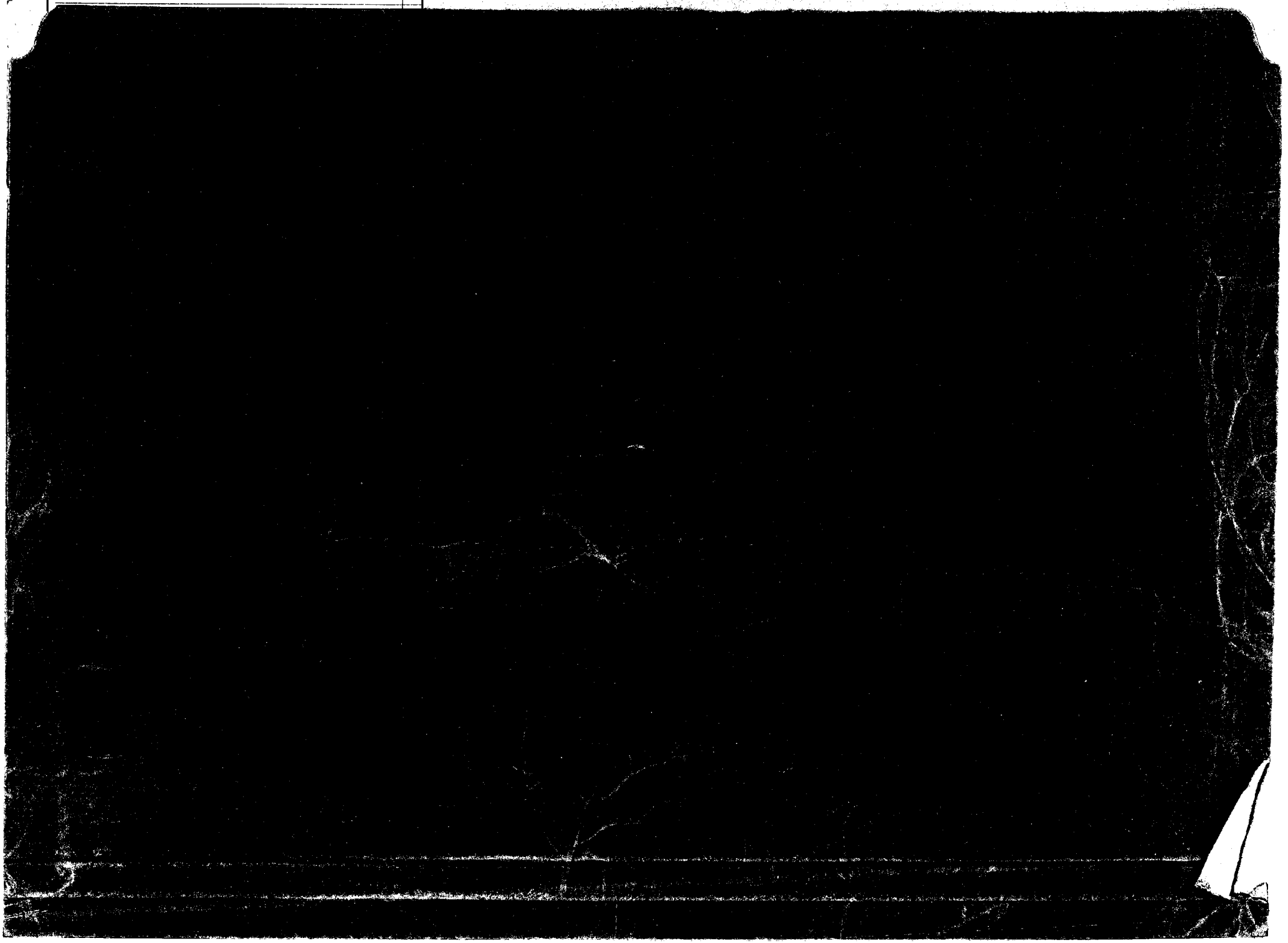
08-2452-CD
James Clark al vs Lyle Thompson et al



IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants

No. 2008-2452-CD

JURY TRIAL DEMANDED

$ FILED pd $95.00 Atty
3:10:50cm 2cc Atty
DEC 26 2008 2cc Shff
William A. Shaw
Prothonotary/Clerk of Courts

COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiff s

Jonathan B. Mack, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

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COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants

No.

JURY TRIAL DEMANDED

NOTICE TO PLEAD

TO: LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS, DEFENDANTS

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. 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 REDUCED FEE OR NO FEE.

David S. Meholick, Court Administrator
CLEARFIELD County Courthouse
230 E. Market Street
CLEARFIELD, PA 16830
(814) 765-2641 Ext. 5982

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
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Sup. Ct. ID 38970

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t/d/b/a VALLEY EXCAVATING AND
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STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants

No.

JURY TRIAL DEMANDED

COMPLAINT

AND NOW COME the Plaintiffs, James E. Clark, Jr., and Brenda Coble individually, and as Administrators of The Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by and through their attorneys, Jonathan B. Mack, Esquire, and Marcus and Mack, P.C., and file the following Complaint:

1. Plaintiffs are adult individuals who are the son and daughter of James Edward Clark, a/k/a James Edward Clark, Sr.,deceased, and are the Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by grant of Letters from the Clearfield County Register of Wills on July 20, 2007. Plaintiff James E. Clark, Jr., resides in Armagh,

Indiana County, Pennsylvania. Plaintiff Brenda Coble resides in Woodbridge, Prince William County, Virginia.

2. Defendant Lyle Thompson in an adult individual believed to reside at 11057 Creek Road, Fannettsburg, Franklin County, Pennsylvania.

3. It is believed that Defendant Lyle Thompson, t/d/b/a Valley Excavating and Hauling, conducts business with a business address of 11057 Creek Road, Fannettsburg, Franklin County, Pennsylvania.

4. Defendant New Enterprise Stone & Lime Company, Inc., is a Delaware corporation with a business address of PO Box 77, New Enterprise, Bedford County, Pennsylvania. Defendant New Enterprise Stone & Lime Company, Inc. regularly conducts business in the Commonwealth of Pennsylvania.

5. It is believed that Defendant New Enterprise Stone & Lime Company, Inc., trades and does business as New Enterprise Stone and Lime Company, with a business address of PO Box 77, New Enterprise, Bedford County, Pennsylvania. Defendant New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone & Lime Company regularly conducts business in the Commonwealth of Pennsylvania.

6. Defendant Preco Electronics, Inc., is a corporation with a business address of 415 North Maple Grove Road, Boise, Ada County, Idaho. It is believed and averred that Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, regularly conducts business in the Commonwealth of Pennsylvania.

7. This lawsuit arises out of an incident that occurred on or about July 11, 2007. Plaintiffs' decedent was walking east in the middle lane of State Route 8012, in Bradford Township, Clearfield County, Pennsylvania. At the same time and place, Defendant Lyle

Thompson, was operating a tri-axle dump truck owned by Lyle Thompson and/or by Lyle Thompson, t/d/b/a Valley Excavating and Hauling, which was facing west, backing up eastbound on State Route 8012, in Bradford Township, Clearfield County, Pennsylvania (hereinafter referred to as the "Accident Site"). Suddenly and without warning, Defendant Thompson struck Plaintiffs' decedent with the rear of the dump truck he was operating and continued to back the dump truck over Plaintiffs' decedent. Plaintiffs' decedent died on July 11, 2007, as a result of massive head trauma with multiple skull fractures and traumatic loss of brain tissue.

8. It is believed that Defendant New Enterprise Stone & Lime Company, Inc., and/or New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone and Lime Company, was the general contractor at the Accident Site.

9. It is believed and is averred that the truck which Defendant Thompson was operating was equipped with a backup warning/safety device that was manufactured, designed, tested, inspected, produced, marketed and/or sold by Defendant Preco Electronics, Inc.

10. Plaintiffs, as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, bring this action on their own behalf and on behalf of all persons entitled to recover damages for the wrongful death of James Edward Clark, a/k/a James Edward Clark, Sr., pursuant to 42 Pa. C.S.A. §8301. Plaintiffs also bring this action to recover damages on behalf of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., pursuant to 42 Pa. C.S.A. §8302.

11. Persons entitled to recover damages for Plaintiffs' decedent's wrongful death and their relationship to the decedent include:

a. Brenda Coble (daughter), 1512 Forest Lane, Woodbridge, Prince William County, Virginia, 22191; and

b. James E. Clark, Jr., (son), PO Box 187, 115 Mountain View Drive, Armagh, Indiana County, Pennsylvania, 15920.

12. During his lifetime, Plaintiffs' decedent did not commence any action to recover damages for the injuries that caused his death, and no other action has been filed to recover damages for the wrongful death of Plaintiffs' decedent.

13. The right to bring this action is conferred upon the Plaintiffs by the following laws under which this action is brought:

a. The Act of July 9, 1976, P.L. 586, No. 142; 42 Pa. C.S.A. §8301;

b. The Act of 1972, Act No. 164 as amended, 20 Pa. C.S.A. §3371; and,

c. Any other Wrongful Death Acts, Fiduciary Acts, Survival Acts, Pennsylvania Law and Pennsylvania Rules of Civil Procedure which are applicable.

14. No other action for wrongful death of Plaintiffs' decedent has been commenced against the within-named Defendants and, in particular, no action for wrongful death was commenced by the personal representatives of the Plaintiffs' decedent within six (6) months of his death.

15. Furthermore, on behalf of themselves, the surviving children of the deceased, Plaintiffs claim all appropriate damages under the Wrongful Death Act including, but not limited to, the following:

a. Loss of economic contribution;

b. Loss of household services;

c. Loss of society, companionship and consortium;

d. Medical expenses;

e. Funeral expenses; and,

f. Administration expenses.

16. Plaintiffs are covered by the Full Tort option under the Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1705.

COUNT I - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
LYLE THOMPSON

17. Each of the above paragraphs are incorporated herein by reference.

18. The aforesaid accident was caused and/or contributed to by the negligence of Defendant, Lyle Thompson, in general and in the following particulars:

a. In operating the dump truck in a dangerous and/or reckless manner under the circumstances;

b. In failing to have the dump truck under proper control;

c. In failing to pay close attention to what was behind him while driving the subject dump truck in reverse;

d. In failing to stop before striking Plaintiffs' decedent;

e. In failing to stop after striking Plaintiffs' decedent to ascertain what he had hit instead of continuing on in reverse;

f. In continuing to operate the dump truck in the manner described above when he saw or in the exercise of reasonable care should have seen that further operation in that direction would result in an accident;

g. In failing to pay proper attention and failing to maintain an appropriate lookout of the road and surrounding traffic conditions while driving in reverse;

h. In failing to operate the brakes in such a manner so that the vehicle could be stopped in time to avoid the accident;

i. In failing to avoid hitting Plaintiffs' decedent when he saw or should have seen that Plaintiffs' decedent was in full view to the rear of the dump truck;

j. In failing to use and/or properly use his side and rearview mirrors while driving the dump truck in reverse;

k. In failing to take proper note of, and precautions for, the configuration of the roadway and/or Accident Site;

l. In failing to take measures to avoid the crash or lessen its severity;

m. In failing to have appropriate and adequate back-up warning/safety device(s) on the subject dump truck;

n. In failing to ensure the back-up warning/safety device(s) on the subject dump truck were in proper operating condition;

o. In violating the various statutes and municipal ordinances pertaining to the operation of motor vehicles on public thoroughfares under the circumstances and in particular, the Accident Site;

p. In driving too fast for conditions;

q. In failing to ascertain clearance before backing;

r. In operating the vehicle in reverse when said maneuver could not be safely accomplished;

s. In striking James Edward Clark;

t. In operating a vehicle that had inappropriate/ineffective/defective/ dangerous/malfunctioning warning/safety devices;

u. In failing to warn James Edward Clark of the presence of his vehicle and/or his intention to operate said vehicle in reverse;

v. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern; and

w. In being otherwise negligent, careless and/or reckless;

19. The subject incident and all injuries, losses, and/or damages Plaintiffs and Plaintiffs' decedent sustained as a result thereof were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Lyle Thompson described above.

20. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Lyle Thompson as outlined above and were not caused or contributed to by Plaintiffs' decedent.

21. Defendant Lyle Thompson's negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

22. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble, individually, demand judgment against the Defendant Lyle Thompson in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT II - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
LYLE THOMPSON, t/d/b/a
VALLEY EXCAVATING AND HAULING

23. Each of the above paragraphs are incorporated herein by reference.

24. At the time and place of the accident described in this Complaint, Defendant Lyle Thompson was operating the dump truck as an agent, servant, representative, employee and/or assign of Defendant Valley Excavating and Hauling (hereinafter referred to as "Defendant Valley") and, at all times relevant hereto, was acting within the scope and course of such employment and was working in furtherance of Defendant Valley's interests.

25. At all times relevant hereto, Defendant Valley was responsible for the actions/inactions of Defendant Lyle Thompson as a matter of vicarious liability and/or respondeat superior.

26. At all times relevant hereto, Defendant Valley entrusted, permitted and/or allowed Defendant Lyle Thompson to operate the subject dump truck.

27. The aforesaid accident and resulting injuries and damages were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Valley, in general and in the following particulars:

a. In failing to appropriately monitor, supervise, train and/or instruct its officers/employees, agents on how to safely operate a dump truck;

b. In hiring, training and/or retaining employees, servants, representatives, agents and/or assigns who were unable and/or unwilling to safely operate dump trucks;

c. In being otherwise negligent, careless and/or reckless;

d. In being responsible for the negligence, carelessness and/or recklessness of Defendant Lyle Thompson as set forth above;

e. In being responsible for the negligence, carelessness and/or recklessness of its officers/employees/agents as a matter of vicarious liability and/or respondeat superior;

f. In negligently entrusting Defendant Lyle Thompson with the dump truck;

g. In entrusting vehicles to its employees and/or retained individuals without undertaking adequate measures to ensure that said individuals were capable of operating said vehicle in a safe and lawful manner;

h. In entrusting Defendant Lyle Thompson with the vehicle when it knew or should have known that he was an incompetent or unsafe driver;

i. In failing to properly investigate Defendant Lyle Thompson's driving record before hiring him;

j. In failing to properly instruct, train and/or supervise their employees and/or retained individuals in order to ensure the safe and proper operation, inspection, maintenance and/or repair of their vehicles;

k. In failing to hire, employ, train, supervise, instruct, retain and/or contract personnel sufficiently qualified and competent to accomplish proper operation, inspection, maintenance and/or repair of their vehicles;

l. In negligently hiring, retaining, and/or training individuals who were unable or unwilling to properly maintain, inspect, repair and/or operate vehicles in a reasonable and safe manner;

m. In allowing, mandating and/or permitting the operation of its vehicle such as to create a dangerous situation;

n. In allowing and/or permitting the operation of its vehicle in such a reckless, careless and/or negligent manner so as to cause or allow the vehicle to run into, strike, collide and run over Plaintiffs' decedent;

o. In failing to adequately warn, instruct, notify and protect others, especially Plaintiffs' decedent, of the dangers associated with its vehicles and/or drivers;

p. In being vicariously liable for the negligence of agents, assigns and/or employees who pose risks or otherwise present danger to persons such as Plaintiffs' decedent;

q. In failing to maintain the subject vehicle in a proper manner and in the proper mechanical condition;

r. In failing to inspect the vehicle properly or inspecting so carelessly so as to not have determined the existence of any mechanical defects or dangerous conditions;

s. In failing to exercise the degree of reasonable care and acting without appropriate due regard for the rights and safety of Plaintiffs' decedent as was required under the circumstances;

t. In violating the laws of the Commonwealth of Pennsylvania and/or the provisions of the Pennsylvania Motor Vehicle Code regulating the operation of motor vehicles;

u. In failing to have appropriate and adequate back-up warning/safety device(s) on the subject dump truck;

v. In failing to ensure the back-up warning/safety device(s) on the subject dump truck were in proper operating condition;

w. In failing to enforce compliance with laws and regulations governing commercial motor vehicles and drivers, including, but not limited to, log book and hour requirements;

x. In allowing the operation of the subject vehicle when the back-up warning/safety device(s) on said vehicle were malfunctioning, inappropriate and/or ineffective;

y. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern; and

z. In being otherwise negligent, careless and/or reckless.

28. The subject incident and all injuries, losses, and/or damages Plaintiffs and Plaintiffs' decedent sustained as a result thereof were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Lyle Thompson t/d/b/a Valley Excavating and Hauling described above.

29. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Lyle Thompson t/d/b/a Valley Excavating and Hauling described as outlined above and were not caused or contributed to by Plaintiffs' decedent.

30. Defendant Lyle Thompson t/d/b/a Valley Excavating and Hauling's negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

31. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble, individually, demand judgment against the Defendant Lyle Thompson t/d/b/a Valley Excavating and Hauling, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT III - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
NEW ENTERPRISE STONE & LIME COMPANY, INC.

32. Each of the above paragraphs are incorporated herein by reference.

33. At the time and place of the accident described in this Complaint, Defendant New Enterprise Stone & Lime Company, Inc., (hereinafter referred to as "New Enterprise, Inc.") was the general contractor and was performing construction, maintenance and/or resurfacing work on State Route 8012 and more specifically at the Accident Site and/or was responsible for the Accident Site and surrounding areas.

34. At all times relevant hereto, Defendant New Enterprise, Inc. operated, controlled, managed, oversaw and/or was in charge of the Accident Site and surrounding areas.

35. At the above mentioned time and place, there existed a dangerous condition at the Accident Site.

36. This aforesaid dangerous condition consisted of Defendant New Enterprise, Inc.'s non-utilization of spotters and/or other precautionary measures to protect workers at the Accident Site, as well as permitting the subject dump truck at the Accident Site to be present and/or in use when it was equipped with improper, malfunctioning, defective, ineffective, inappropriate and/or inadequate back-up warning/safety device(s) or alarms.

37. At the above mentioned time and place, Plaintiffs' decedent was carefully and lawfully working at or around the Accident Site when he came into contact with the aforesaid dangerous condition causing him to be struck and run over by the subject dump truck, causing injuries resulting in his death on July 11, 2007.

38. At the aforementioned time and place, and due to the negligence, carelessness, and/or recklessness of Defendant New Enterprise, Inc. in causing, creating and/or failing to correct/ameliorate the aforesaid dangerous condition, Plaintiffs' decedent came into contact with said condition and was thereby struck and run over, sustaining the injuries and damages set forth below, resulting in his death.

39. Defendant New Enterprise, Inc. caused, created and/or contributed to this aforementioned dangerous condition.

40. At the above mentioned time and place, Defendant New Enterprise, Inc. knew, had knowledge and/or should have known of the existence of the subject dangerous condition.

41. The fatal injuries and damages set forth below were caused and/or contributed to by the negligence, carelessness, and/or recklessness of Defendant New Enterprise, Inc. in any or all of the following respects:

a. In causing and/or permitting the dangerous, hazardous, and unsafe condition to exist and remain on or at the Accident Site;

b. In failing to properly fix, repair, blockade, eliminate, and/or otherwise ameliorate the subject dangerous condition;

c. In failing to keep the Accident Site in a safe condition for persons lawfully on the same;

d. In permitting the dangerous condition to exist and remain on or at the Accident Site when Defendant New Enterprise, Inc. knew, or should have known of its existence and the danger involved;

e. In permitting persons, and Plaintiffs' decedent in particular, to traverse and work at or near the Accident Site when Defendant New Enterprise, Inc. knew, or should have known, that it was dangerous to do so and involved an unreasonable risk of harm to persons so doing;

f. In failing to notify, post signs, or otherwise warn Plaintiffs' decedent of the dangerous condition so that the hazard could be avoided;

g. In maintaining the Subject Premises improperly or in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using or working at or upon the Accident Site, specifically Plaintiffs' decedent, with a safe working environment;

i. In failing to inspect the Accident Site so as to discover the dangerous condition, or inspecting so carelessly or improperly so as not to have discovered the condition;

j. In failing to fix, repair, eliminate, or otherwise properly redress the condition of the Accident Site/work site to ensure that it would not remain unnecessarily dangerous;

k. In causing, creating, contributing to, and/or exacerbating a dangerous condition by allowing the aforementioned dangerous condition to exist and remain unchecked on or at the Accident Site and/or surrounding work site;

l. In failing to take appropriate action so that the incident would be avoided;

m. In failing to exercise that degree of reasonable care and due regard for the rights and safety of Plaintiffs' decedent as was required under the circumstances;

n. In failing to utilize spotters at and/or around the Accident Site to ensure the safety of the workers, in particular, Plaintiffs' decedent;

o. In allowing the dump truck to be used at the Accident Site that did not possess an adequate, appropriate and/or properly functioning back-up warning/safety device;

p. In being otherwise negligent, careless, and reckless;

q. In failing to properly maintain the Accident Site;

r. In failing to provide warnings to persons lawfully at, on or near the Accident Site;

s. In being responsible for the actions, inactions, omissions and/or omissions of Defendants Lyle Thompson and Lyle Thompson, d/b/a Valley Excavating and Hauling as a matter of vicarious liability and/or respondeat superior;

t. In failing to properly monitor, supervise and/or oversee the work being done at the Subject Premises;

u. In failing to take adequate measures to ensure the safety at the Accident Site and/or work site;

v. In hiring and/or contracting with an entity that was unable and/or unwilling to perform the work in a safe and/or reasonable manner;

w. In failing to have appropriate safety measures in place at the subject Accident Site and/or work site;

x. In failing to comply with Occupational Safety & Health Administration guidelines and/or standards;

y. In violating 29 C.F.R. §1926;

z. In violating 29 C.F.R. §1926.601(b)(4);

aa. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern; and

bb. In being otherwise negligent, careless and/or reckless.

42. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant New Enterprise, Inc. described as outlined above and were not caused or contributed to by Plaintiffs' decedent.

43. Defendant New Enterprises, Inc.'s negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

44. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr. and Brenda Coble, individually, demand judgment against the Defendant New Enterprise Stone & Lime Company, Inc., in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT IV - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a
NEW ENTERPRISE STONE AND LIME COMPANY

45. Each of the above paragraphs are incorporated herein by reference.

46. At the time and place of the accident described in this Complaint, Defendant New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone and Lime Company (hereinafter referred to as " New Enterprise") was the general contractor and was performing construction, maintenance and/or resurfacing work on State Route 8012 and more specifically at the Accident Site and/or was responsible for the Accident Site and surrounding areas.

47. At all times relevant hereto, Defendant New Enterprise operated, controlled, managed, oversaw and/or was in charge of the Accident Site and surrounding areas.

48. At the above mentioned time and place, there existed a dangerous condition at the Accident Site.

49. This aforesaid dangerous condition consisted of Defendant New Enterprise non-utilization of spotters and/or other precautionary measures to protect workers at the Accident Site, as well as permitting the subject dump truck at the Accident Site to be present and/or in use when it was equipped with improper, malfunctioning, defective, ineffective, inappropriate and/or inadequate back-up warning/safety device(s) or alarms.

50. At the above mentioned time and place, Plaintiffs' decedent was carefully and lawfully working at or around the Accident Site when he came into contact with the aforesaid dangerous condition causing him to be struck and run over by the subject dump truck, causing injuries resulting in his death on July 11, 2007.

51. At the aforementioned time and place, and due to the negligence, carelessness, and/or recklessness of Defendant New Enterprise in causing, creating and/or failing to correct/ameliorate the aforesaid dangerous condition, Plaintiffs' decedent came into contact with said condition and was thereby struck and run over, sustaining the injuries and damages set forth below, resulting in his death.

52. Defendant New Enterprise caused, created and/or contributed to this aforementioned dangerous condition.

53. At the above mentioned time and place, Defendant New Enterprise knew, had knowledge and/or should have known of the existence of the subject dangerous condition.

54. The fatal injuries and damages set forth below were caused and/or contributed to by the negligence, carelessness, and/or recklessness of Defendant New Enterprise in any or all of the following respects:

a. In causing and/or permitting the dangerous, hazardous, and unsafe condition to exist and remain on or at the Accident Site;

b. In failing to properly fix, repair, blockade, eliminate, and/or otherwise ameliorate the subject dangerous condition;

c. In failing to keep the Accident Site in a safe condition for persons lawfully on the same;

d. In permitting the dangerous condition to exist and remain on or at the Accident Site when Defendant New Enterprise knew, or should have known of its existence and the danger involved;

e. In permitting persons, and Plaintiffs' decedent in particular, to traverse and work at or near the Accident Site when Defendant New Enterprise knew, or should have known, that it was dangerous to do so and involved an unreasonable risk of harm to persons so doing;

f. In failing to notify, post signs, or otherwise warn Plaintiffs' decedent of the dangerous condition so that the hazard could be avoided;

g. In maintaining the Subject Premises improperly or in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using or working at or upon the Accident Site, specifically Plaintiffs' decedent, with a safe working environment;

i. In failing to inspect the Accident Site so as to discover the dangerous condition, or inspecting so carelessly or improperly so as not to have discovered the condition;

j. In failing to fix, repair, eliminate, or otherwise properly redress the condition of the Accident Site/work site to ensure that it would not remain unnecessarily dangerous;

k. In causing, creating, contributing to, and/or exacerbating a dangerous condition by allowing the aforementioned dangerous condition to exist and remain unchecked on or at the Accident Site and/or surrounding work site;

l. In failing to take appropriate action so that the incident would be avoided;

m. In failing to exercise that degree of reasonable care and due regard for the rights and safety of Plaintiffs' decedent as was required under the circumstances;

n. In failing to utilize spotters at and/or around the Accident Site to ensure the safety of the workers, in particular, Plaintiffs' decedent;

o. In allowing the dump truck to be used at the Accident Site that did not possess an adequate, appropriate and/or properly functioning back-up warning/safety device;

p. In being otherwise negligent, careless, and reckless;

q. In failing to properly maintain the Accident Site;

r. In failing to provide warnings to persons lawfully at, on or near the Accident Site;

s. In being responsible for the actions, inactions, omissions and/or omissions of Defendants Lyle Thompson and/or Lyle Thompson, d/b/a Valley Excavating and Hauling as a matter of vicarious liability and/or respondeat superior;

t. In failing to properly monitor, supervise and/or oversee the work being done at the Subject Premises;

u. In failing to take adequate measures to ensure the safety at the Accident Site and/or work site;

v. In hiring and/or contracting with an entity that was unable and/or unwilling to perform the work in a safe and/or reasonable manner;

w. In failing to have appropriate safety measures in place at the subject Accident Site and/or work site;

x. In failing to comply with Occupational Safety & Health Administration guidelines and/or standards;

y. In violating 29 C.F.R. §1926;

z. In violating 29 C.F.R. §1926.501(b)(4);

aa. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern; and

bb. In being otherwise negligent, careless and/or reckless.

55. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant New Enterprise described as outlined above and were not caused or contributed to by Plaintiffs' decedent.

56. Defendant New Enterprises's negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

57. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble individually, demand judgment against the Defendant New Enterprise Stone & Lime Company, Inc., d/b/a New Enterprise Stone & Lime Company, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED

COUNT V - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS

58. Each of the above paragraphs are incorporated herein by reference.

59. On or before July 11, 2007, Defendant Preco Electronics, Inc., t/d/b/d Preco Electronics, (hereinafter referred to as "Defendant Preco"), was in the business of designing, testing, manufacturing, distributing, marketing and/or selling back-up warning/safety devices, including the device(s) which were installed on the subject vehicle involved in the instant matter.

60. Defendant Preco owed Plaintiff s' decedent a duty of care in the design, testing, manufacture, distribution, marketing and/or selling of the aforesaid subject back-up warning/safety device(s) to thereby avoid unreasonable risk of injury to foreseeable users or others who may come into contact/interaction with such products and/or who were to be protected by said device(s).

61. At the time of the incident giving rise to this litigation the back-up warning/safety device(s) installed on the subject vehicle were defective, malfunctioning, inappropriate, improperly working and/or inaudible in the work environment, and thus constituted a dangerous condition.

62. Defendant Preco owed a duty to adequately warn and instruct all owners, foreseeable users and/or the public, of all defects, either known by Defendant Preco herein or that should have been known by Defendant Preco relative to the back-up warning/safety device(s).

63. At all times relevant hereto, Defendant Preco had an obligation to refrain from placing products that were in a defective condition or were unreasonably dangerous in the stream of commerce.

64. Defendant Preco designed, manufactured, distributed, and/or sold the subject back-up warning/safety device(s) thereby placing it/them into the stream of commerce.

65. Defendant Preco knew and expected that said subject back-up warning/safety device(s) would be sold to, used and operated in environments such as the subject Accident Site/work site.

66. Defendant Preco had a duty to remedy and/or ameliorate all defects, either known by Defendant Preco herein or that should have been known by Defendant Preco relative to the back-up warning/safety device(s).

67. At all times relevant hereto, Defendant Preco had a duty to instruct and warn foreseeable users and the public in general of any such defective conditions or unreasonable dangers associated with its products.

68. At all times relevant hereto, Defendant Preco acted by and through its servants, agents, employees and assigns, who acted or failed to act within the scope of their authority in the course of Defendant Preco's business.

69. The subject incident and all injuries and damages Plaintiffs James E. Clark, Jr., and Brenda Coble and Plaintiffs' decedent suffered as a result thereof were caused and/or contributed to by and were the direct and proximate result of the negligence, carelessness and/or recklessness of Defendant Preco, by and through its officers, agents, servants, assigns, and/or employees acting within the scope of their agency, authority, servitude and/or employment, generally and in the following particulars:

a. In designing the backup warning/safety device(s) in such a deficient manner as to permit the subject device(s) and/or components thereof to be defective;

b. In failing to properly design, construct and/or install the backup warning/safety device(s) and/or their component parts;

c. In constructing a backup warning/safety device that Defendant Preco knew or should have known would be defective and/or would malfunction upon foreseeable use;

d. In failing to conduct adequate testing to determine the presence of a defect or defects in design of the backup warning/safety device;

e. In failing to conduct adequate inspections to determine the presence of a defect or defects in design of the back-up warning/safety device;

f. In failing to conduct adequate testing to determine the presence of a defect or defects in the manufacture of the backup warning/safety device that was in use at the aforesaid time and place;

g. In failing to conduct adequate testing to determine/discover the unreasonable risk of injury due to and associated with the improper functioning or inadequacy associated with, the backup warning/safety device;

h. In failing to conduct testing to determine/discover the unreasonable risk of injury due to and associated with the inadequacy of, and/or malfunction of the backup warning/safety device;

i. In failing to adequately warn of the likelihood of the unreasonably dangerous condition of backup warning/safety device;

j. In failing to adequately warn Plaintiff's decedent that Defendant Preco had not properly and adequately designed, manufactured and/or installed the backup warning/safety device;

k. In failing to adequately warn and instruct Plaintiff's decedent of the possibility and consequences of the defects, malfunction, and/or inaudible tone of the subject backup warning/safety device;

l. In failing to design and provide a backup warning/safety device that would be capable of being effective, safe and practical;

m. In constructing or manufacturing the backup warning/safety device with materials which Defendant Preco knew, or should have known, were likely to cause malfunction and/or function improperly and/or ineffectively;

n. In failing to remedy the subject backup warning/safety device which Defendant Preco knew or should have known was likely to have defects and/or malfunction upon foreseeable use;

o. In designing the backup warning/safety device in such a deficient manner as to permit the backup warning/safety device and/or components thereof to malfunction and/or to be defective;

p. In failing to properly design, construct and/or install the backup warning/safety device;

q. In constructing a backup warning/safety device that Defendant Preco knew or should have known would be defective and/or would malfunction upon foreseeable use;

r. In failing to conduct adequate testing to determine the likelihood of injury/defect/ineffectiveness in the use of the backup warning/safety device;

s. In failing to conduct adequate testing to determine the presence of a defect or defects of the backup warning/safety device;

t. In failing to conduct adequate testing to determine the presence of a defect or defects in the manufacture of the backup warning/safety device;

u. In failing to conduct adequate testing to determine/discover the unreasonable risk of injury due to and associated with the improper functioning of the backup warning/safety device;

v. In failing to conduct adequate testing to determine/discover the unreasonable risk due to and associated with the absence of a properly functioning of the backup warning/safety device;

w. In failing to adequately warn Plaintiffs' decedent of the likelihood of unreasonably dangerous malfunction of the backup warning/safety device;

x. In failing to adequately warn Plaintiffs' decedent that Defendant Preco had not properly and adequately designed, manufactured and/or installed the backup warning/safety device;

y. In failing to remedy the backup warning/safety device which Defendant Preco knew or should have known was likely to have defects and/or malfunction upon foreseeable use;

z. In designing the subject backup warning/safety device in such a deficient manner as to permit the device(s) to malfunction upon foreseeable use;

aa. In failing to conduct adequate testing to determine the likelihood of injury in the event of the above mentioned circumstances, or circumstance(s) similar thereto, surrounding the subject incident;

bb. In failing to use that degree of reasonable care, due regard and caution that the circumstances then and there required;

cc. In designing, testing, manufacturing, distributing, marketing and/or selling a back-up safety/warning device which was not loud enough to be effective in a typical construction zone;

dd. In designing, testing, manufacturing, distributing, marketing and/or selling a back-up safety/warning device which was not loud enough to be put to foreseeable use in a typical construction zone;

ee. In designing, testing, manufacturing, distributing, marketing and/or selling a back-up safety/warning device which was not sufficient for its intended purpose(s); and

ff. In failing to provide adequate guidance and/or instruction for the installation of the back-up warning/safety device.

70. At all times relevant hereto, Plaintiffs' decedent conducted himself in a reasonably prudent and cautious manner.

71. The subject incident and resulting injuries were caused and/or contributed to and were the proximate and result of the negligence of Defendant Preco as outlined above and were not caused or contributed to by Plaintiffs' decedent.

72. The subject incident and all injuries, losses, and/or damages Plaintiffs and Plaintiffs' decedent sustained as a result thereof were caused and or contributed to by the negligence, carelessness and/or recklessness of Defendant Preco described above.

73. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Preco described as outlined above and were not caused or contributed to by Plaintiffs' decedent.

74. Defendant Preco's negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

75. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs Brenda Coble and James E. Clark, Jr., individually, demand judgment against the Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT VI -STRICT LIABILITY - WRONGFUL DEATH
BRENDA COBLE AND JAMES E. CLARK, JR., INDIVIDUALLY, PLAINTIFFS
VS.
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS

76. Each of the above paragraphs are incorporated herein by reference.

77. The extremely hazardous nature of a defective and/or malfunctioning backup safety/warning device and Defendant Lyle Thompson and Plaintiffs' decedent's reliance on such safety features rendered the same an abnormally dangerous product.

78. The severe injuries an death of Plaintiffs' decedent as heretofore previously set forth more fully, were proximately and directly caused by the abnormally dangerous product which was manufactured, designed, installed, tested, distributed, marketed and/or sold by Defendant Preco.

79. Defendant Preco placed the subject backup warning/safety device in its and/or with its above-described defective and/or malfunctioning components into the stream of commerce.

80. Defendant Preco, through its acts, failure to act, commissions and/or omissions as previously set forth, caused the backup warning/safety device to be in a defective and/or malfunctioning condition, and thus unreasonably dangerous, and therefore Defendant Preco is strictly liable for all resulting injuries to Plaintiffs' decedent.

81. As a direct consequence and result of the conduct of Defendant Preco as aforesaid, Plaintiffs have sustained the injuries and damages previously set forth heretofore more fully.

WHEREFORE, Plaintiffs Brenda Coble and James E. Clark, Jr., individually, demand judgment against the Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT VII - BREACH OF WARRANTY - WRONGFUL DEATH
BRENDA COBLE AND JAMES E. CLARK, JR., INDIVIDUALLY, PLAINTIFFS
VS.
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS

82. Each of the above paragraphs are incorporated herein by reference.

83. Defendant Preco warranted that the subject backup warning/safety device and its component parts were merchantable and fit for the purpose for which they were intended.

84. It is believed and averred that the product was used in reliance on the warranties by Defendant Preco.

85. The injuries and damages sustained by Plaintiffs were proximately caused by Defendant Preco's breach of express and implied warranties as follows:

a. In breaching express warranties that the subject backup warning/safety device would be free from defects in Defendant Preco's materials and workmanship;

b. In breaching express warranties that the backup warning/safety device would function properly during foreseeable use;

c. In designing, manufacturing, distributing, installing, and/or selling a backup warning/safety device that was not fit for the particular purpose for which it was sold;

d. In designing, manufacturing, distributing, installing, and/or selling a backup warning/safety device that failed to sufficiently warn individuals of the presence and/or operation of the vehicle upon which said device(s) was/were installed; and

e. In designing, manufacturing, distributing, installing, and/or selling a backup warning/safety device that was not merchantable.

86. The warranties were breached by Defendant Preco with the advent of the previously mentioned defects and/or malfunctions associated with the backup warning/safety device.

87. As a direct and proximately consequence of the conduct and breaches of warranty by Defendant Preco Plaintiffs' decedent sustained the injuries and damages previously set forth heretofore more fully.

WHEREFORE, Plaintiffs Brenda Coble and James E. Clark, Jr., individually, demand judgment against the Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT VIII – SURVIVAL
JAMES E. CLARK, JR., AND BRENDA COBLE, ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED, PLAINTIFFS
VS.
DEFENDANTS LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

88. Each of the above paragraphs is incorporated herein by reference.

89. As a direct and proximate result of the previously-described negligence of Defendants, Plaintiffs' Decedent suffered the following damages:

a. James Edward Clark, a/k/a James Edward Clark, Sr.'s pain, suffering, anguish and inconvenience from the happening of the incident until the time of his death;

b. James Edward Clark, a/k/a James Edward Clark, Sr.'s loss of earning and earning capacity;

c. Deprivation of James Edward Clark, a/k/a James Edward Clark, Sr.'s ability to perform any of the routine functions of daily living;

d. James Edward Clark, a/k/a James Edward Clark, Sr.'s general health and vitality;

e. Death; and

f. Other losses and damages permitted by law.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble, Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, respectfully request judgment in their favor and against Defendants Lyle Thompson; Lyle Thompson, t/d/b/a Valley Excavating and Hauling; New Enterprise Stone & Lime Company, Inc.; New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone and Lime Company; and Preco Electronics, Inc., t/d/b/a Preco Electronics, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Jonathan B. Mack, Esquire
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

VERIFICATION

I, James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

VERIFICATION

I, Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

Brenda Coble, individually and as Administrator of the
Estate of James Edward Clark, a/k/a
James Edward Clark, Sr.

FILED

DEC 26 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

ACCEPTANCE OF SERVICE

Filed on behalf of Plaintiffs

Jonathan B. Mack, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

FILED No CC
JAN 08 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No.

JURY TRIAL DEMANDED

ACCEPTANCE OF SERVICE

I accept service of the Complaints in Civil Action on behalf of Defendants Lyle Thompson and Lyle Thompson, t/d/b/a Valley Excavating and Hauling, and certify that I am authorized to do so.

12/24/08
Date

Timothy J. Burdette, Esquire

Mailing Address:
733 Washington Road, Suite 209
Pittsburgh, PA 15228

FILED
JAN 08 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

No. 2008-2452

ISSUE NUMBER:

PLEADING:

PRAECIPE FOR APPEARANCE

CODE AND CLASSIFICATION:

FILED ON BEHALF OF:

NEW ENTERPRISE STONE & LIME CO., INC., incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, Defendants.

COUNSEL OF RECORD:

JEFFREY M. OLSZEWSKI, ESQUIRE
Pa. I.D. No. 50736

CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
(412) 563-2500

FILED NO CC
m/12:55/BOX
JAN 12 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

No. 2008-2452

PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY OF CLEARFIELD COUNTY

Kindly enter my appearance on behalf of the defendant, NEW ENTERPRISE STONE & LIME CO., INC., incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIM E COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, in the above-captioned matter.

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY: _____
Jeffrey M. Olszewski, ESQUIRE
Attorney for the Defendant
NEW ENTERPRISE STONE & LIME CO., INC., incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIM E COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY

A JURY TRIAL IS DEMANDED

CERTIFICATE OF SERVICE

That counsel for the defendant, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIM E COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, hereby certifies that a true and correct copy of its **PRAECIPE FOR APPEARANCE** has been served on all counsel of record, by first class mail, postage pre-paid, according to the Pennsylvania Rules of Civil Procedure, on the 8th day of January, 2009.

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 11078
Indiana, PA 15701
(Counsel for Plaintiff)

Timothy J. Burdette, Esquire
Law Office of Timothy J. Burdette
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Counsel for Defendant, Lyle Thompson; Lyle Thompson t/d/b/a Valley Excavating and Hauling)

Preco Electronics, Inc.
415 North Maple Grove Road
Boise, Idaho 83704

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY: _____
Jeffrey M. Olszewski, ESQUIRE
Attorney for the Defendant
NEW ENTERPRISE STONE & LIME CO., INC., incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIM E COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

PRAECIPE FOR APPEARANCE

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

JURY TRIAL DEMANDED

FILED no cc
JAN 19 2009 (GIO)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – ASBESTOS
Plaintiffs,	)	No. GD 2008-2452
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,	)	
Defendants.	)	

PRAECIPE FOR APPEARANCE

TO: Prothonotary

Please enter the appearance of Goehring, Rutter & Boehm, Stacey F. Vernallis, Esquire, and Jaime N. Doherty, Esquire, to serve as counsel on behalf of Defendant, Preco Electronics, Inc. t/d/b/a Preco Electronics, in the above captioned action.

Dated: 1/15, 2009

Respectfully Submitted,

GOEHRING, RUTTER & BOEHM

By: Jaime N. Doherty

Jaime N. Doherty, Esquire
Pa. I.D. #89402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **PRAECIPE FOR APPEARANCE** has been served via U.S. First Class mail, postage pre-paid, this 15th day of January, 2009, upon the following:

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228

GOEHRING, RUTTER & BOEHM

Jaime N. Doherty

Jaime N. Doherty, Esquire
Pa. I.D. #89402

FILED

JAN 19 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED
m/12:44/BY
JAN 20 2009
William A. Shaw
Prothonotary/Clerk of Courts
3 cc

AFFIDAVIT OF SERVICE

Filed on behalf of Plaintiffs

Jonathan B. Mack, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

AFFIDAVIT OF SERVICE

I hereby certify that I have served a certified copy of the Complaint in the above-referenced matter on Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, by mailing the same on January 5, 2009, to Preco Electronics, Inc., t/d/b/a Preco Electronics, at 415 North Maple Grove Road, Boise, ID 83704, by Certified Mail, Article No.7005 0390 0004 3661 8644, the signed return receipt card being attached hereto evidencing receipt of the Complaint on January 12, 2009.

Respectfully submitted,
MARCUS & MACK, P.C.

BY: _____
Jonathan B. Mack, Esquire
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

Sworn and subscribed to before me
this 16th day of January, 2009.

_____
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Denise M. Fleming, Notary Public
Indiana Boro, Indiana County
My Commission Expires Nov. 30, 2010
Member, Pennsylvania Association of Notaries

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:

Presco Electronics, Inc.,
+/a/b/a Presco Electronics
415 North Maple Grove Rd
Boise, ID 83704

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [signature] ☐ Agent ☒ Addressee

B. Received by (Printed Name) TYLER POSEY

C. Date of Delivery 01-12-09

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. 7005 0390 0004 3661 8644

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AFFIDAVIT OF SERVICE** was mailed, U.S. First Class mail, to the following this 16th day of January, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

PRELIMINARY OBJECTIONS TO COUNTS V, VI AND VII OF PLAINTIFFS' COMPLAINT

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

JURY TRIAL DEMANDED

FILED 1cc Atty Doherty
m/ 10:15cm
FEB 02 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – ASBESTOS
Plaintiffs,	)	No. GD 2008-2452
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,	)	
Defendants.	)	

PRELIMINARY OBJECTIONS TO COUNTS V, VI AND VII OF PLAINTIFFS' COMPLAINT

AND NOW, comes the Defendant, Preco Electronics, Inc. t/d/b/a Preco Electronics ("Preco"), by and through its counsel, Goehring, Rutter & Boehm, and files the within Preliminary Objections to Counts V, VI and VII of Plaintiffs' Complaint, averring as follows:

BACKGROUND-STATEMENT OF FACTS

1. James E. Clark, Jr. and Brenda Coble individually and as Administrators of the Estate of James Edward Clark, deceased, initiated this action on or about December 26, 2008, by filing a Complaint in Civil Action in the Court of Common Pleas, Clearfield County, at No. 2008-2452 against Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling, New Enterprise Stone & Lime Company, Inc., New Enterprise Stone & Lime Company, Inc.,

t/d/b/a New Enterprise Stone and Lime Company, and Preco Electronics, Inc. t/d/b/a Preco Electronics ("Preco"). The Complaint was served upon Preco on January 12, 2009 by certified mail. This dispute arises out of a fatal accident at a construction site in Bradford Township, Clearfield County on July 11, 2007.

2. Plaintiffs' Complaint alleges that James Clark, Decedent was struck with the rear of the dump-truck operated by Defendant Thompson and that Mr. Clark passed away that same day. See Complaint ¶7.

3. Plaintiffs allege that Preco manufactured a "backup warning/safety device" with which Defendant Thompson's truck was equipped at the time of the incident. See Complaint ¶9.

4. As against Defendant Preco, Plaintiffs allege negligence in the wrongful death of James Clark due to defective design, manufacture, and failure to warn.

5. Plaintiffs allege that Preco's device was defective and/or malfunctioning and therefore, of an "extremely hazardous nature." Further, Defendant Thompson and Plaintiffs' reliance on the safety features rendered the Preco product an abnormally dangerous product and as such, Preco is allegedly strictly liable for all resultant injuries to Mr. Clark.

6. Plaintiffs allege that Preco is liable to Plaintiffs in wrongful death under contract theories of breach of the warranties of merchantability and fitness for a particular purpose.

7. Plaintiffs allege that all Defendants, including Preco, are liable to Plaintiff for damages pursuant to a survival action.

8. Preco files Preliminary Objections pursuant to Pa. R.C.P.1028(a)(2) challenging Count V and in the nature of a demurrer challenging Count VII and, in the alternative, Counts V and VI as a matter of law.

PRELIMINARY OBJECTIONS

I. COUNT V – Pa. R.C.P. 1028(a)(2) FAILURE OF A PLEADING TO CONFORM TO LAW OR RULE OF COURT OR INCLUSION OF SCANDALOUS OR IMPERTINENT MATTER

9. Paragraphs 1 through 8 above are incorporated as though set forth fully herein.

10. Paragraphs 72 through 74 in Count V of Plaintiffs' Complaint allege that Plaintiffs' damages were as a result of the recklessness of Preco and that Preco acted recklessly.

11. Plaintiffs do not assert a claim for punitive damages.

12. "Recklessness" is a legal term associated with a claim for punitive damages.

13. In the absence of a claim for punitive damages, any allegations of recklessness as against Preco must be stricken.

WHEREFORE, Defendant Preco Electronics, Inc. t/d/b/a Preco Electronics respectfully requests that its Preliminary Objections pursuant to Pa. R.C.P. 1028(a)(2) to Count V of Plaintiffs' Complaint be sustained, and that all references to "recklessness" be dismissed with prejudice as a matter of law.

II. COUNT V –DEMURRER TO PUNITIVE DAMAGES CLAIM

14. Paragraphs 1 through 13 above are incorporated as though set forth fully herein.

15. Paragraphs 72 through 74 in Count V of Plaintiffs' Complaint allege that Preco was reckless and that its alleged recklessness caused or contributed to the damages sustained by the Decedent.

16. Plaintiffs' Complaint contains no claim or allegation for punitive damages.

17. There are no allegations in Plaintiffs' Complaint that rise to a level sufficient to make a claim for an award of punitive damages.

18. Plaintiffs' claim for punitive damages is legally non-existent and must be stricken as a matter of law.

WHEREFORE, Defendant Preco Electronics, Inc. t/d/b/a Preco Electronics respectfully requests that its Preliminary Objections in the nature of a demurrer to Count V of Plaintiffs' Complaint be sustained, and that the punitive damages claims be dismissed with prejudice as a matter of law.

III. COUNT VII – DEMURRER TO BREACH OF WARRANTY CLAIM PURSUANT TO THE "GIST OF THE ACTION" DOCTRINE

19. Paragraphs 1 through 18 above are incorporated as though set forth fully herein.

20. Pennsylvania's "gist of the action" doctrine maintains the conceptual and distinction between breach of contract claims and tort claims.

21. The doctrine typically operates to preclude a plaintiff from recasting ordinary breach of contract or warranty claims into tort claims when the parties' obligations are defined by a contract and where the basis of the parties' duty that was breached arises out of a contract.

22. Where a tort claim essentially duplicates a breach of Warranty claim or where the success of a tort claim is dependent upon the success of a breach of contract or warranty claim, the gist of the action doctrine forecloses the claim.

23. Plaintiffs' allege that the injury and damages sustained by Decedent alleged were proximately caused by Preco's alleged breach of warranties.

24. Plaintiffs confuse breach of contract and tort theories of law.

25. The contract claim duplicates the tort claim.

26. The "gist of the action" of this claim sounds in negligence, not in breach of warranty.

27. All allegations of Counts V and VI of the Complaint also establish the breach of warranty claim. Plaintiffs allege no legal distinction among the negligence and breach of warranty claims. The breach of warranty claim is barred by application of the "gist of the action" doctrine.

WHEREFORE, Defendant Preco Electronics, Inc. t/d/b/a Preco Electronics respectfully requests that its Preliminary Objections to Count VII of Plaintiffs' Complaint in the nature of a demurrer be sustained and that the breach of warranty of claim be dismissed with prejudice as a matter of law.

IV. COUNTS V AND VI—DEMURRER TO NEGLIGENCE WRONGFUL DEATH AND STRICT LIABILITY CLAIMS PURSUANT TO "GIST OF THE ACTION" DOCTRINE

28. Paragraphs 1 through 27 above are incorporated as though set forth fully herein.

29. In the alternative, should this Honorable Court decline to apply the "gist of the action" doctrine to dismiss with prejudice as a matter of law Count VII to Plaintiffs' Complaint, then by operation of that same doctrine, Counts V and VI of Plaintiffs' Complaint as against Preco must be dismissed as a matter of law.

30. Count V is a negligence/wrongful death claim. Count VI is a strict liability claim. Both claims duplicate the breach of warranty claim.

31. The "gist of the action" doctrine operates to preclude a Plaintiff from recasting ordinary breach of contract or warranty claims into tort claims when the parties' obligations are defined by contract or warranty terms and when the basis of the parties' duty that was breached arises out of a contractual warranty duty.

32. In the event that this Court elects to accept as pled the allegations of Count VII to Plaintiffs' Complaint against Preco, Counts V and VI of Plaintiffs' Complaint must be dismissed with prejudice as a matter of law.

33. In this circumstance, the Court will have deemed that the gist of the action sounds in contract and not in tort.

34. Plaintiffs' claims for negligence/wrongful death and strict liability are barred by the "gist of the action" doctrine.

WHEREFORE, Defendant Preco Electronics, Inc. t/d/b/a Preco Electronics respectfully requests that its Preliminary Objections to Counts V and VI of Plaintiffs' Complaint in the nature of a demurrer be sustained, and that the negligence/wrongful death and strict liability claims be dismissed with prejudice as a matter of law.

Respectfully submitted,

GOEHRING, RUTTER & BOEHM

By: Jaime N. Doherty

Jaime N. Doherty, Esquire
Pa. I.D. #89402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PRELIMINARY OBJECTIONS TO COUNTS V AND VII OF PLAINTIFFS' COMPLAINT** was served via U.S. First Class mail, postage prepaid, this 30 day of January, 2009, upon the following:

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Counsel for James E. Clark, Jr. and Brenda Coble

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
Counsel for Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228
Counsel for New Enterprise Stone & Lime Company, Inc. t/d/b/a New Enterprise Stone and Lime Company

GOEHRING, RUTTER & BOEHM

Jaime N. Doherty

Jaime N. Doherty, Esquire
Pa. I.D. #89402

FILED

FEB 02 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – ASBESTOS
Plaintiffs,	)	No. GD 2008-2452
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,	)	
Defendants.	)	

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____,2009, upon consideration of Defendant Preco Electronics, Inc. t/d/b/a Preco Electronics' Preliminary Objections, it is hereby Ordered, Adjudged and Decreed that said Preliminary Objections are GRANTED as follows:

1. Count V of Plaintiffs' Complaint is dismissed with prejudice pursuant to Pa. R.C.P. 1028(a)(2);

2. Plaintiffs' claim for punitive damages is dismissed with prejudice as a matter of law pursuant to Pa. R.C.P. 1028(a)(4);

3. Count VII of Plaintiffs' Complaint is dismissed with prejudice as a matter of law pursuant to Pa. R.C.P. 1028(a)(4) and the "gist of the action" doctrine; or in the alternative,

Counts V and VI of Plaintiffs' Complaint are dismissed with prejudice as a matter of law pursuant to Pa. R.C.P.1028(a)(4) and the "gist of the action" doctrine.

BY THE COURT:

_____,J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

PRAECIPE FOR ARGUMENT

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

JURY TRIAL DEMANDED

FILED 1cc Atty Doherty
m 10:15cm
FEB 02 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – ASBESTOS
Plaintiffs,	)	No. GD 2008-2452
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,	)	
Defendants.	)	

PRAECIPE FOR ARGUMENT

To: William A. Shaw, Prothonotary

Please place Defendant, Preco Electronics, Inc. t/d/b/a Preco Electronic's Preliminary Objections on the next available Argument List. Attached hereto is a proposed Scheduling Order.

Date: 1/29/09

Respectfully submitted,

GOEHRING, RUTTER & BOEHM

By: Jaime N. Doherty

Jaime N. Doherty, Esquire
Pa. I.D. #89402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PRAECIPE FOR ARGUMENT** was served via U.S. First Class mail, postage prepaid, this 9th day of January, 2009, upon the following:

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228

GOEHRING, RUTTER & BOEHM

Jaime N. Doherty

Jaime N. Doherty, Esquire
Pa. I.D. #89402

FILED

FEB 02 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

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

FEB 02 2009

Attest.

William A. Shaw
Prothonotary
Clerk of Courts

FILED

FEB 02 2009 GD
m/12:20/w
William A. Shaw
Prothonotary/Clerk of Courts
No C/C

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a JAMES
EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW
ENTERPRISE STONE AND LIME
COMPANY; PRECO ELECTRONICS, INC.,
t/d/b/a PRECO ELECTRONICS,

Defendants.

No. 2008-2452

ISSUE NUMBER:

PLEADING:

NOTICE OF SERVICE OF DEFENDANT NEW ENTERPRISE STONE & LIME COMPANY, INC.'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS

CODE AND CLASSIFICATION:

FILED ON BEHALF OF:

NEW ENTERPRISE STONE & LIME CO., INC., incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, Defendants.

COUNSEL OF RECORD:

JEFFREY M. OLSZEWSKI, ESQUIRE
Pa. I.D. No. 50736

CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
(412) 563-2500

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,

No. 2008-2452

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

NOTICE OF SERVICE OF DEFENDANT NEW ENTERPRISE STONE & LIME COMPANY, INC.'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS

This is to certify that Defendant's First Set of Interrogatories and Request for Production of Documents Directed to Plaintiff was served upon the following counsel by first class mail, postage prepaid on the 30 day of January 2009.

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 11078
Indiana, PA 15701
(Counsel for Plaintiff)

Timothy J. Burdette, Esquire
Law Office of Timothy J. Burdette
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Counsel for Defendant, Lyle Thompson; Lyle Thompson t/d/b/a Valley Excavating and Hauling)

Jaime N. Doherty, Esquire
Goering, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(*Counsel for Preco Electronics, Inc.*)

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY: _____

Jeffrey M. Olszewski, ESQUIRE
Attorney for the Defendant
NEW ENTERPRISE STONE & LIME CO., INC., incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIM E COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased, Plaintiffs, vs. LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS, Defendants.	)	CIVIL DIVISION – ASBESTOS No. ~~GD~~ CO 2008-2452

SCHEDULING ORDER OF COURT

AND NOW, to wit, it is hereby ORDERED, ADJUDGED and DECREED that oral argument on Preliminary Objections filed by Defendants, Preco Electronics, Inc. t/d/b/a Preco Electronics will be heard on the 5th day of March, 2009, at 3:00 p.m. A ~~Brief in Support of Defendants' Preliminary Objections shall be due on~~ _____, ~~2009.~~ FSA

By the Court,

_____, J.

2-4-09

FILED
01:00 PM
FEB 04 2009
William A. Shaw
Prothonotary/Clerk of Courts

1CC Atty Doherty (GD)

FILED

FEB 0 4 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/4/09

X You are responsible for serving all appropriate parties.

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

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

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

FILED
FEB 17 2009
m/8:30/cc
William A. Shaw
Prothonotary/Clerk of Courts
No c/c

CERTIFICATE OF SERVICE RE SCHEDULING ORDER OF 3/4/09

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – ASBESTOS
Plaintiffs,	)	No. GD 2008-2452
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,	)	
Defendants.	)	

CERTIFICATE OF SERVICE RE SCHEDULING ORDER OF 3/4/09

I do hereby certify that the Court's Scheduling Order dated February 4, 2009, has been served upon counsel for plaintiffs and defense counsel of record on February 11, 2009, by first class mail, postage prepaid, to the following:

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 1228

Jeffrey M. Olszewski, Esquire
Cipriana & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228

Respectfully submitted,

Goehring, Rutter & Boehm

Jaime N. Doherty

By_____
Jaime N. Doherty, Esquire
Pa. I.D.#89402

FILED
FEB 17 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as Administrators of the ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., Deceased,

Plaintiffs,

v.

LYLE THOMPSON; LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

Case No.: 2008-2452

ISSUE NO.:

PRAECIPE FOR APPEARANCE

Filed on Behalf of:

Lyle Thompson, t/d/b/a Valley Excavating & Hauling, Defendant.

Counsel of Record for This Party:

TIMOTHY J. BURDETTE, ESQUIRE
PA ID. NO. 32703

733 Washington Road, Suite 209
Pittsburgh, PA 15228
Telephone: (412) 531-3700
Facsimile: (412) 344-0799
tjb@burdettelaw.net

FILED NO CC
m 12:54 BK
FEB 20 2009 Copy to CIA
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as Administrators of the ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., Deceased,

Plaintiffs,

v.

LYLE THOMPSON; LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

Case No.: 2008-2452

PRAECIPE FOR APPEARANCE

TO: Prothonotary

Kindly enter my appearance on behalf of Defendant Lyle Thompson t/d/b/a Valley Excavating & Hauling in the above captioned lawsuit.

BY: _____

TIMOTHY J. BURDETTE, ESQUIRE,
Attorney for Lyle Thompson, t/d/b/a
Valley Excavating and Hauling,
Defendant.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on this 18th day of February 2009, a true and correct copy of the foregoing *Praecipe for Appearance*, was served upon the following parties, via U.S. First-Class Mail, postage prepaid, at the following addresses:

Jonathan B. Mack, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 11078
Indiana, PA 15701
(Counsel for Plaintiffs)

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
(Counsel for New Enterprise Stone & Lime Co., Inc., Defendant)

Jaime N. Doherty, Esquire
GOEHRING, RUTTER & BOEHM
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Counsel for Preco Electronics, Inc., Defendant)

BY: _____
TIMOTHY J. BURDETTE, ESQUIRE,
Attorney for Lyle Thompson, t/d/b/a
Valley Excavating and Hauling,
Defendant.

FILED
FEB 20 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as Administrators of the ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., Deceased,

Plaintiffs,

v.

LYLE THOMPSON; LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

Case No.: 2008-2452

ISSUE NO.:

AMENDMENT BY CONSENT PURSUANT TO PA R.C.P. NO. 1033

Counsel of Record for These Parties:

Jonathan B. Mack Esquire
PA ID. NO. 38970
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 11078
Indiana, PA 15701

TIMOTHY J. BURDETTE, ESQUIRE
PA ID. NO. 32703

733 Washington Road, Suite 209
Pittsburgh, PA 15228
Telephone: (412) 531-3700
Facsimile: (412) 344-0799
tjb@burdettelaw.net

FILED 1cc
FEB 20 2009 Atty
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as Administrators of the ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., Deceased, Plaintiffs, v. LYLE THOMPSON; LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS, Defendants.	Case No.: 2008-2452

AMENDMENT BY CONSENT PURSUANT TO PA R.C.P. NO. 1033

The undersigned legal counsel for Plaintiffs and Defendant, Lyle Thompson, t/d/b/a Valley Excavating and Hauling, pursuant to Pa. R.C.P. No. 1033, do hereby agree that the Complaint filed by the Plaintiffs, in the above captioned matter, is hereby amended by the deletion of Paragraphs 18(a), 18(l), 18(w), and 27(z). It is further agreed that the terms "reckless" and "recklessness", which imply conduct possibly subject to punitive damages when no such claim for punitive damages has been made by the Plaintiffs, shall be deleted from Counts I, II, and VIII of the Plaintiffs' Complaint solely as to Defendant Lyle Thompson, individually and t/d/b/a Valley Excavating and Hauling.

BY: _____
JONATHAN B. MACK, ESQUIRE,
Attorney for Plaintiffs.

BY: _____
TIMOTHY J. BURDETTE, ESQUIRE,
Attorney for Lyle Thompson, t/d/b/a
Valley Excavating and Hauling,
Defendant.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on this 18th day of February, 2009, a true and correct copy of the foregoing *Amendment By Consent*, was served upon the following parties, via U.S. First-Class Mail, postage prepaid, at the following addresses:

Jonathan B. Mack, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 11078
Indiana, PA 15701
(Counsel for Plaintiffs)

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
(Counsel for New Enterprise Stone & Lime Co., Inc., Defendant)

Jaime N. Doherty, Esquire
GOEHRING, RUTTER & BOEHM
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Counsel for Preco Electronics, Inc., Defendant)

BY: _____
TIMOTHY S. BURDETTE, ESQUIRE,
Attorney for Lyle Thompson, t/d/b/a
Valley Excavating and Hauling,
Defendant.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED 1cc Atty.
m/10:45cm Neiderhiser
FEB 20 2009
William A. Shaw
Prothonotary/Clerk of Courts

PLAINTIFFS' ANSWER TO DEFENDANT PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS' PRELIMINARY OBJECTIONS TO COUNTS V, VI AND VII OF PLAINTIFFS' COMPLAINT

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

PLAINTIFFS' ANSWER TO DEFENDANT PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS' PRELIMINARY OBJECTIONS TO COUNTS V, VI AND VII OF PLAINTIFFS' COMPLAINT

AND NOW come the Plaintiffs, James E. Clark, Jr., and Brenda Coble, individually and as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by and through their counsel, Bryan S. Neiderhiser, Esquire, and Marcus & Mack, P.C., and file the within Answer to Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics' Preliminary Objections to Counts V, VI and VII of Plaintiffs' Complaint, and aver as follows:

ANSWER TO BACKGROUND STATEMENT OF FACTS

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.

ANSWER TO INSTANT DEFENDANT'S PRELIMINARY OBJECTIONS ALLEGING THE PLAINTIFFS' PLEADING FAILED TO CONFORM TO LAW OR RULE OF COURT OR INCLUSION OF SCANDALOUS OR IMPERTINENT MATTER AND ANSWER TO ALLEGATION REQUEST FOR DEMURRER TO PUNITIVE DAMAGES CLAIM

9-18. The undersigned counsel contacted counsel for Defendant Preco and discussed the allegations set forth in Paragraphs 9 through 18 of Defendant Preco's Preliminary Objections. Counselors have come to an agreement that Plaintiffs will stipulate for the removal of the term "recklessness" in the Counts of Plaintiffs' Complaint against instant Defendant. The Plaintiffs also stipulate that they are not filing a claim for punitive damages.

The Plaintiffs do, however, specifically object to instant Defendants' request in their proposed Order of Court that Count V of Plaintiffs' Complaint be dismissed because said

Complaint specifically pleads allegations of negligence and carelessness that state compensable causes against instant Defendant.

ANSWER TO INSTANT DEFENDANT'S DEMURRER TO BREACH OF WARRANTY CLAIM PURSUANT TO THE "GIST OF THE ACTION" DOCTRINE AS AGAINST COUNT VII OF PLAINTIFFS' COMPLAINT

19. Paragraph 19 of instant Defendant's Preliminary Objections merely incorporates Paragraphs 1 through 18 of its Preliminary Objections and as such, no response is required from Plaintiffs.

20. Paragraph 20 of instant Defendant's Preliminary Objections states conclusions of law to which no response is required.

21. Paragraph 21 of instant Defendant's Preliminary Objections states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 21 of instant Defendant's Preliminary Objections is specifically denied. It is denied that the Gist of the Action Doctrine typically operates to preclude a plaintiff from recasting ordinary breach of contract or warranty claims into tort claims when the parties' obligations are defined by a contract and where the basis of the parties' duty that was breached arises out of a contract. To the contrary, Pennsylvania law is clear that "a personal injury claim based upon a breach of warranty is distinct from a personal injury claim based upon negligence..." Salvador v. I.H. English of Phila., Inc., 307 A.2d 398, 403 (Pa. Super. 1973). Further, the Gist of the Action Doctrine does not apply to alternate causes of action not based in tort. JK Roller Architects, LLC, v. Tower Investments, Inc., 2003 Phila. Ct. Com Pl. Lexis 40 at 3. The theory of Breach of Warranties scunds in contract (Williams v. West Penn Power Co., 502 pa. 557, 476 A.2d 811 (1983) and is therefore an alternate theory of liability which the Plaintiffs are fully entitled to bring, and which may not be dismissed under the Gist of the Action Doctrine.

22. Paragraph 22 of instant Defendant's Preliminary Objections states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 22 of instant Defendant's Preliminary Objections is specifically denied. It is denied that the instant tort claims and the instant breach of warranty claims are dependent upon each other. It is denied that where a tort claim essentially duplicates a breach of warranty claim or where the success of a tort claim is dependent upon the success of a breach of contract or warranty claim, the Gist of the Action Doctrine forecloses the claim. It is further denied that the tort claims in this matter essentially duplicate the breach of warranty claims, and it is denied that the success of the tort claim is dependent upon the success of the breach of contract and/or warranty claims. It is also denied that the Gist of the Action Doctrine forecloses the claim. To the contrary, Plaintiffs success at trial under theories of negligence is not dependent or contingent upon the success of their claim for breach of warranty and visa versa. Although the two causes have many similar elements, they are not identical causes of action and as such, instant Defendant's Preliminary Objections should be denied. As this Court is abundantly aware, products liability cases are routinely filed with claims for breach of warranty of use for a specific purpose, breach of merchantability, strict liability and ordinary negligence. This case is no different, and the Preliminary Objections should be dismissed.

23. Paragraph 23 of instant Defendant's Preliminary Objections is specifically denied as stated. While it is admitted that Plaintiffs allege that the injuries and damages sustained by Plaintiffs' decedent were caused and/or contributed to by Preco's breach of warranties, Plaintiffs also allege and aver that Defendant Preco is strictly liable to Plaintiffs and also allege and aver that Defendant Preco is liable to Plaintiffs under other various theories of negligence as set forth in Plaintiffs' Complaint.

24. Paragraph 24 of instant Defendant's Preliminary Objections is specifically denied. It is denied that Plaintiffs confuse breach of contract and tort theories of law. To the contrary, the instant Defendant confuses separate theories of liability against instant Defendant as being one and the same.

25. Paragraph 25 of instant Defendant's Preliminary Objections is specifically denied. It is denied that the contract claim duplicates the tort claim. To the contrary, Plaintiffs' breach of warranty claims are separate and distinct from the counts of negligence and strict liability.

26. Paragraph 26 of instant Defendant's Preliminary Objections states conclusions of law to which no response is required. To the extent a response is required, Paragraph 26 is specifically denied. It is denied that the gist of the action of this claim sounds in negligence and not in breach of warranty. By way of further answer, the Plaintiffs' Complaint sounds in both negligence and breach of warranty as is made apparent by the separate Counts and allegations in Plaintiffs' Complaint.

27. Paragraph 27 of instant Defendant's Preliminary Objections states conclusions of law to which no response is required. To the extent a response is deemed necessary, Paragraph 27 of instant Defendant's Preliminary Objections is specifically denied. It is denied that Plaintiffs' allege no legal distinction among the negligence and breach of warranty claims. It is also denied that there is no distinction between the claims and/or the allegations in the various counts of Plaintiffs' Complaint. Further, it is denied that by the alleged application of the Gist of the Action Doctrine the breach of warranty claim is barred. The legal distinction between said Counts is apparent. Therefore, Plaintiffs' breach of warranty clam is not barred by application of the Gist of the Action Doctrine.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court deny instant Defendant's Preliminary Objections and dismiss instant Defendant's Preliminary Objections with prejudice.

ANSWER TO INSTANT DEFENDANT'S DEMURRER TO NEGLIGENCE WRONGFUL DEATH AND STRICT LIABILITY CLAIMS PURSUANT TO "GIST OF THE ACTION" DOCTRINE

28. Paragraph 28 of instant Defendant's Preliminary Objections merely incorporates Paragraphs 1 through 27 of its Preliminary Objections and as such, no response is required from Plaintiffs.

29-34. Paragraphs 28 through 34 of Instant Defendant's Preliminary Objections merely plead Paragraphs 19-27 of its Preliminary Objections in the alternative and merely request that Counts V and VI of Plaintiffs' Complaint be dismissed, whereas the preceding Count requested that Count VII be dismissed. As such Plaintiffs hereby incorporates its answers to the preceding paragraphs as if set forth fully herein.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court deny instant Defendant's Preliminary Objections and dismiss instant Defendant's Preliminary Objections with prejudice.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esquire
67 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

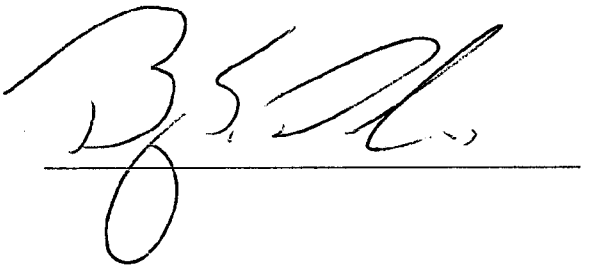
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' ANSWER TO DEFENDANT PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS' PRELIMINARY OBJECTIONS TO COUNTS V, VI AND VII OF PLAINTIFFS' COMPLAINT** was mailed, U.S. First Class mail, to the following this 19th day of February, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219



FILED
MAR 03 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

STIPULATION OF COUNSEL

Filed on behalf of Plaintiffs

Jonathan B. Mack, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

STIPULATION OF COUNSEL

The parties hereby stipulate and agree to revise the identity of Defendant New Enterprise Stone & Lime Company, Inc., New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone and Lime Company, to its correct identity of New Enterprise Stone & Lime, Co., Inc., in the above-referenced matter.

The undersigned parties also hereby stipulate and agree that the case caption in the above-referenced matter shall be changed to the following:

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

It is also stipulated and agreed that the above-referenced Defendants are the appropriate Defendants in this matter and that service upon all of the above-referenced Defendants has been properly effectuated.

MARCUS & MACK, P.C.

By: _____

Jonathan B. Mack, Esquire
Attorney for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

1/12/09
Date

_____

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

2/9/09
Date

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

2/25/09
Date

Jaime N. Doherty

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

FILED
JUN 03 2009
Shaw
Pottawattamie/Clerk of Courts

FILED
014:00BH
MAR 09 2009
William A. Shaw
Prothonotary/Clerk of Courts

1 CC Attys: Mack
T. Burdette
J. Olszewski
Vernalis/Doherty

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

JAMES E. CLARK, JR. and BRENDA COBLE, ind. and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a EDWARD CLARK, SR., deceased	)	
VS.	)	NO. 08-2452-CD
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE AND LIME COMPANY, t/d/b/a PRECO ELECTRONICS	)	

O R D E R

NOW this 5th day of March, 2009, following argument on Preliminary Objections and upon agreement of the parties, the Defendant Preco Electronics, Inc., Preliminary Objection to the use of the word "recklessness" in Count 5 of the Plaintiff's Complaint is granted. The Court hereby

strikes the word "recklessness" from any of the paragraphs of Count 5 of the Plaintiff's Complaint.

In regard to the remaining Preliminary Objections relating to the Gist of the Action Doctrine, it is the ORDER of this Court that counsel for both parties have no more than twenty (20) days from this date in which to submit letter brief on the issue. The said brief may be submitted to the Court by fax.

BY THE COURT,

President Judge

DATE: 3/9/09

___ You are responsible for serving all appropriate parties.

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

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

___ Defendant(s) __X__ Defendant(s) Attorney

___ Special instructions:

FILED
MAR 09 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED 1cc Atty
m/11:27cm Neiderhiser
MAR 16 2009
William A. Shaw
Prothonotary/Clerk of Courts

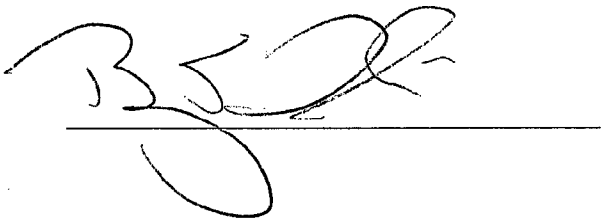
NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' ANSWERS AND RESPONSES TO DEFENDANT NEW ENTERPRISE'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS** were mailed, U.S. First Class mail, to the following this 13th day of March, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 105096
NO: 08-2452-CD
SERVICE # 1 OF 2
COMPLAINT

PLAINTIFF: JAMES E. CLARK, JR. and BRENDA COBLE IND & as Administrators
vs.
DEFENDANT: LYLE THOMPSON al

SHERIFF RETURN

NOW, December 29, 2008, SHERIFF OF BEDFORD COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON NEW ENTERPRISE STONE & LIME COMPANY, INC..

NOW, January 02, 2009 AT 9:07 AM SERVED THE WITHIN COMPLAINT ON NEW ENTERPRISE STONE & LIME COMPANY, INC., DEFENDANT. THE RETURN OF BEDFORD COUNTY IS HERETO **ATTACHED** AND MADE PART OF THIS RETURN.

FILED
013:36 BY
MAR 26 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 105096
NO: 08-2452-CD
SERVICE # 2 OF 2
COMPLAINT

PLAINTIFF: JAMES E. CLARK, JR. and BRENDA COBLE IND & as Administrators
vs.
DEFENDANT: LYLE THOMPSON al

SHERIFF RETURN

NOW, December 29, 2008, SHERIFF OF BEDFORD COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON NEW ENTERPRISE STONE & LIME COMPANY. INC. t/d/b/a NEW ENTERPRISE SONTE AND LIME COMPANY.

NOW, January 02, 2009 AT 9:07 AM SERVED THE WITHIN COMPLAINT ON NEW ENTERPRISE STONE & LIME COMPANY. INC. t/d/b/a NEW ENTERPRISE SONTE AND LIME COMPANY, DEFENDANT. THE RETURN OF BEDFORD COUNTY IS HERETO **ATTACHED** AND MADE PART OF THIS RETURN.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 105096
NO: 08-2452-CD
SERVICES 2

COMPLAINT

PLAINTIFF: JAMES E. CLARK, JR. and BRENDA COBLE IND & as Administrators
vs.
DEFENDANT: LYLE THOMPSON al

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	MARCUS	43728	20.00
SHERIFF HAWKINS	MARCUS	43728	21.00
BEDFORD CO.	MARCUS	43729	137.20

Sworn to Before Me This

_____ Day of _____ 2009

_____

So Answers,

Chester A. Hawkins
Sheriff

SHERIFF'S RETURN - REGULAR

CASE NO: 2008-02452 T

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF Bedford

JAMES E CLARK JR & BRENDA COBL

VS

NEW ENTERPRISE STONE & LIME CO

LUKE BERKEY, Deputy Sheriff of Bedford County, Pensylvania, who being duly sworn according to law, says, the within COMPLAINT was served upon NEW ENTERPRISE STONE & LIME CO T/D/B/A NEW ENTERPRISE STONE the DEFENDANT, at 0907:00 Hour, on the 2nd day of January, 2009 at P O BOX 77 NEW ENTERPRISE, PA by handing to TOM FRYE (OFFICE MGR) @ THE ABOVE ADDRESS a true and attested copy of COMPLAINT together with

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

Sheriff's Costs:

Docketing	.00
Service	.00
Affidavit	.00
Surcharge	.00
	.00
	.00* Paid on 00/00/0000...
	By

Sworn and Subscribed to before me this _____ day of _____ A.D.

_____
Notary

So answers;

LUKE BERKEY

By: _____
Sheriff of Bedford County

SHERIFF'S RETURN - REGULAR

CASE NO: 2008-02452 T

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF Bedford

JAMES E CLARK JR & BRENDA COBL

VS

NEW ENTERPRISE STONE & LIME CO

LUKE BERKEY, Deputy Sheriff of Bedford County, Pensylvania, who being duly sworn according to law, says, the within COMPLAINT was served upon NEW ENTERPRISE STONE & LIME CO the DEFENDANT, at 0907:00 Hour, on the 2nd day of January, 2009 at P O BOX 77 NEW ENTERPRISE, PA by handing to TOM FRYE (OFFICE MGR) @ THE ABOVE ADDRESS a true and attested copy of COMPLAINT together with

_____

_____

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

_____

_____

_____

Sheriff's Costs:

Docketing	.00
Service	.00
Affidavit	.00
Surcharge	.00
	.00
	.00* Paid on 00/00/0000...
	By

Sworn and Subscribed to before me this _____ day of _____ A.D.

_____
Notary

So answers;

LUKE BERKEY

By: _____
Sheriff of Bedford County

A

RECEIPT FOR PAYMENT

Bedford County Pennsylvania

200 South Juliana Street
Bedford, PA 15522

Receipt Date 12/31/2008
Receipt Time 14:43:12

Receipt No. 16250

JAMES E CLARK JR & BRENDA COBL (VS) NEW ENTERPRISE STONE & LIME CO

Case Number 2008-02452 T
Case Type.: COMPLAINT
Service Info 001 First Service
12/31/2008 Open
Remarks
KIMMIE

Total Check...	+	250.00
Total Cash....	+	.00
Cash Out.....	-	.00
Receipt total.	=	250.00

Number .. 43729

Distribution Of Payment

Transaction Description	Payment Amount	
ADVANCE PAYMENT	250.00	MARCUS & MACK
	250.00	

RECEIPT FOR DISTRIBUTION OF ADVANCE PAYMENTS HELD IN ESCROW

Bedford County Pennsylvania

200 South Juliana Street
Bedford, PA 15522

Receipt Date 01/02/2009
Receipt Time 15:55:44

Receipt No. 16267

JAMES E CLARK JR & BRENDA COBL (VS) NEW ENTERPRISE STONE & LIM

Case Number 2008-02452 T
Service Info 001 First Service 12/31/2008 Open
Remarks Escrow Transfer Out

Advance Payment Balance	250.00	MARCUS & MACK
Total Amount Distributed	68.60	57 SOUTH 6TH STREET
		P O BOX 1107
Balance Remaining	181.40	INDIANA PA 15701

Distribution

Transaction Description	Amount	Payee
AFFIDAVIT	3.50	BEDFORD COUNTY GENERAL FUND
MILEAGE	35.10	BEDFORD COUNTY GENERAL FUND
NOTARY FEE	6.00	BEDFORD COUNTY GENERAL FUND
WRIT	24.00	BEDFORD COUNTY GENERAL FUND
Total Amount Distributed	68.60	

RECEIPT FOR DISTRIBUTION OF ADVANCE PAYMENTS HELD IN ESCROW

Bedford County Pennsylvania

200 South Juliana Street
Bedford, PA 15522

Receipt Date 01/02/2009
Receipt Time 15:57:34

Receipt No. 16268

JAMES E CLARK JR & BRENDA COBL (VS) NEW ENTERPRISE STONE & LIM

Case Number 2008-02452 T
Service Info 001 First Service 12/31/2008 Open
Remarks Escrow Transfer Out

Advance Payment Balance	181.40	MARCUS & MACK
Total Amount Distributed	181.40	57 SOUTH 6TH STREET
		P O BOX 1107
Balance Remaining	.00	INDIANA PA 15701

Distribution

Transaction Description	Amount	Payee
AFFIDAVIT	3.50	BEDFORD COUNTY GENERAL FUND
MILEAGE	35.10	BEDFORD COUNTY GENERAL FUND
NOTARY FEE	6.00	BEDFORD COUNTY GENERAL FUND
WRIT	24.00	BEDFORD COUNTY GENERAL FUND
REFUND TO ATTY/PLT	112.80	MARCUS & MACK
Total Amount Distributed	181.40	

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

No. 2008-2452

ISSUE NUMBER:

PLEADING:

STIPULATION OF COUNSEL

CODE AND CLASSIFICATION:

FILED ON BEHALF OF:

NEW ENTERPRISE STONE & LIME CO., INC., incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, Defendants.

COUNSEL OF RECORD:

JEFFREY M. OLSZEWSKI, ESQUIRE
Pa. I.D. No. 50736

CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
(412) 563-2500

FILED NO CC
12:23 BY
MAR 30 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,

No. 2008-2452

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

STIPULATION OF COUNSEL

AND NOW, come the Plaintiffs, James E. Clark, Jr. and Brenda Coble, individually and as administratrix of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased and Defendant New Enterprise Stone & Lime Co., Inc. by and through their attorneys, Marcus & Mack, P.C., and Jonathan B. Mack, Esquire and Cipriani & Werner and Jeffrey M. Olszewski, Esquire and file the following Stipulation of Counsel to remove certain paragraphs and language from the plaintiff's Complaint, stipulating as follows:

1. The Plaintiffs filed suit in this court arising out of a truck accident that occurred on or about July 11, 2007 at which time the decedent, James Edward Clark, Sr., was killed.

2. Plaintiffs' lawsuit contained various counts against the named Defendants, including New Enterprise Stone & Lime Co., Inc. ("New Enterprise").

3. The Plaintiffs' Complaint contained three counts directed against New Enterprise: Count III (Negligence - Wrongful Death); Count IV (Negligence - Wrongful Death) and Count VIII (Survival).

4. Upon review of the Complaint, the undersigned counsel raised objections to certain paragraphs directed against New Enterprise along with certain terms used in the Complaint.

5. After discussion with Plaintiffs' counsel, counsel for New Enterprise and the Plaintiffs agreed to the removal of the following paragraphs and language from the Plaintiffs' Complaint:

a. Paragraphs 41(l), 41(p), 41(q), 41(x), 41(bb), 54(l), 54(p), 54(q), 54(x) and 54(bb); and

b. The terms "reckless" and "recklessness" which implied conduct possibly subject to punitive damages when no such claim for punitive damages has been made by the Plaintiffs.

