

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RICHARD WELLS and JUNE WELLS,	: NO. 04 – 00,020
Plaintiffs	:
	: CIVIL ACTION - LAW
vs.	:
	:
	:
NUWELD, INC., TIMOTHY SATTERFIELD,	:
DAVID FLOOK and ERIE INSURANCE CO.,	:
Defendants	: Non-jury Trial

**OPINION AND VERDICT**

Before the Court are Plaintiffs’ claims of negligence and loss of consortium against Defendant David Flook, and, by way of respondeat superior, against Defendants Nuweld and Satterfield.<sup>1</sup> By agreement of the parties, the matter has been presented to the court for decision based on the pleadings, submitted depositions and affidavits. Briefs were filed March 22 and 26, 2013. The matter is now ripe for decision and the Court enters the following:

**FINDINGS OF FACT**

1. On January 16, 2002, Plaintiff Richard Wells<sup>2</sup> was injured when he fell through the floor of a trailer while unloading pipe as part of his employment duties at Kvaerner Pulping, Inc.
2. The pipe being delivered to Kvaerner was delivered from Defendant Nuweld.
3. Defendant Nuweld had engaged the services of an independent contractor, Ralph Hershberger, to deliver the pipe to Kvaerner.
4. Ralph Hershberger was the driver of the truck and trailer that delivered the pipe to Kvaerner on January 16, 2002.
5. Ralph Hershberger was the owner of the trailer which caused any injury to Plaintiff.

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<sup>1</sup> The claim against Erie Insurance Co. was previously dismissed.

<sup>2</sup> Although June Wells is also a Plaintiff, for convenience, reference to “Plaintiff” in this opinion will refer to only Plaintiff Richard Wells.

6. Although Defendant David Flook was employed by Nuweld on the day in question, he did not deliver the pipe, nor did he own the trailer on which the pipe was delivered.

### **DISCUSSION**

The court finds it unnecessary to even reach the issue of whether Defendant Flook's actions were negligent as it is clear from the evidence that Defendant Flook had no duty to Plaintiff as he was not the owner or driver of the trailer involved in Plaintiff's injuries. Defendant Flook stated in his affidavit that he was not even on Kvaerner's premises that day and Plaintiff testified in his deposition that he did not know whose trailer it was or who the driver was. It appears Plaintiff filed the suit based on mis-information from a co-worker regarding the trailer's ownership.<sup>3</sup>

Without a finding of negligence, the claim for loss of consortium necessarily falls. Liability against Satterfield and Nuweld, based on vicarious liability, also falls.

Accordingly, the Court draws the following:

### **CONCLUSIONS OF LAW**

1. Defendant Flook did not breach any duty of care to Plaintiff.
2. Defendants Nuweld and Satterfield are not vicariously liable for any actions of Defendant Flook.
3. None of the Defendants is liable to Plaintiff June Wells for loss of consortium.

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<sup>3</sup> The co-worker's statement was presented only through Plaintiff and thus is inadmissible hearsay and may not be used to prove ownership of the trailer.

**VERDICT**

AND NOW, this 8<sup>th</sup> day of April 2013, for the foregoing reasons, the Court finds in favor of Defendants and against Plaintiff.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Lester L. Greevy, Jr., Esq.  
J. David Smith., Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson