle in any manner since the accident.

Absent evidence indicating that the pain somehow interferes with her ability to perform a bodily function, Smith's testimony that she continues to suffer neck pain and voluntarily wears a neck brace to alleviate it, fails to meet the *Walsh* standard.

Because the record contains no evidence that could possibly support a finding that Smith suffered permanent loss of a bodily function, summary judgment was appropriate. Accordingly, we affirm the trial court's order.

O R D E R

were Commonwealth agencies subject to one of the enumerated exceptions to sovereign immunity. The defendants filed preliminary objections in the nature of a demurrer, asserting that they were local agencies entitled to *governmental* immunity. The court of common pleas sustained the preliminary objections and dismissed the complaint, concluding that the defendants were local agencies, protected by the governmental immunity provisions (which do not contain an exception for medical malpractice). We affirmed on appeal, finding that the plaintiffs' failure to file preliminary objections to the defendants' preliminary objections constituted a waiver of the right to challenge both the premature assertion of immunity and the court's dismissal of the complaint.

Therefore, based on *Gallagher*, we conclude that Smith waived any argument she could have made regarding the trial court's order to amend the complaint, which effectively determined the issue of EMTA's status for immunity purposes. FN3

FN3. The issue of whether EMTA is considered to be a local or Commonwealth agency is critical to Smith's claim in this case. While recovery of pain and suffering damages against a local agency is restricted under the governmental immunity statute, that restriction is absent in cases involving a Commonwealth agency and sovereign immunity. See Section 8528 of the Code, 42 Pa.C.S. § 8528. Had EMTA been characterized as a Commonwealth agency by the trial court, it appears that Smith would have likely survived summary judgment on the damages issue.

*180 [3] We next address whether the trial court erred in determining EMTA's status for immunity purposes. We note that Smith identifies no fact or law to support a finding that EMTA was created as a Commonwealth agency. EMTA, however, attached to its preliminary objections the resolutions passed by all of the counties involved in creating EMTA as a joint municipal authority pursuant to Section 4 of the former Municipality Authorities Act of 1945(MAA), Act of May 2, 1945, P.L. 382, as amended, 53 P.S. § 306 (establishing the purposes and powers of municipal authorities).FN4 (R.R. 29a-50a) EMTA also attached the certificate of incorporation issued by the Commonwealth, indicating that EMTA was created under the MAA. (R.R. 50a) Based on these documents, we believe that the trial court had sufficient evidence to support a finding that EMTA was a local agency for purposes of immunity. Consequently, we find that the trial court did not err in ordering Smith to amend the complaint accordingly.

FN4. Section 4 of the MAA was repealed by the Act of June 19, 2001, P.L. 287 and reenacted as Section 5607 of the new Municipality Authorities Act, 53 Pa.C.S. § 5607.

[4] In the context of tort claims filed against local agencies, Section 8553(c)(2)(ii) of the Code FN5 limits recovery of damages for pain and suffering to cases involving permanent loss of a bodily function, permanent disfigurement, or permanent dismemberment. The Supreme Court has defined "permanent loss of a bodily function" to mean that as a proximate result of an accident, the injured claimant is unable to do or perform a bodily act which the claimant was able to do or perform before sustaining the injury and that the loss of such ability is permanent. Walsh v. City of Philadelphia, 526 Pa. 227, 585 A.2d 445 (1991).

FN5. 42 Pa.C.S. § 8553(c)(2)(ii).

Smith argues that her own deposition testimony, combined with that of her medical witness, neurosurgeon Dr. Rajjoub, create issues of fact as to whether she suffered permanent loss of a bodily function as a result of the accident. Therefore, she believes the trial court erred in refusing to allow the case to proceed to a jury trial.

To support this contention, Smith cites Boyer v. City of Philadelphia, 692 A.2d 259

examine the entire record in the light most favorable to the non-moving party. *Id.* An award of summary judgment will be affirmed only where there is no genuine issue of material fact and it is clear that the moving party is entitled to judgment as a matter of law. *Id.*

Smith is an adult individual confined to a wheelchair due to a pre-existing condition which renders her unable to care for herself. She resides at a long-term nursing care facility in Wellsboro, Tioga County, Pennsylvania. EMTA is a municipal authority primarily engaged in providing public transportation, including specialized transportation services for the physically disabled, to the residents of Tioga County and neighboring counties.

On October 2, 2001, arrangements were made to transport Smith in an EMTA van to a routine medical examination at the Veteran's Hospital in Bath, New York. Her two sisters accompanied her. On that day, Nares, an employee of EMTA, placed Smith in her wheelchair into the left slot in the back of the van. He secured the wheelchair with four tie-downs and proceeded to operate the van. While Nares was driving onto a highway access ramp, Smith's wheelchair fell over inside the van and she struck her head on the metal chair lift. As a result of the accident, Smith suffered a C-1 fracture producing cervical pain. She was required to temporarily wear a halo device.

On June 4, 2002, Smith filed a complaint alleging that Nares, acting in the scope of his employment, failed to properly secure the wheelchair and that EMTA provided defective equipment which was inadequate to properly secure the wheelchair in the van. Significantly, the complaint***179** characterized EMTA as a Commonwealth agency. EMTA then filed preliminary objections in the nature of a demurrer asserting, *inter alia*, that it was a local agency entitled to governmental immunity. After reviewing the preliminary objections, the trial court concluded that EMTA was a local agency and ordered Smith to amend the complaint accordingly; she complied under protest. In the amended complaint, Smith also alleged that she suffered the following damages: fracture of the C-1 vertebrae, rib fracture, contusions and abrasions, pain and suffering, embarrassment and humiliation, and severe mental distress.

After the parties completed discovery, EMTA filed a motion for summary judgment. The trial court denied the motion as to liability but granted summary judgment in EMTA's favor on the basis that Smith could not meet the damages threshold set forth in Section 8553 of the Judicial Code (Code). FN2 This appeal followed.

FN2. 42 Pa.C.S. § 8553.

[1] We must determine whether the trial court erred in ordering Smith to amend her complaint to identify EMTA as a local agency, rather than a Commonwealth agency, pursuant to EMTA's preliminary objections. We must also address the issue of whether the trial court erred in granting summary judgment in favor of EMTA on the basis that Smith failed to meet the statutory damages requirement set forth in Section 8553 of the Code.

Procedurally, Smith argues that the trial court's order to amend the complaint by naming EMTA as a local agency was "premature" and that it improperly relieved EMTA of its burden to plead and prove local agency status pursuant to Pa. R.C.P. 1030 (providing, *inter alia*, that immunity must be pled as an affirmative defense).

[2] We disagree. If an immunity defense is clear on the face of the complaint, it may be properly raised as a preliminary objection. Miller v. Kistler, 135 Pa.Cmwlth. 647, 582 A.2d 416 (1990). In turn, Smith should have challenged EMTA's preliminary objections by filing her own preliminary objections. Gallagher v. City of Philadelphia, 142 Pa.Cmwlth. 487, 597 A.2d 747 (1991).

In Gallagher, the plaintiffs commenced a medical malpractice action alleging that the defendants

⇨ [268 Municipal Corporations](#)

⇨ [268XII Torts](#)

⇨ [268XII\(A\) Exercise of Governmental and Corporate Powers in General](#)

⇨ [268k742 Actions](#)

⇨ [268k742\(5\) k. Evidence. Most Cited Cases](#)

Evidence was sufficient to support trial court's finding that municipal transit authority was a local agency, as opposed to Commonwealth agency, for purposes of governmental immunity in patron's negligence action against authority for injuries patron sustained while riding authority's bus; patron identified no fact or law to support finding that authority was created as Commonwealth agency, authority presented resolutions passed by all of the counties involved in creating authority as a joint municipal authority pursuant to Municipality Authorities Act (MAA), and there was certificate of incorporation issued by Commonwealth indicating that authority was created under the MAA. 53 P.S. § 306(Repealed).

[4]  [KeyCite Citing References for this Headnote](#)

⇨ [268 Municipal Corporations](#)

⇨ [268XII Torts](#)

⇨ [268XII\(A\) Exercise of Governmental and Corporate Powers in General](#)

⇨ [268k743 k. Damages. Most Cited Cases](#)

Handicapped patron who was injured while riding municipal transit authority bus did not suffer "permanent loss of bodily function" for purposes of compensation under Political Subdivision Tort Claims Act; doctor's deposition testimony established that, as result of accident, patron fractured her C-1 vertebrae, patron was required to wear halo device to stabilize fracture, and bone healed but patron would always have abnormality in form of a callus, and there was no evidence suggesting that callus attributable to accident somehow prevented patron from performing bodily function that she was able to perform before injury, and patron was significantly restricted in activities she could perform before accident. 42 Pa.C.S.A. § 8553(c)(2)(ii).

[5]  [KeyCite Citing References for this Headnote](#)

⇨ [268 Municipal Corporations](#)

⇨ [268XII Torts](#)

⇨ [268XII\(A\) Exercise of Governmental and Corporate Powers in General](#)

⇨ [268k743 k. Damages. Most Cited Cases](#)

The statutory provisions limiting damages recoverable from local agencies should be interpreted broadly. 42 Pa.C.S.A. § 8553(c)(2)(ii).

*178 James T. Rague, Wellsboro, for appellant.

Richard L. Orwig, Reading, for appellee.

BEFORE: SMITH-RIBNER, Judge, LEAVITT, Judge, and JIULIANTE, Senior Judge.

OPINION BY Senior Judge JIULIANTE.

Betty Jean Smith (Smith) appeals from the order of the Court of Common Pleas of Tioga County (trial court) that granted the motion for summary judgment of Endless Mountain Transportation Authority (EMTA) and its employee Jack Nares (Nares). We affirm. ^{FN1}

^{FN1}. Our review of a decision granting summary judgment is limited to determining whether the trial court committed an error of law or an abuse of discretion.

Westmoreland County v. RTA Group, Inc., 767 A.2d 1144 (Pa.Cmwlth.2001). We

878 A.2d 177

Briefs and Other Related Documents

Commonwealth Court of Pennsylvania.

Betty Jean SMITH, Appellant

v.

ENDLESS MOUNTAIN TRANSPORTATION AUTHORITY and Jack Nares.

Argued June 6, 2005.

Decided July 5, 2005.

Background: Handicapped patron, who was injured when her wheelchair fell over inside municipal transit authority's van and she struck her head on metal chair lift, brought action against municipal transit authority, which provided public transportation services for the physically disabled, and against authority's employee, alleging that employee failed to properly secure wheelchair and that authority provided defective equipment which was inadequate to properly secure wheelchair in van. The Court of Common Pleas, Tioga County, No. 505 CV 2002, Dalton, Jr., President Judge, entered summary judgment for authority and its employee, and patron appealed.

Holding: The Commonwealth Court, No. 2017 C.D. 2004, Julianti, Senior Judge, held that patron did not suffer "permanent loss of bodily function" for purposes of compensation under Political Subdivision Tort Claims Act.

Affirmed.

West Headnotes

[1] KeyCite Citing References for this Headnote☛ 268 Municipal Corporations☛ 268XII Torts☛ 268XII(A) Exercise of Governmental and Corporate Powers in General☛ 268k742 Actions☛ 268k742(6) k. Trial, Judgment, and Review. Most Cited Cases

Patron's failure to file preliminary objections to municipal transit authority's preliminary objections, asserting that it was a local agency entitled to governmental immunity, constituted a waiver of any argument patron could have made regarding the trial court's order to amend patron's negligence complaint against authority, for injuries patron sustained while riding authority's bus, by naming authority as a local agency, instead of Commonwealth agency, pursuant to authority's preliminary objections, which effectively determined the issue of authority's status for immunity purposes.

[2] KeyCite Citing References for this Headnote☛ 268 Municipal Corporations☛ 268XII Torts☛ 268XII(A) Exercise of Governmental and Corporate Powers in General☛ 268k742 Actions☛ 268k742(4) k. Pleading. Most Cited Cases

If governmental immunity defense is clear on the face of the complaint, it may be properly raised as a preliminary objection.

[3] KeyCite Citing References for this Headnote

from the ER with analgesics. He related his lower back problems pre-existed the incident.

He then followed up with Dr. Polintan and eventually Dr. Hallstorm. Neither doctor has recommended surgery. When I asked him today what was wrong, he said both doctors told him his neck and wrist were "messed up". However, both physicians said no surgery was indicated, and no specific diagnosis was given to this gentleman.

It is now approximately two years after his original injury, and his physical findings are normal and appropriate for the age of this gentleman. His JAMAR dynamometry testing shows that he does not have a significant problem with his right hand or wrist. His range of motion of both wrists is the same and although he complains subjectively of pain in the right wrist, there is no anatomic or physiologic reason for this.

He also has symmetrical range of motion of his neck, no evidence of paraspinus muscle spasm, no evidence of a herniated disc and no evidence of radiculopathy. His x-rays do show pre-existing degenerative disc disease and osteoarthritis of the cervical spine.

Even though this gentleman continues to complain of subjective pain in both his right wrist ulnarly, as well as his posterior neck, he has no permanent loss of body function or permanent disfigurement. He has normal bodily functions of the neck and right wrist. The loss of range of motion of his neck is attributed to his cervical osteoarthritis. Furthermore, the range of motion of his wrist and function of his right hand are normal showing no permanent loss of body function.

All of my opinions have been based with reasonable medical certainty.

Sincerely,



David H. Johe, MD/aw
Certified Medical Examiner (ABIME)

Both wrists could dorsi flex approximately 30 degrees, and both could palmar flex about 25 degrees. Ulnar deviation was 10 degrees in each wrist, and 20 degrees of radial deviation was present bilaterally.

The skin on his hands was very thin, and he had bruising on his hands. (This gentleman relates that he had gout in the past and has been on a lot of steroids which caused his skin to get thin.) There was no evidence of gouty tophi or significant osteoarthritis of his wrists or fingers.

He has normal two point discrimination with a paperclip at approximately 12 mm bilaterally on all digits. When I examined him for two point at 8 mm bilaterally, he was consistently wrong in both hands. (This gentleman had bilateral ulnar nerve transfers and a left carpal tunnel release done prior to his incident.)

He demonstrated decreased range of motion of his cervical spine which was symmetric. His rotation was 40 degrees in each direction. Flexion was full touching his chin on his chest. Extension was limited to about 20 degrees. Sideways bending was about 30 degrees right or left.

There was no evidence of atrophy in the supraspinatus, infraspinatus, scapular muscles, deltoid muscles or the muscles in the front or back of his neck.

REVIEW OF FILMS:

I reviewed wrist films, cervical films and a cervical MRI. I did not see any evidence in his wrist film of an acute injury including no apparent fracture.

His cervical spine showed significant degenerative disc disease in his neck which pre-existed his injury. There was no significant herniation of a disc.

ASSESSMENT:

1. Contusion to the right wrist, resolved.
2. Posterior cervicalgia.
3. Osteoarthritis and degenerative disc disease, cervical, pre-existing.

DISCUSSION:

This gentleman was involved in an incident where an ATA bus “brushed him” according to the treating physician in the ER, Dr. Clark. He was not knocked to the ground but according to the patient “spun around and caught himself with his cane”. This gentleman showed me how the incident occurred where he put his right arm up, which apparently struck the front of the bus. His mechanism of injury as described by him was minimal.