6. By signing this Stipulation, the undersigned counsel only acknowledge that the paragraphs and language identified above are removed and stricken from the Plaintiffs' Complaint. The parties are not stipulating that there is any liability on any of the Defendants including New Enterprise or that any of the Defendants including New Enterprise owe any monies to the Plaintiffs.

WHEREFORE, the Plaintiffs and New Enterprise agree and stipulate that Paragraphs 41(l), 41(p), 41(q), 41(x), 41(bb), 54(l), 54(p), 54(x) and 54(bb) are stricken. The parties further stipulate that the terms "reckless" and "recklessness" are stricken from the Plaintiffs' Complaint as the Plaintiffs are not seeking punitive damages in this case.

JURY TRIAL DEMANDED.

[SIGNATURE BLOCK ON NEXT PAGE]

Respectfully submitted,

MARCUS & MACK, P.C.

BY: _____

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 11078
Indiana, PA 15701
Attorney for Plaintiff, James E. Clark, Jr., and Brenda Coble, individually and as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., Deceased

CIPRIANI & WERNER, P.C.

BY: _____

Jeffrey M. Olszewski, Esquire
Attorney for the Defendant
New Enterprise Stone & Lime Co., Inc., incorrectly identified as a New Enterprise Stone & Lime Company, Inc., New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone and Lime Company

CERTIFICATE OF SERVICE

That counsel for the defendant, NEW ENTERPRISE STONE & LIME CO., INC. incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIM E COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, hereby certifies that a true and correct copy of its **STIPULATION OF COUNSEL** has been served on all counsel of record, by first class mail, postage pre-paid, according to the Pennsylvania Rules of Civil Procedure, on the 27 day of MARCH, 2009.

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 11078
Indiana, PA 15701
(Counsel for Plaintiff)

Timothy J. Burdette, Esquire
Law Office of Timothy J. Burdette
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Counsel for Defendant, Lyle Thompson; Lyle Thompson t/d/b/a Valley Excavating and Hauling)

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Counsel for Preco Electronics, Inc., d/b/a Preco Electronics)

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY: _____

Jeffrey M. Olszewski, ESQUIRE
Attorney for the Defendant
NEW ENTERPRISE STONE & LIME CO., INC., incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIM E COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY

FILED
MAR 31 2009
William A. Shaw
Prothonotary/Clerk of Courts
No CC

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

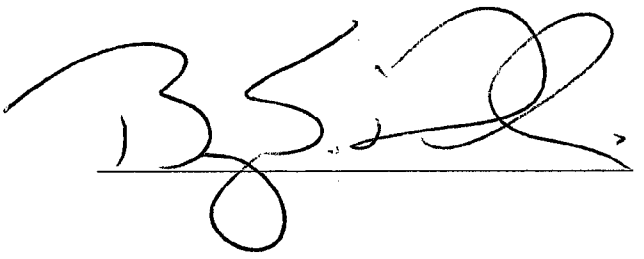
NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' SUPPLEMENTAL ANSWERS AND RESPONSES TO DEFENDANT NEW ENTERPRISE'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS** were mailed, U.S. First Class mail, to the following this 30th day of March, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219



FILED
MAR 31 2009
William A. Shaw
Prothonotary/Clerk of Courts

FILED
m/11:04/6m
MAR 31 2009
William A. Shaw
Prothonotary/Clerk of Courts
cc

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendant

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF SERVICE

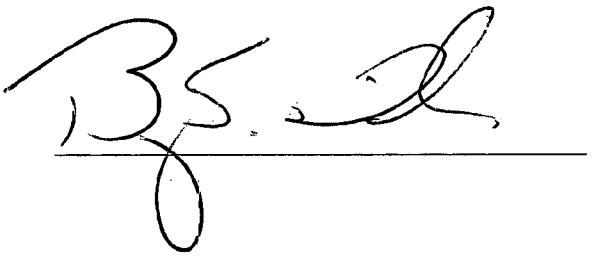
I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS** were mailed, U.S. First Class mail, to the following this 30th day of March, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendant Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

ORIGINAL

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219



IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendant

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED
MAR 31 2009
William A. Shaw
Prothonotary/Clerk of Courts

NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT NEW ENTERPRISE STONE & LIME CO., INC.,** were mailed, U.S. First Class mail, tc the following this 30th day of March, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendant Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

ORIGINAL

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
s/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219



FILED

MAR 3 1 2009

William A. Shaw
Prothonotary/Clerk of Courts

FILED NO CC
m/11:09 BY
MAR 31 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendant

No. 2008-2452-CD

JURY TRIAL DEMANDED

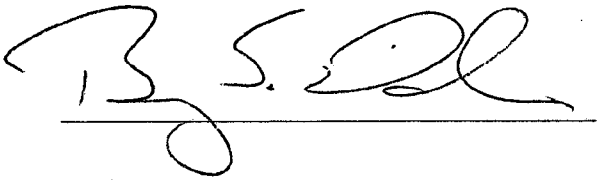
NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT LYLE THOMPSON AND DEFENDANT LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING,** were mailed, U.S. First Class mail, to the following this 30th day of March, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendant Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as Administrators of the ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., Deceased,

Plaintiffs,

v.

LYLE THOMPSON; LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC.; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

To: ALL PARTIES TO THIS ACTION

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Answer, New Matter & Cross-Claims within twenty (20) days from service hereof or a judgment may be entered against you.

By: TIMOTHY J. BURDETTE, ESQUIRE
Attorney for Lyle Thompson, Defendant

Case No.: 2008-2452

JURY TRIAL DEMANDED

ANSWER, NEW MATTER AND CROSS-CLAIMS

Filed on Behalf of:

Lyle Thompson, t/d/b/a Valley Excavating & Hauling, Defendant.

Counsel of Record for This Party:

TIMOTHY J. BURDETTE, ESQUIRE
PA ID. NO. 32703

733 Washington Road, Suite 209
Pittsburgh, PA 15228
Telephone: (412) 531-3700
Facsimile: (412) 344-0799
tjb@burdettelaw.net

FILED NO CC
APR 02 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as Administrators of the ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., Deceased, Plaintiffs, v. LYLE THOMPSON; LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC.; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS, Defendants.	Case No.: 2008-2452

ANSWER

AND NOW, comes the Defendant, Lyle Thompson, and files the following Answer to the Plaintiffs' Amended Complaint:

1. After reasonable investigation this Defendant is presently without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 1 of the Complaint. Those averments are therefore denied and strict proof thereof is demanded at the time of trial.

2. The averments contained in Paragraphs 2 and 3 of the Complaint are admitted. Defendant Lyle Thompson is an adult individual and does operate his business under the fictitious name, Valley Excavating & Hauling.

3. This Defendant is advised and therefore avers that the averments contained in Paragraphs 4 through 6 of the Complaint are directed to the Co-Defendants and that no response to those averments is therefore required from Defendant Lyle Thompson.

4. The averments contained in Paragraph 7 of the Complaint are admitted insofar as they assert that Defendant Lyle Thompson was operating a tri-axle dump truck which he owned and operated as part of his business, Valley Excavating & Hauling. The remaining averments of Paragraph 7 of the Complaint are denied generally pursuant to Pa. R.C.P. No. 1029(e).

5. The averments contained in Paragraphs 8 and 9 of the Complaint are admitted.

6. This Defendant is advised and therefore avers that the averments contained in Paragraph 10 of the Complaint constitute a conclusion of law to which no response is required.

7. After reasonable investigation this Defendant is presently without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 11, 12 and 14 of the Complaint and their subparts. Those averments are therefore denied and strict proof thereof is demanded at the time of trial.

8. This Defendant is advised and therefore avers that the averments contained in Paragraphs 13, 15 and 16 of the Complaint constitute a conclusion of law to which no response is required. In the event it is judicially determined that a response to those averments is required from this Defendant, the remaining Paragraphs of this Answer are incorporated herein by reference.

9. In answer to the averments contained in Paragraph 17 of the Complaint the preceding Paragraphs of this Answer are incorporated herein by reference.

10. The averments contained in Paragraph 18 of the Complaint and its subparts are denied generally pursuant to Pa. R.C.P. No. 1029(e). This Defendant is advised and therefore avers that the Complaint has been amended by consent pursuant to Pa. R.C.P. No. 1033 to delete Paragraphs 18(a), 18(l) and 18(w) from that Complaint.

11. The averments contained in Paragraphs 19 through 22 of the Complaint and their subparts are denied generally pursuant to Pa. R.C.P. No. 1029(e).

12. In answer to the averments contained in Paragraph 23 of the Complaint the preceding Paragraphs of this Answer are incorporated herein by reference.

13. The averments contained in Paragraph 24 of the Complaint are admitted insofar as they allege that Defendant Lyle Thompson, t/d/b/a Valley Excavating & Hauling was operating a dump truck at the time and place of the complained of accident.

14. This Defendant is advised and therefore avers that the averments contained in Paragraph 25 of the Complaint, which allege that Defendant Thompson can be held vicariously liable for his own conduct, constitute a conclusion of law to which no response is required.

15. The averments contained in Paragraph 26 of the Complaint are denied insofar as they allege that Defendant Lyle Thompson had a legal identity separate and apart from the fictitious name of Valley Excavating & Hauling. To the contrary, Valley Excavating & Hauling is not a corporation.

16. The averments contained in Paragraph 27 of the Complaint and its subparts are denied generally pursuant to Pa. R.C.P. No. 1029(e). This Defendant is advised and therefore avers that Paragraph 27(z) of the Complaint was deleted in an amendment by consent pursuant to Pa. R.C.P. No. 1033.

17. The averments contained in Paragraphs 28 through 30 of the Complaint are denied generally pursuant to Pa. R.C.P. No. 1029(e).

18. After reasonable investigation this Defendant is presently without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 31 of the Complaint and its subparts. Those averments are therefore denied and strict proof thereof is demanded at the time of trial.

19. Defendant Lyle Thompson is advised and therefore avers that the allegations contained in Paragraphs 32 through 57 of the Complaint and their subparts are directed to Co-Defendant New Enterprise Stone & Lime Co., Inc., and that no response to those averments is required from this Defendant.

20. Defendant Thompson is advised and therefore avers that Paragraphs 58 through 87 of the Complaint are directed to Co-Defendant Preco Electronics, Inc., and that no response to those averments is therefore required from Defendant Thompson.

21. In answer to the averments contained in Paragraph 88 of the Complaint the preceding Paragraphs of this Answer are incorporated herein by reference.

22. The averments contained in Paragraph 89 of the Complaint and its subparts are denied generally pursuant to Pa. R.C.P. No. 1029(e).

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NEW MATTER

By way of further answer to the Plaintiffs' Complaint, Defendant Lyle Thompson, t/d/b/a Valley Excavating & Hauling, asserts the following as New Matter:

23. This Defendant is advised and therefore avers that the affirmative defenses of comparative negligence, contributory negligence and assumption of the risk need not be pled specifically under the Pennsylvania Rules of Civil Procedure.

24. Plaintiffs' claims against this Defendant are barred in whole or in part by the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law, which are pled herein as an affirmative defense.

25. In the event it is judicially determined that Defendant Lyle Thompson and the Decedent, James E. Clark, Sr., were fellow servants at the time of the complained of accident, Defendant Thompson herein asserts in order to preserve the immunity afforded under the Pennsylvania Worker's Compensation Act.

26. To the extent that the Plaintiff is asserting a claim for medical bills incurred as a result of the complained of incident, this Defendant asserts as an affirmative defense the principals of law set forth on damages in *Moorhead vs. Crozer Chester Medical Center*, 564 Pa. 156, 765 A.2d 786 (2001).

WHEREFORE, Defendant Lyle Thompson, t/d/b/a Valley Excavating & Hauling, demands that the Complaint against him be dismissed with costs sustained in his behalf.

NEW MATTER-CROSS-CLAIM

LYLE S. THOMPSON, SR., v. NEW ENTERPRISE STONE & LIME CO., INC., and PRECO ELECTRONICS, INC.

AND NOW, comes the Defendant, Lyle Thompson, t/d/b/a Valley Excavating & Hauling, and, pursuant to Pa. R.C.P. No. 2252(d), asserts the following cross-claim against the Co-Defendants:

27. The preceding Paragraphs of this Answer and New Matter are incorporated herein by reference.

28. In the event it is judicially determined that the complained of accident occurred as described in the Plaintiffs' Complaint, strict proof of which has been demanded hereinabove, Defendant Lyle Thompson avers, in the alternative, that Co-Defendants New Enterprise Stone & Lime Co., Inc., and/or Preco Electronics, Inc., is/are solely liable or, alternatively, jointly and severally liable, or, alternatively, liable over to Defendant Thompson for indemnity, for any amount that is adjudged due and owing to the Plaintiffs.

29. Defendant Thompson herein asserts a claim for indemnity or, alternatively, contribution, against the Co-Defendants, New Enterprise Stone & Lime Co., Inc., and/or Preco Electronics, Inc.

WHEREFORE, Defendant Lyle Thompson, t/d/b/a Valley Excavating & Hauling, demands that judgment be entered in his favor on his cross-claim against either or both of the Co-Defendants.

A JURY TRIAL IS DEMANDED.

BY: _____

TIMOTHY J. BURDETTE, ESQUIRE,
Attorney for Lyle Thompson, t/d/b/a
Valley Excavating and Hauling,
Defendant.

VERIFIED STATEMENT

I, Lyle S. Thompson, Sr., t/d/b/a Valley Excavating & Hauling, hereby verify that the statements set forth in the foregoing *Answer, New Matter & Cross-Claims* are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Date: 3-7-09

By: Lyle S. Thompson

LYLE S. THOMPSON, SR., Defendant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on this 31ST day of MARCH, 2009, a true and correct copy of the foregoing *Answer, New Matter & Cross-Claims*, was served upon the following parties, via U.S. First-Class Mail, postage prepaid, at the following addresses:

Jonathan B. Mack, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 11078
Indiana, PA 15701
(Counsel for Plaintiffs)

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
(Counsel for New Enterprise Stone & Lime Co., Inc., Defendant)

Jaime N. Doherty, Esquire
GOEHRING, RUTTER & BOEHM
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Counsel for Preco Electronics, Inc., Defendant)

BY: _____
TIMOTHY J. BURDETTE, ESQUIRE,
Attorney for Lyle Thompson, t/d/b/a
Valley Excavating and Hauling,
Defendant.

CA

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

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWIN CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED, Plaintiffs	*	NO. 08-2452-CD
vs.	*	
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE AND LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS, Defendants	*	

ORDER

AND NOW, this 3rd day of April, 2009, following argument on the Defendant Preco Electronics, Inc. Preliminary Objections and upon receipt and review of the parties' briefs; it is the ORDER of this Court that the said Preliminary Objections be and are hereby GRANTED in that pursuant to the "gist of the action" doctrine, Count V sounding in negligence and Count VI sounding in strict liability against Defendant Preco Electronics, Inc. are hereby DISMISSED.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

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William A. Shaw
Prothonotary/Clerk of Courts

1CC: MacklWeidenhiser
T. Buscelle
J. Olszewski
Vernallis/Doherty

FILED

APR 06 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/6/09

____ You are responsible for serving all appropriate parties.

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

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

____ Defendant(s) __X__ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

No. 2008-2452 - CD

ISSUE NUMBER:

PLEADING:

ANSWER, NEW MATTER AND CROSS-CLAIM PURSUANT TO RULE 1031.1

CODE AND CLASSIFICATION:

FILED ON BEHALF OF:

NEW ENTERPRISE STONE & LIME CO., INC., incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, Defendants.

TO: ALL PARTIES

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE ATTACHED ANSWER AND NEW MATTER WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU.

JEFFREY M. OLSZEWSKI, ESQUIRE
CIPRIANI & WERNER, P.C.
Attorneys for Defendant, New Enterprise Stone & Lime Co., Inc.

COUNSEL OF RECORD:

JEFFREY M. OLSZEWSKI, ESQUIRE
Pa. I.D. No. 50736

CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
(412) 563-2500

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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

No. 2008-2452

ANSWER, NEW MATTER AND CROSS-CLAIM PURSUANT TO RULE 1031.1

AND NOW, comes the Defendant, New Enterprise Stone & Lime Co., Inc. ("New Enterprise") by and through its attorneys, Cipriani & Werner, P.C. and Jeffrey M. Olszewski, Esquire and files the following Answer, New Matter and New Matter Under 1031.1 to the Plaintiffs' Complaint, averring as follows:

1. Denied. After reasonable investigation, Defendant New Enterprise is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in Paragraph 1 and the same are therefore specifically denied with strict proof to the contrary demanded at the time of trial.

2. Denied. This paragraph is directed to a party other than Defendant New Enterprise, therefore no further response is required to this paragraph. In addition, this

paragraph contains conclusions of law to which no further response is required by Defendant New Enterprise.

3. Denied. This paragraph is directed to a party other than Defendant New Enterprise, therefore no further response is required to this paragraph. In addition, this paragraph contains conclusions of law to which no further response is required by Defendant New Enterprise.

4. Denied as stated. New Enterprise has an office for the conduct of business located at 3912 Brumbaugh Road, P.O. Box 77, New Enterprise, PA 16664. The remaining averments contained in paragraph 4 are denied with strict proof to the contrary demanded at the time of trial.

5. Denied. Paragraph 5 sets forth conclusions of law to which no further response is required by Defendant New Enterprise. If an additional response is required to this paragraph, then in that event, the averments contained therein are specifically denied with strict proof to the contrary demanded at the time of trial.

6. Denied. This paragraph is directed to a party other than Defendant New Enterprise, therefore, no further response is required to this paragraph. In addition, this paragraph contains conclusions of law to which no further response is required by Defendant New Enterprise.

7. Admitted in part and denied in part. While it is admitted that an incident occurred on or about July 11, 2007, involving the Plaintiffs' decedent, the remaining averments contained in Paragraph 7 are specifically denied with strict proof demanded at the time of trial. In further response to this paragraph, any alleged conduct by Lyle Thompson was not the responsibility of Defendant New Enterprise, with strict proof to

the contrary demanded at the time of trial. The remaining averments contained in Paragraph 7 are denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

8. Denied as stated. While it is not denied that New Enterprise was a contractor performing work on or near State Route 8012 at the request of PennDOT, all work by New Enterprise was undertaken in a careful, cautious and prudent manner and did not cause or contribute to the occurrence of the accident alleged in the Plaintiffs' Complaint. The averments in this paragraph are further specifically denied pursuant to Rule 1029 with strict proof to the contrary demanded at the time of trial.

9. After reasonable investigation, Defendant New Enterprise is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in this paragraph and the same are therefore specifically denied with strict proof to the contrary demanded at the time of trial.

10. Denied. It is specifically denied that any and all of the Plaintiffs' alleged injuries and damages, including James Edward Clark's death, were caused or contributed to by Defendant New Enterprise or any of the Defendant's agents, servants or employees. The averments contained in this paragraph are also specifically denied pursuant to Rule 1029(e).

11. Denied. After reasonable investigation, Defendant New Enterprise is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in Paragraph 11 of the Plaintiffs' Complaint and the same are therefore specifically denied with strict proof to the contrary demanded at the time of trial.

12. Denied. Paragraph 12 sets forth conclusions of law to which no further response is required by Defendant, New Enterprise. The averments contained in Paragraph 12 are further denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

13. Denied. Paragraph 13 sets forth conclusions of law to which no further response is required by Defendant, New Enterprise. The averments contained in Paragraph 13 are further denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

14. Denied. After reasonable investigation, Defendant New Enterprise is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in this paragraph and the same are therefore specifically denied with strict proof to the contrary demanded at the time of trial. In further response to this paragraph, Defendant New Enterprise denies any and all liability to the plaintiff or to any other person or party with strict proof to the contrary demanded at the time of trial.

15. Denied. It is specifically denied that any and all of the Plaintiffs' alleged injuries and/or damages including James Edward Clark, Sr.'s death were caused or contributed to by Defendant New Enterprise or any of the Defendant's agents, servants and/or employees. The averments contained in this paragraph, including subparagraphs 15(a) through 15(f) are also specifically denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

16. Denied. Paragraph 16 sets forth conclusions of law to which no further response is required by Defendant, New Enterprise. The averments contained in

Paragraph 13 are further denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

COUNT I - NEGLIGENCE - WRONGFUL DEATH

JAMES E. CLARK, JR. AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS V. LYLE THOMPSON

17. Defendant New Enterprise incorporates by reference herein its responses to Paragraphs 1 through 16 of the Plaintiffs' Complaint as if the same were set forth at length herein.

18-22. Paragraphs 18 through 22 are directed to a party other than Defendant New Enterprise and therefore do not require a response by Defendant New Enterprise.

WHEREFORE, Defendant New Enterprise denies any and all liability to the Plaintiffs or to any other person or party and demands judgment in its favor in this case along with interest, attorneys fees and all costs of suit.

COUNT II - NEGLIGENCE - WRONGFUL DEATH

JAMES E. CLARK, JR. AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS V. LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING

23. Defendant New Enterprise incorporates by reference herein its responses to Paragraphs 1 through 22 of the Plaintiffs' Complaint as if the same were set forth at length herein.

24-31. Paragraphs 24 through 31 are directed to a party other than Defendant, New Enterprise and therefore do not require a response by Defendant New Enterprise.

WHEREFORE, Defendant New Enterprise denies any and all liability to the Plaintiffs or to any other person or party and demands judgment in its favor in this case along with interest, attorneys fees and all costs of suit.

COUNT III - NEGLIGENCE - WRONGFUL DEATH

JAMES E. CLARK, JR. AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS V. NEW ENTERPRISE STONE & LIME CO., INC.

32. Defendant New Enterprise incorporates by reference herein its responses to Paragraphs 1 through 31 of the Plaintiffs' Complaint as if the same were set forth at length herein.

33. Denied as stated. While it is not denied that New Enterprise was a contractor performing work on or near State Route 8012 at the request of PennDOT, all work by New Enterprise was undertaken in a careful, cautious and prudent manner and did not cause or contribute to the occurrence of the accident alleged in the Plaintiffs' Complaint with strict proof to the contrary demanded at the time of trial. The averments in this paragraph are further specifically denied pursuant to Rule 1029 with strict proof to the contrary demanded at the time of trial.

34. Denied. Paragraph 34 sets forth conclusions of law to which no further response is required by Defendant New Enterprise. If an additional response is required to this paragraph, then, in that event, the averments contained therein are specifically denied with strict proof to the contrary demanded at the time of trial. The averments contained in this Paragraph are also specifically denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

35. Denied. Paragraph 35 sets forth conclusions of law to which no further response is required by Defendant New Enterprise. If an additional response is required to this paragraph, then, in that event, the averments contained therein are specifically denied with strict proof to the contrary demanded at the time of trial. The averments

contained in this Paragraph are also specifically denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

36. Denied. Paragraph 36 sets forth conclusions of law to which no further response is required by Defendant New Enterprise. It is specifically denied that an alleged dangerous condition existed or that the plaintiff-decedent's accident was caused or contributed to by Defendant New Enterprise, with strict proof to the contrary demanded at the time of trial. To the contrary, the Defendant New Enterprise avers that it acted at all times in a careful, cautious and prudent manner and did not cause or contribute to the plaintiff-decedent's accident or any of the plaintiff's alleged injuries and/or damages, the existence of which are and have been denied. In further response to this paragraph, New Enterprise avers that any injuries and/or damages claimed by the plaintiffs were caused or contributed to by persons, parties, events and/or conditions over whom New Enterprise had no control or right to control. The averments contained in this Paragraph are also specifically denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

37. Denied. Paragraph 37 sets forth conclusions of law to which no further response is required by Defendant New Enterprise. After reasonable investigation, Defendant New Enterprise is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in Paragraph 37 and the same are therefore specifically denied with strict proof to the contrary demanded at the time of trial. The averments contained in this Paragraph are also specifically denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

38. Denied. Paragraph 38 sets forth conclusions of law to which no further response is required by Defendant New Enterprise. It is specifically denied that any and all of the Plaintiffs' alleged injuries and/or damages including the death of James Edward Clark, Sr., were caused or contributed to by Defendant New Enterprise or any of Defendant New Enterprise's agents, servants and/or employees. The averments contained in this Paragraph are also specifically denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

39. Denied. Paragraph 39 sets forth conclusions of law to which no further response is required by Defendant New Enterprise. It is specifically denied that the plaintiff-decedent's accident was caused or contributed to by Defendant New Enterprise with strict proof to the contrary demanded at the time of trial. To the contrary, Defendant New Enterprise avers that it acted in a careful, cautious and prudent manner at all times and did not cause or contribute to the plaintiff-decedent's accident or any of the plaintiffs' alleged injuries and/or damages, the existence of which are and have been denied. In further response to this paragraph, New Enterprise avers that any injuries and/or damages claimed by the plaintiffs were caused or contributed to by persons, parties, events and/or conditions over whom New Enterprise had no control or right to control. The averments contained in this paragraph are also specifically denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

40. Denied. Paragraph 40 sets forth conclusions of law to which no further response is required by Defendant New Enterprise. It is specifically denied that the plaintiff-decedent's accident was caused or contributed to by Defendant New Enterprise with strict proof to the contrary demanded at the time of trial. To the contrary, Defendant

New Enterprise avers that it acted in a careful, cautious and prudent manner at all times and did not cause or contribute to the plaintiff-decedent's accident or any of the plaintiffs' alleged injuries and/or damages, the existence of which are and have been denied. In further response to this paragraph, New Enterprise avers that any injuries and/or damages claimed by the plaintiffs were caused or contributed to by persons, parties, events and/or conditions over whom New Enterprise had no control or right to control. The averments contained in this paragraph are also specifically denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

41. Denied. Paragraph 41 sets forth conclusions of law to which no further response is required by Defendant New Enterprise. It is specifically denied that the plaintiff-decedent's accident was caused or contributed to by Defendant New Enterprise with strict proof to the contrary demanded at the time of trial. To the contrary, Defendant New Enterprise avers that it acted in a careful, cautious and prudent manner at all times and did not cause or contribute to the plaintiff-decedent's accident or any of the plaintiffs' alleged injuries and/or damages, the existence of which are and have been denied. In further response to this paragraph, New Enterprise avers that any injuries and/or damages claimed by the plaintiffs were caused or contributed to by persons, parties, events and/or conditions over whom New Enterprise had no control or right to control. The averments contained in this paragraph including subparagraphs 41(a) through 41(bb) are also specifically denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial. As per Stipulation of Counsel, Paragraphs 41(l), 41(p), 41(q), 41(x) and 41(bb) were stricken from the Plaintiffs' Complaint along

with the terms "reckless" and "recklessness" as the plaintiffs are not seeking punitive damages.

42. Denied. Paragraph 42 sets forth conclusions of law to which no further response is required by Defendant New Enterprise. It is specifically denied that any and all of the Plaintiffs' alleged injuries and/or damages including James Edward Clark, Sr.'s death were caused or contributed by Defendant New Enterprise or any of the Defendant's agents, servants and/or employees. The averments contained in this paragraph are also specifically denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

43. Denied. It is specifically denied that any and all of the Plaintiffs' alleged injuries and/or damages including James Edward Clark, Sr.'s death were caused or contributed by Defendant New Enterprise or any of the Defendant's agents, servants and/or employees. The averments contained in this paragraph are also specifically denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

44. Denied. Paragraph 44 sets forth conclusions of law to which no further response is required by Defendant New Enterprise. It is specifically denied that any and all of the Plaintiffs' alleged injuries and/or damages including James Edward Clark, Sr.'s death were caused or contributed by Defendant New Enterprise or any of the Defendant's agents, servants and/or employees. The averments contained in this paragraph, including subparagraphs 44(a) through 44(h), are also specifically denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

WHEREFORE, Defendant New Enterprise denies any and all liability to the Plaintiffs or to any other person or party and demands judgment in its favor in this case along with interest, attorneys fees and all costs of suit.

COUNT IV - NEGLIGENT - WRONGFUL DEATH

JAMES E. CLARK, JR. AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS V. NEW ENTERPRISE STONE & LIME CO., INC.

45. Defendant New Enterprise incorporates by reference herein its responses to Paragraphs 1 through 45 of the Plaintiffs' Complaint as if the same were set forth at length herein.

46-57. Denied. Defendant New Enterprise incorporates its responses to Paragraph 33 through 44 of the plaintiff's complaint as if the same were set forth at length herein. Count IV and Count III are duplicates except for the name of Defendant New Enterprise which has been corrected by Stipulation of Counsel dated March 27, 2009, with strict proof to the contrary demanded at the time of trial.

WHEREFORE, Defendant New Enterprise denies any and all liability to the Plaintiffs or to any other person or party and demands judgment in its favor in this case along with interest, attorneys fees and all costs of suit.

COUNT V - NEGLIGENCE

JAMES E. CLARK, JR. AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS V. PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS

58. Defendant New Enterprise incorporates by reference herein its responses to Paragraphs 1 through 57 of the Plaintiffs' Complaint as if the same were set forth at length herein.

59-75. Paragraphs 59-75 are directed to a party other than Defendant New Enterprise and therefore do not require a response by Defendant New Enterprise.

WHEREFORE, Defendant New Enterprise denies any and all liability to the Plaintiffs or to any other person or party and demands judgment in its favor in this case along with interest, attorneys fees and all costs of suit.

COUNT VI - STRICT LIABILIT - WRONG DEATH

JAMES E. CLARK, JR. AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS V. PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS

76. Defendant New Enterprise incorporates by reference herein its responses to Paragraphs 1 through 75 of the Plaintiffs' Complaint as if the same were set forth at length herein.

77-81. Paragraphs 77-81 are directed to a party other than Defendant New Enterprise and therefore do not require a response by Defendant New Enterprise.

WHEREFORE, Defendant New Enterprise denies any and all liability to the Plaintiffs or to any other person or party and demands judgment in its favor in this case along with interest, attorneys fees and all costs of suit.

COUNT VII - BREACH OF WARRANTY - WRONGFUL DEATH

JAMES E. CLARK, JR. AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS V. PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS

82. Defendant New Enterprise incorporates by reference herein its responses to Paragraphs 1 through 81 of the Plaintiffs' Complaint as if the same were set forth at length herein.

83-87. Paragraphs 83-87 are directed to a party other than Defendant New Enterprise and therefore do not require a response by Defendant New Enterprise.

WHEREFORE, Defendant New Enterprise denies any and all liability to the Plaintiffs or to any other person or party and demands judgment in its favor in this case along with interest, attorneys fees and all costs of suit.

COUNT VIII - SURVIVAL

JAMES E. CLARK, JR. AND BRENDA COBLE, ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK a/k/a JAMES EDWARD CLARK, SR., DECEASED, PLAINTIFFS V. LYLE THOMPSON; LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS

88. Defendant New Enterprise incorporates by reference herein its responses to Paragraphs 1 through 87 of the Plaintiffs' Complaint as if the same were set forth at length herein.

89. Denied. Paragraph 89 sets forth conclusions of law to which no further response is required by Defendant New Enterprise. It is specifically denied that any and all of the Plaintiffs' alleged injuries and/or damages, including James Edward Clark, Sr.'s death, were caused or contributed to by Defendant New Enterprise or any of the defendants, agents, servants and/or employees. The averments contained in this

paragraph, including subparagraphs 89(a) through 89(f) are also specifically denied pursuant to Rule 1029(e) with strict proof to the contrary demanded at the time of trial.

WHEREFORE, Defendant New Enterprise denies any and all liability to the Plaintiffs or to any other person or party and demands judgment in its favor in this case along with interest, attorneys fees and all costs of suit.

NEW MATTER

90. The Plaintiffs' Complaint fails to state a cause of action against Defendant New Enterprise upon which relief can be granted.

91. Defendant New Enterprises raises as a bar to the Plaintiffs' cause of action and/or the claims of any other party, the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. §1701, et seq. which precludes the pleading, proving and recovering of benefits identified in the Financial Responsibility Law, along with limiting any recovery on limited tort which section specifically raises an affirmative defense in this matter.91.

92. Any and all of the Plaintiffs' alleged injuries and/or damages, including James Edward Clark, Sr.'s death may not be recovered by the Plaintiffs due to the plaintiff-decedent's assumption of a known risk of harm.

93. Any and all of the Plaintiffs' alleged injuries and/or damages, including James Edward Clark, Sr.'s death, were caused solely by the Plaintiff's own negligent, careless or reckless conduct and amounts which the Plaintiffs have claimed are barred, modified and/or reduced by the provisions of the Pennsylvania Comparative Negligence Law, 42 Pa.C.S.A. §7102, et seq.

94. The plaintiff-decedent was negligent, careless and reckless in general and in the following particulars:

a. In failing to appreciate open and obvious road conditions;

b. In failing to warn persons on site of his presence in the construction zone

c. In failing to locate and perform his work in a safe area.

d. In failing to follow any and all signs, placard flag or other construction-related warnings; and

e. In failing to appreciate the approaching Thompson vehicle.

95. Defendant Lyle Thompson was the sole and proximate cause of the injuries and/or damages and death claimed by the Plaintiff.

96. Defendant Lyle Thompson, t/d/b/a Valley Excavating and Hauling was the sole and proximate cause of the injuries and/or damages and death claimed by the Plaintiff.

97. Preco Electronics, Inc. t/d/b/a Preco Electronics was the sole and proximate cause of the injuries and/or damages and death claimed by the Plaintiffs.

98. Any and all of the Plaintiffs' alleged injuries and/or damages and James Edward Clark, Sr.'s death were caused by persons, parties, additions and/or events over whom New Enterprise had no control or right to control at any time.

99. No proximate or causal relationship between any work performed by Defendant New Enterprise at State Route 8012 and the injuries and/or damages claimed by the Plaintiffs, including James Edward Clark, Sr.'s death.

100. There is no proximate or causal relationship between Defendant New Enterprise's work on or about State Route 8012 and the alleged negligent and/or improper conduct of other persons and/or parties.

101. Defendant, New Enterprise incorporates by reference and pleads as a complete defense to the Plaintiffs' Complaint each and every term, condition and section contained in the bid documents.

102. Defendant New Enterprise incorporates by reference herein and pleads as a complete defense to the plaintiffs' Compliant each and every term, condition and section contained in the New Enterprise contract with PennDOT.

103. To the extent applicable, Defendant New Enterprise raises the appropriate statute of limitations as a complete defense to the Plaintiffs' cause of action.

104. Each party and/or contractor, including the Plaintiff was responsible for their own work and conduct on the work project described in the Plaintiffs' Complaint.

105. To the extent applicable, Defendant New Enterprises claims a defense of Plaintiffs' failure to mitigate damages.

106. To the extent applicable, Defendant New Enterprise claims the defense of equitable estoppel.

107. Plaintiffs' claims may be barred, limited and/or reduced by the Pennsylvania Workers' Compensation Act, including, but not limited to the section on statutory employer, which is raised as an affirmative defense.

108. The plaintiff-decedent's alleged physical condition was, in fact, the result of the pre-existing injury or condition or an injury or condition which was not caused or aggravated by the accident set forth in the plaintiffs' Complaint.

109. New Enterprises raises as a full and complete defense to the plaintiffs' cause of action the Truck and Transportation Services Operating Agreement between

New Enterprise and Lyle Thompson and/or Lyle Thompson and Valley Excavating and Hauling, dated June 25, 2007.

110. New Enterprises raises as a full and complete defense of plaintiff's cause of action, New Enterprise's contact with Swank Associated Cos., Inc. dated June 7, 7007.

WHEREFORE, Defendant New Enterprise Stone & Lime Co., Inc. denies any and all liability to the plaintiffs or to any other person or party and demands judgment in its favor in this case.

CROSS-CLAIM PURSUANT TO RULE 1031.1

111. For purposes of this cross-claim only, Defendant New Enterprise incorporates by reference herein the allegations contained in the Plaintiff's Complaint against defendants Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling and Preco Electronics, Inc., t/d/b/a Preco Electronics, specifically paragraph 17 through 31 and 59 through 87 as if the same were set forth at length herein. Without admitting the truthfulness of the allegations contained in these paragraphs and denying those portions that are directed against New Enterprise.

112. Any and all of the plaintiffs' alleged injuries and/or damages including the death of James Edward Clark, Sr., existence of which are and have been denied, were caused solely by the negligent, reckless and careless conduct, breach of contract and/or breach of warranty, defendant, defendants Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling and Preco Electronics, Inc., t/d/b/a Preco Electronics, who are alone liable for the plaintiffs' injuries and/or damages as requested in this case.

113. If it is later proven that Defendant New Enterprise caused or contributed to any of the plaintiffs' alleged injuries and/or damages, including the death of James

Edward Clark, Sr., liability which Defendant New Enterprise has specifically denied then under those circumstances, Defendants Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling and Preco Electronics, Inc., t/d/b/a Preco Electronics, are jointly and/or severally liable along with Defendant New Enterprise to the Plaintiffs or liable over to Defendant New Enterprise under theories of indemnity and/or contribution for their conduct.

WHEREFORE, , Defendant New Enterprise Stone & Lime Co., Inc. denies any and all liability to the plaintiffs or to any other person or party and demands judgment in its favor in this case.

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY: _____

Jeffrey M. Olszewski, ESQUIRE
Attorney for the Defendant
NEW ENTERPRISE STONE & LIME CO., INC., incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIM E COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY

A JURY TRIAL IS DEMANDED

VERIFICATION

I hereby affirm that the following facts are correct:

New Enterprise Stone & Lime Co., Inc., is a Defendant in the foregoing action. The attached Answer, New Matter and Cross-Claim Pursuant to Rule 3031.1 is based upon information which I have furnished to my counsel and information which has been gathered by my counsel in preparation for this lawsuit. The language of the Answer, New Matter and Cross-Claim Pursuant to Rule 3031.1 is that of counsel and not of me. I have read the Answer, New Matter and Cross-Claim Pursuant to Rule 3031.1 and to the extent that the Answer, New Matter and Cross-Claim Pursuant to Rule 3031.1 is based upon information which I have given to my counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the content of the Answer, New Matter and Cross-Claim Pursuant to Rule 3031.1 is that of counsel, I have relied upon counsel in making this verification. I hereby acknowledge that the facts set forth in the aforesaid Answer, New Matter and Cross-Claim Pursuant to Rule 3031.1 is made subject to the penalties of 18 Pa.C.S. 4904 relating to unsworn falsification to authorities.

Dated: 4-2-09

James R Miller II

Authorized Representative of New Enterprise Stone & Lime Co., Inc.

James R. Miller II

CERTIFICATE OF SERVICE

That counsel for the defendant, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIM E COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, hereby certifies that a true and correct copy of its **ANSWER, NEW MATTER AND CROSS CLAIMS UNDER RULE 1031.1** has been served on all counsel of record, by first class mail, postage pre-paid, according to the Pennsylvania Rules of Civil Procedure, on the 6th day of April, 2009.

Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 11078
Indiana, PA 15701
(Counsel for Plaintiff)

Timothy J. Burdette, Esquire
Law Office of Timothy J. Burdette
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Counsel for Defendant, Lyle Thompson; Lyle Thompson t/d/b/a Valley Excavating and Hauling)

Jaime N. Doherty, Esquire
Goering, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Counsel for Preco Electronics, Inc.)

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY: _____

Jeffrey M. Olszewski, ESQUIRE
Attorney for the Defendant
NEW ENTERPRISE STONE & LIME CO., INC., incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIM E COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as Administrators of the ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., Deceased,

Plaintiffs,

v.

LYLE THOMPSON; LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC.; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

Case No.: 2008-2452

JURY TRIAL DEMANDED

NOTICE OF SERVICE OF DISCOVERY REQUESTS

Filed on Behalf of:

Lyle Thompson, t/d/b/a Valley Excavating & Hauling, Defendant.

Counsel of Record for This Party:

TIMOTHY J. BURDETTE, ESQUIRE
PA ID. NO. 32703

733 Washington Road, Suite 209
Pittsburgh, PA 15228
Telephone: (412) 531-3700
Facsimile: (412) 344-0799
tjb@burdettelaw.net

FILED ICC
APR 08 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as Administrators of the ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., Deceased, Plaintiffs, v. LYLE THOMPSON; LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC.; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS, Defendants.	Case No.: 2008-2452 JURY TRIAL DEMANDED

NOTICE OF SERVICE OF DISCOVERY REQUESTS

Defendant, Lyle Thompson t/d/b/a Valley Excavating & Hauling, by his counsel, Timothy J. Burdette, Esquire, hereby notifies the Court that, on April 3, 2009, *Defendant Lyle Thompson's First Set of Interrogatories and Request for Production of Documents* was served upon the Plaintiffs herein by e-mailing two (2) copies of the same to counsel for the Plaintiffs, Jonathan B. Mack, Esquire, MARCUS & MACK, P.C., 57 South Sixth Street, P.O. Box 11078, Indiana, PA 15701.

TIMOTHY J. BURDETTE, ESQUIRE,
Attorney for Lyle Thompson t/d/b/a
Valley Excavating & Hauling, Defendant.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that, on this 6th day of April, 2009, a true and correct copy of the foregoing *Notice of Service of Discovery Requests* was served upon the following parties via U.S. First-Class Mail, postage prepaid:

Jonathan B. Mack, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 11078
Indiana, PA 15701
(Counsel for Plaintiffs)

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
(Counsel for New Enterprise Stone & Lime Co., Inc., Defendant)

Jaime N. Doherty, Esquire
GOEHRING, RUTTER & BOEHM
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Counsel for Preco Electronics, Inc., Defendant)

TIMOTHY J. BURDETTE, ESQUIRE,
Attorney for Lyle Thompson t/d/b/a
Valley Excavating & Hauling, Defendant.

FILED
APR 09 2009
m/ 11:15(w
William A. Shaw
Prothonotary/Clerk of Courts
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IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF DEFENDANT, LYLE THOMPSON

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF DEFENDANT, LYLE THOMPSON

Filed on behalf of Plaintiffs

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF DEFENDANT, LYLE THOMPSON,** to Counsel for Defendant, Timothy J. Burdette, 733 Washington Road, Suite 209, Pittsburgh, PA 15228, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **DEFENDANT, LYLE THOMPSON** will be taken on oral examination in the First Floor Shawnee Room at the Holiday Inn, located at 61503 Lincoln Highway, Breezewood, PA 15533, at 1:00 p.m. on Monday, April 20, 2009 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: _____
Bryan S. Neidermiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: April 8, 2009

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION was served by U.S. First Class Mail, postage prepaid this 8th day of April 2009, upon the following:

Timothy J. Burdette, Esquire
Law Office of Timothy J. Burdette
733 Washington Road, Suite 209
Pittsburgh, PA 15228

412-531-3700

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
650 Washington Road
Pittsburgh, PA 15228

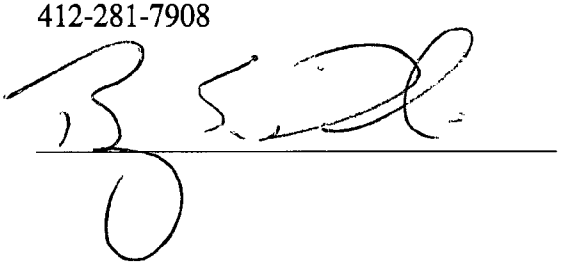
412-563-2500

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

412-281-0587

Network Deposition Services
Suite 101, Gulf Tower
707 Grant Street
Pittsburgh, PA 15219

412-281-7908



UA

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

ORIGINAL

MOTION FOR RECONSIDERATION OF THE ORDER OF COURT GRANTING DEFENDANT PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS' PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

FILED 3cc
09:15 Bal Atty Neiderhiser
APR 13 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

MOTION FOR RECONSIDERATION OF THE ORDER OF COURT GRANTING DEFENDANT PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS' PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

AND NOW, come the Plaintiffs, James E. Clark, Jr., and Brenda Coble, individually and as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by and through their attorneys, Marcus & Mack, P.C., and Bryan S. Neiderhiser, Esquire, who file this Motion for Reconsideration of the Order of Court Granting Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics' Preliminary Objections to Plaintiffs' Complaint and in support thereof aver as follows:

1. Plaintiffs are adult individuals who are the son and daughter of James Edward Clark, a/k/a James Edward Clark, Sr.,deceased, and are the Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by grant of Letters from the Clearfield

County Register of Wills on July 20, 2007. Plaintiff James E. Clark, Jr., resides in Armagh, Indiana County, Pennsylvania. Plaintiff Brenda Coble resides in Woodbridge, Prince William County, Virginia.

2. Plaintiffs' decedent James Clark, Sr., died on July 11, 2007, as a result of being backed into, knocked to the ground and then run over by a dump truck being operated by Defendant Lyle Thompson. On that date, and at the time of his death, Mr. Clark was working as an inspector on State Route 8012 in Bradford Township, Clearfield County, Pennsylvania, at the roadway construction site that was ongoing at the time of this incident. The State Police were called to the scene to conduct an investigation. As a result of that investigation, the State Police generated a police report which indicates that the backup alarm on Mr. Thompson's truck was "barely audible at the back of the truck".

3. The instant Defendant, Preco Electronics, Inc., t/d/b/a Preco Electronics, is the manufacturer of the backup alarm device that was installed on Mr. Thompson's dump truck.

4. In its Preliminary Objections, the instant Defendant argues that the Gist of the Action Doctrine forecloses the Plaintiffs from pursuing claims of negligence and breach of warranty in the same cause of action.

5. Oral argument on this matter was held before this Honorable Court on March 5, 2009.

6. Thereafter, by Order dated April 3, 2009, and filed April 6, 2009, this Honorable Court granted Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics' Preliminary Objections and dismissed Counts V and VI of Plaintiffs' Complaint which sounded in negligence and strict liability.

7. While Plaintiffs' disagree with this Court's conclusion that the Gist of the Action Doctrine operated to preclude any of the Plaintiffs' allegations against the instant Defendant, the

Plaintiffs' respectfully request that this Honorable Court reconsider its position that the instant matter sounds in contract law and not in tort law.

8. All of the other counts of the Plaintiffs' Complaint sound in tort.

9. The genesis of this claim, i.e., the negligent operation of a motor vehicle, the negligent killing of the decedent, the negligent supervision by the contractors at the site, and so on, all sound in negligence and not in contract.

10. As such, should this Court remain convinced that the Gist of the Action Doctrine does operate to foreclose certain of Plaintiffs' allegations against the instant Defendant, Plaintiffs' request that this Honorable Court allow Plaintiffs to proceed against instant Defendant on its claims of negligence and strict liability as opposed to its claims of breach of warranty.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant this Motion for Reconsideration and hold that the Gist of the Action Doctrine does not foreclose any of the Plaintiffs' claims against the instant Defendant, or alternatively hold that the Plaintiffs' cause of action against the instant Defendant sounds in negligence and strict liability as opposed to breach of warranty.

Respectfully submitted,

MARCUS & MACK, P.C.

BY: _____

Bryan S. Neiderhiser, Esquire
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

VERIFICATION

I hereby verify that I have read the foregoing motion and that, to the best of my knowledge, information and belief, there are good grounds to support such motion and it is not interposed merely for delay.

Bryan S. Neiderhiser, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

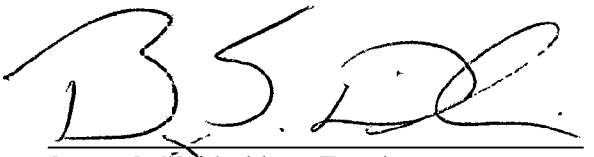
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION FOR RECONSIDERATION OF THE ORDER OF COURT GRANTING DEFENDANT PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS' PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT** was mailed, U.S. First Class mail, to the following this 9th day of April, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219



Bryan S. Neiderhiser, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

ORDER OF COURT

AND NOW, this _____ day of _____, 2009, on presentation of the within Motion for Reconsideration, it is hereby ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for Reconsideration of the Order of Court Granting Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics' Preliminary Objections to Plaintiffs' Complaint is hereby granted and Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics' Preliminary Objections are denied.

BY THE COURT:

_____
J.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

ORDER OF COURT

AND NOW, this _____ day of _____, 2009, on presentation of the within Motion for Reconsideration, it is hereby ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for Reconsideration of the Order of Court Granting Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics' Preliminary Objections to Plaintiffs' Complaint is hereby granted. It is further ORDERED, ADJUDGED, AND DECREED that the Order of Court of April 3, 2009, is hereby stricken and Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics' Preliminary Objections are granted as to Count VII only and Plaintiffs may proceed on Counts V and VI.

BY THE COURT:

_____
J.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED 1cc Atty
m/ 12:15cm Neiderhiser
APR 15 2009
William A. Shaw
Prothonotary/Clerk of Courts

PLAINTIFFS' REPLY TO DEFENDANT THOMPSON/VALLEY EXCAVATING'S NEW MATTER AND NEW MATTER/CROSS-CLAIM

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

PLAINTIFFS' REPLY TO DEFENDANT THOMPSON/VALLEY EXCAVATING'S NEW MATTER AND NEW MATTER/CROSS-CLAIM

AND NOW come the Plaintiffs, James E. Clark, Jr., and Brenda Coble, individually and as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by and through their counsel, Bryan S. Neiderhiser, Esquire, and Marcus & Mack, P.C., and file the within Reply to Defendant Thompson/Valley Excavating's New Matter and New Matter/Cross-claim as follows:

23. Paragraph 23 of Defendant Thompson/Valley Excavating's New Matter states conclusions of law to which no response is required. Further, the Pennsylvania Rules of Civil

Procedure provide that the affirmative defenses of comparative negligence, contributory negligence, and assumption of the risk are deemed denied without need for a response. To the extent that a response is deemed necessary, it is specifically denied that the affirmative defenses of comparative negligence, contributory negligence and/or assumption of the risk are valid, viable and/or effective affirmative defenses in the instant matter. By way of further answer, and at all times relevant hereto, Plaintiffs' decedent acted in a careful, reasonable and prudent manner and in no way was comparatively negligent, contributorily negligent, and/or assumed the risk. Strict proof to the contrary is demanded at trial.

24. Paragraph 24 of Defendant Thompson/Valley Excavating's New Matter states conclusions of law to which no response is required. Further, the Pennsylvania Rules of Civil Procedure provide that any affirmative defense that is not raised and pled with specificity in the appropriate forum is deemed waived. Thus, since Defendant Thompson/Valley Excavating has failed to plead with specificity which defenses they are allegedly raising under the Pennsylvania Motor Vehicle Financial Responsibility Law, the same should be deemed waived. To the extent that a response is deemed necessary, and by way of further answer, Paragraph 24 of Defendant Thompson/Valley Excavating's New Matter is specifically denied. It is denied that Plaintiffs' claim is barred in whole or in part by the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law. By way of further answer, and at all times relevant hereto, Plaintiffs and Plaintiffs' decedent were in full compliance with the Pennsylvania Motor Vehicle Financial Responsibility Law. Strict proof to the contrary is demanded at trial.

25. Paragraph 25 of Defendant Thompson/Valley Excavating's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 25 is specifically denied. It its denied that the Pennsylvania Worker's

Compensation Act serves as an immunity in the subject matter. It is further denied that the aforementioned defense is applicable to the within matter. Strict proof to the contrary is demanded at trial.

26. Paragraph 26 of Defendant Thompson/Valley Excavating's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 26 is specifically denied. It its denied that the case of Moorhead vs. Crozer Chester Medical Center, 564 Pa. 156, 765 A.2d 786 (2001) serves as an affirmative defense to the extent that Plaintiffs are asserting a claim for medical bills in the subject matter. It is further denied that the aforementioned alleged defense is applicable to the within matter. Strict proof to the contrary is demanded at trial.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court dismiss Defendant Thompson/Valley Excavating's New Matter and judgment be entered in their favor.

PLAINTIFFS' REPLY TO DEFENDANT THOMPSON/VALLEY EXCAVATING'S NEW MATTER/CROSS-CLAIM

27. Paragraph 27 of Defendant Thompson/Valley Excavating's New Matter Pursuant to Pa. R.C.P. 2252(d) merely incorporates by reference Paragraphs 1 through 26 of their Answer and New Matter and, as such, no response is required. To the extent that a response is deemed necessary, Plaintiffs specifically deny and repudiate any stance that could be perceived as accepting or endorsing any disavowments of negligence, liability and/or as accepting or endorsing any affirmative defenses therein espoused by Defendant Thompson/Valley Excavating. Strict proof to the contrary is demanded at trial.

28. Paragraph 28 of Defendant Thompson/Valley Excavating's New Matter-Cross-claim

is directed to parties other than Plaintiffs and as such, no response is required from the Plaintiffs To the extent that a response is deemed necessary, it is specifically denied that Defendant Thompson/Valley Excavating are not liable to the Plaintiffs. By way of further answer, Defendants Thompson, Valley Excavating, New Enterprise and Preco are liable to Plaintiffs as set forth more specifically in the Complaint. Strict proof to the contrary is demanded at the time of trial.

29. Paragraph 29 of Defendant Thompson/Valley Excavating's New Matter-Cross-claim is directed to parties other than Plaintiffs and as such, no response is required from the Plaintiffs. To the extent that a response is deemed necessary, it is specifically denied that Defendant Thompson/Valley Excavating are not liable to the Plaintiffs. By way of further answer, Defendants Thompson, Valley Excavating, New Enterprise and Preco are liable to Plaintiffs as set forth more specifically in the Complaint. Strict proof to the contrary is demanded at the time of trial.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court dismiss Defendant Thompson/Valley Excavating's New Matter Pursuant to Pa. R.C.P. 2252(d) and judgment be entered in their favor.

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esq.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

VERIFICATION

I, James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

James E Clark Jr.

James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

VERIFICATION

I, Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

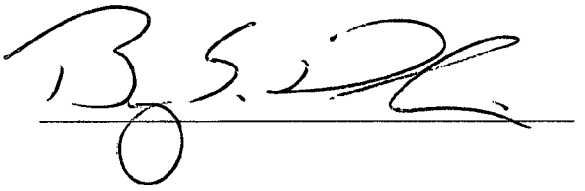
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' REPLY TO DEFENDANT THOMPSON/VALLEY EXCAVATING'S NEW MATTER AND NEW MATTER/CROSS-CLAIM** was mailed, U.S. First Class mail, to the following this 14th day of April, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219



LA

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED
APR 16 2009
0 13:00 (3)
William A. Shaw
Prothonotary/Clerk of Courts
2 cert to Atty

RULE

AND NOW, this 16th day of April, 2009, upon consideration of the within Motion for Reconsideration of the Order of Court Granting Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics' Preliminary Objections to Plaintiffs' Complaint, it is hereby Ordered that:

1. A Rule is issued upon Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, to show cause why the moving party is not entitled to the relief requested;

2. Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, shall file an Answer to the Motion within _____ days of this date;

3. The Motion shall be decided under Pa. R.C.P. 206.7;

4. Argument shall be held on the 21st day of May, 2009, in Courtroom No. 1 @ 3:00 p.m. of the Clearfield County Courthouse, 230 E. Market Street, Clearfield, Pennsylvania; and

5. Notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:

J.

FILED
APR 16 2009
William A. Shaw
Prothonotary/Clerk of Courts
2 cert to
A-f-C

DATE: _____
___ 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:

DATE: 4-16-09
X You are responsible for serving all appropriate parties.
___ The Prothonotary's office has provided service to the following parties:
___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other
___ Defendant(s) ___ Defendant(s) Attorney
___ Special Instructions:

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

ORIGINAL

CERTIFICATE OF SERVICE

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

FILED NO CC
m/11:55 AM
APR 22 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

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

APR 16 2009

Attest.

RULE

AND NOW, this 16TH day of APRIL, 2009, upon consideration of the within Motion for Reconsideration of the Order of Court Granting Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics' Preliminary Objections to Plaintiffs' Complaint, it is hereby Ordered that:

1. A Rule is issued upon Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, to show cause why the moving party is not entitled to the relief requested;

2. Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, shall file an Answer to the Motion within ____ days of this date;

3. The Motion shall be decided under Pa. R.C.P. 206.7;

4. Argument shall be held on the 21ST day of MAY, 2009, in Courtroom No. 1 @ 3:00 P.M. of the Clearfield County Courthouse, 230 E. Market Street, Clearfield, Pennsylvania; and

5. Notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:

/S/ Fredric J Ammerman

J.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Rule entered April 16, 2009, setting forth Argument on the Motion for Reconsideration of the Order of Court Granting Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics' Preliminary Objections to Plaintiffs' Complaint was mailed, U.S. First Class mail, to the following this 21st day of April, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

Bryan S. Neiderhiser, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – ASBESTOS
Plaintiffs,	)	No. ~~CD~~ 2008-2452
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,	)	
Defendants.	)	

ORDER OF COURT

AND NOW, to-wit, this ____ day of May, 2009 upon consideration of the Plaintiffs' Motion for Reconsideration and Defendant Preco Electronics Inc's Response in Opposition to the Motion for Reconsideration, it is hereby ORDERED, ADJUDGED and DECREED that:

- The Motion for Reconsideration is DENIED and Counts V and VI of Plaintiffs' Complaint, sounding in negligence and strict liability against Defendant Preco Electronics Inc. are DISMISSED with prejudice;
- OR, in the alternative: the Preliminary Objections of Defendant Preco Electronics Inc. are hereby GRANTED pursuant to Count VII breach of warranty. Count VII of Plaintiffs' Complaint, (breach of warranty), against Defendant Preco Electronics Inc. is hereby DISMISSED with prejudice.

BY THE COURT:

_____,J
Fredric J. Ammerman, President Judge

5/13

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the Yule.

D7.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT ORDER GRANTING DEFENDANT PRECO ELECTRONICS, INC. t/b/d/a PRECO ELECTRONICS

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

JURY TRIAL DEMANDED

FILED NO CC
MAY 11 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – ASBESTOS
Plaintiffs,	)	No. GD 2008-2452
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,	)	
Defendants.	)	

RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT ORDER GRANTING DEFENDANT PRECO ELECTRONICS, INC. t/b/d/a PRECO ELECTRONICS. t/b/d/a PRECO ELECTRONICS

AND NOW, comes the Defendant, Preco Electronics, Inc. t/d/b/a Preco Electronics ("Preco"), by and through its counsel, Goehring, Rutter & Boehm, and files the within Response in Opposition to Plaintiffs' Motion for Reconsideration of the Court Order, averring as follows:

1. Admitted, based upon information and belief.

2. Denied as stated. The documents, speak for themselves. Any attempt by Plaintiffs to characterize documents is denied. By way of further answer, discovery is ongoing.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Denied as stated. Paragraph 7 contains conclusions of law to which no responsive pleading is required. To the extent that a response is deemed necessary, the Court did not conclude that "the Gist of the Action Doctrine operated to preclude any of the Plaintiffs' allegations against the instant Defendant." The Court concluded that, pursuant to the Gist of the Action Doctrine, the negligence and strict liability counts against Preco were properly dismissed. Preco believes that this Honorable Court properly entered the April 6, 2009 Order of Court. By way of further answer, this Honorable Court's ruling is supported, given the allegations of Plaintiffs' Complaint and the case law applying Gist of the Action Doctrine as discussed in Preco's Preliminary Objections and Brief.

8. Denied as stated. Plaintiffs' Complaint speaks for itself.

9. Denied as stated. Paragraph 9 contains conclusions of law to which no responsive pleading is required. To the extent that a response is deemed necessary, the Gist of the Action Doctrine precludes certain of Plaintiffs' claims against Preco. This Honorable Court properly entered the April 6, 2009 Order of Court. This Honorable Court's ruling is supported, given the allegations of Plaintiffs' Complaint and the case law applying Gist of the Action Doctrine. By way of further answer, to the extent that this Honorable Court reconsiders it position and agrees with Plaintiffs' legal conclusion that the action sounds in negligence and not in contract, Defendant Preco respectfully requests that this Honorable Court enter an Order granting Preco's Preliminary Objections, dismissing Count VII Breach of Warranty of Plaintiffs' Complaint as against Preco.

10. Denied as stated. Paragraph 10 of Plaintiffs' Motion for Reconsideration is a prayer for relief to which no responsive pleading is required. To the extent that a response is deemed necessary, the Court properly dismissed the negligence and strict liability claims on the basis of Gist of the Action. In the alternative, to the extent that this Honorable Court is persuaded that the "Gist of the Action" sounds in tort and not in contract, Preco submits that the Gist of the Action Doctrine operates to preclude Plaintiffs' Breach of Warranty claim (Count VII) as against Preco.

WHEREFORE, Defendant, Preco Electronics Inc. respectfully requests that this Honorable Court deny the Motion for Reconsideration and uphold the initial Order of Court entered April 6, 2009; in the alternative, to the extent that this Honorable Court is persuaded that the action sounds in negligence and not in contract, Defendant, Preco Electronics Inc. respectfully requests that this Honorable enter an Order granting its Preliminary Objections and dismissing the breach of warranty claim (Count VII) of Plaintiffs' Complaint against Defendant Preco Electronics Inc. with prejudice.

Respectfully submitted,

GOEHRING, RUTTER & BOEHM

By: Jaime N. Doherty

Jaime N. Doherty, Esquire
Pa. I.D. #89402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **RESPONSE AND OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT ORDER GRANTING DEFENDANT PRECO ELECTRONICS, INC. T/D/B/A PRECO ELECTRONICS** was served via U.S. First Class mail, postage prepaid, this 8th day of May, 2009, upon the following:

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Counsel for James E. Clark, Jr. and Brenda Coble

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
Counsel for Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228
Counsel for New Enterprise Stone & Lime Company, Inc. t/d/b/a New Enterprise Stone and Lime Company

GOEHRING, RUTTER & BOEHM

Jaime N. Doherty, Esquire
Pa. I.D. #89402

FILED
0/9:47 GN
MAY 27 2009
William A. Shaw
Prothonotary/Clerk of Courts

ICC Attys:
J. Mack/B. Neiderhiser
Timothy Burdette
Jeffrey Olszewski
S. Vernallis/J. Doherty

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

JAMES E. CLARK, JR. and BRENDA COBLE, ind. and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a EDWARD CLARK, SR., deceased

VS.

NO. 08-2452-CD

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE AND LIME COMPANY, t/d/b/a PRECO ELECTRONICS

O R D E R

NOW this 21st day of May, 2009, following argument on the Plaintiff's Motion for Reconsideration filed on April 13, 2009; the Court notes that Defendant has, in essence, changed its mind relative the circumstances of the Court's Order of April 3, 2009, and has now indicated its belief that Counts V and VI should be reinstated; in attempting to deal with the circumstances, it is the ORDER of

this Court that the Court's Order of April 3, 2009, be and is hereby rescinded.

It is the further Order of this Court that the Preliminary Objections filed on behalf of Defendant Preco Electronics, Inc., are hereby dismissed. The Court directs the parties to deal with any allegations of insufficiency of evidence through summary judgment proceedings.

Plaintiff stipulates it is not attempting to proceed on any claim involving recklessness.

BY THE COURT,

President Judge

DATE: 5/27/09

___X___ You are responsible for serving all appropriate parties.

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

_____ Plaintiff(s) ___X___ Plaintiff(s) Attorney _____ Other

_____ Defendant(s) ___X___ Defendant(s) Attorney

_____ Special Instructions:

FILED

MAY 27 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

ORIGINAL

CERTIFICATE OF SERVICE

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

FILED NO CC
m/11:08/01
JUN 03 2009
William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES E. CLARK, JR. and BRENDA COBLE, ind. and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a EDWARD CLARK, SR., deceased	)	
VS.	)	NO. 08-2452-CD
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE AND LIME COMPANY, t/d/b/a PRECO ELECTRONICS	)	

O R D E R

NOW this 21st day of May, 2009, following argument on the Plaintiff's Motion for Reconsideration filed on April 13, 2009; the Court notes that Defendant has, in essence, changed its mind relative the circumstances of the Court's Order of April 3, 2009, and has now indicated its belief that Counts V and VI should be reinstated; in attempting to deal with the circumstances, it is the ORDER of

this Court that the Court's Order of April 3, 2009, be and is hereby rescinded.

It is the further Order of this Court that the Preliminary Objections filed on behalf of Defendant Preco Electronics, Inc., are hereby dismissed. The Court directs the parties to deal with any allegations of insufficiency of evidence through summary judgment proceedings.

Plaintiff stipulates it is not attempting to proceed on any claim involving recklessness.

BY THE COURT,

/S/ Fredric J Ammerman

President Judge

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

MAY 27 2009

Attest.

Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

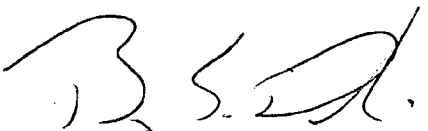
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Order entered May 21, 2009, following argument on Plaintiffs' Motion for Reconsideration filed on April 13, 2009, was mailed, U.S. First Class mail, to the following this 2nd day of June, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219



Bryan S. Neiderhiser, Esquire
Attorney for Plaintiffs

FILED

JUN 03 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

**NOTICE OF DEPOSITION OF
NEW ENTERPRISE
ON SITE PERSONNEL**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

FILED NO CC
m/ 10:45 BK
JUN 11 2009
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF NEW ENTERPRISE ON SITE PERSONNEL

Filed on behalf of Plaintiffs

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF NEW ENTERPRISE ALL ON SITE PERSONNEL,** to Counsel for Defendant, Jeffrey M. Olszewski, 650 Washington Road, Suite 700, Pittsburgh, PA 15228, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **NEW ENTERPRISE ON SITE PERSONNEL** will be taken on oral examination in the Sargent's Court Reporting Office, located at 106 N. Second Street, Clearfield, PA 16830, at 12:00 p.m. on Tuesday, June 30, 2009 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: June 10, 2009

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION was served by U.S. First Class Mail, postage prepaid this 10th day of June 2009, upon the following:

Timothy J. Burdette, Esquire
Law Office of Timothy J. Burdette
733 Washington Road, Suite 209
Pittsburgh, PA 15228

412-531-3700

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
650 Washington Road
Pittsburgh, PA 15228

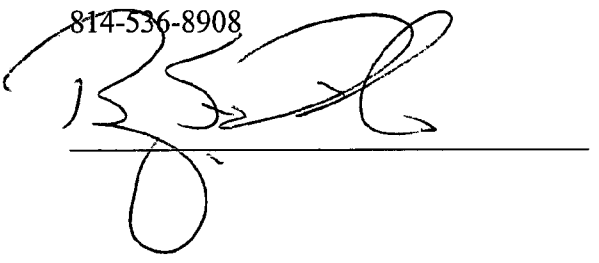
412-563-2500

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

412-281-0587

Sargent's Court Reporting
106 N. Second Street
Clearfield, PA 16830

814-536-8908



IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

**NOTICE OF DEPOSITION OF
NEW ENTERPRISE
HEAD OF SAFETY**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

FILED NO CC
M/10:45/BV
JUN 11 2009
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF NEW ENTERPRISE HEAD OF SAFETY

Filed on behalf of Plaintiffs

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF NEW ENTERPRISE HEAD OF SAFETY,** to Counsel for Defendant, Jeffrey M. Olszewski, 650 Washington Road, Suite 700, Pittsburgh, PA 15228, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **NEW ENTERPRISE HEAD OF SAFETY** will be taken on oral examination in the Sargent's Court Reporting Office, located at 106 N. Second Street, Clearfield, PA 16830, at 11:00 a.m. on Tuesday, June 30, 2009 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: June 10, 2009

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION was served by U.S. First Class Mail, postage prepaid this 10th day of June 2009, upon the following:

Timothy J. Burdette, Esquire
Law Office of Timothy J. Burdette
733 Washington Road, Suite 209
Pittsburgh, PA 15228

412-531-3700

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
650 Washington Road
Pittsburgh, PA 15228

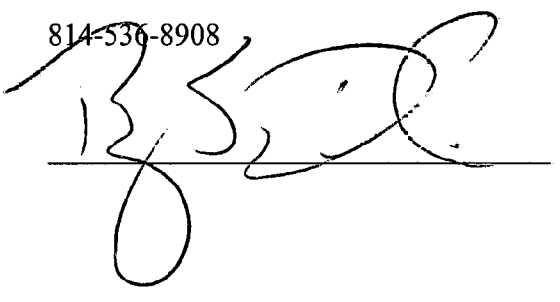
412-563-2500

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

412-281-0587

Sargent's Court Reporting
106 N. Second Street
Clearfield, PA 16830

814-536-8908



FILED

JUN 11 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF NEW ENTERPRISE PROJECT MANAGERS

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

FILED No CC
10:45 BD
JUN 11 2009
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF NEW ENTERPRISE PROJECT MANAGERS

Filed on behalf of Plaintiffs

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF NEW ENTERPRISE PROJECT MANAGERS** to Counsel for Defendant, Jeffrey M. Olszewski, 650 Washington Road, Suite 700, Pittsburgh, PA 15228, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **NEW ENTERPRISE PROJECT MANAGERS** will be taken on oral examination in the Sargent's Court Reporting Office, located at 106 N. Second Street, Clearfield, PA 16830, at 10:00 a.m. on Tuesday, June 30, 2009 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: June 10, 2009

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION was served by U.S. First Class Mail, postage prepaid this 10th day of June 2009, upon the following:

Timothy J. Burdette, Esquire
Law Office of Timothy J. Burdette
733 Washington Road, Suite 209
Pittsburgh, PA 15228

412-531-3700

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
650 Washington Road
Pittsburgh, PA 15228

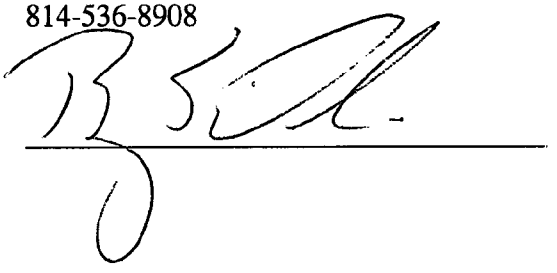
412-563-2500

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

412-281-0587

Sargent's Court Reporting
106 N. Second Street
Clearfield, PA 16830

814-536-8908



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a JAMES
EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW
ENTERPRISE STONE AND LIME
COMPANY; PRECO ELECTRONICS, INC.,
t/d/b/a PRECO ELECTRONICS,

Defendants.

No. 2008-2452

ISSUE NUMBER:

PLEADING:

NOTICE OF SERVICE OF DEFENDANT NEW ENTERPRISE STONE & LIME COMPANY, INC.'S ANSWERS TO PLAINTIFF'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT

CODE AND CLASSIFICATION:

FILED ON BEHALF OF:

NEW ENTERPRISE STONE & LIME CO., INC., incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, Defendants.

COUNSEL OF RECORD:

JEFFREY M. OLSZEWSKI, ESQUIRE
Pa. I.D. No. 50736

CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
(412) 563-2500

FILED NO CC
m/12:48BN
JUN 26 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

No. 2008-2452

NOTICE OF SERVICE OF DEFENDANT NEW ENTERPRISE STONE & LIME COMPANY, INC.'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT

This is to certify that Defendant's Answers to Plaintiff's First Set of Interrogatories and Request for Production of Documents Directed to Defendant was served upon the following counsel by first class mail, postage prepaid on the 24 day of June 2009.

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 11078
Indiana, PA 15701
(Counsel for Plaintiff)

Timothy J. Burdette, Esquire
Law Office of Timothy J. Burdette
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Counsel for Defendant, Lyle Thompson; Lyle Thompson t/d/b/a Valley Excavating and Hauling)

Jaime N. Doherty, Esquire
Goering, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(*Counsel for Preco Electronics, Inc.*)

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY: _____

Jeffrey M. Olszewski, ESQUIRE
Attorney for the Defendant
NEW ENTERPRISE STONE & LIME CO., INC., incorrectly identified as NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIM E COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED
JUL 01 2009
M 1:20
William A. Shaw
Prothonotary/Clerk of Courts
1 cert to Atty

NOTICE OF SERVICE

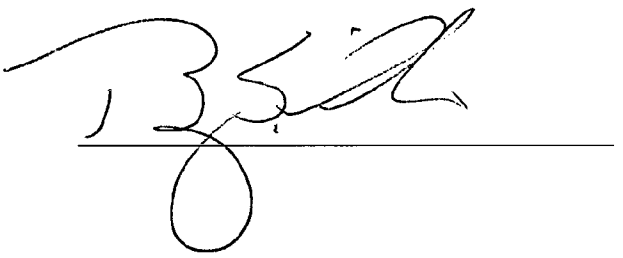
I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' ANSWERS AND RESPONSES TO NOS. 2, 12, 16-23 AND 43-49 OF DEFENDANT LYLE THOMPSON'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS** were hand-delivered to the following this 30th day of June, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

ORIGINAL

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219



FILED
JUL 01 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED 1CC AAty
m/ 12:01 pm Neiderhiser
JUL 23 2009
William A. Shaw
Prothonotary/Clerk of Courts

PLAINTIFFS' REPLY TO DEFENDANT NEW ENTERPRISE'S NEW MATTER AND CROSS-CLAIM

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

PLAINTIFFS' REPLY TO DEFENDANT NEW ENTERPRISE'S NEW MATTER AND CROSS-CLAIM

AND NOW come the Plaintiffs, James E. Clark, Jr., and Brenda Coble, individually and as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by and through their counsel, Bryan S. Neiderhiser, Esquire, and Marcus & Mack, P.C., and file the within Reply to Defendant New Enterprise's New Matter and Cross-claim as follows:

90. Paragraph 90 of Defendant's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 90 is specifically denied. It is denied that Plaintiffs' Complaint fails to state a cause of action against Defendant New Enterprise upon which relief can be granted. By way of further answer,

Plaintiffs have set forth cause(s) of action upon which relief can and should be granted. Strict proof to the contrary is demanded at trial.

91. Paragraph 91 of Defendant New Enterprise's New Matter states conclusions of law to which no response is required. Further, the Pennsylvania Rules of Civil Procedure provide that any affirmative defense that is not raised and pled with specificity in the appropriate forum is deemed waived. Thus, since Defendant New Enterprise has failed to plead with specificity which defenses it is allegedly raising under the Pennsylvania Motor Vehicle Financial Responsibility Law, the same should be deemed waived. To the extent that a response is deemed necessary, and by way of further answer, Paragraph 91 of Defendant New Enterprise's New Matter is specifically denied. It is denied that the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701, et seq., in any way bars Plaintiffs' cause of action. It is further denied that said Law precludes the pleading, proving and/or recovering of benefits identified in the Financial Responsibility Law. Moreover, it is denied that the Law limits recovery based upon a limited tort selection and it is denied that the same serves as a valid, viable and/or effective affirmative defense in the instant matter. By way of further answer, Plaintiffs' Decedent's untimely death was caused by the negligence, carelessness and/or recklessness of the Defendants as set forth more specifically in the Complaint. Therefore, despite this Defendant's assertions to the contrary, Plaintiffs suffered serious, permanent and significant injuries and damages. Moreover, at all times relevant hereto, Plaintiffs elected and/or are subject to the Full Tort option. By way of further answer, and at all times relevant hereto, Plaintiffs and Plaintiffs' decedent were in full compliance with the Pennsylvania Motor Vehicle Financial Responsibility Law. Strict proof to the contrary is demanded at trial.

92. Paragraph 92 of Defendant New Enterprise's New Matter states conclusions of law to which no response is required. Further, the Pennsylvania Rules of Civil Procedure provide that the affirmative defense of assumption of the risk is deemed denied without need for a response. To the extent that a response is deemed necessary, Paragraph 92 of Defendant's New Matter is specifically denied. It is specifically denied that the affirmative defense of assumption of the risk is a valid, viable and/or effective affirmative defense in the instant matter. By way of further answer, and at all times relevant hereto, Plaintiffs' decedent acted in a careful, reasonable and prudent manner and in no way assumed the risk. It is further denied that Plaintiffs' injuries and/or damages, including James Edward Clark, Sr's. death, may not be recovered due to Plaintiffs' Decedent's alleged assumption of the risk. It is further denied that Plaintiffs' Decedent in any way assumed the risk of harm. Strict proof to the contrary is demanded at trial.

93. Paragraph 93 of Defendant New Enterprise's New Matter states conclusions of law to which no response is required. Further, the Pennsylvania Rules of Civil Procedure provide that the affirmative defenses of contributory negligence and comparative negligence are deemed denied without need for a response. To the extent that a response is deemed necessary, it is specifically denied that the affirmative defenses of contributory negligence and comparative negligence are valid, viable and/or effective affirmative defenses in the instant matter. It is further specifically denied that any and all of Plaintiffs' injuries and/or damages, including James Edward Clark, Sr.'s death, were allegedly caused solely by the Plaintiff's own negligent, careless or reckless conduct. It is further specifically denied that the amounts which the Plaintiffs have claimed are allegedly barred, modified and/or reduced by the provisions of the Pennsylvania Comparative Negligence Law, 42 Pa. C.S.A. §7102, et seq. By way of further answer, and at all times relevant hereto, Plaintiffs' decedent acted in a careful, reasonable and prudent manner and

in no way was contributorily and/or comparatively negligent. Strict proof to the contrary is demanded at trial.

94. Paragraph 94 of Defendant New Enterprise's New Matter states conclusions of law which require no response. To the extent that a response is deemed necessary, Paragraph 94 is specifically denied. It is denied that the Plaintiff-Decedent was allegedly negligent, careless and reckless in general and in the following particulars:

a. In failing to appreciate open and obvious road conditions;

b. In failing to warn persons on site of his presence in the construction zone;

c. In failing to locate and perform his work in a safe area;

d. In failing to follow any and all signs, placard flag or other construction-related warnings; and

e. In failing to appreciate the approaching Thompson vehicle.

It is further denied that Plaintiffs' Decedent was in any way contributorily negligent, comparatively negligent, negligent, careless or reckless in the above-captioned matter. By way of further answer, the injuries and/or damages and subsequent death from the subject incident were caused and/or contributed to by the negligence, carelessness and/or recklessness of the Defendants as set forth more specifically in the Complaint . Strict proof to the contrary is demanded at trial.

95. Paragraph 95 of Defendant New Enterprise's New Matter is directed to parties other than Plaintiffs and as such, no response is required from the Plaintiffs. To the extent that a response is deemed necessary Paragraph 95 of Defendant's New Matter is specifically denied as stated. While it is admitted that Defendant Thompson was negligent and that his actions and/or inactions caused and/or contributed to Plaintiffs' Decedent's death, it is specifically denied that

Defendant New Enterprise and the other remaining Defendants are not liable to the Plaintiffs. By way of further answer the Defendants caused and/or contributed to this incident and resultant injuries and damages and are, therefore, liable to Plaintiffs as set forth more specifically in the Complaint. Strict proof to the contrary is demanded at the time of trial.

96. Paragraph 96 of Defendant New Enterprise's New Matter is directed to parties other than Plaintiffs and as such, no response is required from the Plaintiffs. To the extent that a response is deemed necessary Paragraph 96 of Defendant's New Matter is specifically denied as stated. While it is admitted that Defendant Lyle Thompson d/b/a Valley Excavating and Hauling was negligent and that his/its actions and/or inactions caused and/or contributed to Plaintiffs' Decedent's death, it is specifically denied that Defendant New Enterprise and the other remaining Defendants are not liable to the Plaintiffs. By way of further answer the Defendants caused and/or contributed to this incident and resultant injuries and damages and are, therefore, liable to Plaintiffs as set forth more specifically in the Complaint. Strict proof to the contrary is demanded at the time of trial.

97. Paragraph 97 of Defendant New Enterprise's New Matter is directed to parties other than Plaintiffs and as such, no response is required from the Plaintiffs. To the extent that a response is deemed necessary Paragraph 97 of Defendant's New Matter is specifically denied as stated. While it is admitted that Defendant Preco Electronics, Inc. t/d/b/a Preco Electronics was negligent and that its actions and/or inactions caused and/or contributed to Plaintiffs' Decedent's death, it is specifically denied that Defendant New Enterprise and the other remaining Defendants are not liable to the Plaintiffs. By way of further answer the Defendants caused and/or contributed to this incident and resultant injuries and damages and are, therefore, liable to

Plaintiffs as set forth more specifically in the Complaint. Strict proof to the contrary is demanded at the time of trial.

98. Paragraph 98 of Defendant New Enterprise's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 98 is specifically denied. It is denied that any and all of Plaintiffs' injuries and/or damages and James Edward Clark, Sr.'s death were caused by persons, parties, additions and/or events over whom instant Defendant allegedly had no control or right to control at any time. By way of further answer, Plaintiffs' Decedent's injuries and/or damages and the subsequent death of Plaintiffs' Decedent were caused and/or contributed to by the negligence, carelessness and/or recklessness of the Defendants as set forth in the Complaint. Strict proof to the contrary is demanded at trial.

99. Paragraph 99 of Defendant New Enterprise's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 99 is specifically denied. It is denied that there is no proximate or causal relationship between Defendant New Enterprise at State Route 8012 and the injuries and/or damages claims by the Plaintiffs, including James Edward Clark, Sr.'s death. By way of further answer, Plaintiffs' Decedent's injuries and/or damages and the subsequent death of Plaintiffs' Decedent were caused and/or contributed to by the negligence, carelessness and/or recklessness of the Defendants as set forth in the Complaint. Strict proof to the contrary is demanded at trial.

100. Paragraph 100 of Defendant New Enterprise's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 100 is specifically denied. It is denied that there is no proximate or causal relationship between Defendant New Enterprise's work on or about State Route 8012 and the alleged negligent and/or

improper conduct of other persons and/or parties. By way of further answer, Plaintiffs' Decedent's injuries and/or damages and the subsequent death of Plaintiffs' Decedent were caused and/or contributed to by the negligence, carelessness and/or recklessness of the Defendants as set forth in the Complaint. Strict proof to the contrary is demanded at trial.

101. Paragraph 101 of Defendant's New Matter states conclusions of law to which no response is required. Further the Pennsylvania Rules of Civil Procedure and applicable law provide that all affirmative defenses be raised and plead with requisite specificity in the appropriate forum. Further, the Pennsylvania Rules of Civil Procedure and applicable law provide that written documents which form the basis for averments and/or affirmative defenses in Pleadings be attached to said Pleading. Thus since instant Defendant has failed to comply with the above requirements of law, said affirmative defenses and are deemed waived. To the extent that a further response is deemed necessary, Paragraph 101 of instant Defendant's New Matter is specifically denied. It is denied that the terms, conditions and sections contained in the bid documents serve as a complete defense to the Plaintiffs' Complaint. Strict proof to the contrary is demanded at trial.

