08-337-CD
Nationwide Mut. Vs A. Jackson

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendant.

CIVIL ACTION

No. 08-337-CD

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

Filed on behalf of Defendant:
ANTHONY B. JACKSON, incorrectly identified as ANDREW B. JACKSON

Counsel of Record for this Party:

Susan D. Garrard, Esquire
Pa. I.D. #73727

LAW OFFICE OF JOSEPH S. WEIMER
Firm #301

975 Two Chatham Center
Pittsburgh, PA 15219

412-338-3245
412-471-8748(fax)
sdgarrar@travelers.com

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff/Respondent,	No. 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendant.	

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

AND NOW comes the Defendant, ANTHONY B. JACKSON, incorrectly identified as ANDREW B. JACKSON, by and through his attorneys, SUSAN D. GARRARD, ESQUIRE and the LAW OFFICE OF JOSEPH S. WEIMER, and hereby files the following Preliminary Objections to the Plaintiff's Complaint and avers as follows:

1. This cause of action surrounds an automobile accident which allegedly occurred on December 9, 2006.

2. Plaintiff filed a Complaint on February 28, 2008 seeking recovery for damages for property damages as a result of the allegedly negligent actions of both Defendants. See Plaintiff's Complaint attached as Exhibit "A".

3. Plaintiff attempted to serve the Complaint and was unable to do so. According to the docket, he reinstated the Complaint 13 months later on April 13, 2009 (4 months and 4 days after the statute of limitations expired). The docket does not reflect any attempts at service.

4. Plaintiff again reinstated the complaint nine months later on January 21, 2010 (13 months and 12 days after the statute of limitations expired) and again, there are no attempts at service reflected on the docket.

5. Plaintiff has failed to achieve service on Defendant in accordance with the Pennsylvania Rules of Civil Procedure and Pennsylvania case law establishing that a good faith effort at service must be demonstrated.

6. Plaintiff then waited another 8 months before he filed a Petition for alternative service on August 16, 2010, three years and eight months after the accident and one year and eight months after the statute of limitations had run. See copy of docket attached as Exhibit "B".

7. Plaintiff alleges that service was made on the Defendant, Andrew Jackson, on September 2, 2010. See Plaintiff's "Affidavit of Service" attached as Exhibit "C". No green card of other evidence of service is attached to the affidavit in violation of the Rules of Civil Procedure.

8. Despite repeated requests for a copy of the actual green card associated with the certified mail that was allegedly accepted by Mr. Jackson and copies of the letters directed to Mr. Jackson, Plaintiff's counsel has provided no documents in response to these repeated requests. See correspondence dated February 25, 2011 directed to Plaintiff's counsel attached as Exhibit "D". The letter was only one form of communication with plaintiff's counsel. Multiple messages were left for plaintiff's secretary/paralegal regarding the request for proof of service.

9. The statute of limitations for a negligence action is two years from the date of accident. In this case, the statute of limitations would have run on December 9, 2008.

10. Defense counsel entered their appearance after a claims adjuster who handled a personal injury suit arising out of the same accident received notice of the Petition for Non Pros filed by Co-defendant.

11. Anthony Jackson has never been served with a Complaint, Writ of Summons or other document in this action by certified mail, regular mail or any other form.

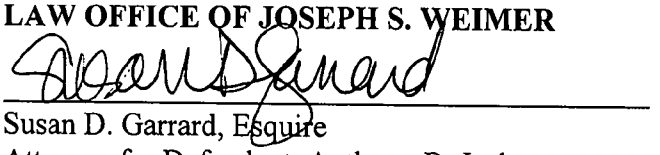
12. Due to the fact that service was not accomplished within the appropriate statute of limitations, Plaintiff's Complaint must be dismissed as the applicable statute of limitations clearly has expired.

13. Defendant files these Preliminary Objections asking that the Court dismiss the Complaint with prejudice for failure to state a cause of action upon which relief may be granted.

WHEREFORE, Defendant, Anthony B. Jackson, incorrectly identified as Andrew B. Jackson, respectfully requests the Court sustain its Preliminary Objections and dismiss Plaintiff's Complaint as the statute of limitations clearly bars any suit by Plaintiff in accordance with the attached Order of Court.

Respectfully submitted,

LAW OFFICE OF JOSEPH S. WEIMER

BY: 

Susan D. Garrard, Esquire
Attorney for Defendant, Anthony B. Jackson

CERTIFICATE OF SERVICE

I, SUSAN D. GARRARD, ESQUIRE, do hereby certify that I have mailed a true and correct copy of the within Preliminary Objections to Plaintiff's Complaint by first class-mail, postage pre-paid, to the following on the 5th day of April, 2011:

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 West Market Street, Suite 2
West Chester, PA 19382
(Attorney for Plaintiff)

James R. Hankle, Esquire
Sherrard German & Kelly P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222
(Attorney for Defendant, Virgil J. Flannery)

LAW OFFICE OF JOSEPH S. WEIMER

BY: Susan D. Garrard

Susan D. Garrard, Esquire
Attorney for Defendant, Anthony B. Jackson

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Nationwide Mutual Insurance Company A/S/O Charles Lepinski
(Plaintiff)

1100 Locust, Dept. 5595
(Street Address)

Des Moines, IA 50391-5595
(City, State ZIP)

CIVIL ACTION

No. 08-337-CD

Type of Case: Negligence

Type of Pleading: complaint

VS.

Filed on Behalf of:
Plaintiffs
(Plaintiff/Defendant)

Audrey R. Jackson
(Defendant)

6658 East 45th Street
(Street Address)

Indianapolis, IN 46220
(City, State ZIP)

AND
Virgil J. Flannery
11705 Trotter Road
Argyle, WI 53504

Paul J. Hennessy, Esquire
(Filed by)

142 West Market Street, Suite 2
(Address)
West Chester, PA 19382
610-431-2727
(Phone)

Paul J. Hennessy
(Signature)

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

FEB 27 2008

Attest. Prothonotary/ Clerk of Courts

EXHIBIT
A
ALL-STATE LEGAL®

Paul J. Hennessy, Esquire
Hennessy & Walker Group
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Nationwide Mutual Insurance Company A/S/O Charles Lepinski 1100 Locust, Dept. 5595 Des Moines, IA 50391-5595	: In The Court of Common Pleas : Clearfield County, Pennsylvania
vs.	: Civil Action Law
Andrew B. Jackson 6658 East 45th Street Indianapolis, IN 46226 AND Virgil J. Flannery 11705 Trotter Road Argyle, WI 53504	: No:

NOTICE

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

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

David S. Meholick, Court Admin.
Clearfield County Courthouse
Clearfield, PA 16830
814-463-2641 ext. 5982

AVISO

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

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por teléfono a la oficina cuya dirección se encuentra encontrada escrita abajo para averiguar dónde se puede conseguir asistencia legal.

David S. Meholick, Court Admin.
Clearfield County Courthouse
Clearfield, PA 16830
814-463-2641 ext. 5982

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396 Attorney for Plaintiffs

Nationwide Mutual Insurance Co A/S/O Charles Lepinski 1100 Locust Dept 5595 Des Moines, IA 50391-5595	: In The Court of Common Pleas : Clearfield County, Pennsylvania
VS	: Civil Action Law
Andrew B. Jackson 6658 E. 45th Street Indianapolis, IN 46226 AND Virgil J. Flannery 11705 Trotter Road Argyle, WI 53504	: No

COMPLAINT

1. Plaintiff Nationwide Mutual Insurance Co is an insurance company licensed and authorized to conduct business in the Commonwealth of Pennsylvania and having as one of its principal places of business the above captioned address.

2. Charles Lepinski is an adult individual insured with Nationwide Mutual Insurance Co.

3. Defendant Andrew B. Jackson is an adult individual who resides at the above captioned address.

4. Defendant Virgil J. Flannery is an adult individual who resides at the above captioned address.

5. On or about 12/09/2006 Plaintiff Nationwide Mutual Insurance Co insured Charles Lepinski with a personal auto policy, policy number ACPBA7102315948 said policy covering a 1998 Kenworth T-600 tractor trailer.

6. Charles Lepinski was insured by the Plaintiff Nationwide Mutual Insurance Company with an inland marine policy of insurance, under policy # 22D34631 on December 9, 2006.

7. On or about 12/09/2006, Defendant Andrew Jackson was operating a 1997 Freightliner XL FS65 bearing IN tag # 0264108 registered to same.

8. On or about 12/09/2006 at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania Defendant Andrew Jackson while operating the aforesaid 1997 Freightliner did negligently, carelessly and/or recklessly, strike/collide into Plaintiff's insured's 1998 Kenworth tractor trailer, being lawfully operated by Lancelot E. Furber causing extensive damages to same.

9. On or about 12/09/2006 at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania, the Defendant Virgil J. Flannery operating a 2007 Pierce Quantum, WI tag # MV8331DT did negligently strike the Plaintiff's vehicle.

10. The negligence of the Defendants consisted of:

a) operating vehicle at a speed unsafe for conditions;
b) being inattentive;
c) failing to maintain proper lookout;
d) failing to maintain control of said vehicle so as to be able to stop within the assured clear distances ahead;
g) failing to take the proper safety precautions;
h) following too closely;
i) failing to warn Plaintiff;
j) failing to give due regard to the right, safety, point and position of plaintiffs property

11. The aforesaid collision resulted solely from the negligent acts and/or failure to act on part of Defendants named herein and was due in no manner whatsoever to any act and/or failure to act on part of Plaintiff's insured.

12. As a result of the aforesaid collision, Plaintiff's insured's vehicle sustained extensive damages to same.

13. Pursuant to the aforesaid policy of insurance, Plaintiff Nationwide Mutual Insurance Co settled the claims of its insured Charles Lepinski in the amount of $34,024.65, (said figure includes Plaintiff's trailer damage in the amount of $23,724.80 and Plaintiff's equipment damage in the amount of $10,300.00) representing fair and reasonable reimbursement for the damages sustained.

14. Pursuant to the aforesaid policy of insurance, Plaintiff Nationwide Mutual Insurance Co is subrogated to Charles Lepinski for this loss.

WHEREFORE, Plaintiff's demand judgment against Defendants, Andrew B. Jackson and Virgil J. Flannery , jointly and severally in the amount of $34,024.65 together plus costs, interest and such other relief this Court finds equitable and just.

Paul J. Hotoczy, Esq.

NATI-1330

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF CHESTER : ss

The undersigned verifies that the facts contained herein are true and correct.

The undersigned understands that false statements herein are made subject to the penalties of 19 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

If applicable, this affidavit is made on behalf of the Plaintiff(s); that the said Plaintiff(s) is/are unable and unavailable to make this verification on its/his/her own behalf within the time allotted for filing of this pleading, and the facts set forth in the foregoing pleading are true and correct to the best of counsel's knowledge, information and belief.

This verification is made pursuant to Pa. R.C.P. 1024 and is based on interviews, conferences, reports, records and other investigative material in the file

Paul J. Hennessy, Esquire

Dated: 2/25/08

Clearfield County Court of Common Pleas

ROA Report

Case: 2008-00337-CD

Current Judge: Fredric Joseph Ammerman

User: BHUDSON

Nationwide Mutual Insurance Company, et alvs.Andrew B. Jackson, et al

CIVIL ACTION

Date		Judge
2/27/2008	New Case Filed.	No Judge
	Filing: Civil Complaint Paid by: Hennessy, Paul J. (attorney for Nationwide Mutual Insurance Company) Receipt number: 1922843 Dated: 02/27/2008 Amount: $95.00 (Check) 3CC Atty Hennessy	No Judge
	Case Filed.	No Judge
3/24/2008	Entry of Appearance, filed by Atty. Hankle Enter appearance on behalf of Defendant Virgil J. Flannery.	No Judge
4/7/2008	Answer, New Matter, and New Matter Pursuant to Pa. R.C.P. 2252(d), filed by s/ James R. Hankle, Esquire. no CC	No Judge
7/18/2008	Motion to Compel Discovery, filed by s/ James R. Hankle, Esquire. no CC	No Judge
7/23/2008	Order, this 22nd day of July, 2008, upon consideration of the Motion to Compel Discovery Responses, it is Ordered that said Motion is Granted. Plaintiff shall provide full and complete Answers and Responses to Defendant's First Set of Interrogatories and First Request for Production of Documents within 20 days from the date of this Order or suffer further sanctions as this Court may deem just and proper. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hankle	Fredric Joseph Ammerman
3/2/2009	Plaintiffs Response to New Matter of Defendant Virgil J. Flannery, filed by s/ Paul J. Hennessy, Esquire. no CC	No Judge
4/13/2009	Filing: Reinstate Complaint Paid by: Hennessy, Paul J. (attorney for Nationwide Mutual Insurance Company) Receipt number: 1928964 Dated: 4/13/2009 Amount: $7.00 (Check) For: Nationwide Mutual Insurance Company (plaintiff). Filed by s/ Paul J. Hennessy, Esquire. 2CC & 2 Compl. Reinstated to Atty.	No Judge
1/21/2010	Filing: Reinstate Complaint Paid by: Hennessy, Paul J. (attorney for Nationwide Mutual Insurance Company) Receipt number: 1933064 Dated: 1/21/2010 Amount: $7.00 (Check) For: Nationwide Mutual Insurance Company (plaintiff) filed by s/ Paul J. Hennessy, Esquire. 2CC & 2 Compl. Reinstated to Atty.	No Judge
8/16/2010	Motion For Alternative Service, filed by s/ Paul J. Hennessy, Esquire. 1CC Atty. Hennessy	No Judge
8/17/2010	Order, this 17th of Aug., 2010, Plaintiffs shall be permitted to serve the Defendant, Andrew B. Jackson a/k/a Anthony B. Jackson by certified and regular mail to 6658 East 45th St., Indianapolis, IN 46226. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hennessy	Fredric Joseph Ammerman
8/27/2010	Filing: Praecipe to Reinstate. Paid by: Hennessy, Paul J. (attorney for Nationwide Mutual Insurance Company) Receipt number: 1936405 Dated: 8/27/2010 Amount: $7.00 (Check) For: Nationwide Mutual Insurance Company (plaintiff) 2CC & 2 reinstated complaints to Atty.	Fredric Joseph Ammerman
11/17/2010	Praecipe for Argument/Scheduling Order, filed by s/ James R. Hankle, Esq. 1CC Atty.	Fredric Joseph Ammerman
	Petition For Entry of Judgment of Non Pros, filed by s/ James R. Hankle, Esq. 1CC Atty.	Fredric Joseph Ammerman
11/18/2010	Praecipe for Argument/Scheduling Order, NOW, this 17th of Nov., 2010, argument/hearing on Petition for Entry of Judgment of Non Pros is scheduled for the 17th of Dec., 2010, at 2:00 p.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hankle	Fredric Joseph Ammerman

ALL-STATE LEGAL®
EXHIBIT
B

Clearfield County Court of Common Pleas

ROA Report

Case: 2008-00337-CD

Current Judge: Fredric Joseph Ammerman

Nationwide Mutual Insurance Company, et alvs.Andrew B. Jackson, et al

CIVIL ACTION

Date		Judge
12/13/2010	Affidavit of Service filed. That on September 2, 2010 Plaintiff did send a true and correct copy of the Complaint to defendant by regular and certified mail, filed by s/ Paul J. Hennessy Esq. 2CC Atty Hennessy	Fredric Joseph Ammerman
12/16/2010	Motion For Continuance, filed by s/ Paul J. Hennessey, Esq. 1CC Atty. Hennessy	Fredric Joseph Ammerman
	Response to Motion for Continuance, filed by s/ Christopher J Davis, Esq. 1CC Atty. Davis	Fredric Joseph Ammerman
	Order this 16th day of December 2010 upon review and consideration of the Plaintiff's Motion for Continuance; it is the ORDER of this Court that argument scheduled for December 17, 2010 be and is hereby rescheduled to the 26th day of January 2011 at 10:00. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. Atty. P. Hennessy, J. Hankle and A. Jackson.	Fredric Joseph Ammerman
12/20/2010	Entry of Appearance, on behalf of Def., Andrew B. Jackson, enter appearance of Susan B. Garrard, Esq. No CC	Fredric Joseph Ammerman

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

DEC 27 2010

Attest.

Prothonotary/
Clerk of Courts

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396 Attorney for Plaintiff

Nationwide Mutual Insurance Company	: In the Court of Common Pleas
a/s/o Charles Lepinski	: Clearfield County, Pennsylvania
VS.	: Civil Action Law
Andrew B. Jackson et al	: NO: 08-337-CD

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA:
:
COUNTY OF CHESTER : ss.

Paul J. Hennessy, Esquire, being duly sworn according to law, deposes and says that on September 2, 2010 Plaintiff did send a true and correct copy of the complaint to Defendant by regular and certified mail, pursuant to the Court Order dated August 17, 2010.

Paul J. Hennessy
Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.

Sworn to and subscribed
before me this 10TH day
of DECEMBER, 2010.

NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Marise De Feo, Notary Public
Westtown Twp., Chester County
My Commission Expires March 31, 2014

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

DEC 13 2010

Attest. Prothonotary/ Clerk of Courts

LAW OFFICE OF
JOSEPH S. WEIMER
975 TWO CHATHAM CENTER
PITTSBURGH, PENNSYLVANIA 15219
(412) 338-3184
FAX (412) 471-8748

Writer's Direct Dial: (412) 338-3245

JOSEPH S. WEIMER
WALTER C. FADEREWSKI
DANIEL T. MOSKAL
F. DAVID DERMOTTA
MICHAEL E. RELICH
EDMOND R. JOYAL, JR.
SUSAN D. GARRARD
NADIA V. LAZO

COPY

February 25, 2011

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 West Market Street, Suite 2
West Chester, PA 19382

RE: Nationwide Mutual Insurance Company a/s/o Charles Lepinski v. Andrew B. Jackson and Virgil J. Flannery Clearfield County / No. 08-337-CD

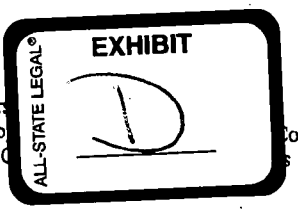
Dear Mr. Hennessy:

Enclosed please find a copy of the letter from Nationwide relative to this claim which indicates that American Equity Insurance was paying Nationwide, on behalf of its insured, Jackson, $18,594.50 which included your client's $1,000.00 deductible. It was for the damages and total loss settlement for the 1998 Kenworth Semi-Tractor only. According to the police report, my client's vehicle struck only the tractor and caused no damage to the trailer. American Equity accepted 100% liability for those damages. I also enclose for your review a copy of the check showing that it was cleared through the bank on April 26, 2007 in the amount of $18,594.50. It was made payable to Nationwide Insurance Company as subrogee of Charles Lepinski, the same party that you are representing in this suit for property damage.

According to the police report, Mr. Lepinski was struck in the driver side of the tractor of his vehicle by Mr. Jackson. The damage to the rear of his trailer was done by a different vehicle. I question whether or not your suit is redundant as your client has already been reimbursed for these damages.

Please advise as to your position with respect to the above.

In addition, as I advised, please forward copies of actual letters and pleadings you mailed to my client along with the green cards evidencing receipt of the correspondence and pleadings that you sent were received. In addition, if any envelopes were returned as unclaimed, please forward copies of them to my attention as well so that I can determine whether proper service has been effectuated. My paralegal advises she has left several letters with your secretary with no response and no documents received.



I look forward to hearing from you with respect to the above.

Very truly yours,

COPY

Susan D. Garrard

SDG/bjm
Enclosure
cc: James R. Hankle, Esquire
(w/enc.)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI, Plaintiff/Respondent, v. ANDREW B. JACKSON and VIRGIL J. FLANNERY, Defendant.	CIVIL ACTION No. 08-337-CD

ORDER OF COURT

AND NOW, this _____ day of _____, 2011, upon consideration of Defendant's Preliminary Objections to the Plaintiff's Complaint and its Brief in Support Thereof, it is hereby **ORDERED, ADJUDGED** and **DECREED** that Defendant's Preliminary Objections are sustained and Plaintiff's Complaint is dismissed with prejudice.

BY THE COURT:

_____J.

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendant.

CIVIL ACTION

No. 08-337-CD

PRAECIPE FOR ARGUMENT DATE

Filed on behalf of Defendant:
ANTHONY B. JACKSON, incorrectly identified as ANDREW B. JACKSON

Counsel of Record for this Party:

Susan D. Garrard, Esquire
Pa. I.D. #73727

LAW OFFICE OF JOSEPH S. WEIMER
Firm #301

975 Two Chatham Center
Pittsburgh, PA 15219

412-338-3245
412-471-8748(fax)
sdgarrar@travelers.com

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI, Plaintiff/Respondent, v. ANDREW B. JACKSON and VIRGIL J. FLANNERY, Defendant.	CIVIL ACTION No. 08-337-CD

PRAECIPE FOR ARGUMENT DATE

Please place Defendant's Preliminary Objections to Plaintiff's Complaint on the next available argument list.

Respectfully submitted,

LAW OFFICE OF JOSEPH S. WEIMER

BY: Susan D. Garrard

Susan D. Garrard, Esquire
Attorney for Defendant, Anthony B. Jackson

CERTIFICATE OF SERVICE

I, SUSAN D. GARRARD, ESQUIRE, do hereby certify that I have mailed a true and correct copy of the within Praecipe for Argument Date by first class-mail, postage pre-paid, to the following on the 5th day of April, 2011:

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 West Market Street, Suite 2
West Chester, PA 19382
(Attorney for Plaintiff)

James R. Hankle, Esquire
Sherrard German & Kelly P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222
(Attorney for Defendant, Virgil J. Flannery)

LAW OFFICE OF JOSEPH S. WEIMER

BY: Susan D. Garrard

Susan D. Garrard, Esquire
Attorney for Defendant, Anthony B. Jackson

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff/Respondent,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendant.

CIVIL ACTION

No. 08-337-CD

ORDER OF COURT

Argument is hereby scheduled on Defendant Jackson's Preliminary Objections to Plaintiff's Complaint before the Honorable Fredric J. Ammerman on the 9th day of June, 2011 in Courtroom 1, at 2:15 PM.

BY THE COURT:

BY: Fredric J. Ammerman J.

4/8/11

FILED 2cc
014:00BA
APR 08 2011 Atty Garrard
William A. Shaw
Prothonotary/Clerk of Courts

FILED

APR 08 2011

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/8/11

X You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED No cc.
m/11:50am
APR 18 2011
William A. Shaw
Prothonotary/Clerk of Courts

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendant.

CIVIL ACTION

No. 08-337-CD

MOTION TO CONTINUE ARGUMENT DATE

Filed on behalf of Defendant:
ANTHONY B. JACKSON, incorrectly identified as ANDREW B. JACKSON

Counsel of Record for this Party:

Susan D. Garrard, Esquire
Pa. I.D. #73727

LAW OFFICE OF JOSEPH S. WEIMER
Firm #301

975 Two Chatham Center
Pittsburgh, PA 15219

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JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff/Respondent,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendant.

CIVIL ACTION

No. 08-337-CD

MOTION TO CONTINUE ARGUMENT DATE

And now comes the Defendant Anthony B. Jackson, incorrectly identified as Andrew M. Jackson, by and through his attorneys, The Law Office of Joseph S. Weimer and Susan D. Garrard, and hereby files the following Motion to Continue Argument Date and avers as follows:

1. On April 5, 2011, Defendant filed Preliminary Objections to the Plaintiff's Complaint along with a Praecipe for Argument Date with the Court.

2. On April 12, 2011, Defendant received an Order scheduling the argument on Preliminary Objections for June 9, 2011 at 2:15 PM.

3. Defense Counsel has a conflict with another scheduled court appearance on that date and contacted Judge Ammerman's office on April 13, 2011 with respect to the conflict and an alternative date. Counsel was provided the date of May 19, 2011 at 2:30 PM.

4. Defense counsel contacted the attorneys of record on April 13, 2011 in order to determine whether the new date was amenable such that a motion to continue the argument could be forwarded to the court.

5. Counsel for Defendant Flannery had no objection to the proposed date of May 19, 2011.

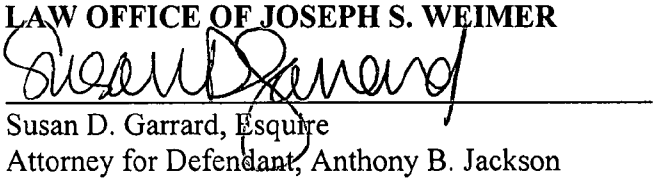
6. Counsel spoke with Terry of Attorney Hennessey's office on April 13, 2011, provided the new date and asked for a return call once the date was cleared. Defense counsel did not hear back and called again on April 14, 2011 and left a message for Terry with the same date asking for a call back.

7. As of the date of this Motion, Defense counsel has not heard from Plaintiff counsel's office with respect to a conflict with the proposed new date.

8. Defendant respectfully requests the Court grant the Motion to Continue and schedule argument on Defendant's preliminary Objections for May 19, 2011 at 2:30 PM in accordance with the attached Order of Court.

Respectfully submitted,

LAW OFFICE OF JOSEPH S. WEIMER

BY: 

Susan D. Garrard, Esquire
Attorney for Defendant, Anthony B. Jackson

CERTIFICATE OF SERVICE

I, SUSAN D. GARRARD, ESQUIRE, do hereby certify that I have mailed a true and correct copy of the within Motion to Continue Argument Date by first class-mail, postage pre-paid, to the following on the 15th day of April, 2011:

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 West Market Street, Suite 2
West Chester, PA 19382
(Attorney for Plaintiff)

James R. Hankle, Esquire
Sherrard German & Kelly P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222
(Attorney for Defendant, Virgil J. Flannery)

LAW OFFICE OF JOSEPH S. WEIMER

BY: Susan D. Garrard

Susan D. Garrard, Esquire
Attorney for Defendant, Anthony B. Jackson

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff/Respondent,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendant.

CIVIL ACTION

No. 08-337-CD

ORDER OF COURT

Argument is hereby scheduled on Defendant Jackson's Preliminary Objections to Plaintiff's Complaint before the Honorable Fredric J. Ammerman on the 19th day of May, 2011 at 2:30 PM in Courtroom 1.

BY THE COURT:

BY: Fredric J. Ammerman J.

4/19/11

FILED
APR 19 2011
William A. Shaw
Prothonotary/Clerk of Courts

5 cc Atty Gerrard

FILED

APR 19 2011

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/19/11

X You are responsible for serving all appropriate parties.

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

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

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street, Suite 2
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396 Attorney for Plaintiffs

Nationwide Mutual	: In The Court of Common Pleas
Insurance Company	: Clearfield County, Pennsylvania
a/s/o Charles Lepinski	: Civil Action Law
v.	: No. 08-337-CD
Andrew B. Jackson	
And	
Virgil J. Flannery	

Plaintiffs Reply to Defendant's Preliminary Objections
To Plaintiff's Complaint

1. Admitted.

2. Admitted.

3. Denied. Plaintiff attempted on numerous occassions to serve the Defendant Jackson at the eventual address of service 6658 E. 45th Street, Indianapolis, IN 46226, and made a diligent effort to locate an alternative address of service for the Defendant through in house, and private vendor investigative searches as demonstrated by exhibits "A" through "H" attached hereto. After confirming the Defendant's address was 6658 E. 45th Street, Indianapolis, IN 46226 through multiple sources, and determining that Defendant was avoiding service of Plaintiffs Complaint, the Plaintiffs petitioned the court to grant alternative service pursuant to Pennsylvania Rule of Civil Procedure 430, which was granted by the Court on August 17, 2010. The Defendant presents its preliminary objections in bad faith, any delay caused to the present matter was a result of Defendant evading service of Plaintiffs Complaint.

4. Denied. Plaintiff attempted on numerous occassions to serve the Defendant Jackson at the eventual address of service 6658 E. 45th Street, Indianapolis, IN 46226, and made a good faith effort to locate an alternative address of service for the Defendant through investigative search. After confirming the Defendant's valid address was 6658 E. 45th Street, Indianapolis, IN 46226, and the Defendant was avoiding service of Plaintiffs Complaint, the Plaintiffs petitioned the court to grant alternative service pursuant to Pennsylvania Rule of Civil Procedure, which was granted by the Court on August 17. 2010.
5. Denied. The Plaintiff has made a good faith effort to locate and serve the Defendant with Plaintiffs Complaint. To the contrary, the Defendant has acted in bad faith avoiding service of Plaintiffs Complaint. Numerous attempts were made at the evetual address of service. The Plaintiff has made a good faith effort to serve the Defendant with Plaintiffs Complaint, attempting to serve the Defendant at the eventual address of service on numerous occassions by certified mail and personal service. Plaintiffs verified the address of 6658 E. 45th Street, Indianapolis, IN 46226, The Defendant presents its preliminary objections to Plaintiffs Complaint with unclean hands as the Defendant avoided service of Plaintiffs Complaint. Any delay in effectuating service is a result of the Defendant avoiding service of Plaintiffs Complaint. Service was intially attempted upon the Plaintiff at the eventual address of service immediately after the initial filing of Plaintiffs Complaint.
6. Denied. Any delay of the present matter is a result of the Defendant avoiding and/or failing to accept service of Plaintiffs Complaint at the eventual address of service. Plaintiff attempted on numerous occassions to serve the Defendant Jackson at the at

6658 E. 45th Street, Indianapolis. IN 46226, and made a good faith effort to locate an alternative address of service for the Defendant through investigative searches. After confirming the Defendant's valid address was 6658 E. 45th Street, Indianapolis, IN 46226, and the Defendant was avoiding service of Plaintiffs Complaint, the Plaintiffs petitioned the court to grant alternative service pursuant to Pennsylvania Rule of Civil Procedure, which was granted by the Court on August 17. 2010. The Defendant presents its preliminary objections with unclean hands.

7. Denied. The averments contained in paragraph 7 of Defendant's preliminary objections contain conclusions of law to which no responsive pleading is required under Pennsylvania Rules of Civil Procedure. Absent the Court Order granting alternative service the Plaintiffs would be required pursuant to Pennsylvania Rule of Civil Procedure 404 to have the Defendant sign/accept the certfied mail addressed to his residence. However, pursuant to the Court Order of August 17, 2010, Plaintiffs were permitted to serve the Defendant Andrew B. Jackson a/k/a Anthony B. Jackson, who resided out of state by mailing the Complaint by regular and certified mail. The Defendant avoided service of Plaintiffs Complaint by failing to accept the certified mail address to his residence on numerous occassions, and the subsquent attempt by the process server the Plaintiffs were granted. The grant of the Court Order did not require the Defendant who was avoiding service of Plaintiffs Complaint to sign for the certfied mail.

