

01-869-CD  
KERRY L. BERGMAN et al -vs- TREASURE LAKE PROPERTY OWNERS ASSOC.

COMMONWEALTH OF PENNSYLVANIA



**Superior Court of Pennsylvania**

Western District

David A. Szewczak, Esq.

Prothonotary

Eleanor R. Valecko

Deputy Prothonotary

November 26, 2001

330 Grant Street  
Pittsburgh, PA 15219

412-565-7592

[www.superior.court.state.pa.us](http://www.superior.court.state.pa.us)

Mr. William A. Shaw  
Prothonotary  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

Re: 2008 WDA 2001

Kerri L. Bergman and Harry Bergman, Jr., Appellants  
v.  
Treasure Lake Property Owners' Association

Dear Mr. Shaw:

Enclosed please find a copy of the docket for the above appeal that was recently filed in the Superior Court. Kindly review the information on this docket and notify this office in writing if you believe any corrections are required.

Appellant's counsel is also being sent a Docketing Statement, pursuant to Pa.R.A.P. 3517, for completion and filing. Please note that Superior Court Dockets are available on the Internet at the Web site address printed at the top of this page. Thank you.

Very truly yours,

Eleanor R. Valecko  
Deputy Prothonotary

MLR

Date: 11/21/2001

**Clearfield County Court of Common Pleas**

User: BHUDSON

Time: 03:51 PM

**ROA Report**

Page 1 of 1

Case: 2001-00869-CD

Current Judge: John K. Reilly Jr.

Kerri L. Bergman, Harry Bergman Jr. vs. Treasure Lake Prop Owners Assoc.

Civil Other

Date

Judge

6/06/2001 ① Filing: Civil Complaint Paid by: Cherry, Paul E. (attorney for Bergman, Harry Jr.) Receipt number: 1826386 Dated: 06/06/2001 Amount: \$80.00 (Check) Two CC Attorney Cherry 7

6/13/2001 ② Sheriff Returns, Complaint on Treasure Lake Property Owners Assoc., filed. s/Chester A. Hawkins by Marilyn Hamm \$38.22 Shff Hawkins paid by Attorney ✓

6/22/2001 ③ Entry of Appearance on behalf of the Defendant. Filed by s/Darryl R. Slimak, Esq. Certificate of Service no cc 3 No Judge

④ Preliminary Objections to Plaintiffs' Complaint. Filed by s/Darryl R. Slimak, Esq. no cc 1 No Judge

7/23/2001 ⑤ Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22. Filed by Darryl R. Slimak, Esq. no cc 26 John K. Reilly Jr.

8/27/2001 ⑥ Defendant's Reply to Plaintiffs' Brief In Opposition to Preliminary Objections to Plaintiffs' Complaint. Filed by s/Darryl R. Slimak, Esq. Cert of Svc no 8 cc John K. Reilly Jr.

9/28/2001 ⑦ Filing: Subpoena Paid by: Medical Legal Reproductions, Inc. Receipt number: 1831903 Dated: 09/28/2001 Amount: \$3.00 (Check) John K. Reilly Jr.

10/31/2001 ⑧ Opinion and Order, Now, this 30th day of Oct. 2001, upon consideration of John K. Reilly Jr. P.O.'s in the Nature of a Demurrer/Motion to Strike Plaintiffs' Complaint, and argument and briefs thereon, this Court does grant said P.O.'s in accordance with the foregoing Opinion and does strike Plaintiffs' Complaint with Prejudice. by the Court, s/JKR, JR., P.J. 1 cc Atty Slimak, Atty Cherry 2

11/01/2001 ⑨ Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4099.22. s/Richard Laws, Esq. no cc 4 John K. Reilly Jr.

11/19/2001 ⑩ Filing: Notice of Appeal to High Court Paid by: Cherry, Paul E. (attorney for Bergman, Kerri L.) Receipt number: 1834357 Dated: 11/19/2001 Amount: \$45.00 (Check) Notice is hereby given that Kerri L. Bergman and Harry Bergman, Jr., hereby appeal to the Superior Court of PA from the Opinion and Order entered in this matter on the 30th day of October, 2001, submitted by Paul E. Cherry, Esquire atty for plaintiff's 1 cc to Superior Court w/\$55.00 check. 6

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW  
PROTHONOTARY  
AND  
CLERK OF COURT

JACQUELINE KENDRICK  
DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



P.O. Box 549  
CLEARFIELD, PENNSYLVANIA 16830  
(814) 765-2641 Ext. 1330

DAVID S. AMMERMAN  
SOLICITOR

COPY

December 19, 2001

Superior Court of Pennsylvania  
Office of the Prothonotary  
1015 Grant Building  
Pittsburgh, PA 15219

RE: Kerri L. Bergman and Harry  
Bergman, Jr.

vs

Treasure Lake Property Owners Association  
No. 01-869-CD  
Superior Court No. 2008 WDA 2001

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. A transcript was requested and has not yet been received by this office. Upon its filing, I will forward it to your office.

Sincerely,

William A. Shaw  
Prothonotary

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY  
AND  
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



DAVID S. AMMERMANN

SOLICITOR

P.O. Box 549  
CLEARFIELD, PENNSYLVANIA 16830  
(814) 765-2641 Ext. 1330

COPY

John K. Reilly, Jr., President Judge  
Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

Paul E. Cherry, Esq.  
23 East Park Ave.  
DuBois, PA 15801

Darryl R. Slimak, Esq.  
McQuaide Blasko  
811 University Drive  
State College, PA 16801

Kerri L. Bergman and  
Harry Bergman, Jr.  
Vs.  
Treasure Lake Property Owners Association

Court No. 01-869-CD  
Superior Court No. 2008 WDA 2001

Dear Counsel:

Please be advised that the above referenced record was forwarded to Superior Court of Pennsylvania on December 19, 2001.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY  
AND  
CLERK OF COURT

CLEARFIELD COUNTY

DAVID S. AMMERMAN

SOLICITOR



JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

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Kerri L. Bergman and  
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Vs.  
Treasure Lake Property Owners Association

Court No. 01-869-CD  
Superior Court No. 2008 WDA 2001

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Please be advised that the above referenced record was forwarded to Superior Court of Pennsylvania on December 19, 2001.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY  
AND  
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



DAVID S. AMMERMAN

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Court No. 01-869-CD  
Superior Court No. 2008 WDA 2001

Dear Counsel:

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Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

## Appeal Docket Sheet

Docket Number: 2008 WDA 2001

Page 1 of 3

November 26, 2001

01-869-CD

Superior Court of Pennsylvania



Kerri L. Bergman and Harry Bergman, Jr., Appellants

v.

Treasure Lake Property Owners' Association

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: November 20, 2001 Awaiting Original Record

Journal Number:

Case Category: Civil CaseType: Trespass

Consolidated Docket Nos.: Related Docket Nos.:

## SCHEDULED EVENT

Next Event Type: Case Initiation

Next Event Due Date: November 20, 2001

Next Event Type: Docketing Statement Received

Next Event Due Date: December 10, 2001

Next Event Type: Original Record Received

Next Event Due Date: December 31, 2001

2008 WDA 2001



FILED

NOV 28 2001

William A. Shaw  
Prothonotary

*KJ*  
**Appeal Docket Sheet****Docket Number:** 2008 WDA 2001**Page 2 of 3****November 26, 2001****Superior Court of Pennsylvania****COUNSEL INFORMATION**

**Appellant** Bergman, Kerri L.  
**Pro Se:** Appoint Counsel Status:

**IFP Status:** No

**Appellant Attorney Information:**

Attorney: Cherry, Paul Edward  
 Bar No.: 42945 Law Firm: Cherry & Cherry  
 Address: 23 East Park Avenue  
 Dubois, PA 15801  
 Phone No.: (814)371-3288 Fax No.:  
 Receive Mail: Yes  
 E-Mail Address:  
 Receive E-Mail: No

**Appellant** Bergman Jr., Harry  
**Pro Se:** Appoint Counsel Status:

**IFP Status:** No

**Appellant Attorney Information:**

Attorney: Cherry, Paul Edward  
 Bar No.: 42945 Law Firm: Cherry & Cherry  
 Address: 23 East Park Avenue  
 Dubois, PA 15801  
 Phone No.: (814)371-3288 Fax No.:  
 Receive Mail: No  
 E-Mail Address:  
 Receive E-Mail: No

**Appellee** Treasure Lake Property Owners' Association  
**Pro Se:** Appoint Counsel Status:

**IFP Status:**

**Appellee Attorney Information:**

Attorney: Slimak, Darryl R.  
 Bar No.: 41695 Law Firm: McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc.  
 Address: McQuaide Blasko et al  
 811 University Drive  
 State College, PA 16801  
 Phone No.: (814)238-4926 Fax No.: (814)234-5620  
 Receive Mail: Yes  
 E-Mail Address:  
 Receive E-Mail: No

**FEE INFORMATION**

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
2001-11-20 00:00:00.000		55.00	55.00	2001SPRWD001504

## Appeal Docket Sheet

## Superior Court of Pennsylvania

Docket Number: 2008 WDA 2001

Page 3 of 3

November 26, 2001



## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Date of OrderAppealed From: October 30, 2001

Date Documents Received: November 20, 2001

Order Type: Order Dated

Judge: Reilly, Jr., John K.

President Judge

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: November 19, 2001

OTN:

Lower Court Docket No.: NO. 869-2001-C.D.

## ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
November 20, 2001	Notice of Appeal Filed	Appellant Appellant	Bergman, Kerri L. Bergman Jr., Harry
November 26, 2001	Docketing Statement Exited (Civil)		Western District Filing Office

FILED

10:00 AM  
NOV 28 2001

E  
KES

William A. Shaw  
Prothonotary

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

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To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does 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 proceeding, if any, and the docket entries in the following matter:

**01-869-CD**

**Kerri L. Bergman and  
Harry Bergman, Jr.  
VS.  
Treasure Lake Property Owners Association**

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

The documents compromising the record have been numbered from **No. 1 to No. 10**, and 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 had been transmitted to the Appellate Court is  
December 19, 2001.

  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

(seal)

Date: 12/19/2001

Time: 08:58 AM

Page 1 of 1

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2001-00869-CD

Current Judge: John K. Reilly Jr.

Kerri L. Bergman, Harry Bergman Jr. vs. Treasure Lake Prop Owners Assoc.

Civil Other

Date	Judge	
06/06/2001	Filing: Civil Complaint Paid by: Cherry, Paul E. (attorney for Bergman, Harry Jr.) Receipt number: 1826386 Dated: 06/06/2001 Amount: \$80.00 (Check) Two CC Attorney Cherry	No Judge
06/13/2001	Sheriff Returns, Complaint on Treasure Lake Property Owners Assoc., filed. s/Chester A. Hawkins by Marilyn Hamm \$38.22 Shff Hawkins paid by Attorney	No Judge
06/22/2001	Entry of Appearance on behalf of the Defendant. Filed by s/Darryl R. Slimak, Esq. Certificate of Service no cc	No Judge
	Preliminary Objections to Plaintiffs' Complaint. Filed by s/Darryl R. Slimak, Esq. no cc	No Judge
07/23/2001	Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22. Filed by Darryl R. Slimak, Esq. no cc	John K. Reilly Jr.
08/27/2001	Defendant's Reply to Plaintiffs' Brief In Opposition to Preliminary Objections to Plaintiffs' Complaint. Filed by s/Darryl R. Slimak, Esq. Cert of Svc no cc	John K. Reilly Jr.
09/28/2001	Filing: Subpoena Paid by: Medical Legal Reproductions, Inc. Receipt number: 1831903 Dated: 09/28/2001 Amount: \$3.00 (Check)	John K. Reilly Jr.
10/31/2001	Opinion and Order, Now, this 30th day of Oct. 2001, upon consideration of John K. Reilly Jr. P.O.'s in the Nature of a Demurrer/Motion to Strike Plaintiffs' Complaint, and argument and briefs thereon, this Court does grant said P.O.'s in accordance with the foregoing Opinion and does strike Plaintiffs' Complaint with Prejudice. by the Court, s/JKR,JR.,P.J. 1 cc Atty Slimak, Atty Cherry	
11/01/2001	Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4099.22. s/Richard Laws, Esq. no cc	John K. Reilly Jr.
11/19/2001	Filing: Notice of Appeal to High Court Paid by: Cherry, Paul E. (attorney for Bergman, Kerri L.) Receipt number: 1834357 Dated: 11/19/2001 Amount: \$45.00 (Check) Notice is hereby given that Kerri L. Bergman and Harry Bergman, Jr., hereby appeal to the Superior Court of PA from the Opinion and Order entered in this matter on the 30th day of October, 2001. submitted by Paul E. Cherry, Esquire atty for plaintiff's 1 cc to Superior Court w/\$55.00 check.	John K. Reilly Jr.
11/28/2001	Appeal Docket Number -- 2008 WDA 2001 from Superior Court of Pennsylvania Filed. no cc	John K. Reilly Jr.

I hereby certify this to be a true and accurate copy of the original  
stamped and signed.

DEC 18 2001

Attest: *William L. Reilly*  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA  
CASE #2001-869-CD

Kerri L. Bergman and Harry  
Bergman, Jr.

VS

Treasure Lake Property Owners Association

ITEM NO.	DATE of FILING	NAME of DOCUMENT	NO of PAGES
01	06/06/01	Civil Complaint	07
02	06/13/01	Sheriff Returns	01
03	06/22/01	Entry of Appearance	03
04	06/22/01	Preliminary Objections to Plaintiff's Complaint	07
05	07/23/01	Certificate Prerequisite to Service of a Subpoena	26
06	08/27/01	Defendant's Reply to Plaintiffs' Brief in Opposition to Preliminary Objections to Plaintiff's Complaint	08
07	10/31/01	Opinion and Order	02
08	11/01/01	Certificate Prerequisite to Service of a Subpoena	04
09	11/19/01	Notice of Appeal	06
10	11/28/01	Appeal Docket Sheet	03

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

**Kerri L. Bergman and**  
**Harry Bergman, Jr.**  
VS

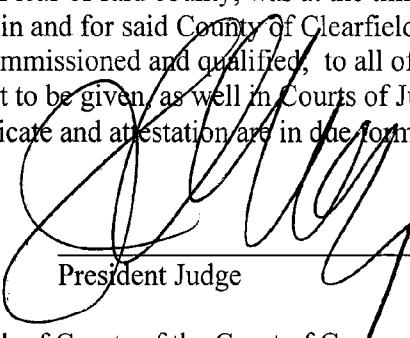
**Treasure Lake Property Owners Association**

So full and entire as the same remains of record before the said Court, at **No. 01-869-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 19<sup>th</sup> Day of December, 2001.

  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

I, **John K. Reilly, Jr.**, President Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw**, by whom the annexed record, certificate and attestation were made and given, and who in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified, to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by proper officer.

  
\_\_\_\_\_  
President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **John K. Reilly, Jr.**, President Judge by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is President Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have  
hereunto set my hand and affixed  
the seal of said Court, this 19<sup>th</sup> day  
of December, 2001.

  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,  
Plaintiffs

vs.

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION,  
Defendant

: No. 869-2001 - C.D.

: Type of Case: CIVIL

: Type of Pleading: COMPLAINT

: Filed on Behalf of: PLAINTIFFS

: Counsel of Record for this Party:

: PAUL E. CHERRY, ESQ.  
Supreme Court No.42945

: CHERRY & CHERRY  
23 East Park Avenue  
DuBois, PA 15801  
(814) 371-3288

FILED

JUN 06 2001

William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY W. BERGMAN, JR.,  
Plaintiffs

vs.

No. - 2001 - C.D.

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION,  
Defendant

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Amended Complaint or for any other claim or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

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

David S. Meholic, Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641 Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY W. BERGMAN, JR.,  
Plaintiffs

vs.

: No. - 2001 - C.D.

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION,  
Defendant

COMPLAINT

AND NOW, comes the Plaintiffs, KERRI L. BERGMAN and HARRY W. BERGMAN, JR., by and through their attorneys, CHERRY & CHERRY, who file the within Complaint, averring as follows:

1. Plaintiff, KERRI L. BERGMAN, is an adult individual, residing at 1399 Treasure Lake, DuBois, Clearfield County, Pennsylvania 15801.
2. Plaintiff, HARRY W. BERGMAN, JR., is an adult individual, intermarried with Plaintiff, KERRI L. BERGMAN, residing at 1399 Treasure Lake, DuBois, Clearfield County, Pennsylvania 15801.
3. Defendant, TREASURE LAKE PROPERTY OWNERS ASSOCIATION, is an Association organized and existing under the laws of the Commonwealth of Pennsylvania and at all times relevant hereto was the owner and operator of property located at Treasure Lake, DuBois, Clearfield County, Pennsylvania 15801.
4. All property owned and operated by the Defendant, including the Treasure Lake Country Club and the Treasure Lake Country Club swimming pool, were open to and for the exclusive use of Treasure Lake Property Owners in good standing which includes the Plaintiff, KERRI L. BERGMAN, at all times relevant hereto.

5. At all times relevant hereto, Defendant was obligated to repair, maintain, inspect, and was otherwise responsible for the operation and maintenance of the Treasure Lake Country Club swimming pool and the Treasure Lake Country Club swimming pool ladder on Defendants' property so that the Treasure Lake Country Club swimming pool and the Treasure Lake Country Club swimming pool ladder would be safe for use by Treasure Lake Property Owners in good standing, including Plaintiff, KERRI L. BERGMAN.

6. On or about June 8, 1999, Plaintiff, KERRI L. BERGMAN, while on Defendants' property as a Treasure Lake Property Owner in good standing, was present at the Treasure Lake Country Club swimming pool for the purposes of swimming.

7. At the said time and date, when Plaintiff, KERRI L. BERGMAN, started to climb down the swimming pool ladder into the Treasure Lake Country Club swimming pool, the ladder suddenly, and without warning, became detached from the side of the swimming pool, pulled away from said swimming pool and twisted, causing Plaintiff, KERRI L. BERGMAN, to lose her balance and fall straddling the ladder of the swimming pool, and causing Plaintiff, KERRI L. BERGMAN, to sustain the serious personal injuries hereinafter set forth.

8. The aforesaid incident and the injuries resulting to the Plaintiff, KERRI L. BERGMAN, occurred solely as a result of the negligence, carelessness, and the recklessness of the Defendant, who was in exclusive control of the Treasure Lake Country Club swimming pool and the Treasure Lake Country Club swimming pool ladder, which said negligence, carelessness, and recklessness consisted of at least the following:

- (a) failing to properly inspect the swimming pool ladder so that it worked in a proper and safe manner;
- (b) failing to properly maintain the swimming pool ladder so that it worked in a proper and safe manner;

- (c) failing to warn Plaintiff, KERRI L. BERGMAN, of the likely malfunction of the swimming pool ladder;
- (d) failing to warn Plaintiff, KERRI L. BERGMAN, of the likelihood that the swimming pool ladder would separate from the swimming pool;
- (e) failing to assure that the swimming pool ladder continued to operate in a safe and proper manner;
- (f) failing to make repairs which were necessary and proper in order to assure the continued safe operation of the swimming pool ladder;
- (g) failing to provide adequate safeguards to prevent the injury to Plaintiff, KERRI L. BERGMAN; and
- (h) being otherwise negligent, careless, and reckless under the circumstances.

COUNT I.

Plaintiff, KERRI L. BERGMAN vs. Defendant,  
TREASURE LAKE PROPERTY OWNERS ASSOCIATION

9. Plaintiff, KERRI L. BERGMAN, incorporates herein by reference the allegations set forth in paragraphs 1 through 8 as though the same were fully set forth at length.

10. By reason of the above incident, Plaintiff, KERRI L. BERGMAN, sustained injuries to her groin area, pelvic bone, bladder, right inner thigh and back, including but not limited to large contusions of the groin area and right inner thigh, bladder infection, severe twisting and shift of pelvic bone, severe sprain of the groin area, and acute lumbosacral sprain and strain.

11. By reason of said injuries, Plaintiff, KERRI L. BERGMAN, has incurred and will continue to incur various expenses for physicians, therapists, and hospitals in effort to treat and cure herself of the aforesaid injuries.

12. By reason of the said injuries, Plaintiff, KERRI L. BERGMAN, has also sustained great pain, suffering, anguish, shock, and injury to her nerves and nervous system, and will continue to suffer the same in the future.

13. A jury trial is demanded.

WHEREFORE, Plaintiff, KERRI L. BERGMAN, demands judgment against Defendant, TREASURE LAKE PROPERTY OWNERS ASSOCIATION., in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), exclusive of interest and costs of suit.

COUNT II

Plaintiff, HARRY W. BERGMAN, JR., vs. Defendant,  
TREASURE LAKE PROPERTY OWNERS ASSOCIATION

14. Plaintiff, HARRY W. BERGMAN, JR., incorporates herein by reference the allegations set forth in paragraphs 1 through 22 as though the same were fully set forth at length.