102. Paragraph 102 of Defendant's New Matter states conclusions of law to which no response is required. Further the Pennsylvania Rules of Civil Procedure and applicable law provide that all affirmative defenses be raised and plead with requisite specificity in the appropriate forum. Further, the Pennsylvania Rules of Civil Procedure and applicable law provide that written documents which form the basis for averments and/or affirmative defenses in Pleadings be attached to said Pleading. Thus since instant Defendant has failed to comply with the above requirements of law, said affirmative defenses and are deemed waived. To the extent that a further response is deemed necessary, Paragraph 102 of instant Defendant's New

Matter is specifically denied. It is denied that the terms, conditions and sections contained in the New Enterprise contract with PennDOT serve as a complete defense to the Plaintiffs' Complaint. Strict proof to the contrary is demanded at trial.

103. Paragraph 103 of Defendant's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 103 is specifically denied. It its denied that the Statute of Limitations serves as a complete defense to Plaintiff's cause of action. To the contrary, Plaintiffs' lawsuit was filed in a timely and proper manner and in accordance with applicable statutes of limitations. Strict proof to the contrary is demanded at trial.

104. Paragraph 104 of instant Defendant's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 104 of instant Defendant's New Matter is specifically denied. It is denied that each party and/or contractor, including the Plaintiff was responsible for their own work and conduct on the work project described in the Plaintiffs' Complaint. Strict proof to the contrary is demanded at trial.

105. Paragraph 105 of Defendant New Enterprise's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 105 is specifically denied. It is denied that the Plaintiffs have failed to mitigate damages. By way of further answer, and at all times relevant hereto, Plaintiffs and Plaintiffs' Decedent have acted in a reasonable and prudent manner and have in no way failed to mitigate their damages. Strict proof to the contrary is demanded at trial.

106. Paragraph 106 of Defendant New Enterprise's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 106 is specifically denied. It is denied that Defendant New Enterprise may claim the defense of

equitable estoppel. It is further denied that the aforementioned defense is applicable to, and/or viable in, the within matter. Strict proof to the contrary is demanded at trial.

107. Paragraph 107 of Defendant New Enterprise's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 107 is specifically denied. It its denied that Plaintiffs' claims may be barred, limited and/or reduced by the Pennsylvania Worker's Compensation Act, including but not limited to the section on statutory employer, which is allegedly being raised as an affirmative defense. It is further denied that the aforementioned defense(s) is applicable to the within matter. Strict proof to the contrary is demanded at trial.

108. Paragraph 108 of Defendant New Enterprise's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 108 is specifically denied. It is denied that Plaintiffs' Decedent's physical condition was the result of the pre-existing injury or condition or an injury or condition which was not caused or aggravated by the accident set forth in Plaintiffs' Complaint. By way of further answer, the injuries and/or damages and subsequent death of Plaintiffs' Decedent set forth by the Plaintiffs in the Complaint were caused and/or contributed to by the negligence, carelessness and/or recklessness of the Defendants as set forth in the Complaint. It is further denied that Plaintiff's death by blunt force trauma and the loss of brain and other bodily matter through the skull was the result of a preexisting injury or condition. Strict proof to the contrary is demanded at trial.

109. Paragraph 109 of Defendant's New Matter states conclusions of law to which no response is required. Further the Pennsylvania Rules of Civil Procedure and applicable law provide that all affirmative defenses be raised and plead with requisite specificity in the appropriate forum. Further, the Pennsylvania Rules of Civil Procedure and applicable law

provide that written documents which form the basis for averments and/or affirmative defenses in Pleadings be attached to said Pleading. Thus since instant Defendant has failed to comply with the above requirements of law, said affirmative defenses and are deemed waived. To the extent that a further response is deemed necessary, Paragraph 109 of instant Defendant's New Matter is specifically denied. It is denied that the Truck and Transportation Services Operating Agreement between New Enterprise and Lyle Thompson and/or Lyle Thompson and Valley Excavating and Hauling, dated June 25, 2007, serve as a full and complete defense to the Plaintiffs' cause of action. Strict proof to the contrary is demanded at trial.

110. Paragraph 110 of Defendant's New Matter states conclusions of law to which no response is required. Further the Pennsylvania Rules of Civil Procedure and applicable law provide that all affirmative defenses be raised and plead with requisite specificity in the appropriate forum. Further, the Pennsylvania Rules of Civil Procedure and applicable law provide that written documents which form the basis for averments and/or affirmative defenses in Pleadings be attached to said Pleading. Thus since instant Defendant has failed to comply with the above requirements of law, said affirmative defenses and are deemed waived. To the extent that a further response is deemed necessary, Paragraph 110 of instant Defendant's New Matter is specifically denied. It is denied that New Enterprise's contract with Swank Associated Companies, Inc., dated June 7, 2007 serves as a full and complete to Plaintiffs' cause of action. Strict proof to the contrary is demanded at trial.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court dismiss Defendant New Enterprise's New Matter and judgment be entered in their favor.

PLAINTIFFS' REPLY TO DEFENDANT NEW ENTERPRISE'S CROSS-CLAIM PURSUANT TO RULE 1031.1

111. Paragraph 111 of Defendant New Enterprise's Cross-Claim Pursuant to Rule 1031.1 merely incorporates by reference the allegations contained in Plaintiffs' Complaint against Defendants Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling and Preco Electronics, Inc., t/d/b/a Preco Electronics, specifically paragraphs 17 through 31 and 59 through 87, and, as such, no response is required. To the extent that a response is deemed necessary, Plaintiffs specifically deny and repudiate any stance that could be perceived as accepting or endorsing any disavowments of negligence, liability and/or as accepting or endorsing any affirmative defenses therein espoused by Defendant New Enterprise. Strict proof to the contrary is demanded at trial.

112. Paragraph 112 of Defendant New Enterprise's Cross-claim is directed to parties other than Plaintiffs and as such, no response is required from the Plaintiffs. To the extent that a response is deemed necessary, it is specifically denied that Plaintiffs' did not suffer the injuries and damages as set forth in the Complaint. It is further denied that instant Defendant is not liable to the Plaintiffs and it is denied that the instant Defendant was not negligent, careless and/or reckless. To the contrary, Plaintiffs' injuries and damages were caused and/or contributed to by the Defendants as set forth more specifically in the Complaint. Strict proof to the contrary is demanded at the time of trial.

113 Paragraph 113 of Defendant New Enterprise's Cross-claim is directed to parties other than Plaintiffs and as such, no response is required from the Plaintiffs. To the extent that a response is deemed necessary, it is specifically denied that Defendant New Enterprise is not liable to the Plaintiffs. By way of further answer, the Defendants are liable to Plaintiffs as set

forth more specifically in the Complaint. Strict proof to the contrary is demanded at the time of trial.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court dismiss Defendant New Enterprise's Cross-claim Pursuant to Rule 1031.1 and judgment be entered in their favor.

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esq.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

VERIFICATION

I, James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

VERIFICATION

I, Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

Brenda Coble, individually and as Administrator of the
Estate of James Edward Clark, a/k/a
James Edward Clark, Sr.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

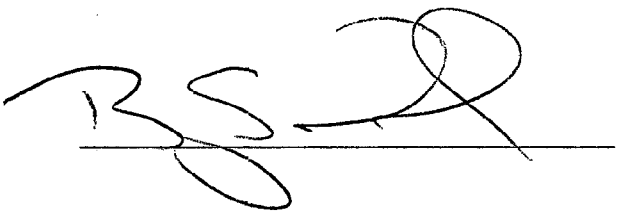
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' REPLY TO DEFENDANT NEW ENTERPRISE'S NEW MATTER AND CROSS-CLAIM PURSUANT TO RULE 1031.1** was mailed, U.S. First Class mail, to the following this 22nd day of July, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

FILED
JUL 24 2009
m/10:20/
William A. Shaw
Prothonotary/Clerk of Courts
NO CERT TO ATTY

NOTICE OF SERVICE

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – No. GD 2008-2452-CD
Plaintiffs,	)	
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., , t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS, Defendants.	)	

NOTICE OF SERVICE OF DISCOVERY REQUESTS

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

Kindly take notice that Defendant, Preco Electronics, Inc. t/d/b/a Preco Electronics, has filed its Responses and Objections to Answers to Plaintiffs' First Set of Interrogatories and Request for Production of Documents Directed to Defendant Preco Electronics, Inc., t/d/b/a Preco upon counsel for Plaintiffs via U.S. mail, postage pre-paid, on July 21, 2009:

Brian Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701

GOEHRING, RUTTER & BOEHM

By: Jaime N. Doherty
Jaime N. Doherty, Esquire
Pa. I.D.#89402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **NOTICE OF SERVICE OF DISCOVERY REQUESTS** has been served via U.S. First Class mail, postage pre-paid, this 21st day of July, 2009 upon the following:

Brian Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Counsel for James E. Clark, Jr. and Brenda Coble

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
Counsel for Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228
Counsel for New Enterprise Stone & Lime Company, Inc. t/d/b/a New Enterprise Stone and Lime Company

GOEHRING, RUTTER & BOEHM

Jaime N. Doherty, Esquire
Pa. I.D. #89402

FILED
JUL 24 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

ANSWER, NEW MATTER AND CROSS-CLAIMS PURSUANT TO RULE 1031.1 OF DEFENDANT PRECO ELECTRONICS, INC. ELECTRONICS, INC. t/b/d/a PRECO ELECTRONICS

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

JURY TRIAL DEMANDED

NOTICE TO PLEAD:
Plaintiff/Cross-Claim Defendants:
You are hereby notified to file a written response to the enclosed New Matter and Cross-Claim within twenty (20) days from the date of service hereof, or a judgment may be entered against you.

GOEHRING, RUTTER & BOEHM

BY: Jaime N. Doherty
Jaime N. Doherty, Esquire

FILED NO CC
JUL 27 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – No. GD 2008-2452-CD
Plaintiffs,	)	
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., , t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS, Defendants.	)	

ANSWER, NEW MATTER AND CROSS-CLAIMS PURSUANT TO RULE 1031.1 OF DEFENDANT PRECO ELECTRONICS, INC. t/b/d/a PRECO ELECTRONICS

AND NOW, comes the Defendant, Preco Electronics, Inc. t/d/b/a Preco Electronics ("Preco"), by and through its counsel, Goehring, Rutter & Boehm, and files the within Answer, New Matter and Cross-Claim Pursuant to Rule 1031.1, averring as follows:

1. Admitted, based upon information and belief.

2. Admitted, based upon information and belief.

3. Admitted, based upon information and belief.

4. Admitted, based upon information and belief.

5. Admitted, based upon information and belief.

6. Denied as stated. It is admitted that Preco is an Idaho Corporation with a business address of 415 North Maple Grove Road, Boise, Idaho. The remaining averments are denied and strict proof is demanded at the time of trial.

7. Denied as stated. It is admitted that an incident occurred on July 11, 2007. The remaining averments of Paragraph 7 are denied and strict proof is demanded at the time of trial.

8. Admitted, based upon information and belief.

9. Denied as stated. After a reasonable investigation, Defendant Preco is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 9 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial.

10. Denied as stated. It is specifically denied that any alleged damage to Plaintiffs, including the death of Plaintiffs' decedent, was caused or contributed to by Defendant Preco, anyone acting on its behalf or under its direction or control. The remaining averments of Paragraph 10 are denied and strict proof is demanded at the time of trial.

11.a-b. Denied as stated. After a reasonable investigation, Defendant Preco lacks knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 11 a-b of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial.

12. Denied as stated. After a reasonable investigation, Defendant Preco lacks knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 12 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial.

13.a-c Paragraph 13 a-c contains conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

14. Denied as stated. After a reasonable investigation, Defendant Preco lacks knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph

14 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial.

15.a-f Denied as stated. It is specifically denied that any of the damages alleged under the Wrongful Death Act were caused or contributed to by Defendant Preco, anyone acting on its behalf or under its direction or control. The remaining averments of Paragraph 15 are denied and strict proof is demanded at the time of trial.

16. Paragraph 16 contains conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

COUNT I – NEGLIGENCE- WRONGFUL DEATH
JAMES E. CLARK JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
LYLE THOMPSON

17. The averments contained within Paragraphs 1 through 16 of Preco's Answer to Plaintiffs' Complaint are incorporated by reference as if the same were set forth fully herein.

18.-22. The averments of Paragraphs 18 through 22 of Plaintiffs' Complaint are directed to a party other than Preco and therefore, no response is necessary by Preco.

WHEREFORE, Defendant, Preco Electronics, Inc. demands judgment in its favor and against the Plaintiffs, along with interest, fees, costs, and all other relief as this Honorable Court may deem proper.

COUNT II – NEGLIGENCE-WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA A. COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
LYLE THOMPSON, t/d/b/a
VALLEY EXCAVATING AND HAULING

23. The averments contained within Paragraphs 1 through 22 of Preco's Answer to Plaintiffs' Complaint are incorporated by reference as if the same were set forth fully herein.

24.-31. The averments of Paragraphs 24 through 31 of Plaintiffs' Complaint are directed to a party other than Preco and therefore, no response is necessary by Preco.

WHEREFORE, Defendant, Preco Electronics, Inc. demands judgment in its favor and against the Plaintiffs, along with interest, fees, costs, and all other relief as this Honorable Court may deem proper.

COUNT III – NEGLIGENCE – WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
NEW ENTERPRISE STONE & LIME COMPANY, INC.

32. The averments contained within Paragraphs 1 through 31 of Preco's Answer to Plaintiffs' Complaint are incorporated by reference as if the same were set forth fully herein.

33.-44. The averments of Paragraphs 33 through 44 of Plaintiffs' Complaint are directed to a party other than Preco and therefore, no response is necessary by Preco.

WHEREFORE, Defendant, Preco Electronics, Inc. demands judgment in its favor and against the Plaintiffs, along with interest, fees, costs, and all other relief as this Honorable Court may deem proper.

COUNT IV – NEGLIGENCE- WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
NEW ENTERPRISE STONE & LIME COMPANY, INC. t/d/b/a
NEW ENTERPRISE STONE AND LIME COMPANY

45. The averments contained within Paragraphs 1 through 44 of Preco's Answer to Plaintiffs' Complaint are incorporated by reference as if the same were set forth fully herein.

46.-57. The averments of Paragraphs 46 through 57 of Plaintiffs' Complaint are directed to a party other than Preco and therefore, no response is necessary by Preco.

WHEREFORE, Defendant, Preco Electronics, Inc. demands judgment in its favor and against the Plaintiffs, along with interest, fees, costs, and all other relief as this Honorable Court may deem proper.

COUNT V – NEGLIGENCE – WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS

58. The averments contained within Paragraphs 1 through 57 of Preco's Answer to Plaintiffs' Complaint are incorporated by reference as if the same were set forth fully herein.

59. Denied as stated. It is admitted that Preco manufactured alarms in July, 2007. After reasonable investigation, Preco lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments in Paragraph 59 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial.

60. Denied as stated. Paragraph 60 contains conclusions of law to which no response is required. To the extent a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

61. Denied. It is specifically denied that the backup alarm on the subject vehicle was defective, malfunctioned, inappropriate, worked improperly and/or inaudibly and/or created a dangerous condition. By way of further answer, Preco manufactured alarms that were at all times free of defect and operated pursuant to the manufacturer's specifications and guidelines when used in an intended and foreseeable manner for an intended and foreseeable purpose. After reasonable investigation, Preco lacks knowledge or information sufficient to form a belief as to whether the alleged backup warning/safety device installed on the subject vehicle was a Preco product. The remaining averments of Paragraph 61 of Plaintiffs' Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

62. Denied as stated. Paragraph 62 contains conclusions of law to which no response is required. To the extent a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

63. Denied as stated. Paragraph 63 contains conclusions of law to which no response is required. To the extent a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

64. Denied as stated. After a reasonable investigation, Preco lacks knowledge or information sufficient to form a belief as to whether the alleged backup warning/safety device installed on the subject vehicle was a Preco product and/or to form a belief as to the truth of the averments contained within Paragraph 64 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial.

65. Denied as stated. After a reasonable investigation, Preco lacks knowledge or information sufficient to form a belief as to whether the alleged backup warning/safety device installed on the subject vehicle was a Preco product and/or the truth of the averments contained within Paragraph 65 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial.

66. Denied. Paragraph 66 contains conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

67. Denied. Paragraph 67 contains conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

68. Denied. Paragraph 68 contains conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

69. Denied. Paragraph 69 contains conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial. It is specifically denied that damages sustained by Plaintiffs and/or

Plaintiffs' decedent were caused or contributed to by Preco, anyone acting on its behalf, or under its direction and/or control. To the contrary, Preco avers that its alarm operated at all times material hereto in accordance with manufacturer's specifications and guidelines and free of defect. By way of further answer, pursuant to a Stipulation of Counsel, all reference to the words "recklessness" or "reckless" was stricken from Plaintiffs' claim on the basis that Plaintiffs do not seek punitive damages. The remaining averments of Paragraph 69 are denied and strict proof is demanded at the time of trial.

70. Denied as stated. After a reasonable investigation, Defendant Preco lacks knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 70 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial. The remaining averments in Paragraph 70 of Plaintiffs' Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

71. Denied. It is specifically denied that any of Plaintiffs' alleged injuries, losses and/or damages were caused or contributed to in any way by Preco, anyone acting on its behalf, or under its direction and/or control. The remaining averments in Paragraph 71 of Plaintiffs' Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

72. Denied. It is specifically denied that any of Plaintiffs' alleged injuries, losses and/or damages were caused or contributed to in any way by Preco, anyone acting on its behalf, or under its direction and/or control. By way of further answer, pursuant to a Stipulation of Counsel, all reference to the words "recklessness" or "reckless" were stricken from Plaintiffs' claim on the basis that Plaintiffs do not seek punitive damages. The remaining averments in Paragraph 71 of Plaintiffs' Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

73. Denied. It is specifically denied that any of Plaintiffs' alleged injuries, losses and/or damages were caused or contributed to in any way by Preco, anyone acting on its behalf, or under its direction and/or control. By way of further answer, pursuant to a Stipulation of Counsel, all reference to the words "recklessness" or "reckless" were stricken from Plaintiffs' claim on the basis that Plaintiffs do not seek punitive damages. The remaining averments in Paragraph 73 of Plaintiffs' Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

74. Denied. It is specifically denied that any of Plaintiffs' alleged injuries, losses and/or damages were caused or contributed to in any way by Preco, anyone acting on its behalf, or under its direction and/or control. By way of further answer, pursuant to a Stipulation of Counsel, all reference to the words "recklessness" or "reckless" were stricken from Plaintiffs' claim on the basis that Plaintiffs do not seek punitive damages. The remaining averments in Paragraph 73 of Plaintiffs' Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

75. Denied. Paragraph 75 contains conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial. It is specifically denied that any or all of the alleged damages, including the death of James Edward Clark, Sr., were caused or contributed to by Preco and/or anyone acting on its behalf or under its direction and/or control.

WHEREFORE, Defendant, Preco Electronics, Inc. demands judgment in its favor and against the Plaintiffs, along with interest, fees, costs, and all other relief as this Honorable Court may deem proper.

COUNT VI – STRICT LIABILITY – WRONGFUL DEATH
BRENDA COBLE AND JAMES E. CLARK, JR., INDIVIDUALLY, PLAINTIFFS
VS.
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS

76. The averments contained within Paragraphs 1 through 76 of Preco's Answer to Plaintiffs' Complaint are incorporated by reference as if the same were set forth fully herein.

77. Denied. It is specifically denied that the backup alarm manufactured by Preco was defective, malfunctioned and/or dangerous. To the contrary, at all times material hereto, alarms manufactured by Preco operated in accordance with manufacturer's specifications and guidelines and free of defect. By way of further answer, after reasonable investigation, Defendant Preco lacks knowledge or information sufficient to form a belief as to whether the alleged backup warning/safety device installed on the subject vehicle was a Preco product and/or as to the truth of the remaining averments contained within Paragraph 77 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial. The remaining averments of Paragraph 77 contain conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

78. Denied. After reasonable investigation, Defendant Preco lacks knowledge or information sufficient to form a belief as to as to whether the alleged backup warning/safety device installed on the subject vehicle was a Preco product and/or as to the truth of the remaining averments contained within Paragraph 78 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial. It is specifically denied that the alarm manufactured by Preco was defective, malfunctioned and/or dangerous. To the contrary, at all times material hereto, the alarm manufactured by Preco operated in accordance with manufacturer's specifications and guidelines and free of defect. The remaining averments of Paragraph 78 contain conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

79. Denied as stated. It is specifically denied that the alarm manufactured by Preco was defective, malfunctioned and/or dangerous. To the contrary, at all times material hereto, the alarm

manufactured by Preco operated in accordance with manufacturer's specifications and guidelines and free of defect. After reasonable investigation, Defendant Preco lacks knowledge or information sufficient to form a belief as to as to whether the alleged backup warning/safety device installed on the subject vehicle was a Preco product and/or as to the truth of the remaining averments contained within Paragraph 79 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial.

80. Denied. It is specifically denied that the alarm manufactured by Preco was defective, malfunctioned and/or dangerous. To the contrary, at all times material hereto, the alarm manufactured by Preco operated in accordance with manufacturer's specifications and guidelines and free of defect. It is specifically denied that any or all of the alleged damages, including the death of James Edward Clark, Sr., were caused or contributed to by Preco, anyone acting on its behalf or under its direction and/or control. After reasonable investigation, Defendant Preco lacks knowledge or information sufficient to form a belief as to whether the alleged backup warning/safety device installed on the subject vehicle was a Preco product and/or as to the truth of the remaining averments contained within Paragraph 80 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial. The remaining averments of Paragraph 80 contain conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

81. Denied. It is specifically denied that the alarm manufactured by Preco was defective, malfunctioned and/or dangerous. To the contrary, at all times material hereto, the alarm manufactured by Preco operated in accordance with manufacturer's specifications and guidelines and free of defect. It is specifically denied that any or all of the alleged damages, including the death of James Edward Clark, Sr., were caused or contributed to by Preco, anyone acting on its behalf or under its direction and/or control. After reasonable investigation, Defendant Preco lacks knowledge or information sufficient to form a belief as to whether the alleged backup warning/safety device

installed on the subject vehicle was a Preco product and/or the truth of the averments contained within Paragraph 81 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial. The remaining averments of Paragraph 81 contain conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

WHEREFORE, Defendant, Preco Electronics, Inc. demands judgment in its favor and against the Plaintiffs, along with interest, fees, costs, and all other relief as this Honorable Court may deem proper.

COUNT VII – BREACH OF WARRANTY – WRONGFUL DEATH
BRENDA COBLE AND JAMES E. CLARK, JR., INDIVIDUALLY, PLAINTIFFS
VS.
PRECO ELECTRONICS, INC. t/d/b/a
PRECO ELECTRONICS

82. The averments contained within Paragraphs 1 through 81 of Preco's Answer to Plaintiffs' Complaint are incorporated by reference as if the same were set forth fully herein.

83. Denied. It is specifically denied that Preco supplied any warranties on Preco products, other than those express written warranties included with the product at the time of sale. After reasonable investigation, Defendant Preco lacks knowledge or information sufficient to form a belief as to whether the alleged backup warning/safety device installed on the subject vehicle was a Preco product and/or the truth of the remaining averments contained within Paragraph 83 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial.

84. Denied. After a reasonable investigation, this Defendant lacks knowledge or information sufficient to form a belief as to whether the alleged backup warning/safety device installed on the subject vehicle was a Preco product and/or the truth of the remaining averments contained within Paragraph 84 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial. The remaining averments of Paragraph 84 contain

conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

85.a-e Paragraph 85 a-e contains conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial. By way of further answer, it is specifically denied that any implied warranties accompanied the Preco product at the time of sale and that Preco installed the alarm devices it manufactured. It is specifically denied that any of the alleged injuries and/or damages sustained by Plaintiffs were proximately caused or contributed to by Preco, anyone acting on its behalf or under its direction and/or control

86. Denied as stated. After a reasonable investigation, this Defendant lacks knowledge or information sufficient to form a belief as to whether the alleged backup warning/safety device installed on the subject vehicle was a Preco product and/or the truth of the remaining averments contained within Paragraph 86 of Plaintiffs' Complaint and therefore, the same averments are denied and strict proof is demanded at the time of trial. The remaining averments of Paragraph 86 contain conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

87. Denied as stated. It is specifically denied that any of the alleged injuries and/or damages sustained by Plaintiffs were proximately caused or contributed to by Preco, anyone acting on its behalf or under its direction and/or control. After a reasonable investigation, this Defendant lacks knowledge or information sufficient to form a belief as to whether the alleged backup warning/safety device installed on the subject vehicle was a Preco product. The remaining averments of Paragraph 87 contain conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial.

WHEREFORE, Defendant, Preco Electronics, Inc. demands judgment in its favor and against the Plaintiffs, along with interest, fees, costs, and all other relief as this Honorable Court may deem proper.

COUNT VIII – SURVIVAL
JAMES E. CLARK, JR., AND BRENDA COBLE, ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED, PLAINTIFFS
VS.
DEFENDANTS LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING';NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

88. The averments contained within Paragraphs 1 through 87 of Preco's Answer to Plaintiffs' Complaint are incorporated by reference as if the same were set forth fully herein.

89. Denied. Paragraph 89 contains conclusions of law to which no response is required. To the extent that a response is necessary, the same averments are denied and strict proof is demanded at the time of trial. It is specifically denied that Plaintiffs' alleged injuries and/or damages were caused or contributed to by Preco, anyone acting on its behalf or under its direction and/or control. The remaining averments of Paragraph 89 are specifically denied and strict proof is demanded at the time of trial.

WHEREFORE, Defendant, Preco Electronics, Inc. demands judgment in its favor and against the Plaintiffs, along with interest, fees, costs, and all other relief as this Honorable Court may deem proper.

NEW MATTER

90. Plaintiffs' Complaint fails to state a claim upon which relief may be granted against Defendant Preco.

91. Defendant Preco raises as a complete defense to Plaintiffs' claim and the claims of other parties the Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 *et seq.,* pled herein as an affirmative defense.

92. Defendant Preco pleads as a complete defense the provisions of the Pennsylvania Comparative Negligence Law, 42 Pa. C.S.A. §7102 *et seq*. and that Plaintiffs' alleged injuries and/or damages were caused solely by Plaintiff's own negligence, carelessness or recklessness which is barred, offset and/or reduced by the Pennsylvania Comparative Negligence Law.

93. Defendant Preco pleads as a complete defense Plaintiff-Decedent's contributory negligence.

94. Defendant Preco pleads as a complete defense Plaintiff-Decedent's assumption of the risk.

95. Plaintiff-Decedent was negligent, careless and/or reckless in failing to recognize an open an obvious condition, including the ongoing construction at the site and the approach of the Thompson vehicle.

96. Plaintiff-Decedent was negligent, careless and/or reckless in failing to warn all persons on site of his presence and location within the construction zone.

97. Plaintiff-Decedent was negligent, careless and/or reckless in failing to perform his work, including measurements, in a manner consistent with industry practice and/or in a safe manner.

98. At all times relevant hereto, the alarms and devices manufactured by Preco operated in accordance with manufacturer's specifications and/or guidelines and free of defect at the time that the device left the possession, custody and/or control of Preco.

99. Preco pleads as a complete defense to Plaintiffs' claim subsequent to modification and/or design alteration by third parties over whom Preco exercises control, nor right nor responsibility of control.

100. Preco pleads as a complete defense that Plaintiff-Decedent was not an intended user.

101. Preco pleads as a complete defense that the alleged injury to Plaintiffs, including the death of Plaintiffs' decedent, was not foreseeable.

102. Preco pleads as a complete defense that the subject backup warning/safety device was not used in an intended manner and/or for an intended purpose.

103. The subject backup warning/safety device was not manufactured by Preco.

104. The back-up alarm/device affixed to Defendant Thompson's vehicle at the time of the incident was not an alarm manufactured by Preco.

105. The Preco Bac-A-Larm Model 45AA was stamped with a date code which was "4207 M."

106. The 4207 M stamp was the date code stamped on all Preco alarm products to represent the week and year of manufacture, as well as the level of revision.

107. The first 2 digits of the date code, "42," signifies the week of the year in which the alarm was manufactured.

108. The last 2 digits, "07," signify the year in which the alarm was manufactured.

109. The final letter "M," signifies the level of revision to the product.

110. The alarm at issue in this case which was identified and removed by Defendant Thompson from his vehicle prior to Preco's opportunity to inspect the alarm on the vehicle.

111. The vehicle was involved in a second, subsequent incident unrelated to the incident that is the subject of this lawsuit prior to its removal by Defendant Thompson and/or its inspection by Defendant Preco.

112. The alarm at issue in this case, which Defendant Thompson alleges was affixed to the Thompson vehicle at the time of the incident, was manufactured in the 42nd week of 2007, the week of October 14, 2007, more than three months subsequent to the July 11, 2007 incident.

113. To the extent that a backup warning/safety device was present on the Thompson vehicle at the time of the July 11, 2007 incident, that alarm is not the same alarm as is presently available for inspection and/or review and as has been identified by Defendant Thompson in this matter as the Preco Bac-A-Larm Model 45 AA.

114. Defendant Preco pleads as a complete defense the limitations of liability set forth in the warranties, instructions and guidelines/recommendations which were included with each Preco alarm at the time of sale.

115. Defendant Preco pleads as a complete defense the express warranties, instructions and guidelines/ recommendations provided with each Preco alarm at the time of sale.

116. Defendant Preco pleads as a complete defense a disclaimer of all implied warranties of whatsoever kind or type as set forth in the instructions, warranties and guidelines/recommendations that accompany each Preco alarm at the time of sale.

117. Preco is not an installer of Preco alarm product.

118. Preco did not install an alarm of any kind or type onto the Thompson vehicle.

119. The alarm alleged to have been installed onto the Thompson vehicle was installed by an entity over whom Preco exerted no control, nor right nor responsibility of control.

120. The alarm installed upon the Thompson vehicle at the time of the July 11, 2007 incident was not an alarm and/or device that was manufactured by Preco.

121. Defendant Preco pleads as a complete defense failure to join an indispensable party including, but not limited to, the installer of the subject backup warning/safety device.

122. The alleged injuries and/or damages sustained by Plaintiffs and/or Plaintiff-Decedent were caused in whole or in part by third parties over whom Preco exercised no control, nor right nor responsibility of control.

123. Preco owed no duty of care to Plaintiffs and/or toPlaintiffs'-Decedent.

124. Defendant Preco pleads as a complete defense to Plaintiffs' claims the doctrine of equitable estoppel.

125. Defendant Preco pleads as a complete defense to Plaintiffs' claims Plaintiffs' failure to mitigate damages.

126. Defendant Preco pleads as a complete defense the right of set-off.

127. Plaintiffs' claims are barred, limited and/or reduced by the Pennsylvania Workers' Compensation Act.

128. Defendant Preco pleads as a complete defense to Plaintiffs' claims the doctrine of laches.

WHEREFORE, Defendant, Preco Electronics, Inc. demands judgment in its favor and against the Plaintiffs, along with interest, fees, costs, and all other relief as this Honorable Court may deem proper.

CROSS-CLAIMS PURSUANT TO RULE 1031.1

129. For purposes of this Cross-Claim only, Defendant Preco incorporates by reference the averments contained within Plaintiffs' Complaint against Defendants Lyle Thompson, Lyle Thompson t/d/b/a Valley Excavating and Hauling and New Enterprise Stone & Lime Company, Inc. as if the same were set forth fully at length herein.

130. To the extent that Plaintiffs prove any or all of their alleged injuries and/or damages, the existence of which are denied, said injuries or damages were caused solely by the acts and/or omissions, negligence, carelessness, recklessness and/or other conduct of Defendants Lyle Thompson, Lyle Thompson t/d/b/a Valley Excavating and Hauling and New Enterprise Stone & Lime Company, Inc. and said Defendants are solely liable to the Plaintiffs for the injuries and/or damages sustained.

131. To the extent that Plaintiffs prove that Defendant Preco caused or contributed in any way to any of Plaintiffs' alleged injuries and/or damages, liability for which is expressly denied, Defendants Lyle Thompson, Lyle Thompson t/d/b/a Valley Excavating and Hauling and New Enterprise Stone & Lime Company, Inc. are jointly and/or severally liable to the Plaintiffs and/or are liable over to Defendant Preco under theories of indemnity and/or contribution.

WHEREFORE, Defendant Preco Electronics Inc. demands judgment in its favor and against Plaintiffs and/or Defendants Lyle Thompson, Lyle Thompson t/d/b/a Valley Excavating and Hauling

and New Enterprise Stone & Lime Company, Inc., together with all reasonable interest, fees, costs and other relief as this Honorable Court may deem proper.

Respectfully submitted by:

Jaime N. Doherty

Dated: July 24, 2009

Jaime N. Doherty, Esquire
Pa. I.D.#89402

Attorneys for Defendant Preco Electronics, Inc.

VERIFICATION

I, Dale Hessing, do hereby verify that I have read the foregoing **ANSWER, NEW MATTER and CROSS-CLAIM** and that the statements therein are correct to the best of my knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unknown falsification to authorities.

PRECO ELECTRONICS, INC.

Date: July 22, 2009

By: _____

Dale Hessing
Vice President of Blindspot Safety for Preco Electronics Inc.

VERIFICATION

I, Mike Bloom, do hereby verify that I have read the foregoing **ANSWER, NEW MATTER and CROSS-CLAIM** and that the statements therein are correct to the best of my knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unknown falsification to authorities.

PRECO ELECTRONICS, INC.

Date: July 20, 2009

By: _____
Mike Bloom

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **ANSWER, NEW MATTER and CROSS-CLAIM** was served via U.S. First Class mail, postage prepaid, this 24th day of July, 2009, upon the following:

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Counsel for James E. Clark, Jr. and Brenda Coble

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
Counsel for Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228
Counsel for New Enterprise Stone & Lime Company, Inc. t/d/b/a New Enterprise Stone and Lime Company

GOEHRING, RUTTER & BOEHM

Jaime N. Doherty

Jaime N. Doherty, Esquire
Pa. I.D. #89402

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

NOTICE OF SERVICE OF DISCOVERY

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
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JURY TRIAL DEMANDED

FILED NO CC
SEP 04 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – No. GD 2008-2452-CD
Plaintiffs,	)	
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., , t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS, Defendants.	)	

NOTICE OF SERVICE OF DISCOVERY

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

Kindly take notice that Defendant, Preco Electronics, Inc. t/d/b/a Preco Electronics, has served its Request for Admissions upon counsel for Plaintiffs via U.S. mail, postage pre-paid, on September 2, 2009:

Brian Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701

By: Jaime N. Doherty
Jaime N. Doherty, Esquire
Pa. I.D.#89402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **NOTICE OF SERVICE OF DISCOVERY** has been served via U.S. First Class mail, postage pre-paid, this 2nd day of September 2009 upon the following:

Brian Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Counsel for James E. Clark, Jr. and Brenda Coble

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
Counsel for Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228
Counsel for New Enterprise Stone & Lime Company, Inc. t/d/b/a New Enterprise Stone and Lime Company

Jaime N. Doherty

Jaime N. Doherty, Esquire
Pa. I.D. #89402

FILED

SEP 0 4 2009

William A. Shaw
Prothonotary/Clerk of Courts

FILED
SEP 28 2009
William A. Shaw
Prothonotary/Clerk of Courts
1 cert to Atty

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

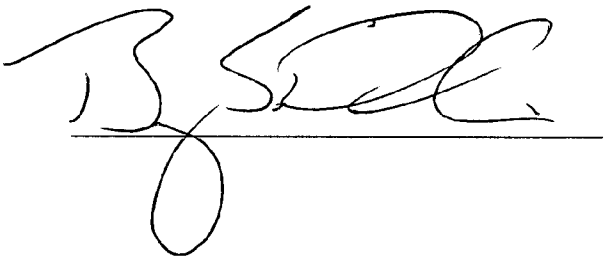
NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' ANSWERS TO DEFENDANT PRECO'S REQUEST FOR ADMISSIONS** were faxed and mailed, U.S. First Class mail, to the following this 25th day of September, 2009:

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228
Attorneys for Defendant New Enterprise

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY UPON NON-PARTIES PURSUANT TO RULE 4009.22

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

JURY TRIAL DEMANDED

FILED
m/10:50 BC
OCT 02 2009
William A. Shaw
Prothonotary/Clerk of Courts
NO CC
GN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – No. GD 2008-2452-CD
Plaintiffs,	)	
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., , t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS, Defendants.	)	

NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY UPON NON-PARTIES PURSUANT TO RULE 4009.22

Defendant, Preco Electronics, Inc., intends to serve subpoenas identical to the ones 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 subpoenas. If no objection is made the subpoenas will be served.

Date: September 30, 2009

Respectfully Submitted,

Jaime N. Doherty

By: _____

Jaime N. Doherty, Esquire
Pa. I.D. #89402
Attorney's for Defendant, Preco Electronics, Inc.

\\QS105PPYM\DOCS\7200\25\CJR0000258V001.DOC

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

James E. Clark Jr., Brenda Coble *
James Edward Estate Of Clark
James Edward Clark Sr.
Plaintiff(s)

Vs. * No. 2008-02452-CD

Lyle Thompson *
Valley Excavating and Hauling
New Enterprise Stone & Lime Co., Inc.
Preco Electronics, Inc., Preco Electronics
Defendant(s)

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

TO: Pennsylvania State Police Troop C including Collision and Reconstruction
(Name of Person or Entity)
485 North Findley Street, Punxsutawney, PA 15767

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

See Exhibit A

(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: Jaime N. Doherty, Esq.
ADDRESS: 437 Grant Street, 14th Floor
Pittsburgh, PA 15219
TELEPHONE: 412.281.0587
SUPREME COURT ID # 89402
ATTORNEY FOR: Preco Electronics, Inc.

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Friday, September 18, 2009
Seal of the Court

Deputy

Exhibit "A"

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things, whether written, electronic, audio or visual in form:

1. The entire contents of the Crash Containment File including, but not limited to:

   A. Troop C Fatal Crash Data Sheet;

   B. News release(s);

   C. Driver/Vehicle Examination Report prepared by Corporal John Burke;

   D. CD (working copy), part of 56 digital photographs;

   E. CD (master copy) of 56 digital accident photographs;

   F. Other crash scene photographs (3 rolls 24 exposures);

   G. Copy of the written warning issued to Operator No. 1

   H. Copy of the fatal crash system entry;

   I. Victim/witness statement of Michael Brooks Beaver

   J. Two Uniscope messages; and

2. Any and all other investigative file materials from or part of either the Crash Containment or police file number C03-0911351.

You are ordered by the Court to produce the above-referenced list of documents at the Law Offices of Goehring, Rutter & Boehm, Frick Building, 437 Grant Street, 14th Floor, Pittsburgh, PA 15219-6107.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

James E. Clark Jr., Brenda Coble *
James Edward Estate Of Clark
James Edward Clark Sr.
Plaintiff(s)

Vs. * No. 2008-02452-CD

Lyle Thompson *
Valley Excavating and Hauling
New Enterprise Stone & Lime Co., Inc.
Preco Electronics, Inc., Preco Electronics
Defendant(s)

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

TO: Pennsylvania State Police, 147 Doe Hill Road, Woodland, Pa 16881
(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 Exhibit A

(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: Jaime N. Doherty, Esq.
ADDRESS: 437 Grant Street, 14th Floor
Pittsburgh, PA 15219
TELEPHONE: 412.281.0597
SUPREME COURT ID # 89402
ATTORNEY FOR: Preco Electronics, Inc.

BY THE COURT:
William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Friday, September 18, 2009
Seal of the Court

Deputy

Exhibit "A"

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things, whether written, electronic, audio or visual in form:

1. The entire contents of the Crash Containment File including, but not limited to:

   A. Troop C Fatal Crash Data Sheet;

   B. News release(s);

   C. Driver/Vehicle Examination Report prepared by Corporal John Burke;

   D. CD (working copy), part of 56 digital photographs;

   E. CD (master copy) of 56 digital accident photographs;

   F. Other crash scene photographs (3 rolls 24 exposures);

   G. Copy of the written warning issued to Operator No. 1

   H. Copy of the fatal crash system entry;

   I. Victim/witness statement of Michael Brooks Beaver

   J. Two Uniscope messages; and

2. Any and all other investigative file materials from or part of either the Crash Containment or police file number C03-0911351.

You are ordered by the Court to produce the above-referenced list of documents at the Law Offices of Goehring, Rutter & Boehm, Frick Building, 437 Grant Street, 14th Floor, Pittsburgh, PA 15219-6107.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY UPON NON-PARTIES PURSUANT TO RULE 4009.22** has been served by U.S. first-class mail, postage prepaid, this 30 day of September 2009, upon the following:

Brian Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Counsel for James E. Clark, Jr. and Brenda Coble

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
Counsel for Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228
Counsel for New Enterprise Stone & Lime Company, Inc. t/d/b/a New Enterprise Stone and Lime Company

Jaime N. Doherty

By: _____
Jaime N. Doherty, Esquire
Pa. I.D. #89402

FILED

OCT 02 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendant

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED NO CC
m/10:54/BH
OCT 07 2009
(GK)
S
William A. Shaw
Prothonotary/Clerk of Courts

NOTICE OF SERVICE

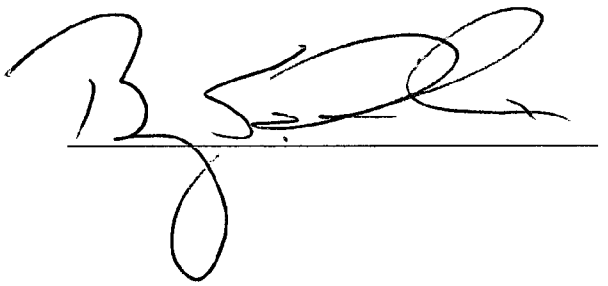
I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' SECOND SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT NEW ENTERPRISE STONE & LIME CO., INC.,** were mailed, U.S. First Class mail, to the following this 6th day of October, 2009:

Timothy J. Burdette, Esquire
Attorney for Defendant Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

ORIGINAL

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219



FILED

OCT 07 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

FILED
OCT 14 2009
William A. Shaw
Prothonotary/Clerk of Courts

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF DEFENDANT, TY THOMPSON

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF DEFENDANT, TY THOMPSON

Filed on behalf of Plaintiffs

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF TY THOMPSON,** to Counsel for Defendant, Timothy J. Burdette, 733 Washington Road, Suite 209, Pittsburgh, PA 15228, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **TY THOMPSON** will be taken on oral examination in the First Floor Shawnee Room at the Holiday Inn, located at 61503 Lincoln Highway, Breezewood, PA 15533, at 10:00 a.m. on Wednesday, December 9, 2009 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: October 13, 2009

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION was served by U.S. First Class Mail, postage prepaid this 13th day of October 2009, upon the following:

Timothy J. Burdette, Esquire
Law Office of Timothy J. Burdette
733 Washington Road, Suite 209
Pittsburgh, PA 15228

412-531-3700

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
650 Washington Road
Pittsburgh, PA 15228

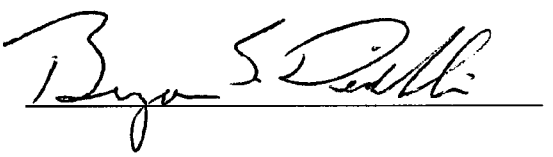
412-563-2500

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

412-281-0587

Network Deposition Services
Suite 101, Gulf Tower
707 Grant Street
Pittsburgh, PA 15219

412-281-7908



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED
OCT 21 2009
William A. Shaw
Prothonotary/Clerk of Courts

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – No. GD 2008-2452-CD
Plaintiffs,	)	
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., , t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS, Defendants.	)	

CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22

As a prerequisite to service of a subpoena for documents and things upon Pennsylvania State Police Troop C, including Collision and Reconstruction – Punxsutawney and Pennsylvania State Police Station - Clearfield C/O Commissioner Pawlowski, Pennsylvania State Police Department Headquarters, pursuant to Rule 4009.22, Defendant, Preco Electronics, Inc., by and through its undersigned counsel, 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: October 19, 2009

Respectfully Submitted,

By: Jaime N. Doherty

Jaime N. Doherty, Esquire
Pa. I.D. #89402
Attorney's for Defendant, Preco Electronics, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY UPON NON-PARTIES PURSUANT TO RULE 4009.22

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – No. GD 2008-2452-CD
Plaintiffs,	)	
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., , t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS, Defendants.	)	

NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY UPON NON-PARTIES PURSUANT TO RULE 4009.22

Defendant, Preco Electronics, Inc., intends to serve subpoenas identical to the ones 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 subpoenas. If no objection is made the subpoenas will be served.

Date: September 30, 2009

Respectfully Submitted,

Jaime N. Doherty

By: _____

Jaime N. Doherty, Esquire
Pa. I.D. #89402
Attorney's for Defendant, Preco Electronics, Inc.

\\QS105PPYM\DOCS\7200\25\CJR0000258V001.DOC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY UPON NON-PARTIES PURSUANT TO RULE 4009.22** has been served by U.S. first-class mail, postage prepaid, this 30 day of September 2009, upon the following:

Brian Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Counsel for James E. Clark, Jr. and Brenda Coble

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
Counsel for Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228
Counsel for New Enterprise Stone & Lime Company, Inc. t/d/b/a New Enterprise Stone and Lime Company

Jaime N. Doherty

By: _____
Jaime N. Doherty, Esquire
Pa. I.D. #89402

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

James E. Clark Jr., Brenda Coble *
James Edward Estate Of Clark
James Edward Clark Sr.
Plaintiff(s)

Vs. * No. 2008-02452-CD

Lyle Thompson *
Valley Excavating and Hauling
New Enterprise Stone & Lime Co., Inc.
Preco Electronics, Inc., Preco Electronics
Defendant(s)

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

TO: Pennsylvania State Police Troop C including Collision and Reconstruction
(Name of Person or Entity)
485 North Findley Street, Punxsutawney, PA 15767

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

See Exhibit A

(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: Jaime N. Doherty, Esq.
ADDRESS: 437 Grant Street, 14th Floor
Pittsburgh, PA 15219
TELEPHONE: 412.281.0587
SUPREME COURT ID # 89402
ATTORNEY FOR: Preco Electronics, Inc.

BY THE COURT:
William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Friday, September 18, 2009
Seal of the Court

Deputy

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

James E. Clark Jr., Brenda Coble *
James Edward Estate Of Clark
James Edward Clark Sr.
Plaintiff(s)

Vs. * No. 2008-02452-CD

Lyle Thompson *
Valley Excavating and Hauling
New Enterprise Stone & Lime Co., Inc.
Preco Electronics, Inc., Preco Electronics
Defendant(s)

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

TO: Pennsylvania State Police, 147 Doe Hill Road, Woodland, Pa 16881
(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 Exhibit A

(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: Jaime N. Doherty, Esq.
ADDRESS: 437 Grant Street, 14th Floor
Pittsburgh, PA 15219
TELEPHONE: 412.281.0597
SUPREME COURT ID # 89402
ATTORNEY FOR: Preco Electronics, Inc.

BY THE COURT:
William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Friday, September 18, 2009
Seal of the Court

Deputy

Exhibit "A"

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things, whether written, electronic, audio or visual in form:

1. The entire contents of the Crash Containment File including, but not limited to:

   A. Troop C Fatal Crash Data Sheet;

   B. News release(s);

   C. Driver/Vehicle Examination Report prepared by Corporal John Burke;

   D. CD (working copy), part of 56 digital photographs;

   E. CD (master copy) of 56 digital accident photographs;

   F. Other crash scene photographs (3 rolls 24 exposures);

   G. Copy of the written warning issued to Operator No. 1

   H. Copy of the fatal crash system entry;

   I. Victim/witness statement of Michael Brooks Beaver

   J. Two Uniscope messages; and

2. Any and all other investigative file materials from or part of either the Crash Containment or police file number C03-0911351.

You are ordered by the Court to produce the above-referenced list of documents at the Law Offices of Goehring, Rutter & Boehm, Frick Building, 437 Grant Street, 14th Floor, Pittsburgh, PA 15219-6107.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO RULE 4009.22** has been served by U.S. first-class mail, postage prepaid, this 19th day of October 2009, upon the following:

Brian Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Counsel for James E. Clark, Jr. and Brenda Coble

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
Counsel for Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228
Counsel for New Enterprise Stone & Lime Company, Inc. t/d/b/a New Enterprise Stone and Lime Company

By: Jaime N. Doherty
Jaime N. Doherty, Esquire
Pa. I.D. #89402

FILED
OCT 21 2009
William A. Shaw
Prothonotary/Clerk of Courts

FILED
DEC 24 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

PLAINTIFFS' MOTION TO CONSOLIDATE

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

PLAINTIFFS' MOTION TO CONSOLIDATE

AND NOW, come the Plaintiffs, James E. Clark, Jr., and Brenda Coble, individually and as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by and through their attorneys, Marcus & Mack, P.C., and Bryan S. Neiderhiser, Esquire, who file this Motion to Consolidate and in support thereof aver as follows:

1. Plaintiffs are adult individuals who are the son and daughter of James Edward Clark, a/k/a James Edward Clark, Sr.,deceased, and are the Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by grant of Letters from the Clearfield

County Register of Wills on July 20, 2007. Plaintiff James E. Clark, Jr., resides in Armagh, Indiana County, Pennsylvania. Plaintiff Brenda Coble resides in Woodbridge, Prince William County, Virginia.

2. The instant matter was commenced via the filing of a Complaint in Civil Action in the Court of Common Pleas of Clearfield County, Pennsylvania on or about December 26, 2008.

3. The matter of the instant Plaintiffs vs. Swank Associated Companies, Inc., and Commonwealth of Pennsylvania, Department of Transportation was commenced via the filing of a Writ of Summons in the Court of Common Pleas of Clearfield County, Pennsylvania, on or about July 9, 2009, and was assigned Docket No. 09-1314-CD. A Complaint was then filed on or around December 3, 2009.

4. The genesis of these two lawsuits involves the same incident and/or occurrence.

5. It is believed, and therefore averred, that consolidating these matters for discovery and trial is in the best interests of judicial economy.

6. Further, consolidating these matters would also eliminate the duplication of efforts during the discovery and trial preparation stages of this matter.

WHEREFORE, Plaintiffs, James E. Clark, Jr., and Brenda Coble, individually and as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, hereby requests your Honorable Court consolidate Nos. 2008-2452-CD and 2009-1314-CD for purposes of discovery and trial.

Respectfully submitted,
MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esquire
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION TO CONSOLIDATE was served upon the following by U.S. First Class Mail, postage pre-paid this 23rd day of December, 2009:

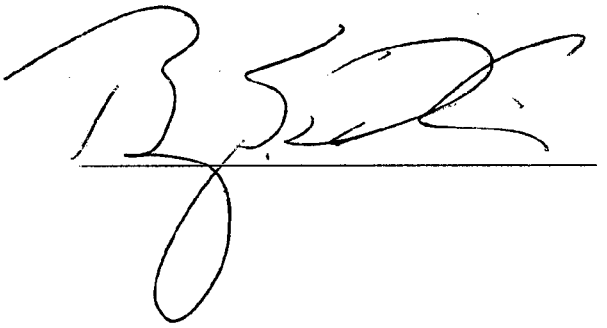
Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506



LA

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

RULE

AND NOW, this 4th day of Jan, 2010, upon consideration of the within Motion to Consolidate, it is hereby Ordered that:

1. A Rule is issued upon the remaining parties to show cause why the moving party is not entitled to the relief requested;

2. Defendants shall file an Answer to the Motion within 20 days of this date;

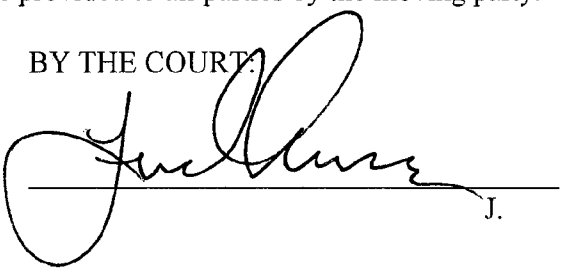
3. The Motion shall be decided under Pa. R.C.P. 206.7;

FSK 4. Argument shall be held on the ____ day of _____, 20___, in Courtroom No. ____ of the Clearfield County Courthouse, 230 E. Market Street, Clearfield, Pennsylvania; and

FILED 1cc
01:44 Atty Neiderhiser
JAN 05 2010
William A. Shaw
Prothonotary/Clerk of Courts

5. Notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:



J.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendant

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED
m/10:34/BA
JAN 13 2010
William A. Shaw
Prothonotary/Clerk of Courts
NO CC

NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' REQUEST FOR ADMISSIONS DIRECTED TO DEFENDANT PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS** was mailed, U.S. First Class mail, to the following this 12th day of January, 2010:

Timothy J. Burdette, Esquire
Attorney for Defendant Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

Courtesy Copies:
John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as Administrators of the ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., Deceased,

Plaintiffs,

v.

LYLE THOMPSON; LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC.; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

Case No.: 2008-2452

JURY TRIAL DEMANDED

ANSWER TO PLAINTIFFS' MOTION TO CONSOLIDATE

Filed on Behalf of:

Lyle Thompson, t/d/b/a Valley Excavating & Hauling, Defendant.

Counsel of Record for This Party:

TIMOTHY J. BURDETTE, ESQUIRE
PA ID. NO. 32703

733 Washington Road, Suite 209
Pittsburgh, PA 15228
Telephone: (412) 531-3700
Facsimile: (412) 344-0799
tjb@burdettelaw.net

FILED NO CC
m/12:55BH
JAN 25 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as Administrators of the ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., Deceased, Plaintiffs, v. LYLE THOMPSON; LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC.; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS, Defendants.	Case No.: 2008-2452 JURY TRIAL DEMANDED

ANSWER TO PLAINTIFFS' MOTION TO CONSOLIDATE

AND NOW, comes the defendant, Lyle Thompson t/d/b/a Valley Excavating and Hauling, and files the following answer to plaintiffs' motion to consolidate:

1. Defendant Thompson consents to the consolidation of the cases filed in this Court at Nos. 2008-2452-CD and 2009-01314-CD for the purposes of discovery and trial.

TIMOTHY J. BURDETTE, ESQUIRE,
Attorney for Lyle Thompson, t/d/b/a Valley Excavating and Hauling, Defendant.

CA

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED
FEB 05 2010
03:45 lm
William A. Shaw
Prothonotary/Clerk of Courts
Cert to Atty's
Niederhiser
Burkette
Olszewski
Doherty/Verma
Dorierala
Daniel
Mack.

ORDER

AND NOW, this 5th day of February, 2010, it is hereby ORDERED, ADJUDGED AND DECREED that Nos. 2008-2452-CD and 2009-1314-CD are hereby consolidated for purposes of discovery and trial. It is further ORDERED, ADJUDGED AND DECREED that all future matters shall be filed at Docket No. 2008-2452-CD.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED NO CC
m/11:30
FEB 17 2010
William A. Shaw
Prothonotary/Clerk of Courts

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT SWANK ASSOCIATED COMPANIES, INC.,** were served

upon the following by U.S. First Class Mail, postage pre-paid this 16th day of February, 2010:

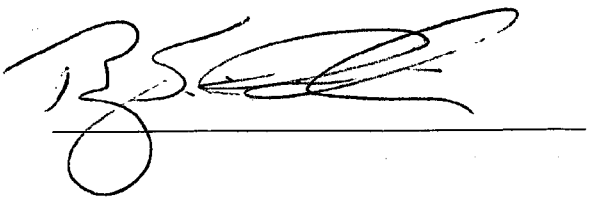
Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506



IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED NO CC
FEB 17 2010
William A. Shaw
Prothonotary/Clerk of Courts

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT COMMONWEALTH OF PENNSYLVANIA,**

DEPARTMENT OF TRANSPORTATION were served upon the following by U.S. First Class Mail, postage pre-paid this 16th day of February 2010:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK JR. and BRENDA COBLE, Individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

-AND-

JAMES E. CLARK, JR. and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC. and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

NOTICE OF SERVICE OF REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

FILED NOCC
m/11:55
MAR - 1 2018
William A. Shaw
Prothonotary/Clerk of Courts

Filed on Behalf of Defendant,

Commonwealth of Pennsylvania
Department of Transportation

Counsel of Record for this Party:

William A. Dopierala
Sr. Deputy Attorney General
Pa. I.D. #21853
Office of Attorney General
Torts Litigation Section
4801 Atlantic Ave.
Erie, PA 16506

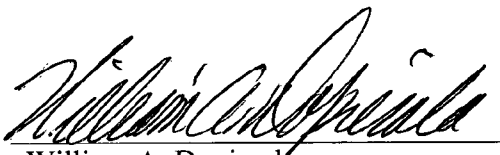
814-836-4362

NOTICE OF SERVICE

TO THE PROTHONOTARY:

Please note that the undersigned has served Request for Production of Documents directed to the Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics to all counsel of record in the above-captioned case.

Thomas W. Corbett, Jr.
Attorney General

By: 
William A. Dopierala
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Service of Request for Production of Documents directed to Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics was served upon the following counsel of record by mailing the same via first class mail, postage pre-paid, on February 26, 2010:

Bryan S. Neiderhiser, Esquire
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701
(Counsel for Plaintiffs)

John P. Davis, III, Esquire
Jones, Gregg, Creehan & Gerace, LLP
411 Seventh Avenue
Suite 1200
Pittsburgh, PA 15219-1905
(Swank Associated Companies, Inc.)

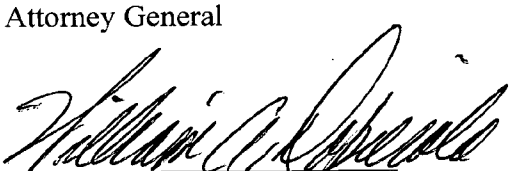
Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Lyle Thompson: Lyle Thompson, t/d/b/a Valley Excavating and Hauling)

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
650 Washington Road
Pittsburgh, PA 15228
(New Enterprise Stone & Lime Co., Inc.)

Jaime N. Doherty, Esquire
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Preco Electronics, Inc., t/d/b/a Preco Electronics)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: 
WILLIAM A. DOPIERALA
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK JR. and BRENDA COBLE, Individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

-AND-

JAMES E. CLARK, JR. and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC. and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

NOTICE OF SERVICE OF REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS NEW ENTERPRISE STONE & LIME CO., INC.

FILED NOCC
m/11:55cm
MAR - 1 2010
William A. Shaw
Prothonotary/Clerk of Courts

Filed on Behalf of Defendant,

Commonwealth of Pennsylvania
Department of Transportation

Counsel of Record for this Party:

William A. Dopierala
Sr. Deputy Attorney General
Pa. I.D. #21853
Office of Attorney General
Torts Litigation Section
4801 Atlantic Ave.
Erie, PA 16506

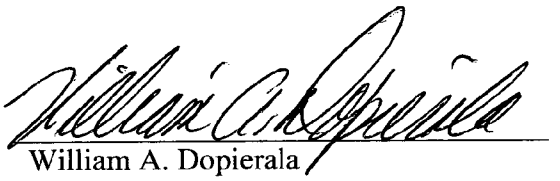
814-836-4362

NOTICE OF SERVICE

TO THE PROTHONOTARY:

Please note that the undersigned has served Request for Production of Documents directed to the Defendant New Enterprise Stone & Lime Co., Inc. to all counsel of record in the above-captioned case.

Thomas W. Corbett, Jr.
Attorney General

By: 
William A. Dopierala
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Service of Request for Production of Documents directed to Defendant New Enterprise Stone & Lime Co., Inc. was served upon the following counsel of record by mailing the same via first class mail, postage pre-paid, on February 26, 2010:

Bryan S. Neiderhiser, Esquire
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701
(Counsel for Plaintiffs)

John P. Davis, III, Esquire
Jones, Gregg, Creehan & Gerace, LLP
411 Seventh Avenue
Suite 1200
Pittsburgh, PA 15219-1905
(Swank Associated Companies, Inc.)

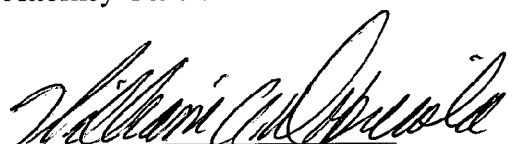
Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Lyle Thompson: Lyle Thompson, t/d/b/a Valley Excavating and Hauling)

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
650 Washington Road
Pittsburgh, PA 15228
(New Enterprise Stone & Lime Co., Inc.)

Jaime N. Doherty, Esquire
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Preco Electronics, Inc., t/d/b/a Preco Electronics)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: 
WILLIAM A. DOPIERALA
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK JR. and BRENDA COBLE, Individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

-AND-

JAMES E. CLARK, JR. and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC. and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

NOTICE OF SERVICE OF REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING

FILED NOCC
m/ 11:55 2m
MAR - 1 2010
William A. Shaw
Prothonotary/Clerk of Courts

Filed on Behalf of Defendant,

Commonwealth of Pennsylvania
Department of Transportation

Counsel of Record for this Party:

William A. Dopierala
Sr. Deputy Attorney General
Pa. I.D. #21853
Office of Attorney General
Torts Litigation Section
4801 Atlantic Ave.
Erie, PA 16506

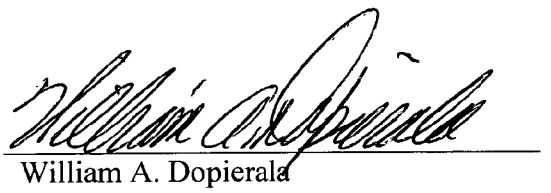
814-836-4362

NOTICE OF SERVICE

TO THE PROTHONOTARY:

Please note that the undersigned has served Request for Production of Documents directed to the Defendants Lyle Thompson; Lyle Thompson, t/d/b/a Valley Excavating and Hauling to all counsel of record in the above-captioned case.

Thomas W. Corbett, Jr.
Attorney General

By: 
William A. Dopierala
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Service of Request for Production of Documents directed to Defendants Lyle Thompson; Lyle Thompson, t/d/b/a Valley Excavating and Hauling was served upon the following counsel of record by mailing the same via first class mail, postage pre-paid,

on February 26, 2010:

Bryan S. Neiderhiser, Esquire
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701
(Counsel for Plaintiffs)

John P. Davis, III, Esquire
Jones, Gregg, Creehan & Gerace, LLP
411 Seventh Avenue
Suite 1200
Pittsburgh, PA 15219-1905
(Swank Associated Companies, Inc.)

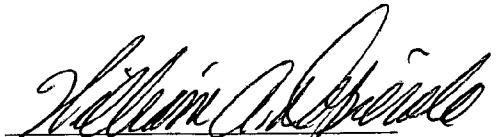
Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Lyle Thompson: Lyle Thompson, t/d/b/a Valley Excavating and Hauling)

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
650 Washington Road
Pittsburgh, PA 15228
(New Enterprise Stone & Lime Co., Inc.)

Jaime N. Doherty, Esquire
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Preco Electronics, Inc., t/d/b/a Preco Electronics)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: 
WILLIAM A. DOPIERALA
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

v.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

ANSWER TO CROSS-CLAIM OF DEFENDANT COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION

FILED ON BEHALF OF DEFENDANT: Swank Associated Companies, Inc.

JAMES E. CLARK, JR., and BRENDA COBLE, individually and As ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED

Plaintiffs,

v.

SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,

Defendants.

COUNSEL OF RECORD FOR THIS PARTY:

JOHN P. DAVIS, III, ESQUIRE
PA ID No. 33294

JONES, GREGG, CREEHAN & GERACE, LLP
411 SEVENTH AVENUE, SUITE 1200
PITTSBURGH, PA 15219-1905
(412) 261-6400

FILED Ncc
m 12:01/cm
MAR - 8 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,
Plaintiffs,
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

JAMES E. CLARK, JR., and BRENDA COBLE, individually and As ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED
Plaintiffs,
v.
SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,
Defendants.

ANSWER TO CROSS-CLAIM OF DEFENDANT COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION

AND NOW, comes Swank Associated Companies, Inc., by and through its attorneys, Jones, Gregg, Creehan & Gerace, LLP, and files the following Answer to Cross-Claim of Defendant Commonwealth of Pennsylvania, Department of Transportation:

1. The averments of paragraph 55 constitute conclusions of law to which a responsive pleading is not required. Nevertheless,

to the extent that a responsive pleading is required, those averments are denied for the reasons set forth in this Defendant's Answer to Plaintiffs' Amended Complaint.

2. The averments of paragraph 56 constitute conclusions of law to which a responsive pleading is not required. To the extent that a responsive pleading is required, the averments of paragraph 56 are denied.

WHEREFORE, Swank Associated Companies, Inc. requests that judgment be entered in its favor on all claims and counts.

Respectfully submitted,

JONES, GREGG, CREEHAN & GERACE, LLP

By: _____
John P. Davis, III, Esquire

FILED ON BEHALF OF DEFENDANT:
Swank Associated Companies, Inc.

VERIFICATION

I, Larry M Chilenski Jr, as an authorized representative of Swank Associated Companies, Inc., have read the foregoing **ANSWER TO CROSS-CLAIM OF DEFENDANT, COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORATION** and hereby aver that the statements contained therein are true and correct to the best of my knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to the unsworn falsification to authorities.

SWANK ASSOCIATED COMPANIES, INC.

DATED: 3-2-2010

By: _____

NO.: G.D. 09-002390

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER TO CROSS-CLAIM OF DEFENDANT, COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION** was served via United States Mail, First Class, postage prepaid, this 4th day of March, 2010, to:

Jonathan B. Mack, Esquire
57 South Sixth Street
P. O. Box 1107
Indiana, PA 15701
(Attorney for Plaintiffs)

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Attorney for Defendants Lyle Thompson, Lyle Thompson t/d/b/a Valley Excavating and Hauling)

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
650 Washington Road
Pittsburgh, PA 15228
(Attorneys for Defendant New Enterprise Stone & Lime Co., Inc.)

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Attorneys for Defendant Preco Electronics, Inc. t/d/b/a Preco Electronics)

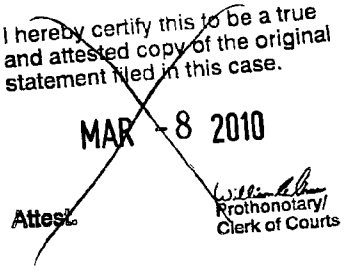
NO.: G.D. 09-002390

William A. Dopierala, Esquire
Sr. Deputy Attorney General
Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
4801 Atlantic Avenue
Erie, PA 16506
(Attorneys for Defendant Commonwealth of Pennsylvania, Department of Transportation)

JONES, GREGG, CREEHAN & GERACE, LLP

By: _____
John P. Davis, III, Esquire

ATTORNEY FOR DEFENDANT
Swank Associated Companies, Inc.



FILED

MAR - 8 2010

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED
MAR 17 2010
William A. Shaw
Prothonotary/Clerk of Courts

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF CORPORAL JOHN P. BURKE

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF CORPORAL JOHN P. BURKE

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF CORPORAL JOHN P. BURKE**, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **CORPORAL JOHN P. BURKE** will be taken on oral examination at Sargent's Court Reporting Service Office located at 106 N. Second Street, Clearfield, PA 16830, at 3:00 p.m. on Friday, May 14, 2010 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: March 16, 2010

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION was served by U.S. First Class Mail, postage prepaid this 16th day of March 2010, upon the following:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating
and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

(412) 531-3700

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics,
Inc., t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

(412) 281-0587

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

(412) 563-2500

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

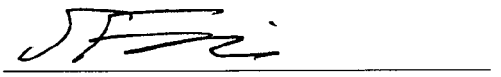
(814) 836-4363

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

(412) 261-6400

Sargent's Court Reporting Service
210 Main Street
Johnstown, PA 15901

(800) 727-4349



FILED

MAR 17 2010

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED
m/9:47 no cc
MAR 17 2010
William A. Shaw
Prothonotary/Clerk of Courts

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF TROOPER THEODORE L. HORNER

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF TROOPER THEODORE L. HORNER

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF TROOPER THEODORE L. HORNER**, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____ /for:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **TROOPER THEODORE L. HORNER** will be taken on oral examination at Sargent's Court Reporting Service Office located at 106 N. Second Street, Clearfield, PA 16830, at 1:30 p.m. on Friday, May 14, 2010 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: March 16, 2010

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION was served by U.S. First Class Mail, postage prepaid this 16th day of March 2010, upon the following:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating
and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

(412) 531-3700

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics,
Inc., t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

(412) 281-0587

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

(412) 563-2500

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

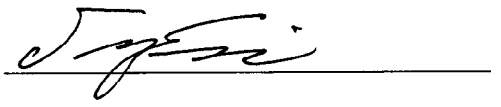
(814) 836-4363

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

(412) 261-6400

Sargent's Court Reporting Service
210 Main Street
Johnstown, PA 15901

(800) 727-4349



FILED
MAR 17 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED NO CC
MAR 17 2010
William A. Shaw
Prothonotary/Clerk of Courts

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF TROOPER DEWAINE R. KEPHART JR.

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF TROOPER DEWAINE R. KEPHART JR.

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF TROOPER DEWAINE R. KEPHART JR.**, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **TROOPER DEWAINE R. KEPHART JR.** will be taken on oral examination at Sargent's Court Reporting Service Office located at 106 N. Second Street, Clearfield, PA 16830, at 12:00 p.m. on Friday, May 14, 2010 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: _____ for:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: March 16, 2010

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION was served by U.S. First Class Mail, postage prepaid this 16th day of March 2010, upon the following:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating
and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

(412) 531-3700

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics,
Inc., t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

(412) 281-0587

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

(412) 563-2500

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

(814) 836-4363

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

(412) 261-6400

Sargent's Court Reporting Service
210 Main Street
Johnstown, PA 15901

(800) 727-4349

FILED
MAR 17 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF TROOPER ROBERT J. FERDARKO

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

FILED NO CC
MAR 17 2010
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF TROOPER ROBERT J. FERDARKO

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF TROOPER ROBERT J. FERDARKO**, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **TROOPER ROBERT J. FERDARKO** will be taken on oral examination at Sargent's Court Reporting Service Office located at 106 N. Second Street, Clearfield, PA 16830, at 10:00 a.m. on Friday, May 14, 2010 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: March 16, 2010

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION was served by U.S. First Class Mail, postage prepaid this 16th day of March 2010, upon the following:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating
and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

(412) 531-3700

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics,
Inc., t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

(412) 281-0587

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

(412) 563-2500

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

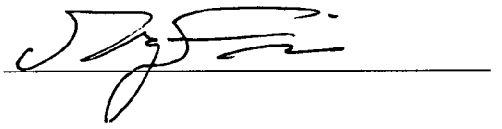
(814) 836-4363

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

(412) 261-6400

Sargent's Court Reporting Service
210 Main Street
Johnstown, PA 15901

(800) 727-4349



FILED
MAR 17 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

NOTICE OF SERVICE

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

JURY TRIAL DEMANDED

FILED NO CC
MAR 19 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,	)	CIVIL DIVISION – No. GD 2008-2452-CD
Plaintiffs,	)	
vs.	)	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., , t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS, Defendants.	)	

NOTICE OF SERVICE OF ANSWERS TO DISCOVERY REQUESTS

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

Kindly take notice that Defendant, Preco Electronics, Inc. t/d/b/a Preco Electronics, has served its Answer to Plaintiffs' Request for Admissions Directed to Defendant Preco Electronics, Inc., t/d/b/a Preco upon counsel for Plaintiffs via U.S. mail, postage pre-paid, on March 17, 2010:

Bryan Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701

GOEHRING, RUTTER & BOEHM

By: Jaime N. Doherty
Jaime N. Doherty, Esquire
Pa. I.D.#89402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **NOTICE OF SERVICE OF DEFENDANT PRECO ELECTRONIC'S ANSWERS TO DISCOVERY REQUESTS** has been served via U.S. First Class mail, postage pre-paid, this 17th day of March, 2010 upon the following:

Bryan Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Counsel for James E. Clark, Jr. and Brenda Coble

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
Counsel for Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228
Counsel for New Enterprise Stone & Lime Company, Inc. t/d/b/a New Enterprise Stone and Lime Company

GOEHRING, RUTTER & BOEHM

Jaime N. Doherty

Jaime N. Doherty, Esquire
Pa. I.D. #89402

FILED
MAR 19 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendant

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED 1cc Atty Neiderhiser
m 12:31 cm
MAR 30 2010
William A. Shaw
Prothonotary/Clerk of Courts

NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' SECOND SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT LYLE THOMPSON AND DEFENDANT LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING,** were mailed, U.S. First Class mail, to the following this 29th day of March, 2010:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

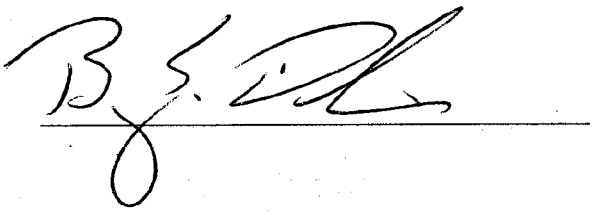
ORIGINAL

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506



FILED

MAR 30 2010

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED
APR 27 2010
William A. Shaw
Prothonotary/Clerk of Courts
1 cert to Atty Mack

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

STIPULATION TO AMEND PLAINTIFFS' AMENDED COMPLAINT

Filed on behalf of Plaintiffs

Jonathan B. Mack, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

STIPULATION TO AMEND PLAINTIFFS' AMENDED COMPLAINT

AND NOW come Counsel for the Plaintiffs, Jonathan B. Mack, Esquire, and Marcus and Mack, P.C., and Counsel for Defendant Swank Associated Companies, Inc., John P. Davis, III, Esq., and Jones, Gregg, Creehan & Gerace, LLP, and file this Stipulation To Amend Plaintiffs' Amended Complaint and in support thereof aver as follows:

1. On April 7, 2010, this Honorable Court issued an Order directing the Plaintiffs to specifically plead the averments of Count I, paragraphs 22(w), (x), and (y) of the Amended Complaint within twenty (20) days from the date of that order.

2 Counsel for the Plaintiffs and Counsel for Defendant Swank Associated Companies, Inc., hereby stipulate and agree that the averments of Count I, paragraphs 22(w), (x), and (y) of the Amended Complaint are amended to read as follows:

w. In failing to comply with, and/or in being responsible for its agents, servants, representatives, employees, contractors, subcontractors, and/or assigns, including but not limited to Larry Chilenski, Mitch Foraker, Travis Foraker, and Bob Stewart, who violated and/or who failed to comply with 29 C.F.R. §1926.201(a);

x. In failing to comply with, and/or in being responsible for its agents, servants, representatives, employees, contractors, subcontractors, and/or assigns, including but not limited to Larry Chilenski, Mitch Foraker, Travis Foraker, and Bob Stewart, who violated and/or who failed to comply with, 29 C.F.R. § 1926.200(a), (b), (c), (e), and (g);

y. In failing to comply with, and/or in being responsible for its agents, servants, representatives, employees, contractors, subcontractors, and/or assigns, including but not limited to Larry Chilenski, Mitch Foraker, Travis Foraker, and Bob Stewart, who violated and/or who failed to comply with, 29 C.F.R. §1926.601(b)(4);

3. Counsel for the Plaintiffs and Counsel for Defendant Swank Associated Companies, Inc., hereby further stipulate and agree that the averments of "recklessness" in Count I, paragraphs 19, 22, 23 and 24 of Plaintiffs' Amended Complaint are hereby stricken, pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2).

4. Plaintiffs' Amended Complaint filed on December 31, 2009, remains unchanged in all other aspects.

WHEREFORE, Counsel for the Plaintiffs and Counsel for Defendant Swank Associated Companies, Inc., hereby stipulate and agree to the afore outlined amendments to Count I, paragraphs 22(w), (x), and (y) of Plaintiffs' Amended Complaint.

Respectfully Submitted:

Jones, Gregg, Creehan & Gerace, LLP,

By: _____

John P. Davis, III, Esq.
Counsel for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

Marcus & Mack, P.C.,

By: Jonathan Mack / by: _____

Jonathan B. Mack, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,
Plaintiffs,

No. 2008-2452-CD

JURY TRIAL DEMANDED

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,
Defendants.

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,
Plaintiffs,

JURY TRIAL DEMANDED

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **STIPULATION TO AMEND PLAINTIFFS' AMENDED COMPLAINT** was served upon the following by U.S. First Class Mail, postage pre-paid this 26th day of April, 2010:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

Jonathan B. Mack, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK JR. and BRENDA COBLE, Individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

-AND-

JAMES E. CLARK, JR. and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC. and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

FILED
MAY 05 2010
William A. Shaw
Prothonotary/Clerk of Courts

NOTICE OF SERVICE OF PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

Filed on Behalf of Defendant,

Commonwealth of Pennsylvania
Department of Transportation

Counsel of Record for this Party:

William A. Dopierala
Sr. Deputy Attorney General
Pa. I.D. #21853
Office of Attorney General
Torts Litigation Section
4801 Atlantic Ave.
Erie, PA 16506

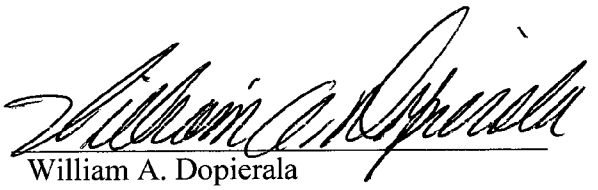
814-836-4362

NOTICE OF SERVICE

TO THE PROTHONOTARY:

Please note that the undersigned has Answers to Plaintiffs' First Set of Interrogatories and Request for Production of Documents directed to Defendant Commonwealth of Pennsylvania Department of Transportation to all counsel of record in the above-captioned case.

Thomas W. Corbett, Jr.
Attorney General

By: 
William A. Dopierala
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Service of Answers to Plaintiffs' First Set of Interrogatories and Request for Production of Documents directed to Defendant Commonwealth of Pennsylvania Department of Transportation was served upon the following counsel of record by mailing the same via first class mail, postage pre-paid, on May 3, 2010:

Bryan S. Neiderhiser, Esquire
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701
(Counsel for Plaintiffs)

John P. Davis, III, Esquire
Jones, Gregg, Creehan & Gerace, LLP
411 Seventh Avenue
Suite 1200
Pittsburgh, PA 15219-1905
(Swank Associated Companies, Inc.)

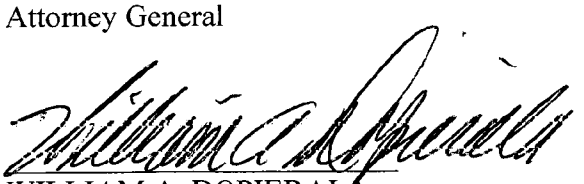
Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Lyle Thompson: Lyle Thompson, t/d/b/a Valley Excavating and Hauling)

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
650 Washington Road
Pittsburgh, PA 15228
(New Enterprise Stone & Lime Co., Inc.)

Jaime N. Doherty, Esquire
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Preco Electronics, Inc., t/d/b/a Preco Electronics)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: 
WILLIAM A. DOPIERALA
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF RHONDA STANKOVICH, PENNDOT EMPLOYEE

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

FILED NO CC
M/8:57 BL
MAY 10 2010
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF RHONDA STANKOVICH, PENNDOT EMPLOYEE

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF RHONDA STANKOVICH**, to Counsel for Defendant, William A. Dopierala, Esquire, 4801 Atlantic Avenue, Erie, PA 16506 on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **RHONDA STANKOVICH** will be taken on oral examination at Sargent's Court Reporting Service Office located at 106 N. Second Street, Clearfield, PA 16830, at 12:00 p.m. on Monday, June 28, 2010 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: May 6, 2010

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION was served by U.S. First Class Mail, postage prepaid this 6th day of May 2010, upon the following:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating
and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

(412) 531-3700

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics,
Inc., t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

(412) 281-0587

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

(412) 563-2500

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of
Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

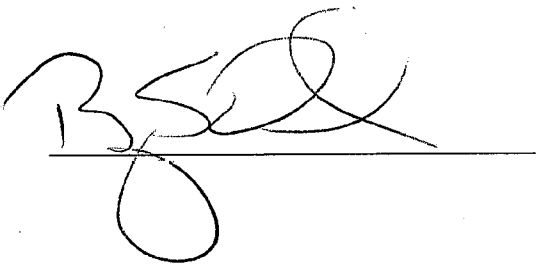
(814) 836-4363

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated
Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

(412) 261-6400

Sargent's Court Reporting Service
210 Main Street
Johnstown, PA 15901

(800) 727-4349



FILED
MAY 10 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF CORPORAL JOHN P. BURKE

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

FILED NO CC
MAY 10 2010
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF CORPORAL JOHN P. BURKE

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF CORPORAL JOHN P. BURKE,** on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **CORPORAL JOHN P. BURKE** will be taken on oral examination at Sargent's Court Reporting Service Office located at 106 N. Second Street, Clearfield, PA 16830, at 10:00 a.m. on Monday, June 28, 2010 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: May 6, 2010

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION was served by U.S. First Class Mail, postage prepaid this 6th day of May 2010, upon the following:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating
and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

(412) 531-3700

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics,
Inc., t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

(412) 281-0587

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

(412) 563-2500

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of
Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

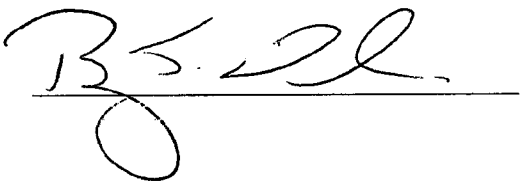
(814) 836-4363

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated
Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

(412) 261-6400

Sargent's Court Reporting Service
210 Main Street
Johnstown, PA 15901

(800) 727-4349



IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF MICHAEL B. BEAVER

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

FILED
m 18:52 2cc
MAY 10 2010
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
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DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF MICHAEL B. BEAVER

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF MICHAEL B. BEAVER** , on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
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OF JAMES EDWARD CLARK, a/k/a
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DECEASED,

Plaintiffs,

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t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

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JAMES E. CLARK, JR., and
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DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **MICHAEL B. BEAVER** will be taken on oral examination at Sargent's Court Reporting Service Office located at 106 N. Second Street, Clearfield, PA 16830, at 11:00 a.m. on Monday, June 28, 2010 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: May 6, 2010

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION was served by U.S. First Class Mail, postage prepaid this 6th day of May 2010, upon the following:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
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William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of
Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

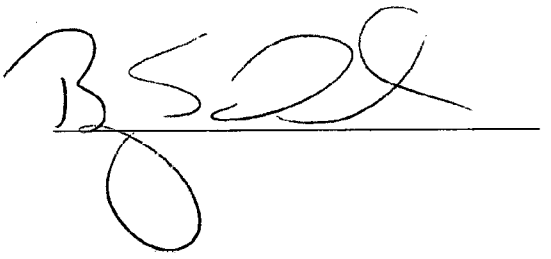
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John P. Davis, III, Esq.
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Sargent's Court Reporting Service
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FILED

MAY 10 2010

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
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DECEASED,

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LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

PLAINTIFFS' REPLY TO DEFENDANT COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION'S NEW MATTER

FILED NO CC
MAY 13 2010
William A. Shaw
Prothonotary/Clerk of Courts

Filed on behalf of Plaintiffs
Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

PLAINTIFFS' REPLY TO DEFENDANT COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION'S NEW MATTER

AND NOW come the Plaintiffs, James E. Clark, Jr., and Brenda Coble, individually and as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by and through their counsel, Bryan S. Neiderhiser, Esquire, and Marcus & Mack, P.C., and file

the within Reply to the New Matter of Defendant Commonwealth of Pennsylvania, Department of Transportation (hereinafter referred to as "Defendant PennDot") as follows:

42. Paragraph 42 of Defendant PennDot's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 42 is specifically denied. It is denied that the cause of action against Defendant PennDot is allegedly barred by the Doctrine of Sovereign Immunity. Strict proof to the contrary is demanded at trial.