He did not go to the hospital immediately but instead went home. Later that evening he went to the hospital complaining of wrist and neck pain. He was seen and discharged

gas. He has loss of hearing and problems with his vision. He states that he bruises easily and has a "sore that doesn't heal".

In the past, he's had anemia, arthritis, a bleeding disorder, cataracts, gout, diabetes, heart attack, hernia repair, pneumonia, stroke and a history of tonsillitis. He had a right total knee done at Clearfield Hospital in 1989. He was admitted to the Altoona Hospital in 2008 with heart and kidney problems as well as to the Clearfield Hospital in 2009 for a bleeding stomach on two occasions. He had a heart attack in 2009.

He takes several medications but did not bring a list. He said the medications are for "sugar, pain and his stomach". He also takes vitamins.

REVIEW OF RECORDS:

I reviewed Clearfield Hospital ER records dated May 30, 2007. The physician who examined him states, "He was brushed by a bus this morning. He didn't actually fall down but sustained a bruise of right forearm. He now states he has stiffness of his neck and lower back. He denies blunt trauma to the head or neck, no paresthesias, numbness. No problems with coordination or balance. No visual or hearing problems but wants to be 'checked out'."

The physician that examined him, Gordon P. Clark, MD, at Clearfield Hospital reported his physical examination showed "posterior neck pain on palpation of posterior cervical muscles and questionable midline tenderness". His extremities were noted to be normal as was his neurologic exam. The patient was discharged from the ER to his home. His condition was considered stable, and he was to follow up with his family physician as needed. X-rays at that time showed degenerative disc and joint disease in the mid and lower cervical spine.

PHYSICAL EXAMINATION:

Physical exam was done in an open back gown with Darlene, a member of my office staff, present. This gentleman denied any injury below his waist at the time of the incident on May 30, 2007, so he was not examined below the waist.

I tested both of his hands with a JAMAR dynamometer. His readings were consistent for both his right and left hand, and his pattern was consistent and normal. This gentleman is left hand dominant, and he injured his right wrist. His right hand showed consistently more strength than the left dominant hand. His right hand showed a consistent pattern between 40-50, and his left hand showed readings between 20-35.

He has full range motion of both shoulders, elbows (including supination and pronation) and all finger joints including MP, PIP and DIP joints. His right thumb showed full range of motion. There was no swelling or arthritis of his joints.

RHODE ISLAND MEDICAL SERVICES, PC

David H. Johe, MD - Andrea Inzana, PA-C

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April 30, 2009

Gwen Sittler
Orwig Law Office
2 Meridian Blvd
2nd Floor
Wyomissing, PA 19610

Re: Norman Dale
Claim #: 011457-0030-84-AB-01
D/O/I: 05/30/07

Dear Ms. Sittler,

Norman Dale came to my St. Marys' office for an independent medical evaluation on April 30, 2009. He is an 82 year old male who said he is retired. He relates that his family doctor is Dr. Richard Johnson. He states that the insurance company would like him to be evaluated today.

HISTORY OF PRESENTING ILLNESS:

According to him, he was "hit by an ATA bus on May 30, 2007". He said he hurt his neck and right wrist. He denied any fractures.

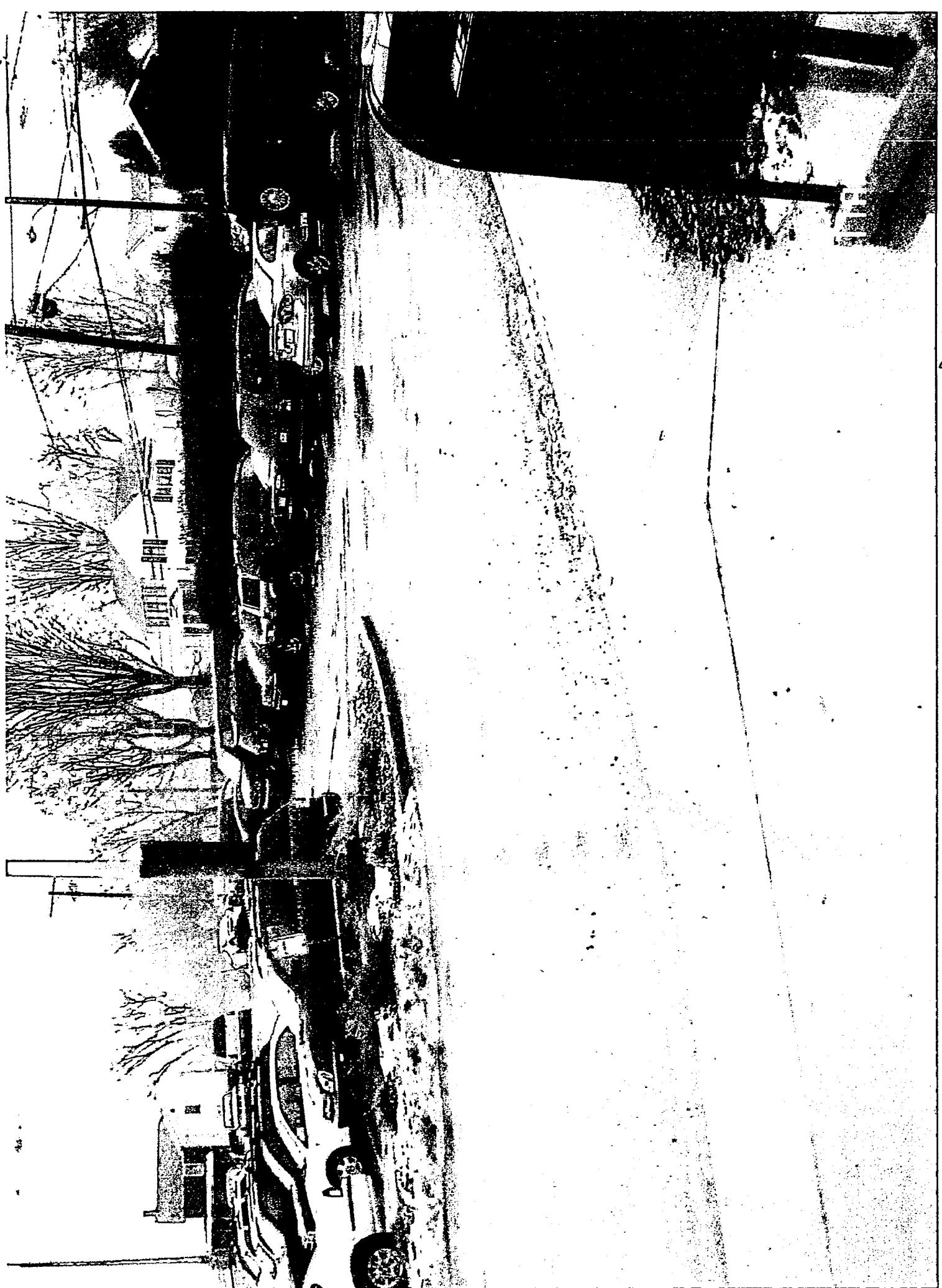
Following his injury, he followed up with Dr. Polintan on several occasions. Dr. Polintan tried to refer him at one time to another physician but unfortunately, he did not go. Dr. Polintan's impression was multiple contusions/sprain involving right wrist, lower back and cervical spine. He also thought he had degenerative arthritis. On November 6, 2007, Dr. Polintan's final office report states, "There is less pain in the right wrist. He still has posterior neck pain".

He then saw Dr. Hallstrom for cervical pain, degenerative joint disease and low back pain. He has not seen any physicians recently.

This gentleman denies any treatment with a medical doctor, chiropractor or physical therapist for his right wrist or cervical spine before the alleged incident.

PAST MEDICAL HISTORY:

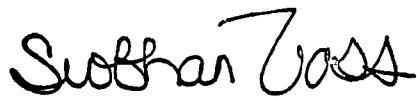
This gentleman complains of muscle/joint/bone pain, weakness or numbness in his arms, back, feet, left hand, lower legs and neck. He says he suffers from poor circulation and swelling of the ankles. He also has bowel changes, constipation, diarrhea and excessive



CERTIFICATE OF COURT REPORTER

I, Siobhan Voss, a Registered Professional Reporter and Notary Public, do hereby certify that the witness, NORMAN V. DALE, was by me duly sworn to testify to the truth; that the foregoing deposition was taken at the time and place stated herein; and that the proceedings are contained fully and accurately to the best of my ability in the notes taken by me on the deposition of the above petition and that it is a correct transcript of the same.

IN WITNESS WHEREOF, I have set my hand this 19th day of February 2009.



SIOBHAN VOSS, R.P.R.

1 Q And were you being treated by Dr. Johnson in the
 2 hospital, or did you have somebody else?
 3 A No, I had Dr. Johnson.
 4 Q Okay. And was Dr. Polintan taking care of you for
 5 your lower back?
 6 A No, not at that time.
 7 Q Okay.
 8 A It was Dr. Johnson.
 9 Q Have you recovered from the heart attack?
 10 A Well, not completely I guess. They want me to
 11 come back. And I have medication and stuff that I have to
 12 take.
 13 Q How old are you now, sir?
 14 A 82.
 15 Q Has the heart attack slowed you down any?
 16 A A little.
 17 Q How about the kidneys, has that slowed you down
 18 any?
 19 A Yes.
 20 Q Is it under control?
 21 A Yes.
 22 Q By medication?
 23 A By medication.
 24 Q Okay. You're doing the best you can?
 25 A That's all.

1 Q Well, God bless you. That's a lot.
 2 That's all I have, sir. Thank you very much for
 3 your candor.
 4 A Okay. Thank you.
 5 MR. NADDEO: We'll waive.
 6 (Proceedings concluded at 2:28 p.m.)

1 Q I understand.
 2 Do you have difficulty moving your head or moving
 3 your neck left or right?
 4 A Yes, I do.
 5 Q Which way does it bother you?
 6 A Both ways but mostly to the right (indicating).
 7 Now that hurt right there.
 8 Q You mean if you swivel -- if you turn your head to
 9 the right?
 10 A Oh, yeah. You can hear it crunch.
 11 Q Can you show me, sir, without having too much pain
 12 how far you can turn your head to the right?
 13 A Right there. That's it.
 14 Q How about to the left? Do you have any
 15 restrictions?
 16 A Yeah, right there.
 17 Q Okay. Does it hurt if you move your head forward
 18 to touch your chin on your neck?
 19 A Yes, it does.
 20 Q Does it hurt if you lift your head back?
 21 A Yes.
 22 Q Are you right-hand dominant, or are you
 23 left-handed?
 24 A I am ambidexterous.
 25 Q Which way did you swing a club?

1 A Left. I write right. I eat right.
 2 Q Okay. Are you having any problems with your left
 3 hand as a result of the carpal tunnel surgery you had some
 4 time ago?
 5 A Yes, I do.
 6 Q And the problem that you have with the right hand,
 7 wrist specifically, do you have any pain in your wrist from
 8 this?
 9 A Yes, I do.
 10 Q Did you have any sutures --
 11 A Nope.
 12 Q -- for that?
 13 A Nope.
 14 Q Okay.
 15 A It didn't need it. It skipped the skin, but it
 16 didn't break it or anything, just skin it, and the mark is
 17 still there where it hit.
 18 Q Did the doctors ever tell you if you injured the
 19 bone or tendons or muscles or anything in particular?
 20 A No.
 21 Q Did you say you have less of a grip than you used
 22 to have?
 23 A Yes.
 24 Q Do you know how many pounds you can lift with that
 25 right hand?

1 A No. But if you'll call the therapist, they can
 2 tell you how much squeeze I have, how much pressure.
 3 Q Okay. When's the last time you saw Dr. Polintan
 4 for any complaints that you had for your wrist or your neck,
 5 sir?
 6 A I can't answer that because I don't remember.
 7 Q Okay.
 8 According to the records that I obtained, sir, you
 9 did -- I only have them up to January of 2008, but I think you
 10 said you do recall seeing Dr. Hallstrom sometime in 2008 --
 11 A Yes.
 12 Q -- if that's fair.
 13 A But he left for the service, and he wasn't doing
 14 me much good, so I just dropped it.
 15 Q Did you drop it and then just go back to
 16 Dr. Polintan instead?
 17 A No. I went to Dr. Johnson.
 18 Q Your family physician?
 19 A Right.
 20 Q Do you see Dr. Johnson on a regular basis?
 21 A Yes, I do.
 22 Q Is it monthly?
 23 A Well, I've been seeing him monthly. And I was
 24 there a week ago today.
 25 Q Okay.

1 A Wait a minute. Tuesday? Yeah, a week ago today I
 2 was there.
 3 Q Not to ask you too much of a personal question but
 4 some questions -- some medical questions I have to ask you.
 5 What other reasons were -- what were the reasons
 6 that you are currently seeing Dr. Johnson?
 7 A Well, I had a heart attack, and my kidneys quit.
 8 And that's the reason I was there this past week.
 9 Q When did you have the heart attack, sir?
 10 A Just before the 4th of July, '08.
 11 Q Of '08.
 12 And the kidney problem, when did that start?
 13 A That started when I had the heart attack.
 14 Q Were you hospitalized as a result of those two
 15 problems?
 16 A I was in the hospital when it happened. And I
 17 spent one week in the Clearfield Hospital and five weeks in
 18 the Altoona Hospital.
 19 Q Why were you -- why were you in the hospital at
 20 that time?
 21 A Back.
 22 Q The lumbar?
 23 A The lumbar section, right.
 24 Q And, excuse me, what year was this?
 25 A '08.