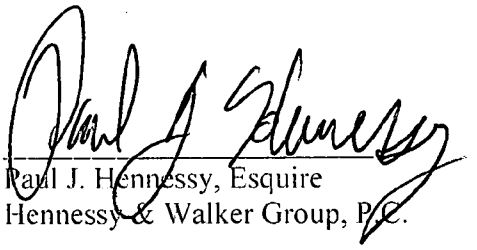
8. Denied. Plaintiffs provided Defendant with the proof of service, and advised Defense counsel the green card was not claimed or returned to Plaintiffs counsel. It is averred that the Defendant attempted to avoid service of Plaintiffs Complaint, as had been

done on previous attempts to effectuate service of Plaintiffs Complaint. Plaintiffs effectuated service pursuant to the Court Order of August 17, 2010, The Plaintiffs were not required to receive a return receipt signed by the Defendant to effectuate service pursuant to the Court Order for alternative service, as they were generally required under Pennsylvania Rules of Civil Procedure 404- Service Outside the Commonwealth. To the contrary Plaintiffs proceeded motioning for alternative service, because the Defendant refused to accept service of the Plaintiffs Complaint by certified mail. In addition, the regular mail sent to the Defendant at 6658 E. 45th Street, Indianapolis, IN 46226 was sent by first class regular mail postage pre-paid with return service requested was not returned to Plaintiff's counsel. Service of Plaintiffs Complaint was effectuated on September 2, 2010. Please see attached Exhibit "B."

9. Denied. Any delay of the present matter is a result of the Defendant avoiding and/or failing to accept service of Plaintiffs Complaint at the eventual address of service 6658 E. 45th Street, Indianapolis, IN 46226. The Plaintiffs filed the present matter in compliance with statute of limitations and made a good faith effort to locate the Defendant. The Defendant presents its preliminary objections with unclean hands.
10. Denied. Plaintiff is without sufficient information to form a belief as to the averments contained in paragraph 10 of Defendant's preliminary objections.
11. Denied. Service of Plaintiffs Complaint was effectuated on September 2, 2010, pursuant to Court Order of August 17, 2010 granting alternative service. A ture and correct copy of the affidavit of service is attached hereto as Exhibit "B."

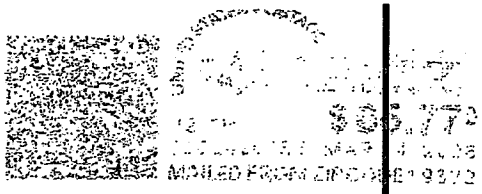
12. Denied. Any delay of the present matter is a result of the Defendant avoiding and/or failing to accept service of Plaintiffs Complaint at the eventual address of service 6658 E. 45th Street, Indianapolis, IN 46226. The Plaintiffs filed the present matter in compliance with statute of limitations and made a good faith effort to locate the Defendant. The Defendant presents its preliminary objections with unclean hands.
13. Denied. Plaintiffs Complaint contains a valid cause of action for negligence against the Defendant and was filed within the statutory period. Plaintiffs made a good faith effort to locate the Defendants. Any delay of the present matter is a result of the Defendant avoiding and/or failing to accept service of Plaintiffs Complaint at the eventual address of service 6658 E. 45th Street, Indianapolis, IN 46226. The Defendant presents its preliminary objections with unclean hands.

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally in the amount of $34,024.65 plus interests and costs.



Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.

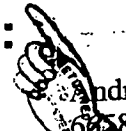
7007 3020 0001 8922 3068



HENNESSY & WALKER
142 West Market Street, Suite 2
West Chester, PA 19382

TO:
Andrew B. Jackson
6058 East 45th Street
Indianapolis, IN 46226

UNDELIVERABLE AS ADDRESSED



UNDELIVERABLE AS ADDRESSED

UNDELIVERABLE AS ADDRESSED

UTF 2052

PLAINTIFF'S EXHIBIT A

PLAINTIFF'S EXHIBIT B

tabbies

accessIndiana Indiana Secretary of State TODD ROKITA

Name Searched On:
TRIPLE X TRUCKING (Legal)

Current Information

Entity Legal Name:
TRIPLE X TRUCKING, INC.

Entity Address:
6658 E 45TH ST, INDIANAPOLIS, IN 46226

General Entity Information:

Control Number: **2006101900157**
Status: **Active**
Entity Type: **For-Profit Domestic Corporation**

Entity Creation Date: **10/18/2006**
Entity Date to Expire:
Entity Inactive Date:

This entity is past due on its Business Entity Report(s). Click here to file the Business Entity Report.

There are no other names on file for this Entity.

Registered Agent(name, address, city , state , zip):
ANTHONY B. JACKSON
6658 E 45TH ST
INDIANAPOLIS , IN 46226

Principals(name, address, city, state, zip - when provided)
ANTHONY B. JACKSON
Incorporator
6658 E 45TH ST
INDIANAPOLIS , IN 46226

Transactions:

Date Filed	Effective Date	Type
10/18/2006	10/18/2006	Articles of Incorporation

Corporate Reports:
Years Paid
N/A

Years Due
2008/2009

Additional Services Available:

GO Generate an official Certificate of Existence/Authorization.
There is a fee of $20.00 for *accessIndiana* subscribers and a fee of $21.42 for credit card users. Example Certificate

NEW SEARCH

All the entity information captured by the Indiana Secretary of State, pursuant to law, is displayed on the Internet. For further information, please call our office at 317-232-6576. Copies of actual corporate documents can also be downloaded online.

If you encounter technical difficulties while using these services, please contact the *accessIndiana* Webmaster.
If you are unable to find the information you need through the resources provided on this web site, please contact Secretary of State Todd Rokita's Business Services Division at 317-232-6576.

« Back to the SOS Web site

accessIndiana

Indiana Secretary of State
TODD ROKITA

Name Searched On:
TRIPLE X TRUCKING (Legal)

Current Information

Entity Legal Name:
TRIPLE X TRUCKING, INC.

Entity Address:
6658 E 45TH ST, INDIANAPOLIS, IN 46226

General Entity Information:

Control Number: **2006101900157**
Status: **Active**
Entity Type: **For-Profit Domestic Corporation**

Entity Creation Date: **10/18/2006**
Entity Date to Expire:
Entity Inactive Date:

This entity is past due on its Business Entity Report(s). Click here to file the Business Entity Report.

There are no other names on file for this Entity.

Additional Services Available:

GO	**View additional information for the entity**, Including **transaction history, merger information, registered agent, principals and corporate report information (years paid and years due).**
GO	**Generate an official Certificate of Existence/Authorization**. There is a total fee of $20.00 for *accessIndiana* subscribers and a fee of $21.42 for credit card users. Example Certificate. Please note that when an entity has a past due business entity report, the Certificate of Existence will indicate that the entity is not current. An entity is current if no reports are past due.
GO	**Generate Copies of Business Entity Documents.**
GO	**Request Information Printouts or Certificates.** There is no fee to place an order; however, you will be billed for any statutory fees associated with your order. View fee schedule View turn around time

PLAINTIFF'S EXHIBIT

tabbies

C

Consolidated report listing 1 Reports

Case Id	Order	Subject	Product	Status
22D353508A	1	JACKSON, ANDREW	MVR	Complete

Case Identifier: 22D353508A
Order: 1

JACKSON, ANDREW

Order Details How To Read

ChoicePoint Inc.

DRIVER RECORD INFORMATION obtained by ChoicePoint Inc. on customer's behalf from the motor vehicle records of the state/province of Indiana. Identification of driver is based on information submitted.

Name/Address
ANTHONY B JACKSON
6658 E 45TH ST
INDIANAPOLIS, IN 46226-3627

Quoteback
22D353508A [QB_3LCDNAHPP9J_1_1_N]

Driver License Number	Rpt Date	System Use	Account Number
8942762746	06/09/2010	000000000000000	710519

Social Security Number:
DMV Account Number: 0000

DOB	Sex	Hgt	Wt	Eyes	Hair	Requested as/Also Known As
05/09/1955	M	6'00	250	BRO	BLA	

DRIVER LICENSE INFORMATION

Class	Issued	Expire	Status	Restrictions
CHAUFFEUR			VALID	GLASSES OR CONTACT
A-CON,GCWR>26001			CDL:VALID	GLASSES OR CONTACT

MISCELLANEOUS AND STATE SPECIFIC INFORMATION

ORDERED AS: 8942762746
CURRENT POINTS: 00
DRIVER SAFETY PROGRAM (DSP) COMPLETED ON 7/22/2008 12:00:00 AM FOR 4 POINTS
ID CARD VOLUNTARILY SURRENDERED ON 5/6/2008 10:10:05 AM
LICENSE EFFECTIVE: 05/06/2008, RENEW CDL LICENSE, CDL CLASS A, ENDORSEMENTS: NT, RESTRICTIONS: A
DRIVER SAFETY PROGRAM (DSP) COMPLETED ON 12/28/2005 FOR 4 POINTS
LICENSE EFFECTIVE: 05/07/2004, RENEW ID CARD, REGULAR ID CARD, ENDORSEMENTS: NONE, RESTRICTIONS: A
LICENSE EFFECTIVE: 05/07/2004, RENEW LICENSE, CDL CLASS A, ENDORSEMENTS: NT, RESTRICTIONS: A
DRIVER SAFETY PROGRAM (DSP) COMPLETED ON 02/19/2004 FOR 4 POINTS
LICENSE EFFECTIVE: 11/15/2000, AMEND LICENSE, CDL CLASS A, ENDORSEMENTS: TK, RESTRICTIONS: A
LICENSE EFFECTIVE: 07/10/2000, DUPLICATE LICENSE, CDL CLASS A, ENDORSEMENTS: NT, RESTRICTIONS: A
LICENSE EFFECTIVE: 07/10/2000, RENEW ID CARD, REGULAR ID CARD, ENDORSEMENTS: NONE, RESTRICTIONS: NONE
EXP: 05/2012
CDL EXP: 05/2012
CDL ENDORSEMENT: LIQUID BULK/CARGO TANK
CDL ENDORSEMENT: DOUBLE/TRIPLES
03 PREVIOUS ADDRESS: 6658 E 45TH ST; INDIANAPOLIS, IN 46226
03 PREVIOUS ADDRESS: 6658 E 45TH ST; INDIANAPOLIS, IN 46226
02 PREVIOUS ADDRESS: 6658 E. 45TH.; INDIANAPOLIS, IN 46226
01 PREVIOUS ADDRESS: 3949 HILLSIDE; INDIANAPOLIS, IN 46205
POSSIBLE MVR MISMATCH, PLEASE REVIEW TO VERIFY: FN

DRIVING RECORD

Type	Vio/Sus Date	Conv/Rein Date	Description	Vio/Conv Code	Pts
CONV	01/25/2002	08/01/2002	SPEEDING 068/55 COURT: OH CASE NO: OH 020906073607 IN COMMERCIAL MOTOR VEHICLE CDL:C		2
CONV	02/12/2003	02/21/2003	NON-POINTABLE VIOLATION COURT: OH CASE NO: OH 030305083833 IN COMMERCIAL MOTOR VEHICLE CDL:C		0
CONV	06/07/2003	08/07/2003	SPEEDING COURT: OH CASE NO: OH 030902183955 IN COMMERCIAL MOTOR VEHICLE CDL:C		2
CONV	09/03/2003	10/27/2003	SPEEDING COURT: OH CASE NO: OH 031119074850 IN COMMERCIAL MOTOR VEHICLE CDL:C		2
CONV	02/22/2004	02/22/2004	SPEEDING 075/65 COURT: NM CASE NO: NM 040405121204 IN COMMERCIAL MOTOR VEHICLE CDL:C		2
CONV	09/11/2004	09/22/2004	SEAT BELT VIOLATION COURT: OH CASE NO: OH 041006192526 IN COMMERCIAL MOTOR VEHICLE CDL:C		0

IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 12/12/2004 01/24/2005
DRIVING WRONG SIDE OF ROAD
COURT: LA 4
CASE NO: LA 050316093227
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 12/12/2004 01/24/2005
UNSAFE LANE MOVEMENT
COURT: LA 4
CASE NO: LA 6634288

CONV 02/13/2005 03/29/2005
SPEEDING 076/60
COURT: GAS CITY CITY 4
CASE NO: 27H010502IF01144

CONV 01/08/2006 03/14/2006
NON-POINTABLE VIOLATION
COURT: MD 0
CASE NO: MD 060317082102
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 03/25/2007 05/21/2007
NON-POINTABLE VIOLATION
COURT: HAGERSTOWN TOWN 0
CASE NO: 89I010704IF1393
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 04/10/2007 05/02/2007
NON-POINTABLE VIOLATION
COURT: PA 0
CASE NO: PA N08496795

CONV 03/03/2008 04/24/2008
SPEEDING 070/65
COURT: LAGRANGE SUPERIOR 2
CASE NO: 44D010803IF01141
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 03/05/2008 03/11/2008
SPEEDING
COURT: OHMUN 2
CASE NO: OHMUN

CONV 02/13/2009 04/08/2009
NON-POINTABLE VIOLATION
COURT: WAYNE SUPERIOR #3 0*
CASE NO: 89D030902IF1291
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 04/04/2009 11/17/2009
NON-POINTABLE VIOLATION
COURT: LAKE SUP DIVISION #4 0*
CASE NO: 45D120905IF03921
IN COMMERCIAL MOTOR VEHICLE CDL:C

– End of Consolidated Report –

Back to Order/Result List

Consolidated report listing 1 Reports

Case Id	Order	Subject	Product	Status
22D353508A	1	JACKSON, ANDREW	MVR	Complete

Case Identifier: 22D353508A
Order: 1

JACKSON, ANDREW

Order Details How To Read

ChoicePoint Inc.

DRIVER RECORD INFORMATION obtained by ChoicePoint Inc. on customer's behalf from the motor vehicle records of the state/province of Indiana. Identification of driver is based on information submitted.

Name/Address
ANTHONY B JACKSON
6658 E 45TH ST
INDIANAPOLIS, IN 46226-3627

Quoteback
22D353508A [QB_3LCDNAHPP9J_1_1_N]

Driver License Number	Rpt Date	System Use	Account Number
8942762746	06/09/2010	000000000000000	710519

Social Security Number	DMV Account Number
	0000

DOB	Sex	Hgt	Wt	Eyes	Hair	Requested as/Also Known As
05/09/1955	M	6'00	250	BRO	BLA	

DRIVER LICENSE INFORMATION

Class	Issued	Expire	Status	Restrictions
CHAUFFEUR			VALID	GLASSES OR CONTACT
A-CON,GCWR>26001			CDL:VALID	GLASSES OR CONTACT

MISCELLANEOUS AND STATE SPECIFIC INFORMATION

ORDERED AS: 8942762746
CURRENT POINTS: 00
DRIVER SAFETY PROGRAM (DSP) COMPLETED ON 7/22/2008 12:00:00 AM FOR 4 POINTS
ID CARD VOLUNTARILY SURRENDERED ON 5/6/2008 10:10:05 AM
LICENSE EFFECTIVE: 05/06/2008, RENEW CDL LICENSE, CDL CLASS A, ENDORSEMENTS: NT, RESTRICTIONS: A
DRIVER SAFETY PROGRAM (DSP) COMPLETED ON 12/28/2005 FOR 4 POINTS
LICENSE EFFECTIVE: 05/07/2004, RENEW ID CARD, REGULAR ID CARD, ENDORSEMENTS: NONE, RESTRICTIONS: A
LICENSE EFFECTIVE: 05/07/2004, RENEW LICENSE, CDL CLASS A, ENDORSEMENTS: NT, RESTRICTIONS: A
DRIVER SAFETY PROGRAM (DSP) COMPLETED ON 02/19/2004 FOR 4 POINTS
LICENSE EFFECTIVE: 11/15/2000, AMEND LICENSE, CDL CLASS A, ENDORSEMENTS: TX, RESTRICTIONS: A
LICENSE EFFECTIVE: 07/10/2000, DUPLICATE LICENSE, CDL CLASS A, ENDORSEMENTS: NT, RESTRICTIONS: A
LICENSE EFFECTIVE: 07/10/2000, RENEW ID CARD, REGULAR ID CARD, ENDORSEMENTS: NONE, RESTRICTIONS: NONE
EXP: 05/2012
CDL EXP: 05/2012
CDL ENDORSEMENT: LIQUID BULK/CARGO TANK
CDL ENDORSEMENT: DOUBLE/TRIPLES
03 PREVIOUS ADDRESS: 6658 E 45TH ST; INDIANAPOLIS, IN 46226
03 PREVIOUS ADDRESS: 6658 E 45TH ST; INDIANAPOLIS, IN 46226
02 PREVIOUS ADDRESS: 6658 E. 45TH.; INDIANAPOLIS, IN 46226
01 PREVIOUS ADDRESS: 3949 HILLSIDE; INDIANAPOLIS, IN 46205
POSSIBLE MVR MISMATCH, PLEASE REVIEW TO VERIFY: FN

DRIVING RECORD

Type	Vio/Sus Date	Conv/Rein Date	Description	Vio/Conv Code	Pts
CONV	01/25/2002	08/01/2002	SPEEDING 069/55 COURT: OH CASE NO: OH 020906073607 IN COMMERCIAL MOTOR VEHICLE CDL:C		2
CONV	02/12/2003	02/21/2003	NON-POINTABLE VIOLATION COURT: OH CASE NO: OH 030305083883 IN COMMERCIAL MOTOR VEHICLE CDL:C		0
CONV	06/07/2003	08/07/2003	SPEEDING COURT: OH CASE NO: OH 030902183855 IN COMMERCIAL MOTOR VEHICLE CDL:C		2
CONV	09/03/2003	10/27/2003	SPEEDING COURT: OH CASE NO: OH 031113074850 IN COMMERCIAL MOTOR VEHICLE CDL:C		2
CONV	02/22/2004	02/22/2004	SPEEDING 075/65 COURT: NM CASE NO: NM 040405121204 IN COMMERCIAL MOTOR VEHICLE CDL:C		2
CONV	09/11/2004	09/22/2004	SEAT BELT VIOLATION COURT: OH CASE NO: OH 041006192526 IN COMMERCIAL MOTOR VEHICLE CDL:C		0

IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 12/12/2004 01/24/2005
DRIVING WRONG SIDE OF ROAD
COURT: LA 4
CASE NO: LA 050316093227
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 12/12/2004 01/24/2005
UNSAFE LANE MOVEMENT
COURT: LA 4
CASE NO: LA 6534238

CONV 02/13/2005 03/29/2005
SPEEDING 076/60
COURT: GAS CITY CITY 4
CASE NO: 27H010502IF01144

CONV 01/09/2006 03/14/2006
NON-POINTABLE VIOLATION
COURT: MD 0
CASE NO: MD 060317082102
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 03/25/2007 05/21/2007
NON-POINTABLE VIOLATION
COURT: HAGERSTOWN TOWN 0
CASE NO: 89I0107041F1393
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 04/10/2007 05/02/2007
NON-POINTABLE VIOLATION
COURT: PA 0
CASE NO: PA M08496795

CONV 03/03/2009 04/24/2009
SPEEDING 070/65
COURT: LAGRANGE SUPERIOR 2
CASE NO: 44D0108031F01141
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 03/05/2008 03/11/2009
SPEEDING
COURT: OHMUN 2
CASE NO: OHMUN

CONV 02/13/2009 04/09/2009
NON-POINTABLE VIOLATION
COURT: WAYNE SUPERIOR #3 0*
CASE NO: 89D0309021F1291
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 04/04/2009 11/17/2009
NON-POINTABLE VIOLATION
COURT: LAKE SUP DIVISION #4 0*
CASE NO: 45D120905IF03921
IN COMMERCIAL MOTOR VEHICLE CDL:C

– End of Consolidated Report –

Back to Order/Result List

HENNESSY & WALKER
GROUP, P.C.
LAW OFFICES
142 WEST MARKET STREET
SUITE 2
WEST CHESTER, PA 19382

CERTIFIED MAIL™

7009 0080 0000 3140 8314

UNITED STATES POSTAGE
PITNEY BOWES
02 1P $ 005.49°
0003093298 APR 15 2009
MAILED FROM ZIP CODE 19382

Andrew B. Jackson a/k/a Anthony B. Jackson
6658 E. 45th Street
Indianapolis, IN 45226

UNCLAIMED

UNC

4-18-09

4-27

5-2 return

PLAINTIFF'S EXHIBIT D

SKIP TRACING, INC.

P.O. BOX 286
METUCHEN, NJ 08840
TEL: (732) 548-7741 FAX: (732) 548-8026

PLAINTIFF'S EXHIBIT
E

CONFIDENTIAL SKIP TRACE REPORT & INVOICE

Prepared for:
HENNESSY & WALKER
142 WEST MARKET STREET
WEST CHESTER, PA 19382
ATTN: LAUREN MORGAN

Date	CASE/CLAIM #
3/11/2009	NATI1330

ITEMS	REPORT:
	ADDRESS SEARCH
	DRIVERS LICENSE ABSTRACT
INSURED/PLAINTIFF:	NATIONWIDE INSURANCE A/S/O CHARLES LEPINSKI
DATE OF LOSS:	12/09/2006
NAME:	ANTHONY B. JACKSON
ADDRESS:	6658 EAST 45TH STREET
CITY, STATE, ZIP:	INDIANAPOLIS, IN 46226
TELEPHONE:	317-542-8312
SOCIAL SECURITY:	
DRIVER LICENSE #:	8942762746
DATE OF BIRTH:	05/09/1955
EMPLOYMENT:	
ADDRESS:	
CITY, STATE, ZIP:	
TELEPHONE:	
POSITION:	
INCOME $:	
BANK:	
BANK ADDRESS:	
CITY, STATE, ZIP:	
TELEPHONE:	
BANK ACCOUNT #	
BALANCE $:	
REAL PROPERTY:	
COMMENTS:	INDIANA DMV RECORDS INDICATE THE NAME ASSOCIATED WITH DRIVER LICENSE NUMBER 8942762746 IS ANTHONY B. JACKSON-SEE COPY. DIRECTORY ASSISTANCE LISTS PHONE NUMBER 317-542-8312 TO C. JACKSON AT 6658 E 45TH ST, INDIANAPOLIS, IN 46226. POSTAL RECORDS INDICATE TONY' JACKSON RECEIVES MAIL AT THIS LOCATION-SEE COPY. OUR NEIGHBORHOOD SEARCH INDICATED ANTHONY AKA TONY JACKSON LIVES AT THIS LOCATION.

PLEASE MAKE CHECKS PAYABLE TO SKIP TRACING, INC. FED TAX ID# 22-305-6426

Total $145.00

Object required

ANTHONY B JACKSON

6658 E 45TH ST INDIANAPOLIS IN 462263

License Number	8942762746
License State	
License Status	VALID
License Class	A
Issued Date	20080506
Expiration Date	2012050
Restrictions	9GLASSES OR CON
Driver's Info	TACT,S:M HT:6 0 WT:250 EC:BROW
Date of Birth	05/09/1955

Report Data

***** MISCELLANEOUS AND STATE SPECIFIC INFORMATION ****

CDL Expire Date: 05/09/2012

CDL As Of Date: 05/06/2008

SR22Code:SR22 not needed

SR50Code:SR50 not needed

Reinstatement Fees Count:0

Reinstatement Fees Amount:0

Insurance Fees Count:0

Insurance Fees Amount:0

REMARKS

Driver Safety Program (DSP) completed on 7/22/2008 12:00:00 AM for 4 points

ID Card voluntarily surrendered on 5/6/2008 10:10:05 AM

Driver Safety Program (DSP) completed on 12/28/2005 for 4 points

Driver Safety Program (DSP) completed on 02/19/2004 for 4 points

DRIVER ADDRESSES

LICENSE CLASS.....: A

LICENSE DESCRIPTION.....: A

LICENSE TYPE.....: CHAUFFEUR

LICENSE STATUS.....: VALID

EXPIRATION DATE.....: 2012-05-09

ENDORSMENTS.....: LIQUID BULK/CARGO TANK,DOUBLE/TRIPLES

ENDORSMENTS DESCRIPTION: LIQUID BULK/CARGO TANK,DOUBLE/TRIPLES

VIOLATIONS:

2008-03-05 2008-03-11 EVENT TYPE.....: VIOLATION

DESCRIPTION.....: SPEEDING

COURT/AGENCY.....: OHMUN

POINTS.....: 2.0

MISCELANIOUS.....: Active Indicator: 0.
ACD.....: S92
2008-03-03 2008-04-24 EVENT TYPE.....: VIOLATION
DESCRIPTION.....: SPEEDING 70/65
COURT/AGENCY.....: LAGRANGE SUPERIOR
POINTS.....: 2.0
COMMERCIAL VEHICLE..: YES
MISCELANIOUS.....: Active Indicator: 1.
ACD.....: S92
2007-04-10 2007-05-02 EVENT TYPE.....: VIOLATION
DESCRIPTION.....: NON-POINTABLE VIOLATION
COURT/AGENCY.....: PA
POINTS.....: 0.0
MISCELANIOUS.....: Active Indicator: 1.
ACD.....: XXX
2007-03-25 2007-05-21 EVENT TYPE.....: VIOLATION
DESCRIPTION.....: NON-POINTABLE VIOLATION
COURT/AGENCY.....: HAGERSTOWN TOWN
POINTS.....: 0.0
COMMERCIAL VEHICLE..: YES
MISCELANIOUS.....: Active Indicator: 1.
ACD.....: XXX
2006-01-08 2006-03-14 EVENT TYPE.....: VIOLATION
DESCRIPTION.....: NON-POINTABLE VIOLATION
COURT/AGENCY.....: MD
POINTS.....: 0.0
COMMERCIAL VEHICLE..: YES
MISCELANIOUS.....: Active Indicator: 0.
ACD.....: XXX
2005-02-13 2005-03-29 EVENT TYPE.....: VIOLATION
DESCRIPTION.....: SPEEDING 76/60
COURT/AGENCY.....: GAS CITY CITY
POINTS.....: 4.0
MISCELANIOUS.....: Active Indicator: 0.
ACD.....: S92
2004-12-12 2005-01-24 EVENT TYPE.....: VIOLATION
DESCRIPTION.....: UNSAFE LANE MOVEMENT
COURT/AGENCY.....: LA
POINTS.....: 4.0
MISCELANIOUS.....: Active Indicator: 0.
ACD.....: M42
2004-12-12 2005-01-24 EVENT TYPE.....: VIOLATION
DESCRIPTION.....: DRIVING WRONG SIDE OF ROAD
COURT/AGENCY.....: LA

POINTS.....: 4.0
COMMERCIAL VEHICLE..: YES
MISCELANIOUS.....: Active Indicator: 0.
ACD.....: M40
2004-09-11 2004-09-22 EVENT TYPE.....: VIOLATION
DESCRIPTION.....: SEAT BELT VIOLATION
COURT/AGENCY.....: OH
POINTS.....: 0.0
COMMERCIAL VEHICLE..: YES
MISCELANIOUS.....: Active Indicator: 0.
ACD.....: F04
2004-02-22 2004-02-22 EVENT TYPE.....: VIOLATION
DESCRIPTION.....: SPEEDING 75/65
COURT/AGENCY.....: NM
POINTS.....: 2.0
COMMERCIAL VEHICLE..: YES
MISCELANIOUS.....: Active Indicator: 0.
ACD.....: S92
2003-09-03 2003-10-27 EVENT TYPE.....: VIOLATION
DESCRIPTION.....: SPEEDING
COURT/AGENCY.....: OH
POINTS.....: 2.0
COMMERCIAL VEHICLE..: YES
MISCELANIOUS.....: Active Indicator: 0.
ACD.....: S92
2003-06-07 2003-08-07 EVENT TYPE.....: VIOLATION
DESCRIPTION.....: SPEEDING
COURT/AGENCY.....: OH
POINTS.....: 2.0
COMMERCIAL VEHICLE..: YES
MISCELANIOUS.....: Active Indicator: 0.
ACD.....: S92
2003-02-12 2003-02-21 EVENT TYPE.....: VIOLATION
DESCRIPTION.....: NON-POINTABLE VIOLATION
COURT/AGENCY.....: OH
POINTS.....: 0.0
COMMERCIAL VEHICLE..: YES
MISCELANIOUS.....: Active Indicator: 0.
ACD.....: XXX
2002-01-25 2002-08-01 EVENT TYPE.....: VIOLATION
DESCRIPTION.....: SPEEDING 68/55
COURT/AGENCY.....: OH
POINTS.....: 2.0
COMMERCIAL VEHICLE..: YES

MISCELANIOUS.....: Active Indicator: 0.

ACD.....: 892

REPORT PROCESS COMPLETE

End of Report

Skip Tracing Inc.

PO Box 286
Metuchen, NJ 08840
732-548-7741
FAX 732-548-8026

Date: Mar 3, 2009
RLD

POSTMASTER
INDIANAPOLIS, IN 46226

REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER
INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS

Please furnish the new address or the name and street address (if a box holder) for the following:

NAME: TONY B. JACKSON

ADDRESS: 6658 E 45TH ST. INDIANAPOLIS, IN 46226

The following is provided in accordance with 39CF265.6(D)(6)(II). THERE IS NO FEE FOR PROVIDING BOXHOLDER INFORMATION. The fee for providing change of address information is waived in accordance with 39CFR 265.6 (d) (1) and (2) and corresponding Administrative Support Manual 352 44

1. Capacity of Requester: PROCESS SERVER
2. Statute or regulation that empowers me to serve process: NJ STATUTE 45:19-22
   NEW JERSEY STATE POLICE PRIVATE DETECTIVE LICENSE NUMBER 4323
3. The names of all parties known to the litigation: HENNESSY&WALKER, ESQ. VS A.B. JACKSON
4. The court in which the case has been or will be heard: MARION COUNTY SPECIAL CIVIL PART
5. The docket or other identifying number, if one has been issued: NATI1300
6. The capacity in which the individual is to be served: DEFENDANT

WARNING

The submission of false information to obtain and use change of address information for any purpose other than the service of legal process in connection with actual or prospective litigation could result in criminal penalties including a fine of up to $10,000.00 or imprisonment or (2) to avoid payment of the fee for change of address information of not more than 5 years or both (Title 17 U.S.C. Section 1001).
I certify that the above information is true and that the address information is needed and will be used solely for service of legal process.