43. Paragraph 43 of Defendant PennDot's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 43 is specifically denied. It is denied that the cause of action against Defendant PennDot does not fall within one of the nine (9) categories enumerated by Section 8522 of Act 152, September 28, 1978, P.L. 788, as amended, 42 Pa. C.S.A. 8522. Strict proof to the contrary is demanded at trial.

44. Paragraph 44 of Defendant PennDot's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 44 is specifically denied. It is denied that in the event that damages are awarded in this case, that said damages are limited to the amounts and for the losses as set forth in §8528 of Act 152, September 28, 1978, P.L. 788, as amended, 42 Pa. C.S.A. 8528. Strict proof to the contrary is demanded at trial.

45. Paragraph 45 of Defendant PennDot's New Matter states conclusions of law to which no response is required. Further, the Pennsylvania Rules of Civil Procedure provide that any affirmative defense that is not raised and pled with specificity in the appropriate forum is deemed waived. Thus, since Defendant PennDot has failed to plead with specificity which defenses it is allegedly raising under the Pennsylvania Motor Vehicle Financial Responsibility Law, the same should be deemed waived. To the extent that a response is deemed necessary, and by way of

further answer, Paragraph 45 of Defendant PennDot's New Matter is specifically denied. It is denied that the rights of the Plaintiff in this action are allegedly restricted, governed, diminished and/or barred by the provisions of the Pennsylvania Financial Responsibility Law, 75 Pa. C.S.A. §1701, et seq. By way of further answer, at all times relevant hereto, Plaintiffs elected and/or are subject to the Full Tort option. By way of further answer, and at all times relevant hereto, Plaintiffs and Plaintiffs' decedent were in full compliance with the Pennsylvania Motor Vehicle Financial Responsibility Law. Strict proof to the contrary is demanded at trial.

46. Paragraph 46 of Defendant PennDot's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 46 is specifically denied. It is denied that the injuries, losses and damages or occurrences alleged in Plaintiffs' Amended Complaint were the result of an independent and intervening cause or causes over which the Defendant PennDot allegedly had no control or in any way participated. By way of further answer, the injuries, losses and damages or occurrences alleged in Plaintiffs' Complaints and Amended Complaints were caused and/or contributed to by the negligence, carelessness and/or recklessness of the Defendants as set forth in the Complaints and Amended Complaints. Strict proof to the contrary is demanded at trial.

47. Paragraph 47 of Defendant PennDot's New Matter states conclusions of law to which no response is required. Further, the Pennsylvania Rules of Civil Procedure provide that any affirmative defense that is not raised and pled with specificity in the appropriate forum is deemed waived. Thus, since Defendant PennDot has failed to plead with specificity which "similar statutes", "contractual provisions" and/or "other fundamental provisions" it is allegedly raising, the same should be deemed waived. To the extent that a response is deemed necessary, Paragraph 47 is specifically denied. It its denied that all rights which might otherwise exist against instant

Defendant are allegedly barred in whole or in part by the applicable statutes of limitations, other similar statutes, contractual provisions and/or other fundamental provisions, including waiver, estoppel and laches. To the contrary, Plaintiffs' lawsuit was filed in a timely and proper manner and in accordance with applicable statutes of limitations. It is denied that Defendant PennDot may claim the defenses of waiver, estoppel and/or laches. It is further denied that any of the aforementioned defenses are applicable to, and/or viable in, the within matter. Strict proof to the contrary is demanded at trial.

48. Paragraph 48 of Defendant PennDot's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 48 is specifically denied. It is denied that Defendant PennDot is protected by any defenses which are articulated at 42 Pa. C.S.A. 8524. Strict proof to the contrary is demanded at trial.

49. Paragraph 49 of Defendant PennDot's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 49 is specifically denied. It is denied that Defendant PennDot is immune from claims grounded upon negligence of independent contractors. By way of further answer, the injuries, losses and damages set forth in the Plaintiffs' Complaints and Amended Complaints were caused and/or contributed to by the negligence, carelessness and/or recklessness of the Defendants as set forth in the Complaints and Amended Complaints. Strict proof to the contrary is demanded at trial.

50. Paragraph 50 of Defendant PennDot's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 50 is specifically denied. It is denied that Defendant PennDot is not liable for harm caused by an act or omission of an independent contractor or his employees. By way of further answer, the injuries, losses and damages set forth in the Complaints and Amended Complaints were caused

and/or contributed to by the negligence, carelessness and/or recklessness of the Defendants as set forth in the Complaints and Amended Complaints. Strict proof to the contrary is demanded at trial.

51. Paragraph 51 of Defendant PennDot's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, after reasonable investigation, Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of instant Defendant's New Matter. Moreover, Paragraph 51 of instant Defendant's New Matter fails to specify which contractor allegedly agreed to indemnify and hold instant Defendant harmless.

52. Paragraph 52 of Defendant PennDot's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 52 is specifically denied. It is denied that funeral, burial and estate administration expenses are not recoverable against instant Defendant. Strict proof to the contrary is demanded at trial.

53. Paragraph 53 of Defendant PennDot's New Matter states conclusions of law to which no response is required. Further, the Pennsylvania Rules of Civil Procedure provide that any affirmative defense that is not raised and pled with specificity in the appropriate forum is deemed waived. Thus, since Defendant PennDot has failed to plead with specificity which "defenses" it is allegedly raising under "any" Workers' Compensation Act, and because it fails to identify which defenses under a "successor statute" it is allegedly raising, and because it also fails to describe or define the "successor statute" it is allegedly raising, the same should be deemed waived. To the extent that a response is deemed necessary, Paragraph 53 is specifically denied. It its denied that Defendant PennDot may assert all defenses under any Workers' Compensation Act, and any successor statute. It is further denied that any Workers' Compensation Act and/or

any successor statute provide any valid, viable and/or effective defenses in the instant matter. Strict proof to the contrary is demanded at trial.

54. Paragraph 54 of Defendant PennDot's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 54 is specifically denied. It is denied that Defendant PennDot is immune from claims grounded upon negligent supervision or employment. By way of further answer, the injuries, losses and damages set forth in the Complaints and Amended Complaints were caused and/or contributed to by the negligence, carelessness and/or recklessness of the Defendants as set forth in the Complaints and Amended Complaints. Strict proof to the contrary is demanded at trial.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court dismiss Defendant PennDot's New Matter and judgment be entered in their favor.

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esq.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

VERIFICATION

I, James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

VERIFICATION

I, Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

Brenda Coble

Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
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JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' REPLY TO DEFENDANT COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF**

TRANSPORTATION'S NEW MATTER was served upon the following by U.S. First Class Mail, postage pre-paid this 12th day of May, 2010:

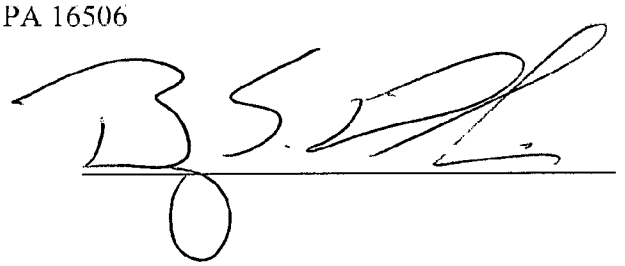
Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
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Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
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437 Grant Street
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Pittsburgh, PA 15219

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506



FILED
MAY 13 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

v.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

ANSWER, NEW MATTER AND CROSSCLAIM

FILED ON BEHALF OF DEFENDANT: Swank Associated Companies, Inc.

JAMES E. CLARK, JR., and BRENDA COBLE, individually and As ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED

Plaintiffs,

v.

SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,

Defendants.

COUNSEL OF RECORD FOR THIS PARTY:

JOHN P. DAVIS, III, ESQUIRE
PA ID No. 33294

JONES, GREGG, CREEHAN & GERACE, LLP
411 SEVENTH AVENUE, SUITE 1200
PITTSBURGH, PA 15219-1905
(412) 261-6400

FILED NOCC
M 10:54 BY
MAY 13 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,
Plaintiffs,
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and
As ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED
Plaintiffs,
v.
SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,
Defendants.

NOTICE TO PLEAD

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

JONES, GREGG, CREEHAN & GERACE, LLP

By: _____
John P. Davis, III, Esquire

FILED ON BEHALF OF DEFENDANT:
Swank Associated Companies, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,
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Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and
As ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED
Plaintiffs,
v.
SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,
Defendants.

ANSWER, NEW MATTER AND CROSSCLAIM

AND NOW, comes Swank Associated Companies, Inc. ("SAC"), by and through its attorneys, Jones, Gregg, Creehan & Gerace, LLP, and files the following Answer, New Matter and Crossclaims to the Amended Complaint:

ANSWER

1. After reasonable investigation, SAC is without information or knowledge sufficient to admit the paragraphs of 1

and, therefore, denies the same.

2. The averments of paragraph 2 are admitted.

3. The averments of paragraph 3 are admitted based upon information and belief.

4. In response to the averments of paragraph 4, it is admitted that an incident occurred on or about July 11, 2007 resulting in the death of James Clark on Exit Ramp 123 off of Interstate 80 in Bradford Township, Clearfield County, Pennsylvania. After reasonable investigation, SAC is without the information or knowledge sufficient to admit how the accident occurred and the ownership of the truck which allegedly caused Mr. Clark's death and, therefore, denies the same. It is specifically denied that the location of the incident was under the ownership, jurisdiction, possession, care, supervision, custody and/or control of SAC.

5. It is admitted that SAC was a subcontractor on a PennDOT project that included work on Exit Ramp 123 off of Interstate 80. The remaining averments of paragraph 5 are denied.

6. The averments of paragraph 6 set forth conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 6 are denied.

7. The averments of paragraph 7 set forth conclusions of law to which a responsive pleading is not required. Nevertheless,

to the extent that a responsive pleading is required, the averments of paragraph 7 are denied.

8. After reasonable investigation, SAC is without information or knowledge sufficient to admit the averments of paragraph 8 and, therefore, denies the same.

9. The averments of paragraph 9 set forth conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 9 are denied.

10. After reasonable investigation, SAC is without information or knowledge sufficient to admit the averments of paragraph 10 and, therefore, denies the same.

11. The averments of paragraph 11 set forth conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 11 are denied.

12. The averments of paragraph 12 set forth conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, after reasonable investigation SAC is without information or knowledge sufficient to admit that Plaintiffs are eligible to recover full tort benefits and, therefore, the averments of paragraph 12 are denied.

COUNT I

NEGLIGENCE - WRONGFUL DEATH

James B. Clark, Jr. and Brenda Coble, individually, Plaintiffs v. Swank Associated Companies, Inc.

13. In response to the averments of paragraph 13, SAC incorporates herein as if set forth in full, paragraphs 1 through 12, supra.

14. The averments of paragraph 14 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, it is admitted that SAC was a subcontractor on a PennDOT project that included work on Exit Ramp 123 off of Interstate 80. It is specifically denied that the location of the incident was under the ownership, jurisdiction, possession, care, supervision, custody and/or control of SAC. The remaining averments of paragraph 14 are denied.

15. The averments of paragraph 15 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments are denied, generally, and it is specifically denied that the location of the incident was under the ownership, jurisdiction, possession, care, supervision, custody and/or control of SAC.

16. The averments of paragraph 16 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, after reasonable investigation SAC is without information or knowledge sufficient to admit the averments of paragraph 16 and, therefore, denies the same.

17. In response to the averments of paragraph 17, SAC incorporates its answer to paragraph 16, supra. By way of further response, SAC specifically denies that it had a contractual or or other duty to provide or otherwise utilize spotters or flaggers or to undertake any other precautionary measures to protect Plaintiffs' decedent, specifically denies that it permitted the subject dump truck to be present, specifically denies that it permitted the subject dump truck to be used, specifically denies any knowledge regarding whether or not the truck was equipped with defective, inappropriate, malfunctioning or inadequate back-up warning/safety device and denies that it had any legal duty to provide such a device on the truck at issue or to assure that such a device was on the truck.

18. The averments of paragraph 18 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, after reasonable investigation SAC is without information or knowledge

sufficient to admit the averments of paragraph 18 and, therefore, denies the same.

19. The averments of paragraph 19 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 19 are denied and, to the extent that is so inferred by the averments of paragraph 19, it is specifically denied that SAC had a contractual, common law or other legal duty to correct or ameliorate the "dangerous conditions" alleged by Plaintiffs, that it allowed Plaintiffs' decedent to come into contact with the dump truck and that it had any duty to protect Plaintiffs' decedent from the injuries and damages sustained.

20. The averments of paragraph 20 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 20 are denied.

21. The averments of paragraph 21 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 21 are denied and it is specifically denied that SAC had any contractual, common law or legal duty to correct and/or remedy any dangerous condition, if any such condition is found to have existed, that contributed to Plaintiffs' decedent's death.

22. The averments of paragraph 22 constitute conclusions of law to which a responsive pleading is not required. To the extent that a responsive pleading is required, the averments of paragraph 22 and subparagraphs (a) through (cc) are denied. SAC further denies that any agency, employer/employee or principal/agent relationship existed between SAC and Defendant Thompson individually and/or t/d/b/a Valley Excavating and Hauling as averred in subparagraph (r), that it had any duty to monitor, supervise and/or oversee the place where the incident occurred as averred in subparagraph (s) and that it hired and/or contracted with any entity for work on the exit ramp other than with Defendant New Enterprise Stone & Lime Co., Inc. as averred in subparagraphs (u), (w), (x) and (y). By way of further response, SAC incorporates herein as if set forth full its answer to paragraph 19, supra.

23. The averments of paragraph 23 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 23 are denied for the reasons stated in paragraphs 1-22, supra, which are incorporated herein as if set forth in full.

24. The averments of paragraph 24 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the

averments of paragraph 24 are denied for the reasons stated in paragraphs 1-22, supra, which are incorporated herein as if set forth in full.

25. The averments of paragraph 25 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 25 and subparagraphs (a) through (h) are denied.

WHEREFORE, Swank Associated Companies, Inc. requests that judgment be entered in its favor as to Count I.

COUNT II

NEGLIGENCE - WRONGFUL DEATH

James B. Clark, Jr. and Brenda Coble, individually, Plaintiffs v. Commonwealth of Pennsylvania, Department of Transportation

26-39. The averments of paragraph 26 through 39 are directed to a party other than SAC and, therefore, may not be answered by it.

COUNT III

SURVIVAL

James B. Clark, Jr. and Brenda Coble, Administrators of the Estate of James Edward Clark, a/k/a James Edward, Sr., deceased, Plaintiffs v. Swank Associated Companies, Inc. and Commonwealth of Pennsylvania, Department of Transportation

40. In response to the averments of paragraph 40, SAC incorporates herein as if set forth in full, paragraphs 1 through 39, supra.

41. The averments of paragraph 41 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraphs 41 and subparagraphs (a) through (f) are denied.

WHEREFORE, Swank Associated Companies, Inc. requests that judgment be entered in its favor as to Count III.

NEW MATTER

42. The Complaint fails to state a cause of action upon which relief can be granted.

43. Plaintiffs' claim is or may be barred by the applicable statute of limitations.

44. Should it be determined at trial or in discovery that Plaintiffs' decedent sustained the injuries claimed, which is denied, said injuries were caused solely by his own acts, omissions and negligence.

45. Should it determined at trial or in discovery that Plaintiffs' decedent sustained the injuries claimed, which is denied, said injuries were caused solely by the acts or omissions of others and by events over which this Defendant had no control and for which this Defendant is not responsible.

46. Should it determined at trial or in discovery that Plaintiffs' decedent sustained the injuries claimed, which is

denied, Plaintiffs' claims are or may be barred by the Doctrine of Assumption of Risk.

47. Should it determined at trial or in discovery that Plaintiffs' decedent sustained the injuries claimed, which is denied, Plaintiffs' claims are or may be barred by the Doctrines of Contributory and/or Comparative Negligence.

48. Should it be determined at trial or in discovery that a dangerous condition existed at the construction site which was a substantial factor in causing Plaintiffs' decedent's injury and death, which is denied, such condition was readily apparent to Plaintiffs' decedent or should have been readily apparent to him upon reasonable inspection and, therefore, this Defendant had no duty to warn Plaintiffs' decedent of such condition or to take other action to guard Plaintiffs' decedent against injury therefrom.

49. At all times material hereto, Defendant exercised reasonable care under the circumstances.

50. Under the terms and provisions of SAC's subcontract with New Enterprise Stone & Lime Company, Inc., relevant portions of which are attached hereto as Exhibit "A," SAC had no contractual obligation to provide inter alia, maintenance of traffic or flag persons, the trucking of milled material or manpower to back up trucks to SAC's roto-mill.

51. The incident alleged to have resulted in Plaintiffs' decedent's injury and death did not occur in an area where SAC was performing milling operations or in an area where SAC had any degree of possession or control at the time of the incident.

WHEREFORE , Swank Associated Companies, Inc., requests that judgment be entered in its favor as to all claims and counts.

CROSSCLAIM PURSUANT TO Pa.R.C.P. 1031.1

Swank Associated Companies, Inc. v. Lyle Thompson t/d/b/a Valley Excavating and Hauling, New Enterprise Stone & Lime Co., Inc., Preco Electronics, Inc. t/d/b/a Preco Electronics and Commonwealth of Pennsylvania, Department of Transportation.

52. In the event that it is proven that the accident, injuries and death at issue occurred as alleged in Plaintiffs' Amended Complaint, which is denied, then the injuries and damages which Plaintiffs' decedent sustained were due to the acts and primary negligence of all of the defendants other than SAC for the reasons plead against them by Plaintiffs, which averments are incorporated herein as if set forth in full.

53. Alternatively, if it is proven that SAC is liable to Plaintiffs, which liability is specifically denied, then the other named Defendants are jointly and/or severally liable with SAC, or are liable over to SAC on theories of indemnity and/or contribution on the causes of action declared upon by Plaintiffs.

WHEREFORE, Swank Associated Companies, Inc. requests that judgment be entered in its favor and against all other parties as to all causes of action, claims and counts.

Respectfully submitted,

JONES, GREGG, CREEHAN & GERACE, LLP

By: _____
John P. Davis, III, Esquire

FILED ON BEHALF OF DEFENDANT:
Swank Associated Companies, Inc.

QUOTATION

SWANK ASSOCIATED COMPANIES, INC.
200 HUNT VALLEY ROAD
NEW KENSINGTON, PA 15068

PHONE: 724-335-6000
FAX: 724-335-3834

Notes: This estimate is good for 90 days from the date below. Prices quoted are for quantities shown.

TO:	New Enterprise - Roaring Spring
ATTN:	Jim Miller
PHONE:	814-224-2121
FAX:	814-766-0207

Project #:	ECMS 57542
Location:	East County
County:	Clearfield
State:	Pennsylvania
Road:	SR 80(B26)
Bid Date:	26-Apr-07

Item	Item#	Description	Depth		Quantity	Unit	Unit Price	Amount
1	0491-0064	Mill Bit. (Mill Only)	2.00	in	748,588	SY	$ 0.23	$ 172,175.24
2	0491-0065	Mill Bit. (Mill Only)	2.50	in	4,150	SY	$ 1.49	$ 6,183.50
3	0491-0070	Mill Bit. (Mill Only) Varia ble Depth	4.00	in	24,133	SY	$ 0.60	$ 14,479.80
	0491-0070	Addit. Mobilizations			1	EA	~~$ 800.00~~	~~$ 800.00~~
		Revised Price						
					Total			~~193,639.53~~ 192,838.54

APW 5-3-07

ARW 5-3-07

Conditions:
1 Price for above item is based on 2 mobilizations and includes internal mobilizaitons.
2 Item 1 is estimated on performing work in 36 days, Item 2 to be performed concurrently with item 1, item 3 in 4 days.
3 Cost per additional mobilization $ 800.00.

Mill only price does not include:
1 Maintenance of traffic or flagpersons.
2 Trucking of milled material.
3 Sweeping.
4 Removal of bituminous material that is not accessible to a large belt loading rotomill.
5 Hot mix / cold patch for temporary ramping.

General Conditions:
1 Price includes S.A.C. transporting its own water. S.A.C.requires that G.C. obtain source for water.
2 Price does not include S.A.C. providing manpower to back up trucks to rotomill.(Mill Only)
3 S.A.C. is not liable for any liquidated damages incurred by G.C. on the project.
4 Price is based upon G.C. providing sufficient trucking to allow for agreed upon production rates.(Mill Only)
5 Price does not include removal of asphalt between steel grids,around expansion dams, wheelruts, cracks, between bricks or areas inaccessible to a large belt loading rotomill.(Mill Only)
6 The number of days indicated above are approximate and are for contractor information only. they should not be construed as a guarantee.
7 S.A.C. is not responsible for removal or disposal of roadway reflectors.
8 G.C. agrees not to withhold retention on subcontracts valued less than $ 200,000.00 unless agreed to prior to bid submittal
9 Price includes all state and federal taxes, please notify us if any additional apply.
10 "We abide by the Equal Opportunity & Affirmative Action Requirements of Executive Order 11246, as amended and are hereby incorporated by rererence"

Estimate authorized by:

Name: Ronald J. Hags | Estimator

Date: 4/26/2007

Approved by:

Name: Jim Miller

Date: 5-1-07

15-b

EX A

VERIFICATION

I, Larry M Chilenski Jr, as an authorized representative of Swank Associated Companies, Inc., have read the foregoing **ANSWER, NEW MATTER AND CROSSCLAIM** and hereby aver that the statements contained therein are true and correct to the best of my knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to the unsworn falsification to authorities.

SWANK ASSOCIATED COMPANIES, INC.

DATED: 5-11-2010

By: _____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER, NEW MATTER AND CROSSCLAIM** was served via United States Mail, First Class, postage prepaid, this 11th day of May, 2010, to:

Jonathan B. Mack, Esquire
57 South Sixth Street
P. O. Box 1107
Indiana, PA 15701
(Attorney for Plaintiffs)

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Attorney for Defendants Lyle Thompson, Lyle Thompson t/d/b/a Valley Excavating and Hauling)

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
650 Washington Road
Pittsburgh, PA 15228
(Attorneys for Defendant New Enterprise Stone & Lime Co., Inc.)

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Attorneys for Defendant Preco Electronics, Inc. t/d/b/a Preco Electronics)

William A. Dopierala, Esquire
Sr. Deputy Attorney General
Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
4801 Atlantic Avenue
Erie, PA 16506
(Attorneys for Defendant Commonwealth of Pennsylvania, Department of Transportation)

JONES, GREGG, CREEHAN & GERACE, LLP

By: _____
John P. Davis, III, Esquire

ATTORNEY FOR DEFENDANT
Swank Associated Companies, Inc.

FILED
MAY 13 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK JR. and BRENDA COBLE, Individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

-AND-

JAMES E. CLARK, JR. and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC. and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

ANSWER TO CROSSCLAIM PURSUANT TO Pa. R.C.P. 1031.1 OF DEFENDANT SWANK ASSOCIATED COMPANIES, INC.

FILED No cc.
m/ 11:40 am
MAY 17 2010
William A. Shaw
Prothonotary/Clerk of Courts

Filed on Behalf of Defendant,

Commonwealth of Pennsylvania
Department of Transportation

Counsel of Record for this Party:

William A. Dopierala
Sr. Deputy Attorney General
Pa. I.D. #21853
Office of Attorney General
Torts Litigation Section
4801 Atlantic Ave.
Erie, PA 16506

814-836-4362

ANSWER TO CROSSCLAIM PURSUANT TO Pa. R.C.P. 1031.1

AND NOW comes the Defendant, Commonwealth of Pennsylvania Department of Transportation (hereinafter referred to as PennDOT), by the Office of the Attorney General, and files this Answer to Crossclaim Pursuant to Pa. R.C.P. 1031.1 of Defendant Swank Associated Companies, Inc., and represents as follows:

Swank Associated Companies, Inc. v. Lyle Thompson t/d/b/a Valley Excavating and Hauling, New Enterprise Stone & Lime Co., Inc., Preco Electronics, Inc. t/d/b/a Preco Electronics and Commonwealth of Pennsylvania, Department of Transportation.

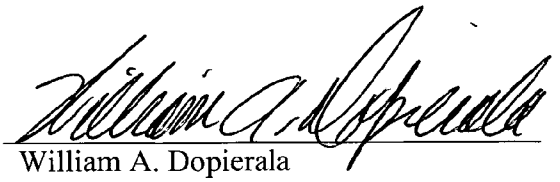
52. The allegations set forth in this paragraph of Plaintiffs' Amended Complaint constitute conclusions of law to which no responsive pleading is required pursuant to the Pennsylvania Rules of Civil Procedure. To the extent that portions of this paragraph could be construed as factual allegations, said allegations are specifically denied, and strict proof thereof is hereby demanded at the time of trial.

53. Denied as a legal conclusion to which no responsive pleading is required.

WHEREFORE, Commonwealth of Pennsylvania, Department of Transportation, respectfully requests that judgment be entered in its favor and against all other parties.

Respectfully submitted,

Thomas W. Corbett, Jr.
Attorney General

By: 
William A. Dopierala
Senior Deputy Attorney General

VERIFICATION

AND NOW, this 14th day of May, 2010, William A. Dopierala, the undersigned, states that he is the attorney for Office of Attorney General and that he is authorized to make this Verification, that the facts set forth in the Answer to Crossclaim Pursuant to Pa. R.C.P. 1031.1 are true and correct, not of his own knowledge, but from information supplied to him, all subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

William A. Dopierala

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer to Crossclaim Pursuant to Pa. R.C.P. 1031.1 was served upon the following counsel of record by mailing the same via first class mail, postage pre-paid, on May 14, 2010:

Bryan S. Neiderhiser, Esquire
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701
(Counsel for Plaintiffs)

John P. Davis, III, Esquire
Jones, Gregg, Creehan & Gerace, LLP
411 Seventh Avenue
Suite 1200
Pittsburgh, PA 15219-1905
(Swank Associated Companies, Inc.)

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Lyle Thompson: Lyle Thompson, t/d/b/a Valley Excavating and Hauling)

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
650 Washington Road
Pittsburgh, PA 15228
(New Enterprise Stone & Lime Co., Inc.)

Jaime N. Doherty, Esquire
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Preco Electronics, Inc., t/d/b/a Preco Electronics)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: William A. Dopierala
WILLIAM A. DOPIERALA
Sr. Deputy Attorney General

CA

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

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as, ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED,	:	
Plaintiffs	:	
vs.	:	NO. 08-2452-CD
SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,	:	
Defendants	:	

AMENDED ORDER

AND NOW, this 2nd day of June, 2010, it is the ORDER of this Court that the caption of this Court's Order of April 7, 2010, filed to Case No. 09-1314-CD be and is hereby AMENDED to read Case No. 08-2452-CD. All other terms and conditions of the Order of April 7, 2010 shall remain unchanged.

ORDER

AND NOW, this 7th day of April 2010, upon consideration of the Parties' oral arguments and the record in this matter, it is the ORDER of this Court as follows:

1. Defendant Swank Associated Companies, Inc.'s Preliminary Objections to Plaintiffs' Amended Complaint are hereby GRANTED, pursuant to Pennsylvania Rules of Civil Procedure 1028(a)(2) and (3).
2. Plaintiffs are ORDERED to specifically plead the averments of Count I, paragraphs 22(w), (x), and (y) of the Amended Complaint within twenty (20) days from the date of this Order, or they will be deemed stricken.

FILED
03:23861
JUN 03 2010
William A. Shaw
Prothonotary/Clerk of Courts

1CC Attys: Mack/Neiderhiser
Burdette
Oliszewski
Vernallis/Doherty
Davis
Dapierala

3. Averments of "recklessness" in Count I, paragraphs 19, 22, 23, and 24 of Plaintiffs' Amended Complaint are hereby STRICKEN, pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2) for inclusion of scandalous or impertinent matter.

BY THE COURT,

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

JUN 03 2010

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/3/10

____ You are responsible for serving all appropriate parties.

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

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

____ Defendant(s) __X__ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,
Plaintiffs,
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

COMPLAINT TO JOIN ADDITIONAL DEFENDANTS

FILED ON BEHALF OF DEFENDANT: Swank Associated Companies, Inc.

JAMES E. CLARK, JR., and BRENDA COBLE, individually and As ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED
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Additional Defendants.

COUNSEL OF RECORD FOR THIS PARTY:

JOHN P. DAVIS, III, ESQUIRE
PA ID No. 33294

JONES, GREGG, CREEHAN & GERACE, LLP
411 SEVENTH AVENUE, SUITE 1200
PITTSBURGH, PA 15219-1905
(412) 261-6400

FILED
m/9:22 3cc
JUN 07 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,
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Defendants.
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LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Additional Defendants.

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after 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 claim or relief requested by the plaintiff. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

David S. Meholick, Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641, ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
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No.: 2008-2452-CD
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SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,
Defendants.
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Additional Defendants.

NOTICE TO PLEAD

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

JONES, GREGG, CREEHAN & GERACE, LLP

BY: _____
JOHN P. DAVIS, III, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,
Plaintiffs,
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

JAMES E. CLARK, JR., and BRENDA COBLE, individually and As ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED
Plaintiffs,
v.
SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,
Defendants.
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Additional Defendants.

COMPLAINT TO JOIN ADDITIONAL DEFENDANTS

AND NOW, comes Swank Associated Companies, Inc. ("SAC"), by and through its attorneys, Jones, Gregg, Creehan & Gerace, LLP,

and files the following Complaint to Join Additional Defendants and in support thereof avers as follows:

1. SAC is a corporation with its principal place of business at 200 Hunt Valley Road, New Kensington, Pennsylvania 15068.

2. Lyle Thompson is an adult individual who resides at 11057 Creek Road, Fannettsburg, Franklin County, Pennsylvania 17221.

3. Based upon information and belief, Lyle Thompson t/d/b/a Valley Excavating and Hauling is a business with a business address at 11057 Creek Road, Fannettsburg, Franklin County, Pennsylvania 17221.

4. New Enterprise Stone & Lime Company, Inc. is a Delaware corporation with its principal business of business at 3912 Brumbaugh Road, New Enterprise, Bedford County, Pennsylvania 16664.

5. Preco Electronics, Inc. is a corporation with a business address of 415 North Maple Grove Road, Boise, Idaho.

6. It is believed and averred that Preco Electronic, Inc. t/d/b/a Preco Electronics regularly conducts business in the Commonwealth of Pennsylvania.

7. On July 9, 2009, a lawsuit styled James E. Clark, Jr. and Brenda Coble, individually and as administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.,

deceased, Plaintiffs v. Swank Associated Companies, Inc. and Commonwealth of Pennsylvania Department of Transportation, Defendants, was filed in the Court of Common Pleas of Clearfield County, Pennsylvania at No. 2009-1314-CD. A copy of the Praecipe for Writ of Summons is attached hereto as Exhibit "A" and a copy of the Summons is attached hereto as Exhibit "B."

8. On December 2, 2009, a Complaint was filed in the suit filed at 2009-0314-CD, a copy of which is attached hereto as Exhibit "C" and is incorporated herein as if set forth in full. An Amended Complaint was subsequently filed on December 30, 2009 and a Stipulation to Amend Plaintiffs' Amended Complaint was filed April 26, 2010. Copies of the Amended Complaint and the Stipulation to Amend Plaintiffs' Amended Complaint are attached hereto as Exhibits "D" and "E" and are incorporated herein as if set forth in full.

9. On May 11, 2010, SAC filed its Answer, New Matter and Crossclaim to the Amended Complaint, a copy of which is attached hereto as Exhibit "F" and is incorporated herein as if set forth in full.

10. In the Amended Complaint filed at 2009-0314-CD, it is pled that the lawsuit arises out of incident that occurred on or about July 11, 2007 when Plaintiffs' decedent was killed on Exit ramp 123 off of State Route 8012/Interstate 80 in Bradford Township, Clearfield County, Pennsylvania when he was struck by a

tri-axle dump truck owned and operated by Lyle Thompson individually and/or t/d/b/a Valley Excavating and Hauling.

11. In the Amended Complaint, it is pled that SAC was one of the contractors working on the construction project and that SAC is liable to Plaintiffs under a negligence theory based upon Plaintiffs' belief that SAC alone and/or with others, operated, controlled, managed, maintained, oversaw, was responsible for and/or was in charge of the place where Plaintiffs' decedent was injured and killed and that SAC is liable for having permitted certain "dangerous conditions" to have existed which caused Plaintiffs' decedent's injuries and death, which dangerous conditions are averred to have consisted of the non-utilization of spotters, flaggers and/or other precautionary measures to protect workers at the construction site and/or in permitting the subject dump truck to be present and/or in use when it was equipped with an improper, malfunctioning, defective, ineffective, inappropriate and/or inadequate back-up warning/safety device(s) or alarm(s).

12. At all time material hereto, SAC was a subcontractor for New Enterprise Stone & Lime Co., Inc. for the construction project referred to above pursuant to a Subcontract Agreement, dated June 7, 2007, a copy of which is attached hereto as Exhibit "G" and is incorporated herein as if set forth in full

13. In accordance with the terms of Exhibit "A," page 15b, of SAC's subcontract with New Enterprise (which is incorporated herein as if set forth in full), SAC agreed only to provide milling services and did not agree to maintain traffic or provide flagpersons, did not agree to truck milled materials, did not agree to provide manpower to back up trucks to the rotomill and did not agree to provide the trucking for the removal of the milled materials.

14. Based upon information and belief, at all times material hereto New Enterprise or others provided or were to have provided spotters and/or flaggers and/or have taken other precautionary measures to protect workers at the construction site including precautions to ensure that the dump truck that struck Plaintiffs' decedent was equipped with a proper, functioning, effective, appropriate and/or adequate back-up warning/safety device(s) or alarm(s)

15. Based upon information and belief, at all times material hereto, Lyle Thompson individually and/or t/d/b/a Valley Excavating and Hauling was a subcontractor for New Enterprise and was the owner of the tri-axle dump truck that he was operating at the time it struck Plaintiffs' decedent.

16. At no time material hereto was Lyle Thompson individually and/or t/d/b/a Valley Excavating and Hauling an agent, servant, employee or subcontractor of SAC.

17. On or about December 26, 2008, a Complaint styled James E. Clark, Jr. and Brenda Coble, individually and as administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, Plaintiffs v. Lyle Thompson; Lyle Thompson t/d/b/a Valley Excavating and Hauling; New Enterprise Stone & Lime Company, Inc.; New Enterprise Lime Company, Inc. t/d/b/a New Enterprise Stone & Lime Company; and Preco Electronics, Inc. t/d/b/a Preco Electronics, Defendants, was filed in the Court of Common Pleas of Clearfield County, Pennsylvania at No. 2008-2452-CD, a copy of which is attached hereto as Exhibit "H" and is incorporated herein as if set forth in full.

18. In the Complaint filed at 2008-2452-CD, Plaintiffs pled negligence causes of action against Lyle Thompson, Lyle Thompson t/d/b/a Valley Excavating and Hauling; New Enterprise Stone & Lime Company, Inc.; New Enterprise Stone & Lime Company, Inc. t/d/b/a New Enterprise Stone & Lime Company; and Preco Electronics t/d/b/a Preco Electronics averring that certain acts or omissions by those parties caused Plaintiffs' decedent's injuries and death.

COUNT I

Swank Associated Companies, Inc. v. Lyle Thompson, Individually and t/d/b/a Valley Excavating and Hauling

19. In the event that it is proven that the injuries to and death of Plaintiffs' decedent occurred as alleged in Plaintiffs' Amended Complaint filed at 2009-01314-CD, which is denied, then the decedent's injuries and death were due solely to the acts and omissions and primary negligence of Lyle Thompson individually and t/d/b/a Valley Excavating and Hauling for the reasons pled by Plaintiffs against him in the Complaint filed at 2008-2452-CD, the averments of which are incorporated herein as if set forth in full.

20. Alternatively, if it is proven at trial that SAC is liable to Plaintiffs, which liability is specifically denied, then Lyle Thompson, individually and t/d/b/a Valley Excavating and Hauling is jointly and/or severally liable with SAC or is liable over to SAC on theories of indemnity and/or contribution on the causes of action declared upon by Plaintiffs for the reasons pled against him in the Complaint filed at number 2008-2452-CD, the averments of which are incorporated herein as if set forth in full.

WHEREFORE, Swank Associated Companies, Inc. requests judgment be entered in its favor and against Lyle Thompson,

individually and t/d/b/a Valley Excavating and Hauling as to all causes of action, claims, and Counts.

COUNT II

Swank Associated Companies, Inc. v.
New Enterprise Stone & Lime Company, Inc.

21. In the event that it is proven that the injuries to and death of Plaintiffs' decedent occurred as alleged in Plaintiffs' Amended Complaint filed at 2009-0134-CD, which is denied, then the decedent's injuries and death were due to the acts and omissions and primary negligence of New Enterprise Stone & Lime Company, Inc. for the reasons pled by Plaintiffs against it in the Complaint filed at 2008-2452-CD, the averments of which are incorporated herein as if set forth in full.

22. Alternatively, if it is proven at trial that SAC is liable to Plaintiffs, which liability is specifically denied, then New Enterprise Stone & Lime Company, Inc. is jointly and/or severally liable with SAC or is liable over to SAC on theories of indemnity and/or contribution on the causes of action declared upon by Plaintiffs for the reasons pled against it in the Complaint filed at number 2008-2452-CD, the averments of which are incorporated herein as if set forth in full.

WHEREFORE, Swank Associated Companies, Inc. requests judgment be entered in its favor and against New Enterprise Stone

& Lime Company, Inc. as to all causes of action, claims, and Counts.

COUNT III

Swank Associated Companies, Inc. v.
Preco Electronics, Inc. t/d/b/a Preco Electronics

23. In the event that it is proven that the injuries to and death of Plaintiffs' decedent occurred as alleged in Plaintiffs' Amended Complaint filed at 2009-0134-CD, which is denied, then decedent's injuries and death were due solely to the acts and omissions and primary negligence of Preco Electronics, Inc. t/d/b/a Preco Electronics for the reasons pled by Plaintiffs against it in the Complaint filed at 2008-2452-CD, the averments of which are incorporated herein as if set forth in full.

24. Alternatively, if it is proven at trial that SAC is liable to Plaintiffs, which liability is specifically denied, then Preco Electronics, Inc. t/d/b/a Preco Electronics is jointly and/or severally liable with SAC or is liable over to SAC on theories of indemnity and/or contribution on the causes of action declared upon by Plaintiffs for the reasons pled against it in the Complaint filed at number 2008-2452-CD, the averments of which are incorporated herein as if set forth in full.

WHEREFORE, Swank Associated Companies, Inc. requests judgment be entered in its favor and against Preco Electronics,

Inc. t/d/b/a Preco Electronics as to all causes of action, claims, and Counts.

Respectfully submitted,

JONES, GREGG, CREEHAN & GERACE, LLP

BY: _____
JOHN P. DAVIS, III, ESQUIRE

Attorney for Defendant
Swank Associated Companies, Inc.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 09-1314-CD

JURY TRIAL DEMANDED

COPY

PRAECIPE FOR WRIT OF SUMMONS

Filed on behalf of Plaintiffs

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #38970

COPY FILED
AUG 19 2009
William A. Shaw
Prothonotary/Clerk of Courts

EXHIBIT
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A

ENTERED

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No.

JURY TRIAL DEMANDED

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY OF SAID COURT:

Please issue a Writ of Summons in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #38970

July 8, 2009

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

SUMMONS

James E. Clark Jr. and
Brenda Coble, individually and as
Administrators of the Estate of James Edward Clark,
a/k/a James Edward Clark, Sr., Deceased

Vs. **NO.: 2009-01314-CD**

Swank Associated Companies, Inc.
and Commonwealth of Pennsylvania,
Department of Transportation

TO: SWANK ASSOCIATED COMPANIES, INC.
COMMONWEALTH OF PENNSYLVANIA, DEPT. OF TRANSPORTATION

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

Date: 7/9/2009

William A. Shaw
Prothonotary

Issuing Attorney:
Jonathan B. Mack
57 South 6th Street
Indiana, PA 15701
(724) 349-5602

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

SUMMONS

James E. Clark Jr. and
Brenda Coble, individually and as
Administrators of the Estate of James Edward Clark,
a/k/a James Edward Clark, Sr., Deceased

Vs. **NO.: 2009-01314-CD**

Swank Associated Companies, Inc.
and Commonwealth of Pennsylvania,
Department of Transportation

TO: SWANK ASSOCIATED COMPANIES, INC.
COMMONWEALTH OF PENNSYLVANIA, DEPT. OF TRANSPORTATION

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

Date: 7/9/2009

William A. Shaw
Prothonotary

Issuing Attorney:
Jonathan B. Mack
57 South 6th Street
Indiana, PA 15701
(724) 349-5602

2009 JUL 14 PM 3:05

EXHIBIT
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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2009-0314-CD

JURY TRIAL DEMANDED

COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiffs

Jonathan B. Mack, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970



Copy

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2009-0314-CD

JURY TRIAL DEMANDED

NOTICE TO DEFEND

TO: SWANK ASSOCIATED COMPANIES, INC.; and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION.

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. 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 REDUCED FEE OR NO FEE.

David S. Meholick, Court Administrator
CLEARFIELD County Courthouse
230 E. Market Street
CLEARFIELD, PA 16830
(814) 765-2641 Ext. 5982

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2009-0314-CD

JURY TRIAL DEMANDED

COMPLAINT

AND NOW come the Plaintiffs, James E. Clark, Jr., and Brenda Coble, individually and as Administrators of The Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by and through their attorneys, Jonathan B. Mack, Esquire, and Marcus and Mack, P.C., and file the following Complaint:

1. Plaintiffs are adult individuals who are the son and daughter of James Edward Clark, a/k/a James Edward Clark, Sr.,deceased, and are the Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by grant of Letters from the Clearfield County Register of Wills on July 20, 2007. Plaintiff James E. Clark, Jr., resides in Armagh, Indiana County, Pennsylvania. Plaintiff Brenda Coble resides in Woodbridge, Prince William County, Virginia.

2. Defendant Swank Associated Companies, Inc., (herein after Defendant Swank) is a Pennsylvania corporation with a business address of 200 Hunt Valley Road, New Kensington, Westmoreland County, Pennsylvania. Defendant Swank regularly conducts business in the Commonwealth of Pennsylvania.

3. Defendant Commonwealth of Pennsylvania, Department of Transportation, (herein after Defendant PennDot) is an agency of the Commonwealth of Pennsylvania which is duly authorized and exists by virtue of the laws of the Commonwealth of Pennsylvania.

4. This lawsuit arises out of an incident that occurred on or about July 11, 2007. Plaintiffs' decedent was on exit ramp 123 off of State Route 8012/Interstate 80 in Bradford Township, Clearfield County, Pennsylvania (hereinafter referred to as the "Accident Site"). At the same time and place, Lyle Thompson, was operating a tri-axle dump truck owned by Lyle Thompson and/or by Lyle Thompson, t/d/b/a Valley Excavating and Hauling, which was facing west, backing up eastbound. Suddenly and without warning, Mr. Thompson struck Plaintiffs' decedent with the rear of the dump truck he was operating and continued to back the dump truck over Plaintiffs' decedent. Plaintiffs' decedent died on July 11, 2007, as a result of massive head trauma with multiple skull fractures and traumatic loss of brain tissue. At all times relevant, the Accident Site was under the ownership, jurisdiction, possession, care, supervision, custody, and/or control of Defendant Swank and/or Defendant PennDot.

5. It is believed and therefore averred that Defendant Swank was one of the contractors at the Accident Site at all times relevant to this lawsuit.

6. Plaintiffs, as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, bring this action on their own behalf and on behalf of all persons entitled to recover damages for the wrongful death of James Edward Clark, a/k/a James Edward Clark, Sr.,

pursuant to 42 Pa. C.S.A. §8301. Plaintiffs also bring this action to recover damages on behalf of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., pursuant to 42 Pa. C.S.A. §8302.

7. Persons entitled to recover damages for Plaintiffs' decedent's wrongful death and their relationship to the decedent include:

a. Brenda Coble (daughter), 1512 Forest Lane, Woodbridge, Prince William County, Virginia, 22191; and

b. James E. Clark, Jr., (son), PO Box 187, 115 Mountain View Drive, Armagh, Indiana County, Pennsylvania, 15920.

8. During his lifetime, Plaintiffs' decedent did not commence any action to recover damages for the injuries that caused his death, and one other action has been filed to recover damages for the wrongful death of Plaintiffs' decedent.

9. The right to bring this action is conferred upon the Plaintiffs by the following laws under which this action is brought:

a. The Act of July 9, 1976, P.L. 586, No. 142; 42 Pa. C.S.A. §8301;

b. The Act of 1972, Act No. 164 as amended, 20 Pa. C.S.A. §3371; and,

c. Any other Wrongful Death Acts, Fiduciary Acts, Survival Acts, Pennsylvania Law, and Pennsylvania Rules of Civil Procedure which are applicable.

10. No other action for wrongful death of Plaintiffs' decedent has been commenced against the within-named Defendants and, in particular, no action for wrongful death was commenced by the personal representatives of the Plaintiffs' decedent within six (6) months of his death.

11. Furthermore, on behalf of themselves, the surviving children of the deceased, Plaintiffs claim all appropriate damages under the Wrongful Death Act including, but not limited to, the following:

a. Loss of economic contribution;

b. Loss of household services;

c. Loss of society, companionship, and consortium;

d. Medical expenses;

e. Funeral expenses; and,

f. Administration expenses.

12. Plaintiffs are covered by the Full Tort option under the Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1705.

COUNT I - NEGLIGENCE - WRONGFUL DEATH

JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
vs.
DEFENDANT SWANK ASSOCIATED COMPANIES, INC.

13. Each of the above paragraphs are incorporated herein by reference.

14. At the time and place of the accident described in this Complaint, Defendant Swank Associated Companies, Inc., was performing construction, maintenance, milling, and/or resurfacing work on State Route 8012/Interstate 80 and/or the exit ramps and more specifically at the Accident Site and/or was, alone and/or with others, responsible for the Accident Site and surrounding areas.

15. At all times relevant hereto, Defendant Swank, alone and/or with others, operated, controlled, managed, maintained, oversaw, was responsible for, and/or was in charge of the Accident Site and surrounding areas.

16. A dangerous condition(s) existed at the Accident Site at the time of the subject incident.

17. This aforesaid dangerous condition(s) consisted of Defendant Swank's, and/or its agents, servants, contractors, subcontractors, assigns, and/or representatives, non-utilization of spotters, flaggers, and/or other precautionary measures to protect workers at the Accident Site, and/or in permitting the subject dump truck at the Accident Site to be present and/or in use when it was equipped with improper, malfunctioning, defective, ineffective, inappropriate, and/or inadequate back-up warning/safety device(s) or alarm(s).

18. At the above mentioned time and place, Plaintiffs' decedent was carefully and lawfully working at or around the Accident Site when he came into contact with the aforesaid dangerous condition(s) causing him to be struck and run over by the subject dump truck, causing injuries resulting in his death on July 11, 2007.

19. At the aforementioned time and place, and due to the negligence, carelessness, and/or recklessness of Defendant Swank in causing, creating, and/or failing to correct/ameliorate the aforesaid dangerous condition(s), Plaintiffs' decedent came into contact with said condition(s) and was thereby struck and run over, sustaining the injuries and damages set forth below, resulting in his death.

20. Defendant Swank caused, created, and/or contributed to the aforementioned dangerous condition(s).

21. At the above mentioned time and place, Defendant Swank knew, had knowledge, and/or should have known, of the existence of the subject dangerous condition(s) and failed to correct and/or remedy the same.

22. The fatal injuries and damages set forth below were caused, and/or contributed to, by the negligence, carelessness, and/or recklessness of Defendant Swank in any or all of the following respects:

a. In causing and/or permitting the dangerous, hazardous, and/or unsafe condition(s) to exist and remain on or at the Accident Site;

b. In failing to properly fix, repair, blockade, eliminate, and/or otherwise ameliorate the subject dangerous condition(s);

c. In failing to keep the Accident Site in a safe condition for persons lawfully on the same;

d. In permitting the dangerous condition(s) to exist and remain on or at the Accident Site when Defendant Swank knew, or should have known, of its existence and the danger involved;

e. In permitting persons, and Plaintiffs' decedent in particular, to traverse and work at or near the Accident Site when Defendant Swank knew, or should have known, that it was dangerous to do so and involved an unreasonable risk of harm to persons so doing;

f. In failing to notify, post signs, or otherwise warn Plaintiffs' decedent of the dangerous condition(s) so that the hazard(s) could be avoided;

g. In maintaining the Accident Site improperly or in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using or working at or upon the Accident Site, specifically Plaintiffs' decedent, with a safe working environment;

i. In failing to inspect the Accident Site so as to discover the dangerous condition(s), or inspecting so carelessly or improperly so as not to have discovered the condition(s);

j. In failing to fix, repair, eliminate, or otherwise properly redress the condition of the Accident Site to ensure that it would not remain unnecessarily dangerous;

k. In causing, creating, contributing to, and/or exacerbating a dangerous condition(s) by allowing the aforementioned dangerous condition(s) to exist and remain unchecked/uncorrected on or at the Accident Site and/or surrounding work site;

l. In failing to take appropriate action so that the incident would be avoided;

m. In failing to exercise that degree of reasonable care and due regard for the rights and safety of Plaintiffs' decedent as was required under the circumstances;

n. In failing to utilize spotters and/or flaggers at and/or around the Accident Site to ensure the safety of the workers, in particular, Plaintiffs' decedent;

o. In allowing the dump truck to be used at the Accident Site that did not possess an adequate, appropriate, and/or properly functioning back-up warning/safety device;

p. In being otherwise negligent, careless, and/or reckless;

q. In failing to properly maintain the Accident Site;

r. In failing to provide and/or appropriate warnings to persons lawfully at, on, or near the Accident Site;

s. In being responsible for the actions, inactions, and/or omissions of Lyle Thompson and/or Lyle Thompson, d/b/a Valley Excavating and Hauling as a matter of vicarious liability and/or respondeat superior;

t. In failing to properly monitor, supervise, and/or oversee the work being done at the Accident Site;

u. In failing to take adequate measures to ensure the safety at the Accident Site and/or work site;

v. In hiring and/or contracting with an entity(ies) that was/were unable and/or unwilling to perform the work in a safe and/or reasonable manner;

w. In failing to have appropriate safety measures in place at the subject Accident Site and/or work site;

x. In failing to comply with Occupational Safety & Health Administration guidelines and/or standards;

y. In violating 29 C.F.R. §1926;

z. In violating 29 C.F.R. §1926.601(b)(4);

aa. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern;

bb. In contracting with and/or in retaining individuals, agents, servants, employees, representatives, contractors, subcontractors, and/or entities who failed to exercise safety and/or were incapable or working safely at the Accident Site and/or surrounding area;

cc. In contracting with and/or in retaining and/or training individuals and/or entities who failed to and/or were incapable of protecting workers and/or those present at the Accident Site from reasonably expected dangers on, at, or near the Accident Site, and/or surrounding area;

dd. In being responsible for the actions, inactions, and/or omissions of other entities, contractors, individuals, agents, employees, representatives, and/or assigns as a matter of vicarious liability and/or respondeat superior, and;

ee. In being otherwise negligent, careless, and/or reckless.

23. The subject accident and resulting losses, damages, and/or injuries were caused and/or contributed to by the negligence, carelessness, and/or recklessness of Defendant Swank, as previously set forth above, and were not caused or contributed to by Plaintiffs' decedent.

24. Defendant Swank's negligence, carelessness, and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

25. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation, and denial of services, assistance, guidance, counseling, and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and,

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble demand judgment against Defendant Swank in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT II - NEGLIGENCE - WRONGFUL DEATH

JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
vs.
DEFENDANT COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION

26. Each of the above paragraphs are incorporated herein by reference.

27. At the time and place of the accident described in this Complaint, Defendant Commonwealth of Pennsylvania, Department of Transportation owned, controlled, maintained managed, operated, oversaw, possessed, and/or was responsible for the Accident site and surrounding areas, and/or the activities taking place thereon.

28. At all times relevant hereto, Defendant PennDot operated, owned, controlled, managed, maintained, possessed, oversaw, was responsible for, and/or was in charge of the Accident Site and surrounding areas.

29. A dangerous condition(s) existed at the Accident Site at the above mentioned time.

30. The people, workers, contractors, and/or entities at the Accident Site were working and/or present at the Accident Site for the benefit of Defendant PennDot.

31. The aforesaid dangerous condition(s) consisted of Defendant PennDot's and/or its agents, servants, representatives, contractors, subcontractors, and/or assigns, non-utilization of spotters, flaggers, and/or other precautionary measures to protect workers at the Accident Site, and/or in permitting the subject dump truck at the Accident Site to be present, and/or in use, when it was equipped with improper, malfunctioning, defective, ineffective, inappropriate, and/or inadequate back-up warning/safety device(s) or alarms.

32. At the above mentioned time and place, Plaintiffs' decedent was carefully and lawfully working at or around the Accident Site when he came into contact with the aforesaid dangerous condition(s) causing him to be struck and run over by the subject dump truck, causing injuries resulting in his death on July 11, 2007.

33. At the aforementioned time and place, and due to the negligence, carelessness, and/or recklessness of Defendant PennDot in causing, creating, and/or failing to correct/ameliorate the aforesaid dangerous condition(s), Plaintiffs' decedent came into contact with said condition(s) and was thereby struck and run over, sustaining the injuries and damages set forth below, resulting in his death.

34. Defendant PennDot caused, created, and/or contributed to this aforementioned dangerous condition(s).

35. At the above mentioned time and place, Defendant PennDot knew, had knowledge, and/or should have known, of the existence of the subject dangerous condition(s) and failed to correct and/or remedy the same.

36. The fatal injuries and damages set forth below were caused and/or contributed to by the negligence, carelessness, and/or recklessness of Defendant PennDot in any or all of the following respects:

a. In causing and/or permitting the dangerous, hazardous, and unsafe condition(s) to exist and remain on or at the Accident Site;

b. In failing to properly fix, repair, blockade, eliminate, and/or otherwise ameliorate the subject dangerous condition(s);

c. In failing to keep the Accident Site in a safe condition for persons lawfully on the same;

d. In permitting the dangerous condition(s) to exist and remain on or at the Accident Site when Defendant PennDot knew, or should have known, of its existence and the danger involved;

e. In permitting persons, and Plaintiffs' decedent in particular, to traverse and work at or near the Accident Site when Defendant PennDot knew, or should have known, that it was dangerous to do so and involved an unreasonable risk of harm to persons so doing;

f. In failing to notify, post signs, or otherwise warn Plaintiffs' decedent of the dangerous condition(s) so that the hazard(s) could be avoided;

g. In maintaining the Accident Site improperly or in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using or working at or upon the Accident Site, specifically Plaintiffs' decedent, with a safe working environment;

i. In failing to inspect the Accident Site so as to discover the dangerous condition(s), or inspecting so carelessly or improperly so as not to have discovered the condition(s);

j. In failing to fix, repair, eliminate, or otherwise properly redress the condition(s) of the Accident Site to ensure that it would not remain unnecessarily dangerous;

k. In causing, creating, contributing to, and/or exacerbating a dangerous condition(s) by allowing the aforementioned dangerous condition(s) to exist and remain unchecked on or at the Accident Site and/or surrounding work site;

l. In failing to take appropriate action so that the incident would be avoided;

m. In failing to exercise that degree of reasonable care and due regard for the rights and safety of Plaintiffs' decedent as was required under the circumstances;

n. In failing to utilize spotters and/or flaggers at and/or around the Accident Site to ensure the safety of the workers, and in particular, Plaintiffs' decedent;

o. In allowing a dump truck to be used at the Accident Site that did not possess an adequate, appropriate, and/or properly functioning back-up warning/safety device;

p. In being otherwise negligent, careless, and/or reckless;

q. In failing to properly maintain the Accident Site;

r. In failing to provide proper and/or appropriate warnings to persons lawfully at, on, or near the Accident Site;

s. In being responsible for the actions, inactions, and/or omissions of Lyle Thompson and/or Lyle Thompson, d/b/a Valley Excavating and Hauling as a matter of vicarious liability and/or respondeat superior;

t. In failing to properly monitor, supervise, and/or oversee the work being done at the Accident Site;

u. In failing to take adequate measures to ensure the safety at the Accident Site and/or surrounding area;

v. In hiring and/or contracting with an entity(ies) that was/were unable and/or unwilling to perform the work in a safe and/or reasonable manner;

w. In failing to have appropriate safety measures in place at the subject Accident Site and/or surrounding area;

x. In failing to comply with Occupational Safety & Health Administration guidelines and/or standards;

y. In violating 29 C.F.R. §1926;

z. In violating 29 C.F.R. §1926.601(b)(4);

aa. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern;

bb. In negligently staffing, retaining, training, and/or screening employees, agents, servants, representatives, contractors, subcontractors, entities, and/or people who were able to access the Accident Site;

cc. In failing to establish and/or enforce safety policies and/or procedures at and/or near the Accident Site;

dd. In being responsible for the actions, inactions, and/or omissions, of the entities, contractors, individuals, agents, employees, representatives, and/or assigns as a matter of vicarious liability and/or respondeat superior, and;

ee. In being otherwise negligent, careless, and/or reckless.

37. The subject accident and resulting losses, damages, and/or injuries were caused and/or contributed to by the negligence, carelessness, and/or recklessness of Defendant PennDot as set forth above and were not caused or contributed to by Plaintiffs' decedent.

38. Defendant PennDot's negligence, carelessness, and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

39. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation, and denial of services, assistance, guidance, counseling, and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and,

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble, demand judgment against Defendant PennDot in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT III – SURVIVAL

JAMES E. CLARK, JR., AND BRENDA COBLE, ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED, PLAINTIFFS

vs.

DEFENDANT SWANK ASSOCIATED COMPANIES, INC., and DEFENDANT COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION

40. Each of the above paragraphs is incorporated herein by reference.

41. As a direct and proximate result of the previously-described negligence of Defendant Swank and/or Defendant PennDot, Plaintiffs' Decedent suffered the following damages:

a. James Edward Clark, a/k/a James Edward Clark, Sr.'s pain, suffering, anguish and inconvenience from the happening of the incident until the time of his death;

b. James Edward Clark, a/k/a James Edward Clark, Sr.'s loss of earning and earning capacity;

c. Deprivation of James Edward Clark, a/k/a James Edward Clark, Sr.'s ability to perform any of the routine functions of daily living;

d. James Edward Clark, a/k/a James Edward Clark, Sr.'s, general health and vitality;

e. Death; and,

f. Other losses and damages permitted by law.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble, Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, respectfully request judgment in their favor and against Defendant Swank Associated Companies, Inc., and/or Defendant Commonwealth of Pennsylvania, Department of Transportation in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Jonathan B. Mack, Esquire
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

VERIFICATION

I, Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

VERIFICATION

I, James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2009-0314-CD

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **COMPLAINT** was mailed, U.S. First Class mail, to the following this 2nd day of December, 2009:

William A. Dopierala
Sr. Deputy Attorney General
Commonwealth Of Pennsylvania
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

Swank Associated Companies, Inc.
200 Hunt Valley Road
New Kensington, PA 15086

CC:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

Jonathan B. Mack, Esquire

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2009-0314-CD

JURY TRIAL DEMANDED

AMENDED COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiffs

Jonathan B. Mack, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

EXHIBIT
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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2009-0314-CD

JURY TRIAL DEMANDED

NOTICE TO DEFEND

TO: SWANK ASSOCIATED COMPANIES, INC.; and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION.

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. 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 REDUCED FEE OR NO FEE.

David S. Meholick, Court Administrator
CLEARFIELD County Courthouse
230 E. Market Street
CLEARFIELD, PA 16830
(814) 765-2641 Ext. 5982

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2009-0314-CD

JURY TRIAL DEMANDED

AMENDED COMPLAINT

AND NOW come the Plaintiffs, James E. Clark, Jr., and Brenda Coble, individually and as Administrators of The Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by and through their attorneys, Jonathan B. Mack, Esquire, and Marcus and Mack, P.C., and file the following Amended Complaint:

1. Plaintiffs are adult individuals who are the son and daughter of James Edward Clark, a/k/a James Edward Clark, Sr.,deceased, and are the Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by grant of Letters from the Clearfield County Register of Wills on July 20, 2007. Plaintiff James E. Clark, Jr., resides in Armagh, Indiana County, Pennsylvania. Plaintiff Brenda Coble resides in Woodbridge, Prince William County, Virginia.

2. Defendant Swank Associated Companies, Inc., (herein after Defendant Swank) is a Pennsylvania corporation with a business address of 200 Hunt Valley Road, New Kensington, Westmoreland County, Pennsylvania. Defendant Swank regularly conducts business in the Commonwealth of Pennsylvania.

3. Defendant Commonwealth of Pennsylvania, Department of Transportation, (herein after Defendant PennDot) is an agency of the Commonwealth of Pennsylvania which is duly authorized and exists by virtue of the laws of the Commonwealth of Pennsylvania.

4. This lawsuit arises out of an incident that occurred on or about July 11, 2007. Plaintiffs' decedent was on exit ramp 123 off of State Route 8012/Interstate 80 in Bradford Township, Clearfield County, Pennsylvania (hereinafter referred to as the "Accident Site"). At the same time and place, Lyle Thompson, was operating a tri-axle dump truck owned by Lyle Thompson and/or by Lyle Thompson, t/d/b/a Valley Excavating and Hauling, which was facing west, backing up eastbound. Suddenly and without warning, Mr. Thompson struck Plaintiffs' decedent with the rear of the dump truck he was operating and continued to back the dump truck over Plaintiffs' decedent. Plaintiffs' decedent died on July 11, 2007, as a result of massive head trauma with multiple skull fractures and traumatic loss of brain tissue. At all times relevant, the Accident Site was under the ownership, jurisdiction, possession, care, supervision, custody, and/or control of Defendant Swank and/or Defendant PennDot.

5. It is believed and therefore averred that Defendant Swank was one of the contractors at the Accident Site at all times relevant to this lawsuit.

6. Plaintiffs, as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, bring this action on their own behalf and on behalf of all persons entitled to recover damages for the wrongful death of James Edward Clark, a/k/a James Edward Clark, Sr.,

pursuant to 42 Pa. C.S.A. §8301. Plaintiffs also bring this action to recover damages on behalf of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., pursuant to 42 Pa. C.S.A. §8302.

7. Persons entitled to recover damages for Plaintiffs' decedent's wrongful death and their relationship to the decedent include:

a. Brenda Coble (daughter), 1512 Forest Lane, Woodbridge, Prince William County, Virginia, 22191; and

b. James E. Clark, Jr., (son), PO Box 187, 115 Mountain View Drive, Armagh, Indiana County, Pennsylvania, 15920.

8. During his lifetime, Plaintiffs' decedent did not commence any action to recover damages for the injuries that caused his death, and one other action has been filed to recover damages for the wrongful death of Plaintiffs' decedent.

9. The right to bring this action is conferred upon the Plaintiffs by the following laws under which this action is brought:

a. The Act of July 9, 1976, P.L. 586, No. 142; 42 Pa. C.S.A. §8301;

b. The Act of 1972, Act No. 164 as amended, 20 Pa. C.S.A. §3371; and,

c. Any other Wrongful Death Acts, Fiduciary Acts, Survival Acts, Pennsylvania Law, and Pennsylvania Rules of Civil Procedure which are applicable.

10. No other action for wrongful death of Plaintiffs' decedent has been commenced against the within-named Defendants and, in particular, no action for wrongful death was commenced by the personal representatives of the Plaintiffs' decedent within six (6) months of his death.

11. Furthermore, on behalf of themselves, the surviving children of the deceased, Plaintiffs claim all appropriate damages under the Wrongful Death Act including, but not limited to, the following:

a. Loss of economic contribution;

b. Loss of household services;

c. Loss of society, companionship, and consortium;

d. Medical expenses;

e. Funeral expenses; and,

f. Administration expenses.

12. Plaintiffs are covered by the Full Tort option under the Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1705.

COUNT I - NEGLIGENCE - WRONGFUL DEATH

JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
vs.
DEFENDANT SWANK ASSOCIATED COMPANIES, INC.

13. Each of the above paragraphs are incorporated herein by reference.

14. At the time and place of the accident described in this Complaint, Defendant Swank Associated Companies, Inc., was performing construction, maintenance, milling, and/or resurfacing work on State Route 8012/Interstate 80 and/or the exit ramps and more specifically at the Accident Site and/or was, alone and/or with others, responsible for the Accident Site and surrounding areas.

15. At all times relevant hereto, Defendant Swank, alone and/or with others, operated, controlled, managed, maintained, oversaw, was responsible for, and/or was in charge of the Accident Site and surrounding areas.

16. A dangerous condition(s) existed at the Accident Site at the time of the subject incident.

17. This aforesaid dangerous condition(s) consisted of Defendant Swank's, and/or its agents, servants, contractors, subcontractors, assigns, and/or representatives, non-utilization of spotters, flaggers, and/or other precautionary measures to protect workers at the Accident Site, and/or in permitting the subject dump truck at the Accident Site to be present and/or in use when it was equipped with improper, malfunctioning, defective, ineffective, inappropriate, and/or inadequate back-up warning/safety device(s) or alarm(s).

18. At the above mentioned time and place, Plaintiffs' decedent was carefully and lawfully working at or around the Accident Site when he came into contact with the aforesaid dangerous condition(s) causing him to be struck and run over by the subject dump truck, causing injuries resulting in his death on July 11, 2007.

19. At the aforementioned time and place, and due to the negligence, carelessness, and/or recklessness of Defendant Swank in causing, creating, and/or failing to correct/ameliorate the aforesaid dangerous condition(s), Plaintiffs' decedent came into contact with said condition(s) and was thereby struck and run over, sustaining the injuries and damages set forth below, resulting in his death.

20. Defendant Swank caused, created, and/or contributed to the aforementioned dangerous condition(s).

21. At the above mentioned time and place, Defendant Swank knew, had knowledge, and/or should have known, of the existence of the subject dangerous condition(s) and failed to correct and/or remedy the same.

22. The fatal injuries and damages set forth below were caused, and/or contributed to, by the negligence, carelessness, and/or recklessness of Defendant Swank in any or all of the following respects:

a. In causing and/or permitting the dangerous, hazardous, and/or unsafe condition(s) to exist and remain on or at the Accident Site;

b. In failing to properly fix, repair, blockade, eliminate, and/or otherwise ameliorate the subject dangerous condition(s);

c. In failing to keep the Accident Site in a safe condition for persons lawfully on the same;

d. In permitting the dangerous condition(s) to exist and remain on or at the Accident Site when Defendant Swank knew, or should have known, of its existence and the danger involved;

e. In permitting persons, and Plaintiffs' decedent in particular, to traverse and work at or near the Accident Site when Defendant Swank knew, or should have known, that it was dangerous to do so and involved an unreasonable risk of harm to persons so doing;

f. In failing to notify, post signs, or otherwise warn Plaintiffs' decedent of the dangerous condition(s) so that the hazard(s) could be avoided;

g. In maintaining the Accident Site improperly or in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using or working at or upon the Accident Site, specifically Plaintiffs' decedent, with a safe working environment;

i. In failing to inspect the Accident Site so as to discover the dangerous condition(s), or inspecting so carelessly or improperly so as not to have discovered the condition(s);

j. In failing to fix, repair, eliminate, or otherwise properly redress the condition of the Accident Site to ensure that it would not remain unnecessarily dangerous;

k. In causing, creating, contributing to, and/or exacerbating a dangerous condition(s) by allowing the aforementioned dangerous condition(s) to exist and remain unchecked/uncorrected on or at the Accident Site and/or surrounding work site;

l. In failing to take appropriate action so that the incident would be avoided;

m. In failing to exercise that degree of reasonable care and due regard for the rights and safety of Plaintiffs' decedent as was required under the circumstances;

n. In failing to utilize spotters and/or flaggers at and/or around the Accident Site to ensure the safety of the workers, in particular, Plaintiffs' decedent;

o. In allowing the dump truck to be used at the Accident Site that did not possess an adequate, appropriate, and/or properly functioning back-up warning/safety device;

p. In failing to properly maintain the Accident Site;

q. In failing to provide proper and/or appropriate warnings to persons lawfully at, on, or near the Accident Site;

r. In being responsible for the actions, inactions, and/or omissions of Lyle Thompson and/or Lyle Thompson, d/b/a Valley Excavating and Hauling as a matter of vicarious liability and/or respondeat superior;

s. In failing to properly monitor, supervise, and/or oversee the work being done at the Accident Site;

t. In failing to take adequate measures to ensure the safety at the Accident Site and/or work site;

u. In hiring and/or contracting with an entity(ies) that was/were unable and/or unwilling to perform the work in a safe and/or reasonable manner;

v. In failing to have appropriate safety measures in place at the subject Accident Site and/or work site;

f.o? w. In failing to comply, and/or in being responsible for those who failed to comply, with Occupational Safety & Health Administration guidelines and/or standards, namely 29 C.F.R. §1926 sub-parts (A) and (G);

f o ? x. In violating, and/or in being responsible for those who violated, 29 C.F.R. § 1926.200;

y. In violating, and/or in being responsible for those who violated, 29 C.F.R. §1926.601(b)(4);

z. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern;

aa. In contracting with and/or in retaining individuals, agents, servants, employees, representatives, contractors, subcontractors, and/or entities who failed to exercise safety and/or were incapable or working safely at the Accident Site and/or surrounding area;

bb. In contracting with and/or in retaining and/or training individuals and/or entities who failed to and/or were incapable of protecting workers and/or those present at the Accident Site from reasonably expected dangers on, at, or near the Accident Site, and/or surrounding area; and,

cc. In being responsible for the actions, inactions, and/or omissions of other entities, contractors, individuals, agents, employees, representatives, and/or assigns as a matter of vicarious liability and/or respondeat superior.

23. The subject accident and resulting losses, damages, and/or injuries were caused and/or contributed to by the negligence, carelessness, and/or recklessness of Defendant Swank, as previously set forth above, and were not caused or contributed to by Plaintiffs' decedent.

24. Defendant Swank's negligence, carelessness, and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

25. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation, and denial of services, assistance, guidance, counseling, and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and,

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble demand judgment against Defendant Swank in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT II - NEGLIGENCE - WRONGFUL DEATH

JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
vs.
DEFENDANT COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION

26. Each of the above paragraphs are incorporated herein by reference.

27. At the time and place of the accident described in this Complaint, Defendant Commonwealth of Pennsylvania, Department of Transportation owned, controlled, maintained managed, operated, oversaw, possessed, and/or was responsible for the Accident site and surrounding areas, and/or the activities taking place thereon.

28. At all times relevant hereto, Defendant PennDot operated, owned, controlled, managed, maintained, possessed, oversaw, was responsible for, and/or was in charge of the Accident Site and surrounding areas.

29. A dangerous condition(s) existed at the Accident Site at the above mentioned time.

30. The people, workers, contractors, and/or entities at the Accident Site were working and/or present at the Accident Site for the benefit of Defendant PennDot.

31. The aforesaid dangerous condition(s) consisted of Defendant PennDot's and/or its agents, servants, representatives, contractors, subcontractors, and/or assigns, non-utilization of spotters, flaggers, and/or other precautionary measures to protect workers at the Accident Site, and/or in permitting the subject dump truck at the Accident Site to be present, and/or in use, when it was equipped with improper, malfunctioning, defective, ineffective, inappropriate, and/or inadequate back-up warning/safety device(s) or alarms.

32. At the above mentioned time and place, Plaintiffs' decedent was carefully and lawfully working at or around the Accident Site when he came into contact with the aforesaid dangerous condition(s) causing him to be struck and run over by the subject dump truck, causing injuries resulting in his death on July 11, 2007.

33. At the aforementioned time and place, and due to the negligence, carelessness, and/or recklessness of Defendant PennDot in causing, creating, and/or failing to correct/ameliorate the aforesaid dangerous condition(s), Plaintiffs' decedent came into contact with said condition(s) and was thereby struck and run over, sustaining the injuries and damages set forth below, resulting in his death.

34. Defendant PennDot caused, created, and/or contributed to this aforementioned dangerous condition(s).

35. At the above mentioned time and place, Defendant PennDot knew, had knowledge, and/or should have known, of the existence of the subject dangerous condition(s) and failed to correct and/or remedy the same.

36. The fatal injuries and damages set forth below were caused and/or contributed to by the negligence, carelessness, and/or recklessness of Defendant PennDot in any or all of the following respects:

a. In causing and/or permitting the dangerous, hazardous, and unsafe condition(s) to exist and remain on or at the Accident Site;

b. In failing to properly fix, repair, blockade, eliminate, and/or otherwise ameliorate the subject dangerous condition(s);

c. In failing to keep the Accident Site in a safe condition for persons lawfully on the same;

d. In permitting the dangerous condition(s) to exist and remain on or at the Accident Site when Defendant PennDot knew, or should have known, of its existence and the danger involved;

e. In permitting persons, and Plaintiffs' decedent in particular, to traverse and work at or near the Accident Site when Defendant PennDot knew, or should have known, that it was dangerous to do so and involved an unreasonable risk of harm to persons so doing;

f. In failing to notify, post signs, or otherwise warn Plaintiffs' decedent of the dangerous condition(s) so that the hazard(s) could be avoided;

g. In maintaining the Accident Site improperly or in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using or working at or upon the Accident Site, specifically Plaintiffs' decedent, with a safe working environment;

i. In failing to inspect the Accident Site so as to discover the dangerous condition(s), or inspecting so carelessly or improperly so as not to have discovered the condition(s);

j. In failing to fix, repair, eliminate, or otherwise properly redress the condition(s) of the Accident Site to ensure that it would not remain unnecessarily dangerous;

k. In causing, creating, contributing to, and/or exacerbating a dangerous condition(s) by allowing the aforementioned dangerous condition(s) to exist and remain unchecked on or at the Accident Site and/or surrounding work site;

l. In failing to take appropriate action so that the incident would be avoided;

m. In failing to exercise that degree of reasonable care and due regard for the rights and safety of Plaintiffs' decedent as was required under the circumstances;

n. In failing to utilize spotters and/or flaggers at and/or around the Accident Site to ensure the safety of the workers, and in particular, Plaintiffs' decedent;

o. In allowing a dump truck to be used at the Accident Site that did not possess an adequate, appropriate, and/or properly functioning back-up warning/safety device;

p. In being otherwise negligent, careless, and/or reckless;

q. In failing to properly maintain the Accident Site;

r. In failing to provide proper and/or appropriate warnings to persons lawfully at, on, or near the Accident Site;

s. In being responsible for the actions, inactions, and/or omissions of Lyle Thompson and/or Lyle Thompson, d/b/a Valley Excavating and Hauling as a matter of vicarious liability and/or respondeat superior;

t. In failing to properly monitor, supervise, and/or oversee the work being done at the Accident Site;

u. In failing to take adequate measures to ensure the safety at the Accident Site and/or surrounding area;

v. In hiring and/or contracting with an entity(ies) that was/were unable and/or unwilling to perform the work in a safe and/or reasonable manner;

w. In failing to have appropriate safety measures in place at the subject Accident Site and/or surrounding area;

x. In failing to comply with Occupational Safety & Health Administration guidelines and/or standards;

y. In violating 29 C.F.R. §1926;

z. In violating 29 C.F.R. §1926.601(b)(4);

aa. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern;

bb. In negligently staffing, retaining, training, and/or screening employees, agents, servants, representatives, contractors, subcontractors, entities, and/or people who were able to access the Accident Site;

cc. In failing to establish and/or enforce safety policies and/or procedures at and/or near the Accident Site;

dd. In being responsible for the actions, inactions, and/or omissions, of the entities, contractors, individuals, agents, employees, representatives, and/or assigns as a matter of vicarious liability and/or respondeat superior, and;

ee. In being otherwise negligent, careless, and/or reckless.

37. The subject accident and resulting losses, damages, and/or injuries were caused and/or contributed to by the negligence, carelessness, and/or recklessness of Defendant PennDot as set forth above and were not caused or contributed to by Plaintiffs' decedent.

38. Defendant PennDot's negligence, carelessness, and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

39. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation, and denial of services, assistance, guidance, counseling, and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and,

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble, demand judgment against Defendant PennDot in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT III – SURVIVAL

JAMES E. CLARK, JR., AND BRENDA COBLE, ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED, PLAINTIFFS

vs.

DEFENDANT SWANK ASSOCIATED COMPANIES, INC., and DEFENDANT COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION

40. Each of the above paragraphs is incorporated herein by reference.

41. As a direct and proximate result of the previously-described negligence of Defendant Swank and/or Defendant PennDot, Plaintiffs' Decedent suffered the following damages:

a. James Edward Clark, a/k/a James Edward Clark, Sr.'s pain, suffering, anguish and inconvenience from the happening of the incident until the time of his death;

b. James Edward Clark, a/k/a James Edward Clark, Sr.'s loss of earning and earning capacity;

c. Deprivation of James Edward Clark, a/k/a James Edward Clark, Sr.'s ability to perform any of the routine functions of daily living;

d. James Edward Clark, a/k/a James Edward Clark, Sr.'s, general health and vitality;

e. Death; and,

f. Other losses and damages permitted by law.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble, Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, respectfully request judgment in their favor and against Defendant Swank Associated Companies, Inc., and/or Defendant Commonwealth of Pennsylvania, Department of Transportation in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Jonathan B. Mack, Esquire
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

VERIFICATION

I, James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

VERIFICATION

I, Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

Brenda Coble, individually and as Administrator of the
Estate of James Edward Clark, a/k/a
James Edward Clark, Sr.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2009-0314-CD

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiffs' Amended Complaint was mailed, U.S. First Class mail, to the following this 30 Th day of December, 2009:

John P. Davis, III
Jones, Gregg, Creehan, & Gerace
411 Seventh Avenue
Suite 1200
Pittsburgh, PA 15219-1905

PennDot
c/o Commonwealth of Pennsylvania
Office of the Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

Jonathan B. Mack, Esquire
Attorney for the Plaintiffs

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

STIPULATION TO AMEND PLAINTIFFS' AMENDED COMPLAINT

Filed on behalf of Plaintiffs

Jonathan B. Mack, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970



IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

STIPULATION TO AMEND PLAINTIFFS' AMENDED COMPLAINT

AND NOW come Counsel for the Plaintiffs, Jonathan B. Mack, Esquire, and Marcus and Mack, P.C., and Counsel for Defendant Swank Associated Companies, Inc., John P. Davis, III, Esq., and Jones, Gregg, Creehan & Gerace, LLP, and file this Stipulation To Amend Plaintiffs' Amended Complaint and in support thereof aver as follows:

1. On April 7, 2010, this Honorable Court issued an Order directing the Plaintiffs to specifically plead the averments of Count I, paragraphs 22(w), (x), and (y) of the Amended Complaint within twenty (20) days from the date of that order.

2. Counsel for the Plaintiffs and Counsel for Defendant Swank Associated Companies, Inc., hereby stipulate and agree that the averments of Count I, paragraphs 22(w), (x), and (y) of the Amended Complaint are amended to read as follows:

w. In failing to comply with, and/or in being responsible for its agents, servants, representatives, employees, contractors, subcontractors, and/or assigns, including but not limited to Larry Chilenski, Mitch Foraker, Travis Foraker, and Bob Stewart, who violated and/or who failed to comply with 29 C.F.R. §1926.201(a);

x. In failing to comply with, and/or in being responsible for its agents, servants, representatives, employees, contractors, subcontractors, and/or assigns, including but not limited to Larry Chilenski, Mitch Foraker, Travis Foraker, and Bob Stewart, who violated and/or who failed to comply with, 29 C.F.R. § 1926.200(a), (b), (c), (e), and (g);

y. In failing to comply with, and/or in being responsible for its agents, servants, representatives, employees, contractors, subcontractors, and/or assigns, including but not limited to Larry Chilenski, Mitch Foraker, Travis Foraker, and Bob Stewart, who violated and/or who failed to comply with, 29 C.F.R. §1926.601(b)(4);

3. Counsel for the Plaintiffs and Counsel for Defendant Swank Associated Companies, Inc., hereby further stipulate and agree that the averments of "recklessness" in Count I, paragraphs 19, 22, 23 and 24 of Plaintiffs' Amended Complaint are hereby stricken, pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2).

4. Plaintiffs' Amended Complaint filed on December 31, 2009, remains unchanged in all other aspects.

WHEREFORE, Counsel for the Plaintiffs and Counsel for Defendant Swank Associated Companies, Inc., hereby stipulate and agree to the afore outlined amendments to Count I, paragraphs 22(w), (x), and (y) of Plaintiffs' Amended Complaint.

Respectfully Submitted:

Jones, Gregg, Creehan & Gerace, LLP,

By: _____

John P. Davis, III, Esq.
Counsel for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

Marcus & Mack, P.C.,

By: Jonathan Mack /bv/

Jonathan B. Mack, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,
Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,
Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,
Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **STIPULATION TO AMEND PLAINTIFFS' AMENDED COMPLAINT** was served upon the following by U.S. First Class Mail, postage pre-paid this 26th day of April, 2010:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

Jonathan B. Mack, Esquire

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,

Plaintiffs,

v.

LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

ANSWER, NEW MATTER AND CROSSCLAIM

FILED ON BEHALF OF DEFENDANT: Swank Associated Companies, Inc.

JAMES E. CLARK, JR., and BRENDA COBLE, individually and As ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED

Plaintiffs,

v.

SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,

Defendants.

COUNSEL OF RECORD FOR THIS PARTY:

JOHN P. DAVIS, III, ESQUIRE
PA ID No. 33294

JONES, GREGG, CREEHAN & GERACE, LLP
411 SEVENTH AVENUE, SUITE 1200
PITTSBURGH, PA 15219-1905
(412) 261-6400

FILED
10:54
MAY 21 2010
William A. Shaw
Prothonotary/Clerk of Courts

EXHIBIT
tabbies
F

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and
as ADMINISTRATORS OF THE
ESTATE OF JAMES EDWARD CLARK,
a/k/a, JAMES EDWARD CLARK,
SR., DECEASED,
Plaintiffs,
v.
LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE STONE
& LIME CO., INC., PRECO
ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,
Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and
As ADMINISTRATORS OF THE
ESTATE OF JAMES EDWARD CLARK,
a/k/a, JAMES EDWARD CLARK, SR.,
DECEASED
Plaintiffs,
v.
SWANK ASSOCIATED COMPANIES,
INC., and COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
TRANSPORTATION,
Defendants.

NOTICE TO PLEAD

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

JONES, GREGG, CREEHAN & GERACE, LLP

By: _____
John P. Davis, III, Esquire

FILED ON BEHALF OF DEFENDANT:
Swank Associated Companies, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,
Plaintiffs,
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

JAMES E. CLARK, JR., and BRENDA COBLE, individually and As ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED
Plaintiffs,
v.
SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,
Defendants.

ANSWER, NEW MATTER AND CROSSCLAIM

AND NOW, comes Swank Associated Companies, Inc. ("SAC"), by and through its attorneys, Jones, Gregg, Creehan & Gerace, LLP, and files the following Answer, New Matter and Crossclaims to the Amended Complaint:

ANSWER

1. After reasonable investigation, SAC is without information or knowledge sufficient to admit the paragraphs of 1

and, therefore, denies the same.

2. The averments of paragraph 2 are admitted.

3. The averments of paragraph 3 are admitted based upon information and belief.

4. In response to the averments of paragraph 4, it is admitted that an incident occurred on or about July 11, 2007 resulting in the death of James Clark on Exit Ramp 123 off of Interstate 80 in Bradford Township, Clearfield County, Pennsylvania. After reasonable investigation, SAC is without the information or knowledge sufficient to admit how the accident occurred and the ownership of the truck which allegedly caused Mr. Clark's death and, therefore, denies the same. It is specifically denied that the location of the incident was under the ownership, jurisdiction, possession, care, supervision, custody and/or control of SAC.

5. It is admitted that SAC was a subcontractor on a PennDOT project that included work on Exit Ramp 123 off of Interstate 80. The remaining averments of paragraph 5 are denied.

6. The averments of paragraph 6 set forth conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 6 are denied.

7. The averments of paragraph 7 set forth conclusions of law to which a responsive pleading is not required. Nevertheless,

to the extent that a responsive pleading is required, the averments of paragraph 7 are denied.

8. After reasonable investigation, SAC is without information or knowledge sufficient to admit the averments of paragraph 8 and, therefore, denies the same.

9. The averments of paragraph 9 set forth conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 9 are denied.

10. After reasonable investigation, SAC is without information or knowledge sufficient to admit the averments of paragraph 10 and, therefore, denies the same.

11. The averments of paragraph 11 set forth conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 11 are denied.

12. The averments of paragraph 12 set forth conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, after reasonable investigation SAC is without information or knowledge sufficient to admit that Plaintiffs are eligible to recover full tort benefits and, therefore, the averments of paragraph 12 are denied.

COUNT I

NEGLIGENCE - WRONGFUL DEATH

James B. Clark, Jr. and Brenda Coble, individually, Plaintiffs
v. Swank Associated Companies, Inc.

13. In response to the averments of paragraph 13, SAC incorporates herein as if set forth in full, paragraphs 1 through 12, supra.

14. The averments of paragraph 14 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, it is admitted that SAC was a subcontractor on a PennDOT project that included work on Exit Ramp 123 off of Interstate 80. It is specifically denied that the location of the incident was under the ownership, jurisdiction, possession, care, supervision, custody and/or control of SAC. The remaining averments of paragraph 14 are denied.

15. The averments of paragraph 15 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments are denied, generally, and it is specifically denied that the location of the incident was under the ownership, jurisdiction, possession, care, supervision, custody and/or control of SAC.

16. The averments of paragraph 16 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, after reasonable investigation SAC is without information or knowledge sufficient to admit the averments of paragraph 16 and, therefore, denies the same.

17. In response to the averments of paragraph 17, SAC incorporates its answer to paragraph 16, supra. By way of further response, SAC specifically denies that it had a contractual or or other duty to provide or otherwise utilize spotters or flaggers or to undertake any other precautionary measures to protect Plaintiffs' decedent, specifically denies that it permitted the subject dump truck to be present, specifically denies that it permitted the subject dump truck to be used, specifically denies any knowledge regarding whether or not the truck was equipped with defective, inappropriate, malfunctioning or inadequate back-up warning/safety device and denies that it had any legal duty to provide such a device on the truck at issue or to assure that such a device was on the truck.

18. The averments of paragraph 18 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, after reasonable investigation SAC is without information or knowledge

sufficient to admit the averments of paragraph 18 and, therefore, denies the same.

19. The averments of paragraph 19 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 19 are denied and, to the extent that is so inferred by the averments of paragraph 19, it is specifically denied that SAC had a contractual, common law or other legal duty to correct or ameliorate the "dangerous conditions" alleged by Plaintiffs, that it allowed Plaintiffs' decedent to come into contact with the dump truck and that it had any duty to protect Plaintiffs' decedent from the injuries and damages sustained.

20. The averments of paragraph 20 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 20 are denied.

21. The averments of paragraph 21 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 21 are denied and it is specifically denied that SAC had any contractual, common law or legal duty to correct and/or remedy any dangerous condition, if any such condition is found to have existed, that contributed to Plaintiffs' decedent's death.

22. The averments of paragraph 22 constitute conclusions of law to which a responsive pleading is not required. To the extent that a responsive pleading is required, the averments of paragraph 22 and subparagraphs (a) through (cc) are denied. SAC further denies that any agency, employer/employee or principal/agent relationship existed between SAC and Defendant Thompson individually and/or t/d/b/a Valley Excavating and Hauling as averred in subparagraph (r), that it had any duty to monitor, supervise and/or oversee the place where the incident occurred as averred in subparagraph (s) and that it hired and/or contracted with any entity for work on the exit ramp other than with Defendant New Enterprise Stone & Lime Co., Inc. as averred in subparagraphs (u), (w), (x) and (y). By way of further response, SAC incorporates herein as if set forth full its answer to paragraph 19, supra.

23. The averments of paragraph 23 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 23 are denied for the reasons stated in paragraphs 1-22, supra, which are incorporated herein as if set forth in full.

24. The averments of paragraph 24 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the

averments of paragraph 24 are denied for the reasons stated in paragraphs 1-22, supra, which are incorporated herein as if set forth in full.

25. The averments of paragraph 25 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraph 25 and subparagraphs (a) through (h) are denied.

WHEREFORE, Swank Associated Companies, Inc. requests that judgment be entered in its favor as to Count I.

COUNT II

NEGLIGENCE - WRONGFUL DEATH

James B. Clark, Jr. and Brenda Coble, individually, Plaintiffs v. Commonwealth of Pennsylvania, Department of Transportation

26-39. The averments of paragraph 26 through 39 are directed to a party other than SAC and, therefore, may not be answered by it.

COUNT III

SURVIVAL

James B. Clark, Jr. and Brenda Coble, Administrators of the Estate of James Edward Clark, a/k/a James Edward, Sr., deceased, Plaintiffs v. Swank Associated Companies, Inc. and Commonwealth of Pennsylvania, Department of Transportation

40. In response to the averments of paragraph 40, SAC incorporates herein as if set forth in full, paragraphs 1 through 39, supra.

41. The averments of paragraph 41 constitute conclusions of law to which a responsive pleading is not required. Nevertheless, to the extent that a responsive pleading is required, the averments of paragraphs 41 and subparagraphs (a) through (f) are denied.

WHEREFORE, Swank Associated Companies, Inc. requests that judgment be entered in its favor as to Count III.

NEW MATTER

42. The Complaint fails to state a cause of action upon which relief can be granted.

43. Plaintiffs' claim is or may be barred by the applicable statute of limitations.

44. Should it be determined at trial or in discovery that Plaintiffs' decedent sustained the injuries claimed, which is denied, said injuries were caused solely by his own acts, omissions and negligence.

45. Should it determined at trial or in discovery that Plaintiffs' decedent sustained the injuries claimed, which is denied, said injuries were caused solely by the acts or omissions of others and by events over which this Defendant had no control and for which this Defendant is not responsible.

46. Should it determined at trial or in discovery that Plaintiffs' decedent sustained the injuries claimed, which is

denied, Plaintiffs' claims are or may be barred by the Doctrine of Assumption of Risk.

47. Should it determined at trial or in discovery that Plaintiffs' decedent sustained the injuries claimed, which is denied, Plaintiffs' claims are or may be barred by the Doctrines of Contributory and/or Comparative Negligence.

48. Should it be determined at trial or in discovery that a dangerous condition existed at the construction site which was a substantial factor in causing Plaintiffs' decedent's injury and death, which is denied, such condition was readily apparent to Plaintiffs' decedent or should have been readily apparent to him upon reasonable inspection and, therefore, this Defendant had no duty to warn Plaintiffs' decedent of such condition or to take other action to guard Plaintiffs' decedent against injury therefrom.

49. At all times material hereto, Defendant exercised reasonable care under the circumstances.

50. Under the terms and provisions of SAC's subcontract with New Enterprise Stone & Lime Company, Inc., relevant portions of which are attached hereto as Exhibit "A," SAC had no contractual obligation to provide inter alia, maintenance of traffic or flag persons, the trucking of milled material or manpower to back up trucks to SAC's roto-mill.

51. The incident alleged to have resulted in Plaintiffs' decedent's injury and death did not occur in an area where SAC was performing milling operations or in an area where SAC had any degree of possession or control at the time of the incident.

WHEREFORE , Swank Associated Companies, Inc., requests that judgment be entered in its favor as to all claims and counts.

CROSSCLAIM PURSUANT TO Pa.R.C.P. 1031.1

Swank Associated Companies, Inc. v. Lyle Thompson t/d/b/a Valley Excavating and Hauling, New Enterprise Stone & Lime Co., Inc., Preco Electronics, Inc. t/d/b/a Preco Electronics and Commonwealth of Pennsylvania, Department of Transportation.

52. In the event that it is proven that the accident, injuries and death at issue occurred as alleged in Plaintiffs' Amended Complaint, which is denied, then the injuries and damages which Plaintiffs' decedent sustained were due to the acts and primary negligence of all of the defendants other than SAC for the reasons plead against them by Plaintiffs, which averments are incorporated herein as if set forth in full.

53. Alternatively, if it is proven that SAC is liable to Plaintiffs, which liability is specifically denied, then the other named Defendants are jointly and/or severally liable with SAC, or are liable over to SAC on theories of indemnity and/or contribution on the causes of action declared upon by Plaintiffs.

WHEREFORE, Swank Associated Companies, Inc. requests that judgment be entered in its favor and against all other parties as to all causes of action, claims and counts.

Respectfully submitted,

JONES, GREGG, CREEHAN & GERACE, LLP

By: _____
John P. Davis, III, Esquire

FILED ON BEHALF OF DEFENDANT:
Swank Associated Companies, Inc.

QUOTATION

SWANK ASSOCIATED COMPANIES, INC.
200 HUNT VALLEY ROAD
NEW KENSINGTON, PA 15068

PHONE: 724-335-6000
FAX: 724-335-3834

Notes: This estimate is good for 90 days from the date below. Prices quoted are for quantities shown.

TO:	New Enterprise - Roaring Spring
ATTN:	Jim Miller
PHONE:	814-224-2121
FAX:	814-766-0207

Project #:	ECMS 57542
Location:	East County
County:	Clearfield
State:	Pennsylvania
Road:	SR 80(B26)
Bid Date:	26-Apr-07

Item	Item#	Description	Depth		Quantity	Unit	Unit Price	Amount
1	0491-0064	Mill Bit. (Mill Only)	2.00	in	748,588	SY	$ 0.23	$ 172,175.24
2	0491-0065	Mill Bit. (Mill Only)	2.50	in	4,150	SY	$ 1.49	$ 6,183.50
3	0491-0070	Mill Bit. (Mill Only) - Variable Depth	4.00	in	24,133	SY	$ 0.60	$ 14,479.80
		Mobilization Additional Mobilizations			1	EA	$800.00	$800.00
		Revised Price						
					Total			~~193,639.53~~ 192,638.54

APW 5-4-07

APW 5-3-07

Conditions:
1 Price for above item is based on 2 mobilizations and includes internal mobilizations.
2 Item 1 is estimated on performing work in 36 days, Item 2 to be performed concurrently with Item 1, Item 3 in 4 days.
3 Cost per additional mobilization $ 800.00.

Mill only price does not include:
1 Maintenance of traffic or flaggersons.
2 Trucking of milled material.
3 Sweeping.
4 Removal of bituminous material that is not accessible to a large belt loading rotomill.
5 Hot mix / cold patch for temporary ramping.

General Conditions:
1 Price includes S.A.C. transporting it's own water. S.A.C.requires that G.C. obtain source for water.
2 Price does not include S.A.C. providing manpower to back up trucks to rotomill.(Mill Only)
3 S.A.C. is not liable for any liquidated damages incurred by G.C. on the project.
4 Price is based upon G.C. providing sufficient trucking to allow for agreed upon production rates.(Mill Only)
5 Price does not includs removal of asphalt between steel grids,around expansion dams, wheelruts, cracks, between bricks or areas inaccessible to a large belt loading rotomill.(Mill Only)
6 The number of days indicated above are approximate and are for contractor information only. they should not be construed as a guarantee.
7 S.A.C. is not responsible for removal or disposal of roadway reflectors.
8 G.C. agrees not to withhold retention on subcontracts valued less than $ 200,000.00 unless agreed to prior to bid submittal
9 Price includes all state and federal taxes, please notify us if any additional apply.
10 "We adide by the Equal Opportunity & Ammative Action Requirements of Executive Order 11246, as amended and are hereby incorporated by reference"

Approved by:

Estimate authorized by:

Name: Ronald J. Hags - Estimator
Date: 4/26/2007

Name:
Date: 5-1-07

15-b

EXA

VERIFICATION

I, Larry M Chilenski Jr, as an authorized representative of Swank Associated Companies, Inc., have read the foregoing **ANSWER, NEW MATTER AND CROSSCLAIM** and hereby aver that the statements contained therein are true and correct to the best of my knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to the unsworn falsification to authorities.

SWANK ASSOCIATED COMPANIES, INC.

DATED: 5-11-2010

By: [signature]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER, NEW MATTER AND CROSSCLAIM** was served via United States Mail, First Class, postage prepaid, this 11th day of May, 2010, to:

Jonathan B. Mack, Esquire
57 South Sixth Street
P. O. Box 1107
Indiana, PA 15701
(Attorney for Plaintiffs)

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Attorney for Defendants Lyle Thompson, Lyle Thompson t/d/b/a Valley Excavating and Hauling)

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
650 Washington Road
Pittsburgh, PA 15228
(Attorneys for Defendant New Enterprise Stone & Lime Co., Inc.)

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Attorneys for Defendant Preco Electronics, Inc. t/d/b/a Preco Electronics)

NO.: G.D. 09-002390

William A. Dopierala, Esquire
Sr. Deputy Attorney General
Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
4801 Atlantic Avenue
Erie, PA 16506
(Attorneys for Defendant Commonwealth of Pennsylvania, Department of Transportation)

JONES, GREGG, CREEHAN & GERACE, LLP

By: _____
John P. Davis, III, Esquire

ATTORNEY FOR DEFENDANT
Swank Associated Companies, Inc.

0735103

NEW ENTERPRISE STONE & LIME CO., INC.

SUBCONTRACT AGREEMENT

This Agreement is entered into effective June 7, 2007, by New Enterprise Stone & Lime Co., Inc., a Delaware corporation with principal offices at New Enterprise, PA ("Contractor"), and

Swank Associated Companies, Inc.
200 Hunt Valley Rd.
New Kensington, PA 15068

(Fed Tax I.D. No. 25-1370389 (Subcontractor"), to perform hereinafter specified portions of the work required under Contractor's Prime Contract dated June 12, 2007 with Commonwealth of Pennsylvania, Department of Transportation ("Owner"), for the construction of Clearfield County, SR0080, (B26) ECMS 57542.

1. SCOPE OF WORK

1.1 Subcontractor shall perform all work and shall furnish all supervision, labor, materials, equipment, supplies and all other things necessary for the complete, proper and safe construction of the work described in Exhibit A to this Agreement and all work incidental thereto, in strict accordance with the terms of the Subcontract, and to the satisfaction of the Contractor and Owner. Exhibits A through F are all to be considered part of this Subcontract, unless expressly excluded on the face of the exhibit.

1.2 With respect to work covered by this Subcontract ("Subcontract Work"), Subcontractor shall assume toward Contractor all obligations, risks and responsibilities which Contractor has assumed towards Owner under the Prime Contract including, without limitation, all requirements relating to the quality, quantity and timeliness of the work.

1.3 Subcontractor acknowledges that it has been informed the entire Prime Contract is available for its inspection at the offices of Contractor at all reasonable times, and that Subcontractor has inspected the Prime Contract to the extent it feels necessary to understand all of the requirements applicable to its Subcontract work.

2. PAYMENT

2.1 Basis and Amount of Payment

2.1.1 Contractor shall pay Subcontractor upon the basis and in the amounts set forth in Exhibit A for performance of the work in accordance with the Subcontract requirements, subject to additions and deductions made by change order or authorized by other provisions of the Subcontract.

2.2 Acknowledgment of Payment Schedule

Subcontractor hereby acknowledges that it has been provided with a copy of Exhibit C - Disclosure of Due Dates for Receipt of Payments from the Owner, before executing this Subcontract. The due date of payments from the Owner is subject to change for reasons beyond Contractor's control, in accordance with the provisions of the Prime Contract.

EXHIBIT
tabbies
G

14. SUBCONTRACTOR'S FAILURE TO PERFORM/DEFAULT TERMINATION

14.1 The Subcontractor agrees that it materially breaches the Subcontract if the Subcontractor (i) fails promptly to pay for materials, supplies, labor, or other items purchased or used in connection with the Subcontract Work, (ii) fails to pursue the Subcontract Work promptly, in accordance with the Subcontract and the schedules established by the Owner or Contractor, or misses any milestones that have been established in the schedule, (iii) fails, due to strikes, picketing, boycotts, cessations of work, or for any other reason, to supply a sufficient number of properly skilled supervisors, workmen, or sufficient amounts of materials, equipment, or supplies of the appropriate quality to properly and expeditiously carry on Subcontract Work, (iv) interferes with, disrupts, or threatens to interfere with or disrupt the operations of the Contractor, the Owner, or any other laborer, materialman, supplier, subcontractor, or other person working on the Project, whether due to labor disputes, picketing, boycotting, or any other reason, (v) has filed against it any lien for unpaid taxes for federal, state or municipal authorities, (vi) files a voluntary petition under any chapter of the Bankruptcy Code, has an involuntary petition filed against it, makes a general assignment for the benefit of its creditors, or has a receiver appointed, (vii) allows any insurance required under the Subcontract to lapse, has such insurance canceled, or otherwise fails to maintain all required coverages for the full term required by the Subcontract, (viii) fails, upon demand, promptly to remove any liens that have been placed upon the Project or to defend any lien claims that are asserted, (ix) fails promptly to indemnify Contractor against any payment bond claims asserted as a result of Subcontractor's failure to pay its subsubcontractors or suppliers, or (x) fails to carry out the Subcontract Work in a proper, workmanlike manner, and in full compliance with the specifications. This list is not intended to be exhaustive, and other breaches by the Subcontractor may also be material.

14.2 If the Subcontractor materially breaches the Subcontract, the Contractor may terminate the Subcontract for default upon three work days' written notice to the Subcontractor. Contractor may, at its option, enter on the premises and take possession, for the purpose of completing the work, of all materials and equipment of the Subcontractor. The Contractor may complete the Work itself or through others, by whatever method the Contractor deems expedient.

14.3 All subsubcontracts or supply agreements which the Subcontract enters into in order to carry out the Subcontract Work shall include a provision that the subsubcontractor or supplier agrees its agreement may be assigned, upon the termination of the Subcontractor for default, to the Contractor. The Contractor shall have the right, but not the obligation, to accept assignment of any or all such contracts. In case of termination for default, Subcontractor shall not be entitled to receive any further payment until the Subcontract Work has been fully completed and accepted by the Owner. At such time, if the unpaid balance of the Subcontract Price exceeds the expense incurred by Contractor in completing the work, together with any additional costs or consequential damages occasioned by Subcontractor's default, the excess shall be paid to the Subcontractor. If the unpaid balance of the Subcontract Price is less than the expense Contractor incurred in completing the work, together with any additional costs or consequential damages occasioned by Subcontractor's default, Subcontractor shall pay the difference to Contractor.

14.4 If Contractor's termination for default, or any action taken pursuant to such a default, is determined to have been wrongful, the termination shall be deemed to have been a termination for convenience, and the Subcontractor's sole remedy shall be as provided in Article 15 of the Subcontract. Subcontractor shall not be entitled to recover the value of Subcontract Work that it had not performed as of the termination, or anticipated profits upon such work. However, if the wrongful termination was prompted by wrongful acts or determinations of the Owner, the Subcontractor's remedy shall be governed by Article 9 and the Prime Contract.

QUOTATION

SWANK ASSOCIATED COMPANIES, INC.
200 HUNT VALLEY ROAD
NEW KENSINGTON, PA 15068

PHONE: 724-335-6000
FAX: 724-335-3834

Notes: This estimate is good for 90 days from the date below. Prices quoted are for quantities shown.

TO:	New Enterprise - Roaring Spring
ATTN:	Jim Miller
PHONE:	814-224-2121
FAX:	814-766-0207

Project #:	ECMS 57542
Location:	East County
County:	Clearfield
State:	Pennsylvania
Road:	SR 80(B26)
Bid Date:	26-Apr-07

Item	Item#	Description	Depth		Quantity	Unit	Unit Price	Amount
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3	0491-0070	Mill Bit. (Mill Only) - variable Depth	4.00	in	24,133	SY	$ 0.60	$ 14,479.80
	0491-0001	Addit. Mobilizations			1	EA	$ 800.00	$ 800.00
		Revised Price						
					Total			~~193,639.53~~ 192,838.54

APW 5-3-07

APW 5-3-07

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3 Cost per additional mobilization $ 800.00.

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1 Maintenance of traffic or flagpersons.
2 Trucking of milled material.
3 Sweeping.
4 Removal of bituminous material that is not accessible to a large belt loading rotomill.
5 Hot mix / cold patch for temporary ramping.

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1 Price includes S.A.C. transporting it's own water. S.A.C.requires that G.C. obtain source for water.
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4 Price is based upon G.C. providing sufficient trucking to allow for agreed upon production rates.(Mill Only)
5 Price does not include removal of asphalt between steel grids,around expansion dams, wheelruts, cracks, between bricks or areas inaccessible to a large belt loading rotomill.(Mill Only)
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7 S.A.C. is not responsible for removal or disposal of roadway reflectors.
8 G.C. agrees not to withhold retention on subcontracts valued less than $ 200,000.00 unless agreed to prior to bid submittal
9 Price includes all state and federal taxes, please notify us if any additional apply.
10 "We adide by the Equal Opportunity & Affirmative Action Requirements or Executive Order 11246, as amended and are hereby incorporated by rererence"

Estimate authorized by:

Name: Ronald J. Hags - Estimator
Date: 4/26/2007

Approved by:

Name: Jack Mus
Date: 5-1-07

15-b

04/26/2007 16:06 SWANK ASSOCIATE CO → 18147660207 NO.662 D001

7.2 Subcontractor shall be liable to Contractor for all costs, including attorneys' fees, that Contractor incurs as a result of Subcontractor's failure to perform its work in strict compliance with this Subcontract, including Prime Contract requirements applicable to the Subcontract Work. Such costs shall include, but not be limited to, actual costs or liquidated damages arising from delay damage claims the Owner makes against the Contractor as a result of delays Subcontractor caused, the Contractor's increased costs to perform the Prime Contract as a result of delays or improper work caused by the Subcontractor, warranty and rework costs arising from the Subcontractor's Work, liability for accidents to persons or property caused by the Subcontractor, or litigation costs and attorneys' fees arising from actions to enforce this Subcontract, to recover for its breach, or to deal with third-party claims arising from Subcontractor's breach of this Subcontract.

8. CHANGES

8.1 Contractor may, at any time, unilaterally or by agreement with Subcontractor, without notice to the Subcontractor's sureties, make changes in the Subcontract Work. Any unilateral order directing a change shall be in writing signed by the Contractor, and any agreement between Contractor and Subcontractor changing the Subcontract Work shall be in writing and signed by both the Contractor and the Subcontractor. The Subcontractor shall perform the work as changed without delay, whether or not there has been any resolution of any claims Subcontractor may have made for adjustments due to the change. Failure to proceed promptly with changed work shall constitute a material breach of the Subcontract.

8.2 Subcontractor shall submit to Contractor any claims for adjustment in the price, schedule or other provisions of the Subcontract claimed by Subcontractor for changes directed by Owner or as a result of deficiencies or discrepancies in the Prime Contract or differing site conditions. Such claims shall be submitted in writing by Subcontractor in time to allow Contractor to comply with the applicable provisions of the Prime Contract so as to protect the interest of Subcontractor and others, including Contractor. Subcontract adjustments shall be made only to the extent that Contractor is entitled to relief from, or must grant relief to, Owner. Further, each Subcontract adjustment shall be equal only to Subcontractor's allocable share of any adjustments in the Contractor's Prime Contract. Subcontractor's allocable share shall be determined by Contractor, after allowance of Contractor's normal overhead, profit and other interest in any recovery by making a reasonable apportionment, if applicable, between Subcontractor, Contractor and other subcontractors or persons with interest in the adjustment. This Paragraph shall apply to all equitable adjustments or other relief allowed by the Prime Contract. The Subcontractor's recovery of its allocable share of adjustments obtained from the Owner shall be its full and only remedy or compensation for claims arising from Owner-directed changes, deficiencies or discrepancies in the Prime Contract, or differing site conditions.

8.3 If the Authorized Representative of the Contractor (identified as hereinafter provided) orders changes, independent of the Owner or the Prime Contract, and those changes materially affect the cost of performing the work, the Subcontractor shall be entitled to an equitable adjustment in the Subcontract Price, which must be set forth in a Change Order signed by the Authorized Representative of the Contractor. In accepting any such Change Order, the Subcontractor agrees that the adjustment contained in it constitutes full and complete compensation for the change, including any delays, disruptions, inefficiencies, escalations, impacts, or other consequences or costs, direct or indirect, that result from the change, and that no further adjustment will be sought with respect to that change.

8.4 If requested by the Contractor, Subcontractor shall submit, within seven (7) calendar days, a reasonable price quotation for proposed changes. If Subcontractor does not submit such a price quotation, and Contractor is required to submit a price to the Owner for work including a Subcontract change, Contractor shall use its best estimate of the proposed change as it affects the Subcontract Work in the quotation to Owner. That estimate shall be the maximum equitable adjustment due to the Subcontractor for the change.

2.3 Progress Payments

2.3.1 Within five (5) days of executing this Subcontract, Subcontractor shall submit to Contractor a schedule of values for all Subcontract Work to be done on a lump sum price basis, showing the amount included in each principal category of Subcontract Work to be done for the lump sum price. If the Contractor approves the schedule of values, it shall serve as the basis for progress payments as to all lump sum price work. If the breakdown is not approved, the Contractor shall establish a reasonable breakdown as a basis for progress payments as to lump sum price items.

2.3.2 Subcontractor shall submit to Contractor Requests for Payment, on the form attached as Exhibit E, on the dates or at the intervals specified by the Contractor. Each application for payment shall describe the Work performed during the preceding payment period for which payment is requested, as specified in the form, and include such other information as the Contractor may reasonably require.

2.3.2.1 The Subcontractor shall include such back-up documentation as the Contractor may reasonably require. Among other things, but without limitation, the Subcontractor may be required to provide invoices to verify costs incurred and claimed and certified payrolls.

2.3.3 Progress payments shall be subject to the same percentage of retainage for work in place as is specified in the Prime Contract. However, if payment for stored materials is permitted by the Prime Contract, those payments shall be subject to a 15% retainage, regardless of whether the Prime Contract requires such a retainage. Payment for stored materials will not be made unless Contractor is permitted by the Prime Contract to request and receive such payment.

2.3.4 Progress payments shall be made to the Subcontractor for work in place and, if permitted by the Prime Contract, for stored materials, within seven (7) days after Contractor has received payment from the Owner with respect to that portion of the Subcontract Work. However, Subcontractor agrees that such payments are subject to the express condition precedent that the Owner and Contractor have approved the Subcontract Work as being in accordance with the Subcontract (including applicable Prime Contract requirements), that the Subcontractor have provided the Contractor with satisfactory proof it has paid all amounts it owes in connection with the Subcontract, and that the Owner have actually paid Contractor for that Subcontract Work. The Subcontractor agrees that the liability of the surety on Contractor=s payment bond, if any, for payment to the Subcontractor, is subject to the same conditions precedent as are applicable to the Contractor=s liability to the Subcontractor. Failure to satisfy any of these conditions shall constitute a failure by Subcontractor to have performed in accordance with the provisions of this Subcontract. Contractor shall not be required to pay Subcontractor amounts in excess of those actually accepted and paid by the Owner with respect to any Subcontract Work. The Subcontractor is not entitled to interest on progress payments made after the date set forth herein.

2.3.5 All material and work covered by progress payments, wherever located, is automatically the property of Contractor or, if the Prime Contract so provides, the property of Owner. This provision shall not relieve Subcontractor from the sole responsibility and liability for all work and materials upon which payments have been made, until final acceptance of them by Owner. The fact that a progress payment has been made with respect to any portion of the Subcontract Work shall not constitute an acceptance of that work if it is defective or otherwise not in conformity with the Subcontract, and shall not constitute a waiver of any of Contractor's or Owner's rights or remedies against Subcontractor with respect to any defects or other failures to conform to the Subcontract, including applicable requirements of the Prime Contract.

2.4 Final Payment

2.4.1 Within ten (10) days after completing the Subcontract Work, the Subcontractor shall submit to the Contractor a written Request for Final Payment, on the form attached as Exhibit F, and supported by such back-up documentation and further information as the Contractor may reasonably require.

2.4.2 Final payment, subject to deductions or withholding permitted by the Subcontract, shall be made within seven (7) days after the Contractor has received final payment from the Owner with respect to the Subcontract Work, and retainage shall be paid within thirty (30) days after final acceptance of the work. However, Subcontractor agrees that such payments are subject to the express conditions precedent that the Contractor and Owner have approved the Subcontract Work as being in accordance with the Subcontract (including applicable Prime Contract requirements), that the Subcontractor have provided the Contractor satisfactory proof it has paid all amounts it owes in connection with the Subcontract, and that the Owner have actually paid Contractor in full for that Subcontract Work. Failure to satisfy any of these conditions shall constitute a failure by Subcontractor to have performed in accordance with the provisions of this Subcontract. Contractor shall not be required to pay Subcontractor in final payment or retainage any amounts in excess of those actually accepted and paid by the Owner with respect to any Subcontract Work. The Subcontractor is not entitled to interest on final payments, or retainage amounts, paid after the date set forth herein.

2.5 Acceptance of final payment shall constitute a waiver of all of the Subcontractor's claims for further compensation or claims under the Subcontract, except those that have been specifically identified in writing either before the Request for Final Payment is submitted or in the Request for Final Payment itself. In particular, but without limitation, the Subcontractor is barred from seeking further payment on unit price items for units not identified and quantified in the Request for Final Payment.

2.6 Withholding or Application of Payments

2.6.1 The Contractor may withhold funds from any progress payment to Subcontractor, or from final payment, to such extent as may be necessary to cover all costs associated with (1) defective Subcontract Work not remedied; (2) third-party claims filed against the Contractor as a result of matters relating to the Subcontract Work, or reasonable evidence indicating probable filing of such claims; (3) failure of the Subcontractor to make prompt payment to subsubcontractors or suppliers for labor, materials or equipment; (4) reasonable evidence that lump sum price items cannot be completed for the unpaid balance of the agreed lump sum price; (5) damage to property of the Contractor, the Owner or another contractor or subcontractor working at the Project; (6) reasonable evidence that the Subcontract Work will not be completed within the Contract Time; (7) failures to carry out the Work in accordance with the Subcontract or Contractor's directions; or (8) any material breach of the Subcontract. This remedy of withholding payment is not exclusive.

2.6.2 Subcontractor agrees that Contractor may pay all materialmen, suppliers, laborers, subsubcontractors and any other persons who have not been paid the monies due them in connection with this Subcontract, whether or not a lien has been filed, and that Contractor may credit the amount of any such payment against amounts otherwise due Subcontractor. Payments may be made directly to the subsubcontractors or suppliers, or by joint check drawn to the order of Subcontractor and the subsubcontractor or supplier in question, whichever shall seem more advantageous to the Contractor, in its sole discretion. This provision, allowing direct payment to subsubcontractors or suppliers, is intended for the protection of the Contractor only, and does not confer rights upon anyone not a direct party to this Subcontract, as a third-party beneficiary or otherwise. Monies retained by the Contractor as a result of the Subcontractor's failure to make payments to subsubcontractors or suppliers shall be regarded as trust funds that may be paid directly to the subsubcontractors or suppliers, and consequently, any such payments made, whether directly or by joint check, shall not constitute bankruptcy preferences. However, no amounts the Contractor pays to the Subcontractor in good faith, and which do not subsequently reach subsubcontractors or suppliers shall give rise to liability of the Contractor to the subsubcontractors or suppliers.

2.6.3 The Subcontractor agrees that all payments made to the Subcontractor, whether by joint check or otherwise, shall be used by the Subcontractor first to pay amounts due to subsubcontractors or suppliers supplying labor or materials for the Subcontract Work, and that only money remaining after such payments are made may be used for any other purpose. Monies paid by joint check shall be deemed to have been paid fully to the subsubcontractor or supplier named as a joint payee, unless the Contractor agrees otherwise in writing. The Contractor may require that a subsubcontractor or supplier who is to receive payment by joint check acknowledge in writing that it will demand payment to it of the full amount of the check, and will not remit any portion thereof to the Subcontractor.

3. BONDS

If required in Exhibit A, the Subcontractor shall provide a performance or payment bond or both for itself in the amount of one hundred percent (100%) of the Subcontract Price.

4. INSURANCE AND INDEMNIFICATION

4.1 The Subcontractor shall provide insurance of the types and amounts required of Contractor in the Prime Contract, or set forth in Exhibit B to this Subcontract, whichever is greater. The insurance shall not be subject to material alteration, cancellation, or non-renewal without thirty days' advance written notice to the Contractor. The insurance shall remain in effect until the Subcontract Work is completed, or for such longer period as is specified in the Prime Contract or Exhibit B. Subcontractor shall provide the Contractor a certificate evidencing the required coverage, and reflecting the aforesaid requirement of thirty days' notice of alteration, cancellation or non-renewal, before commencing work under the Subcontract. If the Contractor so requests, it shall be allowed to examine the insurance policies and endorsements.

4.2 If the Subcontractor fails to obtain the required insurance coverage, or if that coverage is permitted to lapse, or is canceled or ceases to be in effect, for any reason, at any time before the Subcontract Work is completed (or such later date as is specified by the Prime Contract or Exhibit B), that event shall constitute a material breach entitling the Contractor to terminate the Subcontract for default.

4.3 The Subcontractor agrees to defend, indemnify and hold harmless the Contractor and Owner, and their respective officers, agents and employees, from and against any and all claims, demands, injuries, losses, expenses (including attorneys' fees), damages and liabilities of every nature, including contractual liability, arising from or relating to work performed by the Subcontractor on the Project, whether or not the Contractor was negligent, unless the Contractor was solely negligent. Subcontractor's obligation to defend, indemnify and hold harmless shall extend, without limitation, to all claims alleging death or injury to persons or damage or loss to property as a result of the acts or omissions of the Subcontractor, its employees, subsubcontractors, or others for whose actions Subcontractor may be held liable. Subcontractor's obligations under this Article shall be in addition to any independent liability imposed by the Prime Contract.

4.4 The Subcontractor agrees to defend, indemnify and hold harmless the Contractor and Owner, and their successors in interest, from an against any and all mechanics liens or other liens, or claims of rights to enforce liens, including any related expenses and legal fees, against the Project or the improvements to be erected thereon arising out of any Work to be performed or labor or materials to be furnished under the Subcontract. Neither final payment nor acceptance of the improvements erected hereunder shall constitute a waiver of this indemnity. If any such lien or claim for lien shall at any time be filed, the Subcontractor shall promptly cause the lien to be removed, or shall reimburse the Contractor for all costs it incurs or may be compelled to pay in discharging any such lien or satisfying any such claim, including all legal fees.

5. SUBCONTRACTOR'S INVESTIGATION AND REPRESENTATIONS

5.1 The Subcontractor shall carefully examine the Prime Contract, identify those portions affecting its work, and notify the Contractor in writing of any deficiencies, discrepancies, ambiguities or errors before proceeding with the affected work.

5.2 The Subcontractor represents that it is fully able, qualified and experienced to perform the work required by this Subcontract. It acknowledges that, before executing the Subcontract, the Subcontractor has ascertained, by its own independent investigation, the general and local conditions involved in performing the Subcontract Work including, without limitation, the location of the work, accessibility and character of the site, and all other matters which could affect the work or its cost under this Subcontract. Subcontractor has also examined the Prime Contract and is thoroughly familiar with all the provisions and requirements therein affecting the Subcontract Work. Subcontractor has verified all information furnished by the Contractor or others and is satisfied with its correctness and accuracy.

6. TIME

6.1 Time is of the essence of this Subcontract. The Subcontractor shall commence work upon receipt of notice to proceed from the Contractor and shall prosecute the work in a manner that will not delay the completion of the Prime Contract. The Subcontractor shall work in accordance with any schedule provided by the Contractor, including any updated or modified schedules.

6.2 If the Subcontractor fails to adhere to the established schedules, or misses any milestone in any such schedule, or if the Subcontractor abandons the job or fails to have its workers on the Site and productively employed for three (3) days or more, the Contractor may demand that the Subcontractor provide a written plan showing how the lost time will be made up. If the plan is not forthcoming within three (3) additional days, or is determined by Contractor not to present a reasonably feasible plan of making up for the lost time, then the Subcontractor shall be in default.

6.3 The Subcontractor shall be entitled to such extensions of time as the Contractor may receive from the Owner, to the extent that they are applicable to the Subcontractor's work, and to no other extensions of time.

6.4 Subcontractor will coordinate its work with the work of the Contractor and other subcontractors, so that no delays or interference will occur in the completion of the any part or all of the Project.

6.5 The Subcontractor shall make no claim for damages arising out of or relating to delays, disruptions, suspensions, accelerations, inefficiencies or impacts upon the work, apart from such damages as the Contractor may receive from the Owner on behalf of the Subcontractor.

7. SUBCONTRACTOR'S LIABILITY

7.1 Subcontractor hereby assumes the entire responsibility and liability for all work, supervision, labor, and materials provided hereunder and for all equipment, supplies and other things provided by Subcontractor until final acceptance of the work by Owner. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable for it, and shall repair, rebuild and make good the loss, damage or destruction at Subcontractor's own cost.

9. CLAIMS AND DISPUTES

9.1 Claims Involving Owner or Prime Contract

9.1.1 The Subcontractor agrees that all claims or disputes arising from actions or omissions of the Owner, involving the Prime Contract, or involving claims for which the Owner may ultimately be liable, shall be submitted and decided in the manner provided in the Prime Contract for like claims by the Contractor against the Owner. Subcontractor will provide notice of such claims or disputes, and any other submissions or information required by the Prime Contract, within such time as will allow Contractor a reasonable time to analyze the information and submit it to the Owner within the time allowed by the Prime Contract. Subcontractor shall also comply with all other requirements of the Prime Contract relating to such claims. The Subcontractor's failure to comply with these provisions with respect to any claim shall be deemed a waiver of the claim.

9.1.2 Contractor will, at its option, (i) present such claims by Subcontractor to the Owner and answer such claims by the Owner relating to the Subcontract Work, in the Contractor's name, or (ii) authorize Subcontractor to present such claims or answers to the Owner, in the Contractor's name, whenever Contractor is permitted to do so by the Prime Contract. The Contractor shall not be required to submit any claim on behalf of the Subcontractor, or permit Subcontractor to prosecute any claim in Contractor's name if, in the Contractor's reasonable judgment, to do so will subject the Contractor to any penalties or other sanctions or cause Contractor to violate any applicable law relating to the presentation of false or inaccurate claims. If the dispute or claim is prosecuted or defended by the Contractor, Subcontractor agrees to furnish all certifications, documents, statements, witnesses, and other information required by the Contractor, and to pay or reimburse Contractor for all costs, including attorneys' fees, incurred. As a condition precedent to Subcontractor's proceeding against the Owner in the Contractor's name, if requested by Contractor, Subcontractor shall provide adequate security to protect Contractor against counterclaims, penalties, or causes of action by the Owner arising out of or relating to Subcontractor's Work.

9.1.3 The Subcontractor agrees to be bound by all preliminary and final decisions of any board or court as to such claims, whether or not the Subcontractor is a party to the proceedings. The Subcontractor shall have no greater right or claim against the Contractor as to claims or disputes described in Paragraph 9.1.1 above than the Contractor has against the Owner with respect to the Subcontract Work. Contractor shall not be liable to Subcontractor in excess of any sum actually received from Owner on behalf of Subcontractor with respect to such claims or disputes. The Subcontractor waives all rights to penalties that might otherwise be recoverable due to its having to resort to dispute resolution proceedings to recover sums for Subcontract work, or from Contractor's withholding payments to Subcontractor, in accordance with the Subcontract terms, during the pendency of such proceedings.

9.2 Other Claims

The Subcontractor shall provide the Contractor with written notice of any claim or dispute not involving the Owner or Prime Contract, within ten (10) business days of the time that Subcontractor knew, or should have known, of the conditions or events giving rise to the claim or dispute. After receiving such notice, the Contractor shall consider the claim or dispute, require further information or documentation as reasonable, and render a decision. If the Subcontractor is not satisfied with the decision, it may proceed to litigation in accordance with Article 26. The Subcontractor shall proceed with the Subcontract Work, including any disputed portion thereof, without interruption, while the claim or dispute is being considered or litigated. Failure to continue work promptly during pendency of a dispute or claim shall constitute a material breach of the Subcontract.

10. DAMAGE NOTIFICATION

Notice of damage or additional cost for which the Subcontractor alleges the Contractor is responsible (and which is not otherwise more specifically addressed herein) shall be filed in writing with the Contractor within ten (10) business days from commencement of such alleged damage or additional cost. Subcontractor shall make no claim for extra or additional work unless the work is done pursuant to a written order executed by a person identified in Exhibit D to this Subcontract as an Authorized Representative, authorized to issue such orders, or by such other person as Contractor shall hereafter designate in writing to be an Authorized Representative. Only persons designated in Exhibit D or such later writings by Contractor have authority to bind Contractor to change orders or other written orders authorizing extra work or payment therefor.

11. PATENTS

The Subcontractor shall defend, indemnify, and save harmless the Contractor and the Owner from any and all claims or suits for infringements of patents or violations of patent rights, and shall indemnify Contractor and Owner from all costs or expenses arising from such claims or suits, including attorneys' fees, to the extent that such claims or suits arise in connection with the Subcontract Work.

12. CLEAN-UP

The Subcontractor shall at all times keep the Project site free from rubbish, debris, waste, or surplus materials resulting from its operations. The Subcontractor shall turn over the Subcontract Work in such conditions as to permit the next succeeding or intervening work to be commenced without further cleaning. At the completion of the Subcontract Work, such work is to be clean and in a condition acceptable to the Owner. If the Subcontractor fails to comply with provisions of this Paragraph, the Contractor may perform such cleaning and charge the cost to the Subcontractor, or deduct the cost from future payments otherwise due or to become due to the Subcontractor.

13. INSPECTION AND ACCEPTANCE

13.1 Subcontractor shall provide appropriate facilities at all reasonable times for Contractor's or Owner's inspection of the work or materials provided under this Subcontract. The inspection may be at the Project site or at any place where such work or materials may be in preparation, manufacture, storage, or installation. Subcontractor shall promptly replace or correct any work or materials which Contractor or Owner rejects as failing to conform to the requirements of the Subcontract. If Subcontractor does not do so within a reasonable time, Contractor shall have the right to do so and to charge the cost to the Subcontractor, or deduct the cost from payments otherwise due or to become due to the Subcontractor. If, in the Contractor's opinion, it is not expedient to correct or replace all or any part of the rejected work or materials, Contractor may, at its option, deduct from payments due, or to become due, to Subcontractor, such amounts as, in the Contractor's reasonable judgment, represent (i) the difference between the fair value of the rejected work or materials and its value if it had complied with the Subcontract, or (ii) the cost of correction, whichever is higher.

13.2 If any of Subcontractor's work or materials are wrongfully rejected by the Owner, Subcontractor's remedy for that wrongful rejection shall be limited to Contractor's remedy under the Prime Contract.

13.3 The Subcontract Work shall be accepted or rejected according to the terms of the Prime Contract. However, unless otherwise specifically agreed in writing, entrance and use by Owner or Contractor, shall not constitute acceptance of the Subcontract Work.

15. TERMINATION FOR CONVENIENCE

15.1 The Contractor may, upon written notice to the Subcontractor, terminate this Subcontract for any reason whatsoever. Termination for convenience may be exercised at the sole discretion of the Contractor, the exercise of which need not be reasonable, and regardless of whether the Subcontractor is or is not in default. Such a termination for the convenience of the Contractor will be effective immediately upon the Subcontractor's receipt of the notice of termination. Whether or not the termination was prompted by the Owner's termination of all or a portion of the Prime Contract, the Subcontractor's sole and exclusive remedy for termination for convenience shall be payment of the following:

RAH 5-16-07

15.1.1 Mobilization costs, but only to the extent that they represent actually incurred and documented costs paid for the transport or set-up of equipment or materials, or similar tasks necessary to the commencement of the work,

15.1.2 For lump sum price items (other than the line item for mobilization on any schedule of values), a percentage of the agreed lump sum price based on the reasonable value of the work properly performed up to the time of the termination, and

15.1.3 For unit price items, the agreed unit price multiplied by the number of units actually and properly completed as of the time of termination and accepted by the Owner, and

15.1.4 Reasonable and documented costs the Subcontractor incurs in terminating any subsubcontracts or rental or purchase agreements in effect at the time of the termination, without any mark-up for overhead or profit.

15.2 A termination for convenience shall not relieve the Subcontractor of any responsibility it would otherwise have under the Subcontract to correct work that is defective or otherwise not in conformity with the Subcontract, or to pay any costs arising from such defective or non-conforming work. The Contractor does not waive any right or claim to damage which it had under the Subcontract prior to termination, and may pursue or continue to pursue any cause of action arising from actions or omissions of the Subcontractor before termination.

16. RESPONSIBILITY FOR WORK

16.1 The Subcontractor is responsible for the protection of the Subcontract Work, including all materials contained therein or stored at the Project site, until final acceptance thereof by the Owner. Among other things, Subcontractor shall place lights, watchmen, and barricades around its construction. The Contractor shall not be responsible for damages to the Subcontractor's work caused by others, including other subcontractors.

16.2 The Subcontractor warrants and guarantees the workmanship and materials covered by this Subcontract and agrees to make good, at its own expense and at the convenience of the Owner, any defect in material or workmanship which may occur or develop prior to the Contractor's release from responsibility to the Owner with respect to that work or material. In addition, with respect to Subcontractor's Work, Subcontractor hereby expressly assumes all warranty obligations and responsibilities assumed by Contractor under the Prime Contract.

17. TAXES AND PERMITS

17.1 Except as otherwise provided in the Prime Contract, Subcontractor agree to pay, comply with, and hold Owner harmless against (i) the payment of all contributions, taxes, duties, or premiums which may be payable by it under federal, state or local law arising out of the performance of this Subcontract, and (ii) all sales, use or other taxes of whatever nature leveled or assessed against Owner, Contractor, or Subcontractor arising out of this Subcontract, including any interest or penalties. Subcontractor waives any and all claims for additional compensation because of any increase in the aforementioned contributions, taxes, duties or premiums, unless payment for such increases is specifically provided for in the Prime Contract.

17.2 Subcontractor shall obtain and pay for all permits, licenses, fees and certificates of inspection necessary for the prosecution and completion of the Subcontract Work. It shall arrange for all necessary inspections and approvals by public officials, subject to coordination of same with the Contractor.

18. USE OF CONTRACTOR'S FACILITIES

The Subcontractor shall not use Contractor's material, vehicles, equipment, gas, electricity, water or other services, appliances, or facilities without the prior written consent of the Contractor's superintendent. If such written consent is obtained, the Subcontractor shall pay the Contractor's reasonable charges upon demand. Subcontractor agrees to use any of the Contractor's material, vehicles, equipment or other services, appliances, or facilities "as is" and at Subcontractor's own sole risk. Subcontractor agrees to defend, indemnify, and hold harmless the Contractor from an against all claims, demands, liabilities, and expenses, including attorneys' fees, arising from or relating to such use by the Subcontractor.

19. LIENS AND CLAIMS

19.1 If the Project is one on which mechanics' liens or other liens may, consistent with applicable law, be placed, the Subcontractor agrees that it hereby waives its right to assert such lien claims or place such liens upon the Project. The Subcontractor further agrees to execute and/or obtain from its subcontractors and suppliers, such further releases and/or waivers of lien and lien rights as may be required by the Prime Contract or requested by the Contractor.

19.2 Subcontractor shall immediately reimburse Contractor for any amounts that are paid out under Contractor's payment bond for the Project, if any, due to Subcontractor's failure to make payments due, and/or for any costs, including attorneys' fees, that are incurred as a result of such failures by the Subcontractor. If the Contractor incurs, via indemnity obligations or otherwise, any costs or expenses whatsoever as a result of the Subcontractor's failure timely to pay amounts it owes to subsubcontractors, suppliers, or others in connection with the Subcontract Work, Subcontractor shall immediately reimburse Contractor for such costs, including attorneys' fees.

19.3 In the event that liens are filed on the Project or related properties by anyone relating to labor or material being furnished by Subcontractor, Subcontractor agrees to have those liens discharged, by posting a bond with the appropriate authorities or otherwise, within five (5) days of notice. If such liens are not so discharged, Contractor may avail itself of any remedies allowed by law or equity, including, without limitations, itself taking appropriate measures to remove the liens, and charging the resulting costs, including attorneys' fees, to Subcontractor, withholding the amount of such costs from future payments to Subcontractor, and/or terminating this Subcontract for default.

20. INDEPENDENT CONTRACTOR AND COMPLIANCE WITH LAW

The Contractor has contracted with the Subcontractor, and the Subcontractor is acting at all times pursuant to this Subcontract, as an independent contractor.

21. OWNER'S APPROVAL

This Subcontract is contingent upon the Owner's approval of Subcontractor, and materials and products being furnished by the Subcontractor. If, within five (5) business days after written notice to the Subcontractor of any disapproval by the Owner, the Subcontractor fails to overcome the Owner's objection, the Contractor shall have the right to cure the problem or to terminate the Subcontract for default.

22. SAFETY

The Subcontractor is being selected by the Contractor as a competent contractor with respect to the Subcontractor's work. Therefore, the Subcontractor is required to perform its work in a safe manner. The Contractor is relying upon the skill and expertise of the Subcontractor to protect workers on the job site. The Subcontractor shall comply with all applicable local, state, or federal safety and health requirements, including OSHA as applicable. In accordance with state or federal requirements or both, the Subcontractor shall formulate and implement its own safety rules and regulations to promote safe and orderly prosecution of the work. Such rules shall provide for frequent and regular inspection of the job site, materials and equipment by competent persons designated by the Subcontractor. Competent persons mean those capable of identifying existing and predictable hazards and who have the authority to take prompt corrective measures to eliminate them. The Subcontractor shall also follow any safety rules that the Owner or Prime Contract may impose, as well as any safety directions that may be issued by the Contractor.

The Subcontractor also agrees to comply with any safety directions or rules reasonably issued by the Owner or the Contractor to prevent injury or assure compliance with applicable law, whether or not Subcontractor agrees that those directions or rules are actually required in order to comply with applicable law, and to do so without demanding further compensation from the Contractor for such compliance.

23. UTILITIES

Subcontractor shall negotiate, together with Contractor, to have all utilities and obstructions on, under, or over the Project site, or otherwise interfering with work on the Project, removed from or relocated within the construction areas. However, nothing herein shall make Contractor liable to Subcontractor for any delays or hindrances, regardless of duration or extent, caused by the failure of the Owner or the owners of structures (including public utility facilities) to remove or relocate such structures. If the Subcontractor encounters such delays or hindrances, it shall give prompt written notice thereof to the Contractor.

24. ASSIGNMENT

This Subcontract and/or the proceeds from it shall not be sublet or assigned, in whole or in part, without the prior written consent of an officer of the Contractor.

25. NOTICES

All notices shall be addressed to the parties at the addresses set out herein, and shall be considered as delivered when postmarked, if dispatched by registered mail, or when received in all other cases.

26. APPLICABLE LAW/VENUE

This Subcontract shall be governed by an construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflict provisions. Judicial venue for resolution of any claims or disputes relating to this Subcontract shall be the Court of Common Pleas for Bedford County, Pennsylvania (except such disputes as the Subcontract requires to be resolved before another tribunal, pursuant to the provisions of the Prime Contract).

27. SEVERABILITY AND WAIVER

The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of the Contractor to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver of relinquishment of such term, covenant, conditions or right as respects further performance.

28. ENTIRE AGREEMENT

This Subcontract recites the entire agreement between the parties hereto concerning the subjects addressed by the Subcontract, and supersedes all prior or contemporaneous negotiations, representations, or agreements, oral or written, between the parties. The Subcontract may not be modified except in a writing executed by the parties.

29. RIGHT OF RECOUPMENT OR OFFSET

Subcontractor authorizes Contractor to recoup or offset against amounts otherwise due and owing to the Subcontractor under the Subcontract, any and all amounts due to Contractor from Subcontractor, regardless of the origin of such obligations.

30. EXHIBITS

Any exhibits identified below are incorporated into, and made part of, the Subcontract. Additional terms set forth in the attachments shall prevail over conflicting terms set forth in the body of the Subcontract.

Exhibit A	Statement of Work and Subcontract Price	
Exhibit B	Insurance	Exhibit Used (X) Not Used ( )
Exhibit C	Disclosure of Due Dates for Receipt of Payments from the Owner	
Exhibit D	Designation of Authorized Representative(s) of Contractor	

31. ONE CALL

It will be the responsibility of the Subcontractor to place the one call before you will be required to start work on the project. You must fax a copy of the confirmation sheet with the serial number assigned from one call, to the job, before you will be permitted to start any work. If the Subcontractor leaves the project and returns to perform work after 10 working days, you MUST make another one call. The phone number is: (800) 242-1776 or Fax is: (412) 464-7135. You must give 3 working days notice plus 2 Business Hours. If One Call has not been made by the Subcontractor, it will be the responsibility of the Subcontractor for all damages incurred for their work preformed.

BOTH PARTIES HAVE READ AND UNDERSTAND THIS SUBCONTRACT. THIS SUBCONTRACT IS NOT BINDING UPON THE CONTRACTOR UNTIL ACCEPTED AND SIGNED BY AN OFFICER OF THE CONTRACTOR.

IN WITNESS WHEREOF, and intending to be bound thereby, the parties have executed this Subcontract effective as of the day and year set forth above.

WITNESS/~~ATTEST~~

By: Judith A. Creeny

Title: Assistant

Swank Associated Companies, Inc.

By: RJ Hay

Title: Estimator

ATTEST:
(Corporate Seal)

By: Thomas G. Frye

THOMAS G. FRYE

Title: Assistant Secretary/Treasurer

NEW ENTERPRISE STONE & LIME CO., INC.

By:

PAUL I. DETWILER, III

Title: Executive Vice-President

EXHIBIT A
STATEMENT OF WORK AND SUBCONTRACT PRICES

If this Exhibit A specifies that the work, or any portion of the work, is to be done for a lump sum price, the lump sum price represents full and fair compensation for such work, and Subcontractor shall not be entitled to additional compensation, except as otherwise provided in the equitable adjustment and changes provisions of this Subcontract.

If Exhibit A specifies that the work, or any portion of it, is to be done on a unit price basis, then the Subcontractor shall be entitled to payment for such work only in the amount determined by multiplying the stated unit price by the actual number of units of work performed and accepted by the Contractor and the Owner. Quantities set forth in Exhibit A, or elsewhere in this Subcontract, in connection with unit-price work, are estimates only and do not entitle the Subcontractor to payment for such estimated quantities. The parties acknowledge that the actual quantities, upon which payment will be based, may be greater or less than any stated estimates.

Swank Associated Companies, Inc. proposal inserted as page 15-B and made a part of this subagreement.

EXHIBIT A
STATEMENT OF WORK AND SUBCONTRACT PRICES

Swank Associated Companies, Inc.
Clearfield County, SR0080 (B26) ECMS # 57542
Job# 0735103
Phone (724)335-6000 Fax (724)335-3834
Fed. Project # L010-X022-222

Item Number	DESCRIPTION	APPROX. QTY	U/M	UNIT PRICE	TOTAL
0491-0064	Milling of Bituminous Pavement Surface, 2" Depth (Mill Only)	748,588	SY	0.23	172,175.24
0491-0065	Milling of Bituminous Pavement Surface, 2 ½" Depth (Mill Only)	4,150.00	SY	1.49	6,183.50
0491-0070	Milling of Bituminous Pavement Surface, Variable Depth	24,133	SY	0.60	14,479.80
			TOTAL		192,838.54

The following contract pages are attached and made part of this subcontract agreement.

- Project location and description.
- Applicable designated special provisions to subcontractor's scope of work.

This is a rated project with prevailing wage rates and will require certified payroll.

It is agreed that the unqualified word 'Named Assured' whenever used in this insurance includes not only the Named Assured but also any past or present officer, director, member, partner, stockholders, or employee of leased personnel under your direct supervision of the Named Assured while acting within the scope of his duties as such.

'Named Assured' is extended to include any person, organization, trustee or estate to whom the Named Assured is obligated by virtue of written contract, permit or agreement or a certificate of Insurance that had been executed prior to an occurrence to provide insurance such as is afforded by this policy, but only with respects to operations by or on a Named Assured's behalf or to facilities a Named Assured owns or uses, and only to the extent of the limits of liability required by such contract but not to exceed the applicable limits of liability set forth in this policy.

This insurance does not apply to damages because of any negligent acts committed by any person, organization, trustee or estate to whom the Named Assured is obligated by virtue of written contract, certificate of insurance, permit or agreement to provide insurance such as is afforded by this policy.

With respect to architects, engineers, surveyors, or others providing professional services engaged by the Named Assured or for whom the Named Assured are obligated by virtue of written contract, permit or agreement to include as additional Named Assureds, this insurance does not apply to bodily injury, property damage, personal injury, or advertising injury arising out of the rendering of or the failure to render any professional services including:

1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
2) Supervisory, inspection, architectural or engineering activities.

Current and past joint ventures are Named Assureds, but only to the extent of your interest or your obligation to insure the venture.

With respect to "mobile equipment" and "autos" registered in your name under any motor vehicle registration law, any person is a Named Assured while driving such equipment or such auto along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also a Named Assured, but only with respect to liability arising out of the operations of the equipment or auto, and only if no other insurance of any kind is available to that person or organization for this liability.

The inclusion of more than one person, organization, or entity as Named Assured under this policy shall not in any way affect the rights of any such person, organization, or entity as respects any claim, demand, suit or judgement made, brought, or recovered, by or in favor of any Named Assured. This policy shall protect each person, organization, or entity in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the company's liability as set forth elsewhere in this policy beyond the amount for which the Company would have been liable if only one person, organization, or entity has been named as Named Assured.

Subject otherwise to all terms, clauses and conditions as heretofore.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE 0735103

DATE (MM/DD/YYYY): 5/17/2007

PRODUCER
ICAG, LLC
8715 Cary Algonquin Road
Cary, Illinois 60013
847-639-1040
Certificate #: 77-1-13818-6

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Swank Associated Companies, Inc.

200 Hunt Valley Road
New Kensington, PA 15068

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Arch Excess and Surplus Insurance Company	10946
INSURER B:	Arch Insurance Company	11150
INSURER C:	Arch Insurance Company	11150
INSURER D:	National Surety Corporation	21881
INSURER E:		

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE [X] OCCUR X XCU EXCL. DELETED GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	ZAGLB9036000 Limited Pollution Limits $500,000 Stop Gap Liability (for Monopolistic States) Stop Gap Limits	1/28/2007 1,000,000 occur.	1/28/2008 1,000,000	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG gen. aggregate	$ 1,000,000 $ 100,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
B		AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS X PHYSICAL DAMAGE	ZACAT9030200 Comp/Coll Ded. - $500 Glass Ded. - $500 ZAGLB9036000	1/28/2007	1/28/2008	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 * $ * CSL $ * CSL $ * CSL
		GARAGE LIABILITY ANY AUTO	N/A			AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
D		EXCESS/UMBRELLA LIABILITY X OCCUR CLAIMS MADE DEDUCTIBLE X RETENTION $ 10,000	SSE00089204986	1/28/2007	1/28/2008	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	ZAWC9036200	1/28/2007	1/28/2008	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
A		OTHER Property/Equipment - DED $1,000 Leased/Rented Property and Equipment for which the insured is responsible to Insure- No Sublimit Per Item	ZAGLB9036000	1/28/2007	1/28/2008		$ 100,000 $ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

SR 80 Section B26 Clearfield Co. ECMS 57542. New Enterprise Stone and lime Co,. Inc. and Commonwealth of PA Department of Transportation are listed as additional insureds.

Architects and Engineers are not included for Professional Liability

CERTIFICATE HOLDER

New Enterprise Stone and Lime Co., Inc.

PO Box 77
New Enterprise PA 16664

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE Joseph R. Odice

© ACORD CORPORATION 1988

EXHIBIT B
MINIMUM INSURANCE AMOUNTS & COVERAGE

Every contractor providing subcontracting services must provide New Enterprise Stone & Lime Co., Inc. evidence of the following minimum insurance coverage, limits and amounts.

Worker's Compensation Insurance in accordance with statutory requirements in the state(s) of operation for all employees.

Employer's Liability: $100,000 Bodily Injury by Accident; Each Accident
$500,000 Bodily Injury by Disease; Policy Limit
$100,000 Bodily Injury by Disease; Each Employee

Commercial General Liability with Broad Form Property Damage Endorsement:
Occurrence Form:

General Aggregate	$3,000,000
Products and Completed Operations	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage	$50,000
Medical Expenses	$5,000

Such coverage shall include:

Premises – Operations, Contractor's Protective
Products - Completed Operations, Contractual Liability covering the liability assumed herein.
Personal Injury, Broad Form Property Damage, Full Explosion, Collapse, and Underground Coverage, if applicable.
Business Automobile Liability: $1,000,000 Combined Single Limit per occurrence and to include Any Auto or Owned, Non-owned, and Hired vehicles.

1. All liability policies shall contain a specific endorsement naming New Enterprise Stone & Lime Co., Inc., as additional insured. Automobile coverage form shall contain a CA20480299 designated insured endorsement (or equivalent) listing New Enterprise Stone & Lime Co., Inc. as an additional insured on a primary and noncontributory basis. General Liability coverage form shall contain a CG20261185 designated insured endorsement (or equivalent) listing New Enterprise Stone & Lime Co., Inc. as an additional insured on a primary and noncontributory basis. A copy of these endorsements shall accompany the insurance certificate.
2. All liability policies shall contain a provision that no cancellation or material change in the policies shall become effective without notifying, by way of written notice 30 days in advance, New Enterprise Stone & Lime Co., Inc. at P.O. Box 77, New Enterprise, PA 16664.
3. A properly executed Indemnification Agreement will be provided to New Enterprise Stone & Lime Co., Inc.
4. Any and all additional coverage and limits specifically set forth herein or required by the Prime Contract and/or the laws of the state or states in which the project is situated.
5. Underground Storage Tank Removal Contractors will be required to provide, Contractor's Pollution Liability Insurance coverage with a limit of/ $1,000,000 per occurrence/$1,000,000 aggregate. New Enterprise Stone & Lime Co., Inc. shall be added as additional insured.

EXHIBIT C
DISCLOSURE OF DUE DATES FOR RECEIPT OF PAYMENTS FROM THE OWNER

Subject to changes that may occur hereafter, due to actions of the Owner, delays in the Project, or otherwise, the due dates for payments from the Owner are as follows:

CURRENT MONTHLY PAYMENTS - Payments exceeding $10,000 will be processed by the Department at semimonthly intervals, or more frequently as the work progresses, based upon estimates made by the Department, beginning on the first estimate date following Notice to Proceed dating or indicated in the special provisions. Otherwise, estimates will be processed monthly, when the payable amount exceeds $1,000. Partial payments do not bind the Department to the acceptance of any material furnished or work performed

In the absence of good and sufficient reasons, within 7 calendar days of the receipt of current estimate and final payments from the Department, pay all subcontractors their earned share of the payment.

EXHIBIT D
DESIGNATION OF AUTHORIZED REPRESENTATIVE(S) OF CONTRACTOR

The following person or persons are authorized by the Contractor to issue directions to Subcontractor that additional or extra work be performed:

Jim Miller
Jeff Hileman
Al Wiedemann
Dave Lanzendorfer
Dan Blough
Jeff Mills

As of the time the Subcontract is executed, no other persons are authorized to issue such orders to Subcontractor, to approve change orders, or to make binding promises of payment by Contractor for extra or additional work. Substitute Authorized Representatives, or additional Authorized Representatives, may be hereafter designated by the Contractor, but only in a writing executed by the Contractor and expressly designating the other person(s) as Authorized Representative(s).

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants

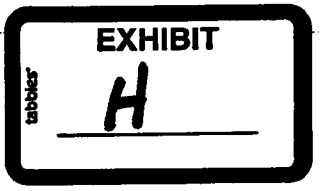
No.

JURY TRIAL DEMANDED

COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiff s

Jonathan B. Mack, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970



COPY

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants

No.

JURY TRIAL DEMANDED

NOTICE TO PLEAD

TO: LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS, DEFENDANTS

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. 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 REDUCED FEE OR NO FEE.

David S. Meholick, Court Administrator
CLEARFIELD County Courthouse
230 E. Market Street
CLEARFIELD, PA 16830
(814) 765-2641 Ext. 5982

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants

No.

JURY TRIAL DEMANDED

COMPLAINT

AND NOW COME the Plaintiffs, James E. Clark, Jr., and Brenda Coble individually, and as Administrators of The Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by and through their attorneys, Jonathan B. Mack, Esquire, and Marcus and Mack, P.C., and file the following Complaint:

1. Plaintiffs are adult individuals who are the son and daughter of James Edward Clark, a/k/a James Edward Clark, Sr.,deceased, and are the Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by grant of Letters from the Clearfield County Register of Wills on July 20, 2007. Plaintiff James E. Clark, Jr., resides in Armagh,

Indiana County, Pennsylvania. Plaintiff Brenda Coble resides in Woodbridge, Prince William County, Virginia.

2. Defendant Lyle Thompson in an adult individual believed to reside at 11057 Creek Road, Fannettsburg, Franklin County, Pennsylvania.

3. It is believed that Defendant Lyle Thompson, t/d/b/a Valley Excavating and Hauling, conducts business with a business address of 11057 Creek Road, Fannettsburg, Franklin County, Pennsylvania.

4. Defendant New Enterprise Stone & Lime Company, Inc., is a Delaware corporation with a business address of PO Box 77, New Enterprise, Bedford County, Pennsylvania. Defendant New Enterprise Stone & Lime Company, Inc. regularly conducts business in the Commonwealth of Pennsylvania.

5. It is believed that Defendant New Enterprise Stone & Lime Company, Inc., trades and does business as New Enterprise Stone and Lime Company, with a business address of PO Box 77, New Enterprise, Bedford County, Pennsylvania. Defendant New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone & Lime Company regularly conducts business in the Commonwealth of Pennsylvania.

6. Defendant Preco Electronics, Inc., is a corporation with a business address of 415 North Maple Grove Road, Boise, Ada County, Idaho. It is believed and averred that Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, regularly conducts business in the Commonwealth of Pennsylvania.

7. This lawsuit arises out of an incident that occurred on or about July 11, 2007. Plaintiffs' decedent was walking east in the middle lane of State Route 8012, in Bradford Township, Clearfield County, Pennsylvania. At the same time and place, Defendant Lyle

Thompson, was operating a tri-axle dump truck owned by Lyle Thompson and/or by Lyle Thompson, t/d/b/a Valley Excavating and Hauling, which was facing west, backing up eastbound on State Route 8012, in Bradford Township, Clearfield County, Pennsylvania (hereinafter referred to as the "Accident Site"). Suddenly and without warning, Defendant Thompson struck Plaintiffs' decedent with the rear of the dump truck he was operating and continued to back the dump truck over Plaintiffs' decedent. Plaintiffs' decedent died on July 11, 2007, as a result of massive head trauma with multiple skull fractures and traumatic loss of brain tissue.

8. It is believed that Defendant New Enterprise Stone & Lime Company, Inc., and/or New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone and Lime Company, was the general contractor at the Accident Site.

9. It is believed and is averred that the truck which Defendant Thompson was operating was equipped with a backup warning/safety device that was manufactured, designed, tested, inspected, produced, marketed and/or sold by Defendant Preco Electronics, Inc.

10. Plaintiffs, as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, bring this action on their own behalf and on behalf of all persons entitled to recover damages for the wrongful death of James Edward Clark, a/k/a James Edward Clark, Sr., pursuant to 42 Pa. C.S.A. §8301. Plaintiffs also bring this action to recover damages on behalf of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., pursuant to 42 Pa. C.S.A. §8302.

11. Persons entitled to recover damages for Plaintiffs' decedent's wrongful death and their relationship to the decedent include:

a. Brenda Coble (daughter), 1512 Forest Lane, Woodbridge, Prince William County, Virginia, 22191; and

b. James E. Clark, Jr., (son), PO Box 187, 115 Mountain View Drive, Armagh, Indiana County, Pennsylvania, 15920.

12. During his lifetime, Plaintiffs' decedent did not commence any action to recover damages for the injuries that caused his death, and no other action has been filed to recover damages for the wrongful death of Plaintiffs' decedent.

13. The right to bring this action is conferred upon the Plaintiffs by the following laws under which this action is brought:

a. The Act of July 9, 1976, P.L. 586, No. 142; 42 Pa. C.S.A. §8301;

b. The Act of 1972, Act No. 164 as amended, 20 Pa. C.S.A. §3371; and,

c. Any other Wrongful Death Acts, Fiduciary Acts, Survival Acts, Pennsylvania Law and Pennsylvania Rules of Civil Procedure which are applicable.

14. No other action for wrongful death of Plaintiffs' decedent has been commenced against the within-named Defendants and, in particular, no action for wrongful death was commenced by the personal representatives of the Plaintiffs' decedent within six (6) months of his death.

15. Furthermore, on behalf of themselves, the surviving children of the deceased, Plaintiffs claim all appropriate damages under the Wrongful Death Act including, but not limited to, the following:

a. Loss of economic contribution;

b. Loss of household services;

c. Loss of society, companionship and consortium;

d. Medical expenses;

e. Funeral expenses; and,

f. Administration expenses.

16. Plaintiffs are covered by the Full Tort option under the Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1705.

COUNT I - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
LYLE THOMPSON

17. Each of the above paragraphs are incorporated herein by reference.

18. The aforesaid accident was caused and/or contributed to by the negligence of Defendant, Lyle Thompson, in general and in the following particulars:

a. In operating the dump truck in a dangerous and/or reckless manner under the circumstances;

b. In failing to have the dump truck under proper control;

c. In failing to pay close attention to what was behind him while driving the subject dump truck in reverse;

d. In failing to stop before striking Plaintiffs' decedent;

e. In failing to stop after striking Plaintiffs' decedent to ascertain what he had hit instead of continuing on in reverse;

f. In continuing to operate the dump truck in the manner described above when he saw or in the exercise of reasonable care should have seen that further operation in that direction would result in an accident;

g. In failing to pay proper attention and failing to maintain an appropriate lookout of the road and surrounding traffic conditions while driving in reverse;

h. In failing to operate the brakes in such a manner so that the vehicle could be stopped in time to avoid the accident;

i. In failing to avoid hitting Plaintiffs' decedent when he saw or should have seen that Plaintiffs' decedent was in full view to the rear of the dump truck;

j. In failing to use and/or properly use his side and rearview mirrors while driving the dump truck in reverse;

k. In failing to take proper note of, and precautions for, the configuration of the roadway and/or Accident Site;

l. In failing to take measures to avoid the crash or lessen its severity;

m. In failing to have appropriate and adequate back-up warning/safety device(s) on the subject dump truck;

n. In failing to ensure the back-up warning/safety device(s) on the subject dump truck were in proper operating condition;

o. In violating the various statutes and municipal ordinances pertaining to the operation of motor vehicles on public thoroughfares under the circumstances and in particular, the Accident Site;

p. In driving too fast for conditions;

q. In failing to ascertain clearance before backing;

r. In operating the vehicle in reverse when said maneuver could not be safely accomplished;

s. In striking James Edward Clark;

t. In operating a vehicle that had inappropriate/ineffective/defective/ dangerous/malfunctioning warning/safety devices;

u. In failing to warn James Edward Clark of the presence of his vehicle and/or his intention to operate said vehicle in reverse;

v. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern; and

w. In being otherwise negligent, careless and/or reckless;

19. The subject incident and all injuries, losses, and/or damages Plaintiffs and Plaintiffs' decedent sustained as a result thereof were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Lyle Thompson described above.

20. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Lyle Thompson as outlined above and were not caused or contributed to by Plaintiffs' decedent.

21. Defendant Lyle Thompson's negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

22. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble, individually, demand judgment against the Defendant Lyle Thompson in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT II - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
LYLE THOMPSON, t/d/b/a
VALLEY EXCAVATING AND HAULING

23. Each of the above paragraphs are incorporated herein by reference.

24. At the time and place of the accident described in this Complaint, Defendant Lyle Thompson was operating the dump truck as an agent, servant, representative, employee and/or assign of Defendant Valley Excavating and Hauling (hereinafter referred to as "Defendant Valley") and, at all times relevant hereto, was acting within the scope and course of such employment and was working in furtherance of Defendant Valley's interests.

25. At all times relevant hereto, Defendant Valley was responsible for the actions/inactions of Defendant Lyle Thompson as a matter of vicarious liability and/or respondeat superior.

26. At all times relevant hereto, Defendant Valley entrusted, permitted and/or allowed Defendant Lyle Thompson to operate the subject dump truck.

27. The aforesaid accident and resulting injuries and damages were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Valley, in general and in the following particulars:

a. In failing to appropriately monitor, supervise, train and/or instruct its officers/employees, agents on how to safely operate a dump truck;

b. In hiring, training and/or retaining employees, servants, representatives, agents and/or assigns who were unable and/or unwilling to safely operate dump trucks;

c. In being otherwise negligent, careless and/or reckless;

d. In being responsible for the negligence, carelessness and/or recklessness of Defendant Lyle Thompson as set forth above;

e. In being responsible for the negligence, carelessness and/or recklessness of its officers/employees/agents as a matter of vicarious liability and/or respondeat superior;

f. In negligently entrusting Defendant Lyle Thompson with the dump truck;

g. In entrusting vehicles to its employees and/or retained individuals without undertaking adequate measures to ensure that said individuals were capable of operating said vehicle in a safe and lawful manner;

h. In entrusting Defendant Lyle Thompson with the vehicle when it knew or should have known that he was an incompetent or unsafe driver;

i. In failing to properly investigate Defendant Lyle Thompson's driving record before hiring him;

j. In failing to properly instruct, train and/or supervise their employees and/or retained individuals in order to ensure the safe and proper operation, inspection, maintenance and/or repair of their vehicles;

k. In failing to hire, employ, train, supervise, instruct, retain and/or contract personnel sufficiently qualified and competent to accomplish proper operation, inspection, maintenance and/or repair of their vehicles;

l. In negligently hiring, retaining, and/or training individuals who were unable or unwilling to properly maintain, inspect, repair and/or operate vehicles in a reasonable and safe manner;

m. In allowing, mandating and/or permitting the operation of its vehicle such as to create a dangerous situation;

n. In allowing and/or permitting the operation of its vehicle in such a reckless, careless and/or negligent manner so as to cause or allow the vehicle to run into, strike, collide and run over Plaintiffs' decedent;

o. In failing to adequately warn, instruct, notify and protect others, especially Plaintiffs' decedent, of the dangers associated with its vehicles and/or drivers;

p. In being vicariously liable for the negligence of agents, assigns and/or employees who pose risks or otherwise present danger to persons such as Plaintiffs' decedent;

q. In failing to maintain the subject vehicle in a proper manner and in the proper mechanical condition;

r. In failing to inspect the vehicle properly or inspecting so carelessly so as to not have determined the existence of any mechanical defects or dangerous conditions;

s. In failing to exercise the degree of reasonable care and acting without appropriate due regard for the rights and safety of Plaintiffs' decedent as was required under the circumstances;

t. In violating the laws of the Commonwealth of Pennsylvania and/or the provisions of the Pennsylvania Motor Vehicle Code regulating the operation of motor vehicles;

u. In failing to have appropriate and adequate back-up warning/safety device(s) on the subject dump truck;

v. In failing to ensure the back-up warning/safety device(s) on the subject dump truck were in proper operating condition;

w. In failing to enforce compliance with laws and regulations governing commercial motor vehicles and drivers, including, but not limited to, log book and hour requirements;

x. In allowing the operation of the subject vehicle when the back-up warning/safety device(s) on said vehicle were malfunctioning, inappropriate and/or ineffective;

y. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern; and

z. In being otherwise negligent, careless and/or reckless.

28. The subject incident and all injuries, losses, and/or damages Plaintiffs and Plaintiffs' decedent sustained as a result thereof were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Lyle Thompson t/d/b/a Valley Excavating and Hauling described above.

29. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Lyle Thompson t/d/b/a Valley Excavating and Hauling described as outlined above and were not caused or contributed to by Plaintiffs' decedent.

30. Defendant Lyle Thompson t/d/b/a Valley Excavating and Hauling's negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

31. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble, individually, demand judgment against the Defendant Lyle Thompson t/d/b/a Valley Excavating and Hauling, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT III - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
NEW ENTERPRISE STONE & LIME COMPANY, INC.

32. Each of the above paragraphs are incorporated herein by reference.

33. At the time and place of the accident described in this Complaint, Defendant New Enterprise Stone & Lime Company, Inc., (hereinafter referred to as "New Enterprise, Inc.") was the general contractor and was performing construction, maintenance and/or resurfacing work on State Route 8012 and more specifically at the Accident Site and/or was responsible for the Accident Site and surrounding areas.

34. At all times relevant hereto, Defendant New Enterprise, Inc. operated, controlled, managed, oversaw and/or was in charge of the Accident Site and surrounding areas.

35. At the above mentioned time and place, there existed a dangerous condition at the Accident Site.

36. This aforesaid dangerous condition consisted of Defendant New Enterprise, Inc.'s non-utilization of spotters and/or other precautionary measures to protect workers at the Accident Site, as well as permitting the subject dump truck at the Accident Site to be present and/or in use when it was equipped with improper, malfunctioning, defective, ineffective, inappropriate and/or inadequate back-up warning/safety device(s) or alarms.

37. At the above mentioned time and place, Plaintiffs' decedent was carefully and lawfully working at or around the Accident Site when he came into contact with the aforesaid dangerous condition causing him to be struck and run over by the subject dump truck, causing injuries resulting in his death on July 11, 2007.

38. At the aforementioned time and place, and due to the negligence, carelessness, and/or recklessness of Defendant New Enterprise, Inc. in causing, creating and/or failing to correct/ameliorate the aforesaid dangerous condition, Plaintiffs' decedent came into contact with said condition and was thereby struck and run over, sustaining the injuries and damages set forth below, resulting in his death.

39. Defendant New Enterprise, Inc. caused, created and/or contributed to this aforementioned dangerous condition.

40. At the above mentioned time and place, Defendant New Enterprise, Inc. knew, had knowledge and/or should have known of the existence of the subject dangerous condition.

41. The fatal injuries and damages set forth below were caused and/or contributed to by the negligence, carelessness, and/or recklessness of Defendant New Enterprise, Inc. in any or all of the following respects:

a. In causing and/or permitting the dangerous, hazardous, and unsafe condition to exist and remain on or at the Accident Site;

b. In failing to properly fix, repair, blockade, eliminate, and/or otherwise ameliorate the subject dangerous condition;

c. In failing to keep the Accident Site in a safe condition for persons lawfully on the same;

d. In permitting the dangerous condition to exist and remain on or at the Accident Site when Defendant New Enterprise, Inc. knew, or should have known of its existence and the danger involved;

e. In permitting persons, and Plaintiffs' decedent in particular, to traverse and work at or near the Accident Site when Defendant New Enterprise, Inc. knew, or should have known, that it was dangerous to do so and involved an unreasonable risk of harm to persons so doing;

f. In failing to notify, post signs, or otherwise warn Plaintiffs' decedent of the dangerous condition so that the hazard could be avoided;

g. In maintaining the Subject Premises improperly or in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using or working at or upon the Accident Site, specifically Plaintiffs' decedent, with a safe working environment;

i. In failing to inspect the Accident Site so as to discover the dangerous condition, or inspecting so carelessly or improperly so as not to have discovered the condition;

j. In failing to fix, repair, eliminate, or otherwise properly redress the condition of the Accident Site/work site to ensure that it would not remain unnecessarily dangerous;

k. In causing, creating, contributing to, and/or exacerbating a dangerous condition by allowing the aforementioned dangerous condition to exist and remain unchecked on or at the Accident Site and/or surrounding work site;

l. In failing to take appropriate action so that the incident would be avoided;

m. In failing to exercise that degree of reasonable care and due regard for the rights and safety of Plaintiffs' decedent as was required under the circumstances;

n. In failing to utilize spotters at and/or around the Accident Site to ensure the safety of the workers, in particular, Plaintiffs' decedent;

o. In allowing the dump truck to be used at the Accident Site that did not possess an adequate, appropriate and/or properly functioning back-up warning/safety device;

p. In being otherwise negligent, careless, and reckless;

q. In failing to properly maintain the Accident Site;

r. In failing to provide warnings to persons lawfully at, on or near the Accident Site;

s. In being responsible for the actions, inactions, omissions and/or omissions of Defendants Lyle Thompson and Lyle Thompson, d/b/a Valley Excavating and Hauling as a matter of vicarious liability and/or respondeat superior;

t. In failing to properly monitor, supervise and/or oversee the work being done at the Subject Premises;

u. In failing to take adequate measures to ensure the safety at the Accident Site and/or work site;

v. In hiring and/or contracting with an entity that was unable and/or unwilling to perform the work in a safe and/or reasonable manner;

w. In failing to have appropriate safety measures in place at the subject Accident Site and/or work site;

x. In failing to comply with Occupational Safety & Health Administration guidelines and/or standards;

y. In violating 29 C.F.R. §1926;

z. In violating 29 C.F.R. §1926.601(b)(4);

aa. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern; and

bb. In being otherwise negligent, careless and/or reckless.

42. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant New Enterprise, Inc. described as outlined above and were not caused or contributed to by Plaintiffs' decedent.

43. Defendant New Enterprises, Inc.'s negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

44. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr. and Brenda Coble, individually, demand judgment against the Defendant New Enterprise Stone & Lime Company, Inc., in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT IV - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a
NEW ENTERPRISE STONE AND LIME COMPANY

45. Each of the above paragraphs are incorporated herein by reference.

46. At the time and place of the accident described in this Complaint, Defendant New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone and Lime Company (hereinafter referred to as " New Enterprise") was the general contractor and was performing construction, maintenance and/or resurfacing work on State Route 8012 and more specifically at the Accident Site and/or was responsible for the Accident Site and surrounding areas.

47. At all times relevant hereto, Defendant New Enterprise operated, controlled, managed, oversaw and/or was in charge of the Accident Site and surrounding areas.

48. At the above mentioned time and place, there existed a dangerous condition at the Accident Site.

49. This aforesaid dangerous condition consisted of Defendant New Enterprise non-utilization of spotters and/or other precautionary measures to protect workers at the Accident Site, as well as permitting the subject dump truck at the Accident Site to be present and/or in use when it was equipped with improper, malfunctioning, defective, ineffective, inappropriate and/or inadequate back-up warning/safety device(s) or alarms.

50. At the above mentioned time and place, Plaintiffs' decedent was carefully and lawfully working at or around the Accident Site when he came into contact with the aforesaid dangerous condition causing him to be struck and run over by the subject dump truck, causing injuries resulting in his death on July 11, 2007.

51. At the aforementioned time and place, and due to the negligence, carelessness, and/or recklessness of Defendant New Enterprise in causing, creating and/or failing to correct/ameliorate the aforesaid dangerous condition, Plaintiffs' decedent came into contact with said condition and was thereby struck and run over, sustaining the injuries and damages set forth below, resulting in his death.

52. Defendant New Enterprise caused, created and/or contributed to this aforementioned dangerous condition.

53. At the above mentioned time and place, Defendant New Enterprise knew, had knowledge and/or should have known of the existence of the subject dangerous condition.

54. The fatal injuries and damages set forth below were caused and/or contributed to by the negligence, carelessness, and/or recklessness of Defendant New Enterprise in any or all of the following respects:

a. In causing and/or permitting the dangerous, hazardous, and unsafe condition to exist and remain on or at the Accident Site;

b. In failing to properly fix, repair, blockade, eliminate, and/or otherwise ameliorate the subject dangerous condition;

c. In failing to keep the Accident Site in a safe condition for persons lawfully on the same;

d. In permitting the dangerous condition to exist and remain on or at the Accident Site when Defendant New Enterprise knew, or should have known of its existence and the danger involved;

e. In permitting persons, and Plaintiffs' decedent in particular, to traverse and work at or near the Accident Site when Defendant New Enterprise knew, or should have known, that it was dangerous to do so and involved an unreasonable risk of harm to persons so doing;

f. In failing to notify, post signs, or otherwise warn Plaintiffs' decedent of the dangerous condition so that the hazard could be avoided;

g. In maintaining the Subject Premises improperly or in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using or working at or upon the Accident Site, specifically Plaintiffs' decedent, with a safe working environment;

i. In failing to inspect the Accident Site so as to discover the dangerous condition, or inspecting so carelessly or improperly so as not to have discovered the condition;

j. In failing to fix, repair, eliminate, or otherwise properly redress the condition of the Accident Site/work site to ensure that it would not remain unnecessarily dangerous;

k. In causing, creating, contributing to, and/or exacerbating a dangerous condition by allowing the aforementioned dangerous condition to exist and remain unchecked on or at the Accident Site and/or surrounding work site;

l. In failing to take appropriate action so that the incident would be avoided;

m. In failing to exercise that degree of reasonable care and due regard for the rights and safety of Plaintiffs' decedent as was required under the circumstances;

n. In failing to utilize spotters at and/or around the Accident Site to ensure the safety of the workers, in particular, Plaintiffs' decedent;

o. In allowing the dump truck to be used at the Accident Site that did not possess an adequate, appropriate and/or properly functioning back-up warning/safety device;

p. In being otherwise negligent, careless, and reckless;

q. In failing to properly maintain the Accident Site;

r. In failing to provide warnings to persons lawfully at, on or near the Accident Site;

s. In being responsible for the actions, inactions, omissions and/or omissions of Defendants Lyle Thompson and/or Lyle Thompson, d/b/a Valley Excavating and Hauling as a matter of vicarious liability and/or respondeat superior;

t. In failing to properly monitor, supervise and/or oversee the work being done at the Subject Premises;

u. In failing to take adequate measures to ensure the safety at the Accident Site and/or work site;

v. In hiring and/or contracting with an entity that was unable and/or unwilling to perform the work in a safe and/or reasonable manner;

w. In failing to have appropriate safety measures in place at the subject Accident Site and/or work site;

x. In failing to comply with Occupational Safety & Health Administration guidelines and/or standards;

y. In violating 29 C.F.R. §1926;

z. In violating 29 C.F.R. §1926.601(b)(4);

aa. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern; and

bb. In being otherwise negligent, careless and/or reckless.

55. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant New Enterprise described as outlined above and were not caused or contributed to by Plaintiffs' decedent.

56. Defendant New Enterprises's negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

57. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble individually, demand judgment against the Defendant New Enterprise Stone & Lime Company, Inc., d/b/a New Enterprise Stone & Lime Company, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT V - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS

58. Each of the above paragraphs are incorporated herein by reference.

59. On or before July 11, 2007, Defendant Preco Electronics, Inc., t/d/b/d Preco Electronics, (hereinafter referred to as "Defendant Preco"), was in the business of designing, testing, manufacturing, distributing, marketing and/or selling back-up warning/safety devices, including the device(s) which were installed on the subject vehicle involved in the instant matter.

60. Defendant Preco owed Plaintiff s' decedent a duty of care in the design, testing, manufacture, distribution, marketing and/or selling of the aforesaid subject back-up warning/safety device(s) to thereby avoid unreasonable risk of injury to foreseeable users or others who may come into contact/interaction with such products and/or who were to be protected by said device(s).

61. At the time of the incident giving rise to this litigation the back-up warning/safety device(s) installed on the subject vehicle were defective, malfunctioning, inappropriate, improperly working and/or inaudible in the work environment, and thus constituted a dangerous condition.

62. Defendant Preco owed a duty to adequately warn and instruct all owners, foreseeable users and/or the public, of all defects, either known by Defendant Preco herein or that should have been known by Defendant Preco relative to the back-up warning/safety device(s).

63. At all times relevant hereto, Defendant Preco had an obligation to refrain from placing products that were in a defective condition or were unreasonably dangerous in the stream of commerce.

64. Defendant Preco designed, manufactured, distributed, and/or sold the subject back-up warning/safety device(s) thereby placing it/them into the stream of commerce.

65. Defendant Preco knew and expected that said subject back-up warning/safety device(s) would be sold to, used and operated in environments such as the subject Accident Site/work site.

66. Defendant Preco had a duty to remedy and/or ameliorate all defects, either known by Defendant Preco herein or that should have been known by Defendant Preco relative to the back-up warning/safety device(s).

67. At all times relevant hereto, Defendant Preco had a duty to instruct and warn foreseeable users and the public in general of any such defective conditions or unreasonable dangers associated with its products.

68. At all times relevant hereto, Defendant Preco acted by and through its servants, agents, employees and assigns, who acted or failed to act within the scope of their authority in the course of Defendant Preco's business.

69. The subject incident and all injuries and damages Plaintiffs James E. Clark, Jr., and Brenda Coble and Plaintiffs' decedent suffered as a result thereof were caused and/or contributed to by and were the direct and proximate result of the negligence, carelessness and/or recklessness of Defendant Preco, by and through its officers, agents, servants, assigns, and/or employees acting within the scope of their agency, authority, servitude and/or employment, generally and in the following particulars:

a. In designing the backup warning/safety device(s) in such a deficient manner as to permit the subject device(s) and/or components thereof to be defective;

b. In failing to properly design, construct and/or install the backup warning/safety device(s) and/or their component parts;

c. In constructing a backup warning/safety device that Defendant Preco knew or should have known would be defective and/or would malfunction upon foreseeable use;

d. In failing to conduct adequate testing to determine the presence of a defect or defects in design of the backup warning/safety device;

e. In failing to conduct adequate inspections to determine the presence of a defect or defects in design of the back-up warning/safety device;

f. In failing to conduct adequate testing to determine the presence of a defect or defects in the manufacture of the backup warning/safety device that was in use at the aforesaid time and place;

g. In failing to conduct adequate testing to determine/discover the unreasonable risk of injury due to and associated with the improper functioning or inadequacy associated with, the backup warning/safety device;

h. In failing to conduct testing to determine/discover the unreasonable risk of injury due to and associated with the inadequacy of, and/or malfunction of the backup warning/safety device;

i. In failing to adequately warn of the likelihood of the unreasonably dangerous condition of backup warning/safety device;

j. In failing to adequately warn Plaintiff's decedent that Defendant Preco had not properly and adequately designed, manufactured and/or installed the backup warning/safety device;

k. In failing to adequately warn and instruct Plaintiff's decedent of the possibility and consequences of the defects, malfunction, and/or inaudible tone of the subject backup warning/safety device;

l. In failing to design and provide a backup warning/safety device that would be capable of being effective, safe and practical;

m. In constructing or manufacturing the backup warning/safety device with materials which Defendant Preco knew, or should have known, were likely to cause malfunction and/or function improperly and/or ineffectively;

n. In failing to remedy the subject backup warning/safety device which Defendant Preco knew or should have known was likely to have defects and/or malfunction upon foreseeable use;

o. In designing the backup warning/safety device in such a deficient manner as to permit the backup warning/safety device and/or components thereof to malfunction and/or to be defective;

p. In failing to properly design, construct and/or install the backup warning/safety device;

q. In constructing a backup warning/safety device that Defendant Preco knew or should have known would be defective and/or would malfunction upon foreseeable use;

r. In failing to conduct adequate testing to determine the likelihood of injury/defect/ineffectiveness in the use of the backup warning/safety device;

s. In failing to conduct adequate testing to determine the presence of a defect or defects of the backup warning/safety device;

t. In failing to conduct adequate testing to determine the presence of a defect or defects in the manufacture of the backup warning/safety device;

u. In failing to conduct adequate testing to determine/discover the unreasonable risk of injury due to and associated with the improper functioning of the backup warning/safety device;

v. In failing to conduct adequate testing to determine/discover the unreasonable risk due to and associated with the absence of a properly functioning of the backup warning/safety device;

w. In failing to adequately warn Plaintiffs' decedent of the likelihood of unreasonably dangerous malfunction of the backup warning/safety device;

x. In failing to adequately warn Plaintiffs' decedent that Defendant Preco had not properly and adequately designed, manufactured and/or installed the backup warning/safety device;

y. In failing to remedy the backup warning/safety device which Defendant Preco knew or should have known was likely to have defects and/or malfunction upon foreseeable use;

z. In designing the subject backup warning/safety device in such a deficient manner as to permit the device(s) to malfunction upon foreseeable use;

aa. In failing to conduct adequate testing to determine the likelihood of injury in the event of the above mentioned circumstances, or circumstance(s) similar thereto, surrounding the subject incident;

bb. In failing to use that degree of reasonable care, due regard and caution that the circumstances then and there required;

cc. In designing, testing, manufacturing, distributing, marketing and/or selling a back-up safety/warning device which was not loud enough to be effective in a typical construction zone;

dd. In designing, testing, manufacturing, distributing, marketing and/or selling a back-up safety/warning device which was not loud enough to be put to foreseeable use in a typical construction zone;

ee. In designing, testing, manufacturing, distributing, marketing and/or selling a back-up safety/warning device which was not sufficient for its intended purpose(s); and

ff. In failing to provide adequate guidance and/or instruction for the installation of the back-up warning/safety device.

70. At all times relevant hereto, Plaintiffs' decedent conducted himself in a reasonably prudent and cautious manner.

71. The subject incident and resulting injuries were caused and/or contributed to and were the proximate and result of the negligence of Defendant Preco as outlined above and were not caused or contributed to by Plaintiffs' decedent.

72. The subject incident and all injuries, losses, and/or damages Plaintiffs and Plaintiffs' decedent sustained as a result thereof were caused and or contributed to by the negligence, carelessness and/or recklessness of Defendant Preco described above.

73. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Preco described as outlined above and were not caused or contributed to by Plaintiffs' decedent.

74. Defendant Preco's negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

75. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs Brenda Coble and James E. Clark, Jr., individually, demand judgment against the Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT VI -STRICT LIABILITY - WRONGFUL DEATH
BRENDA COBLE AND JAMES E. CLARK, JR., INDIVIDUALLY, PLAINTIFFS
VS.
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS

76. Each of the above paragraphs are incorporated herein by reference.

77. The extremely hazardous nature of a defective and/or malfunctioning backup safety/warning device and Defendant Lyle Thompson and Plaintiffs' decedent's reliance on such safety features rendered the same an abnormally dangerous product.

78. The severe injuries an death of Plaintiffs' decedent as heretofore previously set forth more fully, were proximately and directly caused by the abnormally dangerous product which was manufactured, designed, installed, tested, distributed, marketed and/or sold by Defendant Preco.

79. Defendant Preco placed the subject backup warning/safety device in its and/or with its above-described defective and/or malfunctioning components into the stream of commerce.

80. Defendant Preco, through its acts, failure to act, commissions and/or omissions as previously set forth, caused the backup warning/safety device to be in a defective and/or malfunctioning condition, and thus unreasonably dangerous, and therefore Defendant Preco is strictly liable for all resulting injuries to Plaintiffs' decedent.

81. As a direct consequence and result of the conduct of Defendant Preco as aforesaid, Plaintiffs have sustained the injuries and damages previously set forth heretofore more fully.

WHEREFORE, Plaintiffs Brenda Coble and James E. Clark, Jr., individually, demand judgment against the Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT VII - BREACH OF WARRANTY - WRONGFUL DEATH
BRENDA COBLE AND JAMES E. CLARK, JR., INDIVIDUALLY, PLAINTIFFS
VS.
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS

82. Each of the above paragraphs are incorporated herein by reference.

83. Defendant Preco warranted that the subject backup warning/safety device and its component parts were merchantable and fit for the purpose for which they were intended.

84. It is believed and averred that the product was used in reliance on the warranties by Defendant Preco.

85. The injuries and damages sustained by Plaintiffs were proximately caused by Defendant Preco's breach of express and implied warranties as follows:

a. In breaching express warranties that the subject backup warning/safety device would be free from defects in Defendant Preco's materials and workmanship;

b. In breaching express warranties that the backup warning/safety device would function properly during foreseeable use;

c. In designing, manufacturing, distributing, installing, and/or selling a backup warning/safety device that was not fit for the particular purpose for which it was sold;

d. In designing, manufacturing, distributing, installing, and/or selling a backup warning/safety device that failed to sufficiently warn individuals of the presence and/or operation of the vehicle upon which said device(s) was/were installed; and

e. In designing, manufacturing, distributing, installing, and/or selling a backup warning/safety device that was not merchantable.

86. The warranties were breached by Defendant Preco with the advent of the previously mentioned defects and/or malfunctions associated with the backup warning/safety device.

87. As a direct and proximately consequence of the conduct and breaches of warranty by Defendant Preco Plaintiffs' decedent sustained the injuries and damages previously set forth heretofore more fully.

WHEREFORE, Plaintiffs Brenda Coble and James E. Clark, Jr., individually, demand judgment against the Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT VIII – SURVIVAL
JAMES E. CLARK, JR., AND BRENDA COBLE, ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED, PLAINTIFFS
VS.
DEFENDANTS LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

88. Each of the above paragraphs is incorporated herein by reference.

89. As a direct and proximate result of the previously-described negligence of Defendants, Plaintiffs' Decedent suffered the following damages:

a. James Edward Clark, a/k/a James Edward Clark, Sr.'s pain, suffering, anguish and inconvenience from the happening of the incident until the time of his death;

b. James Edward Clark, a/k/a James Edward Clark, Sr.'s loss of earning and earning capacity;

c. Deprivation of James Edward Clark, a/k/a James Edward Clark, Sr.'s ability to perform any of the routine functions of daily living;

d. James Edward Clark, a/k/a James Edward Clark, Sr.'s general health and vitality;

e. Death; and

f. Other losses and damages permitted by law.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble, Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, respectfully request judgment in their favor and against Defendants Lyle Thompson; Lyle Thompson, t/d/b/a Valley Excavating and Hauling; New Enterprise Stone & Lime Company, Inc.; New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone and Lime Company; and Preco Electronics, Inc., t/d/b/a Preco Electronics, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Jonathan B. Mack, Esquire
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

VERIFICATION

I, James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

VERIFICATION

I, Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

VERIFICATION

I, Larry M Chilenski Jr, as an authorized representative of Swank Associated Companies, Inc., have read the foregoing **COMPLAINT TO JOIN ADDITIONAL DEFENDANTS** and hereby aver that the statements contained therein are true and correct to the best of my knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to the unsworn falsification to authorities.

SWANK ASSOCIATED COMPANIES, INC.

DATED: 5-26-2010

By: [signature]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **COMPLAINT TO JOIN ADDITIONAL DEFENDANTS** was served via United States Mail, First Class, Postage Prepaid, this 4th day of June, 2010, to:

Jonathan B. Mack, Esquire
57 South Sixth Street
P. O. Box 1107
Indiana, PA 15701

William A. Dopierala, Esquire
Sr. Deputy Attorney General
Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
4801 Atlantic Avenue
Erie, PA 16506

Respectfully submitted,

JONES, GREGG, CREEHAN & GERACE, LLP

BY: _____
JOHN P. DAVIS, III, ESQUIRE

Attorney for Defendant
Swank Associated Companies, Inc.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

JURY TRIAL DEMANDED

PLAINTIFFS' REPLY TO DEFENDANT SWANK ASSOCIATED COMPANIES, INC.

Filed on behalf of Plaintiffs
Bryan S. Neiderhiser, Esquire
Sup. Ct. ID 81496
Troy M. Frederick, Esquire
Sup. Ct. ID 207461
Counsel for Plaintiffs
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602

FILED NO CC
m/10:40 bl
JUN 09 2010
William A. Shaw
Prothonotary/Clerk of Courts
$ (6a)

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

PLAINTIFFS' REPLY TO DEFENDANT SWANK ASSOCIATED COMPANIES, INC.

AND NOW come the Plaintiffs, James E. Clark, Jr., and Brenda Coble, individually and as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased,

by and through their counsel, Troy M. Frederick, Esquire, and Marcus & Mack, P.C., and file the within Reply to Defendant Swank Associated Companies, Inc. New Matter as follows:

42. Paragraph 42 of Defendant's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 42 is specifically denied. It is denied that Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted. By way of further answer, Plaintiffs have set forth cause(s) of action upon which relief can and should be granted. Strict proof to the contrary is demanded at trial.

43. Paragraph 43 of Defendant's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 43 is specifically denied. It its denied that Plaintiffs' claim is or may be barred by the applicable Statute of Limitations. To the contrary, Plaintiffs' lawsuit was filed in a timely and proper manner and in accordance with applicable statutes of limitations. Strict proof to the contrary is demanded at trial.

44. Paragraph 44 of Defendant's New Matter are specifically denied. It is denied that Plaintiffs' decedent did not sustain the injuries claimed. It is further denied that said injuries were caused solely by his own acts, omissions and negligence. By way of further answer, Plaintiffs' Decedent's untimely death was caused by the negligence and/or carelessness of the Defendants as set forth more specifically in the Complaints and Amended Complaints. Therefore, despite this Defendant's assertions to the contrary, Plaintiffs suffered serious, permanent and significant injuries and damages. By way of further answer, and at all times relevant hereto, Plaintiffs' decedent acted in a careful, reasonable and prudent manner and in no way his injuries and untimely death was caused solely by his own acts, omissions and negligence. Strict proof to the contrary is demanded at trial.

45. Paragraph 45 of Defendant's New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 45 is specifically denied. It is denied that Plaintiffs' decedent did not sustain the injuries claimed. It is further denied that said injuries were caused solely by the acts or omissions of others and by events over which instant Defendant had no control and for which instant Defendant is not responsible. By way of further answer, Plaintiffs' Decedent's injuries and/or damages and the subsequent death of Plaintiffs' Decedent were caused and/or contributed to by the negligence and/or carelessness of the Defendants as set forth in the Complaints and Amended Complaints. Strict proof to the contrary is demanded at trial.

46. Paragraph 46 of Defendant's New Matter states conclusions of law to which no response is required. Further, the Pennsylvania Rules of Civil Procedure provide that the affirmative defense of assumption of the risk is deemed denied without need for a response. To the extent that a response is deemed necessary, Paragraph 46 is specifically denied. It is denied that Plaintiffs' decedent did not sustain the injuries claimed. It is specifically denied that the affirmative defense of assumption of the risk is a valid, viable and/or effective affirmative defense in the instant matter. By way of further answer, and at all times relevant hereto, Plaintiffs' decedent acted in a careful, reasonable and prudent manner and in no way assumed the risk. Strict proof to the contrary is demanded at trial.

47. Paragraph 47 of Defendant's New Matter states conclusions of law to which no response is required. Further, the Pennsylvania Rules of Civil Procedure provide that the affirmative defenses of contributory negligence and/or comparative negligence are deemed denied without need for a response. To the extent that a response is deemed necessary, it is specifically denied that the affirmative defenses of contributory negligence and/or comparative

negligence are valid, viable and/or effective affirmative defenses in the instant matter. It is further specifically denied that Plaintiffs' decedent did not sustain the injuries claimed. Strict proof to the contrary is demanded at trial.

48. Paragraph 48 of Defendant's New Matter are specifically denied. It is denied that a dangerous condition did not exist at the construction site which was a substantial factor in causing Plaintiffs' decedent's injury and death. It is further denied that such condition was readily apparent to Plaintiff's decedent or readily apparent to him upon reasonable inspection. It is further denied that instant Defendant had no duty to warn Plaintiffs' decedent of such condition or to take other action to guard Plaintiffs' decedent against injury therefrom. By way of further answer, Plaintiffs' Decedent's untimely death was caused by the negligence and/or carelessness of the Defendants as set forth more specifically in the Complaints and Amended Complaint. Therefore, despite this Defendant's assertions to the contrary, Plaintiffs suffered serious, permanent and significant injuries and damages. Strict proof to the contrary is demanded at trial.

49. Paragraph 49 of Defendant's New Matter are specifically denied. It is denied that instant Defendant exercised reasonable care under the circumstances. By way of further answer, Plaintiffs' Decedent's untimely death was caused by the negligence and/or carelessness of the Defendants as set forth more specifically in the Complaints and Amended Complaint. Therefore, despite this Defendant's assertions to the contrary, Plaintiffs suffered serious, permanent and significant injuries and damages. Strict proof to the contrary is demanded at trial.

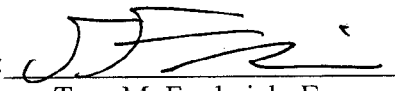
50. Denied. After reasonable investigation, Plaintiffs lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 50, and therefore, the same are denied with strict proof thereof required at trial. By way of further answer, Paragraph 50 is

denied in that the same are conclusions of law which require no response, therefore, strict proof thereof is required at trial.

51. Denied. After reasonable investigation, Plaintiffs lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 51, and therefore, the same are denied with strict proof thereof required at trial. By way of further answer, Paragraph 51 is denied in that the same are conclusions of law which require no response, therefore, strict proof thereof is required at trial.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court dismiss Defendant Swank Associated Companies, Inc.'s New Matter and judgment be entered in their favor.

MARCUS & MACK, P.C.

By: 

Troy M. Frederick, Esq.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 207461

VERIFICATION

I, James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

VERIFICATION

I, Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,
Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,
Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,
Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' REPLY TO DEFENDANT SWANK ASSOCIATED COMPANIES, INC. NEW MATTER** was mailed,

U.S. First Class mail, to the following this 8th day of June, 2010:

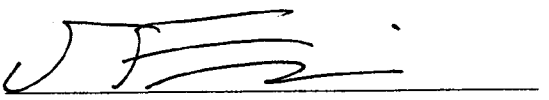
Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise
Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics, Inc.,
t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,
Plaintiffs,
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

FILED
JUN 28 2010
William A. Shaw
Prothonotary/Clerk of Courts

PRAECIPE FOR VOLUNTARY DISCONTINUANCE, WITHOUT PREJUDICE, THE CROSSCLAIM AGAINST DEFENDANTS, LYLE THOMPSON and LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC.; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS.

JAMES E. CLARK, JR., and BRENDA COBLE, individually and As ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED
Plaintiffs,
v.
SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,
Defendants.
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Additional Defendants.

FILED ON BEHALF OF DEFENDANT:
Swank Associated Companies, Inc.

COUNSEL OF RECORD FOR THIS PARTY:

JOHN P. DAVIS, III, ESQUIRE
PA ID No. 33294

JONES, GREGG, CREEHAN & GERACE, LLP
411 SEVENTH AVENUE, SUITE 1200
PITTSBURGH, PA 15219-1905
(412) 261-6400

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and
as ADMINISTRATORS OF THE
ESTATE OF JAMES EDWARD CLARK,
a/k/a, JAMES EDWARD CLARK,
SR., DECEASED,
Plaintiffs,
v.
LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE STONE
& LIME CO., INC., PRECO
ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,
Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and
As ADMINISTRATORS OF THE
ESTATE OF JAMES EDWARD CLARK,
a/k/a, JAMES EDWARD CLARK, SR.,
DECEASED
Plaintiffs,
v.
SWANK ASSOCIATED COMPANIES,
INC., and COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
TRANSPORTATION,
Defendants.
v.
LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE STONE
& LIME CO., INC., PRECO
ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,
Additional Defendants.

1

PRAECIPE FOR VOLUNTARY DISCONTINUANCE, WITHOUT PREJUDICE, THE CROSSCLAIM AGAINST DEFENDANTS, LYLE THOMPSON and LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC.; PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS

TO: Prothonotary

Please discontinue, without prejudice, the Crossclaim asserted against Defendants, Lyle Thompson and Lyle Thompson t/d/b/a Valley Excavating and Hauling; New Enterprise Stone & Lime Co., Inc.; Preco Electronics, Inc. t/d/b/a Preco Electronics.

Respectfully submitted,

JONES, GREGG, CREEHAN & GERACE, LLP

BY: _____
JOHN P. DAVIS, III, ESQUIRE

Attorney for Defendant
Swank Associated Companies, Inc

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PRAECIPE FOR VOLUNTARY DISCONTINUANCE, WITHOUT PREJUDICE, THE CROSSCLAIM ASSERTED AGAINST DEFENDANTS, LYLE THOMPSON and LYLE THOMPSON t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC.; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS** was served via United States Mail, First Class, Postage Prepaid, this 25th day of June, 2010, to:

Jonathan B. Mack, Esquire
57 South Sixth Street
P. O. Box 1107
Indiana, PA 15701
(Attorney for Plaintiffs)

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Attorney for Defendants Lyle Thompson, Lyle Thompson t/d/b/a Valley Excavating and Hauling)

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
650 Washington Road
Pittsburgh, PA 15228
(Attorneys for Defendant New Enterprise Stone & Lime Co., Inc.)

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Attorneys for Defendant Preco Electronics, Inc. t/d/b/a Preco Electronics)

William A. Dopierala, Esquire
Sr. Deputy Attorney General
Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
4801 Atlantic Avenue
Erie, PA 16506
(Attorneys for Defendant Commonwealth of Pennsylvania, Department of Transportation)

Respectfully submitted,

JONES, GREGG, CREEHAN & GERACE, LLP

BY: _____
JOHN P. DAVIS, III, ESQUIRE

Attorney for Defendant
Swank Associated Companies, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,
Plaintiffs,
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

ACCEPTANCE OF SERVICE

FILED ON BEHALF OF DEFENDANT:
Swank Associated Companies, Inc.

JAMES E. CLARK, JR., and BRENDA COBLE, individually and As ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED
Plaintiffs,
v.
SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,
Defendants.
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Additional Defendants.

COUNSEL OF RECORD FOR THIS PARTY:

JOHN P. DAVIS, III, ESQUIRE
PA ID No. 33294

JONES, GREGG, CREEHAN & GERACE, LLP
411 SEVENTH AVENUE, SUITE 1200
PITTSBURGH, PA 15219-1905
(412) 261-6400

FILED No cc
m/ 12:16cm
JUN 28 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,
Plaintiffs,
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

JAMES E. CLARK, JR., and BRENDA COBLE, individually and As ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED
Plaintiffs,
v.
SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,
Defendants.
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Additional Defendants.

ACCEPTANCE OF SERVICE

I, Timothy J. Burdette, Esquire, hereby certify that I am authorized to accept service of the Complaint to Join Additional

Defendants that was filed on June 7, 2010 and was sent to me via Certified Mail, Return Receipt Requested on June 8, 2010 on behalf of Additional Defendant, Lyle Thompson and Lyle Thompson t/d/b/a Valley Excavating and Hauling.

Date: 6/10/10

Timothy J. Burdette, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED,
Plaintiffs,
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Defendants.

No.: 2008-2452-CD
2009-01314-CD
CONSOLIDATED AT: 2008-2452-CD

JAMES E. CLARK, JR., and BRENDA COBLE, individually and As ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a, JAMES EDWARD CLARK, SR., DECEASED
Plaintiffs,
v.
SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,
Defendants.
v.
LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,
Additional Defendants.

ACCEPTANCE OF SERVICE

I, Jeffrey M. Olszewski, Esquire, hereby certify that I am authorized to accept service of the Complaint to Join Additional

Defendants that was filed on June 7, 2010 and was sent to me via Certified Mail, Return Receipt Requested on June 8, 2010 on behalf of Additional Defendant, New Enterprise Stone & Lime Co., Inc.

CIPRIANI & WERNER

Date: 6/16/10

By: _____
Jeffrey M. Olszewski, Esquire

No.: 2008-2452-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ACCEPTANCE OF SERVICE** was served via United States Mail, First Class, Postage Prepaid, this 25th day of June, 2010, to:

Jonathan B. Mack, Esquire
57 South Sixth Street
P. O. Box 1107
Indiana, PA 15701
(Attorney for Plaintiffs)

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
(Attorney for Defendants Lyle Thompson, Lyle Thompson t/d/b/a Valley Excavating and Hauling)

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
650 Washington Road
Pittsburgh, PA 15228
(Attorneys for Defendant New Enterprise Stone & Lime Co., Inc.)

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Attorneys for Defendant Preco Electronics, Inc. t/d/b/a Preco Electronics)

William A. Dopierala, Esquire
Sr. Deputy Attorney General
Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
4801 Atlantic Avenue
Erie, PA 16506
(Attorneys for Defendant Commonwealth of Pennsylvania, Department of Transportation)

JONES, GREGG, CREEHAN & GERACE, LLP

By: _____
John P. Davis, III, Esquire

ATTORNEY FOR DEFENDANT
Swank Associated Companies, Inc.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED
AUG 17 2010
William A. Shaw
Prothonotary/Clerk of Courts

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF OSHA EMPLOYEE, BRENDAN M. CLAYBAUGH

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Troy M. Frederick, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 207461

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,
Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,
Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,
Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF OSHA EMPLOYEE, BRENDAN M. CLAYBAUGH

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF OSHA EMPLOYEE, BRENDAN M. CLAYBAUGH,** on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Troy M. Frederick, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 207461

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **OSHA EMPLOYEE, BRENDAN M. CLAYBAUGH** will be taken on oral examination at the Sargent's Court Reporting Office located at 308 Seneca Street, Oil City, PA 16301, at 11:00 a.m. on Friday, October 08, 2010 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: _____
Troy M. Frederick, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 207461

Dated: August 16, 2010

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION was served by U.S. First Class Mail, postage prepaid this 16th day of August 2010, upon the following:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating
and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

(412) 531-3700

Jaime N. Doherty, Esq.
Goehring, Rutter & Boehm
Attorneys for Defendant Preco Electronics,
Inc., t/d/b/a Preco Electronics
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

(412) 281-0587

Jeffrey M. Olszewski, Esquire
CIPRIANI & WERNER
Attorneys for Defendant New Enterprise Stone & Lime Co., Inc.
650 Washington Road
Pittsburgh, PA 15228

(412) 563-2500

William A. Dopierala
Sr. Deputy Attorney General
Attorneys for Commonwealth of Pennsylvania, Dept. of Transportation
Tort Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

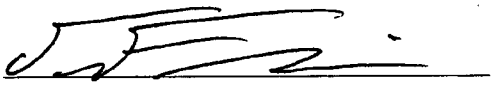
(814) 836-4363

John P. Davis, III, Esq.
Jones, Gregg, Creehan & Gerace, LLP
Attorneys for Swank Associated Companies, Inc.
411 Seventh Ave., Suite 1200
Pittsburgh, PA 15219-1905

(412) 261-6400

Sargent's Court Reporting
210 Main Street
Johnstown, PA 15901

(800) 727-4349



FILED
AUG 17 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., et al.,

Plaintiffs,

v.

SWANK ASSOCIATED COMPANIES, INC., et al.,

Original Defendants.

v.

LYLE THOMPSON, et al.,

Additional Defendant.

Case No.: 2008-2452-CD ~~2009—01314-CD~~

JURY TRIAL DEMANDED

ANSWER TO COMPLAINT TO JOIN ADDITIONAL DEFENDANTS, NEW MATTER AND CROSS-CLAIM

Filed on Behalf of:

Lyle Thompson, t/d/b/a Valley Excavating and Hauling, Additional Defendant.

Counsel of Record for This Party:

TIMOTHY J. BURDETTE, ESQUIRE
PA ID. NO. 32703

733 Washington Road, Suite 209
Pittsburgh, PA 15228
Telephone: (412) 531-3700
Facsimile: (412) 344-0799
tjb@burdettelaw.net

To: The Within Parties:

You are hereby notified to file a written response to the enclosed Answer to Complain to Join Additional Defendants, New Matter and Cross-Claim within twenty (20) days from service hereof or judgment may be entered against you.

By: TIMOTHY J. BURDETTE
Attorney for Additional Defendant

FILED
13:16 BOH
OCT 21 2010
William A. Shaw
Prothonotary/Clerk of Courts
no cc
6a

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., et al., Plaintiffs, v. SWANK ASSOCIATED COMPANIES, INC., et al., Original Defendants, v. LYLE THOMPSON; et al., Additional Defendant.	Case No.: 2009—01314-CD

ANSWER

AND NOW, comes the additional defendant, Lyle S. Thompson, Sr., t/d/b/a Valley Excavating and Hauling, and files the following answer to the complaint to join additional defendants filed by original defendant Swank Associated Companies, Inc.:

1. The averments contained in paragraphs 1 through 3 of the joinder complaint are admitted.

2. This additional defendant is advised and therefore avers that the averments contained in paragraphs 4 through 6 of the joinder complaint are directed to co-additional defendant and that no response to those averments is required from Lyle S. Thompson, Sr.

3. The averments contained in paragraphs 7 through 9 of the joinder complaint are admitted. By way of further answer the following paragraphs of this answer are incorporated herein by reference.

4. The averments contained in paragraphs 10 and 11 of the joinder complaint are strictly and specifically denied. To the contrary, the averments contained in the amended complaint speak for themselves.

5. The averments contained in paragraph 12 of the joinder complaint are admitted insofar as they allege that original defendant Swank Associated Companies was a subcontractor for New Enterprise Stone & Lime Co., Inc., for the subject construction project. After reasonable investigation this additional defendant is presently without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraph 12 of the joinder complaint. Those averments are therefore denied and strict proof thereof is demanded at the time of trial.

6. The averments contained in paragraph 13 of the joinder complaint are strictly and specifically denied. To the contrary, Exhibit "G" to the joinder complaint, as well as Exhibit "A" to that exhibit, speak for themselves. After reasonable investigation additional defendant Thompson is presently without knowledge or information sufficient to form a belief as to the truth of Swank's assertion that it agreed only to provide milling services and did not agree to maintain traffic or provide flagpersons, truck mirrored material, provide manpower to back-up trucks to the rotomill or to provide trucking for the removal of milled materials. These allegations are therefore denied and strict proof thereof is demanded at the time of trial.

7. Additional defendant Thompson is advised and therefore avers that the allegations contained in paragraph 14 of the joinder complaint are directed to co-additional defendant New Enterprise Stone & Lime Co., Inc. In the event that it is judicially determined that a response to those averments is required from additional defendant Thompson, the other paragraphs of this answer are incorporated herein by reference.

8. The averments contained in paragraph 15 of the joinder complaint are admitted.

9. Additional defendant Thompson is advised and therefore avers that the allegations contained in paragraph 16 of the joinder complaint constitute a conclusion of law to which no response is required.

10. The averments contained in paragraph 17 of the joinder complaint are admitted.

11. The averments contained in paragraph 18 of the joinder complaint are strictly and specifically denied. To the contrary, the averments contained in the complaint filed against additional defendant Thompson at No. 2008-2452-CD speak for themselves.

12. The averments contained in paragraphs 19 and 20 of the joinder complaint are denied generally pursuant to Pa. R.C.P. No. 1029(e). By way of further answer to the joinder complaint, additional defendant Thompson incorporates herein by reference his answer and new matter to the complaint filed against him by the plaintiffs at No. 2008-2452-CD.

13. Additional defendant Thompson is advised and therefore avers that the allegations contained in paragraphs 21 through 24 of the joinder complaint are directed to co-additional defendants New Enterprise Stone & Lime Co., Inc. and Preco Electronics, Inc., and that no response to those averments is required from additional defendant Thompson. In the event that it is judicially determined that such a response is required, additional defendant Thompson incorporates herein by reference the preceding paragraphs of this answer as well as his answer to the plaintiff's complaint filed against him at No. 2008-2452-CD.

NEW MATTER

By way of further answer to the joinder complaint, additional defendant Lye S. Thompson, Sr., asserts the following as new matter:

14. Any claim for sole liability asserted in the joinder complaint against this additional defendant is barred by the two year statute of limitations set forth at 42 Pa. C.S. §5524, which is pled as an affirmative defense.

15. Additional defendant Thompson is advised and therefore avers that the affirmative defenses of contributory negligence, comparative negligence and assumption of the risk need not be pled specifically under Pa. R.C.P. No. 1030.

16. In the event that it is judicially determined that plaintiff's decedent and additional defendant Lyle S. Thompson, Sr. were co-employees of the same statutory employer at the time of the complained of accident, additional defendant Thompson pleads herein as an affirmative defense the immunity from suit afforded under the Pennsylvania Worker's Compensation Act and the principles of law set forth in *Fonner v. Shadon, Inc.,* 555 Pa. 370, 724 A.2d 903 (1999).

17. In the event that it is judicially determined that plaintiff's decedent was a business invitee on property in the possession of the Commonwealth of Pennsylvania, Department of Transportation, and/or New Enterprise Stone & Lime Co., Inc., and/or Swank Associated Companies, additional defendant Thompson asserts as an affirmative defense the duties imposed upon such possessors of land under the principles of law set forth in *Richardson v. Dial Corp.,* 2007 WL 626057 (M.D. Pa. 2007).

WHEREFORE, additional defendant Lyle S. Thompson, Sr., t/d/b/a Valley Excavating and Hauling, demands that the joinder complaint against him be dismissed with costs sustained in his behalf.

NEW MATTER – CROSS-CLAIM

AND NOW, comes the additional defendant, Lyle S. Thompson, Sr., t/d/b/a Valley Excavating and Hauling, and pursuant to Pa. R.C.P. No. 1031.1, asserts the following cross-claim

against original defendants Swank Associated Companies, Inc. and Commonwealth of Pennsylvania, Department of Transportation, as well as co-additional defendants New Enterprise Stone & Lime Co., Inc. and Preco Electronics:

1. In the event it is judicially determined that an accident as described by the plaintiffs in their complaint and amended complaint, strict proof of which has been demanded hereinabove, additional defendant Thompson herein asserts a claim against the original defendants and co-additional defendants for indemnity or, alternatively, contribution, for any amount which may be adjudged due and owing by additional defendant Thompson.

WHEREFORE, additional defendant Lyle S. Thompson, Sr., t/d/b/a Valley Excavating and Hauling, demands that judgment be entered on his cross-claim against the original defendants and co-additional defendants.

A JURY TRIAL IS DEMANDED.

BY: _____

TIMOTHY J. BURDETTE, ESQUIRE,
Attorney for Lyle S. Thompson, Sr.,
t/d/b/a Valley Excavating and Hauling,
Additional Defendant.

VERIFIED STATEMENT

I, LYLE THOMPSON, individually and t/d/b/a Valley Excavating and Hauling, am duly authorized to make this Verified Statement on behalf of Valley Excavating and Hauling, and I hereby verify that the statements set forth in the foregoing *Answer to Complaint to Join Additional Defendants, New Matter and Cross-Claim* are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Date: 10-12-2010

By: _____
Signature

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED NO CC
4 APR 21 2011
William A. Shaw
Prothonotary/Clerk of Courts

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF SWANK ASSOCIATED COMPANIES, INC., DESIGNEE(S)** on the 20th day of April, 2011, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED NO CC
m/11:23/611
APR 21 2011
William A. Shaw
Prothonotary/Clerk of Courts

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF NEW ENTERPRISE STONE & LIME CO., INC., DESIGNEE(S)** on the 20th day of April, 2011, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED NO CC
4 APR 21 2011
William A. Shaw
Prothonotary/Clerk of Courts

- AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF PENNDOT DESIGNEE(S)** on the 20th day of April, 2011, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

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

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORSO F THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED Plaintiffs, v. LYLE THOMPSON; LYLE THOMPSON, T/D/B/A VALLEY EXCAVATING and HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS, Defendants.	No. 2008-2452-CD **PRAECIPE FOR APPEARANCE** Filed on behalf of Commonwealth of Pennsylvania, Department of Transportation Counsel of Record for this Party: P. Brennan Hart Pa. I.D. #18123 Shelly R. Pagac Pa. I.D. #63327 PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP One Oxford Centre, 38th Floor Pittsburgh, PA 15219 (412) 263-2000
JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORSO F THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED Plaintiffs, v. SWANK ASSOCIATED COMPANIES, INC.; and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, Defendants, v. LYLE THOMPSON; LYLE THOMPSON, T/D/B/A VALLEY EXCAVATING and HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS, Additional Defendants.	

FILED 1cc Atty Hart
m/ 10:45
JUN 23 2011 copy C/A
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORSO F THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED Plaintiffs, v. LYLE THOMPSON; LYLE THOMPSON, T/D/B/A VALLEY EXCAVATING and HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS, Defendants.	)	No. 2008-2452-CD
JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORSO F THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED Plaintiffs, v. SWANK ASSOCIATED COMPANIES, INC.; and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, Defendants, v. LYLE THOMPSON; LYLE THOMPSON, T/D/B/A VALLEY EXCAVATING and HAULING; NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS, Additional Defendants.	)	

PRAECIPE FOR APPEARANCE

Please enter the appearance of P. Brennan Hart, Shelly R. Pagac, and Pietragallo Gordon Alfano Bosick & Raspanti, LLP, on behalf of Defendant Commonwealth of Pennsylvania, Department of Transportation, in regard to the above-captioned action.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

By _____
P. Brennan Hart

One Oxford Centre, 38th Floor
Pittsburgh, PA 15219
(412) 263-2000

Date: June 20, 2011

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Praecipe for Appearance upon counsel of record this 20th day of June, 2011, by United States mail, first-class, postage prepaid, addressed as follows:

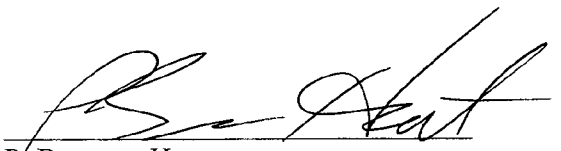
Jonathan B. Mack, Esquire
57 South Sixth Street, P. O. Box 1107
Indiana, PA 15701

Jaime N. Doherty, Esquire
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
650 Washington Road
Pittsburgh, PA 15228

Timothy J. Burdette, Esquire
733 Washington Road
Suite 209
Pittsburgh, PA 15228

John P. Davis, III, Esquire
Jones, Gregg, Creehan & Gerace, LLP
411 Seventh Avenue, Suite 1200
Pittsburgh, PA 15219-1905



P. Brennan Hart

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., , t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants,

vs.

SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

FILED

JUN 28 2011

William A. Shaw
Prothonotary/Clerk of Courts

MOTION FOR SUMMARY JUDGMENT

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

JURY TRIAL DEMANDED

G.D. 08-025098

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., , t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants,

vs.

SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

MOTION FOR SUMMARY JUDGMENT

Defendant, Preco Electronics, Inc. t/d/b/a Preco Electronics ("Preco"), by and through its counsel Goehring, Rutter & Boehm, moves this Honorable Court for Summary Judgment pursuant to Pa. R.C.P. 1035, and in support of the Motion, sets forth the following:

1. This action arises out of a fatal construction site incident on July 11, 2007, along State Route 8012 in Bradford Township, Clearfield County, PA.

2. James Edward Clark, 65 years old on July 11, 2007, was an inspector employed by Erdman Anthony Associates and working for or on behalf of the Pennsylvania Department of Transportation at this milling/paving construction site.

3. As averred in Plaintiffs' Complaint, Mr. Clark was taking measurements on site and at the rear of a tri-axle dump truck owned and operated by Defendant Lyle Thompson, d/b/a Valley Excavating, an independent contractor of Defendant general contractor New Enterprise Stone & Lime Company, Inc. ("New Enterprise").

4. Plaintiffs, Mr. Clark's adult children, James E. Clark, Jr., and Brenda Coble, individually and as Administrators of the Estate of James Edward Clark, a/k/a/ James Edward Clark, Sr., deceased (collectively, "Plaintiffs"), initiated this action through Praecipe for Writ of Summons on July 9, 2009.

6. Plaintiffs subsequently filed a multi-count Complaint in wrongful death on December 26, 2008 against Defendants Lyle Thompson t/d/b/a Valley Excavating & Hauling (tri-axle dump truck driver/operator); New Enterprise (general contractor on the site); and Preco Electronics Inc. (alleged manufacturer of the back-up alarm on Mr. Thompson's tri-axle dump truck on the date of the incident). A copy of the Complaint is attached hereto and incorporated herein by reference as Exhibit "A."

7. Plaintiffs filed a second Complaint on December 2, 2009 against Defendants Swank Associated Companies, Inc. ("Swank") (subcontractor to New Enterprise on site) and the Commonwealth of Pennsylvania, Department of Transportation ("PennDOT")(Project Owner). The actions have been consolidated at this docket number.

8. Plaintiffs assert a wrongful death action against Preco based upon: Negligence (Count V); Strict Products Liability (Count VI); Breach of Warranty (Count VII); and a Survival Action (Count VIII).

9. Plaintiffs allege that the tri-axle dump truck driven by Defendant Lyle Thompson was: 1) equipped with a back-up warning/safety device manufactured, designed, tested, inspected, produced, marketed and/or sold by Preco (Complaint, Paragraph 9); and 2) that the back-up alarm involved in the incident was defective. (Complaint, Paragraph 61).

10. The parties have engaged in rigorous discovery for two and one-half years since the filing of the first Complaint by the Plaintiffs.

11. During discovery, Defendant Preco responded to extensive Interrogatories and Requests for Production of Documents from Plaintiff on July 21, 2009. A complete copy of the responses and objections to Plaintiffs' First Set of Interrogatories and Request for Production of Documents directed to Defendant Preco Electronics Inc. is attached hereto and marked as Exhibit "B" to this Motion.

12. In its responses to discovery, including in its Preliminary Statement, Preco provided in its DATE CODES STANDARD PROCESS SPECIFICATION & PROCEDURE SHEET, which identifies its DATE CODE METHODOLOGY, a process Preco uses to "stamp" each alarm manufactured with four numbers and one number, representing the month, year and revision level of the alarm..

13. The Preliminary Statement provides

> A Date Code was stamped in a contrasting color on the body of every Preco Alarm manufactured. The Date Code was comprised of four (4) numbers and one (1) letter. The first two numbers represent the week of the year in which the individual alarm was manufactured. The last two numbers represent the year in which the individual alarm was manufactured. The letter represents the level of revision of either the base or primary product. The alarm Mr. Thompson alleges was affixed to his truck at the time of the incident in July 2007 bears a Date Stamp of 4207M and was manufactured in the forty-second week of 2007 and was Revision Level M. Based upon the Date Code Methodology, Preco denies that the alarm at issue in this case was affixed to Mr. Thompson's vehicle at the time of the incident as it was not yet manufactured. The incident occurred in July, 2007 and the alarm at issue in this case was not manufactured until the forty-second week of 2007, or the week of October 14, 2007.

14. The Date Code Methodology specification sheet referenced above was produced in discovery and is attached hereto and incorporated herein to this Motion at Exhibit "C."

15. Also during discovery and prior to receiving Preco's written responses, Defendant Thompson made available for inspection and review to all parties a Preco product that he believed, at the time, had been affixed to his truck on the date of the incident. A photo of the alarm from the inspection, with date stamp, is attached hereto and incorporated herein by reference at Exhibit "D." The information supplied to all parties by Preco in discovery controverts this fact and caused Mr. Thompson to withdraw his statement.

16. Subsequent to receiving Preco's written discovery responses which denied that the alarm existed at the time of the accident, Mr. Thompson provided a recorded statement of his son, Ty Thompson. Ty Thompson provided a recorded statement transcript on or about August 14, 2009, a copy of which is attached to this Motion and marked as Exhibit "E."

17. In that statement, Ty Thompson recalls that he replaced the alarm that was on his father's truck at the time of the incident shortly after the OSHA inspector concluded her inspection.. (Exhibit "B", Recorded Statement Transcription of Ty J. Thompson, dated August 14, 2009, Page 3):

> "A. Yeah, I was just cleaning the truck off and going over it and making sure—when you clean it, you pretty much go over it, check all the suspension parts, make sure nothing's broke and all that. Cleaned up everything. I noticed there was a wire loose on one of the back-up alarms from the power washer, from hitting it. And I went to fix it and one end of the back-up alarm looked like it was damaged from the power washer.
>
> Q: Okay. So you replaced it?
>
> A: Correct. Yes.
>
> * * *
>
> Q: Did you keep the old alarm or did you throw it away?
>
> A: Uh, as far as I know, it probably got misplaced or got thrown away. I didn't – I was under the impression if they wanted it, they would have took it then. But I thought they were done with it, that they didn't have

no need for it, so I probably threw it away, 'cause it wasn't working. It was broken.

Q: Okay. Do you remember what kind it was? Did you make any notation at all?

A: All I know there was two more on the shelf. I picked one up and put it on."

18. Ty Thompson's statement confirms and further supports Preco's position: there is no evidence that the alarm that was on the truck at the time of the incident was a Preco product; Defendant Lyle Thompson's son Ty removed the alarm after the incident without noting the manufacturer; and Ty Thompson cannot remember the name brand or manufacturer of the alarms he removed or replaced.

19. The Preco alarm that was inspected during the course of discovery was not manufactured until at least three months after the incident involving Mr. Clark and therefore, could not have been on the truck at the time of the incident. (See Exhibits C and D.)

20. What is uncontroverted in this case is that there is no evidence, from any source, that the alarm on Mr. Thompson's tri-axle dump truck at the time of the incident involving Mr. Clark in July, 2007 was a Preco product.

21. The accident reports prepared by OSHA and the Pennsylvania State Police fail to identify the manufacturer of the alarm. Copies of the police report are attached hereto and incorporated into this Motion at Exhibit "F." Copies of the OSHA Report are attached hereto and incorporated into this Motion at Exhibit "G."

22. None of the photographs taken and provided in discovery by OSHA, PennDOT, New Enterprise, or the Pennsylvania State Police identify Preco as the manufacturer of the back-up alarm on Mr. Thompson's truck at the time of the incident.

23. There have been countless depositions in this matter, yet no one, not OSHA, the Pennsylvania State Police, PennDOT, New Enterprise, nor any other third party observer

to this incident testified that the alarm on the tri-axle dump truck at the time that Mr. Thompson struck Mr. Clark was a Preco product.

24. Trooper Robert J. Ferdarko, Jr. was the investigating officer for the Pennsylvania State Police who arrived on the scene shortly after the accident. Trooper Ferdarko completed a thorough inspection of the truck, including the back up alarm, and an investigation of the scene of the accident. Trooper Ferdarko completed a comprehensive Police Report and was deposed on June 28, 2010. Trooper Ferdarko could not identify the make, model or manufacturer of the subject back up alarm. (See Commonwealth of Pennsylvania Police Crash Reporting Form, Ex. F.)

25. Corporal John P. Burke was the collision reconstruction specialist who assisted Trooper Ferdarko in investigating Lyle Thompson's truck and the accident scene. Corporal Burke was deposed on June 28, 2010 and could not identify the make, model or manufacturer of the subject back up alarm:

Q. Okay. Did you happen to look at the back-up alarm at all on the dump truck?

A. Yes.

Q. Were you able to see who manufactured it?

A. I didn't check that.

***

Q. Did you take any pictures of the back-up alarm?

A. No.

(Burke Dep. 6/28/2010, 26:5-23; Ex. H.)

26. Several OSHA inspectors inspected, photographed and tested the back up alarm, but did not identify the manufacturer of the subject alarm. Brendan Claybaugh was the OSHA Inspector in charge of investigating the accident and specifically the back up alarm. Inspector Claybaugh completed the "Inspection Narrative" attached as Exhibit G.

27. PennDOT's Fatal Investigation Coordinator, Rhonda Stankavich, investigated and photographed the accident, but did not identify the manufacturer of the subject alarm. Ms. Stankavich was deposed on June 28, 2010 and did not identify the make, model or manufacturer of the subject back up alarm.

28. Several New Enterprise employees, Safety Director Steve Tomlinson, Senior Safety Representative Andrew Lingenfelter and Project Superintendent Brian Ormsby investigated the scene and did not identify, either at deposition, or in written reports, the make, model or manufacturer of the backup alarm on Mr. Thompson's truck on July 11, 2007.

29. The parties have completed discovery related to the manufacture of the backup alarm involved in the accident, and that discovery has failed to produce any evidence in support of Plaintiffs' averments in the Complaint that the backup alarm was manufactured, designed, tested, inspected, produced, marketed and/or sold by Preco.

30. There is no evidence of record thus far that would support any cause of action against Preco by Plaintiff.

31. Based upon this astounding lack of evidence against Preco, Preco twice requested voluntary dismissal from this case. Both requests were denied. Preco should not be "held hostage" in this litigation where there is no evidence against it.

32. Preco is entitled to Summary Judgment pursuant to Pa. R. Civ. P. Rule 1035.2(1) and (2) in this matter.

33. Rule 1035.2(1) provides that Summary Judgment is appropriate "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report ..."

34. In this matter, there is no genuine issue of material fact as to whether the alarm on the truck at the time of the accident and was a Preco product. The evidence shows

that it was not. Preco's written responses to discovery, submitted in July, 2009, supported by Ty Thompson's sworn statement in August, 2009, prove that the alarm that was submitted to the parties during discovery for inspection was NOT the alarm on the truck at the time of the accident. In fact, the alarm submitted to the parties for inspection was not even manufactured at the time of the accident.

35. Rule 1035.2(2) provides that summary judgment is appropriate "if, after the completion of discovery relevant to the motion, ... an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury."

36. In this matter, Plaintiffs bear the burden to prove that Preco manufactured the back-up warning or alarm device that was on Mr. Thompson's tri-axle dump truck at the time of the incident involving Mr. Clark on July 11, 2007.

37. Plaintiffs have failed to date to demonstrate such evidence. There is no evidence that Preco manufactured the back-up alarm at issue in the case.

38. Preco is entitled to Summary Judgment pursuant to Pa. R. Civ. P. Rule 1035.2(1).

39. This matter is ripe for summary judgment.

40. Plaintiffs have failed to produce evidence of facts essential to the causes of action against Preco in this matter such that Plaintiffs should not be permitted by the Court, as a matter of law, to proceed to trial against Preco.

WHEREFORE, Defendant, Preco Electronics, Inc. t/d/b/a Preco Electronics, respectfully requests that this Honorable Court grant its Motion for Summary Judgment and enter an Order in favor of Preco Electronics, Inc. t/d/b/a Preco Electronics and against Plaintiffs, James E. Clark, Jr., and Brenda Coble, individually and as Administrators of the

Estate of James Edward Clark, a/k/a/ James Edward Clark, Sr., deceased, dismissing all claims against Preco Electronics Inc. with prejudice.

Date: June 23rd, 2011

Respectfully submitted,

GOEHRING, RUTTER & BOEHM

By Jaime N. Doherty
Jaime N. Doherty, Esquire

Pa. ID #89402
Frick Building, 14th Floor
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

A

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants

No. 2008-2452-CD

JURY TRIAL DEMANDED

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

DEC 26 2008

Attest.

Prothonotary/
Clerk of Courts

COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiffs

Jonathan B. Mack, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

COPY

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED.

No.

JURY TRIAL DEMANDED

Plaintiffs

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants

NOTICE TO PLEAD

TO: LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING; NEW ENTERPRISE STONE & LIME COMPANY, INC., NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS, DEFENDANTS

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. 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 REDUCED FEE OR NO FEE.

David S. Meholick, Court Administrator
CLEARFIELD County Courthouse
230 E. Market Street
CLEARFIELD, PA 16830
(814) 765-2641 Ext. 5982

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Jonathan B. Mack, Esquire
97 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME COMPANY, INC.,
NEW ENTERPRISE STONE & LIME
COMPANY, INC., t/d/b/a NEW ENTERPRISE
STONE AND LIME COMPANY;
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants

No.

JURY TRIAL DEMANDED

COMPLAINT

AND NOW COME the Plaintiffs, James E. Clark, Jr., and Brenda Coble individually, and as Administrators of The Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by and through their attorneys, Jonathan B. Mack, Esquire, and Marcus and Mack, P.C., and file the following Complaint:

1. Plaintiffs are adult individuals who are the son and daughter of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, and are the Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, by grant of Letters from the Clearfield County Register of Wills on July 20, 2007. Plaintiff James E. Clark, Jr., resides in Armagh,

Indiana County, Pennsylvania. Plaintiff Brenda Coble resides in Woodbridge, Prince William County, Virginia.

2. Defendant Lyle Thompson in an adult individual believed to reside at 11057 Creek Road, Fannettsburg, Franklin County, Pennsylvania.

3. It is believed that Defendant Lyle Thompson, t/d/b/a Valley Excavating and Hauling, conducts business with a business address of 11057 Creek Road, Fannettsburg, Franklin County, Pennsylvania.

4. Defendant New Enterprise Stone & Lime Company, Inc., is a Delaware corporation with a business address of PO Box 77, New Enterprise, Bedford County, Pennsylvania. Defendant New Enterprise Stone & Lime Company, Inc. regularly conducts business in the Commonwealth of Pennsylvania.

5. It is believed that Defendant New Enterprise Stone & Lime Company, Inc., trades and does business as New Enterprise Stone and Lime Company, with a business address of PO Box 77, New Enterprise, Bedford County, Pennsylvania. Defendant New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone & Lime Company regularly conducts business in the Commonwealth of Pennsylvania.

6. Defendant Preco Electronics, Inc., is a corporation with a business address of 415 North Maple Grove Road, Boise, Ada County, Idaho. It is believed and averred that Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, regularly conducts business in the Commonwealth of Pennsylvania.

7. This lawsuit arises out of an incident that occurred on or about July 11, 2007. Plaintiffs' decedent was walking east in the middle lane of State Route 8012, in Bradford Township, Clearfield County, Pennsylvania. At the same time and place, Defendant Lyle

Thompson, was operating a tri-axle dump truck owned by Lyle Thompson and/or by Lyle Thompson, t/d/b/a Valley Excavating and Hauling, which was facing west, backing up eastbound on State Route 8012, in Bradford Township, Clearfield County, Pennsylvania (hereinafter referred to as the "Accident Site"). Suddenly and without warning, Defendant Thompson struck Plaintiffs' decedent with the rear of the dump truck he was operating and continued to back the dump truck over Plaintiffs' decedent. Plaintiffs' decedent died on July 11, 2007, as a result of massive head trauma with multiple skull fractures and traumatic loss of brain tissue.

8. It is believed that Defendant New Enterprise Stone & Lime Company, Inc., and/or New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone and Lime Company, was the general contractor at the Accident Site.

9. It is believed and is averred that the truck which Defendant Thompson was operating was equipped with a backup warning/safety device that was manufactured, designed, tested, inspected, produced, marketed and/or sold by Defendant Preco Electronics, Inc.

10. Plaintiffs, as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, bring this action on their own behalf and on behalf of all persons entitled to recover damages for the wrongful death of James Edward Clark, a/k/a James Edward Clark, Sr., pursuant to 42 Pa. C.S.A. §8301. Plaintiffs also bring this action to recover damages on behalf of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., pursuant to 42 Pa. C.S.A. §8302.

11. Persons entitled to recover damages for Plaintiffs' decedent's wrongful death and their relationship to the decedent include:

a. Brenda Coble (daughter), 1512 Forest Lane, Woodbridge, Prince William County, Virginia, 22191; and

b. James E. Clark, Jr., (son), PO Box 187, 115 Mountain View Drive, Armagh, Indiana County, Pennsylvania, 15920.

12. During his lifetime, Plaintiffs' decedent did not commence any action to recover damages for the injuries that caused his death, and no other action has been filed to recover damages for the wrongful death of Plaintiffs' decedent.

13. The right to bring this action is conferred upon the Plaintiffs by the following laws under which this action is brought:

a. The Act of July 9, 1976, P.L. 586, No. 142; 42 Pa. C.S.A. §8301;

b. The Act of 1972, Act No. 164 as amended, 20 Pa. C.S.A. §3371; and,

c. Any other Wrongful Death Acts, Fiduciary Acts, Survival Acts, Pennsylvania Law and Pennsylvania Rules of Civil Procedure which are applicable.

14. No other action for wrongful death of Plaintiffs' decedent has been commenced against the within-named Defendants and, in particular, no action for wrongful death was commenced by the personal representatives of the Plaintiffs' decedent within six (6) months of his death.

15. Furthermore, on behalf of themselves, the surviving children of the deceased, Plaintiffs claim all appropriate damages under the Wrongful Death Act including, but not limited to, the following:

a. Loss of economic contribution;

b. Loss of household services;

c. Loss of society, companionship and consortium;

d. Medical expenses;

e. Funeral expenses; and.

f. Administration expenses.

16. Plaintiffs are covered by the Full Tort option under the Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1705.

COUNT I - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
LYLE THOMPSON

17. Each of the above paragraphs are incorporated herein by reference.

18. The aforesaid accident was caused and/or contributed to by the negligence of Defendant, Lyle Thompson, in general and in the following particulars:

a. In operating the dump truck in a dangerous and/or reckless manner under the circumstances;

b. In failing to have the dump truck under proper control;

c. In failing to pay close attention to what was behind him while driving the subject dump truck in reverse;

d. In failing to stop before striking Plaintiffs' decedent;

e. In failing to stop after striking Plaintiffs' decedent to ascertain what he had hit instead of continuing on in reverse;

f. In continuing to operate the dump truck in the manner described above when he saw or in the exercise of reasonable care should have seen that further operation in that direction would result in an accident;

g. In failing to pay proper attention and failing to maintain an appropriate lookout of the road and surrounding traffic conditions while driving in reverse;

h. In failing to operate the brakes in such a manner so that the vehicle could be stopped in time to avoid the accident;

i. In failing to avoid hitting Plaintiffs' decedent when he saw or should have seen that Plaintiffs' decedent was in full view to the rear of the dump truck;

j. In failing to use and/or properly use his side and rearview mirrors while driving the dump truck in reverse;

k. In failing to take proper note of, and precautions for, the configuration of the roadway and/or Accident Site;

l. In failing to take measures to avoid the crash or lessen its severity;

m. In failing to have appropriate and adequate back-up warning/safety device(s) on the subject dump truck;

n. In failing to ensure the back-up warning/safety device(s) on the subject dump truck were in proper operating condition;

o. In violating the various statutes and municipal ordinances pertaining to the operation of motor vehicles on public thoroughfares under the circumstances and in particular, the Accident Site;

p. In driving too fast for conditions;

q. In failing to ascertain clearance before backing;

r. In operating the vehicle in reverse when said maneuver could not be safely accomplished;

s. In striking James Edward Clark;

t. In operating a vehicle that had inappropriate/ineffective/defective/dangerous/malfunctioning warning/safety devices;

u. In failing to warn James Edward Clark of the presence of his vehicle and/or his intention to operate said vehicle in reverse;

v. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern; and

w. In being otherwise negligent, careless and/or reckless;

19. The subject incident and all injuries, losses, and/or damages Plaintiffs and Plaintiffs' decedent sustained as a result thereof were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Lyle Thompson described above.

20. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Lyle Thompson as outlined above and were not caused or contributed to by Plaintiffs' decedent.

21. Defendant Lyle Thompson's negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

22. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble, individually, demand judgment against the Defendant Lyle Thompson in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT II - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
LYLE THOMPSON, t/d/b/a
VALLEY EXCAVATING AND HAULING

23. Each of the above paragraphs are incorporated herein by reference.

24. At the time and place of the accident described in this Complaint, Defendant Lyle Thompson was operating the dump truck as an agent, servant, representative, employee and/or assign of Defendant Valley Excavating and Hauling (hereinafter referred to as "Defendant Valley") and, at all times relevant hereto, was acting within the scope and course of such employment and was working in furtherance of Defendant Valley's interests.

25. At all times relevant hereto, Defendant Valley was responsible for the actions/inactions of Defendant Lyle Thompson as a matter of vicarious liability and/or respondeat superior.

26. At all times relevant hereto, Defendant Valley entrusted, permitted and/or allowed Defendant Lyle Thompson to operate the subject dump truck.

27. The aforesaid accident and resulting injuries and damages were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Valley, in general and in the following particulars:

a. In failing to appropriately monitor, supervise, train and/or instruct its officers/employees, agents on how to safely operate a dump truck;

b. In hiring, training and/or retaining employees, servants, representatives, agents and/or assigns who were unable and/or unwilling to safely operate dump trucks;

c. In being otherwise negligent, careless and/or reckless;

d. In being responsible for the negligence, carelessness and/or recklessness of Defendant Lyle Thompson as set forth above;

e. In being responsible for the negligence, carelessness and/or recklessness of its officers/employees/agents as a matter of vicarious liability and/or respondeat superior;

f. In negligently entrusting Defendant Lyle Thompson with the dump truck;

g. In entrusting vehicles to its employees and/or retained individuals without undertaking adequate measures to ensure that said individuals were capable of operating said vehicle in a safe and lawful manner;

h. In entrusting Defendant Lyle Thompson with the vehicle when it knew or should have known that he was an incompetent or unsafe driver;

i. In failing to properly investigate Defendant Lyle Thompson's driving record before hiring him;

j. In failing to properly instruct, train and/or supervise their employees and/or retained individuals in order to ensure the safe and proper operation, inspection, maintenance and/or repair of their vehicles;

k. In failing to hire, employ, train, supervise, instruct, retain and/or contract personnel sufficiently qualified and competent to accomplish proper operation, inspection, maintenance and/or repair of their vehicles;

l. In negligently hiring, retaining, and/or training individuals who were unable or unwilling to properly maintain, inspect, repair and/or operate vehicles in a reasonable and safe manner;

m. In allowing, mandating and/or permitting the operation of its vehicle such as to create a dangerous situation;

n. In allowing and/or permitting the operation of its vehicle in such a reckless, careless and/or negligent manner so as to cause or allow the vehicle to run into, strike, collide and run over Plaintiffs' decedent;

o. In failing to adequately warn, instruct, notify and protect others, especially Plaintiffs' decedent, of the dangers associated with its vehicles and/or drivers;

p. In being vicariously liable for the negligence of agents, assigns and/or employees who pose risks or otherwise present danger to persons such as Plaintiffs' decedent;

q. In failing to maintain the subject vehicle in a proper manner and in the proper mechanical condition;

r. In failing to inspect the vehicle properly or inspecting so carelessly so as to not have determined the existence of any mechanical defects or dangerous conditions;

s. In failing to exercise the degree of reasonable care and acting without appropriate due regard for the rights and safety of Plaintiffs' decedent as was required under the circumstances;

t. In violating the laws of the Commonwealth of Pennsylvania and/or the provisions of the Pennsylvania Motor Vehicle Code regulating the operation of motor vehicles;

u. In failing to have appropriate and adequate back-up warning/safety device(s) on the subject dump truck;

v. In failing to ensure the back-up warning/safety device(s) on the subject dump truck were in proper operating condition;

w. In failing to enforce compliance with laws and regulations governing commercial motor vehicles and drivers, including, but not limited to, log book and hour requirements;

x. In allowing the operation of the subject vehicle when the back-up warning/safety device(s) on said vehicle were malfunctioning, inappropriate and/or ineffective;

y. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern; and

z. In being otherwise negligent, careless and/or reckless.

28. The subject incident and all injuries, losses, and/or damages Plaintiffs and Plaintiffs' decedent sustained as a result thereof were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Lyle Thompson t/d/b/a Valley Excavating and Hauling described above.

29. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Lyle Thompson t/d/b/a Valley Excavating and Hauling described as outlined above and were not caused or contributed to by Plaintiffs' decedent.

30. Defendant Lyle Thompson t/d/b/a Valley Excavating and Hauling's negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

31. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble, individually, demand judgment against the Defendant Lyle Thompson t/d/b/a Valley Excavating and Hauling, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT III - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
NEW ENTERPRISE STONE & LIME COMPANY, INC.

32. Each of the above paragraphs are incorporated herein by reference.

33. At the time and place of the accident described in this Complaint, Defendant New Enterprise Stone & Lime Company, Inc., (hereinafter referred to as "New Enterprise, Inc.") was the general contractor and was performing construction, maintenance and/or resurfacing work on State Route 8012 and more specifically at the Accident Site and/or was responsible for the Accident Site and surrounding areas.

34. At all times relevant hereto, Defendant New Enterprise, Inc. operated, controlled, managed, oversaw and/or was in charge of the Accident Site and surrounding areas.

35. At the above mentioned time and place, there existed a dangerous condition at the Accident Site.

36. This aforesaid dangerous condition consisted of Defendant New Enterprise, Inc.'s non-utilization of spotters and/or other precautionary measures to protect workers at the Accident Site, as well as permitting the subject dump truck at the Accident Site to be present and/or in use when it was equipped with improper, malfunctioning, defective, ineffective, inappropriate and/or inadequate back-up warning/safety device(s) or alarms.

37. At the above mentioned time and place, Plaintiffs' decedent was carefully and lawfully working at or around the Accident Site when he came into contact with the aforesaid dangerous condition causing him to be struck and run over by the subject dump truck, causing injuries resulting in his death on July 11, 2007.

38. At the aforementioned time and place, and due to the negligence, carelessness, and/or recklessness of Defendant New Enterprise, Inc. in causing, creating and/or failing to correct/ameliorate the aforesaid dangerous condition, Plaintiffs' decedent came into contact with said condition and was thereby struck and run over, sustaining the injuries and damages set forth below, resulting in his death.

39. Defendant New Enterprise, Inc. caused, created and/or contributed to this aforementioned dangerous condition.

40. At the above mentioned time and place, Defendant New Enterprise, Inc. knew, had knowledge and/or should have known of the existence of the subject dangerous condition.

41. The fatal injuries and damages set forth below were caused and/or contributed to by the negligence, carelessness, and/or recklessness of Defendant New Enterprise, Inc. in any or all of the following respects:

a. In causing and/or permitting the dangerous, hazardous, and unsafe condition to exist and remain on or at the Accident Site;

b. In failing to properly fix, repair, blockade, eliminate, and/or otherwise ameliorate the subject dangerous condition;

c. In failing to keep the Accident Site in a safe condition for persons lawfully on the same;

d. In permitting the dangerous condition to exist and remain on or at the Accident Site when Defendant New Enterprise, Inc. knew, or should have known of its existence and the danger involved;

e. In permitting persons, and Plaintiffs' decedent in particular, to traverse and work at or near the Accident Site when Defendant New Enterprise, Inc. knew, or should have known, that it was dangerous to do so and involved an unreasonable risk of harm to persons so doing;

f. In failing to notify, post signs, or otherwise warn Plaintiffs' decedent of the dangerous condition so that the hazard could be avoided;

g. In maintaining the Subject Premises improperly or in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using or working at or upon the Accident Site, specifically Plaintiffs' decedent, with a safe working environment;

i. In failing to inspect the Accident Site so as to discover the dangerous condition, or inspecting so carelessly or improperly so as not to have discovered the condition;

j. In failing to fix, repair, eliminate, or otherwise properly redress the condition of the Accident Site/work site to ensure that it would not remain unnecessarily dangerous;

k. In causing, creating, contributing to, and/or exacerbating a dangerous condition by allowing the aforementioned dangerous condition to exist and remain unchecked on or at the Accident Site and/or surrounding work site;

l. In failing to take appropriate action so that the incident would be avoided;

m. In failing to exercise that degree of reasonable care and due regard for the rights and safety of Plaintiffs' decedent as was required under the circumstances.

n. In failing to utilize spotters at and/or around the Accident Site to ensure the safety of the workers, in particular, Plaintiffs' decedent;

o. In allowing the dump truck to be used at the Accident Site that did not possess an adequate, appropriate and/or properly functioning back-up warning/safety device;

p. In being otherwise negligent, careless, and reckless;

q. In failing to properly maintain the Accident Site;

r. In failing to provide warnings to persons lawfully at, on or near the Accident Site;

s. In being responsible for the actions, inactions, omissions and/or omissions of Defendants Lyle Thompson and Lyle Thompson, d/b/a Valley Excavating and Hauling as a matter of vicarious liability and/or respondeat superior;

t. In failing to properly monitor, supervise and/or oversee the work being done at the Subject Premises;

u. In failing to take adequate measures to ensure the safety at the Accident Site and/or work site;

v. In hiring and/or contracting with an entity that was unable and/or unwilling to perform the work in a safe and/or reasonable manner;

w. In failing to have appropriate safety measures in place at the subject Accident Site and/or work site;

x. In failing to comply with Occupational Safety & Health Administration guidelines and/or standards;

y. In violating 29 C.F.R. §1926;

z. In violating 29 C.F.R. §1926.601(b)(4);

aa. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern; and

bb. In being otherwise negligent, careless and/or reckless.

42. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant New Enterprise, Inc. described as outlined above and were not caused or contributed to by Plaintiffs' decedent.

43. Defendant New Enterprises, Inc.'s negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

44. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr. and Brenda Coble, individually, demand judgment against the Defendant New Enterprise Stone & Lime Company, Inc., in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT IV - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a
NEW ENTERPRISE STONE AND LIME COMPANY

45. Each of the above paragraphs are incorporated herein by reference.

46. At the time and place of the accident described in this Complaint, Defendant New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone and Lime Company (hereinafter referred to as "New Enterprise") was the general contractor and was performing construction, maintenance and/or resurfacing work on State Route 8012 and more specifically at the Accident Site and/or was responsible for the Accident Site and surrounding areas.

47. At all times relevant hereto, Defendant New Enterprise operated, controlled, managed, oversaw and/or was in charge of the Accident Site and surrounding areas.

48. At the above mentioned time and place, there existed a dangerous condition at the Accident Site.

49. This aforesaid dangerous condition consisted of Defendant New Enterprise non-utilization of spotters and/or other precautionary measures to protect workers at the Accident Site, as well as permitting the subject dump truck at the Accident Site to be present and/or in use when it was equipped with improper, malfunctioning, defective, ineffective, inappropriate and/or inadequate back-up warning/safety device(s) or alarms.

50. At the above mentioned time and place, Plaintiffs' decedent was carefully and lawfully working at or around the Accident Site when he came into contact with the aforesaid dangerous condition causing him to be struck and run over by the subject dump truck, causing injuries resulting in his death on July 11, 2007.

51. At the aforementioned time and place, and due to the negligence, carelessness, and/or recklessness of Defendant New Enterprise in causing, creating and/or failing to correct/ameliorate the aforesaid dangerous condition, Plaintiffs' decedent came into contact with said condition and was thereby struck and run over, sustaining the injuries and damages set forth below, resulting in his death.

52. Defendant New Enterprise caused, created and/or contributed to this aforementioned dangerous condition.

53. At the above mentioned time and place, Defendant New Enterprise knew, had knowledge and/or should have known of the existence of the subject dangerous condition.

54. The fatal injuries and damages set forth below were caused and/or contributed to by the negligence, carelessness, and/or recklessness of Defendant New Enterprise in any or all of the following respects:

a. In causing and/or permitting the dangerous, hazardous, and unsafe condition to exist and remain on or at the Accident Site;

b. In failing to properly fix, repair, blockade, eliminate, and/or otherwise ameliorate the subject dangerous condition;

c. In failing to keep the Accident Site in a safe condition for persons lawfully on the same;

d. In permitting the dangerous condition to exist and remain on or at the Accident Site when Defendant New Enterprise knew, or should have known of its existence and the danger involved;

e. In permitting persons, and Plaintiffs' decedent in particular, to traverse and work at or near the Accident Site when Defendant New Enterprise knew, or should have known, that it was dangerous to do so and involved an unreasonable risk of harm to persons so doing;

f. In failing to notify, post signs, or otherwise warn Plaintiffs' decedent of the dangerous condition so that the hazard could be avoided;

g. In maintaining the Subject Premises improperly or in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using or working at or upon the Accident Site, specifically Plaintiffs' decedent, with a safe working environment;

i. In failing to inspect the Accident Site so as to discover the dangerous condition, or inspecting so carelessly or improperly so as not to have discovered the condition;

j. In failing to fix, repair, eliminate, or otherwise properly redress the condition of the Accident Site/work site to ensure that it would not remain unnecessarily dangerous;

k. In causing, creating, contributing to, and/or exacerbating a dangerous condition by allowing the aforementioned dangerous condition to exist and remain unchecked on or at the Accident Site and/or surrounding work site;

l. In failing to take appropriate action so that the incident would be avoided;

m. In failing to exercise that degree of reasonable care and due regard for the rights and safety of Plaintiffs' decedent as was required under the circumstances;

n. In failing to utilize spotters at and/or around the Accident Site to ensure the safety of the workers, in particular, Plaintiffs' decedent;

o. In allowing the dump truck to be used at the Accident Site that did not possess an adequate, appropriate and/or properly functioning back-up warning/safety device;

p. In being otherwise negligent, careless, and reckless;

q. In failing to properly maintain the Accident Site;

r. In failing to provide warnings to persons lawfully at, on or near the Accident Site;

s. In being responsible for the actions, inactions, omissions and/or omissions of Defendants Lyle Thompson and/or Lyle Thompson, d/b/a Valley Excavating and Hauling as a matter of vicarious liability and/or respondeat superior;

t. In failing to properly monitor, supervise and/or oversee the work being done at the Subject Premises;

u. In failing to take adequate measures to ensure the safety at the Accident Site and/or work site;

v. In hiring and/or contracting with an entity that was unable and/or unwilling to perform the work in a safe and/or reasonable manner;

w. In failing to have appropriate safety measures in place at the subject Accident Site and/or work site;

x. In failing to comply with Occupational Safety & Health Administration guidelines and/or standards;

y. In violating 29 C.F.R. §1926;

z. In violating 29 C.F.R. §1926.601(b)(4);

aa. In allowing the use of motor vehicle equipment having an obstructed view to the rear and/or which did not have a reverse signal alarm which was audible above the surrounding noise level and/or in failing to have a signaler monitoring the traffic pattern; and

bb. In being otherwise negligent, careless and/or reckless.

55. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant New Enterprise described as outlined above and were not caused or contributed to by Plaintiffs' decedent.

56. Defendant New Enterprises's negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

57. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling, and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble individually, demand judgment against the Defendant New Enterprise Stone & Lime Company, Inc., d/b/a New Enterprise Stone & Lime Company, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT V - NEGLIGENCE - WRONGFUL DEATH
JAMES E. CLARK, JR., AND BRENDA COBLE, INDIVIDUALLY, PLAINTIFFS
VS.
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS

58. Each of the above paragraphs are incorporated herein by reference.

59. On or before July 11, 2007, Defendant Preco Electronics, Inc., t/d/b/d Preco Electronics, (hereinafter referred to as "Defendant Preco"), was in the business of designing, testing, manufacturing, distributing, marketing and/or selling back-up warning/safety devices, including the device(s) which were installed on the subject vehicle involved in the instant matter.

60. Defendant Preco owed Plaintiff's' decedent a duty of care in the design, testing, manufacture, distribution, marketing and/or selling of the aforesaid subject back-up warning/safety device(s) to thereby avoid unreasonable risk of injury to foreseeable users or others who may come into contact/interaction with such products and/or who were to be protected by said device(s).

61. At the time of the incident giving rise to this litigation the back-up warning/safety device(s) installed on the subject vehicle were defective, malfunctioning, inappropriate, improperly working and/or inaudible in the work environment, and thus constituted a dangerous condition.

