IN THE SUPERIOR COURT OF PENNSYLVANIA
WESTERN DISTRICT

Joe Myers, **Appellant**

vs.

Timothy F. McCune, Joseph H. Chivers, John/Jack W. Murtagh Jr., Graydon Brewer, Carl V. Nanni, Jack Lewis, Jim Gallagher, Hank Leyland, Greg Loverick, Edward Tassey, AK Steel et al, UAW (formerly Butler Armco Independent Union) et al, Angelo Papa, William Cunningham, Michael Lettrich, Maria Milie Jones, Dennis Roman, Nicholas Koch, Adam Hobaugh, **Appellees**

Superior Court Docket No. 1892 WDA 2019

Appellant's Brief

Notice is hereby given that Joe Myers, Appellant above named, hereby appeals to the Superior Court of Pennsylvania from the order entered in this matter on the 20th day of April, 2020. This order has been entered in the docket as evidenced by the attached copy of the docket entry.

CIVIL DIVISION

Joe Myers
12137 Emerald Green Court
Jacksonville, Florida 32246
904-254-6472

QUESTIONS PRESENTED

The Supreme Court of the United States has held as well as other courts that the Constitution of the United States of America is the Supreme Law of the land. The Constitution restricts the Legislative, Executive and Judicial branches at the State and Federal level from violating or usurping the inalienable/unalienable rights of Appellant and EVERY CITIZEN.

Marbury v. Madison, (5 U.S. 137) (1803), Norton v. Shelby County, (118 U.S. 425) (1886), Boyd v. U.S., (116 U.S. 616), Brady v. U.S., (397 U.S. 742, 748), Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958), Cohens v. Virginia, 19 US (6 Wheat) 264, 404, 5 L.Ed 257 (1821) , Williamson v. U.S. Department of Agriculture, 815 F.2d. 369, ACLU Foundation v. Barr, 952 F.2d. 457, 293 U.S. App. DC 101, (CA DC 1991), Miranda v. Arizona, 384 US 436 p. 491, United States v. Twin City Power Co., (350 U.S. 222)(1956), Morrison v. State, Mo App., (252 S.W. 2d 97, 101), Sandin v. Connor (1995), Meachum v. Fano, (427 U.S. 215) (1976), Butcher's Union Co. v. Crescent City Co., (111 U.S. 746)(1884), United States v. Cruikshank (1875) (92 US 542)

The RIGHTS for every citizen are secured by the **Constitution** which includes the **Bill of Rights**, (*the first 10 Amendments being ratified on **March 4**, 1789*). The ***Preamble*** to the **Bill of Rights** further validates additional ***declaratory*** and ***restrictive clauses*** to prevent misconstruction or abuse of its powers.

"The Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a Desire, in Order to prevent Misconstruction or Abuse of its Powers, that further declaratory and restrictive Clauses should be added: And as extending the Ground of public Confidence in the Government will best ensure the beneficent Ends of its Institution." ***– Preamble of the Bill of Rights***

Amendment 14 was not ratified until July 9, 1868 some 70 plus years after the **Bill of Rights** were ratified which further restricts the States from usurping the RIGHTS of We The People.

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"Unalienable: incapable of being alienated, that is, sold and transferred. " ***– Black's Law Dictionary, Sixth Edition, page 1523***

<u>The questions presented are</u>:

1. Will Appellee Cunningham and ANY COURT be allowed to continue to usurp and violate the Constitutional Inalienable/Unalienable Rights of Appellant since the Supreme Court has already ruled the Bill of Rights are IN FACT RIGHTS that no government can give or take away from Appellant/Anyone, specifically a RIGHT to a JURY TRIAL that Cunningham has denied Appellant repeatedly and continues to harm Appellant by denying compensatory and punitive restitution awarded by a JURY?

2. Will this Court continue to allow the unconstitutional use of statute of limitations/time bar to be used against Appellant by Appellees which violates all the RIGHTS of Appellant in the Bill of Rights and specifically Amendments 7, 9, 10 and 14 Section 1?

3. Will Appellee Cunningham and ALL other Appellees continue to be allowed to conspire to violate Appellant's Rights under Title 18 Section 241 **Conspiracy Against Rights**, 242 **Deprivation of Rights Under Color of Law** and 254 **Federally protected activities** and continue to harm Appellant by denying compensatory and punitive restitution?

4. Will Appellee AK Steel (*now Cleveland-Cliffs*) continue to be allowed to harm Appellant by the continued violation of Appellant's Constitutional Inalienable/Unalienable Rights and CONSTITUTIONAL LAWS and continue to harm Appellant by denying compensatory and punitive restitution?

5. Will Appellee McCune go unpunished and not be required to pay restitution to Appellant for NOT investigating the CRIME committed against Appellant when the truck rolled over with Appellant inside the truck after Appellee AK Steel (*now Cleveland-Cliffs*) verbally ordered Appellant to haul the pinion gear without securing the load even after Appellee AK Steel (*now Cleveland-Cliffs*) had pictures of the truck almost rolling over on co-worker, Dan Redick, as well as the continued illegal activity against Appellant?

6. Will the Court protect Appellant's property of Appellant's labor and because Appellant's INALIENABLE/UNALIENABLE RIGHTS are guaranteed by the Declaration of Independence and Constitution/Bill of Rights? Butcher's Union Co. v. Crescent City Co., (111 U.S. 746)(1884)

7. Will the Court allow the continued FRAUD of Appellee AK Steel (*now Cleveland-Cliffs*) and Appellee UAW because Appellee AK Steel (*now Cleveland-Cliffs*) OWNS Appellee UAW through paying the Appellee UAW officers' salaries and paying the average overtime to the officers' without the officers working the overtime and for providing an on AK Steel property union hall to Appellee UAW validating Appellee UAW is not a union at all at the Appellee AK Steel (*now Cleveland-Cliffs*) plant in Butler Pennsylvania?

8. Will the Court allow Appellee Koch to go unpunished for not apprising the Court and Appellant that Appellee AK Steel was being *acquired and now owned by Cleveland-Cliffs*?

9. Will this Court transfer this case back to the Superior Court of Pennsylvania for a full investigation and prosecutions of all Appellees to enforce the **Writ of Mandamus** and afford Appellant ALL legal remedies mandated by the Constitution of the United States of America?

RELATED CASES

Joseph Myers, ***(Plaintiff)***

v.

AK Steel Corporation and Butler Armco Independent Union, U.A.W. ***(Defendants)***

and

Joseph G. Myers, ***(Plaintiff)*** v. *Joseph Chivers,* ***(Defendant)***

Court filings:

- ***Complaint – Jury Trial Demanded*** dated 4-23-o4 but Time/Date Stamped the day before 4-22-04
- ***Complaint For Legal Malpractice Breach Of Contract, Failure To Timely File/Breach Of Contract, No Justification Of Fee Charged To Plaintiff*** dated 6-1-o4 but not Time/Date Stamped until 6-17-04
- ***Conflict of Interest*** dated 11-20-07

A.D. No. 04-10707

Joe Myers, ***(Plaintiff)***

v.

Timothy F. McCune, Joseph H. Chivers, John/Jack Murtagh Jr., Graydon Brewer, Carl V. Nanni, Jack Lewis, Jim Gallagher, Hank Leyland, Greg Loverick, Edward Tassey, AK Steel et al, UAW (formerly Butler Armco Independent Union) et al, Angelo Papa, William Cunningham, Michael Lettrich, Maria Millie, Jones, Dennis Roman, Nicholas Koch, Adam Hobaugh, ***(Defendants)***

Court filings:

- ***Complaint*** dated 5-29-19
- ***Response to SCHEDULING ORDER*** dated 9-19-19
- ***All Defendants are in Contempt of Court and Obstructing Justice*** dated 9-28-19
- ***Legal Notice and Violation Warning of Denial of Rights Under Color of Law*** dated 10-16-19
- ***Amended Legal Notice and Violation Warning of Denial of Rights Under Color of Law*** dated 10-18-19

- ***Amended Court Filing Adding Defendants and For Continued Violation of Plaintiff's Constitutional Rights*** dated 10-28-19
- ***Response to Motion To Strike by Defendant Koch and to Any Future Court Filings By Any Defendant Trying to Violate Plaintiff's Constitutional Rights*** dated 11-25-19
- ***Notice of Appeal*** dated 12-18-19
- ***Concise Statement of Matters Complained of on Appeal*** dated 2-4-20

NO. A.D. No. 19-10516

x

Joe Myers, ***(Appellant)***

v.

Timothy F. McCune, Joseph H. Chivers, John/Jack Murtagh Jr., Graydon Brewer, Carl V. Nanni, Jack Lewis, Jim Gallagher, Hank Leyland, Greg Loverick, Edward Tassey, AK Steel et al, UAW (formerly Butler Armco Independent Union) et al, Angelo Papa, William Cunningham, Michael Lettrich, Maria Millie, Jones, Dennis Roman, Nicholas Koch, Adam Hobaugh, ***(Appellees)***

Court filings:

- ***Superior Court of Pennsylvania Docketing Statement*** dated 1-7-20
- ***Motion For Relief, Motion For Extension For Rule 1925(b) Order***
- ***Response To Rule 1925(b) Fraudulent/Illegal Order Time/Date Stamped 2-4-20***
- ***Response to Supreme Court Order dated 2-18-20, Writ Of Mandamus, Extraordinary Jurisdiction, Request For Extension For Filing Brief***

Case No.: 1892 WDA 2019

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CERTIFICATE OF COMPLIANCE

This is to certify that the pages for the Brief exceed the stated limit but does comply with the word count limit per **Rule 2135 (d).**

PREAMBLES & CONSTITUTIONAL LAW

1. **Declaration of Independence IN CONGRESS, July 4, 1776 (points related to this Appeal)**:

   The unanimous Declaration of the thirteen united States of America...the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

   We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.— That to secure these rights, **Governments are instituted among Men**, **deriving their just powers from the consent of the governed**,— That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness...But when a long train of **abuses and usurpations**, pursuing invariably the same Object evinces a design to **reduce them under absolute Despotism**, **it is their right**, **it is their duty**, **to throw off such Government**, and to provide new Guards for their future security.— Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government.

The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in **direct object the establishment of an absolute Tyranny over these States**. **To prove this**, let **Facts** be submitted to a candid world.

- **He has refused his Assent to Laws**, **the most wholesome and necessary for the public good**.
- He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.
- He has refused to **pass other Laws for the accommodation of large districts of people**, **unless those people would relinquish the right of Representation in the Legislature**, a right inestimable to them and **formidable to tyrants only**.
- He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.
- He has dissolved Representative Houses repeatedly, **for opposing with manly firmness his invasions on the rights of the people**.
- He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.
- He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.
- He has **obstructed the Administration of Justice**, **by refusing his Assent to Laws for establishing Judiciary powers**.

- **He has made Judges dependent on his Will alone**, for the tenure of their offices, and the amount and payment of their salaries.
- He has erected a multitude of New Offices, **and sent hither swarms of Officers to harrass our people**, and eat out their substance.
- He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.
- He has **affected to render the Military independent of and superior to the Civil power**.
- He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:
- For Quartering large bodies of armed troops among us:
- For protecting them, **by a mock Trial**, **from punishment for any Murders which they should commit on the Inhabitants of these States**:
- For cutting off our Trade with all parts of the world:
- For imposing Taxes on us without our Consent: **For depriving us in many cases, of the benefits of Trial by Jury**:
- For transporting us beyond Seas to be tried for **pretended offences**
- For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:
- For taking away our Charters, **abolishing our most valuable Laws**, **and altering fundamentally the Forms of our Governments**:
- For suspending our own Legislatures, **and declaring themselves invested with power to legislate for us in all cases whatsoever**.
- He has abdicated Government here, by declaring us out of his Protection and waging War against us.
- He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

- He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy of the Head of a civilized nation.
- He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.
- He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: **Our repeated Petitions have been answered only by repeated injury**. A Prince whose character is thus marked by **every act which may define a Tyrant,** is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our Brittish brethren. We have warned them from time to time of **attempts by their legislature to extend an unwarrantable jurisdiction over us**. We have reminded them of the circumstances of our emigration and settlement here.

We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity.

We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, **the Representatives of the united States of America**, **in General Congress**, Assembled, **appealing to the Supreme Judge of the world for the rectitude of our intentions**, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, **That these United Colonies are, and of Right ought to be Free and Independent States**; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor. (Emphasis added throughout point 1)

The Constitution of the United States September 17, 1787 Preamble: **We the People** of the United States, in Order to form a more perfect Union, **establish Justice**, insure domestic Tranquility, provide for the common defence, promote the general Welfare, **and secure the Blessings of Liberty to ourselves and our Posterity**, **do ordain** and **establish this Constitution for the United States of America**. (Emphasis added)

2. **Article 1 The Legislative Branch, Section 1 – The Legislature**: **All legislative Powers herein granted shall be vested in a Congress of the United States**, which shall consist of a Senate and House of Representatives. (Emphasis added)

3. **Article 1 The Legislative Branch, Section 10 - Powers prohibited of States: No State shall** enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; **pass any** Bill of Attainder, ex post facto Law, **or Law impairing the Obligation of Contracts**, or grant any Title of Nobility. (Emphasis added)

4. **Article. IV. - The States Section 1 - Each State to Honor all others:** Full Faith and Credit shall be given in each State **to the public Acts**, Records, **and judicial Proceedings of every other State**. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof. (Emphasis added)

5. **Article. IV. - The States Section 4 - Republican government: The United States shall guarantee to every State in this Union a Republican Form of Government**, and **shall protect each of them** against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) **against domestic Violence**.(Emphasis added)

6. **Article VI - Debts, Supremacy, Oaths: This Constitution, and the Laws** of the **United States which shall be made in Pursuance thereof**; and all Treaties made, **or which shall be made**, under the Authority of the United States, **shall be the supreme Law of the Land**; **and the Judges in every State shall be bound thereby**, **any Thing in the Constitution or Laws of any State to the Contrary notwithstanding**. (Emphasis added)

7. **Article VI - Debts, Supremacy, Oaths: The Senators and Representatives before mentioned**, and the **Members of the several State Legislatures**, **and all executive and judicial Officers**, **both of the United States and of the several States**, **shall be bound by Oath or Affirmation**, **to support this Constitution**; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. (Emphasis added)

8. **Preamble to the Bill of Rights**

Congress of the United States begun and held at the City of New York, on Wednesday the fourth of March, one thousand seven hundred and eighty-nine.

The Conventions of a number of the States, having at the time of their adopting the Constitution expressed a desire in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government will best ensure the beneficent ends of its institution.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring that the following Articles be proposed to the Legislatures of the several states as Amendments to the Constitution of the United States, all or any of which articles, when ratified by three fourths of the said Legislatures to be valid to all intents and purposes as part of the said Constitution; viz.

Articles in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress and Ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution. (Emphasis added)

9. **Bill of Rights, Amendment 7 - Trial by Jury in Civil Cases. Ratified 12/15/1791:** In Suits at common law, where the value in controversy shall exceed twenty dollars, **the right of trial by jury shall be preserved**, **and no fact tried by a jury**, **shall be otherwise reexamined in any Court of the United States**, than according to the rules of the common law. (Emphasis added)

10. **Bill of Rights, Amendment 9 - Construction of Constitution. Ratified 12/15/1791:** The enumeration in the Constitution, of certain rights, **shall not be construed to deny or disparage others retained by the people**. (Emphasis added)

11. **Bill of Rights, Amendment 10 - Powers of the States and People. Ratified 12/15/1791: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States**, are reserved to the States respectively, **or to the people**.

