

08-187-CD

Heidi Fenton vs Melanie Frank

HEIDI FENTON, and  
BRIAN FENTON, her husband : IN THE COURT OF COMMON PLEAS  
Plaintiffs : OF CLEARFIELD COUNTY,  
: PENNSYLVANIA

MELANIE F. FRANK,  
Defendant : No. 08-187-CD  
Plaintiffs : 2008

**PRAECIPE FOR WRIT OF SUMMONS**

TO THE PROTHONOTARY:

Please Issue a Writ of Summons in regard to the above-captioned matter.

Respectfully submitted,

**NICHOLAS, PEROT, SMITH, KOEHLER & WALL**

BY: Denise M. Cuneo

Denise M. Cuneo, Esquire  
Pa. ID 80124  
2527 West 26th Street  
Erie, PA 16506  
(814) 833-8851  
Attorneys for Plaintiffs

Date: Januany 31, 2008

**FILED** Atty pd.  
m1/2/43/08 05.00  
FEB 04 2008  
3cc & 3wnts  
William A. Shaw  
Prothonotary/Clerk of Courts to Atty  
UN

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

COPY

**SUMMONS**

**Heidi Fenton  
Brian Fenton**

**Vs.**

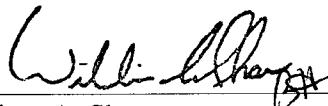
**NO.: 2008-00187-CD**

**Melanie F. Frank**

**TO: MELANIE F. FRANK**

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 02/04/2008

  
\_\_\_\_\_  
William A. Shaw  
Prothonotary

**Issuing Attorney:**

Denise M. Cuneo  
2527 W. 26th St.  
Erie, PA 16506  
(814) 833-8851

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
:  
v. : CIVIL ACTION - LAW  
:  
:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**NOTICE**

TO: TO THE ABOVE NAMED DEFENDANT

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, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

David S. Meholic  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

NICHOLAS, PEROT, SMITH, KOEHLER & WALL, PC  
BY: Denise M. Cuneo

Denise M. Cuneo, Esquire  
Pa. I. D. No. 80124  
2527 West 26<sup>th</sup> Street  
Erie, PA 16506  
(814) 833-8851  
Attorney for Plaintiff

FILED  
MAR 3 2008 3CC  
Atty Cuneo  
William A. Shaw  
Prothonotary/Clerk of Courts  
6K

HEIDI FENTON, and	:	IN THE COURT OF COMMON PLEAS
BRIAN FENTON, her husband	:	OF CLEARFIELD COUNTY,
Plaintiffs	:	PENNSYLVANIA
	:	
	:	
v.	:	CIVIL ACTION - LAW
	:	
	:	
MELANIE F. FRANK,	:	
Defendant	:	No. 08-187 CD

**CIVIL COMPLAINT**

AND NOW, comes the Plaintiffs, Heidi Fenton and Brian Fenton, her husband, by and through their attorneys, Nicholas, Perot, Smith, Koehler & Wall, PC, and files the following Complaint as follows:

1. That Plaintiffs Heidi Fenton and Brian Fenton are married, adult individuals residing at 217 Hogback Road, Kersey, Elk County, Pennsylvania 15846.
2. Defendant Melanie Frank is an adult individual who at the time of the accident resided at 7489 Bennetts Valley Highway, DuBois, Clearfield County, Pennsylvania, 15801.
3. On or about February 12, 2006, at approximately 12:00 p.m., Plaintiff Heidi Fenton was the front seat passenger of a 2005 Dodge Durango, operated by her husband, Brian Fenton, and was proceeding in a southerly direction on SR 255 approaching the intersection with Sher Di Lin Road, Sandy Township, DuBois, Clearfield County, Pennsylvania.
4. That at the same time and place, Defendant Melanie Frank was operating a 1995 Plymouth Voyager van, owned by Theresa Gustafson, in an easterly direction on Sher Di Lin Road, approaching the intersection with SR 255, which is controlled by a stop sign.
5. At the above time and place, Defendant Melanie Frank failed to stop at the stop sign and proceeded into the intersection of SR 255 and Sher Di Lin Road.

6. As a result of the Defendant Melanie Frank's negligence in failing to stop at the stop sign and entering SR 255, directly into the path of Plaintiff's vehicle, the Defendant's vehicle collided with the front of Plaintiff's vehicle. Plaintiff's vehicle began to spin counter-clockwise and came to rest south of the intersection, facing east.

7. As a direct and proximate result of the negligence, recklessness and carelessness of Defendant Melanie Frank as more fully set forth hereinunder, Plaintiff Heidi Fenton was violently shaken and has suffered severe and serious injuries including:

- a. Acute Cervical Sprain/Strain;
- b. Acute Thoracic Sprain/Strain;
- c. Acute Chest Contusion;
- d. Complex Tear of the Lateral Meniscs and partial tear of the Lateral Collateral ligament/Strain of the Left Knee with effusion;
- e. Left knee pain; and
- f. Shock to nerves and nervous system.

8. That as a direct and proximate result of the aforementioned injuries, Plaintiff Heidi Fenton has suffered the following damages:

- a. Plaintiff has suffered and will suffer great pain, suffering, inconvenience; mental anguish, anxiety and loss of enjoyment of life's pleasures;
- b. Plaintiff's general health, strength, and vitality have been impaired;
- c. Plaintiff has, and will, suffer a loss of wages and earning capacity; and
- d. Plaintiff has and will be required to expend large sums of money for medical attention, including medical supplies, medications and attendance services.

**Count I**  
**Heidi Fenton v. Melanie Frank**

9. Plaintiff Heidi Fenton hereby incorporates by reference each and every allegation contained in paragraphs 1 through 8 of this Complaint as though fully set forth herein below in their entirety.

10. The collision between Defendant Melanie Frank's vehicle, and Plaintiff Heidi Fenton's vehicle was caused solely by the negligence, recklessness, and carelessness of the Defendant Melanie Frank in that:

- a. She failed to stop at the stop sign, and her vehicle collided with the Plaintiff's vehicle;
- b. She operated her vehicle at an excessive rate of speed under the circumstances;
- c. She entered the intersection in front of Plaintiff's vehicle without warning;
- d. She failed to have her vehicle under proper and reasonable control;
- e. She operated her vehicle in such a manner as to cause the collision with Plaintiff's vehicle;
- f. She failed to pay proper and reasonable attention to other vehicles as she proceeded across SR 255;
- g. She operated her vehicle without due regard for the rights, safety and position of other vehicles on the road, including Plaintiff's vehicle;
- h. She failed to operate her vehicle in a safe and proper manner; and
- i. She failed to comply with the laws, rules and regulations of the Pennsylvania Motor Vehicle Code, specifically 75 Pa.C.S.A §§ 3323(b) (Duties at Stop Signs), and 3361(Driving Vehicle at Safe Speed).

WHEREFORE, Plaintiff Heidi Fenton demands judgment against Defendant Susan A. Causer in an amount in excess of \$30,000.00, plus interest and costs of suit.

**Count II**  
**Brian Fenton v. Melanie Frank**

11. Plaintiff Brian Fenton incorporates by reference each and every allegation contained in paragraphs 1 through 10 of this Complaint as though fully set forth herein below in their entirety.

12. As a direct and proximate result of the above Defendant's negligence, Plaintiff Brian Fenton has been deprived of the society, companionship, contributions and consortium of his wife, Plaintiff Heidi Fenton to his great detriment and loss. Plaintiff Brian Fenton has also suffered a disruption of his daily living habits and a loss of enjoyment of life.

WHEREFORE, Plaintiff Brian Fenton demands judgment against Defendant Melanie Frank in an amount in excess of \$30,000.00, plus interest and costs of suit.

**JURY TRIAL OF TWELVE (12) DEMANDED.**

Respectfully submitted,

NICHOLAS, PEROT, SMITH, KOEHLER & WALL, PC

BY Denise M. Cuneo

Denise M. Cuneo, Esquire

Attorneys for Plaintiff

Pa. I.D. #80124

2527 West 26<sup>th</sup> Street

Erie, PA 16506

(814) 833-8851

Date: 1/108

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
:  
v. : CIVIL ACTION - LAW  
:  
:  
:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

VERIFICATION

On this 27<sup>th</sup> day of March 2008, Denise M. Cuneo, Esquire, the undersigned, hereby states that she is the attorney for the Plaintiff, Heidi Fenton and Brian Fenton, her husband, that she is authorized to make this verification on behalf of the plaintiff, that the facts set forth in the foregoing Civil Complaint are true and correct, not of her own knowledge, but from information supplied to her by the plaintiff, that the purpose of this verification is to expedite the litigation, that a verification of the plaintiff will be supplied if demanded, all subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

  
Denise M. Cuneo, Esquire

## THE ZODIACAL SIGN BORN UNDER THE ZODIACAL SIGN OF ARIES

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MAR 3 1 2008

William A. Shaw  
Brothmanary/Clerk of Courts

CD 581-20 .64

## МАТЕРИАЛЫ Документы

### ANALYSIS

www.EasyEngineering.net

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

HEIDI FENTON and BRIAN FENTON, CIVIL ACTION - LAW

Plaintiffs, Number 187 - 2008, C. D.

vs. Type of Case: Civil Division

MELANIE F. FRANK, Type of Pleading: Appearance

Defendant. Filed on Behalf of: Defendant

Counsel of Record for this Party:  
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER  
293 Main Street  
Brookville, Pennsylvania 15825  
(814) 849-8316

FILED  
M 11-59401  
APR 11 2008  
NO CC  
C60

William A. Shaw  
Prothonotary/Clerk of Courts

HEIDI FENTON and BRIAN FENTON,

Plaintiffs,

VS.

MELANIE F. FRANK,

Defendant.

\* In the Court of Common Pleas of

\* Clearfield County, Pennsylvania

\* Civil Action - Law

\*

\*

\*

\*

\* Number 187 of 2008, C. D.

#### APPEARANCE

TO WILLIAM SHAW, PROTHONOTARY:

Enter our Appearance on behalf of Melanie F. Frank, the Defendant in the above captioned matter.

DENNISON, DENNISON & HARPER

By

  
John C. Dennison, II  
Attorneys for Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

HEIDI FENTON and BRIAN  
FENTON,

Plaintiffs,

vs.

MELANIE F. FRANK,

Defendant.

CIVIL ACTION - LAW

Number 187 of 2008, C. D.

Type of Case: Civil Division

Type of Pleading: Answer and New Matter

Filed on Behalf of: Defendant

Counsel of Record for this Party:  
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER  
293 Main Street  
Brookville, Pennsylvania 15825  
(814) 849-8316

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

HEIDI FENTON and  
BRIAN FENTON  
Plaintiffs,

vs.

MELANIE F. FRANK,  
Defendant.

\* In the Court of Common Pleas of  
\* Clearfield County, Pennsylvania  
\* Civil Action - Law

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\* Number 187 of 2008, C. D.

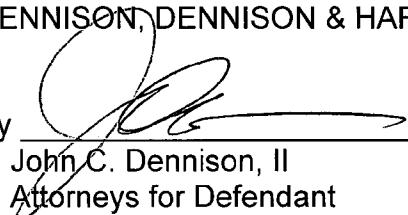
NOTICE TO PLEAD

TO: Heidi Fenton and Brian Fenton, Plaintiffs

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

DENNISON, DENNISON & HARPER

By

  
John C. Dennison, II  
Attorneys for Defendant

HEIDI FENTON and  
BRIAN FENTON  
Plaintiffs,

vs.

MELANIE F. FRANK,  
Defendant.

\* In the Court of Common Pleas of  
\* Clearfield County, Pennsylvania  
\* Civil Action - Law  
\*  
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\*  
\* Number 187 of 2008, C. D.

#### ANSWER AND NEW MATTER

AND NOW, comes the Defendant, MELANIE F. FRANK, by her attorneys, Dennison, Dennison & Harper, who file the following Answer to New Matter to Plaintiffs' Complaint:

1. After reasonable investigation, the Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 1 of Plaintiffs' Complaint and said averments are therefore denied.
2. The averments of Paragraph 2 of Plaintiffs' Complaint are admitted.
3. The averments of Paragraph 3 of Plaintiffs' Complaint are admitted.
4. The averments of Paragraph 4 of Plaintiffs' Complaint are admitted.
5. The averments of Paragraph 5 of Plaintiffs' Complaint are denied pursuant to Pennsylvania Rule of Procedure 1029(e) and no further answer is required thereto.
6. The averments of Paragraph 6 of Plaintiffs' Complaint are denied pursuant to Pennsylvania Rule of Procedure 1029(e) and no further answer is required thereto.

7. The averments of Paragraph 7 of Plaintiffs' Complaint, including subparagraphs a. through f., are denied pursuant to Pennsylvania Rule of Procedure 1029(e) and no further answer is required thereto.

8. The averments of Paragraph 8 of Plaintiffs' Complaint, including subparagraphs a. through d., are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e) and no further answer is required thereto.

WHEREFORE, Defendant demands judgment against the Plaintiffs.

**Count I**

**Heidi Fenton v. Melanie F. Frank**

9. The averments of Paragraphs 1 through 8 of this Answer are incorporated herein by reference thereto as fully as the same are set forth above.

10. The averments of Paragraph 10 of Plaintiffs' Complaint, including subparagraphs a. through i, are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e) and no further answer is required thereto.

WHEREFORE, Defendant demands judgment against the Plaintiffs.

**Count II**

**Brian Fenton v. Melanie F. Frank**

11. The averments of Paragraphs 1 through 10 of this Answer are incorporated herein by reference thereto as fully as the same are set forth above.

12. The averments of Paragraph 12 of Plaintiffs' Complaint are denied pursuant to Pennsylvania Rule of Procedure 1029(e) and no further answer is required thereto.

WHEREFORE, Defendant demands judgment against the Plaintiffs.

#### **NEW MATTER**

In further answer to the averments of Plaintiffs' Complaint, the Defendant files the following New Matter:

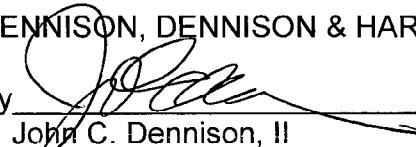
13. The provisions of the Motor Vehicular Financial Responsibility Act, as amended, are incorporated herein by reference thereto as fully as the same bar and/or diminish any claim or cause of action of Plaintiffs.

14. The Plaintiffs did not sustain serious injuries in the accident described in their Complaint, and given the fact that the Plaintiffs were subject to the limited tort option, any and all claims and causes of action of Plaintiffs as set forth in their Complaint are barred.

WHEREFORE, Defendant demands judgment against the Plaintiffs.

DENNISON, DENNISON & HARPER

By

  
John C. Dennison, II

Attorneys for Defendant

## VERIFICATION

I verify that the averments made in the foregoing Answer and New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements herein made are subject to the penalties of 18 Pa.C.S.A. Section 4904, relating to unsworn falsification to authorities.



Melanie F. Frank  
Melanie F. Frank

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
:  
v. : CIVIL ACTION - LAW  
:  
:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**REPLY TO NEW MATTER**

AND NOW, comes the Plaintiff, Heidi Fenton, and Brian Fenton, her husband, by and through her attorneys, Denise M. Cuneo and Nicholas, Perot, Smith, Koehler & Wall, PC, and files the following Reply to New Matter as follows:

13. Denied. Plaintiffs deny that the provisions of the Motor Vehicle Financial Responsibility Act, as amended, bar and/or diminish any claim or cause of action of Plaintiffs.

14. Denied. Plaintiffs deny that she did not sustain serious injuries in the accident described in their complaint, and Plaintiffs deny that any and all claims and causes of action are barred by the limited tort option.

WHEREFORE, Plaintiff Heidi Fenton, and Brian Fenton, her husband, demand judgment in her favor against Defendant Melanie F. Frank, in an amount in excess of \$30,000.00, plus interest and costs.

**JURY TRIAL DEMANDED.**

FILED 4ce  
APR 23 2008 Atty Cuneo  
m 10:53 AM  
APR 23 2008  
William A. Shaw  
Prothonotary/Clerk of Courts  
GK

Respectfully submitted,

NICHOLAS, PEROT, SMITH, KOEHLER & WALL P.C.

BY



Denise M. Cuneo, Esquire  
PA I.D. # 80124  
2527 West 26th Street  
Erie, Pennsylvania 16506  
(814) 833-8851  
Attorneys for Plaintiff

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
:  
v. : CIVIL ACTION - LAW  
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MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**VERIFICATION**

On this 21<sup>st</sup> day of April, 2008, Denise M. Cuneo, Esquire, the undersigned, hereby states that she is the attorney for the Plaintiff, Heidi Fenton, and Brian Fenton, her husband, that she is authorized to make this verification on behalf of the plaintiffs, that the facts set forth in the foregoing Reply to New Matter are true and correct, not of her own knowledge, but from information supplied to her by the plaintiffs, that the purpose of this verification is to expedite the litigation, that a verification of the plaintiffs will be supplied if demanded, all subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

  
Denise M. Cuneo, Esquire

HEIDI FENTON and BRIAN FENTON,

Plaintiffs,

vs.

MELANIE F. FRANK,

Defendant.

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

\*

\* CIVIL ACTION - LAW

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\* Number 187 of 2008 C. D.

**FILED**

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William A. Shaw

Prothonotary/Clerk of Courts

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**NOTICE OF SERVICE OF PLAINTIFF'S ANSWERS TO INTERROGATORIES AND  
REQUEST FOR PRODUCTION OF DOCUMENTS FROM DEFENDANT**

I, Denise M. Cuneo, Esquire, do hereby certify that on the 29<sup>th</sup> day of May, 2008, the original Answers to Interrogatories and Requests for Production of Documents from Defendant, was served upon Defendant's counsel, John C. Dennison II, Esquire, Dennison, Dennison, & Harper, Attorneys at Law, 293 Main Street, Brookville, PA 15825-1291 via U.S. first class mail postage pre-paid.