1 Q If you wanted to, could you cook your own meals?
 2 A Well, it's pretty hard, but I can --
 3 Q You mean as far as your kitchen abilities --
 4 A More or less.
 5 Q -- like me?
 6 You probably make coffee in the morning, don't
 7 you?
 8 A I'm not old enough to drink coffee.
 9 Q Good for you.
 10 How frequently does your cleaning lady come in a
 11 week?
 12 A Every week.
 13 Q And when she doesn't come in, do you pick up the
 14 house, make your beds?
 15 A No. She comes in.
 16 Q Okay. What other chores do you do around the
 17 house that you were telling me about to keep yourself busy?
 18 A Well, I go shopping. I do this. I do that. I
 19 can't answer that right off the thing, but I'm always busy.
 20 Q Is it fair to say that every day you have some
 21 activity to do to take you out of the house, unless it's two
 22 feet of snow on the ground?
 23 A I intend to get out of the house every day, yes.
 24 Q Okay.
 25 A And there's a lot of activities at the building

1 where I live.
 2 Q Okay. Is there anything, Mr. Dale, generally
 3 speaking, that you can't do now because of the incident
 4 involving the ATA bus, or is it fair to say you still do --
 5 you have the same routine?
 6 A No, I don't have the same routine.
 7 Q Okay.
 8 A There's a lot of things I can't do on account of
 9 my neck and my arm.
 10 Q Can you give me an example?
 11 A Well, golf. I can't bowl. I can't do a lot of
 12 things.
 13 Q I thought you said you stopped golfing a couple
 14 years ago, before the accident.
 15 A Well, I did that, but I still can't golf. I can't
 16 hold a club.
 17 Q When's the last time you went bowling?
 18 A Well, we bowl every day -- not every day, every
 19 Tuesday at the apartment.
 20 Q Is that --
 21 A We have a Wii.
 22 Q That's a very good answer. I'll have to remember
 23 that next time. I haven't got into that Wii thing yet.
 24 A Yeah. Yesterday was bowling day at the apartment.
 25 Q Is it fair to say that it's been a number of years

1 since you've actually gone regular bowling in a bowling alley?
 2 A Well, I quit bowling about the same time I quit
 3 golf.
 4 Q And was that due to your lower back, lumbar,
 5 herniated disc problems?
 6 A It was part of the reason, yes.
 7 Q And what year would that have been, give me a
 8 snapshot.
 9 A Probably in the 90s someplace, '93 --
 10 Q Okay.
 11 A -- '94. I'm not sure.
 12 Q You still drive your own car?
 13 A Yes.
 14 Q And you still go grocery shopping on a regular
 15 basis, once a week or more?
 16 A I can go grocery shopping, but I can't carry the
 17 stuff to my apartment. My -- I can light stuff, but the heavy
 18 stuff my cleaning lady brings up.
 19 Q Okay. And why is that?
 20 A Well, I can't lug anything with this hand and the
 21 fact that I can't go up steps.
 22 Q Is that because of the cane and the stroke?
 23 A No. The stroke has nothing to do with it.
 24 Q What -- okay. The cane has to do with the
 25 lumbar --

1 A The lumbar, right.
 2 Q And does that make it difficult for you to walk up
 3 steps?
 4 A Yes.
 5 Q Do you have any other activities that you do on a
 6 regular basis other than going to the club?
 7 A I have a lot of things I do, but I can't put them
 8 to you right now.
 9 Q Okay. They're either social or otherwise?
 10 A Yeah. It keeps me busy.
 11 Q With friends? Do you have a group of friends at
 12 the apartment that get together on a regular basis?
 13 A Oh, yeah. We had a superbowl party Sunday.
 14 Q Good. Did your team win?
 15 A Oh, yes.
 16 Q That's a silly question out here.
 17 Is it fair to say, sir, that most of your social
 18 activities that you've undertaken -- that you currently
 19 undertake, with your friends and buddies, you continue to do
 20 today the same way you did them before May of 2007?
 21 A Well, there's a few things I can't do, but I can't
 22 name them right now.
 23 Q Okay.
 24 A I wasn't prepared for this. And so I just can't
 25 take them right off the top of my head.

1 A Something like that, yes.
 2 Q Now, according to the medical records that I've
 3 had a chance to review, you had some of those shots in the
 4 year 2006?
 5 A I don't think so.
 6 Q Okay. Do you recall being treated by
 7 Dr. Hallstrom in 2006 and 2007 for your lower back problems?
 8 A I'm sure I wasn't treated by Dr. Hallstrom in
 9 2006.
 10 Q How about 2007?
 11 A I'm -- can't answer that. I know it was 2008, but
 12 I don't think it was 2007. It might have been.
 13 Q Now, in 2008 you were being treated by
 14 Dr. Hallstrom -- Hallstrom?
 15 A Hallstrom.
 16 Q Hallstrom.
 17 A Yes.
 18 Q And was he also giving you the same epidural
 19 steroid injections in 2008 -- or 2007?
 20 A I can't answer if I was there in 2007, but I know
 21 I was there in 2008. And I got the injections in 2008.
 22 Q For your lower back?
 23 A My lower back.
 24 Q Okay. Did you hurt any of your lower back area as
 25 a result of the accident with ATA?

1 A No.
 2 Q Okay. In addition to hurting your wrist as you've
 3 shown me, your right wrist, what other complaints did you have
 4 as a result of that incident?
 5 A I had injuries to my neck.
 6 Q Okay. Do you still have those injuries or any --
 7 A Yes, I do. I still have pain from them.
 8 Q Is that the residual effects that you have left
 9 over from that?
 10 A That's correct.
 11 Q Are you currently being treated for that,
 12 Mr. Dale?
 13 A No. Dr. Polintan told me there was nothing more
 14 he could do.
 15 Q Did he discharge you?
 16 A Yes.
 17 Q You were taking some rehabilitation for that? At
 18 some point in time.
 19 A Yes.
 20 Q Was the rehabilitation -- or I'll say physical
 21 therapy. I'm sorry. That's probably a better word.
 22 Was the physical therapy mostly for your wrist?
 23 A Neck and wrist.
 24 Q And did you complete the physical therapy
 25 sessions?

1 A Yes.
 2 Q Okay. Do you still use a cane?
 3 A Yes, I do (indicating).
 4 Q And you were using that cane before the accident?
 5 A Yes. I've had that cane for a good many years.
 6 Q Okay. What do you do nowadays mostly in your
 7 spare time? What activities or hobbies or -- do you
 8 undertake. What do you do during the day?
 9 A Well, I do a lot of things.
 10 Q For example?
 11 A For example, I go up to the club and BS with the
 12 boys in the pro shop. I have chores I've got to do. I have a
 13 lot of things I do, shopping.
 14 Q Keep yourself pretty busy?
 15 A Yes, I do.
 16 Q When you say golf club, do you mean -- I mean when
 17 you say club, do you mean a golf club?
 18 A Golf club.
 19 Q Do you golf?
 20 A Not anymore.
 21 Q When did you stop?
 22 A Probably about seven, eight years ago.
 23 Q Okay. How often -- what's the name -- I'm sorry.
 24 What's the name of the golf club?
 25 A Clearfield Curwensville Country Club.

1 Q I think I passed that coming in. Is it on 322?
 2 A No. It's on the back road from Clearfield to
 3 Curwensville.
 4 Q Okay.
 5 How frequently do you go up there on a weekly
 6 basis? Let's say even during the winter now.
 7 A Oh, two, three times a week.
 8 Q Okay. The -- I believe you said you live in an
 9 apartment?
 10 A Yes.
 11 Q And that's the same apartment you were living in
 12 at the time of the ATA incident?
 13 A Yes, it is.
 14 Q And do you still take care of the apartment?
 15 A I have a cleaning lady.
 16 Q Okay. Did you have a cleaning lady before the
 17 accident?
 18 A I've had a cleaning lady ever since I retired.
 19 Q Okay. Now, you say you still do the chores around
 20 the house.
 21 A Well, sure.
 22 Q Do you cook your own meals?
 23 A Not too often.
 24 Q Do you go out?
 25 A I go out.

1 A It was close to me. I can't tell you how close,
 2 but it was there, and I put my arm up, and I got hit.
 3 Q Was it less than a car away from you when you
 4 first saw it?
 5 A I can't answer that. I'm not sure. I looked up,
 6 and it was on me.
 7 Q Okay. When you looked up, and it was on you, was
 8 it stopped?
 9 A No. It was moving.
 10 Q Towards you?
 11 A Towards me.
 12 Q What was the distance when you first saw it as it
 13 was moving toward you?
 14 A I told you before --
 15 Q That --
 16 A -- that I can't answer that.
 17 Q Let me try to rephrase the question.
 18 At some point in time you saw the bus, correct?
 19 A Yeah, when it was right up on top of me.
 20 Q Okay. And at that point in time, when it was
 21 right on top of you, you said it was moving.
 22 A It was moving. And how fast, I can't answer that.
 23 Q How far did it move before you came in contact
 24 with it?
 25 A Not too far.

1 Q Less than five feet?
 2 A Oh, yes. When I put my arm up, I got hit.
 3 Q Okay. And when you put your arm up, was that when
 4 you saw the bus for the first time, a split second before you
 5 but your arm up?
 6 A Right, a split second before I put my arm up.
 7 Q So then it couldn't have moved very far?
 8 A That's correct.
 9 Q And you just told me you didn't know how fast it
 10 was going?
 11 A Mr -- at that time when I'm hit, I don't know. I
 12 can't answer that question.
 13 Q If you can't answer, that's fine, Mr. Dale, but
 14 just allow me to ask the questions. If you can't answer them,
 15 that's fine. Fair enough?
 16 A Fair enough.
 17 Q Now, when you fell back, I'm not sure if you used
 18 the word lost your balance or --
 19 A It knocked me off balance.
 20 Q Okay. Did it knock you off balance to your left
 21 as you were walking through the parking area? Which way did
 22 you go? Front, back, or to the side?
 23 A To the left side. I put my arm up, and it spun me
 24 backwards.
 25 Q You put your right arm up?

1 A Right.
 2 Q And the force --
 3 A -- knocked me towards my left side. And I spun
 4 around and caught myself with the cane. Otherwise, I would
 5 have been run over by the bus.
 6 Q Okay. Okay.
 7 But your recollection today, sir, is that when you
 8 saw the bus for the first time, you immediately put your arm
 9 up.
 10 A It was right on top of me.
 11 Q And you recall the bus moving?
 12 A Well, it hit me. It had to be moving.
 13 Q Well, I'm not sure. That's why I'm asking you.
 14 Do you recall it actually moving, or were you just
 15 surprised by its presence?
 16 A I was surprised by its presence, and evidently it
 17 was moving --
 18 Q But --
 19 A -- because it hit me.
 20 Q Isn't it fair to say, sir, that you do not know if
 21 it was moving because everything happened so quickly?
 22 A Probably so, but . . .
 23 Q All right.
 24 Do you recall being treated by a Dr. Hallstrom?
 25 A Yes.

1 Q Are you still being treated by Dr. Hallstrom?
 2 A He's in the service.
 3 Q Okay. And you saw that doctor at the Summit
 4 Rehabilitation offices, is that correct?
 5 A That's correct.
 6 Q All right. And what kind of doctor is Dr. Hall --
 7 A Pain doctor.
 8 Q Dr. Hallstrom. Okay.
 9 Okay. And was that doctor referred to you by
 10 Dr. Polintan?
 11 A Polintan?
 12 Q Yes. I'm sorry.
 13 A No, he wasn't.
 14 Q Who referred you to Dr. Hallstrom?
 15 A Dr. Johnson.
 16 Q Is Dr. Johnson your family physician?
 17 A Family physician.
 18 Q You've been seeing him for some time?
 19 A Years, yes.
 20 Q Now, I understand that Dr. Hallstrom back in -- at
 21 some point in time was giving you shots, injections for your
 22 lower back problem?
 23 A Yes.
 24 Q Sometimes referred to as epidural steroid
 25 injections?

1 I'm suggesting that it's showing the parking lot immediately
2 in front of the medical center.
3 A Yes.
4 Q Do you recognize that as a fair illustration or
5 photograph of the parking lot?
6 A Yes, I do.
7 Q But for it looks like it was raining that
8 particular day, does it appear to be in the same configuration
9 now as it was back then on May of 2007?
10 A Yes, it does.
11 Q And looking at that photograph, sir, do you see
12 the parking space that you were parked in that day?
13 A The first car here was red, a red car.
14 Q The first space looks like it has a sign, a white
15 sign right in front of it?
16 A Yes.
17 Q That's where you were parked?
18 A Right.
19 Q And then you said you walked around an island?
20 A Around here, and I crossed right there. And right
21 there is where I got hit with the bus.
22 Q Okay. Is this the island, sir, that you were
23 telling me --
24 A Yes.
25 Q -- about earlier?

1 A Yes, it is.
2 Q Okay. And do you then walk directly --
3 A I walked --
4 Q -- across the parking area?
5 A I walked down to here and crossed where the
6 crosswalk is, right about right where the shadow is across.
7 Q It looks like there's a shadow from a light pole.
8 A Yes.
9 Q Is that the walk area for that --
10 A Yes. You can see that's the opening for the
11 thing, and it was right in this area where I got hit.
12 Q Okay. There does not appear on this photograph,
13 sir, to be a specific crosswalk designation by yellow or white
14 lines on the parking surface itself. Is that correct?
15 A It's all faded, yes, but the one time it was
16 there.
17 Q Okay. It looks like the curb stops at one point,
18 and then it -- the sidewalk probably goes level with the
19 parking area --
20 A No, it's not level.
21 Q -- for wheelchairs?
22 A This is a --
23 Q An incline?
24 A An incline.
25 Q A slope. It's probably like for wheel chair

1 accessibility.
2 A Right, exactly.
3 Q So looking at this photograph, Exhibit No -- which
4 is marked No. 1, your recollection is you walked across
5 basically in the area where the shadow is from the pole?
6 A Some place close to that, yes.
7 Q And how many feet did you tell me you got to --
8 A I was a few feet from this area when the bus hit
9 me.
10 Q Okay. When you say this area, the --
11 A Right next to where the ramp for the --
12 Q The parking --
13 A -- wheelchairs.
14 Q The parking area is -- looks like it's, you know,
15 dark black macadam, correct, and the sidewalk appears to be
16 more of a brown cement?
17 A Concrete, yes.
18 Q Concrete.
19 Is it fair to say, sir -- and I don't want to put
20 words in your mouth -- you were about three feet --
21 A I'm not going to say three feet because I'm not
22 sure.
23 Q Okay. How --
24 A But I was close.
25 No, I can't answer that, but I was close to it

1 when I got hit.
2 Q Do you think you were more than one-half way
3 through the parking area?
4 A Oh, yes, definitely.
5 Q Do you think you were three-quarters?
6 A I think. I don't know. When a bus -- you walk up
7 and see a bus coming at you, I'm not paying particular
8 attention to where the roadway is or where I am.
9 Q Was -- what was -- did you see the bus moving
10 before you put your arm up?
11 A No. When I looked up, the bus was on me.
12 Q Okay. But my question is, sir, before you put
13 your arm up and before -- and the first time you looked at it
14 or saw it, was it moving?
15 A The bus?
16 Q The bus.
17 A The only time I saw it, it was moving.
18 Q And what was the distance that it moved, that you
19 saw it move?
20 A From me?
21 Q Was the bus --
22 A It was right on me when I saw it.
23 Q Now -- in other words, you didn't see it let's say
24 a bus length away from you before you -- before you put your
25 arm up?