12. **Bill of Rights, Amendment 14 - Citizenship Rights. Ratified 7/9/1868:** 1. **All persons born or naturalized in the United States**, and subject to the jurisdiction thereof, **are citizens of the United States and of the State wherein they reside**. **No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States**; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws**.

13. **The Constitution of the Commonwealth of Pennsylvania Declaration of Rights Section 6:**

Trial by jury shall be as heretofore, and the right thereof remain inviolate. The General assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case. Furthermore, in criminal cases, the Commonwealth shall have the same right to trial by jury as does the accused. (Emphasis added)

TABLE OF AUTHORITIES

1. **42 Pennsylvania Consolidated Statutes § 2522 - Oath Of Office § 2522. Oath of office:**

   Before entering upon the duties of his office, each attorney at law shall take and subscribe the following oath or affirmation before a person authorized to administer oaths:

   "I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity, as well to the court as to the client, that I will use no falsehood, nor delay the cause of any person for lucre or malice."

   Any person refusing to take the oath or affirmation shall forfeit his office.

2. **U.S. Code: Title 18 Section 241 / Conspiracy Against Rights**

   This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, (or because of his/her having exercised the same).

It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured.

3. **Title 18, U.S.C., Section 242 - Deprivation of Rights Under Color of Law**

This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.

This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any person to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such person being an alien or by reason of his/her color or race.

Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. This definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, Judges, Nursing Home Proprietors, Security Guards, etc., persons who are bound by laws, statutes ordinances, or customs.

4. **U.S. Code: Title 18 Section 245 / Federally protected activities (1)(b):**

   This statute prohibits willful injury, intimidation, or interference, or attempt to do so, by force or threat of force of any person or class of persons because of their activity as:

   b) a participant in any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

5. **U.S. Code: Title 18 Section 35559/Sentencing classification of offenses (2)(C)**

   (2) Definitions.-For purposes of this subsection-

   (C) the term "extortion" means an offense that has as its elements the extraction of anything of value from another person by threatening or placing that person in fear of injury to any person or kidnapping of any person;

6. ***Marbury v. Madison, 5 U.S. 137 (1803)*** *"All laws which are repugnant to the Constitution are null and void."*

7. ***Norton v. Shelby County, 118 U.S. 425 (1886)*** *"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed."*

8. ***Boyd v. U.S., 116 U.S. 616*** *"The court is to protect against any encroachment of Constitutionally secured liberties."*

9. **Brady v. U.S., 397 U.S. 742, 748** *"Waivers of Constitutional Rights, not only must they be voluntary, they must be knowingly intelligent acts done with sufficient awareness." "If men, through fear, fraud, or mistake, should in terms renounce or give up any natural right, the eternal law of reason and the grand end of society would absolutely vacate such renunciation. The right to freedom being a gift of ALMIGHTY GOD, it is not in the power of man to alienate this gift and voluntarily become a slave." —Samuel Adams, 1772*

10. **Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958)** *"No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it."*

11. **Cohens v. Virginia, 19 US (6 Wheat) 264, 404, 5 L.Ed 257 (1821)** *"When a judge acts where he or she does not have jurisdiction to act, the judge is engaged in an act or acts of treason."*

12. **Williamson v. U.S. Department of Agriculture, 815 F.2d. 369, ACLU Foundation v. Barr, 952 F.2d. 457, 293 U.S. App. DC 101, (CA DC 1991).** *"It is the duty of all officials whether legislative, judicial, executive, administrative, or ministerial to so perform every official act as not to violate constitutional provisions."*

13. **U.S. v. Prudden, 424 F.2d. 1021; U.S. v. Tweel, 550 F. 2d. 297, 299, 300 (1977**) *Silence can only be equated with fraud when there is a legal and moral duty to speak or when an inquiry left unanswered would be intentionally misleading. We cannot condone this shocking conduct... If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately.*

14. **Norman v. Zieber,** 3 Or at 202-03 Fraud. *An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact… which deceives and is intended to deceive another so that he shall act upon it to his legal injury. … It consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him injury… (Emphasis added) –Black's Law Dictionary Fifth Edition, page 594. Then take into account the case of McNally v. U.S., 483 U.S. 350, 371-372, Quoting U.S. v Holzer, 816 F.2d. 304, 307 Fraud in its elementary common law sense of deceit… includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public,… and if he deliberately conceals material information from them he is guilty of fraud.*

15. ***Taylor v. Books A Million, Inc., 296 F.3d 376, 378 (5th Cir.2002) (quoting Miller v. Stanmore, 636 F.2d 986, 988 (5th Cir.1981))*** *"It is well-established that 'pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers."*

16. ***McCartney v. First City Bank, 970 F.2d 45, 47 (5th Cir.1992)*** *"In considering a motion to dismiss for failure to state a claim under Rule 12(b)(6), the court must accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff."*

17. **Miranda vs. Arizona, 384 US 436 p. 491** *"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."*

Jurisdictional Statement

Appellant filed the Notice of Appeal originally to the Supreme Court since that Court has jurisdiction because of the **Judicial Misconduct** of Appellee Cunningham and the **Attorney Misconduct** by all Appellees with a law license. Additionally, the following reasons are why this case must be transferred back to the Supreme Court of Pennsylvania.

Under Section 722 **Direct appeals from courts of common pleas** Appellant has questioned the following points regarding Appellee Cunningham and Appellees with a law license:

> *The Supreme Court shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas in the following classes of cases:*
>
> *(1) Matters prescribed by general rule.*
>
> *(3) Matters where the qualifications, tenure or right to serve, or the manner of service, of any member of the judiciary is drawn in question.*
>
> *(7) Matters where the court of common pleas has held invalid as repugnant to the Constitution, treaties or laws of the United States, or to the Constitution of this Commonwealth, any treaty or law of the United States or any provision of the Constitution of, or of any statute of, this Commonwealth, or any provision of any home rule charter.*

(8) Matters where the right to practice law is drawn in direct question.

Appellee McCune former Butler County District Attorney does not have Sovereign Immunity when he committed **LEGAL MALPRACTICE** and a **CRIME** for failing to honor his SWORN OATH to uphold the Constitution of the United States and investigate the criminal actions perpetrated against Appellant by Appellee AK Steel (*now Cleveland-Cliffs*).

This also includes Appellee Cunningham for his role in the **conspiracy** against Appellant.

8522. Exceptions to sovereign immunity.

(a) **Liability imposed. –** "The General Assembly, pursuant to section 11 of Article I of the Constitution of Pennsylvania, does hereby waive, in the instances set forth in subsection (b) **only and only** to the extent set forth in this subchapter and within the limits set forth in section 8528 (relating to limitations on damages), sovereign immunity as a bar to an action against Commonwealth parties, for damages arising out of a negligent act where the damages would be recoverable under the common law or a statute creating a cause of action if the injury were caused by a person not having available the defense of sovereign immunity."(emphasis added)

Appellee Cunningham has usurped his power under the Constitution of the United States of America by trying to impart his Opinion as "law" when Cunningham knows he can only enforce the CONSTITUTION. Cunningham knows only Congress has the power to make laws that he has taken an oath to uphold and enforce and he knows the Constitution of the United States is the SUPREME LAW that all other laws have to follow or they are not enforceable.

Article 1 The Legislative Branch, Section 1 – The Legislature: **All legislative Powers herein granted shall be vested in a Congress of the United States**, which shall consist of a Senate and House of Representatives. (Emphasis added)

Additionally ALL Appellees have violated **Title 18 Section 241 Conspiracy Against Rights, Section 242 Deprivation of Rights Under Color of Law** and **Section 245 Federally Protected Activities** against Appellant and only the Supreme Court of Pennsylvania has the jurisdiction to demand ALL of Appellant's Constitutional Rights be upheld.

The Supreme Court of Pennsylvania can only bring sanctions against ALL Appellees, direct current Butler County District Attorney Goldinger to honor his Constitutional mandate to investigate the criminal activity of Appellee's against Appellant and prosecute the crimes.

The Supreme Court only has Extraordinary Jurisdiction to order an injunction to investigate the illegal and unsafe practices of hauling grossly overloaded trailers pulled by tractors not rated for the weight of the trailers and defective heavy equipment Appellant and co-workers were routinely verbally ordered to operate that not only violated Appellee AK Steel's (now Cleveland-Cliffs) written directives but also the law.

Appellant called and spoke to David Devries from the PA Attorney General's office prior to Appellant's illegal termination in 2001 and Devries warned Appellant that if Appellant or co-workers operated any equipment in violation of Appellee AK Steel written directives (PUBLIC POLICY LAW) that not only could Appellant and co-workers be held criminally and civilly liable but could go to jail as well even though agents of Appellee AK Steel verbally instructed employees to operate the equipment in violation of AK Steel written directives. This illegal practice violated the law and OSHA mandates as well.

Procedural History

All the evidence provided in this Appellant's Brief can be downloaded at www.1776ToTyranny.com on the ***"Timeline of CORRUPTION"*** page. Appellant has stated the website in every court filing to ALL Appellees. Appellant stated this as Senator Rubio and Congressman Rutherford have started a congressional inquiry with the U.S. Department of Justice and the FBI do to the corruption Appellant has endured at the local, state and federal level.

The appended **Concise Statement** is to be read as part of this Brief. The **Exhibits** can be referenced from the flash drive requested by the Superior Court Order. The **Concise Statement** was also part of the **Response to Rule 1925(a) Fraudulent/Illegal Order 2-13-20** filed by Appellant in the Superior Court so the court already has the **Exhibits**.

Referenced from the Table Of Contents the Preambles & Constitutional Law as well as Table Of Authorities should be reviewed regarding the entire Brief.

In this **Brief** Appellant will reveal to the Court that Appellant has provided a host of ***inculpatory evidence*** of the guilt of Appellees yet the Appellees have provided no ***exculpatory evidence*** to prove their innocence.

The only defense the Appellees have attempted to use is procedural rules – ***which is not LAW at all*** - *to attempt to supersede the highest law of the land which is the Constitution of the United States of America or Appellees have attempted to apply unenforceable laws that impede Appellant's Constitutional RIGHTS*.

In Appellant's research there are 4 key elements of the **Rule of Law** and Appellant has been denied ALL facets of the **RULE OF LAW**:

- The transparency of the law
- Access to a true legal remedy for a fair outcome
- Equal treatment of the law
- Independent judiciary

As the court reviews the evidence and this Brief the Appellant would ask that the following quotes from **"The Law"** (*with emphasis added*), written in 1850 by French economist **Claude-Frédéric Bastiat,** be read in earnest and to apply the words of wisdom to protect Appellant's PROPERTY and ALL RIGHTS under the Constitution of United States of America as was intended by the Colonists and why they stated the usurpations of King George in the Declarations of Independence *(**reference Preambles & Constitutional Law starting on page xii**)*.

Bastiat truly understood that **LAW** was for **JUSTICE** and not to be perverted as it is today as plunder – which is UNCONSTITUTIONAL. This is taking place against the Appellant by the lower court as well as the unconstitutional defense used the Appellees and the court doing nothing to stop the corruption.

> *"Existence, faculties, assimilation—in other words, **personality, liberty, property**—this is man.*
>
> *It is of these three things that it may be said, **apart from all demagogic subtlety**, that they are anterior and **superior to all human legislation**.*

It is not because men have made laws, that personality, liberty, and property exist. ***On the contrary, it is because personality, liberty, and property exist beforehand, that men make laws****. What, then, is law? As I have said elsewhere, it is the collective organization of the individual right to lawful defense.*

Nature, or rather God, has bestowed upon every one of us the right to defend his person, his liberty, and his property, since these are the three constituent or preserving elements of life; elements, each of which is rendered complete by the others, and that cannot be understood without them. For what are our faculties, but the extension of our personality? and what is property, but an extension of our faculties?

If every man has the right of defending, even by force, his person, his liberty, and his property, a number of men have the right to combine together to extend, to organize a common force to provide regularly for this defense.

*Collective right, then, has its principle, its reason for existing, its lawfulness, in individual right; and the common force cannot rationally have any other end, or any other mission, than that of the isolated forces for which it is substituted. Thus, as the force of an individual cannot lawfully touch the person, the liberty, or the property of another individual—for the same reason****, the common force cannot lawfully be used to destroy the person, the liberty, or the property of individuals or of classes.***

For this perversion of force would be, in one case as in the other, in contradiction to our premises. For who will dare to say that force has been given to us, not to defend our rights, but to annihilate the equal rights of our brethren?

And if this be not true of every individual force, acting independently, how can it be true of the collective force, which is only the organized union of isolated forces?

Nothing, therefore, can be more evident than this: ***The law is the organization of the natural right of lawful defense; it is the substitution of collective for individual forces, for the purpose of acting in the sphere in which they have a right to act, of doing what they have a right to do, to secure persons, liberties, and properties, and to maintain each in its right, so as to cause justice to reign over all.***

And if a people established upon this basis were to exist, it seems to me that order would prevail among them in their acts as well as in their ideas. ***It seems to me that such a people would have the most simple, the most economical, the least oppressive, the least to be felt, the most restrained, the most just, and, consequently, the most stable Government that could be imagined, whatever its political form might be.***

Man can only derive life and enjoyment from a perpetual search and appropriation; that is, from a perpetual application of his faculties to objects, or from labor. This is the origin of property.

But also he may live and enjoy, by seizing and appropriating the productions of the faculties of his fellow men. ***This is the origin of plunder.***

Now, labor being in itself a pain, and man being naturally inclined to avoid pain, it follows, and history proves it, ***that wherever plunder is less burdensome than labor, it prevails****; and neither religion nor morality can, in this case, prevent it from prevailing.*

When does plunder cease, then? When it becomes more burdensome and more dangerous than labor. *It is very evident that the proper aim of law is to oppose the fatal tendency to plunder with the powerful obstacle of collective force; that all its measures should be in favor of property, and against plunder.*

And as law cannot exist without the sanction and the support of a preponderant force, it must finally place this force in the hands of those who legislate.

This inevitable phenomenon, combined with the fatal tendency that, we have said, exists in the heart of man, explains the almost universal perversion of law. It is easy to conceive that, instead of being a check upon injustice, it becomes its most invincible instrument.

It is easy to conceive that, according to the power of the legislator, it destroys for its own profit, and in different degrees amongst the rest of the community, personal independence by slavery, liberty by oppression, and property by plunder.

It is in the nature of men to rise against the injustice of which they are the victims. When, therefore, plunder is organized by law, for the profit of those who perpetrate it, all the plundered classes tend, either by peaceful or revolutionary means, to enter in some way into the manufacturing of laws. These classes, according to the degree of enlightenment at which they have arrived, may propose to themselves two very different ends, when they thus attempt the attainment of their political rights; either they may wish to put an end to lawful plunder, or they may desire to take part in it.

It would be impossible, therefore, to introduce into society a greater change and a greater evil than this—the conversion of the law into an instrument of plunder.

What would be the consequences of such a perversion? It would require volumes to describe them all.

We must content ourselves with pointing out the most striking.

In the first place, it would efface from everybody's conscience the distinction between justice and injustice.

***No society can exist unless the laws are respected to a certain degree, but the safest way to make them respected is to make them respectable**. When law and morality are in contradiction to each other, the citizen finds himself in the cruel alternative of either losing his moral sense, or of losing his respect for the law—two evils of equal magnitude, between which it would be difficult to choose.*

...as long as it is admitted that the law may be diverted from its true mission, that it may violate property instead of securing it, everybody will be wanting to manufacture law, either to defend himself against plunder, ***or to organize it for his own profit****. The political question will always be prejudicial, predominant, and absorbing; in a word, there will be fighting around the door of the Legislative Palace. The struggle will be no less furious within it.*

Nevertheless, even in the United States, there are two questions, and only two, that from the beginning have endangered political order. And what are these two questions?

