

08-396-CD
J. Brown al vs V. Yusypyuk al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

James Brown and Betsy Brown,
his wife

(Plaintiff)
1090 West River Street

(Street Address)
Grand Rapids, MI 49504

(City, State ZIP)

CIVIL ACTION

No. 2008-396-CD

Type of Case: Civil Action

Type of Pleading: Complaint

1) Vasyly Yusypuk;
VS. 2) NADIYA EXPRESS, INC.;
3) W2 LOGISTICS, INC.

(Defendant) 1) 1708 4th St, Grand Rapids, MI 49504;
2) 202 North Kenilworth, Mount Prospect, IL 60056; &
3) 2300 East Higgins Road 308, Elk Grove Village, IL 60007

(Street Address)

(City, State ZIP)

Filed on Behalf of:
Plaintiffs

(Plaintiff/Defendant)

MUNLEY, MUNLEY & CARTWRIGHT, P.C.
Daniel Webster Munley, Esq.
James A. Kilpatrick, Esq.

(Filed by)

The Forum Plaza
227 Penn Avenue, Scranton, PA 18503

(Address)

(570) 346-7401

(Phone)

*Daniel Webster Munley
James A. Kilpatrick*

(Signature)

FILED
in 1:32 p.m. 6K
MAR 06 2008
4CC TO ATTY

Att'y PAID
95.00

William A. Shaw
Prothonotary/Clerk of Courts

Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

JAMES BROWN and BETSY BROWN, his wife, 1090 West River Road Vermillion, OH 44089	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Plaintiffs	:	CIVIL ACTION - LAW JURY TRIAL DEMANDED
vs.	:	
VASYL YUSYPYUK 1708 4th Street, NW Grand Rapids, MI 49504	:	
NADIYA EXPRESS, INC. 202 North Kenilworth Mount Prospect, IL 60056	:	
W2 LOGISTICS, INC. 2300 East Higgins Road 308 Elk Grove Village, IL 60007	:	
Defendants	:	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 20 days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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

MidPenn Legal Services
211 E. Locust Street
Marino Building
Clearfield, PA 16830
800-326-9177

PA Lawyer Referral Service
Pennsylvania Bar Association
Harrisburg, PA 17108
800-692-7375

Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
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NADIYA EXPRESS, INC. 202 North Kenilworth Mount Prospect, IL 60056	:	
W2 LOGISTICS, INC. 2300 East Higgins Road 308 Elk Grove Village, IL 60007	:	
Defendants	:	No.:

COMPLAINT

NOW come Plaintiffs, James Brown and Betsy Brown, his wife, by and through their undersigned counsel, Munley, Munley & Cartwright, P.C. and aver as follows:

1. Plaintiffs James Brown and Betsy Brown, his wife, are competent adult individuals with an address at 1090 West River Road, Vermilion, Ohio.
2. Defendant Vasyl Yusypyuk is, on information and belief, a competent adult individual with an address at 1708 4th Street, NW, Grand Rapids, Michigan.
3. Defendant Nadiya Express, Inc., on information and belief, is an Illinois corporation doing systematic and continuous business in the Commonwealth of Pennsylvania, with an address at 202 North Kenilworth, Mount Prospect, Illinois.
4. Defendant W2 Logistic, Inc., on information and belief, is an Illinois corporation doing systematic and continuous business in the Commonwealth of Pennsylvania, with an address at 2300 East Higgins Road 308, Elk Grove Village, Illinois.

5. At all times pertinent hereto, Defendant Vasyl Yusypyuk was the agent, servant, workman and/or employee of Defendants Nadiya Express, Inc. and/or W2 Logistics, Inc. and was acting within the course and scope of his employment.

6. At all times pertinent hereto, Plaintiff James Brown was the operator of a 1999 International tractor trailer, Pennsylvania registration AE50096 owned by PJAX, Inc.

7. At all times pertinent hereto, Defendant Vasyl Yusypyuk was the operator of a 2001 Volvo tractor trailer, Illinois registration P522176 owned by Defendant Nadiya Express, Inc.

8. At all times pertinent hereto, Defendant W2 Logistics, Inc. was the carrier for the tractor trailer operated by Defendant Vasyl Yusypyuk.

9. On or about April 4, 2006 at approximately 12:25 a.m. Plaintiff was traveling east in the right hand lane of SR80 in Clearfield, Clearfield County, Pennsylvania.

10. At the same time and place, Defendant Vasyl Yusypyuk was traveling east behind Plaintiff's vehicle in the right hand lane of SR80 in Clearfield, Clearfield County, Pennsylvania when he operated the tractor trailer in such a careless, reckless and negligent manner that he attempted to pass Plaintiff's tractor trailer by moving into the left hand lane of travel when he suddenly and without warning crossed back into the right hand lane of travel, striking the driver's side of Plaintiff's truck with the side of his tractor trailer, forcing Plaintiff's tractor trailer off the road and into an embankment where it caught on fire, further causing Plaintiff to suffer such injuries as are hereinafter more fully described.

11. As a result of the aforesaid accident, Plaintiff James Brown has suffered, yet suffers and will/may suffer from for an indefinite time in the future injuries including but not limited to right hand pain; left knee pain; left shoulder pain; right hand contusion; left clavicle contusion; traumatic chondromalacia, left knee; right hand interosseous muscle strain; left knee contusion; second degree burns to left hip and thumb; anxiety and shock to his nerves and nervous system, all of which caused him, continue to cause him and will/may cause him for an indefinite time in the future great pain, agony and suffering, both physical and mental.

12. As a result of the aforesaid accident and injuries sustained, Plaintiff James Brown has been forced to undergo medical treatment and will/may be forced to undergo medical treatment at an undetermined time in the future.

13. As a result of the aforesaid accident and injuries sustained, Plaintiffs have expended, yet expends and will/may expend for an indefinite time in the future various and substantial sums of money for the medicine and medical attention in and about endeavoring to treat and cure Plaintiff James Brown of his injuries all to their great financial loss and damage.

14. As a result of the aforesaid accident and injuries sustained, Plaintiff James Brown has been, yet is and will/may for an indefinite time in the future, be unable to go about his usual and daily occupations and routines.

15. As a result of the aforesaid accident and injuries sustained, Plaintiff James Brown has been, yet is and will/may for an indefinite time in the future be forced to forego the pleasures of life.

16. As a result of the accident and injuries sustained, Plaintiff James Brown has suffered, yet suffers and will/may continue to suffer wage diminution or lessening of his earning power and earning capacity, and will/may continue to suffer same forever in the future.

COUNT ONE

James Brown v. Vasyl Yusypyuk

Negligence

17. Paragraphs 1-16 above are incorporated herein by reference as if fully set forth here at length.

18. The aforesaid accident was due solely to the negligent conduct, careless conduct and gross, wanton and reckless conduct of Defendant Vasyl Yusypyuk and in no way due to any negligent act or failure to act on the part of the Plaintiff.

19. The negligent conduct, careless conduct and gross, wanton and reckless of Defendant Vasyl Yusypyuk consisted of the following:

- a. failure to properly observe the roadway;
 - b. failure to properly brake his vehicle;
 - c. failure to maneuver his vehicle so as to avoid a collision;
 - d. failure to maintain adequate control over his vehicle;
 - e. failure to take proper evasive action so as to avoid an accident;
 - f. moving from the left lane into the right lane without ensuring that he could do so safely in violation of 75 Pa.C.S.A. §3309;
 - g. operating his vehicle with careless disregard for the safety of others in violation of 75 Pa.C.S.A. §3714;
 - h. failure to obey the rules of the road, the statutes of the Commonwealth of Pennsylvania and the ordinances of the Township of C, in and about operating his vehicle on the highways and roadways of the Commonwealth of Pennsylvania;
 - i. failure to operate, maintain, inspect and repair his vehicle in accord with the applicable Federal Motor Carrier Safety Regulations and Pennsylvania statutes and regulations;
 - j. operating his vehicle in violation of the rules and regulations of the Federal Motor Carrier Safety Regulations;
 - k. operating his vehicle in violation of the rules and regulations of the Federal Motor Carrier Act;
 - l. operating his vehicle when he was so fatigued as to make it unsafe for him to operate the tractor trailer in violation of 49 CFR 392.3;
 - m. operating his vehicle in excess of the applicable hours of service in violation of 49 CFR 395.3;
 - n. failure to record his duty status in violation of 49 CFR 395.8.
20. As a result of the above-stated acts and omissions, Plaintiff James Brown has suffered

such harm as has been previously stated herein.

WHEREFORE, Plaintiff James Brown demands judgment jointly and severally against Defendant Vasyl Yusypyuk in an amount in excess of \$50,000.00 plus interest and costs.

COUNT TWO

James Brown v. Nadiya Express, Inc.

Negligence

21. Paragraphs 1-20 above are incorporated herein by reference as if fully set forth here at length.

22. The aforesaid accident was due solely to the negligent conduct, careless conduct and gross, wanton and reckless conduct of Defendant Nadiya Express, Inc., by and through its agents, servants, workmen and employees, including but not limited to Vasyl Yusypyuk, and in no way due to any negligent act or failure to act on the part of the Plaintiffs.

23. The negligent conduct, careless conduct and gross, wanton and reckless conduct of Defendant, Nadiya Express, Inc., also consisted of the following:

- a. Negligently entrusting Vasyl Yusypyuk with the vehicle of which Nadiya Express, Inc. was the owner when it knew or should have known that Vasyl Yusypyuk lacked sufficient skill, judgment and prudence in the operation of a tractor trailer;
- b. Failing to adequately instruct Vasyl Yusypyuk in the safe operation of the tractor trailer prior to entrusting him with the tractor trailer of which Defendant Nadiya Express, Inc. was the owner;
- c. Failing to prevent Vasyl Yusypyuk from operating the tractor trailer of which Defendant Nadiya Express, Inc. was the owner until he had sufficient ability to operate the motor vehicle safely;
- d. Failing to adequately ascertain that Vasyl Yusypyuk lacked the ability necessary to safely operate the tractor trailer of which Defendant Nadiya

Express, Inc. was the owner under the circumstances;

- e. failure to provide Vasyl Yusypyuk with the equipment necessary to safely operate a tractor trailer;
- f. failure to operate, maintain, inspect and repair its vehicle in accord with the applicable Federal Motor Carrier Safety Regulations, particularly 49 CFR 396.3, and Pennsylvania statutes and regulations;
- g. operating its vehicle in violation of the rules and regulations of the Federal Motor Carrier Safety Regulations;
- h. operating its vehicle in violation of the rules and regulations of the Federal Motor Carrier Act;
- i. failure to conduct a background check of the driving record of Vasyl Yusypyuk as required by 49 CFR 391 et seq.;
- j. failure to properly supervise Defendant Vasyl Yusypyuk in the operation of its tractor-trailer to ensure compliance with the Federal Motor Carrier Safety Regulations;
- k. permitting its employee, Vasyl Yusypyuk, to operate its tractor trailer when it knew or should have known that he was too fatigued to do so safely in violation of 49 CFR 392.3;
- l. permitting its employee, Vasyl Yusypyuk, to operate its vehicle when it knew or should have known that he was operating the vehicle in excess of the applicable hours of service in violation of 49 CFR 395.3;
- m. permitting its employee, Vasyl Yusypyuk, to continue to operate its vehicle when it knew or should have known that he was not recording his duty status accurately in violation of 49 CFR 395.8.

24. As a result of the above-stated acts and omissions, Plaintiff James Brown has suffered such harm as has been previously stated herein.

WHEREFORE, Plaintiff James Brown demands judgment jointly and severally against Defendant Nadiya Express, Inc. in an amount in excess of \$50,000.00 plus interest and costs.

COUNT THREE

James Brown v. W2 Logistic, Inc.

Negligence

25. Paragraphs 1-24 above are incorporated herein by reference as if fully set forth here at length.

26. The aforesaid accident was due solely to the negligent conduct, careless conduct and gross, wanton and reckless conduct of Defendant W2 Logistic, Inc., by and through its agents, servants, workmen and employees, including but not limited to Vasyly Yusypyuk, and in no way due to any negligent act or failure to act on the part of the Plaintiffs.

27. The negligent conduct, careless conduct and gross, wanton and reckless conduct of Defendant, W2 Logistic, Inc. also consisted of the following:

- a. Negligently entrusting Vasyly Yusypyuk with the vehicle of which Nadiya Express, Inc. was the owner when it knew or should have known that Vasyly Yusypyuk lacked sufficient skill, judgment and prudence in the operation of a tractor trailer;
- b. Failing to adequately instruct Vasyly Yusypyuk in the safe operation of the tractor trailer prior to entrusting him with the tractor trailer of which Defendant Nadiya Express, Inc. was the owner;
- c. Failing to prevent Vasyly Yusypyuk from operating the tractor trailer of which Defendant Nadiya Express, Inc. was the owner until he had sufficient ability to operate the motor vehicle safely;
- d. Failing to adequately ascertain that Vasyly Yusypyuk lacked the ability necessary to safely operate the tractor trailer of which Defendant Nadiya Express, Inc. was the owner under the circumstances;

- e. failure to provide Vasyl Yusypyuk with the equipment necessary to safely operate a tractor trailer;
- f. failure to operate, maintain, inspect and repair its vehicle in accord with the applicable Federal Motor Carrier Safety Regulations, particularly 49 CFR 396.3, and Pennsylvania statutes and regulations;
- g. operating its vehicle in violation of the rules and regulations of the Federal Motor Carrier Safety Regulations;
- h. operating its vehicle in violation of the rules and regulations of the Federal Motor Carrier Act;
- i. failure to conduct a background check of the driving record of Vasyl Yusypyuk as required by 49 CFR 391 et seq.;
- j. failure to properly supervise Defendant Vasyl Yusypyuk in the operation of its tractor-trailer to ensure compliance with the Federal Motor Carrier Safety Regulations;
- k. permitting its employee, Vasyl Yusypyuk, to operate its tractor trailer when it knew or should have known that he was too fatigued to do so safely in violation of 49 CFR 392.3;
- l. permitting its employee, Vasyl Yusypyuk, to operate its vehicle when it knew or should have known that he was operating the vehicle in excess of the applicable hours of service in violation of 49 CFR 395.3;
- m. permitting its employee, Vasyl Yusypyuk, to continue to operate its vehicle when it knew or should have known that he was not recording his duty status accurately in violation of 49 CFR 395.8.

28. As a result of the above-stated acts and omissions, Plaintiff James Brown has suffered such harm as has been previously stated herein.

WHEREFORE, Plaintiff James Brown demands judgment jointly and severally against

Defendant W2 Logistic, Inc. in an amount in excess of \$50,000.00 plus interest and costs.

COUNT FOUR

James Brown vs. Vasyl Yusypyuk

Punitive Damages

29. Paragraphs 1 - 28 above are incorporated herein by reference as if fully set forth here at length.

30. The aforementioned conduct of Defendant Vasyl Yusypyuk was outrageous and/or done willfully, wantonly and/or with reckless indifference to the rights of the public including Plaintiff James Brown. Defendant Vasyl Yusypyuk knew or should have known that operating his vehicle in the early morning hours when he was too fatigued to do so safely and when he was in violation of the applicable hours of service regulations would result in serious injury to others driving on the roadway. Nevertheless, Defendant operated the tractor trailer when he was too fatigued to do so safely; violated the limitations on the hours of service regulations designed to prevent fatigued drivers from operating a tractor trailer; attempted to pass Plaintiff's vehicle when he could not do so safely; failed to maintain control of his vehicle and failed to accurately maintain his drivers' logs to reflect his hours of service. All of these acts did constitute a reckless indifference to the risk of injury to Plaintiff James Brown. As a result, Plaintiffs are seeking an award of punitive damages against Defendant Vasyl Yusypyuk.

WHEREFORE, Plaintiff James Brown demands judgment against Defendant Vasyl Yusypyuk jointly and severally in an amount in excess of \$50,000.00 plus interest and costs.

COUNT FIVE

James Brown v. Nadiya Express, Inc.

Punitive Damages

31. Paragraphs 1 - 30 above are incorporated herein by reference as if fully set forth here at length.

32. The aforementioned conduct of Defendant Nadiya Express, Inc. by and through its

agents, servants, workmen and/or employees including but not limited to Vasyl Yusypyuk was outrageous and/or done willfully, wantonly and/or with reckless indifference to the rights of the public including Plaintiff James Brown. Defendant Nadiya Express, Inc. knew or should have known that permitting Defendant Vasyl Yusypyuk to operate its tractor trailer when he was not qualified to do so, when he could not do so safely, when he would be operating the tractor trailer in the early morning hours when he was too fatigued to do so and when he was in violation of the applicable hours of service regulations would result in serious injury to others driving on the roadway. Nevertheless, Defendant Nadiya Express, Inc. failed to conduct a background check of Defendant Vasyl Yusypyuk; permitted Defendant Vasyl Yusypyuk to operate its tractor trailer when it knew or should have known that he could not do so safely; permitted Defendant Vasyl Yusypyuk to operate its tractor trailer when it knew or should have known that he was in such a state of fatigue that he presented a danger to others on the roadway; permitted Defendant Vasyl Yusypyuk to operate its tractor trailer when it knew or should have known that he was in violation of the applicable hours of service regulations and permitted Defendant Vasyl Yusypyuk to operate its tractor trailer when it knew or should have known that he did not properly maintain his drivers' logs. All of these acts did constitute a reckless indifference to the risk of injury to Plaintiff James Brown. As a result, Plaintiffs are seeking an award of punitive damages against Defendant Nadiya Express, Inc.

WHEREFORE, Plaintiffs demand judgment against Defendant Nadiya Express, Inc. Jointly and severally in an amount in excess of \$50,000.00 plus interest and costs.

COUNT SIX

James Brown v. W2 Logistic, Inc.

Punitive Damages

33. Paragraphs 1 - 33 above are incorporated herein by reference as if fully set forth here at length.

34. The aforementioned conduct of Defendant W2 Logistic, Inc. by and through its agents, servants, workmen and/or employees including but not limited to Vasyl Yusypyuk was

outrageous and/or done willfully, wantonly and/or with reckless indifference to the rights of the public including Plaintiff James Brown. Defendant W2 Logistic, Inc. knew or should have known that permitting Defendant Vasyl Yusypyuk to operate its tractor trailer when he was not qualified to do so, when he could not do so safely, when he would be operating the tractor trailer in the early morning hours when he was too fatigued to do so and when he was in violation of the applicable hours of service regulations would result in serious injury to others driving on the roadway. Nevertheless, Defendant W2 Logistic, Inc. failed to conduct a background check of Defendant Vasyl Yusypyuk; permitted Defendant Vasyl Yusypyuk to operate its tractor trailer when it knew or should have known that he could not do so safely; permitted Defendant Vasyl Yusypyuk to operate its tractor trailer when it knew or should have known that he was in such a state of fatigue that he presented a danger to others on the roadway; permitted Defendant Vasyl Yusypyuk to operate its tractor trailer when it knew or should have known that he was in violation of the applicable hours of service regulations and permitted Defendant Vasyl Yusypyuk to operate its tractor trailer when it knew or should have known that he did not properly maintain his drivers' logs. All of these acts did constitute a reckless indifference to the risk of injury to Plaintiff James Brown. As a result, Plaintiffs are seeking an award of punitive damages against Defendant W2 Logistic, Inc.

WHEREFORE, Plaintiffs demand judgment against Defendant W2 Logistic, Inc. jointly and severally in an amount in excess of \$50,000.00 plus interest and costs.

COUNT SEVEN

Betsy Brown v. Vasyl Yusypyuk

Loss of Consortium

35. Paragraphs 1-34 above are incorporated herein by reference as if fully set forth here at length.

36. At all times here pertinent Betsy Brown was and is the wife of Plaintiff James Brown.

37. Solely because of the negligent conduct, careless conduct and gross, wanton and/or reckless conduct of Defendant Vasyl Yusypyuk in causing the injuries to James Brown, Betsy Brown

as wife of James Brown, has been, yet is and will forever in the future be obliged to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure her husband of his injuries.

38. By reason of the aforesaid accident Plaintiff Betsy Brown has been, yet is and probably will be in the future deprived of the assistance and society of her husband, all of which has been and will be to her great financial loss and detriment.

WHEREFORE, Plaintiff Betsy Brown demands judgment against Defendant Vasyl Yusypyuk jointly and severally in an amount in excess of \$50,000.00 plus interest and costs.

COUNT EIGHT

Betsy Brown v. Nadiya Express, Inc.

Loss of Consortium

39. Paragraphs 1-38 above are incorporated herein by reference as if fully set forth here at length.

40. At all times here pertinent Betsy Brown was and is the wife of Plaintiff James Brown.

41. Solely because of the negligent conduct, careless conduct and gross, wanton and/or reckless conduct of Defendant Nadiya Express, Inc., by and through its agents, servants, workmen and/or employees, including but not limited to Defendant Vasyl Yusypyuk in causing the injuries to James Brown, Betsy Brown as wife of James Brown, has been, yet is and will forever in the future be obliged to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure her husband of his injuries.

42. By reason of the aforesaid accident Plaintiff Betsy Brown has been, yet is and probably will be in the future deprived of the assistance and society of her husband, all of which has been and will be to her great financial loss and detriment.

WHEREFORE, Plaintiff Betsy Brown demands judgment against Defendant Nadiya Express, Inc. jointly and severally in an amount in excess of \$50,000.00 plus interest and costs.

COUNT NINE

Betsy Brown v. W2 Logistic, Inc.

Loss of Consortium

43. Paragraphs 1-38 above are incorporated herein by reference as if fully set forth here at length.

44. At all times here pertinent Betsy Brown was and is the wife of Plaintiff James Brown.

45. Solely because of the negligent conduct, careless conduct and gross, wanton and/or reckless conduct of Defendant W2 Logistic, Inc., by and through its agents, servants, workmen and/or employees, including but not limited to Defendant Vasyl Yusypyuk in causing the injuries to James Brown, Betsy Brown as wife of James Brown, has been, yet is and will forever in the future be obliged to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure her husband of his injuries.

46. By reason of the aforesaid accident Plaintiff Betsy Brown has been, yet is and probably will be in the future deprived of the assistance and society of her husband, all of which has been and will be to her great financial loss and detriment.

WHEREFORE, Plaintiff Betsy Brown demands judgment against Defendant W2 Logistic, Inc. jointly and severally in an amount in excess of \$50,000.00 plus interest and costs.

MUNLEY, MUNLEY & CARTWRIGHT, P.C.

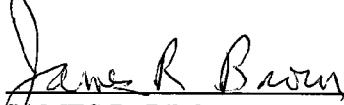
By: 
DANIEL WEBSTER MUNLEY, ESQUIRE

By: 
JAMES A. KILPATRICK, ESQUIRE
Attorney for Plaintiff

The Forum Plaza
227 Penn Avenue
Scranton, PA 18503
(570) 346-7401
Supreme Court Id. Nos.: 77441 & 84876

VERIFICATION

We hereby depose and state that we are the Plaintiffs in the above-captioned action, and that the factual statements in the foregoing Complaint are true and correct to the best of our knowledge, information and belief. We understand that this statement is made subject to the penalties of 18 Pa.C.S. Sec. 4904, relating to unsworn falsification to authorities.


JAMES R. BROWN


BETSY BROWN

FILED

MAR 27 2008

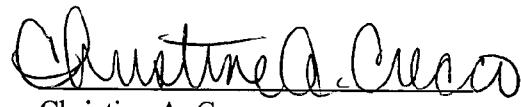
William A. Shaw
Prothonotary/Clerk of Courts

Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
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JAMES BROWN and BETSY BROWN, : IN THE COURT OF COMMON PLEAS
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: JURY TRIAL DEMANDED
VASYL YUSYPYUK :
NADIYA EXPRESS, INC. :
W2 LOGISTICS, INC. :
Defendants : No.: 2008-396-CD

RETURN OF SERVICE

I, Christine A. Crecco, being duly sworn according to law, depose and say that on March 12, 2008 and March 13, 2008, I caused to be served by U.S. Certified Mail, Restricted Delivery, Return/Receipt/Requested, a true and correct of the Complaint upon the Defendants, Vasyl Yusypyuk, Nadiya Express, Inc. and W2 Logistics, Inc. and that the Return/Receipt green cards were returned on March 21, 2008 & March 24, 2008, as indicated by a copy of the card attached below.

