

See prior
briefs

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

LINDA RADAKER,
Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING,
Defendants

2002 - 181 - CD

No. _____, 2002, C. D.

Type of Pleading:

**COMPLAINT IN A CIVIL
ACTION**

Filed on Behalf of:
PLAINTIFF

Counsel of Record for
This Party:
Jeffrey S. DuBois, Esq.
Supreme Court I.D. No. 62074
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

FILED

FEB 07 2002

William A. Shaw
Prothonotary

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

LINDA RADAKER,

Plaintiffs

vs.

No. _____, 2002, C.D.

MILESTONE PROPERTIES, INC.,

JJ GUMBERG COMPANY, a/k/a

GUMBERG ASSOCIATES-SANDY

PLAZA and POLLINO EXCAVATING,:

Defendants

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 Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 1303

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

LINDA RADAKER,

Plaintiffs

vs.

No. _____, 2002, C.D.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING,
Defendants

COMPLAINT IN A CIVIL ACTION

AND NOW, comes the Plaintiff, LINDA RADAKER, by and through her attorneys, HANAK, GUIDO AND TALADAY, and files this Complaint and in support thereof avers the following:

1. Plaintiff, LINDA RADAKER, is an adult individual residing at R.D. #1, Box 180C, Luthersburg, Pennsylvania, 15848.
2. Defendant, MILESTONE PROPERTIES, INC., is a corporation, with an office address of 150 E. Palmetto Drive, Boca Raton, Florida, 33432.
3. Defendant, JJ GUMBERG COMPANY, a/k/a GUMBERG ASSOCIATES-SANDY PLAZA, is on belief, doing business within the Commonwealth of Pennsylvania, as a proprietorship, partnership or corporation, and has an office address of 1051 Brinton Road, Pittsburgh, Allegheny County, Pennsylvania, 15221.
4. Defendant, POLLINO EXCAVATING is, on belief, doing business within the Commonwealth of Pennsylvania, as a

proprietorship, partnership or corporation, and has an office address of 121 Lovers Lane, Kersey, Elk County, Pennsylvania, 15846.

5. The accident in question took place in Clearfield County, and this Court has proper jurisdiction.

6. At all times mentioned herein, Defendant, MILESTONE PROPERTIES, INC., was an owner or operator of the parking lot area in question in the Sandy Plaza, Sandy Township, Clearfield County, Pennsylvania, hereinafter referred to as "Sandy Plaza parking lot" and was in exclusive possession, management, or control of the parking lot area, individually and through its employees, agents or assigns, who were acting within the course of their scope of employment by Defendant and in furtherance of Defendant's business.

7. At all times mentioned herein, Defendant JJ GUMBERG ASSOCIATES, d/b/a GUMBERG ASSOCIATES-SANDY PLAZA was an owner, or lessee, or operator of the parking lot area in question in Sandy Plaza, Clearfield County, Pennsylvania, hereinafter referred to as "Sandy Plaza parking lot" and was in exclusive possession, management, or control of the parking lot area, individually and through its employees, agents or assigns, who were acting within the course of their scope of employment by Defendant and in furtherance of Defendant's business.

8. At all times mentioned herein, Defendant, POLLINO EXCAVATING, was an agent or employee of Defendant, JJ GUMBERG ASSOCIATES, d/b/a GUMBERG ASSOCIATES-SANDY PLAZA, and was

responsible for the maintenance and care for the Sandy Plaza parking lot which included the area in question referenced herein.

9. On or about February 14, 2000, Plaintiff was a business visitor to the store surrounding the Sandy Plaza parking lot.

10. On the above date, the Plaintiff traveled with her husband, now deceased, to the Sandy Plaza parking lot and parked their vehicle in the parking space between the Rent Way Store and the Liquor Store.

11. As Plaintiff was exiting her vehicle, there existed an accumulation of ice on the parking lot which caused Plaintiff to slip, stumble, and fall as soon as she placed her foot on the ice, resulting in serious and permanent injuries as set forth below.

COUNT ONE

Linda Radaker, Plaintiff,

vs.

Milestone Properties, Inc., Defendant.

12. Paragraphs 1 through 11 are incorporated herein by reference as though they were set forth more fully at length.

13. The accident was caused by MILESTONE PROPERTIES, INC.'S negligence, carelessness and recklessness in that:

(a) Defendant caused or permitted ice to accumulate upon the Sandy Plaza parking lot to a point where it posed an unreasonable risk of injury to Plaintiff and other business visitors;

(b) Defendant failed to make a reasonable inspection of the Sandy Plaza parking lot which would have revealed the existence of the dangerous condition posed by the accumulation of ice;

(c) Defendant failed to give warning of the dangerous condition posed by the accumulation of ice, erect barricades, apply deicing materials, post signs, or take any other safety precautions to prevent injury to the Plaintiff or other business visitors;

(d) Defendant failed to remove the accumulated ice from the Sandy Plaza parking lot.

14. Solely as a result of Defendant's negligence, carelessness, and recklessness, Plaintiff has sustained injuries:

(a) Broken kneecap;

(b) Bruises and contusions to the legs and hip;

(c) Bruises and contusions to the arms;

(d) Thereafter, as a result of complications because of her immobilized knee, broken wrist;

(e) General pain and discomfort.

15. The above injuries have caused Plaintiff great pain and suffering and may continue for an indefinite time in the future and may be permanent.

16. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be obliged to expend monies for medicine and medical care in order to treat and help cure her injuries.

17. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff was forced to stay at home and as a result was unable to work for a period of twelve (12) weeks.

18. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be unable to attend to usual and daily duties and employment, to her financial detriment and loss.

WHEREFORE, Plaintiff claims damages in favor of Plaintiff and against Defendant in excess of Twenty-five Thousand and 00/100 (\$25,000.00) Dollars together with costs and interest.

COUNT TWO

Linda Radaker, Plaintiff,

vs.

JJ Gumberg Associates, a/k/a
Gumberg Associates-Sandy Plaza, Defendant.

19. Paragraphs 1 through 18 are incorporated herein by reference as though they were set forth more fully at length.

20. The accident was caused by JJ GUMBERG ASSOCIATES a/k/a GUMBERG ASSOCIATES-SANDY PLAZA'S negligence, carelessness and recklessness in that:

(a) Defendant caused or permitted ice to accumulate upon the Sandy Plaza parking lot to a point where it posed an unreasonable risk of injury to Plaintiff and other business visitors;

(b) Defendant failed to make a reasonable inspection of the Sandy Plaza parking lot which would have revealed the existence of the dangerous condition posed by the accumulation of ice;

(c) Defendant failed to give warning of the dangerous condition posed by the accumulation of ice, erect barricades, apply deicing materials, post signs, or take any other safety precautions to prevent injury to the Plaintiff or other business visitors;

(d) Defendant failed to remove the accumulated ice from the Sandy Plaza parking lot.

21. Solely as a result of Defendant's negligence, carelessness, and recklessness, Plaintiff has sustained injuries:

(a) Broken kneecap;

(b) Bruises and contusions to the legs and hip;

(c) Bruises and contusions to the arms;

(d) Thereafter, as a result of complications because of her immobilized knee, broken wrist;

(e) General pain and discomfort.

22. The above injuries have caused Plaintiff great pain and suffering and may continue for an indefinite time in the future and may be permanent.

23. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be obliged to expend monies for medicine and medical care in order to treat and help cure her injuries.

24. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff was forced to stay at home and as a result was unable to work for a period of twelve (12) weeks.

25. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be unable to attend to usual and daily duties and employment, to her financial detriment and loss.

WHEREFORE, Plaintiff claims damages in favor of Plaintiff and against Defendant in excess of Twenty-five Thousand and 00/100 (\$25,000.00) Dollars together with costs and interest.

COUNT THREE

Linda Radaker, Plaintiff,
vs.
Pollino Excavating, Defendant.

26. Paragraphs 1 through 25 are incorporated hereby reference as though set forth more fully at length.

27. The accident was caused by POLLINO EXCAVATING'S negligence, carelessness and recklessness in that:

(a) Defendant caused or permitted ice to accumulate upon the Sandy Plaza parking lot to a point where it posed an unreasonable risk of injury to Plaintiff and other business visitors;

(b) Defendant failed to make a reasonable inspection of the Sandy Plaza parking lot which would have revealed the existence of the dangerous condition posed by the accumulation of ice;

(c) Defendant failed to give warning of the dangerous condition posed by the accumulation of ice, erect barricades, apply deicing materials, post signs, or take any other safety precautions to prevent injury to the Plaintiff or other business visitors;

(d) Defendant failed to remove the accumulated ice from the Sandy Plaza parking lot.

28. Solely as a result of Defendant's negligence, carelessness, and recklessness, Plaintiff has sustained injuries:

- (a) Broken kneecap;
- (b) Bruises and contusions to the legs and hip;
- (c) Bruises and contusions to the arms;
- (d) Thereafter, as a result of complications because of her immobilized knee, broken wrist;
- (e) General pain and discomfort.

29. The above injuries have caused Plaintiff great pain and suffering and may continue for an indefinite time in the future and may be permanent.

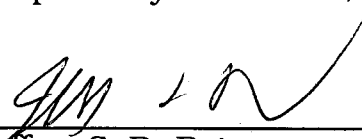
30. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be obliged to expend monies for medicine and medical care in order to treat and help cure her injuries.

31. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff was forced to stay at home and as a result was unable to work for a period of twelve (12) weeks.

32. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be unable to attend to usual and daily duties and employment, to her financial detriment and loss.

WHEREFORE, Plaintiff demands judgment against Defendant in
an amount in excess of Twenty-five Thousand and 00/100
(\$25,000.00) Dollars, exclusive of interest and costs.

Respectfully submitted,

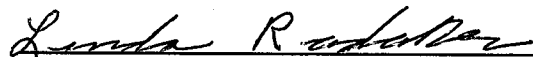


Jeffrey S. DuBois
Attorney for Plaintiff

VERIFICATION

I, LINDA RADAKER, verify that the statements in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.



Linda Radaker

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FEB 07 2002

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William A. Shaw Atty
Prothonotary DuBois

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

LINDA RADAKER,

Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY PLAZA
and POLLINO EXCAVATING,

Defendants

)
: No. 2002-181-CD
)
: Type of Pleading:
)
: **ENTRY OF APPEARANCE**
)
: **Filed on Behalf of:**
) **Defendant Pollino Excavating**

Counsel of Record for this Party:

Joseph P. Green, Esq.
ID No. 19238
Lee, Martin, Green & Reiter, Inc.
115 East High Street
PO Box 179
Bellefonte, PA 16823
814-355-4769

JURY TRIAL DEMANDED

FILED

MAR 01 2002

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William A. Shaw
Prothonotary

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	

ENTRY OF APPEARANCE

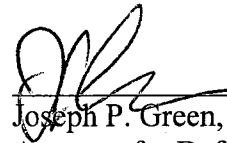
To the Prothonotary:

Enter the appearance of the undersigned on behalf of Pollino Excavating,

Defendant above-named.

LEE, MARTIN, GREEN & REITER, INC.

By:



Joseph P. Green, Esq., ID #19238
Attorney for Defendant Pollino Excavating
115 East High Street
PO Box 179
Bellefonte, PA 16823
814-355-4769

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Entry of Appearance was deposited in the United States mail, postage prepaid, in Bellefonte, Pennsylvania, on the 27 day of Feb, 2002 addressed to the following:

Jeffrey S. DuBois, Esq.
Hanak, guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Milestone Properties, Inc.
150 E. Palmetto Drive
Boca Raton, FL 33432

JJ Gumberg Company a/k/a
Gumberg Associates – Sandy Plaza
1051 Brinton Road
Pittsburgh, PA 15221



Joseph P. Green

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,

Plaintiff,

vs.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES, SANDY,
PLAZA and POLLINO EXCAVATING,

Defendant.

CIVIL ACTION - LAW

No. 2002-181-C.D.

PRAECIPE FOR APPEARANCE

Filed on behalf of Defendant: Milestone
PROPERTIES, INC.

Counsel of Record for this Party:

Bruce E. Rende, Esquire
PA I.D. #52714

ROBB, LEONARD & MULVIHILL
Firm #249
2300 One Mellon Bank Center
Pittsburgh, PA 15219

(412) 281-5431

JURY TRIAL DEMANDED

FILED

MAR 06 2002

m/10:53/120cc
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,	)	CIVIL ACTION - LAW
)	
	)	No.: 2002-181 C.D.
Plaintiffs,)	
)	
vs.)	
)	
MILESTONE PROPERTIES, INC.,)	
J.J. GUMBERG COMPANY a/k/a)	
GUMBERG ASSOCIATES, SANDY)	
PLAZA and POLLINO EXCAVATING,)	
)	
Defendants.)	

PRAECIPE FOR APPEARANCE

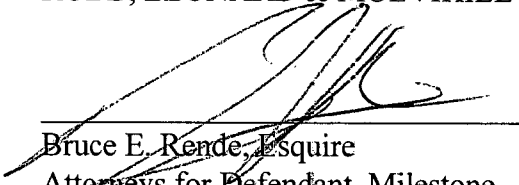
TO: Prothonotary of Clearfield County

Kindly enter our appearance on behalf of the Defendant, Milestone Properties, Inc., in the above-captioned matter.

Respectfully submitted,

ROBB, LEONARD & MULVIHILL

By:



Bruce E. Rende, Esquire
Attorneys for Defendant, Milestone
Properties, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the within PRAECIPE FOR
APPEARANCE upon all counsel of record via First Class U.S. Mail, postage prepaid, on this 4th
day of March, 2002:

Jeffrey S. DuBois, Esquire
Hanak, Guido and Taladay
498 Jeffers Street; P. O. Box 487
DuBois, PA 15801
Attorney for Plaintiff



Bruce E. Rende, Esquire

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

LINDA RADAKER,

Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY PLAZA
and POLLINO EXCAVATING,

Defendants

)

:

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:

)

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)

:

No. 2002-181-CD

Type of Pleading:

ANSWER AND NEW MATTER

Filed on Behalf of:

Defendant Pollino Excavating

Counsel of Record for this Party:

Joseph P. Green, Esq.
ID No. 19238
Lee, Martin, Green & Reiter, Inc.
115 East High Street
PO Box 179
Bellefonte, PA 16823
814-355-4769

JURY TRIAL DEMANDED

FILED

MAR 11 2002

M/1:58pm
William A. Shaw
Prothonotary

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	

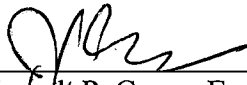
NOTICE TO PLEAD

To the within named parties:

You are hereby notified to plead to the within NEW MATTER within 20 days of service hereof, or judgment may be entered against you.

LEE, MARTIN, GREEN & REITER, INC.

By: _____


Joseph P. Green, Esq., ID #19238
Attorney for Defendant Pollino Excavating
115 East High Street
PO Box 179
Bellefonte, PA 16823
814-355-4769

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	

ANSWER AND NEW MATTER FILED BY
DEFENDANT POLLINO EXCAVATING

Defendant Pollino Excavating responds to the Complaint filed in this matter as follows:

1. Admitted.
2. Denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.
3. Denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.
4. Admitted
5. Denied. The averments are denied pursuant to Pa. R.C.P. 1029(e).
6. & 7. Denied. The responding party does not have detailed or precise knowledge as to the matters relating to the averments set forth in Paragraphs 6 and 7. Therefore, it must deny these averments at this time. After reasonable investigation, the responding party is without

knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

8. Denied as stated. The responding party was neither an employee nor agent of Defendant Gumberg. It had no relationship to said party which would constitute employment or agency.

9. Denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

10. Denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

11. Denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

COUNT ONE

Linda Radaker v. Milestone Properties, Inc.

12. The foregoing responses are incorporated at this point by reference.

13. The averments set forth in paragraph 13 relate to a party other than responding defendant. Therefore, it would appear that no specific response is required. However, to the extent that any implication exists within the averments of paragraph 13, including the subparagraphs, that the responding party committed tortious conduct, said averments are denied in accordance with Pa. R.C.P. 1029(e). In addition, the responding party affirmatively states that

it exercised reasonable care and prudence under the circumstances and committed no act or omission which was the proximate or legal cause of the subject harm.

14. (including subparagraphs a through e). Denied. Any averment, express or implied, which would amount to an assertion that the responding party committed tortious conduct is denied pursuant to Pa. R.C.P. 1029(e). On the contrary, it is affirmatively asserted that the responding party acted with due care and prudence in all respects and committed no tortious conduct which was legal or proximate cause of the subject harm. All allegations relating to the damages are denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

15. Denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

16. Denied. The averments are denied pursuant to Pa. R.C.P. 1029(e). All averments relating to injuries or damages are denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

17. Denied. The averments are denied pursuant to Pa. R.C.P. 1029(e). All averments relating to injuries or damages are denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

18. Denied. The averments are denied pursuant to Pa. R.C.P. 1029(e). All averments relating to injuries or damages are denied. After reasonable investigation, the responding party is

without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

WHEREFORE, it is respectfully requested that judgment be entered in favor of the responding party and against the plaintiff.

COUNT TWO

Linda Radaker v. JJ Gumberg Associates a/k/a

Gumberg Associates-Sanda Plaza

19. The foregoing responses are incorporated at this point by reference.

20. (including subparagraphs a through d). The averments set forth in paragraph 20, including subparagraphs, relate to a defendant other than the responding party. In this regard, it is asserted that no specific response is required. In any event, the responding party asserts that it committed no tortious conduct which was a legal or approximate cause of the alleged harm and that it acted with reasonable care and prudence under the circumstances.

21. Denied. Any averment, express or implied, which would amount to an assertion that the responding party committed tortious conduct is denied pursuant to Pa. R.C.P. 1029(e). On the contrary, it is affirmatively asserted that the responding party acted with due care and prudence in all respects and committed no tortious conduct which was legal or proximate cause of the subject harm. All allegations relating to the damages are denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

22. Denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

23. Denied. The averments are denied pursuant to Pa. R.C.P. 1029(e). All averments relating to injuries or damages are denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

24. Denied. The averments are denied pursuant to Pa. R.C.P. 1029(e). All averments relating to injuries or damages are denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

25. Denied. The averments are denied pursuant to Pa. R.C.P. 1029(e). All averments relating to injuries or damages are denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

WHEREFORE, it is respectfully requested that judgment be entered in favor of the responding party and against the plaintiff.

COUNT THREE

Linda Radaker v. Pollino Excavating

26. The responses to the foregoing paragraphs are incorporated at this point by reference.

27. (including subparagraphs a through d). Denied. The responding party denies all averments set forth in paragraph 27, including subparagraphs, pursuant to Pa. R.C.P. 1029(e). In addition, the responding party affirmatively asserts that it exercised reasonable care and prudence in all respects and committed no tortious conduct which was a legal or proximate cause of the subject harm.

28. (including subparagraphs a though e). Denied. As stated above, the responding party asserts that it acted with reasonable care and prudence in all respects and committed no tortious conduct which was a legal or proximate cause of the subject harm. All allegations relating to damages are denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

29. Denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

30. Denied. As stated above, the responding party asserts that it acted with reasonable care and prudence in all respects and committed no tortious conduct which was a legal or proximate cause of the subject harm. All allegations relating to damages are denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

31. Denied. As stated above, the responding party asserts that it acted with reasonable care and prudence in all respects and committed no tortious conduct which was a legal or proximate cause of the subject harm. All allegations relating to damages are denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

32. Denied. As stated above, the responding party asserts that it acted with reasonable care and prudence in all respects and committed no tortious conduct which was a legal or proximate cause of the subject harm. All allegations relating to damages are denied. After

reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

WHEREFORE, it is respectfully requested that judgment be entered in favor of the responding party and against the plaintiff.

NEW MATTER – GENERAL

33. To the extent applicable, the responding party raises the protection of the two year statute of limitations applicable to personal injury actions in defense of this matter.

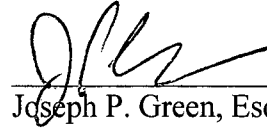
34. It is asserted that the plaintiff herself acted in a negligent and careless manner with respect to her own safety and that such conduct was the legal or proximate cause of injury. The negligent acts and omissions of the plaintiff included the following:

- Failing to be attentive and observant relative to weather conditions in terms of her own safety; and
- Failing to be attentive an observant of walking surface conditions relative to her own safety; and
- Failing to take an alternate or safe route of travel; and,
- Failing to use appropriate footwear; and,
- Failing to exercise due caution in walking across outdoor surfaces in winter weather.

WHEREFORE, it is respectfully requested that judgment be entered in favor of the Defendant Pollino Excavating and against Plaintiff Radaker.

LEE, MARTIN, GREEN & REITER, INC.

By:



Joseph P. Green, Esq., ID #19238
Attorney for Defendant Pollino Excavating
115 East High Street
PO Box 179
Bellefonte, PA 16823
814-355-4769

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	

VERIFICATION

Raymond Pollino, a duly authorized representative of Pollino Excavating, states that he is acquainted with the facts set forth in the foregoing pleading; that the same are true and correct to the best of his knowledge, information and belief; and that this statement is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Raymond Pollino
Raymond Pollino

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

LINDA RADAKER,)
Plaintiff : No. 2002-181-CD
vs. : JURY TRIAL DEMANDED
MILESTONE PROPERTIES, INC.,)
JJ GUMBERG COMPANY, a/k/a)
GUMBERG ASSOCIATES-SANDY PLAZA :
and POLLINO EXCAVATING,)
Defendants :


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer and New Matter
was deposited in the United States mail, postage prepaid, in Bellefonte, Pennsylvania, on the
8 day of March, 2002 addressed to the following:

Jeffrey S. DuBois, Esq.
Hanak, guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Milestone Properties, Inc.
150 E. Palmetto Drive
Boca Raton, FL 33432

JJ Gumberg Company a/k/a
Gumberg Associates – Sandy Plaza
1051 Brinton Road
Pittsburgh, PA 15221



Joseph P. Green

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION – LAW

LINDA RADAKER,

No. 2002-181-CD

Plaintiff

PRAECIPE FOR APPEARANCE

v.

MILESTONE PROPERTIES, INC., JJ
GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO
EXCAVATING,

Filed on behalf of DEFENDANTS, JJ
GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA

Defendants

Counsel of Record for this Party:

ROBERT J. BEHLING, ESQUIRE
Pa. I.D. #30659

PIETRAGALLO, BOSICK & GORDON
Firm #834
One Oxford Centre
301 Grant Street, 38th Floor
Pittsburgh, PA 15219

(412) 263-2000

FILED

MAR 15 2002

11:14 p.m.

William A. Shaw
Prothonotary

WAS

hocc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION – LAW

LINDA RADAKER,	)	No. 2002-181-CD
)	
Plaintiff)	
)	
v.)	
)	
MILESTONE PROPERTIES, INC., JJ)	
GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY)	
PLAZA and POLLINO)	
EXCAVATING,)	
)	
Defendants)	

PRAECIPE FOR APPEARANCE

TO THE PROTHONOTARY:

Kindly enter our appearance as counsel of record for the Defendant, JJ Gumberg
Company, a/k/a Gumberg Associates-Sandy Plaza, in the above-captioned matter.

PIETRAGALLO, BOSICK & GORDON

BY 

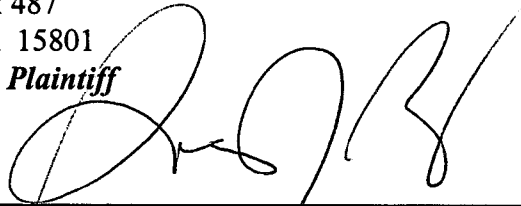
Robert J. Behling, Esquire

Attorneys for Defendant J.J. Gumberg
Company a/k/a Gumberg Associates-
Sandy Plaza

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within pleading was forwarded by first class mail, postage prepaid, this 13th day of March, 2002, upon the following individual:

Jeffrey S. DuBois, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorneys for Plaintiff



Robert J. Behling, Esquire

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

LINDA RADAKER,
Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING,
Defendants

No. 2002-181, C. D.

Type of Pleading:

AFFIDAVIT OF SERVICE

Filed on Behalf of:
PLAINTIFF

Counsel of Record for
This Party:
Jeffrey S. DuBois, Esq.
Supreme Court I.D. No. 62074
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

FILED

MAR 19 2002

WAS
m/10:46/NOCC
William A. Shaw
Prothonotary

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

LINDA RADAKER,

Plaintiffs

vs.

No. 2002-181, C.D.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING,
Defendants

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA

SS:

COUNTY OF CLEARFIELD

The undersigned, JEFFREY S. DUBOIS, hereby swears and affirms that the Defendant, MILESTONE PROPERTIES, INC., was duly served with a copy of the Complaint in the above matter at its principal place of business of 150 East Palmetto Drive, Boca Raton, Florida, 33432, on February 15, 2002, by the United States Postal Service, Certified Mail, the return receipt, No. 7099 3220 0011 0187 7764, is attached hereto.



Jeffrey S. DuBois

Sworn and subscribed before me

this 18th day of March, 2002.



Notary Public

Notarial Seal
Barbara A. Bowser, Notary Public
City of DuBois, Clearfield County
My Commission Expires Mar. 28, 2005
Member, Pennsylvania Association of Notaries

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Milestone Properties Inc
150 E Palmetto Drive
Boca Raton, FL 33432

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

D. RUGLIA

B. Date of Delivery

2-15-02

C. Signature

X *D. RUGLIA*☐ Agent☐ Addressee

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7099 3220 0011 0187 7764

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,

Plaintiff,

vs.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES, SANDY
PLAZA and POLLINO EXCAVATING,

Defendants.

CIVIL ACTION - LAW

No. 2002-181-C.D.

**NOTICE OF SERVICE OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT,
POLLINO EXCAVATING**

Filed on behalf of Defendant: Milestone
PROPERTIES, INC.

Counsel of Record for this Party:

Bruce E. Rende, Esquire
PA I.D. #52714

ROBB, LEONARD & MULVIHILL
Firm #249
2300 One Mellon Bank Center
Pittsburgh, PA 15219

(412) 281-5431

JURY TRIAL DEMANDED

FILED

APR 05 2002

m/1037/no cc
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,	)	CIVIL ACTION - LAW
)	
	)	No.: 2002-181 C.D.
Plaintiffs,)	
)	
vs.)	
)	
MILESTONE PROPERTIES, INC.,)	
J.J. GUMBERG COMPANY a/k/a)	
GUMBERG ASSOCIATES, SANDY)	
PLAZA and POLLINO EXCAVATING,)	
)	
Defendants.)	

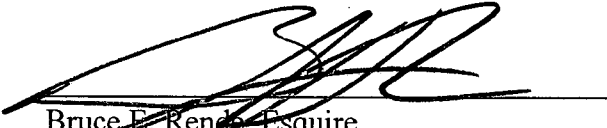
**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT,
POLLINO EXCAVATING**

NOTICE is hereby given that Interrogatories and Request For Production Of Documents Directed To Defendant, Pollino Excavating were served by depositing the same in the U.S. Mail, postage prepaid, on the 3rd day of April, 2002 and addressed to: Pollino Excavating, 121 Lovers Lane, Kersey, PA 15846 and counsel for Plaintiff, Jeffrey S. DuBois, Esquire, Hanak, Guido and Taladay, 498 Jeffers Street, P. O. Box 487, DuBois, PA 15801.