Signature
THOMAS BLACK

PO BOX 286
METUCHEN, NJ 08840

FOR POST OFFICE USE ONLY

✓ GOOD AS ADDRESSED

___ NOT KNOWN AT ADDRESS

___ MOVED LEFT NO FORWARDING ADDRESS

___ NO SUCH ADDRESS

NEW ADDRESS

PLAINTIFF'S EXHIBIT
F

tabbies

tional
sociation of
ofessional
ocess Servers

BRESLIN SPECIALIZED SERVICES

P.O. Box 325
Upper Darby, PA 19082
(610) 734-1647

Philadelphia Association of Professional Process Servers

AFFIDAVIT OF SERVICE

PLAINTIFF(S)	COURT TERM & NO.	COUNTY
Nationwide Mutual Insurance Company	08-337-CD	CLEARFIELD
DEFENDANT(S)	**DATE RECEIVED**	**SERVE BY**
Andrew B. Jackson	2-2-10	3-2-10

SERVE AT
6658 East 45th Street
Indianopolis, IN 46226

xxx ☒ Civil Action complaint ☐ Subpoena
☐ Summons ☐ Other
☐ Writ of

SPECIAL INSTRUCTIONS

Served and made known to _____,
on the _____ day of _____, 20_____, at _____ o'clock, _____ M.,
at _____, County of _____,
Commonwealth of Pennsylvania, in the manner described below:

- ☐ Defendant(s) personally served.
- ☐ Adult family member with whom said Defendant(s) reside(s). Relationship is _____.
- ☐ Adult in charge of Defendant's residence who refused to give name or relationship.
- ☐ Manager/Clerk of place of lodging in which Defendant(s) reside(s), authorized to accept deliveries of U.S. Mail.
- ☐ Agent or persoa in charge of Defendant's office or usual place of business.
- ☐ _____ an officer of said Defendant company.
- ☐ Other _____.

DESCRIPTION	AGE	HEIGHT	WEIGHT	RACE	SEX	OTHER

On the 9 day of FEBRUARY, 2010, at 4:50 o'clock, P M.,
Defendant not found because: ☐ Moved ☑ Unknown ☐ No Answer ☐ Vacant ☐ Other _____
UNKNOWN TO CAROLYN JACKSON RESIDENT OF 20 YEARS

NAME OF SERVER

PAMELA J. CONLEY being duly sworn according to law, certify that I am eighteen years of age or older and that I am not a party to the action or an employee or relative of a party.

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

Sworn to & subscribed before me this 2 day of March 2010
Nancy Botbyl

NOTARY PUBLIC SEAL STATE OF INDIANA
NANCY BOTBYL
Marion County
My Commission Expires
July 18, 2017

Sheriff _____ Process Server / ~~Competent Adult~~ Pamela J. Conley

DEPUTIZED SERVICE

Now, this _____ day of _____, 20_____, I do hereby deputize the Sheriff of _____ County.
to serve this ☐ Summons ☐ Complaint ☐ Other _____ and make return thereof and according to Law.
By (Competent Adult) _____ County Sheriff's Check $_____

Law Firm Hennessy & Walker
Attorney's Name Paul J. Hennessy For Plaintiff
Address 142 West Market Street
West Chester, Pa 19382

ATTEST _____
PRO PROTHY

Telephone # 610-431-2727 Identification # 65396

DATE

PLAINTIFF'S EXHIBIT
G

wide Mutual Insurance Co.	: In the Court of Common Pleas
a/s/o Charles Lepinski	: Clearfield County, Pennsylvania
Vs.	: Civil Action Law
Andrew B. Jackson et al	: NO: 08-337-CD

ORDER

AND NOW, this 17th day of August, 2010, upon consideration of Plaintiffs' Petition for Alternative Service and Memorandum of Law in support of, it is hereby ORDERED that Plaintiffs shall be permitted to serve the Defendant, Andrew B. Jackson a/k/a Anthony B. Jackson by MAILING (certified and regular) to the premises located at:

6658 East 45th Street
Indianapolis, IN 46226

BY THE COURT

/S/ Fredric J Ammerman

J.

I hereby certify this to be a true and [illegible] copy of the original statement filed in this case.

AUG 17 2010

Attest.

Prothonotary/
Clerk of Courts

PLAINTIFF'S EXHIBIT
A

Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Attorney for Plaintiff

Nationwide Mutual Insurance Company	: In the Court of Common Pleas
a/s/o Charles Lepinski	: Clearfield County, Pennsylvania
VS.	: Civil Action Law
Andrew B. Jackson et al	: NO: 08-337-CD

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA:
:
COUNTY OF CHESTER : ss.

Paul J. Hennessy, Esquire, being duly sworn according to law, deposes and says that on September 2, 2010 Plaintiff did send a true and correct copy of the complaint to Defendant by regular and certified mail, pursuant to the Court Order dated August 17, 2010.

Paul J Hennessy
Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.

Sworn to and subscribed
before me this 10TH day
of DECEMBER, 2010.

Marisa De Feo
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Marisa De Feo, Notary Public
Westtown Twp., Chester County
My Commission Expires March 31, 2014

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

DEC 13 2010

Attest. William L. Shaw
Prothonotary/
Clerk of Courts

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street, Suite 2
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396 Attorney for Plaintiffs

Nationwide Mutual	: In The Court of Common Pleas
Insurance Company	: Clearfield County, Pennsylvania
a/s/o Charles Lepinski	: Civil Action Law
v.	: No. 08-337-CD
Andrew B. Jackson	
And	
Virgil J. Flannery	

Memorandum of Law

Issue: Whether Defendant's Preliminary Objections pursuant to Lamp v. Heyman, 366 A.2d 882, 469 Pa. 465 (1976), should be granted when the Defendant evaded service of Plaintiffs Complaint by failing to claim certified mail at the subsequent address of service, and failing to accept personal service from the process server?

Suggested Answer: No, the Defendant offers its preliminary objections without clean hands. The Plaintiffs made a good faith effort to effectuate service of the Complaint, and had previously attempted service at the subsequent address of service after the initial filing of the Complaint. In addition the Plaintiffs performed investigative searches to locate an alternative address of service, but determined the Defendant was avoiding service. Any delay or prejudice caused to the Defendant is a result of the Defendants actions avoiding service of Plaintiffs Complaint by failing to accept certified mail sent to the eventual address of service, and failing to accept service from the process server.

Issue: Whether Service was properly effectuated upon the Defendant Jackson pursuant to the Court Order granting Alternative Service.

Suggested Answer: Yes, absent the Court Order granting alternative service the Plaintiffs would be required pursuant to Pennsylvania Rule of Civil Procedure 404 to have the Defendant sign/accept the certfied mail addressed to his residence as the Defendant contends in its preliminary objections. However, pursuant to the Court Order of August 17, 2010, Plaintiffs were permitted to serve the Defendant Andrew B. Jackson a/k/a Anthony B. Jackson, who resided out of state by mailing the Complaint by mailing Plaintiff's Complaint regular and certified mail. The Defendant avoided service of Plaintiffs Complaint by failing to accept the certified mail address to his residence on numerous occassions, and the subsquent attempt by the process server the Plaintiffs were granted. The green card was not returned to Plaintiffs counsel by the United States Postal Service. The grant of the Court Order did not require the Defendant who was avoiding service of Plaintiffs Complaint to sign for the certfied mail.

Issue: Whether the Defendant is permitted by the Pennsyvlania Rules of Civil Procedure to raise affirmative defenses as Preliminary Objections to Plaintiffs Complaint?

Suggested Answer: No, the Defendant is not permitted to raise affirmative defenses concerning in its preliminary objections, but may only file preliminary objections pursuant to Pennsyvlania Rule of Civil Procedure 1028, which permit preliminary objections in regard to (1) lack of jurisdicition, (2) failure of pleading to conform to law or rule of Court or inclusion of scandalous or impertient matter; (3) insufficient

specificity in a pleading; or (4) legal insufficientcy of pleading (demurrer); (5) lack of capcity to sue; and (6) pendancy of a prior action. The Defendant Jacksons asserts its preliminary objections concern legal insufficientcy of pleading, but its preliminary objections do not relate in any manner to the sufficientcy of pleading of Plaintiffs Complaint, thus the preliminary objections are procedurally incorrect, and should be stricken.

Issue: Whether the Defendant is precluded from raising identical issues previously litigated before Court by co-defendant Flannery, On December 6, 2010, for which Defendant Jackson did not present a brief, or appear at the hearing?

Answer: Yes, the Defendant's Preliminary Objections concern issues that have previously been determined by the Court, and Defendant's preliminary objections concedes it received notice of the prior hearing.

Factual Background:

Plaintiff's commenced the above captioned matter on November 26, 2008, in the Clearfield County Court of Common Pleas seeking to recover property damages sustained on or about December 9, 2006, at or near on or about at or near Route 80 in Lawrence Township,Clearfield County, Pennsylvania. Plaintiffs alleged that Defendant Flannery operating a 2007 Pierce Quantum, WI tag # MV8331DT, and Defendant Jackson while operating the aforesaid 1997 Freightliner negligently struck Plaintiffs insured's 1998 Kenworth tractor trailer causing damages in the amount of $34,024.65.

Upon filing Plaintiffs Complaint within the statutory period the Plaintiffs immediately attempted service of Plaintiffs complaint upon the Defendant at the eventual

address of service 6658 East 45th Street. The Plaintiff has made a diligent effort to move the present matter forward by attempting to effectuate service upon co-defendant Jackson on numerous occassions, and locate a valid address for the Defendant. Attached hereto are Exhibits "A" through "H" demonstrating Plaintiffs good faith effort to serve Plaintiffs Complaint upon the Defendant.

Service of Plaintiffs Complaint was effectuated upon Jackson in accordance with the Court order granting alternative service on August 17, 2010. As stated in Plaintiffs Motion for Alternative Service the Defendant evaded service of Plaintiffs Complaint on numerous occassions by attempting service by certified mail and personal service. Plaintiffs effectuated service on September 2, 2010, by mailing Plaintiff's complaint by certified and regular mail postage prepaid return service request, pursuant to the Court Order. A true and correct copy of the affidavit of service is attached hereto as Exhibit "H." On November 17, 2010, co-defendant Flannery, filed a motion seeking judgment for non-pros, raising identical issues to the co-defendant's Jackson's Preliminary Objections seeking dismissal of Plaintiff's Complaint. The co-defendant Flannery's Motion for Judgment of Non Pros was dismissed by the Court. The Defendant Jackson did not appear at the hearing or submit a brief concerning the motion, despite receiving notice of the hearing as noted in Defendant Jackson's preliminary objections. The Defendant presents the present preliminary objections raising indentical issues as contained in co-defendant's motion previously litigated before the Court on December 16, 2010.

Legal Argument:

Prior to the decision in Lamp v. Heyman, 469 Pa. 465, 366 A.2d 882 (1976), "the rule was that an action commenced but not served within the statutory period was sufficient to toll the statute [of limitations] for an additional period equal to the length of the statutory period." Williams v. Southeastern Pennsyvlania Transportation Authority, 585 A.2d 583, 584 (Pa. Cmwlth. 1991). the Pennsyvania supreme court, in Lamp, qualified the rule to "avoid the situation in which a Plaintiff can bring an action, but, by not making a good-faith effort to notify a defendant, retain exclusive control over it for a period in excess of that permitted by the statute of limitations." Id. at 478, 366 A.2d at 889. "A writ of summons shall remain effective to commence an action only if the Plaintiff then refrains from a course of conduct which serves to stall in its track the legal machinery he has just set in motion." Id. It was subsequently held by the supreme court that "Lamp requires of Plaintiffs a good-faith effort to effectuate notice of commencement of the action." Farinacci v. Beaver County Industrial Development Authority, 510 Pa. 589, 594, 511, A.2d 757, 759 (1986)

In the present matter the Defendant is not entitled to a judgment on the pleadings or dismissal of Plaintiffs Complaint, by virtue of successfully evading service of process. The Defendant must establish that the Plaintiff engaged in a course of conduct to stall the legal machinery. To the contrary, the Defendant acted in a course of conduct to stall the legal machinery, by intentionally avoiding service of Plaintiffs Complaint. Immediately following the filing of Plaintiffs Complaint, service was attempted by Plaintiffs at a valid addresses for the Defendant in good faith to complete proper service.

A party who seeks the equitable relief provided by the entry of a judgment of non pros must do so with clean hands. Id. citing Mudd v. Nosker Lumber, Inc., 443 Pa. Super.

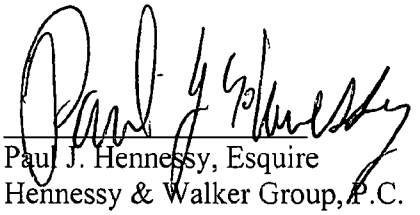
483, 662 A.2d 660 (1995). In the present matter the Defendant Jackson avoided previous attempts of service at 6658 E. 45th Street, Indianapolis, IN 46226. The Defendant's asserts in its preliminary objections that the Defendant is entitled to dismissal of Plaintiffs Complaint, because service was not effectuated upon the Defendant until after the Plaintiff was granted the motion for alternative service.

The Defendant's Preliminary Objections further contends to effectuate service Plaintiff must be in possession of the green card signed by the Defendant, which was not returned to Plaintiffs counsel from the postal service. Absent the Court Order granting alternative service the Plaintiffs would be required pursuant to Pennsylvania Rule of Civil Procedure 404 to have the Defendant sign/accept the certfied mail addressed to his residence as the Defendant contends in its preliminary objections. However, pursuant to the Court Order of August 17, 2010, Plaintiffs were permitted to serve the Defendant Andrew B. Jackson a/k/a Anthony B. Jackson, who resided out of state by mailing the Complaint by mailing Plaintiff's Complaint regular and certified mail. The Defendant avoided service of Plaintiffs Complaint by failing to accept the certified mail address to his residence on numerous occassions, and the subsquent attempt by the process server the Plaintiffs were granted. The grant of the Court Order did not require the Defendant who was avoiding service of Plaintiffs Complaint to sign for the certfied mail. Plaintiffs effectuated service of the Complaint upon the Defendant by mailing the complaint to the Defendant by certfied and regular mail postage prepaid return service requested, and same was not returned to Plaintiffs. A true and correct copy of the affidavit of service is attached hereto as Exhbit "H."

Conclusion:

The Plaintiff has made a good faith effort to locate and serve the Defendant with Plaintiffs Complaint, therefore the Defendant is not entitled to dismissal of Plaintiffs Complaint. To the contrary, the Defendant has acted in bad faith avoiding service of Plaintiffs Complaint. Numerous attempts were made at the evetual address of service.

WHEREFORE, Plaintiff's respectfully request this honorable Court dismiss Defendant's Preliminary Objections, and require the Defendant to file an Answer to Plaintiffs Complaint within twenty days.



Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF CHESTER : ss

The undersigned verifies that the facts contained herein are true and correct.

The undersigned understands that false statements herein are made subject to the penalties of 19 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

If applicable, this affidavit is made on behalf of the Plaintiff(s); that the said Plaintiff(s) is/are unable and unavailable to make this verification on its/his/her own behalf within the time allotted for filing of this pleading, and the facts set forth in the foregoing pleading are true and correct to the best of counsel's knowledge, information and belief.

This verification is made pursuant to Pa. R.C.P. 1024 and is based on interviews, conferences, reports, records and other investigative material in the file

Dated: 4-21-11

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street, Suite 2
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Attorney for Plaintiffs

Nationwide Mutual	: In The Court of Common Pleas
Insurance Company	: Clearfield County, Pennsylvania
a/s/o Charles Lepinski	: Civil Action Law
v.	: No. 08-337-CD
Andrew B. Jackson	
And	
Virgil J. Flannery	

CERTIFICATION OF SERVICE

I hereby certify that I have served a true and correct copy of the Plaintiffs Reply to Defendant's Preliminary Objections and Memorandum of Law upon the Defendant's counsel on April 21, 2011 by First Class United States mail, postage prepaid addressed as follows:

Susan D. Garrard, Esquire
Law Office of Joseph S. Weimer
975 Two Chatham Center
Pittsburgh, PA 15219

James R. Hankle, Esquire
Sherrard, German, & Kelly, P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222

Paul J. Hennessy, Esquire
Hennessy & Walker

Nationwide Mutual	: In The Court of Common Pleas
Insurance Company	: Clearfield County, Pennsylvania
a/s/o Charles Lepinski	: Civil Action Law
v.	: No. 08-337-CD
Andrew B. Jackson	
And	
Virgil J. Flannery	

ORDER

AND NOW, this _____ day of _____, 2011, upon consideration of Defendant Jackson's Preliminary Objections to Plaintiff's Complaint and Plaintiffs Reply thereto it is hereby **ordered** and **decreed** that the Defendant's Preliminary Objections to Plaintiffs Complaint are **denied**. It is further **ordered** that the Defendant shall file an Answer to Plaintiffs Complaint within twenty days (20) from the date of entry of this Order.

BY THE COURT:

_____
J.

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

FILED
JUN 08 2011
William A. Shaw
Prothonotary/Clerk of Courts

1CC Attys: Hennessy Garrard Hankle
1CC D. Mikesell
1CC Law Library

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI, Plaintiff	*	
vs.	*	NO. 2008-337-CD
ANDREW B. JACKSON and VIRGIL J. FLANNERY, Defendants	*	

OPINION

Presently before the Court are preliminary objections filed by Defendant Andrew B. Jackson,[1] challenging this Court's jurisdiction for lack of service. For the reasons that follow, the Court concludes service was properly effectuated and denies Mr. Jackson's preliminary objections.

On February 27, 2008, Plaintiff Nationwide Mutual Insurance Company, as subrogee of Charles Lepinski, filed a complaint in negligence against Mr. Jackson and Virgil J. Flannery[2] for damages caused in a motor vehicle accident which occurred on December 9, 2006. On April 7, 2008, Mr. Flannery filed an answer and new matter. Plaintiff, however, was unable to serve Mr. Jackson with a copy of the complaint and filed a preacipe to reinstate the complaint on April 13, 2009. Plaintiff reinstated the complaint a second time on January 21, 2010. On August 16, 2010, Plaintiff filed a motion for alternative service accompanied by an affidavit, both of which detailed its efforts to locate Mr. Jackson. This Court granted said motion on August 17, 2010, permitting Plaintiff to serve Mr. Jackson by mailing original process to Mr. Jackson via certified and regular mail. Thereafter, Plaintiff reinstated the complaint for a third

[1] Originally identified as Andrew B. Jackson, it has since been learned that the true identity of the defendant is Anthony B. Jackson.
[2] Mr. Flannery is a party to the case but not the preliminary objections.

time on August 27, 2010. Plaintiff's affidavit of service indicates it served Mr. Jackson using the above method of court-ordered alternative service on September 2, 2010. On December 20, 2010, counsel for Mr. Jackson entered her appearance, and on April 7, 2011, the preliminary objections, which are the subject of this opinion, were filed on Mr. Jackson's behalf. Plaintiff filed an answer to the preliminary objections on April 25, 2011, arguing Mr. Jackson was avoiding service and because of unclean hands, he should be precluded from raising this issue. Argument on the preliminary objections was held on May 19, 2011. Both parties had previously submitted briefs, so the matter is now ripe for decision.

As an initial matter, the Court notes a preliminary objection is a proper basis for challenging the court's jurisdiction over a party. *See* Pa. R.C.P. 1028(a)(1). *See also Ramsay v. Pierre*, 822 A.2d 85, 89 (Pa. Super. 2003) ("Proper service is a prerequisite to a court acquiring personal jurisdiction over a defendant."). Therefore, if no service was made or service was defective in some manner, the Court must sustain the preliminary objections, as it would not have *in personam* jurisdiction over the party.

Here, Mr. Jackson alleges he never received service. Additionally, he alleges that service was improperly attempted using regular mail. Finally, he alleges that service has not been accomplished within the applicable statute of limitations. The Court will address the last argument first.

As a general rule, the filing of a complaint tolls the statute of limitations for an additional period equal to the length of the statutory period. *Williams v. SEPTA*, 585 A.2d 583, 584 (Pa. Commw. 1991). The Pennsylvania Supreme Court in *Lamp v. Heyman*, 366 A.2d 882 (Pa. 1976), conditioned the rule upon the plaintiff's good faith effort to serve the complaint. A good-faith effort is a factually driven determination made on a case-by-case basis. *Ramsay*, 822 A.2d at 90.

> [I]t is not necessary the plaintiff's conduct be such that it constitutes some bad faith act or overt attempt to delay before the rule of *Lamp* will apply. Simple neglect and mistake to fulfill the responsibility to see that requirements for service are carried out may be sufficient to bring the rule in *Lamp* to bear.

Id. (quoting *Rosenberg v. Nicholson,* 408 Pa.Super. 502, 597 A.2d 145, 148 (1991)).

The filing of a complaint is effective only if the plaintiff then refrains from a course of conduct which serves to stall in its tracks the legal machinery he has just set in motion." *Lamp,* 366 A.2d at 889. A plaintiff may also seek to reinstate the complaint "at any time and any number of times." Pa. R.C.P. 401(b)(2). Again, the only requirement is that it be done in good faith so as to toll the statute of limitations. *See Lamp*, 366 A.2d 882.

In the instant action, the motor vehicle accident occurred on December 9, 2006. The normal statute of limitations on a negligence action is two years. Thus, the suit must be commenced no later than December 9, 2008. Here, Plaintiff filed its complaint on February 27, 2008, which was before the statutory period expired. The filing of the complaint (and the subsequent reinstatements), therefore, would toll the statute of limitations so long as Plaintiff did not stall the legal machinery and attempted in good faith to effectuate service.

The Court finds Plaintiff made a good faith effort to serve Mr. Jackson during the course of this litigation. Plaintiff's attempts at service include:

- A certified letter mailed March 3, 2008, which was returned "unclaimed." *See* Motion for Alternative Service, August 16, 2010.
- Hiring Skip Tracing, Inc., to locate Mr. Jackson, report dated March 11, 2009. *See* Exhibit E of Plaintiff's Reply.
- A certified letter mailed April 15, 2009, which was returned "unclaimed." *See* Exhibit D of Plaintiff's Reply.[3]
- Sending a process server to Mr. Jackson's address to attempt personal service on February 9, 2010, at 4:50 p.m.; returned as not made ("unknown to Carolyn Jackson resident of 20 years). *See* Exhibit F of Plaintiff's Reply (Breslin Specialized Services' Affidavit of Service).
- Obtaining Mr. Jackson's driver's record from ChoicePoint Inc., report dated June 9, 2010. *See* Exhibit C of Plaintiff's Reply.

[3] Said letter was addressed to Andrew B. Jackson a/k/a Anthony B. Jackson.

- A certified letter, date unknown,[4] which was returned as "undeliverable as addressed." *See* Exhibit A of Plaintiff's Reply to Defendant's Preliminary Objections.
- Investigating the addresses on record for Mr. Jackson's corporation. *See* Exhibit B of Plaintiff's Reply (undated AccessIndiana record).

Every attempt pointed Plaintiff to the same address for Defendant: 6658 East 45th Street, Indianapolis, IN, 46226. Mr. Jackson's trucking company lists this address as the address for the registered agent and principal, both of which are Mr. Jackson. *See* Exhibit B. The police report lists the above address,[5] as does the driver's record report. *See* Exhibit C. Skip Tracing utilized a number of methods to confirm the above address was correct. First, it searched Indiana Department of Motor Vehicle Records, which indicated the license belonged to Mr. Jackson at the above address. Second, it called directory assistance, which listed the phone number provided to police as belonging to C. Jackson at the above address. Third, it inquired of the post office as to Mr. Jackson's address, which it confirmed as good as addressed using the East 45th Street address. Finally, it conducted a search of the neighborhood, which revealed he lived at that location. *See* Exhibit E. This is clearly not a case where Plaintiff sat idle. Rather, Plaintiff took a number of steps to locate Mr. Jackson.

Having concluded Plaintiff acted in good faith in attempting to serve the complaint or the reissued complaints on Mr. Jackson, the Court now turns to the issue of whether service was properly made. Believing it had the correct address, Plaintiff attempted to serve Mr. Jackson with a copy of the complaint pursuant to one of the methods provided in the Pennsylvania Rules of Civil Procedure, but was unsuccessful. The various certified letters were returned "unclaimed."

Alone, the return of a certified letter as "unclaimed" would not be enough to justify the

[4] The envelope is post-marked, but the Court cannot decipher the date due to the quality of the photocopy.
[5] The police report did list Andrew Jackson as the driver with the above address, but the driver's license number from the police report is registered to Anthony Jackson, as the driver's record reveals. *See* Exhibit C.

court granting service by alternative means. "Unclaimed" mail is distinguished from certified mail that is marked "refused" by postal authorities. Refused mail signals an intentional act to avoid service, whereas unclaimed mail may simply signify that the addressee was away and not capable of claiming the mail before it was returned to sender. *See Harris v. Kaulius*, 18 Pa. D. & C. 3d 636 (Pa. Com. Pl. 1981) (holding return of mail as "unclaimed" is not sufficient grounds for alternative service); *Kucher v. Fischer*, 167 F.R.D. 397 (E.D. Pa. 1996), clarifying July 5, 1996 order (same).

Here, though, Plaintiff undertook additional steps to ensure that the 6658 E. 45th Street address was Mr. Jackson's. As outlined above, it conducted an exhausted search of various records to confirm Mr. Jackson's identity and address, and everything indicated it was correct. It was at this point that Plaintiff sought approval from this Court to utilize an alternative form of service to enable it to finally serve the elusive Mr. Jackson. Pursuant to Rule 430 of the Pennsylvania Rules of Civil Procedure, a plaintiff may move the court for a special order directing an alternative method of service when service cannot be made under the applicable rule. The motion must be accompanied by an affidavit stating the nature and extent of the plaintiff's investigation into the defendant's whereabouts. *Id.* The affirmative steps Plaintiff took to find Mr. Jackson was sufficient evidence of its good faith, permitting the Court to issue its order that allowed service by certified and regular mail.[6]

Mr. Jackson is correct that no green return receipt card was filed showing he actually received the certified letter. However, the importance Mr. Jackson places on this issue is overstated. Ordinarily, proof of service by certified mail is made by filing the return receipt. However, the Court permitted service not just by certified mail to the record address but also

[6] The note to Rule 430 gives examples of a good faith effort to locate the defendant, including inquiries of postal authorities, neighbors, directory assistance, and driving records. In the case *sub judice,* Plaintiff or one of its authorized agents utilized these exact methods.

by regular first-class mail. On September 2, 2010, Plaintiff's counsel represented service was made using the aforementioned methods. Requiring Plaintiff to also file a signed return receipt card to effectuate service would defeat the purpose of ordering an alternative method of service in the first place. If Mr. Jackson truly was avoiding service by ignoring notices of certified mail before the order, what was to prevent him from continuing to do so afterward? When the Court granted Plaintiff's motion for alternative service, it was satisfied that the Plaintiff made a good faith effort to locate Mr. Jackson and attempted on a number of occasions to serve him using traditional means, which is why the Court also permitted service via ordinary mail.

Mr. Jackson seems to suggest that the only way service is proper is if the Plaintiff can prove he actually received the letter. This is an incorrect statement of the law. "Due process, reduced to its most elemental component, requires notice. The adequacy of this notice, as applied to substituted service, depends upon whether it is *reasonably calculated* to give the party actual notice of pending litigation." *Romeo v. Looks*, 535 A.2d 1101, 1105 (Pa. Super. 1987) (emphasis added). Based on the efforts Plaintiff undertook to locate Mr. Jackson and confirm his address not once but a number of times, the Court is satisfied that mailing a copy of the complaint via certified and regular mail at that address was reasonably calculated to reach him. *See id.* at 1105 (quoting *Noetzel v. Glasgow, Inc.*, 487 A.2d 1372, 1377-78 (Pa. Super. 1985) ("As long as the method of service is *reasonably certain* to notify a person, the fact that the person nevertheless fails to receive process does not invalidate the service on due process grounds.").

Support for permitting service by ordinary mail is also found in the Rules of Civil Procedure. Under Rule 403(1), a plaintiff may serve original process on a defendant by ordinary mail if the defendant has refused to accept a certified copy. Service by ordinary mail is complete if the mail is not returned to the sender within fifteen days after mailing. *Id.*

Although the certified letters were not returned as refused, *per se*, considering all evidence points to Mr. Jackson receiving mail at the above address, it is reasonable to conclude he would have received notice of the pending litigation via the regular mail that was sent to that address after it was not returned to Plaintiff within fifteen days.

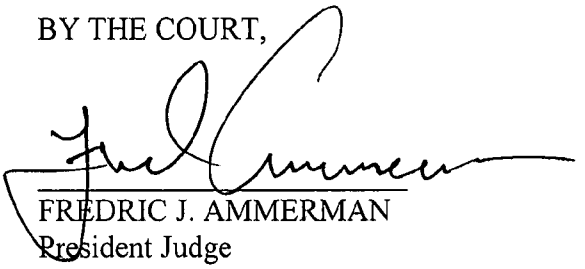
Furthermore, under Rule 403(2), when mail is returned as unclaimed, a plaintiff may make service by another means pursuant to the rules. That is exactly what Plaintiff did. When the certified letters were returned unclaimed, Plaintiff sought this Court's approval pursuant to Rule 430, governing alternative service, to serve Mr. Jackson by certified and regular mail. It makes no difference to the Court that Plaintiff cannot produce a signed copy of the receipt card from the latest certified letter.[7] The Plaintiff did what was required of it under the Court's order for alternative service, and service was property effectuated.

Based on the foregoing, the Court enters the following:

ORDER

NOW, this 8th day of June, 2011, following argument and upon consideration of the parties' briefs, it is the ORDER of this Court that Defendant's Preliminary Objections be and are hereby DENIED. Defendant shall have no more than twenty (20) days from the date of this Order to file a responsive pleading to Plaintiff's Complaint.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

[7] Plaintiff maintains, and the Court has no reason to doubt, that the card was never returned signed, unclaimed, or otherwise by the postal service.

DATE: 6/8/10

___ You are responsible for serving all appropriate parties.

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

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

___ Defendant(s) _X_ Defendant(s) Attorney

___ Special Instructions:

FILED

JUN 08 2011

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendant.

CIVIL ACTION – Law

No. 08-337-CD

ANSWER, NEW MATTER and CROSS CLAIM PURSUANT TO PA. R.C.P. 1031.1 TO PLAINTIFF'S COMPLAINT

Filed on behalf of Defendant:

ANTHONY B. JACKSON INCORRECTLY IDENTIFIED AS ANDREW B. JACKSON

Counsel of Record for this Party:

Susan D. Garrard, Esquire
Pa. I.D. #73727

LAW OFFICE OF JOSEPH S. WEIMER
Firm #301

975 Two Chatham Center
Pittsburgh, PA 15219

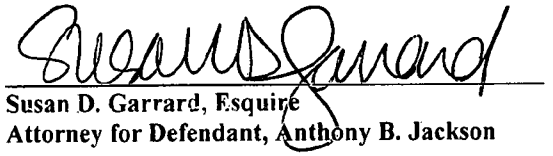
412/338-3245

412/471-8748 (fax)

JURY TRIAL DEMANDED

TO THE NEW MATTER AND ABOVE NAMED:

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE WITHIN NEW MATTER AND CROSSCLAIM PURSUANT TO PA. R.C.P. 1031.1 WITHIN TWENTY (20) DAYS FROM THE DATE OF SERVICE HEREOF OR A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU.



Susan D. Garrard, Esquire
Attorney for Defendant, Anthony B. Jackson

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendant.

