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IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, PENNSYLVANIA

NO. 2008-4261

CIVIL ACTION - LAW

BRYAN KENDALL and SUSAN
KENDALL, his wife
9377 Blue Spring Road
Mercersburg, PA 17236

: DAVID HORNBAKER, as Co-Executor
: of the ESTATE OF DONALD H.
: BERKEBILE, a/k/a DON H.
: BERKEBILE
: 12081 Punch Bowl Road
: Mercersburg, PA 17236
:
: BRYAN YINGST, as Co-Executor of the
: ESTATE OF DONALD H. BERKEBILE,
: a/k/a DON H. BERKEBILE
: 269 Lamparter Road
: Quarryville, PA 17566
:
: JURY TRIAL DEMANDED

Plaintiffs

versus

Defendants

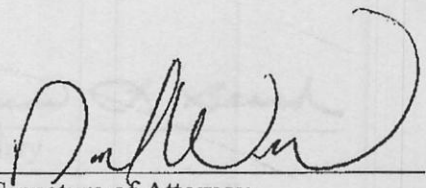
PRAECIPE FOR A WRIT OF SUMMONS

TO THE PROTHONOTARY OF SAID COURT:

Please issue a Writ of Summons in the above-captioned action.

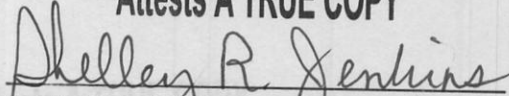
Writ of Summons shall be issued and forwarded to Sheriff.

David S. Wisneski, Esquire
I.D. No. 58796
Navitsky, Olson & Wisneski LLP
2040 Linglestown Road, Suite 303
Harrisburg, PA 17110
(717) 541-9205


Signature of Attorney

Dated: 10/07/08

Attests A TRUE COPY


LINDA L. BEARD, PROTHONOTARY

DEPUTY
LINDA L. BEARD
PROTHONOTARY

2008 OCT - 8 A 10:41

PROTHONOTARY
FRANKLIN COUNTY PA.

BRYAN KENDALL and SUSAN : IN THE COURT OF COMMON PLEAS
 KENDALL, his wife, : FRANKLIN CO., PENNSYLVANIA
 Plaintiffs :
 : NO. 2008-4261
 v. :
 :
 DAVID HORNBAKER, as Co-Executor : CIVIL ACTION - LAW
 of the ESTATE OF DONALD H. :
 BERKEBILE, a/k/a DON H. BERKEBILE :
 and BRYAN YINGST, as Co-Executor of :
 the ESTATE OF DONALD H. :
 BERKEBILE, a/k/a DON H. BERKEBILE. :
 :
 Defendants : JURY TRIAL DEMANDED

NOTICE

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Pennsylvania Law Referral Service
 Pennsylvania Bar Association
 100 South Street, P.O. Box 186
 Harrisburg, PA 17108
 1-800-692-7375

Attests A TRUE COPY

Shelley R. Jenkins
LINDA L. BEARD, PROTHONOTARY

PROTHONOTARY
 LINDA L. BEARD
 PROTHONOTARY
 2009 FEB 19 A 10:21
 FRANKLIN COUNTY PA

7. The facts and occurrences hereinafter related took place on or about July 28, 2008, at approximately 7:30 a.m., at or near 9399 Blue Spring Road, Mercersburg, Franklin County, Pennsylvania.

8. As of July 28, 2008, Bryan and Susan Kendall resided on a large farm that had a mailing address of 9397 Blue Spring Road, Mercersburg, Franklin County, Pennsylvania.

9. A one lane gravel road off of Blue Spring Road provided the only means of ingress and egress for the farm where Plaintiffs resided.

10. As of July 28, 2008, Donald H. Berkebile resided in a house that had a mailing address of 9399 Blue Spring Road.

11. Donald H. Berkebile's property abutted the one lane gravel road that runs through the farm where Plaintiffs resided to the main road (Blue Spring Road).