15. As a result of the negligence, carelessness, reckless disregard, and indifference of Defendant, Plaintiff, HARRY W. BERGMAN, JR., has been deprived of the society, companionship, and consortium of his wife, Plaintiff, KERRI L. BERGMAN, to his great detriment and loss.

16. As a result of the negligence, carelessness, reckless disregard, and indifference of Defendant, Plaintiff, HARRY W. BERGMAN, JR., has incurred large medical bills and expenses to treat his wife's injuries.

17. As a result of the negligence, carelessness, reckless disregard, and indifference of Defendants, Plaintiff, HARRY W. BERGMAN, JR., has suffered a disruption in his daily habits and pursuits and a loss of enjoyment of life.

18. A jury trial is demanded.

WHEREFORE, Plaintiff, HARRY W. BERGMAN, JR., demands judgment against Defendant, TREASURE LAKE PROPERTY OWNERS ASSOCIATION., in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), exclusive of interest and costs of suit.

Respectfully submitted,

CHERRY & CHERRY

By: Paul E. Cherry  
Paul E. Cherry, Esquire  
Attorney for Plaintiffs

We, KERRI L. BERGMAN and HARRY W. BERGMAN, JR., verify that the statements made in this Complaint are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: June 5, 2001

Kerri L. Bergman

Kerri L. Bergman

Date: 5 June 2001

Harry W. Bergman, Jr.

Harry W. Bergman, Jr.

2 CC May Cherry  
018-40481 May pd.  
JUN 1980  
H. J. Williams  
Professional

Cherry & Cherry  
23 EAST PARK AVENUE  
DUBOIS, PENNSYLVANIA 15801

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11085

BERGMAN, KERRI L. & HARRY JR.

01-869-CD

VS.

TREASURE LAKE PROPERTY OWNERS ASSOC.

COMPLAINT

**SHERIFF RETURNS**

NOW JUNE 7, 2001 AT 10:37 AM DST SERVED THE WITHIN COMPLAINT ON TREASURE LAKE PROPERTY OWNERS ASSOC., DEFENDANT AT EMPLOYMENT, TREASURE LAKE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ERIN FREER, ADMIN. SEC. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: SNYDER/MARSHALL

---

Return Costs

Cost	Description
28.22	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

13 Day Of June 2001  
William A. Shaw

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co., Clearfield, PA.  
Ch. 13, Sec. 1, P.L. 1202  
2001

So Answers,

*Chester A. Hawkins  
by Harry A. Harry*

Chester A. Hawkins

Sheriff

**FILED**

*2:01*  
JUN 13 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,

Plaintiffs, : No. 869 - 2001 - C.D.  
vs. : Type of Case: Civil  
TREASURE LAKE PROPERTY : Type of Pleading: ENTRY OF  
OWNERS ASSOCIATION, : APPEARANCE  
Defendant. : Filed on Behalf of: DEFENDANT  
: Counsel of record for this Party:  
: Darryl R. Slimak, Esquire  
: Supreme Court No. 41695  
: McQUAIDE, BLASKO, SCHWARTZ,  
: FLEMING & FAULKNER, INC.  
: 811 University Drive  
: State College, PA 16801  
: (814) 238-4926  
:

**FILED**

JUN 27 2001

William A. Shaw  
Prothonotary

(83)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION - LAW

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,

Plaintiffs, : No. 869 - 2001 - C.D.

vs. :

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, :

Defendant.

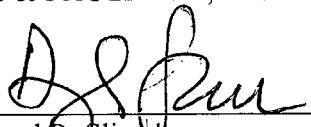
**PRAECIPE FOR ENTRY OF APPEARANCE**

TO THE PROTHONOTARY:

Please enter our appearance on behalf of the Defendant, TREASURE LAKE  
PROPERTY OWNERS ASSOCIATION, in the above-captioned matter.

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_

  
Darryl R. Slimak

Attorneys for Defendant  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: June 21, 2001 \_\_\_\_\_

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION - LAW

KERRI L. BERGMAN and :  
HARRY BERGMAN, JR., :  
Plaintiffs, : No. 869 - 2001 - C.D.  
vs. :  
TREASURE LAKE PROPERTY :  
OWNERS ASSOCIATION, :  
Defendant.

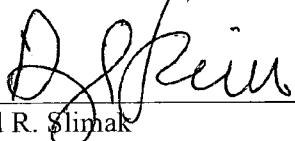
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Praecept for Entry of Appearance on Behalf of Defendant Treasure Lake Property Owners Association, in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 21<sup>st</sup> day of June, 2001, to the attorney(s) of record:

Paul E. Cherry, Esquire  
Cherry & Cherry  
23 East Park Avenue  
Dubois, PA 15801

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_

  
Darryl R. Slimak  
Attorneys for Defendant  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

**FILED**

JUN 22 2001

7/1/01 8:40:00 AM

William A. Shaw

Prothonotary

*[Signature]*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,

Plaintiffs, : No. 869 - 2001 - C.D.  
vs. : Type of Case: Civil  
TREASURE LAKE PROPERTY : Type of Pleading: PRELIMINARY  
OWNERS ASSOCIATION, : OBJECTIONS TO PLAINTIFFS'  
Defendant. : COMPLAINT  
: Filed on Behalf of: DEFENDANT  
: Counsel of record for this Party:  
: Darryl R. Slimak, Esquire  
: Supreme Court No. 41695  
: McQUAIDE, BLASKO, SCHWARTZ,  
: FLEMING & FAULKNER, INC.  
: 811 University Drive  
: State College, PA 16801  
: (814) 238-4926

**FILED**

JUN 22 2001

William A. Shaw  
Prothonotary

#4

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY W. BERGMAN, JR.,

Plaintiffs,

No. 869 - 2001 - C.D.

vs.

TREASURE LAKE PROPERTY  
OWNERS' ASSOCIATION,

JURY TRIAL DEMANDED

Defendants.

**PRELIMINARY OBJECTIONS OF DEFENDANT**  
**TREASURE LAKE PROPERTY OWNERS' ASSOCIATION**  
**TO PLAINTIFF'S COMPLAINT**

AND NOW comes Defendant, Treasure Lake Property Owners' Association, by and through its Attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and file the within Preliminary Objections to Plaintiffs' Complaint:

**I. Demurrer / Motion to Strike Count I and Count II (Negligence of Defendant, Treasure Lake Property Owners' Association) for Failing to State a Claim Upon Which Relief Can be Granted**

1. It is believed that the instant claim was initiated by Plaintiffs, Kerri L. Bergman and Harry W. Bergman, Jr., on June 6, 2001, with the filing of the Complaint in the Court of Common Pleas of Clearfield County.

2. Plaintiffs' Complaint concerns a claim for personal injuries suffered by Plaintiff, Kerri L. Bergman, on June 8, 1999, when the swimming pool ladder at the Treasure Lake Country Club Swimming Pool, which is owned and operated by Defendant, Treasure Lake Property Owners' Association, and upon which Plaintiff Kerri L. Bergman was climbing, allegedly detached from the side of the swimming pool. See Complaint at ¶ 4-7.

3. More specifically, it is alleged that the accident occurred as a result of the negligence of Defendant, Treasure Lake Property Owners' Association, in maintaining the swimming pool ladder. See Complaint at ¶ 8.

4. As averred in the Complaint, Plaintiffs, Kerri L. Bergman and Harry W. Bergman, Jr., as Treasure Lake Property Owners in good standing who are vested with the right to use the facilities provided by the Treasure Lake Property Owners' Association, are members of the Treasure Lake Property Owners' Association. See Complaint at ¶¶ 3-5.

5. As a matter of law, as members of the Treasure Lake Property Owners' Association, Plaintiffs, Kerri L. Bergman and Harry W. Bergman, Jr., cannot file a cause of action for negligence against the Treasure Lake Property Owners' Association, due to the fact the negligence of which Plaintiffs, Kerri L. Bergman and Harry W. Bergman, Jr., complain, is legally imputed to them, as members in of the Treasure Lake Property Owners' Association. See De Villars v. Hessler, 363 PA. 498, 501, 70 A.2d 333, 335 (1950).

6. Furthermore, as to Count II by Plaintiff-husband for Loss of Consortium due to injuries suffered by Plaintiff-wife, in order to recover under a loss of consortium theory, a party must show the Defendant is liable to his spouse. See McNeal v. City of Easton, 143 Pa. Commw. 151, 160, 598 A.2d 638, 642 (1991).

7. Therefore, since Defendant, Treasure Lake Property Owners' Association, is not, as a matter of law, liable to Plaintiff, Kerri L. Bergman, for the injuries caused to her while she was engaged in the use of the swimming pool maintained by the Defendant, Treasure Lake Property Owners' Association, Plaintiff, Harry W. Bergman, Jr.'s, claim for loss of consortium should also be barred.

WHEREFORE, Defendant, Treasure Lake Property Owners' Association, respectfully

requests that the within Demurrer be granted and that the Court enter judgment in their favor and dismiss Plaintiffs' Complaint with prejudice.

**II. [In the Alternative] Demurrer / Motion to Strike Count II Claims of Disruption of Daily Habits and Loss of Enjoyment of Life (brought on behalf of Plaintiff-Husband, Harry W. Bergman) for Failing to State a Claim Upon Which Relief Can be Granted**

8. Paragraphs 1 through 7 of the within Preliminary Objections are incorporated herein by reference.

9. Although, as a matter of law, all claims against Defendant, Treasure Lake Property Owners' Association, must be dismissed for the reasons set forth previously herein, in that the Rules of Civil Procedure provide that all Preliminary Objections must be raised at the same time, the following additional Objection is stated out of an overabundance of caution.

10. In this regard, Count II of Plaintiffs' Complaint is entitled "Harry W. Bergman, Jr. v. Treasure Lake Property Owners' Association." See Complaint at Count II, ¶¶ 14-18.

11. Count II, and specifically by incorporation of Paragraph 2, makes reference to the fact that Plaintiff, Harry W. Bergman, Jr., was at all times relevant to this case, married to and husband of Plaintiff, Kerri L. Bergman. See Complaint at ¶ 2.

12. While the balance of Count II appears to set forth a proper claim for loss of consortium, i.e. loss of care, comfort and society of Mr. Bergman's wife, said Count also proceeds to set forth a claim on behalf of Plaintiff-husband for "disruption in his daily habits and pursuits and loss of enjoyment of life." See Complaint at ¶ 17.

13. A fair reading of the above quoted, objected-to allegations reveal that, in addition to a claim for loss of consortium, Plaintiff-husband is inappropriately attempting to set forth a claim for negligent infliction of emotional distress relative to the events underlying Plaintiffs'

Complaint, and/or attempting to inappropriately expand the concept of a loss of consortium claim to include claims of harm not recognized as such.

14. In order to be viable under Pennsylvania law, a negligent infliction of emotional distress claim must be one of two types, either "direct impact" or "bystander".

15. The "direct impact" rule has been defined by the Superior Court as follows:

"[W]here...a plaintiff sustains bodily injuries, even though trivial or minor in character, which are accompanied by fright or mental suffering directly traceable to the peril in which the defendant's negligence placed the plaintiff, then mental suffering is a legitimate element of damages."

See Long v. Yingling, 700 A.2d 508, 516 (PA. Super. 1997). The Plaintiff-husband has obviously not made such allegations, and the "direct impact" rule is, therefore, inapplicable.

16. Plaintiff-husband's negligent infliction of emotional distress claim is likewise deficient under the "bystander rule," which permits such a claim only where the following factors are met:

"(1) Whether [the] plaintiff was located near the scene of the accident; as contrasted with one who was a distance away from it. (2) Whether the shock resulted from a direct emotional impact upon [the] plaintiff from the sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence. (3) Whether [the] plaintiff and the victim were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship."

See Brown v. Philadelphia College of Osteopathic Medicine, 449 Pa. Super. 667, 674 A.2d 1130, 1133 (1996). The Plaintiff-husband has not pled any facts to suggest that he was located at, or near, the scene of the underlying accident, nor that he contemporaneously observed any harm being negligently inflicted upon his wife by a third party, therefore rendering the "bystander rule" inapplicable to the facts of this case.

17. Additionally, any purported claim of negligent infliction of emotional distress

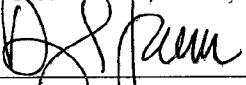
must also fail because Plaintiff-husband has failed to allege any physical manifestations of the emotional distress that he is alleged to have suffered. See Lazor v. Milne, 346 Pa. Super. 177, 499 A.2d 239 (1985).

18. Accordingly, Plaintiff-husband has failed to set forth a claim for negligent infliction of emotional distress upon which relief can be granted, thus mandating that any such claims be dismissed from Counts II of Plaintiffs' Complaint, as a matter of law.

WHEREFORE, Defendant, Treasure Lake Property Owners' Association, respectfully requests that the within Demurrer / Motion to Strike be granted and that this Honorable Court strike the averments of Count II, Paragraph 17, of the Complaint, pertaining to purported mental or physical injuries by Plaintiff Harry W. Bergman, Jr., and restrict said allegations solely to proper claims for lack of care, comfort, society/consortium of his wife by virtue of her having been involved in the accident and suffering various injuries as alleged.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By:   
Darryl R. Slomak  
Richard K. Laws  
Attorneys for Defendant  
Treasure Lake Property Owners' Association  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: 6-21-01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION - LAW

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,

Plaintiffs, : No. 869 - 2001 - C.D.

vs. :

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, :

Defendant.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Preliminary Objections of Defendant  
Treasure Lake Property Owners' Association to Plaintiffs' Complaint in the above-captioned  
matter was mailed by regular mail, postage prepaid, at the Post Office, State College,  
Pennsylvania, on this 21<sup>st</sup> day of June, 2001, to the attorney(s) of record:

Paul E. Cherry, Esquire  
Cherry & Cherry  
23 East Park Avenue  
Dubois, PA 15801

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_  
Darryl R. Slimak  
Attorneys for Defendant  
TREASURE LAKE HOME OWNERS'  
ASSOCIATION  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

**FILED**

JUN 23 2001

01/23/01

no cc

William A. Shaw

Prothonotary

*W.A.S.*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

KERRY & HARRY BERGMAN JR

Vs. : NO. 869 2001 CD  
TREASURE LAKE PROP OWNERS : :

**CERTIFICATE**  
**PREREQUISITE TO SERVICE OF A SUBPOENA**  
**PURSUANT TO RULE 4009.22**

As a prerequisite to service of a subpoena(s) for documents and things pursuant to Rule 4009.22 DARRYL R SLIMAK, ESQUIRE certifies that:

1. A Notice of Intent to Serve the Subpoena(s) with a copy of the subpoena(s) attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena(s) is sought to be served,
2. A copy of the Notice of Intent, including the proposed subpoena(s) is attached to this certificate,
3. No objection to the subpoena(s) has been received, and
4. The subpoena(s) which will be served is identical to the subpoena(s) which is attached to the Notice of Intent to Serve the Subpoena(s).

Date:  
8/3/01

DARRYL R SLIMAK, ESQUIRE  
811 UNIVERSITY DRIVE

STATE COLLEGE, PA 16801  
814-238-4926  
ATTORNEY FOR DEFENDANT

**INQUIRIES SHOULD BE ADDRESSED TO:**

MEDICAL LEGAL REPRODUCTIONS, INC.  
4940 DISSTON STREET  
PHILADELPHIA PA 19135  
(215) 335-3581

File #: M276751

**FILED**

By: **Mercedes Feeney**

111 23 2001  
m 18:50 am/noce  
William A. Shaw  
Prothonotary

15

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY**

KERRY & HARRY BERGMAN JR

vs.

TREASURE LAKE PROP OWNERS

No. 869 2001 CD

TO: PAUL CHERRY

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE  
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

DEFENDANT intends to serve a subpoena(s) identical to the one(s) attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

Date:

7/12/01

DARRYL R SLIMAK, ESQUIRE  
811 UNIVERSITY DRIVE

STATE COLLEGE, PA 16801  
ATTORNEY FOR DEFENDANT

**INQUIRIES SHOULD BE ADDRESSED TO:**

MEDICAL LEGAL REPRODUCTIONS, INC.  
4940 DISSTON STREET  
PHILADELPHIA, PA 19135  
(215) 335-3581

By: **Mercedes Feeney**

Enc(s): Copy of subpoena(s)  
Counsel return card  
File #: **M276751**

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Kerri L. Bergman

Harry Bergman Jr.

Plaintiff(s)

Vs.

Treasure Lake Prop Owners Assoc.

Defendant(s)

\*

\*

No. 2001-00869-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE  
4009.22

TO: Dr Thomas Freenock RR 3 Box 183 Clarion PA 16214

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

MEDICAL LEGAL REPRODUCTIONS, INC 4940 DISSTON ST PHILA PA 19135

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Darryl R Smith, Esquire

ADDRESS: 811 University Dr  
State College, PA 16801

TELEPHONE: 215 335 3212

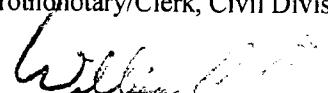
SUPREME COURT ID # 869-2001

ATTORNEY FOR: Treasure Lake Prop

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



Deputy

DATE: Monday, July 09, 2001

Seal of the Court

## ADDENDUM TO SUBPOENA

KERRY & HARRY BERGMAN JR

VS.

TREASURE LAKE PROP OWNERS

NO. 869 2001 CD

CUSTODIAN OF RECORDS FOR: **DR THOMAS FREENOKE**

ANY AND ALL OFFICE RECORDS, INCLUDING NOTES, CORRESPONDENCE, MEMORANDA, X-RAY REPORTS, HISTORY NOTES, INDEX CARDS AND ANY OTHER INFORMATION RELATING TO ANY EXAMINATION OR TREATMENT RENDERED TO:

NAME: KERRI L BERGMAN  
ADDRESS: 1399 TREASURE LAKE DUBOIS PA  
DATE OF BIRTH: 01/22/65  
SSAN: 198603235

ALL RECORDS FROM AS FAR BACK AS RETAINED TO PRESENT.

**CERTIFIED PHOTOCOPIES WILL BE ACCEPTED IN LIEU OF YOUR PERSONAL APPEARANCE.**

---

### RECORD CUSTODIAN - COMPLETE AND RETURN

**RECORDS ARE ATTACHED HERETO:** I hereby certify as custodian of records that, to the best of my knowledge, information and belief all documents or things above mentioned have been produced.

**NO DOCUMENTS AVAILABLE:** I hereby certify that a thorough search has been made and that no record of the following documents have been located (CHECK THE APPROPRIATE BOX):

RECORDS       PATIENT BILLING

X-RAYS       RECORDS / XRAYS have been destroyed

---

Date

Authorized signature for  
DR THOMAS FREENOKE

CLEARFIELD  
M276751-01

\*\*\* SIGN AND RETURN THIS PAGE \*\*\*

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Kerri L. Bergman  
Harry Bergman Jr.  
Plaintiff(s)

Vs.  
Treasure Lake Prop Owners Assoc.  
Defendant(s)

\*

\*

No. 2001-00869-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE  
4009.22

TO: Keystone Rehab Systems 470 Jeffers St Dubois, PA 15801

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

MEDICAL LEGAL REPRODUCTIONS, INC 4940 DISSTON ST PHILA PA 19135

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

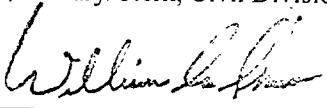
If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Darryl R Smith, Esquire  
ADDRESS: 811 University Dr  
State College, PA 16801  
TELEPHONE: 215-335-3212  
SUPREME COURT ID # 869-2001  
ATTORNEY FOR: Treasure Lake Prop

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

  
Deputy

DATE: Monday, July 09, 2001  
Seal of the Court

## ADDENDUM TO SUBPOENA

KERRY & HARRY BERGMAN JR

VS.

TREASURE LAKE PROP OWNERS

No. 869 2001 CD

CUSTODIAN OF RECORDS FOR: **KEYSTONE REHAB SYS**

ANY AND ALL OFFICE RECORDS, INCLUDING NOTES, CORRESPONDENCE, MEMORANDA, X-RAY REPORTS, HISTORY NOTES, INDEX CARDS AND ANY OTHER INFORMATION RELATING TO ANY EXAMINATION OR TREATMENT RENDERED TO:

NAME: KERRI L BERGMAN  
ADDRESS: 1399 TREASURE LAKE DUBOIS PA  
DATE OF BIRTH: 01/22/65  
SSAN: 198603235

ALL RECORDS FROM AS FAR BACK AS RETAINED TO PRESENT.

**CERTIFIED PHOTOCOPIES WILL BE ACCEPTED IN LIEU OF YOUR PERSONAL APPEARANCE.**

-----

### RECORD CUSTODIAN - COMPLETE AND RETURN

**RECORDS ARE ATTACHED HERETO:** I hereby certify as custodian of records that, to the best of my knowledge, information and belief all documents or things above mentioned have been produced.

**NO DOCUMENTS AVAILABLE:** I hereby certify that a thorough search has been made and that no record of the following documents have been located (CHECK THE APPROPRIATE BOX):

RECORDS       PATIENT BILLING  
 X-RAYS       RECORDS / XRAYS have been destroyed

Date \_\_\_\_\_

Authorized signature for  
KEYSTONE REHAB SYS

CLEARFIELD  
M276751-02

\*\*\* SIGN AND RETURN THIS PAGE \*\*\*

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Kerri L. Bergman

Harry Bergman Jr.