Respectfully submitted,

NICHOLAS, PEROT, SMITH, KOEHLER & WALL

BY

*Denise M. Cuneo*

Denise M. Cuneo, Esquire  
2527 West 26th Street  
Erie, PA 16506  
(814) 833-8851  
Attorneys for Plaintiffs

HEIDI FENTON and BRIAN FENTON,

Plaintiffs,

vs.

MELANIE F. FRANK,

Defendant.

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

\*

\*CIVIL ACTION - LAW

\*

\*

\*

\* Number 187 of 2008 C. D.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 29<sup>th</sup> day of May, 2008, a copy of the foregoing Plaintiff's Answers to Interrogatories and Request for Production of Documents from Defendant was served by upon the following by U.S. first class mail postage prepaid to:

John C. Dennison II, Esquire  
Dennison, Dennison, & Harper  
Attorneys at Law  
293 Main Street  
Brookville, PA 15825-1291

NICHOLAS, PEROT, SMITH, KOEHLER & WALL, P.C.

BY Denise M. Cuneo

Denise M. Cuneo, Esquire  
Pa. I.D. 80124  
2527 West 26th Street  
Erie, PA 16506  
(814) 833-8851  
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103736  
NO: 08-187-CD  
SERVICE # 1 OF 1  
WRIT OF SUMMONS

PLAINTIFF: HEIDI FENTON & BRIAN FENTON  
vs.  
DEFENDANT: MELANIE F. FRANK

**SHERIFF RETURN**

NOW, February 29, 2008 AT 10:04 AM SERVED THE WITHIN WRIT OF SUMMONS ON MELANIE F. FRANK DEFENDANT AT 7489 BENNETTS VALLEY HIGHWAY, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO MELANIE FRANK, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF SUMMONS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING /

**FILED**  
01312008  
JUN 04 2008  
William A. Shaw  
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	NICHOLAS	13247	10.00
SHERIFF HAWKINS	NICHOLAS	13247	37.19

Sworn to Before Me This

\_\_\_\_ Day of \_\_\_\_\_ 2008

So Answers,

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

**COPY**

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

**SUMMONS**

**Heidi Fenton  
Brian Fenton**

**Vs.**

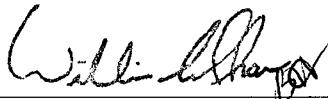
**NO.: 2008-00187-CD**

**Melanie F. Frank**

**TO: MELANIE F. FRANK**

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 02/04/2008

  
\_\_\_\_\_  
William A. Shaw  
Prothonotary

**Issuing Attorney:**

Denise M. Cuneo  
2527 W. 26th St.  
Erie, PA 16506  
(814) 833-8851

HEIDI FENTON, and  
BRIAN FENTON, her husband  
Plaintiffs  
v.  
MELANIE F. FRANK,  
Defendant

: IN THE COURT OF COMMON PLEAS  
: OF CLEARFIELD COUNTY,  
: PENNSYLVANIA  
:  
:  
: CIVIL ACTION - LAW  
:  
:  
: No. 08-187 CD

**NOTICE OF SERVICE OF PLAINTIFFS' FIRST SET OF INTERROGATORIES AND  
REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT  
MELANIE FRANK**

I, Denise M. Cuneo, Esquire, do hereby certify that on the 5 <sup>th</sup> day of June, 2008, the original Plaintiffs' First Set of Interrogatories and Requests for Production of Documents directed to Defendant Melanie Frank, was served upon Defendant's counsel by first class, U.S. Mail:

John C. Dennison, II  
Dennison, Dennison, & Harper  
Attorneys at Law  
293 Main Street  
Brookville, PA 15825-1291

Respectfully submitted,

**NICHOLAS, PEROT, SMITH, KOEHLER & WALL**

BY: *Denise M. Cuneo*  
Denise M. Cuneo, Esquire  
2527 West 26th Street  
Erie, PA 16506  
(814) 833-8851  
Attorneys for Plaintiffs

FILED  
M 12:30 AM  
JUN 09 2008  
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William A. Shaw  
Prothonotary/Clerk of Courts

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
v. : CIVIL ACTION - LAW  
:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**FILED**

JUN 23 2008

11:15 AM  
William A. Shaw  
Prothonotary/Clerk of Courts

3 copy to Attn

**PRAECIPE TO ATTACH VERIFICATION**

TO THE PROTHONOTARY:

Kindly attach the Verifications signed by Plaintiff's Heidi Fenton and Brian Fenton to the Complaint.

Respectfully submitted,

NICHOLAS, PEROT, SMITH, KOEHLER & WALL P.C.

BY Denise M. Cuneo

Denise M. Cuneo, Esquire  
PA I.D. # 80124  
2527 West 26th Street  
Erie, Pennsylvania 16506  
(814) 833-8851  
Attorneys for Plaintiffs



HEIDI FENTON, and  
BRIAN FENTON, her husband  
Plaintiffs

v.

MELANIE F. FRANK,  
Defendant

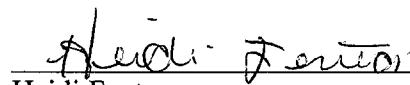
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CIVIL ACTION - LAW

No. 08-187 CD

**VERIFICATION**

I, Heidi Fenton, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

  
Heidi Fenton

Date: 6/19/08

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
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v. : CIVIL ACTION - LAW  
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MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**VERIFICATION**

I, Brian Fenton, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Brian Fenton  
Brian Fenton

Date: 6/19/08

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
:  
v. : CIVIL ACTION - LAW  
:  
:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**FILED**

JUN 23 2008  
M 11:15 AM  
William A. Shaw  
Prothonotary/Clerk of Courts

3 cent to  
ATTN (6K)

TO THE PROTHONOTARY:

Kindly attach the Verifications signed by Plaintiff's Heidi Fenton and Brian Fenton to the Answers to Interrogatories and Request for Production of Documents.

Respectfully submitted,

NICHOLAS, PEROT, SMITH, KOEHLER & WALL P.C.

BY Denise M. Cuneo

Denise M. Cuneo, Esquire  
PA I.D. # 80124  
2527 West 26th Street  
Erie, Pennsylvania 16506  
(814) 833-8851  
Attorneys for Plaintiffs

## VERIFICATION

We verify that the statements made in the foregoing Answers to Interrogatories and Request for Production of Documents are true and correct to the best of our knowledge, information and belief. We understand that false statements herein made are subject to the penalties of 18 Pa. C. S. Section 4904, relating to unsworn falsification to authorities.

Heidi Fenton  
Heidi Fenton

Brian Fenton  
Brian Fenton

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
:  
v. : CIVIL ACTION - LAW  
:  
:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**PRAECIPE TO ATTACH VERIFICATION**

TO THE PROTHONOTARY:

Kindly attach the Verifications signed by Plaintiff's Heidi Fenton and Brian Fenton to the Reply to New Matter.

Respectfully submitted,

NICHOLAS, PEROT, SMITH, KOEHLER & WALL P.C.

BY Denise M. Cuneo

Denise M. Cuneo, Esquire  
PA I.D. # 80124  
2527 West 26th Street  
Erie, Pennsylvania 16506  
(814) 833-8851  
Attorneys for Plaintiffs

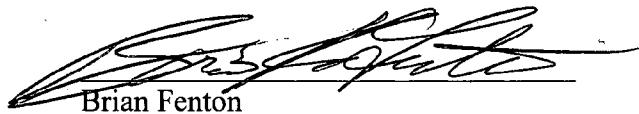
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William A. Shaw  
Prothonotary/Clerk of Courts

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
v. : CIVIL ACTION - LAW  
:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**VERIFICATION**

I, Brian Fenton, verify that the statements made in the foregoing Reply to New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.



Brian Fenton

Date: 4-24-08

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
v. : CIVIL ACTION - LAW  
:  
:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**VERIFICATION**

I, Heidi Fenton, verify that the statements made in the foregoing Reply to New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Heidi Fenton  
Heidi Fenton

Date: 4/24/08

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
:  
v. : CIVIL ACTION - LAW  
:  
:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**NOTICE OF DEPOSITION UPON ORAL EXAMINATION**

**PLEASE TAKE NOTICE** that the deposition upon oral examination of **Melanie F. Frank** has been scheduled and will be taken on at the law offices of Dennison, Dennison and Harper , 293 Main Street, Brookville, Pennsylvania, 15825 on **Friday, September 19, 2008**, beginning at **10:00 a.m.**. The deposition will be taken pursuant to Pa.R.C.P. 4007.1 before a notary public or other person duly qualified by law to administer an oath.

Respectfully submitted,

NICHOLAS, PEROT, SMITH, KOEHLER & WALL

By Denise M. Cuneo  
Denise M. Cuneo, Esquire  
Pa. I.D. 80124  
2527 West 26th Street  
Erie, PA 16506  
(814) 833-8851  
Attorneys for Plaintiffs

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AUG 07 2008  
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William A. Shaw  
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

HEIDI FENTON and BRIAN  
FENTON,

Plaintiffs,

vs.

MELANIE F. FRANK,

Defendant.

CIVIL ACTION - LAW

Number 187 of 2008, C. D.

Type of Case: Civil Division

Type of Pleading: Motion for Partial Summary  
Judgment

Filed on Behalf of: Defendant

Counsel of Record for this Party:  
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER  
293 Main Street  
Brookville, Pennsylvania 15825  
(814) 849-8316

FILED  
MTO:3761 NO CC  
OCT 16 2008  
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William A. Shaw  
Prothonotary/Clerk of Courts

HEIDI FENTON and  
BRIAN FENTON  
Plaintiffs,

vs.

MELANIE F. FRANK,  
Defendant.

\* In the Court of Common Pleas of  
\* Clearfield County, Pennsylvania  
\* Civil Action - Law  
\*  
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\*  
\* Number 187 of 2008, C. D.

### **MOTION FOR PARTIAL SUMMARY JUDGMENT**

AND NOW, comes the Defendant, MELANIE F. FRANK, by and through her attorneys, Dennison, Dennison & Harper, who file the following Motion for Partial Summary Judgment Pursuant to Pa.R.C.P. 1035.2:

1. The accident complained of in the Plaintiff's Complaint was a two-vehicle accident which occurred on February 12, 2006, at approximately 12:00 p.m., on State Route 255 in Sandy Township, Clearfield County, Pennsylvania.
2. The Plaintiff's Complaint attempts to set forth a cause of action in negligence against the Defendant as the result of an alleged collision between the vehicle operated by the Defendant, Melanie F. Frank, and the vehicle in which the Plaintiff, Heidi Fenton, was a passenger.
3. The Plaintiff's Complaint seeks recovery of alleged noneconomic losses as defined by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. §1701 et seq., as amended.

4. The Defendant, Melanie F. Frank, filed an Answer and New Matter in response to the Plaintiffs' Complaint.

5. The New Matter filed by the Defendant, Melanie F. Frank, alleged that the Plaintiff was subject to a limited tort option and did not sustain a serious injury as defined by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. §1701 et seq., as amended.

6. On September 19, 2008, the deposition of the Plaintiff, Heidi Fenton, was conducted. The original of the Plaintiff's deposition has been filed with the Prothonotary.

7. The undisputed record clearly establishes that the Plaintiff, Heidi Fenton, did not suffer serious injuries as defined by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. §1701 et seq., as amended, and therefore, as a matter of law, the Plaintiff, Heidi Fenton, is not entitled to recover noneconomic damages as defined by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. §1701 et seq., as amended.

8. Inasmuch as the loss of consortium claim filed by Brian Fenton, Plaintiff and husband, is derivative in nature, he is not entitled to recover for noneconomic damages as defined by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. §1701 et seq., as amended.

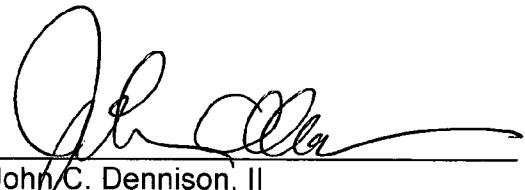
**WHEREFORE**, Defendant, Melanie F. Frank, moves for partial summary judgment in her favor and against the Plaintiffs, Heidi Fenton and Brian Fenton, on the issue of

noneconomic damages for the foregoing reasons and requests that this Honorable Court dismiss with prejudice any of the Plaintiffs' claims for non-economic damages.

Respectfully submitted,

DENNISON, DENNISON & HARPER

By

  
John C. Dennison, II  
Attorneys for Defendant

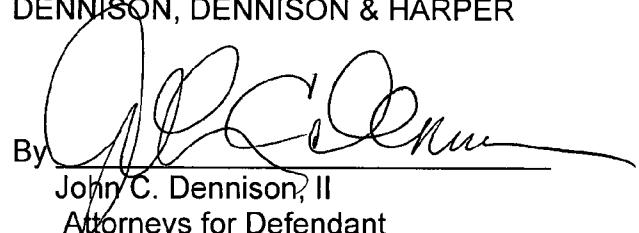
## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion for Partial Summary Judgment was served on the 15th day of October, 2008, by United States Mail, First Class, postage prepaid, addressed to the following:

Denise M. Cuneo, Esq.  
2527 West 26<sup>th</sup> Street  
Erie, PA 16506

DENNISON, DENNISON & HARPER

By

  
John C. Dennison, II  
Attorneys for Defendant

HEIDI FENTON and  
BRIAN FENTON  
Plaintiffs,

vs.

MELANIE F. FRANK,  
Defendant.

\* In the Court of Common Pleas of  
\* Clearfield County, Pennsylvania  
\* Civil Action - Law  
\*  
\*  
\*  
\*  
\* Number 187 of 2008, C. D.

ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, the Defendant  
having filed a Motion for Partial Summary Judgment;

**IT IS HEREBY ORDERED** that said Motion is Granted and all of the Plaintiffs'  
claims for noneconomic damages are dismissed with prejudice.

BY THE COURT,

---

CA

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

**HEIDI FENTON and BRIAN  
FENTON,**

Plaintiffs,

vs.

**MELANIE F. FRANK,**

Defendant.

**CIVIL ACTION - LAW**

Number 187 of 2008, C. D.

Type of Case: Civil Division

Type of Pleading: Praeclipe to Establish  
Briefing Schedule and Oral Argument

Filed on Behalf of: Defendant

Counsel of Record for this Party:  
John C. Dennison, II

Supreme Court Number: 29408

**DENNISON, DENNISON & HARPER**  
293 Main Street  
Brookville, Pennsylvania 15825  
(814) 849-8316

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

HEIDI FENTON and  
BRIAN FENTON  
Plaintiffs,

vs.

MELANIE F. FRANK,  
Defendant.

\* In the Court of Common Pleas of  
\* Clearfield County, Pennsylvania  
\* Civil Action - Law  
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\* Number 187 of 2008, C. D.

**PRAECIPE TO ESTABLISH BRIEFING SCHEDULE AND ORAL ARGUMENT**

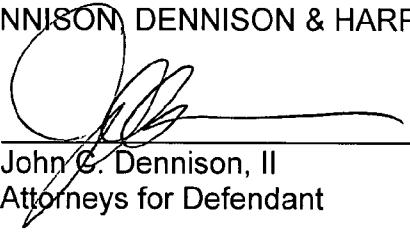
TO THE PROTHONOTARY:

In accordance with Local Rule 211, you are hereby requested to direct the Court Administrator to establish a briefing schedule with respect to Defendant's Motion for Partial Summary Judgment with the understanding that Defendant has already filed her Brief with the Court Administrator and to direct the Court Administrator to schedule oral argument on Defendant's Motion for Partial Summary Judgment.

Respectfully submitted,

DENNISON, DENNISON & HARPER

By

  
John C. Dennison, II  
Attorneys for Defendant

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion for Partial Summary Judgment was served on the 15<sup>th</sup> day of October, 2008, by United States Mail, First Class, postage prepaid, addressed to the following:

Denise M. Cuneo, Esq.  
2527 West 26<sup>th</sup> Street  
Erie, PA 16506

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II  
Attorneys for Defendant

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
:  
v. : CIVIL ACTION - LAW  
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:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**MOTION TO DENY DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

AND NOW, this 24<sup>th</sup> day of October, 2008, Plaintiffs Heidi Fenton, and Brian Fenton, her husband, by and through their attorneys, **Denise M. Cuneo, Esq.** and **Nicholas, Perot, Smith, Koehler & Wall, PC**, files this Motion to Deny Summary Judgment as follows:

1. Disputed issues of fact relevant to this case exist.
2. Plaintiffs have put forth evidence in support of each element of their causes of action.

WHEREFORE, Plaintiffs, Heidi Fenton and Brian Fenton, her husband, respectfully request this Honorable Court to deny Defendant Melanie Frank's Motion for Summary Judgment.

Respectfully submitted,

NICHOLAS, PEROT, SMITH, KOEHLER & WALL, P.C.

BY Denise M. Cuneo

Denise M. Cuneo, Esquire  
PA. I. D.#80124  
2527 West 26<sup>th</sup> Street  
Erie, PA 16506  
(814) 833-8851  
Attorney for Plaintiffs

FILED <sup>2cc</sup>  
10/22/08 by Amy Cuneo  
OCT 23 2008

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William A. Shaw  
Prothonotary/Clerk of Courts

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
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v. : CIVIL ACTION - LAW  
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:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 22<sup>nd</sup> day of October, 2008, a true and correct copy of the foregoing Motion to Deny Defendant's Motion for Summary Judgment was served on the following by United States First Class Mail, postage prepaid:

John C. Dennison, II  
Dennison, Dennison, & Harper  
Attorneys at Law  
293 Main Street  
Brookville, PA 15825-1291  
Attorney for Defendant

Respectfully submitted,

NICHOLAS, PEROT, SMITH, KOEHLER & WALL, P.C.