1 Q You raised your right arm, sir. Is there any
2 markings remaining from the incident?
3 A Right there. It's still there.
4 Q I'm sorry. Is that that -- the red mark right
5 there?
6 A Right in there, yeah. I hit the whole -- the
7 strip in the middle of the bus hit that.
8 Q Okay. What then happened?
9 A It spun me around.
10 Q Okay.
11 A And I caught myself with my cane. Otherwise, I
12 would have gone down, and he would have run over me.
13 Q And after you caught yourself with your cane, what
14 did you do?
15 A I rapped on the front door with my cane to get him
16 to tell him who I was and everything, and he wouldn't -- he
17 stopped for a minute, and then he went on -- or stopped for a
18 few seconds, and then he went on. He wouldn't open the door
19 to the bus. He wouldn't even talk to me.
20 Q When you said he went on, do you mean he pulled
21 out and went on his --
22 A Went on and drove on.
23 Q The bus went on its way?
24 A Yes.
25 Q Have you ever had an opportunity to speak to the

1 driver --
2 A No.
3 Q -- of that bus?
4 A I've never spoke to the driver.
5 Q Did you ever speak to anyone who may have
6 witnessed some or any part of the incident you just told me
7 about?
8 A The three ladies in the office inside who has a
9 glass front, they witnessed it all.
10 Q Okay.
11 A Mr. Naddeo has their address and their names.
12 Q Yes. And he supplied those to me, and I
13 appreciate it.
14 Did you ever speak to any of those three women,
15 personally.
16 A Yes. They called me in when I -- after the bus
17 pulled out, I was pretty shaky. They called me in, and they
18 called the ATT (sic) and notified them what happened.
19 Q Do those three ladies work in the same office, do
20 you know?
21 A Two of them do, but the other one, she works in an
22 office handy to where they were.
23 Q Okay. The other two, what office do they work in?
24 Do you know what doctor's office?
25 A No, they don't work -- I think they work in a

1 billing office, I'm not sure.
2 Q Okay. Do you know a Mr. George Burns?
3 A Yes, I do.
4 Q Who is Mr. Burns?
5 A Well, he's a very good friend of mine, and he was
6 a brother of my brother-in-law.
7 Q I see. Did he have -- did he witness any or --
8 any part of this incident?
9 A No. He took me to the hospital that evening after
10 I started to feel the effects of the accident.
11 Q I see. Does he live nearby you?
12 A He lives in the same apartment building.
13 Q Okay. After you -- after you were spun around and
14 regained your balance, did you then go into your doctor's
15 appointment?
16 A No. I rapped on the bus --
17 Q I'm sorry. After that, after you rapped on the
18 bus.
19 A Well, I went inside. And the ladies in the office
20 who witnessed it, they're the ones who called the ATT -- ATA.
21 Q Okay.
22 A And from there I went into -- which is right next
23 door to it. I went into my doctor's office.
24 Q I see.
25 A I was pretty shook up after I got hit from that.

1 Q Did you -- you completed your eye examination?
2 A Yes.
3 Q Did you then leave the doctor's office?
4 A That I did.
5 Q Did you drive back to your apartment?
6 A I think I went and had lunch. I'm not sure.
7 Q Okay.
8 A I don't know if I drove back to my apartment.
9 Q Then you indicated later that day or evening you
10 must have had a conversation with Mr. Burns?
11 A No. My neck started to get stiff, and my arm
12 started to hurt.
13 Q Okay.
14 A So he lives down the hall. And I called him and
15 asked him if he would take me to the hospital, and he did.
16 Q Okay. He drove you to the hospital?
17 A He drove me to the hospital.
18 Q Okay. Mr. Dale, I'm going to show you a
19 photograph. I've given copies of these to Mr. Naddeo. You've
20 probably seen these.
21 MR. ORWIG: Could we mark this No. 1?
22 (Photocopies of photographs marked for
23 identification as Deposition Exhibit
No. 1.)
24 BY MR. ORWIG:
25 Q Mr. Dale, I'd like to show you a photograph. And

1 A No.
 2 Q Did you see any other I don't want to say
 3 pedestrians but any other people walking in the parking lot
 4 either to or fro -- to or from the parking area into the
 5 hospital, as you were leaving your car.

6 A I don't recall because it's too long ago, and I
 7 didn't pay any attention to that.

8 Q I understand.

9 Did you -- after leaving your car, did you then
 10 begin to walk toward the front doors of the hospital?

11 A Yeah. I went around the island to where the
 12 crosswalk was, and I crossed in the crosswalk.

13 Q Okay. Was there a painted crosswalk area at that
 14 time in the parking lot?

15 A Yes, there was.

16 Q Okay. Again, if you and I were standing at the
 17 front doors of the hospital looking out into the parking lot,
 18 would that crosswalk area have been to our right or to our
 19 left?

20 A Straight ahead.

21 Q In the middle?

22 A In the middle.

23 Q Had you had earlier occasions to have medical
 24 treatment or examinations at this particular medical facility?

25 A Yes, I had.

1 Q It's fair to say you're relatively familiar with
 2 it?

3 A Yes, I was.

4 Q Do you see other doctors in that facility other
 5 than Mr. Smith?

6 A Yes, I do.

7 Q Who else do you see?

8 A Dr. Polintan, who is my orthopedic surgeon.

9 Q And were you seeing Dr. Polintan for the lumbar
 10 herniations that you told me about before May of 2007?

11 A Yes, I was.

12 Q And has he always been your treating orthopedic
 13 surgeon or physician for that lower back problem?

14 A Yes, he has.

15 Q And he continues to be your orthopedic physician
 16 for your lower back problems as of today?

17 A As of today, yes.

18 Q After leaving your car and entering the crosswalk,
 19 did you walk directly toward the front doors of the hospital?

20 A Medical Arts Building, yes.

21 Q Medical Arts Building.

22 Did you deviate at any time out of the crosswalk
 23 area?

24 A Only when I got hit by the bus.

25 Q Okay. At any time did you have to -- before you

1 completed walking on the crosswalk, did you ever have to
 2 return to your car for any reason?

3 A No.

4 Q As you were walking in the crosswalk area, at some
 5 point in time did you see an ATA bus?

6 A No, I did not.

7 Q As you were walking in the crosswalk, did you look
 8 to your right or look to your left?

9 A I did.

10 Q Did you see any vehicles moving in either
 11 direction?

12 A No, no vehicles did I see moving.

13 Q None to your right; none to your left?

14 A No. In that parking lot I know better.

15 Q Do you use a hearing aid, sir?

16 A No, I do not.

17 Q On that particular day, you didn't have an iPod,
 18 you didn't have any ear plugs in your ears or anything like
 19 that?

20 A No, I don't own an iPod.

21 Q Just covering all the bases, if you don't mind.

22 So, sir, as you were walking through this
 23 crosswalk, how far did you get through the crosswalk? Let's
 24 say from the curb island that you talked about by your car
 25 until the curb of the -- by the front doors of the medical

1 center, how far did you get before you --

2 A I was just a few feet from the edge of the roadway
 3 where I went onto the sidewalk going into the parking lot.

4 Q Okay. And as you were walking through the
 5 crosswalk, you said you didn't look to your right; you didn't
 6 look to your left?

7 A I did look to my left and did look to my right.

8 Q Oh, you did. I'm sorry.

9 Did you see any vehicles moving at that time?

10 A No, I did not.

11 Q Did you see an ATA bus --

12 A No, I did not.

13 Q -- at any time?

14 When was the first time you saw an ATA bus?

15 A When I looked up, and he was right on me.

16 Q Okay. And was that bus located near the front
 17 door of the medical building?

18 A Yes, it was.

19 Q Did the vehicle hit you?

20 A It hit my arm. When I saw it, I raised my arm.
 21 And that's when it hit my wrist right there. And it spun me
 22 around. And I caught myself with my cane, or I would have
 23 been down.

24 Q You were walking with your cane?

25 A Yes.

1 Q And did you have surgery for those herniated
2 discs?
3 A No. It's inoperable.
4 Q Were those herniated discs -- do you know what
5 letters were assigned to those discs?
6 A No. I have no idea.
7 Q Sometimes they're C, sometimes there's L.
8 A I have no idea.
9 Q Okay. The two herniated discs -- you said two
10 herniated discs?
11 A Right, in the lumbar section.
12 Q Okay. Were they -- were those herniations due to
13 a traumatic or an accident type of event, or were they more
14 degenerative; in other words, they just --
15 A More degenerative.
16 Q Okay. Do you recall when the problem with those
17 herniations first became apparent to you?
18 A No. I can't answer that.
19 Q Okay. Is it fair to say that you had been
20 treating for that lumbar -- I'll say lumbar herniations before
21 the accident in May of 2007?
22 A Years ago they treated it for me, but the only
23 thing I take now is pain pills.
24 Q Okay. Do you recall being treated by one or more
25 of your doctors in 2006 relative to that lumbar back problem?

1 A No, I don't think so.
2 Q Did the lumbar back problem in any way affect your
3 retirement from the Pennsylvania Department of Transportation?
4 A No, it did not.
5 Q Okay. Are you still being treated for the lumbar
6 back problem?
7 A The only way I'm treated now is with pain pills.
8 Q Okay. So back in May of 2007, you had occasion to
9 go to the Clearfield Medical Arts Center -- or Arts Building?
10 A Yes.
11 (Discussion held off the record.)
12 Q Sorry, Mr. Dale.
13 Could you tell me what was the occasion or reason
14 for you going to the Clearfield Medical Center back in May of
15 2007?
16 A To see my eye doctor.
17 Q Okay. Do you recall what time your appointment
18 was scheduled for?
19 A I think it was 11:30 a.m.
20 Q And who was your eye doctor?
21 A Dr. Smith.
22 Q And have you been seeing Dr. Smith for some time?
23 A Yes.
24 Q I believe you drove your -- did you drive yourself
25 to the --

1 A Yes, I did.
2 Q -- Clearfield Hospital?
3 Did you park in a handicap parking space?
4 A That I did.
5 Q Do you recall where in the parking lot that
6 handicap space is located relative to the front doors?
7 A Yes. It was right off the front doors in the west
8 side of the parking lot in the first handicap spot.
9 Q I understand that the parking lot, there's a --
10 there might be -- I may be mistaken, but there's I recall an
11 island in the middle of the parking lot for cars to park?
12 A Yes.
13 Q And then cars to park I think on the sides. I
14 think there's four rows of parking, give or take.
15 A Right.
16 Q Was the handicap spot that you referred to in the
17 island section?
18 A Yes.
19 Q Okay. If you and I were standing at the front
20 doors of the hospital looking out into the parking lot or
21 looking out into that island of parking spaces, would your car
22 have been parked on the right-hand side or left-hand side of
23 the island?
24 A It was on the right-hand side in the first stall.
25 Q Okay.

1 Now, when this incident occurred with the bus, had
2 you completed your office visit with Dr. Smith?
3 A No. I was on my way in.
4 Q Okay. So is it fair to say that you pulled into
5 the parking lot and then got out of your car to go into the
6 hospital building?
7 A That's correct.
8 Q At any time before the incident involving the bus
9 occurred, had you been inside the hospital building?
10 A No.
11 Q Were you on time for your appointment?
12 A Yeah. I was probably ten minutes early.
13 Q Okay. Did anybody accompany you to the
14 examination, in your car.
15 A No, they did not.
16 Q Did you complete the examination that day?
17 A Yes, I did.
18 Q Okay. When you got out of your car, what was the
19 weather like? Was it a clear day?
20 A No. It was overcast.
21 Q Okay. Was it raining, do you recall?
22 A No, I don't think it was, but I don't recall to be
23 exact.
24 Q Did you have to walk over any type of island or
25 grassy area to get to the front doors?

1 Q And it was at the time of the accident?
 2 A Correct.
 3 Q And you only owned one car?
 4 A At that time --
 5 Q At that time.
 6 A -- yes.
 7 Q Did you submit all your medical bills to Allstate?
 8 Let me rephrase that.
 9 All medical bills that you feel were related to
 10 the incident of May 30th, 2007.
 11 A Yes, they were.
 12 Q To the best of your knowledge, have they been
 13 paid?
 14 A To my knowledge, yes.
 15 Q Looking at the information that Mr. Naddeo had
 16 provided to me, your Allstate policy had a \$10,000 first-party
 17 benefit for medical expenses.
 18 A I think that's correct. I'm not sure, but . . .
 19 Q Do you know if that \$10,000 has been exhausted by
 20 Allstate, or have they paid more than \$10,000 in medical
 21 expenses concerning this event?
 22 A Not to my knowledge, and I have not been notified
 23 if they did.
 24 Q Okay. Do you recall receiving a letter from
 25 Allstate indicating that they were closing your file relative

1 to this event?
 2 A Yes, I did.
 3 Q And that was -- was it -- do you recall that
 4 letter saying it was because there was no further treatment or
 5 no further medical expenses anticipated?
 6 A Yeah. They said that, but I did not tell them
 7 that or anything.
 8 Q Okay.
 9 Did you advise them of your objection to that
 10 letter?
 11 A Mr. Naddeo did.
 12 Q Okay. Very well.
 13 Do you know, sir -- the information that was
 14 provided to me indicated that there was approximately \$4,000
 15 give or take paid by Allstate. Do you know if your medical
 16 bills concerning this event are more than \$4,000?
 17 A I can't answer that because I've never been
 18 notified what the total is.
 19 Q Very well.
 20 We're in the year 2009. Have you had any medical
 21 treatment in the year 2009 for any problem or injury or
 22 physical complaint that you think was related to the incident
 23 of May 30th, 2007?
 24 A No, not to my knowledge.
 25 Q And if you don't mind, sir, rather than having me

1 repeat that date, if you and I can agree that if I talk about
 2 the date of the incident, that's May 30th of 2007?
 3 A Yeah.
 4 Q Okay.
 5 Do you recall, sir, whether in the year 2008 you
 6 had any medical treatment for any physical concern that you
 7 had concerning the incident with the ATA bus, if you know.
 8 A I can't answer that to be truthful with you
 9 because I'm not sure. I think I did --
 10 Q Okay.
 11 A -- but I'm not sure what the dates were.
 12 Q Okay.
 13 A Because I --
 14 Q I understand, sir, you had a stroke in I think May
 15 of 2005 --
 16 A Yeah.
 17 Q -- or December of 2005?
 18 A Right.
 19 Q You were already retired though before that stroke
 20 occurred.
 21 A That's correct.
 22 Q And I understand you have a handicap license or
 23 tag for your car?
 24 A Yes, I do.
 25 Q Did you have that -- did you obtain that handicap

1 tag due to the stroke?
 2 A No. I had got that due to the back injury.
 3 Q I also understand, sir, that you had carpal tunnel
 4 surgery to your left hand or arm sometime in 2006?
 5 A Yes, I did.
 6 Q Okay.
 7 Was that your left arm?
 8 A Yes. The carpal tunnel was on the left arm.
 9 Q Okay. Did you ever have any surgery on your right
 10 arm?
 11 A Yes.
 12 Q What surgery did you have, sir?
 13 A I had ulnar nerve surgery.
 14 Q When did you have that?
 15 A Oh, I can't answer that because I don't remember.
 16 It's a good many years ago.
 17 Q Before the accident?
 18 A Before the accident, correct.
 19 Q Now, you just told me that because of a back
 20 accident or problem you were able to obtain a handicap car
 21 tag, is that correct?
 22 A That's correct.
 23 Q What incident did you have related to your back
 24 that allowed you to obtain that?
 25 A I had two herniated discs.

1 NORMAN V. DALE, called as a witness,
2 having been duly sworn, testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. ORWIG:

6 Q Good afternoon, Mr. Dale. My name is
7 Richard Orwig, and I represent the Area Transit Authority Bus
8 Company.

9 A Yes.

10 Q This afternoon I'd like to ask you some questions
11 relative to an incident that occurred back on May 30th of
12 2007.

13 Q Do you recall that day?

14 A Yes, I do.

15 Q How are you feeling today, sir?

16 A Well, I -- I'm here on the right side of the
17 grass, let's put it that way.

18 Q Good for you.

19 A Are you taking any medications today, sir?

20 Q Yes.

21 Q Are any of the medications that you are taking,
22 would they in any way make it difficult for you to understand
23 the questions that I am asking and for you to answer those
24 questions as best you can?