That of slavery and that of tariffs; that is, precisely the only two questions in which, contrary to the general spirit of this republic, law has taken the character of a plunderer.

Slavery is a violation, sanctioned by law, of the rights of the person. Protection is a violation perpetrated by the law upon the rights of property; and certainly it is very remarkable that, in the midst of so many other debates, this double legal scourge, the sorrowful inheritance of the Old World, should be the only one which can, and perhaps will, cause the rupture of the Union. Indeed, a more astounding fact, in the heart of society, cannot be conceived than this: That law should have become an instrument of injustice. And if this fact occasions consequences so formidable to the United States, where there is but one exception, what must it be with us in Europe, where it is a principle—a system?

This plunder may be only an exceptional blemish in the legislation of a people, and in this case, the best thing can be done is, without so many speeches and lamentations, to do away with it as soon as possible, notwithstanding the clamors of interested parties. *But how is it to be distinguished? Very easily. See whether the law takes from some persons that which belongs to them, to give to others what does not belong to them. See whether the law performs, for the profit of one citizen, and, to the injury of others, an act that this citizen cannot perform without committing a crime.* ***Abolish this law without delay; it is not merely an iniquity—it is a fertile source of iniquities, for it invites reprisals****; and if you do not take care, the exceptional case will extend, multiply, and become systematic. No doubt the party benefited will exclaim loudly; he will assert his acquired rights.*

He will say that the State is bound to protect and encourage his industry; he will plead that it is a good thing for the State to be enriched, that it may spend the more, and thus shower down salaries upon the poor workmen. Take care not to listen to this sophistry, for it is just by the systematizing of these arguments that legal plunder becomes systematized*.*

And this is what has taken place. The delusion of the day is to enrich all classes at the expense of each other; it is to generalize plunder under pretense of organizing it. Now, legal plunder may be exercised in an infinite multitude of ways.

Hence come an infinite multitude of plans for organization; tariffs, protection, perquisites, gratuities, encouragements, progressive taxation, free public education, right to work, right to profit, right to wages, right to assistance, right to instruments of labor, gratuity of credit, etc., etc. And it is all these plans, taken as a whole, with what they have in common, legal plunder, that takes the name of socialism.

Now socialism, thus defined, and forming a doctrinal body, what other war would you make against it than a war of doctrine? You find this doctrine false, absurd, abominable. Refute it. This will be all the easier, the more false, absurd, and abominable it is.

Above all, if you wish to be strong, begin by rooting out of your legislation every particle of socialism which may have crept into it—and this will be no light work.

It is absolutely necessary that this question of legal plunder should be determined, and there are only three solutions of it:

1. When the few plunder the many.

2. When everybody plunders everybody else.

3. When nobody plunders anybody.

Partial plunder, universal plunder, absence of plunder, amongst these we have to make our choice. The law can only produce one of these results.

Partial plunder. This is the system that prevailed so long as the elective privilege was partial; a system that is resorted to, to avoid the invasion of socialism.

Universal plunder. We have been threatened by this system when the elective privilege has become universal; the masses having conceived the idea of making law, on the principle of legislators who had preceded them.

Absence of plunder. This is the principle of justice, peace, order, stability, conciliation, and of good sense, which I shall proclaim with all the force of my lungs (which is very inadequate, alas!) till the day of my death.

And, in all sincerity, can anything more be required at the hands of the law? Can the law, whose necessary sanction is force, be reasonably employed upon anything beyond securing to every one his right? I defy anyone to remove it from this circle without perverting it, and consequently turning force against right.

And as this is the most fatal, the most illogical social perversion that can possibly be imagined, it must be admitted that the true solution, so much sought after, of the social problem, is contained in these simple words—***LAW IS ORGANIZED JUSTICE.***

How, in fact, can we imagine force encroaching upon the liberty of citizens without infringing upon justice, and so acting against its proper aim?

Legal plunder has two roots: one of them, as we have already seen, is in human greed; the other is in misconceived philanthropy.

Before I proceed, I think I ought to explain myself upon the word plunder.

I do not take it, as it often is taken, in a vague, undefined, relative, or metaphorical sense. I use it in its scientific acceptation, and as expressing the opposite idea to property. ***When a portion of wealth passes out of the hands of him who has acquired it, without his consent, and without compensation, to him who has not created it, whether by force or by artifice, I say that property is violated, that plunder is perpetrated.***

I say that this is exactly what the law ought to repress always and everywhere. If the law itself performs the action it ought to repress, I say that plunder is still perpetrated, and even, in a social point of view, under aggravated circumstances.

In this case, however, he who profits from the plunder is not responsible for it; it is the law, the lawgiver, society itself, and this is where the political danger lies.

All that can be said is, that plunder is more visible by its partiality in protectionism, and by its universality in communism; whence it follows that, of the three systems, socialism is still the most vague, the most undefined, and consequently the most sincere.

Be that as it may, to conclude that legal plunder has one of its roots in misconceived philanthropy, is evidently to put intentions out of the question.

The Socialists say, since the law organizes justice, why should it not organize labor, instruction, and religion?

Why? Because it could not organize labor, instruction, and religion, without disorganizing justice.

For remember, that law is force, and that consequently the domain of the law cannot properly extend beyond the domain of force.

When law and force keep a man within the bounds of justice, they impose nothing upon him but a mere negation. They only oblige him to abstain from doing harm. They violate neither his personality, his liberty, nor his property. They only guard the personality, the liberty, the property of others.

They hold themselves on the defensive; they defend the equal right of all. They fulfill a mission whose harmlessness is evident, whose utility is palpable, and whose legitimacy is not to be disputed. This is so true that, as a friend of mine once remarked to me, to say that the aim of the law is to cause justice to reign, is to use an expression that is not rigorously exact. It ought to be said, the aim of the law is to prevent injustice from reigning. ***In fact, it is not justice that has an existence of its own, it is injustice. The one results from the absence of the other.***

But when the law, through the medium of its necessary agent—force—imposes a form of labor, a method or a subject of instruction, a creed, or a worship, it is no longer negative; it acts positively upon men. It substitutes the will of the legislator for their own will, the initiative of the legislator for their own initiative.

They have no need to consult, to compare, or to foresee; the law does all that for them. The intellect is for them a useless encumbrance; they cease to be men; they lose their personality, their liberty, their property.

Try to imagine a form of labor imposed by force, that is not a violation of liberty; a transmission of wealth imposed by force, that is not a violation of property. If you cannot succeed in reconciling this, you are bound to conclude that the law cannot organize labor and industry without organizing injustice.

But if the legislator, mistaking his object, should take up a principle different from that which arises from the nature of things; if one should tend to slavery, and the other to liberty; if one to wealth, and the other to population; one to peace, and the other to conquests; ***the laws will insensibly become enfeebled, the Constitution will be impaired, and the State will be subject to incessant agitations until it is destroyed, or becomes changed, and invincible Nature regains her empire.***

The nature of law is to maintain justice. This is so much the case that, in the minds of the people, law and justice are one and the same thing.

There is in all of us a strong disposition to believe that anything lawful is also legitimate. This belief is so widespread that many persons have erroneously held that things are "just" because law makes them so. ***Thus, in order to make plunder appear just and sacred to many consciences, it is only necessary for the law to decree and sanction it.*** *Slavery, restrictions, and monopoly find defenders not only among those who profit from them but also among those who suffer from them.*

The pretensions of organizers suggest another question, which I have often asked them, and to which I am not aware that I ever received an answer: ***Since the natural tendencies of mankind are so bad that it is not safe to allow them liberty, how comes it to pass that the tendencies of organizers are always good?***

Do not the legislators and their agents form a part of the human race? Do they consider that they are composed of different materials from the rest of mankind? They say that society, when left to itself, rushes to inevitable destruction, because its instincts are perverse.

They presume to stop it in its downward course, and to give it a better direction. They have, therefore, received from heaven, intelligence and virtues that place them beyond and above mankind: let them show their title to this superiority.

They would be our shepherds, and we are to be their flock. ***This arrangement presupposes in them a natural superiority, the right to which we are fully justified in calling upon them to prove.***

What is law? What ought it to be? What is its domain? What are its limits? Where, in fact, does the prerogative of the legislator stop?

I have no hesitation in answering, Law is common force organized to prevent injustice;—in short, Law is Justice.

It is not true that the legislator has absolute power over our persons and property, since they pre-exist, and his work is only to secure them from injury.

It is not true that the mission of the law is to regulate our consciences, our ideas, our will, our education, our sentiments, our works, our exchanges, our gifts, our enjoyments. Its mission is to prevent the rights of one from interfering with those of another, in any one of these things.

Law, because it has force for its necessary sanction, can only have the domain of force, which is justice.

And as every individual has a right to have recourse to force only in cases of lawful defense, so collective force, which is only the union of individual forces, cannot be rationally used for any other end.

The law, then, is solely the organization of individual rights that existed before law.

Law is justice.

So far from being able to oppress the people, or to plunder their property, even for a philanthropic end, its mission is to protect the people, and to secure to them the possession of their property.

It must not be said, either, that it may be philanthropic, so long as it abstains from all oppression; for this is a contradiction. The law cannot avoid acting upon our persons and property; if it does not secure them, then it violates them if it touches them.

The law is justice.

Nothing can be more clear and simple, more perfectly defined and bounded, or more visible to every eye; for justice is a given quantity, immutable and unchangeable, and which admits of neither increase or diminution.

Depart from this point, make the law religious, fraternal, equalizing, industrial, literary, or artistic, and ***you will be lost in vagueness and uncertainty****; you will be upon unknown ground, in a forced Utopia, or, what is worse, in the midst of a multitude of contending Utopias,* ***each striving to gain possession of the law****, and to impose it upon you; for fraternity and philanthropy have no fixed limits, as justice has.* ***Where will you stop? Where is the law to stop?***

I cannot avoid coming to this conclusion—that there are too many great men in the world; there are too many legislators, organizers, institutors of society, conductors of the people, fathers of nations, etc., etc. Too many persons place themselves above mankind, to rule and patronize it; too many persons make a trade of looking after it.

It will be answered—"You yourself are occupied upon it all this time." Very true. But it must be admitted that it is in another sense entirely that I am speaking; and if I join the reformers it is solely for the purpose of inducing them to relax their hold.

I am not doing as Vaucauson did with his automaton, but as a physiologist does with the human frame; I would study and admire it.

I am acting with regard to it in the spirit that animated a celebrated traveler. He found himself in the midst of a savage tribe. A child had just been born, and a crowd of soothsayers, magicians, and quacks were around it, armed with rings, hooks, and bandages. One said—"This child will never smell the perfume of a calumet, unless I stretch his nostrils."

Another said—"He will be without the sense of hearing, unless I draw his ears down to his shoulders." A third said—"He will never see the light of the sun, unless I give his eyes an oblique direction." A fourth said—"He will never be upright, unless I bend his legs." A fifth said—"He will not be able to think, unless I press his brain."

"Stop!" said the traveler. "Whatever God does, is well done; do not pretend to know more than He; and as He has given organs to this frail creature, allow those organs to develop themselves, to strengthen themselves by exercise, use, experience, and liberty."

God has implanted in mankind also all that is necessary to enable it to accomplish its destinies.

There is a providential social physiology, as well as a providential human physiology. The social organs are constituted so as to enable them to develop harmoniously in the grand air of liberty. Away, then, with quacks and organizers! Away with their rings, and their chains, and their hooks, and their pincers! Away with their artificial methods!

Away with their social laboratories, their governmental whims, their centralization, their tariffs, their universities, their State religions, their inflationary or monopolizing banks, their limitations, their restrictions, their moralizations, and their equalization by taxation! And now, after having vainly inflicted upon the social body so many systems, let them end where they ought to have begun—reject all systems, and try liberty—liberty, which is an act of faith in God and in His work."

BASIS FOR THE APPEAL

THE APPELLANT has raised the basic issue on appeal over the negligent and unlawful practice that has resulted in strict liability of Appellee AK Steel (*now Cleveland-Cliffs*) from an avoidable accident by the simple fact of ignoring workplace safety, the law and committing fraud with the alleged union under the guise of Appellee UAW.

Also, Appellant tried to legally protect himself and co-workers by contacting David Devries from the PA Attorney General's office in regard to the illegal activity at Appellee AK Steel (*now Cleveland-Cliffs*) plant and then Appellant was illegally fired for Whistle Blowing.

When Appellant tried to seek justice in the lower court Appellee Cunningham refused to follow the LAW and UNCONSTITUTIONALLY dismissed Appellant's case even after Appellee Cunningham and ALL Appellees with a law license were warned by Appellant with the Warning Letters for Denial of Rights Under Color of Law.

Appellant added the *Warning Letters* as part of the court filing **AMENDED LEGAL NOTICE AND VIOLATION WARNING OF DENIAL OF PLAINTIFFS RIGHTS UNDER COLOR OF LAW OF THE UNITED STATES OF AMERICA.**

When Appellee Cunningham and ALL Appellees ignored the *Warning Letters* Appellant added Cunningham and ALL legal counsel for ALL Appellees as Defendants in court filing **AMENDED COURT FILING ADDING DEFENDANTS AND FOR CONTINUED VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS OF THE UNITED STATES OF AMERICA.**

The Appellant comes now humbly with great respect and admiration for having to place the issue, rules and argument before the Superior Court of Pennsylvania, Western District and ultimately requesting to transfer this case back to the Supreme Court of Pennsylvania, Western District in light of the ***Writ of Mandamus*** and ***Extraordinary Jurisdiction***.

The Appellant comes to the Court in recognition that we have a duty to work to reduce workplace injuries and that everyone follows CONSTITUTIONAL LAWS.

A work place incident resulted in an accident that was fully avoidable and became a criminal action when Appellant was informed that a similar accident occurred to former co-worker, Dan Redick, prior to Appellant's accident yet Appellant was never notified by Appellee AK Steel (*now Cleveland-Cliffs*) of the incident until after Appellant's accident.

The incident ultimately resulted in loss of employment of Appellant as well as the punitive and compensatory damages that resulted from failure of the employer to follow work place safety and CONSTITUIONAL LAWS.

The following numbered points are basic highlights from the appended **Concise Statement.** Because of the limitations of words in the body of the Brief the Court must read the Concise Statement in its entirety.

1) In April of 1984 Appellee AK Steel (*formerly Armco Steel now Cleveland-Cliffs*) entered a **CIVIL contract** with Appellant whereby if Appellant followed Appellee AK Steel's written directives and the LAW that Appellee AK Steel in return would pay wages, benefits, pension, etc. to Appellant.

This was NOT a labor law contract because Appellant was not allowed to be (*nor could be because of the FRAUD*) part of the fraudulent Appellee UAW Union (formerly Butler Armco Independent Union) for approximately 3 months.

Also, Appellee AK Steel pays the salaries of ALL fraudulent Appellee UAW officers and pays the average overtime and bonuses to the fraudulent Appellee officers that do not have to work for the overtime.

Additionally Appellee AK Steel provides a union hall on Appellee AK Steel property which makes it a company owned union.

This practice is illegal and IS and HAS been a Conflict of Interest since Appellant was hired which is FRAUD.

- ***National Labor Relations Act (NLRB) Section 8 (a)(2)*** *makes it an unfair labor practice for an employer "to* ***dominate or interfere*** *with the formation or administration of any labor organization* ***or contribute financial or other support to it.***" *(emphasis added)*

This case **IS and ALWAYS** has been a **CIVIL and CRIMINAL legal matter** but Appellant provided the aforementioned **NLRB Section** to further **prove the FRAUD, CRIMINAL and CIVIL issues** between Appellee AK Steel et al and fraudulent Appellee UAW et al.