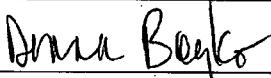


Christine A. Crecco

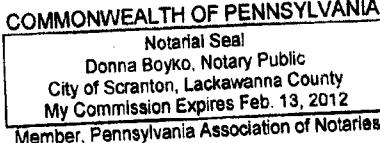
Sworn to and subscribed

before me this 24 day

of March, 2008



NOTARY PUBLIC



*Robert W. Munley**
Marion Munley†*
Matthew A. Cartwright†*
*James Christopher Munley**
*Daniel Webster Munley**
Robert W. Munley, III
Julia K. Munley
Caroline Munley

**Munley,
Munley &
Cartwright, P.C.**

Attorneys at Law

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Scranton, PA 18503
1-800-346-7401
570-346-7401
Fax: 570-346-3452

* Certified Civil Trial Specialist
By National Board of Trial Advocacy
† Member of New York Bar

March 12, 2008

**VIA CERTIFIED MAIL 7007 2680 0000 6027 1521
& FIRST CLASS MAIL**

Vasyl Yusypyuk
1708 4th Street
Grand Rapids, MI 49504

RE: James & Betsy Brown vs. Vasyl Yusypyuk, et al.

Dear Mr. Yusypyuk:

Enclosed please find a true and correct copy of the Complaint, the original of which was filed with the Court.

Pursuant to the PA Rules of Civil Procedure, kindly file your response with a timely manner.

Very truly yours,


DANIEL WEBSTER MUNLEY

DWM/cc
encl.

Robert W. Munley*
Marion Munley†
Matthew A. Cartwright*†
James Christopher Munley*
Daniel Webster Munley*
Robert W. Munley, III
Julia K. Munley
Caroline Munley

* Certified Civil Trial Specialist
By National Board of Trial Advocacy
† Member of New York Bar

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Attorneys at Law

The Forum Plaza
227 Penn Avenue
Scranton, PA 18503
1-800-346-7401
570-346-7401
Fax: 570-346-3452

March 12, 2008

**VIA CERTIFIED MAIL 7006 2150 0001 2869 4922
& FIRST CLASS MAIL**

Nadiya Express Inc.
202 N. Kenilworth Ave.
Mount Prospect, IL 60056

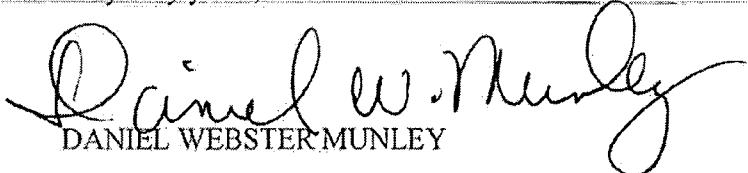
RE: James & Betsy Brown vs. Vasyl Yusypyuk, et al.

Dear Sir or Madam:

Enclosed please find a true and correct copy of the Complaint, the original of which was filed with the Court.

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Very truly yours,


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DWM/cc
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Attorneys at Law

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Fax: 570-346-3452

March 13, 2008

**VIA CERTIFIED MAIL 7007 2680 00006027188022
& FIRST CLASS MAIL**

W2 Logistics, Inc.
2300 East Higgins Road 308
Elk Grove Village, IL 60007

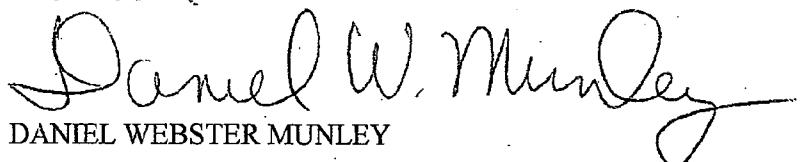
RE: James & Betsy Brown vs. Vasyly Yusypuk, et al.

Dear Sir or Madam:

Enclosed please find a true and correct copy of the Complaint, the original of which was filed with the Court.

Pursuant to the PA Rules of Civil Procedure, kindly file your response with a timely manner.

Very truly yours,


DANIEL WEBSTER MUNLEY

DWM/cc
encl.

Brown Games Cr

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Nadiya Express Inc.
202 N. Kenilworth Ave.
Mount Prospect, IL 60056

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Nadiya Sofra

Agent

Addressee

B. Received by (Printed Name)

NADIYA YUSYUK

C. Date of Delivery

3-18-08

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number
(Transfer from) **7006 2150 0001 2869 4922**

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15 J

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

W2 Logistics, Inc.
2300 East Higgins Road 308
Elk Grove Village, IL 60007

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

Agent
 Addressee

B. Received by (Printed Name)**C. Date of Delivery****D. Is delivery address different from item 1? Yes**

If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes**2. Article Number**

(Tray) 7007 2680 0000 6027 1880

PS Form 3811, February 2004

Domestic Return Receipt

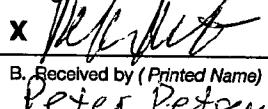
102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Vasyl Yusypyuk
1708 4th Street
Grand Rapids, MI 49504

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

Agent
 Addressee

B. Received by (Printed Name)**C. Date of Delivery****D. Is delivery address different from item 1? Yes**

If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes**2. Article Number**

() 7007 2680 0000 6027 1521

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540



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Label/Receipt Number: **7007 2680 0000 6027 1521**

Status: **Delivered**

Your item was delivered at 11:41 AM on March 15, 2008 in GRAND RAPIDS, MI 49504.

Track & Confirm

Enter Label/Receipt Number.

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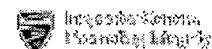
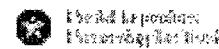
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Search Results

Label/Receipt Number: **7007 2680 0000 6027 1880**

Status: **Delivered**

Your item was delivered at 2:55 PM on March 17, 2008 in ELK GROVE VILLAGE, IL 60007.

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Opportunity Data



Freedom of Information
Act

FINE, WYATT & CAREY, P.C.
BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

ATTORNEYS FOR DEFENDANTS

JAMES BROWN and BETSY
BROWN, his wife,

Plaintiffs,

vs.

VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC.,

Defendants.

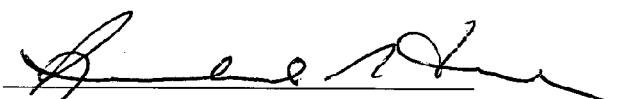
: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY
:
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED
:
:
: NO. 2008-396-CD

PRAECIPE

TO THE PROTHONOTARY:

Kindly enter our appearance on behalf of ALL Defendants in the above-captioned
action.

FINE, WYATT & CAREY, P.C.


RICHARD G. FINE, ESQUIRE
JEFFREY E. HAVRAN, ESQUIRE

FILED NO
APR 07 2008 CC
62

William A. Shaw
Prothonotary/Clerk of Courts

BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

ATTORNEYS FOR DEFENDANTS

FILED
MAY 1 2008
AUG 14 2008
NO
CC

BRD
BPL
William A. Shaw
Prothonotary/Clerk of Courts

**JAMES BROWN and BETSY
BROWN, his wife,**

Plaintiffs,

vs.

**VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC.,**

Defendants. : NO. 2008-396-CD

TO: JAMES BROWN AND BETSY BROWN, HIS WIFE
c/o Daniel Webster Munley, Esquire
The Forum Plaza
227 Penn Avenue
Scranton, PA 18503

NOTICE TO PLEAD

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO
THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TWENTY (20) DAYS
FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST
YOU.

Respectfully submitted,

FINE, WYATT & CAREY, P.C.

RICHARD G. FINE, ESQUIRE
JEFFREY E. HAVRAN, ESQUIRE

FINE, WYATT & CAREY, P.C.
BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

ATTORNEYS FOR DEFENDANTS

**JAMES BROWN and BETSY
BROWN, his wife,**

Plaintiffs,

vs.

**VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC.,**

Defendants. : **NO. 2008-396-CD**

: **IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY**

:

: **CIVIL ACTION - LAW**

:

: **JURY TRIAL DEMANDED**

:

:

:

**DEFENDANTS' PRELIMINARY OBJECTIONS
TO PLAINTIFFS' COMPLAINT**

AND NOW COME, the above-named Defendants by and through their counsel, Fine, Wyatt & Carey, P.C., and hereby preliminarily object to Plaintiffs' Complaint as follows:

1. The present matter arises out of a motor vehicle accident which occurred on or about April 4, 2006 on Interstate 80 eastbound involving a tractor trailer being driven by Plaintiff and Defendant Vasyly Yusypyuk.
2. On the above date both vehicles were traveling eastbound when a collision allegedly occurred in the right hand lane of travel as Defendant had been passing Plaintiff's tractor-trailer. See Plaintiffs' Complaint attached hereto as Exhibit "A".
3. As a result of the above accident, Plaintiff alleges various personal injuries.

A. The within Defendants preliminarily object to Plaintiffs' Complaint pursuant to Pa. R.C.P. 1028(a)(4) in the form of a demurrer with regard to Counts Four, Five and Six of Plaintiffs' Complaint which allege separate causes of action for punitive damages against the within Defendants.

4. The within Defendant incorporates Paragraphs 1 through 3 above as though same were set forth fully herein at length.

5. In Count Four of Plaintiffs' Complaint, they allege a claim for punitive damages against Vasyl Yusypyuk while in Count Five they allege a claim for punitive damages against Nadiya Express, Inc. and in Count Six they allege a claim for punitive damages against W2 Logistic, Inc.

6. It is clear under Pennsylvania law that a request for punitive damages does not constitute a cause of action in and of itself. Nix v Temple University of Com. System of Higher Education, 596 A.2d 1132 (Pa. Super. 1991).

7. A request for punitive damages is merely incidental to the cause of action. Feingold v. Septa, 517 A.2d 1270 (Pa. 1996).

8. In their Complaint, Plaintiffs allege separate causes of action/claims for punitive damages in Counts Four, Five and Six which are improper under Pennsylvania law.

9. As such, Counts Four, Five and Six are improper under Pennsylvania law and should be stricken.

WHEREFORE, the within Defendants respectfully request that Counts Four, Five and Six of Plaintiffs' Complaint be stricken.

B. The within Defendants preliminarily object to Plaintiffs' Complaint pursuant to Pa. R.C.P. 1028(a)(4) in the form of a demurrer with regard to Plaintiffs' allegations of reckless, gross and wanton conduct on the part of the within Defendants along with Plaintiffs' request for punitive damages

10. The within Defendant incorporates Paragraphs 1 through 9 above as though same were set forth fully herein at length.

11. Throughout Plaintiffs' Complaint they make allegations of gross, wanton and reckless conduct on behalf of the within Defendants and make a request for punitive damages. Punitive damages must be based on conduct which is malicious, wanton, reckless, willful or oppressive. *Feld v Merriam*, 485 A.2d 742 (Pa. 1994). Under Pennsylvania law, punitive damages may be awarded for conduct that is outrageous because of the defendant's evil motive or his reckless indifference to the rights of others. *Martin v Johns-Manville Corp*, 494 A.2d 1088 (Pa. 1985). Remanded 502 A.2d 1264 (Pa. Super. 1985); appeal granted by 510 A.2d 1389 (Pa. 1986) reversed by 528 A.2d 947 (Pa. 1987).

12. In determining whether an actor exhibits reckless indifference to the rights of others so as to provide a basis for the award of punitive damages, the allegations of a complaint must establish that the actor actually knew or had reason to know facts which created a high degree of harm to the plaintiff. *Id.*

13. Furthermore, the defendant must have proceeded to act in conscious disregard of or with indifference to that risk. If the defendant does not actually realize the high degree of risk involved, even though a reasonable person in his position would, the mental state required for the imposition of punitive damages under Pennsylvania law is not present.

Martin, supra.

14. A person's conduct is reckless if he or she intentionally does an act or fails to do an act which it is their duty, knowing or having reason to know of facts which would lead a reasonable person to realize that such conduct involves a high degree of probability that substantial harm would result to the other. *Slother v Jaffe*, 51 A.2d 747 (Pa. 1947)

15. "Recklessness" implies a conscious appreciation of the probable extent of danger or risk incident to the contemplated action whereas "negligence" implies knowledge

only of a probable source of danger in the act. Reilly v City of Philadelphia, 195 A. 897 (Pa. 1938).

16. "Wantonness" is characterized by a realization of the probability of injury to another and a reckless disregard of the consequences thereof. Rafferty v DiJohn, 135 A.2d 375 (Pa. 1957).

17. "Wanton misconduct" exists when the danger to the plaintiff though realized, is so recklessly disregarded that, even if there be no actual intent, there is at least a willingness to inflict injury or a conscious indifference to perpetration of the wrong. Stewart v Pittsburgh Rys. Co. 108 A.2d 767 (Pa. 1954).

18. Mere inattention or inadvertence is not "wantonness" which would allow recovery by a plaintiff. Corona v. Pittsburgh Rys. Co., 209 A.2d 425 (Pa. 1965).

19. In their Complaint, Plaintiffs allege that the within Defendants failed to properly operate the tractor trailer, made an improper maneuver by merging to the right and failed to maintain said vehicle in accordance with the Federal Motor Carrier Safety Regulations. See Exhibit "A".

20. Plaintiffs' Complaint fails to allege that the within Defendants intentionally did an act or failed to do an act knowing or having reason to know of facts which would lead a reasonable man to realize that such conduct would create an unreasonable risk along with a high degree of probability that substantial harm would result to another which is required to substantiate the allegations of recklessness.

21. Plaintiffs' Complaint fails to allege that there was any realization of danger by the within Defendants or willingness to inflict injury to the Plaintiffs required to substantiate the allegations of wanton or willful misconduct.

22. A review of the allegations and factual background of Plaintiffs' Complaint does not establish any such conduct which would warrant punitive damages.

23. Plaintiffs have failed to allege facts that the within Defendants actually knew or had reason to know of facts which created a high degree of probability of physical harm to the Plaintiff. There are no set of facts alleged that the within Defendants exhibited "reckless indifference to the rights of others" so as to provide a basis for the award of punitive damages. There are no set of facts alleged which demonstrate that the within Defendants proceeded to act in conscious disregard of or with indifference to any risk.

24. Even assuming the allegations of Plaintiffs' Complaint are true, which allegations are specifically denied by the within Defendants, same would amount to mere negligence at best and not rise to the level of punitive damages.

25. In deciding whether punitive damages are assessable, the motive for the tortfeasor's act must be taken into account and not just the nature of the act itself. *Id.* The imposition of punitive damages to punish a civil defendant is appropriate only where the conduct is egregious. *Martin, supra.*

26. As there is no egregious conduct here on the part of the within Defendants as plead by Plaintiffs, punitive damages are not warranted under the face of their Complaint.

WHEREFORE, the within Defendants respectfully request that the allegations of punitive damages, wanton, gross and reckless conduct on behalf of the within Defendants be stricken from Plaintiffs' Complaint.

C. The within Defendants preliminarily object to Plaintiffs' Complaint pursuant to Pa. R.C.P. 1028(a)(3) in the form of insufficient specificity with regard to the vague and boilerplate language set forth in Paragraph 19 h, i, j and k, Paragraph 23, f, g and h, and Paragraph 27 f, g and h of Plaintiffs' Complaint

27. The within Defendant incorporates Paragraphs 1 through 26 above as though same were set forth fully herein at length.

28. Under our fact pleading rules, a complaint must not only apprise a defendant of plaintiff's asserted claims but it must also synthesize the essential facts to support the claim.

Miketic v Baron, 675 A.2d 324 (Pa. Super. 1996).

29. Allegations in a Complaint must contain sufficient specificity to enable the parties to prepare a defense. *General State Auth. v Sutter Corp.*, 356 A.2d 377 (Pa. Cmwlth. 1976).

30. A complaint must give a defendant notice of the circumstances surrounding the controversy. *Cassell v Shellenberger*, 514 A.2d 163 (Pa. Super. 1986) *appeal denied*, 529 A.2d 1078 (Pa. 1987).

31. In Plaintiffs' Complaint they allege in Paragraph 19 that the negligent, careless gross, wanton and reckless conduct of Vasyl Yusypyuk was as follows:

- h. failure to obey the rules of the road, the statutes of the Commonwealth of Pennsylvania and the ordinances of the Township of C, in and about operating his vehicle on the highways and roadways of the Commonwealth of Pennsylvania;
- i. failure to operate, maintain, inspect and repair his vehicle in accord with the applicable Federal Motor Carrier Safety Regulations and Pennsylvania statutes and regulations;

- j. operating his vehicle in violation of the rules and regulations of the Federal Motor Carrier Safety Regulations; and
- k. operating his vehicle in violation of the rules and regulations of the Federal Motor Carrier Act

See Exhibit "A"

32. In Plaintiffs' Complaint they allege in Paragraph 23 that the negligent, careless, gross, wanton and reckless conduct of Nadiya Express, Inc. was as follows:

- f. failure to operate, maintain, inspect and repair its vehicle in accord with the applicable Federal Motor Carrier Safety Regulations, particularly 49 CFR 396.3, and Pennsylvania statutes and regulations;
- g. operating its vehicle in violation of the rules and regulations of the Federal Motor Carrier Safety Regulations;
- h. operating its vehicle in violation of the rules and regulations of the Federal Motor Carrier Act

See Exhibit "A"

33. In Plaintiffs' Complaint they allege in Paragraph 27 that the negligent, careless, gross, wanton and reckless conduct of W2 Logistic, Inc. was as follows:

- f. failure to operate, maintain, inspect and repair its vehicle in accord with the applicable Federal Motor Carrier Safety Regulations, particularly 49 CFR 396.3, and Pennsylvania statutes and regulations;
- g. operating its vehicle in violation of the rules and regulations of the Federal Motor Carrier Safety Regulations; and
- h. operating its vehicle in violation of the rules and regulations of the Federal Motor Carrier Act

See Exhibit "A"

34. The above-cited subparagraphs of Plaintiffs' Complaint are mere general allegations of negligence and fail to comply with our fact pleading rules.

35. The above-cited subparagraphs of Plaintiffs' Complaint merely allege that the within Defendants violated the rules of the road, statutes of Pennsylvania and ordinances of Clearfield Township in operating the tractor-trailer in question; that the Defendants failed to operate, maintain, inspect and repair the tractor-trailer in accordance with the Federal Motor Carrier Safety regulations and that the vehicle was operated in violation of the Federal Motor Carrier Safety regulations.

36. Plaintiffs do not set forth or state what rules of the road, statutes of the Commonwealth of Pennsylvania, ordinances of the township of Hanover or what provisions of the Federal Motor Carrier Safety regulations that the within Defendants violated or failed to comply with.

37. Plaintiffs' Complaint does not set forth how or in what way said rules of the road, statutes or regulations were violated.

38. The above-cited subparagraphs do not apprise the within Defendants of Plaintiffs' asserted claims nor do they synthesize any essential facts to support Plaintiffs' claims as required by Pennsylvania law.

39. As such, the above-cited subparagraphs of Plaintiffs' Complaint should be stricken for lack of specificity.

WHEREFORE, the within Defendants respectfully request that Paragraph 19 h, i, j and k, Paragraph 23, f, g and h, and Paragraph 27 f, g and h of Plaintiffs' Complaint be stricken for lack of specificity.

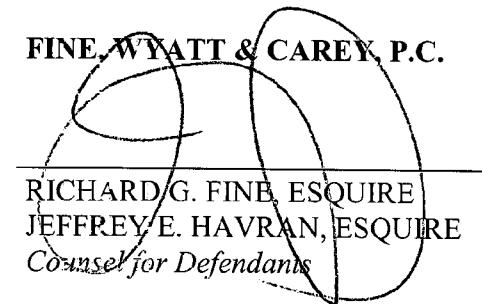


EXHIBIT “A”

Mar. 13. 2008 7:46AM

No. 7496 P. 3

Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

**JAMES BROWN and BETSY BROWN,
his wife,
1090 West River Road
Vermillion, OH 44089**

Plaintiffs

**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY**

**CIVIL ACTION - LAW
JURY TRIAL DEMANDED**

vs.

**VASYL YUSYPYUK
1708 4th Street, NW
Grand Rapids, MI 49504
NADIYA EXPRESS, INC.
202 North Kenilworth
Mount Prospect, IL 60056
W2 LOGISTICS, INC.
2300 East Higgins Road 308
Elk Grove Village, IL 60007**

Defendants

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 20 days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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

**MidPenn Legal Services
211 E. Locust Street
Marino Building
Clearfield, PA 16830
800-326-9177**

**PA Lawyer Referral Service
Pennsylvania Bar Association
Harrisburg, PA 17108
800-692-7375**

Mar. 13. 2008 7:47AM

No. 7496 P. 4

Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

JAMES BROWN and BETSY BROWN,
his wife,
1090 West River Road
Vermillion, OH 44089

Plaintiffs

vs.

VASYL YUSYPYUK
1708 4th Street, NW
Grand Rapids, MI 49504
NADIYA EXPRESS, INC.
202 North Kenilworth
Mount Prospect, IL 60056
W2 LOGISTICS, INC.
2300 East Higgins Road 308
Elk Grove Village, IL 60007

Defendants

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

CIVIL ACTION - LAW
JURY TRIAL DEMANDED

No.:

COMPLAINT

NOW come Plaintiffs, James Brown and Betsy Brown, his wife, by and through their undersigned counsel, Munley, Munley & Cartwright, P.C. and aver as follows:

1. Plaintiffs James Brown and Betsy Brown, his wife, are competent adult individuals with an address at 1090 West River Road, Vermillion, Ohio.
2. Defendant Vasyly Yusypyuk is, on information and belief, a competent adult individual with an address at 1708 4th Street, NW, Grand Rapids, Michigan.
3. Defendant Nadiya Express, Inc., on information and belief, is an Illinois corporation doing systematic and continuous business in the Commonwealth of Pennsylvania, with an address at 202 North Kenilworth, Mount Prospect, Illinois.
4. Defendant W2 Logistic, Inc., on information and belief, is an Illinois corporation doing systematic and continuous business in the Commonwealth of Pennsylvania, with an address at 2300 East Higgins Road 308, Elk Grove Village, Illinois.

Mar. 13. 2008 7:47AM

No. 7496 P. E

5. At all times pertinent hereto, Defendant Vasyl Yusypyuk was the agent, servant, workman and/or employee of Defendants Nadiya Express, Inc. and/or W2 Logistics, Inc. and was acting within the course and scope of his employment.

6. At all times pertinent hereto, Plaintiff James Brown was the operator of a 1999 International tractor trailer, Pennsylvania registration AE50096 owned by PJAX, Inc.

7. At all times pertinent hereto, Defendant Vasyl Yusypyuk was the operator of a 2001 Volvo tractor trailer, Illinois registration P522176 owned by Defendant Nadiya Express, Inc.

8. At all times pertinent hereto, Defendant W2 Logistics, Inc. was the carrier for the tractor trailer operated by Defendant Vasyl Yusypyuk.

9. On or about April 4, 2006 at approximately 12:25 a.m. Plaintiff was traveling east in the right hand lane of SR80 in Clearfield, Clearfield County, Pennsylvania.

10. At the same time and place, Defendant Vasyl Yusypyuk was traveling east behind Plaintiff's vehicle in the right hand lane of SR80 in Clearfield, Clearfield County, Pennsylvania when he operated the tractor trailer in such a careless, reckless and negligent manner that he attempted to pass Plaintiff's tractor trailer by moving into the left hand lane of travel when he suddenly and without warning crossed back into the right hand lane of travel, striking the driver's side of Plaintiff's truck with the side of his tractor trailer, forcing Plaintiff's tractor trailer off the road and into an embankment where it caught on fire, further causing Plaintiff to suffer such injuries as are hereinafter more fully described.

11. As a result of the aforesaid accident, Plaintiff James Brown has suffered, yet suffers and will/may suffer from for an indefinite time in the future injuries including but not limited to right hand pain; left knee pain; left shoulder pain; right hand contusion; left clavicle contusion; traumatic chondromalacia, left knee; right hand interosseous muscle strain; left knee contusion; second degree burns to left hip and thumb; anxiety and shock to his nerves and nervous system, all of which caused him, continue to cause him and will/may cause him for an indefinite time in the future great pain, agony and suffering, both physical and mental.

Mar. 13. 2008 7:47AM

No. 7496 P. 6

12. As a result of the aforesaid accident and injuries sustained, Plaintiff James Brown has been forced to undergo medical treatment and will/may be forced to undergo medical treatment at an undetermined time in the future.

13. As a result of the aforesaid accident and injuries sustained, Plaintiffs have expended, yet expends and will/may expend for an indefinite time in the future various and substantial sums of money for the medicine and medical attention in and about endeavoring to treat and cure Plaintiff James Brown of his injuries all to their great financial loss and damage.

14. As a result of the aforesaid accident and injuries sustained, Plaintiff James Brown has been, yet is and will/may for an indefinite time in the future, be unable to go about his usual and daily occupations and routines.

15. As a result of the aforesaid accident and injuries sustained, Plaintiff James Brown has been, yet is and will/may for an indefinite time in the future be forced to forego the pleasures of life.

16. As a result of the accident and injuries sustained, Plaintiff James Brown has suffered, yet suffers and will/may continue to suffer wage diminution or lessening of his earning power and earning capacity, and will/may continue to suffer same forever in the future.

COUNT ONE

James Brown v. Vasyly Yusypuk

Negligence

17. Paragraphs 1-16 above are incorporated herein by reference as if fully set forth here at length.

18. The aforesaid accident was due solely to the negligent conduct, careless conduct and gross, wanton and reckless conduct of Defendant Vasyly Yusypuk and in no way due to any negligent act or failure to act on the part of the Plaintiff.

19. The negligent conduct, careless conduct and gross, wanton and reckless of Defendant Vasyly Yusypuk consisted of the following:

Mar. 13. 2008 7:48AM

No. 7496 P. 7

- a. failure to properly observe the roadway;
- b. failure to properly brake his vehicle;
- c. failure to maneuver his vehicle so as to avoid a collision;
- d. failure to maintain adequate control over his vehicle;
- e. failure to take proper evasive action so as to avoid an accident;
- f. moving from the left lane into the right lane without ensuring that he could do so safely in violation of 75 Pa.C.S.A. §3309;
- g. operating his vehicle with careless disregard for the safety of others in violation of 75 Pa.C.S.A. §3714;
- h. failure to obey the rules of the road, the statutes of the Commonwealth of Pennsylvania and the ordinances of the Township of C, in and about operating his vehicle on the highways and roadways of the Commonwealth of Pennsylvania;
- i. failure to operate, maintain, inspect and repair his vehicle in accord with the applicable Federal Motor Carrier Safety Regulations and Pennsylvania statutes and regulations;
- j. operating his vehicle in violation of the rules and regulations of the Federal Motor Carrier Safety Regulations;
- k. operating his vehicle in violation of the rules and regulations of the Federal Motor Carrier Act;
- l. operating his vehicle when he was so fatigued as to make it unsafe for him to operate the tractor trailer in violation of 49 CFR 392.3;
- m. operating his vehicle in excess of the applicable hours of service in violation of 49 CFR 395.3;
- n. failure to record his duty status in violation of 49 CFR 395.8.

20. As a result of the above-stated acts and omissions, Plaintiff James Brown has suffered

Mar. 13. 2008 7:48AM

No. 7496 P. E

such harm as has been previously stated herein.

WHEREFORE, Plaintiff James Brown demands judgment jointly and severally against Defendant Vasyly Yusypyuk in an amount in excess of \$50,000.00 plus interest and costs.

COUNT TWO

James Brown v. Nadiya Express, Inc.

Negligence

21. Paragraphs 1-20 above are incorporated herein by reference as if fully set forth here at length.

22. The aforesaid accident was due solely to the negligent conduct, careless conduct and gross, wanton and reckless conduct of Defendant Nadiya Express, Inc., by and through its agents, servants, workmen and employees, including but not limited to Vasyly Yusypyuk, and in no way due to any negligent act or failure to act on the part of the Plaintiff.

23. The negligent conduct, careless conduct and gross, wanton and reckless conduct of Defendant, Nadiya Express, Inc., also consisted of the following:

- a. Negligently entrusting Vasyly Yusypyuk with the vehicle of which Nadiya Express, Inc. was the owner when it knew or should have known that Vasyly Yusypyuk lacked sufficient skill, judgment and prudence in the operation of a tractor trailer;
- b. Failing to adequately instruct Vasyly Yusypyuk in the safe operation of the tractor trailer prior to entrusting him with the tractor trailer of which Defendant Nadiya Express, Inc. was the owner;
- c. Failing to prevent Vasyly Yusypyuk from operating the tractor trailer of which Defendant Nadiya Express, Inc. was the owner until he had sufficient ability to operate the motor vehicle safely;
- d. Failing to adequately ascertain that Vasyly Yusypyuk lacked the ability necessary to safely operate the tractor trailer of which Defendant Nadiya

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Express, Inc. was the owner under the circumstances;

- e. failure to provide Vasyl Yusypyuk with the equipment necessary to safely operate a tractor trailer;
- f. failure to operate, maintain, inspect and repair its vehicle in accord with the applicable Federal Motor Carrier Safety Regulations, particularly 49 CFR 396.3, and Pennsylvania statutes and regulations;
- g. operating its vehicle in violation of the rules and regulations of the Federal Motor Carrier Safety Regulations;
- h. operating its vehicle in violation of the rules and regulations of the Federal Motor Carrier Act;
- i. failure to conduct a background check of the driving record of Vasyl Yusypyuk as required by 49 CFR 391 et seq.;
- j. failure to properly supervise Defendant Vasyl Yusypyuk in the operation of its tractor-trailer to ensure compliance with the Federal Motor Carrier Safety Regulations;
- k. permitting its employee, Vasyl Yusypyuk, to operate its tractor trailer when it knew or should have known that he was too fatigued to do so safely in violation of 49 CFR 392.3;
- l. permitting its employee, Vasyl Yusypyuk, to operate its vehicle when it knew or should have known that he was operating the vehicle in excess of the applicable hours of service in violation of 49 CFR 395.3;
- m. permitting its employee, Vasyl Yusypyuk, to continue to operate its vehicle when it knew or should have known that he was not recording his duty status accurately in violation of 49 CFR 395.8.

24. As a result of the above-stated acts and omissions, Plaintiff James Brown has suffered such harm as has been previously stated herein.

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WHEREFORE, Plaintiff James Brown demands judgment jointly and severally against Defendant Nadiya Express, Inc. in an amount in excess of \$50,000.00 plus interest and costs.

COUNT THREE

James Brown v. W2 Logistic, Inc.

Negligence

25. Paragraphs 1-24 above are incorporated herein by reference as if fully set forth here at length.

26. The aforesaid accident was due solely to the negligent conduct, careless conduct and gross, wanton and reckless conduct of Defendant W2 Logistic, Inc., by and through its agents, servants, workmen and employees, including but not limited to Vasyi Yusypyuk, and in no way due to any negligent act or failure to act on the part of the Plaintiffs.

27. The negligent conduct, careless conduct and gross, wanton and reckless conduct of Defendant, W2 Logistic, Inc. also consisted of the following:

- a. Negligently entrusting Vasyi Yusypyuk with the vehicle of which Nadiya Express, Inc. was the owner when it knew or should have known that Vasyi Yusypyuk lacked sufficient skill, judgment and prudence in the operation of a tractor trailer;
- b. Failing to adequately instruct Vasyi Yusypyuk in the safe operation of the tractor trailer prior to entrusting him with the tractor trailer of which Defendant Nadiya Express, Inc. was the owner;
- c. Failing to prevent Vasyi Yusypyuk from operating the tractor trailer of which Defendant Nadiya Express, Inc. was the owner until he had sufficient ability to operate the motor vehicle safely;
- d. Failing to adequately ascertain that Vasyi Yusypyuk lacked the ability necessary to safely operate the tractor trailer of which Defendant Nadiya Express, Inc. was the owner under the circumstances;

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- c. failure to provide Vasyl Yusypyuk with the equipment necessary to safely operate a tractor trailer;
- f. failure to operate, maintain, inspect and repair its vehicle in accord with the applicable Federal Motor Carrier Safety Regulations, particularly 49 CFR 396.3, and Pennsylvania statutes and regulations;
- g. operating its vehicle in violation of the rules and regulations of the Federal Motor Carrier Safety Regulations;
- h. operating its vehicle in violation of the rules and regulations of the Federal Motor Carrier Act;
- i. failure to conduct a background check of the driving record of Vasyl Yusypyuk as required by 49 CFR 391 et seq.;
- j. failure to properly supervise Defendant Vasyl Yusypyuk in the operation of its tractor-trailer to ensure compliance with the Federal Motor Carrier Safety Regulations;
- k. permitting its employee, Vasyl Yusypyuk, to operate its tractor trailer when it knew or should have known that he was too fatigued to do so safely in violation of 49 CFR 392.3;
- l. permitting its employee, Vasyl Yusypyuk, to operate its vehicle when it knew or should have known that he was operating the vehicle in excess of the applicable hours of service in violation of 49 CFR 395.3;
- m. permitting its employee, Vasyl Yusypyuk, to continue to operate its vehicle when it knew or should have known that he was not recording his duty status accurately in violation of 49 CFR 395.8.

28. As a result of the above-stated acts and omissions, Plaintiff James Brown has suffered such harm as has been previously stated herein.

WHEREFORE, Plaintiff James Brown demands judgment jointly and severally against

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Defendant W2 Logistic, Inc. in an amount in excess of \$50,000.00 plus interest and costs.

COUNT FOUR

James Brown vs. Vasyl Yusypyuk

Punitive Damages

29. Paragraphs 1 - 28 above are incorporated herein by reference as if fully set forth here at length.

30. The aforementioned conduct of Defendant Vasyl Yusypyuk was outrageous and/or done willfully, wantonly and/or with reckless indifference to the rights of the public including Plaintiff James Brown. Defendant Vasyl Yusypyuk knew or should have known that operating his vehicle in the early morning hours when he was too fatigued to do so safely and when he was in violation of the applicable hours of service regulations would result in serious injury to others driving on the roadway. Nevertheless, Defendant operated the tractor trailer when he was too fatigued to do so safely; violated the limitations on the hours of service regulations designed to prevent fatigued drivers from operating a tractor trailer; attempted to pass Plaintiff's vehicle when he could not do so safely; failed to maintain control of his vehicle and failed to accurately maintain his drivers' logs to reflect his hours of service. All of these acts did constitute a reckless indifference to the risk of injury to Plaintiff James Brown. As a result, Plaintiffs are seeking an award of punitive damages against Defendant Vasyl Yusypyuk.

WHEREFORE, Plaintiff James Brown demands judgment against Defendant Vasyl Yusypyuk jointly and severally in an amount in excess of \$50,000.00 plus interest and costs.

COUNT FIVE

James Brown v. Nadiya Express, Inc.

Punitive Damages

31. Paragraphs 1 - 30 above are incorporated herein by reference as if fully set forth here at length.

32. The aforementioned conduct of Defendant Nadiya Express, Inc. by and through its

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agents, servants, workmen and/or employees including but not limited to Vasyly Yusypuk was outrageous and/or done willfully, wantonly and/or with reckless indifference to the rights of the public including Plaintiff James Brown. Defendant Nadiya Express, Inc. knew or should have known that permitting Defendant Vasyly Yusypuk to operate its tractor trailer when he was not qualified to do so, when he could not do so safely, when he would be operating the tractor trailer in the early morning hours when he was too fatigued to do so and when he was in violation of the applicable hours of service regulations would result in serious injury to others driving on the roadway. Nevertheless, Defendant Nadiya Express, Inc. failed to conduct a background check of Defendant Vasyly Yusypuk; permitted Defendant Vasyly Yusypuk to operate its tractor trailer when it knew or should have known that he could not do so safely; permitted Defendant Vasyly Yusypuk to operate its tractor trailer when it knew or should have known that he was in such a state of fatigue that he presented a danger to others on the roadway; permitted Defendant Vasyly Yusypuk to operate its tractor trailer when it knew or should have known that he was in violation of the applicable hours of service regulations and permitted Defendant Vasyly Yusypuk to operate its tractor trailer when it knew or should have known that he did not properly maintain his drivers' logs. All of these acts did constitute a reckless indifference to the risk of injury to Plaintiff James Brown. As a result, Plaintiffs are seeking an award of punitive damages against Defendant Nadiya Express, Inc.

WHEREFORE, Plaintiffs demand judgment against Defendant Nadiya Express, Inc. Jointly and severally in an amount in excess of \$50,000.00 plus interest and costs.

COUNT SIX

James Brown v. W2 Logistic, Inc.

Punitive Damages

33. Paragraphs 1 - 33 above are incorporated herein by reference as if fully set forth here at length.
34. The aforementioned conduct of Defendant W2 Logistic, Inc. by and through its agents, servants, workmen and/or employees including but not limited to Vasyly Yusypuk was

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outrageous and/or done willfully, wantonly and/or with reckless indifference to the rights of the public including Plaintiff James Brown. Defendant W2 Logistic, Inc. knew or should have known that permitting Defendant Vasyly Yusypuk to operate its tractor trailer when he was not qualified to do so, when he could not do so safely, when he would be operating the tractor trailer in the early morning hours when he was too fatigued to do so and when he was in violation of the applicable hours of service regulations would result in serious injury to others driving on the roadway. Nevertheless, Defendant W2 Logistic, Inc. failed to conduct a background check of Defendant Vasyly Yusypuk; permitted Defendant Vasyly Yusypuk to operate its tractor trailer when it knew or should have known that he could not do so safely; permitted Defendant Vasyly Yusypuk to operate its tractor trailer when it knew or should have known that he was in such a state of fatigue that he presented a danger to others on the roadway; permitted Defendant Vasyly Yusypuk to operate its tractor trailer when it knew or should have known that he was in violation of the applicable hours of service regulations and permitted Defendant Vasyly Yusypuk to operate its tractor trailer when it knew or should have known that he did not properly maintain his drivers' logs. All of these acts did constitute a reckless indifference to the risk of injury to Plaintiff James Brown. As a result, Plaintiffs are seeking an award of punitive damages against Defendant W2 Logistic, Inc.

WHEREFORE, Plaintiffs demand judgment against Defendant W2 Logistic, Inc. jointly and severally in an amount in excess of \$50,000.00 plus interest and costs.

COUNT SEVEN

Betsy Brown v. Vasyly Yusypuk

Loss of Consortium

35. Paragraphs 1-34 above are incorporated herein by reference as if fully set forth here at length.
36. At all times here pertinent Betsy Brown was and is the wife of Plaintiff James Brown.
37. Solely because of the negligent conduct, careless conduct and gross, wanton and/or reckless conduct of Defendant Vasyly Yusypuk in causing the injuries to James Brown, Betsy Brown

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as wife of James Brown, has been, yet is and will forever in the future be obliged to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure her husband of his injuries.

38. By reason of the aforesaid accident Plaintiff Betsy Brown has been, yet is and probably will be in the future deprived of the assistance and society of her husband, all of which has been and will be to her great financial loss and detriment.

WHEREFORE, Plaintiff Betsy Brown demands judgment against Defendant Vasyly Yusypyuk jointly and severally in an amount in excess of \$50,000.00 plus interest and costs.

COUNT EIGHT

Betsy Brown v. Nadiya Express, Inc.

Loss of Consortium

39. Paragraphs 1-38 above are incorporated herein by reference as if fully set forth here at length.

40. At all times here pertinent Betsy Brown was and is the wife of Plaintiff James Brown.

41. Solely because of the negligent conduct, careless conduct and gross, wanton and/or reckless conduct of Defendant Nadiya Express, Inc., by and through its agents, servants, workmen and/or employees, including but not limited to Defendant Vasyly Yusypyuk in causing the injuries to James Brown, Betsy Brown as wife of James Brown, has been, yet is and will forever in the future be obliged to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure her husband of his injuries.

42. By reason of the aforesaid accident Plaintiff Betsy Brown has been, yet is and probably will be in the future deprived of the assistance and society of her husband, all of which has been and will be to her great financial loss and detriment.

WHEREFORE, Plaintiff Betsy Brown demands judgment against Defendant Nadiya Express, Inc. jointly and severally in an amount in excess of \$50,000.00 plus interest and costs.

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COUNT NINE

Betsy Brown v. W2 Logistic, Inc.

Loss of Consortium

43. Paragraphs 1-38 above are incorporated herein by reference as if fully set forth here at length.

44. At all times here pertinent Betsy Brown was and is the wife of Plaintiff James Brown.

45. Solely because of the negligent conduct, careless conduct and gross, wanton and/or reckless conduct of Defendant W2 Logistic, Inc., by and through its agents, servants, workmen and/or employees, including but not limited to Defendant Vasyl Yusyppyuk in causing the injuries to James Brown, Betsy Brown as wife of James Brown, has been, yet is and will forever in the future be obliged to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure her husband of his injuries.

46. By reason of the aforesaid accident Plaintiff Betsy Brown has been, yet is and probably will be in the future deprived of the assistance and society of her husband, all of which has been and will be to her great financial loss and detriment.

WHEREFORE, Plaintiff Betsy Brown demands judgment against Defendant W2 Logistic, Inc. jointly and severally in an amount in excess of \$50,000.00 plus interest and costs.

MUNLEY, MUNLEY & CARTWRIGHT, P.C.

By: Daniel Webster Munley
DANIEL WEBSTER MUNLEY, ESQUIRE

By: James A. Kilpatrick
JAMES A. KILPATRICK, ESQUIRE
Attorney for Plaintiff

The Forum Plaza
227 Penn Avenue
Scranton, PA 18503
(570) 346-7401
Supreme Court Id. Nos.: 77441 & 84876

Mar. 13. 2008 7:51AM

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VERIFICATION

We hereby depose and state that we are the Plaintiffs in the above-captioned action, and that the factual statements in the foregoing Complaint are true and correct to the best of our knowledge, information and belief. We understand that this statement is made subject to the penalties of 18 Pa.C.S. Sec. 4904, relating to unsworn falsification to authorities.



JAMES R. BROWN

BETSY BROWN

BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

ATTORNEYS FOR DEFENDANTS

FILED
APR 14 2008
William A. Shaw
Prothonotary/Clerk of Courts

**JAMES BROWN and BETSY
BROWN, his wife,**

Plaintiffs,
vs.

**VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC.,**

Defendants.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY
:
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED
:
:
:
: NO. 2008-396-CD

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of Defendants' Preliminary Objections of Plaintiffs' Complaint together with their Brief in Support thereof by mailing same by first class U.S. Mail, postage prepaid at Scranton, Pennsylvania, to the following counsel of record on the 10/16 day of April, 2008

Daniel Webster Munley, Esquire
Munley, Munley & Cartwright, P.C.
227 Penn Avenue
Scranton, PA 18503

FINE, WYATT & CAREY, P.C.


RICHARD G. FINE, ESQUIRE
JEFFREY E. HAVRAN, ESQUIRE
Counsel for Defendants

CA

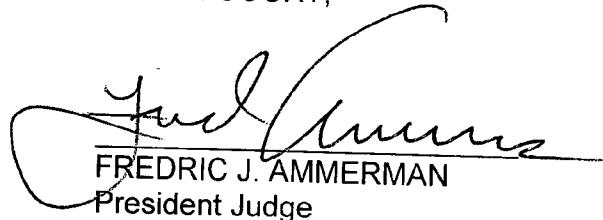
**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

JAMES BROWN and BETSY BROWN,
his wife, *
Plaintiffs *
vs. * NO. 08-396-CD
VASYL YUSYPYUK, NADIYA EXPRESS, INC., *
and W2 LOGISTICS, INC., *
Defendants *

ORDER

NOW, this 22nd day of April, 2008, the Court being in receipt of the Defendants' Preliminary Objections to Plaintiffs' Complaint, it is the ORDER of this Court that argument on the Defendants' Preliminary Objections is scheduled for the 19th day of May, 2008 at 2:30 p.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, PA 16830.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

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04/25/2008 Atty Havran
APR 25 2008
William A. Shaw
Prothonotary/Clerk of Courts

FILED

APR 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/25/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

FILED *2cc*
MAY 01 2008 *Atty Kilpatrick*
William A. Shaw
Prothonotary/Clerk of Courts
(GR)

JAMES BROWN and BETSY BROWN, : IN THE COURT OF COMMON PLEAS
his wife, : OF CLEARFIELD COUNTY
Plaintiffs :
vs. : CIVIL ACTION - LAW
: JURY TRIAL DEMANDED
VASYL YUSYPYUK :
NADIYA EXPRESS, INC. :
W2 LOGISTICS, INC. :
Defendants : No.: 2008-396-CD

**PLAINTIFFS' RESPONSE TO DEFENDANTS' PRELIMINARY
OBJECTIONS TO PLAINTIFFS' COMPLAINT**

NOW come Plaintiffs by and through their undersigned counsel, Munley, Munley & Cartwright, PC, and file the within Response to Defendants' Preliminary Objections to Plaintiffs' Complaint:

1. Admitted. Plaintiffs' Complaint speaks for itself.
2. Admitted. Plaintiffs' Complaint speaks for itself.
3. Admitted. Plaintiffs' Complaint speaks for itself.

A. Preliminary objections to Counts Four, Five and Six

4. Plaintiffs' responses to Paragraphs 1 through 3 above are incorporated herein by reference as if fully set forth here at length.
5. Admitted. Plaintiffs' Complaints speaks for itself.
6. Denied. With respect to the averments contained in paragraph 6 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' claim for punitive damages is improperly pled.

7. Denied. With respect to the averments contained in paragraph 7 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' claim for punitive damages is improperly pled.

8. Denied. With respect to the averments contained in paragraph 8 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' claim for punitive damages is improperly pled.

9. Denied. With respect to the averments contained in paragraph 9 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' claim for punitive damages is improperly pled.

WHEREFORE, Plaintiffs respectfully request this Honorable Court deny Defendants' Preliminary Objections to Plaintiffs' Complaint.

B. Preliminary Objections to allegations of reckless, gross and wanton conduct

10. Plaintiffs' responses to Paragraphs 1 through 9 above are incorporated herein by reference as if fully set forth here at length.

11. Denied. With respect to the averments contained in paragraph 11 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

12. Denied. With respect to the averments contained in paragraph 12 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

13. Denied. With respect to the averments contained in paragraph 13 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

14. Denied. With respect to the averments contained in paragraph 14 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

15. Denied. With respect to the averments contained in paragraph 15 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

16. Denied. With respect to the averments contained in paragraph 16 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

17. Denied. With respect to the averments contained in paragraph 17 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

18. Denied. With respect to the averments contained in paragraph 18 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

19. Denied as stated. Plaintiffs' Complaint speaks for itself. Plaintiffs allege that Defendant Yusypyuk operated the tractor trailer when he was too fatigued to do so, in violation

of the hours of service regulations and that he failed to properly document his driver's log as required under the Federal Motor Carrier Safety Regulations ("FMCSR"). Plaintiffs allege that Defendants Nadiya Express, Inc. and W2 Logistics, Inc. failed to conduct a proper background check; permitted Defendant Yusypyuk to operate the tractor trailer when they knew or should have known that he was too tired to do so safely; permitted Defendant Yusypyuk to operate the tractor trailer when they knew or should have known that he would do so in violation of the applicable hours of service regulations and permitted him to operate the tractor trailer when they knew or should have known that he improperly recording his duty status. All of these allegations have been found sufficient to maintain a claim for punitive damages under Pennsylvania law.

George v. Caravan Exp. Inc., 9 Pa.D&C4th 593 (Fayette County, 1990) (denying preliminary objections and finding that an allegation of improper training would support a punitive damages claim); *Esteras v. TRW, Inc.*, 2006 WL 2474049 (M.D.Pa. Aug. 25, 2006)(Caputo, J.); *Came v. Micou*, 2005 WL 1500978 (M.D. Pa. 2005)(Jones, J.); *Schafer v. Wickham*, 1999 WL 961273 at *2,3 (E.D. Pa. Oct. 15, 1999)(Green, J); *Wang v. Marzani*, 885 F.Supp. 74, 79 (S.D.N.Y. 1995)(Pennsylvania law; denying summary judgment on punitive damages; HOS violations, log falsifications, failure to secure cargo). See *Logue v. Logano Trucking Company*, 921 F.Supp. 1425 (E.D. Pa. 1996)(Joyner, J.)(denying motion to dismiss claims for punitive damages; defendant knowingly took a dangerous vehicle onto a public highway).