BY Denise M. Cuneo  
Denise M. Cuneo, Esquire

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William A. Shaw  
Prothonotary/Clerk of Courts

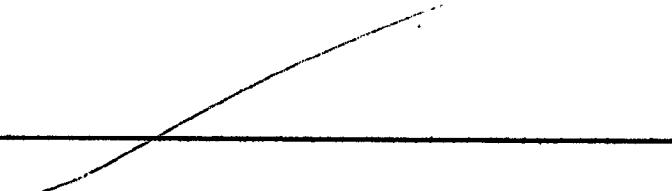
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OCT 23 2008

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
:  
v. : CIVIL ACTION - LAW  
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:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**PROPOSED ORDER**

AND NOW, upon consideration of the Motion in Opposition to Defendant's Motion for  
Summary Judgment, said Motion is DENIED.

J.



HEIDI FENTON and  
BRIAN FENTON  
Plaintiffs,

vs.

MELANIE F. FRANK,  
Defendant.

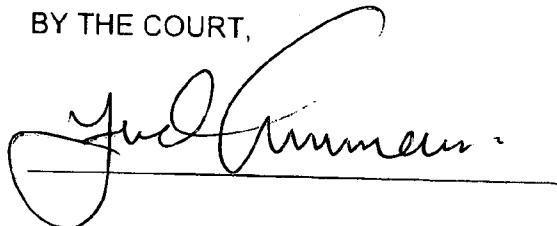
\* In the Court of Common Pleas of  
\* Clearfield County, Pennsylvania  
\* Civil Action - Law  
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\* Number 187 of 2008, C. D.

ORDER

AND NOW, this 23<sup>rd</sup> day of October, 2008, the Defendant having filed a Motion for Partial Summary Judgment and a Brief support of her Motion:

**IT IS HEREBY ORDERED** that Plaintiff shall file a Brief in opposition to Defendant's Motion for Summary Judgment with the Court Administrator at least ten (10) days prior to oral argument on said Motion, and oral argument thereon is hereby scheduled for the 21<sup>st</sup> day of November, 2008 at 1:30 P.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



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5 William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

OCT 23 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 10/23/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

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

HEIDI FENTON, wife, and  
BRIAN FENTON, husband,

Plaintiffs,

vs.

NO. 2008-00187-CD

MELANIE F. FRANK,

Defendant

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William A. Shaw

Prothonotary/Clerk of Courts

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ORDER

AND NOW, on this 19<sup>th</sup> day of December 2008, upon consideration of the record, this Court finds that a genuine issue of material fact exists, as to whether the Plaintiff Heidi Fenton suffered serious injury to her left knee, which is required to recover non-economic damages as a limited tort plaintiff under Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A § 1702 et. seq. Accordingly, it is the Order of this Court that the Defendant's Motion for Summary Judgment be and is hereby DENIED.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED  
DEC 19 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 12-19-08

You are responsible for serving all appropriate parties.

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

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

HEIDI FENTON and BRIAN FENTON, CIVIL ACTION - LAW  
Plaintiffs, Number 187 of 2008, C. D.  
vs. Type of Case: Civil Division  
MELANIE F. FRANK, Type of Pleading: Praeclipe to Place Case  
Defendant. on Trial List  
Filed on Behalf of: Defendant  
Counsel of Record for this Party:  
John C. Dennison, II  
Supreme Court Number: 29408

DENNISON, DENNISON & HARPER  
293 Main Street  
Brookville, Pennsylvania 15825  
(814) 849-8316

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William A. Shaw  
Prothonotary/Clerk of Courts

HEIDI FENTON and BRIAN FENTON,  
Plaintiffs,

vs.

MELANIE F. FRANK,  
Defendant.

\* In the Court of Common Pleas of  
\* Clearfield County, Pennsylvania  
\* Civil Action - Law  
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\* Number 187 - 2008, C. D.

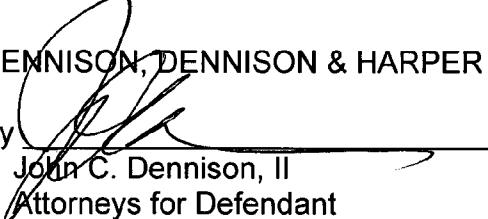
PRAECIPE TO PLACE CASE  
ON ARBITRATION LIST

TO WILLIAM SHAW, PROTHONOTARY:

You are hereby directed to place the above captioned matter on the current  
Trial List.

DENNISON, DENNISON & HARPER

By

  
John C. Dennison, II  
Attorneys for Defendant

08-187-CD

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS		TO THE PROTHONOTARY
<u>To be executed by Trial Counsel Only</u>		
Case Number 187-2008 C.D.	Type Trial Requested	Estimate Trial Time
Date Complaint Filed: 3/31/08	(X) Jury <input type="checkbox"/> Non-jury <input type="checkbox"/> Arbitration	1-1/2 days

Plaintiff(s):  
Heidi Fenton and Brian Fenton \_\_\_\_\_ ( )

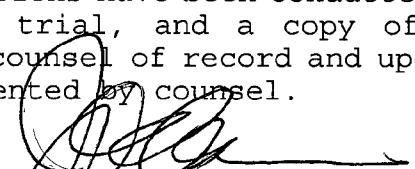
Defendant(s):  
Melanie F. Frank \_\_\_\_\_ ( ) Check block  
if a minor  
is a party  
to the case

Additional Defendant(s)  
N/A \_\_\_\_\_ ( )

Jury Demand Filed By: Plaintiffs	Date Jury Demand Filed: 3/31/2008	
Amount at Issue	Consolidation	Date Consolidation Ordered
\$30,000.00+	( ) Yes <input checked="" type="checkbox"/> No	N/A

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that no motions are outstanding and all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.

  
Signature of Trial Counsel

COUNSEL WHO WILL ACTUALLY TRY CASE	
For the Plaintiff(s): <u>John C. Dennison, II</u>	Telephone Number (814) 849-8316
For the Defendant(s): <u>Denise M. Cuneo, Esq.</u>	Telephone Number (814) 833-8851
For the Additional Defendant(s): <u>N/A</u>	Telephone Number

**FILED** NO  
M 10/31/09  
JAN 09 2009  
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William A. Shaw  
Prothonotary/Clerk of Courts

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
v. :  
: CIVIL ACTION - LAW  
: No. 08-187 CD  
MELANIE F. FRANK, :  
Defendant :  
: *5 m 12:15 pm (6/10)*  
: *William A. Shaw*  
: *Prothonotary/Clerk of Courts*  
: *3 cent to ATM*

**FILED**

**JAN 16 2009**

**NOTICE OF VIDEOTAPE DEPOSITION FOR USE AT TIME OF TRIAL**

**PLEASE TAKE NOTICE** that the videotaped deposition for use at time of trial of **Dr.**

**David Johe** has been scheduled for **February 19, 2009**, at Dr. Johe's office, located at 761 Johnsonburg Rd, St. Marys, PA 15857, beginning at **9:00 a.m.** The deposition will be videotaped for use at trial and will be simultaneously recorded by stenographic means pursuant to Pa.R.C.P. 4007.1 before an officer from Schreiber Court Reporting, Inc., a notary public or person duly qualified by law to administer an oath.

Respectfully submitted,

NICHOLAS, PEROT, SMITH, KOEHLER & WALL

By

*Denise M. Cuneo*  
Denise M. Cuneo, Esquire  
Pa. I.D. 80124  
2527 West 26th Street  
Erie, PA 16506  
(814) 833-8851

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this document was served upon all other parties appearing of record by First-Class United States Mail sent on January 14, 2009.

*Denise M. Cuneo*

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

HEIDE FENTON and BRIAN FENTON :  
vs. : No. 08-187-CD  
MELANIE F. FRANK :  
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**FILED**

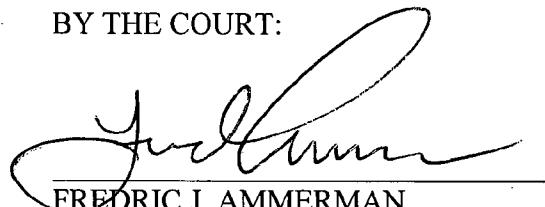
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William A. Shaw  
Prothonotary/Clerk of Courts  
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PENNSYLVANIA  
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**ORDER**

AND NOW, this 23 day of January, 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 Thursday, February 19, 2009 at 2:30 P.M. in Judges Chambers, Clearfield County Courthouse, Clearfield, PA.

Additionally, Jury Selection in this matter shall be and is hereby scheduled for April 2, 2009 at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:



FREDRIC J. AMMERMAN  
President Judge

DATE: 1-26-05

You are responsible for serving all appropriate parties.

Plaintiff(s)  Plaintiff(s) Attorney

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

**FILED**  
**JAN 26 2005**  
William A. Shaw  
Prothonotary/Clerk of Courts

LA

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

HEIDI FENTON and BRIAN FENTON,  
Plaintiffs

vs.

MELANIE F. FRANK,  
Defendant

\*  
\*  
\*  
\*  
\*  
\*

NO. 08-187-CD

**FILED**

FEB 19 2009

012-1514  
William A. Shaw  
Prothonotary/Clerk of Courts

CRIM to Harry  
CUNEO

J. Dawson

**ORDER**

NOW, this 19<sup>th</sup> day of February, 2009, it is the ORDER of this Court that  
the Pre-Trial Conference be and is hereby **rescheduled** from the 19<sup>th</sup> day of February,  
2009, at 2:30 p.m. to the **25<sup>th</sup> day of March, 2009 at 1:30 p.m.** in Chambers of the  
Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

DATE: 2-19-09

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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FEB 19 2009

William A. Shaw  
Prothonotary/Clerk of Courts

FILED

03/24/2009  
MAR 26 2009

ICC Atty's:  
Cureo  
Dennison

5  
William A. Shaw  
Prothonotary/Clerk of Courts

6

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

HEIDI FENTON and BRIAN FENTON  
Plaintiffs  
vs.  
MELANIE F. FRANK  
Defendant

\*  
\*  
\* NO. 08-157-CD  
\*  
\*

ORDER

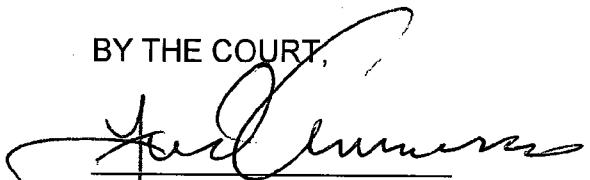
NOW, this 25th day of March, 2009, following pre-trial conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on April 2, 2009 commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Jury Trial is hereby scheduled for July 28, 2009, commencing at 9:00 a.m. 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 later than thirty (30) days prior to trial. 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.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

**FILED**

**MAR 26 2009**

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 3/26/09

✓ 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  Other

— Special Instructions:

Wk

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

HEIDI FENTON and BRIAN  
FENTON,  
Plaintiffs,

vs.

MELANIE F. FRANK,  
Defendant.

CIVIL ACTION - LAW

Number 187 of 2008, C. D.

Type of Case: Civil Division

Type of Pleading: Defendant's Objections  
to Testimony of Dr. David H. Yohe

Filed on Behalf of: Defendant

Counsel of Record for this Party:  
John C. Dennison, II

Supreme Court Number: 29408

DENNISON, DENNISON & HARPER  
293 Main Street  
Brookville, Pennsylvania 15825  
(814) 849-8316

FILED  
M7110824 CC  
JUN 10 2009  
6K

William A. Shaw  
Prothonotary/Clerk of Courts

HEIDI FENTON and  
BRIAN FENTON  
Plaintiffs,

vs.

MELANIE F. FRANK,  
Defendant.

\* In the Court of Common Pleas of  
\* Clearfield County, Pennsylvania  
\* Civil Action - Law  
\*  
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\*  
\* Number 187 of 2008, C. D.

**DEFENDANT'S OBJECTIONS TO THE VIDEOTAPE  
DEPOSITION TESTIMONY OF DAVID H. JOHE, M.D.**

AND NOW, comes the Defendant, MELANIE F. FRANK, by her attorneys, Dennison, Dennison & Harper, who file the following Objections to the Videotape Deposition of David H. Yohe, M.D. which was taken on February 19, 2009, to wit:

**FIRST OBJECTION**

Beginning on Page 13, line 25 through Page 14 line 8, the Defendant objected as follows:

**"I'm going to object to any testimony as to any kind of future problem, as the Plaintiffs in this case must establish a "serious injury", which means that she must establish a serious impairment of a body function as an ordinary and immediate cause of the accident. And the basis of the "serious injury" cannot be based upon a medical condition that might occur in the remote future."**

If this objection is sustained, the testimony on Page 14, line 20 through Page 15, line 8 should be stricken which consists of the following:

Question: In patients who you typically treat for this injury, do they develop problems?

Answer: People who have near total meniscectomies develop osteoarthritis of their knee in the future. This is very clearly seen from – historically from patients before we did knee scopes where people would have an entire cartilage removed and within a period of 5 to 15 years develop significant arthritis in their knee which was a very bad problem for them.

Question: So statistically you would expect her to have development of osteoarthritis in the future?

Answer: She will develop it. How long it takes is a little bit of a question, but it will happen within a matter of years.

## **SECOND OBJECTION**

On Page 17, lines 6 and 7, the Defendant made the following objection:

**Again, I'll make that same objection that I had before.**

If this objection is sustained, the testimony on Page 17, lines 4 and 5 and 8 through 17 which consists of the following should be stricken:

Question: In your opinion, would that have any effect on her development of osteoarthritis? . . .

Answer: People who have cartilage removed – in the case where someone has nearly whole cartilage removed that have jobs that have excessive walking or a lot of

walking do develop osteoarthritis faster than someone who would not have a job which does a lot of walking.

Question: And is that what you expect to occur for Ms. Fenton?

Answer: Yes.

### **THIRD OBJECTION**

On Page 25, lines 18 through 21, the Defendant made the following motion to strike based upon the prior objections:

**“I’ll move to strike the doctor’s last testimony. We already have my objections on the record as far as the future medical problems.”**

The testimony which is objected to is set forth on Page 25, lines 9 through 11:

[h]owever, she does have a significant impairment, in my opinion, will in the future, with reasonable medical certainty, require a total knee arthroplasty.

### **ARGUMENT**

By Order of Court dated December 19, 2008, Your Honorable Court denied Defendant’s Motion for Summary Judgment on the basis that there is a genuine issue of material fact on whether the Plaintiff, Heidi Fenton, suffered a serious injury to her left knee in the accident described in Plaintiffs’ Complaint.

The pertinent law is as follows:

Section 1705(d) of the MVFRL provides that:

Each person who elects the limited tort alternative remains eligible to seek compensation for economic loss... **Unless the injury sustained is a serious injury, each person who is bound by the limited tort election shall be precluded from maintaining an action for noneconomic loss...**

75 Pa.C.S.A. §1705(d). The term "serious injury" is defined in the MVFRL as "A personal injury resulting in death, serious impairment of body function or permanent serious disfigurement." 75 Pa.C.S.A. §1702.

In the decision of Washington v. Baxter, \_\_ Pa. \_\_, 719 A.2d 733 (1998), the Supreme Court of Pennsylvania stated that the "serious impairment of body function" threshold contains two inquiries. First, what body function, if any, was impaired because of the injuries sustained in the accident? In the present case, it is Heidi Fenton's injury to her left knee.

Second, was the impairment of the body function serious? Washington at 740. The Supreme Court further stated that in determining whether the impairment was serious, the focus should not be on the injuries themselves, but on how the injuries affected a particular body function. The Supreme Court set forth several factors to be considered. These factors include: the extent of the impairment; the length of time the impairment lasted; the treatment required to correct the impairment and any other relevant factors. Id.

As set forth above, "future problems" is not one of the enumerated factors deemed pertinent by the Supreme Court in Washington. In addition, although there are a great

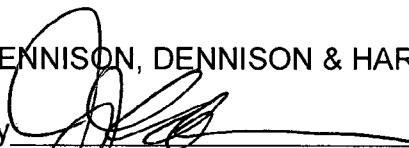
number of cases which define the criteria for a "serious injury," the Defendant cannot locate any cases which support the premise that remote future problems can be taken into account when determining whether or not an injury is "serious." It is therefore submitted that evidence of a serious injury must be based upon immediate and continuing problems involving a body function and not a condition that will occur sometime in the remote future.

With respect to the present case, the deposition of Plaintiff's physician, Dr. David H. Yohe was then taken on February 19, 2009. The Defendant's objections to his testimony are based upon the premise that a "serious injury" to a body function cannot be established by an arthritic condition that will occur remotely sometime in the future particularly when the Plaintiff: (1) has returned to work as of December 18, 2006 (See Dr. Yohe deposition, Page 16 lines 14 through 17, (2) has recovered from her knee injury, and (3) does not have any pain as of April 7, 2007. (See Dr. Yohe's deposition Page 22 lines 24 and 25 and lines 1 and 2 on Page 22)

It should be further noted that Dr. Yohe has not seen her since the operation on her knee (See Dr. Yohe's deposition, Page 14, lines 16 though 19) which occurred on November 1, 2006. (See Paragraph 4 of Exhibit 2 to Dr. Yohe's deposition). In the fourth paragraph of Exhibit 2, it also notes that she was discharged on December 1, 2006, which might actually be the last time Dr. Yohe saw her.

A copy of the transcript of the deposition of Dr. Yohe is attached hereto for Your Honorable Court's convenience.