25 A I don't think so, and I will answer them to the
best I can.

1 Q Okay. Fair enough.

2 Where are you currently living, sir?

3 A I live in Lawrence Township, which is just outside
4 of the Clearfield Borough.

5 Q And what is that address?

6 A The address is 11 -- or 1221 Leonard Street,
7 Apartment 214.

8 Q And were you living there back in May of 2007?

9 A Yes, I was.

10 Q Do you live there by yourself?

11 A Yes.

12 Q Are you married?

13 A No, I'm not.

14 Q Have you ever been married?

15 A No.

16 Q Are you currently employed?

17 A No.

18 Q When were you last employed?

19 A I think it was July of 1988.

20 Q Was that with PennDOT?

21 A With the Pennsylvania Department of
22 Transportation.

23 Q And what did you do for them?

24 A I was the construction inspector supervisor.

25 Q And did you retire from PennDOT?

1 A Yes, I did.

2 Q How many years of service did you put in?

3 A Thirty.

4 Q And have you worked part-time or in any capacity
5 since your retirement at PennDOT?

6 A No, I have not.

7 Q Are you currently receiving any Social Security
8 benefits?

9 A Yes.

10 Q Are you receiving Social Security Disability?

11 A No.

12 Q Just --

13 A -- regular Social Security benefits.

14 Q Okay. Do you currently own a car?

15 A Yes.

16 Q Is it the same car that you had in 2007?

17 A Yes.

18 Q I think it was a Buick?

19 A A Buick.

20 Q And was it still insured by Allstate Insurance
21 Company?

22 A Yes, it is.

23 Q Back in May of 2007, specifically May 30th, I
24 believe your lawsuit indicates that there was an incident
25 involving an ATA bus, is that correct?

1 A That is correct.

2 Q And please excuse me. I should have mentioned
3 earlier. If at any time you don't understand a question of
4 mine, please let me know, and I will rephrase it.

5 A I will.

6 Q And I'll try to speak clearly and loudly enough so
7 you understand me. But if you don't hear me, please let me
8 know. If at any time you want to stop and take a break, go
9 talk to Mr. Naddeo, will you please let me know?

10 A Okay.

11 Q Is it fair to assume that otherwise you'll answer
12 the questions as best and as truthfully as --

13 A That I will, yes.

14 MR. NADDEO: Let him finish his question.

15 BY MR. ORWIG:

16 Q Just so we have a good record, when I -- just give
17 me a chance to ask my question so we can take a transcript of
18 it, and I'll do the same for you.

19 THE WITNESS: I didn't understand what you
20 said, Jim.

21 (Discussion held off the record.)

22 BY MR. ORWIG:

23 Q Mr. Dale, you had told me that your automobile is
24 currently insured by Allstate Insurance Company?

25 A Yes.

INDEX OF EXAMINATION

DIRECT CROSS

NORMAN V. DALE
by Mr. Orwig..... 3

INDEX OF EXHIBITS

DEPOSITION MARKED

1. Photocopied Photograph..... 22

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

NORMAN V. DALE, *
Plaintiff *
*
VS. * CIVIL ACTION
* NO. 08-95-CD
AREA TRANSPORTATION AUTHORITY, *
Defendant *
* * *

TRANSCRIPT OF PROCEEDINGS

VIDEOTAPED
DEPOSITION OF : NORMAN V. DALE

DATE : Tuesday,
February 3, 2009
1:40 p.m.

PLACE : Naddeo & Lewis Law Offices
207 E. Market Street
Clearfield, Pennsylvania

A P P E A R A N C E S:

JAMES E. NADDEO, ESQ.
Appeared on behalf of the Plaintiff

RICHARD L. ORWIG, ESQ.
Appeared on behalf of the Defendant

Stenographic Notes Taken By
Siobhan Voss, R.P.R.

Schreiber Reporting Service
P.O. Box 997, St. Marys, Pa. 15857
814-834-5337

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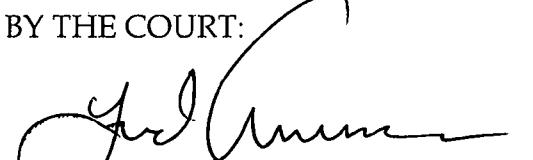
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NORMAN V. DALE	:	IN THE COURT OF COMMON PLEAS
		CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	CIVIL - ACTION
V.	:	
AREA TRANSPORTATION	:	
AUTHORITY,	:	NO.: 08-95-CD
Defendant	:	

SCEDULING ORDER

AND NOW, this 25 day of August, 2009, it is hereby Ordered that the Motion for Summary Judgment filed by the Defendant is scheduled for Argument on the 22 day of September, 2009 beginning at 2:30 'o'clock, P. M. In Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:



Frederic J. Ammerman
President Judge

FILED
013-39674 cc
AUG 25 2009 Atty Dwig
William A. Shaw
Prothonotary/Clerk of Courts
(60)

FILED

AUG 25 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/25/09

You are responsible for serving all appropriate parties.

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

Plaintiff(s) _____ Plaintiff(s) Attorney _____ Other _____

Defendant(s) _____ Defendant(s) Attorney _____

Special instructions:

FILED NO
m/12:37 PM CC
SEP 02 2009
William A. Shaw
Honorary Clerk of Courts
(610)

NORMAN V. DALE : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
V. : CIVIL - ACTION
:
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:
:
AREA TRANSPORTATION :
AUTHORITY, : NO.: 08-95-CD
Defendant :
:

PROOF OF SERVICE

COMMONWEALTH OF PENNSYLVANIA

ss:

COUNTY OF BERKS

I, Gwen W. Sittler, being duly sworn according to law, deposes and says that she served Scheduling Order of August 25, 2009 by mailing the same on this 28th day of August, 2009 via first class mail to:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC.
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830

Gwen W Sittler
Gwen W. Sittler

Sworn and subscribed before me
this 7th day of August, 2009.

Barrel E. Stitzman
COMMONWEALTH OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
CAROL E. STITZMAN, NOTARY PUBLIC
CITY OF READING, BERKS COUNTY
MY COMMISSION EXPIRES SEPT. 27, 2011

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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* No. 08-95-CD

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* Type of Pleading:

* PLAINTIFF'S RESPONSE TO
* MOTION FOR SUMMARY
* JUDGMENT FILED BY
* DEFENDANTS

* Filed on behalf of:
* Plaintiff

* Counsel of Record for
* this party:

* James A. Naddeo, Esq.
* Pa I.D. 06820

* &
* Trudy G. Lumadue, Esq.
* Pa I.D. 202049

* NADDEO & LEWIS, LLC.
* 207 E. Market Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

September 17, 2009

FILED 0105861 Atty SEP 17 2009 Naddeo
William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an *
individual, *
Plaintiff, *
*
v. * No. 08-95-CD
*
AREA TRANSPORTATION AUTHORITY *
OF NORTH CENTRAL PENNSYLVANIA, *
a Pennsylvania corporation, *
Defendant. *

PLAINTIFF'S RESPONSE TO MOTION FOR SUMMARY
JUDGMENT FILED BY DEFENDANTS

NOW COMES the Plaintiff, Norman V. Dale, and by and through his attorney, James A. Naddeo, files the following in response to the Motion for Summary Judgment filed by Defendants:

1. Plaintiff does not dispute that ATA is a local agency entitled to Governmental Immunity pursuant to the Political Subdivision Tort Claims Act 42 Pa. C.S.A. § 8541 et. seq.
2. Plaintiff submits that Plaintiff will be able to prove that his claimed damages would normally be recoverable under common law or statute as required by 42 Pa.C.S.A. § 8542(a)(1).
3. Plaintiff submits that Plaintiff will be able to prove that the negligent acts of the local agency fall within the enumerated category entitled "Vehicle liability" at 42 Pa.C.S.A. § 8542(a)(2) and that the acts were negligent on the part of the local agency's employee. At the very least, there is a genuine issue of material fact as to whether the acts of the driver of

the ATA bus that struck Plaintiff were in fact negligent. Plaintiff contends they were negligent and Defendant contends they were not. There are no admissions of record by Plaintiff that they were not. The only way to determine the same is for the trier of fact to hear the testimony and assess credibility of the witnesses.

4. Plaintiff submits that there is a genuine issue of material fact as to whether Plaintiff's injuries fall within those categories of loss that permit the recovery of pain and suffering pursuant to 42 Pa. C.S.A. § 8553(c)(2)(1).

5. Specifically, Plaintiff submits that he has suffered "permanent loss of bodily function" and "permanent disfigurement."

6. This accident occurred on May 30, 2007. Plaintiff has a permanent mark (scar) on his right wrist where he was struck by ATA bus. See Affidavit of Norman V. Dale, Plaintiff which is attached hereto as Exhibit "A." There is a genuine issue of material fact as to whether the permanent mark on Plaintiff's arm meets the language of the statute which requires "permanent disfigurement."

7. To date, Plaintiff remains unable to perform several tasks due to the injury to his neck which was sustained in the subject incident with the ATA bus. See Exhibit A in which Plaintiff details bodily functions that he is not able to

perform due to his neck injury. There is a genuine issue of material fact as to whether Plaintiff has suffered "permanent loss of bodily function."

8. In addition, Plaintiff believes there is sufficient radiological evidence which will demonstrate the disc protrusion and herniation at T2 and T3 shown post-accident was not shown on radiological evidence prior to the accident and therefore was caused by this accident. See Exhibit A and the medical exhibits attached thereto.

9. Even absent radiological evidence prior to the accident not showing a T2-T3 disc herniation, Plaintiff submits that there is ample evidence to demonstrate and permit a physician to conclude that the T2-T3 herniation resulted from this accident.

10. At the very least, there is a genuine issue of material fact as to whether the disc herniation and protrusion first, was caused by the accident. Second, whether the injury and symptoms resulting therefrom meet the requirement of permanent loss of bodily function required by the statute for Plaintiff to recover pain and suffering.

11. Defendants admit at Paragraph 37 of the Motion for Summary Judgment filed that Plaintiff stated in his deposition that he is not able to carry heavy grocery bags. Due to this inability, Plaintiff is required to have a third party assist him with his grocery shopping. Plaintiff further stated that "I

can't lug anything with this hand." Plaintiff was referring to his injured right hand which the ATA bus struck. These statements by Plaintiff create a genuine issue of material fact as to whether he has lost a permanent bodily function by the loss of use in his right hand/wrist.

12. In the event that the Court does not find based upon the facts presented above by Plaintiff that a genuine issue of material fact has been raised sufficient to deny the motion for summary of judgment of Defendants, Plaintiff submits that Plaintiff believes and therefore avers that Dr. Polintan will affirm by way of medical report and deposition testimony that the neck injury Plaintiff suffered as a result of this accident has resulted in a permanent loss of bodily function.

13. Plaintiff is attempting to obtain said report but has been unable to obtain said medical report from Dr. Polintan in the limited time within which this response was due to the Court.

14. Should the Court require said medical report to determine the motion for summary judgment as filed by Defendants, then Plaintiff would respectfully request the Court grant Plaintiff additional time and additional discovery to permit Plaintiff sufficient time within which to obtain a medical report before ruling upon the motion for summary

judgment filed by Defendants. This is permissible pursuant to Pa.R.C.P. 1053 (c) and also (b).

WHEREFORE, Plaintiff, NORMAN V. DALE, respectfully requests your Honorable Court find there are multiple issues of fact material to this case that may only be decided by the trier of fact in this case and that Defendants are not entitled to judgment as a matter of law and consequently enter an order denying Defendants' Motion for Summary Judgment.

Respectfully Submitted,

NADDEO & LEWIS, LLC

By 
James A. Naddeo
Attorney for Plaintiff

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

*

*

*

*

*

No. 08-95-CD

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

*

*

*

*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Plaintiff's Response to Motion for Summary Judgment Filed by Defendants was served on the following and in the following manner on the 17th day of September, 2009:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, PA 19604

NADDEO & LEWIS, LLC

By: James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

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

NORMAN V. DALE, an *
individual, *
Plaintiff, *
*
v. * No. 08-95-CD
*
AREA TRANSPORTATION *
AUTHORITY OF NORTH CENTRAL *
PENNSYLVANIA, a Pennsylvania *
corporation, *
Defendant. *

AFFIDAVIT OF NORMAN V. DALE, PLAINTIFF

COMES NOW, the undersigned, who being duly sworn according to law, and based upon personal knowledge of the facts stated herein, deposes and says as follows:

1. The Affiant is Norman V. Dale, an adult individual who is the Plaintiff in the above-captioned action.
2. On the date of the accident which is the subject of the above-captioned action I was struck on my right wrist by the ATA bus.
3. As a result of the accident, I have a permanent mark on my right wrist which was caused when the bus hit my arm.
4. Prior to this accident I had no neck pain and no restrictions on my neck movements.
5. As a result of this accident, I sprained my neck as appears from the medical records which are attached hereto as Exhibit "A."

6. As a result of this accident and the neck injury I sustained I continue to suffer ongoing pain in my neck and limitation of motion and the following symptoms:

- a. I am unable to turn my head as I could prior to the accident. The maximum amount I can turn my head to either side without pain is 5-10 degrees.
- b. I am not able to turn my head sufficiently to allow me to locate objects behind me when I am in my car. For example, I was required to exit my vehicle and locate what might be behind my vehicle when attempting to maneuver in a parking lot as I could not turn my head to see behind me.
- c. I cannot watch television for longer than 15 minutes without having to change positions to relieve neck pain.
- d. I cannot keep my neck in the same or similar position for longer than 15 minutes without requiring moving and turning of my head to alleviate neck pain.
- e. I am unable to sleep without pain unless I lie on my right side which helps to alleviate the neck pain.

7. I believe there is radiological evidence post-accident which records comparison images between June of 2006 and October of 2007 that shows disc protrusion (herniation) at T2 and T3 post-accident. Attached hereto as Exhibit "B" are said records.

Norman V. Dale
Norman V. Dale

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF CLEARFIELD) SS.

Before me, the undersigned officer, personally appeared NORMAN V. DALE, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Affidavit are true and correct to the best of his knowledge, information and belief.

Norman V. Dale
Norman V. Dale

SWORN and SUBSCRIBED before me this 8th day of September, 2009.

Ashley Renee Bell

COMMONWEALTH OF PENNSYLVANIA

Material Seal

Ashley Renee Bell, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires May 15, 201

Clearfield Hospital - Clearfield, PA 16830

Patient: DALE, NORMAN V DOB: 1/29/1927 Age/Gender: 80y M
 5/30/2007 22:05 MVC
 MR #: 064322 Acct #: 000001631697
 Private Phys: Richard A. Johnson, DO ED Phys: Gordon P. Clark, MD

CHIEF COMPLAINT: Enc. Type: ACUITY:
 MVC Initial Level II

Physicians caring for patient:
 Gordon P. Clark, MD

TRIAGE

CODE Status

Patient has Living Will/Code Status documentation.

PCP: Richard A. Johnson, DO polintan, hoffman

PHARMACY: Rite Aid Pharmacy; Cleafield, PA, (814)765-2753 Medicine Shoppe; Clearfield, PA, (814)765-5371

Patient arrived ambulatory via private auto from Private Home accompanied by a non-family member

Chief complaint/quote: pt states at 1130 this morning was hit by ATA bus while crossing the street now has painful neck and back

Mental status: The patient is awake, alert and cooperative. The patient is oriented x 3

Medication allergies: No known allergies.