Respectfully submitted,

ROBB, LEONARD & MULVIHILL

By:


Bruce E. Rende, Esquire
Attorneys for Defendant, Milestone
Properties, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,

Plaintiff,

vs.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES, SANDY
PLAZA and POLLINO EXCAVATING,

Defendants.

CIVIL ACTION - LAW

No. 2002-181-C.D.

**NOTICE OF SERVICE OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANTS,
J.J. GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA**

Filed on behalf of Defendant: Milestone
PROPERTIES, INC.

Counsel of Record for this Party:

Bruce E. Rende, Esquire
PA I.D. #52714

ROBB, LEONARD & MULVIHILL
Firm #249
2300 One Mellon Bank Center
Pittsburgh, PA 15219

(412) 281-5431

JURY TRIAL DEMANDED

FILED

APR 05 2002
m/10:39/noce
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,	)	CIVIL ACTION - LAW
)	
	)	No.: 2002-181 C.D.
Plaintiffs,)	
)	
vs.)	
)	
MILESTONE PROPERTIES, INC.,)	
J.J. GUMBERG COMPANY a/k/a)	
GUMBERG ASSOCIATES, SANDY)	
PLAZA and POLLINO EXCAVATING,)	
)	
Defendants.)	

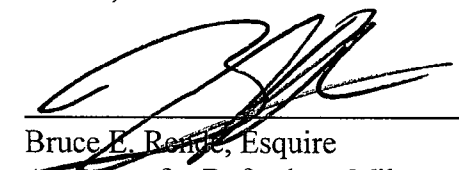
**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS,
J.J. GUMBERG COMPANY a/k/a GUMBERG ASSOCIATES-SANDY PLAZA**

NOTICE is hereby given that Interrogatories and Request For Production Of Documents Directed To Defendants, J.J. Gumberg Company a/k/a Gumberg Associates-Sandy Plaza, were served by depositing the same in the U.S. Mail, postage prepaid, on the 3rd day of April, 2002 and addressed to: J.J. Gumberg Company, a/k/a Gumberg Associates-Sandy Plaza, 1051 Brinton Road, Pittsburgh, PA 15221 and counsel for Plaintiff, Jeffrey S. DuBois, Esquire, Hanak, Guido and Taladay, 498 Jeffers Street; P. O. Box 487, DuBois, PA 15801.

Respectfully submitted,

ROBB, LEONARD & MULVIHILL

By:



Bruce E. Rende, Esquire
Attorneys for Defendant, Milestone
Properties, Inc.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12066

RADAKER, LINDA

02-181-CD

VS.

MILESTONE PROPERTIES, INC. al

COMPLAINT

SHERIFF RETURNS

NOW FEBRUARY 8, 2002, THOMAS KONTES, SHERIFF OF ELK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON POLLINO EXCAVATING, DEFENDANT.

NOW FEBRUARY 12, 2002 SERVED THE WITHIN COMPLAINT ON POLLINO EXCAVATING, DEFENDANT BY DEPUTIZING THE SHERIFF OF ELK COUNTY. THE RETURN OF SHERIFF KONTES IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED RAYMOND POLLINO, OWNER.

NOW FEBRUARY 8, 2002, PETER DEFAZIO, SHERIFF OF ALLEGHENY COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON JJ GUMBERG COMPANY A/K/A GUMBERG ASSOCIATES-SANDY PLAZA, DEFENDANT.

NOW MARCH 1, 2002 SERVED THE WITHIN COMPLAINT ON JJ GUMBERG COMPANY a/k/a GUMBERG ASSOCIATES-SANDY PLAZA, DEFENDANT BY DEPUTIZING THE SHERIFF OF ALLEGHENY COUNTY. THE RETURN OF SHERIFF DEFAZIO IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED DANA RAPNETH, AGENT.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12066

RADAKER, LINDA

02-181-CD

VS.

MILESTONE PROPERTIES, INC. al

COMPLAINT

SHERIFF RETURNS

Return Costs

Cost Description

43.94 SHFF. HAWKINS PAID BY: ATTY.

29.25 SHFF. DEFAZIO PAID BY: ATTY.

3.00 NOTARY PAID BY: ATTY.

26.60 SHFF. KONTES PAID BY: ATTY.

20.00 SURCHARGE PAID BY: ATTY.

122.79

Sworn to Before Me This

15th Day Of April 2002
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st May, 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
Chester A. Hawkins
Sheriff

FILED

APR 15 2002
01146
William A. Shaw
Prothonotary

12066

Affidavit of Service

Linda Radaker

vs.

Pollino Excavating, et al.

No. 181 Term, 20 02

Returnable within _____ days
from date of service hereof.

NOW February 12, 20 02 at 9:39 o'clock A.M.

served the within Complaint on Pollino Excavating

at 121 Lovers Lane, Kersey, Elk County, PA

by handing to Raymond Pollino, owner,

a true and attested copy of the original Complaint and made

known to him the contents thereof. Sheriff's Costs - \$26.60 PAID

Sworn to before me this 13th

day of February A.D. 2002

Carolee S. Gray

Prothonotary

My Commission Expires
January 5, 2004

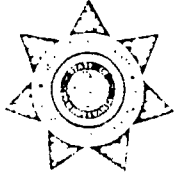
So answers,

Thomas C. Korte

Sheriff

John H. Hoff

Deputy



Sheriff's Office Clearfield County

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533
CLEARFIELD COUNTY FAX
(814) 765-5915

CHESTER A. HAWKINS
SHERIFF

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

DARLENE SHULTZ
CHIEF DEPUTY

MARGARET PUTT
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER

TERM & NO. 02-181-CD

VS

SERVE BY: 3/9/02

MILESTONE PROPERTIES INC al

DOCUMENT TO BE SERVED:
COMPLAINT

MAKE REFUND PAYABLE TO:

HANAK, GUIDO & TALADAY, Attorneys

SERVE: POLLINO EXCAVATING

ADDRESS: 121 Lover Lane, Kersey, Pa. 15846

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF ELK COUNTY Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 8th Day of February 2002.

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

PETER R. DEFAZIO
Sheriff

ALLEGHENY COUNTY SHERIFF'S DEPARTMENT

436 GRANT STREET
PITTSBURGH, PA 15219-2496
PHONE (412) 350-4700

DENNIS SKOSNIK
Chief Deputy

PLAINTIFF LINDA RADAKER

VS.

DEFT. MILESTONE PROPERTIES INC AL
ADD. DEFT. SERVE: JJ GUMBERG COMPANY a/k/a GUMBERG
ADD. DEFT. ASSOCIATES-SANDY PLAZA
GARNISHEE 1051 Brinton Road
Pittsburgh, Pa. 15221
ADDRESS Forest Hills

MUNICIPALITY or CITY WARD _____

DATE: _____ 19 _____

ATTY'S Phone 814-371-7768

CASE# 02-181-CD

EXPIRES 3/9/02

- ☐ SUMMONS/PRAECIPE
☐ SEIZURE OR POSSESSION
☒ NOTICE AND COMPLAINT
☐ REVIVAL of SCI FA
☐ INTERROGATORIES
☐ EXECUTION - LEVY OR GARNISHEE
☐ OTHER

ATTY. Jeffrey DuBois

ADDRESS 408 Jeffers St., PO Box 487
DuBois, Pa. 15801

INDICATE TYPE OF SERVICE: ☐ PERSONAL ☐ PERSON IN CHARGE ☒ DEPUTIZE ☐ CERT. MAIL ☐ POSTED ☐ OTHER ☐ LEVY ☐ SEIZED & STORE

Now, February 8, 2002 19XX I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby deputize the Sheriff of

ALLEGHENY COUNTY

XXXX to execute this Writ and make return thereof according to law

NOTE: ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person or attachment without liability on the part of such deputy herein for any loss, destruction or removal of any property before sheriff's sale thereof.

Seize, levy, advertise and sell all the personal property of the defendant on the premises located at: _____

MAKE

MODEL

MOTOR NUMBER

SERIAL NUMBER

LICENSE NUMBER

SHERIFF'S OFFICE USE ONLY

I hereby CERTIFY AND RETURN that on the 4 day of MARCH, 19 2002 at 11:11 o'clock A.M. P.M. Address Above/Address Below. County of Allegheny, Pennsylvania

I have served in the manner described below:

- ☐ Defendant(s) personally served.
☐ Adult family member with whom said Defendant(s) reside(s). Name & Relationship _____
☐ Adult in charge of Defendant's residence who refused to give name or relationship.
☐ Manager/Clerk of place of lodging in which Defendant(s) reside(s).
☒ Agent or person in charge of Defendant(s) office or usual place of business. DANA RAPNETH

☐ Other _____

☐ Property Posted _____

Defendant not found because: ☐ Moved ☐ Unknown ☐ No Answer ☐ Vacant ☐ Other _____

☐ Certified Mail ☐ Receipt _____ ☐ Envelope Returned _____ ☐ Neither receipt or _____ returned _____ expired _____

☐ Regular Mail Why _____

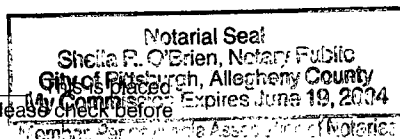
You are hereby notified that on _____, 19 _____, levy was made in the case of _____
Possession/Sale has been set for _____ o'clock.

YOU MUST CALL DEPUTY ON THE MORNING OF SALE POSSESSION BETWEEN 8:30 - 9:30 A.M.

MAR 11 2002

ATTEMPTS _____

Shelia R. O'Brien



Additional Costs Due \$ _____
on writ when returned to Prothonotary. Please check before
satisfying case.

PETER R. DEFAZIO, Sheriff

By Wm. Cangelosi Deputy

District 6

White Copy - Sheriff

Yellow - Sheriff

Pink Copy - Attorney

PETER R. DEFAZIO
Sheriff

ALLEGHENY COUNTY SHERIFF'S DEPARTMENT

436 GRANT STREET
PITTSBURGH, PA 15219-2496
PHONE (412) 350-4700

DENNIS SKOSNIK
Chief Deputy

PLAINTIFF LINDA RADAKER

VS.

DEFT. MILESTONE PROPERTIES INC AL
ADD. DEFT. SERVE: JJ GUMBERG COMPANY a/k/a GUMBERG
ADD. DEFT. ASSOCIATES-SANDY PLAZA
GARNISHEE 1051 Brinton Road
Pittsburgh, Pa. 15221
ADDRESS Forest Hills

CASE# 02-181-CD

EXPIRES 3/9/02

- ☐ SUMMONS/PRAECIPE
☐ SEIZURE OR POSSESSION
☒ NOTICE AND COMPLAINT
☐ REVIVAL of SCI FA
☐ INTERROGATORIES
☐ EXECUTION - LEVY OR GARNISHEE
☐ OTHER

MUNICIPALITY or CITY WARD

ATTY. Jeffrey DuBois

DATE: _____ 19____

ADDRESS 498 Jeffers St., PO Box 487
DuBois, Pa. 15801

ATTY'S Phone 814-371-7768

INDICATE TYPE OF SERVICE: ☐ PERSONAL ☐ PERSON IN CHARGE ☒ DEPUTIZE ☐ CERT. MAIL ☐ POSTED ☐ OTHER ☐ LEVY ☐ SEIZED & STORE

Now, February 8, 2002 19xx I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby deputize the Sheriff of

ALLEGHENY COUNTY

County to execute this Writ and make return thereof according to law

NOTE: ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person or attachment without liability on the part of such deputy herein for any loss, destruction or removal of any property before sheriff's sale thereof.

Seize, levy, advertise and sell all the personal property of the defendant on the premises located at: _____

MAKE

MODEL

MOTOR NUMBER

SERIAL NUMBER

LICENSE NUMBER

SHERIFF'S OFFICE USE ONLY

I hereby CERTIFY AND RETURN that on the 9 day of March, 19 2002 at 10:11 o'clock A.M. Address Above/Address Below. County of Allegheny, Pennsylvania

I have served in the manner described below:

- ☐ Defendant(s) personally served.
☐ Adult family member with whom said Defendant(s) reside(s). Name & Relationship _____
☐ Adult in charge of Defendant's residence who refused to give name or relationship.
☐ Manager/Clerk of place of lodging in which Defendant(s) reside(s).
☒ Agent or person in charge of Defendant(s) office or usual place of business. DANA RAPNETTI

☐ Other _____

☐ Property Posted _____

Defendant not found because: ☐ Moved ☐ Unknown ☐ No Answer ☐ Vacant ☐ Other _____

☐ Certified Mail ☐ Receipt _____ ☐ Envelope Returned _____ ☐ Neither receipt or envelope returned: writ expired _____

☐ Regular Mail Why _____

You are hereby notified that on _____, 19____, levy was made in the case of _____
Possession/Sale has been set for _____, 19____ at _____ o'clock.

YOU MUST CALL DEPUTY ON THE MORNING OF SALE/POSSESSION BETWEEN 8:30 - 9:30 A.M.

ATTEMPTS _____ / _____ / _____

PETER R. DEFAZIO, Sheriff

By Wm Campbell
Deputy

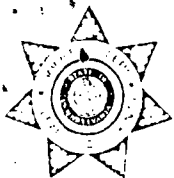
District 6

Additional Costs Due \$ _____, This is placed
on writ when returned to Prothonotary. Please check before
satisfying case.

White Copy - Sheriff

Yellow - Sheriff

Pink Copy - Attorney



Sheriff's Office Clearfield County

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533
CLEARFIELD COUNTY FAX
(814) 765-5915

CHESTER A. HAWKINS
SHERIFF

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

DARLENE SHULTZ
CHIEF DEPUTY

MARGARET PUTT
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER

TERM & NO. 02-181-CD

VS

SERVE BY: 3/9/02

MILESTONE PROPERTIES INC a1

DOCUMENT TO BE SERVED:

COMPLAINT

MAKE REFUND PAYABLE TO: HANAK, GUIDO & TALADAY, Attorneys

SERVE: JJ GUMBERG COMPANY a/k/a GUMBERG ASSOCIATES-SANDY PLAZA

ADDRESS: 1051 Brinton Road, Pittsburgh, Pa. 15221

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby depute the SHERIFF OF ALLEGHENY COUNTY Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 8th Day of February 2002.

Respectfully,

CHESTER A. HAWKINS:
SHERIFF OF CLEARFIELD COUNTY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,

Plaintiff,

vs.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES, SANDY
PLAZA and POLLINO EXCAVATING,

Defendants.

CIVIL ACTION - LAW

No. 2002-181-C.D.

**ANSWER, NEW MATTER AND NEW
MATTER PURSUANT TO Pa.R.C.P.
2252(d)**

Filed on behalf of Defendant: Milestone
Properties, Inc.

Counsel of Record for this Party:

Bruce E. Rende, Esquire
PA I.D. #52714

ROBB, LEONARD & MULVIHILL
Firm #249
2300 One Mellon Bank Center
Pittsburgh, PA 15219

(412) 281-5431

JURY TRIAL DEMANDED

To all Parties
You are hereby notified to file a written
response to the enclosed
ANS. N. Matter. Per Pa.R.C.P. 2252(d)
within twenty (20) days from service hereof
of a judgment may be entered against you.
ROBB, LEONARD & MULVIHILL
By Bruce E. Rende, Esq.
Attorneys as shown

FILED

MAY 03 2002

m/jl:49/nocc
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,	)	CIVIL ACTION - LAW
)	
	)	No.: 2002-181 C.D.
Plaintiffs,)	
)	
vs.)	
)	
MILESTONE PROPERTIES, INC.,)	
J.J. GUMBERG COMPANY a/k/a)	
GUMBERG ASSOCIATES, SANDY)	
PLAZA and POLLINO EXCAVATING,)	
)	
Defendants.)	

ANSWER, NEW MATTER AND NEW MATTER
PURSUANT TO Pa.R.C.P. 2252(d)

AND NOW, comes Defendant, Milestone Properties, Inc. (hereinafter "Milestone"), by and through its attorneys, Robb, Leonard & Mulvihill and Bruce E. Rende, Esquire, and files the within Answer, New Matter and New Matter Pursuant To Pa.R.C.P. 2252(d) of which the following is a statement:

1. Upon reasonable investigation, Milestone is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 1; therefore, same are denied and strict proof thereof is demanded at time of trial.

2. The averments of Paragraph 2 are admitted as stated.

3. Upon reasonable investigation, Milestone is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 3; therefore, same are denied and strict proof thereof is demanded at time of trial.

4. Upon reasonable investigation, Milestone is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 4; therefore, same are denied and strict proof thereof is demanded at time of trial.

5. The averments of Paragraph 5 set forth legal conclusions to which no responsive pleading is required. By way of further answer, to the extent that a responsive pleading may be required, upon reasonable investigation, Milestone is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 5; therefore, same are denied and strict proof thereof is demanded at time of trial.

6. The averments of Paragraph 6 set forth legal conclusions to which no responsive pleading is required. By way of further answer, to the extent that a responsive pleading may be required, the averments of Paragraph 6 are denied as stated. More particularly, it is denied that Milestone was an owner and operator of the parking lot area at issue in this matter or, at anytime material and relevant, either individually and/or through its agents, servants and employees, was in exclusive possession, management and control of the parking lot area at issue.

7. The averments of Paragraph 7 set forth legal conclusions to which no responsive pleading is required. By way of further answer, to the extent that a responsive pleading may be required, the averments of Paragraph 7 refer and relate to other parties to this action and therefore, no responsive pleading is required by Milestone.

8. The averments of Paragraph 8 set forth legal conclusions to which no responsive pleading is required. By way of further answer, to the extent that a responsive pleading may be required, the averments of Paragraph 8 refer and relate to other parties to this action and therefore, no responsive pleading is required by Milestone.

9. The averments of Paragraph 9 set forth legal conclusions to which no responsive pleading is required. By way of further answer, to the extent that a responsive pleading may be required, upon reasonable investigation, Milestone is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 9 therefore, same are denied and strict proof thereof is demanded at time of trial.

10. Upon reasonable investigation, Milestone is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 10; therefore, same are denied and strict proof thereof is demanded at time of trial.

11. The averments of Paragraph 11 set forth legal conclusions to which no responsive pleading is required. By way of further answer, to the extent that a responsive pleading may be required, upon reasonable investigation, Milestone is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 11; therefore, same are denied and strict proof thereof is demanded at time of trial.

Count I

Linda Radaker, Plaintiff vs. Milestone Properties, Inc., Defendant

12. The averments of Paragraphs 1 through 11 above are incorporated herein by reference as though same were more fully set forth below.

13. The averments of Paragraph 13, including its subparts, set forth legal conclusions to which no responsive pleading is required. By way of further answer, to the extent that a responsive pleading may be required, the averments of Paragraph 13 and its subparts, are denied pursuant to Pa.R.C.P. 1029(e).

14. The averments of Paragraph 14, including its subparts, set forth legal conclusions to

which no responsive pleading is required. By way of further answer, to the extent that a responsive pleading may be required, the averments of Paragraph 14 and its subparts, are denied pursuant to Pa.R.C.P. 1029(e).

15. The averments of Paragraph 15 set forth legal conclusions to which no responsive pleading is required. By way of further answer, to the extent that responsive pleading may be required, upon reasonable investigation, Milestone is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 15; therefore, same are denied and strict proof thereof is demanded at time of trial.

16. The averments of Paragraph 16 set forth legal conclusions to which no responsive pleading is required. By way of further answer, to the extent that a responsive pleading may be required, the averments of Paragraph 16 are denied pursuant to Pa.R.C.P. 1029(e).

17. The averments of Paragraph 17 set forth legal conclusions to which no responsive pleading is required. By way of further answer, to the extent that a responsive pleading may be required, the averments of Paragraph 17 are denied pursuant to Pa.R.C.P. 1029(e).

18. The averments of Paragraph 18 set forth legal conclusions to which no responsive pleading is required. By way of further answer, to the extent that a responsive pleading may be required, the averments of Paragraph 18 are denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Defendant, Milestone Properties, Inc., demands judgment in its favor.

Count II

**Linda Radaker, Plaintiff vs. J. J. Gumberg Associates a/k/a Gumberg Associates -
Sandy Plaza, Defendants**

19-25. The averments of Paragraph 19 through 25 refer and relate to other parties to this

action and therefore, no responsive pleading is required by Milestone.

WHEREFORE, Defendant, Milestone Properties, Inc., demands judgment in its favor.

Count III

Linda Radaker, Plaintiff vs. Pollino Excavating, Defendant

26-33. The averments of Paragraphs 26 through 33 refer and relate to other parties to this action and therefore, no responsive pleading is required by Milestone.

WHEREFORE, Defendant, Milestone Properties, Inc., demands judgment in its favor.

New Matter

33. The averments of Paragraphs 1 through 32 above are incorporated herein by reference as though same are more fully set forth below.

34. Milestone believes and therefore avers that Plaintiff was knowledgeable about the premises in question and was familiar with the premises in question.

35. To the extent that discovery may establish, Milestone believes and therefore avers that if Plaintiff fell as alleged, which is denied, that said fall was not due to the negligence, carelessness and recklessness of Milestone, but was due to Plaintiff's own negligence, carelessness and/or recklessness, generally and in the following particulars:

- a. In failing to watch where she was walking and stepping under the circumstances then and there existing;
- b. In failing to make sure that the area where she was walking and stepping was safe under the circumstances then and there existing;
- c. In failing to pay attention to where she was walking and stepping when she knew or had reason to know of the open and obvious condition complained of under the circumstances then and there existing;
- d. In being inattentive to the open and obvious condition which then and there

may have existed and which this Defendant had no notice or knowledge under the circumstances then and there existing;

- e. In failing to take precautions to protect herself from falling under the circumstances then and there existing;
- f. In failing to act as a reasonable and prudent person under the circumstances in the conduct of walking and stepping across the premises in question under the circumstances then and there existing;
- g. In failing to take those precautions which it was her duty to take under the circumstances then and there existing;
- h. In failing to wear appropriate footwear under the circumstances then and there existing; and,
- i. In failing to exercise that degree of due care and caution as required under the circumstances then and there existing.

36. As a result of the above acts of Plaintiff, to the extent that discovery may establish, Milestone believes and therefore avers that Plaintiff was negligent, solely negligent, comparatively negligent and/or voluntarily assumed the risk of her injuries.

37. To the extent that discovery may establish, Milestone believes and therefore avers that as a result of Plaintiff's acts of negligence, carelessness and recklessness, she is totally and/or partially barred from recovery against Milestone as she was responsible and liable in one or more of the following ways:

- a. She assumed the risk of her alleged injuries;
- b. She was contributorily negligent in excess of fifty percent of the cumulative fault of the parties, if any fault exists on the part of Milestone, which is denied; and,
- c. She was contributorily negligent in a manner and fashion that acts as a partial bar to the claims of the Plaintiff.

38. To the extent that discovery may establish, Milestone believes and therefore avers

that periodic inspections were made of the premises to make sure that the premises were safe of all conditions for business invitees and at the time of the events complained of, Milestone had no notice or knowledge of any condition which may have provided a danger to any patron under the circumstances then and there existing.

39. To the extent that discovery may establish, Milestone believes and therefore avers that if the complained of condition is shown to have existed, which is denied, that said condition was open and obvious and accordingly, Milestone owed no duty of care to the Plaintiff under the circumstances then and there existing.

40. Plaintiff's claims against Milestone are barred either in whole or in part as a result of Plaintiff's failure to comply with the applicable statute of limitations provisions.

WHEREFORE, Defendant, Milestone Properties, Inc., demands judgment in its favor.

New Matter Pursuant To Pa.R.C.P. 2252(d)

41. The averments of Paragraphs 1 through 40 above are incorporated herein by reference as though same are more fully set forth below.

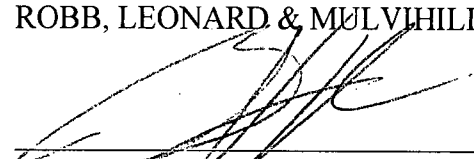
42. Milestone denies that it is in any way liable to the Plaintiff. However, should Milestone be held liable, then Milestone asserts a claim against other Defendants now named or later joined, jointly, severally and together in any combination for contribution and/or indemnification, and for that purpose only, incorporates herein by reference Plaintiff's allegations against all other named Defendants, and asserts that they are solely liable to the Plaintiff or, in the alternative, are liable over to Milestone for contribution and/or indemnification for the reasons more fully set forth in Plaintiff's Complaint.

WHEREFORE, Defendant, Milestone Properties, Inc. demands judgment in its favor.

Respectfully submitted,

ROBB, LEONARD & MULVIHILL

By:



Bruce F. Rende, Esquire
Attorneys for Defendant, Milestone
Properties, Inc.

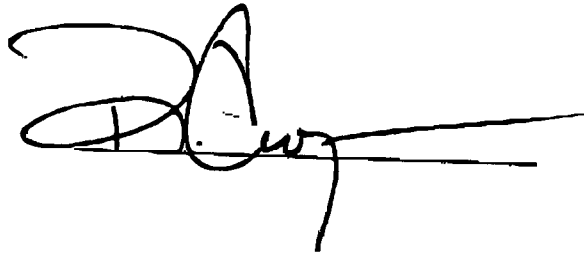
VERIFICATION

I, Raymond R. Crozier Regional Property ^{Mgr.} of Milestone Properties, Inc. of
(Name) (Title)

Florida, deposes and says subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities that the facts set forth in the foregoing **Answer, New Matter and New Matter Pursuant To Pa.R.C.P. 2252(d)** are true and correct to my information and belief.

Date:

4/24/02

A handwritten signature in black ink, appearing to read 'R. Crozier', written over a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the within ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d) was served upon all counsel of record via First Class U.S. Mail, postage prepaid, on this 15th day of May, 2002:

Jeffrey S. DuBois, Esquire
Hanak, Guido and Taladay
498 Jeffers Street; P. O. Box 487
DuBois, PA 15801
Attorneys for Plaintiff

Joseph P. Green, Esquire
Lee, Martin, Green & Reiter, Inc.
115 East High Street; P. O. Box 179
Bellefonte, PA 16823-0170
Attorneys for Defendant, Pollino Excavating

Robert J. Behling, Esquire
Pietragallo, Bosick & Gordon
38th Floor - One Oxford Center
Pittsburgh, PA 15219
Attorneys for Defendant, J. J. Gumberg Company-Sandy Plaza



Bruce E. Rence, Esquire

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

LINDA RADAKER,

Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY PLAZA
and POLLINO EXCAVATING,

Defendants

)
: No. 2002-181-CD
)
: Type of Pleading:
) **REPLY OF DEFENDANT POLLINO**
: **EXCAVATING TO NEW MATTER**
) **FILED BY DEFENDANT MILESTONE**
: **PROPERTIES, INC.**
) Filed on Behalf of:
: **Defendant Pollino Excavating**

Counsel of Record for this Party:

Joseph P. Green, Esq.
ID No. 19238
Lee, Martin, Green & Reiter, Inc.
115 East High Street
PO Box 179
Bellefonte, PA 16823
814-355-4769

JURY TRIAL DEMANDED

FILED

MAY 20 2002

William A. Shaw
Prothonotary

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	

REPLY OF DEFENDANT POLLINO EXCAVATING
TO NEW MATTER FILED BY DEFENDANT MILESTONE PROPERTIES, INC.