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II  
Attorneys for Defendant

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

HEIDI FENTON and \*  
BRIAN FENTON, her husband, \*  
Plaintiffs \*  
\*  
VS. \* CIVIL ACTION  
\* NO. 08-187-CD  
\*  
\*  
MELANIE F. FRANK, \*  
Defendant \*  
\*  
\*\*\*

TRANSCRIPT OF PROCEEDINGS

VIDEOTAPED  
DEPOSITION OF : DAVID H. JOHE, MD  
  
DATE : Thursday,  
February 19, 2009  
9:02 a.m.  
  
PLACE : Medical Office Building  
761 Johnsonburg Road  
St. Marys, Pennsylvania

A P P E A R A N C E S:

DENISE M. CUNEO, ESQ.  
Appeared on behalf of the Plaintiffs

JOHN DENNISON, ESQ.  
Appeared on behalf of the Defendant

\*\*\*

Stenographic Notes Taken By  
Siobhan Voss, R.P.R.

2/19 - 5 2009

Schreiber Reporting Service  
P.O. Box 997, St. Marys, Pa. 15857  
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## INDEX OF EXAMINATION

D C R/D R/C

DAVID H. JOHE, MD			
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by Mr. Dennison.....		18	

## INDEX OF EXHIBITS

PLAINTIFF MARKED

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2. Report.....	18

## INDEX OF EXHIBITS

DEFENDANT MARKED

1. Report.....	19
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1 DAVID H. JOHE, MD, called as a witness,  
2 having been duly sworn, testified as  
follows:

**DIRECT EXAMINATION**

4 BY MS. CUNEO:

5 Q Dr. Johe, we're here to --

6 (Interruption.)

7 Q Dr. Johe, we're here today to take your deposition  
8 on behalf of Heidi Fenton.

9                   Would you be able to go over your resume and your  
10 educational background with us.

11 A I can, yes.

I went to college at Hampden-Sydney College in  
Hampden-Sydney, Virginia graduating with a Bachelor of Science  
Degree in 1973; attended medical school at West Virginia  
University in Morgantown, West Virginia getting an M.D. in  
1977; did an internship at Hartford Hospital in Hartford,  
Connecticut, rotating internship; surgical residency at  
University Hospitals of Cleveland; followed by practice in Elk  
and Brad -- Elk and McKean County.

20 I have active licenses in Pennsylvania, New York,  
21 and Utah, and have inactive licenses in Ohio and Vermont. The  
22 reason my license was in Utah was because of the winter  
23 Olympics some years ago. I still practice in Pennsylvania and  
24 occasionally need to go into New York for practice.

25 Q Doctor, you work in the field of orthopedics. Can

1       you just briefly tell the jury what orthopedics is and what  
2       type of injuries you treat.

3           A       Orthopedic surgery is the treatment of  
4       musculoskeletal problems, specifically your arms legs and  
5       back, specifically injuries to joints, fractures of bones, and  
6       the care of these.

7           Q       And what kind of patients do you treat at your  
8       practice here in Elk County?

9           A       I treat general orthopedics. I'm a solo  
10      practitioner, probably one of the few left. I have been for  
11      many years, since 1982. And I treat all comers with all sorts  
12      of musculoskeletal problems. I do not do very complex spine  
13      surgery, but I do take care of pretty much everything else.  
14      Some pediatric tumor stuff I do not take care of also.  
15      General trauma orthopedics is my bread and butter.

16           Q       About how many patients a week do you see?

17           A       Probably see 60 to 70 patients a week.

18           Q       And about how many surgeries do you do a week?

19           A       I do about four or five major surgeries a week and  
20      anywhere from four to ten minor surgeries a week.

21           Q       And what would be a major surgery, and what would  
22      be a minor surgery?

23           A       Major surgery would be replacing someone's hip or  
24      taking a disc out of their spine, and minor surgery would be  
25      fixing a carpal tunnel on the hand or doing a knee

1        arthroscopy.

2        Q        Are you affiliated with any hospitals?

3        A        I am.

4        Q        Which ones?

5        A        Presently I'm on the active staff at Elk Regional  
6        Health Center in St. Marys, Pennsylvania, where we are today;  
7        I'm also on the active staff of Bradford Hospital, Bradford,  
8        Pennsylvania; and on the associate or courtesy staff of Kane  
9        Hospital in Kane, Pennsylvania.

10        Q        Are you board certified in any fields?

11        A        I am not. I am certified with the Disability  
12        Board ABIME, American Board of Independent Medical Examiners,  
13        but I am not board certified in orthopedic surgery.

14        Q        And you've been practicing orthopedic since 1982  
15        consistently?

16        A        Yes.

17        Q        And we had, Doctor, I believe a copy of your  
18        resume. Is this a recent copy of your CV or resume?

19        A        Yes, it is.

20        MS. CUNEO: I'll have that marked as  
21        Exhibit 1.

22        (Curriculum Vitae marked for  
23        identification as Plaintiff Exhibit  
24        No. 1.)

25        MS. CUNEO: I would offer the doctor as an  
expert in the field of orthopedics.

1                   Mr. Dennison, do you have any questions for  
2                   cross?

3                   MR. DENNISON: I have nothing.

4 BY MS. CUNEO:

5                   Q        Now, Doctor, we're here today to discuss your  
6                   treatment of Heidi Fenton. She had come to your practice and  
7                   had some complaints.

8                   When did you first have any contact with  
9                   Heidi Fenton or your office have contact with her?

10                  A        That's two questions, and I'll answer the last one  
11                  first. The last question is when did my office first have  
12                  contact with Heidi Fenton.

13                  Heidi Fenton called into my office on October 5th,  
14                  2006 requesting an appointment. The reason I know that is  
15                  because this morning we went back into my computer to see when  
16                  she actually scheduled her first appointment. And that's  
17                  pertinent to this case. And we pulled our record up, and I  
18                  printed out, and I'm welcome to provide it to anybody. But  
19                  she called the office on October 5th, 2006 requesting an  
20                  appointment for her left knee.

21                  I then saw her actually on October 19th, 2006 for  
22                  her left knee.

23                  Q        And what kind of complaints did she present to you  
24                  at that point?

25                  A        She came in and said that she was having a problem

1 with her left knee where it was hurting her, it was catching  
2 on her, and she had recently had another injury to her left  
3 knee, which happened between the time she scheduled her  
4 appointment and when I saw her.

5 Q And how did she tell you that she initially  
6 injured her knee?

7 A Well, there's a remote past history of a  
8 cheerleading accident 12 years before I saw her. But I think  
9 that that is not related to her present situation as she  
10 had, she said, a fracture, and it had completely healed. And  
11 she had no symptoms of her knee at all for 12 years.

12 Q And she recovered from that injury completely?

13 A Yes.

14 Q Then did she present to you any other complaints  
15 of an injury regarding her knee?

16 A She did. And I'll take my chart apart here. When  
17 a patient comes in, we have them fill out what I call a pink  
18 sheet, which is basically on the front information regarding  
19 name, address, phone number, and other details. And then on  
20 the back is for Worker's Compensation or an accidental injury  
21 form.

22 According to her in her own words, she said,  
23 quote, knee pain is getting worse, end quote. And according  
24 to her, on February 12th, 2006, she -- her husband was driving  
25 a car and, quote, lady pulled out in front of us in DuBois at

1      old 255 intersection. Lady was life-flighted. My family and  
2      I were taken to DuBois Hospital. Had knee pain and upper back  
3      pain, end quote.

4              She related to me that on February 12th, 2006, she  
5      was in a motor vehicle accident in DuBois and at that time had  
6      some significant injuries to her back and chest and also at  
7      that time did injure her left knee.

8              Q      And, Doctor, did you at that point come up with a  
9      diagnosis for her regarding her knee?

10             A      My exam revealed that she had tenderness over the  
11      lateral joint space. And by that I mean the outside part of  
12      the left knee. And she did not have an effusion or fluid in  
13      the knee but was quite painful over the outside of her knee.

14             My working diagnosis at that point was possible  
15      torn cartilage, specifically the lateral meniscus on the  
16      outside of the knee.

17             Q      And then what did you do for her as part of your  
18      treatment plan?

19             A      She did further evaluation. She related that she  
20      was a certified nurse assistant on her feet at Pinecrest,  
21      which is a nursing home in the area. Her knee was quite  
22      painful. So we took her off work. And I scheduled her for an  
23      MRI, which is a -- not an x-ray study, because it's not an  
24      x-ray, but it's a study in which you put a part of your body  
25      to a magnetic field to examine the soft tissue part of the

1           musculoskeletal system.

2           Q       And did you receive results from the MRI?

3           A       I did. I looked at it myself, plus the report  
4       came back from Dr. Williams at Elk Regional Health Center  
5       where she had the study done.

6                   Both of our opinions were is that she had a torn  
7       lateral meniscus, actually a very bad tear of the lateral  
8       meniscus in her knee.

9           Q       And does that type of tear result from trauma, or  
10      can it just result from anything?

11          A       Usually a tear results from trauma. When  
12      something's worn, it's from a degenerative process. But  
13      generally tears are from trauma.

14          Q       Would the impact of the vehicle -- motor vehicle  
15      accident that she described to you, in your opinion, within a  
16      reasonable degree of medical certainty, be the cause of her  
17      tear in her knee?

18          A       That's a good question. I think that if you look  
19      historically at the accident that she had in DuBois, there is  
20      a record available that shows that both the ambulance people  
21      as well as the nurses who triaged her at the hospital said  
22      that there was a left knee injury.

23                   It appears to me that when she saw the physician,  
24      she was complaining more of some chest pain from her sternum  
25      being injured and her back and neck being injured. And he

1     treats the back and neck more than he would her left knee. In  
2     fact, she had follow-up with a family physician regarding her  
3     neck and back soon after the injury.

4                 I think, to be fair, she did relate to me that her  
5     back and neck and chest were better at the time I saw her in  
6     October of 2006. However, it appears that the trauma that she  
7     did receive did injure her left knee on October 6th, 2006 --  
8     on October 19th -- no, October --

9                 Q     The date of the accident you're referring to?

10                A     Pardon me. February 12th, 2006, the date of the  
11     accident, February 12th, 2006. And her problem kind of I'll  
12     use the word smoldered along or continued along. And she  
13     called and scheduled an appointment prior to the accident of  
14     two days before she saw me in the bathroom where she twisted  
15     her knee.

16                So I think what happened is she was having knee  
17     problems, called to get an appointment, and sort of the straw  
18     that broke the camel's back was the injury in the bathroom,  
19     but that was an aggravation of her preexisting knee problem  
20     that occurred from the motor vehicle accident.

21                Q     Can you say whether the fall in the bathroom, the  
22     two days before she came in to see you, was caused by the knee  
23     problem that she had developed as a result of the motor  
24     vehicle accident?

25                A     I can't say that it absolutely was from that, but

1 I can tell you that what she's explained is that she was  
2 having a knee problem, and it was getting worse. And in  
3 getting worse, she injured herself in the bathroom because her  
4 knee gave out on her and twisted from her preexisting  
5 problems.

6 Q Are those complaints of the knee giving out  
7 typical of someone who has a tear in their lateral meniscus?

8 A Yes. One of the classic things that people tell  
9 me is that I have -- my knee gives way or my knee catches or I  
10 take a step, and it doesn't feel like my knee's there, so when  
11 I step on it, it twists.

12 Yes, that is the story for a torn meniscus in your  
13 knee.

14 Q So, Doctor, at that point, after you got the MRI,  
15 what was your next step?

16 A My next step was, after reviewing that, to sit  
17 down and explain to her what she had and what was wrong with  
18 her knee. And I recommended to her at that point that she  
19 have a knee arthroscopy or an outpatient knee scope I guess is  
20 the way the lay public would call it.

21 Q Now, what is that procedure actually? What do you  
22 do with that procedure?

23 A That procedure consists of someone going to sleep  
24 or having some kind of anesthesia so you do not have pain in  
25 your leg when I'm operating on them. Two small holes are

1 placed in front of the knee. And a scope about the diameter  
2 of a pencil is placed in one of those holes. And you have a  
3 t.v. camera in -- on the end of that scope with a monitor, a  
4 t.v. screen. And you actually look inside the knee. You can  
5 look directly at the cartilages, the anterior cruciate  
6 ligament and other parts of the knee. And then through the  
7 other hole you work instruments to repair or trim or clean or  
8 take care of the damage, if there is any damage in the knee.

9 Q And what did you find when you looked into  
10 Ms. Fenton's knee? What was going on with that?

11 A I'll look at a copy of my operative report so I'm  
12 accurate in my discussion of this.

13 According to my operative report, she had a torn  
14 lateral meniscus of her left knee and mild chondromalacia  
15 patella and mild -- and also a mild chondromalacia of the  
16 lateral femoral condyle.

17 Q Now, what is chondromalacia?

18 A Chondromalacia is where the cartilage is --  
19 actually on the end of the bone begins to deteriorate some.  
20 And a chondromalacia would be -- could be -- chondromalacia in  
21 this case, I feel, was caused from the direct trauma to her  
22 knee that she had approximately nine months earlier. The  
23 cartilage on the end of the bone and on the lateral femoral  
24 condyle was starting to wear some from trauma.

25 The lateral meniscus tear was consistent with her

1           MRI.

2           Q     Does it take a length of time to develop  
3           chondromalacia?

4           A     It does. It usually takes months.

5           Q     Please continue with what else you found in her  
6           knee.

7           A     Well, those were her -- basically her findings.  
8           Her anterior cruciate ligament was normal. The medial  
9           compartment was normal, and her medial meniscus and medial  
10           side of her knee was normal.

11           So primarily she had pathology on the outside part  
12           of her knee. And what I did was trim out almost the entire  
13           lateral meniscus, as it was very torn. It was a -- it was a  
14           significant injury to her knee that caused her knee  
15           significant bodily problems.

16           Q     About how much of her lateral meniscus is  
17           remaining in her knee?

18           A     Less than ten percent.

19           Q     Would that have any effect on her in the future?

20           A     Yes.

21           MR. DENNISON: Can we go off the record,  
22           please?

23           (Videotaping was suspended at this  
24           point.)

25           MR. DENNISON: I'm going to object to any

1           testimony as to any kind of future problem, as the  
2           plaintiffs in this case must establish a serious  
3           injury, which means that she must establish a  
4           serious impairment of a body function as an  
5           ordinary and immediate cause of the accident. And  
6           the basis of the serious injury cannot be based  
7           upon a medical condition that might occur in the  
8           remote future.

9           MS. CUNEO: So noted.

10          MR. DENNISON: Okay. Back on the record.

11          (Videotaping resumed.)

12 BY MS. CUNEO:

13          Q        Doctor, has she developed any difficulties or  
14        problems as a result of having the ten percent of her medial  
15        meniscus in her knee?

16          A        I think, to be fair there, I've not seen her back  
17        since I did her meniscectomy, so I would not be able to  
18        comment on whether or not she has developed further problems  
19        since the meniscectomy.

20          Q        In patients who you typically treat for this  
21        injury, do they develop problems?

22          A        People who have near total meniscectomies develop  
23        osteoarthritis of their knee in the future. This is very  
24        clearly seen from -- historically from patients before we did  
25        knee scopes where people would have an entire cartilage

1 removed and within a period of 5 to 15 years develop  
2 significant arthritis in their knee which was a very bad  
3 problem for them.

4 Q So statistically you would expect her to have  
5 development of osteoarthritis in the future?

6 A She will develop it. How long it takes is a  
7 little bit of a question, but it will happen within a matter  
8 of years.

9 Q At the time that you released her from your care,  
10 prior to that you had sent her to physical therapy. What type  
11 of physical therapy did she undergo?

12 A The physical therapy I believe that she received  
13 was after her knee scope. And whenever someone has a knee  
14 scope, there's a period of four, five days to a week where  
15 they are unable to walk on their knee, and they're on  
16 crutches. The knee muscles become weakened. And when the  
17 knee muscles become weakened, a physical therapist is needed  
18 to help strengthen the knee, get the range of motion back, and  
19 help her through her post-operative period.

20 Q And how long did she receive physical therapy, if  
21 you know.

22 A I do. I can look that up exactly for you.  
23 She first saw a Mr. Tony Bertini, a physical  
24 therapist, on November 6th, 2006. And her last appointment  
25 was on December 1st, 2006. So she's had a total of seven

1      appointments I believe -- approximately seven physical therapy  
2      appointments after her knee surgery.

3            Q      After that, did you then follow up with her at  
4      your office?

5            A      I did. We saw her back in the office several  
6      times throughout her post-operative course. We saw her back  
7      on the 17th of November, two weeks after her knee scope. My  
8      physician assistant saw her at that time to make sure there  
9      was no infection. She was doing well at that time. She was  
10     improving, and she was beginning to walk without crutches.

11            We then saw her back on December 1st, 2006, about  
12     one month after her knee scope. She was doing -- again doing  
13     well, a little bit of discomfort over one of the incision  
14     sites, no sign of infection, good range of motion. And I had  
15     her increase her activities as tolerated, and we scheduled her  
16     to return to work on December 18th, 2006 and gave her a slip  
17     to do so.

18            Q      And what -- are you aware of what her work was,  
19     what type of work she performed?

20            A      Yes. She is a certified nurse assistant, meaning  
21     that she works at a nursing home assisting patients in a  
22     nursing home with toileting, getting up and down out of bed,  
23     feeding them, helping them walk, delivering food, various  
24     things that an aide would do in a nursing home for patients.

25            Q      So she's on her feet with her job --

1           A     Yes.

2           Q     -- walking?

3           A     Yes. She would walk quite a bit in her job.

4           Q     In your opinion, would that have any effect on her  
5 development of the osteoarthritis?

6           MR. DENNISON: Again, I'll make that same  
7           objection that I had before.

8           THE WITNESS: People who have a cartilage  
9           removed -- in the case where someone has a nearly  
10          whole cartilage removed that have jobs that have  
11          excessive walking or a lot of walking do develop  
12          osteoarthritis faster than someone who would not  
13          have a job which does a lot of walking.