12. Plaintiffs were required to pass Mr. Berkebile's property in order to enter or exit the property where they resided.

13. As of July 28, 2008, Donald H. Berkebile was 81 years old.

14. As of July 28, 2008, Donald H. Berkebile lived alone.

15. Prior to July 28, 2008, Donald H. Berkebile had exhibited signs of erratic behavior.

16. Prior to July 28, 2008, Bryan Kendall had avoided Mr. Berkebile and had not spoken to him in eight years.

17. On the morning of July 28, 2008, Plaintiff Bryan Kendall, who owns and operates a landscaping business, left his residence to go to the site of a landscaping job.

18. In order to gain access to the main road, Bryan Kendall drove his truck down the lane leading to Blue Spring Road.

19. As Mr. Kendall was leaving the farm with his landscaping equipment and going down the lane toward the main road, he approached the Berkebile residence.

20. As Mr. Kendall approached the Berkebile residence, Mr. Berkebile was standing in the middle of the lane yelling and pointing his finger at Mr. Kendall.

21. On the left side of the road, Mr. Berkebile had started a fire.

22. The fire prevented Mr. Kendall from simply going around Mr. Berkebile on the left shoulder of the road.

23. On the right side of the road, Mr. Berkebile had driven several stakes into the ground.

24. The stakes prevented Bryan Kendall from simply going around Mr. Berkebile on the right shoulder of the road.

25. Bryan Kendall slowed his vehicle so as not to strike Mr. Berkebile.

26. As Mr. Kendall got closer to Mr. Berkebile, Mr. Berkebile stepped off of the lane.

27. Mr. Kendall brought his truck to a halt and rolled down his window in order to ask Mr. Berkebile what he was talking about.

28. When Mr. Kendall rolled down the window of his truck, smoke from the fire filled the truck's cab.

29. Mr. Kendall could hear Mr. Berkebile cursing and screaming, but could not understand what he was saying.

30. Mr. Kendall got out of his truck in order to ask Mr. Berkebile what was going on and in order to get out of the smoke while doing so.

31. Upon exiting the truck, Mr. Kendall took several steps toward the rear of his truck in order to avoid the fire and smoke.

32. Mr. Kendall then put his hands up in the air and said "Don, what are you talking about?"

33. Mr. Berkebile, who had angled his body so that his left side was facing toward Mr. Kendall and his right side facing away from him, pointed his left index finger at Mr. Kendall and said, "I saw you hit those rocks, you son of a b****" and, without warning or provocation, immediately shot Mr. Kendall in the chest with a handgun that had been concealed in his right hand.

34. The force of the blast lifted Mr. Kendall off of his feet and knocked him to the ground.

35. Mr. Kendall, who was bleeding and in great pain, thought that he was going to die.

36. As Mr. Kendall lay injured on the ground, Mr. Berkebile, who still had the gun out, kept looking at Mr. Kendall's body and pacing between Mr. Kendall and the fire.

37. It appeared to Mr. Kendall that Mr. Berkebile was going to drag his body into the fire to burn it.

38. Mr. Kendall decided that his best hope for surviving the situation was to simply play dead.

39. Mr. Berkebile placed the gun into a holster that had been hidden by his shirt.

40. Mr. Berkebile approached Mr. Kendall's body and kicked him near his feet, as if he were checking to see if he was still alive.

41. At that time, recognizing a possible opportunity to escape his dire situation, Mr. Kendall grabbed Mr. Berkebile.

42. A struggle ensued, during which Bryan Kendall fought for his life.

43. At some point during the struggle, Mr. Berkebile became unresponsive.

44. Bryan Kendall assumed that Mr. Berkebile was either unconscious or playing dead.

45. Mr. Kendall unbuckled Mr. Berkebile's belt and holster with his left hand (his right hand having been injured when he was shot) and threw the belt and holster, with the gun in it, as far as he could away from Mr. Berkebile.