Allergies/food/environmental/animal: Adhesives

Latex Allergy (-)

Medication information obtained from verbal exchange with patient

Current meds: Metoprolol 25 mg BID

Multivitamins BID

Omeprazole 20 mg PO daily

Glyburide 5 mg daily

Prednisolone 2.5 mg daily

Hydrocodone/APAP 5/500 PRN

Allopurinol Unknown dosage PO daily

Notes:

<LN 05-30-2007 22:37>Pt states of taking a medication for diverticulitis and his stool but unsure of name of medication.

Medications were taken prior to arrival to the ED.

Hydrocodone at 1800

Electronic Signature obtained

Consent has been obtained via Electronic patient signature

Notes:

<RAS 05-30-2007 23:06>Pt to er amb with c/o posterior neck pain and and bil hip pain Pt states that he was struck by the atm bus this am approx 1120am Bus struck py but did not knock him down "It made me off balance" no LOC Pt states that he felt ok initially but as the day has progressed, he has developed more pain Pt is awake alert and oriented x3 Skin is warm, dry and pink Lungs with decreased breath sounds otherwise cta Abd is obese, soft and non tender MAE Denies any numbness or tingling Bright alert and very talkative P also c/o pain to right wrist area ulnar aspect "That's where I hit the windshield" Offers good self rom to wrist

LN: Laura Nearhood, RN 05/30/07 22:31

LN: Laura Nearhood, RN 05/30/07 22:35

LN: Laura Nearhood, RN 05/30/07 22:36

LN: Laura Nearhood, RN 05/30/07 22:38

LN: Laura Nearhood, RN 05/30/07 22:39

RAS: Ruihann A. Smulik, RN 05/30/07 23:06

Clearfield Hospital - Clearfield, PA 16830

Patient: DALE, NORMAN V
5/30/2007 22:05 MVC
MR #: 064322
Private Phys: Richard A. Johnson, DO

DOB: 1/29/1927 **Age/Gender:** 80y M
Acct #: 000001631697
ED Phys: Gordon P. Clark, MD

PAST HISTORY

Past Medical/Surgical History

Diabetes Mellitus,
Hypertension
Gout
Disc problems
Cataract(s)

Diverticulitis
Hernia repair
Knee replacement
Knee surgery, right
Testicle removed; Date of surgery: 2002
Hemorrhoidectomy
Cataract removal
Amputation <LN 05/30/2007 22:38> of toe

Notes:

<LN 05-30-2007 22:38>had cataract removed from left eye 10/31
LN: Laura Nearhood, RN 05/30/07 22:37

Past Social History

Tobacco use: (+) <LN:05/30/2007 22:38>
Tobacco use: (-)
Alcohol use: (+)
Living arrangement: Patient lives alone
Safety at home: Patient states, " I feel safe at home."
Occupation: retired

LN: Laura Nearhood, RN 05/30/07 22:38
GPC: Gordon P. Clark, MD 05/31/07 00:22

Past Family History

No significant family history.
GPC: Gordon P. Clark, MD 05/31/07 00:22

NURSING SYSTEMS REVIEW

Assessment

Notes:

<RAS 05-30-2007 23:14> Clearfield Boro Police here and speaking with pt
RAS: Ruthann A. Smulik, RN 05/30/07 23:13

Reassessment

Assessment

Notes:

<RAS 05-31-2007 00:14> back from x-ray States that neck pain has decreased to 4-5/10 and hip pain has

Clearfield Hospital - Clearfield, PA 16830

Patient: DALE, NORMAN V

DOB: 1/29/1927

Age/Gender: 80y M

5/30/2007 22:05 MVC

MR #: 064322

Acct #: 000001631697

Private Phys: Richard A. Johnson, DO

ED Phys: Gordon P. Clark, MD

decreased to 2/10 Pt now c/o pain to left shoulder "It started acting up over in X-ray"
RAS: Ruthann A. Smulik, RN 05/31/07 00:13

FLOWsheets

Medication Administration

Demerol 100 mg IM Gordon P. Clark, MD 5/30/2007 22:53

Medication given as ordered.. Location: IM UOQ L hip Order completed after verification by 2nd RN Name: Linda Blake, RN Ruthann A. Smulik, RN 5/30/2007 23:20

Phenergan 25mg/1ml amp IM Gordon P. Clark, MD 5/30/2007 22:53

Medication given as ordered.. Location: IM UOQ L hip Ruthann A. Smulik, RN 5/30/2007 23:20

Dispense Medications: VICODIN: 1-2 TABS PO EVERY 4-6HRS PRN #4 Gordon P. Clark, MD 5/31/2007 00:33

Dispensed to home per physician order Order completed after verification by 2nd RN Name: Linda Blake, RN

Marty Fulmer, RN 5/31/2007 01:19

HISTORY OF PRESENT ILLNESS

Note

At the time of this signature, I have reviewed and agree with the Chief Complaint, Triage, and P.F.M.S.

History:

States he was brushed by a bus this morning. Didn't actually fall down, but sustained bruise of right forearm. Now states he has stiffness of his neck and lower back. Denies blunt trauma to head or neck, no paresthesia, numbness. No problems with coordination or balance. No visual or hearing problems, but wants to be "checked out".

Medical and surgical history obtained.

Social history obtained.

Past family history obtained.

*GPC:Gordon P. Clark, MD 05/31/07 00:19**GPC:Gordon P. Clark, MD 05/31/07 00:21**GPC:Gordon P. Clark, MD 05/31/07 00:22*

REVIEW OF SYSTEMS

Constitutional

Constitutional: No fever, unexplained weight change or malaise.

Eyes: No visual changes, eye pain or discharge.

ENMT: No hearing changes, pain, discharge or infections.

Cardiac: No chest pain, SOB or edema.

Respiratory: No cough or respiratory distress.

GI: No nausea, vomiting, diarrhea or abdominal pain.

GU: No dysuria, frequency or burning.

MS: see HPI

Neuro: No headache or weakness. No LOC.

Skin: No skin rash.

GPC:Gordon P. Clark, MD 05/31/07 00:22

VITAL SIGNS

Initials/Date/Time	Temp(C)	Rt. Pulse	Resp	Syst	Diast	Pos.	O2 Sat	02 L/mi	Pain Sc
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Clearfield Hospital - Clearfield, PA 16830

Patient: DALE, NORMAN V

DOB: 1/29/1927

Age/Gender: 80y M

5/30/2007 22:05 MVC

MR #: 064322

Acct #: 000001631697

Private Phys: Richard A. Johnson, DO

ED Phys: Gordon P. Clark, MD

LN 5/30/2007 22:34	36.3	O	84	22	132	64	S	91	0	8
RAS 5/30/2007 23:00			85	20	140	51	S	89	0	8
RAS 5/31/2007 00:12			83	16	103	58	S	92	0	4
MF 5/31/2007 01:20			81	18	112	62	S	96	0	3

EXAM

VITALS: Vital signs reviewed

CONSTITUTIONAL: Well-appearing, well-nourished, in moderate distress

HEAD: Normocephalic, atraumatic

EYES: Extraocular muscles intact

EARS: Normal external structures, no drainage

NOSE: Normal appearance, no discharge or bleeding

MOUTH/THROAT: Moist and clear, no erythema or swelling noted

NECK: No bulges or masses, trachea midline, full active ROM. Has posterior neck pain on palpation of posterior cervical muscles and questionable midline tenderness.

HEART: Regular rate and rhythm, normal heart sounds

LUNGS: Breath sounds are clear and equal bilaterally

CHEST: Respirations are symmetric and unlabored

ABD: Soft, non-tender, normoactive bowel sounds, non-distended, no masses

EXT: No cyanosis, clubbing or edema

SKIN: Warm, dry and normal for race, no lesions or rashes noted

NEURO: Glasgow Coma Scale = 15

PSYCHE: Appropriate dress and grooming, cooperative throughout exam

GPC:Gordon P. Clark, MD 05/31/07 00:22

PROCEDURES**Consult**

Radiology notified of order: Patient for CT in Imaging department. Patient taken to Radiology via stretcher transferred by RN. CEC 05/30/07 23:47

Patient returns to the Emergency Department from CT.

CEC 05/31/07 00:14

Preliminary Reading interpreted by Radiologist scanned to chart.

CEC 05/31/07 00:23

CEC:Canace E. Carns, UC 05/30/07 23:47

CEC:Canace E. Carns, UC 05/31/07 00:14

CEC:Canace E. Carns, UC 05/31/07 00:23

ORDERS**Medicine**

Demerol 100 mg IM < Gordon P. Clark, MD 5/30/2007 22:53>

Phenergan 25mg/1ml amp IM < Gordon P. Clark, MD 5/30/2007 22:53>

Dispense Medications: VICODIN: 1-2 TABS PO EVERY 4-6HRS PRN #4 < Gordon P. Clark, MD 5/31/2007 00:33>

Radiology

CT CERVICAL SPINE W/O CON Injury [Reference: 1] < Gordon P. Clark, MD 5/30/2007 22:54>

Prescriptions

Clearfield Hospital - Clearfield, PA 16830

Patient: DALE, NORMAN V	DOB: 1/29/1927	Age/Gender: 80y M
5/30/2007 22:05 MVC		
MR #: 064322	Acct #: 000001631697	
Private Phys: Richard A. Johnson, DO	ED Phys: Gordon P. Clark, MD	

VICODIN: 1-2 TABS PO EVERY 4-6HRS PRN #16 < Gordon P. Clark, MD 5/31/2007 00:34>

PROGRESS NOTES

Progress Note: CT of C spine shows no fracture or dislocation, but extensive DDD, and DJD GPC 05/31/07 00:33
GPC:Gordon P. Clark, MD 05/31/07 00:33

DIAGNOSIS

Motor vehicle crash (MVC) - unspecified injury
Sprain - cervical
<GPC:Gordon P. Clark, MD 05/31/07 00:33>

DISPOSITION

Nursing

Discharge/Transfer occurs at: Thursday, May 31, 2007 01:20

Disposition - Discharged: The patient was discharged to home in stable condition ambulatory accompanied by friend. The patient's diagnosis, condition, and treatment were explained to patient and/or parent/guardian. The patient/responsible party expressed understanding. A discharge plan has been developed. Aftercare instructions given to patient/staff/family member. Physician/PAC notified of pain scale prior to discharge.

MF:Marty Fulmer, RN 05/31/07 01:20

Physician

Rx

Disposition - Discharge from ED: The patient is discharged to home. Patient's condition is stable. The patient is to follow-up with their/the PCP as needed.

General discharge instructions given to patient in English.

GPC:Gordon P. Clark, MD 05/31/07 00:34

Bed Assignments:

WAIT4 RD 5/30/2007 22:05

TRAUMA4 LN 5/30/2007 22:35

Chart electronically signed by: Gordon P. Clark, MD 6/1/2007 04:22

Chart Documented By:

GPC: Gordon P. Clark, MD

RAS: Ruthann A. Smulik, RN

MF: Marty Fulmer, RN

CEC: Canace E. Carns, UC

LN: Laura Nearhood, RN

Release Information:

Patient released 5/31/2007 01:28

Released by Marty Fulmer, RN

CLEARFIELD HOSPITAL IMAGING DEPARTMENT
 P.O. BOX 992, CLEARFIELD, PA 16830
 (814) 768-2275

PATIENT:	DALE, NORMAN V	MR#:	064322	
AGE:	80Y	ADM #:	55914394	OP
DOB:	01/29/1927	ROOM/BED:		
ORD DR:	POLINTAN RODOLFO S	PT CLASS:	OUT	
ATT: DR:	POLINTAN RODOLFO S	PT TYPE:	R	FC: F
ALT DR:	POLINTAN RODOLFO S	HOSP SVC:	IMG	ORDER#: 90106

Final Report

REFERRING DIAGNOSIS: NECK WRIST PAIN: NAVICULAR VIEW OF WRIST
 HISTORY/COMMENTS: NECK PAIN WORSE ON RIGHT SIDE X2 WKS; PT HIT BY BUS 5/30/07; UNABLE TO TURN NECK SO FAR; LOWER BACK PAIN, WORSE ON RIGHT SIDE X2 WKS; NO BACK OR NECK SURGERY; PAIN ALL OVER RIGHT WRIST; UNABLE TO MOVE FINGERS SINCE BUS HIT PT
 ORDER #: 90106

06/20/2007 SPINE CERVICAL COMP OBL&FLEX/EXT 72052

PROCEDURE ENDED: 06/20/2007 11:46 Initials: HB KLK

FULL RESULT: Severe degenerative spondylosis is noted in the cervical spine with multilevel disc space narrowing and osteophyte formation. Prevertebral soft tissues are normal. No atlantoaxial subluxation is seen. No fractures are identified.

IMPRESSION: Advanced degenerative change.
 Osteoporosis.

06/20/2007 SPINE LUMBAR =/> 4 VIEWS 72110

PROCEDURE ENDED: 06/20/2007 11:46 Initials: HB KLK

FULL RESULT: In comparison to the examination dated 6/22/06. There is no interval change from the prior study. The bones are osteoporotic. Bulky osteophytes arise from the vertebral bodies. No fractures or pars defects are seen. Multilevel degenerative disc disease is seen.

IMPRESSION: No interval change.
 Multilevel degenerative disc disease.
 No fractures or pars defects.

06/20/2007 WRIST COMPLETE =/> 3 VIEWS RIGHT 73110

PROCEDURE ENDED: 06/20/2007 11:46 Initials: HB KLK

FULL RESULT: Bones are osteoporotic. No acute fracture is seen. Vascular calcification is noted in the wrist.

IMPRESSION: Osteoporosis.
 No fracture.

READING DR: ALFRED B. COREN, M.D. Jun 20 2007 12:01PM
 ELECTRONICALLY SIGNED: ALFRED B. COREN, M.D. Jun 21 2007 10:28AM
 TRANSCRIBED: cah Jun 20 2007 2:44PM

Ordering DR Batch

Exhibit "B"
 to affidavit

CLEARFIELD HOSPITAL IMAGING DEPARTMENT
 P.O. BOX 992, CLEARFIELD, PA 16830
 (814) 768-2275

PATIENT:	DALE, NORMAN V	MR#:	064322
AGE:	80Y	ADM #:	56373210
DOB:	01/29/1927	ROOM/BED:	OP
ORD DR:	POLINTAN, RODOLFO S	PT CLASS:	OUT
ATT: DR:	POLINTAN, RODOLFO S	PT TYPE:	R
ALT DR:	JOHNSON, RICHARD A	HOSP. SVC:	IMG
FC: F ORDER#: 90110			

Final Report

REFERRING DIAGNOSIS: PAIN

HISTORY/COMMENTS: HIT BY BUS 5/30/07. PAIN POSTERIOR NECK. STIFFNESS. NO NECK SURG. RT. WRIST. PAIN AND SWELLING. NO NEW INJ.