Plaintiff(s)

Vs.

\*

No. 2001-00869-CD

Treasure Lake Prop Owners Assoc.

\*

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE  
4009.22

TO: Dr David Lacomis 3601 Fifth Ave Pittsburgh, PA 15213  
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce  
the following documents or things:

MEDICAL LEGAL REPRODUCTIONS, INC 4940 DISSTON ST PHILA PA 19135

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this  
subpoena, together with the certificate of compliance, to the party making this request at the address  
listed above. You have the right to seek in advance the reasonable cost of preparing the copies or  
producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days  
after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

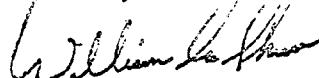
THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Darryl R Smith, Esquire  
ADDRESS: 811 University Dr  
State College, PA 16801

TELEPHONE: 215-335-3212  
SUPREME COURT ID # 869-2001  
ATTORNEY FOR: Treasure Lake Prop

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division



Deputy

DATE: Monday, July 09, 2001

Seal of the Court

## ADDENDUM TO SUBPOENA

KERRY & HARRY BERGMAN JR

vs.

TREASURE LAKE PROP OWNERS

NO. 869 2001 CD

CUSTODIAN OF RECORDS FOR: **DR DAVID LACOMIS**

ANY AND ALL OFFICE RECORDS, INCLUDING NOTES, CORRESPONDENCE, MEMORANDA, X-RAY REPORTS, HISTORY NOTES, INDEX CARDS AND ANY OTHER INFORMATION RELATING TO ANY EXAMINATION OR TREATMENT RENDERED TO:

NAME: KERRI L BERGMAN  
ADDRESS: 1399 TREASURE LAKE DUBOIS PA  
DATE OF BIRTH: 01/22/65  
SSAN: 198603235

ALL RECORDS FROM AS FAR BACK AS RETAINED TO PRESENT.

**CERTIFIED PHOTOCOPIES WILL BE ACCEPTED IN LIEU OF YOUR PERSONAL APPEARANCE.**

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### RECORD CUSTODIAN - COMPLETE AND RETURN

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RECORDS       PATIENT BILLING  
 X-RAYS       RECORDS / XRAYS have been destroyed

Date \_\_\_\_\_

Authorized signature for  
DR DAVID LACOMIS

CLEARFIELD  
M276751-03

\*\*\* SIGN AND RETURN THIS PAGE \*\*\*

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Kerri L. Bergman  
Harry Bergman Jr.  
Plaintiff(s)

Vs.  
Treasure Lake Prop Owners Assoc.  
Defendant(s)

\*

No. 2001-00869-CD

\*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE  
4009.22

TO: Dr Michael Moclock 145 Hospital Ave Dubois, PA 15801  
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

MEDICAL LEGAL REPRODUCTIONS, INC 4940 DISSTON ST PHILA PA 19135

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

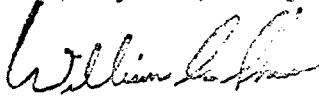
If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Darryl R Smith, Esquire  
ADDRESS: 811 University Dr  
State College, PA 16801  
  
TELEPHONE: 215-335-3212  
SUPREME COURT ID # 869-2001  
ATTORNEY FOR: Treasure Lake Prop

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

  
\_\_\_\_\_  
Deputy

DATE: Monday, July 09, 2001  
Seal of the Court

## ADDENDUM TO SUBPOENA

KERRY & HARRY BERGMAN JR

VS.

TREASURE LAKE PROP OWNERS

No. 869 2001 CD

CUSTODIAN OF RECORDS FOR: **DR MICHAEL MOCLOCK**

ANY AND ALL OFFICE RECORDS, INCLUDING NOTES, CORRESPONDENCE, MEMORANDA, X-RAY REPORTS, HISTORY NOTES, INDEX CARDS AND ANY OTHER INFORMATION RELATING TO ANY EXAMINATION OR TREATMENT RENDERED TO:

NAME: KERRI L BERGMAN  
ADDRESS: 1399 TREASURE LAKE DUBOIS PA  
DATE OF BIRTH: 01/22/65  
SSAN: 198603235

ALL RECORDS FROM AS FAR BACK AS RETAINED TO PRESENT.

**CERTIFIED PHOTOCOPIES WILL BE ACCEPTED IN LIEU OF YOUR PERSONAL APPEARANCE.**

---

### RECORD CUSTODIAN - COMPLETE AND RETURN

**RECORDS ARE ATTACHED HERETO:** I hereby certify as custodian of records that, to the best of my knowledge, information and belief all documents or things above mentioned have been produced.

**NO DOCUMENTS AVAILABLE:** I hereby certify that a thorough search has been made and that no record of the following documents have been located (CHECK THE APPROPRIATE BOX):

RECORDS       PATIENT BILLING  
 X-RAYS       RECORDS / XRAYS have been destroyed

Date

Authorized signature for  
DR MICHAEL MOCLOCK

CLEARFIELD  
M276751-04

**\*\*\* SIGN AND RETURN THIS PAGE \*\*\***

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Kerri L. Bergman  
Harry Bergman Jr.  
Plaintiff(s)

Vs.

\*

No. 2001-00869-CD

Treasure Lake Prop Owners Assoc.  
Defendant(s)

\*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE  
4009.22

TO: Dr MaryJane Kinosian 90 Beaver Drive Dubois PA 15801  
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

MEDICAL LEGAL REPRODUCTIONS, INC 4940 DISSTON ST PHILA PA 19135

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

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THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Darryl R Smith, Esquire  
ADDRESS: 811 University Dr  
State College, PA 16801  
  
TELEPHONE: 215-335-3212  
SUPREME COURT ID # 869-2001  
ATTORNEY FOR: Treasure Lake Prop

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Monday, July 09, 2001  
Seal of the Court

William A. Shaw  
Deputy

## ADDENDUM TO SUBPOENA

KERRY & HARRY BERGMAN JR

Vs.

NO. 869 2001 CD

TREASURE LAKE PROP OWNERS

CUSTODIAN OF RECORDS FOR: DR MARYJANE KINOSIAN

ANY AND ALL OFFICE RECORDS, INCLUDING NOTES, CORRESPONDENCE, MEMORANDA, X-RAY REPORTS, HISTORY NOTES, INDEX CARDS AND ANY OTHER INFORMATION RELATING TO ANY EXAMINATION OR TREATMENT RENDERED TO:

NAME: KERRI L BERGMAN  
ADDRESS: 1399 TREASURE LAKE DUBOIS PA  
DATE OF BIRTH: 01/22/65  
SSAN: 198603235

ALL RECORDS FROM AS FAR BACK AS RETAINED TO PRESENT.

CERTIFIED PHOTOCOPIES WILL BE ACCEPTED IN LIEU OF YOUR PERSONAL APPEARANCE.

### RECORD CUSTODIAN - COMPLETE AND RETURN

**RECORDS ARE ATTACHED HERETO:** I hereby certify as custodian of records that, to the best of my knowledge, information and belief all documents or things above mentioned have been produced.

**NO DOCUMENTS AVAILABLE:** I hereby certify that a thorough search has been made and that no record of the following documents have been located (CHECK THE APPROPRIATE BOX):

RECORDS                     PATIENT BILLING  
 X-RAYS                     RECORDS / XRAYS have been destroyed

Date

Authorized signature for  
DR MARYJANE KINOSIAN

CLEARFIELD  
M276751-05

\*\*\* SIGN AND RETURN THIS PAGE \*\*\*

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Kerri L. Bergman

Harry Bergman Jr.

Plaintiff(s)

Vs.

\*

No. 2001-00869-CD

Treasure Lake Prop Owners Assoc.

\*

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE  
4009.22

TO: Dubois Reg Med Ctr 100 Hospital Dr Dubois, PA 15801

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

MEDICAL LEGAL REPRODUCTIONS, INC 4940 DISSTON ST PHILA PA 19135

(Address)

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THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Darryl R Smith, Esquire  
ADDRESS: 811 University Dr  
State College, PA 16801

TELEPHONE: 215-335-3212  
SUPREME COURT ID # 869-2001  
ATTORNEY FOR: Treasure Lake Prop

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division



Deputy

DATE: Monday, July 09, 2001

Seal of the Court

*ADDENDUM TO SUBPOENA*

KERRY & HARRY BERGMAN JR

vs.

## TREASURE LAKE PROP OWNERS

No. 869 2001 CD

CUSTODIAN OF RECORDS FOR: DUBOIS REG MED CTR

Any and all hospital records, including microfilm, microfiche emergency room reports, x-ray reports, out-patient records physical therapy records, and any other information pertaining to:

NAME: KERRI L BERGMAN  
ADDRESS: 1399 TREASURE LAKE DUBOIS PA  
DATE OF BIRTH: 01/22/65  
SSAN: 198603235

ALL INPT. OUTPT. OUTPT SURGERY, EMERGENCY ROOM, ETC.

**ALL FEES MUST BE APPROVED PRIOR TO RECORDS BEING FORWARDED.**

## RECORD CUSTODIAN - COMPLETE AND RETURN

[ ] **RECORDS ARE ATTACHED HERETO:** I hereby certify as custodian of records that, to the best of my knowledge, information and belief all documents or things above mentioned have been produced.

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RECORDS       PATIENT BILLING  
 X-RAYS       RECORDS / XRAYS have been destroyed

Date

Authorized signature for  
DUBOIS REG MED CTR

CLEARFIELD  
M276751-06

**\*\*\* SIGN AND RETURN THIS PAGE \*\*\***

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Kerri L. Bergman

Harry Bergman Jr.

Plaintiff(s)

Vs.

\*

No. 2001-00869-CD

Treasure Lake Prop Owners Assoc.

\*

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE  
4009.22

TO: Dr Paula Clemens 3601 Fifth Ave Pittsburgh PA 15213

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

MEDICAL LEGAL REPRODUCTIONS, INC 4940 DISSTON ST PHILA PA 19135

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

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THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Darryl R Smith, Esquire

ADDRESS: 811 University Dr  
State College, PA 16801

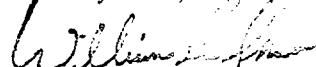
TELEPHONE: 215-335-3212

SUPREME COURT ID # 869-2001

ATTORNEY FOR: Treasure Lake Prop

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division



Deputy

DATE: Monday, July 09, 2001

Seal of the Court

## ADDENDUM TO SUBPOENA

KERRY & HARRY BERGMAN JR

Vs.

TREASURE LAKE PROP OWNERS

No. 869 2001 CD

CUSTODIAN OF RECORDS FOR: **DR PAULA CLEMENS**

ANY AND ALL OFFICE RECORDS, INCLUDING NOTES, CORRESPONDENCE, MEMORANDA, X-RAY REPORTS, HISTORY NOTES, INDEX CARDS AND ANY OTHER INFORMATION RELATING TO ANY EXAMINATION OR TREATMENT RENDERED TO:

NAME: KERRI L BERGMAN  
ADDRESS: 1399 TREASURE LAKE DUBOIS PA  
DATE OF BIRTH: 01/22/65  
SSAN: 198603235

ALL RECORDS FROM AS FAR BACK AS RETAINED TO PRESENT.

CERTIFIED PHOTOCOPIES WILL BE ACCEPTED IN LIEU OF YOUR PERSONAL APPEARANCE.

-----

### RECORD CUSTODIAN - COMPLETE AND RETURN

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RECORDS                     PATIENT BILLING  
 X-RAYS                     RECORDS / XRAYS have been destroyed

Date \_\_\_\_\_

Authorized signature for  
**DR PAULA CLEMENS**

CLEARFIELD  
M276751-07

\*\*\* SIGN AND RETURN THIS PAGE \*\*\*

## ADDENDUM TO SUBPOENA

KERRY & HARRY BERGMAN JR

Vs.

TREASURE LAKE PROP OWNERS

No. 869 2001 CD

CUSTODIAN OF RECORDS FOR: **DR MICHAEL GUILIANI**

ANY AND ALL OFFICE RECORDS, INCLUDING NOTES, CORRESPONDENCE, MEMORANDA, X-RAY REPORTS, HISTORY NOTES, INDEX CARDS AND ANY OTHER INFORMATION RELATING TO ANY EXAMINATION OR TREATMENT RENDERED TO:

NAME: KERRI L BERGMAN  
ADDRESS: 1399 TREASURE LAKE DUBOIS PA  
DATE OF BIRTH: 01/22/65  
SSAN: 198603235

ALL RECORDS FROM AS FAR BACK AS RETAINED TO PRESENT.

**CERTIFIED PHOTOCOPIES WILL BE ACCEPTED IN LIEU OF YOUR PERSONAL APPEARANCE.**

-----

### RECORD CUSTODIAN - COMPLETE AND RETURN

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RECORDS       PATIENT BILLING

X-RAYS       RECORDS / XRAYS have been destroyed

Date \_\_\_\_\_

Authorized signature for  
**DR MICHAEL GUILIANI**

CLEARFIELD  
M276751-08

\*\*\* SIGN AND RETURN THIS PAGE \*\*\*

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Kerri L. Bergman  
Harry Bergman Jr.  
Plaintiff(s)

Vs.

Treasure Lake Prop Owners Assoc.  
Defendant(s)

\*

\*

No. 2001-00869-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE  
4009.22

TO: Dr Michael Giuliani 3601 Fifth Avenue Pittsburgh PA 15213

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

MEDICAL LEGAL REPRODUCTIONS, INC 4940 DISSTON ST PHILA PA 19135

(Address)

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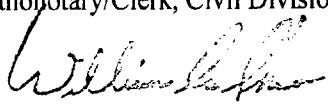
THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Darryl R Smith, Esquire  
ADDRESS: 811 University Dr  
State College, PA 16801

TELEPHONE: 215-335-3212  
SUPREME COURT ID # 869-2001  
ATTORNEY FOR: Treasure Lake Prop

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division



Deputy

DATE: Monday, July 09, 2001

Seal of the Court

## ADDENDUM TO SUBPOENA

KERRY & HARRY BERGMAN JR

Vs.

TREASURE LAKE PROP OWNERS

No. 869 2001 CD

CUSTODIAN OF RECORDS FOR: **DR SUSAN BASER**

ANY AND ALL OFFICE RECORDS, INCLUDING NOTES, CORRESPONDENCE, MEMORANDA, X-RAY REPORTS, HISTORY NOTES, INDEX CARDS AND ANY OTHER INFORMATION RELATING TO ANY EXAMINATION OR TREATMENT RENDERED TO:

NAME: KERRI L BERGMAN  
ADDRESS: 1399 TREASURE LAKE DUBOIS PA  
DATE OF BIRTH: 01/22/65  
SSAN: 198603235

ALL RECORDS FROM AS FAR BACK AS RETAINED TO PRESENT.

CERTIFIED PHOTOCOPIES WILL BE ACCEPTED IN LIEU OF YOUR PERSONAL APPEARANCE.

-----

### RECORD CUSTODIAN - COMPLETE AND RETURN

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RECORDS       PATIENT BILLING

X-RAYS       RECORDS / XRAYS have been destroyed

Date

Authorized signature for  
DR SUSAN BASER

CLEARFIELD  
M276751-09

\*\*\* SIGN AND RETURN THIS PAGE \*\*\*

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Kerri L. Bergman

Harry Bergman Jr.

Plaintiff(s)

Vs.

\*

No. 2001-00869-CD

Treasure Lake Prop Owners Assoc.

\*

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE  
4009.22

TO: Dr Susan Baser Allegheny Gen Hosp, 420 E North Ave Pittsburgh PA  
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

MEDICAL LEGAL REPRODUCTIONS, INC 4940 DISSTON ST PHILA PA 19135

(Address)

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NAME: Darryl R Smith, Esquire

ADDRESS: 811 University Dr

State College, PA 16801

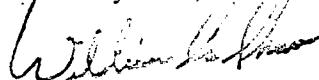
TELEPHONE: 215-335-3212

SUPREME COURT ID # 869-2001

ATTORNEY FOR: Treasure Lake Prop

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division



Deputy

DATE: Monday, July 09, 2001

Seal of the Court

## ADDENDUM TO SUBPOENA

KERRY & HARRY BERGMAN JR

Vs.

TREASURE LAKE PROP OWNERS

No. 869 2001 CD

CUSTODIAN OF RECORDS FOR: **DR ROBERT ARMSTRONG**

ANY AND ALL OFFICE RECORDS, INCLUDING NOTES, CORRESPONDENCE, MEMORANDA, X-RAY REPORTS, HISTORY NOTES, INDEX CARDS AND ANY OTHER INFORMATION RELATING TO ANY EXAMINATION OR TREATMENT RENDERED TO:

NAME: KERRI L BERGMAN  
ADDRESS: 1399 TREASURE LAKE DUBOIS PA  
DATE OF BIRTH: 01/22/65  
SSAN: 198603235

ALL RECORDS FROM AS FAR BACK AS RETAINED TO PRESENT.

**CERTIFIED PHOTOCOPIES WILL BE ACCEPTED IN LIEU OF YOUR PERSONAL APPEARANCE.**

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### RECORD CUSTODIAN - COMPLETE AND RETURN

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RECORDS       PATIENT BILLING

X-RAYS       RECORDS / XRAYS have been destroyed

Date

Authorized signature for  
DR ROBERT ARMSTRONG

CLEARFIELD  
M276751-10

\*\*\* SIGN AND RETURN THIS PAGE \*\*\*

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Kerri L. Bergman

Harry Bergman Jr.

Plaintiff(s)

Vs.

\*

No. 2001-00869-CD

Treasure Lake Prop Owners Assoc.

\*

Defendant(s)

\*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE  
4009.22

TO: Dr Robert Armstrong West Penn Orthopedics RR 3 Clarion PA  
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce  
the following documents or things:

MEDICAL LEGAL REPRODUCTIONS, INC 4940 DISSTON ST PHILA PA 19135

(Address)

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subpoena, together with the certificate of compliance, to the party making this request at the address  
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THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Darryl R Smith, Esquire  
ADDRESS: 811 University Dr  
State College, PA 16801

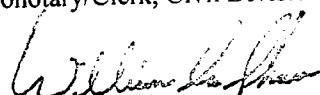
TELEPHONE: 215-335-3212

SUPREME COURT ID # 869-2001

ATTORNEY FOR: Treasure Lake Prop

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division



Deputy

DATE: Monday, July 09, 2001

Seal of the Court

## ADDENDUM TO SUBPOENA

KERRY & HARRY BERGMAN JR

vs.

TREASURE LAKE PROP OWNERS

No. 869 2001 CD

CUSTODIAN OF RECORDS FOR: STATE FARM INS CO

ANY AND ALL RECORDS, MEDICAL AND OR ACCIDENT CORRESPONDENCE, NOTES, RECEIPTS, BILLS, ETC., AND ANY OTHER INFORMATION PERTAINING TO:

NAME: KERRI L BERGMAN  
ADDRESS: 1399 TREASURE LAKE DUBOIS PA  
DATE OF BIRTH: 01/22/65  
SSAN: 198603235

ALL FIRST AND THIRD PARTY RECORDS.  
MVA OF JUNE 4, 1999

ALL FEES MUST BE APPROVED PRIOR TO RECORDS BEING FORWARDED.

-----

### RECORD CUSTODIAN - COMPLETE AND RETURN

**RECORDS ARE ATTACHED HERETO:** I hereby certify as custodian of records that, to the best of my knowledge, information and belief all documents or things above mentioned have been produced.

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RECORDS       PATIENT BILLING

X-RAYS       RECORDS / XRAYS have been destroyed

Date

Authorized signature for  
STATE FARM INS CO

CLEARFIELD  
M276751-11

\*\*\* SIGN AND RETURN THIS PAGE \*\*\*

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Kerri L. Bergman  
Harry Bergman Jr.  
Plaintiff(s)

Vs.  
Treasure Lake Prop Owners Assoc.  
Defendant(s)

No. 2001-00869-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE  
4009.22

TO: STATE FARM INS CO RD 3 Box 162 CLARION PA  
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce  
the following documents or things:  
MEDICAL LEGAL REPRODUCTIONS, INC 4940 DISSTON ST PHILA PA 19135

(Address)

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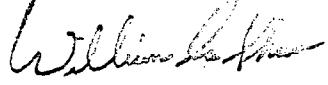
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TELEPHONE: 215-335-3212  
SUPREME COURT ID # 869-2001  
ATTORNEY FOR: Treasure Lake Prop

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

  
Deputy

DATE: Monday, July 09, 2001  
Seal of the Court

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Kerri L. Bergman

Harry Bergman Jr.

Plaintiff(s)

Vs.

\*

No. 2001-00869-CD

Treasure Lake Prop Owners Assoc.