CIVIL ACTION – Law

No. 08-337-CD

ANSWER, NEW MATTER and CROSSCLAIM PURSUANT TO PA. R.C.P. 1031.1 TO PLAINTIFF'S COMPLAINT

AND NOW, comes the Defendant, ANTHONY B. JACKSON incorrectly identified as ANDREW B. JACKSON, by and through his attorneys, SUSAN D. GARRARD, ESQUIRE, and the LAW OFFICE OF JOSEPH S. WEIMER, and hereby files the following Answer, New Matter and Cross Claim Pursuant to Pa. R.C.P. 1031.1 to Plaintiff's Complaint and avers as follows:

1. This Defendant is without knowledge or information to ascertain the veracity of the allegation contained in paragraph 1. Accordingly, the same is denied and strict proof required at time of trial.

2. This Defendant is without knowledge or information to ascertain the veracity of the allegation contained in paragraph 2. Accordingly, the same is denied and strict proof required at time of trial.

3. Denied as stated. Anthony Jackson is an adult individual who resides at 6658 East 45th Street, Indianapolis, IN 46226.

4. This Paragraph is not directed towards this Defendant. Therefore, no response is required.

5. This Defendant is without knowledge or information to ascertain the veracity of the allegation contained in paragraph 5. Accordingly, the same is denied and strict proof required at time of trial.

6. This Defendant is without knowledge or information to ascertain the veracity of the allegation contained in paragraph 6. Accordingly, the same is denied and strict proof required at time of trial.

7. Denied as stated. On or about December 9, 2006, Anthony Jackson was operating a 1997 Freightliner XLPS 65 barring Indiana tag number 10264108. The vehicle is registered to Anthony Jackson.

8. This paragraph states a legal conclusion to which no response is required. To the extent a response may be deemed necessary, Defendant, Anthony Jackson, specifically denies any and all allegations of negligence and damages and demands strict proof at time of trial.

9. This paragraph is not directed towards this Defendant and therefore, no response is required.

10.(a-j) This paragraph and its subparagraphs state legal conclusions to which no response is required. To the extent a response is required, the same is denied. Defendant specifically denies any and all allegations of negligence in accordance with PA. R.C.P. Rule 1029(e).

11. This paragraph states a legal conclusion to which no response is required. To the extent a response may be deemed necessary, Defendant, Anthony Jackson, specifically denies any and all allegations of negligence and damages and demands strict proof at time of trial.

12. This paragraph states a legal conclusion to which no response is required. To the extent a response may be deemed necessary, Defendant, Anthony Jackson, specifically denies any and all allegations of negligence and damages in accordance with Pa. R.C.P. 1029(e).

13. Defendant is without knowledge or information sufficient to ascertain the veracity of the allegations contained in paragraph 13. Accordingly, the same is denied and strict proof required at time of trial.

14. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, the same is denied.

WHEREFORE, Defendant, Anthony B. Jackson, incorrectly identified as Andrew B. Jackson, demands judgment against Plaintiff, plus interest and costs of suit.

NEW MATTER

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

16. Although not necessary to do so, this Defendant pleads the affirmative defenses of comparative negligence, contributory negligence and assumption of the risk of the full and complete bar to Plaintiff's claims against this Defendant.

17. Plaintiff's claims against this Defendant are barred in that Plaintiff's alleged damages were caused by the actions or inactions of a third party or parties, for whose conduct this Defendant is neither liable nor responsible.

18. This Defendant affirmatively pleads that this Defendant encountered a sudden emergency, requiring quick action on his part.

19. At all times material to this cause of action, a sudden and clear emergency arose inside the range of the assured clear distance in front of this Defendant.

20. Plaintiff's claims are barred by the equitable doctrines of latches, waiver, release, accordance, satisfaction, and estoppel.

21. This Defendant affirmatively pleads that Plaintiff has failed to mitigate its damages.

22. This Defendant affirmatively pleads the statute of limitations as a full and compete bar to plaintiff's claims to the extent that the same may be applicable.

23. Defendant affirmatively pleads the failure of Plaintiff to serve this Defendant in accordance with the Pennsylvania Rules of Civil Procedure.

24. Defendant affirmatively pleads the statute of limitations as a full and complete defense to this matter.

25. Defendant affirmatively pleads that Plaintiff has failed to effectuate service on Anthony Jackson in accordance with Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendant, Anthony B. Jackson, incorrectly identified as Andrew B. Jackson, demands judgment against Plaintiff, plus interest and costs of suit.

CROSS CLAIM PURSUANT TO PA R.C.P. 1031.1

26. Defendant, Anthony Jackson, incorrectly identified as Andrew B. Jackson, incorporates by reference the averments contained in Paragraphs 1 through 25 of his Answer and New Matter as though specifically restated herein.

27. If the Plaintiff, Nationwide Mutual Insurance Company a/s/o Charles Lepinski, is entitled to damages in this case, damages which have been specifically denied, then its injuries and damages were the direct and proximate result of the Co-Defendant Virgil J. Flannery, who alone is liable to the Plaintiff, or in the alternative, is jointly and severely liable to the Plaintiff

28. In the event that it is determined that Defendant Anthony Jackson is liable to Plaintiff for damages, a liability which is specifically denied, then Co-Defendant, Virgil J. Flannery, is liable over Defendant Anthony Jackson for indemnification and/or contribution.

WHEREFORE, Defendant, Anthony Jackson, incorrectly identified as Andrew B. Jackson demands judgment in his favor and against Plaintiff, Nationwide Mutual Insurance

Company a/s/o Charles Lepinski, or in the alternative, demands judgment against Virgil J. Flannery for indemnification and/or contribution.

Respectfully submitted,
LAW OFFICE OF JOSEPH S. WEIMER

By _____
Susan B. Garrard, Esquire
Attorney for Anthony B. Jackson,
Incorrectly Identified As
Andrew B. Jackson

VERIFICATION

I, Anthony B. Jackson, one of the Defendants in the within matter, do verify that the averments of fact made in the within **ANSWER, NEW MATTER and CROSS CLAIM PURSUANT TO PA. R.C.P. 1031.1 TO PLAINTIFF'S COMPLAINT** are true and correct based upon knowledge, information and belief.

I understand that false statements are made subject to penalty of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

Anthony B Jackson

Anthony B. Jackson

CERTIFICATE OF SERVICE

I, SUSAN D. GARRARD, ESQUIRE, do hereby certify that I have mailed a true and correct copy of the within **ANSWER, NEW MATTER and CROSS CLAIM PURSUANT TO PA. R.C.P. 1031.1 TO PLAINTIFF'S COMPLAINT** by first class-mail, postage pre-paid, to the following on the 8th day of July, 2011:

Paul J. Hennessy, Esquire
142 West Market Street, Suite 2
West Chester, PA 19382
(Attorney for Plaintiff)

James R. Hankle, Esquire
Sherrard German & Kelly P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222
(Attorney for Defendant, Virgil J. Flannery)

Respectfully submitted,
LAW OFFICE OF JOSEPH S. WEIMER

By Susan D. Garrard
Susan B. Garrard, Esquire
Attorney for Anthony B. Jackson,
Incorrectly Identified As
Andrew B. Jackson

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED

JUL 29 2011

William A. Shaw
Prothonotary/Clerk of Courts

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendants.

CIVIL ACTION

NO: 08-337-CD

ANSWER AND NEW MATTER TO CROSS CLAIM OF DEFENDANT JACKSON

Filed on Behalf of Defendant, Virgil J. Flannery

Counsel of Record for this Party:

James R. Hankle, Esquire
Email: jrh@sgkpc.com
PA I.D. No. 36019
Christopher J. Davis, Esquire
Email: cjd@sgkpc.com
PA I.D. No. 92876

Sherrard, German & Kelly, P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222
(412) 355-0200

Firm No. 0006

TO: DEFENDANT, ANTHONY JACKSON, INCORRECTLY IDENTIFIED AS ANDREW B. JACKSON, YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED NEW MATTER WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

SHERRARD, GERMAN & KELLY, P.C.

By: _____
Attorney for Defendant, Virgil Flannery.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants.	

ANSWER AND NEW MATTER TO CROSS CLAIM OF DEFENDANT JACKSON

AND NOW, comes Defendant, Virgil J. Flannery ("Flannery"), by and through his attorneys, James R. Hankle, Esquire, Christopher J. Davis, Esquire, and Sherrard, German & Kelly, P.C., and files the within Answer and New Matter to Cross Claim of Defendant Anthony Jackson, incorrectly identified as Andrew Jackson ("Jackson"), as follows:

ANSWER

1. The averments set forth in Paragraph 26 of the Cross Claim are incorporative in nature and are not directed toward Flannery, therefore, no responsive pleading is required. To the extent that a responsive pleading is required, Flannery incorporates the averments contained in his previously filed Answer, New Matter and New Matter Pursuant to 2252(d), now recognized as a cross-claim under Pennsylvania Rule of Civil Procedure 1031.1.

2. The averments set forth in Paragraph 27 of the Cross Claim contain legal conclusions to which no responsive pleading is required. To the extent that a responsive pleading is required, the averments set forth in Paragraph 27 of the Cross Claim are denied and strict proof thereof is demanded at the time of trial.

3. The averments set forth in Paragraph 28 of the Cross Claim contain legal conclusions to which no responsive pleading is required. To the extent that a responsive pleading is required, the averments set forth in Paragraph 28 of the Cross Claim are denied and strict proof thereof is demanded at the time of trial.

NEW MATTER

4. Jackson has failed to state a cause of action upon which relief can be granted.

5. Flannery specifically denies that he, alone, is liable to Plaintiff or, in the alternative, that he is jointly or severally liable with Jackson to Plaintiff.

6. To the extent that Plaintiff is entitled to damages in this case, damages which are specifically denied, then Plaintiff's damages were the direct and proximate result of Jackson.

7. Further, to the extent that Plaintiff is entitled to damages in this case, damages which are specifically denied, then Jackson is liable over to Flannery for indemnification and/or contribution.

8. Jackson's cross claims are barred or limited by his contributory and/or comparatively negligence as established in the Pennsylvania Comparative Negligence Act, 42 Pa. C.S.A. § 7102, with Jackson's negligence being the sole or substantial cause of any damages allegedly sustained by Plaintiff.

9. As to Jackson's cross claims, Flannery pleads the defense of the Sudden Emergency Doctrine.

10. At all times material to Jackson's cross claims, Flannery was confronted with an occurrence that permitted no opportunity to apprehend the situation and avoid the accident.

11. At all times material to Jackson's cross claims, Flannery was confronted with an occurrence requiring some form of immediate, evasive action.

12. At all times material to Jackson's cross claims, a sudden and clear emergency arose inside the range of the assured clear distance in front of Flannery.

13. The sudden and clear emergency that arose inside the range of the assured clear distance in front of Flannery was the sudden swerving of the tractor trailer operated by Plaintiff's insured, Charles Lepinski, and the sudden blocking of the lanes of travel in front of Flannery by the tractor trailer operated by Plaintiff's insured, Charles Lepinski, as well as the involvement of other vehicles in the accident, including Jackson's vehicle.

14. At all times material to Jackson's cross claims, any duty that Flannery is alleged to have failed to have performed, so suddenly and unexpectedly arose that there was no opportunity to apprehend the situation and act according to the exigency in a manner to avoid the collision.

15. At all times material to Jackson's cross claims, Flannery found himself in a position of danger which was not the result of his negligence.

16. At all times material to Jackson's cross claims, Flannery made an honest exercise of judgment in attempting to avoid a collision with the tractor trailer operated by Plaintiff's insured, Charles Lepinski, even if Jackson could have done better had he had time to deliberate.

SHERRARD, GERMAN & KELLY, P.C.

By_____

James R. Hankle, Esquire
Christopher J. Davis, Esquire
Attorneys for Defendant,
Virgil J. Flannery

VERIFICATION

I, Christopher J. Davis, Esquire, hereby verify that:

1. Defendant, Virgil J. Flannery, is outside the jurisdiction of this Honorable Court;

2. I have sufficient knowledge or information and belief from documentation forwarded to me by Virgil J. Flannery; and

3. The facts and allegations set forth in the within Answer and New Matter To Cross Claim of Defendant Jackson are true the best of my knowledge.

Date: July 28, 2011

By: _____
Christopher J. Davis, Esquire

Paul J. Hennessy, Esquire
Hennessy & Walker
142 West Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Attorney for Plaintiffs

Nationwide Mutual Insurance Company A/S/O Charles Lepinski	: In The Court of Common Pleas
	: Clearfield County, Pennsylvania
vs.	: Civil Action Law
Andrew B. Jackson **AND** Virgil J. Flannery	: No: 08-337-CD

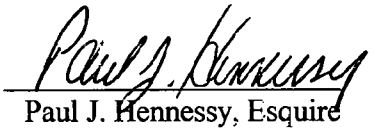
Plaintiff's Response to New Matter of Defendant Anthony B. Jackson

15-20. Denied. The averments contained in paragraphs 15-20 contain conclusions of law to which no responsive pleading is required. Strict proof is demanded at time of trial.

21. Denied. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 21. Strict proof is demanded at time of trial.

22-25. Denied. The averments contained in paragraphs 22-25 contain conclusions of law to which no responsive pleading is required, pursuant to the Pennsylvania Rules of Civil Procedure.

Wherefore Plaintiff demands judgment against the Defendants jointly and severally in the amount of $34,024.65 plus interest and court costs and whatever relief This Court determines to equitable and just.



Paul J. Hennessy, Esquire
Hennessy & Walker

Paul J. Hennessy, Esquire
Hennessy & Walker
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Attorney for Plaintiff

Nationwide Mutual Insurance Company A/S/O Charles Lepinski	: In The Court of Common Pleas
	: Clearfield County, Pennsylvania
vs.	
	: Civil Action Law
Andrew B. Jackson **AND** Virgil J. Flannery	: No: 08-337-CD

CERTIFICATION OF SERVICE

I hereby certify that I have served a true and correct copy of the Plaintiff's Reply to New Matter of Defendant, Jackson filed in the above captioned action upon the Defendants' counsel on, July 29, 2011 by First Class United States mail, addressed as follows:

Susan D. Garrard, Esquire
Law Office of Joseph S. Weimer
975 Two Chatham Center
Pittsburgh, PA 15219

James R. Hankle, Esquire
Sherrard, German & Kelly, P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222

Paul J. Hennessy, Esquire
Hennessy & Walker

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CIVIL TRIAL LISTING – CERTIFICATE OF READINESS

FORM MUST BE FILEDWITH: CLEARFIELD COUNTY PROTHONOTARY
230 EAST MARKET STREET, 1ST FLOOR
CLEARFIELD, PA 16830

DATE PRESENTED: Nov. 9, 2011 CASE NUMBER: 2008-337-CD ~~09-1192~~

DATE ORIGINAL COMPLAINT WAS FILED: 01/21/2009

TYPE OF TRIAL REQUESTED:
( ) *JURY* (X) *NON-JURY*
( ) *ARBITRATION (case cannot exceed $20,000)*

ESTIMATED LENGTH OF TRIAL:
____ DAY(S) (or) 4 HOURS

PLAINTIFF(S):

Nationwide Mutual Insurance Co. a/s/o Charles Lepinski

DEFENDANT(S):

Check (√) if Defendant is a Minor

Andrew B. Jackson ( )

ADDITIONAL DEFENDANT(S):

Virgil J. Flannery ( )

( )

FILED ICC AHY Hennessy
m/11:45am
NOV 14 2011
William A. Shaw
Prothonotary/Clerk of Courts
6K

JURY DEMAND FILED BY: Plaintiff

DATE JURY DEMAND FILED:

AMOUNT AT ISSUE: $ 34,024.66

CONSOLIDATION? ( ) YES (X) NO

IF YES, DATE CONSOLIDATION ORDERED: _____

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE ARBITRATION / TRIAL LIST.

I certify that 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 or arbitration, 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:

Paul J. Hennessy
SIGNATURE

Paul J. Hennessy, Esq., 142 W. Market St., West Chester, PA 19382		610-431-2727
FOR THE PLAINTIFF(S)	ADDRESS	TELEPHONE #
Susan D. Garrard, Esq., 975 Two Chatham Ctr.,Ste. 2,Pittsburgh, PA 15219		412-338-3193
FOR THE DEFENDANT(S)	ADDRESS	TELEPHONE #
James R. Hankle, Esq.,28th Fl.,Two PNC Plaza,620 Liberty Ave., Pittsburgh, PA 15222		412-355-0200
FOR ADDITIONAL DEFENDANT(S)	ADDRESS	TELEPHONE #

Paul J. Hennessy, Esquire
Hennessy & Walker Group
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Nationwide Mutual Insurance Company A/S/O Charles Lepinski	: In The Court of Common Pleas
	: Clearfield County, Pennsylvania
vs.	
	: Civil Action Law
Andrew B. Jackson **AND** Virgil J. Flannery	: No: 09-1192

CERTIFICATION OF SERVICE

I hereby certify that I have served a true and correct copy of the Plaintiffs Civil Trial Listing/Certificate of Readiness upon the Defendant's counsel on November 9, 2011 by First Class United States mail, postage prepaid addressed as follows:

Susan D. Garrard, Esquire
Law Office of Joseph S. Weimer
975 Two Chatham Center
Pittsburgh, PA 15219

AND

James R. Hankle, Esquire
Sherrard, German & Kelly
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222

Paul J. Hennessy, Esquire
Hennessy & Walker

CA

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

NATIONWIDE MUTUAL INSURANCE COMPANY, a/s/o CHARLES LEPINSKI Plaintiffs	:	NO. 2008-0337-CD
vs.	:	
ANDREW B. JACKSON VIRGIL J. FLANNERY Defendants	:	

ORDER

AND NOW, this 15th day of November, 2011, it is the Order of the Court that a pre-trial conference in the above-captioned matter shall be and is hereby scheduled for **Monday, December 19, 2011 at 2:00 P.M.** in Judge's Chambers, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED
NOV 16 2011
William A. Shaw
Prothonotary/Clerk of Courts

cc
ICC Attys:
Hennessy
Garras
Hankle

FILED

NOV 16 2011

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/16/11

____ You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) _X_ Plaintiff(s) Attorney ____ Other

____ Defendant(s) _X_ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendant.

CIVIL ACTION

No. 08-337-CD

PRAECIPE TO SETTLE AND DISCONTINUE

Filed on behalf of Plaintiff:

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI

Counsel of Record for this Party:

Paul J. Hennessy, Esquire
Pa. I.D. #

142 West Market Street, Suite 2
West Chester, PA 19382

610/431-2727

FILED No CC.
m/10:49am
DEC 23 2011
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff/Respondent,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendant.

CIVIL ACTION

No. 08-337-CD

PRAECIPE

TO THE PROTHONOTARY:

SIR :

Kindly settle and discontinue the above-captioned case on behalf of the Plaintiff.

Paul J. Hennessy, Esquire
Attorney for Plaintiff

DATE_____

PRO. COST_____

SHERIFF DUE_____

CERT._____

PROTHONOTARY

By_____
Deputy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff/Respondent,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendants/Petitioners

CIVIL ACTION

NO: 08-337-CD

PETITION FOR ENTRY OF JUDGMENT OF NON PROS

Filed on Behalf of Defendant/Petitioner, Virgil J. Flannery

Counsel of Record for this Party:

James R. Hankle, Esquire
Email: jrh@sgkpc.com
PA I.D. No. 36019
Christopher J. Davis, Esquire
Email: cjd@sgkpc.com
PA I.D. No. 92876

Sherrard, German & Kelly, P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222
(412) 355-0200

Firm No. 0006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff/Respondent,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants/Petitioners.	

PETITION FOR ENTRY OF JUDGMENT OF NON PROS

AND NOW, comes Defendant, Virgil J. Flannery, by and through his attorneys, James R. Hankle, Esquire, Chris J. Davis, Esquire, and Sherrard, German & Kelly, P.C., and files the following Petition for Entry of Judgment of Non Pros, averring as follows:

I. PROCEDURAL BACKGROUND

1. On or about February 27, 2008, Plaintiff/Respondent, Nationwide Mutual Insurance Company a/s/o Charles Lepinski ("Nationwide"), filed a Complaint against Defendants, Andrew B. Jackson ("Jackson") and Virgil J. Flannery ("Flannery"), for property damage claims arising from a motor vehicle accident involving Charles Lepinski, Jackson and Flannery, in addition to other motor vehicles. (A true and correct copy of the Complaint is attached hereto as Exhibit A.)

2. On or about April 7, 2008, Flannery filed an Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to the Complaint, denying any liability whatsoever for the accident,

invoking various defenses, including the sudden emergency doctrine, and contending that Charles Lepinski and/or Jackson were liable for the accident and resultant property damages alleged in the Complaint. (A true and correct copy of the Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) is attached hereto as Exhibit B.)

3. Despite the presence of a Notice to Plead and instructions to respond on the Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d), neither Nationwide nor Jackson have responded to the Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d).

4. On May 15, 2008, in an effort to defend his interests in the case, Flannery served a First Set of Interrogatories Directed to Plaintiff and a First Request for Production of Documents Directed to Plaintiff (collectively "Discovery Requests").

5. On July 18, 2008, because over two (2) months had passed and Nationwide had failed to respond to the Discovery Requests within 30 days, Flannery filed and presented a Motion to Compel Discovery Responses ("Motion").

6. On July 22, 2008, upon review and consideration of the Motion, this Honorable Court granted the Motion and entered an order directing Nationwide to provide full and complete answers and responses to the Discovery Requests within 20 days. (A true and correct copy of this Honorable Court's Order of Court is attached hereto as Exhibit C.)

7. On August 4, 2008, Nationwide served Flannery with Answers to the First Set of Interrogatories Directed to Plaintiff and Responses to the First Requests for Production of Documents Directed to Plaintiff.

8. Since August 4, 2008, despite the fact that well over two (2) years have passed since that date, no further activity has occurred with respect to Nationwide's prosecution of this case.

II. ARGUMENT

A. Standard for Granting Petitions for Entry of Judgment of Non Pros

9. A petition for entry of judgment of non pros is the vehicle by which a litigant asserts his or her common-law right to a reasonably prompt conclusion to a case. See Bucci v. Detroit Fire & Marine Ins. Co., 109 Pa. Super. 167, 167 A. 425, 427 (Pa. Super. Ct. 1933).

10. The trial court has broad discretion to grant a petition for entry of judgment of non pros. See Jacobs v. Halloran, 551 Pa. 350, 710 A.2d 1098 (Pa. Super. Ct. 1998).

11. In order for a trial court to grant a petition for entry of judgment of non pros for the delay in the prosecution of an action, three conditions must be present: (1) the plaintiff must have failed to prosecute the action within a reasonable time for want of due diligence; (2) there must be no reasonable or compelling excuse for the plaintiff's delay; and (3) the plaintiff's delay must have been prejudicial to the defendant or adverse party. See Reading Radio, Inc. v. Fink, 2003 PA Super 353, 833 A.2d 199, 216 (Pa. Super. Ct. 2003).

B. The Conditions Required For The Entry Of Judgment Of Non Pros Are Present

(1) Nationwide Has Shown A Want of Due Diligence In Failing To Prosecute Its Action

12. As explained above, no activity of any type has occurred in this case since August 4, 2008, well over two (2) years ago.

13. Indeed, after the filing of its Complaint, the only activity Nationwide engaged in was the service of its discovery responses, which was only done after Flannery's Motion and this Honorable Court's Order compelling Nationwide to respond.

14. As further evidence of a complete lack of due diligence, Nationwide has neither engaged in discovery of its own nor responded to the Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) filed by Flannery.

15. In stark contrast to Flannery's due diligence in defending his interests after receiving the Complaint filed against him, Nationwide has done absolutely nothing to prosecute its case after the filing of its Complaint.

(2) There Is No Reasonable Or Compelling Excuse For Nationwide's Delay

16. Important to this Petition is the fact that this case has been brought by Nationwide, as the subrogee of Charles Lepinski, to recover monies it paid for property damage caused to Mr. Lepinski's motor vehicle.

17. As an insurance company in a subrogation action seeking reimbursement money, there is no reasonable or compelling excuse for Nationwide's nearly three (3) year delay in prosecuting the action.

18. Furthermore, since receiving Nationwide's discovery responses on August 4, 2008, Flannery has not received any correspondence or communications from Nationwide or anyone on its behalf requesting or explaining any delay in moving the case forward.

(3) Flannery Has Been Prejudiced By Nationwide's Delay

19. As a result of Nationwide's delay, Flannery has experienced a substantial diminution in his ability to properly present his case at trial; namely, Flannery been harmed and prejudiced due to a lack of evidence, or speculative evidence, that now exists surrounding the dispute.

20. The motor vehicle accident giving rise to this case occurred on December 9, 2006, on a remote portion of the longest interstate in Pennsylvania, in severely inclement weather, and

involved multiple vehicles, with numerous potential witnesses. As a result of the nearly three (3) year delay in the prosecution of Nationwide's claims, evidence has undeniably been lost, witnesses have likely moved, cannot be located or have died, and, even if they could be found, their memories have certainly faded.

21. Although some witness statements were provided by Nationwide in its discovery responses, the issue concerning lost evidence, or disappearing or absent witnesses, is no more apparent than by the fact that Jackson, a party to this case, is believed to have not been served with the Complaint for reasons relating to Nationwide's inability to locate him. If a named party to this suit cannot be located, one can only imagine how difficult, if not impossible, it will be to locate witnesses to the accident.

22. Indeed, the nearly three (3) year delay by Nationwide in doing nothing to prosecute its case after the filing of the Complaint against Flannery has prejudiced Flannery's ability to defend his interests. Equity principles, particularly where Flannery has vehemently denied liability through a responsive pleading while Nationwide has filed nothing in response to challenge this denial and has further engaged in no communications or discovery of its own to prosecute its case, mandate that a judgment of non pros be entered against Nationwide.

III. CONCLUSION

For the foregoing reasons, Defendant, Virgil J. Flannery, respectfully requests that this Honorable Court enter a judgment of non pros against Plaintiff, Nationwide Mutual Insurance Company a/s/o Charles Lepinski, and dismiss this action altogether against Defendant, Virgil J. Flannery.

Respectfully submitted,

SHERRARD, GERMAN & KELLY, P.C.

By James R. Hankle
James R. Hankle, Esquire
Christopher J. Davis, Esquire
Attorneys for Defendant,
Virgil J. Flannery

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Petition for Entry of Judgment of Non Pros** was served upon the following individuals by United States Mail, first class delivery, postage pre-paid this 15 day of November, 2010:

Paul J. Hennessy, Esquire
142 West Market Street, Suite 2
West Chester, PA 19382

Andrew B. Jackson
6658 East 45th Street
Indianapolis, IN 46226
(last known address)

By: James R. Hankle
James R. Hankle, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

Nationwide Mutual Insurance Company A/S/O Charles Lepinski
(Plaintiff)

1100 Locust, Dept. 5595
(Street Address)

Des Moines, IA 50391-5595
(City, State ZIP)

CIVIL ACTION

No. 08-337-CD

Type of Case: Negligence

Type of Pleading: complaint

VS.

Andrew B. Jackson
(Defendant)

6658 East 45th Street
(Street Address)

Indianapolis, IN 46220
(City, State ZIP)

AND
Virgil J. Flannery
11705 Trotter Road
Argyle, WI 53504

Filed on Behalf of:

Plaintiffs
(Plaintiff/Defendant)

Paul J. Hennessy, Esquire
(Filed by)

142 West Market Street, Suite 2
(Address)
West Chester, PA 19382
610-431-2727
(Phone)

Paul J. Hennessy
(Signature)

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

FEB 27 2008

Attest. William A. Shaw
Prothonotary/
Clerk of Courts

EXHIBIT
"A"

Paul J. Hennessy, Esquire
Hennessy & Walker Group
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Nationwide Mutual Insurance Company A/S/O Charles Lepinski 1100 Locust, Dept. 5595 Des Moines, IA 50391-5595	: In The Court of Common Pleas : Clearfield County, Pennsylvania
vs.	: Civil Action Law
Andrew B. Jackson 6658 East 45th Street Indianapolis, IN 46226 AND Virgil J. Flannery 11705 Trotter Road Argyle, WI 53504	: No:

NOTICE

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

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

David S. Meholick, Court Admin.
Clearfield County Courthouse
Clearfield, PA 16830
814-465-2641 ext. 5982

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notification. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defenses o sus objecionnes a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perdee dinero o sus propiedades u otros derechos importantes para usted.

Lleva esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por teléfono a la oficina cuya direccion se encuentra encuentra escrita abajo para averiguar dónde se puede conseguir asistencia legal.

David S. Meholick, Court Admin.
Clearfield County Courthouse
Clearfield, PA 16830
814-465-2641 ext. 5982

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396 Attorney for Plaintiffs

Nationwide Mutual Insurance Co A/S/O Charles Lepinski 1100 Locust Dept 5595 Des Moines, IA 50391-5595	: In The Court of Common Pleas : Clearfield County, Pennsylvania : Civil Action Law
VS	: No
Andrew B. Jackson 6658 E. 45th Street Indianapolis, IN 46226 **AND** Virgil J. Flannery 11705 Trotter Road Argyle, WI 53504	

COMPLAINT

1. Plaintiff Nationwide Mutual Insurance Co is an insurance company licensed and authorized to conduct business in the Commonwealth of Pennsylvania and having as one of its principal places of business the above captioned address.

2. Charles Lepinski is an adult individual insured with Nationwide Mutual Insurance Co.

3. Defendant Andrew B. Jackson is an adult individual who resides at the above captioned address.

4. Defendant Virgil J. Flannery is an adult individual who resides at the above capponed address.

5. On or about 12/09/2006 Plaintiff Nationwide Mutual Insurance Co insured Charles Lepinski with a personal auto policy, policy number ACPBA7102315948 said policy covering a 1998 Kenworth T-600 tractor trailer.

6. Charles Lepinski was insured by the Plaintiff Nationwide Mutual Insurance Company with an inland marine policy of insurance, under policy # 22D34631 on December 9, 2006.

7. On or about 12/09/2006, Defendant Andrew Jackson was operating a 1997 Freightliner XL FS65 bearing IN tag # 0264108 registered to same.

8. On or about 12/09/2006 at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania Defendant Andrew Jackson while operating the aforesaid 1997 Freightliner did negligently, carelessly and/or recklessly, strike/collide into Plaintiff's insured's 1998 Kenworth tractor trailer, being lawfully operated by Lancelot E. Furber causing extensive damages to same.

9. On or about 12/09/2006 at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania, the Defendant Virgil J. Flannery operating a 2007 Pierce Quantum, WI tag # MV8331DT did negligently strike the Plaintiff's vehicle.

10. The negligence of the Defendants consisted of:

a) operating vehicle at a speed unsafe for conditions;
b) being inattentive;
c) failing to maintain proper lookout;
d) failing to maintain control of said vehicle so as to be able to stop within the assured clear distances ahead;
g) failing to take the proper safety precautions;
h) following too closely;
i) failing to warn Plaintiff;
j) failing to give due regard to the right, safety, point and position of plaintiffs property

11. The aforesaid collision resulted solely from the negligent acts and/or failure to act on part of Defendants named herein and was due in no manner whatsoever to any act and/or failure to act on part of Plaintiff's insured.