14          BY MS. CUNEO:

15          Q     And is that what you expect to occur for  
16          Ms. Fenton?

17          A     Yes.

18          Q     Doctor, we have a copy of your narrative report  
19          that you drafted. Has what you testified to today been  
20          consistent with your narrative report?

21          A     Yes. I think I plugged a few holes in. And the  
22          one hole was that she actually scheduled the appointment in my  
23          office before her injury of twisting in the bathroom, which  
24          supports my opinion that she had a problem before the injury  
25          in the bathroom that occurred two days before I saw her. And,

1 yes, the report is accurate.

2 Q Thank you.

3 MS. CUNEO: We'll have that marked as  
4 Exhibit No. 2.

5 (Report marked for identification as  
6 Plaintiff Exhibit No. 2.)

7 BY MS. CUNEO:

8 Q Doctor, have all the opinions you've been giving  
9 here today been within a reasonable degree of medical  
10 certainty?

11 A Yes.

12 Q And do you believe that your treatment was  
13 reasonable, necessary, and directly related to her motor  
14 vehicle accident and the injuries she sustained in that?

15 A Yes.

16 MS. CUNEO: I have no other questions for  
17 him.

18 MR. DENNISON: Okay. Thank you.

19 CROSS EXAMINATION

20 BY MR. DENNISON:

21 Q Now, Doctor, you first saw her on October 19th,  
22 2006, correct?

23 A That is correct.

24 Q And that is more than ten months after the  
25 accident, correct?

1           A    That is correct.

2           Q    And you base your opinion that the knee injury was  
3   caused by the accident that happened on -- in early 2006 based  
4   upon the history that she gave to you, correct?

5           A    Yes.

6           Q    Now, are you aware that she was treated by  
7   Dr. Renee Allenbaugh shortly after the accident, and a problem  
8   with her knee is not mentioned in any of those records?

9           A    I am.

10          Q    Are you aware that she was treated by a  
11   Tony Bertini, physical therapist, after the accident, and a  
12   problem with her knee is not mentioned in any of those  
13   records?

14          A    I am.

15            MR. DENNISON: Can I mark this as an  
16   exhibit.

17            (Report marked for identification as  
18   Defendant Exhibit No. 1.)

19   BY MR. DENNISON:

20          Q    Okay. Doctor, can you read to the jury under  
21   notes at the top of that exhibit.

22            Excuse me. This is a -- just so the jury  
23   understands, this is a record from the Elk Regional Health  
24   Center, correct?

25          A    I believe what we're referring to is an emergency

1 room record from the Elk Regional Health Center dated  
2 October 17th, 2006.

3 Q Okay. And this would be two days before you first  
4 met with her, correct?

5 A Yes.

6 Q And would you read to the jury what that states.

7 A It says under notes, slipped and fell in bathroom  
8 injuring left knee -- or BR, which I assume is bathroom,  
9 injuring left knee.

10 Q And that's the same knee that you operated on,  
11 correct?

12 A It is.

13 Q And -- so she had problem that day -- two days  
14 before the accident that was significant enough with her knee  
15 that she had to go to the hospital, correct?

16 A Yes.

17 Q Okay. Now, she also stated that she broke her  
18 left knee approximately 12 years ago, correct?

19 A Yes.

20 Q Okay. Now, in your report dated April 7th to the  
21 plaintiff's attorney, you state -- or you relate the fact that  
22 she did give you a history of this problem with her knee 12  
23 years ago, but I don't see anything in your report that you  
24 indicate that you had noticed that she had just injured her  
25 knee on October 17th.

1           A    That is correct.

2           Q    When did you first find out that she had injured  
3 her knee on October 17th, 2006?

4           A    Whenever the notes were referred back to me in  
5 doing a history after I saw her the first time. In other  
6 words, I did some more homework after I saw her the first  
7 time.

8           Q    And that's why -- well, you first saw her in  
9 October -- on October 19th, 2006, correct? That's when you  
10 did first see her was October 19, 2006.

11          A    October 19, that is correct, two days after the  
12 bathroom incident.

13          Q    All right. But your report to the plaintiff's  
14 attorney is dated April 2nd, 2007. And at that point, again,  
15 you still did not reflect the fact that you knew that she had  
16 had a problem with her left knee by falling in the bathroom on  
17 October 17, 2006, is that correct?

18          A    That is not in my notes, sir, that is correct.

19          Q    Now, in your report you state that she did not  
20 have any limitations. It says, currently she has no physical  
21 limitations, correct?

22          A    That is correct.

23          Q    All right. And would you tell the jury what that  
24 means.

25          A    It means that after I did the knee arthroscopy on

1      her, it was my opinion that she had a significant impairment  
2      to her knee, but that impairment would not prohibit her from  
3      returning to her normal gainful employment.

4            Q      Well, it says no physical limitations. So I think  
5      the jury can understand that just in layman's terms. It means  
6      that she could do anything that she wanted to do.

7            A      I believe that's what I just said, sir. I said  
8      that she is able to return to her normal gainful employment,  
9      but that does not preempt the fact that she has a significant  
10     impairment permanently to her knee.

11           Q      Now, you -- you did this as an outpatient  
12     procedure --

13           A      I did.

14           Q      -- correct?

15                   And would you categorize this as minor surgery?

16           A      Yes.

17           Q      And this type of surgery is not unlike football  
18     players routinely receive, correct?

19           A      I'm not sure they routinely receive it. Many  
20     football players tear meniscuses and have knee scopes, yes.

21           Q      Okay. That's what I mean. So this is sort of a  
22     common type of athletic injury.

23           A      Yes.

24           Q      And at the time that you wrote this report on  
25     April 7th, 2007, you state, she has presently recovered from

1 her injury and does not have any pain, correct?

2 A Yes.

3 MR. DENNISON: That's all I have.

## REDIRECT EXAMINATION

5 BY MS. CUNEO:

6 Q To follow up, Doctor, the fact that Dr. Allenbaugh  
7 and the physical therapy notes don't mention her knee injury,  
8 is that any concern to you?

11 (Videotaping was suspended at this  
12 point.)

18 MS. CUNEO: I have no comment.

19 (Videotaping resumed.)

20 THE WITNESS: Could you repeat the last  
21 question?

22 MS. CUNEO: I could.

23 | BY MS. CUNEO:

24 Q Does it have any concern to you whether  
25 Dr. Allenbaugh and the physical therapy notes don't mention

1 her knee?

2 A In reviewing Dr. Allenbaugh's notes and the  
3 physical therapy notes, she was referred to the physical  
4 therapist by Dr. Allenbaugh for a neck and back problem not  
5 for a knee problem.

6 Q So, in your opinion, would that be that -- well --  
7 let me ask you then, regarding your narrative report, it  
8 doesn't mention the fall in the bathroom. Is that because --  
9 is that because the narrative report is based on your office  
10 notes and not the emergency room notes? How does that work?

11 A To be honest with you, that was probably an --  
12 a -- just left out not intentionally by me but as a -- an  
13 error. I do know and I think today's testimony does reflect  
14 the fact that she did have the fall in the bathroom. And  
15 that's very clear by the records. So it's just not in there,  
16 for whatever reason.

17 Q Okay.

18 A But it is clear that that did happen.

19 Q Would any of the questions you've been asked,  
20 Doctor, on cross or redirect change your opinions?

21 A No. My opinion is that she sustained a knee  
22 injury in a car accident. The thing kind of smoldered along.  
23 She began to have symptoms. She called for an appointment in  
24 my office.

25 Between the time she called for the appointment in

1 my office for the knee injury to the time I saw her, she had  
2 a -- another -- I'll say another knee injury. I'll say that  
3 she had a knee problem which, in my opinion, was related to  
4 her previous accident; in other words, she was having problems  
5 with her knee where it was catching, locking, and it twisted,  
6 and she aggravated a preexisting condition.

7 And it's my opinion that that knee problem has had  
8 surgery. She is able to do her normal work at this time;  
9 however, she does have a significant impairment that, in my  
10 opinion, will in the future, with reasonable medical  
11 certainty, require a total knee arthroplasty.

12 MS. CUNEO: I have no additional questions  
13 for him.

14 MR. DENNISON: Yeah -- can we go off the  
15 record again.

16 (Videotaping was suspended at this  
17 point.)

18 MR. DENNISON: I'll move to strike the  
19 doctor's last testimony. We already have my  
20 objections on the record as far as the future  
21 medical problems.

22 MS. CUNEO: We'll go back on.

23 (Videotaping resumed.)

24 MS. CUNEO: Doctor, I'd like to thank you  
25 for your deposition today.

1           I have no additional questions for him.

2           Attorney Dennison?

3           MR. DENNISON: I certainly have nothing.

4           THE WITNESS: I would like to waive review  
5 or signature of this.

6           (Proceedings concluded at 9:31 a.m.)

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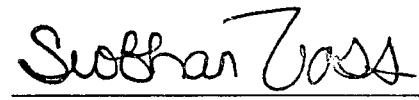
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## CERTIFICATE OF COURT REPORTER

I, Siobhan Voss, a Registered Professional Reporter and Notary Public, do hereby certify that the witness, DAVID H. JOHE, MD, 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 2nd day of March 2009.



Siobhan Voss  
SIOBHAN VOSS, R.P.R.

## RESUME

David Howard Johe, MD  
Medical Office Building  
761 Johnsonburg Road, Suite 210  
St. Marys, Pennsylvania 15857  
Phone: 814-781-8655  
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**COLLEGE:** Hampden-Sydney College  
Hampden-Sydney, Virginia  
Graduated 1973, BS  
Double Major: Chemistry and Biology  
AXE Chemistry Fraternity

**MEDICAL SCHOOL:** West Virginia University  
Morgantown, West Virginia  
Graduated 1977, MD

**INTERNSHIP:** Hartford, Connecticut  
July, 1977 to June, 1978  
Rotating (Flexible) Internship

**SURGICAL RESIDENCY:** University Hospitals of Cleveland  
Case-Western Reserve University  
Cleveland, Ohio  
July, 1978 to June, 1979

**ORTHOPAEDIC RESIDENCY:** University Hospitals of Cleveland  
Case-Western Reserve University  
Cleveland, Ohio  
July, 1979 to October, 1982

**MEDICAL LICENSES:**

Pennsylvania:	1982	MD-27103-E, active
New York:	1982	150266, active
Utah:	2001	4994676-8905, active
Ohio:	1977	42552, inactive
Vermont:	1987	7539, inactive

Plaintiff #1  
2-19-09  
S. VOSS

## PREVIOUS HOSPITAL AFFILIATIONS:

Amherst Hospital Amherst, Ohio Coordinator Emergency Department for Physicians Services Emergency Physician	1980-82
Kane Hospital Kane, Pennsylvania Consulting Staff Courtesy Staff	1882-83 1991-present
Shriner's Hospital Erie, Pennsylvania Consulting Staff (Crippled Children's Clinic)	1982-86
Salamanca Hospital Salamanca, New York Active Staff Orthopaedic Surgery and Emergency Dept.	1982-87
Bradford Hospital Bradford, Pennsylvania Active Staff Orthopaedic Surgery	1982-87
Elk Regional Medical Center Johnsonburg Road St. Marys, Pennsylvania Active Staff Orthopaedic Surgery	1991 - present
Regional Ambulatory Surgery Center 1376 Bucktail Road St. Marys, Pennsylvania Active Staff Orthopaedic Surgery	2002 - present
Bradford Regional Medical Center Bradford, Pennsylvania Active Staff Orthopaedic Surgery	2005 - present

**OTHER POSITIONS:**

National Medical Advisory Committee  
National Ski Patrol

Expert Medical Review Committee  
National Ski Patrol

National Medical Director - 2000 to 2005  
National Ski Patrol

Co-Editor and Author  
Outdoor Emergency Care, (textbook)  
Fourth Edition, National Ski Patrol

Certified Independent Medical Examiner  
American Board of Independent Medical  
Examiners - August 2000 to present

**MEMBERSHIP:**

Elk & Cameron County Medical Society

Pennsylvania Medical Society

Pennsylvania Orthopaedic Society

Wilderness Medical Society

Founding Board Member EMMO East

American Medical Association

**OTHER:**

Instructor, Rehabilitation Class  
Physical Therapy Assistant Program  
Penn State Dubois,  
From September 1998 - present

Physician Assistant, Clinical Trainer  
Gannon University, Erie, PA  
2003 - present Academic Year

Orthopaedic Surgery Clinical Trainer  
Philadelphia College of Osteopathic Medicine  
Philadelphia, PA  
2003 - present Academic Year

**NATIONAL SKI PATROL  
PUBLISHED ARTICLES:**

Assess Neuro-Vascular Status of  
Arm, Hand in Three Easy Steps  
Ski Patrol Magazine  
Spring 1995, Vol. 11, No. 3

Patient Unresponsive?  
Remember Spinal Precautions  
Ski Patrol Magazine  
Fall 1996, Vol. 13, No. 1

Keep Current on Automated External  
Defibrillators  
Ski Patrol Magazine  
Fall 1997, Vol. 14

How to Recruit Dedicated Patrol Candidates  
Ski Patrol Magazine  
Fall 1997, Vol. 14

The NSP and Scouting:  
There's a Lot of Merit to this Match  
Ski Patrol Magazine  
Spring / Summer 1999, Vol. 15, No. 3

Dueling Banjos, article on  
Why You Shouldn't Smoke Marijuana and Ski  
Powder Magazine  
November 1999

That Terrible "Pop" In Your Knee  
(an article regarding Anterior Cruciate Injuries)  
Ski Patrol Magazine  
Winter 2000

When Is Shoulder Pain Not Related to  
Shoulder Injury?  
Ski Patrol Magazine  
Fall 2000

Kehr's Sign: An Assessment Tip to Keep  
You on Track  
Ski Patrol Magazine  
Fall 2000

**NATIONAL SKI PATROL  
PUBLISHED ARTICLES:  
(continued)**

Special Care for the Injured Tooth  
Ski Patrol Magazine  
Fall 2001

Is There a Doctor on the Scene?  
Ski Patrol Magazine  
Winter 2001

Outdoor Emergency Care  
Editor (2002)

Bone Up On Care of Femur Fractures  
Ski Patrol Magazine  
Fall 2002

The Spiral Tibia Fracture: Injury Trend Re-emerges  
Ski Patrol Magazine  
Winter 2002

Time is of the Essence:  
OEC for Avalanche Victims  
Ski Patrol Magazine  
Winter 2003

Abdominal Assessment Takes More  
Than Gut Instinct  
Ski Patrol Magazine  
Fall 2005

New CPR, AED Standards Outlined on Scene  
(The Journal of Outdoor Emergency Care)  
Summer 2006

Exercised-Induced Asthma:  
No Room for Airway Error  
Ski Patrol Magazine  
Winter 2007

## RECENT CONTINUING MEDICAL EDUCATION CLASSES

03/11/98 Community Rehabilitation Services  
Scott A. Murray M.D. / Martin Schaefer, M.D.  
(1.0 CREDIT HOURS)  
sponsored by  
Hamot Medical Center and  
St. Marys Regional Medical Center

06/10/98 OSHA Bloodborne Pathogen Program  
Kathy Wonderly RN, CIC, BSPA / Joyce Fledderman, BSN  
(1.0 CREDIT HOURS)  
sponsored by  
Hamot Medical Center and  
St. Marys Regional Medical Center

08/12/98 Surgical Options in Gastroesophageal Reflux Disease  
Robert H. McLaughlin, M.D.  
(1.0 CREDIT HOURS)  
sponsored by  
Hamot Medical Center and  
St. Marys Regional Medical Center

09/11/98 Doctors, Death & Dignity  
thru  
(9.5 CREDIT HOURS)  
sponsored by  
Hamot Medical Center  
Chautauqua Institution  
Chautauqua, New York

09/12/98

10/09/98 Essentials of Wilderness Care  
thru  
(24 CREDIT HOURS)  
sponsored by  
Elk County Emergency Services  
Ridgway, PA

10/11/98

10-14-98 Surgical Treatment Strategies for Myofascial  
Pain Syndrome  
N. Ake Nystrom, M.D., PhD.  
(1.0 CREDIT HOURS)  
sponsored by  
Hamot Medical Center and  
St. Marys Regional Medical Center

11/19/98 Total Joint Arthroplasty  
thru  
(13.50 CREDIT HOURS)  
sponsored by  
11/21/98 Pennsylvania Orthopaedic Society  
Harrisburg, PA

## RECENT CONTINUING EDUCATION

12/09/98    Thyroid Disease and Women's Health  
              (1.0 CREDIT HOURS)  
              sponsored by  
              Hamot Medical Center and  
              St. Marys Regional Medical Center

10/9/98    thru    Essentials of Wilderness Care  
              (24.0 CREDIT HOURS - Category 2)  
10/11/99    sponsored by  
              Wilderness EMS Institute

03/14/99    thru    Adult Orthopaedic Surgery Conference  
              (35 CREDIT HOURS)  
03/21/99    sponsored by  
              University of Colorado School of Medicine

04/9/99    thru    Minimally Invasive Surgery of the Spine:  
              Approaches for Treatment of Thoracic & Lumbar Pathology  
04/10/99    (14.5 CREDIT HOURS)  
              sponsored by  
              Albany Medical College

06/23/99    thru    Sixteenth Annual San Diego Shoulder Course  
              (28.25 CREDIT HOURS)  
06/26/99    sponsored by  
              Tri-City Medical Center

09/30/99    thru    How To Be An Effective Medical Witness  
              (14 CREDIT HOURS)  
10/01/99    sponsored by  
              SEAK Inc.

