IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

VOICES FOR INDEPENDENCE, (VFI), MICHAEL L. EAKIN; JAY SHUFFSTALL; CAROLYN A. CREHAN; KATHY A. HERTZOG; PAUL PECUNAS; SANDRA FULLER MARY ANN PARSNIK; PAT WEAVER; FELICIA BONGIORNO; MELVIN BORREO STEPHEN CLARK; JILL HRINDA-PATTEN MARY D. KRUG; and B. LYNNE VESTAL, on behalf of themselves and all others similarly situated Plaintiffs, v. COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION; ALLEN D. BIEHLER, P.E., in his official capacity as Secretary of Transportation of the Commonwealth of Pennsylvania, CITY OF ERIE, PENNSYLVANIA and CITY OF MEADVILLE, PENNSYLVANIA Defendants.	Civil Action No.: 1:06cv00078-SJM HON. SEAN J. McLAUGHLIN M.J. : PARADISE-BAXTER **FIRST AMENDED** **CLASS ACTION COMPLAINT**

****

First Amended Complaint

I. Preliminary Statement

1. The Cities of Erie and Meadville, Pennsylvania and their surrounding areas are not accessible to and readily usable by their citizens with disabilities. Among other things, Erie and Meadville's sidewalks and intersections are not safe, and people using wheelchairs for mobility must travel in the streets.

2. The Department of Transportation of the Commonwealth of Pennsylvania, (hereinafter PennDOT), Erie and Meadville have spent federal and state taxpayer

dollars altering sidewalks and street intersections and certain other facilities in ways that violate federal accessibility building guidelines and standards. Because Defendants have failed to meet minimum accessibility standards, Plaintiffs and similarly situated class members with disabilities are denied access to Defendants' services, programs or activities, and must risk serious injury attempting to traverse Erie, Meadville and surrounding areas, or while attempting to use the facilities.

3. Beginning in 1973, under section 504 of the Rehabilitation Act, (the Rehab Act) Congress required Defendants when receiving federal money to build or repair streets, sidewalks, bridges, buildings, parking lots, or any other service, program or activity, to meet detailed accessibility construction guidelines and standards codified in the Uniform Federal Accessibility Standards. Later, in 1990 with the Americans With Disabilities Act (ADA), Congress strengthened the law, ordering public entities, including Defendants, to meet these same detailed disability accessibility construction guidelines, even when Defendants did not use federal money to build or repair its streets, sidewalks, bridges, buildings, parking lots, or any other services, programs or activities. Both the ADA and Rehab Act also contain provisions requiring cities to make modifications in their services, programs and activities to make them readily accessible.

4. Defendants have acted with deliberate and callous disregard of federal law, and has consistently failed to ensure that newly constructed, reconstructed and existing sidewalks, intersections and certain other facilities are built to meet required minimum accessibility guidelines and standards.

5. Defendants have engaged in a continuing pattern and practice of overarching discrimination against Plaintiffs and class members beginning at least in January 1992 and continuing to the present.

6. Plaintiffs file this class action lawsuit to seek court intervention to force Defendants to live up to its federally mandated duties to ensure accessibility to their citizens with disabilities. Plaintiffs each live in Erie, Meadville or surrounding areas, and use services offered in there.

7. Plaintiffs ask the court to order Defendants to retrofit their intersections and sidewalks to make them readily usable and safe for people with disabilities. Plaintiffs also ask the court to order Defendants to put into place a detailed system to ensure that they comply with all federal law in the future so that the new construction and repairs will ensure mandated access for people with disabilities.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction of Plaintiffs' claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

9. Venue is proper under 28 U.S.C. § 1391(b) because each Defendatn is located in the Western District and the events and/or omissions giving rise to Plaintiffs' claims occurred in the District.

III. PARTIES

10. Plaintiff, Voices for Independence (VFI), is a membership organization which advocates to increase opportunities for independent living for persons with disabilities. It serves people with disabilities throughout Pennsylvania, including Erie, Meadville and surrounding areas in Pennsylvania. VFI's mission is to promote access and inclusion of

persons with disabilities into housing, employment and recreation. Defendants' failure to properly install curb ramps during resurfacing of streets and alteration of sidewalks frustrates VFI's mission and purposes. VFI has diverted significant resources documenting violations by Defendants and in attempting to correct those illegal patterns of conduct.