46. With one eye on Mr. Berkebile, Mr. Kendall crawled to the cab of his truck, where he was able to retrieve his cell phone, which was laying on the seat.

47. Mr. Kendall telephoned 911 for assistance.

48. Mr. Kendall was taken by Life Lion to the Altoona Trauma Center, where surgery was performed.

49. Mr. Berkebile's handgun had been loaded with some type of pellet or buck shot.

50. It is believed, and therefore averred, that Mr. Berkebile used a .45/410 revolver to shoot Mr. Kendall.

51. Such a weapon is capable of being loaded with either .45 caliber cartridges or .410 gauge shot shells.

52. It is believed, and therefore averred, that Mr. Berkebile used a shotgun shell as ammunition when he shot Mr. Kendall.

53. Mr. Kendall was diagnosed as having suffered a multiple shotgun injury to the right lower chest, to the right upper quadrant and to the right forearm, with multiple pellets in the substance of the right lobe of his liver, and shot gun pellets within the parietoperitoneum of the lower chest wall.

54. Although some of the pellets were removed during the course of surgery, pellets were left in the subcutaneous areas in Mr. Kendall's right arm, in Mr. Kendall's right chest wall area and in Mr. Kendall's liver.

55. Mr. Kendall continues to experience discomfort, abdominal pain and scarring from the injuries that he sustained in the aforesaid incident.

56. Mr. Kendall has incurred over \$40,000.00 in medical expenses in an attempt to treat the injuries caused by Mr. Berkebile.

COUNT I - ASSAULT

**BRYAN KENDALL V. DAVID HORNABKER, AS CO-EXECUTOR OF
THE ESTATE OF DONALD H. BERKEBILE, A/K/A DON H. BERKEBILE
AND BRYAN YINGST, AS CO-EXECUTOR OF THE ESTATE OF
DONALD H. BERKEBILE, A/K/A DON H. BERKEBILE**

57. Paragraphs 1 through 56 of this Complaint are incorporated herein by reference.

58. Mr. Berkebile's shooting of Mr. Kendall was intentional, willful and malicious.

59. Donald H. Berkebile's actions as set forth above were done with the intent to put Mr. Kendall in reasonable and immediate fear of harmful or offensive contact with his body.

60. Plaintiff Bryan Kendall, as a result of Donald H. Berkebile's conduct as set forth above, was put in reasonable and immediate fear of such harmful or offensive conduct.

61. Donald H. Berkebile's conduct as set forth above constituted an assault upon Bryan Kendall.

62. As a direct and proximate result of the assault committed by Donald H. Berkebile, Plaintiff Bryan Kendall experienced immediate fear of a harmful or offensive contact with his body, and claim is made therefor.

63. As a direct and proximate result of Donald H. Berkebile's assault upon Bryan Kendall, Bryan Kendall sustained injuries that include, but are not limited to, multiple shotgun pellet injuries to his chest, abdomen, forearm, liver and spleen.

64. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has incurred, and will in the future incur, medical and rehabilitative expenses, and claim is made therefor.

65. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has undergone, and in the future will undergo, great physical and mental pain and suffering, great inconvenience in carrying out his daily activities, and a loss of life's pleasures and enjoyment, and claim is made therefor.

66. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has been, and in the future will be, subject to great humiliation and embarrassment, and claim is made therefor.

67. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has sustained a loss of earnings by reason of not being able to fulfill his employment, and claim is made therefor.

68. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has sustained loss of earning power and earning capacity, and claim is made therefor.