20. Denied. With respect to the averments contained in paragraph 20 those averments constitute conclusions of law to which no response is required. By way of further answer, it is

specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

21. Denied. With respect to the averments contained in paragraph 21 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

22. Denied. With respect to the averments contained in paragraph 22 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

23. Denied. With respect to the averments contained in paragraph 23 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

24. Denied. With respect to the averments contained in paragraph 24 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

25. Denied. With respect to the averments contained in paragraph 25 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

26. Denied. With respect to the averments contained in paragraph 26 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations do not support a claim for punitive damages.

WHEREFORE, Plaintiffs respectfully request this Honorable Court deny Defendants'

Preliminary Objections to Plaintiffs' Complaint.

C. Preliminary objections on the grounds of insufficient specificity

27. Plaintiffs' responses to Paragraphs 1 through 26 above are incorporated herein by reference as if fully set forth here at length.

28. Denied. With respect to the averments contained in paragraph 28 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations are insufficient pled.

29. Denied. With respect to the averments contained in paragraph 29 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations are insufficient pled.

30. Denied. With respect to the averments contained in paragraph 30 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations are insufficient pled.

31. Admitted. Plaintiffs' Complaint speaks for itself.

32. Admitted. Plaintiffs' Complaint speaks for itself.

33. Admitted. Plaintiffs' Complaint speaks for itself.

34. Denied. With respect to the averments contained in paragraph 34 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations are insufficient pled.

35. Denied. With respect to the averments contained in paragraph 35 those averments

constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations are insufficient pled.

36. Denied. With respect to the averments contained in paragraph 36 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations are insufficient pled.

37. Denied. With respect to the averments contained in paragraph 37 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations are insufficient pled.

38. Denied. With respect to the averments contained in paragraph 38 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations are insufficient pled.

39. Denied. With respect to the averments contained in paragraph 39 those averments constitute conclusions of law to which no response is required. By way of further answer, it is specifically denied that Plaintiffs' allegations are insufficient pled.

WHEREFORE, Plaintiffs respectfully request this Honorable Court deny Defendants' Preliminary Objections to Plaintiffs' Complaint.

MUNLEY, MUNLEY & CARTWRIGHT, P.C.

By:

JAMES A. KILPATRICK
Attorney for Plaintiffs

The Forum Plaza
227 Penn Avenue
Scranton, PA 18503
Supreme Court Id. No.: 84876

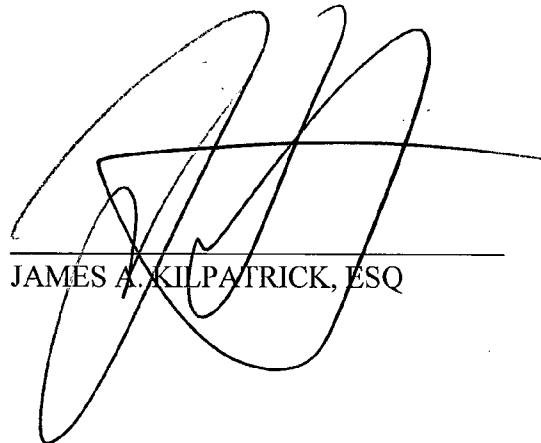
**Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401**

JAMES BROWN and BETSY BROWN, his wife,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Plaintiffs	:	
vs.	:	CIVIL ACTION - LAW JURY TRIAL DEMANDED
VASYL YUSYPYUK	:	
NADIYA EXPRESS, INC.	:	
W2 LOGISTICS, INC.	:	
Defendants	:	No.: 2008-396-CD

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of Plaintiffs' Response and Brief in Opposition to Defendants' Preliminary Objections, were served by First Class Mail on this 30th day of April, 2008, upon the following:

Richard G. Fine, Esq.
Fine, Wyatt & Carey, P.C.
425 Spruce Street
P.O. Box 590
Scranton, PA 18501



JAMES A. KILPATRICK, ESQ.

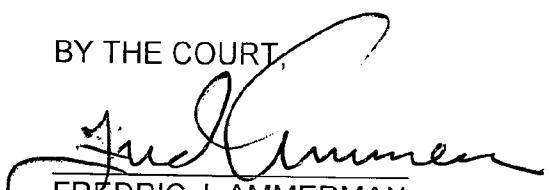
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JAMES BROWN and BETSY BROWN, *
Plaintiffs *
vs. * NO. 08-396-CD
VASYL YUSYPYUK, NADIYA EXPRESS, INC., *
and W2 LOGISTICS, INC., *
Defendants *

O R D E R

NOW, this 21st day of May, 2008, following argument on the Defendants' Preliminary Objections and the Court's review of the parties' briefs, it is the ORDER of this Court that the Preliminary Objections be and are hereby DISMISSED.

BY THE COURT,


FREDRIC J. AMMERMAN

President Judge

FILED
01/30/08
MAY 21 2008
Fines & Havran
Murley &
William A. Shaw
Prothonotary/Clerk of Courts
Kilpatrick
GD

FILED

MAY 21 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE *5/21/08*

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

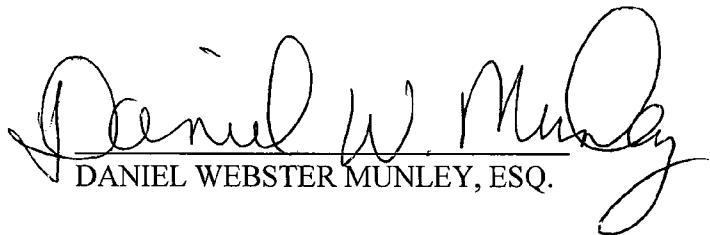
Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

JAMES BROWN and BETSY BROWN, his wife,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Plaintiffs	:	CIVIL ACTION - LAW
vs.	:	JURY TRIAL DEMANDED
VASYL YUSYPYUK	:	
NADIYA EXPRESS, INC.	:	
W2 LOGISTICS, INC.	:	
Defendants	:	No.: 2008-396-CD

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of Plaintiffs' Request for Production of Documents directed to W2 Logistics, Inc., were served by First Class Mail on this 3rd day of June, 2008, upon the following:

Jeffrey E. Havaran, Esq.
Fine, Wyatt & Carey, P.C.
425 Spruce Street
P.O. Box 590
Scranton, PA 18501


DANIEL WEBSTER MUNLEY, ESQ.

FILED ^{NOCC}
MUNLEY
JUN 06 2008
William A. Shaw
Prothonotary/Clerk of Courts

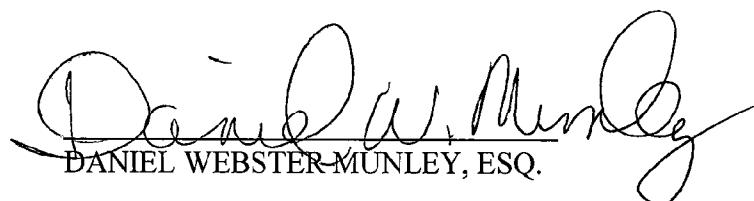
Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

JAMES BROWN and BETSY BROWN, his wife,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Plaintiffs	:	
vs.	:	CIVIL ACTION - LAW JURY TRIAL DEMANDED
VASYL YUSYPYUK	:	
NADIYA EXPRESS, INC.	:	
W2 LOGISTICS, INC.	:	
Defendants	:	No.: 2008-396-CD

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of Plaintiffs' Request for Production of Documents directed to Nadiya Express, Inc., were served by First Class Mail on this 3rd day of June, 2008, upon the following:

Jeffrey E. Havaran, Esq.
Fine, Wyatt & Carey, P.C.
425 Spruce Street
P.O. Box 590
Scranton, PA 18501



DANIEL WEBSTER MUNLEY, ESQ.

FILED *100-1111-06* NO CC
JUN 06 2008

William A. Shaw
Prothonotary/Clerk of Courts

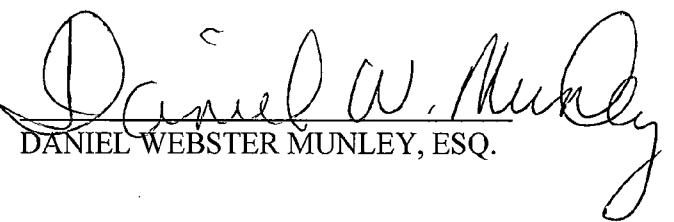
Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

JAMES BROWN and BETSY BROWN, his wife,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Plaintiffs	:	
vs.	:	CIVIL ACTION - LAW JURY TRIAL DEMANDED
VASYL YUSYPYUK	:	
NADIYA EXPRESS, INC.	:	
W2 LOGISTICS, INC.	:	
Defendants	:	No.: 2008-396-CD

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of Plaintiffs' Request for Production of Documents directed to Vasyl Yusypyuk, were served by First Class Mail on this 3rd day of June, 2008, upon the following:

Jeffrey E. Havaran, Esq.
Fine, Wyatt & Carey, P.C.
425 Spruce Street
P.O. Box 590
Scranton, PA 18501



DANIEL WEBSTER MUNLEY, ESQ.

FILED NO
MUNLEY CC
JUN 06 2008
WM

William A. Shaw
Prothonotary/Clerk of Courts

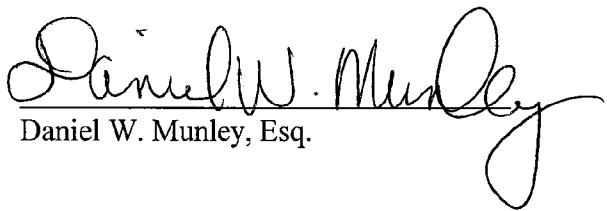
Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

JAMES BROWN and BETSY BROWN, his wife,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Plaintiffs	:	CIVIL ACTION - LAW JURY TRIAL DEMANDED
vs.	:	
VASYL YUSYPYUK	:	
NADIYA EXPRESS, INC.	:	
W2 LOGISTICS, INC.	:	
Defendants	:	No.: 2008-396-CD

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of Plaintiffs' Answers to Defendants Interrogatories; Answers to Expert Interrogatories; and Responses to Request for Production of Documents, were served by First Class Mail on this 6th day of June, 2008, upon the following:

Jeffrey Havaran, Esq.
Fine, Wyatt & Carey, P.C.
425 Spruce Street
P.O. Box 590
Scranton, PA 18501


Daniel W. Munley, Esq.

FILED
110:4380 NOCC
JUN 11 2008
GD

William A. Shaw
Prothonotary/Clerk of Courts

BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

ATTORNEY S FOR DEFENDANTS

JAMES BROWN and BETSY
BROWN, his wife,

Plaintiffs,
vs.

VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC.,

Defendants.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY
:
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED
:
:
:
: NO. 2008-396-CD

FILED *ICC Atty*
m/11/40 cm *Havran*
JUN 24 2008
WM

William A. Shaw
Prothonotary/Clerk of Courts

I, JEFFREY E. HAVRAN, ESQUIRE, hereby certify that I served a true and correct copy of the foregoing Defendants' Objections to Plaintiffs' Request for Production of Documents (Set I), upon the following counsel of record, by placing the same in the U.S. Mail, postage, prepaid first-class on the 23 day of June, 2008:

Daniel Webster Munley, Esquire
Munley, Munley & Cartwright, P.C.
The Forum Plaza
227 Penn Avenue
Scranton, PA 18503

FINE, WYATT & CAREY, P.C.

JEFFREY E. HAVRAN, ESQUIRE
Counsel for Defendants

CERTIFICATE

PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

ORIGINAL

IN THE MATTER OF:

JAMES BROWN

-VS-

VASYL YUSYPYUK, ET AL

FILED *No CC*
08/17/08
AUG 28 2008 *610*

William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS

TERM,
CLEARFIELD

CASE NO: 2008-396-CD

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of JEFFREY HAVRAN, ESQ.
certifies that

- (1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
- (2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
- (3) No objection to the subpoena has been received, and
- (4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

DATE: 08/19/2008

MCS on behalf of
ISI Jeffrey Havran, Esq
JEFFREY HAVRAN, ESQ.
Attorney for DEFENDANT

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

IN THE MATTER OF:

COURT OF COMMON PLEAS

JAMES BROWN

TERM,

-VS-

CASE NO: 2008-396-CD

VASYL YUSYPYUK, ET AL

NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND
THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

CLEARFIELD HOSPITAL	MEDICAL RECORDS
CLEARFIELD HOSPITAL	ANY AND ALL DIAGNOSTIC FILMS
DR. THOMAS ZECK	MEDICAL RECORDS & XRAYS
CLEARFIELD EMS	EMS RECORDS
CLEVELAND CLINIC FOUNDATION	MEDICAL RECORDS & XRAYS
METRO HEALTH	MEDICAL RECORDS
PJAX FREIGHT SYSTEM	EMPLOYMENT

TO: DANIEL MUNLEY, ESQ., PLAINTIFF COUNSEL

MCS on behalf of JEFFREY HAVRAN, ESQ. intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If the twenty day notice period is waived or if no objection is made, then the subpoena may be served. Complete copies of any reproduced records may be ordered at your expense by completing the attached counsel card and returning same to MCS or by contacting our local MCS office.

DATE: 07/28/2008

MCS on behalf of

JEFFREY HAVRAN, ESQ.
Attorney for DEFENDANT

CC: JEFFREY HAVRAN, ESQ.

Any questions regarding this matter, contact
DANIEL MUNLEY, ESQ.
227 PENN AVENUE
SCRANTON, PA 18503

THE MCS GROUP INC.
1601 MARKET STREET
#800
PHILADELPHIA, PA 19103
(215) 246-0900

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

James Brown

*

Betsy Brown

Plaintiff(s)

Vs.

*

No. 2008-00396-CD

Vasyl Yusypyuk

*

Nadiya Express, Inc

W2 Logistic, Inc.

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: CUSTODIAN OF RECORDS FOR: CLEARFIELD HOSPITAL - MEDICAL RECORDS
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

SEE ATTACHED

MCS GROUP INC., 1601 MARKET ST., STE 800, PHILA PA 19103

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: JEFFREY HAVRAN, ESQ.

ADDRESS: 425 SPRUCE ST
SCRANTON, PA 18501

TELEPHONE: (215) 246-0900

SUPREME COURT ID #

ATTORNEY FOR: DEFENDANT

BY THE COURT:

William A. Shaw LM
Prothonotary/Clerk, Civil Division

8/19/2008
DATE: Tuesday, July 22, 2008

Seal of the Court

Deputy

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

CLEARFIELD HOSPITAL
MEDICAL RECORDS
809 TURNPIKE AVENUE

CLEARFIELD, PA 16830

RE: 81575
JAMES BROWN

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

Entire hospital medical file, including but not limited to any and all records, correspondence to and from the consulting and/or treating physician, files, memoranda, handwritten notes, history and physical reports, medication/prescription records, nurse's notes, doctor's comments, dietary restrictions, and all patient consent or refusal of treatment, procedures, test, and/or medication, lab and diagnostic test results, including any and all such items as may be stored in a computer database or otherwise in electronic form, relating to any examination, consultation, diagnosis, care, treatment, admission, discharge, or emergency care pertaining to:

Dates Requested: up to and including the present.
Subject : JAMES BROWN

Social Security #: XXX-XX-1125
Date of Birth: 12-26-1956

CERTIFICATE

PREREQUISITE TO SERVICE OF A SUBPOENA

PURSUANT TO RULE 4009.22

ORIGINAL

IN THE MATTER OF:

COURT OF COMMON PLEAS

JAMES BROWN

TERM,
CLEARFIELD

-VS-

CASE NO: 2008-396-CD

VASYL YUSYPYUK, ET AL

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of JEFFREY HAVRAN, ESQ.
certifies that

- (1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
- (2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
- (3) No objection to the subpoena has been received, and
- (4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

DATE: 08/19/2008

MCS on behalf of
Jeffrey Havran, Esq.
JEFFREY HAVRAN, ESQ.
Attorney for DEFENDANT

**COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD**

James Brown
Betsy Brown
Plaintiff(s)

V.S.

*

No. 2008-00396-CD

Vasyl Yusypyuk
Nadiya Express, Inc
W2 Logistic, Inc.
Defendant(s)

*

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22**

TO: CUSTODIAN OF RECORDS FOR: CLEARFIELD HOSPITAL - RADIOLOGY DEPT.
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

SEE ATTACHED

MCS GROUP INC., 1601 MARKET ST. STE 800, PHILA PA 19103

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: JEFFREY HAVRAN, ESQ.
ADDRESS: 425 SPRUCE ST
SCRANTON, PA 18501
TELEPHONE: (215) 246-0900
SUPREME COURT ID #
ATTORNEY FOR: DEFENDANT

BY THE COURT.

William A. Shaw LM
Prothonotary/Clerk, Civil Division

8/19/2008
DATE: Tuesday, July 22, 2008
Seal of the Court

Deputy

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

CLEARFIELD HOSPITAL
RADIOLOGY DEPT.
809 TURNPIKE AVENUE

CLEARFIELD, PA 16830

RE: 81575
JAMES BROWN

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

Any and all diagnostic films and tests, including but not limited to MRI films, CAT scans, EEGs, EKGs, EMGs, and subsequent reports, including any and all such pertaining to:

Dates Requested: up to and including the present.
Subject : JAMES BROWN

Social Security #: XXX-XX-1125
Date of Birth: 12-26-1956

CERTIFICATE

PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

ORIGINAL

IN THE MATTER OF:

COURT OF COMMON PLEAS

JAMES BROWN

TERM,
CLEARFIELD

-VS-

CASE NO: 2008-396-CD

VASYL YUSYPYUK, ET AL

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of JEFFREY HAVRAN, ESQ.
certifies that

- (1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
- (2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
- (3) No objection to the subpoena has been received, and
- (4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

DATE: 08/19/2008

MCS on behalf of
Jeffrey Havran, Esq.
JEFFREY HAVRAN, ESQ.
Attorney for DEFENDANT

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

James Brown
Betsy Brown
Plaintiff(s)

Vs.

*

No. 2008-00396-CD

Vasyl Yusypyuk
Nadiya Express, Inc
W2 Logistic, Inc.
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: CUSTODIAN OF RECORDS FOR: DR. THOMAS ZECK
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

SEE ATTACHED

MCS GROUP INC, 1601 MARKET ST, STE 800, PHILA PA 19103

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: JEFFREY HAVRAN, ESQ.
ADDRESS: 425 SPRUCE ST
SCRANTON, PA 18501
TELEPHONE: (215) 246-0900
SUPREME COURT ID # _____
ATTORNEY FOR: DEFENDANT

BY THE COURT:

William A. Shaw Um
Prothonotary/Clerk, Civil Division

8/19/2008
DATE: Tuesday, July 22, 2008
Seal of the Court

Deputy

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

DR. THOMAS ZECK
1740 COOPER FOSTER ROAD
#E

LORAIN, OH 44053

RE: 81575
JAMES BROWN

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

INCLUDING DIAGNOSTIC FILMS

Entire medical and x-ray file, including but not limited to any and all records, correspondence to and from the treating and consulting physicians, files, memoranda, handwritten notes, history and physical reports, x-ray films and reports, medication/prescription records, including any and all such items as may be stored in a computer database or otherwise in electronic form, relating to any examination, consultation, care or treatment pertaining to:

Dates Requested: up to and including the present.
Subject : JAMES BROWN

Social Security #: XXX-XX-1125
Date of Birth: 12-26-1956

CERTIFICATE
PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

ORIGINAL

IN THE MATTER OF:

COURT OF COMMON PLEAS

JAMES BROWN

TERM,
CLEARFIELD

-VS-

CASE NO: 2008-396-CD

VASYL YUSYPYUK, ET AL

AS a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of JEFFREY HAVRAN, ESQ.
certifies that

- (1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
- (2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
- (3) No objection to the subpoena has been received, and
- (4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

DATE: 08/19/2008

MCS on behalf of
18/Jeffrey Havran, Esq
JEFFREY HAVRAN, ESQ.
Attorney for DEFENDANT

**COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD**

James Brown
Betsy Brown
Plaintiff(s)

VS.

2

No. 2008-00396-CD

Vasyl Yusypyuk

Nadiya Express, Inc
W2 Logistic, Inc.
Defendant(s)

3

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22**

TO: CUSTODIAN OF RECORDS FOR: CLEARFIELD EMS
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

g.s.
SEE ATTACHED

MCS GROUP INC. 1601 MARKET ST. STE 800 PHILA PA 19103

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

BY THE COURT:

William A. Shaw LM
Prothonotary/Clerk, Civil Division

8/19/2008
DATE: Tuesday, July 22, 2008
Seal of the Court

Deputy

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

CLEARFIELD EMS
713 WEST FRONT STREET

CLEARFIELD, PA 16830

RE: 81575
JAMES BROWN

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

ANY & ALL RECORDS

Dates Requested: up to and including the present.
Subject : JAMES BROWN

Social Security #: XXX-XX-1125
Date of Birth: 12-26-1956

CERTIFICATE
PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

ORIGINAL

IN THE MATTER OF:

COURT OF COMMON PLEAS

JAMES BROWN

TERM,
CLEARFIELD

-VS-

CASE NO: 2008-396-CD

VASYL YUSYPYUK, ET AL

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of JEFFREY HAVRAN, ESQ.
certifies that

- (1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
- (2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
- (3) No objection to the subpoena has been received, and
- (4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

DATE: 08/19/2008

MCS on behalf of
ISI Jeffrey Havran, Esq
JEFFREY HAVRAN, ESQ.
Attorney for DEFENDANT

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

James Brown

*

Betsy Brown

Plaintiff(s)

Vs.

*

No. 2008-00396-CD

*

Vasyl Yusypyuk

Nadiya Express, Inc

W2 Logistic, Inc.

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: CUSTODIAN OF RECORDS FOR: CLEVELAND CLINIC FOUNDATION

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

SEE ATTACHED

MCS GROUP INC., 1601 MARKET ST, STE 800, PHILA PA 19103

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: JEFFREY HAVRAN, ESQ.

ADDRESS: 425 SPRUCE ST

SCRANTON, PA 18501

TELEPHONE: (215) 246-0900

SUPREME COURT ID #

ATTORNEY FOR: DEFENDANT

BY THE COURT:

William A. Shaw *LM*
Prothonotary/Clerk, Civil Division

8/19/2008
DATE: Tuesday, July 22, 2008

Seal of the Court

Deputy

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

CLEVELAND CLINIC FOUNDATION
3600 KOLBE ROAD
SUITE 100

LORAIN, OH 44053

**RE: 81575
JAMES BROWN**

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

INCLUDING DIAGNOSTIC FILMS

Entire medical and x-ray file, including but not limited to any and all records, correspondence to and from the treating and consulting physicians, files, memoranda, handwritten notes, history and physical reports, x-ray films and reports, medication/prescription records, including any and all such items as may be stored in a computer database or otherwise in electronic form, relating to any examination, consultation, care or treatment pertaining to:

**Dates Requested: up to and including the present.
Subject : JAMES BROWN**

**Social Security #: XXX-XX-1125
Date of Birth: 12-26-1956**

CERTIFICATE

PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

ORIGINAL

IN THE MATTER OF:

COURT OF COMMON PLEAS

JAMES BROWN

TERM,
CLEARFIELD

-VS-

CASE NO: 2008-396-CD

VASYL YUSYPYUK, ET AL

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of JEFFREY HAVRAN, ESQ.
certifies that

- (1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
- (2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
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- (4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

DATE: 08/19/2008

MCS on behalf of
Jeffrey Havran, Esq.
JEFFREY HAVRAN, ESQ.
Attorney for DEFENDANT

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

James Brown

*

Betsy Brown

Plaintiff(s)

Vs.

*

No. 2008-00396-CD

*

Vasyl Yusypyuk

Nadiya Express, Inc

W2 Logistic, Inc.