62. Defendant Preco owed a duty to adequately warn and instruct all owners, foreseeable users and/or the public, of all defects, either known by Defendant Preco herein or that should have been known by Defendant Preco relative to the back-up warning/safety device(s).

63. At all times relevant hereto, Defendant Preco had an obligation to refrain from placing products that were in a defective condition or were unreasonably dangerous in the stream of commerce.

64. Defendant Preco designed, manufactured, distributed, and/or sold the subject back-up warning/safety device(s) thereby placing it/them into the stream of commerce.

65. Defendant Preco knew and expected that said subject back-up warning/safety device(s) would be sold to, used and operated in environments such as the subject Accident Site/work site.

66. Defendant Preco had a duty to remedy and/or ameliorate all defects, either known by Defendant Preco herein or that should have been known by Defendant Preco relative to the back-up warning/safety device(s).

67. At all times relevant hereto, Defendant Preco had a duty to instruct and warn foreseeable users and the public in general of any such defective conditions or unreasonable dangers associated with its products.

68. At all times relevant hereto, Defendant Preco acted by and through its servants, agents, employees and assigns, who acted or failed to act within the scope of their authority in the course of Defendant Preco's business.

69. The subject incident and all injuries and damages Plaintiffs James E. Clark, Jr., and Brenda Coble and Plaintiffs' decedent suffered as a result thereof were caused and/or contributed to by and were the direct and proximate result of the negligence, carelessness and/or recklessness of Defendant Preco, by and through its officers, agents, servants, assigns, and/or employees acting within the scope of their agency, authority, servitude and/or employment, generally and in the following particulars:

a. In designing the backup warning/safety device(s) in such a deficient manner as to permit the subject device(s) and/or components thereof to be defective;

b. In failing to properly design, construct and/or install the backup warning/safety device(s) and/or their component parts;

c. In constructing a backup warning/safety device that Defendant Preco knew or should have known would be defective and/or would malfunction upon foreseeable use;

d. In failing to conduct adequate testing to determine the presence of a defect or defects in design of the backup warning/safety device;

e. In failing to conduct adequate inspections to determine the presence of a defect or defects in design of the back-up warning/safety device;

f. In failing to conduct adequate testing to determine the presence of a defect or defects in the manufacture of the backup warning/safety device that was in use at the aforesaid time and place;

g. In failing to conduct adequate testing to determine/discover the unreasonable risk of injury due to and associated with the improper functioning or inadequacy associated with, the backup warning/safety device;

h. In failing to conduct testing to determine/discover the unreasonable risk of injury due to and associated with the inadequacy of, and/or malfunction of the backup warning/safety device;

i. In failing to adequately warn of the likelihood of the unreasonably dangerous condition of backup warning/safety device;

j. In failing to adequately warn Plaintiff's decedent that Defendant Preco had not properly and adequately designed, manufactured and/or installed the backup warning/safety device;

k. In failing to adequately warn and instruct Plaintiff's decedent of the possibility and consequences of the defects, malfunction, and/or inaudible tone of the subject backup warning/safety device;

l. In failing to design and provide a backup warning/safety device that would be capable of being effective, safe and practical;

m. In constructing or manufacturing the backup warning/safety device with materials which Defendant Preco knew, or should have known, were likely to cause malfunction and/or function improperly and/or ineffectively;

n. In failing to remedy the subject backup warning/safety device which Defendant Preco knew or should have known was likely to have defects and/or malfunction upon foreseeable use;

o. In designing the backup warning/safety device in such a deficient manner as to permit the backup warning/safety device and/or components thereof to malfunction and/or to be defective;

p. In failing to properly design, construct and/or install the backup warning/safety device;

q. In constructing a backup warning/safety device that Defendant Preco knew or should have known would be defective and/or would malfunction upon foreseeable use;

r. In failing to conduct adequate testing to determine the likelihood of injury/defect/ineffectiveness in the use of the backup warning/safety device;

s. In failing to conduct adequate testing to determine the presence of a defect or defects of the backup warning/safety device;

t. In failing to conduct adequate testing to determine the presence of a defect or defects in the manufacture of the backup warning/safety device;

u. In failing to conduct adequate testing to determine/discover the unreasonable risk of injury due to and associated with the improper functioning of the backup warning/safety device;

v. In failing to conduct adequate testing to determine/discover the unreasonable risk due to and associated with the absence of a properly functioning of the backup warning/safety device;

w. In failing to adequately warn Plaintiffs' decedent of the likelihood of unreasonably dangerous malfunction of the backup warning/safety device;

x. In failing to adequately warn Plaintiffs' decedent that Defendant Preco had not properly and adequately designed, manufactured and/or installed the backup warning/safety device;

y. In failing to remedy the backup warning/safety device which Defendant Preco knew or should have known was likely to have defects and/or malfunction upon foreseeable use;

z. In designing the subject backup warning/safety device in such a deficient manner as to permit the device(s) to malfunction upon foreseeable use;

aa. In failing to conduct adequate testing to determine the likelihood of injury in the event of the above mentioned circumstances, or circumstance(s) similar thereto, surrounding the subject incident;

bb. In failing to use that degree of reasonable care, due regard and caution that the circumstances then and there required;

cc. In designing, testing, manufacturing, distributing, marketing and/or selling a back-up safety/warning device which was not loud enough to be effective in a typical construction zone;

dd. In designing, testing, manufacturing, distributing, marketing and/or selling a back-up safety/warning device which was not loud enough to be put to foreseeable use in a typical construction zone;

ee. In designing, testing, manufacturing, distributing, marketing and/or selling a back-up safety/warning device which was not sufficient for its intended purpose(s); and

ff. In failing to provide adequate guidance and/or instruction for the installation of the back-up warning/safety device.

70. At all times relevant hereto, Plaintiffs' decedent conducted himself in a reasonably prudent and cautious manner.

71. The subject incident and resulting injuries were caused and/or contributed to and were the proximate and result of the negligence of Defendant Preco as outlined above and were not caused or contributed to by Plaintiffs' decedent.

72. The subject incident and all injuries, losses, and/or damages Plaintiffs and Plaintiffs' decedent sustained as a result thereof were caused and or contributed to by the negligence, carelessness and/or recklessness of Defendant Preco described above.

73. The subject accident and resulting losses, damages and/or injuries were caused and/or contributed to by the negligence, carelessness and/or recklessness of Defendant Preco described as outlined above and were not caused or contributed to by Plaintiffs' decedent.

74. Defendant Preco's negligence, carelessness and/or recklessness as stated above, caused and/or contributed to Plaintiffs' decedent's injuries which caused his death on July 11, 2007.

75. The persons entitled by law to recover damages for James Edward Clark, a/k/a James Edward Clark, Sr.,'s death, identified herein, have sustained the following losses and damages, including but not limited to:

a. Medical expenses for services and supplies incident to the treatment rendered to and subsequent death of James Edward Clark, a/k/a James Edward Clark, Sr.;

b. Funeral and estate expenses related to James Edward Clark, a/k/a James Edward Clark, Sr.'s death;

c. Loss, deprivation and denial of services, assistance, guidance, counseling and companionship of James Edward Clark, a/k/a James Edward Clark, Sr.;

d. Deprivation of the financial support and all pecuniary benefits they would have received from James Edward Clark, a/k/a James Edward Clark, Sr.;

e. Expenses incurred in the administration of James Edward Clark, a/k/a James Edward Clark, Sr.'s estate;

f. Loss of the ability to maintain and sustain any family relationship;

g. Other losses and damages recoverable at law; and

h. Loss of consortium.

WHEREFORE, Plaintiffs Brenda Coble and James E. Clark, Jr., individually, demand judgment against the Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT VI -STRICT LIABILITY - WRONGFUL DEATH
BRENDA COBLE AND JAMES E. CLARK, JR., INDIVIDUALLY, PLAINTIFFS
VS.
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS

76. Each of the above paragraphs are incorporated herein by reference.

77. The extremely hazardous nature of a defective and/or malfunctioning backup safety/warning device and Defendant Lyle Thompson and Plaintiffs' decedent's reliance on such safety features rendered the same an abnormally dangerous product.

78. The severe injuries an death of Plaintiffs' decedent as heretofore previously set forth more fully, were proximately and directly caused by the abnormally dangerous product which was manufactured, designed, installed, tested, distributed, marketed and/or sold by Defendant Preco.

79. Defendant Preco placed the subject backup warning/safety device in its and/or with its above-described defective and/or malfunctioning components into the stream of commerce.

80. Defendant Preco, through its acts, failure to act, commissions and/or omissions as previously set forth, caused the backup warning/safety device to be in a defective and/or malfunctioning condition, and thus unreasonably dangerous, and therefore Defendant Preco is strictly liable for all resulting injuries to Plaintiffs' decedent.

81. As a direct consequence and result of the conduct of Defendant Preco as aforesaid, Plaintiffs have sustained the injuries and damages previously set forth heretofore more fully.

WHEREFORE, Plaintiffs Brenda Coble and James E. Clark, Jr., individually, demand judgment against the Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT VII - BREACH OF WARRANTY - WRONGFUL DEATH
BRENDA COBLE AND JAMES E. CLARK, JR., INDIVIDUALLY, PLAINTIFFS
VS.
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS

82. Each of the above paragraphs are incorporated herein by reference.

83. Defendant Preco warranted that the subject backup warning/safety device and its component parts were merchantable and fit for the purpose for which they were intended.

84. It is believed and averred that the product was used in reliance on the warranties by Defendant Preco.

85. The injuries and damages sustained by Plaintiffs were proximately caused by Defendant Preco's breach of express and implied warranties as follows:

a. In breaching express warranties that the subject backup warning/safety device would be free from defects in Defendant Preco's materials and workmanship;

b. In breaching express warranties that the backup warning/safety device would function properly during foreseeable use;

c. In designing, manufacturing, distributing, installing, and/or selling a backup warning/safety device that was not fit for the particular purpose for which it was sold;

d. In designing, manufacturing, distributing, installing, and/or selling a backup warning/safety device that failed to sufficiently warn individuals of the presence and/or operation of the vehicle upon which said device(s) was/were installed; and

e. In designing, manufacturing, distributing, installing, and/or selling a backup warning/safety device that was not merchantable.

86. The warranties were breached by Defendant Preco with the advent of the previously mentioned defects and/or malfunctions associated with the backup warning/safety device.

87. As a direct and proximately consequence of the conduct and breaches of warranty by Defendant Preco Plaintiffs' decedent sustained the injuries and damages previously set forth heretofore more fully.

WHEREFORE, Plaintiffs Brenda Coble and James E. Clark, Jr., individually, demand judgment against the Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT VIII – SURVIVAL
JAMES E. CLARK, JR., AND BRENDA COBLE, ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED, PLAINTIFFS
VS.
DEFENDANTS LYLE THOMPSON; LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY; PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

88. Each of the above paragraphs is incorporated herein by reference.

89. As a direct and proximate result of the previously described negligence of Defendants, Plaintiffs' Decedent suffered the following damages:

a. James Edward Clark, a/k/a James Edward Clark, Sr.'s pain, suffering, anguish and inconvenience from the happening of the incident until the time of his death;

b. James Edward Clark, a/k/a James Edward Clark, Sr.'s loss of earning and earning capacity;

c. Deprivation of James Edward Clark, a/k/a James Edward Clark, Sr.'s ability to perform any of the routine functions of daily living;

d. James Edward Clark, a/k/a James Edward Clark, Sr.'s general health and vitality;

e. Death; and

f. Other losses and damages permitted by law.

WHEREFORE, Plaintiffs James E. Clark, Jr., and Brenda Coble, Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased, respectfully request judgment in their favor and against Defendants Lyle Thompson; Lyle Thompson, t/d/b/a Valley Excavating and Hauling; New Enterprise Stone & Lime Company, Inc.; New Enterprise Stone & Lime Company, Inc., t/d/b/a New Enterprise Stone and Lime Company; and Preco Electronics, Inc., t/d/b/a Preco Electronics, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

Respectfully submitted,

MARCUS & MACK, P.C.

By _____

Jonathan B. Mack, Esquire
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

VERIFICATION

I, James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

James E. Clark, Jr., individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

VERIFICATION

I, Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

Brenda Coble, individually and as Administrator of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr.

B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., DECEASED

Plaintiffs

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME CO., INC., PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS,

Defendant

No. 2008-2452-CD

RESPONSES AND OBJECTIONS TO ANSWERS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
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(412) 281-0587

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK. JR.. and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE
ESTATE OF JAMES EDWARD
CLARK. a/k/a JAMES EDWARD
CLARK, SR., DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE
THOMPSON, G/d/b/a VALLEY
EXCAVATING AND HAULING:
NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS. INC..
t/d/b/a PRECO ELECTRONICS.

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

RESPONSES AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

AND NOW comes Defendant, Preco Electronics, Inc. ("Preco"), by and through its attorneys, Goehring, Rutter & Boehm, and files the following Responses and Objections to Plaintiffs' First Set of Interrogatories and Request for Production of Documents:

GENERAL OBJECTIONS

1. To the extent that any Interrogatory seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, PRECO objects to responding to the same.

2. PRECO objects to each and every interrogatory insofar as it may contain vague, ambiguous and imprecise language, or the extent that it is overly broad and burdensome.

3. PRECO objects to these interrogatories to the extent that they require PRECO to make inquiry and give answers and responses regarding information that is in the possession of parties other than PRECO, which exceeds the requirements of the applicable rules.

4. PRECO objects to these interrogatories as overly broad, excessive and beyond the scope of permitted discovery.

5. PRECO objects to the Interrogatories to the extent that they request information that is protected by the attorney-client privilege, the work product doctrine and/or any other applicable privilege, protection or restriction. To the extent that Plaintiffs seek information protected by such privileges, PRECO asserts such privilege to the full extent of the law and, accordingly, will not provide such information.

6. PRECO objects to the Interrogatories to the extent that they request that the PRECO divulge information on a timetable not consistent with the Pennsylvania Rules of Civil Procedure.

7. PRECO objects to providing the information that is a matter of public record and is equally accessible and available to Plaintiffs through an examination of the public record on grounds that providing such information will be oppressive, unduly burdensome and unreasonably expensive and cannot be accomplished by the PRECO with substantially greater facility than can otherwise be accomplished by

Plaintiffs.

8. PRECO's investigation of facts relating to the claims at issue in this action is continuing. Accordingly, PRECO's responses to the Interrogatories are based only upon such information and documents as are available and known to PRECO as of the time of these responses. PRECO reserves the right to revise, change or supplement these discovery responses as it may deem appropriate.

9. Each of these General Objections shall be deemed to be incorporated by reference in each of the following responses.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

PRELIMINARY STATEMENT

Preco Electronics, Inc. sold its light and alarm division in February 2008, prior to receiving notice of the instant claim. Subsequent to the sale and prior to notice of the instant claim, all hard copy documents and materials related to the Preco manufactured products in the division were removed and/or transferred to the subsequent purchaser. Some documents remain in electronically stored format at Preco in Boise, Idaho and those documents will be produced for inspection and review at a mutually agreeable date and time at the law offices of Goehring, Rutter &Boehm, 437 Grant Street, Pittsburgh, PA, 15219, Preco's legal counsel.

One of the documents that will be available for inspection and review is the Preco DATE CODE STANDARD PROCESS SPECIFICATION & PROCEDURE sheet which details the PRECO DATE CODE METHODOLOGY. A date code was stamped in a

contrasting color on the body of every Preco alarm manufactured. The date code was comprised of four (4) numbers and one (1) letter. The first two numbers represent the week of the year in which the individual alarm was manufactured. The last two numbers represent the year in which the individual alarm was manufactured. The letter represents the level of revision of either the base or primary product. The alarm Mr. Thompson alleges was affixed to his truck at the time of the incident in July 2007 bears a date stamp of 4207M and was manufactured in the 42nd week of 2007 and was revision level M. Based upon the Date Code methodology, Preco denies that the alarm at issue in this case was affixed to Mr. Thompson's vehicle at the time of the incident as it was not yet manufactured. The incident occurred in July, 2007 and the alarm at issue in this case was not manufactured until the 42nd week of 2007, or the week of October 14, 2007.

INTERROGATORIES

1. Are you a corporation? If so, please state:

   a. The name stated in the current Articles of Incorporation:

   b. All other names used by the corporation during the past ten years and the date each was used;

   c. The date and place of incorporation;

   d. The address of the principal place of business; and

   e. Whether you are qualified to do business in Pennsylvania.

ANSWER: Yes.

a. Preco Electronics, Inc.

b. None

c. April 18, 2000; Idaho

d. 415 N. Maple Grove Road

Boise, Idaho 83704-8241

e. Yes

2. Are you a partnership? If so, please state:

   a. The current partnership name;

   b. All other names used by the partnership during the past ten (10) years and the date each was used;

   c. Whether you are a limited partnership and, if so, under the laws of what jurisdiction;

   d. The name and address of each general partner; and

   e. The address of the principal place of business.

   ANSWER: No.

3. Are you a joint venture? If so, please state:

   a. The current joint venture name;

   b. All other names used by the joint venture during the past ten years and the date each was used;

   c. The name and address of each joint venturer; and

   d. The address of the principal place of business.

   ANSWER: No.

4. Are you an unincorporated association? If so, please state:

   a. The current unincorporated association name;

   b. All other names used by the unincorporated association during the past ten (10) years and the date each was used; and

c. The address of the principal place of business.

ANSWER: No.

5. Have you done business under a fictitious name during the past ten (10) years? If so, for each fictitious name please state:

a. The name;

b. The date each was used;

c. The state and county of each fictitious name filing; and

d. The address of the principal place of business.

ANSWER: No, not with respect to the alarm that is alleged by Plaintiffs AND Defendant Thompson to have been affixed to Defendant Thompson's vehicle.

6. Within the past five (5) years, has any public entity registered or licensed your business? If so, for each license or registration please:

a. Identify the license or registration;

b. State the name of the public entity; and

c. State the dates of issuance and expiration.

ANSWER: Objection this Interrogatory is overly broad, vague and contains terms that are not defined. Without waiving said objections, Preco is not aware that its business has been licensed or registered by any public entity or that such licensure or registration is required under the law.

7. Please state the names and addresses of all witnesses that you intend to call at the trial of this action.

ANSWER: Objection. This interrogatory seeks disclosure of information on a time table inconsistent with the Rules of Civil Procedure and/or information that is protected by attorney/client privilege, work product doctrine or other applicable privilege. Without waiving said objections, Preco has not yet determined which witnesses it intends to call at trial.

8. With regard to the witnesses listed in the previous Interrogatory, please state the substance of the testimony of each witness.

ANSWER: Objection. This Interrogatory seeks disclosure of information on a timetable inconsistent with the Rules of Civil Procedure and/or information that is protected by attorney/client privilege, work product doctrine or other applicable privilege. The information requested is beyond the scope of permissible discovery. Without waiving said objections, see response to Interrogatory No. 7.

9. Please state the name, address, and telephone number of each individual:

a. Who witnessed the incident or the events occurring immediately before or after the incident;

b. Who heard any statements made about the incident by any individual at the scene; and

c. Do you, or anyone acting on your behalf, have any knowledge of the incident or the events preceding and/or subsequent thereto.

ANSWER: a. Neither representatives of Preco nor any person or entity

acting on its behalf or within its control witnessed the incident as Preco was not on site on the day of the incident or at any time prior or subsequent thereto.

b. Neither representatives of Preco nor any person or entity acting on its behalf or within its control heard any statements by any individual at the scene as Preco was not on site on the day of the incident or at any time prior or subsequent thereto.

c. Neither representatives of Preco nor any person or entity acting on its behalf has any first hand knowledge of the incident or the events preceding or subsequent to the incident as Preco was not on site on the day of the incident or at any time prior or subsequent thereto. All knowledge of Preco Electronics about the incident was learned through the information developed in the pleadings and the discovery in this law suit to-date.

10. Please state the names and addresses of all eyewitnesses known to you, your attorney, or other representative.

ANSWER: Objection. This interrogatory seeks information that is beyond the scope of permissible discovery and that is subject to the attorney-client privilege, work product doctrine, or other applicable privilege. Without waiving said objections, Preco knows of no other eyewitnesses than those previously disclosed by other parties in written discovery and through deposition in this lawsuit and in the investigative files of the Pennsylvania State Police and OSHA, all of which are equally and presently within the possession, custody and control of Plaintiffs.

11. If you subsequently discover persons who were witnesses to the incident in question, please state whether you will supplement your Answers to these Interrogatories without the necessity of a follow-up Interrogatory.

ANSWER: Preco will supplement its responses to these interrogatories in compliance with the Pennsylvania Rules of Civil Procedure.

12. If you subsequently discover persons having knowledge of relevant facts concerning the subject matter of this action, please state whether you will supplement your Answers to these Interrogatories without the necessity of a follow-up Interrogatory.

ANSWER: See response to Interrogatory No. 11

13. Will you or your attorneys call at the trial of this action any person to testify as an expert witness?

ANSWER: Objection. This interrogatory seeks information on a time table inconsistent with the Pennsylvania Rules of Civil Procedure and/or information that is protected by the attorney/client privilege, work product doctrine or other applicable privilege. Without waiving said objections, Preco has not yet determined whether it will use expert witnesses and/or which expert witnesses will testify at trial on its behalf.

14. If the answer to the preceding Interrogatory is in the affirmative, please state the following as to each such witness:

a. His or her complete identification, including name and address;

b. His or her occupation;

c. His or her field of expertise;

d. His or her qualifications as an expert;

e. The date of each expert report, whether written or oral;

f. Any fee or fees paid to the witness for his or her involvement in this matter; and

g. Please attach a copy of any and all written reports identified in response to subsection "e" above.

ANSWER: Objection. See response to Interrogatory No. 13.

15. In addition to those persons identified in the two previous Interrogatories, please state the name and present address of any person who has been retained, employed, or consulted by you as an expert in connection with the claim in this case or any defense to the claim in this case.

ANSWER: Objection. See response to Interrogatory No. 13.

16. Please set forth facts to which each expert is expected to testify.

ANSWER: Objection. See response to Interrogatory No. 13.

17. Please set forth opinions to which each expert is expected to testify.

ANSWER: Objection. See response to Interrogatory No. 13

18. Please set forth in detail the factual information and materials supplied to each such expert.

ANSWER: Objection. See response to Interrogatory No. 13.

19. Please set forth a summary of the grounds (other than facts requested in the preceding Interrogatory) for each such opinion, including but not limited to, any tests or experiments conducted and any text material on which the expert witness will rely. Identify all such texts including name, author, edition, and page.

ANSWER: See response to Interrogatory No. 13

20. For any expert identified in answer to these Interrogatories, please state whether this witness has previously been used by you, your attorney, your insurer, or other representative.

ANSWER: Objection. This interrogatory seeks information that is irrelevant, beyond the permissible scope of discovery and not reasonably calculated to lead to the discovery of admissible information. Without waiving said objections, see response to Interrogatory No. 13.

21. If your answer to the preceding interrogatory is in the affirmative, please state the following:

a. The nature of the relationship between the witness identified and you, your attorney, or other representative;

b. The number of times this witness has been used or employed by you, your attorney, or other representative;

c. Whether on this prior occasion or occasions, a written report was prepared by the witness;

d. Whether on this prior occasion or occasions, the witness was called to testify at trial or whether deposition testimony was taken;

e. Full case captions for each prior occasion in which the expert witness testified or was deposed during the past ten (10) years. If full caption is not available, state case names, court, or tribunal and approximate date or term; and

f. The fee or fees paid in each instance where this witness was retained or used.

ANSWER: Objection. This Interrogatory seeks information that is beyond the scope of permissible discovery. Without waiving said objection, see response to Interrogatories No. 13 and 20.

22. State the names and addresses of any other persons upon whom you will rely to prove/defend your case and each person's relationship to you.

ANSWER: Objection. This interrogatory seeks information on a time table inconsistent with the Pennsylvania Rules of Civil Procedure, information that is protected by the attorney/client privilege, work product doctrine or other applicable privilege, and/or is irrelevant, vague, overbroad, beyond the scope of permissible discovery and/or not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, Preco has not yet determined upon whom it will rely to prove or defend its case.

23. Do you or your representatives have any photographs, films, or videotapes of Plaintiffs' Decedent, the site of the incident that is the subject matter of this litigation, the surrounding area, or any other person, place, or thing relevant to this matter? If so, please

state:

a. The date(s) the photographs were taken;

b. The name and address of the person taking them;

c. The objects or particular site or view each photograph depicts; and

d. The name and address of the present custodian of said photographs.

ANSWER: Yes. Preco has photographs of Defendant Thompson's Valley Excavating Truck and the backup alarm that Defendant Thompson alleges was removed from the vehicle subsequent to the incident. All other photographs in Preco's possession were received from other parties to the litigation through discovery.

a. August 29, 2008;

b. Objection. The information sought in this interrogatory is protected by the attorney/client privilege, work product doctrine or other applicable privilege;

c. Color copies of the photographs will be made are available for inspection and review at the offices of legal counsel for Preco, Goehring, Rutter & Boehm, 437 Grant Street, Pittsburgh, Pa 15219 at a mutually agreeable date and time; and

d. Goehring, Rutter & Boehm, 437 Grant Street, Pittsburgh, PA 15219.

24. Please state whether any plans, drawings, or diagrams were made of the site of the incident that is the subject matter of this action and, if yes, please provide:

a. A description of each such plan, drawing, or diagram;

b. The date each was made;

c. The name and address of the person making same; and

d. The name and address of the present custodian of same.

ANSWER: No.

25. Have you or your representatives obtained any written, transcribed, or recorded statement from any witness or party, or any statement signed, adopted, or otherwise approved by any witness or party? If so, please attach a copy of each statement pursuant to Pennsylvania Rule of Civil Procedure 4009.

ANSWER: No.

26. Please state whether any examinations, inspections, or investigations were made pursuant to the incident made the subject matter of this litigation. If so, please set forth the following information:

a. The date or dates of each such examination, inspection or investigation;

b. The name, address, employer, and job title of each person involved or contributing to the examination, inspection or investigation;

c. A full and complete description of the examination, inspection, or investigation, including the identity of all persons talked to or contacted;

d. A full and complete description of the findings or results of the investigation, inspection, or examination;

e. A full and complete description of any responsive or remedial action taken by you, your agents or assigns;

f. Please identify all records relating to each investigation, inspection, or examination and the name and address of the custodian of those records;

g. Whether the investigator/representative submitted a report to counsel for Instant Defendants or to any other person; and

h. Pursuant to Pennsylvania Rule of Civil Procedure 4009, if the answer to sub-part "g" is in the affirmative, please attach a copy of said report to these answers if the report is written. If oral, please give a summary of said report.

ANSWER: Objection. This interrogatory seeks information that is subject to the attorney/client privilege, work product doctrine or other applicable privilege. Without waiving said objection, Preco was not on site on the day of the incident or at anytime prior or subsequent to the incident. Moreover, Preco was notified of the incident approximately one year after the incident occurred. Preco is not aware of any examinations, inspections or investigations undertaken other than those already identified in discovery by and from other parties and third parties including, but not limited to, New Enterprise Stone & Lime Company, OSHA, the Pennsylvania Department of Transportation and the Pennsylvania State Police. All information relative to those examinations, inspections and investigations has been previously produced to the Plaintiffs.

27. Have you, any representative of yours, Instant Defendant's counsel, or Instant Defendant's insurer performed, contracted to be performed, or arranged in any way any type of background investigation, check, or inquiry of the Plaintiffs' decedent? If so, please identify any such persons or entities who have custody of all reports, memoranda, letters, electronic

data, or information of any type (including computer records) regarding any such activity. Please attach a complete copy, without editing, or any such information, including but not limited to, any such photographs, films, videotapes, 8-millimeter film, and handwritten notes regarding such investigation.

ANSWER: Objection. This interrogatory is irrelevant, vague and overbroad and seeks information that is protected by the attorney/client privilege, work product doctrine or other applicable privilege. Without waiving said objections, no.

DEFENSES

28. Do you contend that any of the following caused or contributed to the happening of the incident and/or to any injuries or damages claimed in this case:

a. Breach of duty by anyone other than yourself, including anyone not a party to this lawsuit;

b. Any defect in any instrumentality involved in the incident;

c. Negligent maintenance, inspection, repair or service of any instrumentality involved in the incident;

d. Weather conditions;

e. Road conditions or any other conditions existing at the scene of the incident;

f. Sudden emergency; or,

g. Assumption of the risk.

h. Contributory negligence by Plaintiffs' Decedent.

ANSWER: a-h. Objection. These interrogatories call for legal

conclusions, are vague, overbroad and contain undefined terms. They also seek information protected by the attorney/client privilege, work product doctrine or other applicable privilege. Without waiving said objections, this case remains under investigation and discovery into the roles of other parties on the date of the incident is continuing. Preco maintains that its back-up alarm operated fully and completely in accordance with manufacturer's specifications and guidelines and free of defect at all times. See also the Answer, New Matter and Cross Claims filed on behalf of Preco in this action.

29. If your answer to any part of the preceding Interrogatory is "yes", state, for each affirmative response:

a. Your contentions as to each cause or contributing factor;

b. Each fact known to you which supports each contention;

c. The identity of each person who caused or contributed to the incident and/or damages; and,

d. The identity of each person whom you believe possesses knowledge of any such fact.

ANSWER: Objection. See response to Interrogatory No. 28.

30. If your answer to any part of the preceding Interrogatory is "yes", state, for each affirmative response:

a. Your contentions as to each cause or contributing factor;

b. Each fact known to you which supports each contention;

c. The identity of each person who caused or contributed to the incident

and/or damages; and,

d. The identity of each person whom you believe possesses knowledge of any such fact.

ANSWER: Objection. See response to Interrogatory No. 29.

31. Was the subject back-up alarm/device on Defendant Thompson's truck operating properly just prior to the incident described in the Complaint? If your answer to this interrogatory is "no" state:

a. The nature of the defect or problem with the back-up alarm/device;

b. The length of time such problem or defect had existed;

c. Identify any and all individuals who you claim examined, repaired, or attempted repairs with respect to any defect identified in this paragraph, and if you are in possession of any documents evidencing inspection, repair, or attempted repair, please attach these to your Answers to Interrogatories or in Response to Request to Produce.

ANSWER: **Yes. Preco is not aware that there was any incident, report of an incident or other allegation of improper operation of the backup alarm/device on Defendant Thompson's truck at any time prior to, during or subsequent to the incident. Defendant Thompson has testified and provided written discovery responses which indicate that the backup alarm/device on his truck was operating properly at all times. To the extent that Plaintiffs establish that the back-up alarm device on Defendant Thompson's truck at the time of the incident was a Preco design or manufactured product, Preco maintains that its back-up alarm products operated fully and completely in accordance with manufacturer's specifications and guidelines and free of defect at all times.**

32. Were you ever advised or made aware from any of the Defendants in this lawsuit that the subject back-up alarm/device on Defendant Thompson's truck, or any other back-up device substantially similar to that which was installed on Defendant Thompson's truck, ever malfunctioned prior to the subject accident?

ANSWER: Objection. This interrogatory seeks information which is overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it inquires into other devices not the subject of this lawsuit. The terms "other back-up device substantially similar" are not defined. Without waiving said objections, no.

33. Is it your contention that the subject back-up alarm/device on Defendant Thompson's truck did not malfunction prior to the time of the subject accident?

ANSWER: Yes.

34. If your answer to the preceding Interrogatory is in the affirmative, please describe:

ANSWER: See response to Interrogatory No. 31.

35. Prior to the subject accident, were you aware of any problems or notice any decline in the performance, quality or sound of the subject back-up alarm/device on Defendant Thompson's truck or with substantially similar back-up alarm/devices that you manufacture and/or sell?

ANSWER: Objection. This interrogatory seeks information which is

irrelevant, overly broad, vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Preco objects to the extent that the interrogatory seeks information about other devices not the subject of this lawsuit. The terms "substantially similar back-up alarm/devices" are not defined. Without waiving said objections, to the extent that Plaintiffs establish that the back-up alarm/device on Defendant Thompson's truck at the time of the incident was a Preco product, no.

36. If you answer to the above Interrogatory is in the affirmative, please describe.

ANSWER: Objection. See response to Interrogatory No. 35.

37. Did anyone ever mention to you or advise you of any problems or defects that they experienced with back-up alarms or devices substantially similar to the subject back-up alarm/device on Defendant Thompson's truck or with substantially similar back-up alarm/devices that you manufacture and/or sell?

ANSWER: Objection. See response to Interrogatory No. 35.

38. If your answer to No. 37 is yes, please explain.

ANSWER: Objection. See response to Interrogatory No. 37.

39. If you inspected, or caused to be inspected, the subject back-up device after the happening of the subject incident, please state which volume setting the device was set to at the time of said inspection.

ANSWER: Objection. This interrogatory seeks information which is protected

by the attorney/client privilege, work product doctrine or other applicable privilege and is overly broad, vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, the volume setting on the alarm that Defendant Thompson alleges was affixed to his vehicle at the time of the incident and which was removed without Preco's prior knowledge or consent subsequent to the incident was set at "high" upon inspection. Preco was advised by Defendant Thompson's counsel that the alarm setting was not adjusted during removal, that the alarm was in the "high" position while affixed to the truck, and remained in the "high" position at all times subsequent to removal. Preco understands that at all times subsequent to the accident, the alarm has been in the possession, custody or control of Defendant Thompson and/or his counsel.

40. Are you aware of any other accidents or incidents similar to the instant action that have occurred as a result of malfunctioning back-up alarms/devices, similar to the back-up alarm/device on Defendant Thompson's truck, or other similar back-up alarms/device which you manufacture and/or sell? If so, state the date or other means of identification, and address of the person to whom it occurred, the location in which it occurred, and what, if any safety, precautions were taken as a result of it.

ANSWER: Objection. This interrogatory is irrelevant, overly broad, unduly burdensome, vague and not reasonably calculated to lead to the discovery of relevant or admissible information. This interrogatory amounts to a "fishing expedition" and seeks information relative not only other Preco alarms and devices, but also apparently any other manufacturer's "malfunctioning back-up alarms/devices." The terms "other

accidents" "incidents similar" "malfunctioning" and "other similar back-up alarms/devices" are not defined in these interrogatories. Preco objects to any characterization of the alarm at issue as "malfunctioning," as there is no indication from the information, evidence or testimony available that the alarm on defendant Thompson's truck malfunctioned. Without waiving said objections, no.

41. Please provide a listing of all internal "in house" designation codes and corresponding consumer market names used for your back-up alarms/devices. Please indicate the geographical market destination for each.

ANSWER: Objection. This interrogatory is overly broad, unduly burdensome and seeks information about devices manufactured by Preco that are not at issue or in any way related to this lawsuit or incident. Without waiving said objections, see Preco's preliminary statement. To the extent available, documents responsive to this request will be available for inspection and review at a mutually agreeable date and time at the office of the undersigned, legal counsel for Preco Electronics, Inc.

42. Identify whether the subject back-up alarm/device is produced in conjunction with another manufacturer. Please provide the consumer market name(s) and "in house" designation code(s) (if known) as it is marketed by the other manufacturer.

ANSWER: To the extent that Plaintiffs establish that the "subject backup alarm/device" that was on Defendant Thompson's vehicle at the time of the incident was a Preco product, Preco manufactured the Model 45AA Bac-A-Larm that Defendant Thompson alleges was affixed to his vehicle at the time of the incident. However, the

subassemblies of component parts of the alarm including, but not limited to, the "housing," circuit assemblies, switch and speaker, were manufactured by others. To the extent available, documents responsive to this request will be available for inspection and review at a mutually agreeable date and time at the offices of the undersigned, counsel for Preco.

43. Please name all manufacturers/suppliers of all component parts of the subject back-up alarm/device.

ANSWER: See response to Interrogatory No. 44.

44. Please provide a list of all the part numbers, component numbers, and any other identifying numbers for the subject back-up alarm/device model.

ANSWER: See response to Interrogatory No. 44.

45. Please detail any changes (however minor) in the subject back-up alarm/device during all model years with the same basic design or the model five (5) years previous and the model five (5) years subsequent to the subject back-up alarm/device.

ANSWER: Objection. This interrogatory is irrelevant, overly broad, unduly burdensome, vague and not reasonably calculated to lead to the discovery of admissible information. This interrogatory seeks information which is beyond the scope of permissible discovery. Without waiving said objections, Preco sold its light and alarm division in February, 2008, prior to notice of the claim. Subsequent to the sale, documents were transferred or removed from Preco's possession, custody or control. To

the extent available, documents responsive to this request will be available for inspection and review at a mutually agreeable date and time at the offices of the undersigned, legal counsel for Preco.

46. Please provide details as to whether Instant Defendant ever received any notification either previous or subsequent to the subject incident, as to injuries to other individuals from Instant Defendant's products.

ANSWER: Objection. This interrogatory seeks information which is irrelevant, prejudicial, inflammatory, overly broad, vague, unduly burdensome and not reasonably calculated to lead to discovery of admissible evidence. Information on products other than the Model 45AA, which is the subject of this lawsuit, manufactured by Preco is outside the permissible scope of discovery in this action. Without waiving said objections Preco is not aware of any injuries caused or in any way contributed to by the Model 45AA Bac-A-Larm.

47. Please provide all marketing information regarding the subject back-up alarm/device and provide all design, testing, inspection reports and manual information regarding the subject back-up alarm/device.

ANSWER: Preco sold its light and alarm division in February, 2008, prior to notice of the claim. Subsequent to the sale, documents were transferred or removed from Preco's possession, custody and control. To the extent available, documents responsive to this request will be available for inspection and review at a mutually agreeable date and time at the office of the undersigned, legal counsel for Preco.

48. Have you received or become aware of any complaint or incident involving other substantially similar back-up alarm/devices from any other customers, consumers, wholesale dealers or retailers?

ANSWER: Objection. This interrogatory seeks information which is irrelevant, prejudicial, inflammatory, overly broad, vague, unduly burdensome and not reasonably calculated to lead to discovery of admissible evidence. Information on products other than the Model 45AA, which is the subject of this lawsuit, manufactured by Preco is outside the permissible scope of discovery in this action. Without waiving said objections, Preco is not aware of any complaints or incidents involving the Model 45AA, other than the instant lawsuit. Discovery is ongoing and Preco reserves the right to supplement its responses to this Interrogatory.

49. For each complaint referred to in answer to the previous Interrogatory, please identify:

a. Date of alleged incident:

b. Date Instant /Defendant received notice of complaint or became aware of complaint;

c. Nature of complaint; and

d. Name and last known address and/or telephone number of complainant or his or her attorney, agent or representative.

ANSWER: Objection. See response to Interrogatory No. 48

50. Have you been sued or named as a defendant or additional defendant in any action or lawsuit involving the subject back-up alarm/device model or substantially similar models?

ANSWER: Objection. This interrogatory seeks information which is irrelevant, prejudicial, inflammatory, overly broad, vague, unduly burdensome and not reasonably calculated to lead to discovery of admissible evidence. Information on products other than the Model 45AA, which is the subject of this lawsuit, manufactured by Preco is outside the permissible scope of discovery in this action. Without waiving said objections, Preco is not aware of any action or lawsuit involving the Model 45AA alarm, other than the instant lawsuit. Discovery is ongoing and Preco reserves the right to supplement its responses to this Interrogatory.

51. For each action or lawsuit referred to in answer to the previous Interrogatory, please state:

a. Date of alleged injury-producing incident;

b. Date action or lawsuit was filed;

c. Court in which action or lawsuit was filed;

d. Name of each party;

e. Name and address of lawyer(s) who represented Plaintiffs(s);

f. Date of settlement, verdict, or dismissal or other termination of litigation; and

g. Verdict, decision or terms of settlement (if settlement is subject to confidentiality, please indicate).

ANSWER: Objection. See response to Interrogatory No. 50

52. Have you received or become aware of any complaint or incident involving other back-up alarm/devices of the same model year as the subject model manufactured, sold or distributed by Instant Defendant in which it is alleged that malfunctioned and caused any minor injuries, serious injuries or death'?

ANSWER: **Objection. This Interrogatory is irrelevant, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence as it seeks information on all alarm devices manufactured by Preco in the same model year as the model Defendant Thompson alleges was affixed to his truck at the time of the incident and is not in any way relevant to the instant lawsuit. Without waiving said objections, Preco is not aware of any complaint or incident at this time.**

53. For each complaint referred to in answer to the previous Interrogatory, please state:

a. Date of alleged incident:

b. Date Instant Defendant received notice of complaint or became aware of complaint;

c. Nature of complaint; and

d. Name and last known address and/or telephone number of complainant or is or her attorney, agent or representative.

ANSWER: Objection. See Response to Interrogatory No. 52.

54. Was the subject back-up alarm/device and/or its model the subject of any recall? If so, please state:

a. Date of each recall;

b. Reason(s) for each recall;

c. The recall notice number of each recall campaign.

d. Describe any alteration made to each recalled item; and

e. An exact description of each item recalled.

ANSWER: To the extent that Plaintiffs establish that the "subject back-up alarm/device" was a Preco product, as Defendant Thompson alleges, no.

55. Does Instant Defendant contend that the subject back-up alarm/device had been substantially changed or altered between the date of sale and the date of the incident?

ANSWER: Discovery is ongoing. Preco has not had an opportunity to fully examine and investigate or inspect the subject backup alarm/device and/or the roles of the other parties in this action. Preco reserves its defense of substantial change or alteration until such time as its own investigation and/or inspection of the alarm is completed. See also the Answer, New Matter and Cross-Claims filed on behalf of Preco in this matter.

56. If your answer to the preceding Interrogatory is in the affirmative, please state:

a. Every fact in support of this contention;

b. Identify each person having knowledge of any facts that support this contention;

c. Identify every document that supports this contention; and

d. Describe every tangible item of evidence that supports this contention.

ANSWER: See response to Interrogatory No. 55.

57. Does Instant Defendant contend that Plaintiffs' Decedent was not using the subject

back-up alarm/device in an intended or foreseeable manner at the time of the incident? If so, please state:

a. Every fact in support of this contention;

b. Identify each person having knowledge of any facts that support this contention;

c. Identify every document that supports this contention; and

d. Describe every tangible item of evidence that supports this contention.

ANSWER: Objection. This interrogatory is vague and not reasonably related to the incident as alleged in Plaintiffs' Complaint. Plaintiffs' decedent was not "using" the subject backup alarm/device at the time of the incident, based upon the common definition of the word "use". However, these interrogatories do not define "use" or "using". Discovery is ongoing. Preco has not had an opportunity to fully examine and investigate or inspect the subject backup alarm/device and/or the roles of the parties in this incident. Preco reserves its defense of unintended use/unintended user and/or unforeseeable manner of use until such time as its own investigation and/or inspection of the alarm is completed. See also the Answer, New Matter and Cross-Claims filed on behalf of Preco in this matter.

58. On what date was the subject back-up alarm/device originally sold?

ANSWER: Objection. Preco objects to the extent that this question presumes that the "subject back-up alarm/device" was designed, manufactured and/or sold by Preco. Without waiving said objections, to the extent that Plaintiffs can establish that the alarm Defendant Thompson alleges was affixed to his truck on the date of the incident is the subject back-up alarm/device, Preco did not, in the ordinary course of business, track the

date upon which its alarms were sold. In general, Preco manufactured alarms that were sold to distributors who ultimately sold to the end user. Preco did not have in place at any time a system to track the identity of the distributor who purchased an individual alarm from Preco. At all times relevant hereto, Preco tracked the week and year, as well as level of revision for an individual alarm. In the instant matter, Defendant Thompson alleges that the alarm affixed to his truck at the time of the July 11, 2007 incident was the Preco Bac-A-Larm Model No. 45AA. Defendant Thompson alleges that he removed the alarm subsequent to the incident and made the alarm available for inspection and review by all parties. Upon inspection and review, the alarm contains the date code 4207M in white stamped ink on the bottom of the alarm. This date code is the method by which Preco tracks the week, year and level of revision to an individual model alarm. The date code stamped on the alarm Mr. Thompson alleges was on his truck at the time of the incident was manufactured in the 42nd week of 2007 (week of October 14, 2007) and is revision level M.

All Preco alarms were stamped pursuant to this procedure through the date that Preco sold the alarm and light division in February, 2008. Therefore, based upon the information available and upon inspection and review of the alarm, Preco denies that the alarm which is alleged to have been affixed to Defendant Thompson's vehicle at the time of the incident was even manufactured at the time of the incident.

59. Have you ever made any safety/business decisions pertaining to the subject back-up alarm/device on a cost-benefit basis? If so, please explain the decisions and reasons therefore in detail.

ANSWER: Objection. This interrogatory seeks information that is beyond the scope of permissible discovery, is vague, broad, unduly burdensome, prejudicial and not

reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, at all times prior to the sale of the alarm and sound division in February 2008, and while Preco owned and controlled the alarm and light division, it complied with all regulations in the industry, manufactured its alarms to specific industry standards and verified, prior to the alarm leaving its warehouse, that the subject alarm complied with the specific industry standards to which it was manufactured.

60. Have you made any changes to the subject back-up alarm/device and/or substantially similar models which may have prevented an occurrence that is the subject of this lawsuit from occurring'? If so, please explain the changes, including when and why the changes were made and explaining the nature and cost of implementing the change. If no changes have been made, please explain why.

ANSWER: **Objection. This interrogatory is overly broad, unduly burdensomc, prejudicial, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. This interrogatory calls for speculation and a legal conclusion. Without waiving said objections, see Preco's Answer, New Matter and Cross-Claims filed in this action.**

61. Have you made or ever considered other design alternatives for the model of the subject back-up alarm/device and/or substantially similar models? If so, please provide all documents reflecting such considerations, plans and/or proposals.

ANSWER: Objection. This interrogatory is overly broad, unduly burdensome, prejudicial, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Information on other design alternatives for "substantially similar models" is wholly irrelevant to the subject back-up alarm at issue in this case. This interrogatory

amounts to a "fishing expedition" for the Plaintiffs. Without waiving said objections, Preco is unaware of alternative design considerations, plans and/or proposals set forth for the Model 45AA Bac-A-Larm. Preco is aware that at some point in time, the Model 45AA Alarm housing component part, manufactured by companies other than Preco, moved from metal housing to plastic housing. Preco is unaware of the time frame of the change or the reason(s) for the change. Discovery is ongoing. Preco continues to search for documents responsive to this Interrogatory. To the extent that responsive documents exist, the same will be provided at a mutually agreeable date and time for inspection and review at the offices of the undersigned, legal counsel for Preco.

62. Please set forth the decibel output for the subject back-up alarm/device at each volume setting.

ANSWER: **To the extent that Plaintiffs establish that the alarm that was affixed to Defendant Thompson's truck at the time of the incident was a Preco product and/or to the extent that Defendant Thompson proves that the alarm that was affixed to his vehicle at the time of the incident is the alarm that Defendant Thompson alleges was affixed to his vehicle at the time of the incident, that model is a Preco Bac-A-Larm, Model 45AA with a "manual adjust" setting. The "low" setting measures at 87 decibels and the "high" setting measures at 107 decibels, both of which comply with applicable regulations.**

63. Please describe why the subject back-up alarm/device had a volume switch?

ANSWER: Documents responsive to this request, to the extent available, will be produced at a mutually agreeable date and time at the offices of the undersigned, legal counsel for Preco. By way of further answer, the alarm at issue in this case is Model 45AA which contained a dual volume "manual adjust" setting by design. OSHA specifies

the output volume required. Both settings on the Model 45AA met the OSHA requirements. Subsequent to the time that the alarm leaves Preco's warehouse, the distributor and/or end user determines whether the "high" setting or the "low" setting will be used, depending upon the worksite at which the alarm will be used.

64. Please attach a photocopy of SAE International Publication/Document No. J1446 regulations and all amendments.

ANSWER: **Objection. This information is in the public domain and is a standard which is equally accessible and available to the Plaintiff as to Defendant Preco in this action. By way of further answer, the specification referenced by Plaintiff relates to the application of an alarm onto a piece of equipment. As Preco was not an installer of its products, this regulation and its amendments were inapplicable to Preco as a manufacturer.**

65. Please describe how the subject back-up alarm/device or models similar to the subject back-up alarm/device are to be wired to vehicles or trucks, i.e., through the vehicle/truck's back-up lights or switch-activated?

ANSWER: **Preco is not an installer of its alarm devices. It is a manufacturer. Preco makes no representations or warranties as to installation. However, Preco does supply recommended installation guidelines with the sale of each alarm, a copy of which will be produced at a mutually agreeable date and time for inspection and review at the office of the undersigned, legal counsel for Preco.**

66. Have you ever received any complaints from any of your consumers concerning instructions or the need for more-specific instructions for installation and/or use of the subject back-up alarm/device or for similar models?

ANSWER: Objection. This interrogatory is beyond the scope of permissible discovery, is overly broad, unduly burdensome, prejudicial, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, no.

67. Please state in detail your version of how the incident occurred and all the precautions Instant Defendant took to prevent the subject incident from happening.

ANSWER: Objection. Preco was not on site to provide a first hand account of the manner in which the incident occurred and was not on site prior or subsequent to the incident to speak with or interview anyone having first hand information. To the extent that Plaintiff establishes that the alarm that was affixed to Defendant Thompson's vehicle at the time of the incident was a Preco product, Preco maintains that its alarms operated fully and completely in accordance with manufacturer's specifications and guidelines and free of defect at all times.

68. Were there any accidents of a similar nature to any of Instant Defendant's other customers within ten years prior to the subject accident?

ANSWER: Objection. This interrogatory seeks information which is irrelevant, prejudicial, inflammatory, overly broad, vague, unduly burdensome and not

reasonably calculated to lead to discovery of admissible evidence. Information relevant to other customers and/or other Preco manufactured products is outside the scope of permissible discovery in this action. This Interrogatory is not reasonably limited in scope. The terms "accidents of a similar nature" and "other customers" are not reasonably defined to allow defendant Preco to endeavor to respond. Without waiving said objections, no.

69. If your answer to the previous Interrogatory is in the affirmative, please set forth all details.

ANSWER: Objection. See response to Interrogatory No. 68.

70. Please state what subsequent measures Instant Defendant has taken to prevent future incidents/injuries.

ANSWER: Objection. This interrogatory seeks information which is irrelevant, prejudicial, inflammatory, overly broad, vague, unduly burdensome and not reasonably calculated to lead to discovery of admissible evidence. Information relevant to subsequent remedial measures is beyond the scope of permissible discovery. Preco objects to the extent that this question presumes that there was any defect, flaw or irregularity in its product and maintains that its alarms operated fully and completely in accordance with manufacturer's specifications and guidelines and free of defect at all times. By way of further answer, Preco sold its lights and alarm division in February, 2008, prior to notice of the claim that is the subject of this lawsuit.

DOCUMENTS, REPORTS AND INVESTIGATIONS

71. State whether any other investigatory or other reports were prepared, compiled, submitted or made on behalf of Instant Defendant in the regular course of business or as a result of the event for either private use or for any federal, state, local or industry safety or regulatory organization.

ANSWER: None.

72. If the Answer to the preceding Interrogatory is in the affirmative:

a. Enumerate and identify the same by date, subject matter, name, address,

b. job classification of the person or persons making or rendering the same;

c. The name. address and present whereabouts of the person who has present custody or control thereof and the purpose of such preparation;

d. Attach a copy of each such report to the Answers to these Interrogatories pursuant to R.C.P. 4009(a)(1I) and 4009(b)(1).

ANSWER: See response to Interrogatory No. 70.

73. Did you, or anyone acting in your behalf, submit any notes, reports, statements, or memoranda to your insurance liability carrier concerning the event? If so, state:

a. The date of such report or statement;

b. The person preparing and filing such report or statement;

c. The name and address of the person or persons receiving the same;

d. The names and addresses of those employed by you or associated with you who have possession, custody or control of a copy of said reports, transcript or other reproduction of such testimony, memorandum, or statements made to your insurance carrier.

ANSWER: Objection. This interrogatory seeks information which is protected from disclosure by the attorney-client privilege, work product doctrine and/or other applicable privilege and as such, will not be disclosed. Without waiving said objections, all communication with the insurance carrier has been through counsel which is protected from disclosure for the reasons set forth above.

74. Attach a copy of all your insurance carrier statements to the Answers to these Interrogatories.

ANSWER: Objection. This interrogatory is vague as "insurance carrier statements" is not defined. This interrogatory seeks information which is protected from disclosure by attorney-client privilege, work product doctrine or other applicable privilege. Without waiving said objections, if "all your insurance carrier statements" refers to any written or transcribed statement, none.

75. State whether any plans, drawings, blueprints, models, sketches, maps or

diagrams exist or were made of the accident site or about any matter concerning the event and, if so, state:

a. The identity of each said plan, drawing, blueprint, sketch or diagram by subject matter;

b. The day and the time of day when each of the same were made;

c. The name and address of the person making same;

d. The name and address of the person or persons having custody of such plans, drawings, blueprints, sketches or diagrams;

e. At the expense of the Plaintiffs, attach a copy of each sketch or diagram to the Answer to this Interrogatory.

ANSWER: Preco made no plans, drawings, blueprints, models, sketches, maps or diagrams of the accident scene, but is aware that drawings and/or sketches have been produced by other parties in discovery and are equally within the possession, custody and control of the Plaintiffs.

INSURANCE

76. Was there a policy of insurance that covered you on the date of the incident against the type of risk involved here? If so, for each policy state:

a. The name and address of the insurer;

b. The Policy Number;

c. Name of the insured on said policy;

d. The effective dates thereof;

e. The nature of the coverage;

f. The limits of liability for personal injuries for each person in each accident;

g. The limits of liability for property damage;

h. The amount of deductible per incident and per person;

i. The name and address of the custodian of said policy.

ANSWER: **a. One Beacon Insurance Group**

b. 711-00-98-29-0000

c. Preco Electronics, Inc.

d. 6/20/07 through the sale of the alarm and light division in February, 2008

e. General Liability

f. $1,000,000 per occurrence

g. N/A

h. To be supplied

i. Preco Electronics, Inc.
415 N. Maple Grove Road
Boise, Idaho 83704-8241

STATUS OF PLAINTIFFS' DECEDENT

77. Identify any person having knowledge of Plaintiffs' Decedent physical condition prior to the date of the event.

ANSWER: None.

EXHIBITS AND WITNESSES

78. Identify all exhibits you intend to offer at the Trial of this matter, and please attach copies of same to these Answers.

ANSWER: Objection. This interrogatory seeks disclosure of information on a time table inconsistent with the Rules of Civil Procedure and/or information that is protected by attorney/client privilege, work product doctrine or other applicable privilege. Without waiving said objections, Preco has not yet determined which exhibits it intends to use at trial.

79. Identify all witnesses you intend to call at the trial of this matter.

ANSWER: Objection. This interrogatory seeks disclosure of information on a time table inconsistent with the Rules of Civil Procedure and/or information that is protected by attorney/client privilege, work product doctrine or other applicable privilege. Without waiving said objections, Preco has not yet determined which witnesses it intends to call at trial.

80. For each person who assisted in the preparation of Instant Defendant's Answers to these Interrogatories, please provide:

a. Name;

b. Home Address

c. Business address

d. Job Title/Occupation; and

e. Relationship to Defendant.

ANSWER: a-e. Defense Counsel, Mike Bloom, Accountant and Dale Hessing, Vice-President of Blind Spot Safety, c/o Preco Electronics, 415 N. Maple Grove Road, Boise, Idaho 83704-8241.

Respectfully submitted:

GOEHRING, RUTTER & BOEHM

By: Jaime N. Doherty

Jaime N. Doherty, Esquire
Pa. ID No. 89402

Attorneys for Preco Electronics, Inc. t/d/b/a Preco Electronics

VERIFICATION

I, Mike Bloom, of Preco Electronics, Inc., do hereby verify that I have read the foregoing RESPONSES AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS and that the statements therein are correct to the best of my knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unknown falsification to authorities.

PRECO ELECTRONICS, INC.

Date: July 17, 2009 By: _____

Mike Bloom

VERIFICATION

I, Dale Hessing, Vice President of Blind Spot Safety at Preco Electronics, Inc., do hereby verify that I have read the foregoing RESPONSES AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS and that the statements therein are correct to the best of my knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unknown falsification to authorities.

PRECO ELECTRONICS, INC.

Date: July 17, 2009 By: _____

Dale Hessing

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the RESPONSES AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGTORIES AND REQUESTS FOR PRODUCTION OF DOUMENTS was served on all counsel of record by first class mail, postage prepaid, and by email this 21st day of July, 2009, at the following address:

Bryan Niederhiser, Esquire
Marcus & Mack
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Counsel for James E. Clark, Jr. and Brenda Coble

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
Counsel for Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228
Counsel for New Enterprise Stone & Lime Company, Inc. t/d/b/a New Enterprise Stone and Lime Company

Jaime Doherty, Esquire

C

DATE CODE STANDARD PROCESS SPECIFICATION & PROCEDURE

1. SCOPE

   1.1. This document describes the Date Code Format, Specification, and Procedure.

2. PURPOSE

   2.1. Provide a standard method of tracking the manufacturing date and revision level of Products built at PRECO.

3. RESPONSIBILITY

   3.1. It is the responsibility of Manufacturing Engineering to create, maintain, and update this document.

   3.2. It is the responsibility of Production or Test operators to follow this procedure when date coding product.

4. REFERENCES

   4.1. Date Code Verification Log, PQ0-054-4_.

   4.2. Bill of Materials

   4.3. Date Code Verification Instructions, PW0-044-4_.

5. PROCEDURES

   5.1. PRECO DATE CODE METHODOLOGY

      5.1.1. If a product requires a date code, it will be noted on the cover sheet or within the BOM.

      5.1.2. Date Code Example**: 0104,** See Table 1, PRECO DATE CODE TABLE, on the following page.

      5.1.3. For products which have the date code stamped into the housing, an inspection stamp may be used to indicate the product has passed test and inspection.

      5.1.4. Unless otherwise indicated in the Manufacturing Bill of Materials, the date code will be applied after the product has passed all tests and inspections, and is ready for final packaging.

         5.1.4.1. Date Stamp acts as a visual indicator that inspection and or test was completed satisfactorily.

         5.1.4.2. No defective or untested product shall be date stamped.

         5.1.4.3. Units will be stamped one at a time immediately after final inspection or test by the person performing the inspection or test.

         5.1.4.4. Unless otherwise specified, the date code shall be ink stamped in contrasting color on the body of the unit using either Black or White ink, depending on the unit base color.

      5.1.5. Processing product with an existing date code stamp:

TECHNICAL DATA FURNISHED HEREIN SHALL NOT BE EITHER RELEASED, USED, DUPLICATED, OR DISCLOSED IN WHOLE OR IN PART FOR MANUFACTURE OR PROCUREMENT WITHOUT THE WRITTEN PERMISSION OF PRECO ELECTRONICS **PRECO ELECTRONICS CONFIDENTIAL**

5.1.5.1. Product shall be stamped with a new Date Code. The original date code shall remain visible. The original revision shall be used unless otherwise directed by engineering.

6. TABLE 1

PRECO DATE CODE TABLE		
EXAMPLE	**DESCRIPTION**	**CODE**
01	WEEK OF YEAR	**01 = 1st WEEK** 02 = 2nd WEEK 03 = 3rd WEEK 04 = 4th WEEK 05 = 5th WEEK - - 53 = 53rd WEEK
04	YEAR OF BUILD	**01 = 2001** 02 = 2002 03 = 2003 04 = 2004 05 = 2005 ETC.
A	CURRENT REVISION LEVEL (*NOTES)	**A** thru Z

6.1. NOTE 1. In the case of private branded (labeled) Preco propriety product, the revision level will be the revision level on the Primary Product.

6.2. NOTE 2. In the case of the product being built under a Deviation Number, the revision level will be the revision of the underlying BASE PRODUCT. (Not the rev. 'A' of the deviation product P/N).

6.3. CATERPILLAR DATE CODE METHODOLOGY

6.3.1. Numerical Code

6.3.1.1.	0	1	2	3	4	5	6	7	8	9
6.3.1.2.	N	U	M	E	R	A	L	K	O	D

6.3.2. Whenever dates are to be shown in numerical code, use the sequence of DAY, MONTH, and the last two digits of the YEAR. (The 'DAY' is Fridays' date.) Six letters with no spaces between must always be used. When the number of the day or month is less than 10, a zero is inserted before the number to maintain the six letter sequence.

6.3.2.1. Example: November 02, 2001 is translated to 021101, which is coded as NMUUNU

TECHNICAL DATA FURNISHED HEREIN SHALL NOT BE EITHER RELEASED, USED, DUPLICATED, OR DISCLOSED IN WHOLE OR IN PART FOR MANUFACTURE OR PROCUREMENT WITHOUT THE WRITTEN PERMISSION OF PRECO ELECTRONICS **PRECO ELECTRONICS CONFIDENTIAL**

6.3.3. Code shall be applied to both primary products and subassemblies as required on the cover sheet of the BOM.

6.3.4. In the case of Caterpillar products the date code listed above is stamped into the housing prior to assembly and therefore does not indicate a unit that has passed inspection and test.

6.3.5. Immediately after first housing is stamped, the date code shall be verified and the information shall be recorded in the Date Code Verification log, PQ0-054-4_.

7. TABLE 2

DATE	DESCRIPTION	CUSTOMER P/N	NUMERALKOD/EC-PO									OPERATOR
		PRECO P/N	TRANSLATION									VERIFIED
			D	D	M	M	Y	Y	E	C	P	O	

A	B	C	D	D	E	E	F	F	G	G	H	H	J
K		L	M	M	N	N	P	P	Q	Q	R	R	S

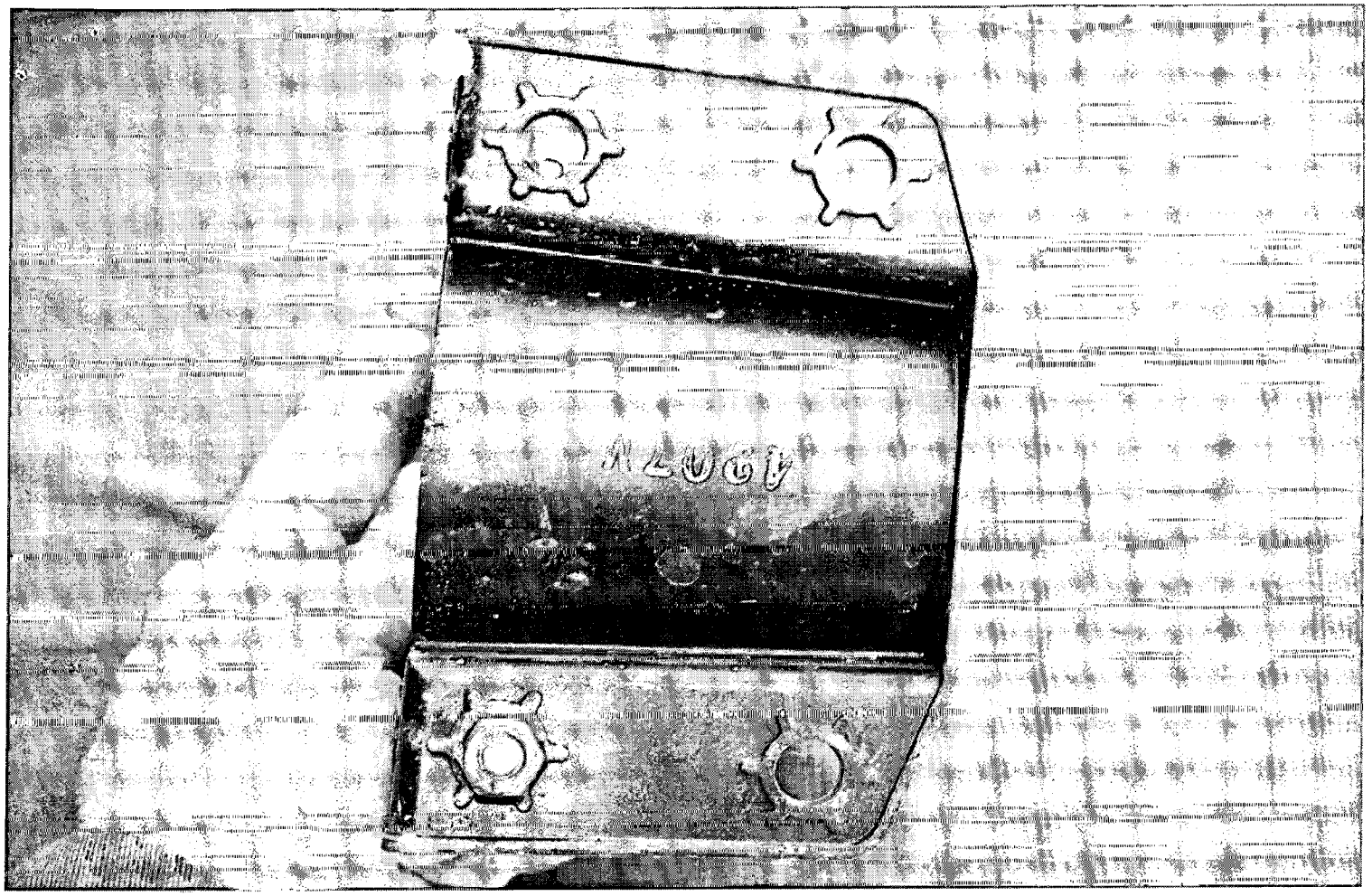
7.1. A = Build Date, B = Brief Description, C = Customer P/N EC, D, E, F, G, H is entered using the NUMERALKOD Letters, D = 2 Spaces for Fridays' Date per scheduled build, E = 2 Spaces for the Month, F = 2 Spaces for the last two digits of the Year, G = EC level of Customer P/N, H = Letters PO (First and Last letter of Preco), J = Initials of Set-Up Operator, K = This field is not required, but this line is to be completed by the verification operator, L = Preco P/N as scheduled, M, N, P, Q, R = is the translation for the NUMERALKOD written in the spaces directly above these squares, S = Initials of the Verification Operator.

8. DEFINITIONS

8.1. Product is defined as 'PRIMARY PRODUCT ', or the highest assembly level of the entity, (assembly, sub-assembly, device, component, unit, system, etc.) to which the Date Code is affixed or applied. Primary products are to the far left on the schedule. Private brands are inset from the primary products.

TECHNICAL DATA FURNISHED HEREIN SHALL NOT BE EITHER RELEASED, USED, DUPLICATED, OR DISCLOSED IN WHOLE OR IN PART FOR MANUFACTURE OR PROCUREMENT WITHOUT THE WRITTEN PERMISSION OF PRECO ELECTRONICS **PRECO ELECTRONICS CONFIDENTIAL**

D



E

RECORDED STATEMENT TRANSCRIPTION

INSURED:Lyle Thompsont/b/a ValleyExcauating and Hauling

DATE OF LOSS: 07/11/07
CLAIM NO.:70-37-235730
YORK CLAIMS FILE NO.: Nain-0005a1
CLAIMANT: Estate of James Clark
STATEMENT OF: TY J. THOMPSON
STATEMENT DATE: AUGUST 14, 2009

This is John Edleman. Today is Friday, August 14, 2009. The time is now about 12:45.

Q: Could you state your full name for me, please?
A: My name is Ty J. Thompson.

Q: And that's T-Y?
A: Yes.

Q: Ty J. Thompson.
A: Ty Jackson.

Q: Ty Jackson Thompson.
A: Yes.

Q: Okay. And you understand this is being recorded?
A: Yes.

Q: What's your home address? What do you list as?
A: 17473 Fannetsburg Road East.

Q: Fannetsburg. F-A-N-N-E-T-S-B-U-R-G.
A: Yes.

Q: Fannetsburg East.
A: Yes.

Q: And that's in Fannetsburg, oddly enough, huh.
A: Correct.

Q: 17221.
A: Correct.

Q: Okay. And your father is Lyle S. Thompson?

A: Yes.

Q: He's a senior, right?
A: Correct.

Q: Now he runs, or does business as Valley Excavating and Hauling. Are you affiliated with that in any way?
A: No, don't have nothing in it, other than just cheap labor, free labor.

Q: Yeah, okay. Date of your birth?
A: 7-15-77.

Q: '77. Okay. So you have a truck yourself. Right?
A: Correct. I'm not working at this time. Correct.

Q: Okay.
A: I have a CDL and I have a Class C inspection license.

Q: So, let's go back to—we're going to talk about an accident I guess your dad had July of '07. It looks like—the date that I have is July 11, '07.
A: That's about right, I believe.

Q: Okay. So that involved Valley Excavating and your father. So he operates separately. You have your own tri-axle and you do your own work. Right?
A: Correct.

Q: Okay. So you operate with a separate what—ICC number and everything?
A: Yes, I had it all. At this time I'm not working the truck. I still own the truck. But, yes, I was.

Q: Okay. Back then, though?
A: Yeah, correct.

Q: Okay. And different numbers—completely different from your father altogether?
A: Right. I had my own insurance and everything. Yes.

Q: Okay. Doing the same type of work or—?
A: Correct. Yes. Tri-axle dump truck.

Q: Tri-axle dump truck.
A: Working for New Enterprise.

Q: So you were actually doing work for New Enterprise also?

A: Not at the time he was doing this. It was probably about a year before that. Price of fuel was going up and the rate of the rock was going down, so I told them to go to hell and I come home and went to work for somebody else.

Q: Okay.
A: The economy wasn't the best at the time for me to be getting into it.

Q: All right. So your dad has this accident back on the 11th and one of the contentions is that the back-up alarm wasn't loud enough. So once he gets the truck back to Fannetsburg, you're going to clean it off.
A: Well, I—it set here. I wasn't supposed to touch it until OSHA come. OSHA come and looked at it and did all their paperwork and all that stuff. Far as I know, they gave me the green light to go back to work, to work on it, so—

Q: Okay. So that was the girl that came out of Harrisburg. Right?
A: Um, I'm not sure where she—it was a female, yes, sir.

Q: Okay. So she came out and she tested the back-up alarm and looked at the truck and said she was done with it and—
A: Pretty much, yeah.

Q: So that was about two weeks after the accident?
A: Well, I wouldn't say two weeks. It might have been two weeks. It was probably a week or two after she said it was okay.

Q: Okay.
A: Is when I started to clean it up.

Q: Okay. So you're thinking the end of July, first of August?
A: Yeah, around August somewhere.

Q: First of August.
A: Yeah, first of August.

Q: So what's—you go out and you're going to pressure-wash everything.
A: Yeah, I was just cleaning the truck off and going over it and making sure—when you clean it, you pretty much go over it, check all the suspension parts, make sure nothing's broke and all that. Cleaned off everything. I noticed there was a wire loose on one of the back-up alarms from the power washer, from hitting it. And I went to fix it and one end of the back-up alarm looked like it was damaged from the power washer.

Q: Okay. So you replaced it.
A: Correct. Yes.

Q: Did you keep the old alarm or did you throw it away?
A: Uh, far as I know, it probably got misplaced or got thrown away. I didn't—I was under the impression if they wanted it, they would have took it then. But I thought they were done with it, that they didn't have no needs for it, so I probably threw it away, 'cause it wasn't working. It was broken.

Q: Okay. Do you remember what kind it was? Did you make any notation at all?
A: All I know there was two more on the shelf. I picked one up and put it on.

Q: Okay. Was it similar?
A: Uh, I believe. It was black and it beeped. Had four bolt holes on; it bolted right up.

Q: So it fit in the same holes and everything, so—
A: It fit in the same location, correct. Yes.

Q: So the chances are it was a pre-corner back-up alarm.
A: Probably, yes.

Q: Okay. Now you said you have an inspection license.
A: Yes.

Q: Okay.
A: Class C—not for big trucks though. Class C—the small automobile stuff.

Q: Oh, so just small state inspection stuff.
A: Correct. Yes.

Q: Okay. But not—
A: I am mechanically-inclined, yes.

Q: So when you looked at the back-up alarm, did you test it at all or were you there when the girl from OSHA was there?
A: It was working when—I was here a little bit. I didn't—I come into the barn—it was up in the lot was where she was looking at it and I come down to the barn. It was around July and it was hot, so I wasn't standing out there waiting for it. As far as I know, she gave me the green light that we was allowed moving it and that's when I commenced to working on it.

Q: Sure. Okay. Now when you heard the back-up alarm, did you have any notion that it was loud or not loud?
A: I know it was working and the reverse lights were working. That's about all I—it was working as far as I know. I don't—I know some of them are louder than others. Some of them have variable loudnesses on them. Some of them are just so many decibels. They're all kind of different.

Q: Okay. So when you said you jammed the power washer wand back up underneath there, you blew a couple wires off when that happened.
A: Well, I broke—the power washer's not a—it's a commercial power washer—

Q: So it really—it does a nice job, doesn't it?
A: Yeah. It actually broke the wire off and broke a piece of the back-up alarm off.

Q: Okay. All right. So the new alarm that you put on was right out of the store, right out of the box and on—
A: Right off the shelf. It was in the box. It wasn't out of the store; we had them here and, like I said, we have two trucks. It's something that you gotta' have to work on the jobs. They check them pretty frequently.

Q: Okay. So you just had a spare one, you just threw it on there, and that was it.
A: Correct.

Q: Okay. Nothing out of the ordinary, nothing unusual about it at all?
A: No, it was—far as I know, it was working fine. She said it was okay. I commenced to working on it and then I seen when I dried off there a little bit, I seen the wire was off and the one terminal end was damaged a little bit.

Q: Okay.
A: So I messed with it there a little bit and I said the heck with it and I just bolted a new one on it.

Q: Okay. So that was it then?
A: Pretty much.

Q: Okay. Well, has all the information you've given me been true to the best of your knowledge?
A: As far as I know, yes.

Q: All right. Could you state your full name again?
A: My name is Ty Jackson Thompson.

Q: All right. This concludes this recorded interview.
A: All right.