11. Each named individual Plaintiff lives in and/or travels through Erie, Meadville, or surrounding areas of Pennsylvania. Each cannot ambulate without wheelchairs or other assistive devices, and some have sight impairments that require the use of detectible warnings. Each named individual Plaintiff is a person with a disability under the ADA and the Rehab Act.

12. Defendants PennDOT, City of Erie and City of Meadville are each public entities as that term is defined under 42 U.S.C. § 12131(l); 28 C.F.R. § 35.104. Defendant Allen D. Biehler, P.E., has been the Secretary of Transportation for the Commonwealth of Pennsylvania since year 2003. He has ultimate decision and policy making authority over the matters at issue in this lawsuit.

IV. CLASS ACTION ALLEGATIONS

13. In Counts I and II, pursuant to Fed. R. Civ. P. 23 (b)(2), Plaintiffs bring this action on behalf of themselves and a class of all persons with mobility or sight impairment disabilities as defined by the Rehabilitation Act of 1974 and the Americans With Disabilities Act, who have used in the past, or will attempt to use in the future, the facilities, services, programs in the cities of Erie and Meadville and surrounding areas, that have been built, rebuilt or altered by PennDOT after January 26, 1992, the effective

date of Title II of the Americans With Disabilities Act. Plaintiffs seek declaratory and injunctive relief only, but not damages, on behalf of themselves and the class.

A. The class is so numerous that joinder of the individual members would be impracticable. Several hundred people who must rely on ambulatory devices such as wheelchairs, scooters, canes or walkers reside in Erie, Meadville or adjacent areas. Additionally, many nonresidents who must rely on ambulatory devices such as wheelchairs or scooters travel in those areas to go to work, to patronize businesses or to visit family and friends. Plaintiffs and others similarly situated will travel in those more often when Defendants comply with the ADA and Rehabilitation Act and make those area's streets and sidewalks fully accessible to persons with disabilities.

B. The named Plaintiffs are adequate class representatives because they are directly impacted by Defendants' failure to properly install, repair or adequately maintain curb ramps. The interests of the named Plaintiffs are not antagonistic to, or in conflict with, the interests of the class as a whole. The attorneys representing the class are experienced in representing clients in class actions involving civil rights claims, including enforcement of the ADA, and other federal claims.

C. Common questions of law and fact predominate, including questions posed by Plaintiffs' allegations that Defendants have failed to properly install, repair or adequately maintain curb ramps.

D. Claims of the named Plaintiffs are typical of the claims of the class because all class members and the named Plaintiffs are affected by Defendants' failure to properly install, repair or adequately maintain curb ramps.

E. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

F. Notice of the pendency of this class action pursuant to Rule 23(b)(2) is not required. It is contemplated that notice of any proposed dismissal or settlement shall be given to all members of the class in such manner as the Court directs pursuant to Rule 23(e).

V. FACTS

14. For at least the last 28 years, and continuing in to the present, Defendants have engaged in a pattern of operating or building new services, programs and/or altering existing services, programs without making those programs or services accessible to Plaintiffs and class members.

15. The individually named Plaintiffs and the persons employed by or served by VFI can not currently ambulate or travel safely on Erie, Meadville and surrounding streets or sidewalks without ADA-compliant curb ramps because each uses a

wheelchair or scooter. They must travel on streets or sidewalks installed or resurfaced by PennDOT since January 26, 1992 that contain no curb ramps, or contain curb ramps that are not accessible to persons with mobility impairments due to their improper design or maintenance.

16. In each year beginning January 26, 1992 and continuing to the present, Defendants have resurfaced city streets and altered or constructed sidewalks while failing either to install curb ramps necessary for persons using mobility devices to travel continuously along the sidewalks or constructing such ramps improperly. When the named Plaintiffs attempt to cross many of the streets in these areas, they are forced to enter the stream of traffic and travel along the curb until they can locate a private driveway or other private business to re-enter the sidewalk.