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: **CUSTODIAN OF RECORDS FOR: METRO HEALTH**

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

SEE ATTACHED

MCS GROUP INC, 1601 MARKET ST, STE 800, PHILA PA 19103

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: **JEFFREY HAVRAN, ESQ.**

ADDRESS: **425 SPRUCE ST**

SCRANTON, PA 18501

TELEPHONE: **(215)246-0900**

SUPREME COURT ID #

ATTORNEY FOR: **DEFENDANT**

BY THE COURT:

William A. Shaw *LH*

Prothonotary/Clerk, Civil Division

8/19/2008
DATE: Tuesday, July 22, 2008

Seal of the Court

Deputy

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

METRO HEALTH
2500 METRO HEALTH DRIVE

CLEVELAND, OH 44109

RE: 81575
JAMES BROWN

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

Entire medical file, including but not limited to any and all records, correspondence to and from the consulting and treating physicians, files, memoranda, handwritten notes, history and physical reports, medication/prescription records, including any and all such items as may be stored in a computer database or otherwise in electronic form, relating to any examination, diagnosis or treatment pertaining to:

Dates Requested: up to and including the present.
Subject : JAMES BROWN

Social Security #: XXX-XX-1125
Date of Birth: 12-26-1956

CERTIFICATE
PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

ORIGINAL

IN THE MATTER OF:

COURT OF COMMON PLEAS

JAMES BROWN

TERM,
CLEARFIELD

-VS-

CASE NO: 2008-396-CD

VASYL YUSYPYUK, ET AL

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of JEFFREY HAVRAN, ESQ.
certifies that

- (1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
- (2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
- (3) No objection to the subpoena has been received, and
- (4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

DATE: 08/19/2008

MCS on behalf of
Jeffrey Havran, Esq.
JEFFREY HAVRAN, ESQ.
Attorney for DEFENDANT

**COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD**

James Brown

Betsy Brown

Plaintiff(s)

Vs.

*

No. 2008-00396-CD

Vasyl Yusypyuk

Nadiya Express, Inc

W2 Logistic, Inc.

Defendant(s)

10

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22**

TO: CUSTODIAN OF RECORDS FOR: PJAX FREIGHT SYSTEM
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

SEE ATTACHED

MCS GROUP INC, 1601 MARKET ST, STE 800, PHILA PA 19103

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

BY THE COURT:

William A. Shaw LM
Prothonotary/Clerk, Civil Division

8/19/2008
DATE: Tuesday, July 22, 2008
Seal of the Court

Deputy

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

PJAX FREIGHT SYSTEM
P.O. BOX 1290

GIBSONIA, PA 15044

RE: 81575
JAMES BROWN

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

INCLUDING WORKERS COMPENSATION FILE

Any and all employment records, applications, files, memoranda, compensation, time and attendance records, personnel records, payroll and salary reports and all medical records as an employee, including any and all such items as may be stored in a computer database or otherwise in electronic form, pertaining to:

Dates Requested: up to and including the present.
Subject : JAMES BROWN

Social Security #: XXX-XX-1125
Date of Birth: 12-26-1956

Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

FILED acc
11/08/08 Atty Munley
DEC 11 2008
William A. Shaw
Prothonotary/Clerk of Courts

JAMES BROWN and BETSY BROWN, : IN THE COURT OF COMMON PLEAS
his wife, : OF CLEARFIELD COUNTY
Plaintiffs :
vs. : CIVIL ACTION - LAW
: JURY TRIAL DEMANDED
VASYL YUSYPYUK :
NADIYA EXPRESS, INC. :
W2 LOGISTICS, INC. :
Defendants : No.: 2008-396-CD

PLAINTIFFS' MOTION TO COMPEL RESPONSES TO
REQUEST FOR PRODUCTION OF DOCUMENTS - SET ONE

NOW come Plaintiffs by and through their undersigned counsel, Munley, Munley & Cartwright, PC, and file the within Motion to Compel Defendants' response to Plaintiffs' Request for Production of Documents - Set One:

1. This action arises out of injuries sustained by Plaintiff James Brown in an automobile accident on April 4, 2006. Mr. Brown was operating a tractor trailer in the right hand, east bound lane of SR80 in Clearfield, Clearfield County, Pennsylvania, when he was struck by a tractor trailer being operated by Defendant Vasyl Yusypyuk and owned and operated by Defendants Nadiya Express, Inc. and W2 Logistics, Inc. Mr. Yusypyuk attempted to pass Mr. Brown on the left, then suddenly pulled back into the right hand lane, striking Mr. Brown. The accident occurred at approximately 12:25 a.m.

2. On August 9, 2006, Plaintiffs' counsel sent certified letters to Defendants Vasyl Yusypyuk and Nadiya Express, Inc. requesting that they retain documents including the driver's

logs, trip envelopes and other similar information. A copy of this letter is attached as Exhibit A.

3. Defendant Nadiya Express, Inc. received this letter on August 12, 2006 and Defendant Vasyl Yusypyuk received this letter on August 28, 2006. See copies of the return receipts, attached as Exhibit B.

4. Plaintiffs filed suit on March 6, 2008. On June 6, 2008, Plaintiffs served Request for Production of Documents - Set One on Defendants. Plaintiffs are requesting relevant information for a six month time period, including the following:

trip and operational documents, including fuel receipts, toll receipts, bills of lading and other similar information;
driver's logs;
driver qualification file;
driver personnel file;
road equipment and/or driver compliance inspections or warnings and traffic citations;
photographs, drawing, reports and statements and copies of accident and/or incident files for any prior accidents involving Mr. Yusypyuk and/or co-drivers;
accident and/or incident files;
safety manuals or other similar information;
vehicular satellite movement records;
maintenance records;
driver's daily condition reports;
information given to experts;
Federal and state tax returns for both personal and business accounts for the past four years immediately preceding this accident

See Exhibit C attached.

5. On June 23, 2008, Defendants served their objections to Plaintiffs' Request for Production of Documents on Plaintiffs. Defendants objected to 14 of the 15 requests.

Defendants objected that the requested information as being overly broad, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence.

Defendants further objected that the time period for information, November 4, 2005 through April 4, 2006, is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. See Exhibit D attached.

6. Defendants further indicated that they would provide the discoverable portions of Mr. Yusypyuk's Driver's Qualification File, discoverable information including photographs, drawing, reports and statements and copies of accident and/or incident files for any prior accidents involving Mr. Yusypyuk and/or co-drivers. Defendants further indicated that they would provide maintenance records but objected to provided the driver daily vehicle condition reports from November 4, 2005 through April 6, 2006.

7. On July 28, 2008, Plaintiff's counsel requested that Defendants forward their responses to the Request for Production of Documents. Defendants' counsel responded that these responses would be provided by August 25, 2008.

8. The discovery responses were not provided by that date and Plaintiffs again requested these responses on September 23, 2008. To date, no responses have been received.

9. The information requested is discoverable and is reasonably calculated to lead to the discovery of admissible evidence. Pennsylvania Rule of Civil Procedure 4003.1(a) provides that a party may obtain discovery of any matter, not privileged, which is relevant to the subject

matter involved in the pending action. Pennsylvania Rule of Civil Procedure 4003.1(b) further states that it is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence. The burden of proof is on the objector to show lack of relevance. *Fuller v. Jackson*, 50 Pa.D&C 3d 628 (Cumberland County, 1987).

10. Defendant provides no evidence to support its general objections and Defendant should be compelled to provide full and complete responses to Plaintiff's Request for Production of Documents - Set One.

11. Defendants further provide no support for their contention that these requests are unduly burdensome. The burden is on the Defendant to demonstrate how the information requested is unduly burdensome. "A bald, broad assertion that the Interrogatories are extremely broad, burdensome, and improper is thus inadequate." *Hilton v. Willough*, 13 D&C 3d 587 (Philadelphia County, 1980). Litigants should expect that "[a]lmost any discovery request causes some annoyance, embarrassment, oppression, burden or expense." *D.S. v. DePaul Institute*, 32 Pa. D. & C.4th 328, 334 (Allegheny Cty. 1996). The proper inquiry is whether the party objecting to discovery has established unreasonable annoyance, embarrassment, oppression, burden or expense associated with the discovery request. *Merrifield v. Gavern*, 10 Pa. D. & C.4th 541, 542 (Lacka. Cty. 1991).

12. This accident occurred just after midnight and Plaintiffs allege that Defendant

Yusypyuk was operating his vehicle while fatigued and while in excess of the applicable hours of service regulations set out in the Federal Motor Carrier Safety Regulations (“FMCSR”). Copies of the driver’s logs from November 4, 2005 through April 4, 2006 are highly relevant to a determination as to whether or not Mr. Yusypyuk was operating in violation of the hours of service regulations and whether or not he had a history of doing so. This information is discoverable and should be provided.

13. Copies of the trip and operational documents, as well as any vehicular movement records are highly relevant so that Plaintiffs can compare the logs with other documentation to determine whether or not the logs accurately reflect the movement of Defendant Yusypyuk in the six months prior to this accident. The period of time requested is reasonable and these documents should be provided.

14. Copies of Defendant Yusypyuk’s driver’s qualification file and personnel file are highly relevant as Plaintiffs allege that Defendants Nadiya Express, Inc. and W2 Logistics, Inc. did not properly qualify Mr. Yusypyuk as required by the FMCSR. Any materials added to these files after this accident is also relevant to determine if Mr. Yusypyuk was reprimanded or otherwise disciplined for this accident. This information is clearly relevant and should be provided. Defendants indicated that these records would be provided but have not done so to date.

15. Defendant further objects to requests 6, 7 and 9. These requests seek copies of all

objects, photographs, drawings, reports, statements or otherwise described documents or objects in the possession of any of the Defendants in reference to the accident as defined herein excluding only those written documents, materials and objects that can be clearly identified as the work product of the defendant's attorneys; copies of any and all other accident or incident files and records maintained by any of the Defendants in reference to any other vehicular accident, or incident, prior to the occurrence of the accident in question, where Vasyly Yusypyuk or his co-driver(s), or driver trainer, was the driver of a vehicle involved in the prior accidents or incidents and copies of any and all Nadiya Express, Inc. and/or W2 Logistics, Inc. officers, executives or administrator's notices, directives, bulletins, publications and manuals of any type or otherwise described written instructions in reference to the day-to-day motor carrier operating and safety procedures to be followed by their company personnel, managers, supervisors, dispatchers and drivers in effect at the time of this accident. The information requested is relevant and should be provided. Request 6 specifically excludes information subject to privilege from the request. Information pertaining to whether or not Defendant Yusypyuk or any co-drivers were involved in other accidents is relevant to determine regarding whether or not Defendants acted properly in hiring and retaining Defendant Yusypyuk as a driver as well as a determination as to what, if any, training was provided to Defendants' drivers. All the information requested by Plaintiff is relevant and should be provided.

16. Requests 11 and 12 seek the maintenance records and driver daily vehicle

condition reports from November 4, 2005 through April 4, 2006 for the tractor and trailer involved in this accident. This information is relevant to a determination as to whether or not the tractor and trailer were in proper working condition and should be provided. Defendants indicated that they would provide this information but have not done so. This information, including the drivers' daily reports for the six months preceding this accident, is relevant and should be provided.

17. Defendant objects to Request 14 which seeks a copy of any documents submitted to Defendant's expert on the grounds that this request is beyond the scope of permissible discovery. Request 14 is well within the scope of permissible discovery and Plaintiff requests that Defendant's be compelled to supplement this response once expert witnesses have been obtained.

18. Request 15 seeks copies of the parties tax returns, including the records used to produce the taxes, for the four years preceding this accident. Plaintiffs requested this information as Plaintiffs have made a claim for punitive damages in this case and this information is relevant to a consideration of the wealth of the Defendants. Plaintiffs request that Defendants be compelled to produce this information or, in the alternative, that Defendants be compelled to preserve this information pending a determination as to the applicability of punitive damages.

19. Defendants did not object or respond in any way to request 13 which asks for copies of any applicable insurance policy. Pennsylvania Rule of Civil Procedure 4003.2

specifically permits discovery of insurance information and the same should be provided.

20. Defendants further objected that all of Plaintiffs' discovery requests are covered by some undefined privilege. Pennsylvania Rule of Civil Procedure 4009.12(b)(2) requires defendants to identify any documents or things not produced on the grounds that they are not within the scope of permissible discovery and to identify these items with reasonable particularity together with the basis for non-production. Defendants have provided no such privilege log and Plaintiffs are unable to evaluate the propriety of the objections. Defendants should be compelled to provide a privilege log as required by Pennsylvania Rule of Civil Procedure 4009.12.

WHEREFORE, Plaintiffs request that Defendants be compelled to provide full, complete and responsive answers to Plaintiffs' Request for Production of Documents - Set One within 20 days or suffer sanctions.

MUNLEY, MUNLEY & CARTWRIGHT, P.C.

By: 
DANIEL WEBSTER MUNLEY, ESQUIRE
Attorney for Plaintiff

The Forum Plaza
227 Penn Avenue
Scranton, PA 18503
(570) 346-7401
Supreme Court Id. No.: 77441

Robert W. Munley*
Marion Munley†
Matthew A. Cartwright*†
James Christopher Munley*
Daniel Webster Munley*
Robert W. Munley, III
Julia K. Munley*
Caroline Munley

**Munley,
Munley &
Cartwright, P.C.**
Attorneys at Law

The Forum Plaza
227 Penn Avenue
Scranton, PA 18503
1-800-346-7401
570-346-7401
Fax: 570-346-3452

*Certified Civil Trial Specialist
By National Board of Trial Advocacy
†Member of New York Bar

August 9, 2006

**VIA CERTIFIED MAIL 7006 0100 0005 3627 6322
& FIRST CLASS MAIL**

Vasyl Yusypyuk
1708 4th Street
Grand Rapids, MI 49504

RE: James R. Brown

Dear Mr. Yusypyuk:

Please be advised this office represents James R. Brown who sustained severe injuries in the motor vehicle accident of 04/04/2006 in which the vehicle you were driving was involved. Mr. Brown is currently looking to you for compensation for these injuries.

Kindly turn this letter over to your insurance company and have them contact me as soon as possible so that we can expedite this matter. Failure to hear from your insurance carrier will result in immediate litigation.

Please be advised that you are not to destroy the following records:

1. Driver's logs for the six months preceding the collision;
2. Co-driver's logs for the same period if team driving;
3. The driver qualification file, and all incident reports involving the driver;
4. All 70 hour and other compliance audits of the driver (and co-driver if applicable);
5. All trip receipts, weight tickets, bills of lading, and operational documents that could be used to conduct log audits and verify log accuracy;
6. Satellite tracking information for the six month period prior to the crash;
7. Bills and statements from Com Data or similar expense/cash advance services used by the carrier;
8. All information contained in or retrieved from onboard data records (ECM units or black boxes);
9. E-mail and other communications between the driver and dispatcher or carrier;
10. All maintenance records, pre-trip inspection reports, post trip inspection reports, and annual inspection records; and

EXHIBIT 'A'

Vasyl Yusypyuk
August 9, 2006
Page 2

11. The tractor-trailer itself, or at a minimum, relevant portions of the equipment, if there is any evidence or allegation that equipment malfunction or failure played a role in the collision; and
12. Any documents evidencing method of payment made to the driver including, but not limited to payroll records, time cards, and any and all records that may pertain to this incident or the parties involved.

Any destruction of any evidence in relation to this matter will be considered spoliation of evidence which will result in legal consequences.

Again, please forward this letter to your insurance company as soon as possible.

Very truly yours,

DANIEL WEBSTER MUNLEY

DWM/cc
cc: Nadiya Express, Inc.

Robert W. Munley*
Marion Munley*†
Matthew A. Cartwright*†
James Christopher Munley*
Daniel Webster Munley*
Robert W. Munley, III
Julia K. Munley*
Caroline Munley

Munley, Munley & Cartwright, P.C.

Attorneys at Law

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Fax: 570-346-3452

*Certified Civil Trial Specialist
By National Board of Trial Advocacy
†Member of New York Bar

August 9, 2006

**VIA CERTIFIED MAIL 7006 0100 0005 3627 6407
& FIRST CLASS MAIL**

Nadiya Express Inc.
202 N. Kenilworth Ave.
Mount Prospect, IL 60056

RE: James R. Brown

Dear Sir or Madam:

Please be advised this office represents James R. Brown who sustained severe injuries in the motor vehicle accident of 04/04/2006 in which your vehicle was involved, driven by Vasyl Yusypyuk. Mr. Brown is currently looking to you for compensation for these injuries.

Kindly turn this letter over to your insurance company and have them contact me as soon as possible so that we can expedite this matter. Failure to hear from your insurance carrier will result in immediate litigation.

Please be advised that you are not to destroy the following records:

1. Driver's logs for the six months preceding the collision;
2. Co-driver's logs for the same period if team driving;
3. The driver qualification file, and all incident reports involving the driver;
4. All 70 hour and other compliance audits of the driver (and co-driver if applicable);
5. All trip receipts, weight tickets, bills of lading, and operational documents that could be used to conduct log audits and verify log accuracy;
6. Satellite tracking information for the six month period prior to the crash;
7. Bills and statements from Com Data or similar expense/cash advance services used by the carrier;
8. All information contained in or retrieved from onboard data records (ECM units or black boxes);
9. E-mail and other communications between the driver and dispatcher or carrier;
10. All maintenance records, pre-trip inspection reports, post trip inspection reports, and annual inspection records; and

Nadiya Express Inc.

August 9, 2006

Page 2

11. The tractor-trailer itself, or at a minimum, relevant portions of the equipment, if there is any evidence or allegation that equipment malfunction or failure played a role in the collision; and
12. Any documents evidencing method of payment made to the driver including, but not limited to payroll records, time cards, and any and all records that may pertain to this incident or the parties involved.

Any destruction of any evidence in relation to this matter will be considered spoliation of evidence which will result in legal consequences.

Again, please forward this letter to your insurance company as soon as possible.

Very truly yours,

DANIEL WEBSTER MUNLEY

DWM/cc

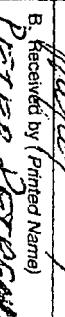
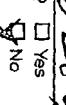
SENDER INFORMATION SECTION		COMPLETION SECTION ON DELIVERY	
<p>Complete this section on delivery</p> <p>1. Article Addressed to:</p> <p>Vasyly Yusypynuk 1708 4th Street Grand Rapids, MI 49504</p>		<p>A. Signature  <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)  <input type="checkbox"/> C. Date of Delivery </p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> <p></p>	
<p>2. Article Num <i>Transfer</i> 7006 0100 0005 3627 6322</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt</p>	
<p>10255-02-4-1540</p>			

EXHIBIT 'B'

James Burton (cc)

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

 FedEx
FedEx Express Inc.
1002 N. Kenilworth Ave.
Mount Prospect, IL 60056


Oleg Yasypuk

Signature Agent
 Date of Delivery
B. Received by (Printed Name) Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:
 Yes No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number: 7006 0100 0005 3627 6407
(Transfer from: _____)

Domestic Return Receipt

102595-02-M-1540

PS Form 3811, February 2004

**Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401**

JAMES BROWN and BETSY BROWN, his wife,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Plaintiffs	:	
vs.	:	CIVIL ACTION - LAW JURY TRIAL DEMANDED
VASYL YUSYPYUK NADIYA EXPRESS, INC. W2 LOGISTICS, INC.	:	
Defendants	:	No.: 2008-396-CD

**PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO VASYL YUSYPYUK (SET ONE)**

Plaintiffs hereby request the Defendants to produce by request number for inspection and copying at the offices of Munley, Munley & Cartwright, 227 Penn Avenue, Scranton, Pennsylvania 18503 within forty five (45) days of receipt hereof, the originals or complete and clearly readable copies of the items described in each request:

EXHIBIT 'C'

1. Complete and clearly readable copies of all trip and/or operational documents pertaining to the movement of cargo by Vasyly Yusypyuk and/or any of his/her accompanying co-driver(s), or driver trainers from November 4, 2005 through the delivery date and time of the cargo he may have been transporting at the time the accident occurred April 4, 2006). Please refer to the following sub-Definitions "H-1 through H-17" and follow them closely grouping and identifying all documents produced by each trip occurring during the time period requested:

- H-1. Complete and clearly readable copies of Vasyly Yusypyuk's trip reports and/or trip envelopes, daily loads delivered or picked up reports or any otherwise described work reports, work schedule reports, fuel purchased reports, or any reports made by Vasyly Yusypyuk to Nadiya Express, Inc. and/or W2 Logistics, Inc. , inclusive of daily, weekly or monthly cargo transported, time and/or distance traveled reports or work records excluding only those documents known as "driver's daily logs or driver's record of duty status".
- H-2. Complete and clearly readable copies of all receipts for any trip expenses or purchases made by Vasyly Yusypyuk or Nadiya Express, Inc. and/or W2 Logistics, Inc. , his/her co-driver during a trip regardless of type of purchase, such as fuel, weighing of vehicles, food, lodging, equipment maintenance, repair or equipment cleaning, special or oversize permits, bridge and/or toll roads, loading or unloading cost, and all otherwise described receipts regardless of the type of objects or services purchased.
- H-3. Complete and clearly readable copies of all cargo pickup or delivery documents prepared by any of the Defendants, transportation brokers, involved shippers or receivers, motor carriers operations/dispatch personnel, drivers, or other persons or organizations relative to the cargo transported and the operations of Vasyly Yusypyuk or Nadiya Express, Inc. and/or W2 Logistics, Inc..
- H-4. Complete and clearly readable copies of any and all written requests, letters, memoranda, instructions, or orders, for transportation of cargo prepared by Defendants, transportation brokers, involved shippers or receivers, motor carriers operations/dispatch or sales personnel, drivers or other persons or organizations relative to the operations and cargo transported by Vasyly Yusypyuk.
- H-5. Complete and clearly readable copies of all bills of lading and/or cargo manifest prepared or issued by any shippers, brokers, transporting motor carriers personnel, receivers of cargo or any of the Defendants. This specifically includes readable and complete copies of bills of lading, manifest, or other documents regardless of form

or description, that show signed receipts for cargo delivered along with any other type of document that may show dates and times of cargo pickup or delivery that are relative to the operations and cargo transported by Vasyl Yusypyuk.

- H-6. Complete and clearly readable copies of all equipment or cargo loading, unloading or detention of equipment records along with any other documents showing cargo pickup and/or delivery dates and times or delays and/or detention of equipment relative to the operations of Vasyl Yusypyuk.
- H-7. Complete and clearly readable copies of all cargo transported freight bills, Pro's or otherwise described similar documents inclusive of all signed or unsigned cargo pickup and delivery copies that indicate date and/or time of pick up or delivery of cargo by Vasyl Yusypyuk or his/her co-driver(s).
- H-8. Complete and clearly readable copies of all written instructions, orders, or advice given to Vasyl Yusypyuk in reference to cargo transported, routes to travel, locations to purchase fuel, cargo pickup or delivery times issued by Nadiya Express, Inc. and/or W2 Logistics, Inc. , shippers, receivers, or any other persons or organizations.
- H-9. Complete and clearly readable copies of dispatch and/or operational records indicating assignment of equipment and drivers to specific cargo pickup, transportation and delivery, dates and times of pickup and delivery, movement of cargo, shippers and receivers of cargo, and any other related operational records or documents, regardless of form. This specifically includes all dispatch and operational type computer generated documents and materials indicating the trips, cargo, movements or activities of Vasyl Yusypyuk.
- H-10. Complete and clearly readable copies of any driver call-in records or otherwise described written records indicating any communications between Nadiya Express, Inc. and/or W2 Logistics, Inc. and Vasyl Yusypyuk.
- H-11. Complete and clearly readable copies of all accounting records, merchandise purchased, cargo transportation billings or invoices and subsequent payments or otherwise described records indicating billings for transportation of cargo or payment for services performed for Nadiya Express, Inc. and/or W2 Logistics, Inc. by Vasyl Yusypyuk and/or his/her co-drivers.
- H-12. Complete and clearly readable copies of all initial or rough driver's trip check-in or financial settlement sheets along with all final trip accounting documents, and computer generated documents or printouts showing expenses and payment(s) for service(s) or salary paid to Vasyl Yusypyuk in reference to Vasyl Yusypyuk's trip(s). This specifically includes any summary type documents showing all payments made to Vasyl Yusypyuk and/or his/her co-drivers regardless of the purpose of payment or period of time payment was made for.