2) During the year of 2000 Appellant had numerous conversations with OSHA official Jim Connell about operating defective heavy equipment and overloading the tractor-trailers on roads the public uses on Appellee AK Steel property. Appellee AK Steel allows the **Heckett Slag company** to conduct business on Appellee AK Steel property and allowed anyone from the public to drive onto Appellee AK Steel property to purchase slag.

Anyone that drove into the plant came to an intersection that was at the bottom of the extremely steep hill with an approximately 90 degree bend half way down the hill that went to the Hilltop facility of Appellee AK Steel.

Appellant and co-workers were then and NOW still required to haul *unsecured grossly overloaded trailers pulled by a truck/tractor that was not rated to haul that weight* (**Exhibits 5 and 26**) from the Hilltop facility down the extremely steep hill with the approximately 90 degree bend. This hill came to an intersection the public enters and the road to the main plant, the same roads the vendors **(non-AK Steel employees)** use.

3) Prior to Appellant being illegally fired for Whistle Blowing Appellant was disciplined (**Exhibit 3**) when a Stake Truck Appellant was operating rolled onto its side **after Appellant was verbally instructed to NOT chain down the pinion gear (A CRIME).**

This verbal directive was in violation of Appellee AK Steel written policy which is PUBLIC POLICY LAW. **The pinion gear rolled to the side boards of the truck rolling over the truck with Appellant inside that had the potential to seriously injure or KILL Appellant or someone else.**

A similar incident previously happen to co-worker, **Dan Redick**, yet Appellee AK Steel **NEVER told Appellant about it (A CRIME)** which would have prevented the incident that happened to Appellant. *After Appellant's incident Appellant was shown pictures of the Dan Redick incident that were in Appellee AK Steel files all along*. Appellee AK Steel knew this was an unsafe practice but did NOTHING until after the truck rolled over on Appellant - **CRIME!**

After the truck rolled over with Appellant inside the truck it was only THEN Appellee AK Steel started requiring the **pinion gear** to be hauled by a low-boy tractor trailer *PROVING AGAIN Appellee AK Steel KNEW it was dangerous to haul it by a Stake Truck*. After the incident Appellant was required by Appellee AK Steel to take a breathalyzer test as well as a urine test as required by Pennsylvania Motor Code, which Appellant passed both tests.

AGAIN Appellee AK Steel followed Pennsylvania Motor Code LAW even though the incident was on Appellee AK Steel property.

The very fact of Appellee AK Steel having pictures of the truck incident with co-worker, Dan Redick, and NOT informing Appellant **was a CRIME yet Appellee McCune REFUSED to investigate the CRIME!**

4) After Appellant received discipline for the incident of the truck rolling over on Appellant when he was verbally directed **NOT** to chain down the pinion gear, because the machine shop did not want undo stress on the bearings, *Appellant became concerned of criminal and civil liability so Appellant called the PA Attorney General's office and spoke with Mr. David Devries*. Appellant explained to Devries that Appellee AK Steel was verbally instructing Appellant and co-workers to operate defective heavy equipment and grossly overload tractor-trailers on roads that the public and vendors use that violated Appellee AK Steel written policy as well as *ALL LAWS and the LAW of PUBLIC POLICY.*

Appellant then asked Devries if Appellant would be legally liable. Devries stated that not only would Appellant be held civilly liable but if someone was hurt or killed Appellant could be held criminally liable and could quite possibly serve a prison term.

Appellant informed Appellee Tassey of the conversation Appellant had with Devries yet Appellee Tassey illegally fired Appellant in the future for WHISTLE BLOWING.

THIS CALL WITH DEVRIES AS WELL AS ALL THE EVIDENCE PROVES this case has NOTHING to do with LABOR LAW but **IN FACT** this case is **ALL about CRIMINAL and CIVIL LAW**.

Labor law could never protect Appellant or co-workers civilly or criminally and **ALL Appellees knew that THEN and know that FACT NOW!**

5) Another disciplinary meeting on 12-15-00 (**Exhibit 7 hand written notes by Appellee Loverick**) was held because Appellant hauled within the legal load limit and completed the required job assignment YET in the meeting on the issue Appellee Tassey stated he wanted Appellee to haul overloaded.

Appellant asked Appellee Tassey if Appellant did not haul overloaded would Appellant be terminated to which Appellee Tassey replied **"NO"** YET Appellee Tassey did terminate Appellant when Appellee Tassey gave Appellant another illegal verbal order to haul the overloaded trailers with an inferior tractor and Appellant was not allowed to chain down the coils.

Appellant wanted to follow Appellee AK Steel written directives *(**Exhibits 1, 4, 5, 8 and 12**) and ALL LAWS and the LAW of PUBLIC POLICY which Appellee AK Steel had already disciplined Appellant (**Exhibit 3**) for following verbal orders that violated Appellee AK Steel written directives yet Appellee Tassey was giving Appellant verbal orders again to violate written Appellee AK Steel directives*. In this meeting Appellant stated to Appellee Tassey on page 1 *"I still feel it is unsafe and I want to be disqualified and sent back to zone 6. I can't do the job safely the way you want me to. I can't afford to go to jail."* Other Appellee AK Steel employees have been disqualified YET Appellee Tassey refused to disqualify Appellant so Tassey could illegally FIRE APPELLANT.

On page 3 (Exhibit 7) Appellant requested everything from his employment file stating "*I need everything for my attorney*" so Appellee Tassey, Appellee UAW and Appellee Loverick knew this was about CRIMINAL and CIVIL LAW and NEVER labor law.

6) **Exhibit 8** is a letter dated 1-31-01 Appellant received from Appellee AK Steel **V.P. of Human Resources Brenda Harmon** regarding Appellee AK Steel's corporate policies covering equal employment opportunity, harassment and workplace violence. Page 3 under **POLICY** the document states *"The Company further prohibits threats, threatening behavior, or acts of violence against employees or other individuals by anyone on AK Steel property or off AK Steel property if the prohibited conduct* ***relates to an individual's employment with the Company****. Such misconduct,* ***regardless of who originates it or participates in it, and regardless of whether it is oral, written, or physical conduct****, must be promptly reported and will be investigated.*

If found to have occurred, appropriate corrective action will be taken up to and including termination of the offending individual's employment. Criminal activity *may also be* ***referred to the appropriate authorities which may result in arrest and prosecution."*** (emphasis added)

Appellant had repeatedly reported the harassment as well as criminal and civil activity with Appellant's comments in investigation meetings as well as **Exhibits 7, 9 and 11** not to mention Appellee AK Steel written policies **Exhibits 1, 4, 5, 8 and 12 that validate Appellee AK Steel knew this was a CRIMINAL and CIVIL matter and had NOTHING to do with labor law**.

7) **Exhibit 4** is the **Armco's Safety and Security Handbook** that was given to Appellant and co-workers in 1999 and **in force while Appellant was CIVILLY contracted and employed by Appellee AK Steel**. The following points validate Appellant's claims of **FRAUD** and **criminal activity by ALL Appellees**.

This document was presented at the illegal arbitration that exonerated Appellant and was ignored by corrupt Arbitrator Dean. **See underlined portions:**

a) Page 1 states that safety is paramount and a Supervisor will "TEACH" you how to do your job safely.
b) Page 2 again speaks of safety.
c) Page 5 again expounding on safety.
d) Page 6 instructs an employee to report safety concerns "**IMMEDIATELY**" to your supervisor ***WHICH APPELLANT DID REPEATEDLY***. Additionally stating that "**The rules and instructions** contained in this book are supplementary to applicable Federal, State, and local laws and regulations. **In the event of differences, the higher standard of safety shall apply**." (emphasis added)

This last sentence vindicates Appellant of EVERY issue Appellee AK Steel illegally fired Appellant over and proves Appellee AK Steel LIED and committed FRAUD!

Every Appellee knew as well and are still conspiring against Appellant by trying to claim NLRB overrules CRIMINAL and CIVIL LAW and ALL APPELLEES KNOW IT DOES NOT!!!!

e) Page 7 expounds again on the importance of safety.
f) Page 68 details the requirement to follow the State Motor Code for ALL employees on Appellee AK Steel property.
g) Page 71 states that ALL deficiencies on mobile cranes MUST be corrected prior to use **yet Appellant and co-workers were required to operate defective mobile cranes. One such incident was operating the Linkbelt crane with a bent boom extension that was removed after repairman observed it was bent YET Appellee AK Steel instructed the repairman to put it back on the crane.**

Appellee AK Steel instructed Appellant and co-workers to operate the defective crane for almost a year before the boom extension was repaired.

h) Page 78 makes it clear not to be insubordinate **yet Appellee Tassey gave Appellant a verbal order that violated the law and Appellee AK Steel written policy WHICH IS PUBLIC POLICY LAW and then Appellee Tassey fired Appellant for WHISTLE BLOWING.**

i) Page 79 makes it clear to follow Appellee AK Steel safety protocol and not to violate OSHA standards **yet that is what Appellee AK Steel did was fire Appellant for FORCING Appellant to violate their own written directives and OSHA LAW (Exhibit 42).**

j) Pages 80 and 81 details that Appellant was required to properly operate vehicles and not violate criminal laws. **Appellee AK Steel IN FACT committed a crime by EXTORTING from Appellant and Appellant's family Appellant's wages, benefits, pension, etc. by verbally ordering Appellant to violate the law and Appellee AK Steel's own written directives that Appellee AK Steel had disciplined Appellant for before (Exhibit 3) and when Appellant followed the LAW and Appellee AK Steel written directives Appellee AK Steel fired Appellant for Whistle Blowing.**

8) **Exhibit 9** is a letter dated 3-1-01 sent from Appellant's then legal counsel Dennis Moskal to Appellee AK Steel warning them of the civil and criminal liability being forced on Appellant and co-workers.

9) **Exhibit 11** is a letter dated 3-21-01 sent from Appellant to Appellee AK Steel and specifically Appellee AK Steel then CEO Wardrop warning them of the civil and criminal liability being forced on Appellant and co-workers. This letter was sent just 2 days prior to Appellant being fired for Whistle Blowing.

10) **Exhibit 13** is the letter Appellant received from Appellee AK dated 4-5-01. The letter was signed by Appellee Tassey intending to suspend Appellant with intent to discharge Appellant on 4-11-01. Appellee Tassey admitted in writing his illegal directive for Appellant to break the law hauling the grossly overloaded trailers with a tractor not rated to haul the load. **Exhibits 1, 4, 5, 8, 12 and 27 provide further evidence of Appellee Tassey's CRIMINAL directive to Appellant.**

11) On 4-9-01 Appellant contacted **Brenda Harmon** - V.P. of Human Resources, for Appellee AK Steel – who wrote the letter (**Exhibit 8**) dated 1-31-01. Appellant contacted Harmon to file a complaint. Harmon called Appellant back and informed Appellant to contact **Rick Winters in Human Resources Manager at the Appellee AK Steel plant in Butler.**

12) On 4-12-01 Appellant contacted Rick Winter to file a complaint with Human Resources. On 4-19-01 Winter's returned a call to Appellant to inform Appellant that Winters would not pursue Appellant's complaint against Appellee AK Steel. The corruption continues because Appellee AK Steel pays the salary, benefits, etc. of Winter's just like Appellee UAW officers.

13) **Exhibit 23** provides the Verbatim Record dated 8-20-01 of the fraudulent Arbitration Hearing and the **NOTES by Appellant** of the testimony of Appellee AK Steel agents that exonerate Appellant of any wrong doing and provide more evidence of FRAUD perpetrated against Appellant.

14) **Exhibit 28** is the letter Appellant wrote to Appellee McCune providing evidence of criminal activity that Appellee McCune refused to investigate thereby violating his sworn oath to uphold the Constitution and his oath as an attorney.

15) Appellant had a phone conversation with **Appellee AK Steel Board of Director Bonnie Hill** on 9-18-01 and she refused to help even though **Exhibit 1A** *proves the board knew Appellee AK Steel CEO Wardrop was a tyrant*.

16) The **Concise Statement** has all the evidence of those Appellant contacted in the local, state and federal government. Specifically **Exhibit - U.S. Attorney General letter 2003** dated 3-7-2003 that was addressed to then U.S. Attorney General Ashcroft and had ALL the **Exhibits** presented in this **Brief**. This letter was well within any **UNCONSTITUTIONAL** statute of limitations/time bar and was also U.S. Certified Mailed the following local, state and federal officials and agencies:

- Former President, George W. Bush

- Former Secretary of Labor, Elaine Chao
- Former Homeland Security Secretary, Tom Ridge
- Former FBI Director, Robert Mueller
- Former U.S. Marshalls Director, Benigno G. Reyna
- Former U.S. House of Representatives Chairman, John A. Boehner
- Former PA Governor, Ed Rendell
- Former PA Attorney General, Mike Fisher
- Former PA U.S. Senator, Alen Spector
- Former PA U.S. Senator, Rick Santorum
- Former PA U.S. House of Representative, Phil English
- Former PA State Senate, Mary Jo White
- Former PA State House of Representative, GuyTravaglio
- Former President of the National Safety Council, Alan McMillan
- Pennsylvania Governor's Award for Safety Excellence Committee

Appellant sent the letter to all named above because Appellee Chivers refused to file a Complaint for Appellant and Appellant could not find legal counsel until Appellee Papa agreed to represent Appellant. At the first meeting Appellant provided Appellee Papa with the binder of the **Exhibit - U.S. Attorney General letter 2003** dated 3-7-2003 with all the **Exhibits** and ALL Appellees <u>were aware and have been aware of the evidence</u> and have continued to conspire against Appellant.

APPELLEES WITH A LAW LICENSE

Appellant retained Appellees Chivers and Papa yet they both violated their sworn oath to uphold the Constitution and their ***Oath of office - 42 Pennsylvania Consolidated Statutes Section 2522*** to protect Appellant's RIGHTS.

Appellee McCune was well aware of his legal obligation as the former Butler County District Attorney to investigate the criminal activity of Appellee AK Steel when Appellant sent Appellee McCune the letter dated 11-29-01 (**Exhibit 28**) detailing the criminal activity perpetrated against Appellant by Appellee AK Steel.

Appellee Cunningham was well aware at ALL TIMES that he did not follow the **RULE OF LAW** as referenced in the aforementioned 4 elements when Cunningham dismissed Appellant's case in the Commonwealth court see appended Opinion and Order.

Appellant filed a **SUBTANTIVE LAW** Complaint (the **Constitution** being the **Supreme Law** of the Land) and Appellee Cunningham knew that FACT and continued to try to use the Pennsylvania Rules of Civil Procedure (PRCP) to circumvent and deny Appellant's **Constitutional and Inalienable/Unalienable Rights**.

Substantive law: "That part of the law which the courts are established to administer, as opposed to the rules according to which the substantive law itself is administered. That part of the law which creates, defines, and regulates rights, as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtaining redress for their invasion." **– Black's Law Dictionary**

Appellee Cunningham chose to take part in the conspiracy against Appellant with all other Appellees, **Title 18 Section 241, Section 242 and Section 245**.

Additionally because of Appellees **Judicial Misconduct** and the **Attorney Misconduct** by all Appellees with a law license this case must be transferred back to the Supreme Court of Pennsylvania under Section 722 as referenced in the **Jurisdictional Statement**.

All Appellees violated **Title 18 Section 241 Conspiracy Against Rights, Section 242 Deprivation of Rights Under Color of Law** and **Section 245 Federally Protected Activities** against Appellant. Warning Letters to ALL Appellees are part of the court filing **Amended Legal Notice and Warning for Violation of Right Under Color of Law 10-18-19**.