10/02/99    thru    How To Be A Successful Independent Medical Examiner  
              (14 CREDIT HOURS)  
10/03/99    sponsored by  
              SEAK, Inc.

02-08-00    thru    Winter Wilderness Medicine Course  
              (21 CREDIT HOURS - Category 1)  
02-12-00    sponsored by  
              Wilderness Medical Society

## RECENT CONTINUING EDUCATION

05-04-00 thru 05-06-00 The Panther Sports Medicine Symposium  
The Knee: A New Millennium from  
Robotics to Gene Therapy  
(27 CREDIT HOURS - Category 1)  
sponsored by  
University of Pittsburgh School of Medicine

05-22-00 Ultra High Molecular Weight Polyethylene  
Wear In Total Hip Arthroplasty: A Review  
(1 CREDIT HOUR - Category 1)  
sponsored by Slack Incorporated, publisher of  
Orthopedics - May 2000

07-08-00 thru 07-09-00 ABIME (IME) Review Course  
(15 CREDIT HOURS - Category I)  
sponsored by  
American Board of Independent Medical Examiners  
Chicago, IL

11-17-00 thru 11-19-00 Sports Medicine & The NBA  
(17 CREDIT HOURS - Category 1)  
sponsored by  
American Orthopaedic Society for Sports Medicine

04-12-00 April Monthly Education  
(1 CREDIT HOUR)  
Elk Regional Health Center & Hamot Hospital

05-10-00 Electronic Patient Record  
(1 CREDIT HOUR)  
Elk Regional Health Center & Hamot Hospital

06-14-00 New Advances in Wound Care  
(1 CREDIT HOUR)  
Elk Regional Health Center & Hamot Hospital

08-09-00 Preventing Bloodborne Pathogen  
(1 CREDIT HOUR)  
Elk Regional Health Center & Hamot Hospital

09-14-00 Pain in the Fifth Vital Sign  
(1 CREDIT HOUR)  
Elk Regional Health Center & Hamot Hospital

## RECENT CONTINUING EDUCATION

12-13-00 Legal Update on Confidentiality  
(1 CREDIT HOUR)  
Elk Regional Health Center & Hamot Hospital

01-21-01 thru 01-26-01 19th Annual Vail Orthopaedic Symposium  
Total Hip and Knee Replacement  
(26 CREDIT HOURS - Category 1)  
Sponsored by  
Education Design  
Denver, CO 80231

02-02-01 thru 02-09-01 Winter Wilderness Medicine Course  
(25 CREDIT HOURS - Category 1)  
Sponsored by  
Wilderness Medical Society

02-16-01 "Clinical Challenges in Osteoarthritis and  
Viscosupplementation," Volume 1, No. 1  
(1 CREDIT HOUR - Category 1)  
sponsored by  
University of Michigan Medical School  
Office of Continuing Medical Education  
Ann Arbor, MI 48109-0201

07-14-01 thru 07-15-01 AMA Guides, 5th Edition Training Course  
(11 CREDIT HOURS)  
sponsored by  
American Academy of Disability Evaluating Physicians  
Chicago, IL

11-07-01 Acromioclavicular Joint Injuries: Identifying &  
Treating "Separated Shoulder" and other Conditions  
(1 CREDIT HOUR)  
sponsored by  
The American College of Sports Medicine

RECENT CONTINUING EDUCATION

03-19-01 HIPAA  
(1 CREDIT HOUR)  
sponsored by  
Hamot Medical Center and  
Elk Regional Health Center

05-15-02 thru 05-15-02 Pediatric Advanced Life Support  
(16 CREDIT HOURS)  
sponsored by  
Children's Hospital of Pittsburgh and  
Butler Community College

10-02-02 thru 10-05-02 Advances in Hip and Knee Arthroplasty  
(25.50 CREDIT HOURS)  
sponsored by  
Harvard Medical School  
Boston, MA

01-13-03 thru 01-19-03 17th Annual Orthopaedic Symposium -  
Upper Extremity & Trauma Update  
(34 CREDIT HOURS - Category 1)  
sponsored by  
HealthStream Education Design  
Denver, Colorado 80231

03-02-03 thru 03-07-03 Emergency Medicine Conference  
(18 CREDIT HOURS - Category 1)  
sponsored by  
American College of Emergency Physicians (ACEP),  
the California Chapter of ACEP and  
Medical Conferences, Inc.

03-28-03 Advanced Cardiac Life Support Recertification  
(7 CREDIT HOURS - Category 1)  
sponsored by  
St. Marys Regional Medical Center  
St. Marys, PA

6-23-03 Elk Grand Rounds  
(1 CREDIT HOUR - Category 1)  
sponsored by  
Hamot Medical Center and  
Elk Regional Medical Center

07-11-03 Study of Writing Winning Reports in the  
Medicolegal Arena  
(4 CREDIT HOURS - Category 1)  
sponsored by  
American Board of Independent Medical Examiners  
Chicago, IL

## RECENT CONTINUING EDUCATION

07-12-03 AMA Guides to the Evaluation of Permanent Impairment  
4th & 5th Editions  
(15 CREDIT HOURS - Category 1)  
sponsored by  
American Board of Independent Medical Examiners  
Chicago, IL

08-20-03 Pittsburgh Bone Symposium 2003  
thru (22 CREDIT HOURS - Category 1)  
08-23-03 sponsored by  
University of Pittsburgh Medical Center  
Pittsburgh, PA

9-08-04 Adult, Infant CPR and AED- Skill Station  
(3 CREDIT HOURS -Category 1)  
sponsored by  
Elk Regional Health Center  
St. Marys, PA

9-28-04 2003 - 2004 Informed Risk Management Update for  
Pennsylvania Physicians  
(3 CREDIT HOURS - Category 1)  
sponsored by InforMED  
Harrisburg, PA

9-29-04 #9901 Osteoporosis: Diagnosis and Treatment  
(5 CREDIT HOURS - Cataegory 1)  
sponsored by  
CME Resource  
Sacramento, CA

03-13-05 State of the Art of Orthopaedics 2005  
thru (32 CREDIT HOURS)  
03-17-05 sponsored by  
HealthStream  
Denver, CO 80231

04-14-05 Advanced Cardiac Life Support  
(3 CREDIT HOURS)  
sponsored by  
Elk Regional Health Center

RECENT CONTINUING EDUCATION

11-16-05 Advanced Diagnosis & Treatment for Neck & Back Pain  
thru (26 CREDIT HOURS - Category 1)

11-19-05 sponsored by  
St. Mary's Medical Center, San Francisco,  
and American Back Society  
San Francisco, CA

11-16-05 AMA Guides, 5th Edition Course  
(8 CREDIT HOURS)  
sponsored by  
St. Mary's Medical Center, San Francisco  
and American Back Society  
San Francisco, CA

12-01-05 Advances in Surgical Technology  
thru (23.0 CREDIT HOURS)

12-03-05 sponsored by  
HealthStream  
Denver, CO 80231

04-06-06 Legal Medicine  
Quality Assurance/Risk Management/Medical Ethics  
(5 CREDIT HOURS)  
sponsored by  
Armed Forces Institute of Pathology

05-01-06 Legal Aspects in Pain Medicine  
(1 CREDIT HOUR)  
sponsored by  
Academy for Healthcare Education

07-10-06 Thromboprophylaxis in Arthroscopic Surgery  
(1 CREDIT HOUR)  
Elsevier Office of Continuing Medical Education

08-17-06 12 CREDIT HOURS  
sponsored by  
Infor Med, Harrisburg, PA  
Bloodborne Pathogens (3 Credits), Medication Safety  
(1 Credit), Measurement & Taxonomy (2 Credits),  
Surveillance (1 Credit), Cognition, Systems & Risk  
(1 Credit), Implementation of Surveillance (1 Credit)  
Challenges & Lessons Learned (1 Credit) Programs &  
Collaborations (1 Credit), Tools & Procedures (1 Credit)

## RECENT CONTINUING EDUCATION

03/11/07      Perioperative Management  
thru              (21 CREDIT HOURS)  
03/14/07              sponsored by  
                    The Johns Hopkins University School of Medicine  
                    Baltimore, MD

04/19/07      Knowing and Understanding Occupational Medicine Practice  
(4.5 CREDIT HOURS)  
                    sponsored by  
                    Hamot Medical Center & Elk Regional Health Center  
                    Erie, PA                      St. Marys, PA

10/29/07      Creating an Effective Peer Review Process  
(1 CREDIT HOUR)  
                    sponsored by  
                    Hamot Medical Center & Bradford Regional Medical Center  
                    University of Pittsburgh at Bradford, Bradford, PA

07/30/08      Patient Safety: A Roadmap  
(1 CREDIT HOUR)  
                    sponsored by  
                    The Pennsylvania Medical Society  
                    Elk Regional Health Center, St. Marys, PA

08/01/08      Multiple Sclerosis and Management: Practical Strategies to  
Promote Compliance and Improve Patient Care  
(1 CREDIT HOUR)  
                    sponsored by  
                    University of Kentucky  
                    College of Medicine  
                    One Quality Street, 6th Floor  
                    Lexington, KY 40507-1461

## RECENT CONTINUING EDUCATION

07/09/08 thru 07/13/08	The American Orthopaedic Society for Sports Medicine (26 CREDIT HOURS) sponsored by The American Orthopaedic Society for Sports Medicine 6300 N River Road - Suite 500 Rosemont, IL 60018
09/16/08	Venous Disease: Diagnosis & Treatment for Your Patients (2.5 CREDIT HOURS) sponsored by Robert W. Tahara, MD 116 Interstate Parkway, Suite 31 Bradford, PA 16701
10/2/08	Topics in Risk Management - Vol. 02 Iss. 01, August 2007 (3 CREDIT HOURS) Oakstone Medical Publishing
11/12/08	Topics in Risk Management - Vol. 02 Iss. 02, August 2007 (3 CREDIT HOURS) Oakstone Medical Publishing
11/12/08	Topics in Risk Management - Vol. 02 Iss. 03, August 2007 (3 CREDIT HOURS) Oakstone Medical Publishing
11/12/08	Topics in Risk Management - Vol. 02 Iss. 04, August 2007 (3 CREDIT HOURS) Oakstone Medical Publishing

11/20/08      Innovations in Orthopaedics: New Tricks for Old Dogs  
thru              (18.5 CREDIT HOURS)

11/22/08      sponsored by  
Pennsylvania Orthopaedic Society  
510 N Third Street - 3rd Floor  
Harrisburg, PA 17101-1112

11/26/08      Inhaled Corticosteroids in Patients with Stable Chronic Obstructive  
Pulmonary Disease: A Systematic Review and Meta-analysis  
(1 CREDIT HOURS)

sponsored by  
JAMA & ARCHIVES

12/04/08      Holiday Total Knee Course  
thru              (12.5 CREDIT HOURS)

12/05/08      sponsored by  
Hospital for Special Surgery Office of Continuing Medical Education  
535 East 70th Street  
New York, NY 10021

**RHODE ISLAND MEDICAL SERVICES, PC**  
*David H. Jone, MD - Andrea Thompson, PA-C*  
**761 Johnsonburg Road - Suite 210**  
**St. Marys, PA 15857**  
**814-781-8655 - fax 814-834-6279**

April 2, 2007

Denise M. Cuneo, Esquire  
Nicholas, Perot, Smith, Koehler & Wall  
2527 West 26<sup>th</sup> Street  
Erie, PA 16506

Plaintiff #2  
2-19-09  
S. VOSS

RE: Heidi Fenton  
DOB: 3/29/77  
SS#: 107-64-7142  
DOI: 2/12/06

Dear Ms. Cuneo,

Heidi Fenton is a patient of mine. She came to see me on 10/19/06. She related that she was employed at ERHC as a CNA. At that time, she described a motor vehicle accident that she was involved in on 2/12/06. She stated, "husband was driving and lady pulled out in front of us in DuBois at old 255 intersection. The lady was life-flighted. My family and I were taken to the DuBois Hospital. I had knee pain and upper back pain". On the day I saw her, she was complaining of "knee pain getting worse". She said that when she was a belted passenger, she slid down in her seat, hitting her knees on the dashboard.

Following the accident, she had an MRI done of her knees at ERHC on 10/20/06. That MRI revealed that she had a complex tear of the lateral meniscus and a partial tear of the lateral collateral ligament in her knee. Therefore, her diagnosis was "torn lateral meniscus and strain of the lateral collateral ligament".

In asking her history about previous problems with her knee, she related that 12 years prior, she had a cheerleading accident where she had a fracture in her left knee but was given conservative treatment and got better, requiring no further care.

Therefore, it is my opinion that Heidi Fenton sustained a torn lateral meniscus in the motor vehicle accident on 2/12/06. Following her injury, she had a knee arthroscopy done by me on 11/1/06. Her knee arthroscopy report is enclosed. Her operation consisted of a lateral menisectomy arthroscopically and debridement of a lateral femoral condyle cartilage. She tolerated the procedure well and post operatively did well. She was discharged from care following physical therapy on 12/1/06.

Page 2

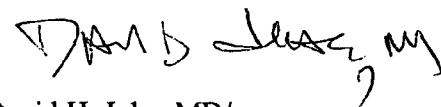
Currently, she has no physical limitations. She has a greater than 50% chance of developing osteoarthritis in her knee as she ages as she has very little meniscus left in the lateral aspect of her knee. Her surgery in the future would be a total knee arthroplasty if her arthritis continued to get worse.

Prior to doing a total knee, she may require a less invasive treatment such as injections of cortisone, anti-inflammatory medicine or Synvisc.

She presently has recovered from her injury and does not have pain; however, her chance of developing pain in the future and significant osteoarthritis is present.

I have no idea on the approximate projected cost for future medical treatment. Presently, a total knee arthroplasty costs approximately \$20,000.

Sincerely,



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

RUN DATE: 10/19/06  
RUN TIME: 1442  
RUN USER: JOHDA.BLH

Elk Regional Health Center EDM \*\*LIVE\*\*  
Assessment Data

PAGE 1

Patient: FENTON, HEIDI L  
Physician: KULLING, DAVID L  
Chief Complaint: Pain, Knee

Acct. No.: V90300419 Unit No.: M000366435  
Age/sex: 29/F Loc: ER  
Status: DEP ER

\*TR - Triage Document

10/17/06- 2008 - ER.JJC

Notes: SLIPPED AND FELL IN BR INJURING LEFT KNEE.  
Complaint: PT STATES SHE BROKE HER LEFT KNEE APROX 12 YEARS AGO.

Method of Arrival: Triage  
Applicable (Y/N/U): N  
History of: Cardiac:

Priority: 4  
Asthma: COPD: CHF: CVA: Seizures:  
Hypertension: Thyroid: Ulcers:

Diabetes: TYPE: Hiatal Hernia: Cancer: Type:  
Arthritis: Gout: Alzheimer's: Psychological: TYPE:  
HIV: Hepatitis: TYPE:  
LNMP: 2 WEEKS Pregnant (Y/N/U/D): N NO  
EDC: Alcohol: N (Y/N/U) Type: NONE  
Do you now, or have you ever used tobacco products (Y/N/U): N Type: NONE  
COMMENT:  
<Allergies>: NKA  
<CONTINUED>:  
<SURGERY / TYPE>: OVARIAN CYST, LAP, C-SECTION X2, TUBAL

\*\*\*<PRESENT MEDS (Herbal, OTC etc. LIST LAST DOSE & TIME)>\*\*\*

1. NONE  
2.  
3.  
4.  
5.  
6.  
7.  
Other meds:  
8.  
9.  
10.  
11.  
12.  
13.  
14.

Medication list correct/complete (Y/N): Y If not why:

===== VITAL SIGNS =====  
Temp (F): 98 Temp (C): 36.7 Source: PO Pulse: 80 Respirations: 18 Blood Pressure: 110/72  
WEIGHT: LB: 168 OZ: KG: 76.37 Type: ESTIMATED (ER ONLY)  
HEIGHT: IN: 62 CM: 157.4 Obtained: Estimated Height

Pain Intensity (0-10): 7 SPO2: Room Air SPO2: With Oxygen (Liters):  
Tetanus: X Year: >10 YRS Last Immunization:

Flu Shot: X Month/Year: 2005

Pneumococcal Vaccine: N Month/Year: NO

OD: / OS: / \*\*\*\*VISUAL ACUITY\*\*\*\* Applicable (Y/N/U): N  
OU: / Corrected: Uncorrected:  
\*\*\*\*MVA INFORMATION\*\*\*\* Applicable (Y/N/U): N

Police Department Notified:

Time Notified:

Media Release:

Restrained (Y/N/U): Airbag Deployment (Y/N/U): Helmet (Y/N/U):

===== TRIAGE NURSE INTERVENTIONS =====

Dressings: Ice: X-RAY: Urine: Labs:  
Splints: Elevate: Meds: Type:

==Ambulance Treatments Prior to arrival in ED==

O2: IV: Applicable (Y/N/U):  
Aerosol: Medication:

Collar: Backboard: CTD: Splint: Dressing: Ice:

Defendant 1  
2-19-09  
S. Voss

HEIDI FENTON and-  
BRIAN FENTON  
Plaintiffs,

vs. ....

MELANIE F. FRANK,

Defendant.

\* In the Court of Common Pleas of  
\* Clearfield County, Pennsylvania  
\* Civil Action - Law

\*

\*

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\*

\*

\*

\*

\* Number 187 of 2008, C. D.

FILED

JUN 15 2009

0/8:30

William A. Shaw  
Prothonotary/Clerk of Courts

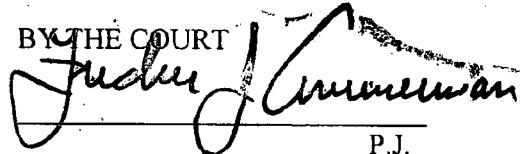
3 Ctr to

ATT (G 10)

SCHEDULING ORDER

AND NOW, this 12 day of June, 2009, it appearing of record that the Defendant has filed Objections with the Court concerning objections on the video tape of Dr. David J. Yohe, Plaintiffs' medical expert, and in accordance with the Order of Court dated March 25, 2009, the Plaintiffs' shall file a brief in opposition to such Objections on or before June 28, 2009., Oral argument on the Objections shall take place in the Judge's Chambers, Courthouse, Clearfield, Pennsylvania on the 2nd day of July, 2009, at 11:30 A.m.

BY THE COURT

  
P.J.

DATE: 6-15-09

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:

FILED  
JUN 15 2009  
William A. Shaw  
Prothonotary/Clerk of Courts

10  
HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
v. :  
: CIVIL ACTION - LAW  
: No. 08-187 CD  
MELANIE F. FRANK, :  
Defendant :  
:

FILED  
M 12 33 2009  
JUN 19 2009  
William A. Shaw  
Prothonotary/Clerk of Courts  
2 CC Atty Cuneo  
GO

**PLAINTIFFS' REPLY TO DEFENDANT'S OBJECTIONS  
TO TESTIMONY OF DR. DAVID H. JOHE**

AND NOW, comes the Plaintiffs, Heidi Fenton and Brian Fenton, her husband, by and through their attorneys Denise M. Cuneo, Esq. and **Nicholas, Perot, Smith, Koehler & Wall, P.C.**, and files this Reply to Defendant's Objections to Testimony of Dr. David H. Johe, the content of which is as follows:

**I. BACKGROUND**

This action arises out of a motor vehicle accident which occurred on February 12, 2006 at the intersection of Sher-De-Lin Road and the Bennetts Valley Highway in Sandy Township, DuBois, Clearfield County, Pennsylvania. Mr. Fenton was driving a 2005 Dodge Durango, and Ms. Fenton was the restrained, front seat passenger when Defendant Melanie Frank failed to stop at a stop sign controlling Sher-De-Lin Road with the Bennetts Valley Highway. The vehicles collided. As a result of this impact, Ms. Fenton sustained injuries and suffered damages including, loss of wages. Ms. Fenton has suffered an injury to her left knee, including a Complex Tear of the Lateral Meniscus and partial tear of the Lateral Collateral ligament, Strain of the Left Knee with effusion and Left knee pain (Complaint, P. 7). She underwent surgical repair of the left knee by David H. Johe, MD and continues to experience intermittent knee pain.

It is undisputed that at the time of this accident, Mr. and Ms. Fenton had an insurance policy, which provided limited tort coverage.

## **II. ISSUE**

**WHETHER DR. DAVID H. JOHE MAY TESTIFY REGARDING PLAINTIFF HEIDI FENTON'S FUTURE DEVELOPMENT OF ARTHRITIS IN HER LEFT KNEE AS A "SERIOUS BODILY INJURY"?**

**SUGGESTED ANSWER: DR. DAVID H. JOHE MAY TESTIFY REGARDING PLAINTIFF HEIDI FENTON'S FUTURE DEVELOPMENT OF ARTHRITIS IN HER LEFT KNEE AS A "SERIOUS BODILY INJURY."**

## **III. LAW AND ARGUMENT**

In this matter, this Honorable Court has issued a decision dated December 19, 2008, denying the Defendant's Motion for Summary Judgment regarding whether the Plaintiff Heidi Fenton suffered a serious bodily injury to her left knee in the motor vehicle accident.

Section 1705(d) of the Pennsylvania Motor Vehicle Financial Responsibility Act provides:

Each person who elects the limited tort alternative remains eligible to seek compensation for economic loss sustained in a motor vehicle accident as a consequence of the fault of another person pursuant to applicable tort law. Unless the injury sustained is a serious injury, each person who is bound by the limited tort election shall be precluded from maintaining an action for any noneconomic loss....

75 Pa.C.S. A §1705(d).

Serious injury is defined as a personal injury resulting in death, serious impairment of body function or permanent serious disfigurement. 75. Pa.C.S.A. §1702.

Pursuant to *Washington v. Baxter*, 533 Pa. 434, 719 A.2d 733 (1998), a Court is required to consider a variety of factors in order to determine whether an injury is a "Serious Injury",

including the extent of the impairment, the length of the impairment and the treatment required to correct the impairment. Here, the record established before the accident, Plaintiff did not suffer from any left knee complaints. After the accident, Plaintiff had complaints, which resulted in the need for surgical intervention.

Ms. Fenton's deposition was taken on September 19, 2008 and is attached as **Exhibit 1**.

Ms. Fenton testified that she is employed as a Certified Nurse Assistant at Pinecrest Nursing Home. As part of her job duties, she is required to assist residents in activities of daily living, such as lifting them into bed, walking them and helping with lifeskills. She noted that she had difficulty performing her job duties prior to her surgery. (Depo., pp. 11 to 14).

In reviewing the accident, Ms. Fenton noted that her knees were pushed under the dashboard. She noted immediate pain in her knees. (Depo., pp. 18-20). She explained that from the day of the motor vehicle accident until her surgery, her knee was painful, it locked, and caused her to fall. She noted that she fell at work, and also again on October 17, 2006, which caused her to seek medical treatment at Elk Regional Medical Center. Prior to this fall, Ms. Fenton had scheduled her appointment with David H. Johe, MD for a consultation for the left knee. She explained that she scheduled the appointment due to the constant, aching pain in the left knee. (Depo., pp. 34-37).

Following her surgery on November 1, 2006, Ms. Fenton missed three months of work. Ms. Fenton noted that even after her surgery and at the time of her deposition, she continued to have pain in the knee, which limited activities such as long walks and shopping for long periods of time. (Depo., pp. 40- 43).

Under cross-examination, Ms. Fenton further testified that from the time of the accident until her surgery, the knee would catch, pop and lock at least once or twice per week. She had

fallen three to four times from February to October, 2006. The knee was giving out on her and this prompted her to contact Dr. Johe. She described her continuing pain as similar to a toothache. The knee continued to bother her a few days per month and she no longer played football with her boys. (Depo., pp. 43-45).

Dr. Johe's narrative report, dated April 2, 2007, outlines her injury in the motor vehicle accident and that her knee pain was getting worse. Dr. Johe opined that these injuries were directly related to the motor vehicle accident of February 12, 2006. In order to repair these injuries, Dr. Johe performed arthroscopic surgery on November 1, 2006. He noted that she had a greater than 50% chance of developing osteoarthritis in her left knee due to the small remaining portion of her meniscus in the lateral aspect of the left knee. He explained that if the arthritis worsened, she would need cortisone injections, medications, Synvisc and possibly a total knee arthroplasty. Although at her last visit, she was pain free, Dr. Johe concluded that she will develop pain in the future and she had significant osteoarthritis already. At his deposition, Dr. Johe's testimony confirmed these conclusions. (**See Dr. Johe's Deposition, as an Exhibit attached to Defendant's Objections**)

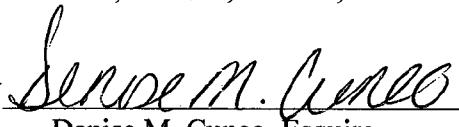
It is clear that based *Washington v. Baxter*, 533 Pa. 434, 719 A.2d 733 (1998), the determination of what consists a "serious bodily injury" is fact specific. In *Washington*, the Pennsylvania Supreme Court concluded that the minor complaints that the Plaintiff suffered did not rise to the level of serious injury. On the contrary, in the case presently before the court, Plaintiff's injury has reached that level and Dr. Johe should be permitted to testify regarding the impact this injury will have in her future.

**IV. Conclusion**

WHEREFORE, for the foregoing reasons, the Plaintiffs Heidi Fenton and Brian Fenton, her husband, respectfully request that this Honorable Court deny the Defendant's Objections to Testimony of Dr. David H. Johe.

Respectfully submitted,

NICHOLAS, PEROT, SMITH, KOEHLER & WALL, P.C.

BY  6/16/09  
Denise M. Cuneo, Esquire  
PA. I. D.#80124  
2527 West 26<sup>th</sup> Street  
Erie, PA 16506  
(814) 833-8851  
Attorney for Plaintiffs

HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
:  
v. : CIVIL ACTION - LAW  
:  
:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 16<sup>th</sup> day of June, 2009, a true and correct copy of the foregoing Plaintiffs' Reply to Defendant's Objections to Testimony of Dr. David H. Johe was served upon the following by United States First Class Mail, postage prepaid according to all applicable rules of court:

John C. Dennison, II  
Dennison, Dennison, & Harper  
Attorneys at Law  
293 Main Street  
Brookville, PA 15825-1291  
Attorney for Defendant

Respectfully submitted,

NICHOLAS, PEROT, SMITH, KOEHLER & WALL, P.C.

BY Denise M. Cuneo  
Denise M. Cuneo, Esquire

SIN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PA

CIVIL DIVISION

\* \* \* \* \*

\*

HEIDI FENTON, and BRIAN \* Case No.

FENTON, her husband, \* 08-187CD

Plaintiffs \*

vs. \*

MELANIE F. FRANK, \*

Defendant \*

\*

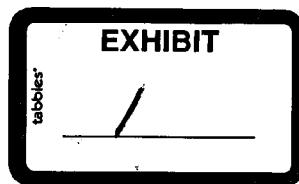
\* \* \* \* \*

DEPOSITION

OF

HEIDI FENTON

September 19, 2008



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by the certifying agency.

OBJECTIONS		Page 6	Page 8
ATTORNEY	PAGE		
	NONE MADE		
1	1	ATTORNEY DENNISON:	
2	2	Okay. All right, thank you.	
3	3	BY ATTORNEY DENNISON:	
4	4	Q. And Heidi, did I already ask you to state your	
5	5	full name?	
6	6	A. Yes.	
7	7	Q. Okay. We were just introduced, my name is John	
8	8	Dennison, and I'm representing Melanie Frank in this	
9	9	case, and of course this is the time and place for	
10	10	your deposition. And I just want to make sure ---	
11	11	Denise told my client the same thing that if you don't	
12	12	understand a question just ask me to rephrase it. If	
13	13	you need to talk to Denise for any reason, you're	
14	14	welcome to do so. If you don't know the answer to a	
15	15	question, the proper answer to say is I don't know.	
16	16	Just because you're under oath doesn't mean you have	
17	17	to give a factual answer if you really don't know	
18	18	because I don't want you to guess at things. So is	
19	19	that fair enough?	
20	20	A. Yes.	
21	21	Q. Okay. Where do you reside?	
22	22	A. Kersey.	
23	23	Q. And what's your address up there?	
24	24	A. It's 217 Hogback Road, Kersey, PA 15846.	
25	25	Q. Are you a high school graduate?	
PROCEEDINGS		Page 7	Page 9
1	1	A. Yes.	
2	2	Q. Okay. And where did you graduate?	
3	3	A. Saint Marys High School.	
4	4	Q. In what year?	
5	5	A. '95.	
6	6	Q. Where were you born and raised?	
7	7	A. DuBois, PA. I was raised in Weedville.	
8	8	Q. Okay. And then how did you end up going to St.	
9	9	Marys?	
10	10	A. Because with Weedville, they go to St. Marys.	
11	11	Q. Oh, does Weedville go to St. Marys?	
12	12	A. Yeah.	
13	13	Q. Okay. I didn't realize that. So okay. Are you	
14	14	married?	
15	15	A. Yes.	
16	16	Q. And your husband's name?	
17	17	A. Brian Fenton.	
18	18	Q. And on what date were you married?	
19	19	A. April 19, 2001.	
20	20	Q. Who presently lives in your household?	
21	21	A. Me and my husband and my two children.	
22	22	Q. Now, during high school what was your major, or	
23	23	your course of study?	
24	24	A. College Prep.	
25	25	Q. Okay. And what did you do after you graduated	

3 (Pages 6 to 9)

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<p style="text-align: right;">Page 14</p> <p>1 until October — what is it? October 17th of 2006?      2 A. With some difficulties but I did return.      3 Q. Okay. Then you had surgery on your knee in      4 October of 2006; correct? And I think it was October      5 19, 2006 you had your surgery?      6 A. I don't know the exact date, but I'm guessing      7 yeah.      8 Q. Maybe I'm wrong. That's the first time you saw      9 Dr. Joho, I'm sorry. Okay, then on October 20th, I      10 think you had — okay, you had an MRI done. And then      11 you had your surgery on November 1st, 2006; correct?      12 And then you're saying that you were off work for      13 three months after that?      14 A. I'm guessing it was almost three months.      15 Q. Okay. And then after that three-month period,      16 were you able to return to work?      17 A. Yes.      18 Q. Okay. And were you able to return to work on a      19 full-time basis?      20 A. Yes.      21 Q. Okay. And have you worked on a full-time basis      22 since you returned from work after your surgery?      23 A. Yes.      24 Q. Okay.      25 ATTORNEY DENNISON:</p>	<p style="text-align: right;">Page 16</p> <p>1 A. No.      2 Q. All right. Now the accident happened on February      3 12, 2006; correct?      4 A. Yes.      5 Q. And, can you tell me what you were doing that day?      6 A. I was --- we were going to DuBois. We're in the      7 car, going down the road I was talking to the kids,      8 you know, I was just --- turned my head to talk to      9 them and all of the sudden I looked and the car was      10 right there.      11 Q. Now, where were your children positioned?      12 A. The oldest was behind me and I was the passenger;      13 and the youngest was behind my husband, the driver.      14 Q. Okay. Now, did they have their seat belts on?      15 A. Yes.      16 Q. And how old are your children?      17 A. Now they are four and five.      18 Q. Okay. And so back in 2006, they were three and      19 two; is that right?      20 A. Yeah.      21 Q. Okay. So they were in their little car seats?      22 A. Yep.      23 Q. Now, were either one of them injured as a result      24 of the accident?      25 A. No.</p>
<p style="text-align: right;">Page 15</p> <p>1 Then let me ask your attorney for the      2 record; is she claiming any loss of income not covered      3 by her first party benefits then?      4 ATTORNEY CUNEO:      5 I thought they paid her a majority of her      6 wages, but I will double check on that.      7 ATTORNEY DENNISON:      8 Okay. All right. Because I think it's      9 like 80 percent --- I know, I used to pay it.      10 ATTORNEY CUNEO:      11 Right.      12 BY ATTORNEY DENNISON:      13 Q. So except for the difference then — your      14 attorney is going to check on this, but it's my      15 understanding, except for the difference between what      16 you were normally paid and what you were reimbursed by      17 your own insurance company, that this is the amount      18 that you would be claiming for loss of income?      19 A. Yes.      20 Q. Okay. All right. Now, have you incurred any      21 medical bills which have not been paid by either your      22 own insurance company or by Blue Cross/Blue Shield?      23 A. No.      24 Q. Okay. Do you have any other out-of-pocket loss,      25 you know, any expenses that you've incurred?</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. All right. Did you know Melanie Frank prior to      2 the time of the accident?      3 A. No.      4 Q. Have you ever spoken to her since the time of the      5 accident?      6 A. No.      7 Q. When did you realize that you were going to be in      8 an accident?      9 A. At impact.      10 Q. Do you have any idea of how fast you were --- and      11 your husband was driving?      12 A. Yeah.      13 Q. Okay. Do you have any idea how fast your vehicle      14 was traveling at the time of the accident?      15 A. Thirty-five (35), 40.      16 Q. And where was the position of Melanie Frank's      17 vehicle when you first observed it?      18 A. In our lane.      19 Q. Okay. So you did not see her prior to her in      20 being in your lane of travel?      21 A. No.      22 Q. Okay. So do you know whether or not she stopped      23 at the stop sign?      24 A. I don't know that. I believe not.      25 Q. Okay. And on what basis do you believe that?</p>