17. On information and belief, Plaintiffs allege that Defendants routinely either fail to install curb ramps when resurfacing, altering, or installing streets and sidewalks or construct any such ramps improperly. Therefore, Plaintiffs allege, upon information and belief, many recently resurfaced roads and sidewalks in the relevant areas lack curb cuts required by law, or contain improperly installed curb cuts which fail to meet the minimum design standards under federal law. These standards require each ramp to be built with the least possible slope, and do not allow a direct running slope of more than 8.3%, a cross-slope of more than 2%, and require a level landing at the top of the ramp with slopes of no more than 2%. The transitions from ramps to walks, gutters, or streets must be flush and free of abrupt changes. Some examples of non-compliant ramps are set out below. These are only example of many other virtually identical violations of law throughout Defendants' jurisdictions.

18. The Bayfront Connector was reconstructed entirely by Defendant PennDOT in 2005. In this project, PennDOT completely rebuilt the road and sidewalks along both sides of the road. This reconstruction went into the intersection at Bayfront Connector and 12th Street. There are 2 ramps at the southeast and southwest corners that were installed in 2005.

A. The southeast corner has one new diagonal ramp. The cross-slope is 5.5%

B. The sidewalk running along the east side of Bayfront Connector runs directly into the flared side of the ramp which has a running slope of 18.1% for over a 6 inch run. One of the Plaintiffs in this case fell out of her wheelchair as that Plaintiff attempted to cross this curb cuts excessive flared side.

C. The pedestrian crossing buttons at this corner are 51 inches high. The button for crossing 12th Street is placed at the back of the pole. There is no sidewalk behind the pole and the button hangs over a steep cliff. People in wheelchairs (and many other pedestrians, including children) are not able to reach this button at all. Most wheelchair users are also unable to reach the other button for crossing the Bayside Connector that is placed too high on the pole.

D. There is a steep drop-off along the east edge of the sidewalk along the Bayfront Connector. Pedestrians are protected from the drop-off by a fence which runs along the sidewalk to the corner of the Bayfront Connector and East 12th Street. However, the fence ends

just before the pole with the crossing buttons. There is no fence around the pole or around the southern and eastern edges of the ramp landing. Anyone trying to use the buttons or maneuver a wheelchair at the top of the ramp risks falling over the steep drop-off onto the broken rocks that have been placed there by Defendants and their agents.

19. The sidewalk on the east side of the Bayfront Connector just south of this curb ramp has a direct slope of 17.2% for over a 16 inch run. As the sidewalk continues south across the over-pass, there are a series of gutters crossing the sidewalk that stop wheelchairs when their front wheels fall into the trenches. These gutters cannot be avoided and make the sidewalks not accessible to nor readily usable by Plaintiffs and similarly situated class members.

A. On the street adjacent side of this sidewalk, a pedestrian approaching the corner at 12th Street cannot see that the curb goes around the corner to the diagonal ramp. There is no contrast between the edge of the curb and the concrete gutter and it appears that there is a ramp crossing the Bayfront Connector. This curb should have a stripe painted along the top to alert pedestrian traffic to the curb and the missing ramp.

B. The ramp on the southwest corner facing east was installed in 2005. The north facing ramp was installed slightly earlier.

- There is no level landing at the top of these ramps (Slopes of 7.3% X 3.3%).

- There is a ramped sidewalk between the two ramps with running slopes of 12.5% for over a 6 inch run.
- The ramps have no detectable warnings.

20. Recently, PennDOT resurfaced Buffalo Road in the City of Erie. The sidewalks were not modified as a part of this project. During the time period from 1992 through present, Erie has resurfaced virtually every street that intersects with Buffalo Road. Thus, if Erie had properly installed ramps while resurfacing the streets intersecting Buffalo Road, and PennDOT had installed proper ramps while resurfacing Buffalo Road, all intersections would now be fully accessible to Plaintiffs. Unfortunately, both Erie and PennDOT failed to act properly, and now the intersections and sidewalks along Buffalo Road are not accessible to Plaintiffs. As an example, at the intersection of Buffalo Road and Pennsylvania Avenue, the sidewalk runs along the southeast side of Pennsylvania, crosses Pennsylvania at Buffalo Road and turns down along the southwest side of Pennsylvania and goes under the overpass to join with the Bayfront Connector. The pedestrian walkway and two ramps crossing Pennsylvania at Buffalo Road were constructed in 2005. The ramp on the southeast corner is a diagonal ramp. It has a counter-slope of 6% and a 1 inch lip at the bottom of the ramp, and no level landing (8.2% X 2.4%).The ramp on the southwest corner is a diagonal ramp. It has a counter-slope of 5.7% and a ½ inch lip at the bottom of the ramp, a cross-slope of 6.3% and no level landing (10.2% X 8.7%).