WHEREFORE, Plaintiff Bryan Kendall demands judgment against Defendants David Hornbaker, as Co-Executor of the Estate of Donald H. Berkebile, a/k/a Don H. Berkebile and Bryan Yingst, as Co-Executor of the Estate of Donald H. Berkebile, a/k/a Don H. Berkebile for damages in an amount of Fifty Thousand (\$50,000.00) Dollars, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT II - BATTERY

**BRYAN KENDALL V. DAVID HORNABKER, AS CO-EXECUTOR OF
THE ESTATE OF DONALD H. BERKEBILE, A/K/A DON H. BERKEBILE
AND BRYAN YINGST, AS CO-EXECUTOR OF THE ESTATE OF
DONALD H. BERKEBILE, A/K/A DON H. BERKEBILE**

69. Paragraphs 1 through 56 of this Complaint are incorporated herein by reference.

70. Mr. Berkebile's shooting of Mr. Kendall was intentional, willful and malicious.

71. The actions of Donald H. Berkebile as set forth above constituted a battery upon the person of Bryan Kendall.

72. Donald H. Berkebile intended to cause a harmful or offensive contact with the body of Bryan Kendall.

73. Donald H. Berkebile intended to put Bryan Kendall in reasonable and immediate fear of a harmful, offensive contact with his body.

74. Donald H. Berkebile's shooting of Bryan Kendall resulted in a harmful or offensive contact with Plaintiff's body.

75. As a direct and proximate result of Donald H. Berkebile's battery upon Bryan Kendall, Bryan Kendall sustained injuries that include, but are not limited to, multiple shotgun pellet injuries to his chest, abdomen, forearm, liver and spleen.

76. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has incurred, and will in the future incur, medical and rehabilitative expenses, and claim is made therefor.

77. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has undergone, and in the future will undergo, great physical and mental pain and suffering, great inconvenience in carrying out his daily activities, and a loss of life's pleasures and enjoyment, and claim is made therefor.

78. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has been, and in the future will be, subject to great humiliation and embarrassment, and claim is made therefor.

79. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has sustained a loss of earnings by reason of not being able to fulfill his employment, and claim is made therefor.

80. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has sustained loss of earning power and earning capacity, and claim is made therefor.

WHEREFORE, Plaintiff Bryan Kendall demands judgment against Defendants David Hornbaker, as Co-Executor of the Estate of Donald H. Berkebile, a/k/a Don H. Berkebile and Bryan Yingst, as Co-Executor of the Estate of Donald H. Berkebile, a/k/a Don H. Berkebile for damages in an amount of Fifty Thousand (\$50,000.00) Dollars, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT III – NEGLIGENCE

**BRYAN KENDALL V. DAVID HORNABKER, AS CO-EXECUTOR OF
THE ESTATE OF DONALD H. BERKEBILE, A/K/A DON H. BERKEBILE
AND BRYAN YINGST, AS CO-EXECUTOR OF THE ESTATE OF
DONALD H. BERKEBILE, A/K/A DON H. BERKEBILE**

81. Paragraphs 1 through 56 of this Complaint are incorporated herein by reference.

82. Plaintiffs plead, in the alternative, that Donald H. Berkebile's shooting of Bryan Kendall was an act of negligence.

83. Plaintiff Bryan Kendall's injuries were a direct and proximate result of the negligent conduct of Donald H. Berkebile as set forth in paragraphs 85 through 90 below.

84. As a direct and proximate result of Donald H. Berkebile's negligence as set forth in paragraphs 85 through 90 below, Defendants, as Co-Administrators of the Estate of Donald H. Berkebile, are liable to Plaintiff Bryan Kendall for the injuries alleged herein.

85. Donald H. Berkebile utilized unnecessary force under the circumstances that existed at the time of the incident that is the subject of this Complaint.

86. Donald H. Berkebile utilized excessive force under the circumstances that existed at the time of the incident that is the subject of this Complaint.

87. Donald H. Berkebile did know, or should have known, that firing a loaded weapon at another person could cause serious injury and harm, but nonetheless did so.

88. Donald H. Berkebile accidentally discharged his weapon at Mr. Kendall.

89. Donald H. Berkebile shot Bryan Kendall despite the fact that Mr. Kendall did not pose any threat to Mr. Berkebile.

90. As a direct and proximate result of Donald H. Berkebile's negligence as set forth above, Bryan Kendall sustained injuries that include, but are not limited to, multiple shotgun pellet injuries to his chest, abdomen, forearm, liver and spleen.

91. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has incurred, and will in the future incur, medical and rehabilitative expenses, and claim is made therefor.

92. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has undergone, and in the future will undergo, great physical and mental pain and suffering, great inconvenience in carrying out his daily activities, and a loss of life's pleasures and enjoyment, and claim is made therefor.

93. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has been, and in the future will be, subject to great humiliation and embarrassment, and claim is made therefor.

94. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has sustained a loss of earnings by reason of not being able to fulfill his employment, and claim is made therefor.

95. As a direct and proximate result of the aforesaid injuries, Plaintiff Bryan Kendall has sustained loss of earning power and earning capacity, and claim is made therefor.

WHEREFORE, Plaintiff Bryan Kendall demands judgment against Defendants David Hornbaker, as Co-Executor of the Estate of Donald H. Berkebile, a/k/a Don H. Berkebile and Bryan Yingst, as Co-Executor of the Estate of Donald H. Berkebile, a/k/a Don H. Berkebile for damages in an amount of Fifty Thousand (\$50,000.00) Dollars, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT IV – PUNITIVE DAMAGES

**BRYAN KENDALL V. DAVID HORNABKER, AS CO-EXECUTOR OF
THE ESTATE OF DONALD H. BERKEBILE, A/K/A DON H. BERKEBILE
AND BRYAN YINGST, AS CO-EXECUTOR OF THE ESTATE OF
DONALD H. BERKEBILE, A/K/A DON H. BERKEBILE**

96. Paragraphs 1 through 56 and Counts I through III of this Complaint are incorporated herein by reference.

97. Donald H. Berkebile's conduct as set forth above, in particular his unprovoked shooting of Plaintiff Bryan Kendall was malicious, wanton, willful and/or showed a reckless indifference and disregard to the interest of others.

98. Donald H. Berkebile acted with either intentional or negligent recklessness and indifference to the interest of others.

99. Donald H. Berkebile's conduct as set forth above was outrageous.

100. As a direct and proximate result of Defendant's malicious, wanton, willful, oppressive and/or recklessly indifferent conduct as set forth above, Plaintiff Bryan Kendall sustained injuries including multiple shotgun pellet injuries to his chest, abdomen, forearm, liver and spleen.

101. Accordingly, Plaintiff Bryan Kendall seeks punitive damages against the Estate of Donald B. Berkebile so as to deter others from committing similar acts.

WHEREFORE, Plaintiff Bryan Kendall demands judgment against Defendants David Hornbaker, as Co-Executor of the Estate of Donald H. Berkebile, a/k/a Don H. Berkebile and Bryan Yingst, as Co-Executor of the Estate of Donald H. Berkebile, a/k/a Don H. Berkebile for damages in an amount of Fifty Thousand (\$50,000.00) Dollars, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT V

**SUSAN KENDALL V. DAVID HORNABKER, AS CO-EXECUTOR OF
THE ESTATE OF DONALD H. BERKEBILE, A/K/A DON H. BERKEBILE
AND BRYAN YINGST, AS CO-EXECUTOR OF THE ESTATE OF
DONALD H. BERKEBILE, A/K/A DON H. BERKEBILE**

102. Paragraphs 1 through 56 and Count I of this Complaint are incorporated herein by reference.

103. As a direct and proximate result of the Donald H. Berkebile's assault and the injuries sustained by Plaintiff Bryan Kendall as set forth above, Susan Kendall has been, and in the future may be, deprived of the companionship, support, services, society and consortium of her husband, and claim is made therefor.

WHEREFORE, Plaintiff Susan Kendall demands judgment against Defendants David Hornbaker, as Co-Executor of the Estate of Donald H. Berkebile, a/k/a Don H. Berkebile and Bryan