12. As a result of the aforesaid collision, Plaintiff's insured's vehicle sustained extensive damages to same.

13. Pursuant to the aforesaid policy of insurance, Plaintiff Nationwide Mutual Insurance Co settled the claims of its insured Charles Lepinski in the amount of $34,024.65, (said figure includes Plaintiff's trailer damage in the amount of $23,724.80 and Plaintiff's equipment damage in the amount of $10,300.00) representing fair and reasonable reimbursement for the damages sustained.

14. Pursuant to the aforesaid policy of insurance, Plaintiff Nationwide Mutual Insurance Co is subrogated to Charles Lepinski for this loss.

WHEREFORE, Plaintiffs demand judgment against Defendants, Andrew B. Jackson and Virgil J. Flannery, jointly and severally in the amount of $34,024.65 together plus costs, interest and such other relief this Court finds equitable and just.

Paul J. Hennessy, Esq.

NATI-1330

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF CHESTER : ss

The undersigned verifies that the facts contained herein are true and correct.

The undersigned understands that false statements herein are made subject to the penalties of 19 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

If applicable, this affidavit is made on behalf of the Plaintiff(s); that the said Plaintiff(s) is/are unable and unavailable to make this verification on its/his/her own behalf within the time allotted for filing of this pleading, and the facts set forth in the foregoing pleading are true and correct to the best of counsel's knowledge, information and belief.

This verification is made pursuant to Pa. R.C.P. 1024 and is based on interviews, conferences, reports, records and other investigative material in the file

Paul J. Hennessy, Esquire

Dated: 2/25/08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendants.

CIVIL ACTION

NO: 08-337-CD

ANSWER, NEW MATTER, AND NEW MATTER PURSUANT TO Pa. R.C.P. 2252(d)

Filed on Behalf of Defendant, Virgil J. Flannery

Counsel of Record for this Party:

James R. Hankle, Esquire
Email: jrh@sgkpc.com
PA I.D. No. 36019
Christopher J. Davis, Esquire
Email: cjd@sgkpc.com
PA I.D. No. 92876

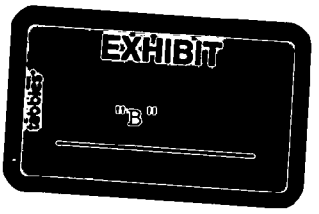
Sherrard, German & Kelly, P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222
(412) 355-0200

Firm No. 0006

TO: PLAINTIFF
YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d) WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

SHERRARD, GERMAN & KELLY, P.C.

By: James R. Hankle
ATTORNEY FOR DEFENDANT,
Virgil J. Flannery



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendants.

CIVIL ACTION

NO: 08-337-CD

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after the 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 ELIBIGLE PERSONS AT A REDUCED FEE OR NO FEE.**

DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 E. MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830
TELEPHONE: 814-765-2641, EXT. 5982

AVISO

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan mas adelante en las siguientes paginas, debe tomar accion dentro de los proximos veinte (20) dias despues de la notificacion de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objecciones a, las demandas presentadas aqui en contra suya. Se le advierte de que si usted falla de tomar accion como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamacion o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin mas aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted. **USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE, SI USTED NO TIENE UN ABOGADO O NO PUEDE PAGARLE A UNO, LLAME O VAYA A LA SIGUIENTE OFICINA PARA AVERIGUAR DONDE PUEDE ENCONTRAR ASISTENCIA LEGAL.**

DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 E. MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830
TELEPHONE: 814-765-2641, EXT. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants.	

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d)

AND NOW, comes Defendant, Virgil J. Flannery ("this Defendant"), by and through his attorneys, James R. Hankle, Esquire, Chris J. Davis, Esquire, and Sherrard, German & Kelly, P.C., and files the following Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) averring as follows:

ANSWER

1. As to the allegations contained in Paragraph 1, same pertains to the identity of adverse parties and are neither admitted nor denied, and strict proof is demanded at the time of trial.

2. As to the allegations contained in Paragraph 2, same pertains to the identity of adverse parties and are neither admitted nor denied, and strict proof is demanded at the time of trial.

3. As to the allegations contained in Paragraph 3, same pertains to the identity of adverse parties and are neither admitted nor denied, and strict proof is demanded at the time of trial.

4. As to the allegations contained in Paragraph 4, admitted.

5. As to the allegations contained in Paragraph 5, after reasonable investigation, this Defendant is without information sufficient to form a belief as to the truth thereof and same is therefore denied, and if material, proof thereof is demanded at the trial of this cause.

6. As to the allegations contained in Paragraph 6, after reasonable investigation, this Defendant is without information sufficient to form a belief as to the truth thereof and same is therefore denied, and if material, proof thereof is demanded at the trial of this cause.

7. As to the allegations contained in Paragraph 7, admitted.

8. As to the allegations contained in Paragraph 8, it is admitted that on or about December 9, 2006, at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania, Defendant, Andrew Jackson, while operating a 1997 Freightliner did negligent, carelessly and recklessly strike/collide into a tractor trailer being operated by Plaintiff's insured, Charles Lepinski. As to all other allegations contained in Paragraph 8, after reasonable investigation, this Defendant is without information sufficient to form a belief as to the truth thereof and same is therefore denied, and if material, proof thereof is demanded at the trial of this cause.

9. As to the allegations contained in Paragraph 9, it is admitted that on or about December 9, 2006, at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania, this Defendant operated a 2007 Pierce Quantum motor vehicle with Wisconsin license plate number MV8331DT and struck the rear-end of a tractor trailer being operated by Plaintiff's insured, Charles Lepinski. As to all other allegations contained in Paragraph 9, this Defendant has been advised by counsel and therefore believes and avers that he need not make any response, as all such averments are generally denied and placed at issue by virtue of this Answer and in accordance with Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

10. As to the allegations contained in Paragraph 10, this Defendant has been advised by counsel and therefore believes and avers that he need not make any response, as all such averments are generally denied and placed at issue by virtue of this Answer and in accordance with Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

11. As to the allegations contained in Paragraph 11, this Defendant has been advised by counsel and therefore believes and avers that he need not make any response, as all such averments are generally denied and placed at issue by virtue of this Answer and in accordance with Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

12. As to the allegations contained in Paragraph 12, after reasonable investigation, this Defendant is without information sufficient to form a belief as to the truth thereof and same is therefore denied, and if material, proof thereof is demanded at the trial of this cause.

13. As to the allegations contained in Paragraph 13, after reasonable investigation, this Defendant is without information sufficient to form a belief as to the truth thereof and same is therefore denied, and if material, proof thereof is demanded at the trial of this cause.

14. As to the allegations contained in Paragraph 14, after reasonable investigation, this Defendant is without information sufficient to form a belief as to the truth thereof and same is therefore denied, and if material, proof thereof is demanded at the trial of this cause.

WHEREFORE, Defendant, Virgil J. Flannery, demands judgment in his favor against Plaintiff, with interest and costs of suit.

NEW MATTER

15. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

16. Plaintiff's insured, Charles Lepinski, was comparatively negligent, which comparative negligence was the sole or substantial cause of any damages allegedly sustained by Plaintiff.

17. Plaintiff's Complaint is barred or diminished in accordance with the provisions of the Pennsylvania Comparative Negligence Act, 42 Pa. C.S.A. Section 7102.

18. No act or failure to act on the part of this Defendant was a factor in bringing about any damages allegedly sustained by Plaintiff.

19. The damages allegedly sustained by Plaintiff were the result of facts or omissions by persons or entities over whom this Defendant had no legal responsibility or control.

20. This Defendant pleads the doctrine of Res Ipsa Loquitur and avers that this accident would not have happened in the absence of the negligent conduct of Plaintiff's insured, Charles Lepinski.

21. This Defendants pleads the defense of the Sudden Emergency Doctrine.

22. At all times material to this cause of action, this Defendant was confronted with an occurrence that permitted no opportunity to apprehend the situation and avoid the accident.

23. At all times material to this cause of action, this Defendant was confronted with an occurrence requiring some form of immediate, evasive action.

24. At all times material to this cause of action, a sudden and clear emergency arose inside the range of the assured clear distance in front of this Defendant.

25. The sudden and clear emergency that arose inside the range of the assured clear distance in front of this Defendant was the sudden swerving of the tractor trailer operated by Plaintiff's insured, Charles Lepinski, and the sudden blocking of the lanes of travel in front of this Defendant by the tractor trailer operated by Plaintiff's insured, Charles Lepinski.

26. At all times material to this cause of action, the tractor trailer operated by Plaintiff's insured, Charles Lepinski, jack-knifed, blocked the lanes of travel in front of this Defendant, and was almost at a complete stop when, despite this Defendant's best efforts to avoid a collision, an accident occurred.

27. At all times material to this cause of action, any duty this Defendant is alleged to have failed to performed, so suddenly and unexpectedly arose that there was no opportunity to apprehend the situation and act according to the exigency.

28. At all times material to this cause of action, this Defendant found himself in a position of danger which was not the result of his negligence.

29. At all times material to this cause of action, this Defendant made an honest exercise of judgment in attempting to avoid a collision with the tractor trailer operated by Plaintiff's insured, Charles Lepinski, even if this Defendant could have done better had he had time to deliberate.

30. The fact that at the time that the tractor trailer being operated by Plaintiff's insured, Charles Lepinski, was still moving, expresses a time-lapse that avoids any indicia offering this Defendant an opportunity to reflect as to what course of action he should have taken, other than that which he did pursue.

WHEREFORE, Defendant, Virgil J. Flannery, denies and continues to deny any and all liability to Plaintiff under any theory or cause of action as set forth in Plaintiff's Complaint and demands judgment in his favor.

NEW MATTER PURSUANT TO Pa. R.C.P. 2252(d)

31. This Defendant denies any and all liability to Plaintiff under any theory or cause of action set forth in any of the pleadings filed in this action. If it determined at the time of trial, however, that Plaintiff is entitled to any relief whatsoever against this Defendant as a result of the alleged damages, then in that event, this Defendant claims that Defendant, Andrew B. Jackson, is solely liable to Plaintiff for the reasons set forth in Plaintiff's Complaint against Defendant, Andrew B. Jackson, in this action and this Defendant incorporates by reference, as if the same had been set forth at length, those allegations of Plaintiff's Complaint as they apply to Defendant, Andrew B. Jackson, or in the alternative, Defendant, Andrew B. Jackson is liable over to this Defendant for any and all sums which may be recovered against this Defendant although any liability on the part of this Defendant is specifically denied.

32. This Defendant further joins Defendant, Andrew B. Jackson, in this cross-claim to protect his right to contribution and/or indemnity in the event it is judicially determined that this Defendant and Defendant, Andrew B. Jackson, are jointly and/or severely liable to Plaintiff, although the existence of any liability on the part of this Defendant is specifically denied.

WHEREFORE, Defendant, Virgil J. Flannery, respectfully requests this Honorable Court to enter judgment in favor of Virgil J. Flannery and against Defendant, Andrew B. Jackson, for any judgment entered in favor of Plaintiff against Defendant, Virgil J. Flannery.

Respectfully submitted,

SHERRARD, GERMAN & KELLY, P.C.

By James R. Hankle

James R. Hankle, Esquire
Christopher J. Davis, Esquire
Attorneys for Defendant,
Virgil J. Flannery

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer, New Matter, and New Matter Pursuant to Pa.R.C.P. 2252(d) was served upon the following individual by United States Mail, first class delivery, postage pre-paid this 4 day of April, 2008:

Paul J. Hennessy, Esquire
142 West Market Street, Suite 2
West Chester, PA 19382

Andrew B. Jackson
6658 East 45th Street
Indianapolis, IN 46226

By: James R. Hankle
James R. Hankle, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants.	

ORDER OF COURT

AND NOW, TO-WIT, this 22 day of July, 2008 upon presentation and consideration of the within Motion to Compel Discovery Responses, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is GRANTED.

It is further ORDERED that Plaintiff, Nationwide Mutual Insurance Company a/s/o Charles Lepinski, shall provide full and complete Answers and Responses to Defendant's First Set of Interrogatories and First Request for Production of Documents within twenty (20) days from the date of this Order or suffer further sanctions as this Court may deem just and proper.

BY THE COURT:

/s/ Fredric J. Ammerman

_____ J.

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

JUL 23 2008

Attest. William L. Ohm
Prothonotary/
Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants.	

PRAECIPE FOR ARGUMENT/SCHEDULING ORDER

AND NOW, TO-WIT, this 17th day of November, 2010, upon consideration of the Petition for Entry of Judgment of Non Pros in the above matter, it is the Order of Court that argument/hearing has been scheduled for the 17th day of December, 2010, at 2:00 o'clock P. M. in Courtroom No. 1.

BY THE COURT:

Judge

FILED
12:50 pm
NOV 18 2010
William A. Shaw
Prothonotary/Clerk of Courts

ICC
Atty
Hankle
(6w)

FILED

NOV 18 2010

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/18/10

X You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396 Attorney for Plaintiff

Nationwide Mutual Insurance Company	: In the Court of Common Pleas
a/s/o Charles Lepinski	: Clearfield County, Pennsylvania
VS.	: Civil Action Law
Andrew B. Jackson et al	: NO: 08-337-CD

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA:
:
COUNTY OF CHESTER : ss.

Paul J. Hennessy, Esquire, being duly sworn according to law, deposes and says that on September 2, 2010 Plaintiff did send a true and correct copy of the complaint to Defendant by regular and certified mail, pursuant to the Court Order dated August 17, 2010.

Paul J. Hennessy
Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.

Sworn to and subscribed
before me this 10TH day
of DECEMBER, 2010.

Marisa De Feo
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Marisa De Feo, Notary Public
Westtown Twp., Chester County
My Commission Expires March 31, 2014

FILED 2cc Atty
m/ 11:49 am Hennessy
DEC 13 2010
William A. Shaw
Prothonotary/Clerk of Courts

Paul J. Hennessy, Esquire
Hennessy & Walker
142 West Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

FILED 1cc Atty Hennessy
m 10:50am
DEC 16 2010
William A. Shaw
Prothonotary/Clerk of Courts

Attorney for Plaintiffs

Nationwide Mutual Insurance Company A/S/O Charles Lepinski	: In The Court of Common Pleas
	: Clearfield County, Pennsylvania
vs.	
	: Civil Action Law
Andrew B. Jackson	08-337-CD
AND	: No: ~~09-1192~~
Virgil J. Flannery	

Motion for Continuance

Now comes, Plaintiff by and through their counsel Paul J. Hennessy, Esquire Respectfully requesting that this Honorable Court grant this Motion for Continuance, and in support thereof states as follows:

1. On November 17, 2010 an Argument/Scheduling Order was signed by Judge Ammerman scheduling the case to be heard on December 17, 2010 at 2:00 P.M.

2. On or about December 1, 2010, Plaintiff attorney received via first class mail a letter from Attorney Hankle, advising of the Argument date.

3. On December 15, 2010 Plaintiff attorney contacted attorney for defendant Flannery, to request a continuance as Plaintiff is proceeding to judgment against Defendant, Jackson and Plaintiff attorney is unable to attend the argument due to a hearing scheduled in Philadelphia Municipal Court, State Farm vs. Richmond Roofing, no. SC-08-08-19-5844 and a Motion hearing in Lancaster County,

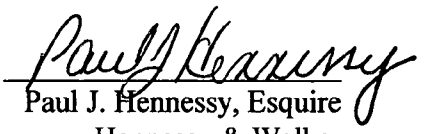
Erie Insurance vs. Yenikeyev, no. CI-10-714, which is being handled by Plaintiff's counsel partner on the same day.

4. On December 16, 2010, Plaintiff attorney contacted Attorney Hankle requesting a continuance.

5. Attorney Hankle originally objected to continuance based on knowledge The Defendant Jackson was not served. Plaintiffs have proved him with proof of same.

WHEREFORE, Plaintiff respectfully requests this Honorable Court Grant this Motion for Continuance and reschedule for 30 days.

Respectfully submitted,



Paul J. Hennessy, Esquire
Hennessy & Walker

FILED

DEC 16 2010

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff/Respondent,	NO: 08-337-CD
v.	**RESPONSE TO PLAINTIFF'S MOTION FOR CONTINUANCE**
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants/Petitioners	Filed on Behalf of Defendant/Petitioner, Virgil J. Flannery

Counsel of Record for this Party:

James R. Hankle, Esquire
Email: jrh@sgkpc.com
PA I.D. No. 36019
Christopher J. Davis, Esquire
Email: cjd@sgkpc.com
PA I.D. No. 92876

Sherrard, German & Kelly, P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222
(412) 355-0200

Firm No. 0006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff/Respondent,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants/Petitioners.	

RESPONSE TO PLAINTIFF'S MOTION FOR CONTINUANCE

AND NOW, comes Defendant, Virgil J. Flannery ("Flannery"), by and through his attorneys, James R. Hankle, Esquire, Christopher J. Davis, Esquire, and Sherrard, German & Kelly, P.C., and files the following Petition for Entry of Judgment of Non Pros, averring as follows:

1. This afternoon, on December 15, 2010, at 2:59 p.m., counsel for Defendant, Virgil J. Flannery received a facsimile of Plaintiff's Motion for Continuance, requesting that the December 17, 2010 oral argument on Flannery's Petition for Entry of Judgment of Non Pros be continued for thirty (30) days.

2. The basis for Plaintiff's Motion for Continuance; namely, that Plaintiff is proceeding to judgment against Defendant, Andrew Jackson, has absolutely no bearing on the issues set forth in Flannery's Petition for Entry of Judgment of Non Pros. In addition, any argument based on a scheduling conflict appears somewhat disingenuous and certainly should have been brought to this

Honorable Court's attention earlier, particularly given that Plaintiff has just today filed its Motion for Continuance, only two (2) days before the argument date and weeks after this Honorable Court entered an Order of Court, dated November 17, 2010, scheduling argument on the Petition for Entry of Judgment of Non Pros for December 17, 2010.

3. Accordingly, Flannery objects to Plaintiff's Motion for Continuance.

WHEREFORE, Defendant, Virgil J. Flannery, respectfully requests that this Honorable Court deny Plaintiff's Motion for Continuance and keep the originally scheduled oral argument date on the Petition for Entry of Judgment of Non Pros, scheduled for December 17, 2010, at 2:00 p.m.

Respectfully submitted,

SHERRARD, GERMAN & KELLY, P.C.

By_____

James R. Hankle, Esquire
Christopher J. Davis, Esquire
Attorneys for Defendant,
Virgil J. Flannery

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Response to Motion for Continuance** was served upon the following individuals by the manner and methods set forth below this 15th day of December, 2010:

The Honorable Frederic J. Ammerman
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(via facsimile)

Paul J. Hennessy, Esquire
142 West Market Street, Suite 2
West Chester, PA 19382
(via facsimile)

Andrew B. Jackson
6658 East 45th Street
Indianapolis, IN 46226
(via regular mail at last known address)

By: _____
Christopher J. Davis, Esquire

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

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI Plaintiff vs ANDREW B. JACKSON and VIRGIL J. FLANNERY, Defendants	* * * * * *	NO. 08-337-CD

FILED
DEC 16 2010
4:00
William A. Shaw
Prothonotary/Clerk of Courts
Atty P. Hennessy
J. Hankle
A. Jackson

ORDER

NOW, this 16th day of December, 2010, upon review and consideration of the Plaintiff's Motion for Continuance; it is the ORDER of this Court that the argument on the Defendant's Motion for Entry of Judgment of Non Pros scheduled for December 17, 2010 be and is hereby rescheduled to the 26th day of January, 2011 at 10:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

The Court notes that no further continuances in this matter shall be granted.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

DATE:_____

____You are res[illegible] appropriate parties.

✓ The Proth[illegible] provided service to the following parties:

____Plaintiff(s) ✓ Plaintiff(s) Attorney ____Other

✓ Defendant(s) ✓ Defendant(s) Attorney

____Special Instructions:

6658 EAST 45TH ST.

INDIANAPOLIS, IN 46226

FILED

DEC 16 2010

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendant.

CIVIL ACTION – Law

No. 08-337-CD

PRAECIPE FOR APPEARANCE

Filed on behalf of Defendant:

ANDREW B. JACKSON

Counsel of Record for this Party:

Susan D. Garrard, Esquire
Pa. I.D. #73727

LAW OFFICE OF JOSEPH S. WEIMER
Firm #301

975 Two Chatham Center
Pittsburgh, PA 15219

412/338-3245

412/471-8748 (fax)

no cc
Copy to CIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff/Respondent,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendant.

CIVIL ACTION – Law

No. 08-337-CD

PRAECIPE FOR APPEARANCE

To The Prothonotary:

Kindly enter my appearance on behalf of the Defendant, Andrew B. Jackson, pertaining to the above-captioned case.

LAW OFFICE OF JOSEPH S. WEIMER

By _____
Susan B. Garrard, Esquire
Attorney for Andrew B. Jackson

CERTIFICATE OF SERVICE

I, SUSAN D. GARRARD, ESQUIRE, do hereby certify that I have mailed a true and correct copy of the within **PRAECIPE FOR APPEARANCE** by first class-mail, postage pre-paid, to the following on the 16th day of December, 2010:

Paul J. Hennessy, Esquire
142 West Market Street, Suite 2
West Chester, PA 19382
(Attorney for Plaintiff)

James R. Hankle, Esquire
Sherrard German & Kelly P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222
(Attorney for Defendant, Virgil J. Flannery)

LAW OFFICE OF JOSEPH S. WEIMER

By _____
Susan B. Garrard, Esquire
Attorney for Andrew B. Jackson

William A. Shaw, Prothonotary
P. O. Box 549
Clearfield, PA 16830

FILED
JAN 03 2011
William A. Shaw
Prothonotary/Clerk of Courts

Andrew B. Jackson
6658 East 45th Street
Indianapolis IN 46226

Return to Sender
No Andrew lives at
this address

Rec'd 12-16-10

Re-mailed

Returned

016H16505405
$00.44
12/17/2010
Mailed From 16830
US POSTAGE
Hasler

NIXIE 462 DE 1 04 12/29/10
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
BC: 16830054949 *0695-01697-29-29

46230[illegible]549

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

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI Plaintiff vs ANDREW B. JACKSON and VIRGIL J. FLANNERY, Defendants	* * * * * *	NO. 08-337-CD

ORDER

NOW, this 16th day of December, 2010, upon review and consideration of the Plaintiff's Motion for Continuance; it is the ORDER of this Court that the argument on the Defendant's Motion for Entry of Judgment of Non Pros scheduled for December 17, 2010 be and is hereby rescheduled to the 26th day of January, 2011 at 10:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

The Court notes that no further continuances in this matter shall be granted.

BY THE COURT,

/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

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

DEC 16 2010

Attest, [signature]
Prothonotary/
Clerk of Courts

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street. Suite 2
West Chester, Pa 19382
610-431-2727
Attorney I.D. 65396

Attorney For Plaintiffs

Nationwide Mutual Insurance Company	: In The Court of Common Pleas
a/s/o Charles Lepinski	: Clearfield County, Pennsylvania
v.	: Civil Action Law
Andrew B. Jackson	: No. 2008 - 337 - CD
And	
Virgil J. Flannery	

Plaintiffs Reply To Defendant's Petition For Entry of Judgment of Non Pros

1. Admitted.

2. Admitted. A true and correct copy of Plaintiff's Reply to Defendant's New Matter and New Matter pursuant to Pa. R. C.P. 2252(d) filed in the Clearfield County Court of Common Pleas is attached hereto as Exhibit "A." A copy of Plaintiff's Reply to Defendant's New Matter was served upon the Defendant in accordance with Pennsyvlania Rules of Civil Procedure.

3. Denied. The averments contained in paragraph 3 of Defendant's Petition for Entry of Judgment of Non Pros are false. A true and correct copy of Plaintiff's time stamped Reply to New Matter and New Matter pursuant to Pa. R. C.P. 2252(d) filed in the Clearfield County Court of Common Pleas is attached hereto as Exhibit "A." which was filed in March 2, 2009. To the contrary the Defendant Flannery has not taken any affirmative steps in regard to this matter since July of 2008. Any delay concerning the present matter is a result of the delay by the Defendant Flannery. A true and correct copy of the Docket is attached hereto as

exhibit "B" indicating numerous docket entries initiated by the Plaintiff since August of 2008.

4-8. Denied. Plaintiffs have provided the Defendant with completed discovery concerning this matter in accordance with Pennsylvania Rules of Civil Procedure. The other averments indicated by the Defendant are false. A true and correct copy of the docket indicating numerous docket entries by the Plaintiff concerning the present matter since August 4, 2008, is attached hereto as Exhibit "B."

9. Denied. The averments contained in paragraph 9 of Defendant's Petition contains conclusions of law to which no responsive pleading is required under Pennsyvlania Rules of Civil Procedure the averments are therefore denied. The Defendant's cited case does not relate to the present matter as Plaintiff's have active in regard to the present matter diligently attemping to effecutate service upon co-Defendant Andrew B. Jackson, and were granted a motion to serve the Defendant by Alternative Service in August of 2010, and subsequently serving the Defendant. Any delay relating this matter is a result of the Defendant Flannery. The averments within Defendant's Petition alleging delay by the Plaintiff's since August 4, 2008, are false a true and correct copy of the Docket displaying for this matter is attached hereto as Exhibit "B."

10. Denied. The averments contained in pargraph 10 of Defendant's Petition contain conclusions of law to which no responsive pleading is required under Pennslyvania Rules of Civil Procedure. To the contrary, the Plaintiff has been diligent in their efforts to effectuate service upon co-defendant Andrew B. Jackson, which has not prejudiced Defendant Flannery, but benefited the

Defendant Flannery who alleges Jackson is solely responsible. Furthermore, any delay in this matter can directly be attributed to the Defendant.

11. Denied. The averemnts contained in paragraph 11 of Defendant's Petition contains conclusions of law to which no responsive pleading is required under Pennsylvania Rules of Civil Procedure. To the contrary, the Plaintiff has been diligent in their efforts to effectuate service upon co-defendant Andrew B. Jackson, which has not prejudiced Defendant Flannery, but benefited the Defendant Flannery who alleges Jackson is solely responsible. Furthermore, any delay in this matter can directly be attributed to the Defendant.

12-15. Denied. The averments contained in paragraph 12 through 15 of Defendant's Petition are false. A true and correct copy of the Plaintiffs Reply to Defendant's New Matter is attached hereto as Exhibit "A." Furthermore, the Plaintiff's have made a diligent effort to locate the Co-Defendant Jackson, and were granted a Motion to alternative service, and subsequently effectuated service. A true and correct copy of the Docket is attached hereto as Exhibit "B."

16. Denied. The Defendant is well aware that Plaintiff's have made a diligent effort to prosecute the above captioned matter and effectuate service upon the Co-Defendant Jackson by inquiries pursuant to the Freedom of Information Act and skip trace investigative searches, within the time period the Defendant claims the docket had no activity. A true and correct copy of the docket is attached hereto as Exhibit "B."

17. Denied. The Defendant is well aware that Plaintiff's have made a diligent effort to prosecute the above captioned matter, and effectuate service upon the Co-

Defendant Jackson by inquiries pursuant to the Freedom of Information Act and skip trace investigative searches. During the time period the Defendant falsely claims the docket had no activity, the Plaintiffs reinstated the Complaint numerous times to attempt service upon the Co Defendant, and eventually were granted authority by the Court to effectuate service pursuant to Pennsyvlania Rule of Civil Procedure 430. A true and correct copy of the docket is attached hereto as Exhibit "B." As indicated in Plaintiff's Motion for Alternative Service filed with the Court on August 16, 2010, Plaintiffs believed the Defendant Jackson to unavailable or deliberately concealing his whereabouts delaying the present matter.

18. Denied. The averments contained in paragraph 18 of Defendant's Petition for Entry of Judgment of Non Pros are false. A true and correct copy of Plaintiff's Reply to New Matter and New Matter pursuant to Pa. R. C.P. 2252(d) filed in the Clearfield County Court of Common Pleas is attached hereto as Exhibit "A." Defendant is well aware the Plaintiff's made a diligent effort to locate the Defendant. Any delay in this matter was caused by the Defendant Flannery.

19. Denied. The Plaintiffs have provided completed discovery to the Defendant Flannery. The Defendant Flannery has not been by the prejudiced in the present matter, to the contrary the Defendant Flannery has benefited by service of Plaintiff's Complaint being effectuated upon co-defendant Jackson. Any delay concerning this matter has been the result of the delay by the Defendant Flannery.

20-22. Defendant. The Plaintiffs have provided the Defendant with completed discovery. The Defendant Flannery has not been prejudiced in regard to this

matter. A true and correct copy of the Docket concerning this matter is attached hereto as exhibit "B." Any delay relating to this matter can be attributed to the Defendant.

WHEREFORE, Plaintiffs respectfully request that the Defendant's Petition for Entry of Judgment of Non- Pros be dismissed.

Paul J. Hennessy, Esquire

Paul J. Hennessy, Esquire
Hennessy & Walker Group
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Nationwide Mutual Insurance Company A/S/O Charles Lepinski	: In The Court of Common Pleas
	: Clearfield County, Pennsylvania
vs	: Civil Action Law
Andrew B. Jackson AND Virgil J. Flannery	: No: 08-337-CD

Plaintiffs Response to New Matter of Defendant Virgil J. Flannery

Nationwide Mutual Insurance Company as subrogee of Charles Lepinski, by and through his counsel, Paul J. Hennessy, Esquire and Hennessy and Walker Group, P.C., files the following responses to New Matter of Defendant Virgil J. Flannery and New Matter Pursuant to Pa. R.C.P. 2252(d) averring as follows:

15-21. Denied. The allegations contained in paragraphs 15-21 contain conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure.

22. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 22. Strict proof is demanded at the time of trial, if relevant.

23. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 22. Strict proof is demanded at the time of trial, if relevant.

24. Denied. The averments contained in paragraph 24 contains conclusions of law to which no responsive pleading is required under Pennsylvania Rules of Civil Procedure. By way of further response it is denied that a sudden and clear emergency arose inside the range of the assured clear distance ahead in front of the Defendant. Strict proof is demanded at the time of trial, if relevant.

25. Denied. The allegations contained in paragraph 25 contain conclusions of law to which no responsive pleading is required under Pennsylvania Rules of Civil Procedure. Strict proof is demanded at the time of trial, if relevant.

26. Denied. To the contrary on 12/9/2006 at or near Route 80 in Lawrence Township Clearfield County, Pennsylvania the defendant Virgil J. Flannery negligently, carelessly and/or recklessly operating a 2007 Pierce Quantum struck Plaintiff insured's vehicle.