ORDER #: 90110

10/10/2007 MRI CERVICAL SPINE W/O CON 72141

PROCEDURE ENDED: 10/10/2007 12:58 Initials: HLF SSW

FULL RESULT: MRI SEQUENCING: Images of the cervical spine are obtained in the sagittal and axial projection. Images are obtained with spin echo, fast spin echo and gradient echo techniques.

MRI FINDINGS: The study is degraded by patient motion.

There is a mild anterior listhesis T2 on T3. There is a small central disc protrusion at this level.

There is straightening of the normal cervical lordosis.

There is disc space narrowing at C3-C4, C4-C5, C5-C6 and C6-C7 with associated disc desiccation.

At C3-C4, there is osteophyte formation with some relative foraminal narrowing bilaterally. The AP diameter of the canal is narrowed 9.0 to 10.0 mm.

At C4-C5, there is a desiccated narrowed disc with some relative foraminal narrowing. There is a bony impress on the sac central to right in nature. The AP diameter of the canal is narrowed to 10.0 mm.

At C5-C6, there is a desiccated mildly bulging disc. There is foraminal narrowing left greater than right. The AP diameter of the canal is at the lower limits of normal.

At C6-C7, there is a desiccated disc with osteophyte formation.

No primary intradural lesion is identified. The cord appears normal in morphology and signal. No abnormalities identified at the craniocervical junction.

IMPRESSION: Diffuse degenerative changes characterized by disc space narrowing and endplate spurring.

There is an element of canal stenosis at C3-C4, C4-C5 and C5-C6.

There is foraminal narrowing at multiple levels.

There is slight anterior listhesis of T2 on T3 and a small central disc protrusion at this level.

10/10/2007 MRI UP EXT JOINT W/O CON RIGHT 73221

PROCEDURE ENDED: 10/10/2007 12:58 Initials: HLF SSW

FULL RESULT: MRI right wrist.

CLEARFIELD HOSPITAL IMAGING DEPARTMENT
P.O. BOX 992, CLEARFIELD, PA 16830
(814) 768-2275

PATIENT:	DALE, NORMAN V	MR#:	064322	
AGE:	80Y	ADM #:	56373210	OP
DOB:	01/29/1927	ROOM/BED:		
ORD DR:	POLINTAN, RODOLFO S	PT CLASS:	OUT	
ATT DR:	POLINTAN, RODOLFO S	PT TYPE:	R	FC: F
ALT DR:	JOHNSON, RICHARD A	HOSP SVC:	IMG	ORDER#: 90110

MRI SEQUENCING: Images are obtained in the axial, sagittal and coronal projection. Images are obtained with spin echo, fast spin echo and gradient echo techniques.

MRI FINDINGS: There is some motion degradation of the study. There are mild degenerative changes at the first carpal metacarpal articulation. The triangular fibrocartilage appears grossly intact. There is no evidence for an instability pattern. No area of bone edema is identified. No focal mass and/or fluid collection is identified. There is no evidence for joint effusion. Relationship of the scaphoid, lunate and capitate appear within normal limits.

No abnormal tendon signal is identified.

IMPRESSION: Mild degenerative changes first carpal metacarpal articulation.

No other significant osseous and/or soft tissue abnormality is identified.

No area of edema, fluid and/or mass is noted.

No other significant osseous abnormality is noted.

READING DR: RICHARD O BOLDEN, M.D. Oct 10 2007 1:24PM
ELECTRONICALLY SIGNED: RICHARD O BOLDEN, M.D. Oct 10 2007 3:34PM
TRANSCRIBED: par Oct 10 2007 3:26PM

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

NORMAN V. DALE
VS
AREA TRANSPORTATION
AUTHORITY

}

}

}

FILED

0/11/36cm

SEP 24 2009

(610)

William A. Shaw

Prothonotary/Clerk of Courts

O R D E R

NOW, this 22nd day of September, 2009, following argument on the Defendant's Motion for Summary Judgment, it is the ORDER of this Court as follows:

1. Plaintiff shall have no more than Thirty (30) Days from this date in which to cause the expert report of Rodolfo Polintan, M.D., to be filed with the record; Plaintiff shall have no more than Forty (40) Days from this date in which to submit an appropriate brief to the Court with copy to be provided to Defense counsel.

2. Defense counsel shall have no more than Fifty (50) Days from this date in which to supply the Court with any rebuttal brief.

BY THE COURT,



President Judge

DATE: 9-24.2009

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED

SEP 24 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

*
*
*
*
* No. 08-95-CD
*

* Type of Pleading:

* **CERTIFICATE OF SERVICE**

* Filed on behalf of:
* Plaintiff

* Counsel of Record for
* this party:

*
* James A. Naddeo, Esq.
* Pa I.D. 06820
* &
* Trudy G. Lumadue, Esq.
* Pa I.D. 202049

* NADDEO & LEWIS, LLC.
* 207 E. Market Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

September 30, 2009

FILED
OCT 14 2009
SEP 30 2009
NO CC
610
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William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an individual, *
Plaintiff, *
*
v. * No. 08-95-CD
*
*
AREA TRANSPORTATION AUTHORITY *
OF NORTH CENTRAL PENNSYLVANIA, *
a Pennsylvania corporation, *
Defendant. *

Certificate of Service

I, James A. Naddeo, attorney for the plaintiff, do hereby certify that a copy of Plaintiff's Pre-Trial Memorandum was served on the following parties this 30th day of September, 2009:

First Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, PA 19604

NADDEO & LEWIS, LLC

By: James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

NORMAN V. DALE

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation

Defendants.

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

No. 97-C-1411

08-95-CD

**DEFENDANT AREA TRANSPORTATION AUTHORITY OF NORTH CENTRAL PENNSYLVANIA'S
PROOF OF SERVICE OF DEFENDANT'S PRETRIAL STATEMENT OF DEFENDANT**

COMMONWEALTH OF PENNSYLVANIA

:

ss:

COUNTY OF BERKS

:

I, Marion E. Smith, being duly sworn according to law, depose and say that on this 28th day of September, 2009, I served a true and correct copy of Defendant Area Transportation Authority of Pennsylvania's Pretrial Statement via first class mail, postage prepaid, upon the following counsel of record:

James E. Naddeo, Esg.
Naddeo & Lewis, LLC
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830



Marion E. Smith

FILED NO
01259761
OCT 05 2009
S
William A. Shaw
Prothonotary/Clerk of Courts

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RECEIVED

OCT 05 2009

Court Administrator's
Office

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

No. 08-95-CD

Type of Pleading:

**SUPPLEMENTAL EXHIBIT TO
PLAINTIFF'S RESPONSE TO
MOTION FOR SUMMARY
JUDGMENT**

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

October 7, 2009

FILED

03/32/2011
OCT 07 2009
Atty Naddeo

William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

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No. 08-95-CD

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Supplemental Exhibit to Plaintiff's Response to Motion for Summary Judgment was served on the following and in the following manner on the 7th day of October, 2009:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, PA 19604

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

Rodolfo S. Polintan, M.D., P.C.

807 Turnpike Avenue
Clearfield, Pennsylvania 16830

Telephone (814) 765-8590

Fellow:
American College of Surgeons
American Academy of Orthopaedic Surgeons
American Academy of
Neurological and Orthopaedic Surgeons
International College of Surgeons

October 6, 2009

James A. Naddeo, Esquire
P.O. Box 552
Clearfield, PA 16830

RE: Norman V. Dale

Dear Attorney Naddeo:

I am in receipt of your letter dated September 29, 2009.

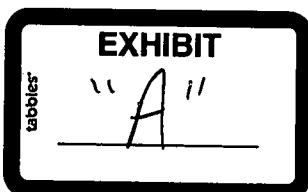
In regards to the accident of Mr. Dale which occurred on May 30, 2007, I saw him initially for the injuries he sustained in this accident on June 19, 2007. History was taken from him, and he said that he was a pedestrian when he was struck by a bus near the hospital. He said that he developed pain around the back of the neck, pain on the right wrist and also on the lower back. I need to mention that he has history of low back pain from degenerative causes.

Apparently after he was struck by the bus he was sent to the E.R. of the Clearfield Hospital wherein he had CT scan of the cervical spine which showed degenerative joint disease and mild spinal stenosis. No films were taken of the wrist nor the back.

Examination at that time showed cervical spine with slight stiffness but no soft tissue swelling. There was tenderness on the back of the neck. Examination of the low back at that time showed normal lumbar lordosis and examination of the right hand showed slightly tender over the distal ulna; no deformity of the right wrist, slight decreased range of motion of the right wrist; no tenderness at the snuff box.

With this in mind he was sent for x-ray of the cervical spine, LS spine, right wrist including navicular view.

The cervical spine x-ray showed on 06-20-07 with flexion and extension, advanced degenerative changes with multi-level disc space narrowing and osteophyte formation. There is also



James A. Naddeo, Esquire
RE: Norman V. Dale
October 6, 2009
Page Two

evidence of osteoporosis. Lumbar spine x-rays on the same date showed multi-level degenerative disc disease; no fractures or pars defect. X-ray of the right wrist showed osteoporosis and no fracture.

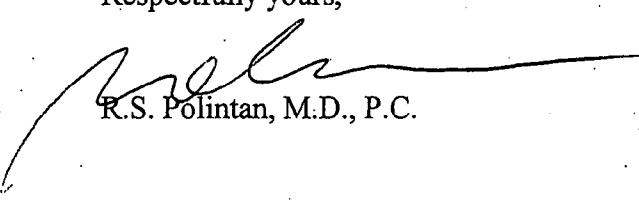
Because of the persistence of the neck pain and stiffness, the patient was sent for a MRI of the cervical spine. Also on account of the continuing pain on the right wrist, he had MRI of the right wrist. These were done on October 10, 2007.

I did review the chart on Mr. Dale and for your information no thoracic spine MRI was done. The cervical spine MRI however showed the upper level of the thoracic spine. This MRI of the cervical spine showed foraminal narrowing at multiple levels. There is an anterior listhesis of the thoracic spine #2 on thoracic #3 and a small central disc protrusion at this level. There are degenerative changes characterized by disc space narrowing and endplate spurring and element of canal stenosis at C3-C4, C4-C5 and C5-C6. The MRI of the wrist shows degenerative disease; there is no fracture. In regards to the MRI of the cervical spine and part of the upper thoracic spine, unfortunately Mr. Dale did not have any comparison MRI of the cervical spine prior to this accident.

Because of his continuing pain in the upper back and around the posterior aspect of the neck, it is my opinion, within a reasonable degree of medical certainty, that the patient's pain was causally related to the accident that he had. I agree that he had some arthritis on the cervical spine on the x-rays and it is within a reasonable degree of medical certainty that Mr. Dale did have limited range of motion of the cervical spine prior to the accident; however, the decreased range of motion had increased dramatically because of this accident. Within a reasonable degree of medical certainty, even though we don't have a comparable MRI of the cervical spine, that the small central disc herniation at thoracic #2 and on thoracic #3 is secondary to the accident reported by Mr. Dale. It is also within a reasonable degree of medical certainty that the pain in the neck that Mr. Dale suffered is mainly secondary to the accident. Based on his age, degenerative changes, his pain and physical limitation will be permanent.

Thank you very much, and the above narrative report is based on a reasonable degree of medical certainty. Should you have any questions, please feel free to call me.

Respectfully yours,


R.S. Polintan, M.D., P.C.

RSP/jed

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

NORMAN V. DALE,
Plaintiff

vs.

AREA TRANSPORTATION AUTHORITY OF
NORTH CENTRAL PENNSYLVANIA, a
Pennsylvania corporation,
Defendant

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NO. 08-95-CD

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William A. Shaw
Prothonotary/Clerk of Courts
ICC Atlys: Naddo
Orwig

ORDER

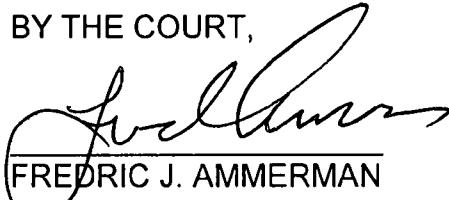
NOW, this 7th day of October, 2009, following pre-trial conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on **January 5, 2010** commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Jury Trial is hereby scheduled for **March 1, 2 and 3, 2010** commencing at 9:00 a.m. each day in Courtroom No. 1 of the Clearfield County Courthouse.
3. All depositions which are to be used for trial presentation purposes shall be completed by absolutely no later than sixty (60) days prior to the commencement of trial or the same will not be available for use at trial. A copy of the transcript of any such deposition(s) shall be provided to opposing counsel within no more than ten (10) days following completion of the deposition(s).
4. The written report of any expert who will testify at trial which has not previously been provided to opposing counsel shall be delivered within no more than seventy-five (75) days from this date. Failure to comply will result in the witness not being available for use at trial.
5. Any party making objections relative the testimony to be provided by any witness in the form of a deposition at the time of trial shall submit said objections to the Court, in writing, no later than forty-five (45) days prior to the commencement of

trial. All objections shall reference specific page and line numbers within the deposition(s) in question along with that party's brief relative same. The opposing party shall file an Answer thereto and submit its brief in opposition to said objections no later than thirty (30) days prior to the commencement of trial.

6. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than forty-five (45) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than thirty (30) days prior to trial.
7. The parties hereby agree to the authenticity of any and all medical records and bills which were previously provided through the discovery process. No party shall be required to produce a Medical Records witness for purposes of authentication.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

OCT 12 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/12/09

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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Court Administrator's
Office

NORMAN V. DALE	:	IN THE COURT OF COMMON PLEAS
	Plaintiff	CLEARFIELD COUNTY, PENNSYLVANIA
V.	:	CIVIL - ACTION
	:	
AREA TRANSPORTATION	:	
AUTHORITY,	:	NO.: 08-95-CD
	Defendant	:

**NOTICE OF TRIAL VIDEO/ORAL
DEPOSITION
- DAVID JOHE, MD**

Filed on behalf of
Defendant Area Transportation
Authority

Counsel of Record for This Party:

Richard L. Orwig, Esq.
PA I.D. No.: 22371

ORWIG LAW OFFICES
200 Spring Ridge Drive
Suite 202
Wyomissing, PA 19610
610.939.9866

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B&W William A. Shaw
Prothonotary/Clerk of Courts

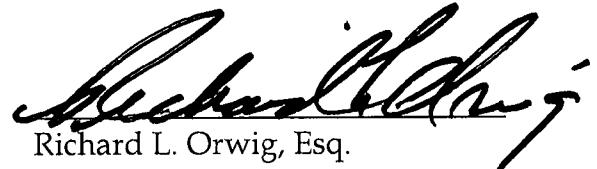
NORMAN V. DALE	:	IN THE COURT OF COMMON PLEAS
	Plaintiff	: CLEARFIELD COUNTY, PENNSYLVANIA
V.		: CIVIL - ACTION
		:
AREA TRANSPORTATION	:	
AUTHORITY,		: NO.: 08-95-CD
	Defendant	:

NOTICE OF TRIAL VIDEO/ORAL DEPOSITION

To: James A. Naddeo, Esq., Naddeo & Lewis, LLC., 207 E. Market Street, Clearfield, PA 16830

PLEASE TAKE NOTICE that on **Friday, December 18, 2009**, beginning at **9:30 a.m.** Defendant Area Transportation Authority (ATA) will take the trial video deposition of **DAVID JOHE, MD** pursuant to Pa. R.C.P. No. 4007.1. The video deposition will take place at **Rhode Island Medical Services, P.C., Medical Office Building, 761 Johnsonburg Road, Suite 210, St. Marys, PA 15857**, telephone 814.781.8655, upon oral examination before an officer authorized by the laws of the Commonwealth of Pennsylvania to administer oaths. The videotape portion of the deposition will be conducted by Dale Evanoff Videography, 2426 Haybarger Ave., Erie, PA 16502 or his designee, simultaneously with stenographic recording.