Defendant Pollino Excavating responds to the New Matter as follows:

33. The responding party hereby incorporates by reference the assertions and denials set forth in its original responsive pleading filed in the above matter.

34 through 40. The responding party believes that the averments set forth in paragraphs 34 through 40 relate to the position of Defendant Milestone Properties vis-à-vis the claim of the plaintiff. Defendant Pollino Excavating concurs with the defenses and assertions set forth in said paragraph and has essentially pled the same new matter in its responsive pleading.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Defendant Pollino Excavating.

41. The responding party hereby incorporates by reference the assertions and denials set forth in its original responsive pleading filed in this matter.

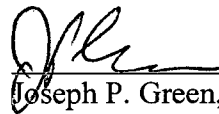
42. Denied. The averments set forth in paragraph 42 contain conclusions of law to which no specific response is required. In any event, it is asserted that Defendant Pollino Excavating acted with reasonable care and prudence in all respects and committed no tortious

conduct which was a legal or proximate cause of the alleged harm. Defendant Pollino Excavating asserts that it has no liability, direct or indirect, with respect to this matter.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Defendant Pollino Excavating.

LEE, MARTIN, GREEN & REITER, INC.

By:



Joseph P. Green, Esq., ID #19238
Attorney for Defendant Pollino Excavating
115 East High Street
PO Box 179
Bellefonte, PA 16823
814-355-4769

STATEMENT RELATING TO ABSENCE OF VERIFICATION

The foregoing pleading needs no separate verification because it restates averments of fact and/or denials which already appear of record and which were previously verified by the responding party.

A handwritten signature in black ink, appearing to read 'J. P. Green', is written above a horizontal line.

Joseph P. Green, Esq.

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

LINDA RADAKER,)
Plaintiff : No. 2002-181-CD
vs. : JURY TRIAL DEMANDED
MILESTONE PROPERTIES, INC., :
JJ GUMBERG COMPANY, a/k/a :
GUMBERG ASSOCIATES-SANDY PLAZA :
and POLLINO EXCAVATING,)
Defendants :

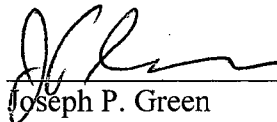
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply of Defendant Pollino
Excavating to New Matter Filed by Defendant Milestone Properties, Inc. was deposited in the
United States mail, postage prepaid, in Bellefonte, Pennsylvania, on the 17 day of
May, 2002 addressed to the following:

Jeffrey S. DuBois, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Bruce Rende, Esq.
One Mellon Center, Suite 2300
Pittsburgh, PA 15129

Robert Behling, Esq.
One Oxford Center, 38th Floor
301 Grant Street
Pittsburgh, PA 15219



Joseph P. Green

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION – LAW

LINDA RADAKER,

No. 2002-181-CD

Plaintiff

v.

MILESTONE PROPERTIES, INC., JJ
GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO
EXCAVATING,

Defendants

**REPLY TO PURSUANT TO RULE
2252(d) OF DEFENDANT
MILESTONE PROPERTIES, INC.**

Filed on behalf of DEFENDANTS, JJ
GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA

Counsel of Record for this Party:

ROBERT J. BEHLING, ESQUIRE
Pa. I.D. #30659

PIETRAGALLO, BOSICK & GORDON
Firm #834
One Oxford Centre
301 Grant Street, 38th Floor
Pittsburgh, PA 15219

(412) 263-2000

FILED

JUN 14 2002
m/1:05/1000
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION – LAW

LINDA RADAKER,	)	No. 2002-181-CD
)	
Plaintiff)	
)	
v.)	
)	
MILESTONE PROPERTIES, INC., JJ)	
GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY)	
PLAZA and POLLINO)	
EXCAVATING,)	
)	
Defendants)	

REPLY TO PURSUANT TO RULE 2252(d)
OF DEFENDANT MILESTONE PROPERTIES, INC.

AND NOW, comes J. J. GUMBERG COMPANY, a/k/a GUMBERG ASSOCIATES ("J. J. Gumberg) by and through its attorneys, Pietragallo, Bosick & Gordon and files the following Reply to New Matter Pursuant to Rule 2252(d) of Defendant Milestone Properties, Inc. averring as follows:

1. The allegations of Paragraph 42 of the New Matter constitute legal conclusions to which no responsive pleading is required. The allegations are denied and strict proof thereof is demanded at the time of trial. By way of further answer, J. J.

Gumberg incorporates by reference hereto its Answer, New Matter and New Matter Pursuant to 2252(d).

WHEREFORE, the Defendants, J. J. GUMBERG COMPANY, a/k/a GUMBERG ASSOCIATES denies liability to any party under any theory and respectfully request judgment in their favor.

PIETRAGALLO, BOSICK & GORDON

BY Robert J. Behling *aw*
Robert J. Behling, Esquire

Attorneys for Defendant J.J. Gumberg
Company

VERIFICATION

I, Defendant, Sam Vidnovic do hereby verify that the averments of fact set forth in the foregoing **REPLY TO PURSUANT TO RULE 2252(d) OF DEFENDANT MILESTONE PROPERTIES, INC.**, are true and correct based on my knowledge, information and belief.

I understand that false statements herein are made subject to penalty of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Date: June 7, 2002

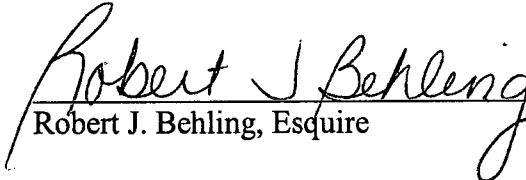
A handwritten signature in black ink, appearing to read "Sam Vidnovic", written over a horizontal line.

Sam Vidnovic
Director of Retail Operations
J.J. Gumberg Co.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within
REPLY TO PURSUANT TO RULE 2252(d) OF DEFENDANT MILESTONE
PROPERTIES, INC., was forwarded by first class mail, postage prepaid, this 12th day
of June 2002, upon the following individual:

Jeffrey S. DuBois, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorneys for Plaintiff


Robert J. Behling, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

LINDA RADAKER,

Plaintiff

CIVIL ACTION - LAW

No. 2002-181-CD

v.

MILESTONE PROPERTIES, INC., JJ
GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO
EXCAVATING,

Defendants

ANSWER, NEW MATTER AND NEW
MATTER PURSUANT TO RULE
2252(d)

Filed on behalf of DEFENDANTS, J.J.
GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES - SANDY
PLAZA

Counsel of Record for this Party:

ROBERT J. BEHLING, ESQUIRE
Pa. I.D. #30659

PIETRAGALLO, BOSICK & GORDON
Firm #834
One Oxford Centre
301 Grant Street, 38th Floor
Pittsburgh, PA 15219

(412) 263-2000

TO all parties
YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN
RESPONSE TO THE ENCLOSED New Matter
WITHIN TWENTY (20) DAYS FROM SERVICE
HEREOF OR A JUDGMENT MAY BE ENTERED
AGAINST YOU.

ATTY. FOR

Defendants Gumberg

FILED

JUL 10 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

LINDA RADAKER,	)	CIVIL ACTION – LAW
)	
Plaintiff	)	No. 2002-181-CD
)	
v.)	
)	
MILESTONE PROPERTIES, INC., JJ)	
GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY)	
PLAZA and POLLINO)	
EXCAVATING,)	
)	
Defendants)	

**ANSWER, NEW MATTER AND NEW
MATTER PURSUANT TO RULE 2252(d)**

AND NOW come the Defendants, J.J. Gumberg Co. and Gumberg Associates - Sandy Plaza, improperly identified as J. J. Gumberg Company, a/k/a Gumberg Associates - Sandy Plaza, hereinafter referred to as "Gumberg," by and through its attorneys, Pietragallo, Bosick & Gordon and files the following Answer, New Matter and New Matter Pursuant to Rule 2252(d) and in support thereof avers as follows:

1. After reasonable investigation, Gumberg lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph 1 of the Plaintiff's Complaint, therefore, same is denied and strict proof thereof is demanded at the time of trial.

2. After reasonable investigation, Gumberg lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph 2 of the

Plaintiff's Complaint, therefore same is denied and strict proof thereof is demanded at the time of trial.

3. Denied as stated. J. J. Gumberg Co. is a Delaware corporation with an address of 1051 Brinton Road, Pittsburgh, Allegheny County, Pennsylvania. Gumberg Associates-Sandy Plaza is a Pennsylvania limited partnership with an address of 1051 Brinton Road, Pittsburgh, Allegheny County, Pennsylvania. By way of further response, J. J. Gumberg Co. is the agent the for Gumberg Associates-Sandy Plaza pursuant to a management agreement.

4. After reasonable investigation, Gumberg lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph 4 of the Plaintiff's Complaint, therefore same is denied and strict proof thereof is demanded at the time of trial.

5. The allegations contained in Paragraph 5 constitute legal conclusions to which no response is required. To the extent that a response is deemed necessary, the allegations are generally denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e).

6. After reasonable investigation, Gumberg lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph 6 of the Plaintiff's Complaint, therefore same is denied and strict proof thereof is demanded at the time of trial.

7. Denied. It is denied that J. J. Gumberg Co., and/or Gumberg Associates – Sandy Plaza improperly identified as J. J. Gumberg Associates d/b/a Gumberg Associates – Sandy Plaza were the owners of the property when the incident occurred. J. J. Gumberg Co. manages the shopping center and contracted with Pollino Excavating for snow removal services.

8. Denied as stated. J. J. Gumberg Co. entered into an agreement with Pollino Excavating to provide certain services as an independent contractor.

9. The allegation contained in Paragraph 9 constitutes legal conclusions to which no response is required. To the extent that a response is deemed necessary, the allegations are generally denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e).

10. After reasonable investigation, Gumberg lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph 10 of the Plaintiff's Complaint, therefore, same is denied and strict proof thereof is demanded at the time of trial.

11. After reasonable investigation, Gumberg lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph 11 of the Plaintiff's Complaint, therefore, same is denied and strict proof thereof is demanded at the time of trial.

COUNT I
LINDA RADAKER, Plaintiff v.
MILESTONE PROPERTIES, INC., Defendant

12. Gumberg incorporates paragraphs 1 through 11 of their Answer as if more fully set forth herein.

13-18. The allegations contained in these paragraphs are directed to another defendant and therefore, no response is required. Insofar as a response is required, Defendants deny said allegations pursuant to the Pennsylvania Rules of Civil Procedure 1029(e).

WHEREFORE, the Defendants respectfully request judgment in their favor and against Plaintiff, with costs.

COUNT II
LINDA RADAKER, Plaintiff v.
J. J. GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY PLAZA

19. Gumberg incorporates Paragraphs 1 through 18 of their Answer as if more fully set forth below herein.

20. The allegations contained in Paragraph 20 constitute legal conclusions to which no response is required. To the extent that a response is deemed necessary, the allegations are generally denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e). By way of further response, the entity J. J. Gumberg Associates a/k/a Gumberg Associates – Sandy Plaza does not exist and is not a proper party.

21. The allegations contained in Paragraph 21 constitute legal conclusions to which no response is required. To the extent that a response is deemed necessary, the allegations are generally denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e).

22. The allegations contained in Paragraph 22 constitute legal conclusions to which no response is required. To the extent that a response is deemed necessary, the allegations are generally denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e).

23. The allegations contained in Paragraph 23 constitute legal conclusions to which no response is required. To the extent that a response is deemed necessary, the allegations are generally denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e).

24. The allegations contained in Paragraph 24 constitute legal conclusions to which no response is required. To the extent that a response is deemed necessary, the allegations are generally denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e).

25. The allegations contained in Paragraph 25 constitute legal conclusions to which no response is required. To the extent that a response is deemed necessary, the allegations are generally denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e).

WHEREFORE, Gumberg respectfully request judgment in their favor and against Plaintiff, with costs.

COUNT III
LINDA RADAKER, Plaintiff v.
POLLINO EXCAVATING, Defendant

26. Gumberg incorporates Paragraphs 1 through 25 of their Answer as if more fully set forth herein.

27-32. The allegations contained in these paragraphs are directed to another defendant and therefore, no response is required. Insofar as a response is required, Defendants deny said allegations pursuant to the Pennsylvania Rules of Civil Procedure 1029(e).

WHEREFORE, Defendants respectfully request judgment in their favor and against the Plaintiff, with costs.

NEW MATTER

33. Paragraphs 1 through 32 of the Answer and New Matter are hereby incorporated as if more fully set forth herein.

34. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

35. Plaintiff's claim may be barred by the applicable statute of limitations.

36. Plaintiff's claim may be barred or reduced due to her own carelessness, recklessness and negligent conduct.

37. Plaintiff's claim may be barred by the application of the Pennsylvania Comparative Negligence Act.

38. Plaintiff's claim is barred by her assumption of a known risk.

39. Plaintiff's injuries or damages, if any, were caused by the superseding or intervening acts not within the control of these Defendants.

40. The condition of the parking lot complained of in the Plaintiff's Complaint was open and obvious and readily observable by the Plaintiff.

41. The Plaintiff's injuries and damages, if any, were caused by the acts or omissions of third parties not within the control of these Defendants.

42. These Defendants did not cause or create the condition of the parking lot complained of in the Plaintiff's Complaint.

43. These Defendants believe and therefore aver that the alleged accumulation of ice and or snow was a natural accumulation thereby barring Plaintiff's recovery.

44. These Defendants did not have notice of said conditions alleged by Plaintiff.

WHEREFORE, these Defendants respectfully request judgment in their favor and against the Plaintiff, with costs.

NEW MATTER PURSUANT TO 2252(d)

45. These Defendants hereby incorporate by reference any and all allegations contained in the Plaintiff's Complaint directed to co-defendant Pollino Excavating as if more fully set forth below.

46. Pursuant to the Contract between these Defendants and co-defendant Pollino Excavating, Pollino Excavating is responsible for snow and ice removal from certain portions of the Sandy Plaza.

47. Without admitting that the Plaintiff has suffered personal injury or damages as a result of the aforesaid accident, if such injuries and or damages are proven at the time of trial,

these Defendants allege that the Plaintiff's resulting losses, injuries and/or damages were directly and proximately caused by Pollino Excavating's failure to maintain Sandy Plaza pursuant to the Snow Removal Agreement between Pollino Excavating and Gumberg Associates – Sandy Plaza by J.J. Gumberg Co. A copy of the Snow Removal Agreement is attached hereto, made a part hereof and marked as Exhibit "A".

48. Pursuant to the terms and conditions of the aforementioned agreement, the defendant Pollino Excavating contractually agreed to indemnify and save the owners of the property and J.J. Gumberg Co. harmless from and against any and all liability, loss, claims and expenses including attorney's fees.

49. In addition, the aforementioned agreement required the defendant Pollino Excavating to name Gumberg Associates – Sandy Plaza and J.J. Gumberg Co. as additional insureds, which said status would provide a defense to the claims.

50. These Defendants believe and, therefore, aver that they are entitled to contractual indemnity and status as additional insureds, including a defense, by Defendant Pollino Excavating or its litigation representative.

51. To the extent that the Plaintiff provides that she is entitled to recovery at the time of trial, same being expressly denied, then Defendant Pollino Excavating is alone liable to the Plaintiff, or liable over to these Defendants or jointly or severally liable to the Plaintiff, or liable to these Defendants directly for contribution or indemnity.

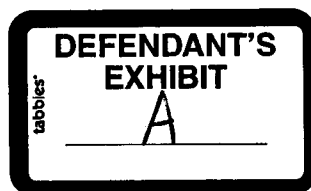
WHEREFORE, these Defendants respectfully request judgment in their favor and against the Plaintiff, with costs.

PIETRAGALLO, BOSICK & GORDON

BY 

Robert J. Behling, Esquire

Attorneys for Defendants J.J. Gumberg Co. and
Gumberg Associates-Sandy Plaza improperly
identified as J. J. Gumberg Company a/k/a
Gumberg Associates-Sandy Plaza



SNOW REMOVAL AGREEMENT

THIS AGREEMENT, made this 25th day of September, 1998, between POLLINO EXCAVATING, hereinafter called the "Contractor", of 121 Lovers Lane, Kersey, PA 15846 and GUMBERG ASSOCIATES - SANDY PLAZA, BY J. J. GUMBERG CO., AGENT, hereinafter called the "Owner", of Brinton Executive Center, 1051 Brinton Road, Pittsburgh, PA 15221.

WITNESSETH:

THAT, in consideration of the mutual covenants and agreements herein contained, the parties hereto do hereby agree as follows:

1. **Scope of Work.** The Contractor shall perform the work, supply the necessary materials and equipment, and furnish all required labor to plow and remove the snow from the parking lot at Sandy Plaza Shopping Center ("Work"). When snow accumulates to a depth of three (3") inches or in the month of December when snow accumulates to a depth of two (2") inches, the Contractor is hereby directed and authorized to plow, salt, and clear the parking lot without any further notice from Owner. The snow is not to be physically removed from the parking lot unless specifically requested by Owner, but it is to be plowed and moved to those holding areas designated in red on the plot plan of the Shopping Center, attached hereto as Exhibit "A".

2. **Payment.** Contractor shall make monthly certified requisitions for payment certifying the Work actually completed during said month in accordance with the following rate schedule:

- 1) Snow plowing - Trucks at \$55.00 an hour each
- 2) Backhoe - For piling snow or removing snow if necessary at \$55.00 an hour
- 3) Dump Truck - For removing snow if necessary at \$55.00 an hour
- 4) Salting - One truck at \$55.00 an hour and Owner will supply the salt.

Owner will disburse payment within thirty (30) days of receipt of requisition for payment subject to the verification and approval of a J. J. Gumberg Co. representative.

If Contractor does not receive payment timely, he shall give notice to Owner. If payment is not received within ten (10) days of Owner's receipt of said notice, the payment shall bear interest at the rate of four percent (4%) per annum.

3. **Term.** This Agreement is effective immediately upon receipt of a fully executed counterpart of this Agreement through the spring of 2000, or until such earlier time as Owner notifies Contractor to discontinue its services.

4. **Indemnity Provisions.** The Contractor hereby agrees to indemnify and save the Owner and J. J. Gumberg Co. harmless from and against any and all liability, loss, damage, cost and expense, including court costs and attorneys fees (whether or not litigation

be commenced) of whatever nature or type, that the Owner may hereinafter suffer or incur by reason of:

- (a) Any injury or damage sustained or purported to have been sustained by any person or thing as a result of the Work contemplated hereby;
- (b) Any other act or omission of the Contractor, its agents, representatives or other persons at any time during the course of this Agreement;
- (c) Any breach or default of the Contractor in the performance of its obligations hereunder.

The foregoing indemnity shall not be applicable insofar as any injury or damage or other claim results solely from the act or omission of the Owner.

5. **Insurance Coverage.** Prior to the commencement of any Work by the Contractor, Contractor shall procure and maintain for the term of this Agreement: a current insurance certificate indicating general liability coverage in the amounts of \$1,000,000.00 for injury to one person in one accident; \$1,000,000.00 for injury to more than one person in one accident; and \$500,000.00 coverage for property damage. The insurance certificate shall name "Gumberg Associates - Sandy Plaza and J. J. Gumberg Co., as additional insureds" and indicate thirty (30) days written notice of cancellation or change of policy be given to J. J. Gumberg Co., Agent.

6. **Form of Notice.** Any notice which Owner or Contractor may be required to give to the other party under this Agreement shall be in writing and shall be mailed registered or certified mail, return receipt requested, to the other party at the address specified on Page 1 hereof, and the time of the rendition of such shall be when same is deposited in an official United States Post Office, postage prepaid.

7. **Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

8. **Safety Precautions and Programs.** The Contractor has the duty for providing for and overseeing all safety orders, precautions and programs necessary to the reasonable safety of the Work, and shall take reasonable precautions for the safety of all employees and other persons whom the Work might affect.

9. **Binding Effect of Agreement.** This Agreement shall inure to and be binding upon the heirs, legal representatives, successors and assigns of the parties hereto, but the Contractor agrees not to assign, transfer, convey or otherwise dispose of this Agreement, or its right, title or interest herein, or its power to execute the same, to any person, company or corporation without the written consent of Owner; and in no case shall the letting of a subcontract by Contractor relieve Contractor even with the consent of Owner of its liability or obligations under this Agreement.

10. **Agency.** Contractor recognizes that the J. J. Gumberg Co. is acting as Agent for the Owner identified on Page 1, and has the authority to enter into this Agreement and expressly agrees that except for a breach of said representation, J. J. Gumberg Co. shall not have any further liability and/or exposure to any claim whatsoever.

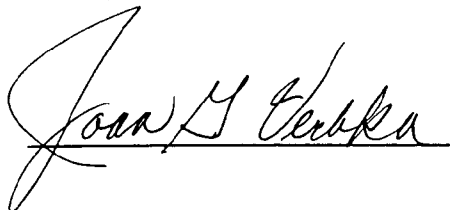
11. **Property Damage.** The Contractor shall not damage, harm or cause any loss to property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, curbs, pavements, roadways, structures and utilities. The Contractor shall promptly remedy any such damage and/or loss upon notice from Owner.

12. **Limited Liability.** Anything herein to the contrary notwithstanding, the covenants contained in this Contract to be performed by Owner, or its agents or representatives, shall not be binding personally upon Owner, its agents or representatives, or Owner's respective successors, assigns, executors, heirs or legatees, and no deficiency judgment or other action for personal liability shall be brought or maintained against Owner or any of the aforementioned parties, it being understood and agreed that execution or any other legal enforcement for collection on any verdict or judgment against Owner and/or the aforesaid parties shall be expressly limited and exculpated to the real estate of the Shopping Center and Owner's improvements thereon so that Contractor shall look solely to the equity of Owner in the Shopping Center for the satisfaction of Contractor's remedies in the event of any Owner's default hereunder. The parties mutually agree that this Paragraph is and shall be considered an integral part of this Contract.


REQUIRED SIGNATURES ON PAGE 4

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESS:



ATTEST:


Stephen L. White
Assistant Secretary

CONTRACTOR:

POLLINO EXCAVATING


BY: 
Raymond Pollino

OWNER:

GUMBERG ASSOCIATES - SANDY PLAZA

BY: J. J. GUMBERG CO., AGENT



BY: 
John E. Kramer
Executive Vice President

BY: 
William R. Clarkson, Jr.
Vice President

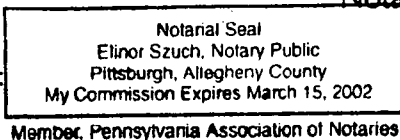
COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

Personally appeared before me, the undersigned, a Notary Public, in and for said County and Commonwealth, John E. Kramer and William R. Clarkson, Jr., known to me to be the Executive Vice President and Vice President, respectively, of J. J. Gumberg Co., Agent for Gumberg Associates - Sandy Plaza, who acknowledge that they did sign and seal the foregoing instrument for and on behalf of said Corporation, being thereunto duly authorized and that the same is their free act and deed as such officers and the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Pittsburgh, Pennsylvania, this 9th day of October, 1998.

Elinor Szuch
Notary Public

My Commission Expires:



STATE OF PA)
) SS:
COUNTY OF ELK)

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State the above named Raymond Pollino, who said that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at KERSEY, PA, this 8 day of OCT, 1998.

Joan G. Verbka
Notary Public

My Commission Expires:

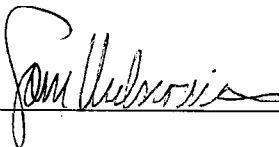
NOTARIAL SEAL
JOAN G. VERBKA, Notary Public
Fox Township, Elk County
My Commission Expires February 5, 2001

VERIFICATION

I, Defendant, Sam Vidnovic do hereby verify that the averments of fact set forth in the foregoing **ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE 2252(d)** are true and correct based on my knowledge, information and belief.

I understand that false statements herein are made subject to penalty of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Date: May 9, 2002



For: J.J. Gumberg Co.

Title: Director of Retail Operations

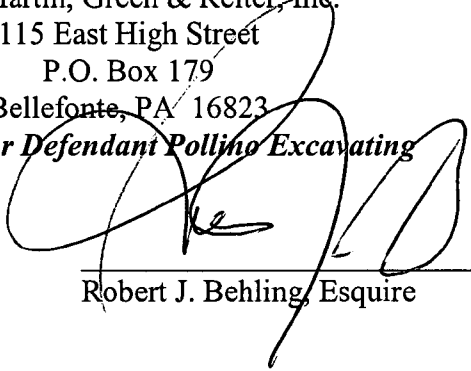
CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within pleading was forwarded by first class mail, postage prepaid, this 8 day of July 2002, upon the following individual:

Jeffrey S. DuBois, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorneys for Plaintiff

Bruce E. Rende, Esquire
Robb, Leonard & Mulvihill
2300 One Mellon Bank Center
Pittsburgh, PA 15219
Attorneys for Defendant Milestone Properties, Inc.

Joseph P. Green, Esquire
Lee, Martin, Green & Reiter, Inc.
115 East High Street
P.O. Box 179
Bellefonte, PA 16823
Attorneys for Defendant Pollino Excavating



Robert J. Behling, Esquire

FILED

JUL 10 2002

m/33284

NO CC

3/28

William A. Shaw
Prothonotary

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

LINDA RADAKER,)
Plaintiff : No. 2002-181-CD
vs.) JURY TRIAL DEMANDED
MILESTONE PROPERTIES, INC., :
JJ GUMBERG COMPANY, a/k/a)
GUMBERG ASSOCIATES-SANDY PLAZA :
and POLLINO EXCAVATING,)
Defendants :

**REPLY BY DEFENDANT POLLINO EXCAVATING TO NEW MATTER
RAISED BY DEFENDANTS JJ GUMBERG COMPANY,
a/k/a GUMBERG ASSOCIATES-SANDY PLAZA**

Defendant Pollino Excavating replies to the New Matter filed by Defendants JJ Gumberg Company, a/k/a Gumberg Associates-Sandy Plaza ("Gumberg") as follows:

Reply to New Matter

33. Denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

34 through 38. The responding party does not contest the assertions set forth in these paragraphs of "New Matter" and would hereby assert the same in its own defense.

39. Denied. To the extent that Defendant Gumberg is suggesting that any liability or fault would rest with the responding party, said averments are denied in all respects. Defendant Pollino Excavating acted with reasonable care and prudence in all respects.

FILED

JUL 29 2002
m/1:25/NOCC
William A. Shaw
Prothonotary
KEB

40. Admitted in part and denied in part. It is denied that the plaintiff's description of the parking area is accurate. In any event, any condition of the parking area would have been open, obvious and readily observable by the plaintiff.

41. Denied. To the extent that Defendant Gumberg is suggesting that any liability or fault would rest with the responding party, said averments are denied in all respects. Defendant Pollino Excavating acted with reasonable care and prudence in all respects.

42. Denied. To the extent that Defendant Gumberg is suggesting that any liability or fault would rest with the responding party, said averments are denied in all respects. Defendant Pollino Excavating acted with reasonable care and prudence in all respects.

43. Admitted. Assuming that there was an "accumulation of ice and snow" at the area where the plaintiff sustained her alleged fall, Defendant Pollino Excavating would agree that same would have resulted from natural causes. However, any such accumulation of ice and snow was not in any manner related to unreasonable, negligent or tortious conduct on the part of the responding party.