H-13. Complete and clearly readable copies of any and all motor carrier or driver created trip fuel mileage and purchase reports or records. This specifically includes all documents and computer generated documents, regardless of form or subject, received from any source such as the organization known as "COMCHEK", or generated for or by Nadiya Express, Inc. and/or W2 Logistics, Inc. showing date, time and location of fueling or other purchases by Vasyly Yusypyuk and/or his/her co-drivers while on the trips requested herein.

H-14. Complete and clearly readable copies of all checks or otherwise described negotiable instruments issued to Vasyly Yusypyuk or his/her co-driver(s) given in payment as trip advances, loans, or for any other purpose inclusive of checks issued for employee payroll, and/or for owner/operator or trip lessors services in the possession of any of the Defendants. Specifically copies of both the "front and back" of each check and/or comchek issued to Vasyly Yusypyuk, or any of his/her co-drivers is requested.

H-15. Complete and clearly readable copies of any and all state fuel or oversize special permits and any related documents or requests issued to or by any state agency to transport cargo over their territories regardless of the form of the permit. The receipt acknowledging payment for the permit(s) issued by any governmental agency is specifically requested that relate to the movements of Vasyly Yusypyuk and/or his/her co-drivers during the requested time period.

H-16. Complete and clearly readable copies of any and all trip leases or trip lease contracts involving Vasyly Yusypyuk and/or his/her co-drivers along with all related documentation issued to or created or received by any of the Defendants. Specifically, this includes any trip leases negotiated between the Defendants and any other motor carrier or their drivers inclusive of all related documentation thereto. Basically, "related documentation" consists of any documents created or generated in reference to each trip lease(s) and in addition, driver's daily logs or record of duty status, driver's daily condition reports, motor carrier certification of drivers qualification and include other documents that relate to the billing and payment for such movement of freight, along with all other types of documentation regardless of form or description that are relative to each occurrence involving the services and activities of Vasyly Yusypyuk and/or his/her co-drivers, and,

H-17. Complete and clearly readable copies of any and all other "operational or trip related documents" created or received by the Defendants or any other persons or organizations, regardless of form or description and not defined herein, in the possession of any of the Defendants and relative to the operations, activities, movements, cargo and trips accomplished by Vasyly Yusypyuk and/or his/her co-drivers during the time period requested.

(NOTE: Plaintiff is totally unaware of Nadiya Express, Inc. and/or W2 Logistics, Inc. 's motor carrier transportation operational and trip control methods and procedures and has no

alternative but to include the broad definitions set forth in definitions H-1 through H-17. It is not the intent of Plaintiff to overburden the Defendants. If the defendant, Nadiya Express, Inc. and/or W2 Logistics, Inc. , will demonstrate their operational trip methods, procedures and documents system to Plaintiff, Plaintiff will attempt to simplify this request for the benefit of all concerned.)

2. Complete and clearly readable copies of the "Driver Qualification File" maintained by any of the Defendants on Vasyl Yusypyuk along with any other documents contained therein, in their precise state of existence on the date of the accident (April 4, 2006). Please refer to the following sub-Definitions "F-1 through F-13" herein and follow them closely:

- F-1. Any pre-employment questionnaires or other documents secured from Vasyl Yusypyuk prior to employment.
- F-2. Any and all completed applications for employment secured both before and/or after the actual date of contract or employment of Vasyl Yusypyuk.
- F-3. All medical examinations, drug tests and certification of medical examinations inclusive of expired and non-expired documents relative to Vasyl Yusypyuk.
- F-4. All of Vasyl Yusypyuk's annual violation statements which should include one for each twelve months of contract or employment with the Defendant motor carrier in this case.
- F-5. All actual driver's motor carrier road tests administered to Vasyl Yusypyuk.
- F-6. All actual driver's motor carrier written tests administered to Vasyl Yusypyuk.
- F-7. All road and written test certificates issued by Nadiya Express, Inc. and/or W2 Logistics, Inc. or any other motor carrier or organization to Vasyl Yusypyuk regardless of the date issued or the originator of such certificates.
- F-8. All past employment inquiries sent to or secured from former employers along with all responses received from former employers inclusive of all U. S. mail, personal contact or telephone inquiries and results directed to or received by Nadiya Express, Inc. and/or W2 Logistics, Inc. from past employers of Vasyl Yusypyuk.
- F-9. All inquiries to and answers received from any organization in reference to the driver's license record of traffic violations and accidents directed to and/or received by any of the Defendants, or other organizations on behalf of defendants, from state or federal governmental agencies relative to Vasyl Yusypyuk's traffic and accident

record.

- F-10. Copies of all road or written test cards, medical cards, motor carrier certification of driver qualification cards and any other motor carrier transportation related cards in the possession of any of the Defendants regardless of card issuance date or origin. This specifically includes cards, as previously described herein, issued by other motor carriers to Vasyl Yusypyuk or his/her co-drivers presently in their personal possession.
- F-11. All annual reviews, file reviews or file summaries and related documents found in the driver qualification file of Vasyl Yusypyuk.
- F-12. All documents relative to any drug testing of Vasyl Yusypyuk, and
- F-13. Any and all other contents of Vasyl Yusypyuk's driver qualification file, regardless of subject, form, purpose, originator, receiver, title or description.

(Note: Plaintiff respectfully would remind the Defendants this request is also directed to Vasyl Yusypyuk and copies of any of the described documents in his/her possession are included in this request).

3. Complete and clearly readable copies of any and all other documents added to Vasyl Yusypyuk's "Driver Qualification File" from April 4, 2006 to the present date, as presently maintained by Nadiya Express, Inc. and/or W2 Logistics, Inc. . Please identify and produce such documents separate and apart from the documents requested in Request Number 2 herein.

4. Complete and clearly readable copies of the "Driver Personnel File" and/or any otherwise titled files on Vasyl Yusypyuk or in reference to Vasyl Yusypyuk's services, from initial contract or employment with Nadiya Express, Inc. and/or W2 Logistics, Inc. to the present date. Please refer to the following sub-definitions G-1 through G-5 and follow them closely:

- G-1. Applications for employment, owner/operator or other types of contracts, agreements, payroll or money advanced records, attendance records, computer generated documents and any other summary type document regardless of subject,

description or form relative to Vasyl Yusypyuk or the services performed by Vasyl Yusypyuk.

- G-2. Hiring, suspension, termination, warning notices, complaints, letters, memorandums and any other similar type documents relative to Vasyl Yusypyuk.
- G-3. Prior industrial, vehicular, cargo, hazardous materials incidents, health or accident reports, or other types of injury, sickness, accidents or loss reports or records inclusive of cargo shortage or damage reports, along with all related documents to each such sickness, incident or accident that relate to Vasyl Yusypyuk.
- G-4. FMCSA or other law enforcement agencies, terminal audits or roadside equipment and/or driver inspections reports, traffic citations or traffic warnings, inclusive of any of the defendant's file reviews or summaries of violations of company, state or federal laws, rules or regulations committed by Vasyl Yusypyuk, or any of his/her co-drivers; and
- G-5. Any and all other documents found in such a file, regardless of description, title, form, origin or subject, maintained by the Defendants in reference to Vasyl Yusypyuk, excluding only those documents required by the FMCSR Part 391, Driver Qualifications, defined in request #2, sub-definitions "F-1 through F-13" herein.

5. Complete and clearly readable copies of any state or FMCSR, issued terminal audits, road equipment and/or driver compliance inspections or warnings and traffic citations issued in reference to the activities of Vasyl Yusypyuk, his/her co-drivers, or driver trainers, by any city, county, state or federal agency or law enforcement official in the possession of any of the Defendants. This request specifically includes any documents issued by any governmental agencies or officials in reference to violations of any State or Federal Motor Carrier Safety or Hazardous Materials Regulations that may have been issued in reference to the activities of Vasyl Yusypyuk or his/her co-drivers or driver trainers from November 4, 2005 through and including April 4, 2006.

6. Complete and clearly readable copies of all objects, photographs, drawings, reports, statements or otherwise described documents or objects in the possession of any of the Defendants in reference to the accident as defined herein "excluding only" those written documents, materials and objects that can be clearly identified as the work product of the defendant's attorneys. This specifically includes any and all reports and written or electronically recorded statements made by any of the defendants to any other person, organization or governmental entity.

7. Complete and clearly readable copies of any and all other accident or incident files and records maintained by any of the Defendants in reference to any other vehicular accident, or incident, prior to the occurrence of the accident in question, where Vasyl Yusypyuk, or his/her co-driver(s), or driver trainer, was the driver of a vehicle involved in the prior accidents or incidents.

8. Complete and clearly readable copies of all driver's record of duty status or driver's daily logs and 70/60 hour - 8/7 day summaries or otherwise described work time records created by Vasyl Yusypyuk, and or any of his/her co-drivers, for the period from November 4, 2005 through and including April 4, 2006 in accordance with FMCSA Part 395 in the possession of any of the Defendants and specifically any copies in the personal possession of Vasyl Yusypyuk.

9. Complete and clearly readable copies of any and all Nadiya Express, Inc. and/or W2 Logistics, Inc. officers, executives or administrator's notices, directives, bulletins, publications

and manuals of any type or otherwise described written instructions in reference to the day-to-day motor carrier operating and safety procedures to be followed by their company personnel, managers, supervisors, dispatchers and drivers. Specifically, any document relative to disciplinary policies or procedures for late freight delivery, motor fleet safety or failure to comply with the FMCSR in existence and effective at Nadiya Express, Inc. and/or W2 Logistics, Inc. on April 4, 2006.

10. Complete and clearly readable copies of any and all created electronic or satellite "vehicular movement recording documents or records" such as QualComm, HighwayMaster, American Mobile Satellite Corp. or any similar organization's records along with any Tractor trip recorder computer generated documents, tachograph charts, computer generated trip printouts or any otherwise described documents generated by whatever means, in reference to the physical movement and geographical locations at a certain time and date of the Tractor and/or Trailer involved in the accident from November 4, 2005 through and including April 4, 2006.

11. Complete and clearly readable copies of all maintenance files and records from November 4, 2005 through and including April 4, 2006 maintained by any of the Defendants in accordance with the FMCSR/PAMCSR, Part 396 on the Tractor involved in the accident inclusive of any inspections, repairs or maintenance done to the Tractor. In addition, all driver daily vehicle condition reports submitted by any driver(s) on the Tractor, from November 4, 2005 through and

including April 4, 2006 in the possession of any of the Defendants. This specifically includes all the driver daily vehicle condition reports, maintenance files and records maintained by any other person(s) or organization(s) that Vasyly Yusypyuk or Nadiya Express, Inc. and/or W2 Logistics, Inc. may have borrowed, rented or leased the Tractor from, or who performed maintenance services on behalf of, or for Nadiya Express, Inc. and/or W2 Logistics, Inc. or Vasyly Yusypyuk.

12. Complete and clearly readable copies of the maintenance files and records created from November 4, 2005 through and including April 4, 2006 maintained by any of the Defendants in accordance with the FMCSR/PAMCSR, Part 396 on the Trailer pulled by Vasyly Yusypyuk inclusive of any documents indicating inspections, repairs or maintenance to the Trailer. In addition, all driver daily vehicle condition reports submitted by any driver(s), from November 4, 2005 through and including April 4, 2006 in the possession of any of the Defendants. This specifically includes all the driver daily condition reports, maintenance files and records maintained by any other organization that Vasyly Yusypyuk or Nadiya Express, Inc. and/or W2 Logistics, Inc. may have borrowed, rented or leased the Trailer from or who performed maintenance services for or on behalf of Nadiya Express, Inc. and/or W2 Logistics, Inc. or Vasyly Yusypyuk.

13. Complete and clearly readable copies of each and every insurance policy and/or agreements

which may be required to satisfy all or part of a judgment which may be entered in this action or to indemnify or reimburse any of the defendants for payments made to satisfy such a judgment.

This request specifically refers to all coverage available to any of the defendants and/or thought or believed to be available and in force when this accident occurred indicating one or more of the defendants as a named insured or omnibus insured or any other type whether by application, binder, issuance of policy or extension of a grace period.

14. Complete and clearly readable copies of any and all documents given to any expert(s) retained by Defendants for their review or used in formulating their opinions on this accident.

15. Please provide copies of all Federal and State Income tax returns for both personal and business accounts for the past four years immediately preceding the motor vehicle accident *(include any and all records used to produce said taxes).*

MUNLEY, MUNLEY & CARTWRIGHT, P.C.

By: _____
DANIEL WEBSTER MUNLEY, ESQUIRE

The Forum Plaza
227 Penn Avenue
Scranton, PA 18503
(570) 346-7401
Supreme Court Id. No.: 77441

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P.O. BOX 590

SCRANTON, PENNSYLVANIA 18501-0590

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RICHARD G. FINE
WILLIAM E. WYATT, JR.
PATRICK C. CAREY
EDWARD A. MONSKY
JOSEPH E. JANC
JOHN T. CLARY, JR.
VINCENT A. SCAMELL, JR.
JEFFREY E. HAVRAN*
JANINE EDWARDS
LANEY B. WYATT
DOUGLAS A. YAZINSKI

*ALSO MEMBER N.J. BAR

HONESDALE OFFICE:
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FAX NO. (570) 253-4650

LOUIS A. FINE
(1904-1997)

June 23, 2008

Daniel Webster Munley, Esquire
Munley, Munley & Cartwright, P.C.
227 Penn Avenue
Scranton, PA 18503

RE: James & Betsy Brown v W2 Logistics, Inc., et al.
Clearfield CCP: No. 08-396-CD
Our File No: 21586

Dear Dan:

Enclosed please find Defendants' Objections to Plaintiffs' Request for Production of Documents, Set I, with regard to the above-captioned matter. Please note, I will be forwarding Defendants' Responses to Plaintiffs' Request for Production of Documents under separate cover.

Should you have any questions, please let me know.

Sincerely,

FINE, WYATT & CAREY, P.C.

Jeffrey E. Havran, Esquire

JEH/jvh
Enclosure

EXHIBIT 'D'

FINE, WYATT & CAREY, P.C.
BY: RICHARD G. FINE, ESQUIRE
Attorney ID No.: 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No.: 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
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ATTORNEY S FOR DEFENDANTS

**JAMES BROWN and BETSY
BROWN, his wife,**

**: IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY**

Plaintiffs,

**:
: CIVIL ACTION – LAW**

vs.

: JURY TRIAL DEMANDED

**VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC.,**

:

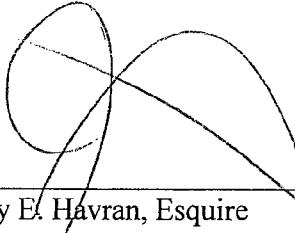
Defendants.

: NO. 2008-396-CD

**DEFENDANTS' OBJECTIONS TO PLAINTIFFS' FIRST SET OF REQUESTS
FOR PRODUCTION DOCUMENTS, SET I**

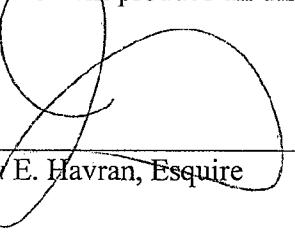
AND NOW COME, the above-named Defendants', by and through their counsel, Fine, Wyatt & Carey, P.C., and hereby object to Plaintiffs' Request for Production of Documents (Set I), as follows:

1. (H-1) - (H-17) Objection. The within Defendants' object to Plaintiffs' Request for Production of Documents No. 1 (H-1)-(H-17) pursuant to Pa. R.C.P. 4003.1 through 4003.6 and 4011 along with said request being overly broad, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, the requested time frame of the discovery request of November 4, 2005 through April 4, 2006 is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.



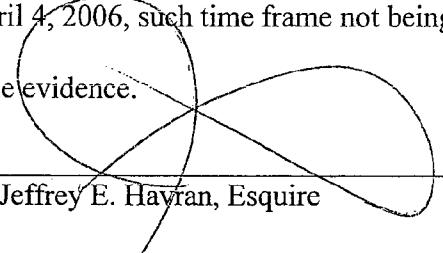
Jeffrey E. Havran, Esquire

2. (F-1)-(F-13) Objection. The within Defendants' object to Plaintiffs' Request for Production of Document No. 2 (F-1)-(F-13) pursuant to Pa. R.C.P. 4003.1 through 4003.6 and 4011 along with said request being overly broad, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection, the within Defendants' will produce all discoverable portions of Mr. Yusypyuk's "Driver Qualification File".



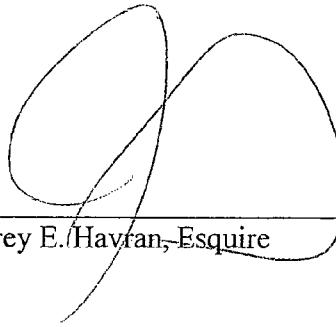
Jeffrey E. Havran, Esquire

3. Objection. The within Defendants' object to Plaintiffs' Request for Production of Document No. 3 pursuant to Pa. R.C.P. 4003.1 through 4003.6 and 4011 along with said request being overly board, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, said request deals with a time frame subsequent to or post accident of April 4, 2006, such time frame not being reasonably calculated to lead to the discovery of admissible evidence.



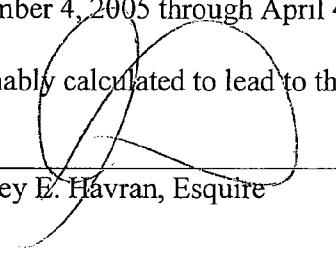
Jeffrey E. Havran, Esquire

4. (G-1)-(G-5) Objection. The within Defendants' object to Plaintiffs' Request for Production of Document No. 4 (G-1)-(G-5) pursuant to Pa. R.C.P. 4003.1 through 4003.6 and 4011 along with said request being overly board, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence. By way of further response, said request deals with a time frame subsequent to or post-accident of April 4, 2006, such time frame not being reasonably calculated to lead to the discovery of admissible evidence.



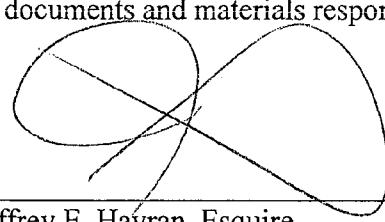
Jeffrey E. Havran, Esquire

5. Objection. The within Defendants' object to Plaintiffs' Request for Production of Document No. 5 pursuant to Pa. R.C.P. 4003.1 through 4003.6 and 4011 along with said request being overly board, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence. By way of further response, the requested time frame of the discovery request of November 4, 2005 through April 4, 2006 is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.



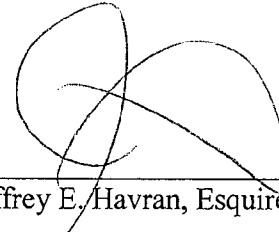
Jeffrey E. Havran, Esquire

6. Objection. The within Defendants' object to Plaintiffs' Request for Production of Document No. 6 pursuant to Pa. R.C.P. 4003.1 through 4003.6 and 4011 along with said request being overly board, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, the within Defendants' will produce all discoverable documents and materials responsive to this request.



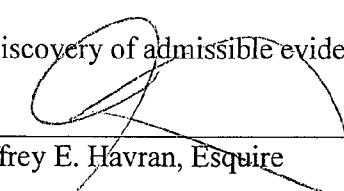
Jeffrey E. Havran, Esquire

7. Objection. The within Defendants' object to Plaintiffs' Request for Production of Document No. 7 pursuant to Pa. R.C.P. 4003.1 through 4003.6 and 4011 along with said request being overly board, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, the within Defendants' will produce all discoverable documents and materials responsive to this request.



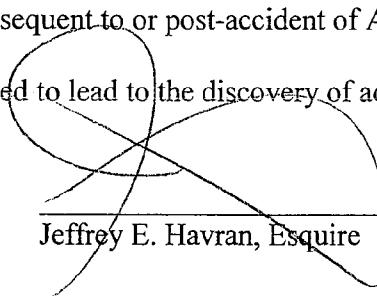
Jeffrey E. Havran, Esquire

8. Objection. The within Defendants' object to Plaintiffs' Request for Production of Document No. 8 pursuant to Pa. R.C.P. 4003.1 through 4003.6 and 4011 along with said request being overly broad, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence. By way of further response, said request seeks records and documents subsequent to or post-accident of April 4, 2006, such time frame not being reasonably calculated to lead to the discovery of admissible evidence.



Jeffrey E. Havran, Esquire

10. Objection. The within Defendants' object to Plaintiffs' Request for Production of Document No. 10 pursuant to Pa. R.C.P. 4003.1 through 4003.6 and 4011 along with said request being overly broad, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence. By way of further response, said request seeks records and documents subsequent to or post-accident of April 4, 2006, such time frame not being reasonably calculated to lead to the discovery of admissible evidence.



Jeffrey E. Havran, Esquire

11. Objection. The within Defendants' object to Plaintiffs' Request for Production of Document No. 11 pursuant to Pa. R.C.P. 4003.1 through 4003.6 and 4011 along with said request being overly broad, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence. While the within Defendants' do not object to producing any maintenance files and records regarding the tractor in question for a reasonable period of time, Plaintiffs' seek all driver daily vehicle condition reports said by any driver(s) on

the tractor, from November 4, 2005 through and including April 4, 2006 in the possession of any of the within Defendants'. Said request is overly broad, unduly burdensome, in violation of Pa. R.C.P. 4011 and is not reasonably calculated to lead to the discovery of admissible evidence.

Jeffrey E. Havran, Esquire

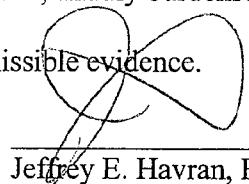
12. Objection. The within Defendants' object to Plaintiffs' Request for Production of Document No. 12 pursuant to Pa. R.C.P. 4003.1 through 4003.6 and 4011 along with said request being overly broad, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence. While the within Defendants' do not object to producing any maintenance files and records regarding the trailer in question for a reasonable time period, Plaintiffs' seek "all driver daily vehicle condition reports said by any driver(s) on the trailer, from November 4, 2005 through and including April 4, 2006 in the possession of any of the within Defendants'. Said request is overly broad, unduly burdensome and in violation of Pa. R.C.P. 4011 and is not reasonably calculated to lead to the discovery of admissible evidence.

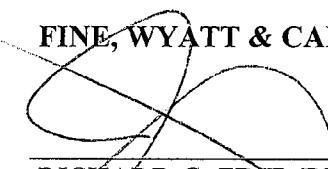
Jeffrey E. Havran, Esquire

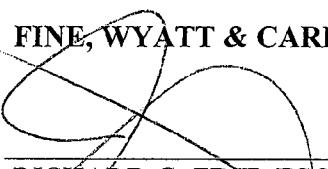
14. Objection. The within Defendants' object to Plaintiffs' Request for Production of Documents No. 14 pursuant to Pa. R. C. P. 4003.1 through 4003.6 and 4011 along with said request being over broad, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence.

Jeffrey E. Havran, Esquire

15. Objection. The within Defendants' object to Plaintiffs' Request for Production of Documents No. 15 pursuant to Pa. R. C. P. 4003.1 through 4003.6 and 4011 along with said request being over broad, unduly burdensome, privileged and not reasonably calculated to lead to the discovery of admissible evidence.


Jeffrey E. Havran, Esquire


FINE, WYATT & CAREY, P.C.


RICHARD G. FINE, ESQUIRE
JEFFREY E. HAVRAN, ESQUIRE
Counsel for Defendants

BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

ATTORNEY S FOR DEFENDANTS

JAMES BROWN and BETSY
BROWN, his wife,

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY

Plaintiffs,

:
: CIVIL ACTION - LAW

vs.

: JURY TRIAL DEMANDED

VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC.,

:
:
:
:
:

Defendants.

: NO. 2008-396-CD

CERTIFICATE OF SERVICE

I, JEFFREY E. HAVRAN, ESQUIRE, hereby certify that I served a true and correct copy of the foregoing Defendants' Objections to Plaintiffs' Request for Production of Documents (Set I), upon the following counsel of record, by placing the same in the U.S. Mail, postage, prepaid first-class on the 23rd day of June, 2008:

Daniel Webster Munley, Esquire
Munley, Munley & Cartwright, P.C.
The Forum Plaza
227 Penn Avenue
Scranton, PA 18503

FINE, WYATT & CAREY, P.C.