F

COMMONWEALTH OF P SYLVANIA FAT WZ

POLICE CRASH REPORTING FORM

Crash Number P1335753 K10 8-14-07

AA 500 1 | Case Closed: Yes | Reportable Crash: Yes | Page: 01

1 Police Agency Data

Incident Number: C03-0911351 | Police Agency: 68C03 | Patrol Zone: 072

Agency Name: PA STATE POLICE | Precinct: CLEARFIELD 1330 | Investigation Date (MM-DD-YYYY): 07-11-2007

Dispatch Time (mil): 1531 | Arrival Time (mil): 1537 | Investigator: TPR. ROBERT J. FERDARKO | Badge Number: 05962

Reviewer: CPL BRADLEY D. ROY | Badge Number: 05573 | Approval Date (MM-DD-YYYY): 08-08-2007

2 Crash Data

County: 17 | County Name: CLEARFIELD | Municipality: 206 | Municipality Name: BRADFORD TOWNSHIP

Day of Week: Sun | Mon | Tue | Wed | Thu | Fri | Sat | Unk — Wed

Crash Date (MM-DD-YYYY): 07-11-2007 | Crash Time (mil): 1530 | No of Units: 02 | People: 02 | Injured: 00 | Killed*: 01 | *If > 00 complete Form F

Workzone (If Yes, Complete Form M, Section 29): Yes | School Bus Related: No | School Zone Related: No | Notify PENNDOT Maintenance: No

3 Loc Type

Intersection Type: Midblock | 4 Way Intersection | "T" Intersection | "Y" Intersection | Traffic Circle/ Round About | Multi-Leg Intersection | On Ramp | Off Ramp | Crossover | Railroad Crossing | Other

*Special Location: 02 — * See Overlay

4 Principal Road

Route Number: 8012 | Segment (Optional): | Travel Lanes: 01 | Speed Limit: 65

Street Name: | Street Ending: | Orientation: West

House Number (if applicable): For Mid-block crashes only. Use postal House Number and make sure Principal Roadway Street Name is filled in if using this option

Route Signing: Interstate (Not Turnpike) | Turnpike (East/West) | Turnpike Spur | State Highway | County Road | Local Road or Street | Private Road | Other/ Unknown

5 Intersecting Road

Use For Intersection Crashes

Route Number: | Segment (Optional): | Travel Lanes: | Speed Limit:

Street Name: | Street Ending: | Orientation: North | South | East | West | Unknown

Route Signing: Interstate (Not Turnpike) | Turnpike (East/West) | Turnpike Spur | State Highway | County Road | Local Road or Street | Private Road | Other/ Unknown

6 Distance From Landmark

Use For Mid - Block Crashes

Please Enter Information for **BOTH** Landmarks if Using This Option

Landmark 1: Intersecting Rt Num Or Mile Post: 0970 | Or Segment Marker: | Or Intersecting Street Name: | St Ending: | Ramp Use Only: North | South | East | West — West

Landmark 2: Intersecting Rt Num Or Mile Post: 0080 | Or Segment Marker: | Or Intersecting Street Name: | St Ending: | Ramp Use Only: North | South | East | West — East

Feet: 272 | Or Miles:

Distance From Crash Scene to Landmark 1 (For Crash between Landmark 1 and Landmark 2)

7 GPS

Latitude: Degrees 41 | Minutes 01 | Seconds 11.64

Longitude: — Degrees 78 | Minutes 20 | Seconds 22.14

8 TCD

Traffic Control Device: Not Applicable | Traffic Signal | Flashing Traffic Signal | Stop Sign | Yield Sign | Active RR Crossing Controls | Passive RR Crossing Controls | Police Officer or Flagman | Other Type TCD | Unknown

TCD Functioning: No Controls | Device Functioning Improperly | Emergency Preemptive Signal | Device Not Functioning | Device Functioning Properly | Unknown

9 Lane Closure

Lane Closed (If "Not Applicable", skip rest of the Lane Closure section): Not Applicable | Partially | Fully | Unknown

Lane Closure Direction: North | East | North and South | All (N,S,E,W) | South | West | East and West

Traffic Detoured: Yes | No | Unknown

Esti. Time Closed: < 30 Min. | 30-60 Min. | 1-3 hrs | 3-6 hrs | 6-9 hrs | > 9 hours | Unknown

FORM # AA-500 (12/02)

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COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 2

Police Use Only C03-091351

Page: 02

Crash Number P1335753

10 Unit Info

Type Unit: (●) Motor Vehicle in Transport; ( ) Hit & Run Vehicle; ( ) Illegally Parked; ( ) Legally Parked; ( ) Non - Motorized; ( ) Pedestrian; ( ) Pedestrian on Skates, in Wheelchair, etc; ( ) Disabled From Previous Crash; ( ) Train; ( ) Phantom Vehicle

(If "Pedestrian" or "Pedestrian on Skates, in Wheelchair, etc", Complete Form M, Section 28)

Commercial Vehicle: (●) Yes ( ) No *(If Yes, Complete Form C)*

Vehicle Driver / Pedestrian Information

Unit No: 01

First Name: LYLE

MI: S

Date of Birth (MM-DD-YYYY): 01 05 1941

Delete? ( )

Last Name: THOMPSON

Telephone Number: 717-349-7760

Address / City / State: 11057 CREEK ROAD, FANNETTSBURG, PA

Zip: 17221

Driver License Number: 10879976

Franklin City

Alcohol/Drugs Suspected: (●) No; ( ) Alcohol; ( ) Illegal Drugs; ( ) Alcohol and Drugs; ( ) Medication; ( ) Unknown

Driver or Pedestrian Phy.: (●) Apparently Normal; ( ) Had Been Drinking

Alcohol Test Type: ( ) Test Not Given; (●) Blood; ( ) Breath; ( ) Urine; ( ) Other; ( ) Unknown if Test Given

Primary Vehicle Code Vio: 3702

Alcohol Test Results: 0. ; ( ) Test Refused; ( ) Test Given, Contaminated Results; (●) Unknown Results

Driver Presence: 1 (1=Driver Operated Vehicle; 2=No Driver; 3=Driver Fled Scene; 4=Hit and Run; 9=Unknown)

Owner/Driver: 01 (00=Not Applicable; 01=Private Vehicle Owned/Leased by Driver; 02=Private Vehicle Not Owned/Leased by Driver; 03=Rented Vehicle; 04=State Police Vehicle; 05=PENNDOT Vehicle; 06=Other State Gov Veh; 07=Municipal Police Veh; 08=Other Municipal Government Vehicle; 09=Federal Gov Veh; 98=Other; 99=Unknown)

11 Vehicle Information

Same as Driver (●)

Owner First Name:

Owner Last Name or Business Name *(If Pedestrian, skip this Section)*:

Address / City / State / Zip:

Vehicle Make: DIAMOND REO

*Make Code: 81 (see overlay)

VIN: 1D9AC4182J1009153

Model Year: 1988

Vehicle Model: GIANT

License Plate: YMP4214

Reg. State: PA

Est. Speed: 008

Vehicle Towed: ( ) Yes (●) No

Towed By:

Insurance: (●) Yes ( ) No ( ) Unknown

Insurance Company: NATIONAL INDEMNITY INS CO

Policy No: 70TRN405723

12 Trailing Unit

No. of Trailing Units: 0

Type Unit: (1=Towing Pass. Veh; 2=Towing Truck.; 3=Towing Utility Trailer; 4=Mobile/Modular Home; 5=Camper; 6=Full Trailer; 7=Semi-Trailer; 8=Other; 9=Unknown)

Tag No: Tag Year: Tag St:

Direction of Travel: E

*Vehicle Position: 01

*Movement: 14

*See Overlay

Special Usage: 00 (00=Not Applicable; 01=Fire Veh; 02=Ambulance; 03=Police; 08=Other Emergency Vehicle; 11=Pupil Transport; 12=Commercial Passenger Carrier; 13=Taxi; 21=Tractor Trailer; 22=Twin Trailer; 23=Triple Trailer; 31=Modified Veh; 99=Unknown)

Vehicle Color: 03 (01=Blue; 02=Red; 03=White; 04=Green; 05=Black; 06=Yellow; 07=Silver; 08=Gold; 09=Brown; 10=Orange; 11=Purple; 12=Other; 99=Unknown)

Vehicle Type: 05 (01=Automobile; 02=Motorcycle; 03=Bus; 04=Small Truck *(If "02", Complete Form M, Section 26)*; 05=Large Truck; 06=SUV; 07=Van; 10=Snowmobile; 11=Farm Equip; 12=Construction Equip; 13=ATV; 18=Other Type Spec Veh; 19=Unk. Type Spec Veh; 20=Unicycle, Bicycle, Tricycle; 21=Other Pedalcycle; 22=Horse & Buggy; 23=Horse & Rider; 24=Train; 25=Trolley; 98=Other; 99=Unknown *(If "20" or "21", Complete Form M, Section 27)*)

Initial Impact Point: 06 (00=Non-Collision; 01-12=Clock Points; 13=Top; 14=Undercarriage; 15=Towed Unit; 99=Unknown)

Damage Indicator: 0 (0=None; 1=Minor; 2=Functional; 3=Disabling; 9=Unknown)

Gradient: 2 (1=Level; 2=Uphill; 3=Downhill; 4=Bottom of Hill; 5=Top of Hill; 9=Unknown)

Road Alignment: 1 (1=Straight; 2=Curved; 9=Unknown)

COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 2

Police Use Only: C03-0911351

Page: 03

Crash Number: P1335753

Unit Info

10 **Type Unit**: ○ Motor Vehicle in Transport ○ Hit & Run Vehicle ○ Illegally Parked ○ Legally Parked ○ Non-Motorized ● Pedestrian ○ Pedestrian on Skates, in Wheelchair, etc ○ Disabled From Previous Crash ○ Train ○ Phantom Vehicle

(If "Pedestrian" or "Pedestrian on Skates, in Wheelchair, etc", Complete Form M, Section 28)

Commercial Vehicle: ○ Yes ● No *(If Yes, Complete Form C)*

Vehicle Driver / Pedestrian Information

11

Unit No: 02

First Name: JAMES

MI: E

Date of Birth (MM-DD-YYYY): 08-19-1944

Delete? ○

Last Name: CLARK

Telephone Number: 814-845-7367

Address / City / State: 1304 HARMONY Road, WESTOVER, PA

Zip: 16692

Driver License Number: NOTREQ

State:

Class:

Alcohol/Drugs Suspected: ● No ○ Illegal Drugs ○ Medication ○ Alcohol ○ Alcohol and Drugs ○ Unknown

Driver or Pedestrian Physical Condition: ● Apparently Normal ○ Illegal Drug Use ○ Fatigue ○ Medication ○ Had Been Drinking ○ Sick ○ Asleep ○ Unknown

Alcohol Test Type: ● Test Not Given ○ Breath ○ Other ○ Blood ○ Urine ○ Unknown if Test Given

Primary Vehicle Code Violation: NONE — Charged? ○ Yes ○ No

Alcohol Test Results: 0.__ ○ Test Refused ○ Unknown Results ○ Test Given, Contaminated Results

Driver Presence: 1=Driver Operated Vehicle; 2=No Driver; 3=Driver Fled Scene; 4=Hit and Run; 9=Unknown

Owner/Driver: 00=Not Applicable; 01=Private Vehicle Owned/Leased by Driver; 02=Private Vehicle Not Owned/Leased by Driver; 03=Rented Vehicle; 04=State Police Vehicle; 05=PENNDOT Vehicle; 06=Other State Gov Veh; 07=Municipal Police Veh; 08=Other Municipal Government Vehicle; 09=Federal Gov Veh; 98=Other; 99=Unknown

Vehicle Information

12

Same as Driver ○

Owner First Name

Owner Last Name or Business Name *(If Pedestrian, skip this Section)*

Address / City / State / Zip

Vehicle Make

***Make Code** (see overlay)

VIN

Model Year

Vehicle Model

License Plate

Reg. State

Est. Speed

Vehicle Towed: ○ Yes ○ No

Towed By

Insurance: ○ Yes ○ No ○ Unknown

Insurance Company

Policy No

Trailing Unit — No. of Trailing Units:

Type Unit: 1=Towing Pass. Veh; 2=Towing Truck; 3=Towing Utility Trailer; 4=Mobile/Modular Home; 5=Camper; 6=Full Trailer; 7=Semi-Trailer; 8=Other; 9=Unknown

Tag No | **Tag Year** | **Tag St**

Direction of Travel | ***Vehicle Position** | ***Movement** | ***See Overlay**

Special Usage: 00=Not Applicable; 01=Fire Veh; 02=Ambulance; 03=Police; 08=Other Emergency Vehicle; 11=Pupil Transport; 12=Commercial Passenger Carrier; 13=Taxi; 21=Tractor Trailer; 22=Twin Trailer; 23=Triple Trailer; 31=Modified Veh; 99=Unknown

Vehicle Color: 01=Blue; 02=Red; 03=White; 04=Green; 05=Black; 06=Yellow; 07=Silver; 08=Gold; 09=Brown; 10=Orange; 11=Purple; 12=Other; 99=Unknown

Vehicle Type: 01=Automobile; 02=Motorcycle; 03=Bus; 04=Small Truck *(If "02", Complete Form M, Section 26)*; 05=Large Truck; 06=SUV; 07=Van; 10=Snowmobile; 11=Farm Equip; 12=Construction Equip; 13=ATV; 18=Other Type Spec Veh; 19=Unk. Type Spec Veh; 20=Unicycle, Bicycle, Tricycle; 21=Other Pedalcycle; 22=Horse & Buggy; 23=Horse & Rider; 24=Train; 25=Trolley; 98=Other; 99=Unknown *(If "20" or "21", Complete Form M, Section 27)*

Initial Impact Point: 00=Non-Collision; 01-12=Clock Points; 13=Top; 14=Undercarriage; 15=Towed Unit; 99=Unknown

Damage Indicator: 0=None; 1=Minor; 2=Functional; 3=Disabling; 9=Unknown

Gradient: 1=Level; 2=Uphill; 3=Downhill; 4=Bottom of Hill; 5=Top of Hill; 9=Unknown

Road Alignment: 1=Straight; 2=Curved; 9=Unknown

COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 3

Police Use Only C03-0911351

Page 04

Crash Number P1335753

People Information

A Person Type: 1=Driver, 2=Passenger, 7=Pedestrian, 8=Other, 9=Unknown

B Sex: F=Female, M=Male, U=Unknown

C Injury Severity: 0=Not Injured, 1=Killed, 2=Major Injury, 3=Moderate Injury, 4=Minor Injury, 8=Injury, Unk Severity, 9=Unknown if Injury

D Seat Position: 00=Not A Passenger/Occupant, 01=Driver - All Vehicles, 02=Front Seat Middle Position, 03=Front Seat Right Side, 04=Second Row - Left Side Or Motorcycle Passenger, 05=Second Row - Middle Position, 06=Second Row - Right Side, 07=Third Row Or Greater - Left Side, 08=Third Row Or Greater - Middle Position, 09=Third Row Or Greater - Right Side, 10=Sleeper Section of Truckcab, 11=In Other Enclosed Passenger Or Cargo Area, 12=In Open Area (Back Of Pickup, Etc.), 13=Trailing Unit, 14=Riding On Vehicle Exterior, 15=Bus Passenger, 98=Other, 99=Unknown

E Safety Equipment One: 00=None Used / Not Applicable, 01=Shoulder Belt Used, 02=Lap Belt Used, 03=Lap And Shoulder Belt Used, 04=Child Safety Seat Used, 05=Motorcycle Helmet Used, 06=Bicycle Helmet Used, 10=Safety Belt Used Improperly, 11=Child Safety Seat Used Improperly, 12=Helmet Used Improperly, 90=Restraint Used, Type Unknown, 99=Unknown

F Safety Equipment Two: 00=None Used / Not Applicable, 01=Front Air Bag Deployed (For This Seat), 02=Side Air Bag Deployed (For This Seat), 03=Other Type Air Bag Deployed, 04=Multiple Air Bags Deployed, 05=Motorcycle Eye Protection, 06=Bicyclist Wearing Elbow/Knee/Pads, 10=Air Bag Not Deployed, Switch On, 11=Air Bag Not Deployed, Switch Off, 12=Air Bag Not Deployed, Unk Switch Setting, 13=Air Bag Removed (Prior To Crash), 19=Unknown If Air Bag Deployed, 99=Unknown

G Ejection: 0=Not Applicable, 1=Not Ejected, 2=Totally Ejected, 3=Partially Ejected, 9=Unknown

H Ejection Path: 0=Not Ejected / Not Applicable, 1=Through Side Door Opening, 2=Through Side Window, 3=Through Windshield, 4=Through Back Door, 5=Through Back Door Tailgate Opening, 6=Through Roof Opening (Sunroof/ Convertible Top Down), 7=Through Roof Opening (Convertible Top Up), 9=Unknown

I Extrication: 0=Not Applicable, 1=Not Extricated, 2=Extricated By Mechanical Means, 3=Freed By Non - Mechanical Means, 8=Other, 9=Unknown

13 EMS Agency: CLEARFIELD EMS Medical Facility: NONE

14

Unit No	Person No	Delete?	Date of Birth (MM-DD-YYYY)	A	B	C	D	E	F	G	H	I
01	01	☐	01-05-1941	1	M	0	01	00	00	1	0	1

Name / Address / Phone: ☒ Same as Operator — EMS Transport: ○ Yes ● No

Unit No	Person No	Delete?	Date of Birth (MM-DD-YYYY)	A	B	C	D	E	F	G	H	I
02	01	☐	08-19-1944	7	M	1	00	00	00	1	0	1

Name / Address / Phone: ☒ Same as Operator — EMS Transport: ○ Yes ● No

Unit No	Person No	Delete?	Date of Birth (MM-DD-YYYY)	A	B	C	D	E	F	G	H	I
		☐	- -									

Name / Address / Phone: ☐ Same as Operator — EMS Transport: ○ Yes ○ No

Unit No	Person No	Delete?	Date of Birth (MM-DD-YYYY)	A	B	C	D	E	F	G	H	I
		☐	- -									

Name / Address / Phone: ☐ Same as Operator — EMS Transport: ○ Yes ○ No

Unit No	Person No	Delete?	Date of Birth (MM-DD-YYYY)	A	B	C	D	E	F	G	H	I
		☐	- -									

Name / Address / Phone: ☐ Same as Operator — EMS Transport: ○ Yes ○ No

Unit No	Person No	Delete?	Date of Birth (MM-DD-YYYY)	A	B	C	D	E	F	G	H	I
		☐	- -									

Name / Address / Phone: ☐ Same as Operator — EMS Transport: ○ Yes ○ No

FORM # AA-500 (12/02)

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COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 4

Police Use Only: C03-091135 1

Page: 05

Crash Number: P1335753

General Crash Information

(If more than 2 Units only complete once)

Crash Description	8	0=Non-Collision 1=Rear End	2=Head On 3=Rear to Rear (Backing)	4=Angle 5=Sideswipe (Same Direction)	6=Sideswipe (Opposite Direction) 7=Hit Fixed Object	8=Hit Pedestrian 9=Other/Unknown
Relation to Roadway	1	1=On Travel Lanes 2=Shoulder	3=Median 4=Roadside	5=Outside Trafficway 6=In Parking Lane	7=Gore (Ramp Intersection) 9=Unknown	
Illumination	1	1=Daylight 2=Dark - No Street Lights	3=Dark - Street Lights 4=Dusk	5=Dawn 6=Dark - Unknown Roadway Lighting	8=Other	
Weather Conditions	1	1=No Adverse Conditions 2=Rain	3=Sleet (Hail) 4=Snow	5=Fog 6=Rain & Fog	7=Sleet & Fog 8=Other	9=Unknown
Road Surface Conditions	0	0=Dry 1=Wet	2=Sand, Mud, Dirt, Oil 3=Snow Covered	4=Slush 5=Ice	6=Ice Patches 7=Water - Standing or Moving	8=Other

Unit(s) Event Information

15

16

Unit No		Harm Event	L/R	Most?	Utility Pole Number
01	1	02			
	2				
Please Put Events in Sequential Order	3				
	4				
02	1	11			
	2				
Please Put Events in Sequential Order	3				
	4				

17

First Harmful Event in the Crash	Unit No	Harm Event	Most Harmful Event in the Crash	Unit No	Harm Event
	01	02		01	02

Do not repeat this information on multiple pages

Harmful Events (Harm Event)

01=Hit Unit 1
02=Hit Unit 2
03=Hit Unit 3
04=Hit Unit 4
05=Hit Unit 5
06=Hit Other Traffic Unit
07=Hit Deer
08=Hit Other Animal
09=Collision With Other Non Fixed Object
11=Struck By Unit 1
12=Struck By Unit 2
13=Struck By Unit 3
14=Struck By Unit 4
15=Struck By Unit 5
16=Struck By Other Traffic Unit
21=Hit Tree Or Shrubbery
22=Hit Embankment
23=Hit Utility Pole
24=Hit Traffic Sign
25=Hit Guard Rail
26=Hit Guard Rail End
27=Hit Curb
28=Hit Concrete Or Longitudinal Barrier
29=Hit Ditch
30=Hit Fence Or Wall
31=Hit Building
32=Hit Culvert
33=Hit Bridge Pier Or Abutment
34=Hit Parapet End
35=Hit Bridge Rail
36=Hit Boulder Or Obstacle On Roadway
37=Hit Impact Attenuator
38=Hit Fire Hydrant
39=Hit Roadway Equipment
40=Hit Mail Box
41=Hit Traffic Island
42=Hit Snow Bank
43=Hit Temporary Construction Barrier
48=Hit Other Fixed Object
49=Hit Unknown Fixed Object
50=Overturn/Roll Over
51=Struck By Thrown Or Falling Object
52=Pot Holes Or Other Pavement Irregularities
53=Jacknife
54=Fire In Vehicle
58=Other Non-Collision
99=Unknown Harmful Event

Contributing Information

18

Environmental / Roadway Potential Factors (E/R)

1: 08 2: 3:

00=None
01=Windy Conditions
02=Sudden Weather Conditions
03=Other Weather Conditions
04=Deer In Roadway
05=Obstacle On Roadway
06=Other Animal In Roadway
07=Glare
08=Work Zone Related
11=Slippery Road Conditions (Ice/Snow)
12=Substance On Roadway
13=Potholes
14=Broken Or Cracked Pavement
15=TCD Obstructed
16=Soft Shoulder Or Shoulder Drop Off
28=Other Roadway Factor
29=Other Environmental Factor
99=Unknown

Possible Vehicle Failures (V)

00=None
01=Tires
02=Brake System
03=Steering System
04=Suspension
05=Power Train
06=Exhaust
07=Headlights
08=Signal Lights
09=Other Lights
10=Horn
11=Mirrors
12=Wipers
13=Driver Seating/Control
14=Body, Doors, Hood, Etc
15=Trailer Hitch
16=Wheels
17=Airbags
18=Trailer Overloaded
19=Unsecure/Shifted Trailer Load
20=Improper Towing
21=Obstructed Windshield
99=Unknown

Unit No				
01	1: 00	2:		
	1:	2:		

19

Indicated Prime Factor

Do not repeat this information on multiple pages.

E/R ○ V ○ D ● P ○

Unit No	Factor Code
01	17

If E/R is the Prime Factor Type, leave Unit No blank

Driver Action (D)

00=No Contributing Action
01=Driver Was Distracted
02=Driving Using Hand Held Phone
03=Driving Using Hands Free Phone
04=Making Illegal U-Turn
05=Improper/Careless Turning
06=Turning From Wrong Lane
07=Proceeding W/O Clearance After Stop
08=Running Stop Sign
09=Running Red Light
10=Failure To Respond To Other Traffic Control Device
11=Tailgating
12=Sudden Slowing/Stopping
13=Illegally Stopped On Road
14=Careless Passing Or Lane Change
15=Passing In No Passing Zone
16=Driving The Wrong Way On 1-Way Street
17=Careless Or Illegal Backing On Roadway
18=Driving On The Wrong Side Of Road
19=Making Improper Entrance To Highway
20=Making Improper Exit From Highway
21=Careless Parking/Unparking
22=Over/Under Compensation At Curve
23=Speeding
24=Driving Too Fast For Conditions
25=Failure To Maintain Proper Speed
26=Driver Fleeing Police (Pol Chase)
27=Driver Inexperienced
28=Failure To Use Specialized Equip
92=Affected By Physical Condition
98=Other Improper Driving Actions
99=Unknown

Unit No				
01	1: 17	2:	3:	4:
02	1: 01	2:	3:	4:

Pedestrian Action (P)

00=None
01=Entering Or Crossing At Specified Location
02=Walking, Running, Jogging, Or Playing
03=Working
04=Pushing Vehicle
05=Approaching Or Leaving Vehicle
06=Working On Vehicle
07=Standing
98=Other
99=Unknown

Unit No		Unit No	
01	03	02	03

FORM # AA-500 (12/02)

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COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 5 | Police Use Only C03-0911351 | Page 06 | Crash Number P1335753

20 Diagram

SEE ATTACHED DIAGRAM

21

Witness Name	Address	Phone
1 MICHAEL BROOKS BEAVER	3006 RIDGEWAY-JOHNSONBURG RD, RIDGEWAY, PA 15853	814-389-3621
2		

22 Witness and Narrative

Narrative and additional witnesses: Accident Investigation Notification Issued? ● Property Damage ○

ON 07/11/07 AT 1537 HOURS I ARRIVED AT THE SCENE. UPON MY ARRIVAL UNIT #1 WAS AT ITS FINAL REST POSITION FACING WEST IN THE MILLED LANE OF SR 8012 APPROXIMATELY 50' EAST OF THE POINT OF IMPACT. OPER #2 WAS LAYING ON THE ROADWAY IN THE MILLED LANE OF SR 8012 AT THE POINT OF IMPACT ON HIS LEFT SIDE FACING EAST WITH HIS HEAD TO THE NORTH.

THIS CRASH OCCURRED AS OPER #2 WAS WALKING EAST ON SR 8012 IN THE MILLED LANE. UNIT #1 WAS FACING WEST BACKING UP EASTBOUND ON SR 8012 IN THE MILLED LANE BEHIND OPER #2. OPER #1 DID NOT OBSERVE OPER #2 ON THE ROADWAY BEHIND HIM AS HE BACKED HIS UNIT. APPARENTLY OPER #2 WAS NOT AWARE THAT UNIT #1 WAS APPROACHING HIS LOCATION. THE CENTER REAR OF UNIT #1 STRUCK OPER #2 FROM BEHIND KNOCKING OPER #2 TO THE GROUND. OPER #1 UNAWARE THAT HIS UNIT HAD STRUCK OPER #2 CONTINUED TO BACK HIS UNIT OVER OPER #2. OPER #1 BROUGHT HIS UNIT TO A STOP APPROXIMATELY 50' EAST OF THE POINT OF IMPACT AFTER HEARING A ~~TRANSMITTED~~ TRANSMISSION OVER THE CB RADIO.

THE CRASH SCENE CONSISTED OF A BERM ON THE NORTH EDGE OF THE ROADWAY, A LANE WHICH THE SURFACE HAD BEEN MILLED, A SURFACED LANE SEPARATED FROM THE MILLED LANE BY ORANGE REFLECTIVE TRAFFIC BARRELS, AND A BERM ON THE SOUTH EDGE OF THE ROADWAY

MORE

COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 N | Police Use Only C03-0911351 | Page 07 | ● New ○ Change/Continuation | Crash Number P133575 3

Auxiliary Witness and Narrative

Narrative and additional witnesses:

22 ON 07/11/07 AT 1538 HOURS I SPOKE WITH TROOPER DEWAINE KEPHART OF PSP CLEARFIELD AT THE SCENE. HE RELATED THAT HE WAS WORKING IN THE ACTIVE CONSTRUCTION ZONE ON SR 80 WESTBOUND. HE RELATED THAT A CONSTRUCTION WORKER CAME UP TO HIM AND INFORMED HIM THAT THERE WAS A TRAFFIC COLLISION ON THE EXIT 123 WB OFF RAMP, AND THAT AN INSPECTOR HAD BEEN RUN OVER BY A TRI-AXLE. HE RELATED THAT HE RESPONDED TO THE SCENE AND CHECKED ON THE CONDITION OF OPER #2, HE FOUND HIM TO BE UNRESPONSIVE WITH NO SIGNS OF LIFE. HE RELATED THAT HE CONTACTED PSP CLEARFIELD AND ADVISED THEM OF THE CRASH AND REQUESTED THAT AN AMBULANCE AND THE CORONER BE DISPATCHED TO THE SCENE.

ON 07/11/07 AT 1555 HOURS I INTERVIEWED WITNESS BEAVER AT THE SCENE. HE RELATED THAT HE WAS PARKED AT THE TOP OF THE RAMP FACING WEST JUST EAST OF THE POINT OF IMPACT, WHICH WAS THE STAGING AREA FOR THE TRUCKS INVOLVED IN THE MILLING WORK. OPER #2 WAS WALKING EASTBOUND UP THE RAMP AND WAS FACING EAST. UNIT #1 WAS FACING WEST AND WAS BACKING UP THE RAMP IN AN EASTBOUND DIRECTION TO THE STAGING AREA. HE RELATED THAT HE WAS WORKING ON HIS PAPERWORK AND HAPPENED TO LOOK UP IMMEDIATELY PRIOR TO IMPACT. HE RELATED THAT HE GRABBED THE MICROPHONE FROM HIS CB RADIO AND TRIED TO WARN THE DRIVER OF THE TRI-AXLE. HE RELATED THAT UNIT #1 CONTINUED TO BACK UP AND RAN OVER OPER #2 WITH THE CENTER REAR OF UNIT #1.

ON 07/11/07 AT 1605 HOURS I INTERVIEWED OPER #1 AT THE SCENE. HE RELATED THAT HE WAS BACKING UP THE RAMP AND DIDN'T SEE OPER #2. HE STATED, "I KEPT LOOKING FROM ONE MIRROR TO THE OTHER WHILE I WAS BACKING UP." "I THOUGHT I RAN OVER A PILE OF MILLINGS AT WHICH TIME SOMEONE SAID OVER THE CB RADIO THAT AN INSPECTOR HAD GOT RUN OVER." "I STOPPED MY TRUCK IMMEDIATELY AFTER HEARING THAT." "I DIDN'T SEE HIM IN THE MIRRORS."

ON 07/11/07 AT 1625 HOURS CLEARFIELD COUNTY DEPUTY CORONER MICHAEL POLACHEK PRONOUNCED OPER #2 DEAD AT THE SCENE DUE TO BLUNT FORCE TRAUMA.

MORE

COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 N | Police Use Only C03-0911351 | Page 08 | ● New ○ Change/Continuation | Crash Number P133575 3

Auxiliary Witness and Narrative

Narrative and additional witnesses:

22 I OBTAINED THE DRIVERS DOCUMENTS FROM OPER#1 AND PREFORMED A WALK AROUND INSPECTION OF THE TRUCK. I DID NOT OBSERVE ANY DEFICIENCIES OTHER THAN THERE WAS NO WEIGHT CLASS DECAL DISPLAYED ON THE WINDSHIELD AND THE REGISTRATION PLATE WAS DISPLAYED ON THE FRONT OF THE TRUCK WHEN IT SHOULD HAVE BEEN DISPLAYED ON THE REAR. I ASKED OPER#1 IF HIS BACK UP ALARM WAS OPERATIONAL AND HAD HIM PLACE THE VEHICLE IN REVERSE. THE BACKUP ALARM WAS BARELY AUDIBLE WHILE I WAS STANDING AT THE REAR OF THE VEHICLE.

THERE WERE TIRE TRACKS FROM THE RIGHT SIDE TIRES OF UNIT#1 IN THE SOFT MILLING DEBRIS ALONG THE NORTH EDGE OF THE MILLED LANE. IT DID NOT APPEAR THAT OPER#1 HAD TAKEN ANY EVASIVE ACTION OR HAD BRAKED HIS UNIT PRIOR TO IMPACT. THIS PHYSICAL EVIDENCE WAS CONSISTENT WITH THE STATEMENT FROM OPER#1 THAT HE HAD NOT OBSERVED OPER#2 PRIOR TO IMPACT.

CPL. JOHN P. BURKE, TROOP C COLLISION AND RECONSTRUCTION / MCSAP, RESPONDED TO THE SCENE. IT WAS DETERMINED THAT A FULL RECONSTRUCTION WOULD NOT BE CONDUCTED. CPL. BURKE INSPECTED THE VEHICLE BUT DID NOT FIND ANY PROBLEMS WITH THE VEHICLE WHICH CONTRIBUTED TO THE CRASH THAT WERE COVERED UNDER THE STATE OR FEDERAL INSPECTION REQUIREMENTS. I HAD ADVISED BURKE OF THE BACKUP ALARM, HE ADVISED IT WAS NOT A REQUIREMENT TO HAVE ONE NOR A DEFICIENCY ACCORDING TO THE MOTOR CARRIER INSPECTION CRITERIA. A COPY OF BURKES' INSPECTION REPORT RETAINED IN THE CRASH ATTACHMENT FILE.

TPR THEODORE L. HORNER OF TROOP C R&I RESPONDED TO THE SCENE AND PHOTOGRAPHED THE SCENE. REFER TO SUPPLEMENTAL REPORT SUBMITTED BY TPR. HORNER.

CRASH SCENE PHOTOGRAPHS AND THE WORKING COPY CD OF DIGITAL PHOTOGRAPHS RETAINED IN THE CRASH ATTACHMENT FILE. THE MASTER COPY CD RETAINED AT TROOP C R&I

COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 N | Police Use Only C03-0911351 | Page 09 | ● New ○ Change/Continuation | Crash Number P133575 3

Auxiliary Witness and Narrative

Narrative and additional witnesses:

22 CLEARFIELD COUNTY DISTRICT ATTORNEY BILL SHAW RESPONDED TO THE SCENE ON 07/11/07 AT 1630 HOURS. HE ADVISED THAT NO PROSECUTION SHOULD BE INITIATED FOR THIS INCIDENT

ON 07/11/07 AT 1703 HOURS UNISCOPE MESSAGE # CFC171-72185 WAS SENT TO PSP PUNXSUTAWNEY TO REQUEST A DEATH NOTIFICATION OF OPER #2'S FAMILY BE MADE. TPR RANDY D. POWELL MADE THE DEATH NOTIFICATION TO THE FAMILY. REFER TO SUPPLEMENTAL REPORT SUBMITTED BY TPR. POWELL.

OPER #2 WAS TRANSPORTED TO CLEARFIELD HOSPITAL MORGUE VIA CLEARFIELD EMS AMBULANCE.

OPER #2'S PENNSYLVANIA DRIVERS LICENSE # 10879976 WAS RETAINED BY DEPUTY CORONER MICHAEL PULACHER TO BE FORWARDED TO PENNDOT.

DUE TO THE CRASH SCENE BEING LOCATED IN AN ACTIVE WORK ZONE WHERE THE ROAD SURFACE WAS BEING MILLED AND WAS VERY IRREGULAR, BASELINE COORDINATE MEASUREMENTS WERE NOT OBTAINED. I MEASURED THE WIDTH OF THE LANES AND BERMS AT THE POINT OF IMPACT AND OBTAINED A MEASUREMENT FROM SR 970 TO THE POINT OF IMPACT.

MEASUREMENTS TAKEN:
DISTANCE FROM SR 970 TO POINT OF IMPACT = 272' EAST
NORTH BERM WIDTH = 2'
MILLED LANE SURFACE = 14'
SURFACED TRAVEL LANE = 6'6"
SOUTH BERM WIDTH = 2'

TROOP C FATAL CRASH DATA COLLECTION SHEET SUBMITTED ON 07/11/07, A COPY RETAINED IN CRASH ATTACHMENT FILE.

FATAL CRASH SYSTEM ENTRY MADE PSP iNET ON 07/11/07 IN ACCORDANCE WITH FR 6-4 VEHICLE CRASHES, COPY RETAINED IN CRASH ATTACHMENT FILE.

FATAL TRAFFIC COLLISION MESSAGE SENT VIA UNISCOPE MESSAGE # CFI171-72189 ON 07/11/07. COPY RETAINED IN CRASH ATTACHMENT FILE.

MORE

COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 N | Police Use Only C03-0911351 | Page 10 | ● New ○ Change/Continuation | Crash Number P133575 3

Narrative and additional witnesses:

22 ASSISTED AT THE SCENE BY CPL. STEVEN DANIEL AND TPR. DEWAINE KERHART.

ON 07/12/07 AT 1530 HOURS AT PSP CLEARFIELD I MET WITH OSHA INSPECTOR BRENDAN M CLAYBAUGH OF U.S. DEPARTMENT OF LABOR, 1128 STATE STREET, SUITE 200, ERIE, PA 16501, 814-461-1492. I ADVISED HIM OF THE DETAILS OF THE CRASH AND THE FACT THAT THE AUDIBLE BACKUP ALARM ON THE TRUCK, UNIT #1, WAS BARELY AUDIBLE AT THE BACK OF THE TRUCK. HE RELATED THAT HE WOULD INSPECT THE BACKUP ALARM TO SEE IF IT COMPLIED WITH OSHA STANDARDS.

OPER #1 WAS ISSUED A WRITTEN WARNING REQUIRING HIM TO SUBMIT TO CHEMICAL TESTING PURSUANT TO TITLE 75, SECTION 3756. OPER #1 COMPLIED WITH THE WRITTEN WARNING AND ON 07/11/07 HE HAD BLOOD TESTS FOR ALCOHOL AND DRUG TESTING DRAWN AT CLEAR-CARE CORPORATION. OPER #1 RETURNED TO WRITTEN WARNING NOTICE AND A COPY OF THE RECEIPT FOR HIS BLOOD TESTS TO ME.

CLEAN/NCIC CHECKS NEGATIVE

NEWS RELEASE RETAINED IN THE CRASH ATTACHMENT FILE.

* LIST OF ATTACHMENTS WHICH ARE RETAINED IN THE CRASH ATTACHMENT FILE:
TROOP C FATAL CRASH DATA SHEET
NEWS RELEASE
DRIVER/VEHICLE EXAMINATION REPORT (CPL BURKE)
CD CONTAINING DIGITAL CRASH PHOTOS (WORKING COPY)
CRASH SCENE PHOTOGRAPHS.
WRITTEN WARNING FOR OPER #1
COPY OF FATAL CRASH SYSTEM ENTRY
VICTIM/WITNESS STATEMENT - MICHAEL BEAVER
UNISCOPE MESSAGE # CFL171-72185
UNISCOPE MESSAGE # CFL171-72189

Auxiliary Witness and Narrative

FORM # AA-500N (12/02)

PENNDOT COPY

CLARK00123

COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 C

Police Use Only: C03-0911351

Page: 11

(●) New ( ) Change/Continuation

Crash Number: P13357533

Commercial Vehicle Information

Unit No: 01

Number of Axles: 04 (Code Number of Axles or '99' for unknown)

Carrier Phone: (717) 349-7760

Carrier Name: VALLEY EXCAVATING AND HAULING

Address: 11057 CREEK ROAD

GVWR: 73280

Oversize Load: ( ) Yes (●) No ( ) Unknown

City: FANNETTSBURG

State: PA

Zip: 17221

USDOT#: 835232

ICC #:

PUC #: A0011755 3

23

Cargo Body Type
- ( ) Not Applicable
- ( ) Van/Enclosed Box
- ( ) Cargo Tank
- ( ) Flat Bed
- (●) Dump
- ( ) Concrete Mixer
- ( ) Auto Transport
- ( ) Garbage/Refuse
- ( ) Bus
- ( ) Other/Unknown

Hazardous Material
- ( ) Yes (●) No

Enter 1-digit hazardous material class

Vehicle Configuration
- ( ) Not Applicable
- ( ) Passenger Car - Only Record if HazMat Placard Displayed
- ( ) Light Truck (Van, Mini-Van, Panel, Pickup or SUV with HazMat Placard)
- ( ) Single Unit Truck (2 Axles, 6 Tires)
- (●) Single Unit Truck (3 or More Axles)
- ( ) Single Unit Truck (Unknown Number of Axles)
- ( ) Truck/Trailer(s)
- ( ) Truck Tractor (Bobtail)
- ( ) Tractor/Semi-Trailer(s)
- ( ) Medium/Heavy Truck - Cannot Classify
- ( ) Small Bus (Seats 9-15 People, Including Driver)
- ( ) Bus (Seats More Than 15 People, Including the Driver)
- ( ) Other
- ( ) Unknown

Release Indicator: 1 = No Release 2 = Release Occurred 9 = Unknown

Commercial Vehicle Information

Unit No:

Number of Axles: (Code Number of Axles or '99' for unknown)

Carrier Phone: ( ) -

Carrier Name:

Address:

GVWR:

Oversize Load: ( ) Yes ( ) No ( ) Unknown

City:

State:

Zip:

USDOT#:

ICC #:

PUC #:

23

Cargo Body Type
- ( ) Not Applicable
- ( ) Van/Enclosed Box
- ( ) Cargo Tank
- ( ) Flat Bed
- ( ) Dump
- ( ) Concrete Mixer
- ( ) Auto Transport
- ( ) Garbage/Refuse
- ( ) Bus
- ( ) Other/Unknown

Hazardous Material
- ( ) Yes ( ) No

Enter 1-digit hazardous material class

Vehicle Configuration
- ( ) Not Applicable
- ( ) Passenger Car - Only Record if HazMat Placard Displayed
- ( ) Light Truck (Van, Mini-Van, Panel, Pickup or SUV with HazMat Placard)
- ( ) Single Unit Truck (2 Axles, 6 Tires)
- ( ) Single Unit Truck (3 or More Axles)
- ( ) Single Unit Truck (Unknown Number of Axles)
- ( ) Truck/Trailer(s)
- ( ) Truck Tractor (Bobtail)
- ( ) Tractor/Semi-Trailer(s)
- ( ) Medium/Heavy Truck - Cannot Classify
- ( ) Small Bus (Seats 9-15 People, Including Driver)
- ( ) Bus (Seats More Than 15 People, Including the Driver)
- ( ) Other
- ( ) Unknown

Release Indicator: 1 = No Release 2 = Release Occurred 9 = Unknown

COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 M | Police Use Only: C03-091351 | Page: 1 2 | ● New ○ Change/Continuation | Crash Number: P 1 3 3 5 7 5 3

26 Motorcycle

Unit No: ____ | Engine Size: ____ CC

For Answers to the below (except for Engine Size and Helmet Type) use the following codes: Y = Yes N = No U = Unknown

Motorcycle Has? / **The Driver Has?**

- ☐ Passenger
- ☐ MC Education
- ☐ Saddle Bag and/or Trunk
- ☐ Trailer

Driver Protection ?

- ☐ Eye Protection
- ☐ Long Sleeves
- ☐ Long Pants
- ☐ Over Ankle Boots

Helmet Type

0 = No Helmet
1 = Full Helmet
2 = 3/4 Style
3 = Half Helmet Style
9 = Unknown

- ☐ Helmet Stay On?
- ☐ Helmet has DOT or Snell Designation

Passenger Protection ?

- ☐ Eye Protection
- ☐ Long Sleeves
- ☐ Long Pants
- ☐ Over Ankle Boots

Helmet Type

0 = No Helmet
1 = Full Helmet
2 = 3/4 Style
3 = Half Helmet Style
9 = Unknown

- ☐ Helmet Stay On?
- ☐ Helmet has DOT or Snell Designation

27 Pedalcycles

Unit No: ____ | Use Codes: Y = Yes N = No U = Unknown

- ☐ Passenger?
- ☐ Helmet?
- ☐ Head Lights?
- ☐ Rear Reflectors?

Unit No: ____ | Use Codes: Y = Yes N = No U = Unknown

- ☐ Passenger?
- ☐ Helmet?
- ☐ Head Lights?
- ☐ Rear Reflectors?

28 Pedestrian

Unit No: 0 2

Pedestrian Location: 0 5

01 = Marked Crosswalks at Intersection
02 = At Intersection - No Crosswalks
03 = Non-Intersection Crosswalks
04 = Driveway Access
05 = In Roadway
06 = Not in Roadway
07 = Median
08 = Island
09 = Shoulder
10 = Sidewalk
11 = < 10 Feet Off Road
12 = > 10 Feet Off Road
13 = Outside Trafficway
14 = Shared Paths/Trails
99 = Unknown

Pedestrian Signals

- ○ Yes
- ○ No
- ● Not at Intersection

Pedestrian Clothing

- ● Light
- ○ Dark
- ○ Reflective
- ○ Unknown

Unit No: ____

Pedestrian Location: ____

01 = Marked Crosswalks at Intersection
02 = At Intersection - No Crosswalks
03 = Non-Intersection Crosswalks
04 = Driveway Access
05 = In Roadway
06 = Not in Roadway
07 = Median
08 = Island
09 = Shoulder
10 = Sidewalk
11 = < 10 Feet Off Road
12 = > 10 Feet Off Road
13 = Outside Trafficway
14 = Shared Paths/Trails
99 = Unknown

Pedestrian Signals

- ○ Yes
- ○ No
- ○ Not at Intersection

Pedestrian Clothing

- ○ Light
- ○ Dark
- ○ Reflective
- ○ Unknown

29 Work Zone

Work Zone Type

- ● Construction (Long Term)
- ○ Maintenance (Short Term)
- ○ Utility Company
- ○ Other

Where in Work Zone ?

- ○ Before 1st Work Zone Warning Sign
- ○ Advance Warning Area
- ○ Transition Area
- ● Activity Area
- ○ Termination Area
- ○ Other

Work Zone Speed or Advisory Limit: 4 0

Workers Present

- ● Yes
- ○ No
- ○ Unknown

Law Enforcement Officer Present

- ● Yes
- ○ No
- ○ Unknown

Special Work Zone Characteristics

(Mark all that apply. If not involved or unknow, leave blank)

- ☒ Lane Closure?
- ☐ Road Closed with Detour?
- ☒ Work on Shoulder or Median?
- ☐ Intermittent or Moving Work?
- ☐ Flagger Control?
- ☐ Other

List all Warning Signs in Narrative

Additional M-Page Information

COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 F

Police Use Only: C03-091351

Page: 13

● New ○ Change/Continuation

Crash Number: P 13 35 75 3

24 **Road Surface Type**
○ Concrete ● Blacktop ○ Brick or Block ○ Slag, Gravel or Stone ○ Dirt ○ Other ○ Unknown

Special Jurisdiction
● No Special Jurisdiction ○ National Park ○ Military ○ Indian Reservation ○ College/University Campus ○ Other Federal Sites ○ Other ○ Unknown

Please complete Unit Information for **each** unit involved in a ***fatal*** crash. Do not repeat the information in the fields above on multiple pages.

Unit Information

Unit No: 01

25 **Driver Restrictions Compliance**
● No Restrictions/ Not Applicable ○ Restrictions Complied With ○ Restrictions Not Complied With ○ Compliance Unknown ○ Not a Pennsylvania Driver ○ Unknown Compliance

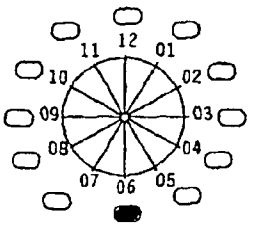
Driver Endorsement Compliance
○ None Required ● Required - Complied With ○ Required - Non Compliance ○ Required - Compliance Unknown ○ Not a Pennsylvania Driver ○ Unknown Compliance

Driver License Compliance
○ Not Licensed ○ Not Required for Vehicle Class ○ No Valid License for Class ● Valid License for Class ○ Unk if CDL or CDL Required ○ Not a Pennsylvania Driver ○ Unknown

Drug Test Type
● None ○ Blood ○ Urine ○ Other ○ Unknown if Test Given

Drug Test Results - (Up to Four Results)
0 = No Test Given
1 = No Drug Reported
2 = Marijuana
3 = Cocaine
4 = Opiates
5 = Amphetamines
6 = PCP
8 = Other
9 = Unknown Test Results
0 | | | |

Principle Impact Point
○ Non-Collision ○ Top ○ Undercarriage ○ Towed Unit ○ Unknown



Avoidance Maneuver
● No Avoidance Maneuver ○ Braking - Skid Marks Evident ○ Braking - No Skid Marks, Driver Stated ○ Braking - Other Evidence ○ Steering - Evidence or Driver Stated ○ Steering and Braking Evidence or Stated ○ Other Avoidance Maneuver ○ Inconclusive ○ Unknown

Under Ride Indicator
● No Underride or Override ○ Underride, Compartment Intrusion ○ Underride, No Compartment Intrusion ○ Underride, Compartment Intrusion Unknown ○ Override, Other Vehicle ○ Unknown if Underride or Override

Emergency Use
● Not in Emergency Use ○ Lights Flashing ○ Siren Sounding ○ Both Lights and Siren ○ Unknown

Unit Information

Unit No: 02

25 **Driver Restrictions Compliance**
● No Restrictions/ Not Applicable ○ Restrictions Complied With ○ Restrictions Not Complied With ○ Compliance Unknown ○ Not a Pennsylvania Driver ○ Unknown Compliance

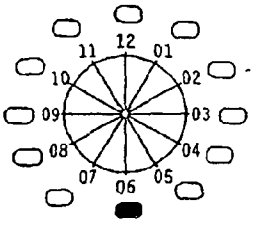
Driver Endorsement Compliance
● None Required ○ Required - Complied With ○ Required - Non Compliance ○ Required - Compliance Unknown ○ Not a Pennsylvania Driver ○ Unknown Compliance

Driver License Compliance
○ Not Licensed ● Not Required for Vehicle Class ○ No Valid License for Class ○ Valid License for Class ○ Unk if CDL or CDL Required ○ Not a Pennsylvania Driver ○ Unknown

Drug Test Type
● None ○ Blood ○ Urine ○ Other ○ Unknown if Test Given

Drug Test Results - (Up to Four Results)
0 = No Test Given
1 = No Drug Reported
2 = Marijuana
3 = Cocaine
4 = Opiates
5 = Amphetamines
6 = PCP
8 = Other
9 = Unknown Test Results
0 | | | |

Principle Impact Point
○ Non-Collision ○ Top ○ Undercarriage ○ Towed Unit ○ Unknown



Avoidance Maneuver
● No Avoidance Maneuver ○ Braking - Skid Marks Evident ○ Braking - No Skid Marks, Driver Stated ○ Braking - Other Evidence ○ Steering - Evidence or Driver Stated ○ Steering and Braking Evidence or Stated ○ Other Avoidance Maneuver ○ Inconclusive ○ Unknown

Under Ride Indicator
● No Underride or Override ○ Underride, Compartment Intrusion ○ Underride, No Compartment Intrusion ○ Underride, Compartment Intrusion Unknown ○ Override, Other Vehicle ○ Unknown if Underride or Override

Emergency Use
● Not in Emergency Use ○ Lights Flashing ○ Siren Sounding ○ Both Lights and Siren ○ Unknown

PENNDOT COPY

CLARK00126

COMMONWEALTH OF P_ SYLVANIA FAT WZ ○ New

POLICE CRASH REPORTING FORM

Crash Number

AA 500 1

Case Closed ● Yes ○ No | Reportable Crash ● Yes ○ No | Page 14 | ● Change/ Continuation | P1335753

1 Police Agency Data

Incident Number: C03-091135 1 | Police Agency: 68C03 | Patrol Zone: 072

Agency Name: PA STATE POLICE | Precinct: PUNXSUTAWNEY/1310 | Investigation Date (MM-DD-YYYY): 07-11-2007

Dispatch Time (mil): 1531 | Arrival Time (mil): 1537 | Investigator: TPR. THEODORE L. HORNER JR /8106 | Badge Number:

Reviewer: CPL. JEFFREY A. KUNSELMAN /5385 | Badge Number: | Approval Date (MM-DD-YYYY): 07-16-2007

2 Crash Data

County | County Name | Municipality | Municipality Name

Crash Date (MM-DD-YYYY) | Crash Time (mil) | No of Units | People | Injured | Killed* (*If > 00, Complete Form F)

Day of Week: ○ Sun ○ Mon ○ Tue ○ Wed ○ Thu ○ Fri ○ Sat ○ Unk

Workzone (If Yes, Complete Form M, Section 29) ○ Yes ○ No | School Bus Related ○ Yes ○ No | School Zone Related ○ Yes ○ No | Notify PENNDOT Maintenance ○ Yes ○ No

3 Loc Type

Intersection Type: ○ 4 Way Intersection ○ "Y" Intersection ○ Multi-Leg Intersection ○ Off Ramp ○ Railroad Crossing ○ Midblock ○ "T" Intersection ○ Traffic Circle/ Round About ○ On Ramp ○ Crossover ○ Other

*Special Location | * See Overlay

4 Principal Road

Route Number | Segment (Optional) | Travel Lanes | Speed Limit

Street Name | Street Ending

Orientation: ○ North ○ South ○ East ○ West ○ Unknown

House Number (if applicable): For Mid-block crashes only. Use postal House Number and make sure Principal Roadway Street Name is filled in if using this option

Route Signing: ○ Interstate (Not Turnpike) ○ Turnpike (East/West) ○ Turnpike Spur ○ State Highway ○ County Road ○ Local Road or Street ○ Private Road ○ Other/ Unknown

5 Intersecting Road

Use For Intersection Crashes

Route Number | Segment (Optional) | Travel Lanes | Speed Limit

Street Name | Street Ending

Orientation: ○ North ○ South ○ East ○ West ○ Unknown

Route Signing: ○ Interstate (Not Turnpike) ○ Turnpike (East/West) ○ Turnpike Spur ○ State Highway ○ County Road ○ Local Road or Street ○ Private Road ○ Other/ Unknown

6 Distance From Landmark

Use For Mid - Block Crashes

Please Enter Information for **BOTH** Landmarks if Using This Option

Landmark 1: Intersecting Rt Num Or Mile Post | Or Segment Marker | Or Intersecting Street Name | St Ending | Ramp Use Only: ○ North ○ South ○ East ○ West

Landmark 2: Intersecting Rt Num Or Mile Post | Or Segment Marker | Or Intersecting Street Name | St Ending | Ramp Use Only: ○ North ○ South ○ East ○ West

Feet | Or Miles

Distance From Crash Scene to Landmark 1 *(For Crash between Landmark 1 and Landmark 2)*

7 GPS

Latitude: Degrees | Minutes | Seconds

Longitude: — Degrees | Minutes | Seconds

8 TCD

Traffic Control Device: ○ Not Applicable ○ Traffic Signal ○ Yield Sign ○ Police Officer or Flagman ○ Flashing Traffic Signal ○ Stop Sign ○ Active RR Crossing Controls ○ Other Type TCD ○ Passive RR Crossing Controls ○ Unknown

TCD Functioning: ○ No Controls ○ Device Functioning Improperly ○ Emergency Preemptive Signal ○ Device Not Functioning ○ Device Functioning Properly ○ Unknown

9 Lane Closure

Lane Closed (If "Not Applicable", skip rest of the Lane Closure section): ○ Not Applicable ○ Partially ○ Fully ○ Unknown

Lane Closure Direction: ○ North ○ East ○ North and South ○ All (N,S,E,W) ○ South ○ West ○ East and West

Traffic Detoured: Yes ○ No ○ Unknown ○

Est. Time Closed: ○ < 30 Min. ○ 30-60 Min. ○ 1-3 hrs ○ 3-6 hrs ○ 6-9 hrs ○ > 9 hours ○ Unknown

FORM # AA-500 (10/06)

PENNDOT COPY

CLARK00127

COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 N | Police Use Only C03-091351 | Page 15 | New | Change/Continuation | Crash Number P133575353

Narrative and additional witnesses:

22

Auxiliary Witness and Narrative

ON 07/11/07 AT 1601 HOURS, I WAS CONTACTED VIA TELEPHONE BY P.C.O. PAULA HALEY FROM THE PSP-CLEARFIELD STATION. P.C.O. HALEY STATED THAT PERSONNEL AT PSP-CLEARFIELD WERE INVESTIGATING A FATAL TRAFFIC CRASH THAT OCCURRED ON THE WEST BOUND OFF RAMP (SR 8012) AT THE 123 EXIT OFF OF SR80, BRADFORD TOWNSHIP, CLEARFIELD COUNTY. THE INVESTIGATING OFFICER, WHO WAS LATER DETERMINED TO BE TPR. ROBERT J. FERDARKO JR., WAS REQUESTING THAT I RESPOND TO THE SCENE.

ON 07/11/07 AT 1657 HOURS, I ARRIVED AT THE SCENE. PSP PERSONNEL PRESENT AT THE SCENE WERE ON-SCENE SUPERVISOR CPL. STEVEN W. DANIEL, TPR. FERDARKO AND TPR. DEWAINE R. KEPHART JR. CPL. DANIEL AND TPR. FERDARKO INFORMED ME OF THE KNOWN FACTS THUS FAR IN THE INVESTIGATION AND STATED THEY WANTED ME TO PHOTOGRAPH THE SCENE. AFTER A PRELIMINARY SURVEY OF THE SCENE, PHOTOGRAPHY WAS BEGUN.

PHOTOGRAPHS WERE TAKEN AT THE SCENE OF UNIT #1, THE VICTIM/PEDESTRIAN, ITEM'S LAYING ON THE GROUND NEAR THE VICTIM, BLACK MARKS ON THE VICTIM'S PANTS AND THE OVERALL CRASH SCENE. THE PHOTOGRAPHS WERE TAKEN WITH THE USE OF A NIKON N90S 35 MM CAMERA LOADED WITH 400 SPEED KODAK MAX COLOR FILM. THREE ROLLS OF 24-EXPOSURE FILM WERE TAKEN. ALL PHOTOGRAPHS TAKEN WILL BE SUPPLIED TO THE INVESTIGATING OFFICER AT A LATER DATE WITH THE NEGATIVES BEING RETAINED AT THE FORENSIC SERVICES UNIT OFFICE AT PUNXSUTAWNEY HEADQUARTERS.

I ALSO TOOK FIFTY-SIX PHOTOGRAPHS AT THE SCENE WITH A FINEPIX S2 PRO DIGITAL CAMERA. I THEN TRANSFERRED THE IMAGES TO TWO NON-REWRITABLE COMPACT DISCS CREATING A MASTER COPY AND A WORKING COPY ON 07/11/07 FROM 1909-1913 HOURS. THE IMAGES WERE REVIEWED AND ACCURATELY REPRESENT THE ITEMS PHOTOGRAPHED. THE COMPACT DISCS WERE MARKED AS DIRECTED IN S.O. 2006-06 WITH THE MASTER COPY COMPACT DISC BEING RETAINED IN THE TROOP C NEGATIVE FILE WITH THE 35 MM NEGATIVES AND THE WORKING COPY COMPACT DISC BEING FORWARDED TO THE INVESTIGATING OFFICER.

MORE

COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 N | Police Use Only C03-0911351 | Page 1 6 | New | Change/ Continuation | Crash Number P 1 3 3 5 7 5 3

Auxiliary Witness and Narrative

Narrative and additional witnesses:

22

THERE WERE TWO UNITS AT THE SCENE THAT WERE INVOLVED IN THIS CRASH. UNIT #1 WAS A 1988 GIANT DIAMOND RIO DUMP TRUCK AND UNIT #2 WAS THE VICTIM/PEDESTRIAN IDENTIFIED AS JAMES EDWARD CLARK, DOB 08/19/44. THE VICTIM WAS PRONOUNCED DEAD AT THE SCENE BY CLEARFIELD COUNTY ASSISTANT CORONER MICHAEL POLACHEK ON 07/11/07 AT 1625 HOURS. POLACHEK STATED THE PRELIMINARY CAUSE OF DEATH TO BE MASSIVE HEAD TRAUMA AND THE MANNER OF DEATH TO BE ACCIDENTAL PENDING AN AUTOPSY OF THE VICTIM.

AFTER DISCUSSING THE INCIDENT WITH CPL. DANIEL AND TPR. FERDARKO, IT WAS DECIDED THAT NO FURTHER PHOTOGRAPHY WAS REQUIRED AT THAT TIME. I DEPARTED THE SCENE AT 1820 HOURS.

REFERENCE C01-0911431 REQUEST ASSIST-ALL/FORENSIC SERVICES.

COMMONWEALTH OF P. SYLVANIA FAT WZ ○ New

POLICE CRASH REPORTING FORM

Crash Number

AA 500 1

Case Closed ● Yes ○ No | Reportable Crash ● Yes ○ No | Page 17 | ● Change/Continuation | P13357563

1 Police Agency Data

Incident Number: C03-0911351 | Police Agency: 68C03 | Patrol Zone: 072

Agency Name: PA STATE POLICE | Precinct: PUNXSUTAWNEY/1310 | Investigation Date (MM-DD-YYYY): 07-11-2007

Dispatch Time (mil): 1531 | Arrival Time (mil): 1537 | Investigator: TPR Randy D. Powell | Badge Number: 8828

Reviewer: Cpl Brooks D. Coy | Badge Number: 5373 | Approval Date (MM-DD-YYYY): 08-08-2007

2 Crash Data

County | County Name | Municipality | Municipality Name | Day of Week: ○ Sun ○ Mon ○ Tue ○ Wed ○ Thu ○ Fri ○ Sat ○ Unk

Crash Date (MM-DD-YYYY) | Crash Time (mil) | No of Units | People | Injured | Killed* | *(If > 00, Complete Form F)

Workzone (If Yes, Complete Form M, Section 29) ○ Yes ○ No | School Bus Related ○ Yes ○ No | School Zone Related ○ Yes ○ No | Notify PENNDOT Maintenance ○ Yes ○ No

3 Loc Type

Intersection Type: ○ Midblock ○ 4 Way Intersection ○ "T" Intersection ○ "Y" Intersection ○ Traffic Circle/Round About ○ Multi-Leg Intersection ○ On Ramp ○ Off Ramp ○ Crossover ○ Railroad Crossing ○ Other

*Special Location | * See Overlay

4 Principal Road

Route Number | Segment (Optional) | Travel Lanes | Speed Limit

Street Name | Street Ending

Orientation: ○ North ○ South ○ East ○ West ○ Unknown

House Number (if applicable)

For Mid-block crashes only. Use postal House Number and make sure Principal Roadway Street Name is filled in if using this option

Route Signing: ○ Interstate (Not Turnpike) ○ Turnpike (East/West) ○ Turnpike Spur ○ State Highway ○ County Road ○ Local Road or Street ○ Private Road ○ Other/Unknown

5 Intersecting Road

Use For Intersection Crashes

Route Number | Segment (Optional) | Travel Lanes | Speed Limit

Street Name | Street Ending

Orientation: ○ North ○ South ○ East ○ West ○ Unknown

Route Signing: ○ Interstate (Not Turnpike) ○ Turnpike (East/West) ○ Turnpike Spur ○ State Highway ○ County Road ○ Local Road or Street ○ Private Road ○ Other/Unknown

6 Distance From Landmark

Use For Mid - Block Crashes

Please Enter Information for **BOTH** Landmarks if Using This Option

Landmark 1: Intersecting Rt Num Or Mile Post | Or Segment Marker | Or Intersecting Street Name | St Ending | Ramp Use Only: ○ North ○ South ○ East ○ West

Landmark 2: Intersecting Rt Num Or Mile Post | Or Segment Marker | Or Intersecting Street Name | St Ending | Ramp Use Only: ○ North ○ South ○ East ○ West

Feet | Or Miles

Distance From Crash Scene to Landmark 1 *(For Crash between Landmark 1 and Landmark 2)*

7 GPS

Latitude: Degrees | Minutes | Seconds

Longitude: — Degrees | Minutes | Seconds

8 TCD

Traffic Control Device: ○ Not Applicable ○ Traffic Signal ○ Flashing Traffic Signal ○ Stop Sign ○ Yield Sign ○ Active RR Crossing Controls ○ Passive RR Crossing Controls ○ Police Officer or Flagman ○ Other Type TCD ○ Unknown

TCD Functioning: ○ No Controls ○ Device Functioning Improperly ○ Emergency Preemptive Signal ○ Device Not Functioning ○ Device Functioning Properly ○ Unknown

9 Lane Closure

Lane Closed (If "Not Applicable", skip rest of the Lane Closure section): ○ Not Applicable ○ Partially ○ Fully ○ Unknown

Lane Closure Direction: ○ North ○ South ○ East ○ West ○ North and South ○ East and West ○ All (N,S,E,W)

Traffic Detoured: Yes ○ No ○ Unknown ○

Esti. Time Closed: ○ < 30 Min. ○ 30-60 Min. ○ 1-3 hrs ○ 3-6 hrs ○ 6-9 hrs ○ > 9 hours ○ Unknown

FORM # AA-500L (rev. 2)

PENNDOT COPY

CLARK00130

COMMONWEALTH OF PENNSYLVANIA
POLICE CRASH REPORTING FORM

AA 500 N | Police Use Only C03-0911351 | Page 1 8 | ○ New | ● Change/ Continuation | Crash Number P 1 3 3 5 7 5 3

Auxiliary Witness and Narrative

Narrative and additional witnesses:

22

~~SUPPLEMENTAL REPORT SUBMITTED BY TROOPER RANDY D POWELL,~~ STATE POLICE PUNXSUTAWNEY, REGARDING THE FATAL TRAFFIC CRASH C03-0911351.

~~ON 07/11/07, I WAS CONTACTED BY PSP CLEARFIELD REGARDING A FATAL~~ TRAFFIC CRASH THAT OCCURRED AT EXIT 123, BRADFORD TOWNSHIP, CLEARFIELD COUNTY IN WHICH JAMES EDWARD CLARK WAS KILLED. IT WAS REQUESTED I MAKE CONTACT WITH ELIZABETH CLARK (W/N-F DOB: ~~05/14/19), MOTHER OF JAMES CLARK, FOR THE DEATH NOTIFICATION. IT~~ WAS LATER DETERMINED CLARK'S BROTHER, DONALD KENNETH CLARK (W/N-M DOB: 09/07/46) ALSO RESIDES WITHIN OUR JURISDICTION. THE DETERMINATION WAS MADE TO CONTACT DONALD CLARK DUE THE AGE ~~OF ELIZABETH CLARK.~~

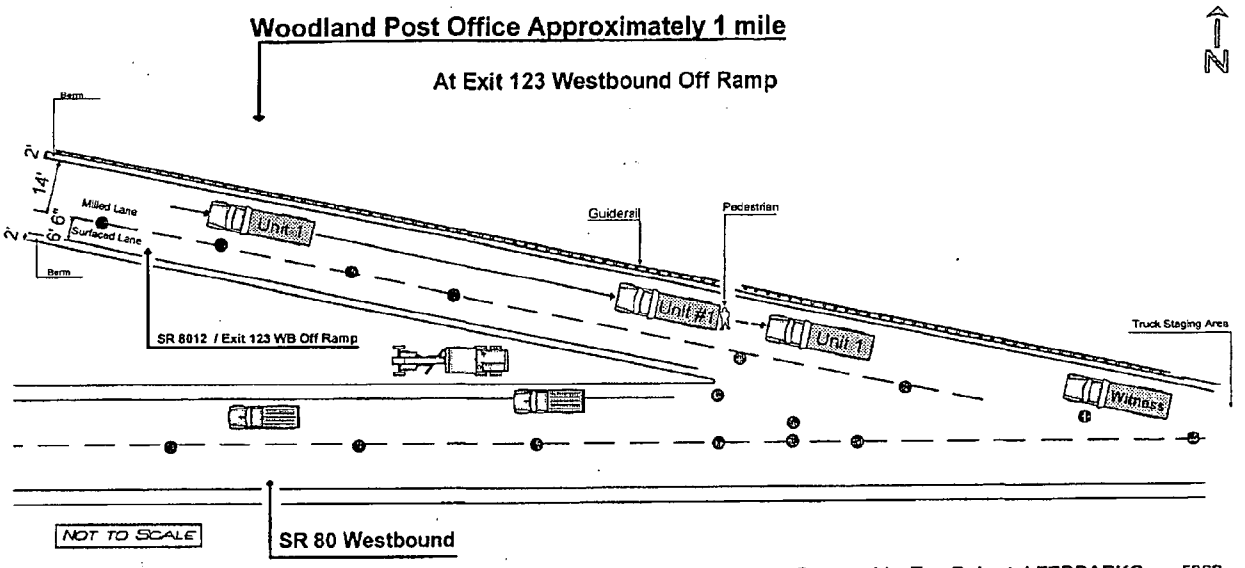
ON 07/11/07 AT 19:04 HOURS, I ARRIVED AT 1064 HARMONY ROAD, WESTOVER, PA, THE RESIDENCE OF DONALD KENNETH CLARK. ~~ELIZABETH CLARK WAS ALSO PRESENT. THE FAMILY WAS INFORMED OF THE CRASH AND THE DEATH OF JAMES EDWARD CLARK.~~

ASSISTING AT THE RESIDENCE WAS CORPORAL ROBERT LOUGHRAN AND ~~DICK MATTESON, PASTOR OF THE CALVARY EVANGELICAL CHURCH.~~

Incident Number C03-0911351	Crash Report # P1335753
Agency Code: 68C03	
Date and Arrival Time: 07/11/07 1537 hours	

Woodland Post Office Approximately 1 mile

At Exit 123 Westbound Off Ramp



Prepared by Tpr. Robert J FERDARKO 5962

Legend
Construction Barrels = ●

ESD: Fatal Drawing1.esd Scale: 1 in = 33.58 ft

CLARK00132

G

U.S. Department of Labor
Occupational Safety & Health Administration

Inspection Narrative

	Inspection Nr.	309338978	
	Optional Case Number	Ex. 1C	
Establishment Name	New Enterprise Stone & Lime Company, Inc.		
Legal Entity	Corporation	Type of Business	Heavy Highway

NATURE AND SCOPE

Check Applicable Boxes And Explain Findings:

[ ]	Complaint Items	[X]	Unprogrammed Related (To Accident)
[ ]	Referral Items	[ ]	NEP,
[X]	Accident Investigation	[ ]	Planned Inspection
[ ]	Follow-UP	[ ]	Records Only Inspection

Case Summary:

The inspection was initiated as a result of a fatality. The fatality occurred in an active construction zone when a tri-axle dump truck backed-over an inspector. The construction project consisted of a road resurfacing project on I-80 near the Clearfield, PA On/Off ramps. At the time of the fatality, road milling activities were taking place in the general area (i.e. several hundred feet east of the impact area). In the impact area, trucks were lined-up and awaiting their turn at the road mill machine. Direct eyewitnesses were not identified for the event. The dump truck belonged to Valley Excavating. The independent owner/operator was driving the truck at the time of the accident. Investigation determined that the dump truck driver was independent owner/operator with no employees.

Discussed the accident with Pennsylvania State Police Investigations. The PSP investigator stated he could not hear the trucks back-up alarm while he was standing at the truck's driver side door. The PSP investigators believed you had to be under the truck's tailgate to hear the back-up alarm.

Case Summary:

The truck was tracked down to Valley Excavating's base of operations. The truck and the company's operations were in the HBAO jurisdiction. AAD Burbage/ Ex 7C discussed the situation with Ex 7C Ex 7C dispatched Ex 7C to analyze the truck and to perform noise monitoring on the truck's alarm. The alarm was found to be barely audible. The noise measurements were taken while the truck's engine was off and while it was running. The truck's back-up alarm was found to be barely audible even with the truck's bed up and the engine turned off.

The inspection numbers associated with the fatality and this case include the following:

309338978 New Enterprise Stone & Lime Company, Inc. *(This Case File)*	General Contractor for the project. The company was responsible for supplying trucks to Swank Associated. These trucks would take the milled road material from the road milling machine and then dump the milled material in a designated area. Dispatched and hired the Independent Owner Operator and his dump truck to the site. The Independent owner operator has driven for New Enterprise Stone & Lime for almost 7 years. This driver had hauled several loads of milled road material before the accident. New Enterprise Stone & Lime provided the Independent Owner/Operator a checklist (Copy of checklist is in the file).
309338960 Erdman Anthony Associates, Inc.	The company's employee was fatally injured when he was backed over by the tri-axle dump truck.
309338986 Swank Associated Companies, Inc	The company's employees were conducting the road milling operations. These employees physically operated the road milling machine. At the site, the company's employees consisted of an Operating Engineer and Laborer.

Company Summary:

New Enterprise Stone & Lime Company, Inc. has been in business for several years. The company has several subsidiaries and performs a substantial amount of heavy highway work. An excerpt from the company's web site is attached to this narrative. This excerpt explains the company's history and work activities.

The company has a comprehensive safety & health program. The company's safety director (Steve Thomlinson) is a CSP. The company's safety/health department is staffed by approximately 5-personnel.

Approximately 15 inspections have been attempted on the company in the past 8 years. Only 3 of the inspections resulted in any violations. The highest dollar amounts for the cases were between $5,500 and $6,300. All of the cases appeared to be settled at the area office level. A majority of the violations dealt with crane issues. A few violations dealt with fall protection, scaffolds, and concrete work. These violations contained a mixture of serious and other-than-serious violations. The violations do not appear to be similar in kind to the violation that led to the fatality covered by this case.

The company's newsletter addressed blind spot issues. A copy of this newsletter is located in the case file.

New Enterprise Stone & Lime provided the Independent Owner/Operator a checklist (Copy of checklist is in the file).

Other Information:

Copy of the Pennsylvania State Police Accident Investigation Report is contained in the case file.

Copies of photos from the Pennsylvania State Police Accident Investigation Report.

Copies of related documents from the Erdman Anthony case file. These documents included the OSHA-36 and OSHA-170.

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

ESTATE OF JAMES CLARK,	*	
Plaintiff	*	Case No.
vs.	*	2008-2452-CD
LYLE THOMPSON, et al.,	*	
Defendants	*	

* * * * * * * * *

DEPOSITION OF
JOHN BURKE
June 28, 2010

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

Pennsylvania State Police officers at the scene that you spoke with?

A. There were, but honestly I don't recall who they were.

Q. Okay. Did you happen to look at the back-up alarm at all on the dump truck?

A. Yes.

Q. Were you able to see who manufactured it?

A. I didn't check that.

ATTORNEY OLSZEWSKI:

I'm sorry. I didn't hear you.

A. I didn't check that. I didn't inspect to see who the manufacturer of the back-up alarm was.

ATTORNEY OLSZEWSKI:

Thank you, sir.

BY ATTORNEY FREDERICK:

Q. Did you take any pictures of the back-up alarm?

A. No.

Q. Did you speak with Michael Beaver, the witness?

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF CLEARFIELD)

CERTIFICATE

I, Rhonda K. Thorpe, a Notary Public in and for the Commonwealth of Pennsylvania, do hereby certify:

That the witness whose testimony appears in the foregoing deposition, was duly sworn by me on said date and that the transcribed deposition of said witness is a true record of the testimony given by said witness;

That the proceeding is herein recorded fully and accurately;

That I am neither attorney nor counsel for, nor related to any of the parties to the action in which these depositions were taken, and further that I am not a relative of any attorney or counsel employed by the parties hereto, or financially interested in this action.



Rhonda K. Thorpe

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **MOTION FOR SUMMARY JUDGMENT** has been served via U.S. First Class mail, postage pre-paid, this 23rd day of June, 2011 upon the following:

Bryan Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Counsel for James E. Clark, Jr. and Brenda Coble

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
Counsel for Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228
Counsel for New Enterprise Stone & Lime Company, Inc. t/d/b/a New Enterprise Stone and Lime Company

John P. Davis, III, Esquire
Jones Gregg Creehan & Gerace, LLP
Chamber of Commerce Building
411 Seventh Avenue, Suite 1200
Pittsburgh, PA 15219
Attorney for Swank Associated Companies, Inc.

P. Brennan Hart, Esquire
Shelly R. Pagac, Esquire
Pietragallo Gordon Alfano Rosick & Raspanti LLP
38th Floor, One Oxford Centre
Pittsburgh, PA 15219
Attorneys for The Commonwealth of PA

GOEHRING, RUTTER & BOEHM

Jaime N. Doherty

Jaime N. Doherty, Esquire
Pa. I.D. #89402

FILED
JUN 28 2011
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., , t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants,

vs.

SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

ORDER

AND NOW, to wit, this ____ day of _____, 2011, upon consideration of Preco Electronics, Inc., t/d/b/a Preco Electronics' Motion for Summary Judgment, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is granted and all claims against Preco Electronics, Inc. are dismissed with prejudice.

BY THE COURT:

_____ J.

CA

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

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased, Plaintiffs,	:	NO. 2008-2452-CD
vs.	:	
LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS, Defendants,	:	
vs.	:	
SWANK ASSOCIATED COMPANIES, INC. and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, Defendants,	:	

FILED 3 cc
02:18 Atty
JUN 29 2011
William A. Shaw
Prothonotary/Clerk of Courts
Doherty

ORDER

AND NOW, this 29 day of June, 2011, it is the ORDER of the Court that argument on Defendant Preco Electronics, Inc., t/d/b/a Preco Electronics' Motion for Summary Judgment shall be and is hereby scheduled for **Friday, August 19, 2011 at 10:30 A.M.** in Courtroom No. 1, Clearfield County Courthouse.

One half hour has been reserved for this hearing.

BY THE COURT:

Fredric J. Ammerman, President Judge

FILED

JUN 29 2011

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/29/11

X You are responsible for serving all appropriate parties.

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

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

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., , t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants,

vs.

SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

FILED
AUG 15 2011
William A. Shaw
Prothonotary/Clerk of Courts

PRAECIPE TO WITHDRAW MOTION FOR SUMMARY JUDGMENT W/O PREJUDICE

Filed on Behalf of:

PRECO ELECTRONICS, INC., t/d/b/a PRECO ELECTRONICS

Counsel of Record for this Party:

Stacey F. Vernallis, Esquire
Pa. I.D. #43659

Jaime N. Doherty, Esquire
Pa. I.D. #89402

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and BRENDA COBLE, individually and as ADMINISTRATORS OF THE ESTATE OF JAMES EDWARD CLARK, a/k/a JAMES EDWARD CLARK, SR., deceased,

Plaintiffs,

vs.

LYLE THOMPSON, LYLE THOMPSON, t/d/b/a VALLEY EXCAVATING AND HAULING, NEW ENTERPRISE STONE & LIME COMPANY, INC., , t/d/b/a NEW ENTERPRISE STONE AND LIME COMPANY, PRECO ELECTRONICS, INC. t/d/b/a PRECO ELECTRONICS,

Defendants,

vs.

SWANK ASSOCIATED COMPANIES, INC., and COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,

Defendants.

CIVIL DIVISION

No. 2008-2452-CD

PRAECIPE TO WITHDRAW MOTION FOR SUMMARY JUDGMENT WITHOUT PREJUDICE

TO: Clearfield County Prothonotary

Kindly withdraw without prejudice the Defendant, Preco Electronics, Inc. t/d/b/a Preco Electronics's Motion for Summary Judgment which was filed on June 29, 2011, pending settlement.

Respectfully submitted,

GOEHRING, RUTTER & BOEHM

By _____
Jaime N. Doherty, Esquire
Pa. I.D. #89402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **PRAECIPE TO WITHDRAW MOTION FOR SUMMARY JUDGMENT WITHOUT PREJUDICE** has been served via U.S. First Class mail, postage pre-paid, this 12 day of August, 2011 upon the following:

Bryan Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Counsel for James E. Clark, Jr. and Brenda Coble

Timothy J. Burdette, Esquire
733 Washington Road, Suite 209
Pittsburgh, PA 15228
Counsel for Lyle Thompson, Lyle Thompson, t/d/b/a Valley Excavating and Hauling

Jeffrey M. Olszewski, Esquire
Cipriani & Werner
Suite 700, 650 Washington Road
Pittsburgh, PA 15228
Counsel for New Enterprise Stone & Lime Company, Inc. t/d/b/a New Enterprise Stone and Lime Company

John P. Davis, III, Esquire
Jones Gregg Creehan & Gerace, LLP
Chamber of Commerce Building
411 Seventh Avenue, Suite 1200
Pittsburgh, PA 15219
Attorney for Swank Associated Companies, Inc.

P. Brennan Hart, Esquire
Shelly R. Pagac, Esquire
Pietragallo Gordon Alfano Rosick & Raspanti LLP
38th Floor, One Oxford Centre
Pittsburgh, PA 15219
Attorneys for The Commonwealth of PA

GOEHRING, RUTTER & BOEHM

Jaime N. Doherty, Esquire
Pa. I.D. #89402

FILED

AUG 15 2011

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

FILED 1cc Atty Neiderhiser
m/10:51/cm
AUG 16 2011 6K

William A. Shaw
Prothonotary/Clerk of Courts

JURY TRIAL DEMANDED

PLAINTIFF'S SUGGESTION OF DEATH

Filed on behalf of Plaintiffs
Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street,
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

PLAINTIFFS' SUGGESTION OF DEATH

AND NOW, this 15th day of August, 2011, it is suggested that the Plaintiff, Brenda Coble, died on August 2, 2011 in Woodbridge, Virginia.

An administration of the Estate will be raised.

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____

Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
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DECEASED,

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t/d/b/a VALLEY EXCAVATING AND
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DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **SUGGESTION OF DEATH** was served upon the following by U.S. First Class Mail, postage pre-paid this 15th day of August, 2011:

Timothy J. Burdette, Esquire
Attorney for Defendants Lyle Thompson;
Lyle Thompson, t/d/b/a Valley Excavating and Hauling
733 Washington Road, Suite 209
Pittsburgh, PA 15228

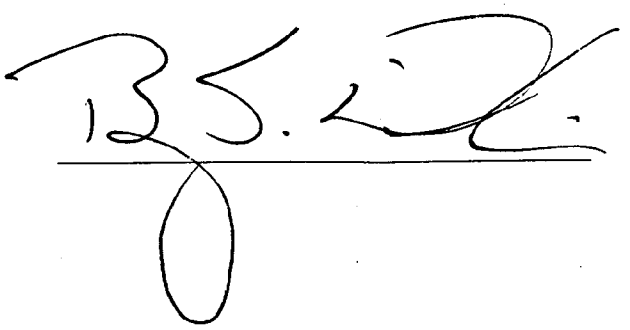
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Jaime N. Doherty, Esquire
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4801 Atlantic Avenue
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IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
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OF JAMES EDWARD CLARK, a/k/a
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t/d/b/a VALLEY EXCAVATING AND
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STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS,

Defendants.

No. 2008-2452-CD

JURY TRIAL DEMANDED

-AND-

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BRENDA COBLE, individually and as
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DECEASED,

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vs.

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and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

PLAINTIFFS' PRAECIPE TO DISCONTINUE

Filed on behalf of Plaintiffs
Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
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Telephone: 724-349-5602
Sup. Ct. ID #81496

FILED NO CC
M/12:52 pd
AUG 17 2011
GK
William A. Shaw
Prothonotary/Clerk of Courts

PLAINTIFFS' PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Please mark the above-captioned action settled and forever discontinued of record.

MARCUS & MACK, P.C.,

By: _____

Jonathan B. Mack, Esquire
57 South Sixth Street
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Telephone: 724-349-5602
Sup. Ct. ID 38970

Dated: August 16, 2011

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES E. CLARK, JR., and
BRENDA COBLE, individually and as
ADMINISTRATORS OF THE ESTATE
OF JAMES EDWARD CLARK, a/k/a
JAMES EDWARD CLARK, SR.,
DECEASED,

Plaintiffs,

vs.

LYLE THOMPSON; LYLE THOMPSON,
t/d/b/a VALLEY EXCAVATING AND
HAULING; NEW ENTERPRISE
STONE & LIME CO., INC.,
PRECO ELECTRONICS, INC., t/d/b/a
PRECO ELECTRONICS;

Defendants.

No. 2008-2452-CD

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DECEASED,

Plaintiffs,

vs.

SWANK ASSOCIATED COMPANIES, INC.;
and COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' PRAECIPE TO DISCONTINUE** was served upon the following by U.S. First Class Mail, postage pre-paid this 16th day of August, 2011:

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FILED
AUG 17 2011
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Prothonotary/Clerk of Courts

PENNSYLVANIA 16830

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G-R-B
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ATTORNEYS AT LAW
Straightforward Thinking.

RECEIVED
MAR 25 2009
Court Administrator's Office

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February 12, 2009

Jaime N. Doherty
jdoherty@grblaw.com
Pittsburgh Office

Via facsimile: 814.765.7649
The Honorable Frederic J. Ammerman
Clearfield County Courthouse
P.O. Box 549, 230 E. Market Street
Clearfield, PA 16830-0549

Re: James E. Clark, Jr., and Brenda Coble, individually and as Administrators of the Estate of James Edward Clark, a/k/a James Edward Clark, Sr., deceased vs. Lyle Thompson, et al. No. 2008-2452-CD

Dear Judge Ammerman:

Pursuant to the Order of Court dated March 5, 2009 in the above-captioned matter presently before Your Honor, on behalf of Defendant Preco Electronics Inc., ("Preco") the undersigned submits the following letter brief by facsimile to the Court. Defendant understands that a recitation of the facts is not necessary.

The sole remaining issue before the Court on Preliminary Objections is the applicability of the "gist of the action" doctrine to Counts V and VI of Plaintiffs' Complaint (negligence and strict liability claims against Preco, manufacturer of the backup alarm at issue in this litigation). In the alternative, to the extent that this Honorable Court determines that the gravamen of the action lies in tort and not in contract, the issue is whether the "gist of the action" doctrine applies to Count VII of Plaintiffs' Complaint (breach of warranty count against Preco). In sum, Plaintiff cannot proceed on both tort and breach of contract claims where one claim is essentially an attempt to recharacterize the other. See *Craig vs. Amateur Softball Assoc. of America*, 2008 PA Super. 123, 951A.2d 372 (Pa. Super. 2008).

At argument this Honorable Court noted that the Pennsylvania Supreme Court has not addressed the viability of the "gist of the action" doctrine. However, the Pennsylvania Superior Court directly addressed this issue in *Reardon vs. Allegheny College, et. al.* 2007 PA Super. 160, 926 A.2d 477 (Pa. Super. 2007). " [A]n intensive research effort does indicate that our Supreme Court has not explicitly reviewed the concept under the appellation 'gist of the action' ...

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both this Court and various federal courts have operated under the assumption that the gist of the action doctrine is a viable doctrine that will eventually be explicitly adopted by our state's High Court." Id. at *P31, 485-86. The *Reardon* Court concluded that the Supreme Court, in dicta, recognized that to allow Plaintiffs to forward both tort and contract theories of recovery arising out of damages allegedly incurred in the context of a contractual relationship is problematic and creates confusion in these well-settled causes of action. The *Reardon* Court determined that the gist of the action doctrine is viable. See Id.

The "gist of the action" doctrine bars tort claims: (1) arising solely from the contract; (2) where the duties allegedly breached were grounded in the contract; (3) where liability stems from a contract; or (4) where the tort claim essentially duplicates a breach of contract claim, or the success of the tort claim is wholly dependant upon the terms of the contract. See *Etoll, Inc. v. Elias/Savion Advertising, Inc.*, 2002 PA Super. 347, *P28, 811 A.2d 10 (Pa. Super.2002).

The "gist of the action" test is a general test to evaluate the essential ground, foundation or material part of a complaint or law suit. The question of whether the doctrine applies is an issue of law subject to plenary review. See Id. *P16, 15.

In the instant action, Plaintiffs assert negligence, strict liability, survival and breach of warranty claims against Preco. The duties that serve as the basis of the negligence and strict liability allegations in the Complaint arise out of or are otherwise based in the warranty or implied contract under which Preco sold its product. The claim against Preco has its genesis in an alleged breach of duties imposed by virtue of Preco's sale of the alarm and the implied warranties that follow the sale of the alarm. The "Contract" at issue in this case cannot be considered collateral to the alleged wrongdoing of Preco. A contract action cannot be converted into a tort action simply by casting Preco's conduct in tort terms. See *The Flynn Co. v. Peerless Door & Glass Inc., et al.*, 2002 Phila. Ct. Com. Pl. LEXIS 61, *8-9 (2002).

In *Freestone v. New England Log Homes Inc., et. al.*, 2003 PA. Super. 24, 819 A.2d 550, the Pennsylvania Superior Court held that where Plaintiff-Owners filed suit against a supplier of a log home kit alleging breach of contract, breach of warranty and negligence, the lower court failed to dismiss the negligence claim where the case was properly viewed in its entirety as a contract action. The Court found that "the allegation of negligence arises from the contractual duty imposed ... to provide suitable building materials." Id. at *P2, 551. The "gist of the action" doctrine "is designed to maintain the conceptual distinction between breach of contract and tort claims. As a practical matter, the doctrine

precludes Plaintiffs from re-casting ordinary breach of contract claims into tort claims." Id. at *P16, 554 *citing Etoll, Inc. v. Elias/Savion Advertising, Inc.*, 2002 PA Super. 347, 811 A.2d 10 (2002). The Court determined that the negligence alleged by the Plaintiffs was "actually the failure to live up to a contract." Id.

In the instant matter, Plaintiff's negligence claim must be dismissed as against Preco because the basis of the action lies in breach of contract. The alleged duties breached were grounded in the contract itself, and the tort claim essentially duplicates the breach of contract claim.

In the alternative, should this Honorable Court determine that the foundation of Plaintiffs' claims against Preco is in negligence, and not in breach of warranty (contract), there is precedent from the Superior Court of Pennsylvania that the "gist of the action" doctrine can be applied to bar a breach of contract claim where the basis for the claim against the Defendant lies in negligence. In *Craig v. Amateur Softball Assoc. of America*, 2008 Super. 123, 951 A.2d 372 (Pa. Super. 2008), a softball player sued the Association in the Court of Common Pleas of Allegheny County for injuries sustained when he was struck in the head by a softball. The Complaint raised both negligence and breach of contract claims against the Association. In support of the contract theory, Mr. Craig alleged that payment of dues to the Association resulted in contract formation which gave rise to a duty of care. The Court discounted this argument and held that Mr. Craig was, "for all intents and purposes, attempting to re-characterize his negligence claim as a contract claim." The Court dismissed the contract claim citing *Reardon v. Allegheny College*, 2007 PA. Super. 160, 926 A.2d 477 (Pa. Super. 2007) and the applicability of the "gist of the action" doctrine. Id. at *P13, 377.

In the instant matter, to the extent that this Honorable Court determines that Plaintiffs' causes of action and the alleged duties arise out of negligence and not breach of warranty, Preco asserts that Count VII of Plaintiffs' Complaint (breach of warranty) must be dismissed with prejudice. The spirit of the "gist of the action" doctrine and the reasoning of the *Craig* Court provide support for this position.

CONCLUSION

The gist of the action, while not yet addressed by the Supreme Court, was declared viable by the Superior Court. Under the traditional operation of the "gist of the action" doctrine, Preco respectfully requests that this Honorable Court grant its Preliminary Objections to Counts V and VI of Plaintiffs'

Complaint, (negligence and strict liability), as the foundation of Plaintiffs' claim against Preco is based in contract, not in tort.

In the alternative, to the extent that this Honorable Court determines that Plaintiffs' cause of action against Preco lies in tort and not in contract, Preco respectfully requests that this Honorable Court dismiss Count VII of Plaintiffs' Complaint, (breach of warranty) against Preco pursuant to the reasoning set forth in *Craig v. Amateur Softball Assoc. of America*, 2008 PA. Super. 123, 951 A.2d 372 (Pa. Super. 2008).

In either case, the gist of the action doctrine maintains the critical distinction between breach of contract and tort claims. Where one claim essentially duplicates the other, that claim must be dismissed.

Respectfully submitted,

Jaime N. Doherty

Jaime N. Doherty, Esquire

JND/cll

cc: All counsel of record