44. Denied. After reasonable investigation, the responding party is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof is demanded.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Defendant Pollino Excavating.

Reply to New Matter Pursuant to Pa. R.C.P. 2252(d)

45. Denied. The responding party would hereby incorporate by reference the denials and averments set forth in his earlier responsive pleading. In addition, the responding party would hereby incorporate by reference the allegations of the Plaintiff's Complaint wherein the

Plaintiff, in that same pleading, alleges that it is Defendant Gumberg which is solely liable to the Plaintiff herein for the injuries sustained. (See, Complaint – Count II).

46. Denied as stated. While it is admitted that the “Snow Removal Agreement” attached to the responsive pleading is an accurate copy of the described document, it is asserted that “these Defendants” were not parties to the contract. The contract was executed by Gumberg Associates-Sandy Plaza, by JJ Gumberg Company, Agent. It does not by any means appear that JJ Gumberg Company was a party to the subject contract. Said contract was between the contractor and the owner which is believed to have been Gumberg Associates-Sandy Plaza. The agent was not a party to said Agreement other than in its capacity to sign the document on behalf of the owner. The responsibilities of the responding party are as set forth in the Snow Removal Agreement. Said obligations are limited to the terms of same. In addition, it is asserted that all work required by the Snow Removal Agreement was performed in a proper and workmanlike manner and no breach of contract or tortious conduct occurred.

Pursuant to Pa. R.C.P. 2252(d), Defendant Pollino Excavating hereby cross-claims against Defendant Gumberg asserting that Defendant Gumberg is solely liable to the Plaintiff assuming, only for purposes of this joinder, that said Plaintiff establishes the averments of Count II of her Complaint at trial.

47. Denied. It is denied that Defendant Pollino Excavating committed any tortious conduct whatsoever which was a legal or proximate cause of the subject harm. With respect to the attached Snow Removal Agreement, the foregoing response is incorporated herein by reference. It is asserted that JJ Gumberg Company was not a party to the contract other than apparently executing same as agent of the owner. In addition, the indemnity clause, by its own language, is negated where injury or damage is caused by the act or omission of the Owner. The

averments of the Complaint make such an averment. In addition, it is asserted that all work required by the Snow Removal Agreement was performed in a proper and workmanlike manner and no breach of contract or tortious conduct occurred.

Pursuant to Pa. R.C.P. 2252(d), Defendant Pollino Excavating hereby cross-claims against Defendant Gumberg asserting that Defendant Gumberg is solely liable to the Plaintiff assuming, only for purposes of this joinder, that said Plaintiff establishes the averments of Count II of her Complaint at trial.

48. Admitted in part and denied in part. It is admitted that the attached Snow Removal Agreement was executed by the "Owner" and "Contractor". However, the provisions of the indemnity clause do not generate liability in these circumstances. Any determination must await the adjudication of this matter from a factual standpoint.

In addition, the indemnity clause, by its own language, is negated where injury or damage is caused solely by the act or omission of the Owner. The averments of the Complaint make such an averment. The indemnity clause does not generate liability on the part of Defendant Pollino Excavating in these circumstances.

49. Admitted in part and denied in part. It is admitted that the Snow Removal Agreement states what is contained therein. However, any general liability coverage was or would have been associated with the actual snow removal operations and would not have been applicable. In further response, Defendant Pollino Excavating asserts that an Additional Insured Endorsement was furnished. However, the issuing insurer has advised Defendant Gumberg that the additional insured status only applied to performance of ongoing operations which were not taking place at the time of the underlying incident.

50. Denied. While paragraph 50 might set forth the belief of the defendants, it is averred that said belief represents nothing more than an assertion of the state of mind of said parties. Said state of mind involves the assertion of a legal conclusion which requires no specific response. In addition, the responding party states that application of this particular indemnity provision does not generate the results being asserted by the said defendants.

51. Denied. The averments set forth in paragraph 51 set forth a legal conclusion requiring no specific response. In any event, Defendant Pollino Excavating hereby reasserts the assertions and denials set forth in its Answer filed to the original Complaint in this case.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Defendant Pollino Excavating.

LEE, MARTIN, GREEN & REITER, INC.

By: 

Joseph P. Green, Esq., ID #19238
Attorney for Defendant Pollino Excavating
115 East High Street
PO Box 179
Bellefonte, PA 16823
814-355-4769

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

LINDA RADAKER,)
Plaintiff	: No. 2002-181-CD
)
vs.	: JURY TRIAL DEMANDED
)
MILESTONE PROPERTIES, INC.,	:
JJ GUMBERG COMPANY, a/k/a)
GUMBERG ASSOCIATES-SANDY PLAZA	:
and POLLINO EXCAVATING,)
Defendants	:

VERIFICATION

Raymond Pollino, a duly authorized representative of Pollino Excavating, states that he is acquainted with the facts set forth in the foregoing responsive pleading; that the same are true and correct to the best of his knowledge, information and belief; and that this statement is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Raymond Pollino
Raymond Pollino

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

LINDA RADAKER,)
Plaintiff : No. 2002-181-CD
vs. : JURY TRIAL DEMANDED
MILESTONE PROPERTIES, INC., :
JJ GUMBERG COMPANY, a/k/a)
GUMBERG ASSOCIATES-SANDY PLAZA :
and POLLINO EXCAVATING,)
Defendants :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply by Defendant Pcllino
Excavating to New Matter Raised by Defendants JJ Gumberg Company, a/k/a Gumberg
Associates-Sandy Plaza was deposited in the United States mail, postage prepaid, in Bellefonte,
Pennsylvania, on the 26th day of July, 2002 addressed to the following:

Jeffrey S. DuBois, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Bruce Rende, Esq.
One Mellon Center, Suite 2300
Pittsburgh, PA 15129

Robert Behling, Esq.
One Oxford Center, 38th Floor
301 Grant Street
Pittsburgh, PA 15219



Joseph P. Green

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

LINDA RADAKER,

Plaintiff

CIVIL ACTION – LAW

No. 2002-181-CD

v.

MILESTONE PROPERTIES, INC., JJ
GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO
EXCAVATING,

Defendants

CERTIFICATE OF SERVICE OF
DEFENDANTS' FIRST SET OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION DIRECTED TO
PLAINTIFF

Filed on behalf of DEFENDANTS, JJ
GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA

Counsel of Record for this Party:

ROBERT J. BEHLING, ESQUIRE
Pa. I.D. #30659

PIETRAGALLO, BOSICK & GORDON
Firm #834
One Oxford Centre
301 Grant Street, 38th Floor
Pittsburgh, PA 15219

JURY TRIAL DEMANDED

(412) 263-2000

FILED

SEP 13 2002

m. alarino
William A. Shaw
Prothonotary

[Signature]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

LINDA RADAKER,	)	CIVIL ACTION – LAW
Plaintiff)	
v.	)	No. 2002-181-CD
)	
MILESTONE PROPERTIES, INC., JJ)	
GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY)	
PLAZA and POLLINO)	
EXCAVATING,)	
Defendants)	

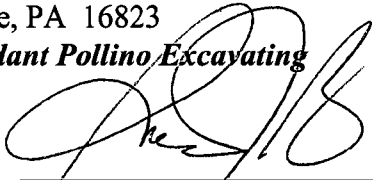
CERTIFICATE OF SERVICE

The undersigned does hereby certify that Defendants' First Set of Interrogatories and Request for Production of Documents Directed to Plaintiff were forwarded by first class mail, postage prepaid, this 11th day of September, 2002, upon the following individuals:

Jeffrey S. DuBois, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorneys for Plaintiff

Bruce E. Rende, Esquire
Robb, Leonard & Mulvihill
2300 One Mellon Bank Center
Pittsburgh, PA 15219
Attorneys for Defendant Milestone Properties, Inc.

Joseph P. Green, Esquire
Lee, Martin, Green & Reiter, Inc.
115 East High Street
P.O. Box 179
Bellefonte, PA 16823
Attorneys for Defendant Pollino Excavating



Robert J. Behling, Esquire

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

LINDA RADAKER,

Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY PLAZA
and POLLINO EXCAVATING,
Defendants

)
: No. 2002-181-CD
)
: JURY TRIAL DEMANDED
)
: Type of Pleading:
) **Entry of Appearance**
: Filed on Behalf of:
) **Defendant Pollino Excavating**
:

Counsel of Record for this Party:

Joseph P. Green, Esquire
ID # 19238
Jonathan D. Grine, Esquire
ID# 85746
Lee, Martin, Green & Reiter, Inc.
115 East High Street
P O Box 179
Bellefonte, PA 16823
814-355-4769
- and -
101 Innovation Blvd, Suite 311
State College, PA 16803
814-237-6291

FILED

OCT 18 2002

William A. Shaw
Prothonotary

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a	:	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,	:	
Defendants	:	

ENTRY OF APPEARANCE

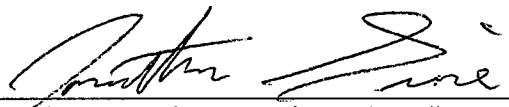
TO PROTHONOTARY:

Please enter the appearance of the undersigned on behalf of Defendant Pollino

Excavating in the above matter.

LEE, MARTIN, GREEN & REITER, INC.

By:


Jonathan D. Grine, Esquire PA ID# 85746
Attorneys for Defendant Pollino Excavating
101 Innovation Blvd., Suite 311
State College, PA 16803
(814) 237-6291

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

LINDA RADAKER,)	
Plaintiff	)	No. 2002-181-CD
)	
vs.	)	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,)	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA)	
and POLLINO EXCAVATING,)	
Defendants)	

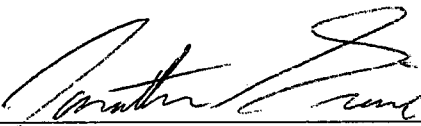
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Entry of Appearance was deposited in the United States mail, postage prepaid, in State College, Pennsylvania, on the 17th day of October, 2002 addressed to the following:

Jeffrey S. DuBois, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Bruce Rende, Esq.
One Mellon Center, Suite 2300
Pittsburgh, PA 15129

Robert Behling, Esq.
One Oxford Center, 38th Floor
301 Grant Street
Pittsburgh, PA 15219


Jonathan D. Grine, Esquire

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William A. Shaw
Prothonotary

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OCT 18 2002
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a	:	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,	:	
Defendants	:	

**NOTICE OF TAKING DEPOSITION ON ORAL
EXAMINATION PURSUANT TO R.C.P. No. 4007.1**

TO: Linda Radaker, Plaintiff
c/o Jeffrey S. DuBois, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P O Box 487
DuBois, PA 15801

NOTICE IS HEREBY GIVEN, pursuant to Pennsylvania Rule of Civil Procedure No. 4007.1, that the deposition of Plaintiff Linda Radaker will be taken on oral examination at the offices of Hanak, Guido and Taladay, 498 Jeffers Street, DuBois, Pennsylvania on November 20, 2002 at beginning at 1:30 p.m. and at any and all adjournments thereof.

The subject matter of the deposition will relate to the above-captioned matter and will include all relevant information known to the above-named individual relating to said action. All topics are relevant to the subject matter and none of them are privileged.

The discovery will substantially aid in the preparation of this matter for trial and the deposition will not violate any of the restrictions of the Rules of Civil Procedure.

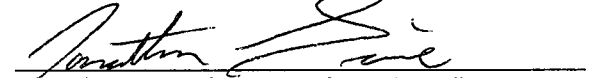
FILED

OCT 18 2002

William A. Shaw
Prothonotary

LEE, MARTIN, GREEN & REITER, INC.

By:



Jonathan D. Grine, Esquire PA ID# 85746

Joseph P. Green, Esquire PA ID# 19238

Attorneys for Defendant Pollino Excavating

101 Innovation Blvd., Suite 311

State College, PA 16803

814 - 237-6291

- and -

115 East High Street

PO Box 179

Bellefonte, PA 16823

814-355-4769

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a	:	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,	:	
Defendants	:	

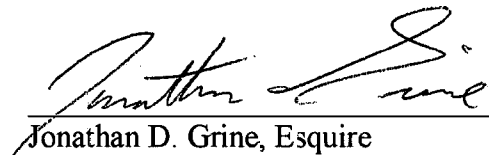
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Deposition was deposited in the United States mail, postage prepaid, in State College, Pennsylvania, on the 17th day of October, 2002 addressed to the following:

Jeffrey S. DuBois, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Bruce Rende, Esq.
One Mellon Center, Suite 2300
Pittsburgh, PA 15129

Robert Behling, Esq.
One Oxford Center, 38th Floor
301 Grant Street
Pittsburgh, PA 15219


Jonathan D. Grine, Esquire

RECEIVED OCT 12 11 08 AM '02

William A. Shaw
Prothonotary

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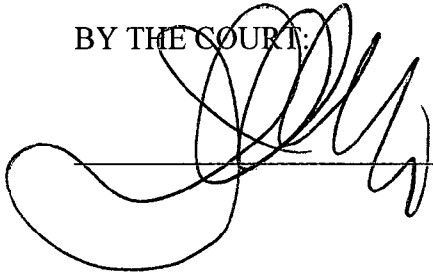
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LINDA RADAKER,)
Plaintiff : No. 2002-181-CD
vs. : JURY TRIAL DEMANDED
MILESTONE PROPERTIES, INC., :
JJ GUMBERG COMPANY, a/k/a :
GUMBERG ASSOCIATES-SANDY PLAZA :
and POLLINO EXCAVATING,)
Defendants :

ORDER

AND NOW, this 31 day of Oct, 2002, upon consideration of Defendant's Motion to Compel Discovery Responses, it is hereby ordered and decreed that the Plaintiff shall provide full and complete answers to the outstanding interrogatories propounded by Defendant Pollino Excavating within 10 days of the date of this Order.

BY THE COURT:



FILED

NOV 01 2002

William A. Shaw
Prothonotary

FILED

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William A. Shaw
Prothonotary

Atty Green

6/2/87

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

LINDA RADAKER,

Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY PLAZA
and POLLINO EXCAVATING,
Defendants

No. 2002-181-CD

JURY TRIAL DEMANDED

FILED

OCT 28 2002

William A. Shaw
Prothonotary

MOTION TO COMPEL DISCOVERY RESPONSES

Defendant Pollino Excavating hereby moves for an Order compelling the Plaintiff to respond to outstanding discovery as follows:

1. The instant civil action relates to an alleged slip and fall resulting in personal injuries which occurred on or about February 14, 2000, in Clearfield County, Pennsylvania.
2. On July 19, 2002, Defendant Pollino served a set of interrogatories upon Plaintiff Linda Radaker, through her counsel, making inquiry with respect to various relevant subjects relating to the instant litigation.
3. Plaintiff Linda Radaker has failed to respond in any manner to the outstanding interrogatories and she has filed no objections thereto.
4. On September 19, 2002, counsel for the moving party sent a reminder to the Plaintiff's attorney requesting that responses be furnished within ten days.
5. The attorney representing the Plaintiff has been completely unresponsive with respect to the subject discovery. Answers to interrogatories have not been filed nor has any legitimate explanation for the delay been furnished.

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

LINDA RADAKER,)
Plaintiff : No. 2002-181-CD
vs.)
 : JURY TRIAL DEMANDED
MILESTONE PROPERTIES, INC., :
JJ GUMBERG COMPANY, a/k/a)
GUMBERG ASSOCIATES-SANDY PLAZA :
and POLLINO EXCAVATING,)
Defendants :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Compel
Discovery Responses was deposited in the United States mail, postage prepaid, in Bellefonte,
Pennsylvania, on the 25 day of OCT., 2002 addressed to the following:

Jeffrey S. DuBois, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Bruce Rende, Esq.
One Mellon Center, Suite 2300
Pittsburgh, PA 15129

Robert Behling, Esq.
One Oxford Center, 38th Floor
301 Grant Street
Pittsburgh, PA 15219



Joseph P. Green

FILED
311:13-84
OCT 28 2002
McC

William A. Shaw
Prothonotary

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

LINDA RADAKER,
Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING,
Defendants

No. 2002-181, C. D.

Type of Pleading:

NOTICE OF SERVICE

Filed on Behalf of:
PLAINTIFF

Counsel of Record for
This Party:
Jeffrey S. DuBois, Esq.
Supreme Court I.D. No. 62074
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

FILED

NOV 13 2002

William A. Shaw
Prothonotary

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

LINDA RADAKER,

Plaintiffs

vs.

No. 2002-181, C.D.

MILESTONE PROPERTIES, INC.,

JJ GUMBERG COMPANY, a/k/a

GUMBERG ASSOCIATES-SANDY

PLAZA and POLLINO EXCAVATING,:

Defendants

NOTICE OF SERVICE OF ANSWERS TO
DEFENDANT POLLINO EXCAVATING
INTERROGATORIES

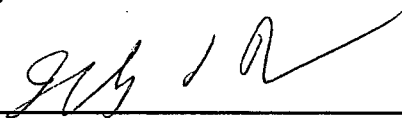
This is to certify that on the 11th day of November, 2002, I
mailed an original and one copy of Answers to Defendant Pollino
Excavating's Interrogatories Directed to Plaintiff, by first class mail,
postage prepaid, to:

Joseph P. Green, Esq.
Leek, Martin, Green & Reiter, Inc.
115 East High Street
P. O. Box 179
Bellefonte, PA 16823

and one copy, by first class mail, postage prepaid, to:

Bruce E. Rende, Esq.
Robb, Leonard & Mulvihill
2300 One Mellon Bank Center
Pittsburgh, PA 15219

Robert J. Behling, Esq.
Pietragallo, Boslick & Gordon
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219



Jeffrey S. DuBois
Attorney for Plaintiff

FILED

NOV 13 2002

Atty. Dubois

William A. Shaw
Prothonotary

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

LINDA RADAKER,

Plaintiff

vs.

MILESTONE PROPERTIES, INC.,

JJ GUMBERG COMPANY, a/k/a

GUMBERG ASSOCIATES-SANDY PLAZA

and POLLINO EXCAVATING,

Defendants

)

: No. 2002-181-CD

)

: JURY TRIAL DEMANDED

)

: Type of Pleading:

) **Motion for Summary Judgment**

: Filed on Behalf of:

) **Defendant Pollino Excavating**

:

Counsel of Record for this Party:

Joseph P. Green, Esquire

ID # 19238

Jonathan D. Grine, Esquire

ID# 85746

Lee, Martin, Green & Reiter, Inc.

115 East High Street

P O Box 179

Bellefonte, PA 16823

814-355-4769

- and -

101 Innovation Blvd, Suite 311

State College, PA 16803

814-237-6291

FILED

FEB 08 2003

William A. Shaw
Prothonotary

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	

SUMMARY JUDGMENT MOTION FILED BY
DEFENDANT POLLINO EXCAVATING

AND NOW comes Defendant Pollino Excavating, by and through its attorneys, LEE, MARTIN, GREEN & REITER, INC., and files the within Motion for Summary Judgment, the following of which is a statement:

1. The instant litigation involves an alleged slip and fall in a commercial parking lot which occurred on or about February 14, 2000 at the Sandy Plaza, Clearfield County, Pennsylvania. (Plaintiff's Complaint, a true and correct copy of which is attached as MSJ Exhibit 1).

2. The moving party is Defendant Pollino Excavating which is an entity that allegedly was obligated to perform snow removal duties at the Sandy Plaza.

3. Although discovery is not completed for all purposes, the moving party would respectfully suggest that all discovery relevant to the issues raised in this motion has been completed.

4. The only identified living witness known to have been at the scene of the incident at the pertinent time would be Plaintiff Linda Radaker.

5. In this tort action, it is Plaintiff Linda Radaker who has the burden of proof with respect to each and every element of her cause of action. Hamil v. Bashline, 392 A.2d 1280, 1286 (Pa. 1978).

6. The record developed to date indicates that there is an absence of evidence relative to the condition of the area of the parking lot where the fall allegedly occurred which would be sufficient to raise a triable issue as to whether an actionable condition existed.

7. The testimony adduced from Plaintiff Linda Radaker herself indicates that she does not have sufficient knowledge upon which to pursue her cause of action in terms of being able to sufficiently describe characteristics of the subject area of pavement which was allegedly associated with her fall. (Deposition transcript of Linda Radaker, 11/20/2002, a true and correct copy of which is attached as MSJ Exhibit 2).

8. Plaintiff Radaker did not recall whether it was cold out on the date of her alleged slip and fall and did not think it was raining, snowing or sleeting. (MSJ Exhibit 2, pp. 11-12, 14).

9. Plaintiff Radaker did not recall whether there was snow or any other type of winter conditions on the ground in the Sandy Plaza parking lot. (MSJ Exhibit 2, p. 14).

10. After her fall, Plaintiff Radaker testified that the ground only felt wet and that she did not feel any ice, snow or other debris. (MSJ Exhibit 2, pp. 18, 51, 52, 53).

11. Although Plaintiff Radaker also testified that the general weather conditions that day were "icy," that description was solely based on the assumption that it had to be icy because she fell. (MSJ Exhibit 2, p. 12).

12. Summary Judgment is appropriate only where it is clear and free of doubt that the pleadings, depositions, answers to interrogatories, and admissions on file, together with

affidavits, if any, show there is no genuine issue as to a material fact. Pa.R.C.P. 1035(b); Holpp v. Fez, Inc., 656 A.2d 147 (Pa.Super. 1995).

13. When the defendant is a moving party, he may make the showing necessary to support the entry of summary judgment by pointing to materials which indicate the plaintiff is unable to satisfy an element of his cause of action. Godlewski v. Pars Manufacturing Company, 597 A.2d 106 (Pa.Super. 1991).

14. The party seeking to avoid entry of summary judgment may not rest on averments, but must affirmatively show that there is a genuine issue of material fact for trial. Buchkno v. Penn Linen and Uniform Services, Inc., 631 A.2d 674 (Pa.Super. 1993).

15. Where the allegations of the non-moving party's pleading have been controverted by the moving party's supporting material, the non-moving party must by affidavit, or in some other way provided for by the rule, set forth specific facts showing that a genuine issue of material fact exists. Roland v. Kravco, Inc., 513 A.2d 1029 (Pa.Super. 1986).

16. When asserting a claim of negligence based upon a slip and fall caused by icy conditions on a sidewalk, a plaintiff is required to prove that it was the dangerous accumulation of snow and ice which caused the plaintiff to fall. Id. at 1032.

17. Evidence of a wet surface, without more, does not establish a dangerous condition. Id.

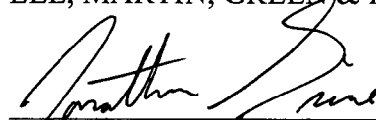
18. Plaintiff Radaker's theory of negligence in the present matter is that she slipped and fell on an accumulation of ice on the Sandy Plaza parking lot. The only evidence offered in support of this allegation, however, is Plaintiff Radaker's deposition testimony that she fell and the area in question was "wet."

19. Accordingly, the moving party contends that the record developed to date indicates that no genuine issue of material fact is present which would create a legitimate jury question concerning liability.

WHEREFORE, it is respectfully requested that summary judgment be entered in favor of Defendant Pollino Excavating.

LEE, MARTIN, GREEN & REITER, INC.

By:



Jonathan D. Grine, Esquire PA ID# 85746
Attorneys for Defendant Pollino Excavating
101 Innovation Blvd., Suite 311
State College, PA 16803
(814) 237-6291

010110381192AC

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

LINDA RADAKER,
Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING.:
Defendants

2002-181-CD

No. _____, 2002, C. D.

Type of Pleading:

**COMPLAINT IN A CIVIL
ACTION**

Filed on Behalf of:
PLAINTIFF

Counsel of Record for
This Party:
Jeffrey S. DuBois, Esq.
Supreme Court I.D. No. 62074
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

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

FEB 07 2002

Attest,

Love R.R.
Prothonotary/
Clerk of Courts

EXHIBIT

MSJ

1

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

LINDA RADAKER,

Plaintiffs

vs.

No. _____, 2002, C.D.

MILESTONE PROPERTIES, INC.,

JJ GUMBERG COMPANY, a/k/a

GUMBERG ASSOCIATES-SANDY

PLAZA and POLLINO EXCAVATING,

Defendants

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 Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 1303

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

LINDA RADAKER,

Plaintiffs

vs.

No. _____, 2002, C.D.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING,
Defendants

COMPLAINT IN A CIVIL ACTION

AND NOW, comes the Plaintiff, LINDA RADAKER, by and through her attorneys, HANAK, GUIDO AND TALADAY, and files this Complaint and in support thereof avers the following:

1. Plaintiff, LINDA RADAKER, is an adult individual residing at R.D. #1, Box 180C, Luthersburg, Pennsylvania, 15848.
2. Defendant, MILESTONE PROPERTIES, INC., is a corporation, with an office address of 150 E. Palmetto Drive, Boca Raton, Florida, 33432.
3. Defendant, JJ GUMBERG COMPANY, a/k/a GUMBERG ASSOCIATES-SANDY PLAZA, is on belief, doing business within the Commonwealth of Pennsylvania, as a proprietorship, partnership or corporation, and has an office address of 1051 Brinton Road, Pittsburgh, Allegheny County, Pennsylvania, 15221.
4. Defendant, POLLINO EXCAVATING is, on belief, doing business within the Commonwealth of Pennsylvania, as a

proprietorship, partnership or corporation, and has an office address of 121 Lovers Lane, Kersey, Elk County, Pennsylvania, 15846.

5. The accident in question took place in Clearfield County, and this Court has proper jurisdiction.

6. At all times mentioned herein, Defendant, MILESTONE PROPERTIES, INC., was an owner or operator of the parking lot area in question in the Sandy Plaza, Sandy Township, Clearfield County, Pennsylvania, hereinafter referred to as "Sandy Plaza parking lot" and was in exclusive possession, management, or control of the parking lot area, individually and through its employees, agents or assigns, who were acting within the course of their scope of employment by Defendant and in furtherance of Defendant's business.

7. At all times mentioned herein, Defendant JJ GUMBERG ASSOCIATES, d/b/a GUMBERG ASSOCIATES-SANDY PLAZA was an owner, or lessee, or operator of the parking lot area in question in Sandy Plaza, Clearfield County, Pennsylvania, hereinafter referred to as "Sandy Plaza parking lot" and was in exclusive possession, management, or control of the parking lot area, individually and through its employees, agents or assigns, who were acting within the course of their scope of employment by Defendant and in furtherance of Defendant's business.

8. At all times mentioned herein, Defendant, POLLINO EXCAVATING, was an agent or employee of Defendant, JJ GUMBERG ASSOCIATES, d/b/a GUMBERG ASSOCIATES-SANDY PLAZA, and was

responsible for the maintenance and care for the Sandy Plaza parking lot which included the area in question referenced herein.

9. On or about February 14, 2000. Plaintiff was a business visitor to the store surrounding the Sandy Plaza parking lot.

10. On the above date, the Plaintiff traveled with her husband, now deceased, to the Sandy Plaza parking lot and parked their vehicle in the parking space between the Rent Way Store and the Liquor Store.

11. As Plaintiff was exiting her vehicle, there existed an accumulation of ice on the parking lot which caused Plaintiff to slip, stumble, and fall as soon as she placed her foot on the ice, resulting in serious and permanent injuries as set forth below.