27-28 Denied. The allegations contained in paragraph 27 and 28 contain conclusions of law to which no responsive pleading is required under Pennsylvania Rules of Civil Procedure. Strict proof is demanded at the time of trial.

29-30. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 29-30. Strict proof is demanded at the time of trial.

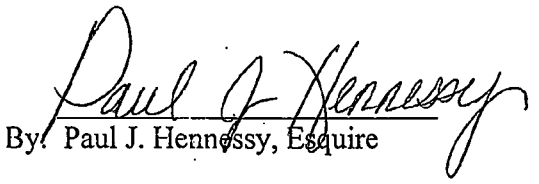
WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally in the amount of $34,024.65 plus interest and costs.

Plaintiffs Response to New Matter pursuant to Pa. R.C.P. 2252(d)

31-32. Denied. The averments contained in paragraphs 31 and 32 contain conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally in the amount of $34,024.65 plus interest and costs.

Respectfully Submitted,



By: Paul J. Hennessy, Esquire

PLAINTIFF'S EXHIBIT B

Clearfield County Court of Common Pleas

ROA Report

Case: 2008-00337-CD

Current Judge: Fredric Joseph Ammerman

Nationwide Mutual Insurance Company, et alvs.Andrew B. Jackson, et al

User: BILLSHAW

CIVIL ACTION

Date		Judge
2/27/2008	New Case Filed.	No Judge
	Filing: Civil Complaint Paid by: Hennessy, Paul J. (attorney for Nationwide Mutual Insurance Company) Receipt number: 1922843 Dated: 02/27/2008 Amount: $95.00 (Check) 3CC Atty Hennessy	No Judge
	Case Filed.	No Judge
3/24/2008	Entry of Appearance, filed by Atty. Hankle Enter appearance on behalf of Defendant Virgil J. Flannery.	No Judge
4/7/2008	Answer, New Matter, and New Matter Pursuant to Pa. R.C.P. 2252(d), filed by s/ James R. Hankle, Esquire. no CC	No Judge
7/18/2008	Motion to Compel Discovery, filed by s/ James R. Hankle, Esquire. no CC	No Judge
7/23/2008	Order, this 22nd day of July, 2008, upon consideration of the Motion to Compel Discovery Responses, it is Ordered that said Motion is Granted. Plaintiff shall provide full and complete Answers and Responses to Defendant's First Set of Interrogatories and First Request for Production of Documents within 20 days from the date of this Order or suffer further sanctions as this Court may deem just and proper. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hankle	Fredric Joseph Ammerman
3/2/2009	Plaintiffs Response to New Matter of Defendant Virgil J. Flannery, filed by s/ Paul J. Hennessy, Esquire. no CC	No Judge
4/13/2009	Filing: Reinstate Complaint Paid by: Hennessy, Paul J. (attorney for Nationwide Mutual Insurance Company) Receipt number: 1928964 Dated: 4/13/2009 Amount: $7.00 (Check) For: Nationwide Mutual Insurance Company (plaintiff). Filed by s/ Paul J. Hennessy, Esquire. 2CC & 2 Compl. Reinstated to Atty.	No Judge
1/21/2010	Filing: Reinstate Complaint Paid by: Hennessy, Paul J. (attorney for Nationwide Mutual Insurance Company) Receipt number: 1933064 Dated: 1/21/2010 Amount: $7.00 (Check) For: Nationwide Mutual Insurance Company (plaintiff) filed by s/ Paul J. Hennessy, Esquire. 2CC & 2 Compl. Reinstated to Atty.	No Judge
8/16/2010	Motion For Alternative Service, filed by s/ Paul J. Hennessy, Esquire. 1CC Atty. Hennessy	No Judge
8/17/2010	Order, this 17th of Aug., 2010, Plaintiffs shall be permitted to serve the Defendant, Andrew B. Jackson a/k/a Anthony B. Jackson by certified and regular mail to 6658 East 45th St., Indianapolis, IN 46226. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hennessy	Fredric Joseph Ammerman
8/27/2010	Filing: Praecipe to Reinstate. Paid by: Hennessy, Paul J. (attorney for Nationwide Mutual Insurance Company) Receipt number: 1936405 Dated: 8/27/2010 Amount: $7.00 (Check) For: Nationwide Mutual Insurance Company (plaintiff) 2CC & 2 reinstated complaints to Atty.	Fredric Joseph Ammerman
11/17/2010	Praecipe for Argument/Scheduling Order, filed by s/ James R. Hankle, Esq. 1CC Atty.	Fredric Joseph Ammerman
	Petition For Entry of Judgment of Non Pros, filed by s/ James R. Hankle, Esq. 1CC Atty.	Fredric Joseph Ammerman

Nationwide Mutual Insurance Company, et alvs.Andrew B. Jackson, et al

CIVIL ACTION

Date		Judge
11/18/2010	Praecipe for Argument/Scheduling Order, NOW, this 17th of Nov., 2010, argument/hearing on Petition for Entry of Judgment of Non Pros is scheduled for the 17th of Dec., 2010, at 2:00 p.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hankle	Fredric Joseph Ammerman
12/13/2010	Affidavit of Service filed. That on September 2, 2010 Plaintiff did send a true and correct copy of the Complaint to defendant by regular and certified mail, filed by s/ Paul J. Hennessy Esq. 2CC Atty Hennessy	Fredric Joseph Ammerman
12/16/2010	Motion For Continuance, filed by s/ Paul J. Hennessey, Esq. 1CC Atty. Hennessy	Fredric Joseph Ammerman
	Response to Motion for Continuance, filed by s/ Christopher J Davis, Esq. 1CC Atty. Davis	Fredric Joseph Ammerman
	Order this 16th day of December 2010 upon review and consideration of the Plaintiff's Motion for Continuance; it is the ORDER of this Court that argument scheduled for December 17, 2010 be and is hereby rescheduled to the 26th day of January 2011 at 10:00. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. Atty. P. Hennessy, J. Hankle and A. Jackson.	Fredric Joseph Ammerman
12/20/2010	Entry of Appearance, on behalf of Def., Andrew B. Jackson, enter appearance of Susan B. Garrard, Esq. No CC	Fredric Joseph Ammerman
1/3/2011	Return mail from Andrew Jackson regarding Dec. 16th Order, (forward to Atty. Garrard 1-3-11)	Fredric Joseph Ammerman

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF CHESTER : ss

The undersigned verifies that the facts contained herein are true and correct.

The undersigned understands that false statements herein are made subject to the penalties of 19 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

If applicable, this affidavit is made on behalf of the Plaintiff(s); that the said Plaintiff(s) is/are unable and unavailable to make this verification on its/his/her own behalf within the time allotted for filing of this pleading, and the facts set forth in the foregoing pleading are true and correct to the best of counsel's knowledge, information and belief.

This verification is made pursuant to Pa. R.C.P. 1024 and is based on interviews, conferences, reports, records and other investigative material in the file

Paul J Kearney

Dated: 1/6/11

Paul J. Hennessy, Esquire
Hennessy & Walker
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Attorney for Plaintiff

Nationwide Mutual Insurance Company A/S/O Charles Lepinski	: In The Court of Common Pleas
	: Clearfield County, Pennsylvania
vs.	
	: Civil Action Law
Andrew B. Jackson **AND** Virgil J. Flannery	: No: 09-1192

CERTIFICATION OF SERVICE

I hereby certify that I have served a true and correct copy of the Plaintiff's Reply to Defendant's Petition for Entry of Judgment of Non Pros filed in the above captioned action upon the Defendants' counsel on, January 7., 2011 by First Class United States mail, addressed as follows:

Susan D. Garrard, Esquire
Law Office of Joseph S. Weimer
975 Two Chatham Center
Pittsburgh, PA 15219

James R. Hankle, Esquire
Sherrard, German & Kelly, P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222

Paul J. Hennessy

Paul J. Hennessy, Esquire
Hennessy & Walker

CA

Nationwide Mutual	: In The Court of Common Pleas
Insurance Company	: Clearfield County, Pennsylvania
a/s/o Charles Lepinski	: Civil Action Law
v.	: No. 08-337-CD
Andrew B. Jackson	
And	
Virgil J. Flannery	

ORDER

AND NOW, this _____ day of _____, 2011, upon consideration of Defendant Virgil J. Flannery's Petition for Entry of Judgment of Non Pros and Plaintiffs Reply thereto it is hereby **ordered** and **decreed** that the Defendant's Petition is **denied**.

BY THE COURT:

_____

J.

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI	:	
-vs-	:	No. 08-337-CD
ANDREW B. JACKSON and VIRGIL J. FLANNERY	:	

O R D E R

AND NOW, this 26th day of January, 2011, following argument on the Defendant Virgil J. Flannery's Motion for Entry of Judgment of Non Pros, it is the ORDER of this Court that said Motion be and is hereby denied.

BY THE COURT,

President Judge

FILED 5CC
01:42 PM Atty
JAN 28 2011 Hennessy
William A. Shaw
Prothonotary/Clerk of Courts

FILED

JAN 28 2011

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/28/11

X You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

Nationwide Mutual Insurance Company A/S/O Charles Lepinski
(Plaintiff)

1100 Locust, Dept. 5595
(Street Address)

Des Moines, IA 50391-5595
(City, State ZIP)

VS.

Andrew B. Jackson
(Defendant)

6658 East 45th Street
(Street Address)

Indianapolis, IN 46226
(City, State ZIP)

AND
Virgil J. Flannery
11705 Trotter Road
Argyle, WI 53504

CIVIL ACTION

No. 08-337-CD

Type of Case: Negligence

Type of Pleading: complaint

Filed on Behalf of:
Plaintiffs
(Plaintiff/Defendant)

August 27 2010 Document Reinstated/~~Reissued~~ to ~~Sheriff~~/Attorney for service.
Deputy Prothonotary

Paul J. Hennessy, Esquire
(Filed by)

142 West Market Street, Suite 2
(Address)
West Chester, PA 19382
610-431-2727
(Phone)

(Signature)

FILED 3CC
m 12:57 Atty Hennessy
FEB 27 2008
William A. Shaw
Prothonotary/Clerk of Courts
Atty pd. $95.00

April 13, 2009 Document Reinstated/~~Reissued~~ to ~~Sheriff~~/Attorney for service.
GK
Deputy Prothonotary

1-21-10 Document Reinstated/~~Reissued~~ to ~~Sheriff~~/Attorney for service.
GK
Deputy Prothonotary

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Attorney for Plaintiffs

Nationwide Mutual Insurance Co A/S/O Charles Lepinski 1100 Locust Dept 5595 Des Moines, IA 50391-5595	: In The Court of Common Pleas : Clearfield County, Pennsylvania
VS	: Civil Action Law
Andrew B. Jackson 6658 E. 45th Street Indianapolis, IN 46226 **AND** Virgil J. Flannery 11705 Trotter Road Argyle, WI 53504	: No

COMPLAINT

1. Plaintiff Nationwide Mutual Insurance Co is an insurance company licensed and authorized to conduct business in the Commonwealth of Pennsylvania and having as one of its principal places of business the above captioned address.

2. Charles Lepinski is an adult individual insured with Nationwide Mutual Insurance Co.

3. Defendant Andrew B. Jackson is an adult individual who resides at the above captioned address.

4. Defendant Virgil J. Flannery is an adult individual who resides at the above captioned address.

5. On or about 12/09/2006 Plaintiff Nationwide Mutual Insurance Co insured Charles Lepinski with a personal auto policy, policy number ACPBA7102315948 said policy covering a 1998 Kenworth T-600 tractor trailer.

6. Charles Lepinski was insured by the Plaintiff Nationwide Mutual Insurance Company with an inland marine policy of insurance, under policy # 22D34631 on December 9, 2006.

7. On or about 12/09/2006, Defendant Andrew Jackson was operating a 1997 Freightliner XL FS65 bearing IN tag # 0264108 registered to same.

8. On or about 12/09/2006 at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania Defendant Andrew Jackson while operating the aforesaid 1997 Freightliner did negligently, carelessly and/or recklessly, strike/collide into Plaintiff's insured's 1998 Kenworth tractor trailer, being lawfully operated by Lancelot E. Furber causing extensive damages to same.

9. On or about 12/09/2006 at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania, the Defendant Virgil J. Flannery operating a 2007 Pierce Quantum, WI tag # MV8331DT did negligently strike the Plaintiff's vehicle.

10. The negligence of the Defendants consisted of:

a) operating vehicle at a speed unsafe for conditions;
b) being inattentive;
c) failing to maintain proper lookout;
d) failing to maintain control of said vehicle so as to be able to stop within the assured clear distances ahead;
g) failing to take the proper safety precautions;
h) following too closely;
i) failing to warn Plaintiff;
j) failing to give due regard to the right, safety, point and position of plaintiffs property.

11. The aforesaid collision resulted solely from the negligent acts and/or failure to act on part of Defendants named herein and was due in no manner whatsoever to any act and/or failure to act on part of Plaintiff's insured.

12. As a result of the aforesaid collision, Plaintiff's insured's vehicle sustained extensive damages to same.

13. Pursuant to the aforesaid policy of insurance, Plaintiff Nationwide Mutual Insurance Co settled the claims of its insured Charles Lepinski in the amount of $34,024.65, (said figure includes Plaintiff's trailer damage in the amount of $23,724.80 and Plaintiff's equipment damage in the amount of $10,300.00) representing fair and reasonable reimbursement for the damages sustained.

14. Pursuant to the aforesaid policy of insurance, Plaintiff Nationwide Mutual Insurance Co is subrogated to Charles Lepinski for this loss.

WHEREFORE, Plaintiffs demand judgment against Defendants, Andrew B. Jackson and Virgil J. Flannery , jointly and severally in the amount of $34,024.65 together plus costs, interest and such other relief this Court finds equitable and just.

Paul J. Hennessy, Esq.

NATI-1330

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF CHESTER : ss

The undersigned verifies that the facts contained herein are true and correct.

The undersigned understands that false statements herein are made subject to the penalties of 19 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

If applicable, this affidavit is made on behalf of the Plaintiff(s); that the said Plaintiff(s) is/are unable and unavailable to make this verification on its/his/her own behalf within the time allotted for filing of this pleading, and the facts set forth in the foregoing pleading are true and correct to the best of counsel's knowledge, information and belief.

This verification is made pursuant to Pa. R.C.P. 1024 and is based on interviews, conferences, reports, records and other investigative material in the file

Paul J. Hennessy, Esquire

Dated: 2/25/08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendants.

CIVIL ACTION

NO: 08-337-CD

PRAECIPE FOR APPEARANCE

Filed on Behalf of Defendant,
Virgil J. Flannery

Counsel of Record for this Party:

James R. Hankle, Esquire
Email: jrh@sgkpc.com
PA I.D. No. 36019

Sherrard, German & Kelly, P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222
(412) 355-0200

Firm I.D. No. 006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants.	

PRAECIPE FOR APPEARANCE

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly enter the appearance of the undersigned as attorney for **Defendant, Virgil J. Flannery**, in the above-captioned case.

Respectfully submitted,

SHERRARD, GERMAN & KELLY, P.C.

By James R. Hankle

James R. Hankle, Esquire
jrh@sgkpc.com
PA I.D. No. 36019

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Praecipe for Appearance** was served upon the following individual by United States Mail, first class delivery, postage pre-paid this 19 day of March, 2008:

Paul J. Hennessy, Esquire
142 West Market Street, Suite 2
West Chester, PA 19382

By: James R. Hankle
James R. Hankle, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendants.

CIVIL ACTION

NO: 08-337-CD

ANSWER, NEW MATTER, AND NEW MATTER PURSUANT TO Pa. R.C.P. 2252(d)

Filed on Behalf of Defendant, Virgil J. Flannery

Counsel of Record for this Party:

James R. Hankle, Esquire
Email: jrh@sgkpc.com
PA I.D. No. 36019
Christopher J. Davis, Esquire
Email: cjd@sgkpc.com
PA I.D. No. 92876

Sherrard, German & Kelly, P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222
(412) 355-0200

Firm No. 0006

TO: PLAINTIFF
YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d) WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

SHERRARD, GERMAN & KELLY, P.C.

By: James R. Hankle
ATTORNEY FOR DEFENDANT,
Virgil J. Flannery

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendants.

CIVIL ACTION

NO: 08-337-CD

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after the 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 ELIBIGLE PERSONS AT A REDUCED FEE OR NO FEE.**

DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 E. MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830
TELEPHONE: 814-765-2641, EXT. 5982

AVISO

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan mas adelante en las siguientes paginas, debe tomar accion dentro de los proximos veinte (20) dias despues de la notificacion de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objecciones a, las demandas presentadas aqui en contra suya. Se le advierte de que si usted falla de tomar accion como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamacion o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin mas aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted. **USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE, SI USTED NO TIENE UN ABOGADO O NO PUEDE PAGARLE A UNO, LLAME O VAYA A LA SIGUIENTE OFICINA PARA AVERIGUAR DONDE PUEDE ENCONTRAR ASISTENCIA LEGAL.**

DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 E. MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830
TELEPHONE: 814-765-2641, EXT. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants.	

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d)

AND NOW, comes Defendant, Virgil J. Flannery ("this Defendant"), by and through his attorneys, James R. Hankle, Esquire, Chris J. Davis, Esquire, and Sherrard, German & Kelly, P.C., and files the following Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) averring as follows:

ANSWER

1. As to the allegations contained in Paragraph 1, same pertains to the identity of adverse parties and are neither admitted nor denied, and strict proof is demanded at the time of trial.

2. As to the allegations contained in Paragraph 2, same pertains to the identity of adverse parties and are neither admitted nor denied, and strict proof is demanded at the time of trial.

3. As to the allegations contained in Paragraph 3, same pertains to the identity of adverse parties and are neither admitted nor denied, and strict proof is demanded at the time of trial.

4. As to the allegations contained in Paragraph 4, admitted.

5. As to the allegations contained in Paragraph 5, after reasonable investigation, this Defendant is without information sufficient to form a belief as to the truth thereof and same is therefore denied, and if material, proof thereof is demanded at the trial of this cause.

6. As to the allegations contained in Paragraph 6, after reasonable investigation, this Defendant is without information sufficient to form a belief as to the truth thereof and same is therefore denied, and if material, proof thereof is demanded at the trial of this cause.

7. As to the allegations contained in Paragraph 7, admitted.

8. As to the allegations contained in Paragraph 8, it is admitted that on or about December 9, 2006, at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania, Defendant, Andrew Jackson, while operating a 1997 Freightliner did negligent, carelessly and recklessly strike/collide into a tractor trailer being operated by Plaintiff's insured, Charles Lepinski. As to all other allegations contained in Paragraph 8, after reasonable investigation, this Defendant is without information sufficient to form a belief as to the truth thereof and same is therefore denied, and if material, proof thereof is demanded at the trial of this cause.

9. As to the allegations contained in Paragraph 9, it is admitted that on or about December 9, 2006, at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania, this Defendant operated a 2007 Pierce Quantum motor vehicle with Wisconsin license plate number MV8331DT and struck the rear-end of a tractor trailer being operated by Plaintiff's insured, Charles Lepinski. As to all other allegations contained in Paragraph 9, this Defendant has been advised by counsel and therefore believes and avers that he need not make any response, as all such averments are generally denied and placed at issue by virtue of this Answer and in accordance with Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

10. As to the allegations contained in Paragraph 10, this Defendant has been advised by counsel and therefore believes and avers that he need not make any response, as all such averments are generally denied and placed at issue by virtue of this Answer and in accordance with Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

11. As to the allegations contained in Paragraph 11, this Defendant has been advised by counsel and therefore believes and avers that he need not make any response, as all such averments are generally denied and placed at issue by virtue of this Answer and in accordance with Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

12. As to the allegations contained in Paragraph 12, after reasonable investigation, this Defendant is without information sufficient to form a belief as to the truth thereof and same is therefore denied, and if material, proof thereof is demanded at the trial of this cause.

13. As to the allegations contained in Paragraph 13, after reasonable investigation, this Defendant is without information sufficient to form a belief as to the truth thereof and same is therefore denied, and if material, proof thereof is demanded at the trial of this cause.

14. As to the allegations contained in Paragraph 14, after reasonable investigation, this Defendant is without information sufficient to form a belief as to the truth thereof and same is therefore denied, and if material, proof thereof is demanded at the trial of this cause.

WHEREFORE, Defendant, Virgil J. Flannery, demands judgment in his favor against Plaintiff, with interest and costs of suit.

NEW MATTER

15. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

16. Plaintiff's insured, Charles Lepinski, was comparatively negligent, which comparative negligence was the sole or substantial cause of any damages allegedly sustained by Plaintiff.

17. Plaintiff's Complaint is barred or diminished in accordance with the provisions of the Pennsylvania Comparative Negligence Act, 42 Pa. C.S.A. Section 7102.

18. No act or failure to act on the part of this Defendant was a factor in bringing about any damages allegedly sustained by Plaintiff.

19. The damages allegedly sustained by Plaintiff were the result of facts or omissions by persons or entities over whom this Defendant had no legal responsibility or control.

20. This Defendant pleads the doctrine of Res Ipsa Loquitur and avers that this accident would not have happened in the absence of the negligent conduct of Plaintiff's insured, Charles Lepinski.

21. This Defendants pleads the defense of the Sudden Emergency Doctrine.

22. At all times material to this cause of action, this Defendant was confronted with an occurrence that permitted no opportunity to apprehend the situation and avoid the accident.

23. At all times material to this cause of action, this Defendant was confronted with an occurrence requiring some form of immediate, evasive action.

24. At all times material to this cause of action, a sudden and clear emergency arose inside the range of the assured clear distance in front of this Defendant.

25. The sudden and clear emergency that arose inside the range of the assured clear distance in front of this Defendant was the sudden swerving of the tractor trailer operated by Plaintiff's insured, Charles Lepinski, and the sudden blocking of the lanes of travel in front of this Defendant by the tractor trailer operated by Plaintiff's insured, Charles Lepinski.

26. At all times material to this cause of action, the tractor trailer operated by Plaintiff's insured, Charles Lepinski, jack-knifed, blocked the lanes of travel in front of this Defendant, and was almost at a complete stop when, despite this Defendant's best efforts to avoid a collision, an accident occurred.

27. At all times material to this cause of action, any duty this Defendant is alleged to have failed to performed, so suddenly and unexpectedly arose that there was no opportunity to apprehend the situation and act according to the exigency.

28. At all times material to this cause of action, this Defendant found himself in a position of danger which was not the result of his negligence.

29. At all times material to this cause of action, this Defendant made an honest exercise of judgment in attempting to avoid a collision with the tractor trailer operated by Plaintiff's insured, Charles Lepinski, even if this Defendant could have done better had he had time to deliberate.

30. The fact that at the time that the tractor trailer being operated by Plaintiff's insured, Charles Lepinski, was still moving, expresses a time-lapse that avoids any indicia offering this Defendant an opportunity to reflect as to what course of action he should have taken, other than that which he did pursue.

WHEREFORE, Defendant, Virgil J. Flannery, denies and continues to deny any and all liability to Plaintiff under any theory or cause of action as set forth in Plaintiff's Complaint and demands judgment in his favor.

NEW MATTER PURSUANT TO Pa. R.C.P. 2252(d)

31. This Defendant denies any and all liability to Plaintiff under any theory or cause of action set forth in any of the pleadings filed in this action. If it determined at the time of trial, however, that Plaintiff is entitled to any relief whatsoever against this Defendant as a result of the alleged damages, then in that event, this Defendant claims that Defendant, Andrew B. Jackson, is solely liable to Plaintiff for the reasons set forth in Plaintiff's Complaint against Defendant, Andrew B. Jackson, in this action and this Defendant incorporates by reference, as if the same had been set forth at length, those allegations of Plaintiff's Complaint as they apply to Defendant, Andrew B. Jackson, or in the alternative, Defendant, Andrew B. Jackson is liable over to this Defendant for any and all sums which may be recovered against this Defendant although any liability on the part of this Defendant is specifically denied.

32. This Defendant further joins Defendant, Andrew B. Jackson, in this cross-claim to protect his right to contribution and/or indemnity in the event it is judicially determined that this Defendant and Defendant, Andrew B. Jackson, are jointly and/or severely liable to Plaintiff, although the existence of any liability on the part of this Defendant is specifically denied.

WHEREFORE, Defendant, Virgil J. Flannery, respectfully requests this Honorable Court to enter judgment in favor of Virgil J. Flannery and against Defendant, Andrew B. Jackson, for any judgment entered in favor of Plaintiff against Defendant, Virgil J. Flannery.

Respectfully submitted,

SHERRARD, GERMAN & KELLY, P.C.

By James R. Hankle

James R. Hankle, Esquire
Christopher J. Davis, Esquire
Attorneys for Defendant,
Virgil J. Flannery

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer, New Matter, and New Matter Pursuant to Pa.R.C.P. 2252(d) was served upon the following individual by United States Mail, first class delivery, postage pre-paid this 4 day of April, 2008:

Paul J. Hennessy, Esquire
142 West Market Street, Suite 2
West Chester, PA 19382

Andrew B. Jackson
6658 East 45th Street
Indianapolis, IN 46226

By: James R. Hankle
James R. Hankle, Esquire

VERIFICATION

I, James R. Hankle, Esquire, hereby verify that:

1. Defendant, Virgil J. Flannery, is outside the jurisdiction of this Honorable Court;

2. I have sufficient knowledge or information and belief from documentation forwarded to me by Virgil J. Flannery; and

3. The facts and allegations set forth in the within Answer, New Matter, and New Matter Pursuant to Pa. R.C.P. 2252(d) are true the best of my knowledge.

Date: April 3, 2008

By: James R. Hankle
James R. Hankle, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendants.

CIVIL ACTION

NO: 08-337-CD

MOTION TO COMPEL DISCOVERY RESPONSES

Filed on Behalf of Defendant, Virgil J. Flannery

Counsel of Record for this Party:

James R. Hankle, Esquire
Email: jrh@sgkpc.com
PA I.D. No. 36019
Christopher J. Davis, Esquire
Email: cjd@sgkpc.com
PA I.D. No. 92876

Sherrard, German & Kelly, P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222
(412) 355-0200

Firm No. 0006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants.	

MOTION TO COMPEL DISCOVERY RESPONSES

AND NOW, comes Defendant, Virgil J. Flannery ("this Defendant"), by and through his attorneys, James R. Hankle, Esquire, Christopher J. Davis, Esquire, and Sherrard, German & Kelly, P.C., and files the within Motion to Compel Discovery Responses and in support thereof avers as follows:

1. This action involves claims for property damages arising from a motor vehicle accident involving the above-referenced parties.

2. On or about May 15, 2008, counsel for Defendant, Virgil J. Flannery, served upon counsel for Plaintiff, Defendant's First Set of Interrogatories and First Requests for Production of Documents. True and correct copies of Defendant's First Set of Interrogatories and First Requests for Production of Documents are attached hereto as Exhibit "A".

3. Pursuant to the applicable Pennsylvania Rules of Civil Procedure 4006 and 4009.12, responses to these discovery requests were due on or before June 16, 2008.

4. When Plaintiff failed to provide any responses to the aforementioned discovery requests, counsel for Defendant, Virgil J. Flannery, sent a letter to counsel for Plaintiff on or about June 18, 2008, requesting that counsel advise as to when appropriate answers and responses to these

discovery requests would be received. A true and correct copy of the June 18, 2008 letter is attached hereto as Exhibit "B".

5. To date, Plaintiff has failed to provide responses to Defendant's First Set of Interrogatories and First Requests for Production of Documents and has failed to respond to counsel's June 18, 2008 letter.

6. The information sought in Defendant's First Set of Interrogatories and First Requests for Production of Documents is relevant for the instant action, and Defendant is further prejudiced by Plaintiff's failure to provide appropriate responses so that he may defend the claims made against him.

WHEREFORE, Defendant, Virgil J. Flannery, respectfully requests that this Honorable Court enter an order compelling Plaintiff to provide full and complete Answers and Responses to Defendant's First Set of Interrogatories and First Request for Production of Documents within twenty (20) days or suffer further sanctions as this Court may deem just and proper.

Respectfully submitted,

SHERRARD, GERMAN & KELLY, P.C.

By James R. Hankle

James R. Hankle, Esquire
Christopher J. Davis, Esquire
Attorneys for Defendant,
Virgil J. Flannery

CERTIFICATION

I certify that the Movant, Defendant, Virgil J. Flannery, has in good faith conferred or attempted to confer with Plaintiff, Nationwide Mutual Insurance Company a/s/o Charles Lepinski, in an effort to secure the requested discovery requests without court action as required under Local Rule 208.2(e). The parties have been unable to agree.

Christopher J. Davis

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Motion to Compel Discovery Responses** was served upon the following individuals by United States Mail, first class delivery, postage pre-paid this 16 day of July, 2008:

Paul J. Hennessy, Esquire
142 West Market Street, Suite 2
West Chester, PA 19382

Andrew B. Jackson
6658 East 45th Street
Indianapolis, IN 46226

By: James R. Hankle
James R. Hankle, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendants.

CIVIL ACTION

NO: 08-337-CD

FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF

Filed on Behalf of Defendant,
Virgil J. Flannery

Counsel of Record for this Party:

James R. Hankle, Esquire
Email: jrh@sgkpc.com
PA I.D. No. 36019
Christopher J. Davis, Esquire
Email: cjd@sgkpc.com
PA I.D. No. 92876

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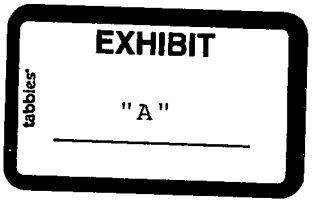
Firm No. 0006



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants.	

FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF

AND NOW, comes Defendant, Virgil J. Flannery ("this Defendant"), by and through his attorneys, James R. Hankle, Esquire, Christopher J. Davis, Esquire, and Sherrard, German & Kelly, P.C., and serves the following First Requests for Production of Documents Directed to Plaintiff. You are notified that pursuant to the applicable Rules of Civil Procedure, you must provide responses and produce for inspection and copying the following designated documents which are in their possession, custody or control and serve the requested documents upon Defendant's attorneys within thirty (30) days from the date of service hereof.

DEFINITIONS

1. "Individual" shall mean any person, partnership, joint venture, firm, association, corporation or business or any governmental or legal entity.

2. "Document" shall mean, in addition to and including the definition provided by Pa.R.C.P. 4009.1, the originals, drafts, and all non-identical versions or copies (whether different

from originals by reason of notations made on such copies or otherwise) of all written or graphic material, however produced or reproduced, in your possession, custody or control, including, but not limited to, writings, drawings, graphs, charts, photographs, sound or mechanical recordings or tape, computer printouts, e-mail, computer tapes, discs or other storage media, computer programs, computer punch cards, microfilm, microfiche and other data compilations from which information can be obtained or translated, if necessary through the use of detection devices, into reasonably usable form. "Document" also includes any label, heading, title, or other identification of the file drawer, folder, file, or the like, in which the document is located.