\*

Defendant(s)

\*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE  
4009.22

TO: PRUDENTIAL INS CO 520 BRAOD HOLLOW RD MELVILLE NY 11747-3678  
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

MEDICAL LEGAL REPRODUCTIONS, INC 4940 DISSTON ST PHILA PA 19135

(Address)

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NAME: Darryl R Smith, Esquire

ADDRESS: 811 University Dr  
State College, PA 16801

TELEPHONE: 215-335-3212

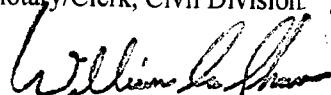
SUPREME COURT ID # 869-2001

ATTORNEY FOR: Treasure Lake Prop

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



Deputy

DATE: Monday, July 09, 2001

Seal of the Court

## ADDEDUM TO SUBPOENA

KERRY & HARRY BERGMAN JR

Vs.

TREASURE LAKE PROP OWNERS

No. 869 2001 CD

CUSTODIAN OF RECORDS FOR: PRUDENTIAL INS CO

ANY AND ALL RECORDS, MEDICAL AND OR ACCIDENT CORRESPONDENCE, NOTES, RECEIPTS, BILLS, ETC., AND ANY OTHER INFORMATION PERTAINING TO:

NAME: KERRI L BERGMAN  
ADDRESS: 1399 TREASURE LAKE DUBOIS PA  
DATE OF BIRTH: 01/22/65  
SSAN: 198603235

ALL FIRST AND THIRD PARTY RECORDS.  
MVA OF JUNE 4, 1999

ALL FEES MUST BE APPROVED PRIOR TO RECORDS BEING FORWARDED.

---

### RECORD CUSTODIAN - COMPLETE AND RETURN

[ ] **RECORDS ARE ATTACHED HERETO:** I hereby certify as custodian of records that, to the best of my knowledge, information and belief all documents or things above mentioned have been produced.

[ ] **NO DOCUMENTS AVAILABLE:** I hereby certify that a thorough search has been made and that no record of the following documents have been located (CHECK THE APPROPRIATE BOX):

( ) RECORDS

( ) PATIENT BILLING

( ) X-RAYS

( ) RECORDS / XRAYS have been destroyed

Date

Authorized signature for  
PRUDENTIAL INS CO

CLEARFIELD  
M276751-12

\*\*\* SIGN AND RETURN THIS PAGE \*\*\*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,

Plaintiffs, : No. 869 - 2001 - C.D.  
vs. : Type of Case: Civil  
TREASURE LAKE PROPERTY : Type of Pleading:  
OWNERS ASSOCIATION, : DEFENDANT'S REPLY TO  
Defendant. : PLAINTIFFS' BRIEF IN OPPOSITION  
: TO PRELIMINARY OBJECTIONS TO  
: PLAINTIFFS' COMPLAINT  
: Filed on Behalf of: DEFENDANT  
: Counsel of record for this Party:  
: Darryl R. Slimak, Esquire  
: Supreme Court No. 41695  
: Richard K. Laws, Esquire  
: Supreme Court No. 82639  
: McQUAIDE, BLASKO, SCHWARTZ,  
: FLEMING & FAULKNER, INC.  
: 811 University Drive  
: State College, PA 16801  
: (814) 238-4926

**FILED**

AUG 27 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY W. BERGMAN, JR.,

Plaintiffs, : No. 869 - 2001 - C.D.

vs. :

TREASURE LAKE PROPERTY  
OWNERS' ASSOCIATION, : JURY TRIAL DEMANDED

Defendants. :

**DEFENDANT'S REPLY TO PLAINTIFFS' BRIEF IN OPPOSITION TO  
PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT**

AND NOW comes Defendant, Treasure Lake Property Owners' Association, by and through its Attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and files the within Reply to Plaintiffs' Brief in Opposition, as follows:

**I. The Plaintiffs' Complaint Must Be Dismissed Where, at the Time of the Incident  
Alleged, The Plaintiffs Were Members of the Association Which They Presently  
Seek to Sue.**

It is the Defendant's contention that the Plaintiffs are precluded from proceeding with the instant negligence action because they were both "members" of the Treasure Lake Property Owners' Association at the time of the incident alleged. In this regard, it is Defendant's position that the present claim is barred, as a matter of law, because any negligence found on the part of the Defendant Association will be legally imputed upon the Plaintiffs. See Defendant's Brief in Support at p. 3. Without citation to any substantive legal authority whatsoever, Plaintiffs merely contend, within their Brief in Opposition, that, because the Defendant was an "incorporated association" at the time of the underlying incident, the legal authority advanced in support of

Defendant's position is distinguishable, thus permitting their claim to proceed.<sup>1</sup> Also, reference is made to several Rules of Civil Procedure, which are, presumably, argued to support Plaintiffs' position. Tellingly, however, **Plaintiffs utterly fail to cite even one case suggesting that there is some legal distinction between "associations" which are or are not "incorporated."**

First, any resort to the Rules of Civil Procedure to avoid the substantive legal authority advanced within Defendant's Preliminary Objections and Brief in Support is completely misplaced. Specifically, Plaintiffs make citation to Rules of Civil Procedure 2154 and 2178 within their Brief in Opposition, which when read at first blush, seem to confer authority upon Plaintiffs to proceed with the present case. However, when applying Rules of Civil Procedure to situations such as the present, it must be reminded that, while the Supreme Court has been vested with "the power to prescribe general rules governing practice and procedure" such rules "must be consistent with the Pennsylvania Constitution" and must "neither abridge, enlarge nor modify the *substantive rights* of any litigant...." See Const. art. 5, § 10(c)(emphasis added). In this regard, the discussion within *procedural* Rules 2154 and 2178, which generally covers the area of lawsuits between corporations and their members, must give way to the *substantive* legal authority cited within Defendant's Brief, which requires dismissal of this action. See Svetik v. Svetik, 377 Pa.Super. 496, 547 A.2d 794, 796-97 (1988)(discussing the interplay between the Rules of Civil Procedure and substantive case law and recognizing, for example, that the

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<sup>1</sup> For purposes of completeness, the Association of which Plaintiffs are themselves members is registered as a "Pennsylvania Non-Profit Corporation," which is organized to "promote the community welfare of the Treasure Lake Property Owners," who are the exclusive "regular members" of the organization, per the document attached to Plaintiffs' Brief in Opposition as Exhibit "A." Per 15 Pa.C.S.A. §102, et. seq., (the "Associations Code"), "Associations" are inclusive of corporations, partnerships, or two or more persons "associated in a common enterprise or undertaking."

promulgation of Rule 2129 (governing actions between partnerships and partners) did not in any way alter the common law which precluded partners from suing the partnership in tort).

In light of the foregoing, and in turning to the substantive law in this area, Plaintiffs have merely attempted to distinguish the legal authority cited within Defendant's Brief on the basis that the cases discussed therein deal principally with the preclusion of tort actions brought by members of *unincorporated* associations against the association itself. The Defendant submits that the Plaintiffs' argument is overly simplistic and ignores the long-standing policy notions supporting the cases that have been submitted in support of Defendant's position.

Perhaps the case to provide the most extensive analysis of the law supporting Defendant's position is Plasterer v. Paine, 375 Pa.Super. 407, 544 A.2d 985 (1988). In Plasterer, the Superior Court recognized the well settled rule that "members of unincorporated associations may not recover from such associations in tort, since any negligence of the association or its members is legally imputed to all of its members." Id. 544 A.2d at 987-88. Significantly, the Court did **not** focus so narrowly on the legal fiction created (whether the association was incorporated or not), but, instead, looked to whether the members of the association at issue could be said to be "engaged in a joint enterprise" so as render the "negligence of each member engaged in the prosecution of that enterprise imputable to each and every other member." Id. If the answer to the foregoing question is in the affirmative, the Court held, in no uncertain terms, that a negligence and/or tort action may not proceed. Id.

In this regard, the Plasterer Court cited to the early Supreme Court decision in De Villars v. Hessler, 363 Pa. 498, 70 A.2d 333 (1950), to further define the rule of law cited above. In De Villars, the plaintiff had been a member of an unincorporated fraternal association which operated a food concession stand at the county fair. When helping with the preparation of food,

the plaintiff was injured when a propane gas steam table exploded causing injuries. The plaintiff sued the association, its officers and several of its members, but the trial court entered judgment on the pleadings for the defendants, and the Supreme Court affirmed, reasoning as follows:

*“Being thus cooperatively engaged with those who were allegedly guilty of negligence she became subject to the legal principle that where persons join in the prosecution of a common enterprise there is thereby created a mutual relationship of agency among them, with the result that the negligence of any of them is imputed to each and all of them. Since, therefore, the negligence of which she complains is legally imputed to herself, she cannot recover from the association or from any of its members, other than, as already stated, the individuals who actually committed the tort which caused her injuries.”*

See Plasterer, 544 A.2d at 987 (citing De Villars, supra, 70 A.2d at 335)(emphasis added); see also Bowser v. Hershey Baseball Assoc., 357 Pa.Super. 435, 516 A.2d 61, 63 (1986)(holding that member of an unincorporated, non-profit association was precluded from bringing tort claim against the association where a member was not a “client, customer or invitee of the association,” but, instead, was one of the “joint entrepreneurs” of the association and was actively engaged in organizing and conducting the activity at issue). Significantly, arguments attempting to carve out exceptions among “active” and “passive” memberships in the association at issue have also been rejected by the Appellate Courts. See Plasterer, supra; Zehner v. Wilkinson Methodist Church, 587 A.2d 1388, 1389 (1990)(recognizing that the rule argued above is not based on the members status on the premises at any given moment, but, instead, their membership in the association).

The point to be made by the cases cited above is that the Appellate Courts have not engaged in a game of semantics when applying the rule of claim preclusion between associations and their members. To the contrary, the courts have looked beyond legal fictions to determine whether the parties can be said to have been “engaged in a joint or common enterprise” so as to “create a mutual relationship of agency among them” resulting in the negligence of one being

imputed to whole. See Plasterer, De Villars, and Bowser, supra. As the above quotation from De Villars and Plasterer makes clear, the fact of incorporated or unincorporated status of the association is not important, but rather, it is the fact of the entity being an “association” which is a group of persons joined in a common enterprise (herein to run their common pool, etc.).

Indeed, this point is illustrated by the decision in Svetik v. Svetik, supra, where the Superior Court cited Bowser and Plasterer with approval and **extended** the rule established therein to preclude a **partner** from maintaining an action against his **partnership** for injuries he sustained **on the partnership property**. See Svetik, 547 A.2d at 799-800.<sup>2</sup> In this regard, it is particularly dispositive herein that, although the Defendant Association was incorporated at the time of the incident alleged, it was organized as a **non-profit corporation, which existed for the exclusive benefit of members of the Treasure Lake Property Owners' Association, including Plaintiffs herein.** See Exhibit “A,” attached to Plaintiff’s Brief in Opposition. There is thus no question that Plaintiffs were both “members” of their own Association at the time of the incident alleged, and as such, were themselves engaged in the “joint or common enterprise” of maintaining and/or promoting the very Association which they presently seek to sue regarding maintenance of their own commonly held pool facility! See also Plasterer and Zehner, supra (holding that being an active versus passive member of the association is a distinction without a difference in fact). The cases cited within Defendant’s Brief in Support, as well as herein, simply preclude the Plaintiffs from proceeding in the face of the “mutual agency relationship” that was in place during the time at issue with respect to the responsibility for the pool facilities which

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<sup>2</sup> As Duquesne Light v. Roberts, 661 A.2d 9 (Pa.Super. 1995) demonstrates, the significance of incorporating an unincorporated association is to limit the associations’ members from unlimited liability **to third persons** outside of the association membership.

Plaintiffs themselves own in common with the other property owner members of the Association.

Thus, Defendant Association, again, respectfully requests this Honorable Court to grant its demurrer to Plaintiffs' Complaint and dismiss it from this lawsuit, with prejudice.<sup>3</sup>

## **II. Conclusion**

For the reasons set forth herein, as well as those within Defendant's Preliminary Objections and Brief in Support, it is respectfully requested that this Honorable Court grant the relief requested by Defendant, Treasure Lake Property Owners' Association, and in doing so, issue an Order dismissing Plaintiffs' Complaint, with prejudice.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By: 

Darryl R. Slimak  
Richard K. Laws  
Attorneys for Defendant  
Treasure Lake Property Owners Association  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: 8/24/01

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<sup>3</sup> In the event that it becomes necessary to consider the Defendant's remaining Preliminary Objection, the Plaintiffs have conceded that the Complaint does not seek to set forth a claim for Negligent Infliction of Emotional Distress, and the Defendant thus requests that an Order be entered in accordance with that previously submitted in this regard.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY W. BERGMAN, JR.,

Plaintiffs, : No. 869 - 2001 - C.D.

vs. :

TREASURE LAKE PROPERTY  
OWNERS' ASSOCIATION, :

Defendants. :

JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Defendant's Reply to Plaintiffs' Brief in Opposition to Preliminary Objections to Plaintiffs' Complaint in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 24<sup>th</sup> day of August, 2001, to the attorney(s) of record:

Paul E. Cherry, Esquire  
Cherry & Cherry  
23 East Park Avenue  
DuBois, PA 15801

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By: 

Darryl R. Slimak

Richard K. Laws

Attorneys for Defendant

Treasure Lake Property Owners' Assoc.

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

FILED

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William A. Shaw  
Prothonotary  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.

-vs-

No. 01-869-CD

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION

**OPINION AND ORDER**

Kerri L. Bergman, Plaintiff above-named, has filed a Complaint seeking to recover money damages from Defendant alleging that on June 8, 1999, she was injured when the swimming pool ladder at the Treasure Lake Country Club swimming pool, owned and operated by Defendant, detached from the side of said pool causing Plaintiff's injuries.

Plaintiff further alleges in her Complaint that the accident occurred as a result of the negligence of the Defendant in maintaining the swimming pool ladder. Plaintiff, Harry Bergman, Jr., husband of Kerri L. Bergman, seeks, in Count 2 of said Complaint, to recover damages for loss of consortium, disruption of daily habits and loss of enjoyment of life.

Defendant has filed Preliminary Objections in the nature of a Demurrer/Motion to Strike the Complaint and this Court does herein grant said Preliminary Objections.

As averred in the Complaint, Plaintiffs Kerri L. Bergman and Harry Bergman, Jr., are members in good standing of the Defendant Treasure Lake Property Owners Association and Defendant seeks to strike the Complaint claiming that Plaintiffs, as members of Defendant Association, cannot file a cause of action for negligence against Defendant due to the fact that the negligence of which Plaintiffs' complain is legally imputed to them as

**FILED** members of Defendant Association and in support of said argument, Defendant cites Plasterer

OCT 3 1981 375 Pa. Super. 407, 544 A.2d 985 (1988) wherein the Superior Court held that the

A. Shaw  
Notary



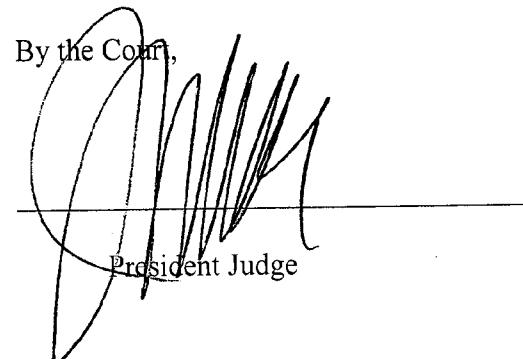
Plaintiff's case must fail since the negligence of the Defendant and its officers is imputed to its members. Moreover, the Court made no distinction between passive and active members.

Plaintiffs argue in their brief that Plasterer v. Paine, id, and other cases which have addressed the issue apply only to unincorporated associations and due to the fact that Defendant is a corporation, Plaintiffs should be permitted to proceed. Plaintiffs, however, offer no authority for this argument and this Court is not persuaded that the distinction between an unincorporated association and a corporation should be such that the rationale of Plasterer v. Paine, id, should not apply here and will therefore grant Defendant's Preliminary Objection and strike Plaintiffs' Complaint. In view of this, it will not be necessary to discuss Defendant's alternative objection.

WHEREFORE, the Court enters the following:

**ORDER**

NOW, this 30<sup>th</sup> day of October, 2001, upon consideration of Preliminary Objections in the Nature of a Demurrer/Motion to Strike Plaintiffs' Complaint, and argument and briefs thereon, this Court does grant said Preliminary Objections in accordance with the foregoing Opinion and does strike Plaintiffs' Complaint with prejudice.

By the Court,  
  
President Judge

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William A. Shaw - City Surveyor

Prothonotary

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1996-1997

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

BERGMAN

Vs.

TREASURE LAKE PROP OWNERS

NO. 869 2001 CD

**CERTIFICATE**

**PREREQUISITE TO SERVICE OF A SUBPOENA**

**PURSUANT TO RULE 4009.22**

As a prerequisite to service of a subpoena(s) for documents and things pursuant to Rule 4009.22 RICHARD LAWS, ESQUIRE certifies that:

1. A Notice of Intent to Serve the Subpoena(s) with a copy of the subpoena(s) attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena(s) is sought to be served,
2. A copy of the Notice of Intent, including the proposed subpoena(s) is attached to this certificate,
3. No objection to the subpoena(s) has been received, and
4. The subpoena(s) which will be served is identical to the subpoena(s) which is attached to the Notice of Intent to Serve the Subpoena(s).

Date: 10/23/01

RICHARD LAWS, ESQUIRE  
MCQUAIDE BLASKO LAW OFFICE  
811 UNIVERSITY DRIVE  
STATE COLLEGE, PA 16801  
814-235-2240  
ATTORNEY FOR DEFENDANT

**INQUIRIES SHOULD BE ADDRESSED TO:**

MEDICAL LEGAL REPRODUCTIONS, INC.  
4940 DISSTON STREET  
PHILADELPHIA PA 19135  
(215) 335-3581

By: Mercedes Feeney

**FILED**

NOV 01 2001  
M 11/03/01  
W. A. Shaw  
Notary

File #: M279519

AS

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY**

BERGMAN

Vs.

TREASURE LAKE PROP OWNERS

No. 869 2001 CD

TO: PAUL CHERRY

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE  
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

DEFENDANT intends to serve a subpoena(s) identical to the one(s) attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

Date: 10/2/01

RICHARD LAWS, ESQUIRE  
MCQUAIDE BLASKO LAW OFFICE  
811 UNIVERSITY DRIVE  
STATE COLLEGE, PA 16801  
ATTORNEY FOR DEFENDANT

**INQUIRIES SHOULD BE ADDRESSED TO:**

MEDICAL LEGAL REPRODUCTIONS, INC.  
4940 DISSTON STREET  
PHILADELPHIA, PA 19135  
(215) 335-3581

By: **Mercedes Feeney**

Enc(s): Copy of subpoena(s)  
Counsel return card  
File #: **M279519**

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Kerri L. Bergman

Harry Bergman Jr.

Plaintiff(s)

Vs.

\*

No. 2001-00869-CD

Treasure Lake Prop Owners Assoc.

\*

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE  
4009.22

TO: STATE FARM INS CO

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

**\*\*SEE ATTACHED ADDENDUM\*\***

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: RICHARD LAWS, ESQ  
ADDRESS: 811 UNIVERSITY DR  
STATE COLLEGE PA 16801  
TELEPHONE: (215) 335-3212  
SUPREME COURT ID #: DEFENDANT  
ATTORNEY FOR:

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Friday, September 28, 2001

Seal of the Court

Deputy

## ADDENDUM TO SUBPOENA

BERGMAN

vs.

TREASURE LAKE PROP OWNERS

No. 869 2001 CD

CUSTODIAN OF RECORDS FOR: STATE FARM INS CO

ANY AND ALL RECORDS, MEDICAL AND OR ACCIDENT CORRESPONDENCE, NOTES, RECEIPTS, BILLS, ETC., AND ANY OTHER INFORMATION PERTAINING TO:

NAME: KERRI L BERGMAN  
ADDRESS: 1399 TREASURE LAKE DUBOIS PA  
DATE OF BIRTH: 01/22/65  
SSAN: 198603235

FIRST PARTY FILE FROM AUTOMOBILE ACCIDENT OF JUNE 4, 1999,  
INCLUDING MEDICAL RECORDS, ALL PAYMENTS MADE, ETC.

ALL FEES MUST BE APPROVED PRIOR TO RECORDS BEING FORWARDED.

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### RECORD CUSTODIAN - COMPLETE AND RETURN

**RECORDS ARE ATTACHED HERETO:** I hereby certify as custodian of records that, to the best of my knowledge, information and belief all documents or things above mentioned have been produced.

**NO DOCUMENTS AVAILABLE:** I hereby certify that a thorough search has been made and that no record of the following documents have been located (CHECK THE APPROPRIATE BOX):

RECORDS       PATIENT BILLING  
 X-RAYS       RECORDS / XRAYS have been destroyed

Date \_\_\_\_\_

Authorized signature for  
STATE FARM INS CO

CLEARFIELD  
M279519-01

\*\*\* SIGN AND RETURN THIS PAGE \*\*\*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,  
Plaintiffs

vs.