COUNT ONE

Linda Radaker, Plaintiff,

vs.

Milestone Properties, Inc., Defendant.

12. Paragraphs 1 through 11 are incorporated herein by reference as though they were set forth more fully at length.

13. The accident was caused by MILESTONE PROPERTIES, INC.'S negligence, carelessness and recklessness in that:

(a) Defendant caused or permitted ice to accumulate upon the Sandy Plaza parking lot to a point where it posed an unreasonable risk of injury to Plaintiff and other business visitors;

(b) Defendant failed to make a reasonable inspection of the Sandy Plaza parking lot which would have revealed the existence of the dangerous condition posed by the accumulation of ice;

(c) Defendant failed to give warning of the dangerous condition posed by the accumulation of ice, erect barricades, apply deicing materials, post signs, or take any other safety precautions to prevent injury to the Plaintiff or other business visitors;

(d) Defendant failed to remove the accumulated ice from the Sandy Plaza parking lot.

14. Solely as a result of Defendant's negligence, carelessness, and recklessness, Plaintiff has sustained injuries:

(a) Broken kneecap;

(b) Bruises and contusions to the legs and hip;

(c) Bruises and contusions to the arms;

(d) Thereafter, as a result of complications because of her immobilized knee, broken wrist;

(e) General pain and discomfort.

15. The above injuries have caused Plaintiff great pain and suffering and may continue for an indefinite time in the future and may be permanent.

16. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be obliged to expend monies for medicine and medical care in order to treat and help cure her injuries.

17. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff was forced to stay at home and as a result was unable to work for a period of twelve (12) weeks.

18. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be unable to attend to usual and daily duties and employment, to her financial detriment and loss.

WHEREFORE, Plaintiff claims damages in favor of Plaintiff and against Defendant in excess of Twenty-five Thousand and 00/100 (\$25,000.00) Dollars together with costs and interest.

COUNT TWO

Linda Radaker, Plaintiff,

vs.

JJ Gumberg Associates, a/k/a
Gumberg Associates-Sandy Plaza, Defendant.

19. Paragraphs 1 through 18 are incorporated herein by reference as though they were set forth more fully at length.

20. The accident was caused by JJ GUMBERG ASSOCIATES a/k/a GUMBERG ASSOCIATES-SANDY PLAZA'S negligence, carelessness and recklessness in that:

(a) Defendant caused or permitted ice to accumulate upon the Sandy Plaza parking lot to a point where it posed an unreasonable risk of injury to Plaintiff and other business visitors;

(b) Defendant failed to make a reasonable inspection of the Sandy Plaza parking lot which would have revealed the existence of the dangerous condition posed by the accumulation of ice;

(c) Defendant failed to give warning of the dangerous condition posed by the accumulation of ice, erect barricades, apply deicing materials, post signs, or take any other safety precautions to prevent injury to the Plaintiff or other business visitors;

(d) Defendant failed to remove the accumulated ice from the Sandy Plaza parking lot.

21. Solely as a result of Defendant's negligence, carelessness, and recklessness, Plaintiff has sustained injuries:

(a) Broken kneecap;

(b) Bruises and contusions to the legs and hip;

(c) Bruises and contusions to the arms;

(d) Thereafter, as a result of complications because of her immobilized knee, broken wrist;

(e) General pain and discomfort.

22. The above injuries have caused Plaintiff great pain and suffering and may continue for an indefinite time in the future and may be permanent.

23. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be obliged to expend monies for medicine and medical care in order to treat and help cure her injuries.

24. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff was forced to stay at home and as a result was unable to work for a period of twelve (12) weeks.

25. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be unable to attend to usual and daily duties and employment, to her financial detriment and loss.

WHEREFORE, Plaintiff claims damages in favor of Plaintiff and against Defendant in excess of Twenty-five Thousand and 00/100 (\$25,000.00) Dollars together with costs and interest.

COUNT THREE

Linda Radaker, Plaintiff,
vs.
Pollino Excavating, Defendant.

26. Paragraphs 1 through 25 are incorporated hereby reference as though set forth more fully at length.

27. The accident was caused by POLLINO EXCAVATING'S negligence, carelessness and recklessness in that:

(a) Defendant caused or permitted ice to accumulate upon the Sandy Plaza parking lot to a point where it posed an unreasonable risk of injury to Plaintiff and other business visitors;

(b) Defendant failed to make a reasonable inspection of the Sandy Plaza parking lot which would have revealed the existence of the dangerous condition posed by the accumulation of ice;

(c) Defendant failed to give warning of the dangerous condition posed by the accumulation of ice, erect barricades, apply deicing materials, post signs, or take any other safety precautions to prevent injury to the Plaintiff or other business visitors;

(d) Defendant failed to remove the accumulated ice from the Sandy Plaza parking lot.

28. Solely as a result of Defendant's negligence, carelessness, and recklessness, Plaintiff has sustained injuries:

- (a) Broken kneecap;
- (b) Bruises and contusions to the legs and hip;
- (c) Bruises and contusions to the arms;
- (d) Thereafter, as a result of complications because of her immobilized knee, broken wrist;
- (e) General pain and discomfort.

29. The above injuries have caused Plaintiff great pain and suffering and may continue for an indefinite time in the future and may be permanent.

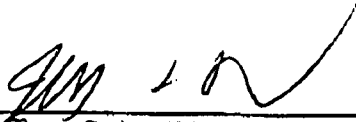
30. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be obliged to expend monies for medicine and medical care in order to treat and help cure her injuries.

31. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff was forced to stay at home and as a result was unable to work for a period of twelve (12) weeks.

32. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be unable to attend to usual and daily duties and employment, to her financial detriment and loss.

WHEREFORE, Plaintiff demands judgment against Defendant in
an amount in excess of Twenty-five Thousand and 00/100
(\$25,000.00) Dollars, exclusive of interest and costs.

Respectfully submitted.




Jeffrey S. DuBois
Attorney for Plaintiff

VERIFICATION

I, LINDA RADAKER, verify that the statements in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.


Linda Radaker

1 IN THE COURT OF COMMON PLEAS
2 OF CLEARFIELD COUNTY, PENNSYLVANIA
3
4

5 LINDA RADAKER,
6 PLAINTIFF

7 VS.

:
:
: CIVIL ACTION - LAW
: NO: 2002-181-CD
:
:
:

8 MILESTONE PROPERTIES, INC.,
9 JJ GUMBERG COMPANY, a/k/a
10 GUMBERG ASSOCIATES-SANDY
11 PLAZA AND POLLINO
12 EXCAVATING,
13 DEFENDANTS
14

15 DEPOSITION OF: LINDA RADAKER

16 TAKEN BY: DEFENDANTS

17 BEFORE: HEATHER GOSS BORING
18 NOTARY PUBLIC

19 DATE: NOVEMBER 20, 2002
20 1:30 P.M.

21 PLACE: HANAK, GUIDO & TALADAY
22 498 JEFFERS STREET
23 DUBOIS, PA 15801
24
25

EXHIBIT

MSJ

2

A P P E A R A N C E S:

HANAK, GUIDO & TALADAY
BY: JEFFREY S. DUBOIS, ESQUIRE
498 JEFFERS STREET
DUBOIS, PA 15801
FOR - PLAINTIFF

PIETRAGALLO, BOSICK & GORDON
BY: ROBERT J. BEHLING, ESQUIRE
THE 38TH FLOOR, ONE OXFORD CENTER
301 GRANT STREET
PITTSBURGH, PA 15219
FOR - DEFENDANT - JJ GUMBERG COMPANY,
GUMBERG ASSOCIATES-SANDY PLAZA

LEE, MARTIN, GREEN & REITER
BY: JONATHAN D. GRINE, ESQUIRE
115 EAST HIGH STREET
BELLEFONTE, PA 16823
FOR - DEFENDANT - POLLINO EXCAVATING

I N D E XBY DEFENDANTSEXAMINATION

LINDA RADAKER

By Mr. Grine:	4
By Mr. Behling:	37
By Mr. DuBois:	--

STIPULATION

It is hereby stipulated by and between counsel for the respective parties that reading, signing, sealing, certification, and filing are waived, and that all objections except as to the form of the question are reserved to the time of trial.

LINDA RADAKER, called as a witness, being sworn, testified as follows:

EXAMINATION

BY MR. GRINE:

Q Good afternoon, Ms. Radaker. My name is Jon Grine and I represent the Defendant, Pollino Excavating, in this case. Have you ever done a deposition before?

A No.

Q Basically, what we're going to do is you just got sworn in and I'm going to ask you some questions about the accident and you're just going to answer them. If I ask a question that you don't understand, just tell me and I'll, you know, try to

1 rephrase it, or if I say, you don't hear the
2 question properly, ask me and I'll repeat it. If
3 you need to talk to your attorney at any time,
4 you're welcome to take a break whenever you want to.

5 Do you mind if I call you Linda?

6 A No.

7 Q Just a couple of background questions.
8 Can you give me your name and address, please?

9 A Linda Radaker. My address is RD 1,
10 Box 180C, Luthersburg, PA.

11 Q And your date of birth?

12 A 2/23 of '53.

13 Q Now, I look through the file and I'm aware
14 that from a statement that you gave, that your
15 husband has passed away.

16 A Yes.

17 Q I'm sorry to hear that. Could you give me
18 a date of when he did pass away?

19 A Ten, first part of, no, wait, maybe it was
20 11 -- 11, first part of 2000.

21 Q First part of 2000?

22 A Yeah.

23 Q So right around the time of the accident,
24 possibly?

25 A I meant, excuse me, 2000 in 11, November,

1 I think.

2 Q November of 2000?

3 A Yeah.

4 Q Okay.

5 A Sorry.

6 Q That's fine. Do you have any children or
7 anything?

8 A Yes, I have two sons.

9 Q Their names and ages?

10 A Mike, 23. Do you want the full name?

11 Q Sure.

12 A Michael Paul and Matthew Allen, and he's
13 17.

14 Q Does Matthew currently live with you?

15 A They both do.

16 Q Okay. As far as your level of education,
17 how far did you...

18 A Twelve years.

19 Q So through high school?

20 A Yeah.

21 Q From looking at your records, where do you
22 work, basically?

23 A At the hospital, at West.

24 Q And what is your position there?

25 A Housekeeping.

1 Q You've worked at the hospital for quite a ⁷
2 while, I guess?
3 A Yeah, since '77.
4 Q Could you just give me some of the duties
5 that you do with the housekeeping?
6 A Clean offices.
7 Q Clean offices? Do you clean the rooms,
8 patient rooms, thing like that, or are you strictly
9 administrative offices?
10 A Offices and exam rooms. That's all that's
11 over there.
12 Q And what do you have to do as far as when
13 you clean them?
14 A The sinks and dust off everything.
15 Q Just dust, vacuum, things like that?
16 A I don't. There's another person.
17 Q Okay. So has your job been pretty much
18 the same since 1977, as far as your
19 responsibilities?
20 A Yeah. I've moved from the hospital over
21 to Medical Arts.
22 Q It's still the same employer, though?
23 A Yeah. We've had different bosses, though.
24 Q But it's still kind of the same work, just
25 cleaning?

1 A Yeah.

2 Q Could you maybe just ballpark maybe your
3 income for the year, that you make yearly?

4 A Maybe 900, maybe. I don't know.

5 Q Nine Hundred? Okay. Maybe that would be
6 900 for every two weeks, like a paycheck?

7 A Oh, I don't know.

8 Q Okay. Who is your current supervisor at
9 work?

10 A Cheryl O'Donnell.

11 Q How long has she been your supervisor?

12 A Maybe between five and ten years.

13 Q Just talking about your health and history
14 of accidents prior to, I guess it would have been
15 February 14th when you had the slip and fall, have
16 you had any other prior injuries prior to that date?

17 A I fell down my steps at home.

18 Q When was that?

19 A In the '90s.

20 Q Would it be the early part of the '90s,
21 mid '90s, late '90s?

22 A That one I don't know.

23 Q Okay. Sometimes in the '90s. And what
24 injury did you suffer when you fell down the stairs?

25 A I hurt my leg.

1 Q Do you remember which leg it was?

2 A It was the other one.

3 Q You hurt your left one in this accident,
4 so it would be your right leg you hurt?

5 A Yeah.

6 Q What happened to it? I mean, you say you
7 hurt it. Was it broken or --

8 A I think I fractured my knee.

9 Q Was it kind of similar to the left one
10 that happened up at the Sandy Plaza, or like a
11 fracture of the knee?

12 A Yeah, I think. I worked with it, though.

13 Q And this happened when you fell down the
14 stairs? Was that at your home?

15 A Yeah.

16 Q How did that occur?

17 A I just fell.

18 Q Just fell? Just tripped or -- okay. Did
19 you have any kind of surgical procedure or anything
20 on your knee that you hurt when you fell down the
21 stairs?

22 A No.

23 Q Did they put it in a cast or anything like
24 that?

25 A No. I couldn't take off because I'd just

1 got back. This had nothing to do with you guys, but
2 my son, so I couldn't take off, so I had to work
3 with it.

4 Q So you worked through it? Did they give
5 you any kind of cast or anything to wear so you
6 could work through it, or just you didn't have a
7 cast --

8 A I hopped a lot.

9 Q So let's kind of focus on the day outside
10 the Sandy Plaza. I guess it would be February 14th
11 of 2000; is that correct?

12 A Yeah.

13 Q What were you doing earlier in the day,
14 before you actually arrived at Sandy Plaza?

15 A I worked all night and then we went out to
16 eat, my husband and me, and then we went, we was
17 going to go over to Rent America.

18 Q So was it a night shift, I guess, that you
19 just came off of?

20 A Yeah.

21 Q How long was the night shift?

22 A I was working eleven to 7:30.

23 Q So did your husband pick you up or did you
24 go home, or how was that?

25 A No, he picks me up, he did.

1 Q Where did you go eat that day?

2 A Perkins.

3 Q Perkins? That's around there, I guess?

4 A Yeah, it's pretty close.

5 Q I saw a sign for it, at least, coming in.

6 So what time do you think you arrived at Sandy

7 Plaza, just a ballpark? It was after Perkins, I

8 guess?

9 A Yeah, probably about eight or nine.

10 Q Now at the time of the accident, did you

11 have anything wrong with you as far as were you

12 injured at all prior to that?

13 A No.

14 Q And you came from work, so were you still

15 wearing your work clothes?

16 A Yeah.

17 Q What kind of shoes do you wear with your

18 work clothes?

19 A White sneakers.

20 Q This was February. Was it cold out that

21 day? Do you recall?

22 A No, I don't recall.

23 Q What type of car were you riding in that

24 day?

25 A A Blazer, a truck.

1 Q Is it the type of truck that has like a
2 little footrest that you set down when you step up
3 and out of it, when I say, like on the side?

4 A Yeah, I know. I'm not sure.

5 Q Do you still have that truck?

6 A No, my son wrecked it, so...

7 Q So it's no longer --

8 A (Witness shakes head.)

9 Q Okay. That day, your husband would have
10 been driving?

11 A Yeah.

12 Q Do you recall the weather conditions that
13 day?

14 A Icy.

15 Q Icy? Was it like raining or sleeting or
16 snowing at the time?

17 A I don't think so.

18 Q Well, I guess the weather conditions that
19 evening before, when you were at work on that day,
20 do you recall those weather conditions?

21 A I didn't have no trouble walking.

22 Q But you believe it was icy on the day that
23 you fell?

24 A It had to be because I fell.

25 Q We talked about the temperature. You

1 don't remember how cold it was outside that day?

2 A No.

3 Q Did you have a winter jacket on to go
4 outside?

5 A Yeah.

6 Q Now, we just actually, before the court
7 reporter got here, went up to the Sandy Plaza
8 parking lot. It was the first time I've been there.
9 How many times before the accident have you been to
10 the Sandy Plaza parking lot?

11 A Many times.

12 Q Many times? So you're pretty familiar
13 with the lot, I guess?

14 A Yeah.

15 Q Ever been there before when it's been bad
16 weather or anything like that?

17 A Yeah.

18 Q Did you ever notice anything about the lot
19 as far as when it's bad weather, is it always
20 slippery?

21 A I never had no trouble before.

22 Q Why were you there that day? You were
23 going to Rent-A-Way?

24 A Yeah.

25 Q What were you going to do at Rent-A-Way?

1 A Looking for a dresser.

2 Q Now, when you actually pulled into the
3 lot, did you park the car so if you're sitting in
4 the passenger's side, you'd be facing the Rent-A-Way
5 store or was it --

6 A Yeah.

7 Q So the front of the car would be facing
8 the stores?

9 A Yeah.

10 Q Okay. Was the car directly in front
11 of -- if you look out the window, you're looking
12 right at the Rent-A-Way store, the liquor store, the
13 front windshield?

14 A Rentway.

15 Q Rentway? I think you said earlier you
16 don't recall if it was snowing or raining or
17 anything like that?

18 A (Witness shakes head.)

19 Q Did you notice anything about the parking
20 lot when you pulled in? I mean, as far as was there
21 snow on the ground or anything like that, as you're
22 pulling into the actual Sandy Plaza?

23 A Yeah. I don't know.

24 Q How about when you were at Perkins? Did
25 you notice the parking lot at Perkins, if there was

1 snow or ice on the ground at Perkins?

2 A No.

3 Q You don't recall?

4 A No. I'm sorry.

5 Q If you don't recall, that's fine. That's
6 your answer. At the time when you actually pulled
7 in that day, do you recall how many cars were in the
8 parking lot?

9 A Not a lot.

10 Q I guess it was still pretty early in the
11 morning, so it would just be opening?

12 A Yeah.

13 Q Were there any cars besides your car
14 beside the driver's side or like beside where you
15 would get out of the passenger's side?

16 A Not on my side because I was on the
17 ground, so...

18 Q Okay. So you parked the car and you were
19 getting ready to go into the Rentway, Who got out of
20 the car first, you or your husband?

21 A I would say we both did at the same time.

22 Q Obviously, you open up the door. Now, as
23 you, before you took a step down, did you take a
24 look down or did you just kind of get out? How did
25 that work?

1 A I just got out.

2 Q Just got out? Okay. Can you kind of just
3 describe how you got out of the car?

4 A With, you know, how you always do, with
5 one foot and the second foot.

6 Q So you stepped out, if you were on the
7 passenger's side, would it be fair to say you
8 stepped out with your right foot first?

9 A (Witness nods head.)

10 Q Then you would have got out with your left
11 foot to follow?

12 A (Witness nods head.)

13 (Discussion held off record.)

14 BY MR. GRINE:

15 Q So when you stepped out, you had your
16 right foot out first?

17 A Yes.

18 Q Did you slip on your right foot or did you
19 not slip until your left foot came out?

20 A I don't know.

21 Q Can you describe how you fell? Like as
22 far as --

23 A I was kind of backwards.

24 Q So you're falling backwards?

25 A Yeah.

1 Q Away from the stores?

2 A No, I didn't fall that way. I fell like
3 where the cars would be parked.

4 Q So you fell kind of sideways?

5 A Yeah.

6 Q Did you slip on both feet or did one foot
7 slip? I mean, obviously, you hurt your leg. What
8 happened there with your leg as you fell?

9 A I don't know. It happened so fast.

10 Q So it was pretty instantaneous from the
11 time you got out of the car --

12 A Yeah.

13 Q -- until when you put your foot down? Do
14 you recall what happened to your leg? Did it get
15 bent up behind you? Did it go forward?

16 A One leg got underneath me. I don't know
17 which one it was. It probably was the one that got
18 hurt.

19 Q Were there any other people around that
20 might have seen you, been able to help you or
21 anything like that, when you fell?

22 A Yes, but we didn't go in there. It was in
23 the liquor store. Some lady was looking out the
24 window.

25 Q So someone in the liquor store saw you

1 fall?

2 A Yeah.

3 Q There was no one out in the parking lot
4 that might have seen it?

5 A No.

6 Q So when you fell, did you have gloves on
7 at the time?

8 A No.

9 Q Could you feel like the ground as you're
10 laying there? Did it seem icy? Did it seem --

11 A Wet.

12 Q Wet? The ground felt wet? What did your
13 husband do as soon as you fell?

14 A Tried to get me up.

15 Q Did you say anything to him as far as what
16 happened?

17 A Like what do you mean by that?

18 Q You fell. Did you say why you fell or did
19 you tell your husband anything like that?

20 A No, because he knew.

21 Q Okay. So he saw you fall?

22 A Yeah.

23 Q As soon as you fall, you're laying on the
24 ground. Are you feeling pain right away or --

25 A Oh, yeah.

1 Q Where were you feeling pain?

2 A In my leg.

3 Q It was pretty much instantaneous from the
4 time you fell?

5 A Yeah.

6 Q Anything else hurting at that time besides
7 your leg?

8 A No, that was it.

9 Q Okay. Did you ever report to anyone
10 within any of the stores in the Sandy Plaza that you
11 fell in the plaza?

12 A No, and we should.

13 Q So I guess you fell, your husband helped
14 you back in the car, and what did you guys do next?

15 A We went up to the hospital.

16 Q So immediately after you fell, your next
17 stop was the hospital?

18 A Yeah. Not my choice, but...

19 Q Why do you say not your choice?

20 A I didn't want to go.

21 Q Why was that?

22 A Because I just don't like to go up to the
23 hospital.

24 Q You just don't like hospitals? Okay.

25 You've worked there, so. I'm going to go into the

1 hospital and the treatment and things like that, but
2 let's talk a little bit about the fall at your
3 house. I guess that would have been on
4 February 18th?

5 A Yes, somewhere around there.

6 Q So what was your physical condition at
7 that time?

8 A I was on crutches and I lost my balance.

9 Q Did you have any kind of a brace or
10 anything on your leg?

11 A I would say so.

12 Q So you're on crutches and you're on your
13 brace. Now, where did the fall occur in your house?

14 A In my living room.

15 Q This was a couple of days after the actual
16 fall at the Sandy Plaza. Were you under any kind of
17 doctor's orders to be at home or do you recall what
18 the doctor told you?

19 A Yeah. I had to walk with the crutches and
20 that kind of puts you right at home.

21 Q And the fall took place in your living
22 room?

23 A Yeah.

24 Q Do you remember what time of day that was
25 when the fall occurred?

1 A No, I don't.

2 Q You were up on your crutches, I imagine.

3 A (Witness nods head.)

4 Q Were you going somewhere? What were you
5 doing?

6 A Yeah, somewhere in my house.

7 Q Do you recall where you were going, what
8 you needed to do?

9 A Probably to the bathroom.

10 Q So you were leaving the living room area
11 and what happened there?

12 A I lost my balance.

13 Q Did you trip on anything or you just kind
14 of --

15 A No.

16 Q You were on the crutches and you just lost
17 your balance?

18 A (Witness nods head.)

19 Q Did anybody else see you fall at that time
20 or --

21 A No, but they heard me.

22 Q They heard you? So there were other
23 people in the house?

24 A Yes.

25 Q Do you remember where they were in the

1 house?

2 A I don't know about my husband, but my boys
3 was in their bedrooms.

4 Q Was this during a weekday or was it a
5 weekend?

6 A A weekend because my boys wasn't there --
7 I mean, they was there.

8 Q They probably would have been at school.
9 Okay. So you're on crutches and what happened? Can
10 you describe the fall to me? I guess as you were
11 leaving the living room and you lost balance. You
12 obviously hurt your wrist. How did you hurt your
13 wrist in the fall?

14 A Hitting it against the TV.

15 Q So you fell like forward into the TV or
16 sideways into the TV or --

17 A Kind of, I guess, sideways into the TV.

18 Q Would it be your left -- is it your left
19 wrist or is it your right wrist?

20 A (Indicating.)

21 Q The right wrist. So you would have fallen
22 to your right maybe and hit it, is that...

23 A (Witness nods head.)

24 Q Did you go seek treatment right away that
25 day?

1 A Oh, yes.

2 Q Did that hurt more than the actual first
3 time when you hurt your knee earlier?

4 A About the same, I think.

5 Q About the same? Okay. But you knew
6 something was wrong right away?

7 A (Witness nods head.)

8 Q Where did you go for that treatment?

9 A Up at the hospital.

10 Q Do you recall who you saw for the
11 treatment that day?

12 A No, I don't.

13 Q Did you go to the emergency room?

14 A Yes.

15 Q Go back to the medical treatment that you
16 sought the day you hurt your knee, which I guess
17 would have been February 14th, you went to -- the
18 hospital's name, if you could just state it for us?

19 A Dubois Regional Medical Center.

20 Q That was where you worked?

21 A Yeah.

22 Q Did you go to the ER room that day, the
23 emergency room?

24 A Yeah.

25 Q Do you recall the doctor that you saw that

1 day for your...

2 A No, I don't.

3 Q It's been a while. I understand.

4 A Yeah.

5 Q Does the name Dr. Russell Cameron, does
6 that sound familiar at all as a possible doctor you
7 might have seen that day?

8 A The name doesn't hit a bell.

9 Q So you went in there that day. What
10 injuries did you have to tell the doctor?

11 A What with this?

12 Q No, the first time, with the leg.

13 A That my leg hurt. It was swelling up
14 already.

15 Q Did they take x-rays and things like that?

16 A Yeah.

17 Q What did they tell you after the x-rays?

18 A Broken knee.

19 Q Okay. On that day, what did they do for
20 you on the 14th before they sent you home?

21 A They put a brace on it and gave me
22 crutches.

23 Q Did they give you any pain medicine to try
24 to --

25 A Yeah.

1 Q Do you recall what kind of pain medicine
2 you might have been on?

3 A No, I don't remember.

4 Q The day you actually went there with the
5 wrist, which would have been a couple of days later,
6 you went to the emergency room, and did they do the
7 same thing, x-rays, things like that?

8 A Yeah. They didn't even put me in the ER.
9 They just sent me to x-ray.

10 Q Okay. And what did the doctors tell you
11 that day as far what was the matter with your wrist?

12 A Broken.

13 Q And before they sent you home that day,
14 what did they do?

15 A They wrapped it and that was about it.

16 Q Now, obviously, you had to get some
17 treatment for the knee and the wrist. Do you
18 recall, like, when you went in, what they did?

19 A After I left the ER, I had an appointment
20 to go to the bone doctor.

21 Q Would this be after the wrist trip to the
22 ER?

23 A Both times.

24 Q Okay.

25 A Then with this (indicating), they tried to

1 put a cast on it, but it didn't stay on it that
2 long.

3 Q When you say "this," you're talking about
4 your right wrist?

5 A Yeah.

6 Q Did they, I think I saw they might have
7 put pins into your wrist?

8 A Yeah, pins.

9 Q How many pins did they put in there?

10 A One here, one here (indicating.)

11 Q Do you recall when that was done?

12 A I don't think it was that week.

13 Q That wasn't at the actual hospital, that
14 was at --

15 A Yeah.

16 Q Oh, that was at the hospital?

17 A Yeah.

18 Q You said the bone doctor, would that be
19 the orthopedics doctor?

20 A Yeah.

21 Q What did you see the orthopedics doctor
22 for?

23 A For this and this both (indicating.)

24 Q But they didn't do the pins at the
25 Orthopedic Center or is the Orthopedic Center

1 located in the hospital?