A. The counter-slope at the top of the pedestrian walkway is 8.8%, making it extremely difficult to maneuver off the ramp and onto the

walkway. The beginning section of the walkway has a running slope of as much as 14%.

B. The pedestrian walkway, from Buffalo Road down the hill to under the overpass, has a cross-slope up to 3.5%. Starting about 3 feet from the top of the ramp, the walkway has a running slope exceeding 5% for a minimum of 18 feet. The running slope along this section is between 5% to 10%.

C. The walkway is not smooth and has “waves” in it which causes wheelchairs traveling over it bounce and rock.

D. The geography along this section of the walkway is controlled and was deliberately built-up for its installation. There is an abundance of space available for building the walkway with room for switchbacks and gentler slopes.

21. As a continuing policy, when the Cities of Erie and Meadville resurface a street that intersects with a PennDOT street, Erie and Meadville refuse to replace defective (or non-existent) curb ramps where the resurfaced Erie or Meadville street meets the PennDOT street. Thus, hundreds of these old, non-compliant ramps are replaced by neither by Erie or Meadville nor by PennDOT, no matter how many times either or both of the intersecting streets are resurfaced. The following are examples of this situation, which exists throughout the Cities of Erie and Meadville:

22. At the intersection of McClelland Road (an Erie street) and Buffalo Road (a PennDOT street in Erie) there are seven old, non-compliant ramps. Buffalo Road was resurfaced by PennDOT in 2004-2005. McClelland Road was resurfaced by the City of

Erie in 2002 -2003. The City resurfacing runs past the ramps crossing McClelland Road on the northeast and northwest corners of the intersection with Buffalo Road and PennDOT's resurfacing runs through the entire intersection. Thus, either Erie, PennDOT, or both, should have corrected all of the defective curb ramps at this intersection while resurfacing the two intersecting streets. But both Defendants failed to act. As a result:

A. The northwest corner of the intersection has a diagonal ramp with a running slope of 18%, a cross-slope of 9.7% and no level landing (5.7 X 6.2). This ramp should have been included in both the City resurfacing on McClelland Road and PennDOT resurfacing on Buffalo Road.

B. The northeast corner ramp facing west has a running slope of 14%, a cross-slope of 4.4% and steeply flared sides (34%) and no level landing. This ramp should have been included in the City resurfacing of McClelland Road.

C. The northeast corner ramp facing south has a 1 inch lip, steeply flared sides (20%) and no level landing. There is a bench for a bus stop at the top of the ramp where the level landing should be. This ramp should have been included in PennDOT resurfacing of Buffalo Road.

D. The southeast corner ramp facing north has a running slope of 9.2%. This ramp should have been included in PennDOT resurfacing of Buffalo Road.

E. The southwest corner ramp facing north has a running slope of 13.5% and no level landing. This ramp should have been included in PennDOT resurfacing of Buffalo Road.

23. The City of Erie resurfaced Pennsylvania Avenue in 2005 and replaced the ramps along the resurfaced stretch until the intersection of Pennsylvania Ave. and East 26th Street. East 26th Street is a PennDOT street. Because East 26th Street is a PennDOT Street, Erie failed to act and left in place two old, non-compliant ramps, even though the Erie's resurfacing continued past the defective curb ramps into the intersection and included all of the street asphalt completely surrounding the two old defective ramps.

A. The southwest corner ramp facing east has a running slope of 9.6% and no level landing (3.5% X 3.3%).

B. The southeast corner ramp facing west has a running slope of 9.1%, steeply flared sides (20%) and no level landing (4.1% X 4.2%).

24. PennDOT in year 2005 resurfaced Buffalo Road in Erie from Broad Street (Rt. 20) to the Erie City line. But PennDOT left in place numerous defective curb ramps along this stretch. A majority of these intersections have non-compliant ramps or are lacking ramps entirely. Meanwhile, Erie has resurfaced every City street intersecting this resurfaced stretch of Buffalo Road. At each sidewalk where this City of Erie resurfacing touched Buffalo Road, Erie refused to install curb ramps at these intersections, turning Buffalo Road into a permanent roadblock for anyone traveling in a wheelchair.