Appellee McCune or Cunningham do not have the shield of Sovereign Immunity as referenced in the **Jurisdictional Statement**.

Section 8522 **DOES NOT** allow Sovereign Immunity for Appellee McCune when he committed **LEGAL MALPRACTICE** and the **CRIME** for failing to honor his SWORN OATH to uphold the Constitution of the United States of America. This also includes Appellee Cunningham for his role in the **conspiracy** against Appellant.

Appellees Cunningham and McCune violated their oath to uphold the Constitution of the United States of America and their ***Oath of office - 42 Pennsylvania Consolidated Statutes Section 2522*** to protect Appellant's RIGHTS.

SUPREME LAW

While the Courts have tried force Appellant to use Rules of Civil Procedure this Court knows that Appellant filed the original Complaint and ALL court filing under **Substantive Law and the Constitution is the Supreme Law of the land**.

Appellant provides the following portions of the U.S. Constitution and Pennsylvania Constitution, court opinions and additional information to prove Appellant's **Constitutional Inalienable/Unalienable Rights** are GOD-GIVEN/NATURAL RIGHTS that cannot be given or taken by a government/court and that have been violated by Appellee Cunningham and the Rules of Civil Procedure have also violated the guaranteed rights of Appellant and We The People.

Article 1 The Legislative Branch, Section 10 - Powers prohibited of States: <u>No State shall</u> enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; <u>pass any</u> Bill of Attainder, ex post facto Law, **or Law impairing the Obligation of Contracts**, or grant any Title of Nobility. (Emphasis added)

Article VI - Debts, Supremacy, Oaths: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. (Emphasis added)

The Preamble to the **Bill of Rights** is VERY CLEAR on WHY the colonists added the **Bill of Rights** and ratified the Amendments.

"The Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, ***in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added:*** *And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution."*

The colonists were very concerned about government overreach after they had **rescued We The People from the tyranny of King George**. That is WHY the **Bill of Rights** was added to further restrain the Government (**Appellee Cunningham**) and why Appellant has a **RIGHT** to be heard before a JURY and WHY there is **NO statute of limitations on the Constitutional Rights of Appellant or ANYONE**.

Bill of Rights, Amendment 7 - Trial by Jury in Civil Cases. Ratified 12/15/1791:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United states, than according to the rules of the common law." (Emphasis added)

Bill of Rights, Amendment 9 - Construction of Constitution. Ratified 12/15/1791:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." (Emphasis added)

Bill of Rights, Amendment 10 - Powers of the States and People. Ratified 12/15/1791:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, **or to the people**." (Emphasis added)

Bill of Rights, Amendment 14 - Citizenship Rights. Ratified 7/9/1868: 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. **No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States**; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added)

The Constitution of the Commonwealth of Pennsylvania Declaration of Rights Section 6:

"Trial by jury shall be as heretofore, and the right thereof remain inviolate". The General assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case. Furthermore, in criminal cases, the Commonwealth shall have the same right to trial by jury as does the accused. (Emphasis added)

Appellee Cunningham and ALL Appellees with a law license violated ***42 Pennsylvania Consolidated Statutes Section 2522 – Oath of office*:**

"Before entering upon the duties of his office, each attorney at law shall take and subscribe the following oath or affirmation before a person authorized to administer oaths.

"I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity, as well to the court as to the client, that will use no falsehood, nor delay the cause of any person for lucre or malice."

Any person refusing to take the oath or affirmation shall forfeit his office." (Emphasis added)

The Constitution of the Commonwealth of Pennsylvania *Article I Declaration Of Rights* § 11. Courts to be open; suits against the Commonwealth.

"All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct."

Below are some highlights for the Canonical Supreme Court case Marbury v. Madison, 5 U.S. 137 (1803) *substantiating Appellant's legal RIGHTS*:

- "If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply."
- "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection."
- "In the third volume of his Commentaries, page 23, Blackstone states two cases in which a remedy is afforded by mere operation of law.
  "In all other cases," he says, "it is a general and indisputable rule that where there is a legal right, there is also a legal remedy by suit or action at law whenever that right is invaded."
  "It cannot be presumed that any clause in the Constitution is intended to be without effect, and therefore such construction is inadmissible unless the words require it."
- "The question whether an act repugnant to the Constitution can become the law of the land is a question deeply interesting to the United States, but, happily, not of an intricacy proportioned to its interest.

It seems only necessary to recognise certain principles, supposed to have been long and well established, to decide it."

- "That the people have an original right to establish for their future government such principles as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected."
- "This original and supreme will organizes the government and assigns to different departments their respective powers. It may either stop here or establish certain limits not to be transcended by those departments."
- "Certainly all those who have framed written Constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the Legislature repugnant to the Constitution is void."
- "Here. the language of the Constitution is addressed especially to the Courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the Legislature should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these and many other selections which might be made, it is apparent that the framers of the Constitution contemplated that instrument as a rule for the government of courts, as well as of the Legislature.

Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner to their conduct in their official character. How immoral to impose it on them if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the Legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words:

"I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States."

Why does a judge swear to discharge his duties agreeably to the Constitution of the United States if that Constitution forms no rule for his government? if it is closed upon him and cannot be inspected by him?
If such be the real state of things, this is worse than solemn mockery. To prescribe or to take this oath becomes equally a crime."

- "It is also not entirely unworthy of observation that, in declaring what shall be the supreme law of the land, the Constitution itself is first mentioned, and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank.

> Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument."

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed." – ***Norton v. Shelby County, 118 U.S. 425 (1886)***

"The court is to protect against any encroachment of Constitutionally secured liberties." – ***Boyd v. U.S., 116 U.S. 616***

"It is the duty of all officials whether legislative, judicial, executive, administrative, or ministerial to so perform every official act as not to violate constitutional provisions." – ***Williamson v. U.S. Department of Agriculture, 815 F.2d. 369, ACLU Foundation v. Barr, 952 F.2d. 457, 293 U.S. App. DC 101, (CA DC 1991)***

"The first ten amendments in the Constitution, adopted as they were soon after the adoption of the Constitution, are in the nature of the bill of rights, and were adopted in order to quiet the apprehension of many, that without some such declaration of rights the government would assume, and might be held to possess, the power to trespass upon those rights of persons and property which by the Declaration of Independence were affirmed to be unalienable rights." ***– United States v. Twin City Power Co., 350 U.S. 222 (1956)***

"Inalienable rights: Rights which are not capable of being surrendered or transferred without the consent of the one possessing the rights." ***– Morrison v. State, Mo., App., 252 S.W.2d 97, 101***

"Things which are not in commerce, as public roads, are in there nature unalienable. Some things are unalienable, in consequence of particular provisions in the law forbidding their sale or transfer, as pensions granted by the government. The natural rights of life and liberty are unalienable." **– Bouveirs Law Dictionary 1856 Edition**

"Unalienable: incapable of being alienated, that is, sold and transferred." ***– Black's Law Dictionary, Sixth Edition, page 1523***

"Among these unalienable rights, as proclaimed in the great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment. The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions...The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable." (emphasis added) ***– Butcher's Union Co. v. Crescent City Co., 111 U.S. 746 (1884)***

This aforementioned case validates that Appellee AK Steel extorted Appellant's property of future wages, pension, benefits, etc.

"The Due Process Clause protects the unalienable liberty recognized in the Declaration of Independence rather than the particular rights or privileges conferred by specific laws or regulations." ***– SANDIN v. CONNOR 1995***

"if the inmate's protected liberty interests are no greater than the State chooses to allow, he is really little more than the slave described in the 19th century cases. I think it clear that even the inmate retains an unalienable interest in liberty – at the very minimum the right to be treated with dignity – which the Constitution may never ignore." ***– MEACHUM v. FANO, 427 U.S. 215 (1976)***

An inmate has more RIGHTS than what the Commonwealth court has permitted Appellant.

ISSUES

1. Whether the Appellant, Joe Myers, operated industrial equipment in a safe manner?

A. Appellant was verbally ordered to operate grossly overloaded trailers for the tractor's capacity hauling the trailers in violation of written Appellee AK Steel directives which is Public Policy Law.

B. Appellant was verbally ordered to operate defective heavy equipment in violation of written Appellee AK Steel directives which is Public Policy Law.

C. Appellee AK Steel continues to violate their own written policy and directives of safety rule and danger to future equipment operators.

i. **Exhibits 1, 4, 5, and 12** proves Appellant's lawful claims.

ii. When Appellee AK Steel verbally directed Appellant to not chain down the load that resulted in the truck rolling over (**Exhibit 3**) knowing the truck almost rolled over with former co-worker, Dan Redick, and having pictures (which Appellant viewed after Appellant's incident) of the truck with the axle off the ground hauling the same pinion gear as Appellant, that was a criminal act.

2. Whether the Appellant, Joe Myers, was damaged by Appellee McCune?

A. Damages.

i. Appellee McCune refused to investigate Appellant's letter (**Exhibit 28**) to McCune detailing the criminal activity, which is also a criminal act by McCune. *Had McCune conducted an investigation, that very act, could have been instrumental in nullifying the illegal termination of Appellant*.

ii. McCune's legal malpractice and refusal to honor his sworn OATH to the Constitution damaged Appellant financially.

3. Whether the Appellant, Joe Myers, was damaged by Appellee Cunningham?

A. Damages.

i. Appellee Cunningham has also committed a criminal act by attempting to dismiss the case against Appellant without having an investigation into the criminal activity of ALL Appellees.
ii. Had Appellee Cunningham honored his OATH to uphold the Constitutional he would have scheduled the INALIENABLE/UNALIENABLE RIGHT TO A JURY TRIAL for Appellant and allowed the JURY of Appellant's peers decide the case.

iii. When Appellee Cunningham stated ***"Your right to a trial by jury is not absolute"*** he violated Appellant's INALIENABLE/UNALIENABLE RIGHT TO A JURY TRIAL.
iv. Appellee Cunningham's criminal actions have damaged Appellant financially.

4. Whether the Appellant, Joe Myers, was damaged by the Commonwealth Court for failure to uphold Appellant's God-given/natural Inalienable/Unalienable RIGHTS?

A. Damages.

i. The Commonwealth Court is continuing to damage Appellant financially by not protecting the God-given/natural Inalienable/Unalienable RIGHTS of Due Process, Equal Protection, Trial by Jury, trying to deny or disparage rights retained by the people and ANY RIGHT retained by the Appellant.

ii. The Commonwealth Court has not upheld the Appellant's Constitutional INALIENABLE/UNALIENABLE RIGHTS and specifically a JURY TRIAL.

5. Whether the Appellant, Joe Myers was damaged by Appellee AK Steel?

A. Damages.

i. Loss of income and future earnings,

ii. Loss of employment

iii. Loss of benefits and future benefits

iv. Loss of future pension and investments not able to take part in

v. Loss of inflation on all monetary losses

vi. Loss of family activities that Appellant could not afford

vii. Defamation of character due to having to put "fired or terminated" on every application Appellant filled out

viii. Unable to be employed by any company at the income Appellant had while employed at Appellee AK Steel do to having to put "fired or terminated" on every application Appellant filled out

RULE(S)

- The Constitution of the United States that include the Bill of Rights
- Appellee AK Steel written directives *which once on paper became PUBLIC POLICY LAW*. All Exhibits are listed and part of the Concise Statement filed with the Superior Court:

  a) **Exhibits 1 –** Safety and Health Standard Procedure (SHSP-0035-28) was created in 1971 some 10 plus years prior to Appellant being hired and references Exhibit 4.

  b) **Exhibits 4 –** Armco's Safety and Security Handbook mandates to use the Pennsylvania Motor Code both inside and outside the Appellee AK Steel plant, to secure loads on all vehicles, haul according to the legal load limit, inform the supervisor of all deficiencies of any equipment and not to operate heavy equipment or any equipment until the all deficiencies are fixed.

c) **Exhibits 5 –** Advisory notice regarding each tractor and trailer combination weights dated 7-12-99
d) **Exhibits 12 –** Safety contact dated 3-22-01 to all truck drivers "#1 – Do not overload trucks, haul within the legal load limits. #2 – Secure all loads on all vehicles."

ANALYSIS

Appellant attempted to follow Appellee AK Steel written directives – which is PUBLIC POLICY LAW - especially after Appellant was warned (**Exhibit 3**) and repeatedly verbally directed to violate the written directives.

Appellant even contacted David Devries from the PA Attorney General's office for legal assistance. Devries informed Appellant that if Appellant operated any equipment that was in violation of company directives or defective in any way and someone was hurt or killed that Appellant could be held civilly and criminally liable and could quite possibly serve a jail term. After speaking with Devries Appellant conveyed that conversation to Appellant's supervisors and the Human Resources Manager and Appellant was ultimately fired for Whistle Blowing.

Appellant's then legal counsel and Appellant sent letters (**Exhibits 9 and 11**) to Appellee AK Steel CEO Wardrop, supervisors, etc. and Appellant was ultimately fired for Whistle Blowing.

CONCLUSION

Appellant and Appellee AK Steel entered a civil contract, the basis being if Appellant follows Appellee AK Steel directives and the law that Appellee AK Steel would provide Appellant wages, pension, benefits, etc.

Appellant has been damaged by ALL Appellees for conspiring against Appellant's Constitutional Inalienable/Unalienable RIGHTS and the CONSTITUTIONAL LAWS that protected Appellant then and now.

NOT ONE TIME in the course of the legal battle that Appellant has had with ALL Appellees have the Appellees claimed, themselves or those they are representing, were innocent. The Appellees sole defense has only been procedural rules that they KNOW are NOT LAW which is FRAUD.

Appellant warned Appellee Cunningham and ALL Appellees with a law license for violating the Constitutional Inalienable/Unalienable RIGHTS of Appellant yet they continued their conspiracy against Appellant.

Appellant even mailed EVERY Appellee the **Violation Warning** letter for **Denial of Rights Under Color of Law** and added all the Violation Warning letters for each Appellee to court filing **Amended Legal Notice and Warning for Violation of Rights Under Color of Law** dated 10-18-19.

When Appellee Cunningham ignored Appellant's lawful warning Appellant filed **Amended Court Filing Adding Defendants** dated 10-28-19 naming ALL Appellees with a law license as Defendants as well as then Defendant Cunningham. Appellant filed this court filing almost one month prior to Appellee Cunningham UNCONSTITUTIONALLY dismissing Appellant's case with the appended final order to appeal.

The evidence provided – **SPECIFICALLY GOVERNMENT EXHIBIT 1A** and the alleged $50 million compensation to former CEO Wardrop Appellant seeks $100 million from Appellee AK Steel and $10 million from EACH other Appellee in compensatory and punitive damages for the conspiracy.

WRIT OF MANDAMUS

Appellant Myers files this ***Writ of Mandamus*** as there has been the appended final Order dated 11-21-20 and the Supreme Court of Pennsylvania must demand that Appellee Cunningham is removed as a judge since he is an Appellee and that Appellee Cunningham is reported to the Disciplinary Board of the Supreme Court of Pennsylvania to have his law license revoked for his blatant violation of not honoring his sworn oath to uphold the Constitution of the United States of America and his sworn oath of office as an attorney and his part in the conspiracy against Appellant.

The Supreme Court of Pennsylvania must report Appellee McCune to the Disciplinary Board of the Supreme Court of Pennsylvania to have his law license revoked for his blatant violation of not honoring his sworn oath to uphold the Constitution of the United States of America and his sworn oath of office as an attorney and his part in the conspiracy against Appellant. Specifically for not investigating the criminal act committed by Appellee AK Steel when the truck rolled over with Appellant inside the truck even after Appellant sent Appellee McCune a detailed letter (**Exhibit 28**) of the criminal activity while Appellee McCune was the Butler County District Attorney.