2 A No. His office is over here (indicating)
3 and he came to the hospital and done it.

4 Q Okay. So everything that was done was
5 done at the hospital?

6 A Yeah.

7 Q Did you actually ever go to the Orthopedic
8 Center or was everything, when you saw him, at the
9 hospital?

10 A No. My doctor appointments was over at
11 his office.

12 Q And he's the doctor that recommended using
13 the pins to try to heal your wrist?

14 A Yeah.

15 Q Did they do anything for your knee besides
16 put it in a -- did you say it was a leg brace or
17 something like that?

18 A Yeah. I had one of them blue braces and
19 then after that, they put this thing on that had
20 kind of like two wheels.

21 Q Okay.

22 A And every other day we had to move them
23 wheels.

24 Q Okay.

25 A Plus I had therapy on both things.

1 Q Was there any kind of operation or
2 anything done on your knee?

3 A No.

4 Q So they just immobilized it so it wouldn't
5 move?

6 A Yeah.

7 Q So the only type of surgical operation
8 would have been on your wrist?

9 A Yeah.

10 Q When they put the pins in?

11 A Yeah.

12 Q Did you have any kind of rehab or physical
13 therapy that you had to attend?

14 A Yeah, for both.

15 Q When did that start?

16 A For the leg, I think it was right after
17 Valentine's Day.

18 Q Okay.

19 A And for my hand it was, I had therapy on
20 my hand before I had surgery.

21 Q When you went to therapy, would you go for
22 both? They'd treat both of them?

23 A Yeah.

24 Q Was the therapy also at the DuBois
25 Regional Medical Center?

1 A Yeah, in a way. It's across the road.
2 It's called Medical Arts.

3 Q It's in the same complex, same area?

4 A Yeah.

5 Q Can you just describe some of the
6 treatments that you underwent as far as what they
7 had you do to try to get your wrist and your leg
8 back?

9 A For my leg, it was like just make sure my
10 leg would move up and down like kind of thing, and
11 they put me on some of their machines.

12 Q What did the machines do, help your leg
13 move?

14 A Yeah. And for my arm, they would just
15 kind of move it around and they gave me like a ball
16 that I had to squeeze. I think that was about it.

17 Q So they helped you move your wrist and
18 your leg around and they also gave you exercises to
19 do there?

20 A Yeah.

21 Q How long did you go to rehab or therapy?

22 A I was back to work and I was still going
23 through it.

24 Q Okay.

25 A I went back in May. He wanted me off

1 longer, but the hospital only allows you off so
2 long.

3 Q So did the therapy go into the summer?
4 Did it go into the fall? Do you remember how long
5 it went before you actually finished up with your
6 therapy?

7 A A hundred percent I don't know.

8 Q Okay.

9 A It's written down, but I don't know.

10 Q Yeah. Obviously, when you had these
11 injuries, could you kind of tell us how these
12 injuries affected your day-to-day life?

13 A You couldn't do anything.

14 Q Was that right off, right after the
15 injury, you had a hard time doing things?

16 A Yeah.

17 Q How long were you, I guess, at home?

18 A The 12 weeks.

19 Q Twelve weeks? Did it, obviously, you
20 didn't work for 12 weeks, so that affected your
21 work?

22 A Yeah.

23 Q Did you have any trouble sleeping, things
24 like that, because of your injuries?

25 A Yeah.

1 Q Okay. Why?

2 A In a lot of pain.

3 Q Pain?

4 A And some of the medicine didn't help that.

5 Q Were you ever confined to your bed or
6 anything like that after the injuries occurred?

7 A I should have been, but I laid out on the
8 couch.

9 Q They told you to go to bed, but you laid
10 out on the couch --

11 A Yeah.

12 Q -- and watched TV and things like that?

13 A Yeah.

14 Q Do you recall when maybe your injuries
15 kind of got better?

16 A I don't know. Seemed like a long time,
17 though.

18 Q You were actually at the hospital and had
19 some procedures done at the hospital and you
20 incurred some medical expenses. Was your insurance
21 able to pay that or do you have any outstanding
22 medical bills from all this?

23 A I sent my bills over to (indicating.)

24 Q Are you aware if you have anything
25 outstanding that you have to pay or have they all

1 been paid for?

2 A I don't know yet.

3 Q You also had to take off 12 weeks of work?

4 A Yes.

5 Q Was that under the Family Medical Leave
6 Act or anything like that? Do you recall what that
7 was? Why was it only 12 weeks that the hospital
8 allowed you to have?

9 A It doesn't matter what you're off for,
10 it's 12 weeks.

11 Q Do you get paid when you're off for those
12 12 weeks?

13 A A third of your pay.

14 Q Is there any type of policy they have
15 where you have to take your vacation days and sick
16 days for these 12 weeks or anything like that?

17 A Okay, before -- it's called a disability
18 thing.

19 Q Okay.

20 A And you have to be off 30 days before it
21 kicks in.

22 Q So what happens for the first 30 days
23 before --

24 A You take your vacation time or you don't
25 take no pay at all.

1 Q Did you have --

2 A Yes, I had.

3 Q -- for the 30 days?

4 A Yes.

5 Q And then after that 30 days, the 12 weeks
6 kicks in?

7 A No, I think it kicks in from day one, but
8 your pay doesn't kick in until after your 30 days.

9 Q Are you part of a union at the hospital?

10 A No.

11 Q So after the pay kicks in, you're saying
12 you only get a third of your pay?

13 A Yeah.

14 Q So you would have lost some pay?

15 A Yeah.

16 Q As you sit here today, do you have any
17 physical limitations from your wrist or your left
18 knee?

19 A I'm not saying my leg doesn't hurt, but
20 you know, it's, I have to go on.

21 Q Yeah. Do you still receive any kind of
22 rehab treatment or things like that?

23 A No. I still go to the doctors, though.

24 Q You go to the doctors for?

25 A Once a year.

1 Q For a checkup on your injuries?

2 A Yeah.

3 Q When was the last time you went to the
4 doctor?

5 A In this year.

6 Q Do you recall what they said during your
7 yearly checkup as far as, you know, what the status
8 of your injuries are?

9 A He's not going to sign me off.

10 Q He's not going to sign you off?

11 A No.

12 Q Does he still have you doing any kind of
13 rehab or things like that?

14 A I'm supposed to do them at home.

15 Q So you have home exercises to do?

16 A Yeah.

17 Q Are you currently on any kind of
18 medication for either the wrist or the --

19 A No.

20 Q So you went back. Did you actually make
21 it back to work, I guess, in twelve weeks because
22 you said you had to?

23 A Yeah. It was very hard, but I went back.

24 Q What did you do at work, what kind of
25 work, when you went back, did you...

1 A The same things. I used this hand a lot
2 (indicating) because I couldn't even squeeze.

3 Q Did they offer you any kind of opportunity
4 to maybe have a different type of job where it
5 wouldn't be so hard until you felt better, or did
6 you have to do the same job?

7 A The same job.

8 Q How long do you think, when you went back
9 after the 12 weeks, where you were kind of
10 struggling with the injuries?

11 A Probably a couple of months.

12 Q Okay. And would it be fair to say that
13 eventually it got better and you were able to work a
14 little better and kind of back to normal?

15 A Yeah. It will never be like it should be,
16 but...

17 Q When you say that, why would you say that?

18 A Because he says it will never get any
19 better.

20 Q So does something bother you right now
21 with it or...

22 A Sometimes.

23 Q When you say "it," are you talking about
24 your wrist or your knee?

25 A Both. I have trouble with both off and

1 on.

2 Q So what kind of trouble do you have,
3 actually, when you have trouble with them?

4 A Like this one, I get pain (indicating.)

5 Q When you say "this one," you're talking
6 about your left knee?

7 A Yeah.

8 Q So you get pain in it? Are you able to
9 walk and do things or what kind of...

10 A I don't take off work, so you have to.

11 Q Okay. And is the wrist, do you still have
12 complications with your wrist?

13 A Not a lot.

14 Q So you're kind of telling me that it's
15 more your knee that gives you trouble still?

16 A Yeah.

17 Q I read a statement that you gave to a
18 Candy Hamman. I don't know if you remember this, it
19 was a phone statement a year or so ago.

20 A Oh, the one where I probably messed up.

21 Q Did you, besides that statement, did you
22 give a statement to anybody else, or is that the
23 only statement that you recall giving to somebody?

24 THE WITNESS: Was that the one that we did
25 in here?

1 MR. DUBOIS: Yes. That's the only one.

2 BY MR. GRINE:

3 Q Was that the only statement that you've
4 given?

5 A Yes.

6 Q Do you have any other type of claims or
7 lawsuits currently out besides this one, or is this
8 the only lawsuit that you're involved in?

9 A This is the only one.

10 MR. GRINE: I don't have any other
11 questions right now. Thank you.

12

13 EXAMINATION

14

15 BY MR. BEHLING:

16 Q Linda, can you hear me okay?

17 A Yeah.

18 Q Maybe I'll move because I don't want you
19 to turn your head for the reporter. I'll just go
20 straight across and that will make it easier.

21 (Discussion held off record.)

22 BY MR. BEHLING:

23 Q Okay. Why don't we start as it relates to
24 your current medical. When was the last time you've
25 seen a doctor?

1 A We have to go every two years, working at
2 the hospital.

3 Q Well, let me ask you this question. When
4 was the last time you saw a doctor for any injuries
5 that you relate to the events that occurred at the
6 shopping center that day?

7 A It was in 2000. I mean, yeah, 2000, this
8 year.

9 Q In 2002?

10 A Yeah.

11 Q Do you know when in 2002? Was it a long
12 time ago? Because we're almost through 2002. Was
13 it in the summer, was it last winter or was it this
14 fall when the kids would have gone back to school?

15 A No, I would say summer.

16 Q Summer. Which doctor would that have
17 been?

18 A The one I went to.

19 Q Would it have been Dr. Schrantz?

20 A Yeah, that's it.

21 Q I have medical records from Dr. Schrantz,
22 I believe, and I have office records, and if I'm not
23 mistaken, the last office record that I have is in
24 September of 2000. So you're saying that you have
25 seen him since September of 2000?

1 A Yes.

2 MR. BEHLING: Jeff, do you have any office
3 records beyond September of 2000?

4 MR. DUBOIS: I don't know.

5 MR. BEHLING: Why don't you take a look?
6 I'll keep on going.

7 BY MR. BEHLING:

8 Q When you would go to the doctor, would the
9 doctor ask you how you felt?

10 A Yes.

11 Q And since the doctor was there to treat
12 you and help you, would you tell the doctor the
13 truth?

14 A Yes.

15 Q In the doctor's office notes, for example,
16 in September of 2000, you were there to follow up
17 for both your wrist and your knee?

18 A Yes.

19 Q In the doctor's note on September of 2000,
20 it said, (Reading): She says she has absolutely no
21 symptoms in the left knee. That
22 means you're having no problem, no
23 pain at all. The right wrist is
24 stiff, but it is not particularly
25 tender. She is very pleased with

1 the results.

2 Now, in September of 2000, did you tell
3 your doctor that?

4 A I guess.

5 Q You don't have a specific recollection one
6 way or the other; is that what you're telling me?

7 A Yes.

8 Q Do you have any reason to know why he
9 would put something like that in his note if you
10 didn't have a discussion along those lines with him?

11 A I don't know.

12 Q Did you get along with your doctor?

13 A Yeah.

14 Q Is there anything that you cannot do now
15 that you could do before the accident?

16 A You mean like cleaning?

17 Q Let's talk about what you do in these
18 categories: What you do at your job, what you do at
19 home, taking care of the house or doing things for
20 the kids, or what you do from social or recreational
21 standpoints.

22 Let's talk about your job. When you went
23 back to work after this accident, you told us for a
24 while you used your good hand.

25 A Yeah.

1 Q How long did that go on that you relied on
2 one hand until you got back to using both hands?

3 A I would probably say a couple of months.

4 Q All right. Is there anything, after those
5 couple of months, is there anything at work that you
6 cannot do now that you could do before this
7 accident?

8 A Probably not.

9 Q As part of your job, is there stairs that
10 you have to go up and down?

11 A Yes.

12 Q Did you have to, do you clean out, you
13 know, the garbage and take the garbage out and put
14 it in like a big cart?

15 A Yes.

16 Q Do you have to push that cart around to
17 other rooms or other offices?

18 A Yes.

19 Q And do you have to ultimately empty the
20 garbage and replace trashliners and things like
21 that?

22 A Yes.

23 Q Do you have to mop or vacuum or use any
24 type of broom or other device as it relates to the
25 flooring?

- 1 A Unless we're short, no.
- 2 Q If you're short, you would have to?
- 3 A Yes.
- 4 Q Okay. Is there someone else who has that
- 5 job, that has to do the flooring aspect of it unless
- 6 you're short?
- 7 A Yes.
- 8 Q When you're short, what type of things
- 9 would you have to do as it related to maintaining
- 10 the floors?
- 11 A The sweeper and the mopping.
- 12 Q Now, how about at home? Are you primarily
- 13 responsible for everything that goes on at home?
- 14 A Yes.
- 15 Q As far as cooking?
- 16 A Yes, I guess.
- 17 Q Cooking, cleaning?
- 18 A Uh-huh.
- 19 Q Is that yes?
- 20 A Yes.
- 21 Q Laundry?
- 22 A Yes.
- 23 Q Shopping for the food?
- 24 A No.
- 25 Q Who does the food shopping?

1 A My son.

2 Q Okay. But the cooking, cleaning, those
3 types of things, laundry, that's your
4 responsibility?

5 A Yes.

6 Q Is there any limitation in you performing
7 those unfortunately thankless tasks that moms have
8 to do?

9 A At home I'm fine, but like if we're short,
10 the mopping does bother me.

11 Q The mopping, you can do it, but it bothers
12 you?

13 A Yeah. By the end of the night, my hand
14 hurts.

15 Q It's your hand because you're holding onto
16 the mop with your hands as opposed to your leg?

17 A Yeah, yeah.

18 Q Okay. Now, we went through home, we went
19 through the job. Let's talk about, do you have any
20 hobbies? Do you read or do you knit or crochet, or
21 do you bowl or play bingo or anything like that?

22 A I read. That's about it.

23 Q Did you read before the accident, as well?

24 A Yes.

25 Q Did you have any activities that I have

1 described, such as, you know, bowling or jogging or
2 anything like that before the accident?

3 A No, I never did any of that.

4 Q Okay. If you didn't do it before, I guess
5 you're not doing it now, right?

6 A No.

7 Q Now, how long has it been since you've
8 taken any prescription medication for the injuries
9 that you sustained in the accident?

10 A I'm not sure.

11 Q I assume that for several weeks afterwards
12 you were on some varying kind of medications. I saw
13 some references to some pain medication in here.

14 A Yeah.

15 Q But after three or four months, do you
16 think you would have been done with all the pain
17 medication from a prescription standpoint?

18 A I'm not sure.

19 Q All right. How about over-the-counter?
20 Today, this is 2002, do you routinely take any
21 over-the-counter medication or supplements that you
22 take because of the injuries or the conditions you
23 feel you have as a result of this accident?

24 A No.

25 Q Now, as it relates to your employment and

1 your time off of work and your wages, I understand
2 from looking at the file there was a as a part of
3 your employment package, you had a disability policy
4 that was issued by UNUM Insurance Company?

5 A Yeah, that's our disability insurance.

6 Q So they were sending you checks after a
7 waiting period?

8 A Yeah, after your 30 days.

9 Q After 30 days. And that would pay for a
10 percentage of your income?

11 A Yes.

12 Q Do you know how much those individual
13 checks were?

14 A No, not offhand.

15 Q Because of your employment with the
16 hospital, did you have health insurance?

17 A Yes.

18 Q Do you have any medical bills that you're
19 aware of that need to be paid that haven't been paid
20 by somebody?

21 A Yes.

22 Q What are those medical bills? Whose are
23 they and how much are they, if you know?

24 A What do you mean, who are they?

25 Q Well, for example, is it a doctor, is it a

1 therapist, or is it the hospital?

2 A I would say the hospital.

3 Q Okay.

4 A And money-wise, I don't know.

5 Q Did you give all that information to your
6 lawyer?

7 A Yes.

8 Q So you think that there are some unpaid
9 medical bills as a result of this?

10 A Yes.

11 Q And you think it's primarily the hospital?

12 A Yes.

13 Q Was there some sort of deductible or
14 co-pay associated with your health plan, as far as
15 you know?

16 A I don't think so.

17 Q Did you return to your previous position
18 with the hospital? That is, did they give you your
19 old job back?

20 A Yes.

21 Q So you were not demoted or your hours
22 weren't reduced when you returned to work? They
23 were glad to have you back and you went back to your
24 old job?

25 A Yes.

1 Q I have here a general site survey of the
2 plaza, of Sandy Plaza. Do you want to take a look
3 at this, please?

4 A (Reviewing.)

5 Q All right?

6 A Okay.

7 Q Now, first I'm going to ask you about the
8 stores and then I'm going to ask you about the
9 parking lot. The stores that we see here, they're
10 outlined, starting with Kmart and working down the
11 pizza shop and there's another small retail,
12 Gambrello, the Deb Shop, Rentway, the liquor store,
13 CVS and Bi-Lo, are these generally the stores that
14 were there at the time of this accident?

15 A I think Deb's was there. This one might
16 not have been (indicating.)

17 Q You're talking about CitiFinancial?

18 A Yeah.

19 Q But your intended destination was the
20 Rentway store, correct?

21 A Yeah.

22 Q Would you agree with me that at the time
23 of the accident, that moving up from the Bi-Lo, that
24 the Bi-Lo was there?

25 A Yeah, they've been there for years.

1 Q Then next to the Bi-Lo was the drug store?

2 A Yeah.

3 Q Next to the drugstore was the liquor
4 store?

5 A Yeah.

6 Q And next to the liquor store was the
7 Rentway store?

8 A Yes.

9 Q Okay. Does this drawing, which is Drawing
10 No. SP-1 --

11 MR. BEHLING: Is there a date on that,
12 Jeff?

13 MR. DUBOIS: 2/12/98.

14 BY MR. BEHLING:

15 Q -- 2/12/98 there, by this engineering
16 firm, does this generally depict the way the center
17 is laid out, with the Kmart kind of at the one end
18 and then these retail shops running down this way
19 toward the main road?

20 A Yes.

21 Q Do you know whether the parking stalls on
22 the day of this accident were aligned in this
23 fashion? By that I mean, they seem to be completely
24 perpendicular to the travel lanes in the center, or
25 were they on an angle?

1 A No, they were like they are now.

2 Q And "like they are now" is on an angle?

3 A We was just up there.

4 Q Do you recall whether they were on an
5 angle or whether they were perpendicular like this?
6 Now, I'm talking about now. We were just there
7 about two hours ago, an hour ago.

8 A Probably at an angle.

9 Q Okay. Now, can you mark with a circle
10 where you believe, in a general sense, I don't want
11 you to actually have to pick out the exact spot. If
12 you can, that would be great, but do I understand
13 you don't know exactly where you were parked?

14 A No.

15 Q I'm correct in that assumption?

16 A Yes.

17 Q Okay. So I'm not asking you, then, to
18 pick a spot, and I know that when you draw a circle
19 for me, it's going to indicate the general area.

20 A Okay.

21 Q You can make the circle as small as you
22 want or you can make the circle as big as you want.
23 Okay? But I'd like you to draw a circle and I'd
24 like you to put your initials in it for me. Okay?

25 A Okay.

1 Q Now, this was about at nine o'clock in the
2 morning?

3 A Yes.

4 Q Are all of these businesses open at nine
5 o'clock in the morning or are only some of them open
6 at nine o'clock in the morning?

7 A I would say probably some of them.

8 Q This being in February, kids are in
9 school. How would you describe how many cars were
10 in the parking lot? Was it easy to find a place to
11 park?

12 A Yes, very easy.

13 Q Why don't you, here's a pen, and like I
14 said, with that limitation, knowing you don't know
15 exactly where, that you're going to give me a
16 general area, draw a circle as large or as small as
17 you would like and put your initials in it.

18 A (Witness complies.)

19 Q All right. Now, when you got out of the
20 car that day, do you remember anything other than
21 slipping and falling?

22 A I remember there was somebody looking
23 outside, but we didn't go in and get her name.

24 Q But that was afterwards, right? When you
25 said you remember someone looking outside --

1 A Yeah.

2 Q -- that was something you noticed
3 afterwards?

4 A Yeah, afterwards.

5 Q I'm talking about as you were getting out
6 of the vehicle, do you remember anything other than
7 starting to get out of the truck and stepping out of
8 the truck and slipping and falling?

9 A No.

10 Q When you were on the ground, you said it
11 felt wet?

12 A Yes.

13 Q Were your clothes wet?

14 A Yes.

15 Q When I say "your clothes," would you
16 describe for me which parts of your clothes were
17 wet?

18 A My pants was wet and my coat was wet.

19 Q Okay. Now, your pants, are we talking
20 about the bottom part of your pants or kind of like
21 the seat, where you would have -- I assume you ended
22 up at some point on your buttocks, sitting on the
23 ground?

24 A Yeah.

25 Q Okay. Are you talking about the back of

1 your pants, anything that would have been touching
2 the ground would have been wet, or are you talking
3 about any particular area?

4 A Like, I would say the leg type thing.

5 Q Okay. And your coat, was your coat long
6 enough to cover your buttocks?

7 A I don't think so.

8 Q Which part of your coat was wet?

9 A The bottom half.

10 Q The bottom part?

11 A Yes.

12 Q How about any of the sleeves?

13 A Excuse me, it might have been because I
14 did lay down.

15 Q You did lay all the way down?

16 A Yeah.

17 Q Were you wearing a hat?

18 A No.

19 Q When you laid down, did you feel wet or
20 did you feel actual ice or snow?

21 A Wet.

22 Q How long do you believe you laid on the
23 ground?

24 A Not long.

25 Q A minute? Two minutes? Your husband

1 helped you --

2 A Yeah.

3 Q -- you didn't lay there and wait for
4 paramedics or anything like that?

5 A No. Maybe between five and ten minutes.

6 Q Okay. Did you see any other cars pull in
7 or pull out?

8 A No.

9 Q Was it when you were on the ground looking
10 that you saw the person in the liquor store looking
11 out? I'm trying to get that sequence.

12 A I don't think so. I think it was after I
13 was back in the truck.

14 Q After you were back in the truck? When
15 you were laying on the ground did you feel any,
16 other than wet, did you feel any garbage or glass or
17 cans or any other debris?

18 A No.

19 Q All right. One of your medical records
20 from the doctor indicated that your other knee
21 injury on the other side --

22 A Yes.

23 Q -- that you had surgery on that knee. Is
24 that accurate or inaccurate?

25 A No, it's true, a long time ago.

1 Q Okay. Well, maybe I misunderstood your
2 answers earlier. I understood that you had an
3 injury to your other knee and I thought that you
4 said that you couldn't go back to work because you
5 were just off because of your son and, therefore,
6 you had to hop around and work through it.

7 A Well, wait a minute. Okay. When I first
8 got married, I hurt this other one.

9 Q Okay.

10 A And that's the one we're talking about.
11 And then when I fell down my steps, I hurt the same
12 one again.

13 Q All right. Well, let me make sure that
14 we're talking about the same thing. A long time
15 ago, you had hurt your right knee?

16 A Yes.

17 Q Is that correct?

18 A Yeah.

19 Q And was it a similar type of injury or
20 fracture?

21 A No, because I had surgery on it at that
22 time.

23 Q Okay. Well, that was the treatment. My
24 question was, were you told it was a similar type of
25 injury, that it was a fracture around your knee?

1 A Probably not because I did my knee and leg
2 both at the same time.

3 Q You did your knee and leg. Who was your
4 doctor for that injury?

5 A Dr. Barley.

6 Q And what hospital was that?

7 A It was at our hospital. He's retired now.
8 He's no longer at the hospital.

9 Q Approximately what year was that?

10 A '71, '72.

11 Q And you fell then?

12 A Yeah, I fell down steps.

13 Q You fell down steps. Was that at home?

14 A No.

15 Q Where was that?

16 A I was baby-sitting somebody's kids.

17 Q Let's see, you were born in '53, so that
18 would have made you about 18 or 19 years old?

19 A Yeah.

20 Q So you fell at someone else's home?

21 A Yeah.

22 Q Or were you baby-sitting over at your
23 house?

24 A No, I wasn't at my house.

25 Q Then another time, you fell and injured,

1 reinjured, the right knee, but that's when you said
2 you couldn't take any time off from work?

3 A Right.

4 Q When was that injury; do you remember?

5 A In the '90s. I couldn't get no records
6 for that.

7 Q And that was a fall at home?

8 A Yeah.

9 Q Do you remember how you fell back in the
10 '70s?

11 A No, I don't.

12 Q Do you remember how you fell in the '90s,
13 when you, I'll call it, injured your right knee
14 again?

15 A All I know is I fell.

16 Q Then you had -- did you have any other
17 falls besides those two?

18 A No.

19 Q Then you had this fall in 2000 at the
20 plaza, right?

21 A Yes.

22 Q Then you had a fall a couple of days later
23 in 2000, or a near fall, where you fractured your
24 wrist?

25 A Yes.

1 Q And that was at home. Did you have
2 anymore falls?

3 A No.

4 Q Now, the surgery you got back in the '70s,
5 what did you understand that surgery was for?

6 A For my knee.

7 Q What did they do, do you know?

8 A They took a half a cartry (sic) out, I
9 think.

10 Q They took a half a --

11 A Cartry (sic). It's a bone you have in
12 your knee.

13 Q So they took a piece of bone out of your
14 knee?

15 A Yes.

16 Q Were you in a cast?

17 A Yes.

18 Q Did you have to go through therapy after
19 that?

20 A It's been so long ago, I don't remember.

21 Q All right. Did you have ever any problems
22 with your right knee other than when you first
23 injured it in the '70s and when you fell at home in
24 the '90s?

25 A Yes, it hurt a lot.

1 Q It hurt a lot both of those times?

2 A And then after I fell the second time, all
3 the pain left.

4 Q In the '90s? You mean after you fell in
5 the '90s?

6 A Yeah.

7 Q So it bothered you between the '70s and
8 the '90s?

9 A Yeah.

10 Q And then when you reinjured it and you
11 healed from that, then it didn't bother you anymore?

12 A No.

13 Q Okay. I want to go over some of your
14 medical providers and then I'll be done, to make
15 sure I have them all. Then we'll know exactly who
16 they are. DuBois Medical Center?

17 A Yes.

18 Q Emergency room, the day of the accident,
19 2/14?

20 A Yes.

21 Q DuBois Medical Center Emergency Room,
22 2/19, when you hurt your wrist?

23 A Yes.

24 Q Surgery at DuBois Medical Center for your
25 wrist because it wasn't healing straight?

1 A Yes.

2 Q Was that what you understand, that your
3 wrist was not healing straight, that's why they put
4 those pins in?

5 A Yes.

6 Q And those pins were put in on the outside,
7 correct?

8 A Yes. A big rod was from here to there
9 (indicating.)

10 Q And you went back to the emergency room on
11 5/19?

12 A That's to take the pin out.

13 Q Oh, that was for the pin removal. Okay.
14 And then, of course, your treatment with Dr.
15 Schrantz?

16 A Yes.

17 MR. BEHLING: All right. I don't have any
18 further questions.

19 MR. GRINE: I don't either.

20 MR. DUBOIS: No questions and we'll waive.
21

22 (Deposition concluded at 2:29 p.m.)
23
24
25

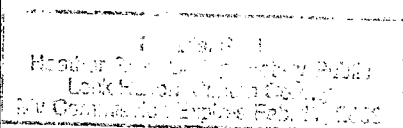
1 COUNTY OF CLINTON :
2 COMMONWEALTH OF PENNSYLVANIA : ss


3 I, HEATHER GOSS BORING, Reporter-Notary Public,
4 authorized to administer oaths within and
5 for the Commonwealth of Pennsylvania and take
6 depositions in the trial of causes, do hereby
7 certify that the foregoing is the testimony of
8 LINDA RADAKER.