25. Defendants Meadville and PennDOT act exactly in the same way. In Meadville, during year 2005, PennDOT resurfaced Chestnut St. (a PennDOT street) from at Main Street(Diamond Park) through Grove Street (all Meadville streets). Both PennDOT and Meadville left defective curb ramps in place at each of these intersections, although Defendants have resurfaced all of these intersections very recently. The intersections of Chestnut St. with North Main, Liberty and Grove Streets each contain defective ramps that are not accessible to readily usable by Plaintiffs and similarly situated class members. Defendants are repeating this pattern in year 2006, as PennDOT is resurfacing Park Street all across downtown Meadville. Because of this practice by Defendants, over one-half of the curb ramps in Meadville are defective, and there are no plans to correct these defective ramps during resurfacing during the next twenty years.

26. This is just the tip of the iceberg. For example, during years 2004-05, PennDOT rebuilt 38th Street in Erie from Peach Street to Glendale, including the adjacent sidewalks, near the Erie Zoo. The sidewalks have cross slopes exceeding 2%, and the curb cuts have cross slopes exceeding 2% and running slopes exceeding 8.33%, lack level landings, and the entire project is not accessible to and readily usable by Plaintiffs and similarly situated class members. Neither Erie nor PennDOT plan to correct these numerous defects, and Plaintiffs and class members are denied access to these brand new sidewalks, the zoo and other adjacent facilities.

27. Upon information and belief, these violations are examples of many similar violations committed by PennDOT in Erie, Meadville and their surrounding areas during

years 1992 through present. Plaintiffs now seek injunctive relief to correct these and all other similar inaccessible facilities as soon as possible.

VI. CAUSES OF ACTION
FIRST CAUSE OF ACTION: CLASS-WIDE INJUNCTIVE RELIEF CLAIM UNDER TITLE II OF THE AMERICANS WITH DISABILITIES ACT

28. Plaintiffs bring this count under Title II of the Americans With Disabilities Act (ADA) for class-wide declaratory and injunctive relief.

29. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Title II of the ADA defines each Defendant as a "public entity." 42 U.S.C. § 12131(1).

30. One form of prohibited discrimination is the exclusion from a public entity's services, programs, or activities because of the inaccessibility of the entity's facility. The United States Department of Justice has issued binding program accessibility regulations that Plaintiffs now seek to enforce.

31. The Title II ADA access requirements are set forth in 28 C.F.R. § 149 (the general prohibition against discrimination); 28 C.F.R. § 150 (requiring accessibility of facilities existing prior to January 26, 1992, the effective date of Title II); and, 28 C.F.R. § 151 (requiring that facilities newly constructed or altered after January 26, 1992 be fully accessible).

32. Section 28 C.F.R. § 150(a) requires each Defendant to "operate each service, program, or activity, (so) when viewed in its entirety, (it) is readily accessible to and usable by individuals with disabilities. "The phrase 'services, programs, or

activities' encompasses virtually everything that a public entity does." *Johnson v. City of Saline*, 151 F.3d 564, 569 (6th Cir.1998).

33. Beginning in at least 1992, and continuing up to the present, each Defendant has engaged in a continuing pattern and practice of over-arching discrimination against Plaintiffs and class members by operating several of its services, programs, or activities which, when viewed in their entirety, are not readily accessible to and usable by Plaintiffs and other class members with disabilities. These services, programs, or activities include, among others, Erie, Meadville and surrounding areas' sidewalks, curb-ramps, and walkways.

34. In addition**,** Title II of the Americans With Disabilities Act requires that when a public entity builds or alters any part of a facility after January 26, 1992, it shall to the maximum extent possible, be altered so that it is readily accessible to and usable by individuals with disabilities. 42 U.S.C. §§ 12146 & 12147; 28 C.F.R. § 35.151(a) & (b). Each of the sidewalks and intersections at issue in this lawsuit has been "altered" "by, on behalf of, or for the use" of each of the Defendants". *Id*. Compliance with federal building and design standards provides a safe harbor to public entities, 28 C.F.R. § 35.151(c).