3. "You" or "your" shall mean the Plaintiff and/or its, his, her and/or their representatives and agents.

4. "Agent", "investigator", "representative" and "attorney" shall mean all persons working on your behalf and/or under your direction.

5. "Communication" shall mean any transmission of information, the information transmitted, and any process by which information is transmitted, and shall include written communications and oral communications.

6. "Relating to" and "pertaining to" (or forms thereof) shall mean constituting, reflecting, representing, supporting, concerning, contradicting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating and/or relevant to. As indicated, the term necessarily includes information which is in opposition to as well as in support of the position(s) and claim(s) of the Plaintiff(s) in this action, as well as any positions or claims made by the Defendant(s) or Additional Defendant(s).

7. "Date" shall mean the day of the week, the month and the year. If only the approximate date is known or available to you, please state the approximate date, indicating that it is approximate only.

8. "Address" shall mean the street number, street name, city, state or territory, country (if other than the United States of America), and, if available, zip code or other mailing code for the place of the designated person's residence or, if a business, the place its business is principally conducted.

9. "Identify," when used in reference to a person or persons, shall mean the (a) full name, (b) current or last known address, (c) current or last known phone number, (d) current or last known place of employment, and (e) current or last known job title or position.

10. "Identify," when used in reference to an act (including an alleged omission), communication, occurrence, statement or conduct (herein collectively called acts), shall mean to (a) describe the substance of the event or events constituting such act and state the date when such act occurred; (b) identify each and every person participating in such act; (c) identify all other persons (if any) present when such act occurred; (d) state whether any minutes, notes, memoranda, or other record of such act was made; (e) state whether such record now exists; and, (f) identify the person or persons presently having possession, custody or control of each such record.

11. "Identify," when used in reference to a document, shall mean the document's author, recipients(s), date, and bates number (if applicable).

12. "The accident," unless otherwise specifically described, shall mean the accident giving rise to this litigation.

REQUESTED DOCUMENTS

1. Any and all statements of any witnesses or parties to this action concerning or in any way relating to the accident.

RESPONSE:

2. Any and all photographs, diagrams or other documents concerning or in any way relating to the incident complained of including, but not limited to, photographs of the scene of the accident, etc.

RESPONSE:

3. Any and all policies of automobile insurance in effect at the time of the accident, including, but not limited to, all declaration sheets, endorsements, addendums, additional insured status sheets, tort option forms, correspondence and/or other documents which may relate to this litigation.

RESPONSE:

4. All and all reports, letters, memorandum or other written or recorded matter prepared by investigators or any other persons other than an attorney which concerns the accident or this litigation, including your insurer's claims file, excluding only those entries which contain mental impressions as to the merit or value of this litigation.

RESPONSE:

5. Any and all reports of experts who have been consulted and who will be called as witnesses at trial and/or all documents or other exhibits which form the basis of any opinion of any expert who may be called to testify.

RESPONSE:

6. Any and all estimates of damage, value or to repair relating to the vehicle allegedly damaged in the accident.

RESPONSE:

7. Any and all documents and things which you intend to introduce as exhibits at the trial of this action.

RESPONSE:

8. Any and all documents which you identified in your answers to Defendant's First Set of Interrogatories Directed to Plaintiff.

RESPONSE:

9. Any and all documents on which you relied or to which you referred in answering Defendant's First Set of Interrogatories Directed to Plaintiff.

RESPONSE:

Respectfully submitted,

SHERRARD, GERMAN & KELLY, P.C.

By _____
James R. Hankle, Esquire
Christopher J. Davis, Esquire
Attorneys for Defendant,
Virgil J. Flannery

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing First Requests for Production of Documents Directed to Plaintiff was served upon the following individuals by United States Mail, first class delivery, postage pre-paid this 15 day of May, 2008:

Paul J. Hennessy, Esquire
142 West Market Street, Suite 2
West Chester, PA 19382

Andrew B. Jackson
6658 East 45th Street
Indianapolis, IN 46226

By: James R. Hankle
James R. Hankle, Esquire

{S0004659.1}

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendants.

CIVIL ACTION

NO: 08-337-CD

FIRST SET OF INTERROGATORIES DIRECTED TO PLAINTIFF

Filed on Behalf of Defendant,
Virgil J. Flannery

Counsel of Record for this Party:

James R. Hankle, Esquire
Email: jrh@sgkpc.com
PA I.D. No. 36019
Christopher J. Davis, Esquire
Email: cjd@sgkpc.com
PA I.D. No. 92876

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants.	

FIRST SET OF INTERROGATORIES DIRECTED TO PLAINTIFF

AND NOW, comes Defendant, Virgil J. Flannery ("this Defendant"), by and through his attorneys, James R. Hankle, Esquire, Christopher J. Davis, Esquire, and Sherrard, German & Kelly, P.C., and serves the following First Set of Interrogatories Directed to Plaintiff. You are notified that pursuant to the applicable Rules of Civil Procedure, your answers, duly executed and sworn to, must be served within thirty (30) days from service thereof. Your answers must be entered after the corresponding numbered interrogatory or part thereof to which it is responsive on the copies served or reproduction thereof, attaching such additional pages as may be required for complete answers. These interrogatories shall be deemed to be continuing so as to require supplemental answers if Plaintiff or anyone on his, her or their behalf obtains further information between the time the answers are served and the time of the trial.

DEFINITIONS

1. "Individual" shall mean any person, partnership, joint venture, firm, association, corporation or business or any governmental or legal entity.

2. "Document" shall mean, in addition to and including the definition provided by Pa.R.C.P. 4009.1, the originals, drafts, and all non-identical versions or copies (whether different from originals by reason of notations made on such copies or otherwise) of all written or graphic material, however produced or reproduced, in your possession, custody or control, including, but not limited to, writings, drawings, graphs, charts, photographs, sound or mechanical recordings or tape, computer printouts, e-mail, computer tapes, discs or other storage media, computer programs, computer punch cards, microfilm, microfiche and other data compilations from which information can be obtained or translated, if necessary through the use of detection devices, into reasonably usable form. "Document" also includes any label, heading, title, or other identification of the file drawer, folder, file, or the like, in which the document is located.

3. "You" or "your" shall mean the Plaintiff and/or its, his, her and/or their representatives and agents.

4. "Agent", "investigator", "representative" and "attorney" shall mean all persons working on your behalf and/or under your direction.

5. "Communication" shall mean any transmission of information, the information transmitted, and any process by which information is transmitted, and shall include written communications and oral communications.

6. "Relating to" and "pertaining to" (or forms thereof) shall mean constituting, reflecting, representing, supporting, concerning, contradicting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating and/or relevant to. As indicated, the term necessarily includes information which is in opposition to as well as in support of the position(s) and claim(s) of the Plaintiff(s) in this action, as well as any positions or claims made by the Defendant(s) or Additional Defendant(s).

7. "Date" shall mean the day of the week, the month and the year. If only the approximate date is known or available to you, please state the approximate date, indicating that it is approximate only.

8. "Address" shall mean the street number, street name, city, state or territory, country (if other than the United States of America), and, if available, zip code or other mailing code for the place of the designated person's residence or, if a business, the place its business is principally conducted.

9. "Identify," when used in reference to a person or persons, shall mean the (a) full name, (b) current or last known address, (c) current or last known phone number, (d) current or last known place of employment, and (e) current or last known job title or position.

10. "Identify," when used in reference to an act (including an alleged omission), communication, occurrence, statement or conduct (herein collectively called acts), shall mean to (a) describe the substance of the event or events constituting such act and state the date when such act occurred; (b) identify each and every person participating in such act; (c) identify all other persons (if any) present when such act occurred; (d) state whether any minutes, notes, memoranda, or other record of such act was made; (e) state whether such record now exists; and, (f) identify the person or persons presently having possession, custody or control of each such record.

11. "Identify," when used in reference to a document, shall mean the document's author, recipients(s), date, and bates number (if applicable).

12. "The accident," unless otherwise specifically described, shall mean the accident giving rise to this litigation.

INTERROGATORIES

1. Please state the following information as it relates to Charles Lepinski:

   A. Full name;

   B. Any other names that he has used or been known by;

   C. Date and place of birth;

   D. Social security number;

   E. Marital status at the time of the accident;

   F. Present marital status;

   G. Home address at the time of the accident;

   H. Present home address;

ANSWER:

2. State specifically and with particularity the alleged acts of negligence that the Defendant, Virgil J. Flannery, committed.

ANSWER:

3. State specifically and with particularity the alleged acts of negligence that the Defendant, Andrew Jackson, committed.

ANSWER:

4. If you, your representative, attorney, consultant, surety, indemnitor, insurer or agent obtained a statement or statements as defined in Pa.R.C.P. 4003.4(1) and (2) and F.R.C.P. 26(b)(3) concerning this action and/or its subject matter from any party to this action, or any other person or witness, please state:

A. the name and address of the person who gave each statement including the name and address of each person's employer;

B. the date each statement was given;

C. the name and address of the person who obtained each statement;

D. the name and address of the person or entity that hired or retained the person who obtained each statement;

E. the date when each statement was obtained;

F. the place where each statement was obtained;

G. whether each statement is written, signed by the person making it, or a stenographic, mechanical, electrical or other recording, or a transcription thereof;

H. the names and addresses of all persons and/or entities who presently have custody of each original statement identified in your answers above;

I. the names and addresses of all persons and/or entities who presently have custody of any copies of each statement identified in your answers above; and,

J. please attach to your answers to interrogatories a photostatic copy of like reproduction of each statement identified in your answers above.

ANSWER:

5. If you intend to call any expert witness at trial, please state:

A. the name and address of each such expert witness;

B. the subject matter as to which each such expert witness is expected to testify;

C. the substance of the facts and opinions to which each expert is expected to testify and a summary of the grounds for each opinion and/or attach a copy of each expert's report to your answers to interrogatories;

D. the educational background, field of expertise, professional experience, publications, membership in professional societies, employment experience and court appearances (including citations) of each of the expert witnesses identified in your answers; and,

E. if you have received a report from said expert, please attach a copy of said report.

ANSWER:

6. If you, your attorney, or other representative have retained or specifically employed any expert whom you do not intend to call as a witness at trial, please state:

A. the name and address of each such expert;

B. the precise area of his expertise as retained or specifically employed herein; and,

C. the facts known and/or opinions held by said expert.

ANSWER:

7. If any tests or procedures have or will be performed by any expert retained by you, your attorney, principal, or representative in this action, whether or not you intend to call that expert as a witness at trial, please state:

A. the name and address of the person conducting the test, including the name of each person's employer; and,

B. the educational background, field of expertise, professional experience, publications, membership in professional societies, employment experience and court appearances (including citations) of each of the expert witnesses identified in your answers above.

ANSWER:

8. If any photographs were taken or maps, charts or diagrams prepared regarding the locale or surrounding area of the site of the accident or of any other matter or thing involved in this litigation, please state:

A. the date(s) which such photographs were taken or such maps, charts or diagrams were prepared;

B. the name and address of the person who took or prepared them;

C. where they were taken or prepared;

D. the object or subject of the particular site or view each photograph, map, chart or diagram represents; and,

E. the present whereabouts of the photographs, maps, charts and diagrams and the names and addresses of whomever is in possession or custody thereof.

ANSWER:

9. State the names and addresses of any eyewitnesses to the accident known to you, your agents, servants or employees or known to your attorneys or representatives.

ANSWER:

10. State the names and present addresses of all persons whom you, your attorneys, agents, investigators or other representatives have been informed may be witnesses to the events immediately preceding the accident.

ANSWER:

11. State the names and present addresses of all persons whom you, your attorneys, agents, investigators or other representatives have been informed may be witnesses to events immediately subsequent to the accident.

ANSWER:

12. State the names and present addresses of all persons whom you, your attorneys, agents, investigators or other representatives have been informed were present in the vicinity of the accident and who might have knowledge of the circumstances thereof, whether or not you know said persons observed or witnessed the accident.

ANSWER:

13. List the names and present addresses of all investigators, representatives or employees who have investigated the accident and/or the claims made in this litigation. With respect to each such person, state the following:

A. employment affiliation at the time of the investigation;

B. present employment affiliation;

C. the names and addresses of each and every party contacted;

D. the date when contacted;

E. whether an attempt was made to procure a statement in any form;

F. the results of such attempt;

G. whether said investigator or representative submitted a report to counsel for the plaintiff or to any other person; and,

H. if the answer to the preceding subinterrogatory is in the affirmative, attach a copy of said report to these answers if said report is in writing; if said report is oral, give a summary of said report.

ANSWER:

14. Did you, your attorneys, agents, investigators or other representatives submit a claim for damage to your motor vehicle caused by the accident to any motor vehicle insurer?

ANSWER:

15. If your answer to the preceding interrogatory was anything other than an unqualified, "No," then for each motor vehicle insurance policy against which you, your attorneys, agents, investigators or other representatives submitted a claim for damage to your motor vehicle caused by the accident, identify each of these policies of motor vehicle insurance by:

A. insurance company;

B. named insured(s);

C. policy number(s); and,

D. claim number(s) relating to the claim submitted.

ANSWER:

16. What was the amount on the date of the accident of the deductible for the property damage coverage applicable to your vehicle against which you submitted the claim referred to in your answer to the preceding interrogatory?

ANSWER:

17. Who, if anyone, paid the deductible amount referred to in your answer to the preceding interrogatory?

ANSWER:

18. What is the amount, if any, that was paid by your or any insurer for damage to your vehicle caused by the accident?

ANSWER:

19. How many estimates of the cost of the damage to the vehicle and/or to repair the vehicle were obtained by you, your insurer, or any other of your representatives or agents?

ANSWER:

20. For each estimate referred to in your answer to the preceding interrogatory, please state:

A. the name and address of the company(ies) which prepared the estimate(s);

B. the address(es) at which the estimate(s) were prepared;

C. the name of the specific employee(s), independent contractor(s), or other representative(s) of the company(ies) listed in your answer to the preceding interrogatory who prepared the estimate(s); and,

D. the date(s) on which the estimate(s) were prepared.

ANSWER:

21. Was the alleged damage to the vehicle repaired?

ANSWER:

22. If your answer to the preceding interrogatory is anything other than an unqualified "no", please state:

A. the name and address of the company(ies) which repaired the alleged damage;

B. the name of the specific employee(s), independent contractor(s), or other representative(s) of the company(ies) listed in your answer to the preceding interrogatory who repaired the alleged damage; and,

C. the date on which the repair was completed.

ANSWER:

23. Did the alleged damage to the vehicle cause the vehicle to be considered a total loss by whomever inspected and evaluated the vehicle for its alleged damage, by you, or by any of your representatives?

ANSWER:

24. If your answer to the preceding interrogatory is anything other than an unqualified "No", please state:

A. the name and address of the company(ies) which considered the alleged damage to cause the vehicle to be considered a total loss;

B. the name of the specific employee(s), independent contractor(s), or other representative(s) of the company(ies) listed in your answer to the preceding interrogatory who considered the alleged damage to cause the vehicle to be considered a total loss;

C. the date on which the vehicle was considered to be a total loss; and,

D. the amount of value the vehicle was considered to have as a total loss.

ANSWER:

25. If the vehicle was considered to be a total loss, was the vehicle's value paid for by any insurer?

ANSWER:

26. If your answer to the preceding interrogatory is anything other than an unqualified "No," please state:

A. the name and address of the insurer(s) which paid for the value of the vehicle;

B. the name of the specific person(s) or other entity(ies) who received payment for the value of the vehicle; and,

C. the date on which the payment was made.

ANSWER:

27. Are you claiming that the Defendant, Virgin Flannery, is responsible for any other damages other than those which you have stated in your answers to the preceding interrogatories?

ANSWER:

28. If your answer to the preceding interrogatory is anything other than an unqualified "No," please state:

A. the amount(s) of damages you are claiming;

B. a description of the claimed damages, i.e., towing, storage, cost for estimate, etc.,

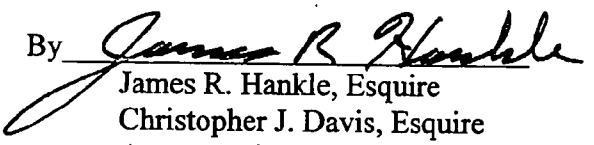
C. the name and address of any entities or persons to which or to whom payment has been made by you or your insurer for the claimed damages; and,

D. for each such payment, the date(s) on which the payment(s) were made.

ANSWER:

Respectfully submitted,

SHERRARD, GERMAN & KELLY, P.C.

By 

James R. Hankle, Esquire
Christopher J. Davis, Esquire
Attorneys for Defendant,
Virgil J. Flannery

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing First Set of Interrogatories Directed to Plaintiff was served upon the following individuals by United States Mail, first class delivery, postage pre-paid this 15 day of May, 2008:

Paul J. Hennessy, Esquire
142 West Market Street, Suite 2
West Chester, PA 19382

Andrew B. Jackson
6658 East 45th Street
Indianapolis, IN 46226

By: James R. Hankle
James R. Hankle, Esquire

SHERRARD
GERMAN & KELLY, P.C.
ATTORNEYS AT LAW

28th Floor, Two PNC Plaza, 620 Liberty Avenue, Pittsburgh, PA 15222
Phone: 412-355-0200 • Fax: 412-261-6221 • www.sgkpc.com

Christopher J. Davis
Direct Dial: (412) 258-6735
Email: cjd@sgkpc.com

June 18, 2008

Paul J. Hennessy, Esquire
142 West Market Street, Suite 2
West Chester, PA 19382

In re: Nationwide Mutual Insurance Company a/s/o Charles Lepinski v. Andrew B. Jackson and Virgil J. Flannery
No: 08-337-CD

Dear Mr. Hennessy:

On or about May 15, 2008, we served upon you Defendant's First Set of Interrogatories and First Requests for Production of Documents with regard to the above-referenced matter. Pursuant to the applicable Pennsylvania Rules of Civil Procedure, responses to these discovery requests were due on or before June 16, 2008. To date, we have not yet received any responses from you. Accordingly, we would request that you please advise as to when we may expect appropriate Answers and Responses to these discovery requests.

Thank you for your anticipated cooperation in this regard.

Very truly yours,

Christopher J. Davis

CJD/pmis
cc: Mr. Andrew B. Jackson
Ms. Joy White

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants.	

ORDER OF COURT

AND NOW, TO-WIT, this _____ day of _____, 2008, upon consideration of the foregoing Motion, it is hereby ORDERED that:

1. a rule is issued upon the Plaintiff to show cause why the moving party is not entitled to the relief requested;

2. the Plaintiff shall file an answer to the motion within ____ days of this date;

3. the Motion shall be decided under Pa.R.C.P. 206.7;

4. depositions and all other discovery shall be completed within ____ days of this date;

5. an evidentiary hearing on disputed issues of material fact shall be held on _____ _____, in the Clearfield County Courthouse, Clearfield, Pennsylvania, in Courtroom No. _____;

6. argument shall be held on _____, in Courtroom No. _____ of the Clearfield County Courthouse; and

7. notice of entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants.	

ORDER OF COURT

AND NOW, TO-WIT, this 22 day of July, 2008 upon presentation and consideration of the within Motion to Compel Discovery Responses, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is GRANTED.

It is further ORDERED that Plaintiff, Nationwide Mutual Insurance Company a/s/o Charles Lepinski, shall provide full and complete Answers and Responses to Defendant's First Set of Interrogatories and First Request for Production of Documents within twenty (20) days from the date of this Order or suffer further sanctions as this Court may deem just and proper.

BY THE COURT:

J.

FILED
09:10a.m. GK
JUL 23 2008
William A. Shaw
Prothonotary/Clerk of Courts

1CC Atty Hankle
GK

DATE: 7-23-08

X You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

FILED

JUL 23 2008

William A. Shaw
Prothonotary/Clerk of Courts

Paul J. Hennessy, Esquire
Hennessy & Walker Group
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Nationwide Mutual Insurance Company A/S/O Charles Lepinski	: In The Court of Common Pleas
	: Clearfield County, Pennsylvania
vs	: Civil Action Law
Andrew B. Jackson AND Virgil J. Flannery	: No: 08-337-CD

Plaintiffs Response to New Matter of Defendant Virgil J. Flannery

Nationwide Mutual Insurance Company as subrogee of Charles Lepinski, by and through his counsel, Paul J. Hennessy, Esquire and Hennessy and Walker Group, P.C., files the following responses to New Matter of Defendant Virgil J. Flannery and New Matter Pursuant to Pa. R.C.P. 2252(d) averring as follows:

15-21. Denied. The allegations contained in paragraphs 15-21 contain conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure.

22. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 22. Strict proof is demanded at the time of trial, if relevant.

23. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 22. Strict proof is demanded at the time of trial, if relevant.

24. Denied. The averments contained in paragraph 24 contains conclusions of law to which no responsive pleading is required under Pennsylvania Rules of Civil Procedure. By way of further response it is denied that a sudden and clear emergency arose inside the range of the assured clear distance ahead in front of the Defendant. Strict proof is demanded at the time of trial, if relevant.

25. Denied. The allegations contained in paragraph 25 contain conclusions of law to which no responsive pleading is required under Pennsylvania Rules of Civil Procedure. Strict proof is demanded at the time of trial, if relevant.

26. Denied. To the contrary on 12/9/2006 at or near Route 80 in Lawrence Township Clearfield County, Pennsylvania the defendant Virgil J. Flannery negligently, carelessly and/or recklessly operating a 2007 Pierce Quantum struck Plaintiff insured's vehicle.

27-28 Denied. The allegations contained in paragraph 27 and 28 contain conclusions of law to which no responsive pleading is required under Pennsylvania Rules of Civil Procedure. Strict proof is demanded at the time of trial.

29-30. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 29-30. Strict proof is demanded at the time of trial.

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally in the amount of $34,024.65 plus interest and costs.

Plaintiffs Response to New Matter pursuant to Pa. R.C.P. 2252(d)

31-32. Denied. The averments contained in paragraphs 31 and 32 contain conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally in the amount of $34,024.65 plus interest and costs.

Respectfully Submitted,

Paul J. Hennessy

By: Paul J. Hennessy, Esquire

Paul J. Hennessy, Esquire
Hennessy & Walker Group
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Nationwide Mutual Insurance Company A/S/O Charles Lepinski 1100 Locust, Dept. 5595 Des Moines, IA 50391-5595	: In The Court of Common Pleas : Clearfield County, Pennsylvania
vs. Andrew B. Jackson etal 6658 East 45th Street Indianapolis, IN 46226	: Civil Action Law : No: 08-337-CD

Praecipe to Reinstate

To The Prothonotary:

Please reinstate the Complaint on the above-captioned action.
Please return to the attorney so that we may attempt service for Andrew B. Jackson.

Paul J. Hennessy, Esquire
Attorney for Plaintiff

NATI-1330

FILED Atty pd. 7.00
m/11:18 cl
APR 13 2009
2cc & 2 Comp.
Reinstated
to Atty
William A. Shaw
Prothonotary/Clerk of Courts
610

Paul J. Hennessy, Esquire
Hennessy & Walker Group
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Nationwide Mutual Insurance Company A/S/O Charles Lepinski 1100 Locust, Dept. 5595 Des Moines, IA 50391-5595	: In The Court of Common Pleas : Clearfield County, Pennsylvania
vs.	: Civil Action Law
Andrew B. Jackson etal 6658 East 45th Street Indianapolis, IN 46226	: No: 08-337-CD

Praecipe to Reinstate

To The Prothonotary:

Please reinstate the Complaint on the above-captioned action.
Please return to the attorney so that we may attempt service for Andrew B. Jackson.

Paul J. Hennessy, Esquire
Attorney for Plaintiff

NATI-1330

FILED
m/10:18 cm
JAN 21 2010
William A. Shaw
Prothonotary/Clerk of Courts

Atty pd. 7.00
2 cc
2 Compl.
Reinstated
to Atty

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

Nationwide Mutual Insurance Company A/S/O Charles Lepinski
(Plaintiff)

1100 Locust, Dept. 5595
(Street Address)

Des Moines, IA 50391-5595
(City, State ZIP)

CIVIL ACTION

No. 08-337-CD

Type of Case: Negligence

Type of Pleading: complaint

VS.

Filed on Behalf of:

Plaintiffs
(Plaintiff/Defendant)

Andrew B. Jackson
(Defendant)

6658 East 45th Street
(Street Address)

Indianapolis, IN 46226
(City, State ZIP)

AND
Virgil J. Flannery
11705 Trotter Road
Argyle, WI 53504

Paul J. Hennessy, Esquire
(Filed by)

142 West Market Street, Suite 2
(Address)
West Chester, PA 19382
610-431-2727
(Phone)

Paul J. Hennessy
(Signature)

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

FEB 27 2008

Attest. William L. Ross
Prothonotary/
Clerk of Courts

4/13/09 Document
Reinstated/~~Reissued~~ to ~~Sheriff~~/Attorney
for service.

William L. Ross
~~Deputy~~ Prothonotary

Paul J. Hennessy, Esquire
Hennessy & Walker Group
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Nationwide Mutual Insurance Company A/S/O Charles Lepinski 1100 Locust, Dept. 5595 Des Moines, IA 50391-5595	: In The Court of Common Pleas : Clearfield County, Pennsylvania
vs. Andrew B. Jackson 6658 East 45th Street Indianapolis, IN 46226 **AND** Virgil J. Flannery 11705 Trotter Road Argyle, WI 53504	: Civil Action Law : No:

NOTICE

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

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

David S. Meholick, Court Admin.
Clearfield County Courthouse
Clearfield, PA 16830
814-465-2641 ext. 5982

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo ai partir de la fecha de la demanda y la notification. Hace faita asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defenses o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perdee dinero o sus propiedades u otros derechos importantes para usted.

Lleva esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por teléfono a la oficina cuya direccion se encuentra encuentra escrita abojo para averiguar dónde se puede conseguir asistencia legal.

David S. Meholick, Court Admin.
Clearfield County Courthouse
Clearfield, PA 16830
814-465-2641 ext. 5982

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Attorney for Plaintiffs

Nationwide Mutual Insurance Co A/S/O Charles Lepinski 1100 Locust Dept 5595 Des Moines, IA 50391-5595	: In The Court of Common Pleas : Clearfield County, Pennsylvania : Civil Action Law
VS	: No
Andrew B. Jackson 6658 E. 45th Street Indianapolis, IN 46226 **AND** Virgil J. Flannery 11705 Trotter Road Argyle, WI 53504	

COMPLAINT

1. Plaintiff Nationwide Mutual Insurance Co is an insurance company licensed and authorized to conduct business in the Commonwealth of Pennsylvania and having as one of its principal places of business the above captioned address.

2. Charles Lepinski is an adult individual insured with Nationwide Mutual Insurance Co.

3. Defendant Andrew B. Jackson is an adult individual who resides at the above captioned address.

4. Defendant Virgil J. Flannery is an adult individual who resides at the above captioned address.

5. On or about 12/09/2006 Plaintiff Nationwide Mutual Insurance Co insured Charles Lepinski with a personal auto policy, policy number ACPBA7102315948 said policy covering a 1998 Kenworth T-600 tractor trailer.

6. Charles Lepinski was insured by the Plaintiff Nationwide Mutual Insurance Company with an inland marine policy of insurance, under policy # 22D34631 on December 9, 2006.

7. On or about 12/09/2006, Defendant Andrew Jackson was operating a 1997 Freightliner XL FS65 bearing IN tag # 0264108 registered to same.

8. On or about 12/09/2006 at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania Defendant Andrew Jackson while operating the aforesaid 1997 Freightliner did negligently, carelessly and/or recklessly, strike/collide into Plaintiff's insured's 1998 Kenworth tractor trailer, being lawfully operated by Lancelot E. Furber causing extensive damages to same.

9. On or about 12/09/2006 at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania, the Defendant Virgil J. Flannery operating a 2007 Pierce Quantum, WI tag # MV8331DT did negligently strike the Plaintiff's vehicle.

10. The negligence of the Defendants consisted of:

a) operating vehicle at a speed unsafe for conditions;
b) being inattentive;
c) failing to maintain proper lookout;
d) failing to maintain control of said vehicle so as to be able to stop within the assured clear distances ahead;
g) failing to take the proper safety precautions;
h) following too closely;
i) failing to warn Plaintiff;
j) failing to give due regard to the right, safety, point and position of plaintiffs property.

11. The aforesaid collision resulted solely from the negligent acts and/or failure to act on part of Defendants named herein and was due in no manner whatsoever to any act and/or failure to act on part of Plaintiff's insured.

12. As a result of the aforesaid collision, Plaintiff's insured's vehicle sustained extensive damages to same.

13. Pursuant to the aforesaid policy of insurance, Plaintiff Nationwide Mutual Insurance Co settled the claims of its insured Charles Lepinski in the amount of $34,024.65, (said figure includes Plaintiff's trailer damage in the amount of $23,724.80 and Plaintiff's equipment damage in the amount of $10,300.00) representing fair and reasonable reimbursement for the damages sustained.

14. Pursuant to the aforesaid policy of insurance, Plaintiff Nationwide Mutual Insurance Co is subrogated to Charles Lepinski for this loss.

WHEREFORE, Plaintiffs demand judgment against Defendants, Andrew B. Jackson and Virgil J. Flannery , jointly and severally in the amount of $34,024.65 together plus costs, interest and such other relief this Court finds equitable and just.

Paul J. Hennessy, Esq.

NATI-1330

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF CHESTER : ss

The undersigned verifies that the facts contained herein are true and correct.

The undersigned understands that false statements herein are made subject to the penalties of 19 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

If applicable, this affidavit is made on behalf of the Plaintiff(s); that the said Plaintiff(s) is/are unable and unavailable to make this verification on its/his/her own behalf within the time allotted for filing of this pleading, and the facts set forth in the foregoing pleading are true and correct to the best of counsel's knowledge, information and belief.

This verification is made pursuant to Pa. R.C.P. 1024 and is based on interviews, conferences, reports, records and other investigative material in the file

Paul J. Hennessy, Esquire

Dated: 2/25/08

CA

Paul J. Hennessy, Esquire
Hennessy & Walker
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Attorney for Plaintiffs

FILED
AUG 16 2010
William A. Shaw
Prothonotary/Clerk of Courts

Nationwide Mutual Insurance Co.	: In the Court of Common Pleas
a/s/o Charles Lepinski	: Clearfield County, Pennsylvania
Vs.	: Civil Action Law
Andrew B. Jackson et al	: NO: 08-337-CD

MOTION FOR ALTERNATIVE SERVICE

AND NOW, Plaintiff by and through their attorney, Paul J. Hennessy, Esquire, hereby make petition to this Court for alternative service pursuant to PA R.C.P. 430 and in support thereof, state the following:

1. The civil complaint was filed on February 27, 2008, listing Defendant residing at 6658 E. 45th Street, Indianapolis, IN 46226. The civil complaint was reinstated on January 21, 2010 listing defendant residing at 6658 E. 45th Street, Indianapolis, IN 46226.