9 I further certify that before the taking of said
10 deposition, the witness was duly sworn; that the
11 questions and answers were taken down
12 stenographically by the said HEATHER GOSS BORING, a
13 Reporter-Notary Public, approved and agreed to, and
14 afterwards reduced to typewriting under the
15 direction of the said Reporter.

16 I further certify that the proceedings and
17 evidence are contained fully and accurately in the
18 notes taken by me in the within deposition, and that
19 this copy is a correct transcript of the same.

20 In testimony whereof, I have hereunto subscribed
21 my hand this 30th day of December, 2002.

22
23 
24


HEATHER GOSS BORING
Notary Public

25 My commission expires
on February 17, 2003

LAWYER'S NOTES

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	

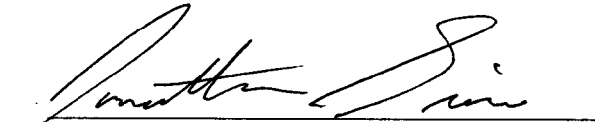
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Summary Judgment and Brief were deposited in the United States mail, postage prepaid, in State College, Pennsylvania, on the 31st day of January, 2003 addressed to the following:

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

LINDA RADAKER,

Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY PLAZA
and POLLINO EXCAVATING,

Defendants

)
: No. 2002-181-CD
)
: JURY TRIAL DEMANDED
)
: Type of Pleading:
) **Brief in Support of**
) **Motion for Summary Judgment**
) Filed on Behalf of:
) **Defendant Pollino Excavating**

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OFFICE

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
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MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	

BRIEF IN SUPPORT OF DEFENDANT POLLINO EXCAVATING'S
MOTION FOR SUMMARY JUDGMENT

I. BACKGROUND

The instant litigation involves an alleged slip and fall in a commercial parking lot which occurred on or about February 14, 2000 at the Sandy Plaza, Clearfield County, Pennsylvania. (Plaintiff's Complaint, MSJ Exhibit 1). Plaintiff, Linda Radaker, filed a Complaint in Civil Action alleging negligence against the captioned Defendants. (MSJ Exhibit 1).

Plaintiff's theory of negligence against Defendants is that she slipped and fell on an accumulation of ice while exiting an automobile that was parked in the Sandy Plaza parking lot. (MSJ Exhibit 1, ¶¶ 10-11). Plaintiff is the only identified living witness known to have been at the scene of the incident during the time of the alleged slip and fall. On November 20, 2002, Plaintiff's deposition was taken regarding the facts surrounding her alleged slip and fall. (Deposition transcript of Linda Radaker, 11/20/02, MSJ Exhibit 2).

Plaintiff's deposition testimony revealed several important facts surrounding her fall. First, she did not recall whether it was cold out on the date of her alleged slip and fall and did not think it was raining, snowing or sleeting. (MSJ Exhibit 2, pp. 11-12, 14). Second, Plaintiff did not recall whether there was snow or any other type of winter conditions on the ground of the Sandy Plaza parking lot. (MSJ Exhibit 2, p. 14). Third, after her fall, Plaintiff testified that the ground only felt wet and that she did not feel any ice, snow or other debris. (MSJ Exhibit 2, pp. 18, 51-52, 53). Fourth, while Plaintiff testified that the general weather conditions that day were "icy," her description was solely based on the assumption that it had to be icy because she fell. (MSJ Exhibit 2, p. 12).

Plaintiff does not have sufficient knowledge upon which to pursue her cause of action in terms of being able to sufficiently describe the characteristics or condition of the subject area of pavement which was allegedly associated with her fall.

II. ARGUMENT

A. STANDARD FOR GRANTING SUMMARY JUDGMENT

Summary Judgment is appropriate only where it is clear and free of doubt that the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to material fact. Pa. R.C.P. 1035(b); Holpp v. Fez, Inc., 656 A.2d 147 (Pa.Super. 1995). When the defendant is a moving party, he may make the showing necessary to support the entrance of summary judgment by pointing to materials which indicate the plaintiff is unable to satisfy an element of his cause of action. Godlewski v. Pars Manufacturing Company, 597 A.2d 106 (Pa.Super. 1991).

The party seeking to avoid entry of summary judgment may not rest on averments, but must affirmatively show that there is a genuine issue of material fact for trial. Buchkno v. Penn Linen and Uniform Services Inc., 631 A.2d 674 (Pa.Super. 1993). Where the allegations of the non-moving party's pleading have been controverted by the moving party's supporting material, the non-moving party must by affidavit, or in some other way provided for by the rule, set forth specific facts showing that a genuine issue of material fact exists. Roland v. Kravco, Inc., 513 A.2d 1029 (Pa.Super. 1986).

B. PLAINTIFF HAS FAILED TO PRODUCE EVIDENCE THAT A DANGEROUS CONDITION EXISTED AT THE LOCATION OF THE FALL.

The factual scenario in the instant case is almost virtually identical to the factual scenario presented in Roland v. Kravco, in which the Superior Court affirmed the trial court's granting of summary judgment for defendant. Roland, 513 A.2d 1034. Specifically, in Roland, the Superior Court held that plaintiffs failed to establish that there were ridges and elevations of ice that caused plaintiff to fall. Id. at 1032.

In Roland, the plaintiff slipped and fell as she was walking on the defendant's parking lot. Id. at 1030. As in the instant case, the only evidence of how the accident occurred was found in the deposition of the plaintiff. In its opinion, the Superior Court examined the following portions of the plaintiff's deposition transcript:

Q. ...Was there dampness on the surface of the parking lot?

A. I would say it was wet.

Q. It was wet.

A. Yes.

Q. But it was not actually raining at the time.

A. No, there was no rain.

Q. Was there any snow in the parking lot?

A. Yes. Well, it was all piled up on the one side.

Q. Like it had been cleared.

A. Yes, it was cleared up.

Q. What did you see immediately before you fell to the ground?

A. Nothing, just it was wet, but I knew that when I went there.

Q. Did you see any snow in your path.

A. No, there was no snow. I didn't see any snow.

Q. Did you see any ice in your path?

A. No, I didn't see any ice.

Q. Now, in your complaint I believe there's an allegation that you slipped on ice. What is the basis of that statement?

A. Slipping on ice?

Q. Yes.

A. I just figured it must have been. I mean I just couldn't think of I mean, I know -- I mean -- well, I don't know, but I didn't see a thing on the ground except -- you know, it was wet and I know there was nothing in my path to trip over or to fall on.

Q. So you just concluded that since you slipped that there must have been ice that you didn't see.

A. That's right.

Id. at 1031.

The above segments of deposition testimony examined by the Superior Court in Roland are strikingly similar to the following segments of Plaintiff Linda Radaker's deposition testimony of November 20, 2002:

Q. Do you recall the weather conditions that day?

A. Icy.

Q. Icy? Was it like raining or sleeting or snowing at the time?

A. I don't think so.

Q. Well, I guess the weather conditions that evening before, when you were at work on that day, do you recall those weather conditions?

A. I didn't have no trouble walking.

Q. *But you believe it was icy on the day that you fell?*

A. *It had to be because I fell.* (emphasis added)

Q. We talked about the temperature. You don't remember how cold it was outside that day?

A. No.

(MSJ Exhibit 2, pp. 12-13).

Q. ... I think you said earlier you don't recall if it was snowing or raining or anything like that?

A. (Witness shakes head.)

Q. Did you notice anything about the parking lot when you pulled in? I mean, as far as was there snow on the ground or anything like that, as you're pulling into the actual Sandy Plaza.

A. Yeah. I don't know.

(MSJ Exhibit 2, p. 14).

Q. So when you fell, did you have gloves on at the time?

A. No.

Q. Could you feel like the ground as you're laying there? Did it seem icy? Did it seem --

A. Wet.

(MSJ Exhibit 1, p. 18).

Q. When you were on the ground, you said it felt wet?

A. Yes.

Q. Were your clothes wet?

A. Yes.

(MSJ Exhibit 2, p. 51).

Q. When you laid down, did you feel wet or did you feel actual ice or snow?

A. Wet.

(MSJ Exhibit 2, p. 52).

Q. After you were back in the truck? When you were laying on the ground did you feel any other than wet, did you feel any garbage or glass or cans or any other debris?

A. No.

(MSJ Exhibit 2, p. 53).

In Pennsylvania there is no liability created by a general slippery condition on the surface of a parking lot. Roland at 1032. It must appear that there were dangerous

conditions due to ridges or elevations, which were allowed to remain for an unreasonable length of time. Id. Further, a plaintiff must also show that these ridges or elevations were the cause of the fall and in the absence of proof of this, the plaintiff has no basis for recovery. Id.

Specifically, when asserting a claim of negligence based upon a slip and fall caused by icy conditions, a plaintiff must prove: (1) that snow and ice had accumulated on the sidewalk in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians traveling thereon; (2) that the property owner had notice, either actual or constructive, of the existence of such condition; and (3) that it was the dangerous accumulation of snow and ice which caused plaintiff to fall. Absent proof of all such facts, the plaintiff has no basis for recovery.

Roland at 1032, *citing Rinaldi v. Levine*, 176 A.2d at 625-626 (Pa. 1962).

In Roland, the Superior Court affirmed the trial court's granting of summary judgment, concluding that plaintiff's testimony of slipping on a wet surface and believing ice was present was insufficient to satisfy her burden. Defendant Pollino Excavating respectfully submits that that the same result should be obtained in the instant case.

The Plaintiff's theory of negligence in the present matter is that Plaintiff Radaker slipped on accumulated ice and fell. The only evidence offered in support of this allegation, however, is Plaintiff Radaker's deposition testimony that it was wet and she slipped and fell. Indeed, Plaintiff Radaker's own testimony fails to establish the existence of an accumulation of ice or snow. It establishes only the existence of a wet parking lot. This is simply insufficient to sustain Plaintiff's burden of proof. As in Roland, Plaintiff has failed to offer any other evidence in support of her theory. As in

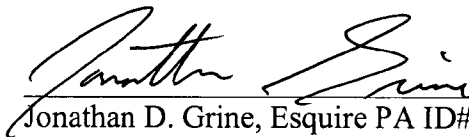
Roland, summary judgment should be granted because Plaintiffs have failed to support the averments of their complaint with sufficient facts establishing the existence of a dangerous condition or defect.

III. CONCLUSION

Based on the above, Defendant Pollino Excavating respectfully requests that this Honorable Court grant the within Motion for Summary Judgment and dismiss the Plaintiff's Complaint with prejudice.

LEE, MARTIN, GREEN & REITER, INC.

By:



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JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	

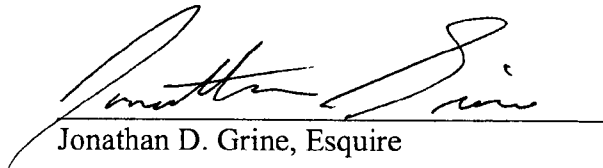
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Summary Judgment and Brief were deposited in the United States mail, postage prepaid, in State College, Pennsylvania, on the 31st day of January, 2003 addressed to the following:

Jeffrey S. DuBois, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Bruce Rende, Esq.
2300 One Mellon Bank Center
Pittsburgh, PA 15219

Robert Behling, Esq.
One Oxford Center, 38th Floor
301 Grant Street
Pittsburgh, PA 15219


Jonathan D. Grine, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

LINDA RADAKER,

Plaintiff

v.

MILESTONE PROPERTIES, INC., JJ
GUMBERG COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA and
POLLINO EXCAVATING,

Defendants

CIVIL ACTION – LAW

No. 2002-181-CD

MOTION FOR SUMMARY JUDGMENT

Filed on behalf of DEFENDANTS, JJ
GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA

Counsel of Record for this Party:

ROBERT J. BEHLING, ESQUIRE
Pa. I.D. #30659

PIETRAGALLO, BOSICK & GORDON
Firm #834
One Oxford Centre
301 Grant Street, 38th Floor
Pittsburgh, PA 15219

(412) 263-2000

JURY TRIAL DEMANDED

FILED

FEB 12 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

LINDA RADAKER,	)	CIVIL ACTION – LAW
)	
Plaintiff	)	No. 2002-181-CD
)	
v.)	
)	
MILESTONE PROPERTIES, INC., JJ)	
GUMBERG COMPANY, a/k/a GUMBERG)	
ASSOCIATES-SANDY PLAZA and)	
POLLINO EXCAVATING,)	
)	
Defendants)	

MOTION FOR SUMMARY JUDGMENT

AND NOW come the Defendants, J.J. Gumberg Co. and Gumberg Associates - Sandy Plaza, improperly identified as J. J. Gumberg Company, a/k/a Gumberg Associates - Sandy Plaza, hereinafter referred to as "Gumberg," by and through its attorneys, Pietragallo, Bosick & Gordon, and hereby file the within Motion for Summary Judgment, the following of which is a statement:

1. The instant litigation involves an alleged slip and fall in a commercial parking lot which occurred on or about February 14, 2000 at the Sandy Plaza, Clearfield County, Pennsylvania. (Plaintiff's Complaint, a true and correct copy of which is attached as MSJ Exhibit 1).
2. The moving party is Defendant J.J. Gumberg Company, the possessor of the parking lot in question.

3. Although discovery is not completed for all purposes, the moving party would respectfully suggest that all discovery relevant to the issues raised in this motion has been completed.

4. The only available witness known to have been at the scene of the incident at the pertinent time would be Plaintiff Linda Radaker.

5. In this tort action, it is Plaintiff Linda Radaker who has the burden of proof with respect to each and every element of her cause of action. Hamil v. Bashline, 392 A.2d 1280, 1286 (Pa. 1978).

6. The record developed to date indicates that there is an absence of evidence relative to the condition of the area of the parking lot where the fall allegedly occurred which would be sufficient to raise a triable issue as to whether an actionable condition existed.

7. The testimony adduced from Plaintiff Linda Radaker herself indicates that she does not have sufficient knowledge upon which to pursue her cause of action in terms of being able to sufficiently describe characteristics of the subject area of pavement which was allegedly associated with her fall. (Deposition transcript of Linda Radaker, 11/20/2002, a true and correct copy of which is attached as MSJ Exhibit 2).

8. Plaintiff Radaker did not recall whether it was cold out on the date of her alleged slip and fall and did not think it was raining, snowing or sleeting. (MSJ Exhibit 2, pp. 11-12, 14).

9. Plaintiff Radaker did not recall whether there was snow or any other type of winter conditions on the ground in the Sandy Plaza parking lot. (MSJ Exhibit 2, p. 14).

10. After her fall, Plaintiff Radaker testified that the ground only felt wet and that she did not feel any ice, snow or other debris. (MSJ Exhibit 2, pp. 18, 51, 52, 53).

11. Although Plaintiff Radaker also testified that the general weather conditions that day were “icy,” that description was solely based on the assumption that it had to be icy because she fell. (MSJ Exhibit 2, p. 12).

12. Summary Judgment is appropriate only where it is clear and free of doubt that the pleadings, depositions, answers to interrogatories, and admission on file, together with affidavits, if any, show there is no genuine issue as to a material fact. Pa. R.C.P. 1035(b); Holpp v. Fez, Inc., 656 A.2d 147 (Pa.Super. 1995).

13. When the defendant is a moving party, he may make the showing necessary to support the entry of summary judgment by pointing to materials which indicate the plaintiff is unable to satisfy an element of his cause of action. Godlewski v. Pars Manufacturing Company, 597 A.2d 106 (Pa.Super. 1991).

14. The party seeking to avoid entry of summary judgment may not rest on averments, but must affirmatively show that there is a genuine issue of material fact for trial. Buchkno v. Penn Linen and Uniform Services, Inc., 631 A.2d 674 (Pa.Super. 1993).

15. Where the allegations of the non-moving party’s pleading have been controverted by the moving party’s supporting material, the non-moving party must by affidavit, or in some other way provided for by the rule, set forth specific facts showing that a genuine issue of material fact exists. Harmotta v. Bender, 604 A.2d 837 (1992); Roland v. Kravco, Inc., 513 A.2d 1029 (Pa.Super. 1986).

16. When asserting a claim of negligence based upon a slip and fall caused by icy conditions on a sidewalk, a plaintiff is required to prove that it was the dangerous accumulation of snow and ice which caused the plaintiff to fall. Id. at 1032.

17. Evidence of a wet surface, without more, does not establish a dangerous condition or notice.

18. Plaintiff Radaker's theory of negligence in the present matter is that she slipped and fell on an accumulation of ice on the Sandy Plaza parking lot. The only evidence offered in support of this allegation, however, is Plaintiff Radaker's deposition testimony that she fell and the area in question was "wet."

19. Accordingly, the moving party contends that the record developed to date indicates that no genuine issue of material fact is present which would create a legitimate jury question concerning liability.

WHEREFORE, it is respectfully requested that summary judgment be entered in favor of J.J. Gumberg Company.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

BY 

Robert J. Behling, Esquire

Attorneys for Defendants J.J. GUMBERG
COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA



010110381192AC

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

LINDA RADAKER,
Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING.,
Defendants

2002-181-CD

No. _____, 2002, C. D.

Type of Pleading:

**COMPLAINT IN A CIVIL
ACTION**

Filed on Behalf of:
PLAINTIFF

Counsel of Record for
This Party:
Jeffrey S. DuBois, Esq.
Supreme Court I.D. No. 62074
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

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

FEB 07 2002

Attest,

W. L. R.
Prothonotary/
Clerk of Courts

EXHIBIT

MSJ

1

N THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

LINDA RADAKER,

Plaintiffs

vs.

No. _____, 2002, C.D.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING,
Defendants

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 Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 1303

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

LINDA RADAKER,
Plaintiffs

vs.

No. _____, 2002, C.D.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING,
Defendants

COMPLAINT IN A CIVIL ACTION

AND NOW, comes the Plaintiff, LINDA RADAKER, by and through her attorneys, HANAK, GUIDO AND TALADAY, and files this Complaint and in support thereof avers the following:

1. Plaintiff, LINDA RADAKER, is an adult individual residing at R.D. #1, Box 180C, Luthersburg, Pennsylvania, 15848.
2. Defendant, MILESTONE PROPERTIES, INC., is a corporation, with an office address of 150 E. Palmetto Drive, Boca Raton, Florida, 33432.
3. Defendant, JJ GUMBERG COMPANY, a/k/a GUMBERG ASSOCIATES-SANDY PLAZA, is on belief, doing business within the Commonwealth of Pennsylvania, as a proprietorship, partnership or corporation, and has an office address of 1051 Brinton Road, Pittsburgh, Allegheny County, Pennsylvania, 15221.
4. Defendant, POLLINO EXCAVATING is, on belief, doing business within the Commonwealth of Pennsylvania, as a

proprietorship, partnership or corporation, and has an office address of 121 Lovers Lane, Kersey, Elk County, Pennsylvania, 15846.

5. The accident in question took place in Clearfield County, and this Court has proper jurisdiction.

6. At all times mentioned herein, Defendant, MILESTONE PROPERTIES, INC., was an owner or operator of the parking lot area in question in the Sandy Plaza, Sandy Township, Clearfield County, Pennsylvania, hereinafter referred to as "Sandy Plaza parking lot" and was in exclusive possession, management, or control of the parking lot area, individually and through its employees, agents or assigns, who were acting within the course of their scope of employment by Defendant and in furtherance of Defendant's business.

7. At all times mentioned herein, Defendant JJ GUMBERG ASSOCIATES, d/b/a GUMBERG ASSOCIATES-SANDY PLAZA was an owner, or lessee, or operator of the parking lot area in question in Sandy Plaza, Clearfield County, Pennsylvania, hereinafter referred to as "Sandy Plaza parking lot" and was in exclusive possession, management, or control of the parking lot area, individually and through its employees, agents or assigns, who were acting within the course of their scope of employment by Defendant and in furtherance of Defendant's business.

8. At all times mentioned herein, Defendant, POLLINO EXCAVATING, was an agent or employee of Defendant, JJ GUMBERG ASSOCIATES, d/b/a GUMBERG ASSOCIATES-SANDY PLAZA, and was

responsible for the maintenance and care for the Sandy Plaza parking lot which included the area in question referenced herein.

9. On or about February 14, 2000. Plaintiff was a business visitor to the store surrounding the Sandy Plaza parking lot.

10. On the above date, the Plaintiff traveled with her husband, now deceased, to the Sandy Plaza parking lot and parked their vehicle in the parking space between the Rent Way Store and the Liquor Store.

11. As Plaintiff was exiting her vehicle, there existed an accumulation of ice on the parking lot which caused Plaintiff to slip, stumble, and fall as soon as she placed her foot on the ice, resulting in serious and permanent injuries as set forth below.

COUNT ONE

Linda Radaker, Plaintiff,

vs.

Milestone Properties, Inc., Defendant.

12. Paragraphs 1 through 11 are incorporated herein by reference as though they were set forth more fully at length.

13. The accident was caused by MILESTONE PROPERTIES, INC.'S negligence, carelessness and recklessness in that:

(a) Defendant caused or permitted ice to accumulate upon the Sandy Plaza parking lot to a point where it posed an unreasonable risk of injury to Plaintiff and other business visitors;

(b) Defendant failed to make a reasonable inspection of the Sandy Plaza parking lot which would have revealed the existence of the dangerous condition posed by the accumulation of ice;

(c) Defendant failed to give warning of the dangerous condition posed by the accumulation of ice, erect barricades, apply deicing materials, post signs, or take any other safety precautions to prevent injury to the Plaintiff or other business visitors;

(d) Defendant failed to remove the accumulated ice from the Sandy Plaza parking lot.

14. Solely as a result of Defendant's negligence, carelessness, and recklessness, Plaintiff has sustained injuries:

(a) Broken kneecap;

(b) Bruises and contusions to the legs and hip;

(c) Bruises and contusions to the arms;

(d) Thereafter, as a result of complications because of her immobilized knee, broken wrist;

(e) General pain and discomfort.

15. The above injuries have caused Plaintiff great pain and suffering and may continue for an indefinite time in the future and may be permanent.

16. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be obliged to expend monies for medicine and medical care in order to treat and help cure her injuries.

17. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff was forced to stay at home and as a result was unable to work for a period of twelve (12) weeks.

18. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be unable to attend to usual and daily duties and employment, to her financial detriment and loss.

WHEREFORE, Plaintiff claims damages in favor of Plaintiff and against Defendant in excess of Twenty-five Thousand and 00/100 (\$25,000.00) Dollars together with costs and interest.

COUNT TWO

Linda Radaker, Plaintiff,

vs.

JJ Gumberg Associates, a/k/a
Gumberg Associates-Sandy Plaza, Defendant.

19. Paragraphs 1 through 18 are incorporated herein by reference as though they were set forth more fully at length.

20. The accident was caused by JJ GUMBERG ASSOCIATES a/k/a GUMBERG ASSOCIATES-SANDY PLAZA'S negligence, carelessness and recklessness in that:

(a) Defendant caused or permitted ice to accumulate upon the Sandy Plaza parking lot to a point where it posed an unreasonable risk of injury to Plaintiff and other business visitors;

(b) Defendant failed to make a reasonable inspection of the Sandy Plaza parking lot which would have revealed the existence of the dangerous condition posed by the accumulation of ice;

(c) Defendant failed to give warning of the dangerous condition posed by the accumulation of ice, erect barricades, apply deicing materials, post signs, or take any other safety precautions to prevent injury to the Plaintiff or other business visitors;

(d) Defendant failed to remove the accumulated ice from the Sandy Plaza parking lot.

21. Solely as a result of Defendant's negligence, carelessness, and recklessness, Plaintiff has sustained injuries:

(a) Broken kneecap;

(b) Bruises and contusions to the legs and hip;

(c) Bruises and contusions to the arms;

(d) Thereafter, as a result of complications because of her immobilized knee, broken wrist;

(e) General pain and discomfort.

22. The above injuries have caused Plaintiff great pain and suffering and may continue for an indefinite time in the future and may be permanent.

23. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be obliged to expend monies for medicine and medical care in order to treat and help cure her injuries.

24. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff was forced to stay at home and as a result was unable to work for a period of twelve (12) weeks.

25. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be unable to attend to usual and daily duties and employment, to her financial detriment and loss.

WHEREFORE, Plaintiff claims damages in favor of Plaintiff and against Defendant in excess of Twenty-five Thousand and 00/100 (\$25,000.00) Dollars together with costs and interest.

COUNT THREE

Linda Radaker, Plaintiff,
vs.
Pollino Excavating, Defendant.

26. Paragraphs 1 through 25 are incorporated hereby reference as though set forth more fully at length.

27. The accident was caused by POLLINO EXCAVATING'S negligence, carelessness and recklessness in that:

(a) Defendant caused or permitted ice to accumulate upon the Sandy Plaza parking lot to a point where it posed an unreasonable risk of injury to Plaintiff and other business visitors;

(b) Defendant failed to make a reasonable inspection of the Sandy Plaza parking lot which would have revealed the existence of the dangerous condition posed by the accumulation of ice;

(c) Defendant failed to give warning of the dangerous condition posed by the accumulation of ice, erect barricades, apply deicing materials, post signs, or take any other safety precautions to prevent injury to the Plaintiff or other business visitors;

(d) Defendant failed to remove the accumulated ice from the Sandy Plaza parking lot.

28. Solely as a result of Defendant's negligence, carelessness, and recklessness, Plaintiff has sustained injuries:

- (a) Broken kneecap;
- (b) Bruises and contusions to the legs and hip;
- (c) Bruises and contusions to the arms;
- (d) Thereafter, as a result of complications because of her immobilized knee, broken wrist;
- (e) General pain and discomfort.

29. The above injuries have caused Plaintiff great pain and suffering and may continue for an indefinite time in the future and may be permanent.

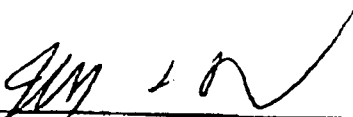
30. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be obliged to expend monies for medicine and medical care in order to treat and help cure her injuries.

31. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff was forced to stay at home and as a result was unable to work for a period of twelve (12) weeks.

32. As a result of Defendant's negligence, carelessness and recklessness, Plaintiff has and will in the future be unable to attend to usual and daily duties and employment, to her financial detriment and loss.

WHEREFORE, Plaintiff demands judgment against Defendant in
an amount in excess of Twenty-five Thousand and 00/100
(\$25,000.00) Dollars, exclusive of interest and costs.