The Supreme Court of Pennsylvania must report ALL other Appellees with a law license to the Disciplinary Board of the Supreme Court of Pennsylvania to have their law license revoked for their blatant violation of not honoring their sworn oath to uphold the Constitution of the United States of America and their sworn oath of office as attorneys and their part in the conspiracy against Appellant.

The Supreme Court of Pennsylvania must demand that the current Butler County District Attorney Richard Goldinger investigate the criminal activity against Appellant by ALL Appellees and the continued unsafe use of grossly overloaded tractor-trailers with UNSECURED loads traveling the extremely steep hill with an approximate 45 degree bend in the hill at the Appellee AK Steel plant in Butler Pennsylvania that allows the public and vendors to travel the on the same Appellee AK Steel roads. Appellant notified Goldinger on 8-12-19 via a time/date stamped email (**Exhibit - Investigation and prosecution**). If Goldinger does not honor his sworn oaths then the court must mandate his investigation and prosecution and forward the investigation of Appellant's case to the Pennsylvania Attorney General.

EXTRAORDINARY JURISDICTION

In light of the aforementioned in the **Brief** and the **Writ of Mandamus** this case must be transferred back to the Supreme Court of Pennsylvania. Appellant has proven through the Constitution of the United States of America, Title 42 and the Pennsylvania Constitution and because ALL Appellees have violated **Title 18 Section 241 Conspiracy Against Rights, Section 242 Deprivation of Rights Under Color of Law and Section 245 Federally Protected Activities** by conspiring against Appellant's Rights that only the Supreme Court of Pennsylvania has jurisdiction.

Additionally, this case must also be transferred to the Supreme Court of Pennsylvania for the violation of Appellant's Constitutional Inalienable/Unalienable RIGHTS and only the Supreme Court of Pennsylvania can impose demand a full investigation regarding the conspiracy of ALL Appellees against Appellant but specifically the Appellees with a law license.

The Supreme Court of Pennsylvania only has the jurisdiction to enforce an injunction against Appellee AK Steel to have a full investigation of the civil and criminal acts and conspiracy that Appellee AK Steel has perpetrated against Appellant and the fraud between Appellee AK Steel et al and the fraudulent Appellee UAW et al.

When Appellee AK Steel provides a union hall on AK Steel property as well as pays the salaries and overtime that the fraudulent Appellee UAW officers do not have to work for and then defrauds the court when Appellees AK Steel and fraudulent UAW have the civil case of Appellant in 2004 transferred to Federal Court claiming it is an NLRB case the Supreme Court of Pennsylvania must investigate and call for the prosecution of ALL Appellees involved in this continued fraud against Appellant.

FINAL WORDS

"Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading." ***– UNITED STATES of America v. Horton R PRUDDEN***

"The enforcement of any "law" or policy contrary to the Constitution is criminal and morally reprehensible." **– Sheriff Mack**

There are only 3 basics of the Supreme laws of the land:

1. Constitutional Laws which are enforceable
2. Unconstitutional Laws which are unenforceable
3. Constitutional Laws that are UNCONSTITUTIONALLY applied to impede the RIGHTS of any Sovereign Citizen which are unenforceable

The following are quotes by our Forefathers that our elected and appointed official have either forgotten or chose to usurp against We the People. I would encourage ALL Justices to pay attention to why a JURY TRIAL is so valuable to our Constitutional Republic for LIBERTY and FREEDOM and that *We the People* are *SUPERIOR SOVEREIGNS* to the Executive, Legislative and Judicial SERVANTS:

- "In free governments the rulers are the servants, and the people their superiors and sovereigns." **– Benjamin Franklin**
- Every word of (the Constitution) decides a question between power and liberty." **– James Madison**
- "Government is instituted to protect property of every sort...This being the end of government, that alone is a just government, which *impartially* secures to every man, whatever is his own." **– James Madison**

- "The friends and adversaries of the plan of the (Constitutional) convention, if they agree on nothing else , concur at least in the value they set upon the trial by jury; or if there is any difference between them it consist of this: the former regard it as a valuable safeguard to liberty, the latter represent it as the very palladium of free government." **– Alexander Hamilton**
- "It is not only his (the juror's) right but his duty...to find the verdict according to his own best understanding, judgement, and conscience, though in direct opposition to the directions of the court." **– John Adams**
- "I consider trial by jury as the only anchor yet imagined by man by which a government can be held to the principles of its Constitution." **– Thomas Jefferson**
- "The jury has the right to judge both the law as well as the fact in controversy." **– John Jay**

"*We the people* of the United States, in order to form a more perfect union, *establish justice*, insure domestic tranquility, provide for the common defense, promote the general welfare, and *secure the blessings of liberty* to ourselves and our posterity, *do ordain and establish this Constitution for the United States of America*." **– Preamble to the Constitution of the United States of America**

Appellant has one final question, is this court or any court going to follow the SUPREME LAW of the land which is the Constitution of the United States of America and hold the ***LAW as ORGANIZED JUSTICE,*** as Bastiat stated, or are the courts going to allow ***UNCONSTITUTIONAL UNENFORCEABLE LAW*** to continue as ***ORGANIZED CRIME*** and continue to allow Appellant to be illegally plundered***?***

This entirety of this writ should issue and the full weight of the Constitution must be followed to the prosecution of ALL Appellees and the compensatory and punitive damages restored to Appellant.

Dated this 20th day of April, 2020

Joe Myers pro se

12137 Emerald Green Court

Jacksonville, FL 32246

Phone: 904-254-6472

Email: 1776ToTyranny@gmail.com

IN THE COMMON PLEAS COURT OF BUTLER COUNTY

COMMONWEALTH OF PENNSYLVANIA

CERTIFICATE AND TRANSMITTAL OF RECORD
UNDER
PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1931(c)

TO THE PROTHONOTARY OF THE SUPERIOR COURT:

THE UNDERSIGNED, Prothonotary of the Court of Common Pleas of Butler County. The said court being a court of record, do hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceedings, if any, and the docket entries in the following matter:

JOE MYERS

A.D. NO: 19-10516
C.P. NO: 19-21706

1892 WDA 2019

VS.

TIMOTHY F MCCUNE, JOSEPH H. CHIVERS,
JOHN/JACK W. MURTAGH JR., GRAYDON BREWER,
CARL V. NANNI, JACK LEWIS, JIM GALLAGHER,
HANK LEYLAND, GREG LOVERICK, EDWARD TASSEY,
AK STEEL ET AL,
UAW (FORMERLY BUTLER ARMCO INDEPENDENT UNION) ET AL,
ANGELO PAPA, WILLIAM CUNNINGHAM,
MICHAEL LETTRICH, MARIA MILIE JONES,
DENNIS ROMAN, NICHOLAS KOCH, ADAM HOBAUGH,

in compliance with Pa. R.A.P. 1931(c).

The transcripts comprising the record having been numbered No. 1 through No. 54, attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.
The date on which the record has been transmitted to the appellate court is February 13, 2020.

Kelly L Ferraro

Prothonotary

A.D. 19-10516: JOE MYERS VS TIMOTHY F MCCUNE, JOSEPH H. CHIVERS, JOHN/JACK W. MURTAGH JR., GRAYDON BREWER, CARL V. NANNI, JACK LEWIS, JIM GALLAGHER, HANK LEYLAND, GREG LOVERICK, EDWARD TASSEY, AK STEEL ET AL, UAW (FORMERLY BUTLER ARMCO INDEPENDENT UNION) ET AL, ANGELO PAPA, WILLIAM CUNNINGHAM, MICHAEL LETTRICH, MARIA MILIE JONES, DENNIS ROMAN, NICHOLAS KOCH, ADAM HOBAUGH,

C.P. 19-21706: JOE MYERS VS TIMOTHY F MCCUNE, JOSEPH H. CHIVERS, JACK W. MURTAGH JR., GRAYDON BREWER, CARL V. NANNI, JACK LEWIS, JIM GALLAGHER, HANK LEYLAND, GREG LOVERICK, EDWARD TASSEY, AK STEEL ET AL, UAW (FORMERLY BUTLER ARMCO INDEPENDENT UNION) ET AL

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2019-10516 JOE MYERS (vs) TIMOTHY F MCCUNE AL

Reference No..:
Case Type.....: PROFESSIONAL LIABILITY
Judgment.....: .00
Judge Assigned: WILLIAM R CUNNINGHAM
Disposed Desc.:
---------- Case Comments ----------

Filed.....: 5/29/2019
Time.....: 11:56
Execution Date 0/00/0000
Jury Trial....
Disposed Date. 0/00/0000
Higher Crt 1.: 1892WDA2019
Higher Crt 2.:

General Index		Attorney Info
MYERS JOE 12137 EMERALD GREEN COURT JACKSONVILLE FL 32246	PLAINTIFF	
MCCUNE TIMOTHY F 124 W DIAMOND ST BUTLER PA 16001	DEFENDANT	JONES MARIE MILIE LETTRICH MICHAEL R
CHIVERS JOSEPH 100 FIRST AVENUE SUITE 650 PITTSBURGH PA 15222	DEFENDANT	ROMAN DENNIS J SEIBERT CHARLENE S
MURTAGH JACK W 110 SWINDERMAN ROAD WEXFORD PA 15090	DEFENDANT	HOBAUGH ADAM K
BREWER GRAYDON 48 CRYSTAL DRIVE OAKMONT PA 15139	DEFENDANT	
NANNI CARL 200 E PEARL ST BUTLER PA 16001	DEFENDANT	HOBAUGH ADAM K
LEWIS JACK 870 BULLCREEK RD BUTLER PA 16002	DEFENDANT	HOBAUGH ADAM K
GALLAGHER JIM 200 PORTMAN ROAD BUTLER PA 16002	DEFENDANT	HOBAUGH ADAM K
LEYLAND HANK 188 PORTMAN ROAD BUTLER PA 16002	DEFENDANT	HOBAUGH ADAM K
LOVERICK GREG 100 EAST STREET BUTLER PA 16001	DEFENDANT	HOBAUGH ADAM K
TASSEY ED 103 MCQUISTION ROAD BUTLER PA 16001	DEFENDANT	KOCH NICHOLAS J
AK STEEL 1 ARMCO DR LYNDORA PA 16045	DEFENDANT	KOCH NICHOLAS J
UNITED AUTO WORKERS-UAW 112 HOLLYWOOD DR SUITE 101 BUTLER PA 16001	DEFENDANT	HOBAUGH ADAM K

Date	Entries
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5/29/2019	SUPREME COURT OF PENNSYLVANIA CIVIL COVER SHEET JUDGT #19-21706 - NON PROS
5/29/2019	COMPLAINT IN CIVIL ACTION

2019-10516 JOE MYERS (vs) TIMOTHY F MCCUNE AL

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5/29/2019	13 CERT COPY TO PLAINTIFF
5/30/2019	JUDGE THOMAS J DOERR ASSIGNED TO CASE
5/30/2019	ORDER OF COURT DATED 5/30/19 IT IS ORDERED CASE IS ASSIGNED TO HONORABLE THOMAS J DOERR
5/30/2019	The Prothonotary of Butler County, Pennsylvania hereby certifies that a copy of the foregoing Order of Court was mailed to: AK STEEL; BREWER GRAYDON; CHIVERS JOSEPH; GALLAGHER JIM; LEWIS JACK; LEYLAND HANK; LOVERICK GREG; MCCUNE TIMOTHY F; MURTAGH JACK W; MYERS JOE; NANNI CARL; PAPA ANGELO; TASSEY ED; UNITED AUTO WORKERS-UAW on Thursday, May 30, 2019, by first class mail, postage prepaid.
6/07/2019	ORDER RETURNED BY USPS - JACK LEWIS NO SUCH NUMBER UNABLE TO FORWARD
6/19/2019	DEFENDANTS AK STEEL CORPORATION'S AND EDWARD TASSEY'S PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT
6/19/2019	DEFENDANTS AK STEEL CORPORATION'S AND EDWARD TASSEY'S BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT
6/21/2019	APPEARANCE OF NICHOLAS J KOCH ATTORNEY FOR AK STEEL CORPORATION AND EDWARD TASSEY
6/25/2019	ORDER OF COURT DATED 6/21/19 THIS COURT HEREBY RECUSES ITSELF FROM THIS CASE AND REQUESTS THAT THE ADMINISTRATIVE JUDGE REASSIGN THE CASE TO ANOTHER JUDGE
6/26/2019	The Prothonotary of Butler County, Pennsylvania hereby certifies that a copy of the foregoing Order of Court was mailed to: BREWER GRAYDON; CHIVERS JOSEPH; GALLAGHER JIM; KOCH NICHOLAS J; LEWIS JACK; LEYLAND HANK; LOVERICK GREG; MCCUNE TIMOTHY F; MURTAGH JACK W; NANNI CARL; PAPA ANGELO; UNITED AUTO WORKERS-UAW on Wednesday, June 26, 2019, by first class mail, postage prepaid.
7/02/2019	APPEARANCE OF MARIE MILIE JONES AND MICHAEL R LETTRICH ATTORNEYS FOR HONORABLE TIMOTHY D MCCUNE
7/02/2019	APPEARANCE OF DENNIS J ROMAN AND CHARLENE S SEIBERT ATTORNEYS FOR JOSEPH H CHIVERS
7/03/2019	NOTICE OF INTENTION TO ENTER JUDGMENT OF NON PROS FOR FAILURE TO FILE A CERTIFICATE OF MERIT
7/05/2019	PRELIMINARY OBJECTIONS ON BEHALF OF TIMOTHY F MCCUNE
7/05/2019	BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS ON BEHALF OF TIMOTHY F MCCUNE
7/05/2019	PRAECIPE FOR ARGUMENT
7/12/2019	RESPONSE TO DEFENDANT CHIVERS NOTICE OF INTENTIONS TO ENTER JUDGMENT OF NON PROS FOR FAILURE TO FILE A CERTIFICATE OF MERIT
7/12/2019	ORDER RETURNED BY USPS - NO SUCH NUMBER UNABLE TO FORWARD TO JACK M URTAGH
7/15/2019	RESPONSE TO DEFENDANT MCCUNE'S PRELIMINARY OBJECTIONS BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS AND PRAECIPE FOR ARGUMENT
7/16/2019	CERTIFICATE OF SERVICE
7/17/2019	ORDER RETURNED BY USPS - NICHOLAS J KOCH NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD

2019-10516 JOE MYERS (vs) TIMOTHY F MCCUNE AL

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8/14/2019	PRAECIPE FOR JUDGMENT OF NON PROS PURSUANT TO PA R C P 1042.7 ON BEHALF OF JOSEPH H CHIVERS ONLY
8/14/2019	JUDGMENT ENTERED AT CP 19-21706 AS PER PRAECIPE
8/15/2019	RESPONSE TO DEFENDANT CHIVERS PRAECIPE FOR JUDGMENT OF NON PROS PURSUANT TO PA R C P 1042.7
8/22/2019	RESPONSE TO NOTICE OF RECORDING OF NON PROS 8-14-19
9/09/2019	ORDER OF COURT DTD 09/05/19 IT IS HEREBY ORDERED THAT ORAL ARGUMENT SHALL BE HELD BEFORE THE UNDERSIGNED ON ALL PRELIMINARY OBJECTIONS OF THE DFTS ON 10/22/19 AT 11:00AM ANY PARTY WISHING TO WAIVE ORAL ARGUMENT & REST ON THE PLEADINGS MAY DO SO BY CONTACTING BUTLER CO COURT ADMINISTRATOR CANDACE GRAFF ON OR BEFORE 10/08/19 AT PHONE NO 724-284-5200 ANY PARTY WISHING TO APPEAR TELEPHONICALLY MAY DO SO PROVIDED THAT PARTY MAKES THE APPROPRIATE ARRANGEMENTS WITH BUTLER CO COURT ADMINISTRATOR CANDACE GRAFF ON OR BEFORE 10/08/19 AT THE ABOVE NUMBER
9/09/2019	The Prothonotary of Butler County, Pennsylvania hereby certifies that a copy of the foregoing Order of Court was mailed to: BREWER GRAYDON; GALLAGHER JIM; JONES MARIE MILIE/LETTRICH MICHAEL R; KOCH NICHOLAS J; LEWIS JACK; LEYLAND HANK; LOVERICK GREG; MURTAGH JACK W; MYERS JOE; NANNI CARL; PAPA ANGELO; ROMAN DENNIS J/SEIBERT CHARLENE S; UNITED AUTO WORKERS-UAW on Monday, September 9, 2019, by first class mail, postage prepaid.
9/24/2019	APPEARANCE OF ADAM K HOBAUGH ON BEHALF OF DFTS UAW LOCAL 3303/JAMES C GALLAGHER/HANK LEYLAND/JOHN MURTAGH JR/GREG LOVERICK/CARL NANNI/JACK LEWIS
9/24/2019	NOTICE OF INTENT TO FILE JUDGMENT OF NON PROS FOR FAILURE TO FILE A CERTIFICATE OF MERIT FILED ON BEHALF OF DFTS UAW LOCAL 3303/JAMES C GALLAGHER/HANK LEYLAND/JOHN MURTAGH JR/GREG LOVERICK/CARL NANNI/JACK LEWIS
9/24/2019	DFTS UAW LOCAL 3303/JAMES C GALLAGHER/HANK LEYLAND/JOHN MURTAGH JR/GREG LOVERICK/CARL NANNI/JACK LEWIS PRELIMINARY OBJECTIONS TO PLFS COMPLAINT
9/24/2019	DFTS UAW LOCAL 3303/JAMES C GALLAGHER/HANK LEYLAND/JOHN MURTAGH JR/GREG LOVERICK/CARL NANNI/JACK LEWIS BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO PLFS COMPLAINT
9/24/2019	RESPONSE TO SCHEDULING ORDER FILED ON BEHALF OF PLF JOE MYERS
10/03/2019	PLAINTIFF'S RESPONSE TO DEFENDANTS PRELIMINARY OBJECTIONS BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS AND NOTICE OF INTENT TO FILE JUDGMENT OF NON PROS
10/16/2019	NOTICE TO BUTLER COUNTY NOTICE OF JUDICIAL MISCONDUCT NOTICE OF ATTORNEY MISCONDUCT
10/18/2019	LEGAL NOTICE & VIOLATION WARNING OF DENIAL OF PLFS RIGHTS UNDER COLOR OF LAW OF THE UNITED STATES OF AMERICA FILED ON BEHALF OF PLF JOE MYERS
10/18/2019	CORRESPONDENCE FROM JOE MYERS TO MR CUNNINGHAM

2019-10516 JOE MYERS (vs) TIMOTHY F MCCUNE AL

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10/21/2019 AMENDED LEGAL NOTICE & VIOLATION WARNING OF DENIAL OF PLFS RIGHTS UNDER COLOR OF LAW OF THE UNITED STATES OF AMERICA FILED ON BEHALF OF PLF JOE MYERS

10/22/2019 LIMITED SPECIAL APPEARANCE PRELIMINARY OBJECTIONS ENTERING THE APPEARANCE OF ANGELO A PAPA ON BEHALF OF ANGELO PAPA

10/29/2019 AMENDED COURT FILING ADDING DFTS & FOR CONTINUED VIOLATION OF PLFS CONSTITUTIONAL RIGHTS OF THE UNITED STATES OF AMERICA & RESPONSE TO DFT PAPAS LIMITED SPECIAL APPEARANCE PRELIMINARY OBJECTIONS FILED ON BEHALF OF PLF

11/01/2019 SUPPLEMENT TO DEFENDANTS UAW LOCAL 3303'S JAMES C GALLAGHER'S HANK LEYLAND'S JOHN MURTAGH JR'S GREG LOVERICK'S CARL NANNI'S AND JACK LEWIS' BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO PLAINTIFF TO PLAINTIFF'S COMPLAINT

11/07/2019 RESPONSE TO SUPPLEMENT TO BRIEF IN SUPPORT PRELIMINARY OBJECTIONS OF PLAINTIFF'S COMPLAINT BY DEFENDANT HOBAUGH AND ANY FUTURE COURT FILINGS BY ANY DEFENDANT

11/07/2019 ORDER RETURNED BY USPS - FOR KOCH NICHOLAS J MARKED RETURN TO SENDER UNABLE TO FORWARD RETURN TO SENDER

11/19/2019 DEFENDANTS AK STEEL CORPORATION'S AND EDWARD TASSEY'S MOTION TO STRIKE

11/21/2019 OPINION AND ORDER DTD 11/21/19 FOR THE REASONS SET FORTH IN THE ACCOMPANYING OPINION OF THIS SAME DATE THE PRELIMINARY OBJECTIONS OF TIMOTHY F MCCUNE JACK W MURTAUGH JR CARL V NANNI JACK LEWIS JIM GALLAGHER HANK LEYLAND GREG LOVERICH EDWARD TASSEY AK STEEL UAW (FORMERLY BUTLER ARMCO INDEPENDENT UNION) ARE GRANTED EN TOTO SUCH THAT THIS CASE IS DISMISSED ENTIRELY AGAINST THESE DFTS WITH PREJUDICE THE PLF IS ADVISED THIS ORDER CONSTITUTES A FINAL APPEALABLE ORDER FROM WHICH AN APPEAL CAN BE TAKEN TO THE SUPERIOR COURT OF PA ANY SUCH APPEAL MUST BE FILED WITH THE BUTLER CO PROTHONOTARY WITHIN 30 DAYS OF THE DATE OF THIS ORDER

11/21/2019 The Prothonotary of Butler County, Pennsylvania hereby certifies that a copy of the foregoing Opinion & Order of Court was mailed to: BREWER GRAYDON; HOBAUGH ADAM K; JONES MARIE MILIE/LETTRICH MICHAEL R; KOCH NICHOLAS J; MYERS JOE; PAPA ANGELO A; ROMAN DENNIS J/SEIBERT CHARLENE S; JUDGE WILLIAM CUNNINGHAM (COURT ADMIN) on Thursday, November 21, 2019, by first class mail, postage prepaid.

12/02/2019 RESPONSE TO MOTION TO STRIKE BY DEFENDANT KOCH AND TO ANY FUTURE COURT FILINGS BY ANY DEFENDANT TRYING TO VIOLATE PLAINTIFF'S CONSTITUTIONAL RIGHTS OF THE UNITED STATES OF AMERICA

12/18/2019 NOTICE OF APPEAL TO SUPERIOR COURT $90.25 RECEIVED AND COPY TO SUPERIOR COURT OF PA

12/11/2019 ORDER FOR NICHOLAS KOCH RETURNED BY USPS MARKED RETURN TO SENDER NO SUCH NUMBER
** SUITE NUMBER CHANGED FROM 700 TO 800 - PER INTERNET SEARCH OF ADDRESS & RESENT

1/02/2020 SUPERIOR COURT OF PENNSYLVANIA OFFICIAL DOCKET # 1892 WDA 2019

1/06/2020 RULE 1925(A) ORDER DTD 1/2/20 IT IS HEREBY ORDERED THAT THE PLF SHALL FILE A CONCISE STATEMENT OF MATTERS COMPLAINED OF ON APPEAL (CONCISE STATEMENT) ON OR BEFORE TWENTY (20) DAYS FROM THE DATE OF FILING OF THIS ORDER THE PLF IS ADVISED THAT THE PURPOSE OF A CONCISE STATEMENT IS TO IDENTIFY ALL ISSUES THE PLF INTENDS TO PRESENT ON APPEAL THE FAILURE OF THE PLF TO TIMELY FILE A CONCISE STATEMENT MEANS THAT HE HAS NOT PRESERVED ANY ISSUES FOR APPELLATE REVIEW FAILURE OF THE PFL TO TIMELY INCLUDE AN ISSUE IN A CONCISE STATEMENT MEANS THE PLF HAS NOT PRESERVED THAT ISSUE FOR APPELLATE

2019-10516 JOE MYERS (vs) TIMOTHY F MCCUNE AL

Reference No..:
Case Type.....: PROFESSIONAL LIABILITY
Judgment.....: .00
Judge Assigned: WILLIAM R CUNNINGHAM
Disposed Desc.:
Filed.....: 5/29/2019
Time.....: 11:56
Execution Date 0/00/0000
Jury Trial....
Disposed Date. 0/00/0000
Higher Crt 1.: 1892WDA2019
Higher Crt 2.:

---------- Case Comments ----------

REVIEW

1/07/2020 The Prothonotary of Butler County, Pennsylvania hereby certifies that a copy of the foregoing Order of Court was mailed to: BREWER GRAYDON; HOBAUGH ADAM K; JONES MARIE MILIE; KOCH NICHOLAS J; LETTRICH MICHAEL R; MYERS JOE; ROMAN DENNIS J; SEIBERT CHARLENE S on Tuesday, January 07, 2020, by first class mail, postage prepaid.

1/10/2020 REQUEST FOR TRANSCRIPT OR COPY BUTLER COUNTY

1/10/2020 TRANSCRIPT OF ORAL ARGUMENT HELD BEFORE THE HON. WILLIAM R. CUNNINGHAM SENIOR JUDGE BUTLER COUNTY COURTHOUSE BUTLER PENNSYLVANIA OCTOBER 22, 2019

1/23/2020 MOTION FOR RELIEF

1/23/2020 MOTION FOR EXTENSION FOR RULE 1925 B ORDER

1/29/2020 SUPERIOR COURT OF PENNSYLVANIA OFFICIAL DOCKET #1892 WDA 2019 ORDER DATED 1/22/20 APPELLANT'S MOTION FOR RELIEF AND FOR EXTENSION FOR RULE 1925B WHICH HAS BEEN DOCKETED AS AN APPLICATION FOR RELIEF IS DENIED WITHOUT PREJUDICE TO SEEK RELIEF IN THE TRIAL COURT SEE PA R A P 1925 B REGARDING INSTRUCTIONS AND SERVICE

2/06/2020 CONCISE STATEMENT FILED ON BHF OF PLF

2/04/2020 RULE 1925(A) ORDER DATED 1/30/20 BY ORDER DATED 1/2/20 AND FILED ON 1/6/20 THE PLF WAS ADVISED THAT HE HAD 20 DAYS TO FILE A CONCISE STATEMENT OF MATTERS COMPLAINED OF ON APPEAL (CONCISE STATEMENT) THE PLF HAD UNTIL 1/27/20 TO FILE A CONCISE STATEMENT AND HAS FAILED TO DO SO IN SAID ORDER THE PLF WAS ADVISED THAT IF HE FAILED TO FILE A CONCISE STATEMENT THE RESULT WAS HIS FAILURE TO PRESERVE ANY ISSUE FOR APPELLATE REVIEW AS THE RECORD REFLECTS THE PLF HAS FAILED TO PRESERVE ANY ISSUES FOR APPELLATE REVIEW ASSUMING ARGUENDO ON APPELLATE COURT NONETHELESS REVIEWS THIS MATTER ON THE MERITS INCORPORATED HEREIN IN THIS COURT'S OPINION DATED 11/21/19 EXPLAINING IN DETAIL THE BASIS FOR DISMISSING THIS CASE ONE REMAINING HOUSEKEEPING MATTER THE PLF HAS FILED A HOST OF DOCUMENTS IN WHICH HE CONTINUALLY ADDS A PERSON AS A NAMED DFT AT ORAL ARGUMENT ON 10/22/19 THE PLF WAS ADVISED THAT HE CANNOT CIMPLY ADD A PERSON AS A DFT AT HIS WHIM HE WAS ADVISED HE NEEDED LEAVE OF COURT TO ADD A PARTY ORAL ARGUMENT TRANSCRIPT 10/22/19 AT PG 9 THE PLF HAS REPEATEDLY IGNORED THIS DIRECTIVE BECAUSE HE DOES NTO BELIEVE HE IS BOUND BY ANY PROCEDURAL RULE PURSUANT TO PA R CIV P 1033(A) THERE ARE 2 PROCEDURAL METHODS BY WHICH A PERSON CAN BE ADDED AS A PARTY TO WIT BY CONSENT OF THE ADVERSE PARTY OR BY LEAVE OF COURT NON OF THE PEOPLE THE PLF HAS UNILATERALLY INCLUDE3D AS NAMED DFTS WERE PROPERLY ADDED BY CONSENT OF THE ADVERSE PARTY OR BY OBTAINING LEAVE OF COURT HENCE THESE INDIVIDUALS ARE NOT ACTUAL PARTIES TO THIS LITIGATION NOR REQUIRED TO RESPOND TO ANY OF THE PLF'S BULLYING TACTICS THE PARAMETERS OF THIS CASE REMAIN THE ORIGINALLY NAMED DFTS THE PROTHONOTARY OF BUTLER COUNTY IS DIRECTED TO FORWARD THE RECORD OF THIS CASE FORTHWITH TO THE SUPERIOR COURT OF PENNSYLVANIA

2/07/2020 The Prothonotary of Butler County, Pennsylvania hereby certifies that a copy of the foregoing Order of Court was mailed to: BREWER GRAYDON; HOBAUGH ADAM K; JONES MARIE MILIE; KOCH NICHOLAS J; LETTRICH MICHAEL R; MYERS JOE; ROMAN DENNIS J; SEIBERT CHARLENE S on Friday, February 07, 2020, by first class mail, postage prepaid.

2/13/2020 RECORD TRANSMITTED TO SUPERIOR COURT OF PA BY CERT MAIL CERT NO 9414 8149 0247 3762 0143 41
CERT COPY CONTENTS & DOCKET ENTRIES MAILED TO: MARIE MILIE JONES DENNIS J ROMAN JOE MYERS ADAM K HOBAUGH NICHOLAS J KOCH MICHAEL R LETTRICH CHARLENE S SEIBERT

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- - - - - - - - - - - - - - - - LAST ENTRY - - - - - - - - - - - - - - - -

Escrow Information

Fees & Debits	Beg Bal	Pymts/Adj	End Bal
TAX ON CMPLT	.50	.50	.00
JCS/ATJ	40.25	40.25	.00
REPORTER TRANS	66.50	66.50	.00
COMPLAINT FILED	138.00	138.00	.00
PRO AUTOMATION	5.00	5.00	.00
COPIER COST	68.50	68.50	.00
APPEAL	83.00	83.00	.00
COPIER COST	25.00	25.00	.00
	426.75	426.75	.00

End of Case Information

JOE MYERS, Plaintiff v. TIMOTHY F. MCCUNE, JOSEPH CHIVERS, JACK W. MURTAUGH, JR., GRAYDON BREWER, CARL V. NANNI, JACK LEWIS, JIM GALLAGHER, HANK LEYLAND, GREG LOVERCHECK, EDWARD TASSEY, AK STEEL, UAW (formerly Butler Armco Independent Union), Defendants	: : : : : : : : : : : : : :	IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA NO. A.D. No. 19-10516

PROTHONOTARY'S OFFICE-BUTLER CO. ENTERED & FILED
2019 NOV 21 A 10:45
PROTHONOTARY

OPINION

The presenting matters are the Preliminary Objections to the Plaintiff's Complaint filed by various Defendants. For the reasons explained hereafter, the Preliminary Objections are GRANTED *en toto* such that this case is DISMISSED with prejudice against the objecting Defendants.