TREASURE LAKE PROPERTY  
OWNERS' ASSOCIATION,  
Defendant

: No. 869 - 2001 - C.D.  
: Type of Case: CIVIL  
: Type of Pleading: NOTICE OF APPEAL  
: Filed on Behalf of: PLAINTIFFS  
: Counsel of Record for This Party:  
: PAUL E. CHERRY, ESQUIRE  
: Supreme Court No. 42945  
: CHERRY & CHERRY  
: 23 East Park Avenue  
: DuBois, PA 15801  
: (814) 371-3288

FILED

NOV 19 2001

William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,  
Plaintiffs

vs.

No. 869 - 2001 - C.D.

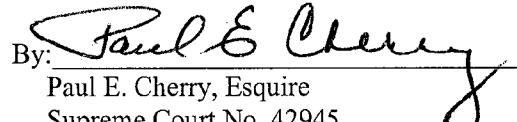
TREASURE LAKE PROPERTY  
OWNERS' ASSOCIATION,  
Defendants

NOTICE OF APPEAL

Notice is hereby given that KERRI L. BERGMAN and HARRY BERGMAN, JR., Plaintiffs above named, hereby appeal to the Superior Court of Pennsylvania from the Opinion and Order entered in this matter on the 30<sup>th</sup> day of October, 2001. This Opinion and Order has been entered in the docket as evidenced by the attached copy of the docket entry.

Respectfully submitted,

CHERRY & CHERRY

By: 

Paul E. Cherry, Esquire  
Supreme Court No. 42945  
Cherry & Cherry  
23 East Park Avenue  
DuBois, PA 15801  
(814) 371-3288  
Attorney for the Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,  
Plaintiffs

vs.

No. 869 - 2001 - C.D.

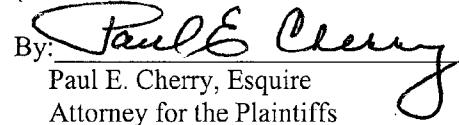
TREASURE LAKE PROPERTY  
OWNERS' ASSOCIATION,  
Defendants

ORDER FOR TRANSCRIPT

A notice of appeal having been filed in this matter, the official court reporter is hereby ordered to produce, certify, and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

Respectfully submitted,

CHERRY & CHERRY

By:   
Paul E. Cherry, Esquire  
Attorney for the Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

KERRI L. BERGMAN and	:
HARRY BERGMAN, JR.,	:
Plaintiffs	:
vs.	:
	No. 869 - 2001 - C.D.
TREASURE LAKE PROPERTY	:
OWNERS' ASSOCIATION,	:
Defendants	:

PROOF OF SERVICE OF NOTICE OF APPEAL

I hereby certify that I am this day serving copies of the foregoing notice of appeal, docket entries, order for transcript and this proof of service on the following persons in the manner indicated below:

Service by first class mail addressed as follows:

William A. Shaw, Prothonotary  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

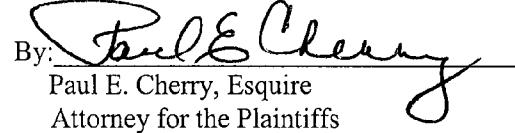
The Honorable John K. Reilly, Jr., President Judge  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

Clearfield County Court Reporter's Office  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

Darryl R. Slimak, Esquire  
McQuaide Blasko  
811 University Drive  
State College, PA 16801-6699

Respectfully submitted,

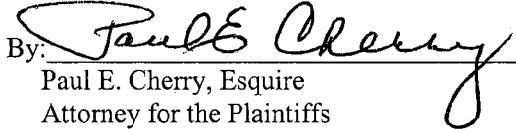
CHERRY & CHERRY

By:   
Paul E. Cherry, Esquire  
Attorney for the Plaintiffs

I understand that any false statements herein are made subject to the penalties of 18 Pa. Cons. Stat. Section 4904 (relating to unsworn falsification to authorities).

Dated: November 16, 2001

CHERRY & CHERRY

By:   
Paul E. Cherry, Esquire  
Attorney for the Plaintiffs

e: 11/16/2001

User: JKENDRICK

e: 01:37 PM

C field County Court of Common Pleas

ROA Report

Case: 2001-00869-CD

Current Judge: John K. Reilly Jr.

Kerri L. Bergman, Harry Bergman Jr. vs. Treasure Lake Prop Owners Assoc.

Civil Other

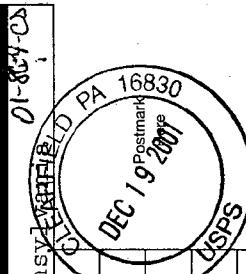
Date	Judge	
06/06/2001	Filing: Civil Complaint Paid by: Cherry, Paul E. (attorney for Bergman, Harry Jr.) Receipt number: 1826386 Dated: 06/06/2001 Amount: \$80.00 (Check) Two CC Attorney Cherry	No Judge
06/13/2001	Sheriff Returns, Complaint on Treasure Lake Property Owners Assoc., filed. s/Chester A. Hawkins by Marilyn Hamm \$38.22 Shff Hawkins paid by Attorney	No Judge
06/22/2001	Entry of Appearance on behalf of the Defendant. Filed by s/Darryl R. Slimak, Esq. Certificate of Service no cc Preliminary Objections to Plaintiffs' Complaint. Filed by s/Darryl R. Slimak, No Judge Esq. no cc	No Judge
07/23/2001	Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22. Filed by Darryl R. Slimak, Esq. no cc	John K. Reilly Jr.
08/27/2001	Defendant's Reply to Plaintiffs' Brief In Opposition to Preliminary Objections John K. Reilly Jr. to Plaintiffs' Complaint. Filed by s/Darryl R. Slimak, Esq. Cert of Svc no cc	John K. Reilly Jr.
09/28/2001	Filing: Subpoena Paid by: Medical Legal Reproductions, Inc. Receipt number: 1831903 Dated: 09/28/2001 Amount: \$3.00 (Check)	John K. Reilly Jr.
10/31/2001	Opinion and Order, Now, this 30th day of Oct. 2001, upon consideration of John K. Reilly Jr. P.O.'s in the Nature of a Demurrer/Motion to Strike Plaintiffs' Complaint, and argument and briefs thereon, this Court does grant said P.O.'s in accordance with the foregoing Opinion and does strike Plaintiffs' Complaint with Prejudice. by the Court, s/JKR, JR., P.J. 1 cc Atty Slimak, Atty Cherry	John K. Reilly Jr.
11/01/2001	Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22. s/Richard Laws, Esq. no cc	John K. Reilly Jr.

4/55 - C16  
1 Chart to Superior Court  
William A. Shum  
4/2001  
NOV 19 2001

FILED

Cherry & Cherry  
23 EAST PARK AVENUE  
DUBBOIS, PENNSYLVANIA 15801

<b>U.S. Postal Service CERTIFIED MAIL RECEIPT</b>	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
01-854-03	
Superior Court of Pennsylvania	
Postage	\$ 3.50
Certified Fee	\$ 2.10
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 7.10</b>



Recipient's Name (Please Print Clearly) (to be completed by mailer)

Office of the Prothonotary

Street, Apt. No., or Box No. \_\_\_\_\_

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City, State, ZIP+4 \_\_\_\_\_

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013255 (ms) a  
William A. Shaw  
Prothonotary KOT

Law Offices  
**CHERRY & CHERRY**

**Paul E. Cherry**

—  
**John A. Cherry**  
(1936 - 1992)

**23 East Park Avenue  
Suite #1  
Dubois, PA 15801**

**Tel (814) 371-3288  
Fax (814) 371-8372**

March 21, 2002

01 869. CD ?

David A. Szewczak, Prothonotary  
Superior Court of Pennsylvania  
Western District  
330 Grant Street  
Pittsburgh, PA 15219

**IN RE: BERGMAN, K. v. TREASURE LAKE PROPERTY  
No. 2008 WDA 2001**

Dear Mr. Szewczak:

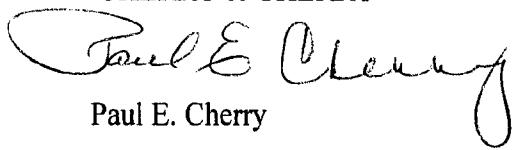
Enclosed please find the original and eight (8) copies of Brief for Appellant to be filed at your earliest convenience to the above-captioned action.

Notice of this filing is being forwarded to Darryl R. Slimak, Esquire, counsel for Appellee, by copy of this letter and a certified copy of the Appellant's Appeal for Extension of Time to File Brief.

Thank you for your consideration. Should you have any questions or desire any additional information, please do not hesitate to contact my office.

Very truly yours,

**CHERRY & CHERRY**

  
Paul E. Cherry

PEC/laf

Enclosures

Cc: Darryl R. Slimak Esquire  
William A. Shaw, Prothonotary ✓  
Honorable John K. Reilly, Jr.  
Harry and Kerri Bergman

IN THE SUPERIOR COURT OF PENNSYLVANIA  
Western District

ERGMAN, K. v. TREASURE LAKE PROPERTY : SUPERIOR COURT DOCKET NO.  
: 2008 WDA 2001

---

BRIEF FOR APPELLANT

---

Appeal from the Opinion and Order rendered on October 30, 2001, by the Court of Common  
Please of Clearfield County, Pennsylvania, Orphans' Court Division to No. 01 - 869 - CD.

Paul E. Cherry, Esquire  
CHERRY & CHERRY  
23 East Park Avenue  
DuBois, Pennsylvania 15801  
(814) 371-3288

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**STATEMENT OF JURISDICTION**

The Jurisdiction of your Honorable Court is invoked pursuant to 42 Pa. C.S.A. Section 742 (Appeals from Court of Common Pleas) whereby the Appellant by timely Notice of Appeal filed November 30, 2001, entered an Appeal from the Opinion and Order dated October 30, 2001, rendered by the Court of Common Pleas of Clearfield County, Civil Division to No. 01 – 869 – CD.

**STATEMENT OF QUESTIONS INVOLVED**

1. Whether the Court erred in granting Appellee's Preliminary Objections where Appellee is an incorporated association and only asserted that because member of an unincorporated association cannot recover damages for personal injuries, neither should a member of an incorporated association?
2. Did the trial court err in striking Appellant's Complaint with prejudice where there are issues which are not clear and free from doubt?

### **STATEMENT OF THE CASE**

Appellants initiated the present action by filing a Complaint on June 6, 2001, which alleged that on June 8, 1999, Appellant, KERRI L. BERGMAN, was seriously injured when a swimming pool ladder located at the Treasure Lake Country Club swimming pool, became detached from the side of the swimming pool and twisted, causing Appellant, KERRI L. BERGMAN, to loss her balance and fall straddling the ladder due to the negligence, carelessness, indifference and reckless disregard of Appellee. Appellant, HARRY W. BERGMAN, JR., alleged a cause of action for loss of consortium as a result of his wife's injuries.

On or about June 21, 2001, Appellee filed Preliminary Objections to Appellants' Complaint and their Brief in Support of Appellee's Preliminary Objections.

On or about August 20, 2001, Appellants filed their Brief in Opposition to Preliminary Objections.

Following Argument which was held on October 1, 2001, the Court entered an Order and Opinion which granted Appellee's Preliminary Objections and struck Appellants' Complaint with Prejudice.

On November 20, 2001, Appellant filed a Notice of Appeal and Order for Transcript.

### **SUMMARY OF ARGUMENT**

Appellants first argue that the Court of Common Pleas erred in granting Appellee's Preliminary Objections and dismissing Appellants' Complaint with prejudice where Appellee is an incorporated planned community association and only asserted that because a member of an unincorporated association cannot recover damages for personal injuries, neither should a member of an incorporated planned community association.

Appellants next argue that the Court erred in striking Appellant's Complaint with prejudice where there are issues which are not clear and free from doubt.

## **ARGUMENT**

**1. Did the Court of Common Pleas err in granting Appellee's Preliminary Objections where Appellee is an incorporated planned community association and only asserted that because a member of an unincorporated association cannot recover damages for personal injuries, neither should a member of an incorporated planned community association.**

Appellee's Preliminary Objections relied solely on their assertion that Appellants, as unit owners and members of the Treasure Lake Property Owners' Association, cannot file a cause of action for negligence against Appellee due to the fact that any negligence on the part of the Treasure Lake Property Owners' Association will be imputed upon Appellants.

In support of Appellee's Preliminary Objections, Appellee's Brief only cited Plasterer vs. Paine, 375 Pa.Super. 407, 413, 544 A.2d 985 (1988) and De Villars vs. Hessler, 363 Pa. 498, 501, 70 A.2d 333,335 (1950).

A glance at both of these cases reveals that they pertain to personal injuries sustained by member of *unincorporated associations*.

Appellant has stipulated that Appellee is correct in its assertion that members of an *unincorporated association* cannot recover damages for personal injuries from the association. This is set forth in Pa.R.C.P. No. 2154.

In the case at hand, however, Appellee is an *incorporated planned community association*.

68 Pa.C.S.A. §5311 (a) (4) sets forth:

"A unit owner is not precluded from bringing an action contemplated by this subsection because he is a unit owner or a member or officer of the association.

Clearly, pursuant to 68 Pa.C.S.A. §5311 (a) (4), Appellants are entitled to maintain their cause of action against Appellee.

As such, the Opinion and Order of President Judge John K. Reilly, Jr., dated October 30, 2001, which dismissed Plaintiffs' Complaint with prejudice should be reversed and remanded.

**2. Did the trial court err in striking Appellant's Complaint with prejudice where there are issues which are not clear and free from doubt?**

Pa.R.C.P. §1028(a) (4) sets forth:

"Preliminary objections may be filed by any party to any pleading and are limited to the following grounds: legal sufficiency of a pleading (demurrer).

Appellee filed their Preliminary Objections specifically under a Demurrer/Motion to Strike Count I and II (Negligence of Defendant, Treasure Lake Property Owners' Association) for Failing to State a Claim Upon Which Relief Can Be Granted.

In Cheltenham Tp. Police Ass'n vs. Cheltenham Tp., 152 Pa.Cmwth. 338, 618 A1.2 1234 (1992), the Commonwealth Court citing Capital City Lodge No. 12, Fraternal Order of Police vs. City of Harrisburg, 138 Pa.Commonwealth Ct. 475 , 588 A2.d 584 (1991), set forth:

"Our standard of review when considering preliminary objections in the nature of a demurrer is limited to a review of the allegations set forth in the challenged pleading. We must accept as true all well-pleaded material facts in the complaint and all inferences reasonably drawn therefrom. Since a demurrer tests the legal sufficiency of the complaint, preliminary objections should be sustained and a complaint dismissed only in cases that are clear and free from doubt that the law will not permit recovery by plaintiff."

Appellee's Preliminary Objections relied solely on their assertion that Appellants, as unit owners and members of the Treasure Lake Property Owners' Association, cannot file a cause of action for negligence against Appellee. Appellee's Brief in Support of the Preliminary Objections cited only Plasterer and De Villars which pertain solely to personal injuries sustained by members of *unincorporated associations*.

68 Pa.C.S.A. §5311 (a) (4) sets forth:

"A unit owner is not precluded from bringing an action contemplated by this subsection because he is a unit owner or a member or officer of the association.

Appellants' Complaint clearly shows that Appellants are members of an incorporated planned community association. Pursuant to 68 Pa.C.S.A. §5311 (a) (4), Appellants are not precluded from bringing an action against Appellee.

In Mellon Bank, N.A. vs. Fabinyi, 437 Pa.Super. 559, 650 A.2d 895 (1994), the Superior Court, citing Gekas vs. Shapp, 469 Pa. 1, 364 A.2d 691 (1976), held:

"In order to sustain a demurrer, it is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit a recovery. If there is any doubt, it should be resolved by the overruling of the demurrer." Id. at 899.

In Foflygen vs. R. Zemel, M.D., 420 Pa.Super. 18, 615 A.2d 1345 (1992), appeal denied 535 Pa. 619, 629 A.2d 1380, the Superior Court set forth:

"All material facts set forth in the pleadings as well as all inferences reasonably deducible therefrom are admitted as true for the limited purpose of this review. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it. In reviewing the grant of a demurrer we are not bound by the inferences drawn by the trial court, nor are we bound by its conclusions of law. Furthermore, we will affirm the grant of such a motion only when the moving party's right to succeed is certain and the case is so free from doubt that further proceedings would be clearly fruitless." Id. at 1352.

In granting the Preliminary Objections of Appellee and striking Appellants' Complaint in the instant case, the court relied on the argument of Appellee and the citing of Plasterer and De Villars.

The Court in Mellon, citing International Union of Operating Engineers, Local No. 66 vs. Linesville Construction Company, 457 Pa.220, 322 A.2d 353 (1974), held:

"preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues by a demurrer." Id. at 899

The Court in Foflygen, citing Neff vs. Lasso, 382 Pa.Super. 487, 555 A.2d 1304 (1989), go on to state:

“Finally, ‘novelty of a claim or theory alone, does not compel affirmance.’” Id. at 1352.

Obviously, Appellants are entitled to maintain their cause of action against Appellee.

As such, the Opinion and Order of President Judge John K. Reilly, Jr., dated October 30, 2001, which dismissed Plaintiffs’ Complaint with prejudice should be reversed and remanded.

## **CONCLUSION**

The Court's Opinion and Order which granted Appellee's Preliminary Objections and dismissed Appellant's Complaint with prejudice was incorrect and, therefore, the Opinion and Order of President Judge John K. Reilly, Jr., dated October 30, 2001, should be reversed and remanded.

Respectfully submitted,

CHERRY & CRERRY

By:   
Paul E. Cherry, Esquire  
Attorney for Appellants  
Kerri L. Bergman and Harry Bergman, Jr.

IN THE SUPERIOR COURT OF PENNSYLVANIA  
Western District

BERGMAN, K. v. TREASURE LAKE PROPERTY : SUPERIOR COURT DOCKET NO.  
: 2008 WDA 2001

**PROOF OF SERVICE**

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

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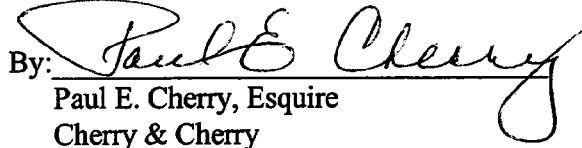
David A. Srewczak, Prothonotary  
Superior Court of Pennsylvania  
1015 Grant Building  
Pittsburgh, PA 15219

William A. Shaw, Prothonotary  
Clearfield County Courthouse  
2<sup>nd</sup> & Market Streets  
Clearfield, PA 16830

Honorable John K. Reilly, Jr.  
President Judge of Courts of Common Pleas of Clearfield County  
Clearfield County Courthouse  
2nd & Market Streets  
Clearfield, PA 16830

Richard K. Laws, Esquire  
McQuaide Blasko  
811 University Drive  
State College, PA 16801  
(Counsel for Appellee)

Dated: March 21, 2002

By:   
Paul E. Cherry, Esquire  
Cherry & Cherry  
23 East Park Avenue  
DuBois, PA 15801  
Of counsel for Appellants  
(814) 371-3288

IN THE SUPERIOR COURT OF PENNSYLVANIA  
Western District

BERGMAN, K. v. TREASURE LAKE PROPERTY : SUPERIOR COURT DOCKET NO.  
: 2008 WDA 2001

01-869-CD

REPRODUCED RECORD

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Appeal from the Opinion and Order rendered on October 30, 2001, by the Court of Common  
Please of Clearfield County, Pennsylvania, Orphans' Court Division to No. 01-869-CD.

Paul E. Cherry, Esquire  
CHERRY & CHERRY  
23 East Park Avenue  
DuBois, Pennsylvania 15801  
(814) 371-3288

**REPRODUCED RECORD**  
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Date: 11/16/2001

Time: 01:37 PM

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Clearfield County Court of Common Pleas

ROA Report

Case: 2001-00869-CD

Current Judge: John K. Reilly Jr.

Kerri L. Bergman, Harry Bergman Jr. vs. Treasure Lake Prop Owners Assoc.

Civil Other

Date	Event Description	Judge
6/06/2001	Filing: Civil Complaint Paid by: Cherry, Paul E. (attorney for Bergman, Harry Jr.) Receipt number: 1826386 Dated: 06/06/2001 Amount: \$80.00 (Check) Two CC Attorney Cherry	No Judge
6/13/2001	Sheriff Returns, Complaint on Treasure Lake Property Owners Assoc., filed. s/Chester A. Hawkins by Marilyn Hamm \$38.22 Shff Hawkins paid by Attorney	No Judge
6/22/2001	Entry of Appearance on behalf of the Defendant. Filed by s/Darryl R. Slimak, Esq. Certificate of Service no cc	No Judge
	Preliminary Objections to Plaintiffs' Complaint. Filed by s/Darryl R. Slimak, Esq. no cc	No Judge
7/23/2001	Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22. Filed by Darryl R. Slimak, Esq. no cc	John K. Reilly Jr.
8/27/2001	Defendant's Reply to Plaintiffs' Brief In Opposition to Preliminary Objections John K. Reilly Jr. to Plaintiffs' Complaint. Filed by s/Darryl R. Slimak, Esq. Cert of Svc no cc	John K. Reilly Jr.
9/28/2001	Filing: Subpoena Paid by: Medical Legal Reproductions, Inc. Receipt number: 1831903 Dated: 09/28/2001 Amount: \$3.00 (Check)	John K. Reilly Jr.
10/31/2001	Opinion and Order, Now, this 30th day of Oct. 2001, upon consideration of John K. Reilly Jr. P.O.'s in the Nature of a Demurrer/Motion to Strike Plaintiffs' Complaint, and argument and briefs thereon, this Court does grant said P.O.'s in accordance with the foregoing Opinion and does strike Plaintiffs' Complaint with Prejudice. by the Court, s/JKR, JR., P.J. 1 cc Atty Slimak, Atty Cherry	John K. Reilly Jr.
11/01/2001	Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22. s/Richard Laws, Esq. no cc	John K. Reilly Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,  
Plaintiffs

vs.