35. Beginning January 26, 1992, and each year continuing to the present, each Defendant has constructed new services, programs or activities or altered parts of services, programs or activities in Erie, Meadville and surrounding areas, but has failed to ensure that those services, programs or activities are readily accessible to and usable by Plaintiffs and similarly situated persons with disabilities. For example, PennDOT has:

A. Resurfaced intersections and/or rebuilt sidewalks after 1992, without installing curb ramps that meet federal standards;

B. Installed after 1992, sidewalks and curb ramps that violate federal standards; and,

C. Operated after 1992, recreational or other services, programs or activities that are not accessible to Plaintiffs and

36. The failures by each Defendant has made each of these existing and or newly altered services, programs or activities not readily accessible and usable by Plaintiffs and others similarly situated. By their actions complained of herein, Defendants have intentionally discriminated against Plaintiffs and class members due to their disabilities. Plaintiffs are entitled to injunctive relief ordering Defendants to bring these and future services, programs or activities into compliance, and to pay attorneys fees and costs.

SECOND CAUSE OF ACTION:
CLASS-WIDE CLAIM UNDER THE REHABILITATION ACT OF 1973

37. Plaintiffs bring this count for class-wide declaratory and injunctive relief. The Rehabilitation Act requires that "[n]o otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). Upon information and belief, each Defendant receives Federal financial assistance. The Rehabilitation Act defines "program or activity" as "all of the operations of" a qualifying local government. 29 U.S.C. § 794(B)(1)(A).

38. Beginning with the effective date of the Rehabilitation Act, and continuing each year to the present, each Defendant has received federal money but has engaged in a continuing pattern and practice of over-arching discrimination against Plaintiffs and class members by denying the benefits of, or subjecting them to discrimination under several programs or activities receiving Federal financial assistance. Among other things, each Defendant has : Resurfaced intersections and/or rebuilt sidewalks after 1974, without installing curb ramps that meet federal standards;

A. Installed after 1973, sidewalks and curb ramps that violate federal standards; and,

B. Operated after 1973, recreational or other services, programs or activities that are not accessible to Plaintiffs and others similarly situated, including, but not limited to, intersections, cross-walk controls and detectable warnings and walkways.

39. Each of these failures by Defendants have made each of these programs or activities not readily accessible and usable by and others similarly situated. By their actions complained of herein, Defendants have intentionally discriminated against Plaintiffs and class members due to their disabilities. Plaintiffs are entitled to injunctive relief ordering each Defendant to bring these services, programs or activities into compliance, and attorneys fees and costs.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff class seeks judgment against Defendants as follows:

1. That the Court declare the rights and duties of the parties consistent with the relief sought by Plaintiffs;

2. That Defendants, their agents, employees and all persons in concert or participation with any of them be permanently enjoined from:

   a. Discriminating against persons with disabilities in the construction, resurfacing, and maintenance of roadways and sidewalks; and

   b. Refusing or failing to comply with the requirements of the ADA and the Rehabilitation Act and their implementing regulations;

3. That Defendants establish and implement an effective plan to insure, retrospectively and prospectively, that all construction, resurfacing, and maintenance of roadways and sidewalks--including but not limited to the installation of curb ramps or other sloped areas at all intersections of streets and/or pedestrian walkways--that has occurred any time after January, 1992 complies with the ADA and its implementing regulations;

4. That Defendants submit to the Court and class counsel periodic reports on implementation of the plan referenced immediately above;

5. That Plaintiffs recover an award of their reasonable attorneys fees, costs, and expenses.

Plaintiffs further pray for such additional relief as the interests of justice may require.

Respectfully submitted,

_/S/ J. Mark Finnegan
J. Mark Finnegan
Denise M. Heberle
HEBERLE & FINNEGAN
2580 Craig Road

Ann Arbor, MI 48103
734-302-3233
734-302-3233
hffirm@comcast.net

_/S/ Craig A. Markham_____
Craig A. Markham (38531)
ELDERKIN, MARTIN, KELLY & MESSINA
Jones School Square
150 East Eighth Street
Erie, PA 16501
814-456-4000
814-454-7411 fax
camarkham@elderkinlaw.com

Attorneys for Plaintiffs