PROCEDURAL HISTORY

The Plaintiff's pro se Complaint, filed on May 29, 2019, is largely indecipherable in terms of presenting a factual or legal basis for a claim against any of the Defendants. To the extent a factual picture can be ascertained from Plaintiff's rambling references to his constitutional rights, it appears the Plaintiff was terminated from his employment with AK Steel on April 10, 2001. *Plaintiff's Complaint, p.4.* With the assistance of his union representatives, the Plaintiff challenged the basis for his termination before an arbitrator. On November 29, 2011, the arbitrator upheld the Plaintiff's termination.

As the public records reflect, the Plaintiff subsequently filed a lawsuit on April 22, 2004 in the Butler County Court of Common Pleas against AK Steel Corporation and Butler Armco Independent Union, U.A.W. (hereafter Union). The case was then removed by the Defendants to the federal district court and docketed at Civil Action No. 04-674 in the United States District Court for the Western District of Pennsylvania. The case was reviewed by the federal court pursuant to the preempting law, the Labor Management Relations Act ("LMRA"), 29 U.S.C. Section 185(a).

Plaintiff's lawsuit claimed that the Union representatives failed to adequately represent him regarding his discharge, specifically for refusing to appeal the arbitrator's ruling. In Plaintiff's view, there was a breach of contract by his Union representatives. Plaintiff also alleged a breach of contract against AK Steel Corporation in addition to a state law fraud claim. The gravamen of the Plaintiff's case was the contention that the defendants committed fraud by failing to inform him that the arbitrator's ruling was unappealable and that he had a six-month window time to file an unfair labor practice claim.

By Opinion and Order dated October 4, 2004, the Honorable Judge Donetta W. Ambrose, then the Chief U.S. District Judge for the Western District of Pennsylvania, dismissed all of the Plaintiff's claims as time-barred. The Plaintiff's appeal to the Third Circuit Court of Appeals resulted in the affirmance of the trial court's ruling by Opinion/Order filed December 8, 2005. *See Myers v AK Steel Corporation,* 156 F. App. 528 (3d Cir. 2005).

On May 29, 2019, Plaintiff filed the case *sub judice* in the Butler County Court of Common Pleas. The original named Defendants were Timothy F. McCune, Joseph M. Chivers, Jack W. Murtaugh, Jr., Graydon Brewer, Carl V. Nanni, Jack Lewis, Jim Gallagher, Hank Leyland, Greg Loverick, Edward Tassey, AK Steel, UAW (formerly Butler Armco Independent Union).

Defendant Timothy F. McCune was sued in his capacity as Butler County District Attorney. However, at the time this lawsuit was filed, Timothy F. McCune was serving as a member of the Butler County Court of Common Pleas. By Order dated June 25, 2019, by the Honorable Judge William Shaffer, President Judge, the Butler County bench was recused from this case. Thereafter, the undersigned was appointed by the Pennsylvania Supreme Court by Order dated July 24, 2019 to preside in this matter.

The Defendants who have filed Preliminary Objections are Plaintiff's former employer, AK Steel, Plaintiff's Union and Union representatives. Oral argument was held on October 22, 2019, with all necessary parties participating, including the Plaintiff. It was an opportunity for all parties to make their positions clear. A court reporter recorded the proceeding.

The Plaintiff had ample time to amend his Complaint to address any issues raised in the Preliminary Objections and failed to do so. Most of the reasons for granting the Preliminary Objections overlap for all Defendants, while there are specific reasons related to certain Defendants.

TIMOTHY F. MCCUNE

Plaintiff is suing Timothy F. McCune for his alleged failure to prosecute people who were involved in the termination of his employment with AK Steel. His claim is baseless for a host of legal and factual reasons.

As a matter of law, the Plaintiff does not have standing to sue McCune for failing to prosecute a fellow citizen. It has long been the law that a private citizen cannot sue the prosecutor for exercising the core function of making prosecutorial decisions. According to the United States Supreme Court, "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

The rationale is based on the need for prosecutors to exercise independent professional judgment grounded on the facts and law without regard to whether private citizens can file suit. It also prevents private citizens from seeking revenge on a perceived enemy by attempting to coerce a prosecutor to file a criminal charge for fear of civil liability.

For the above reasons, among others, prosecutors are given immunity from civil liability for claims against them in state and federal court. In Pennsylvania, the doctrine of high public official immunity precludes the Plaintiff's claim against McCune. *Durham v McElynn,* 772 A.2d 68, 68 (Pa. 2001). Under federal law, a prosecutor has absolute immunity from civil liability. *Kulwicki v. Dawson,* 969 F.2d 1454 (3d Cir. 1992). "The decision to initiate a prosecution is at the core of a prosecutor's judicial role. A prosecutor is absolutely immune when making this decision, even when he acts without a good faith belief that any wrongdoing occurred." *Id., p.1463.* Accordingly, McCune is immune from any state or federal civil claim the Plaintiff can assert.

Assuming *arguendo* that Plaintiff could sue McCune, his Complaint fails to establish a legal or factual basis for any claim. The lone factual allegation in Plaintiff's Complaint is that McCune stated "I have no opinion regarding your claims with AK Steel." *Complaint, p. 7.* From this alleged statement, the Plaintiff, without any basis, leaps to the conclusion that McCune "turned a blind eye" to prosecuting anyone. *Id.* The Plaintiff fails to identify who should have been prosecuted. Further, Plaintiff never identified what specific crimes were committed that should have been prosecuted by McCune.

Separately, Plaintiff fails to provide any reason why he waited over eighteen years to sue McCune. The Plaintiff cannot, as a matter of law, identify any civil claim against McCune that was still within any state or federal statute of limitations when this lawsuit was filed on May 29, 2019.

Lastly, Plaintiff's Complaint does not identify what relief he seeks against McCune. The only demand that Plaintiff asserts is that McCune lose his law license. This lawsuit is not the proper forum for such a demand.

Based on the foregoing, the law does not afford Plaintiff any relief against McCune.

DEFENDANTS UAW LOCAL 3303, JAMES C. GALLAGHER, HANK LEYLAND, JOHN MURTAUGH Jr, GREG LOVERICK, CARL V. NANNI AND JACK LEWIS

These Defendants are comprised of the Plaintiff's Union, Union officials and/or Plaintiff's co-workers. Giving the Plaintiff the benefit of all favorable inferences in his Complaint, it is still unclear what causes of action Plaintiff asserts against these Defendants.

It is undisputed the Plaintiff was a member of the Union he now is suing. In addition, there was a Collective Bargaining Agreement (CBA) entered into by AK Steel Corporation and the Union, pursuant to which Plaintiff was bound as a member of the Union. As the Plaintiff's litigation in federal court established, the rights and remedies he possessed pursuant to the CBA were governed by the LMRA. Given these uncontestable circumstances, there are at least the following legal reasons why the Plaintiff cannot establish a claim against any of these Defendants.

A) COLLATERAL ESTOPPEL

AK Steel Corporation and the Butler Armco Independent Union, U.A.W. were named parties in the Plaintiff's unsuccessful litigation in federal court. In the present lawsuit, Plaintiff identifies as a Defendant, "U.A.W. (formerly Butler Armco Independent Union)". Hence, the present Union is the successor to the union defendant in Plaintiff's prior litigation.

As a result, the Plaintiff is collaterally estopped from litigating any issues in this case that were previously litigated between these parties. At a minimum, these issues include the fact that all of the Plaintiff's claims against these Defendants under the LMRA are time-barred according to the Third Circuit Court of Appeals Order in 2005. Nothing Plaintiff alleges in this lawsuit, nor could he allege if permitted to amend his Complaint, can change those facts.

B). FEDERAL OR STATE STATUTE OF LIMITATIONS

Giving the Plaintiff the benefit of an inference that his claims are not pursuant to the LMRA, he has yet to articulate any claim that is within any federal or state statute of limitations. To the extent there are any factual averments within the Plaintiff's Complaint, all of the activity which he mentions occurred in 2001. Plaintiff was fired by AK Steel on April 10, 2001. The arbitrator upheld his dismissal by a decision dated November 29, 2001.

As the federal courts found, since 2001, the Plaintiff has known what he needed to know to timely file a lawsuit against AK Steel and/or the U.A.W. Further, the federal courts found that none of the Defendants engaged in any fraudulent behavior that impeded the Plaintiff's ability to timely file a lawsuit.

Then, as now, the Plaintiff fails to allege any basis for an equitable tolling of the statute of limitations for any federal or state claims against the present Defendants. The Plaintiff waited for over eighteen years to file the current lawsuit against these Defendants. To let this lawsuit proceed, and force the Defendants to incur additional expenses as well as the unnecessary use of judicial resources, is unjust when this case can be resolved as a matter of law.

C.) THESE DEFENDANTS ARE NOT STATE ACTORS

Giving the Plaintiff the benefit of a far-fetched inference that his Complaint alleges a factual basis that somehow these Defendants violated his right to a jury trial in his federal litigation, he still cannot establish a legal claim as a matter of law.

It has long been a bedrock constitutional principle that private actors, such as the Defendants herein, cannot be liable for a constitutional violation. Rather, only those who are acting pursuant to state authority can be liable for violating a citizen's constitutional rights. The Fourteenth Amendment to the United States Constitution provides in relevant part:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fourteenth Amendment applies to conduct characterized as "state action." *Lugar v Edmondson Oil Company Inc. and Barbour,* 457 U.S. 2744, 2746 (1982).

The statutory embodiment of this principle is found in Title 42 U.S.C. Section 1983, which grants a remedy to a private citizen for a violation of a constitutional right which takes place "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory…" *Id.*

The Supreme Court of the United States eloquently described the distinction between the liability of a state actor and a private citizen as follows:

"In 1883, this Court in the *Civil Rights Cases*, 109 U.S. 3 (3 S.Ct. 18, 27 L.Ed. 835), affirmed the dichotomy set forth in the Fourteenth Amendment between the deprivation by the state, subject to scrutiny under its provisions, and private conduct, 'however discriminatory or wrongful,' against which the Fourteenth Amendment offers no shield."
Jackson v. Metropolitan Edison Co. 419 U.S. 345, 349 (1974).

Nothing Plaintiff has alleged in his Complaint, or could allege in any amended complaint, can establish the Defendants were state actors liable for the violation of any of the Plaintiff's constitutional rights.

D.) THE RIGHT TO A JURY TRIAL IN A CIVIL CASE IS NOT ABSOLUTE

One consistent theme of the Plaintiff's Complaint is his insistence that he has a right to a jury trial without any interference by the Defendants or the Court. By the authorities he cites, it is unclear in what setting he creates any claim against these Defendants for a violation of his right to a jury trial.

The Plaintiff was never the subject of a criminal prosecution. Hence, his reliance on *Miranda v. Arizona,* 384 U.S. 432 (1966) is irrelevant. Instead, the Plaintiff has been involved in three separate civil proceedings, including this case, all of which he initiated as the moving party.

First was the arbitration case, which Plaintiff lost in 2001. Next was the civil lawsuit he filed in 2004 against these parties, which was dismissed by federal judges prior to trial. In these two proceedings, none of the Defendants had any authority to deny the Plaintiff his right to a jury trial. The arbitrator's ruling was entered pursuant to the procedure set forth in the CBA under which it was brought. The federal judges had the legal authority to dismiss the Plaintiff's case short of a jury trial because his claims were time-barred.

At oral argument in this case, this Court, at least twice, tried to explain to the Plaintiff that his right to a jury trial in a civil proceeding was not absolute. Plaintiff was informed his claims were reviewable by a court to determine whether there was a factual and legal basis to allow any viable causes of action to go to trial.

The Plaintiff fails to acknowledge or accept the fact that when he chose to invoke the jurisdiction of this Court by filing the instant case, he was subject to all of the procedural and substantive laws binding upon all moving parties. Inherent within the civil process is the gatekeeping function of a judge to dismiss a case that fails to establish a legal or factual basis for a jury trial.

As the record in this case establishes, it is clear as a matter of law that the Plaintiff has not set forth, nor can he establish by any amended Complaint, a viable cause of action against any of these Defendants. Thus, it is incumbent upon this Court, as the gatekeeper, to grant the Preliminary Objections of the Defendants and dismiss this case with prejudice.

CONCLUSION

Plaintiff's Complaint (as well as his other filings) are based on a misguided belief that he can sue anyone at any time for any reason and demand that nothing can be done to prevent him from having a jury try the case.

The record is clear that the Plaintiff has not and cannot by amendment establish a legal claim against any of the Defendants discussed herein.

BY THE COURT:

DATE: 11-21-19

J.

SR. JUDGE WILLIAM R. CUNNINGHAM

IN THE COURT OF COMMON PLEAS BUTLER COUNTY, PENNSYLVANIA

JOE MYERS	:	**CIVIL DIVISION**
	:	**A.D. No 19-10516**
Plaintiff,	:	
	:	
v.	:	
	:	
TIMOTHY F. MCCUNE, JOSEPH CHIVERS, JACK W. MURTAUGH JR., GRAYDON BREWER, CARL V. NANNI, JACK LEWIS, JIM GALLAGHER, HANK LEYLAND, GREG LOVERICK, EDWARD TASSEY, AK STEEL, et al, UAW (formerly Butler Armco Independent Union) et at.,	:	
	:	
Defendants.	:	

PROTHONOTARY'S OFFICE-BUTLER CO. ENTERED & FILED
2019 NOV 21 A 10:45
PROTHONOTARY

ORDER

And now, this 21st day of November, 2019, for the reasons set forth in the accompanying Opinion of this same date, the Preliminary Objections of Timothy F. McCune, Jack W. Murtaugh, Jr., Carl V. Nanni, Jack Lewis, Jim Gallagher, Hank Leyland, Greg Loverick, Edward Tassey, AK Steel, U.A.W. (formerly Butler Armco Independent Union) are **GRANTED** *en toto* such that this case is dismissed entirely against these Defendants with prejudice.

The Plaintiff is advised this Order constitutes a final, appealable order from which an appeal can be taken to the Superior Court of Pennsylvania. Any such appeal must be filed with the Butler County Prothonotary within thirty (30) days of the date of this Order.

SO ORDERED.

WILLIAM R. CUNNINGHAM
SENIOR JUDGE

CERTIFICATE OF SERVICE

I, the undersigned, certify that the foregoing **APPELLANT'S BRIEF** was served on the following via U.S. Mail, First-Class, this 20th day of April, 2020.

Erie County Courthouse
Att: William Cunningham
140 West 6th Street
Erie, PA 16501

Frost Brown Todd LLC
Union Trust Building / Att: Nicholas J. Koch
501 Grant Street, Suite 800
Pittsburgh, PA 15219

JonesPassodelis PLLC
Gulf Tower /Att: Ms. Jones & Mr. Letterich
707 Grant Street, Suite 3410
Pittsburgh, PA 15219

Angelo Papa
318 Highland Ave
New Castle, PA 16101

Graydon Brewer
48 Crystal Drive
Oakmont, PA 15139-1051

Murtagh, Hobaugh & Cech
Att: Adam Hobaugh
110 Swinderman Road
Wexford, PA 15090

Marshall Dennehey Warner Coleman & Goggin
Union Trust Building / Att: Dennis Roman
501 Grant Street, Suite 700
Pittsburgh, PA 15219

Joe Myers