ORWIG LAW OFFICE



Richard L. Orwig, Esq.
Attorney for Defendant ATA

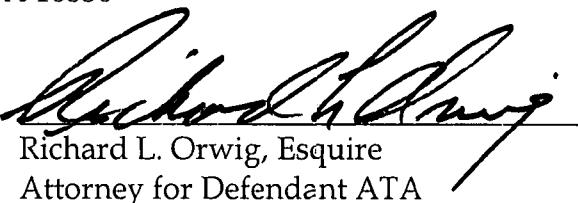
Dated: October 29, 2009

NORMAN V. DALE	:	IN THE COURT OF COMMON PLEAS
Plaintiff	:	CLEARFIELD COUNTY, PENNSYLVANIA
V.	:	CIVIL - ACTION
	:	
AREA TRANSPORTATION	:	
AUTHORITY,	:	NO.: 08-95-CD
Defendant	:	

CERTIFICATE OF SERVICE

I, Richard L. Orwig, Esquire, hereby certify that on this 29th day of October, 2009, I served a true and correct copy of Defendant Area Transportation Authority's (BARTA) Notice of Trial Video/Oral Deposition of **DAVID JOHE, MD** upon the following parties or counsel of record, via first class mail, postage prepaid:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC.
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830



Richard L. Orwig, Esquire
Attorney for Defendant ATA

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

NORMAN DALE,

Plaintiff

vs.

NO. 08-95-CD

AREA TRANSIT AUTHORITY
and RANDY TURNER,
Defendants

ORDER

AND NOW, this 8th day of December 2009, upon consideration of the Parties' oral arguments and briefs, and upon consideration of the same, it is the ORDER of this Court this Court as follows:

1. Defendants' Motion for Summary Judgment is hereby DENIED.
2. Plaintiff will have no more twenty (20) days from this date to file an Amended Complaint wherein the Plaintiff specifically pleads Defendant's status as a "local agency" entitled to Governmental Immunity.

FILED

12/23/09
DEC 10 2009

William A. Shaw
Prothonotary/Clerk of Courts

2cc
Attns: Nadeo
Orwig
⑥

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

DEC 10 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/10/09

 You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other
 Defendant(s) Defendant(s) Attorney Other

 Special Instructions:

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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* No. 08-95-CD

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* Type of Pleading:

* **AMENDED COMPLAINT**

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* Filed on behalf of:
* Plaintiff

*
*.

* Counsel of Record for
* this party:

*
*.

* James A. Naddeo, Esq.
* Pa I.D. 06820
* &
* Trudy G. Lumadue, Esq.
* Pa I.D. 202049

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* NADDEO & LEWIS, LLC.
* 207 E. Market Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

*
*.

Dated: December 15, 2009

FILED 1cc
12/15/09
DEC 15 2009
Atty Naddeo
W.A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an *
individual, *
Plaintiff, *
*
v. * No. 08-95-CD
*
*
AREA TRANSPORTATION AUTHORITY *
OF NORTH CENTRAL PENNSYLVANIA, *
a Pennsylvania corporation, *
Defendants *

NOTICE TO PLEAD

TO THE DEFENDANT:

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

NADDEO & LEWIS, LLC

By 
James A. Naddeo, Esquire
Attorney for Plaintiff

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

NORMAN V. DALE, an
individual, *
Plaintiff, *
*
v. * No. 08-95-CD
*
*
AREA TRANSPORTATION AUTHORITY *
OF NORTH CENTRAL PENNSYLVANIA, *
a Pennsylvania corporation, *
Defendants *

AMENDED COMPLAINT

NOW COMES the Plaintiff, Norman V. Dale, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff is Norman V. Dale who is a sui
juris, adult individual who resides at 1221 Leonard Street,
Clearfield, Pennsylvania 16830.

2. That the Defendant is Area Transportation Authority of North Central Pennsylvania, and is a Pennsylvania corporation with a principal office located at 173 Spider Lake Road, DuBois, Pennsylvania 15801.

3. That Defendant Area Transportation Authority of North Central Pennsylvania is a "local agency" as defined within the Commonwealth of Pennsylvania statutes and is entitled to Governmental Immunity.

4. That on or about May 30, 2007 at approximately 11:15 a.m., E.D.S.T., the Plaintiff was struck by a bus owned

and operated by Area Transportation Authority of Northwestern Pennsylvania, in particular bus number 711.

5. That the incident as described in Paragraph 4 occurred in the parking lot of the Clearfield Medical Arts Building located at 807 Turnpike Avenue, Clearfield, Pennsylvania.

6. That on said date, at or about said time, Plaintiff parked in a handicapped parking space and proceeded to walk toward the main entrance of the Clearfield Medical Arts Building.

7. That Clearfield Medical Arts Building is adjacent to the Clearfield Hospital and its parking lot is located South of the Medical Arts Building and the Hospital.

8. That on the aforesaid date and at or about the said time, Plaintiff was walking North in a crosswalk marked for pedestrians approaching the main entrance of the Clearfield Medical Arts Building.

9. That on the aforesaid date and at or about the said time, ATA Bus No. 711, on information and belief being operated by an employee of the defendant, was traveling West through the parking lot at the same location where Plaintiff was walking.

10. That on the aforesaid date and at or about the said time, ATA Bus No. 711, struck the Plaintiff on his right side.

11. That on the aforesaid date and at or about the said time, it was daylight and there were no averse weather conditions.

12. That as a result of the collision described in Paragraph 10 hereof which is incorporated herein by reference, the Plaintiff was spun and thrown approximately six-eight feet.

13. That the collision described in Paragraph 10 hereof which is incorporated herein by reference caused bruises and contusions and serious injuries to Plaintiff as hereinafter set forth.

14. That the Defendant was guilty of the following negligence, recklessness and carelessness which was the proximate cause of the accident and the injuries to the Plaintiff as follows:

A. That the Defendant failed to maintain a proper lookout while traveling in a parking lot;

B. That the Defendant failed to yield the right-of-way to a pedestrian;

C. That the Defendant violated the Motor Vehicle Code of 1975, June 17, P.L. 162, Section 3542, 75 Pa.

C.S.A. Section 3714 and supplements thereto in that it

operated a vehicle upon the parking lot of Clearfield Medical Arts Building, with careless disregard for the safety of the Plaintiff.

D. That the Defendant violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3361, 75 Pa. C.S.A. Section 3361, and supplements thereto, in that it operated a vehicle upon the parking lot of Clearfield Medical Arts Building at a speed exceeding that which was safe and reasonable with regard to the circumstances then existing.

E. That the Defendant violated the Motor Vehicle Code of 1976, June 17, P.L. 162, Section 3309, 75 Pa.C.S.A. Section 3542, and supplements thereto, in that it failed to yield the right-of-way to an individual walking in a marked crosswalk.

15. That as a result of the collision described in Paragraph 10 hereof, the Plaintiff suffered the following injuries which may and probably will be permanent:

A. Injury to his neck and cervical spine, being a ruptured and/or herniated disc,

B. Injury to his right wrist and arm, causing degenerative changes and arthritic symptoms, and including a scar to his right forearm where the bus struck the Plaintiff.

16. That as a result of the injuries referred to in Paragraph 15 hereof, the Plaintiff was unable to engage in certain of his regular household duties.

17. That as a result of the injuries referred to in Paragraph 15 hereof, the Plaintiff may incur medical expenses for the treatment of his injuries in excess of his available first party medical benefits.

18. That the Plaintiff claims a reasonable amount for the following:

- A. Pain and suffering: past, present and future;
- B. Privation and inconvenience: past, present and future;
- C. Future medical expenses
- D. All other damages allowable by law.

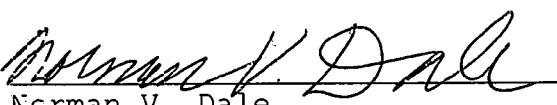
WHEREFORE, the Plaintiff claims damages from the Defendant, in excess of Twenty Five Thousand (\$25,000.00) Dollars. Jury Trial Demanded.

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

V E R I F I C A T I O N

I, Norman V. Dale, Plaintiff, verify that the statements made in the foregoing Amended Complaint are true and correct upon my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

By: 
Norman V. Dale
Plaintiff

Dated: 12-14-09

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

NORMAN V. DALE, an *
individual, *
Plaintiff, *
*
v. * No. 08-95-CD
*
AREA TRANSPORTATION AUTHORITY *
OF NORTH CENTRAL PENNSYLVANIA, *
a Pennsylvania corporation, *
Defendants *

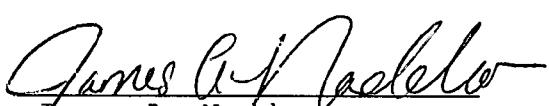
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Amended Complaint was served on the following and in the following manner on the 15th day of December, 2009:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, PA 19604

NADDEO & LEWIS, LLC

By: 
James A. Naddeo
Attorney for Plaintiff

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

* No. 08-95-CD

* Type of Pleading:

* **CERTIFICATE OF SERVICE**

* Filed on behalf of:
* Plaintiff

* Counsel of Record for
* this party:

* James A. Naddeo, Esq.
* Pa I.D. 06820
* &
* Trudy G. Lumadue, Esq.
* Pa I.D. 202049

* NADDEO & LEWIS, LLC.
* 207 E. Market Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED 3cc Atty
12:22pm Naddeo
DEC 16 2009
S

William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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No. 08-95-CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Taking Deposition was served on the following and in the following manner on the 16th day of December, 2009:

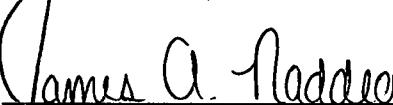
First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
1940 North 13th Street
Reading, PA 19604

Maryann Cornelius, Court Reporter
339 Southmont Boulevard
Johnstown, PA 15905

NADDEO & LEWIS, LLC

By:


James A. Naddeo

Attorney for Plaintiff

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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No. 08-95-CD

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Prothonotary/Clerk of Courts

Type of Pleading:

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PRAECIPE TO SETTLE

AND DISCONTINUE

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Filed on behalf of: _____

*

Plaintiff

*

*

Counsel of Record for

*

this party:

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*

James A. Naddeo, Esq.

*

Pa I.D. 06820

*

&

*

Trudy G. Lumadue, Esq.

*

Pa I.D. 202049

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NADDEO & LEWIS, LLC.

*

207 E. Market Street

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P.O. Box 552

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Clearfield, PA 16830

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(814) 765-1601

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FEB 23 2010

William A. Shaw
Prothonotary/Clerk of Courts

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

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No. 03-95-CD

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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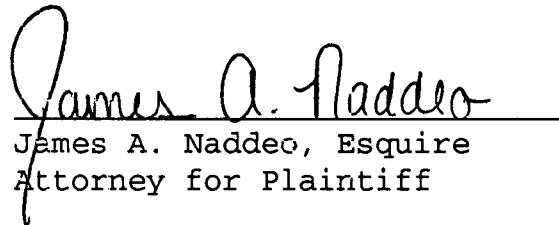
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PRAECIPE TO SETTLE AND DISCONTINUE

TO THE PROTHONOTARY:

Please mark the above-captioned case settled and discontinued.

Naddeo & Lewis, LLC



James A. Naddeo, Esquire
Attorney for Plaintiff

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

NORMAN V. DALE, an
individual,

Plaintiff,

v.

AREA TRANSPORTATION AUTHORITY
OF NORTH CENTRAL PENNSYLVANIA,
a Pennsylvania corporation,
Defendants

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No. 08-95-CD

CERTIFICATE OF SERVICE

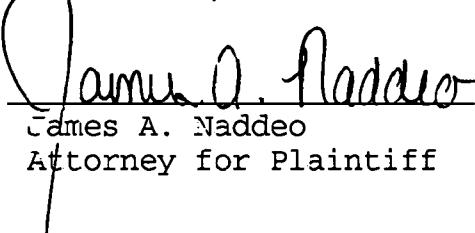
I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Praeclipe to Settle and Discontinue was served on the following and in the following manner on the 23rd day of February, 2010:

First-Class Mail, Postage Prepaid

Richard L. Orwig, Esquire
Orwig Law Offices
2 Meridian Boulevard
Wyomissing, PA 19610

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CC
JL

Norman V. Dale

Vs. No. 2008-00095-CD
Area Transportation Authority of North Central Pen

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on February 23, 2010, marked:

Settled and discontinued

Record costs in the sum of \$95.00 have been paid in full by James A. Naddeo Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 23rd day of February A.D. 2010.



William A. Shaw, Prothonotary

FILED *File*

MAR 15 2010
m/3:20h
William A. Shaw
Prothonotary/Clerk of Courts

I went to the

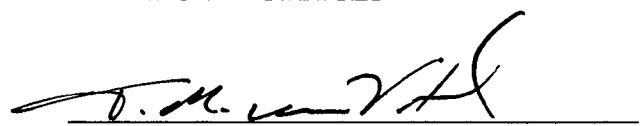
NORMAN V. DALE	:	IN THE COURT OF COMMON PLEAS
PLAINTIFF.	:	CLEARFIELD COUNTY, PENNSYLVANIA
V.	:	CIVIL - ACTION
	:	
AREA TRANSPORTATION	:	
AUTHORITY,	:	NO.: 08-95-CD
DEFENDANT,	:	

WITHDRAWAL OF APPEARANCE

TO THE PROTHONOTARY:

Please withdraw my appearance for the Defendant Area Transportation Authority in the above captioned case.

NAGY LAW OFFICES



Todd M. von Vital, Esquire
200 Spring Ridge Drive, Suite 202
Wyomissing, PA 19610

DATED: March 10, 2010

NORMAN V. DALE	:	IN THE COURT OF COMMON PLEAS
PLAINTIFF,	:	CLEARFIELD COUNTY, PENNSYLVANIA
V.	:	CIVIL - ACTION
:		
AREA TRANSPORTATION	:	
AUTHORITY,	:	NO.: 08-95-CD
DEFENDANT,	:	

CERTIFICATE OF SERVICE

I, Todd M. von Vital, Esq., on this 10th day of March, 2010, hereby certify that a true and correct copy of Withdraw of Appearance for Defendant Area Transportation Authority was served upon the following party, or counsel via first class mail, postage prepaid:

James A. Naddeo, Esq.
Naddeo & Lewis, LLC.
207 E. Market Street
P. O. Box #552
Clearfield, PA 16830

Richard L. Orwig, Esquire
Orwig Law Offices
Treeview Corporate Bldg.
2 Meridian Blvd.
Wyomissing, PA 19610



Todd M. von Vital, Esquire