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION,  
Defendant

: No. 8L9 - 2001 - C.D.  
: Type of Case: CIVIL  
: Type of Pleading: COMPLAINT  
: Filed on Behalf of: PLAINTIFFS  
: Counsel of Record for this Party:  
: PAUL E. CHERRY, ESQ.  
: Supreme Court No. 42945  
: CHERRY & CHERRY  
: 23 East Park Avenue  
: DuBois, PA 15801  
: (814) 371-3288

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and	:	
HARRY W. BERGMAN, JR.,	:	
Plaintiffs	:	
vs.	:	No. - 2001 - C.D.
TREASURE LAKE PROPERTY	:	
OWNERS ASSOCIATION,	:	
Defendant	:	

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Amended Complaint or for any other claim or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

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

David S. Meholick, Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641 Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and	:
HARRY W. BERGMAN, JR.,	:
Plaintiffs	:
vs.	:
	No. - 2001 - C.D.
TREASURE LAKE PROPERTY	:
OWNERS ASSOCIATION,	:
Defendant	:

COMPLAINT

AND NOW, comes the Plaintiffs, KERRI L. BERGMAN and HARRY W. BERGMAN, JR., by and through their attorneys, CHERRY & CHERRY, who file the within Complaint, averring as follows:

1. Plaintiff, KERRI L. BERGMAN, is an adult individual, residing at 1399 Treasure Lake, DuBois, Clearfield County, Pennsylvania 15801.
2. Plaintiff, HARRY W. BERGMAN, JR., is an adult individual, intermarried with Plaintiff, KERRI L. BERGMAN, residing at 1399 Treasure Lake, DuBois, Clearfield County, Pennsylvania 15801.
3. Defendant, TREASURE LAKE PROPERTY OWNERS ASSOCIATION, is an Association organized and existing under the laws of the Commonwealth of Pennsylvania and at all times relevant hereto was the owner and operator of property located at Treasure Lake, DuBois, Clearfield County, Pennsylvania 15801.
4. All property owned and operated by the Defendant, including the Treasure Lake Country Club and the Treasure Lake Country Club swimming pool, were open to and for the exclusive use of Treasure Lake Property Owners in good standing which includes the Plaintiff, KERRI L. BERGMAN, at all times relevant hereto.

5. At all times relevant hereto, Defendant was obligated to repair, maintain, inspect, and was otherwise responsible for the operation and maintenance of the Treasure Lake Country Club swimming pool and the Treasure Lake Country Club swimming pool ladder on Defendants' property so that the Treasure Lake Country Club swimming pool and the Treasure Lake Country Club swimming pool ladder would be safe for use by Treasure Lake Property Owners in good standing, including Plaintiff, KERRI L. BERGMAN.

6. On or about June 8, 1999, Plaintiff, KERRI L. BERGMAN, while on Defendants' property as a Treasure Lake Property Owner in good standing, was present at the Treasure Lake Country Club swimming pool for the purposes of swimming.

7. At the said time and date, when Plaintiff, KERRI L. BERGMAN, started to climb down the swimming pool ladder into the Treasure Lake Country Club swimming pool, the ladder suddenly, and without warning, became detached from the side of the swimming pool, pulled away from said swimming pool and twisted, causing Plaintiff, KERRI L. BERGMAN, to lose her balance and fall straddling the ladder of the swimming pool, and causing Plaintiff, KERRI L. BERGMAN, to sustain the serious personal injuries hereinafter set forth.

8. The aforesaid incident and the injuries resulting to the Plaintiff, KERRI L. BERGMAN, occurred solely as a result of the negligence, carelessness, and the recklessness of the Defendant, who was in exclusive control of the Treasure Lake Country Club swimming pool and the Treasure Lake Country Club swimming pool ladder, which said negligence, carelessness, and recklessness consisted of at least the following:

- (a) failing to properly inspect the swimming pool ladder so that it worked in a proper and safe manner;
- (b) failing to properly maintain the swimming pool ladder so that it worked in a proper and safe manner;

- (c) failing to warn Plaintiff, KERRI L. BERGMAN, of the likely malfunction of the swimming pool ladder;
- (d) failing to warn Plaintiff, KERRI L. BERGMAN, of the likelihood that the swimming pool ladder would separate from the swimming pool;
- (e) failing to assure that the swimming pool ladder continued to operate in a safe and proper manner;
- (f) failing to make repairs which were necessary and proper in order to assure the continued safe operation of the swimming pool ladder;
- (g) failing to provide adequate safeguards to prevent the injury to Plaintiff, KERRI L. BERGMAN; and
- (h) being otherwise negligent, careless, and reckless under the circumstances.

COUNT I.

Plaintiff, KERRI L. BERGMAN vs. Defendant,  
TREASURE LAKE PROPERTY OWNERS ASSOCIATION

9. Plaintiff, KERRI L. BERGMAN, incorporates herein by reference the allegations set forth in paragraphs 1 through 8 as though the same were fully set forth at length.

10. By reason of the above incident, Plaintiff, KERRI L. BERGMAN, sustained injuries to her groin area, pelvic bone, bladder, right inner thigh and back, including but not limited to large contusions of the groin area and right inner thigh, bladder infection, severe twisting and shift of pelvic bone, severe sprain of the groin area, and acute lumbosacral sprain and strain.

11. By reason of said injuries, Plaintiff, KERRI L. BERGMAN, has incurred and will continue to incur various expenses for physicians, therapists, and hospitals in effort to treat and cure herself of the aforesaid injuries.

12. By reason of the said injuries, Plaintiff, KERRI L. BERGMAN, has also sustained great pain, suffering, anguish, shock, and injury to her nerves and nervous system, and will continue to suffer the same in the future.

13. A jury trial is demanded.

WHEREFORE, Plaintiff, KERRI L. BERGMAN, demands judgment against Defendant, TREASURE LAKE PROPERTY OWNERS ASSOCIATION, in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), exclusive of interest and costs of suit.

COUNT II

Plaintiff, HARRY W. BERGMAN, JR., vs. Defendant,  
TREASURE LAKE PROPERTY OWNERS ASSOCIATION

14. Plaintiff, HARRY W. BERGMAN, JR., incorporates herein by reference the allegations set forth in paragraphs 1 through 22 as though the same were fully set forth at length.

15. As a result of the negligence, carelessness, reckless disregard, and indifference of Defendant, Plaintiff, HARRY W. BERGMAN, JR., has been deprived of the society, companionship, and consortium of his wife, Plaintiff, KERRI L. BERGMAN, to his great detriment and loss.

16. As a result of the negligence, carelessness, reckless disregard, and indifference of Defendant, Plaintiff, HARRY W. BERGMAN, JR., has incurred large medical bills and expenses to treat his wife's injuries.

17. As a result of the negligence, carelessness, reckless disregard, and indifference of Defendants, Plaintiff, HARRY W. BERGMAN, JR., has suffered a disruption in his daily habits and pursuits and a loss of enjoyment of life.

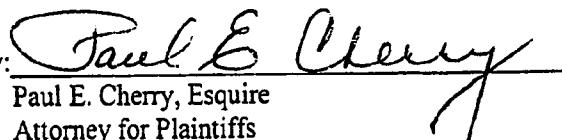
18. A jury trial is demanded.

WHEREFORE, Plaintiff, HARRY W. BERGMAN, JR., demands judgment against Defendant, TREASURE LAKE PROPERTY OWNERS ASSOCIATION, in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), exclusive of interest and costs of suit.

Respectfully submitted,

CHERRY & CHERRY

By:

  
Paul E. Cherry, Esquire  
Attorney for Plaintiffs

We, KERRI L. BERGMAN and HARRY W. BERGMAN, JR., verify that the statements made in this Complaint are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: June 5, 2001

Kerr L. Bergman  
Kerr L. Bergman

Date: 5 June 2001

Harry W. Bergman Jr.  
Harry W. Bergman, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,

Plaintiffs, : No. 869 - 2001 - C.D.

vs.

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION,

Defendant. : Type of Case: Civil

Type of Pleading: PRELIMINARY  
OBJECTIONS TO PLAINTIFFS'  
COMPLAINT

Filed on Behalf of: DEFENDANT

Counsel of record for this Party:  
Darryl R. Slimak, Esquire  
Supreme Court No. 41695

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY W. BERGMAN, JR.,

Plaintiffs,

No. 869 - 2001 - C.D.

vs.

TREASURE LAKE PROPERTY  
OWNERS' ASSOCIATION,

JURY TRIAL DEMANDED

Defendants.

PRELIMINARY OBJECTIONS OF DEFENDANT  
TREASURE LAKE PROPERTY OWNERS' ASSOCIATION  
TO PLAINTIFF'S COMPLAINT

AND NOW comes Defendant, Treasure Lake Property Owners' Association, by and through its Attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and file the within Preliminary Objections to Plaintiffs' Complaint:

I. Demurrer / Motion to Strike Count I and Count II (Negligence of Defendant, Treasure Lake Property Owners' Association) for Failing to State a Claim Upon Which Relief Can be Granted

1. It is believed that the instant claim was initiated by Plaintiffs, Kerri L. Bergman and Harry W. Bergman, Jr., on June 6, 2001, with the filing of the Complaint in the Court of Common Pleas of Clearfield County.

2. Plaintiffs' Complaint concerns a claim for personal injuries suffered by Plaintiff, Kerri L. Bergman, on June 8, 1999, when the swimming pool ladder at the Treasure Lake Country Club Swimming Pool, which is owned and operated by Defendant, Treasure Lake Property Owners' Association, and upon which Plaintiff Kerri L. Bergman was climbing, allegedly detached from the side of the swimming pool. See Complaint at ¶¶ 4-7.

3. More specifically, it is alleged that the accident occurred as a result of the negligence of Defendant, Treasure Lake Property Owners' Association, in maintaining the swimming pool ladder. See Complaint at ¶ 8.

4. As averred in the Complaint, Plaintiffs, Kerri L. Bergman and Harry W. Bergman, Jr., as Treasure Lake Property Owners in good standing who are vested with the right to use the facilities provided by the Treasure Lake Property Owners' Association, are members of the Treasure Lake Property Owners' Association. See Complaint at ¶¶ 3-5.

5. As a matter of law, as members of the Treasure Lake Property Owners' Association, Plaintiffs, Kerri L. Bergman and Harry W. Bergman, Jr., cannot file a cause of action for negligence against the Treasure Lake Property Owners' Association, due to the fact the negligence of which Plaintiffs, Kerri L. Bergman and Harry W. Bergman, Jr., complain, is legally imputed to them, as members in of the Treasure Lake Property Owners' Association. See De Villars v. Hessler, 363 PA. 498, 501, 70 A.2d 333, 335 (1950).

6. Furthermore, as to Count II by Plaintiff-husband for Loss of Consortium due to injuries suffered by Plaintiff-wife, in order to recover under a loss of consortium theory, a party must show the Defendant is liable to his spouse. See McNeal v. City of Easton, 143 Pa. Commw. 151, 160, 598 A.2d 638, 642 (1991).

7. Therefore, since Defendant, Treasure Lake Property Owners' Association, is not, as a matter of law, liable to Plaintiff, Kerri L. Bergman, for the injuries caused to her while she was engaged in the use of the swimming pool maintained by the Defendant, Treasure Lake Property Owners' Association, Plaintiff, Harry W. Bergman, Jr.'s, claim for loss of consortium should also be barred.

WHEREFORE, Defendant, Treasure Lake Property Owners' Association, respectfully

requests that the within Demurrer be granted and that the Court enter judgment in their favor and dismiss Plaintiffs' Complaint with prejudice.

**II. [In the Alternative] Demurrer / Motion to Strike Count II Claims of Disruption of Daily Habits and Loss of Enjoyment of Life (brought on behalf of Plaintiff-Husband, Harry W. Bergman) for Failing to State a Claim Upon Which Relief Can be Granted**

8. Paragraphs 1 through 7 of the within Preliminary Objections are incorporated herein by reference.

9. Although, as a matter of law, all claims against Defendant, Treasure Lake Property Owners' Association, must be dismissed for the reasons set forth previously herein, in that the Rules of Civil Procedure provide that all Preliminary Objections must be raised at the same time, the following additional Objection is stated out of an overabundance of caution.

10. In this regard, Count II of Plaintiffs' Complaint is entitled "Harry W. Bergman, Jr. v. Treasure Lake Property Owners' Association." See Complaint at Count II, ¶¶ 14-18.

11. Count II, and specifically by incorporation of Paragraph 2, makes reference to the fact that Plaintiff, Harry W. Bergman, Jr., was at all times relevant to this case, married to and husband of Plaintiff, Kerri L. Bergman. See Complaint at ¶ 2.

12. While the balance of Count II appears to set forth a proper claim for loss of consortium, i.e. loss of care, comfort and society of Mr. Bergman's wife, said Count also proceeds to set forth a claim on behalf of Plaintiff-husband for "disruption in his daily habits and pursuits and loss of enjoyment of life." See Complaint at ¶ 17.

13. A fair reading of the above quoted, objected-to allegations reveal that, in addition to a claim for loss of consortium, Plaintiff-husband is inappropriately attempting to set forth a claim for negligent infliction of emotional distress relative to the events underlying Plaintiffs'

- Complaint, and/or attempting to inappropriately expand the concept of a loss of consortium claim to include claims of harm not recognized as such.

14. In order to be viable under Pennsylvania law, a negligent infliction of emotional distress claim must be one of two types, either "direct impact" or "bystander".

15. The "direct impact" rule has been defined by the Superior Court as follows:

"[W]here...a plaintiff sustains bodily injuries, even though trivial or minor in character, which are accompanied by fright or mental suffering directly traceable to the peril in which the defendant's negligence placed the plaintiff, then mental suffering is a legitimate element of damages."

See Long v. Yingling, 700 A.2d 508, 516 (Pa. Super. 1997). The Plaintiff-husband has obviously not made such allegations, and the "direct impact" rule is, therefore, inapplicable.

16. Plaintiff-husband's negligent infliction of emotional distress claim is likewise deficient under the "bystander rule," which permits such a claim only where the following factors are met:

- "(1) Whether [the] plaintiff was located near the scene of the accident; as contrasted with one who was a distance away from it. (2) Whether the shock resulted from a direct emotional impact upon [the] plaintiff from the sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence. (3) Whether [the] plaintiff and the victim were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship."

See Brown v. Philadelphia College of Osteopathic Medicine, 449 Pa. Super. 667, 674 A.2d 1130, 1133 (1996). The Plaintiff-husband has not pled any facts to suggest that he was located at, or near, the scene of the underlying accident, nor that he contemporaneously observed any harm being negligently inflicted upon his wife by a third party, therefore rendering the "bystander rule" inapplicable to the facts of this case.

17. Additionally, any purported claim of negligent infliction of emotional distress

must also fail because Plaintiff-husband has failed to allege any physical manifestations of the emotional distress that he is alleged to have suffered. See Lazor v. Milne, 346 Pa. Super. 177, 499 A.2d 239 (1985).

18. Accordingly, Plaintiff-husband has failed to set forth a claim for negligent infliction of emotional distress upon which relief can be granted, thus mandating that any such claims be dismissed from Counts II of Plaintiffs' Complaint, as a matter of law.

WHEREFORE, Defendant, Treasure Lake Property Owners' Association, respectfully requests that the within Demurrer / Motion to Strike be granted and that this Honorable Court strike the averments of Count II, Paragraph 17, of the Complaint, pertaining to purported mental or physical injuries by Plaintiff Harry W. Bergman, Jr., and restrict said allegations solely to proper claims for lack of care, comfort, society/consortium of his wife by virtue of her having been involved in the accident and suffering various injuries as alleged.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By: 

Darryl R. Sliwak  
Richard K. Laws  
Attorneys for Defendant  
Treasure Lake Property Owners' Association  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: 6-21-01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION - LAW

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,

Plaintiffs, : No. 869 - 2001 - C.D.

vs.

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION,

Defendant.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Preliminary Objections of Defendant  
Treasure Lake Property Owners' Association to Plaintiffs' Complaint in the above-captioned  
matter was mailed by regular mail, postage prepaid, at the Post Office, State College,  
Pennsylvania, on this 21<sup>st</sup> day of June, 2001, to the attorney(s) of record:

Paul E. Cherry, Esquire  
Cherry & Cherry  
23 East Park Avenue  
Dubois, PA 15801

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_

Darryl R. Slimak  
Attorneys for Defendant  
TREASURE LAKE HOME OWNERS'  
ASSOCIATION  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,

Plaintiffs, : No. 869 - 2001 - C.D.

vs.

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION,

Defendant.

Type of Case: Civil

Type of Pleading: BRIEF IN SUPPORT  
OF DEFENDANT'S PRELIMINARY  
OBJECTIONS

Filed on Behalf of: DEFENDANT

Counsel of record for this Party:  
Darryl R. Slimak, Esquire  
Supreme Court No. 41695

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.  
811 University Drive  
State College, PA 16801  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY W. BERGMAN, JR.,

Plaintiffs,

No. 869 - 2001 - C.D.

vs.

TREASURE LAKE PROPERTY  
OWNERS' ASSOCIATION,

JURY TRIAL DEMANDED

Defendants.

**BRIEF IN SUPPORT OF DEFENDANT'S PRELIMINARY  
OBJECTIONS TO PLAINTIFFS' COMPLAINT**

AND NOW comes Defendant, Treasure Lake Property Owners' Association, by and through its Attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and file the within Brief in Support of Defendant's Preliminary Objections to Plaintiffs' Complaint:

**I. Relevant Facts and Procedural History**

The instant claim was initiated by Plaintiffs, Kerri L. Bergman and Harry W. Bergman, Jr., on June 6, 2001 with the filing of a Complaint in the Court of Common Pleas of Clearfield County. Generally speaking, Plaintiffs' Complaint concerns a claim for personal injuries suffered by Plaintiff, Kerri L. Bergman, on June 8, 1999, when the ladder of the swimming pool at the Treasure Lake Country Club, which is owned and operated by the Treasure Lake Property Owners' Association, broke away from the swimming pool while Plaintiff, Kerri L. Bergman, was climbing into the pool. However, the Complaint specifically alleges that Plaintiffs are members of the allegedly negligent Homeowner's Association, and Mr. Bergman attempts to seek certain damages inappropriately denominated as loss of consortium claims, such that in

response to Plaintiffs' Complaint, Defendant has filed Preliminary Objections on the following grounds: (1) Demurrer / Motion to Strike Count I and Count II for Failing to State a Claim Upon Which Relief Can be Granted; and (2) [In the Alternative] Demurrer / Motion to Strike Count II Claim for Negligent Infliction of Emotional Distress (brought on behalf of Plaintiff-husband) for Failing to State a Claim Upon Which Relief Can be Granted. In the interest of brevity, the facts set forth in the Preliminary Objections, which elucidate the foregoing defenses and objections to the Complaint, are incorporated herein by reference and will be discussed in the pertinent sections of this Brief.

## **II. Questions Presented**

- A. WHETHER PLAINTIFFS' COUNT I AND COUNT II CLAIMS FOR NEGLIGENCE AND LOSS OF CONSORTIUM AGAINST DEFENDANT, TREASURE LAKE HOME OWNERS' ASSOCIATION, MUST BE DISMISSED WHERE PLAINTIFFS, WHO ARE MEMBERS OF DEFENDANT ASSOCIATION, HAVE FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AS TO SAID CLAIM?**

(Suggested Answer in the Affirmative)

- B. [IN THE ALTERNATIVE] WHETHER PLAINTIFFS' COUNT II CLAIM OF NEGLIGENCE INFILCTION OF EMOTIONAL DISTRESS, WHICH PLAINTIFF HAS ATTEMPTED TO RECAST AS A LOSS OF CONSORTIUM CLAIM MUST BE DISMISSED WHERE PLAINTIFFS HAVE FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AS TO SAID CLAIM?**

(Suggested Answer in the Affirmative)

### III. Discussion

#### A. Plaintiffs' Count I and Count II Claims For Negligence Against Defendant Must Be Dismissed Where Plaintiffs Have Failed to State a Claim upon Which Relief Can Be Granted As to Said Claim Because Members of a Homeowner's Association May Not Sue Same for Alleged Negligence Under Settled Pennsylvania Law

Plaintiffs' Complaint avers that Plaintiffs, Kerri L. Bergman and Harry W. Bergman, Jr., were at the time of the accident members in good standing of the Treasure Lake Property Owners' Association. In this regard, as members in good standing of the Treasure Lake Property Owners' Association, Plaintiffs cannot, as a matter of law, file a cause of action for negligence against Treasure Lake Property Owners' Association, due to the fact that any negligence found on the part of the Treasure Lake Property Owners' Association will be imputed upon Plaintiffs.