JEFFREY E. HAVRAN, ESQUIRE
Counsel for Defendants

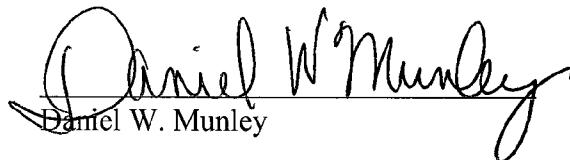
42
Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

JAMES BROWN and BETSY BROWN, : IN THE COURT OF COMMON PLEAS
his wife, : OF CLEARFIELD COUNTY
Plaintiffs :
vs. : CIVIL ACTION - LAW
: JURY TRIAL DEMANDED
VASYL YUSYPYUK :
NADIYA EXPRESS, INC. :
W2 LOGISTICS, INC. :
Defendants : No.: 2008-396-CD

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of Plaintiffs' Motion to Compel with Brief in Support of Motion to Compel Responses to Request for Production of Documents (Set I), were served by First Class Mail on this 5th day of December, 2008, upon the following:

Richard G. Fine, Esq.
Fine, Wyatt & Carey, P.C.
425 Spruce Street
P.O. Box 590
Scranton, PA 18501


Daniel W. Munley

CRA

Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

JAMES BROWN and BETSY BROWN, : IN THE COURT OF COMMON PLEAS
his wife, : OF CLEARFIELD COUNTY

Plaintiffs : CIVIL ACTION - LAW

vs. : JURY TRIAL DEMANDED

VASYL YUSYPYUK :
NADIYA EXPRESS, INC. :
W2 LOGISTICS, INC. :
Defendants : No.: 2008-396-CD

RULE RETURNABLE

AND NOW, this 15th day of December, 2008, upon consideration of

Plaintiff's Motion to Compel more specific answer, a rule is granted to show cause why

Plaintiff's Motion should not be granted in the above captioned matter.

Rule returnable scheduled for the 22nd day of January, 2009, at
2:30 p.m. in Courtroom 1.

Judge J. Munley
J.

Daniel W. Munley, Esq.
James Kilpatrick, Esq.
227 Penn Avenue
Scranton, PA 18503

Richard G. Fine, Esq.
Jeffrey E. Havran, Esq.
425 Spruce Street, P.O. Box 590
Scranton, PA 18501

FILED
014-00801 2008
DEC 15 2008 Amy Munley
S
William A. Shaw
Prothonotary/Clerk of Courts

FILED

DEC 15 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/15/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney Other

Special Instructions:

BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

ATTORNEYS FOR DEFENDANTS

FILED *PC*

DEC 23 2008

1/20/09
William A. Shaw
Prothonotary/Clerk of Courts

5
1 copy to Plaintiff

**JAMES BROWN and BETSY
BROWN, his wife,**

Plaintiffs,

vs.

**VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC.,**

Defendants.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY
:
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED
:
:
:
: NO. 2008-396-CD

**DEFENDANTS' ANSWER TO PLAINTIFFS' MOTION TO COMPEL
RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS- SET ONE**

AND NOW COME, the above-named Defendants, by and through their attorneys, Fine, Wyatt & Carey, P.C., and hereby responds to Plaintiffs' Motion to Compel Responses to Plaintiffs' Request for Production of Documents – Set One as follows:

1. Denied as stated. The allegations and averments of Paragraph 1 of Plaintiffs' Motion are denied as stated. Strict proof thereof is demanded at the time of trial.

2. Denied as stated. Said correspondence as referred to by Plaintiffs in Paragraph 2 of their Motion are written documents which speak for themselves. Any characterization thereof by Plaintiffs is specifically denied. Strict proof thereof is demanded at the time of trial.

3. Denied as stated. Said correspondence as referred to by Plaintiffs in Paragraph 3 of their Motion are written documents which speak for themselves. Any characterization thereof by Plaintiffs is specifically denied. Strict proof thereof is demanded at the time of trial.

4. Admitted in part and denied in part. It is admitted only that on March 6, 2008 Plaintiffs filed suit and on or about June 6, 2008 they served Request for Production of Documents upon the within Defendants. Said discovery requests are written documents which speak for themselves. Any inference or characterization thereof by Plaintiffs is specifically denied. By way of further response, Defendants are in the process of verifying responses to said discovery and it is anticipated that discovery responses will be served upon Plaintiffs in the near future. Strict proof thereof is demanded at the time of trial.

5. Denied as stated. The allegations and averments of Paragraph 5 of Plaintiffs' Motion are denied as stated. To the contrary, the within Defendants logged various objections to Plaintiffs' discovery requests but further indicated that discoverable documents, including Mr. Yusypyuk's driver qualification file, discoverable portions of Mr. Yusypyuk's personnel file, photographs, discoverable accident or incident files, driver's logs for a reasonable timeframe and maintenance logs which may exist regarding the tractor/trailer in question for a reasonable timeframe would be produced. By way of further response, see Defendants' Objections to Plaintiffs' Request for Production of Documents. By way of further response, Plaintiffs seek documentation for a period of time from November 4, 2005 through the date of the accident, April 4, 2006 which is a 6-month timeframe. Any attempt to compel Defendants to locate documentation for such a timeframe would cause unreasonable annoyance, oppression, burden and expense to the

within Defendants along with requiring the making of unreasonable investigation by Defendants pursuant to Pa. R.C.P. 4011(b) and (e). The within Defendants would be willing to work with Plaintiffs' counsel in an attempt to agree upon a reasonable timeframe for production of these documents. Strict proof thereof is demanded at the time of trial..

6. The allegations and averments of Paragraph 6 of Plaintiffs' Motion are denied as stated. By way of further response, see Defendants' Objections to Plaintiffs' Discovery. Strict proof thereof is demanded at the time of trial.

7. Denied as stated. The allegations and averments of Paragraph 7 of Plaintiffs' Motion are denied as stated. It is specifically denied that the within Defendants ever represented that they would be providing discovery responses by August 25, 2008. No such letter is attached by Plaintiffs to their Motion. Strict proof thereof is demanded at the time of trial.

8. Denied as stated. The allegations and averments of Paragraph 8 of Plaintiffs' Motion are denied as stated. Strict proof thereof is demanded at the time of trial.

9. Denied as stated. It is specifically denied that Plaintiffs Request for Production of Documents merely seeks discoverable information that is reasonably calculated to lead to the discovery of admissible evidence as defined by Pa. R.C.P. 4003.1. By way of further response, Plaintiffs seek information which is not reasonably calculated to lead to the discovery of admissible evidence and seek information dealing with timeframes subsequent or post accident of April 4, 2006 along with requesting information over a timeframe for 6 months predating the accident in question, which would cause unreasonable annoyance, oppression, burden and expense to the within

Defendants as indicated in Pa. R.C.P. 4011(b). Moreover, the information requested of Defendants would require the making of an unreasonable investigation by the within Defendants as indicated in Pa. R.C.P. 4011(e). Strict proof thereof is demanded at the time of trial.

10. Denied as stated. The allegations and averments of Paragraph 10 of Plaintiffs' Motion are denied as stated. To the contrary, the within Defendants specifically deny that they have alleged general objections to Plaintiffs' Request for Production of Documents. To the contrary, said objections speak for themselves. Moreover, the requested timeframe of some of Plaintiffs' discovery requests of November 4, 2005 through April 4, 2006 is violative of Pa. R.C.P. 4011. Strict proof thereof is demanded at the time of trial.

11. Denied as stated. The allegations and averments of Paragraph 11 of Plaintiffs' Motion are denied as stated. To the contrary, Plaintiffs seek Defendants to make an unreasonable investigation for any documents they may have regarding a 6-month timeframe occurring almost 3 years previous in violation of Pa. R.C.P. 4011. The within Defendants have no objection to attempting to work with Plaintiffs in agreeing on some reasonable timeframe for production of same. Strict proof thereof is demanded at the time of trial.

12. Denied as stated. The allegations and averments of Paragraph 12 of Plaintiffs' Motion are denied as stated. Taking that Plaintiffs' allegation that Mr. Yusypyuk was fatigued at the time of the accident in question and in excess of the applicable hours of service regulations set forth by the Federal Motor Carrier Safety Regulations as true, it is unfathomable for one to see how driver's logs from November of 2005 would have any basis of showing fatigue or hours of service violations for an

incident occurring in April of 2006. The Federal Motor Carrier Safety Regulations speak as to the number of hours a driver may drive per day or hours driven per week. How something occurring in November of 2005 may be relevant to the events of April of 2006 is not reasonably calculated to lead to the discovery of admissible evidence. Strict proof thereof is demanded at the time of trial.

13. The allegations and averments of Paragraph 13 of Plaintiffs' Motion are denied as stated. Plaintiffs contend that trip and operational documents as well as vehicular movements are relevant so that they can compare logs with their documentation. Plaintiffs seek such documentation over a 6-month timeframe prior to the accident in question. Again, it is unfathomable to see how documents for a trip which may have occurred in November of 2005 would be relevant to the events of the accident of April 4, 2006. Such timeframe would have no bearing on the events of April 4, 2006 nor would information from that timeframe be reasonably calculated to lead to the discovery of admissible evidence. Strict proof thereof is demanded at the time of trial.

14. Denied as stated. The allegations and averments of Paragraph 14 of Plaintiffs' Motion are denied as stated. To the contrary, the within Defendants assert that they will provide a copy of Mr. Yusypyuk's driver's qualification file and discoverable portions of his personnel file. Plaintiffs generally seek "any and all" materials which may have been added to Mr. Yusypyuk's file post accident. The within Defendants would agree to produce any materials added post accident which deal with the events of April 4, 2006. Strict proof thereof is demanded at the time of trial.

15. Denied as stated. The allegations and averments of Paragraph 15 of Plaintiffs' Motion are denied as stated. In Requests No. 6, No. 7 and No. 9, Plaintiffs seek a long list of various items, including objects, photographs, drawings, reports,

statements and documents, etc. regarding Mr. Yusypyuk, the vehicles involved in the accident in question and the accident scene. The within Defendants have indicated that they will produce discoverable documents and materials responsive to said Requests. Strict proof thereof is demanded at the time of trial.

16. Denied as stated. The allegations and averments of Paragraph 16 of Plaintiffs' Motion are denied as stated. In Requests No 11 and No. 12 of Plaintiffs' Request for Production of Documents, they seek maintenance records and daily driver vehicle condition reports from November 4, 2005 through April 4, 2006 for both the tractor and trailer involved in the accident in question. Plaintiffs seek documentation over a 6-month timeframe predating the accident in question, which would impose an unreasonable burden, expense and would require the making of an unreasonable investigation by the within Defendants in violation of Pa. R.C.P. 4011. The within Defendants would be agreeable to work with Plaintiffs' counsel as to a reasonable timeframe for the production of such documents and materials. Strict proof thereof is demanded at the time of trial.

17. Denied as stated. The allegations and averments of Paragraph 17 of Plaintiffs' Motion are denied as stated. In Request No. 14 Plaintiffs generally seek "any and all documents" given to any expert retained by Defendants for the review or use in formulating their opinions regarding this accident. Plaintiffs contend that this Request is well within the scope of permissible discovery. However, Pa. R.C.P. 4003.5(a)(3) states that "a party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for a trial and who is not expected to be called as a witness at trial." See Pa. R.C.P.

4003.5(a)(3). Plaintiffs' Request No. 14 is violative of the above Rule. Strict proof thereof is demanded at the time of trial.

18. Denied as stated. The allegations and averments of Paragraph 18 of Plaintiffs' Motion are denied as stated. In Request No. 15 of Plaintiffs' Request for Production of Document, they seek tax returns of the Defendants for four (4) years preceding the accident in question asserting same would be relevant to their claim for punitive damages. Pursuant to Pa. R.C.P. 4003.7 regarding punitive damages, a party may obtain information concerning the wealth of a defendant in a claim for punitive damages only upon order of court setting forth appropriate restrictions as to the time of discovery, the scope of discovery, and the dissemination of the material discovered. In the present case, the within Defendants have filed Preliminary Objections to Plaintiffs' request for punitive damages. It is anticipated that such claim will be the subject of a motion for summary judgment. Nevertheless in the present case, there has been no order of court allowing for Plaintiffs to obtain information regarding the wealth of the Defendants. As such, Plaintiffs Request No. 15 is in violation of the Pennsylvania Rules of Civil Procedure. Strict proof thereof is demanded at the time of trial.

19. Denied as stated. The allegations and averments of Paragraph 19 of Plaintiffs' Motion are denied as stated. The within Defendants will provide a copy of the applicable policy of insurance to Plaintiffs. Strict proof thereof is demanded at the time of trial.

20. Denied as stated. The allegations and averments of Paragraph 20 of Plaintiffs' Motion are denied as stated. To the contrary, said objections to Plaintiffs' individual discovery requests speak for themselves. Strict proof thereof is demanded at the time of trial.

WHEREFORE, the within Defendants respectfully request that Plaintiffs' Motion to Compel be denied.

Respectfully submitted,

FINE, WYATT & CAREY, P.C.

~~RICHARD G. FINE, ESQUIRE
JEFFREY E. HAVRAN, ESQUIRE
Counsel for Defendants~~

BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

ATTORNEYS FOR DEFENDANTS

**JAMES BROWN and BETSY
BROWN, his wife,**

**: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY**

Plaintiffs,

vs.

**VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC.,**

**: CIVIL ACTION - LAW
: JURY TRIAL DEMANDED**

Defendants.

: NO. 2008-396-CD

CERTIFICATE OF SERVICE

I, JEFFREY E. HAVRAN, ESQUIRE, hereby certify that I served a true and correct copy of the foregoing Defendants' Answer to Plaintiffs' Motion to Compel Responses to Request for Production of Documents (Set One), upon the following counsel of record, by placing the same in the U.S. Mail, postage, prepaid first-class on the 22nd day of December, 2008:

Daniel Webster Munley, Esquire
Munley, Munley & Cartwright, P.C.
The Forum Plaza
227 Penn Avenue
Scranton, PA 18503

FINE, WYATT & CAREY, P.C.

JEFFREY E. HAVRAN, ESQUIRE
Counsel for Defendants

BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
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425 Spruce St.
PO Box 590
Scranton, PA 18501
(570) 343-1197

ATTORNEYS FOR DEFENDANTS

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William A. Shaw
Prothonotary/Clerk of Courts

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**JAMES BROWN and BETSY
BROWN, his wife,**

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY
CIVIL ACTION – LAW
JURY TRIAL DEMANDED
NO. 2008-396-CD

NOTICE TO PLEAD

TO: Plaintiffs

You are hereby notified to file a written response to the enclosed Answer and
New Matter within twenty (20) days from the date of service hereof or a judgment may
be entered against you in accordance with the Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

~~FINE, WYATT & CAREY, P.C.~~

~~RICHARD G. FINE, ESQUIRE
JEFFREY E. HAVRAN, ESQUIRE~~

BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
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Plaintiffs,

vs.

**VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
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Defendants.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

CIVIL ACTION – LAW

JURY TRIAL DEMANDED

NO. 2008-396-CD

DEFENDANTS' VASYL YUSYPYUK, NADIYA EXPRESS, INC. and W2 LOGISTIC, INC. INPROPERLY NAMED AND IDENTIFIED AS W2 LOGISTICS, INC. ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT

AND NOW COME the above Defendants, Vasyl Yusypyuk, Nadiya Express, Inc. and W2 Logistics, Inc., by and through their Attorneys, Fine, Wyatt & Carey, P.C., hereby respond to Plaintiffs' Complaint as follows:

1. Denied pursuant to Pa.R.C.P. 1029 (c-e). The allegations and averments of Paragraph 1 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). Strict proof thereof is demanded at the time of trial

2. Admitted

3. Admitted in part and Denied in part. It is admitted that Nadiya Express, a corporation with an address of 202 North Kenilworth, Mount Prospect, IL, Wi-

regard to the remaining allegations and averments of Paragraph 3 of Plaintiffs' Complaint, same are denied. Strict proof thereof is demanded at the time of trial.

4. Denied as stated. To the contrary, the within Defendant is W2 Logistic, Inc. with an address of 2300 East Higgins Road, Suite 318, Elk Grove Village, Illinois. Strict proof thereof is demanded at the time of trial.

5. Denied as stated. The allegations and averments of Paragraph 5 of Plaintiffs' Complaint are denied as stated. To the contrary, on or about April 4, 2006, Vasyl Yusypyuk was an owner-operator running under the authority of W2 Logistic, Inc. Strict proof thereof is demanded at the time of trial.

6. Denied pursuant to Pa.R.C.P. 1029 (c-e). The allegations and averments of Paragraph 6 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). Strict proof thereof is demanded at the time of trial.

7. Admitted.

8. Denied as stated. The allegations and averments of Paragraph 8 of Plaintiffs' Complaint are denied as stated. To the contrary Vasyl Yusypyuk was an owner-operator running under the authority of W2 Logistic, Inc. on April 4, 2006. Strict proof thereof is demanded at the time of trial.

9. Denied pursuant to Pa.R.C.P. 1029 (c-e). The allegations and averments of Paragraph 9 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness or recklessness on the part of the within Defendants is specifically denied. Strict proof thereof is demanded at the time of trial.

10. Denied pursuant to Pa.R.C.P. 1029 (c-e). The allegations and averments of Paragraph 10 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By

way of further response, any inference of negligence, carelessness or recklessness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

11. Denied pursuant to Pa.R.C.P. 1029 (c-e). The allegations and averments of Paragraph 11 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness or recklessness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

12. Denied pursuant to Pa.R.C.P. 1029 (c-e). The allegations and averments of Paragraph 12 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness or recklessness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

13. Denied pursuant to Pa.R.C.P. 1029 (c-e). The allegations and averments of Paragraph 13 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness or recklessness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

14. Denied pursuant to Pa.R.C.P. 1029 (c-e). The allegations and averments of Paragraph 14 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By

way of further response, any inference of negligence, carelessness or recklessness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

15. Denied pursuant to Pa.R.C.P. 1029 (c-e). The allegations and averments of Paragraph 15 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness or recklessness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

16. Denied pursuant to Pa.R.C.P. 1029 (c-e). The allegations and averments of Paragraph 16 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness or recklessness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

COUNT ONE

James Brown v. Vasyl Yusypyuk

Negligence

17. Paragraphs 1 through 16 above are incorporated by reference as though fully set forth at length herein.

18. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 18 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness,

grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

19 (a-n) Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 19 (a-n) of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

20. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 20 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

WHEREFORE, the within Defendants respectfully request that Plaintiffs' Complaint be dismissed with prejudice and that judgment be entered in their favor.

COUNT TWO

James Brown v. Nadiya Express, Inc.

Negligence

21. Paragraphs 1 through 20 above are incorporated by reference as though fully set forth at length herein.

22. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 22 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By

way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

23 (a-m) Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 23 (a-m) of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

24. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 24 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

WHEREFORE, the within Defendants respectfully request that Plaintiff's Complaint be dismissed with prejudice and that judgment be entered in their favor.

COUNT THREE

James Brown v. W2 Logistics, Inc.

Negligence

25. Paragraphs 1 through 24 above are incorporated by reference as though fully set forth at length herein.

26. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 26 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

27 (a-m) Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 27 (a-m) of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

28. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 28 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

WHEREFORE, the within Defendants respectfully request that Plaintiffs' Complaint be dismissed with prejudice and that judgment be entered in their favor.

COUNT FOUR

James Brown v. Vasyl Yusypyuk

Punitive Damages

29. Paragraphs 1 through 28 above are incorporated by reference as though fully set forth at length herein.

30. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 30 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

WHEREFORE, the within Defendants respectfully request that Plaintiffs' Complaint be dismissed with prejudice and that judgment be entered in their favor.

COUNT FIVE

James Brown v. Nadiya Express, Inc.

Punitive Damages

31. Paragraphs 1 through 30 above are incorporated by reference as though fully set forth at length herein.

32. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 32 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

WHEREFORE, the within Defendants respectfully request that Plaintiffs' Complaint be dismissed with prejudice and that judgment be entered in their favor.

COUNT SIX

James Brown v. W2 Logistics, Inc.

Punitive Damages

33. Paragraphs 1 through 32 above are incorporated by reference as though fully set for at length herein.

34. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 34 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

WHEREFORE, the within Defendants respectfully request that Plaintiffs' Complaint be dismissed with prejudice and that judgment be entered in their favor.

COUNT SEVEN

Betsy Brown v. Vasyl Yusypyuk

Loss of Consortium

35. Paragraphs 1 through 34 above are incorporated by reference as though fully set for at length herein.

36. Denied pursuant to Pa.R.C.P. 1029 (c-e). The allegations and averments of Paragraph 36 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). Strict proof thereof is demanded at the time of trial.

37. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 37 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

38. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 38 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

WHEREFORE, the within Defendants respectfully request that Plaintiffs' Complaint be dismissed with prejudice and that judgment be entered in their favor.

COUNT EIGHT

Betsy Brown v. Nadiya Express, Inc.

Loss of Consortium

39. Paragraphs 1 through 38 above are incorporated by reference as though fully set forth at length herein.

40. Denied pursuant to Pa.R.C.P. 1029 (c-e). The allegations and averments of Paragraph 40 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). Strict proof thereof is demanded at the time of trial.

41. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 41 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By

way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

42. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 42 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

WHEREFORE, the within Defendants respectfully request that Plaintiff's Complaint be dismissed with prejudice and that judgment be entered in their favor.

COUNT NINE

Betsy Brown v. W2 Logistics, Inc.

Loss of Consortium

43. Paragraphs 1 through 42 above are incorporated by reference as though fully set forth at length herein.

44. Denied pursuant to Pa.R.C.P. 1029 (c-e). The allegations and averments of Paragraph 44 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). Strict proof thereof is demanded at the time of trial.

45. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 45 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To

the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

46. Denied pursuant to Pa.R.C.P 1029 (c-e). The allegations and averments of Paragraph 46 of Plaintiffs' Complaint are denied pursuant to Pa.R.C.P. 1029 (c-e). By way of further response, any inference of negligence, carelessness, recklessness, grossness or wantonness on the part of the within Defendants is specifically denied. To the contrary, the within Defendants acted with due care at all times. Strict proof thereof is demanded at the time of trial.

WHEREFORE, the within Defendants respectfully request that Plaintiffs' Complaint be dismissed with prejudice and that judgment be entered in their favor.

NEW MATTER

47. The within Defendant incorporates herein by reference the averments of Paragraphs 1 through 46 above as thought same were herein set forth at length.

Statute of Limitations

48. By way of New Matter and in defense of the above captioned action, the within Defendants assert that Plaintiffs' claims are barred by Plaintiffs' failure to bring same within the applicable statute of limitations.

Contributory/Comparative Negligence

49. By way of New Matter and in defense of the above captioned action, the within Defendants aver that Plaintiffs' claims are limited and/or barred by their contributory and/or comparative negligence under the circumstances.

Assumption of Risk

50. By way of New Matter and in defense of the above captioned action, the within Defendants aver that Plaintiffs' claims are limited and/or barred by the

assumption of a known risk, thereby rendering them contributory/ comparatively negligent under the circumstances.

+

Causation

51. By way of New Matter and in defense of the above captioned action, the within Defendants aver that if Plaintiff sustained any injury, same was not caused by any action or inaction on the part of the within Defendants but rather occurred as a result of a pre-existing condition and/or injury caused by the negligence of the Plaintiff and/or injury caused by the actions or inactions on the part of other parties or individuals not a party to this action.

Substantial Factor

52. By way of New Matter and in defense of the above captioned action, the within Defendants aver that if the within Defendants was negligent, which negligence is specifically denied, the within Defendants assert that same was not a substantial factor and/or proximate cause of Plaintiff's alleged injuries.

Demurrer

53. By way of New Matter and in defense of the above captioned action, the within Defendants demur to Plaintiffs' Complaint for failing to state claims upon which relief can be granted.

Lack of Negligence

54. By way of New Matter and in defense of the above captioned action, the within Defendants deny that the incident which is the subject of this suit was the result of any negligence, carelessness or recklessness on the part of the within Defendants.