2. Attempts were made to serve the Defendant on March 3, 2008 via certified mail were returned to send as "unclaimed". Attempts were made to serve Defendant by Process Server on February 9, 2010 at 6658 E. 45th Street, Indianapolis, IN 46226.

3. Plaintiffs have confirmed the Defendant's address as correct via police report, driver's record search, Indiana Secretary of State search, copies of which are attached hereto.

WHEREFORE, Plaintiffs seek an order from the Court in view of the fact that the Defendant appears to be either unavailable or deliberately concealing his/her whereabouts, permitting service by mailing to the aforesaid premises.

Paul J. Hennessy, Esquire
Hennessy & Walker

Nationwide Mutual Insurance Co.	: In the Court of Common Pleas
a/s/o Charles Lepinski	: Clearfield County, Pennsylvania
Vs.	: Civil Action Law
Andrew B. Jackson et al	: NO: 08-337-CD

AFFIDAVIT

STATE OF PENNSYLVANIA:
: ss.
COUNTY OF CHESTER :

Paul J. Hennessy, Esquire being duly sworn according to law, deposes and says that he represents the Plaintiff(s) in the above entitled case; that he is authorized to make this affidavit on behalf of the Plaintiff(s); and that he has put forth a good faith effort to locate the defendant.

Plaintiffs have a police report, Indiana Secretary of State search, and driver's license record search confirming defendant's address.
Certified Mail has been attempted and the Process Server has been to Defendant's home address of 66658 East 45th Street, Indianaplis, IN 46226 (see attached).

Paul J. Hennessy
Paul J. Hennessy, Esquire
Hennessy & Walker

Sworn to and subscribed
before me this 10th day
of August ,2010.

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Marisa De Feo, Notary Public
Westtown Twp., Chester County
My Commission Expires March 31, 2014

Paul J. Hennessy, Esquire
Hennessy & Walker
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Attorney for Plaintiffs

Nationwide Mutual Insurance Co.	: In the Court of Common Pleas
a/s/o Charles Lepinski	: Clearfield County, Pennsylvania
Vs.	: Civil Action Law
Andrew B. Jackson et al	: NO: 08-337-CD

Memorandum of Law in Support of Plaintiffs' Petition for Alternative Service

When Service cannot be made under the regular service methods, the Plaintiff under Pennsylvania Rules of Civil Procedure No. 430(a) may make a motion for special order directing an alternative or substitute method of service usually by mail. Such a motion must be accompanied by an affidavit stating the nature and extent of the investigation made to determine the whereabouts of the Defendant and the reasons why service cannot be made by the regular means.

In Colavecchi v. Knarr, 457 A.2d 111 (Pa.Super.,1983) it was concluded the fact that a sheriff could not make service at the address furnished to him by Plaintiff did not convert Defendants into persons whose whereabouts were "unknown".

In Deer Park Lumber, Inc. v. Major, 559 A.2d 941 (Pa.Super.,1989) it was determined that more than a mere paper search is required before resort can be had to the publication provisions of Rule 430.

In Penn v. Raynor, 1989 WL 126282, (E.D.PA.,1989) a good faith effort to locate the

Defendant must be made. Such an effort includes; (1) inquires of postal authorities including inquires pursuant to the Freedom of Information Act, 39 C.F.R. Part 265, (2) inquires of relatives, neighbors, friends and employers of the Defendant and (3) examination of local telephone directories, voter registration records and motor vehicle records. In the instant case Plaintiff has made a "good faith" effort.

Paul J. Hennessy

Paul J. Hennessy, Esquire
Hennessy & Walker

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF CHESTER : ss

The undersigned verifies that the facts contained herein are true and correct.

The undersigned understands that false statements herein are made subject to the penalties of 19 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

If applicable, this affidavit is made on behalf of the Plaintiff(s); that the said Plaintiff(s) is/are unable and unavailable to make this verification on its/his/her own behalf within the time allotted for filing of this pleading, and the facts set forth in the foregoing pleading are true and correct to the best of counsel's knowledge, information and belief.

This verification is made pursuant to Pa. R.C.P. 1024 and is based on interviews, conferences, reports, records and other investigative material in the file

Paul J. Hennessy

Paul J. Hennessy, Esq.
Hennessy & Walker Group, P.C.

Dated: 8/10/10

BRESLIN SPECIALIZED SERVICES

National Association of Professional Process Servers

P.O. Box 325
Upper Darby, PA 19082
(610) 734-1647

Philadelphia Association of Professional Process Servers

AFFIDAVIT OF SERVICE

PLAINTIFF(S)	COURT TERM & NO.	COUNTY
Nationwide Mutual Insurance Company	08-337-CD	CLEARFIELD
DEFENDANT(S)	**DATE RECEIVED**	**SERVE BY**
Andrew B. Jackson	2-2-10	3-2-10

SERVE AT
6658 East 45th Street
Indianopolis, IN 46226

xxx☒ Civil Action complaint ☐ Subpoena
☐ Summons ☐ Other
☐ Writ of

SPECIAL INSTRUCTIONS

Served and made known to _____,

on the _____ day of _____, 20_____, at _____ o'clock, _____ M.,

at _____, County of _____,

Commonwealth of Pennsylvania, in the manner described below:

- ☐ Defendant(s) personally served.
- ☐ Adult family member with whom said Defendant(s) reside(s). Relationship is _____.
- ☐ Adult in charge of Defendant's residence who refused to give name or relationship.
- ☐ Manager/Clerk of place of lodging in which Defendant(s) reside(s), authorized to accept deliveries of U.S. Mail.
- ☐ Agent or person in charge of Defendant's office or usual place of business.
- ☐ _____ an officer of said Defendant company.
- ☐ Other _____.

DESCRIPTION	AGE	HEIGHT	WEIGHT	RACE	SEX	OTHER

On the 9 day of FEBRUARY, 20 10, at 4:50 o'clock, P M.,

Defendant not found because: ☐ Moved ☑ Unknown ☐ No Answer ☐ Vacant ☐ Other _____

UNKNOWN TO CAROLYN JACKSON RESIDENT OF 20 YEARS

NAME OF SERVER

PAMELA J. CONLEY being duly sworn according to law, certify that I am eighteen years of age or older and that I am not a party to the action or an employee or relative of a party.

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

Sworn to & subscribed before me this 2 day of March 2010

Nancy Botbyl

NANCY BOTBYL
Marion County
My Commission Expires
July 18, 2017

Sheriff _____ Process Server / ~~Competent Adult~~ Pamela J. Conley

DEPUTIZED SERVICE

Now, this _____ day of _____, 20_____, I do hereby deputize the Sheriff of _____ County.

to serve this ☐ Summons ☐ Complaint ☐ Other _____ and make return thereof and according to Law.

By (Competent Adult) _____ County Sheriff's Check $_____

Law Firm Hennessy & Walker

Attorney's Name Paul J. Hennessy For Plaintiff

Address 142 West Market Street
West Chester, Pa 19382

Telephone # 610-431-2727 Identification # 65396

ATTEST _____
PRO PROTHY

_____
DATE

accessIndiana

Indiana Secretary of State
TODD ROKITA

Name Searched On:
TRIPLE X TRUCKING (Legal)

Current Information

Entity Legal Name:
TRIPLE X TRUCKING, INC.

Entity Address:
6658 E 45TH ST, INDIANAPOLIS, IN 46226

General Entity Information:

Control Number: **2006101900157**
Status: **Active**
Entity Type: **For-Profit Domestic Corporation**

Entity Creation Date: **10/18/2006**
Entity Date to Expire:
Entity Inactive Date:

This entity is past due on its Business Entity Report(s). Click here to file the Business Entity Report.

There are no other names on file for this Entity.

Registered Agent(name, address, city, state, zip):
ANTHONY B. JACKSON
6658 E 45TH ST
INDIANAPOLIS , IN 46226

Principals(name, address, city, state, zip - when provided)
ANTHONY B. JACKSON
Incorporator
6658 E 45TH ST
INDIANAPOLIS , IN 46226

Transactions:

Date Filed	Effective Date	Type
10/18/2006	10/18/2006	Articles of Incorporation

Corporate Reports:
Years Paid
N/A

Years Due
2008/2009

Additional Services Available:

GO Generate an official Certificate of Existence/Authorization.
There is a fee of $20.00 for *accessIndiana* subscribers and a fee of $21.42 for credit card users. Example Certificate

NEW SEARCH

All the entity information captured by the Indiana Secretary of State, pursuant to law, is displayed on the Internet. For further information, please call our office at 317-232-6576. Copies of actual corporate documents can also be downloaded online.

If you encounter technical difficulties while using these services, please contact the *accessIndiana* Webmaster.
If you are unable to find the information you need through the resources provided on this web site, please contact Secretary of State Todd Rokita's Business Services Division at 317-232-6576.

« Back to the SOS Web site

accessIndiana

Indiana Secretary of State
TODD ROKITA

Name Searched On:
TRIPLE X TRUCKING (Legal)

Current Information

Entity Legal Name:
TRIPLE X TRUCKING, INC.

Entity Address:
6658 E 45TH ST, INDIANAPOLIS, IN 46226

General Entity Information:

Control Number: **2006101900157**
Status: **Active**
Entity Type: **For-Profit Domestic Corporation**

Entity Creation Date: **10/18/2006**
Entity Date to Expire:
Entity Inactive Date:

This entity is past due on its Business Entity Report(s). Click here to file the Business Entity Report.

There are no other names on file for this Entity.

Additional Services Available:

GO	**View additional information for the entity**, including **transaction history, merger information, registered agent, principals and corporate report information (years paid and years due).**
GO	**Generate an official Certificate of Existence/Authorization.** There is a total fee of $20.00 for *accessIndiana* subscribers and a fee of $21.42 for credit card users. Example Certificate. Please note that when an entity has a past due business entity report, the Certificate of Existence will indicate that the entity is not current. An entity is current if no reports are past due.
NEW! GO	**Generate Copies of Business Entity Documents.**
GO	**Request Information Printouts or Certificates.** There is no fee to place an order; however, you will be billed for any statutory fees associated with your order. View fee schedule View turn around time

Consolidated report listing 1 Reports

Case Id	Order	Subject	Product	Status
22D353508A	1	JACKSON, ANDREW	MVR	Complete

Case Identifier: 22D353508A
Order: 1

JACKSON, ANDREW

Order Details How To Read

ChoicePoint Inc.

DRIVER RECORD INFORMATION obtained by ChoicePoint Inc. on customer's behalf from the motor vehicle records of the state/province of Indiana. Identification of driver is based on information submitted.

Name/Address	Quoteback	
ANTHONY B JACKSON	22D353508A	[QB_3LCDNAHDP9J_1_1_N]
6658 E 45TH ST		
INDIANAPOLIS, IN 46226-3627		

Driver License Number	Rpt Date	System Use	Account Number
8942762746	06/09/2010	000000000000000	710519

Social Security Number	DMV Account Number
	0000

DOB	Sex	Hgt	Wt	Eyes	Hair	Requested as/Also Known As
05/09/1955	M	6'00	250	BRO	BLA	

DRIVER LICENSE INFORMATION

Class	Issued	Expire	Status	Restrictions
CHAUFFEUR			VALID	GLASSES OR CONTACT
A-COM,GCWR>26001			CDL:VALID	GLASSES OR CONTACT

MISCELLANEOUS AND STATE SPECIFIC INFORMATION

ORDERED AS: 8942762746
CURRENT POINTS: 00
DRIVER SAFETY PROGRAM (DSP) COMPLETED ON 7/22/2008 12:00:00 AM FOR 4 POINTS
ID CARD VOLUNTARILY SURRENDERED ON 5/6/2008 10:10:05 AM
LICENSE EFFECTIVE: 05/06/2008, RENEW CDL LICENSE, CDL CLASS A, ENDORSEMENTS: NT, RESTRICTIONS: A
DRIVER SAFETY PROGRAM (DSP) COMPLETED ON 12/28/2005 FOR 4 POINTS
LICENSE EFFECTIVE: 05/07/2004, RENEW ID CARD, REGULAR ID CARD, ENDORSEMENTS: NONE, RESTRICTIONS: A
LICENSE EFFECTIVE: 05/07/2004, RENEW LICENSE, CDL CLASS A, ENDORSEMENTS: NT, RESTRICTIONS: A
DRIVER SAFETY PROGRAM (DSP) COMPLETED ON 02/19/2004 FOR 4 POINTS
LICENSE EFFECTIVE: 11/15/2000, AMEND LICENSE, CDL CLASS A, ENDORSEMENTS: TX, RESTRICTIONS: A
LICENSE EFFECTIVE: 07/10/2000, DUPLICATE LICENSE, CDL CLASS A, ENDORSEMENTS: NT, RESTRICTIONS: A
LICENSE EFFECTIVE: 07/10/2000, RENEW ID CARD, REGULAR ID CARD, ENDORSEMENTS: NONE, RESTRICTIONS: NONE
EXP: 05/2012
CDL EXP: 05/2012
CDL ENDORSEMENT: LIQUID BULK/CARGO TANK
CDL ENDORSEMENT: DOUBLE/TRIPLES
03 PREVIOUS ADDRESS: 6658 E 45TH ST; INDIANAPOLIS, IN 46226
03 PREVIOUS ADDRESS: 6658 E 45TH ST; INDIANAPOLIS, IN 46226
02 PREVIOUS ADDRESS: 6658 E. 45TH.; INDIANAPOLIS, IN 46226
01 PREVIOUS ADDRESS: 3949 HILLSIDE; INDIANAPOLIS, IN 46205
POSSIBLE MVR MISMATCH, PLEASE REVIEW TO VERIFY: FN

DRIVING RECORD

Type	Vio/Sus Date	Conv/Rein Date	Description	Vio/Conv Code	Pts
CONV	01/25/2002	08/01/2002	SPEEDING 068/55 COURT: OH CASE NO: OH 020906073607 IN COMMERCIAL MOTOR VEHICLE CDL:C		2
CONV	02/12/2003	02/21/2003	NON-POINTABLE VIOLATION COURT: OH CASE NO: OH 030305083833 IN COMMERCIAL MOTOR VEHICLE CDL:C		0
CONV	06/07/2003	08/07/2003	SPEEDING COURT: OH CASE NO: OH 030902183855 IN COMMERCIAL MOTOR VEHICLE CDL:C		2
CONV	09/03/2003	10/27/2003	SPEEDING COURT: OH CASE NO: OH 031119074850 IN COMMERCIAL MOTOR VEHICLE CDL:C		2
CONV	02/22/2004	02/22/2004	SPEEDING 075/65 COURT: NM CASE NO: NM 040405121204 IN COMMERCIAL MOTOR VEHICLE CDL:C		2
CONV	09/11/2004	09/22/2004	SEAT BELT VIOLATION COURT: OH CASE NO: OH 041006192526 IN COMMERCIAL MOTOR VEHICLE CDL:C		0

IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 12/12/2004 01/24/2005
DRIVING WRONG SIDE OF ROAD
COURT: LA 4
CASE NO: LA 050316093227
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 12/12/2004 01/24/2005
UNSAFE LANE MOVEMENT
COURT: LA 4
CASE NO: LA 6534238

CONV 02/13/2005 03/29/2005
SPEEDING 076/60
COURT: GAS CITY CITY 4
CASE NO: 27H010502IF01144

CONV 01/03/2006 03/14/2006
NON-POINTABLE VIOLATION
COURT: MD 0
CASE NO: MD 060317082102
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 03/25/2007 05/21/2007
NON-POINTABLE VIOLATION
COURT: HAGERSTOWN TOWN 0
CASE NO: 89I010704IF1393
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 04/10/2007 05/02/2007
NON-POINTABLE VIOLATION
COURT: PA 0
CASE NO: PA M08496795

CONV 03/03/2008 04/24/2008
SPEEDING 070/65
COURT: LAGRANGE SUPERIOR 2
CASE NO: 44D010803IF01141
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 03/05/2008 03/11/2008
SPEEDING
COURT: OHMUN 2
CASE NO: OHMUN

CONV 02/13/2009 04/08/2009
NON-POINTABLE VIOLATION
COURT: WAYNE SUPERIOR #3 0*
CASE NO: 89D030902IF1291
IN COMMERCIAL MOTOR VEHICLE CDL:C

CONV 04/04/2009 11/17/2009
NON-POINTABLE VIOLATION
COURT: LAKE SUP DIVISION #4 0*
CASE NO: 45D120905IF03921
IN COMMERCIAL MOTOR VEHICLE CDL:C

– End of Consolidated Report –

Back to Order/Result List

COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 2 — Police Use Only: C03-0887584 — Page: 02 — Crash Number: P0767914

Unit Info

Type Unit: (●) Motor Vehicle in Transport ( ) Hit & Run Vehicle ( ) Illegally Parked ( ) Legally Parked ( ) Non - Motorized ( ) Pedestrian ( ) Pedestrian on Skates, in Wheelchair, etc ( ) Disabled From Previous Crash ( ) Train ( ) Phantom Vehicle

(If "Pedestrian" or "Pedestrian on Skates, in Wheelchair, etc", Complete Form M, Section 28)

Commercial Vehicle: (●) Yes ( ) No (If Yes, Complete Form C)

Vehicle Driver / Pedestrian Information

Unit No: 01 — First Name: ANDREW — MI: B — Date of Birth (MM-DD-YYYY): 05 09 1955

Delete? ( ) — Last Name: JACKSON — Telephone Number: 317-542-8312

Address / City / State: 6658 E. 45TH ST., INDIANAPOLIS, IN 46226-3627 — Zip: 46226

Driver License Number: 894276274 6 — State: IN — Class: A

Alcohol/Drugs Suspected: (●) No ( ) Illegal Drugs ( ) Medication ( ) Alcohol ( ) Alcohol and Drugs ( ) Unknown

Driver or Pedestrian Physical Condition: (●) Apparently Normal ( ) Illegal Drug Use ( ) Fatigue ( ) Medication ( ) Had Been Drinking ( ) Sick ( ) Asleep ( ) Unknown

Alcohol Test Type: (●) Test Not Given ( ) Breath ( ) Other ( ) Blood ( ) Urine ( ) Unknown If Test Given

Primary Vehicle Code Violation: 3361 — Charged? ( ) Yes (●) No

Alcohol Test Results: 0.[ ] ( ) Test Refused ( ) Test Given, Contaminated Results ( ) Unknown Results

Driver Presence: 1 — 1=Driver Operated Vehicle, 2=No Driver, 3=Driver Fled Scene, 4=Hit and Run, 9=Unknown

Owner/Driver: 02 — 00=Not Applicable, 01=Private Vehicle Owned/Leased by Driver, 02=Private Vehicle Not Owned/Leased by Driver, 03=Rented Vehicle, 04=State Police Vehicle, 05=PENNDOT Vehicle, 06=Other State Gov Veh, 07=Municipal Police Veh, 08=Other Municipal Government Vehicle, 09=Federal Gov Veh, 98=Other, 99=Unknown

Vehicle Information

Same as Driver ( ) — Owner First Name: — Owner Last Name or Business Name (If Pedestrian, skip this Section): PERKINS SPECIALIZE

Address / City / State / Zip: 9025 RIVER ROAD, INDIANAPOLIS, IN 46240 — Vehicle Make: FREIGTLINER — *Make Code: 82 (see overlay)

VIN: 2FUPCSZB6VA572717 — Model Year: 1997 — Vehicle Model: XL/FS65

License Plate: 0264108 — Reg. State: IN — Est. Speed: 35 — Vehicle Towed: (●) Yes ( ) No — Towed By: BRICEN TOWING

Insurance: (●) Yes ( ) No ( ) Unknown — Insurance Company: AMERICAN EQUITY SPECIALTY — Policy No: GT 100556

Trailing Unit: No. of Trailing Units: 1 — Type Unit: 7 — 1=Towing Pass. Veh, 2=Towing Truck, 3=Towing Utility Trailer, 4=Mobile/Modular Home, 5=Camper, 6=Full Trailer, 7=Semi-Trailer, 8=Other, 9=Unknown — Tag No: T435381 — Tag Year: 07 — Tag St: TN

Direction of Travel: E — *Vehicle Position: 03 — *Movement: 01 — *See Overlay

Special Usage: 21 — 00=Not Applicable, 01=Fire Veh, 02=Ambulance, 03=Police, 08=Other Emergency Vehicle, 11=Pupil Transport, 12=Commercial Passenger Carrier, 13=Taxi, 21=Tractor Trailer, 22=Twin Trailer, 23=Triple Trailer, 31=Modified Veh, 99=Unknown

Vehicle Color: 01 — 01=Blue, 02=Red, 03=White, 04=Green, 05=Black, 06=Yellow, 07=Silver, 08=Gold, 09=Brown, 10=Orange, 11=Purple, 12=Other, 99=Unknown

Vehicle Type: 05 — 01=Automobile, 02=Motorcycle, 03=Bus, 04=Small Truck (If "02", Complete Form M, Section 26) (If "20" or "21", Complete Form M, Section 27), 05=Large Truck, 06=SUV, 07=Van, 10=Snowmobile, 11=Farm Equip, 12=Construction Equip, 13=ATV, 18=Other Type Spec Veh, 19=Unk. Type Spec Veh, 20=Unicycle, Bicycle, Tricycle, 21=Other Pedalcycle, 22=Horse & Buggy, 23=Horse & Rider, 24=Train, 25=Trolley, 98=Other, 99=Unknown

Initial Impact Point: 01 — 00=Non-Collision, 01-12=Clock Points, 13=Top, 14=Undercarriage, 15=Towed Unit, 99=Unknown

Damage Indicator: 3 — 0=None, 1=Minor, 2=Functional, 3=Disabling, 9=Unknown

Gradient: 3 — 1=Level, 2=Uphill, 3=Downhill, 4=Bottom of Hill, 5=Top of Hill, 9=Unknown

Road Alignment: 1 — 1=Straight, 2=Curved, 9=Unknown

CA

Nationwide Mutual Insurance Co.	: In the Court of Common Pleas
a/s/o Charles Lepinski	: Clearfield County, Pennsylvania
Vs.	: Civil Action Law
Andrew B. Jackson et al	: NO: 08-337-CD

ORDER

AND NOW, this 17th day of AUGUST, 2010, upon consideration of Plaintiffs' Petition for Alternative Service and Memorandum of Law in support of, it is hereby ORDERED that Plaintiffs shall be permitted to serve the Defendant, Andrew B. Jackson a/k/a Anthony B. Jackson by MAILING (certified and regular) to the premises located at:

6658 East 45th Street
Indianapolis, IN 46226

BY THE COURT

Fredric J. Ammerman

J.

FILED
013:44/301
AUG 17 2010
William A. Shaw
Prothonotary/Clerk of Courts
1 CC Atty
Hennessy

Paul J. Hennessy, Esquire
Hennessy & Walker Group
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

FILED
m/ 11:04 AM
AUG 27 2010
William A. Shaw
Prothonotary/Clerk of Courts

cc $7.00 Atty
2cc & 2
reinstated
Complaints to
Atty

Nationwide Mutual Insurance Company A/S/O Charles Lepinski 1100 Locust, Dept. 5595 Des Moines, IA 50391-5595	: In The Court of Common Pleas : Clearfield County, Pennsylvania
vs.	: Civil Action Law
Andrew B. Jackson et al 6658 East 45th Street Indianapolis, IN 46226	: No: 08-337-CD

Praecipe to Reinstate

To The Prothonotary:

Please reinstate the Complaint on the above-captioned action. Please return to the attorney for service.

Paul J. Hennessy
Paul J. Hennessy, Esquire
Attorney for Plaintiff

NATI-1330

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

Nationwide Mutual Insurance Company A/S/O Charles Lepinski
(Plaintiff)

1100 Locust, Dept. 5595
(Street Address)

Des Moines, IA 50391-5595
(City, State ZIP)

CIVIL ACTION

No. 08-337-CD

Type of Case: Negligence

Type of Pleading: complaint

VS.

Andrew B. Jackson
(Defendant)

6658 East 45th Street
(Street Address)

Indianapolis, IN 46226
(City, State ZIP)

AND
Virgil J. Flannery
11705 Trotter Road
Argyle, WI 53504

Filed on Behalf of:

Plaintiffs
(Plaintiff/Defendant)

Paul J. Hennessy, Esquire
(Filed by)

142 West Market Street, Suite 2
(Address)
West Chester, PA 19382
610-431-2727
(Phone)

Paul J. Hennessy
(Signature)

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

FEB 27 2008

Attest. William L. Ohar
Prothonotary/
Clerk of Courts

4/13/09 Document Reinstated/~~Reissued~~ to ~~Sheriff~~/Attorney for service.
William L. Ohar
~~Deputy~~ Prothonotary

1/6/10 Document Reinstated/~~Reissued~~ to ~~Sheriff~~/Attorney for service.
William L. Ohar
~~Deputy~~ Prothonotary

Paul J. Hennessy, Esquire
Hennessy & Walker Group
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Nationwide Mutual Insurance Company A/S/O Charles Lepinski 1100 Locust, Dept. 5595 Des Moines, IA 50391-5595	: In The Court of Common Pleas : Clearfield County, Pennsylvania
vs. Andrew B. Jackson 6658 East 45th Street Indianapolis, IN 46226 **AND** Virgil J. Flannery 11705 Trotter Road Argyle, WI 53504	: Civil Action Law : No:

NOTICE

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

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

David S. Meholick, Court Admin.
Clearfield County Courthouse
Clearfield, PA 16830
814-465-2641 ext. 5982

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo ai partir de la fecha de la demanda y la notification. Hace faita asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defenses o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perdee dinero o sus propiedades u otros derechos importantes para usted.

Lleva esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por teléfono a la oficina cuya direccion se encuentra encuentra escrita abojo para averiguar dónde se puede conseguir asistencia legal.

David S. Meholick, Court Admin.
Clearfield County Courthouse
Clearfield, PA 16830
814-465-2641 ext. 5982

Paul J. Hennessy, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 65396

Attorney for Plaintiffs

Nationwide Mutual Insurance Co A/S/O Charles Lepinski 1100 Locust Dept 5595 Des Moines, IA 50391-5595	: In The Court of Common Pleas : Clearfield County, Pennsylvania
VS	: Civil Action Law
Andrew B. Jackson 6658 E. 45th Street Indianapolis, IN 46226 **AND** Virgil J. Flannery 11705 Trotter Road Argyle, WI 53504	: No

COMPLAINT

1. Plaintiff Nationwide Mutual Insurance Co is an insurance company licensed and authorized to conduct business in the Commonwealth of Pennsylvania and having as one of its principal places of business the above captioned address.

2. Charles Lepinski is an adult individual insured with Nationwide Mutual Insurance Co.

3. Defendant Andrew B. Jackson is an adult individual who resides at the above captioned address.

4. Defendant Virgil J. Flannery is an adult individual who resides at the above captioned address.

5. On or about 12/09/2006 Plaintiff Nationwide Mutual Insurance Co insured Charles Lepinski with a personal auto policy, policy number ACPBA7102315948 said policy covering a 1998 Kenworth T-600 tractor trailer.

6. Charles Lepinski was insured by the Plaintiff Nationwide Mutual Insurance Company with an inland marine policy of insurance, under policy # 22D34631 on December 9, 2006.

7. On or about 12/09/2006, Defendant Andrew Jackson was operating a 1997 Freightliner XL FS65 bearing IN tag # 0264108 registered to same.

8. On or about 12/09/2006 at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania Defendant Andrew Jackson while operating the aforesaid 1997 Freightliner did negligently, carelessly and/or recklessly, strike/collide into Plaintiff's insured's 1998 Kenworth tractor trailer, being lawfully operated by Lancelot E. Furber causing extensive damages to same.

9. On or about 12/09/2006 at or near Route 80 in Lawrence Township, Clearfield County, Pennsylvania, the Defendant Virgil J. Flannery operating a 2007 Pierce Quantum, WI tag # MV8331DT did negligently strike the Plaintiff's vehicle.

10. The negligence of the Defendants consisted of:

a) operating vehicle at a speed unsafe for conditions;
b) being inattentive;
c) failing to maintain proper lookout;
d) failing to maintain control of said vehicle so as to be able to stop within the assured clear distances ahead;
g) failing to take the proper safety precautions;
h) following too closely;
i) failing to warn Plaintiff;
j) failing to give due regard to the right, safety, point and position of plaintiffs property.

11. The aforesaid collision resulted solely from the negligent acts and/or failure to act on part of Defendants named herein and was due in no manner whatsoever to any act and/or failure to act on part of Plaintiff's insured.

12. As a result of the aforesaid collision, Plaintiff's insured's vehicle sustained extensive damages to same.

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF CHESTER : ss

The undersigned verifies that the facts contained herein are true and correct.

The undersigned understands that false statements herein are made subject to the penalties of 19 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

If applicable, this affidavit is made on behalf of the Plaintiff(s); that the said Plaintiff(s) is/are unable and unavailable to make this verification on its/his/her own behalf within the time allotted for filing of this pleading, and the facts set forth in the foregoing pleading are true and correct to the best of counsel's knowledge, information and belief.

This verification is made pursuant to Pa. R.C.P. 1024 and is based on interviews, conferences, reports, records and other investigative material in the file

Paul J. Hennessy, Esquire

Dated: 2/25/08

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,

Plaintiff,

v.

ANDREW B. JACKSON and VIRGIL J. FLANNERY,

Defendants.

CIVIL ACTION

NO: 08-337-CD

PRAECIPE FOR ARGUMENT/ SCHEDULING ORDER

Filed on Behalf of Defendant, Virgil J. Flannery

Counsel of Record for this Party:

James R. Hankle, Esquire
Email: jrh@sgkpc.com
PA I.D. No. 36019
Christopher J. Davis, Esquire
Email: cjd@sgkpc.com
PA I.D. No. 92876

Sherrard, German & Kelly, P.C.
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222
(412) 355-0200

Firm No. 0006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Praecipe for Argument/Scheduling Order** was served upon the following individuals by United States Mail, first class delivery, postage pre-paid this 15 day of November, 2010:

Paul J. Hennessy, Esquire
142 West Market Street, Suite 2
West Chester, PA 19382

Andrew B. Jackson
6658 East 45th Street
Indianapolis, IN 46226
(last known address)

By: James R. Hankle
James R. Hankle, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY a/s/o CHARLES LEPINSKI,	CIVIL ACTION
Plaintiff,	NO: 08-337-CD
v.	
ANDREW B. JACKSON and VIRGIL J. FLANNERY,	
Defendants.	

ORDER OF COURT

AND NOW, TO-WIT, this _____ day of _____, 2010, upon presentation and consideration of the within Petition for Entry of Judgment of Non Pros, it is hereby ORDERED, ADJUDGED and DECREED that said Petition is GRANTED and that Plaintiff's case against Defendant, Virgil J. Flannery, is hereby dismissed.

BY THE COURT:

_____J.