See Plasterer v. Paine, 375 Pa.Super. 407, 413, 544 A.2d 985, 988 (1988); See also De Villars v. Hessler, 363 Pa. 498, 501, 70 A.2d 333, 335 (1950). Therefore, Count I, the negligence claim filed by Plaintiff-wife, is barred as a matter of well-settled law.

Count II, by Plaintiff-husband, contains a claim for Loss of Consortium for Plaintiff-husband due to his wife's injuries, which were allegedly caused by the negligence of Defendant. In order to recover under a loss of consortium theory, a party must show that the defendant is liable to his spouse. See McNeal v. City of Easton, 143 Pa.Commw. 151, 160, 598 A.2d 638, 642, (1991). Therefore, since Defendant is not, as a matter of law, liable to Plaintiff-wife for the injuries caused to her while she was engaged in the use of the swimming pool owned and operated by Defendant, Plaintiff-husband's claim for Loss of Consortium should also be barred.

B. [In the Alternative] Plaintiffs' Count II Claim for Loss of Consortium Against Defendant Must Be Dismissed Where Plaintiffs Have Failed to State a Claim upon Which Relief Can Be Granted As to Said Claim

As discussed in the preceding section of this Brief, as a matter of law, all claims against Defendant, Treasure Lake Property Owners' Association must be dismissed on the basis that Plaintiffs, as members of the Treasure Lake Property Owners' Association, may not file a negligence claim against Treasure Lake Property Owners' Association. However, in that the Rules of Civil Procedure provide that all Preliminary Objections must be raised at the same time, out of an overabundance of caution, Objecting Defendants have raised an additional ground for dismissing portions of Plaintiffs' claims. In this regard, a Demurrer has been filed on behalf of Objecting Defendants requesting dismissal of all claims for negligent infliction of emotional distress asserted by Plaintiff Harry W. Bergman in Count II of the Complaint, which he inappropriately appears to have attempted to recast as loss of consortium claims.

Count II of Plaintiffs' Complaint is entitled "Harry W. Bergman, Jr. v. Treasure Lake Property Owners' Association". (See Complaint at Count II). In this regard, Count II, by incorporation of Paragraph 2, makes specific reference to the fact that Plaintiff, Harry W. Bergman, Jr., was at all times relevant to this case, married to and husband of Kerri L. Bergman. (See Complaint at Count II and ¶ 2). While the balance of Count II appears to set forth proper claims for loss of consortium, i.e. loss of the care, comfort and society of Mr. Bergman's wife, see Anchorstar v. Mack Trucks, Inc., 533 Pa. 177, 180, 620 A.2d 1120, 1122 (1993); see also Bedillion v. Frazee, 408 Pa. 281, 285, 183 A.2d 341, 343 (1962); Hopkins v. Blanco, 224 Pa.Super. 116, 302 A.2d 855 (1973), aff'd, 457 Pa. 90, 320 A.2d 39 (1974), said Count also proceeds to set forth claims on behalf of Plaintiff-husband for "disruption in his daily habits and pursuits and loss of enjoyment of life. (See Complaint at ¶ 17). Simply stated, a fair reading of

the above quoted, objected-to allegations reveals that, in addition to a claim for loss of consortium, Plaintiff-husband is inappropriately attempting to set forth a claim for negligent infliction of emotional distress relative to the events underlying Plaintiffs' Complaint.

In order to be viable under Pennsylvania law, a negligent infliction of emotional distress claim must be one of two types, either "direct impact" or "bystander." The "direct impact" rule has been defined by the Superior Court as follows:

"[W]here...a plaintiff sustains bodily injuries, even though trivial or minor in character, which are accompanied by fright or mental suffering directly traceable to the peril in which the defendant's negligence placed the plaintiff, then mental suffering is a legitimate element of damages."

See i.e. Long v. Yingling, 700 A.2d 508, 516 (Pa. Super. 1997). The Plaintiff-husband has obviously not made such allegations, and the "direct impact" rule is, therefore, inapplicable.

Plaintiff-husband's negligent infliction of emotional distress claim is likewise deficient under the "bystander rule," which permits such a claim only where the following factors are met:

"(1) Whether [the] plaintiff was located near the scene of the accident; as contrasted with one who was a distance away from it. (2) Whether the shock resulted from a direct emotional impact upon [the] plaintiff from the sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence. (3) Whether [the] plaintiff and the victim were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship."

See i.e. Brown v. Philadelphia College of Osteopathic Medicine, 449 Pa. Super. 667, 674 A.2d 1130, 1133 (1996). The Plaintiff-husband has not pled any facts to suggest that he was located at, or near, the scene of the underlying accident, nor that he contemporaneously observed any harm being negligently inflicted upon his wife by a third party, therefore rendering the "bystander rule," likewise, inapplicable to the facts of this case. Additionally, any purported claim of negligent infliction of emotional distress must also fail because Plaintiff-husband has

failed to allege any physical manifestations of the emotional distress that he is alleged to have suffered. See i.e. Lazor v. Milne, 346 Pa. Super. 177, 499 A.2d 369 (1985).

Because Plaintiff-husband has inappropriately attempted to expand the concept of loss of consortium claims to an extent never before contemplated by the law of this Commonwealth, and has failed to set forth a claim for negligent infliction of emotional distress upon which relief can be granted, it is respectfully requested that any such claims be dismissed from Count II of Plaintiffs' Complaint, as a matter of law. In this regard, it is requested that this Honorable Court strike the averments of Paragraph 17 of Count II pertaining to purported mental or physical injuries by the Plaintiff-husband, and restrict said allegations solely to proper claims for lack of care, comfort, society/ consortium of his wife by virtue of her having been involved in the accident and suffering various injuries as alleged.

#### IV. Conclusion

For the reasons set forth herein, it is respectfully requested that this Honorable Court grant the relief requested by Defendant, Treasure Lake Property Owners' Association, and in doing so, issue an Order dismissing Plaintiffs' Complaint, with prejudice.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By: 

Darryl R. Slimak  
Attorney for Defendant  
Treasure Lake Property Owners Association  
811 University Drive  
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(814) 238-4926  
Fax: (814) 238-9624

Dated: 6-21-01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION - LAW

KERRI L. BERGMAN and  
HARRY BERGMAN, JR.,

Plaintiffs, : No. 869 - 2001 - C.D.

vs.

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION,

Defendant.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Brief in Support of Defendant's Preliminary Objections to Plaintiffs' Complaint in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 21<sup>st</sup> day of 2001, to the attorney(s) of record:

Paul E. Cherry, Esquire  
Cherry & Cherry  
23 East Park Avenue  
Dubois, PA 15701

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By: 

Darryl R. Shimak  
Attorneys for Defendant  
TREASURE LAKE PROPERTY  
OWNERS' ASSOCIATION  
811 University Drive  
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IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

KERRI L. BERGMAN and  
HARRY W. BERGMAN, JR.,  
Plaintiffs

vs.

TREASURE LAKE PROPERTY  
OWNERS' ASSOCIATION,  
Defendants

: No. 869 - 2001 - C.D  
:  
: Type of Case: CIVIL  
:  
: Type of Pleading: BRIEF IN  
: OPPOSITION TO PRELIMINARY  
: OBJECTIONS TO PLAINTIFFS'  
: COMPLAINT  
:  
: Filed on Behalf of: PLAINTIFFS  
:  
: Counsel of Record for This Party:  
: PAUL E. CHERRY, ESQUIRE  
:  
: Supreme Court No 42945  
:  
: CHERRY & CHERRY  
: 23 East Park Avenue  
: DuBois, PA 15801  
: (814) 371-3288

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA

## CIVIL ACTION

KERRI L. BERGMAN and  
HARRY W. BERGMAN, JR.,  
Plaintiffs

: No. 869 - 2001 - C.D

vs.

TREASURE LAKE PROPERTY  
OWNERS' ASSOCIATION,  
Defendants

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PLAINTIFFS' BRIEF IN OPPOSITION TO  
PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

## I. FACTS

Plaintiffs initiated the present action by filing a Complaint on June 6, 2001, which alleged that on June 8, 1999, Plaintiff, KERRI L. BERGMAN, was seriously injured when a swimming pool ladder located at the Treasure Lake Country Club swimming pool, became detached from the side of the swimming pool and twisted, causing Plaintiff, KERRI L. BERGMAN, to loss her balance and fall straddling the ladder due to the negligence, carelessness, indifference and reckless disregard of Defendant. Plaintiff, HARRY W. BERGMAN, JR., alleged a cause of action for loss of consortium as a result of his wife's injuries.

On or about June 21, 2001, Defendant, TREASURE LAKE PROPERTY OWNERS' ASSOCIATION, filed Preliminary Objections to Plaintiffs' Complaint and the same is currently before this Honorable Court.

## II. ISSUES

A. WHETHER PLAINTIFFS' COUNT I AND II CLAIMS FOR NEGLIGENCE AND LOSS OF CONSORTIUM AGAINST DEFENDANT MUST BE DISMISSED WHERE PLAINTFFS, WHO ARE MEMBERS OF DEFENDANT ASSOCIATION, HAVE FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE?

ANSWER: NO

B. WHETHER PARAGRAPH 17 OF PLAINTIFFS' COMPLAINT SHOULD BE STRICKEN OR DISMISSED AS IT FAILS TO SET FORTH A CLAIM FOR NEGLIGENT INFILCATION OF EMOTIONAL DISTRESS?

ANSWER: NO

## III. ARGUMENT

A. WHETHER PLAINTIFFS' COUNT I AND II CLAIMS FOR NEGLIGENCE AND LOSS OF CONSORTIUM AGAINST DEFENDANT MUST BE DISMISSED WHERE PLAINTFFS, WHO ARE MEMBERS OF DEFENDANT ASSOCIATION, HAVE FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE?

Plaintiffs believe Paragraphs 5 through 7 of Defendant's Preliminary Objections to Plaintiffs' Complaint are unwarranted. Essentially, Defendant states that, as a matter of law, members of the Treasure Lake Property Owners' Association cannot file a cause of action for negligence against Defendant due to the fact that any negligence on the part of the Treasure Lake Property Owners' Association will be imputed upon Plaintiffs.

Defendant cites Plasterer vs. Paine, 375 Pa.Super. 407, 413, 544 A.2d 985 (1988) and De Villars vs. Hessler, 363 Pa. 498, 501, 70 A.2d 333,335 (1950) in their Brief in Support of Defendant's Preliminary Objections.

A glance at both of these cases reveals that they pertain to personal injuries sustained by member of *unincorporated associations*.

Defendants are correct in their assertion that members of an *unincorporated association* cannot recover damages for personal injuries from the association. This is set forth in Pa.R.C.P. No. 2154.

In the case at hand, however, Defendant is an *incorporated association*, a fact that should be well known by their counsel. A true and correct copy of the Bylaws of Treasure Lake Property Owners Association, Inc. is attached hereto and made a part hereof as Exhibit "A".

While Plaintiffs should have more properly named Defendants in their full corporate name, Treasure Lake Property Owners Association, *Inc.*, pursuant to Pa.R.C.P. No. 2178, said omission does not warrant the dismissal of Count I and II of Plaintiffs' Complaint.

B. WHETHER PARAGRAPH 17 OF PLAINTIFFS' COMPLAINT SHOULD BE STRICKEN OR DISMISSED AS IT FAILS TO SET FORTH A CLAIM FOR NEGLIGENT INFILCATION OF EMOTIONAL DISTRESS?

Plaintiffs also believe that Paragraphs 8 through 18 of Defendant's Preliminary Objections to Plaintiffs' Complaint are unwarranted.

Defendant, in their Preliminary Objections to Plaintiffs' Complaint, first request that Paragraph 17 of Plaintiffs' Complaint be stricken based upon Defendant's claim that Plaintiff, HARRY W. BERGMAN, JR., is attempting to expand the concept of a loss of consortium claim. Defendant proceeds, however, in their Brief in Support of Defendant's Preliminary Objections, to argue that Count II of Plaintiffs' Complaint should be dismissed in its entirety. Defendant argues in their Brief that Plaintiff, HARRY W. BERGMAN, JR., is inappropriately attempting to set forth a claim for negligent infliction of emotional distress.

A look at Count II of Plaintiffs' Complaint shows that it is a standard and proper claim for loss of consortium. Paragraph 12 of Defendant's Preliminary Objections concurs and sets forth "the balance of Count II appears to set forth a proper claim for loss of consortium, i.e. loss of care, comfort and society".

Nowhere in Plaintiffs' Complaint is a claim for negligent infliction of emotional distress set forth. Paragraph 17 of Plaintiffs' Complaint merely avers, correctly, that Plaintiff, HARRY W. BERGMAN, JR., has suffered a disruption in his daily habits and pursuits and a loss of enjoyment of life. This fact can certainly be concluded if a party is suffering from loss of consortium due to injuries suffered by their spouse. It appears that Defendant has taken it upon itself to read more into Plaintiffs' Complaint than what is averred.

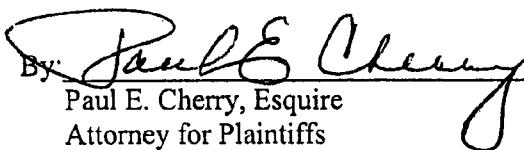
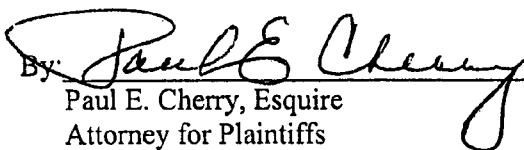
Plaintiffs have properly pled their Complaint. As such, neither Count II or Paragraph 17 of Plaintiffs' Complaint should be stricken, nor should the Complaint be dismissed.

#### IV. CONCLUSION

For the foregoing reasons, Defendant's Preliminary Objections to Plaintiffs' Complaint should be dismissed as a matter of law.

Respectfully submitted,

CHERRY & CHERRY

  
By:   
Paul E. Cherry, Esquire  
Attorney for Plaintiffs

# BYLAWS OF TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC.

## ARTICLE I

**Section 1.1** NAME: This Corporation shall be known as the Treasure Lake Property Owners Association, Inc. (The "Association"), a Pennsylvania non-profit corporation whose business address is 13 Treasure Lake, DuBois, PA, 15801.

**Section 1.2** PURPOSE and OBJECTIVE: The general purpose of the "Association" is to further and promote the community welfare of the Treasure Lake property owners, including but not limited to, the holding, management, maintenance and enhancement of such real properties, infrastructures and easements owned by the Association and those which the Association has acquired or may acquire in the future. In exercising this obligation the Association may take such steps as it deems necessary to promote the safety, security, and well-being of its property owners.

**Section 1.3** AFFILIATIONS: All Treasure Lake organizations, or groups, as of the date of adoption of these By-Laws, shall continue to be recognized as being affiliated with or otherwise under the auspices of the Association until their dissolution.

1.3.1 Procedures For Affiliations or Sponsorship: No organization or group may be affiliated with the Treasure Lake Property Owners Association, Inc. without the approval of a majority of the Board of Directors. Application for affiliation with or sponsorship by the Association shall be submitted in writing to the Board for review and consideration. The application may be in letter form and shall contain a brief description of the applicant (s) / organization (s) purpose, its structure, and its requirements for membership. Upon receipt of such an application, the Board shall make its study and decision to approve or disapprove such affiliation within sixty (60) days after receipt of the organizations application by the Board Secretary. The Board of Directors may, for just cause, withdraw affiliation upon a majority vote to do so.

## ARTICLE II MEMBERSHIP

**Section 2.1** REGULAR MEMBERSHIP: Regular membership of the Association shall consist of the following: all persons, partnerships, or corporations, who acquire title, legal or equitable, to any form of real estate within the Treasure Lake sub-division, Sandy Township, Clearfield County, Pennsylvania, other than the Treasure Lake land developer, its successors or assigns.

**Section 2.2** ASSOCIATE MEMBERSHIP: Associate memberships shall be divided into two groups: Full Associate and Limited Associate memberships.

2.2.1 Full Associate Membership. Full Associate Membership shall be afforded, with all rights and privileges as that of a Regular Membership, to all persons residing legally in the same household as a Regular Member. However, Full Associate members shall not have the right to vote, hold elective office, or chair any committee of the Association.

2.2.2 Limited Associate Membership. Limited Associate membership may be granted for usage of amenities which allow public access as deemed by the Board of Directors. Rules and Regulations regarding Limited Associate Membership will be defined by the Board of Directors.

**Section 2.3** ASSIGNMENTS of MEMBERSHIP: Neither class of memberships described in Sections 2.1 or 2.2 inclusive shall be assignable.

**Section 2.4** MEMBERSHIP STANDING: To be recognized as a Regular member in good standing of the Association, a person must:

2.4.1 Possess ownership of, or an equitable interest in a lot or lots situated within the environs of the Treasure Lake sub-division (including the area known as Cayman Landing, Silverwoods and Wolf Run) Sandy Township, Clearfield County, Pennsylvania. Such ownership must be capable of being verified by a Deed of Trust on that lot or lots.

2.4.2 Have paid, or otherwise current with all financial obligations to the Treasure Lake Property Owners Association, as witnessed by the Financial Records of the Treasure Lake Property Owners Association, Inc, to include Association annual assessments, as well as any and all outstanding fines, fees, or penalties imposed by the Association on the property owner(s) and members.

2.4.3 In determining the eligible standing of an Association Regular member, no residency requirements within the Treasure Lake community shall be applicable.

**Section 2.5** PRIVILEGES of REGULAR MEMBERSHIP. The privileges of Regular Membership shall include:

2.5.1 The right of access to the lot or lots owned by the respective members over and across the roads owned or maintained by the Association.

2.5.2 The use of such facilities as the Association may acquire or establish for the convenience of its members.

2.5.3 The use of such facilities as the Association may acquire or establish for recreational purposes.

2.5.4 The right to petition and vote with respect to all matters that may be referred to the vote of the Regular members by law or by the By-Laws.

2.5.5 The right to attend all open Board meetings, hearings, and meetings of the membership.

**Section 2.6** DISCIPLINARY MEASURES:

2.6.1 The right granted under Section 2.5.1 shall be absolute and cannot under any circumstances be withdrawn by the Association.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and :  
HARRY BERGMAN, JR., :  
Plaintiffs, : No. 869 - 2001 - C.D.  
vs. : Type of Case: Civil  
TREASURE LAKE PROPERTY :  
OWNERS ASSOCIATION, : Type of Pleading:  
Defendant. : DEFENDANT'S REPLY TO  
: PLAINTIFFS' BRIEF IN OPPOSITION  
: TO PRELIMINARY OBJECTIONS TO  
: PLAINTIFFS' COMPLAINT  
: Filed on Behalf of: DEFENDANT  
: Counsel of record for this Party:  
: Darryl R. Slimak, Esquire  
: Supreme Court No. 41695  
: Richard K. Laws, Esquire  
: Supreme Court No. 82639  
: McQUAIDE, BLASKO, SCHWARTZ,  
: FLEMING & FAULKNER, INC.  
: 811 University Drive  
: State College, PA 16801  
: (814) 238-4926

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY W. BERGMAN, JR.,

Plaintiffs,

No. 869 - 2001 - C.D.

vs.

TREASURE LAKE PROPERTY  
OWNERS' ASSOCIATION,

JURY TRIAL DEMANDED

Defendants.

**DEFENDANT'S REPLY TO PLAINTIFFS' BRIEF IN OPPOSITION TO  
PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT**

AND NOW comes Defendant, Treasure Lake Property Owners' Association, by and through its Attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and files the within Reply to Plaintiffs' Brief in Opposition, as follows:

I. **The Plaintiffs' Complaint Must Be Dismissed Where, at the Time of the Incident Alleged, The Plaintiffs Were Members of the Association Which They Presently Seek to Sue.**

It is the Defendant's contention that the Plaintiffs are precluded from proceeding with the instant negligence action because they were both "members" of the Treasure Lake Property Owners' Association at the time of the incident alleged. In this regard, it is Defendant's position that the present claim is barred, as a matter of law, because any negligence found on the part of the Defendant Association will be legally imputed upon the Plaintiffs. See Defendant's Brief in Support at p. 3. Without citation to any substantive legal authority whatsoever, Plaintiffs merely contend, within their Brief in Opposition, that, because the Defendant was an "incorporated association" at the time of the underlying incident, the legal authority advanced in support of

Defendant's position is distinguishable, thus permitting their claim to proceed.<sup>1</sup> Also, reference is made to several Rules of Civil Procedure, which are, presumably, argued to support Plaintiffs' position. Tellingly, however, Plaintiffs utterly fail to cite even one case suggesting that there is some legal distinction between "associations" which are or are not "incorporated."

