IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

JARED WOLFE,	:	
	:	
Plaintiff	:	NO: 08-01217
	:	
vs.	:	
	:	
	:	
KARL ZIERLE,	:	CIVIL ACTION
Defendant	:	

O R D E R

AND NOW, this 25th day of September, 2009, following argument on the Plaintiff's Motions in Limine it is hereby ORDERED that the Plaintiff's Motion in Limine requesting the Court to permit questioning of the Defendant regarding BAC results is GRANTED. The Plaintiff may submit into evidence the evidence of the Defendant's drinking prior to the accident, the testimony of Trooper Haven regarding his observations and opinions regarding the Defendant's state of intoxication, the Defendant's guilty plea and BAC results as evidence of the Defendant's unfitness to drive. The Pennsylvania Supreme Court has held that "evidence of a driver's blood alcohol content alone is insufficient to prove intoxication to a degree that renders him unfit to drive." Locke v. Claypool, 627 A.2d 801(Pa.Super. 1993), *citing Billow v. Farmers Trust Company, 266 A.2d 92 (1970).* The Pennsylvania Superior Court has held that the criminal presumptions of intoxication are inapplicable to civil negligence cases. See Locke v. Claypool, *supra,* at 804; Suskey v. Loyal Order of Moose Lodge No. 86, 472 A.2d 663 (Pa.Super. 1984). In Ackerman v. Delmonico,

486 A.2d 410 (Pa.Super. 1984), the Superior Court explained the rationale behind this rule as follows:

> The theory behind allowing a blood alcohol level to be admitted into evidence in a civil case is that it is relevant circumstantial evidence relating to intoxication. However, blood alcohol content alone may not be admitted for the purpose of proving intoxication. There must be other evidence showing the actor's conduct with suggests intoxication. Only then, and if other safeguards are present, may a blood alcohol level be admitted. Id. at 414.

In the case at bar, it is alleged that the Plaintiff's vehicle was struck from behind on March 2, 2007 at approximately 11:00 a.m. by a vehicle being operated by the Defendant. The Defendant admitted during a deposition that he consumed approximately fifteen to sixteen twelve ounce beers between 11:00 p.m. and 4:00 a.m. prior to the 11:00 a.m. accident. The Plaintiff admitted that he did not "feel sober" on the morning of the accident. It is submitted that the police officer that investigated the accident will testify regarding his observations as set forth in his Affidavit. Trooper Haven's Affidavit states that he detected an order of alcohol on the Defendant's breath, observed that the Defendant's eyes were blood shot and the Defendant's speech was slurred. Following the Defendant's failure to properly perform field sobriety tests the Defendant was arrested for DUI and transported to Williamsport Hospital for blood testing purposes. The Defendant admitted that he had been arrested for DUI, and that he was placed on the ARD program in connection with the charges.

In Ackerman, *supra*, evidence that the Defendant "drank heavily in the late afternoon and evening before the accident, smelled strongly of alcohol at the time of the accident, slurred his speech and had an unusually low level of alertness" was sufficient to render evidence of the Defendant's blood alcohol content admissible at

trial. See Locke, *supra*, at 804. This Court will accordingly allow evidence of the Defendant's alcohol consumption prior to the accident, his BAC level, and the resulting guilty plea to DUI.

The Plaintiff's Motion in Limine requesting the presentation of evidence regarding the Defendant's prior record of DUI arrests is DENIED. Evidence of DUI arrests in 1987, 1989 and 1993 is too remote in time and the prejudicial effect of admitting the evidence would far outweigh the probative value of such evidence.

BY THE COURT,

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Richard A. Gray, J.

cc: Michael A. Dinges, Esquire
Rebecca L. Penn, Esquire
Gary L. Weber, Esquire