Mitigation

55. By way of New Matter and in defense of the above captioned action, the within Defendants aver that any injuries, damages and/or losses Plaintiff may have suffered, were caused in whole and/or part by Plaintiff's failure to mitigate his damages.

Collateral Estoppel and Res Judicata

56. By way of New Matter and in defense of the above captioned action, the within Defendants assert that any claims of Plaintiffs are barred by the doctrines of collateral estoppel and res judicata.

Doctrines of Waiver, Estoppel and Release

57. By way of New Matter and in defense of the above captioned action, the within Defendants assert that Plaintiffs' claims are barred either in whole or part by the doctrines of waiver, estoppel and/or release.

Proximate Cause

58. By way of New Matter and in defense of the above captioned action, the within Defendants aver that there is no negligence on his part or in the alternative, in the event that it is judicially determined that there was negligence on the part of the within Defendants, same was not a proximate cause or substantial factor of any injury alleged by Plaintiffs.

Rule 238 Damages

59. By way of New Matter and in defense of the above captioned action, if there is a judicial determination that the application of Rule 238 in the within action is constitutional, such possibility being specifically denied, then liability for any damages imposed under said Rule shall not run from the period of time that Plaintiffs failed to

convene a reasonable settlement demand, delayed in responding to any of Defendants' discovery requests, and violated any of the discovery rules or caused the delay of trial.

The Collateral Source Rule

60. By way of New Matter and in defense of the above captioned action, the within Defendants aver that the Collateral Source Rule does not apply if the Plaintiffs should be awarded any money damages, such possibility being specifically denied, then the amount of said damages must be reduced by the total amount of any and all payments that the Plaintiffs received from any and all collateral sources for any injuries and/or damages that the Plaintiffs allegedly suffered in this matter.

Reduction of Medical Expenses

61. By way of New Matter and in defense of the above captioned action, the within Defendants aver that if Plaintiffs should be awarded any money damages, such possibility being specifically denied, then the amount of said damages must be reduced by the total amount of any and all medical expenses charged but not actually paid by or on behalf of the Plaintiff, i.e., any amount recovered by the Plaintiff must be reduced by the sum of any and all medical expenses written off by any health care provider pursuant to the Pennsylvania Supreme Court's ruling in Moorhead v. Crozer-Chester Medical Center, 765 A.2d 786 (Pa. 2001).

**PENNSYLVANIA MOTOR VEHICLE FINANCIAL
RESPONSIBILITY ACT**

62. By way of New Matter and in defense of the above captioned action, the within Defendants aver that Plaintiffs' claims are limited in whole and/or part by the application of the Pennsylvania Motor Vehicle Financial Responsibility Act.

LIMITED TORT

63. By way of New Matter and in defense of the above captioned action, the within Defendants aver that Plaintiffs' right of recovery herein is limited and/or barred by the selection of the limited tort option on his applicable automobile insurance policy, pursuant to 75 P.S. §1705.

64. By way of New Matter and in defense of the above captioned action, the within Defendants aver that Plaintiffs' claims are limited and/or barred as his injuries are not "serious" or "permanent" as though the terms are defined in the Pennsylvania Motor Vehicle Financial Responsibility Act.

PUNITIVE DAMAGES

65. By way of New Matter and in defense of the above captioned action, the within Defendants aver that Plaintiffs have failed to state a claim for punitive damages including any claims of reckless, gross or wanton conduct on the part of the within Defendants upon which relief can be granted.

WHEREFORE, the within Defendants demands judgment in his favor and against the Plaintiffs together with such other relief as this Honorable Court deems just and proper.

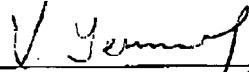
Respectfully Submitted By:

FINE, WYATT & CAREY, P.C.

RICHARD G. FINE, ESQUIRE
JEFFREY E. HAVRAN, ESQUIRE

VERIFICATION

I, Corporate Designee of Nadiya Express, Inc., hereby verify that I have read the Answer and New Matter to Plaintiffs' Complaint, and that insofar as they are based upon information within my own knowledge, they are true and correct; insofar as they are based upon the expertise of counsel, I have relied upon counsel in making this verification. I understand that this verification is made subject to the provisions of 18 PA C. S. 4904 pertaining to unsworn falsification to authorities.



Corporate Designee of Nadiya Express, Inc.

DATE: _____

21586

VERIFICATION

I, Vasyl Yusypyuk, hereby verify that I have read the Answer and New Matter to Plaintiffs' Complaint, and that insofar as they are based upon information within my own knowledge, they are true and correct; insofar as they are based upon the expertise of counsel, I have relied upon counsel in making this verification. I understand that this verification is made subject to the provisions of 18 PA C. S. 4904 pertaining to unsworn falsification to authorities.

V. Yusypyuk
Vasyl Yusypyuk ✓

DATE: _____

21586

VERIFICATION

I, Corporate Designee of W2 Logistic, Inc., hereby verify that I have read the Answer and New Matter to Plaintiffs' Complaint, and that insofar as they are based upon information within my own knowledge, they are true and correct; insofar as they are based upon the expertise of counsel, I have relied upon counsel in making this verification. I understand that this verification is made subject to the provisions of 18 PA C. S. 4904 pertaining to unsworn falsification to authorities.

Rehan Waewali
Corporate Designee of W2 Logistics, Inc.

DATE: 12/31/08

21586

Received Time Jan. 5. 8:24AM

BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

ATTORNEYS FOR DEFENDANTS

**JAMES BROWN and BETSY
BROWN, his wife,**

Plaintiffs,

vs.

**VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC.,**

Defendants.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

CIVIL ACTION – LAW

JURY TRIAL DEMANDED

NO. 2008-396-CD

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of Defendants' Answer and New Matter by mailing same by first class U.S. Mail, postage prepaid at Scranton, Pennsylvania, to the following counsel of record on the 9th day of January, 2008

Daniel Webster Munley, Esquire
Munley, Munley & Cartwright, P.C.
227 Penn Avenue
Scranton, PA 18503

FINE, WYATT & CAREY, P.C.

RICHARD G. FINE, ESQUIRE
JEFFREY E. HAVRAN, ESQUIRE
Counsel for Defendants

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

JAMES BROWN and BETSY BROWN
his wife,

vs.
VASYL YUSYPYUK
NADIYA EXPRESS, INC.
W2 LOGISTICS, INC.,

* NO. 08-396-CD

FILED

JAN 20 2009

01/20/09

William A. Shaw
Prothonotary/Clerk of Courts

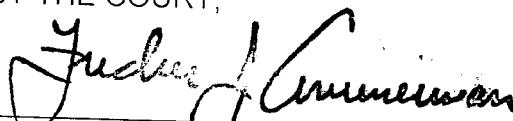
CFmt to Atty HANAN w/ fax

+ Atty MURRAY

ORDER

AND NOW, this 19th day of January, 2009, the Court being in receipt of the Defendants' (faxed) Motion for Leave for Allowance to Conduct Oral Argument Scheduled for January 22, 2009 by Telephone or Alternatively, Motion to Continue Oral argument, it is the ORDER of this Court that said Motion be and is hereby GRANTED and oral argument on Plaintiff's Motions to Compel is rescheduled from January 22, 2009 to the 11th day of February, 2009 at 10:00 Am. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

JAN 20 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1-20-09

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FAILED COPY TO ATTY HARRIAU

FINE, WYATT & CAREY, P.C.
BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

ATTORNEYS FOR DEFENDANTS

**JAMES BROWN and BETSY
BROWN, his wife.**

Plaintiffs.

vs.

**VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC..**

Defendants.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

JURY TRIAL DEMANDED

NO. 2008-396-CD

**DEFENDANTS' MOTION FOR LEAVE FOR ALLOWANCE TO CONDUCT
ORAL ARGUMENT SCHEDULED FOR JANUARY 22, 2009 BY TELEPHONE
OR ALTERNATIVELY, MOTION TO CONTINUE ORAL ARGUMENT**

AND NOW COME, the above-named Defendants, by and through their counsel, Fine, Wyatt & Carey, P.C., and hereby moves this Honorable Court for leave to conduct oral argument on Plaintiff's Motion to Compel more specific answers to discovery by way of telephone, or alternatively, Motion to continue oral argument on same.

1. The present matter arises out of a motor vehicle accident occurring on or about April 4, 2006 on I-80 eastbound in Clearfield, Clearfield County, Pennsylvania.

2. As a result of the accident in question, Plaintiffs alleges personal injuries and proceeded to commence suit against the within Defendants.

3. On or about June 6, 2008, Plaintiffs served their Request for Production of Documents upon the within Defendants, thereafter, Defendants filed various objections to said Request.

4. On or about December 11, 2008, Plaintiffs filed a Motion to Compel responses to the Request for Production of Documents.

5. The within Defendants timely filed an Answer to same.

6. Oral argument on said Motion and Rule Returnable has been scheduled for January 22, 2009 at 2:30 P.M. in Courtroom No. 1 of the Clearfield County Courthouse.

7. The undersigned is attached for a medical malpractice trial in a matter in Luzerne County beginning February 2, 2009.

8. The undersigned is scheduled to meet with a medical trial witness in said medical malpractice trial on the afternoon of January 22, 2009. This is the only available time for this witness to meet with the undersigned prior to trial despite efforts to reschedule same.

9. The undersigned respectfully requests leave of this Honorable Court to conduct said oral argument by way of telephone or alternatively, continue oral argument on same.

10. No prior continuances have been requested regarding this matter.

11. The undersigned has attempted to contact Plaintiffs' counsel, Daniel Munley, Esquire, to seek his concurrence in said Motion, however we have not heard back from him regarding his position on same.

Respectfully submitted,

FINE, WYATT & CAREY, P.C.

Jeffrey E. Haaran
JEFFREY E. HAVRAN, ESQUIRE

RECEIVED
JAN 20 2009
William A. Shaw
Prothonotary/Clerk of Courts

*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO. 1568
DESTINATION ADDRESS 15703439538
PSWD/SUBADDRESS
DESTINATION ID
ST. TIME 01/20 09:36
USAGE T 00' 53
PGS. 2
RESULT OK

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

Clearfield County
Courthouse

Fax

To: ATTY HAVRAN From: William A. Shaw

Fax: 570-343-9538 Date: 1-20-09

Phone: Pages: 2

Re: CC:

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

FINE, WYATT & CAREY, P.C.
BY: *RICHARD G. FINE, ESQUIRE*
Attorney ID No. 08281
BY: *JEFFREY E. HAVRAN, ESQUIRE*
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

ATTORNEYS FOR DEFENDANTS

FILED 1CC AAm
m 11:56 am Havran
JAN 23 2009 (610)

William A. Shaw
Prothonotary/Clerk of Courts

**JAMES BROWN and BETSY
BROWN, his wife.**

Plaintiffs,

vs.

**VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC..**

Defendants.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY
CIVIL ACTION - LAW
JURY TRIAL DEMANDED
NO. 2008-396-CD

**DEFENDANTS' MOTION FOR LEAVE FOR ALLOWANCE TO CONDUCT
ORAL ARGUMENT SCHEDULED FOR JANUARY 22, 2009 BY TELEPHONE
OR ALTERNATIVELY, MOTION TO CONTINUE ORAL ARGUMENT**

AND NOW COME, the above-named Defendants, by and through their counsel, Fine, Wyatt & Carey, P.C., and hereby moves this Honorable Court for leave to conduct oral argument on Plaintiff's Motion to Compel more specific answers to discovery by way of telephone, or alternatively, Motion to continue oral argument on same.

1. The present matter arises out of a motor vehicle accident occurring on or about April 4, 2006 on I-80 eastbound in Clearfield, Clearfield County, Pennsylvania.
2. As a result of the accident in question, Plaintiffs alleges personal injuries and proceeded to commence suit against the within Defendants

3. On or about June 6, 2008, Plaintiffs served their Request for Production of Documents upon the within Defendants, thereafter, Defendants filed various objections to said Request.

4. On or about December 11, 2008, Plaintiffs filed a Motion to Compel responses to the Request for Production of Documents.

5. The within Defendants timely filed an Answer to same.

6. Oral argument on said Motion and Rule Returnable has been scheduled for January 22, 2009 at 2:30 P.M. in Courtroom No. 1 of the Clearfield County Courthouse.

7. The undersigned is attached for a medical malpractice trial in a matter in Luzerne County beginning February 2, 2009.

8. The undersigned is scheduled to meet with a medical trial witness in said medical malpractice trial on the afternoon of January 22, 2009. This is the only available time for this witness to meet with the undersigned prior to trial despite efforts to reschedule same.

9. The undersigned respectfully requests leave of this Honorable Court to conduct said oral argument by way of telephone or alternatively, continue oral argument on same.

10. No prior continuances have been requested regarding this matter.

11. The undersigned has attempted to contact Plaintiffs' counsel, Daniel Munley, Esquire, to seek his concurrence in said Motion, however we have not heard back from him regarding his position on same.

Respectfully submitted,

FINE, WYATT & CAREY, P.C.

JEFFREY E. HAVRAN, ESQUIRE

BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

ATTORNEYS FOR DEFENDANTS

**JAMES BROWN and BETSY
BROWN, his wife,**

Plaintiffs,

vs.

**VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC.,**

Defendants.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY
:
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED
:
:
:
: NO. 2008-396-CD

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of Defendants' Motion for Leave for Allowance to Conduct Oral Argument Scheduled for January 22, 2009 by Telephone or alternatively, Motion to Continue Oral Argument by mailing same by first class U.S. Mail, postage prepaid at Scranton, Pennsylvania, to the following counsel of record on the 19th day of January, 2009:

Daniel Webster Munley, Esquire
Munley, Munley & Cartwright, P.C.
227 Penn Avenue
Scranton, PA 18503

FINE, WYATT & CAREY, P.C.

RICHARD G. FINE, ESQUIRE
JEFFREY E. HAVRAN, ESQUIRE
Counsel for Defendants

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

JAMES BROWN and BETSY BROWN,
his wife,

* No. 08-396-CD

Plaintiffs

*

vs.

*

VASYL YUSYPYUK, NADIYA EXPRESS, INC.,
W2 LOGISTICS, INC.

*

Defendants

*

*

*

*

ORDER

AND NOW, this 13th day of February, 2009, following argument on the Plaintiffs' Motion to Compel Responses to Requests for Production of Documents – Set I, it is the ORDER of this Court as follows:

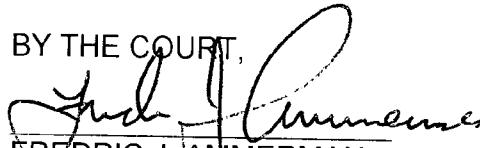
1. The Defense has agreed to supply documents requested in paragraph 1, H-1 through H-17 for a period including the accident date of April 4, 2006 and up to 30 days prior thereto;
2. The Defense has agreed to supply the items described in paragraph 2, F-1 through F-13 for the same 30 day period as set forth above, with the exception of anything which is not discoverable due to attorney client privilege.
3. Plaintiff has withdrawn the request in paragraph 3 of the Request for Production of Documents.
4. The Defense will provide the documents requested in paragraph 4 from the time of the truck driver's employment up to and including the date of the accident;
5. The Defense shall provide the documents requested in paragraph 5 of the Request for Production of Documents including the date of the accident and for the six months immediately preceding the accident;

FILED
02/13/09
FEB 13 2009

William A. Shaw
Prothonotary/Clerk of Courts
2CCAtlys:
Munley/Kilpatrick
Fife/Hayran

6. The Defense shall supply the documents requested in paragraphs 6 that are specifically described. The request for "otherwise described documents" is hereby DENIED.
7. The Defense shall supply the documents requested in paragraph 7.
8. The Defense has agreed to supply the documents requested in paragraph 8, but only from the date of the accident and the 30 days immediately preceding the same.
9. The Defense has agreed to supply the documents requested in paragraphs 9 and 10 of the Plaintiffs' Request for Production of Documents.
10. The Defense shall supply the documents requested in paragraphs 11 and 12 of the Plaintiffs' Request for Production of Documents, but only from the date of the accident and the immediately preceding 30 days.
11. The Defense has agreed to provide the documents requested in paragraph 13.
12. The Plaintiff has withdrawn the Request for Production of Documents set forth in paragraphs 14 and 15, without prejudice to request the same in the future.
13. All documents shall be supplied in no more than 45 days from this date.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

FEB 13 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/13/09

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) Plaintiff(s) Attorney Other

 Defendant(s) Defendant(s) Attorney

 Special Instructions:

Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

FILED NO
M1247AO
FEB 23 2009
S William A. Shaw
Prothonotary/Clerk of Courts
60

JAMES BROWN and BETSY BROWN, : IN THE COURT OF COMMON PLEAS
his wife, : OF CLEARFIELD COUNTY
Plaintiffs :
vs. : CIVIL ACTION - LAW
VASYL YUSYPYUK : JURY TRIAL DEMANDED
NADIYA EXPRESS, INC. :
W2 LOGISTICS, INC. :
Defendants : No.: 2008-396-CD

REPLY TO NEW MATTER

NOW come the Plaintiffs by and through their undersigned counsel and responds to Defendants' New Matter as follows:

47. Plaintiffs' incorporates herein by reference the averments of Plaintiffs' Complaint as thought same were herein set forth at length.

Statute of Limitations

48. Denied as a conclusion of law to which no further responsive pleading is required. If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Contributory/Comparative Negligence

49. Denied as a conclusion of law to which no further responsive pleading is required. If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Assumption of Risk

50. Denied as a conclusion of law to which no further responsive pleading is required. If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Causation

51. Denied as a conclusion of law to which no further responsive pleading is required.

If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Substantial Factor

52. Denied as a conclusion of law to which no further responsive pleading is required.
If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Demurrer

53. Denied as a conclusion to which no further responsive pleading is required. If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Lack of Negligence

54. Denied as a conclusion of law to which no further responsive pleading is required.
If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Mitigation

55. Denied as a conclusion of law to which no further responsive pleading is required.
If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Collateral Estoppel and Res Judicata

56. Denied as a conclusion of law to which no further responsive pleading is required.
If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Doctrines of Waiver, Estoppel and Release

57. Denied as a conclusion of law to which no further responsive pleading is required.
If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Proximate Cause

58. Denied as a conclusion of law to which no further responsive pleading is required.
If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Rule 238 Damages

59. Denied as a conclusion of law to which no further responsive pleading is required.
If a response is required, the allegation is denied and strict proof is demanded at time of trial.

The Collateral Source Rule

60. Denied as a conclusion of law to which no further responsive pleading is required.

If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Reduction of Medical Expenses

61. Denied as a conclusion of law to which no further responsive pleading is required. If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Pennsylvania Motor Vehicle Financial Responsibility Act

62. Denied as a conclusion to which no further responsive pleading is required. If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Limited Tort

63. Denied as a conclusion of law to which no further responsive pleading is required. If a response is required, the allegation is denied and strict proof is demanded at time of trial.

64. Denied as a conclusion of law to which no further responsive pleading is required. If a response is required, the allegation is denied and strict proof is demanded at time of trial.

Punitive Damages

65. Denied as a conclusion of law to which no further responsive pleading is required. If a response is required, the allegation is denied and strict proof is demanded at time of trial.

WHEREFORE, the Plaintiffs request this Honorable Court dismiss Defendants Answer and New Matter and enter judgment in Plaintiffs favor as prayed for in his Complaint.

Munley, Munley & Cartwright, P.C.

BY: _____

DANIEL WEBSTER MUNLEY

I.D. No. 77441

Attorney for Plaintiffs

VERIFICATION

I hereby depose and state that I am attorney for the Plaintiffs in the above-captioned action, that I am authorized to make this Verification on behalf of Plaintiffs, and that the factual statements in the foregoing Reply to New Matter are true and correct to the best of my knowledge, information and belief. I understand that this statement is made subject to the penalties of 18 Pa.C.S. Sec. 4904, relating to unsworn falsification to authorities.



Daniel Webster Munley

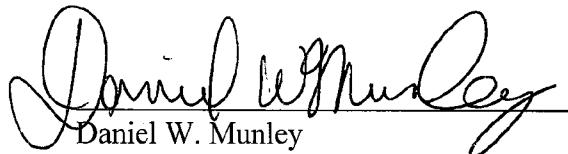
Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

JAMES BROWN and BETSY BROWN, : IN THE COURT OF COMMON PLEAS
his wife, : OF CLEARFIELD COUNTY
Plaintiffs :
vs. : CIVIL ACTION - LAW
: JURY TRIAL DEMANDED
VASYL YUSYPYUK :
NADIYA EXPRESS, INC. :
W2 LOGISTICS, INC. :
Defendants : No.: 2008-396-CD

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of Plaintiffs' Reply to New Matter, was served by First Class Mail on this 20th day of February, 2009, upon the following:

Jeffrey E. Havran, Esq.
Fine, Wyatt & Carey, P.C.
425 Spruce Street
P.O. Box 590
Scranton, PA 18501



Daniel W. Munley

BY: RICHARD G. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

FILED

MAR 27 2009

5
M 12:10/2
William A. Shaw
Prothonotary/Clerk of Courts
I went to Attu
(GW)

ATTORNEY S FOR DEFENDANTS

JAMES BROWN and BETSY
BROWN, his wife,

Plaintiffs,
vs.

VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC.,

Defendants.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY
:
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED
:
:
:
: NO. 2008-396-CD

CERTIFICATE OF SERVICE

I, JEFFREY E. HAVRAN, ESQUIRE, hereby certify that I served a true and correct copy of the foregoing Defendants' First Request for Production of Documents, upon the following counsel of record, by placing the same in the U.S. Mail, postage, prepaid first-class on the 26th day of March, 2009:

Daniel Webster Munley, Esquire
Munley, Munley & Cartwright, P.C.
The Forum Plaza
227 Penn Avenue
Scranton, PA 18503

FINE, WYATT & CAREY, P.C.

JEFFREY E. HAVRAN, ESQUIRE
Counsel for Defendants

Munley, Munley & Cartwright, PC
The Forum Plaza - 227 Penn Avenue
Scranton, PA 18503
570-346-7401

JAMES BROWN and BETSY BROWN, his wife,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Plaintiffs	:	
vs.	:	CIVIL ACTION - LAW JURY TRIAL DEMANDED
VASYL YUSYPYUK NADIYA EXPRESS, INC. W2 LOGISTICS, INC.	:	
Defendants	:	No.: 2008-396-CD

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of Notice of Deposition of Vasyl Yusypyuk, a representative of Nadiya Express, Inc., a representative of W2 Logistics, Inc. was served by First Class Mail on the 14th day of January, 2010, upon the following:

Jeffrey E. Havran, Esq.
Fine, Wyatt & Carey
425 Spruce Street
P.O. Box 590
Scranton, PA 18501



Daniel Webster Munley

FILED 1cc ^{cc A.W. Munley}
M 11:50 am JAN 19 2010
S William A. Shaw
Prothonotary/Clerk of Courts

BY: RICHARD C. FINE, ESQUIRE
Attorney ID No. 08281
BY: JEFFREY E. HAVRAN, ESQUIRE
Attorney ID No. 78840
425 Spruce St.
PO Box 590
Scranton PA 18501
(570) 343-1197

ATTORNEYS FOR DEFENDANTS

FILED 2010 MAR 29 1:45 PM
MUNLEY

William A. Shaw
Prothonotary/Clerk of Courts

**JAMES BROWN and BETSY
BROWN, his wife.**

Plaintiffs,

vs.

**VASYL YUSYPYUK, NADIYA
EXPRESS, INC. and
W2 LOGISTICS, INC.,**

Defendants.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

JURY TRIAL DEMANDED

NO. 2008-396-CD

PRAECIPE FOR DISCONTINUANCE

TO: PROTHONOTARY CLEARFIELD COUNTY:

Kindly mark the above-captioned action as settled, ended and discontinued with prejudice.

MUNLEY, MUNLEY & CARTWRIGHT, P.C.
Attorneys for Plaintiffs

BY.

DANIEL W. MUNLEY, ESQUIRE

Dated: 3/24/10

ENTRY OF DISCONTINUANCE

The above-captioned action is hereby marked settled, discontinued and ended, with prejudice.

BY: William Shatner
Prothonotary