First, any resort to the Rules of Civil Procedure to avoid the substantive legal authority advanced within Defendant's Preliminary Objections and Brief in Support is completely misplaced. Specifically, Plaintiffs make citation to Rules of Civil Procedure 2154 and 2178 within their Brief in Opposition, which when read at first blush, seem to confer authority upon Plaintiffs to proceed with the present case. However, when applying Rules of Civil Procedure to situations such as the present, it must be reminded that, while the Supreme Court has been vested with "the power to prescribe general rules governing practice and procedure" such rules "must be consistent with the Pennsylvania Constitution" and must "neither abridge, enlarge nor modify the *substantive rights of any litigant....*" See Const. art. 5, § 10(c)(emphasis added). In this regard, the discussion within *procedural* Rules 2154 and 2178, which generally covers the area of lawsuits between corporations and their members, must give way to the *substantive* legal authority cited within Defendant's Brief, which requires dismissal of this action. See Svetik v. Svetik, 377 Pa.Super. 496, 547 A.2d 794, 796-97 (1988)(discussing the interplay between the Rules of Civil Procedure and substantive case law and recognizing, for example, that the

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<sup>1</sup> For purposes of completeness, the Association of which Plaintiffs are themselves members is registered as a "Pennsylvania Non-Profit Corporation," which is organized to "promote the community welfare of the Treasure Lake Property Owners," who are the exclusive "regular members" of the organization, per the document attached to Plaintiffs' Brief in Opposition as Exhibit "A." Per 15 Pa.C.S.A. §102, *et. seq.*, (the "Associations Code"), "Associations" are inclusive of corporations, partnerships, or two or more persons "associated in a common enterprise or undertaking."

promulgation of Rule 2129 (governing actions between partnerships and partners) did not in any way alter the common law which precluded partners from suing the partnership in tort).

In light of the foregoing, and in turning to the substantive law in this area, Plaintiffs have merely attempted to distinguish the legal authority cited within Defendant's Brief on the basis that the cases discussed therein deal principally with the preclusion of tort actions brought by members of *unincorporated* associations against the association itself. The Defendant submits that the Plaintiffs' argument is overly simplistic and ignores the long-standing policy notions supporting the cases that have been submitted in support of Defendant's position.

Perhaps the case to provide the most extensive analysis of the law supporting Defendant's position is Plasterer v. Paine, 375 Pa.Super. 407, 544 A.2d 985 (1988). In Plasterer, the Superior Court recognized the well settled rule that "members of unincorporated associations may not recover from such associations in tort, since any negligence of the association or its members is legally imputed to all of its members." Id. 544 A.2d at 987-88. Significantly, the Court did not focus so narrowly on the legal fiction created (whether the association was incorporated or not), but, instead, looked to whether the members of the association at issue could be said to be "engaged in a joint enterprise" so as render the "negligence of each member engaged in the prosecution of that enterprise imputable to each and every other member." Id. If the answer to the foregoing question is in the affirmative, the Court held, in no uncertain terms, that a negligence and/or tort action may not proceed. Id.

In this regard, the Plasterer Court cited to the early Supreme Court decision in De Villars v. Hessler, 363 Pa. 498, 70 A.2d 333 (1950), to further define the rule of law cited above. In De Villars, the plaintiff had been a member of an unincorporated fraternal association which operated a food concession stand at the county fair. When helping with the preparation of food,

the plaintiff was injured when a propane gas steam table exploded causing injuries. The plaintiff sued the association, its officers and several of its members, but the trial court entered judgment on the pleadings for the defendants, and the Supreme Court affirmed, reasoning as follows:

“Being thus *cooperatively engaged* with those who were allegedly guilty of negligence she became subject to the legal principle that *where persons join in the prosecution of a common enterprise there is thereby created a mutual relationship of agency among them*, with the result that *the negligence of any of them is imputed to each and all of them*. Since, therefore, the negligence of which she complains is legally imputed to herself, she cannot recover from the association or from any of its members, other than, as already stated, the individuals who actually committed the tort which caused her injuries.”

See Plasterer, 544 A.2d at 987 (citing De Villars, *supra*, 70 A.2d at 335)(emphasis added); see also Bowser v. Hershey Baseball Assoc., 357 Pa.Super. 435, 516 A.2d 61, 63 (1986)(holding that member of an unincorporated, non-profit association was precluded from bringing tort claim against the association where a member was not a “client, customer or invitee of the association,” but, instead, was one of the “joint entrepreneurs” of the association and was actively engaged in organizing and conducting the activity at issue). Significantly, arguments attempting to carve out exceptions among “active” and “passive” memberships in the association at issue have also been rejected by the Appellate Courts. See Plasterer, *supra*; Zehner v. Wilkinson Methodist Church, 587 A.2d 1388, 1389 (1990)(recognizing that the rule argued above is not based on the members status on the premises at any given moment, but, instead, their membership in the association).

The point to be made by the cases cited above is that the Appellate Courts have not engaged in a game of semantics when applying the rule of claim preclusion between associations and their members. To the contrary, the courts have looked beyond legal fictions to determine whether the parties can be said to have been “engaged in a joint or common enterprise” so as to “create a mutual relationship of agency among them” resulting in the negligence of one being

imputed to whole. See Plasterer, De Villars, and Bowser, supra. As the above quotation from De Villars and Plasterer makes clear, the fact of incorporated or unincorporated status of the association is not important, but rather, it is the fact of the entity being an "association" which is a group of persons joined in a common enterprise (herein to run their common pool, etc.).

Indeed, this point is illustrated by the decision in Svetik v. Svetik, supra, where the Superior Court cited Bowser and Plasterer with approval and extended the rule established therein to preclude a partner from maintaining an action against his **partnership** for injuries he sustained **on the partnership property**. See Svetik, 547 A.2d at 799-800.<sup>2</sup> In this regard, it is particularly dispositive herein that, although the Defendant Association was incorporated at the time of the incident alleged, it was organized as a ***non-profit* corporation, which existed for the exclusive benefit of members of the Treasure Lake Property Owners' Association, including**

**Plaintiffs herein.** See Exhibit "A," attached to Plaintiff's Brief in Opposition. There is thus no question that Plaintiffs were both "members" of their own Association at the time of the incident alleged, and as such, were themselves engaged in the "joint or common enterprise" of maintaining and/or promoting the very Association which they presently seek to sue regarding maintenance of their own commonly held pool facility! See also Plasterer and Zehner, supra (holding that being an active versus passive member of the association is a distinction without a difference in fact). The cases cited within Defendant's Brief in Support, as well as herein, simply preclude the Plaintiffs from proceeding in the face of the "mutual agency relationship" that was in place during the time at issue with respect to the responsibility for the pool facilities which

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<sup>2</sup> As Duquesne Light v. Roberts, 661 A.2d 9 (Pa.Super. 1995) demonstrates, the significance of incorporating an unincorporated association is to limit the associations' members from unlimited liability to **third persons** outside of the association membership.

Plaintiffs themselves own in common with the other property owner members of the Association. Thus, Defendant Association, again, respectfully requests this Honorable Court to grant its demurrer to Plaintiffs' Complaint and dismiss it from this lawsuit, with prejudice.<sup>3</sup>

**II. Conclusion**

For the reasons set forth herein, as well as those within Defendant's Preliminary Objections and Brief in Support, it is respectfully requested that this Honorable Court grant the relief requested by Defendant, Treasure Lake Property Owners' Association, and in doing so, issue an Order dismissing Plaintiffs' Complaint, with prejudice.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By:   
Darryl R. Slimak  
Richard K. Laws  
Attorneys for Defendant  
Treasure Lake Property Owners Association  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: 8/24/01

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<sup>3</sup> In the event that it becomes necessary to consider the Defendant's remaining Preliminary Objection, the Plaintiffs have conceded that the Complaint does not seek to set forth a claim for Negligent Infliction of Emotional Distress, and the Defendant thus requests that an Order be entered in accordance with that previously submitted in this regard.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and  
HARRY W. BERGMAN, JR.,

Plaintiffs,

No. 869 - 2001 - C.D.

vs.

TREASURE LAKE PROPERTY  
OWNERS' ASSOCIATION,

JURY TRIAL DEMANDED

Defendants.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Defendant's Reply to Plaintiffs' Brief in Opposition to Preliminary Objections to Plaintiffs' Complaint in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 24<sup>th</sup> day of August, 2001, to the attorney(s) of record:

Paul E. Cherry, Esquire  
Cherry & Cherry  
23 East Park Avenue  
DuBois, PA 15801

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By: 

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Richard K. Laws  
Attorneys for Defendant  
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State College, PA 16801  
(814) 238-4926  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

KERRI L. BERGMAN and :  
HARRY BERGMAN, JR. :  
: :  
-vs- : No. 01 - 869 - CD  
: :  
TREASURE LAKE PROPERTY :  
OWNERS ASSOCIATION :  
:

OPINION AND ORDER

Kerri L. Bergman, Plaintiff above-named, has filed a Complaint seeking to recover money damages from Defendant alleging that on June 8, 1999, she was injured when the swimming pool ladder at the Treasure Lake Country Club swimming pool, owned and operated by Defendant, detached from the side of said pool causing Plaintiff's injuries.

Plaintiff further alleges in her Complaint that the accident occurred as a result of the negligence of the Defendant in maintaining the swimming pool ladder. Plaintiff, Harry Bergman, Jr., husband of Kerri L. Bergman, seeks, in Count 2 of said Complaint, to recover damages for loss of consortium, disruption of daily habits and loss of enjoyment of life.

Defendant has filed Preliminary Objections in the nature of a Demurrer/Motion to Strike the Complaint and this Court does herein grant said Preliminary Objections.

As averred in the Complaint, Plaintiffs Kerri L. Bergman and Harry Bergman, Jr., are members in good standing of the Defendant Treasure Lake Property Owners Association and Defendant seeks to strike the Complaint claiming that Plaintiffs, as members of Defendant Association, cannot file a cause of action for negligence against Defendant due to the fact that the negligence of which Plaintiffs' complain is legally imputed to them as members of Defendant Association and in support of said argument. Defendant cites Plasterer v. Paine, 375 Pa. Super. 407, 544 A.2d 985 (1988) wherein the Superior Court held that the

Plaintiff's case must fail since the negligence of the Defendant and its officers is imputed to its members. Moreover, the Court made no distinction between passive and active members.

Plaintiffs argue in their brief that Plasterer v. Paine, id. and other cases which have addressed the issue apply only to unincorporated associations and due to the fact that Defendant is a corporation, Plaintiffs should be permitted to proceed. Plaintiffs, however, offer no authority for this argument and this Court is not persuaded that the distinction between an unincorporated association and a corporation should be such that the rationale of Plasterer v. Paine, id. should not apply here and will therefore grant Defendant's Preliminary Objection and strike Plaintiffs' Complaint. In view of this, it will not be necessary to discuss Defendant's alternative objection.

WHEREFORE, the Court enters the following:

**ORDER**

NOW, this 30<sup>th</sup> day of October, 2001, upon consideration of Preliminary Objections in the Nature of a Demurrer/Motion to Strike Plaintiffs' Complaint, and argument and briefs thereon, this Court does grant said Preliminary Objections in accordance with the foregoing Opinion and does strike Plaintiffs' Complaint with prejudice.

By the Court,

/s/ JOHN K. REILLY, JR.

President Judge

hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

OCT 31 2001

Attest.

*William J. Shaw*  
Prothonotary

IN THE SUPERIOR COURT OF PENNSYLVANIA  
Western District

BERGMAN, K. v. TREASURE LAKE PROPERTY : SUPERIOR COURT DOCKET NO.  
: 2008 WDA 2001

**PROOF OF SERVICE**

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by First Class Mail

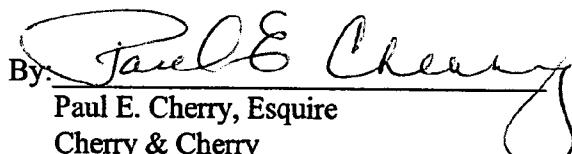
David A. Srewczak, Prothonotary  
Superior Court of Pennsylvania  
1015 Grant Building  
Pittsburgh, PA 15219

William A. Shaw, Prothonotary  
Clearfield County Courthouse  
2<sup>nd</sup> & Market Streets  
Clearfield, PA 16830

Honorable John K. Reilly, Jr.  
President Judge of Courts of Common Pleas of Clearfield County  
Clearfield County Courthouse  
2nd & Market Streets  
Clearfield, PA 16830

Richard K. Laws, Esquire  
McQuaide Blasko  
811 University Drive  
State College, PA 16801  
(Counsel for Appellee)

Dated: March 22, 2002

By:   
Paul E. Cherry, Esquire  
Cherry & Cherry  
23 East Park Avenue  
DuBois, PA 15801  
Of counsel for Appellants  
(814) 371-3288

**The Superior Court of Pennsylvania**

**Sitting at Pittsburgh**

1015 Grant Building  
Pittsburgh, Pennsylvania  
15219

**CERTIFICATE OF CONTENTS OF REMANDED RECORD  
AND NOTICE OF REMAND**

**under**

**PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572**

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:  
Record and opinion

As remanded from said court in the following matter:  
Keri Bergman, et al v. Treasure Lake Property Owners Assoc.  
No. 2008 WDA 2001  
Court of Common Pleas Civil Division, Clearfield County  
No. 869 2001 C.D.

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is: 9-4-02

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

*Eleanor R. Velecky*

**DEPUTY PROTHONOTARY**

RECORD, ETC. RECEIVED:

DATE: 9-6-02

*William A. Shaw*

(Signature & Title)

Deputy Prothonotary  
My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

**FILED**

*m/10/02*  
SEP 06 2002

William A. Shaw  
Prothonotary

J. S40024/02

KERRI L. BERGMAN AND HARRY BERGMAN,  
JR.,

Appellants

v.

TREASURE LAKE PROPERTY OWNERS'  
ASSOCIATION,

Appellee

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

**FILED**

ml104A  
SEP 06 2002

William A. Shaw  
Prothonotary

01-869-CD

No. 2008 WDA 2001

Appeal from the Order entered October 30, 2001  
in the Court of Common Pleas of Clearfield County,  
Civil Division, at No. 869 2001 C.D.

BEFORE: JOYCE, ORIE MELVIN and POPOVICH, JJ.

MEMORANDUM:

**FILED JUL 24 2002**

Appellants, Kerri L. Bergman and Harry Bergman, Jr., appeal from the Order sustaining the preliminary objections in the nature of a demurrer filed by Appellee, Treasure Lake Property Owners' Association. Appellants assert the trial court erred in holding that they, as members of the Appellee Association, are precluded from pursuing a tort action against the Association because any negligence of the Association would be imputed to them as a matter of law. We affirm.

The underlying facts averred in the complaint and procedural background may be summarized as follows. Appellants initiated the present action by filing a complaint on June 6, 2001, which averred that on June 8, 1999, Mrs. Bergman was seriously injured when a swimming pool ladder became detached from the side of the swimming pool causing her to fall.

Appellants named the Association as the sole defendant, alleging it failed to properly maintain the pool's ladder; thereby causing Mrs. Bergman's injuries. Mr. Bergman asserted a cause of action for loss of consortium as a result of his wife's injuries. Additionally, Appellants averred that they were members of the Association at all times relevant to this incident.

On June 21, 2001, the Association filed preliminary objections in the nature of a demurrer and a supporting brief, which requested dismissal on the theory of imputed liability. Specifically, in contesting the propriety of the action they argued that because an association is considered a joint enterprise, each member was both principal and agent for every other member. Consequently, the negligence of each member was required to be imputed to every other member, with the result that a member could not maintain an action for negligence against the association, because the member himself shared responsibility as a principal for the negligence of which he complained. Appellants responded by filing a brief in opposition to which the Association filed a reply brief. Following oral argument on October 1, 2001, the Honorable John K. Reilly, P.J. issued an Opinion and Order dated October 30, 2001, which sustained the Association's preliminary objections and dismissed the complaint with prejudice. This timely appeal followed.

On appeal Appellants raise two issues:

1. Whether the [trial court] erred in granting Appellee's Preliminary Objections where Appellee is an

incorporated association and only asserted that because member [sic] of an unincorporated association cannot recover damages for personal injuries, neither should a member of an incorporated association?

2. Did the trial court err in striking Appellant's [sic] Complaint with prejudice where there are issues which are not clear and free from doubt?

Appellants' brief, at 1. In essence, these issues present but one question *i.e.*, whether the facts as alleged permit recovery?

Preliminary objections in the nature of a demurrer may be sustained only in cases in which it is clear and free from doubt that the facts pled by the plaintiff are legally insufficient to establish a right to relief. ***Stair v. Turtzo, Spry, Sbrocchi, Faul & Labarre***, 564 Pa. 305, 309, 768 A.2d 299, 301 (2001). In an appeal from an order sustaining preliminary objections in the nature of a demurrer, this Court must accept all material facts set forth in the complaint as well as all inferences reasonably deducible therefrom as admitted and true. ***Wagner v. Waitlevertch***, 774 A.2d 1247, 1250 (Pa. Super. 2001). The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. ***Juban v. Schermer***, 751 A.2d 1190, 1192 (Pa. Super. 2000). In reaching our decision, we need not consider the pleader's conclusions of law, unwarranted inferences from facts, opinions, or argumentative allegations. ***Wagner, supra***. If, however, any doubt exists as to whether a demurrer should be sustained, we must reverse the decision of the court below. ***Id.*** at

1250-51. Our scope of review in this matter is plenary. ***Donahue v. Federal Express Corp.***, 753 A.2d 238, 241 (Pa. Super. 2000).

The trial court agreed with the Association's argument and found that pursuant to ***Plasterer v. Paine***, 544 A.2d 985 (Pa. Super. 1988) and ***De Villars v. Hessler***, 363 Pa. 498, 70 A.2d 333 (1950), Appellants, as members of the Association, could not maintain a negligence action against the Association. In ***Plasterer***, appellant was a member of the Liberty Fire Company Marching Club and was injured in a fistfight with another member of the club while socializing at the club's bar. Plasterer sued the association alleging it should not have allowed Mr. Paine access to the bar because of its awareness of Mr. Paine's mental disabilities and propensity for violence. Following a jury verdict in Plasterer's favor, the trial court entered a j.n.o.v. On appeal, this Court affirmed, in reliance upon the well-settled rule announced by our Supreme Court in ***De Villars***, finding that members of unincorporated associations may not recover from such associations in tort, since any negligence of the association or its members is legally, imputed to all of its members. ***Id.*** at 987-88.

In ***De Villars***, the plaintiff had been a member of a fraternal association, which operated a food concession stand at the county fair. While assisting with the preparation of food, the plaintiff was injured when a propane gas steam table exploded causing injuries. The plaintiff sued the association, its officers and several of its members, and the trial court

entered judgment on the pleadings for the defendants. Our Supreme Court affirmed, reasoning as follows:

Being thus **cooperatively engaged** with those who were allegedly guilty of negligence she became subject to the legal principle that **where persons join in the prosecution of a common enterprise there is thereby created a mutual relationship of agency among them, with the result that the negligence of any of them is imputed to each and all of them.** Since, therefore, the negligence of which she complains is legally imputed to herself, she cannot recover from the association or from any of its members, other than, as already stated, the individuals who actually committed the tort which caused her injuries.

**Plasterer**, 544 A.2d at 987 (quoting **De Villars**, 363 Pa. at 500-501, 70 A.2d at 335) (emphasis added)).

In their brief Appellants have abandoned the argument presented below that **Plasterer** and **De Villars** only apply to unincorporated associations rather than associations like the Appellee, which is organized as a nonprofit corporation. Instead, they now attempt to distinguish this precedent on the basis that the Appellee is an incorporated "planned community" association subject to the Uniform Planned Community Act. 68 Pa.C.S.A. §§ 5101-5414. Specifically, they direct our attention to § 5311(a)(4), which provides: "A unit owner is not precluded from bringing an action contemplated by this subsection because he is a unit owner or a member or officer of the association." Appellants' brief, at 4. Consequently, they now assert they are part of a planned community and may maintain this suit.

However, our review of the complaint does not reveal any averment that the Association is a "planned community" or that Appellants are unit owners in a planned community. Since our inquiry is limited to whether, on the facts averred, the law says with certainty that no recovery is possible, ***Juban, supra***, we cannot now consider new averments of fact or arguments based thereon that were not presented to the trial court. **See** Pa.R.A.P., Rule 302(a), 42 Pa.C.S.A. (stating "[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal."); ***Commonwealth v. Douglass***, 701 A.2d 1376, 1379 (Pa. Super. 1997) (same). Accordingly, we find this issue waived and further find the trial court properly applied the above-stated legal doctrine to the facts as alleged in dismissing Appellants' complaint.

Order affirmed.

Judgment Entered:

Eleanor R. Valecko

Deputy Prothonotary

JUL 24 2002

Date: \_\_\_\_\_