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<p style="text-align: right;">Page 22</p> <p>1    between your neck pain? Do you just sort of  2    generalize that as having neck pain?  3    A. Yeah.  4    Q. Okay. Let me back up again then. Where did you  5    have pain?  6    A. Like in the upper back, like right where the neck  7    meets the back.  8    Q. Okay. That's what I was trying to say. So it's  9    where the neck meets the back; is that correct?  10   A. Yes.  11   Q. And is that the area of pain, in that area of the  12   body that you've been having problems with?  13   A. Yes.  14   Q. Okay. All right.  15   ATTORNEY DENNISON:  16   And Denise, I'll ask you; is it all right  17   if we can sort of summarize those as being, in  18   paragraphs A and B, seven A and B of being the acute  19   cervical sprain/strain and also acute thoracic  20   sprain/strain?  21   ATTORNEY CUNEO:  22   Yes, but due to the location.  23   ATTORNEY DENNISON:  24   It's the same injury, okay.  25   BY ATTORNEY DENNISON:</p>	<p style="text-align: right;">Page 24</p> <p>1    pain.  2    Q. Okay. And did they discharge you to home then?  3    A. Yes.  4    Q. Okay. And how long were you in the emergency  5    room?  6    A. Maybe three hours.  7    Q. And then you were discharged to home; correct?  8    A. Yes.  9    Q. Now have you ever been hospitalized as an  10   inpatient for any injury that you associate with this  11   accident?  12   A. No.  13   Q. Then, I'll show you, this is number two and this  14   is a record of the emergency room on the day of the  15   accident.  16   (Deposition Exhibit Two marked for  17   identification.)  18   BY ATTORNEY DENNISON:  19   Q. And if you look on page number two down there  20   under 1613 it says differential diagnosis, it says,  21   cervical, thoracic spine fracture or sprain/strain;  22   correct?  23   A. Yes.  24   Q. And you were eventually determined to have just a  25   strain or a sprain; correct?</p>
<p style="text-align: right;">Page 23</p> <p>1    Q. Now, in this report, you can take a look there.  2    It says, Plaintiff was 28-year-old female with a chief  3    complaint of neck and chest pain, okay? Did you see  4    that?  5    A. Uh-huh (yes).  6    Q. All right. And would you agree with that  7    statement?  8    A. Yes.  9    Q. Okay. Then later on down, it does say, it says  10   patient has pain in lower, in lower -- or PMS in  11   lower extremities with pain on palpitation of both  12   knees; do you see that?  13   A. Yeah.  14   Q. Okay. But your chief complaint was to the neck,  15   and then it also says chest.  16   A. Yeah.  17   Q. All right. We'll talk about the chest pain a  18   little bit later then. So you went to the emergency  19   room and they performed some x-rays and other  20   diagnostic tests?  21   A. Yes.  22   Q. Okay. And what happened after -- what happened  23   at the conclusion of their treatment at the ER on the  24   day of the accident?  25   A. They just relatively concentrated on the neck.</p>	<p style="text-align: right;">Page 25</p> <p>1    A. Yes.  2    Q. Apparently you do have an old compression  3    fracture? You didn't know that?  4    A. I guess. I never knew that.  5    Q. But the injury that we're talking about here is a  6    sprain/strain; correct?  7    A. Yeah.  8    Q. Now, it doesn't look like you really had much  9    treatment on your knees on the day of the accident?  10   A. They cut my pants and looked at them and moved  11   them, and they worried about the neck.  12   Q. Okay. All right. And then the next page, it  13   says; impression with neck and back pain, patient  14   discharged home and improve conditions with  15   instructions on back pain; correct?  16   A. Yes.  17   Q. Okay. And here's number three and these are the  18   medical records that your attorney gave to me. In  19   fact, all these records that I've shown you thus far,  20   your attorney gave to me. And this is from Renee  21   Allenberg, MD.  22   (Deposition Exhibit Three marked for  23   identification.)  24   A. Allenbaugh.  25   BY ATTORNEY DENNISON:</p>

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<p>1 trying to get the timeline down.</p> <p>2 BY ATTORNEY DENNISON:</p> <p>3 Q. Okay. When you went back to work in March of</p> <p>4 2006, your cervical thoracic strain did not prevent</p> <p>5 you from returning to work on a full-time basis; is</p> <p>6 that correct?</p> <p>7 A. Yes.</p> <p>8 Q. So you were able to lift patients and do all the</p> <p>9 things that you had done prior to the accident?</p> <p>10 A. Yes, with general pain but I could still do it.</p> <p>11 Q. All right. So you were able to do it but you were</p> <p>12 still having some pain?</p> <p>13 A. Yeah.</p> <p>14 Q. Okay. And, if you were able to --- strike that.</p> <p>15 Lifting patients can be pretty heavy work;</p> <p>16 correct?</p> <p>17 A. Yeah.</p> <p>18 Q. So if you were able to lift patients by March of</p> <p>19 2006, would it be a fair statement that you were able</p> <p>20 to lift your own children and perform all of the</p> <p>21 routine work around the house that you would normally</p> <p>22 have done prior to the time of the accident?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Did you ever take any medication for pain</p> <p>25 with respect to your neck?</p>	<p>1 Q. Okay. Did your acute chest contusion prevent you</p> <p>2 from doing anything that you wanted to do?</p> <p>3 A. No.</p> <p>4 Q. Did you ever have any treatment on your chest</p> <p>5 contusion?</p> <p>6 A. No.</p> <p>7 Q. Did you know you had a contusion because it hurt</p> <p>8 or could you actually see a bruise, too?</p> <p>9 A. You could see a bruise and it hurt.</p> <p>10 Q. All right. And again, that cleared within days or</p> <p>11 weeks after the accident?</p> <p>12 A. Yeah.</p> <p>13 Q. Okay. Now, we're going to talk about your left</p> <p>14 knee, but prior to doing that under number F, you say;</p> <p>15 shock to your nerves and nervous system; do you know</p> <p>16 what that means?</p> <p>17 A. Well, just the force basically, I guess.</p> <p>18 Q. Was there a side --- and we're going to talk about</p> <p>19 your left knee. Was there any other injury that you</p> <p>20 sustained in this accident though that we haven't</p> <p>21 talked about?</p> <p>22 A. No.</p> <p>23 Q. Okay. So the shock to nerves and nervous system</p> <p>24 is not a separate injury that we need to talk about</p> <p>25 then, correct?</p>
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<p>1 A. Other than what they gave me, no.</p> <p>2 Q. Just at the emergency room that night?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So they gave you some pain pills in the</p> <p>5 emergency room on the night of the accident; correct?</p> <p>6 A. Yeah.</p> <p>7 Q. But you never took any pain medication that Dr.</p> <p>8 Allenbaugh prescribed?</p> <p>9 A. To be honest, I never take them.</p> <p>10 Q. All right. So aside from the medication that you</p> <p>11 took for pain on the night of the accident or in the</p> <p>12 next couple of days after it ran out, you have not</p> <p>13 taken any other medication for pain?</p> <p>14 A. Nothing that they've prescribed, over-the-counter</p> <p>15 maybe, ibuprofen.</p> <p>16 Q. Now in March of 2006, how often would you take</p> <p>17 that for your neck, thoracic pain?</p> <p>18 A. Maybe once per day.</p> <p>19 Q. Now, in your complaint, you talk about an acute</p> <p>20 chest contusion?</p> <p>21 A. Well, they thought it was from the seatbelt.</p> <p>22 Q. All right. Can we agree that that's something</p> <p>23 that would have resolved itself within a matter of</p> <p>24 days or weeks after the accident?</p> <p>25 A. Yes.</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. Sometimes attorneys just throw that in</p> <p>3 there, you know, just as a general statement. So I</p> <p>4 was just trying to clarify that so --. Okay. Now,</p> <p>5 we know on the day of the accident that the ambulance</p> <p>6 people talked about the fact that you would have pain</p> <p>7 in both knees upon palpation. Do you know what</p> <p>8 palpation means?</p> <p>9 A. No.</p> <p>10 Q. Just sort of --- touching. Okay. Then you</p> <p>11 mention the problems with your knees in the emergency</p> <p>12 room; right?</p> <p>13 A. Yes.</p> <p>14 Q. Because we discussed that, okay. After you left</p> <p>15 the emergency room, were you still having problems</p> <p>16 with your knees?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Both knees or just the left knee?</p> <p>19 A. Just the one.</p> <p>20 Q. Because in the emergency room report it talks</p> <p>21 about --- or in the ambulance report it talks about</p> <p>22 both knees. Could we agree then that within a very</p> <p>23 short period of time, your right knee stopped</p> <p>24 bothering you?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 38</p> <p>1 A. Two days.</p> <p>2 Q. Okay. So does that mean that you made the 3 appointment with Dr. Johe on October 17th, 2006?</p> <p>4 A. I'm unsure of the day, but I could find it 5 out --- but ---.</p> <p>6 Q. Why don't you look at also, Defendant's Exhibit 7 Number Six and why don't you take a minute to read 8 that.</p> <p>9 (Deposition Exhibit Six marked for 10 identification.)</p> <p>11 A. Yes, two days after I fell in the bathroom I did 12 see Dr. Johe, but I scheduled the appointment before I 13 fell in the ER (sic). I'm guessing two days prior to 14 falling in the ER, I had scheduled the appointment.</p> <p>15 BY ATTORNEY DENNISON:</p> <p>16 Q. Okay. All right. And why did you schedule the 17 appointment?</p> <p>18 A. Because the pain --- I mean, it was just always 19 there like a toothache and I wanted to know what was 20 wrong with it.</p> <p>21 Q. And apparently, we know for a fact that you did 22 have a problem with your left knee 12 years prior; 23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And I guess you used the term that you broke your</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes.</p> <p>2 Q. All right. Were you able to walk out of the 3 emergency room that night?</p> <p>4 A. Barely, but I did.</p> <p>5 Q. So they didn't give you crutches or anything?</p> <p>6 A. No.</p> <p>7 Q. So then you saw Dr. Johe two days later? Now, in 8 Dr. Johe's report, which is Exhibit Number Six, it 9 says, she had an MRI done of her knees at Elk Regional 10 Health Care on October 20, 2006?</p> <p>11 A. Yeah.</p> <p>12 Q. Okay. You didn't have an MRI done at DRMC then?</p> <p>13 A. No.</p> <p>14 Q. From the time of the accident until you had this 15 MRI done --- well, strike that.</p> <p>16 The MRI that you had done on October 20, 2006, was 17 that the only MRI since the time of the accident that 18 you had taken then?</p> <p>19 A. Yes.</p> <p>20 Q. And you were off work then for three months after 21 your surgery?</p> <p>22 A. Yes.</p> <p>23 Q. And your surgery was on November 1st, 2006?</p> <p>24 A. Yes.</p> <p>25 Q. So you would have been off all of November, all of</p>
<p style="text-align: right;">Page 39</p> <p>1 knee?</p> <p>2 A. I think, he at that time, called it 3 fractured/dislocated.</p> <p>4 Q. Okay. And I know you did it in a cheerleading 5 accident; can you tell me what happened?</p> <p>6 A. I was just up in a pyramid and I fell.</p> <p>7 Q. The base collapsed or something?</p> <p>8 A. Yeah.</p> <p>9 Q. Okay. And tell me exactly what happened to your 10 knee in that fall.</p> <p>11 A. Basically, my legs come down like an Indian style 12 kind of, in a way, and the knee just kind of flopped 13 that way.</p> <p>14 Q. Now, what was your specific diagnosis then, 12 15 years ago?</p> <p>16 A. Just a fracture and dislocated.</p> <p>17 Q. Did you tear any ligaments or anything?</p> <p>18 A. No.</p> <p>19 Q. Do you know what the meniscus is?</p> <p>20 A. Yes.</p> <p>21 Q. And 12 years ago did they talk about your injuring 22 the meniscus in your left knee?</p> <p>23 A. No.</p> <p>24 Q. I noticed they diagnosed it as at least a bruise 25 by way of the emergency room report?</p>	<p style="text-align: right;">Page 41</p> <p>1 December and January?</p> <p>2 A. Yes.</p> <p>3 Q. All right. And you were able to then return to 4 work on a full-time basis?</p> <p>5 A. Yes.</p> <p>6 Q. And at that point were you then able to perform 7 all of the work that was required of you?</p> <p>8 A. Yes.</p> <p>9 Q. And again, that would be helping all of these 10 patients with their activities of daily living?</p> <p>11 A. Yes.</p> <p>12 Q. Which would include --- you know, helping them 13 walk, lifting them out of the bed?</p> <p>14 A. Yes.</p> <p>15 Q. Now I know that you were able to --- by your 16 testimony that you were able to go back to work on a 17 full-time basis; how soon after that accident were you 18 able to perform all of your normal household duties?</p> <p>19 A. Probably about three months.</p> <p>20 Q. Okay. And after you returned to work then, three 21 months after the surgery; you were able to walk 22 without any problems?</p> <p>23 A. Yes.</p> <p>24 Q. Now this report was dated April 2nd, 2007 from Dr. 25 Johe, and he at that point --- he said, currently she</p>

1 ATTORNEY CUNEO:  
2 We'll waive.  
3 ATTORNEY DENNISON:  
4 Yeah, Melanie will waive, too, then.  
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8 DEPOSITION CONCLUDED AT 12:20 P.M.

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<p><b>80</b> 15:9</p> <hr/> <p style="text-align: center;"><b>9</b></p>			
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<p><b>95</b> 9:5 <b>96</b> 10:5</p>			
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HEIDI FENTON, and : IN THE COURT OF COMMON PLEAS  
BRIAN FENTON, her husband : OF CLEARFIELD COUNTY,  
Plaintiffs : PENNSYLVANIA  
:  
:  
v. : CIVIL ACTION - LAW  
:  
:  
MELANIE F. FRANK, :  
Defendant : No. 08-187 CD

**PROPOSED ORDER**

AND NOW, upon consideration of the Plaintiffs' Reply to Defendant's Objections to  
Testimony of Dr. David H. Johe, said Defendant's Objections are DENIED.

---

J.

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

HEIDI FENTON and BRIAN  
FENTON, her husband,

Plaintiffs / No. 2008-187-CD

vs.

MELANIE F. FRANK

Defendants /

**OPINION**

On February 12, 2006, Defendant Ms. Frank allegedly failed to stop at a stop sign at the intersection of Sher-Di-Lin Road and State Route 255 in Sandy Township, Clearfield County, and collided with a vehicle operated by Plaintiff Husband Brian Fenton. Plaintiff Wife Heidi Fenton was a restrained passenger in the front seat of her husband's vehicle, and she sustained injuries in the accident. Ms. Fenton and her husband had elected the limited tort option in their automobile insurance. The Plaintiffs are now suing Ms. Frank for economic losses, such as medical bills, and for various non-economic losses, including pain and suffering, loss of quality of life, and loss of consortium.

The Defendant moved for partial summary judgment on the grounds that the election of the limited tort option precluded the Plaintiffs from recovering for the non-economic losses suffered by Plaintiffs. This Court denied that motion by way of its Order of December 19, 2008. The Plaintiff's medical expert, Dr. David Johe, was deposed on videotape on February 19, 2009; the Defendant has filed a motion raising three objections to Dr. Johe's testimony. For the following reasons, this Court hereby OVERRULES the objections.

**FILED**

01400501  
S JUL 14 2009

William A. Shaw  
Prothonotary/Clerk of Courts

2008 Atty: Curro  
Dennison (60)  
cc: D. Mikesell  
Law Library

Section 1705 of the Motor Vehicle Financial Responsibility Law (“MVFRL”), 75 Pa. Cons. Stat. §§ 1701 et seq., delineates the differences between the “limited tort” and “full tort” automobile insurance options available in the Commonwealth. Individuals with limited tort coverage may recover economic losses resulting from an accident, but (subject to a few inapplicable exceptions) “[u]nless the injury sustained is a serious injury, each person who is bound by the limited tort election shall be precluded from maintaining an action for any noneconomic loss, …” § 1705(d). A “serious injury” is defined in section 1702 as a “personal injury resulting in death, serious impairment of body function or permanent serious disfigurement.” The threshold determination of whether an injury is serious, thus getting past the limited tort bar, is left to the jury in all but the clearest of cases. Washington v. Baxter, 553 Pa. 434, 446, 719 A.2d 733, 740 (1998). To determine whether “serious impairment of body function” has occurred, two inquiries are necessary: what body function was impaired, and was this impairment serious? Id. Several factors are identified to aid in determining that second question, including the extent and temporal length of the impairment, treatment required, and any other relevant factors. Id.

Plaintiff Wife has not died, nor is it alleged that she suffers from permanent disfigurement. The only way that Plaintiff Wife can defeat the limited tort bar and recover for her non-economic damages is by satisfying the definition of “serious injury” via “serious impairment of body function.” She attempts to do so with the testimony of Dr. Johe, who testified in his videotape deposition that Plaintiff Wife “will develop [osteoarthritis]” in her knee. Transcript of Videotape Deposition of David H. Johe 02/19/09 at 15. Dr. Johe was unable to predict an exact time when Plaintiff Wife would develop this osteoarthritis, but testified that it was his opinion within a reasonable degree of medical certainty that such a

problem will develop. Id. at 15, 18.

The basis of all three of the Defendant's objections is the "future problems" which will develop in Plaintiff Wife's knee. Defendant argues that, because "future problems" are not one of the enumerated factors in Washington, *supra*, it cannot possibly qualify as a serious injury. Defendant suggests a reading of Washington that is too narrow; our Supreme Court specifically left the inquiry into serious impairment of body function somewhat open by mandating the consideration of "any other relevant factors." 553 Pa. at 446, 719 A.2d at 740. As the determination of whether the Plaintiff has suffered a serious injury is reserved for the jury, the jury should be able to consider whether the certain development of osteoarthritis is a sufficient "other relevant factor" in order to find that the Plaintiff Wife suffered a serious injury.

**ORDER**

NOW, this 14th day of July, 2009, consistent with the foregoing opinion, it is the ORDER of this court that Defendant Melanie F. Frank's Objections to Testimony of Dr. David H. Johe be and hereby are OVERRULED.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED

AUG 21 2009

11:25 AM

William A. Shaw  
Prothonotary/Clerk of Courts

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COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

HEIDI FRANK and  
BRIAN FRANK,

Plaintiffs,

vs.

MELANIE F. FRANK,

Defendant.

CIVIL ACTION - LAW

Number 187 of 2008 C.D.

Type of Case: Civil Division

Type of Pleading: Praeclipe to Discontinue

Filed on behalf of: Plaintiffs

Counsel of Record for this Party:

Denise M. Cuneo  
Supreme Court Number: 80124

Nicholas, Perot, Smith, Koehler & Wall  
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Erie, PA  
(814) 833-8851

HEIDI FRANK and  
BRIAN FENTON,  
Plaintiffs,

vs.

MELANIE F. FRANK,

Defendant.

- \* In the Court of Common Pleas of
- \* Clearfield County, Pennsylvania
- \*
- \* Civil Action - Law
- \*
- \*
- \*
- \*
- \* Number 187 of 2008 C.D.

**PRAECIPE TO DISCONTINUE**

TO WILLIAM A. SHAW, PROTHONOTARY:

You are hereby directed to mark the above captioned matter "settled, discontinued and ended with prejudice".

NICHOLAS, PEROT, SMITH, KOEHLER & WALL, PC

By Denise M. Cuneo  
Denise M. Cuneo  
Attorneys for Plaintiffs

**FILED**

**AUG 24 1968**

William A. Clegg  
Prothonotary/Clerk

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