Respectfully submitted,



Jeffrey S. DuBois
Attorney for Plaintiff

VERIFICATION

I, LINDA RADAKER, verify that the statements in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Linda Radaker
Linda Radaker

1 IN THE COURT OF COMMON PLEAS
2 OF CLEARFIELD COUNTY, PENNSYLVANIA
3
4

5 LINDA RADAKER,
6 PLAINTIFF

7 VS.

: CIVIL ACTION - LAW
: NO: 2002-181-CD
:
:
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:
:
:

8 MILESTONE PROPERTIES, INC.,
9 JJ GUMBERG COMPANY, a/k/a
10 GUMBERG ASSOCIATES-SANDY
11 PLAZA AND POLLINO
12 EXCAVATING,
13 DEFENDANTS

14 DEPOSITION OF: LINDA RADAKER

15 TAKEN BY: DEFENDANTS

16 BEFORE: HEATHER GOSS BORING
17 NOTARY PUBLIC

18 DATE: NOVEMBER 20, 2002
19 1:30 P.M.

20 PLACE: HANAK, GUIDO & TALADAY
21 498 JEFFERS STREET
22 DUBOIS, PA 15801

23 **EXHIBIT**

24 MSJ

25 2

A P P E A R A N C E S:

2

HANAK, GUIDO & TALADAY
BY: JEFFREY S. DUBOIS, ESQUIRE
498 JEFFERS STREET
DUBOIS, PA 15801
FOR - PLAINTIFF

PIETRAGALLO, BOSICK & GORDON
BY: ROBERT J. BEHLING, ESQUIRE
THE 38TH FLOOR, ONE OXFORD CENTER
301 GRANT STREET
PITTSBURGH, PA 15219
FOR - DEFENDANT - JJ GUMBERG COMPANY,
GUMBERG ASSOCIATES-SANDY PLAZA

LEE, MARTIN, GREEN & REITER
BY: JONATHAN D. GRINE, ESQUIRE
115 EAST HIGH STREET
BELLEFONTE, PA 16823
FOR - DEFENDANT - POLLINO EXCAVATING

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I N D E X

BY DEFENDANTS

EXAMINATION

LINDA RADAHER

By Mr. Grine:	4
By Mr. Behling:	37
By Mr. DuBois:	--

STIPULATION

It is hereby stipulated by and between counsel for the respective parties that reading, signing, sealing, certification, and filing are waived, and that all objections except as to the form of the question are reserved to the time of trial.

LINDA RADAKER, called as a witness, being sworn, testified as follows:

EXAMINATION

BY MR. GRINE:

Q Good afternoon, Ms. Radaker. My name is Jon Grine and I represent the Defendant, Pollino Excavating, in this case. Have you ever done a deposition before?

A No.

Q Basically, what we're going to do is you just got sworn in and I'm going to ask you some questions about the accident and you're just going to answer them. If I ask a question that you don't understand, just tell me and I'll, you know, try to

1 rephrase it, or if I say, you don't hear the
2 question properly, ask me and I'll repeat it. If
3 you need to talk to your attorney at any time,
4 you're welcome to take a break whenever you want to.

5 Do you mind if I call you Linda?

6 A No.

7 Q Just a couple of background questions.
8 Can you give me your name and address, please?

9 A Linda Radaker. My address is RD 1,
10 Box 180C, Luthersburg, PA.

11 Q And your date of birth?

12 A 2/23 of '53.

13 Q Now, I look through the file and I'm aware
14 that from a statement that you gave, that your
15 husband has passed away.

16 A Yes.

17 Q I'm sorry to hear that. Could you give me
18 a date of when he did pass away?

19 A Ten, first part of, no, wait, maybe it was
20 11 -- 11, first part of 2000.

21 Q First part of 2000?

22 A Yeah.

23 Q So right around the time of the accident,
24 possibly?

25 A I meant, excuse me, 2000 in 11, November,

1 I think.

2 Q November of 2000?

3 A Yeah.

4 Q Okay.

5 A Sorry.

6 Q That's fine. Do you have any children or
7 anything?

8 A Yes, I have two sons.

9 Q Their names and ages?

10 A Mike, 23. Do you want the full name?

11 Q Sure.

12 A Michael Paul and Matthew Allen, and he's
13 17.

14 Q Does Matthew currently live with you?

15 A They both do.

16 Q Okay. As far as your level of education,
17 how far did you...

18 A Twelve years.

19 Q So through high school?

20 A Yeah.

21 Q From looking at your records, where do you
22 work, basically?

23 A At the hospital, at West.

24 Q And what is your position there?

25 A Housekeeping.

1 Q You've worked at the hospital for quite a ⁷
2 while, I guess?
3 A Yeah, since '77.
4 Q Could you just give me some of the duties
5 that you do with the housekeeping?
6 A Clean offices.
7 Q Clean offices? Do you clean the rooms,
8 patient rooms, thing like that, or are you strictly
9 administrative offices?
10 A Offices and exam rooms. That's all that's
11 over there.
12 Q And what do you have to do as far as when
13 you clean them?
14 A The sinks and dust off everything.
15 Q Just dust, vacuum, things like that?
16 A I don't. There's another person.
17 Q Okay. So has your job been pretty much
18 the same since 1977, as far as your
19 responsibilities?
20 A Yeah. I've moved from the hospital over
21 to Medical Arts.
22 Q It's still the same employer, though?
23 A Yeah. We've had different bosses, though.
24 Q But it's still kind of the same work, just
25 cleaning?

1 A Yeah.

2 Q Could you maybe just ballpark maybe your
3 income for the year, that you make yearly?

4 A Maybe 900, maybe. I don't know.

5 Q Nine Hundred? Okay. Maybe that would be
6 900 for every two weeks, like a paycheck?

7 A Oh, I don't know.

8 Q Okay. Who is your current supervisor at
9 work?

10 A Cheryl O'Donnell.

11 Q How long has she been your supervisor?

12 A Maybe between five and ten years.

13 Q Just talking about your health and history
14 of accidents prior to, I guess it would have been
15 February 14th when you had the slip and fall, have
16 you had any other prior injuries prior to that date?

17 A I fell down my steps at home.

18 Q When was that?

19 A In the '90s.

20 Q Would it be the early part of the '90s,
21 mid '90s, late '90s?

22 A That one I don't know.

23 Q Okay. Sometimes in the '90s. And what
24 injury did you suffer when you fell down the stairs?

25 A I hurt my leg.

1 Q Do you remember which leg it was?

2 A It was the other one.

3 Q You hurt your left one in this accident,
4 so it would be your right leg you hurt?

5 A Yeah.

6 Q What happened to it? I mean, you say you
7 hurt it. Was it broken or --

8 A I think I fractured my knee.

9 Q Was it kind of similar to the left one
10 that happened up at the Sandy Plaza, or like a
11 fracture of the knee?

12 A Yeah, I think. I worked with it, though.

13 Q And this happened when you fell down the
14 stairs? Was that at your home?

15 A Yeah.

16 Q How did that occur?

17 A I just fell.

18 Q Just fell? Just tripped or -- okay. Did
19 you have any kind of surgical procedure or anything
20 on your knee that you hurt when you fell down the
21 stairs?

22 A No.

23 Q Did they put it in a cast or anything like
24 that?

25 A No. I couldn't take off because I'd just

1 got back. This had nothing to do with you guys, but¹⁰
2 my son, so I couldn't take off, so I had to work
3 with it.

4 Q So you worked through it? Did they give
5 you any kind of cast or anything to wear so you
6 could work through it, or just you didn't have a
7 cast --

8 A I hopped a lot.

9 Q So let's kind of focus on the day outside
10 the Sandy Plaza. I guess it would be February 14th
11 of 2000; is that correct?

12 A Yeah.

13 Q What were you doing earlier in the day,
14 before you actually arrived at Sandy Plaza?

15 A I worked all night and then we went out to
16 eat, my husband and me, and then we went, we was
17 going to go over to Rent America.

18 Q So was it a night shift, I guess, that you
19 just came off of?

20 A Yeah.

21 Q How long was the night shift?

22 A I was working eleven to 7:30.

23 Q So did your husband pick you up or did you
24 go home, or how was that?

25 A No, he picks me up, he did.

1 Q Where did you go eat that day?

2 A Perkins.

3 Q Perkins? That's around there, I guess?

4 A Yeah, it's pretty close.

5 Q I saw a sign for it, at least, coming in.

6 So what time do you think you arrived at Sandy
7 Plaza, just a ballpark? It was after Perkins, I
8 guess?

9 A Yeah, probably about eight or nine.

10 Q Now at the time of the accident, did you
11 have anything wrong with you as far as were you
12 injured at all prior to that?

13 A No.

14 Q And you came from work, so were you still
15 wearing your work clothes?

16 A Yeah.

17 Q What kind of shoes do you wear with your
18 work clothes?

19 A White sneakers.

20 Q This was February. Was it cold out that
21 day? Do you recall?

22 A No, I don't recall.

23 Q What type of car were you riding in that
24 day?

25 A A Blazer, a truck.

1 Q Is it the type of truck that has like a
2 little footrest that you set down when you step up
3 and out of it, when I say, like on the side?

4 A Yeah, I know. I'm not sure.

5 Q Do you still have that truck?

6 A No, my son wrecked it, so...

7 Q So it's no longer --

8 A (Witness shakes head.)

9 Q Okay. That day, your husband would have
10 been driving?

11 A Yeah.

12 Q Do you recall the weather conditions that
13 day?

14 A Icy.

15 Q Icy? Was it like raining or sleeting or
16 snowing at the time?

17 A I don't think so.

18 Q Well, I guess the weather conditions that
19 evening before, when you were at work on that day,
20 do you recall those weather conditions?

21 A I didn't have no trouble walking.

22 Q But you believe it was icy on the day that
23 you fell?

24 A It had to be because I fell.

25 Q We talked about the temperature. You

1 don't remember how cold it was outside that day?

2 A No.

3 Q Did you have a winter jacket on to go
4 outside?

5 A Yeah.

6 Q Now, we just actually, before the court
7 reporter got here, went up to the Sandy Plaza
8 parking lot. It was the first time I've been there.
9 How many times before the accident have you been to
10 the Sandy Plaza parking lot?

11 A Many times.

12 Q Many times? So you're pretty familiar
13 with the lot, I guess?

14 A Yeah.

15 Q Ever been there before when it's been bad
16 weather or anything like that?

17 A Yeah.

18 Q Did you ever notice anything about the lot
19 as far as when it's bad weather, is it always
20 slippery?

21 A I never had no trouble before.

22 Q Why were you there that day? You were
23 going to Rent-A-Way?

24 A Yeah.

25 Q What were you going to do at Rent-A-Way?

1 A Looking for a dresser.

2 Q Now, when you actually pulled into the
3 lot, did you park the car so if you're sitting in
4 the passenger's side, you'd be facing the Rent-A-Way
5 store or was it --

6 A Yeah.

7 Q So the front of the car would be facing
8 the stores?

9 A Yeah.

10 Q Okay. Was the car directly in front
11 of -- if you look out the window, you're looking
12 right at the Rent-A-Way store, the liquor store, the
13 front windshield?

14 A Rentway.

15 Q Rentway? I think you said earlier you
16 don't recall if it was snowing or raining or
17 anything like that?

18 A (Witness shakes head.)

19 Q Did you notice anything about the parking
20 lot when you pulled in? I mean, as far as was there
21 snow on the ground or anything like that, as you're
22 pulling into the actual Sandy Plaza?

23 A Yeah. I don't know.

24 Q How about when you were at Perkins? Did
25 you notice the parking lot at Perkins, if there was

1 snow or ice on the ground at Perkins?

2 A No.

3 Q You don't recall?

4 A No. I'm sorry.

5 Q If you don't recall, that's fine. That's
6 your answer. At the time when you actually pulled
7 in that day, do you recall how many cars were in the
8 parking lot?

9 A Not a lot.

10 Q I guess it was still pretty early in the
11 morning, so it would just be opening?

12 A Yeah.

13 Q Were there any cars besides your car
14 beside the driver's side or like beside where you
15 would get out of the passenger's side?

16 A Not on my side because I was on the
17 ground, so...

18 Q Okay. So you parked the car and you were
19 getting ready to go into the Rentway. Who got out of
20 the car first, you or your husband?

21 A I would say we both did at the same time.

22 Q Obviously, you open up the door. Now, as
23 you, before you took a step down, did you take a
24 look down or did you just kind of get out? How did
25 that work?

1 A I just got out.

2 Q Just got out? Okay. Can you kind of just
3 describe how you got out of the car?

4 A With, you know, how you always do, with
5 one foot and the second foot.

6 Q So you stepped out, if you were on the
7 passenger's side, would it be fair to say you
8 stepped out with your right foot first?

9 A (Witness nods head.)

10 Q Then you would have got out with your left
11 foot to follow?

12 A (Witness nods head.)

13 (Discussion held off record.)

14 BY MR. GRINE:

15 Q So when you stepped out, you had your
16 right foot out first?

17 A Yes.

18 Q Did you slip on your right foot or did you
19 not slip until your left foot came out?

20 A I don't know.

21 Q Can you describe how you fell? Like as
22 far as --

23 A I was kind of backwards.

24 Q So you're falling backwards?

25 A Yeah.

1 Q Away from the stores?

2 A No, I didn't fall that way. I fell like
3 where the cars would be parked.

4 Q So you fell kind of sideways?

5 A Yeah.

6 Q Did you slip on both feet or did one foot
7 slip? I mean, obviously, you hurt your leg. What
8 happened there with your leg as you fell?

9 A I don't know. It happened so fast.

10 Q So it was pretty instantaneous from the
11 time you got out of the car --

12 A Yeah.

13 Q -- until when you put your foot down? Do
14 you recall what happened to your leg? Did it get
15 bent up behind you? Did it go forward?

16 A One leg got underneath me. I don't know
17 which one it was. It probably was the one that got
18 hurt.

19 Q Were there any other people around that
20 might have seen you, been able to help you or
21 anything like that, when you fell?

22 A Yes, but we didn't go in there. It was in
23 the liquor store. Some lady was looking out the
24 window.

25 Q So someone in the liquor store saw you

1 fall?

2 A Yeah.

3 Q There was no one out in the parking lot
4 that might have seen it?

5 A No.

6 Q So when you fell, did you have gloves on
7 at the time?

8 A No.

9 Q Could you feel like the ground as you're
10 laying there? Did it seem icy? Did it seem --

11 A Wet.

12 Q Wet? The ground felt wet? What did your
13 husband do as soon as you fell?

14 A Tried to get me up.

15 Q Did you say anything to him as far as what
16 happened?

17 A Like what do you mean by that?

18 Q You fell. Did you say why you fell or did
19 you tell your husband anything like that?

20 A No, because he knew.

21 Q Okay. So he saw you fall?

22 A Yeah.

23 Q As soon as you fall, you're laying on the
24 ground. Are you feeling pain right away or --

25 A Oh, yeah.

1 Q Where were you feeling pain?

2 A In my leg.

3 Q It was pretty much instantaneous from the
4 time you fell?

5 A Yeah.

6 Q Anything else hurting at that time besides
7 your leg?

8 A No, that was it.

9 Q Okay. Did you ever report to anyone
10 within any of the stores in the Sandy Plaza that you
11 fell in the plaza?

12 A No, and we should.

13 Q So I guess you fell, your husband helped
14 you back in the car, and what did you guys do next?

15 A We went up to the hospital.

16 Q So immediately after you fell, your next
17 stop was the hospital?

18 A Yeah. Not my choice, but...

19 Q Why do you say not your choice?

20 A I didn't want to go.

21 Q Why was that?

22 A Because I just don't like to go up to the
23 hospital.

24 Q You just don't like hospitals? Okay.
25 You've worked there, so. I'm going to go into the

1 hospital and the treatment and things like that, but ²⁰
2 let's talk a little bit about the fall at your
3 house. I guess that would have been on
4 February 18th?

5 A Yes, somewhere around there.

6 Q So what was your physical condition at
7 that time?

8 A I was on crutches and I lost my balance.

9 Q Did you have any kind of a brace or
10 anything on your leg?

11 A I would say so.

12 Q So you're on crutches and you're on your
13 brace. Now, where did the fall occur in your house?

14 A In my living room.

15 Q This was a couple of days after the actual
16 fall at the Sandy Plaza. Were you under any kind of
17 doctor's orders to be at home or do you recall what
18 the doctor told you?

19 A Yeah. I had to walk with the crutches and
20 that kind of puts you right at home.

21 Q And the fall took place in your living
22 room?

23 A Yeah.

24 Q Do you remember what time of day that was
25 when the fall occurred?

1 A No, I don't.

2 Q You were up on your crutches, I imagine.

3 A (Witness nods head.)

4 Q Were you going somewhere? What were you
5 doing?

6 A Yeah, somewhere in my house.

7 Q Do you recall where you were going, what
8 you needed to do?

9 A Probably to the bathroom.

10 Q So you were leaving the living room area
11 and what happened there?

12 A I lost my balance.

13 Q Did you trip on anything or you just kind
14 of --

15 A No.

16 Q You were on the crutches and you just lost
17 your balance?

18 A (Witness nods head.)

19 Q Did anybody else see you fall at that time
20 or --

21 A No, but they heard me.

22 Q They heard you? So there were other
23 people in the house?

24 A Yes.

25 Q Do you remember where they were in the

1 house?

2 A I don't know about my husband, but my boys
3 was in their bedrooms.

4 Q Was this during a weekday or was it a
5 weekend?

6 A A weekend because my boys wasn't there --
7 I mean, they was there.

8 Q They probably would have been at school.
9 Okay. So you're on crutches and what happened? Can
10 you describe the fall to me? I guess as you were
11 leaving the living room and you lost balance. You
12 obviously hurt your wrist. How did you hurt your
13 wrist in the fall?

14 A Hitting it against the TV.

15 Q So you fell like forward into the TV or
16 sideways into the TV or --

17 A Kind of, I guess, sideways into the TV.

18 Q Would it be your left -- is it your left
19 wrist or is it your right wrist?

20 A (Indicating.)

21 Q The right wrist. So you would have fallen
22 to your right maybe and hit it, is that...

23 A (Witness nods head.)

24 Q Did you go seek treatment right away that
25 day?

1 A Oh, yes.

2 Q Did that hurt more than the actual first
3 time when you hurt your knee earlier?

4 A About the same, I think.

5 Q About the same? Okay. But you knew
6 something was wrong right away?

7 A (Witness nods head.)

8 Q Where did you go for that treatment?

9 A Up at the hospital.

10 Q Do you recall who you saw for the
11 treatment that day?

12 A No, I don't.

13 Q Did you go to the emergency room?

14 A Yes.

15 Q Go back to the medical treatment that you
16 sought the day you hurt your knee, which I guess
17 would have been February 14th, you went to -- the
18 hospital's name, if you could just state it for us?

19 A Dubois Regional Medical Center.

20 Q That was where you worked?

21 A Yeah.

22 Q Did you go to the ER room that day, the
23 emergency room?

24 A Yeah.

25 Q Do you recall the doctor that you saw that

1 day for your...

2 A No, I don't.

3 Q It's been a while. I understand.

4 A Yeah.

5 Q Does the name Dr. Russell Cameron, does
6 that sound familiar at all as a possible doctor you
7 might have seen that day?

8 A The name doesn't hit a bell.

9 Q So you went in there that day. What
10 injuries did you have to tell the doctor?

11 A What with this?

12 Q No, the first time, with the leg.

13 A That my leg hurt. It was swelling up
14 already.

15 Q Did they take x-rays and things like that?

16 A Yeah.

17 Q What did they tell you after the x-rays?

18 A Broken knee.

19 Q Okay. On that day, what did they do for
20 you on the 14th before they sent you home?

21 A They put a brace on it and gave me
22 crutches.

23 Q Did they give you any pain medicine to try
24 to --

25 A Yeah.

1 Q Do you recall what kind of pain medicine
2 you might have been on?

3 A No, I don't remember.

4 Q The day you actually went there with the
5 wrist, which would have been a couple of days later,
6 you went to the emergency room, and did they do the
7 same thing, x-rays, things like that?

8 A Yeah. They didn't even put me in the ER.
9 They just sent me to x-ray.

10 Q Okay. And what did the doctors tell you
11 that day as far what was the matter with your wrist?

12 A Broken.

13 Q And before they sent you home that day,
14 what did they do?

15 A They wrapped it and that was about it.

16 Q Now, obviously, you had to get some
17 treatment for the knee and the wrist. Do you
18 recall, like, when you went in, what they did?

19 A After I left the ER, I had an appointment
20 to go to the bone doctor.

21 Q Would this be after the wrist trip to the
22 ER?

23 A Both times.

24 Q Okay.

25 A Then with this (indicating), they tried to

1 put a cast on it, but it didn't stay on it that
2 long.

3 Q When you say "this," you're talking about
4 your right wrist?

5 A Yeah.

6 Q Did they, I think I saw they might have
7 put pins into your wrist?

8 A Yeah, pins.

9 Q How many pins did they put in there?

10 A One here, one here (indicating.)

11 Q Do you recall when that was done?

12 A I don't think it was that week.

13 Q That wasn't at the actual hospital, that
14 was at --

15 A Yeah.

16 Q Oh, that was at the hospital?

17 A Yeah.

18 Q You said the bone doctor, would that be
19 the orthopedics doctor?

20 A Yeah.

21 Q What did you see the orthopedics doctor
22 for?

23 A For this and this both (indicating.)

24 Q But they didn't do the pins at the
25 Orthopedic Center or is the Orthopedic Center

1 located in the hospital?

2 A No. His office is over here (indicating)
3 and he came to the hospital and done it.

4 Q Okay. So everything that was done was
5 done at the hospital?

6 A Yeah.

7 Q Did you actually ever go to the Orthopedic
8 Center or was everything, when you saw him, at the
9 hospital?

10 A No. My doctor appointments was over at
11 his office.

12 Q And he's the doctor that recommended using
13 the pins to try to heal your wrist?

14 A Yeah.

15 Q Did they do anything for your knee besides
16 put it in a -- did you say it was a leg brace or
17 something like that?

18 A Yeah. I had one of them blue braces and
19 then after that, they put this thing on that had
20 kind of like two wheels.

21 Q Okay.

22 A And every other day we had to move them
23 wheels.

24 Q Okay.

25 A Plus I had therapy on both things.

1 Q Was there any kind of operation or
2 anything done on your knee?

3 A No.

4 Q So they just immobilized it so it wouldn't
5 move?

6 A Yeah.

7 Q So the only type of surgical operation
8 would have been on your wrist?

9 A Yeah.

10 Q When they put the pins in?

11 A Yeah.

12 Q Did you have any kind of rehab or physical
13 therapy that you had to attend?

14 A Yeah, for both.

15 Q When did that start?

16 A For the leg, I think it was right after
17 Valentine's Day.

18 Q Okay.

19 A And for my hand it was, I had therapy on
20 my hand before I had surgery.

21 Q When you went to therapy, would you go for
22 both? They'd treat both of them?

23 A Yeah.

24 Q Was the therapy also at the DuBois
25 Regional Medical Center?

1 A Yeah, in a way. It's across the road.
2 It's called Medical Arts.

3 Q It's in the same complex, same area?

4 A Yeah.

5 Q Can you just describe some of the
6 treatments that you underwent as far as what they
7 had you do to try to get your wrist and your leg
8 back?

9 A For my leg, it was like just make sure my
10 leg would move up and down like kind of thing, and
11 they put me on some of their machines.

12 Q What did the machines do, help your leg
13 move?

14 A Yeah. And for my arm, they would just
15 kind of move it around and they gave me like a ball
16 that I had to squeeze. I think that was about it.

17 Q So they helped you move your wrist and
18 your leg around and they also gave you exercises to
19 do there?

20 A Yeah.

21 Q How long did you go to rehab or therapy?

22 A I was back to work and I was still going
23 through it.

24 Q Okay.

25 A I went back in May. He wanted me off

1 longer, but the hospital only allows you off so
2 long.

3 Q So did the therapy go into the summer?
4 Did it go into the fall? Do you remember how long
5 it went before you actually finished up with your
6 therapy?

7 A A hundred percent I don't know.

8 Q Okay.

9 A It's written down, but I don't know.

10 Q Yeah. Obviously, when you had these
11 injuries, could you kind of tell us how these
12 injuries affected your day-to-day life?

13 A You couldn't do anything.

14 Q Was that right off, right after the
15 injury, you had a hard time doing things?

16 A Yeah.

17 Q How long were you, I guess, at home?

18 A The 12 weeks.

19 Q Twelve weeks? Did it, obviously, you
20 didn't work for 12 weeks, so that affected your
21 work?

22 A Yeah.

23 Q Did you have any trouble sleeping, things
24 like that, because of your injuries?

25 A Yeah.

1 Q Okay. Why?

2 A In a lot of pain.

3 Q Pain?

4 A And some of the medicine didn't help that.

5 Q Were you ever confined to your bed or
6 anything like that after the injuries occurred?

7 A I should have been, but I laid out on the
8 couch.

9 Q They told you to go to bed, but you laid
10 out on the couch --

11 A Yeah.

12 Q -- and watched TV and things like that?

13 A Yeah.

14 Q Do you recall when maybe your injuries
15 kind of got better?

16 A I don't know. Seemed like a long time,
17 though.

18 Q You were actually at the hospital and had
19 some procedures done at the hospital and you
20 incurred some medical expenses. Was your insurance
21 able to pay that or do you have any outstanding
22 medical bills from all this?

23 A I sent my bills over to (indicating.)

24 Q Are you aware if you have anything
25 outstanding that you have to pay or have they all

1 been paid for?

2 A I don't know yet.

3 Q You also had to take off 12 weeks of work?

4 A Yes.

5 Q Was that under the Family Medical Leave
6 Act or anything like that? Do you recall what that
7 was? Why was it only 12 weeks that the hospital
8 allowed you to have?

9 A It doesn't matter what you're off for,
10 it's 12 weeks.

11 Q Do you get paid when you're off for those
12 12 weeks?

13 A A third of your pay.

14 Q Is there any type of policy they have
15 where you have to take your vacation days and sick
16 days for these 12 weeks or anything like that?

17 A Okay, before -- it's called a disability
18 thing.

19 Q Okay.

20 A And you have to be off 30 days before it
21 kicks in.

22 Q So what happens for the first 30 days
23 before --

24 A You take your vacation time or you don't
25 take no pay at all.

1 Q Did you have --

2 A Yes, I had.

3 Q -- for the 30 days?

4 A Yes.

5 Q And then after that 30 days, the 12 weeks
6 kicks in?

7 A No, I think it kicks in from day one, but
8 your pay doesn't kick in until after your 30 days.

9 Q Are you part of a union at the hospital?

10 A No.

11 Q So after the pay kicks in, you're saying
12 you only get a third of your pay?

13 A Yeah.

14 Q So you would have lost some pay?

15 A Yeah.

16 Q As you sit here today, do you have any
17 physical limitations from your wrist or your left
18 knee?

19 A I'm not saying my leg doesn't hurt, but
20 you know, it's, I have to go on.

21 Q Yeah. Do you still receive any kind of
22 rehab treatment or things like that?

23 A No. I still go to the doctors, though.

24 Q You go to the doctors for?

25 A Once a year.

1 Q For a checkup on your injuries?

2 A Yeah.

3 Q When was the last time you went to the
4 doctor?

5 A In this year.

6 Q Do you recall what they said during your
7 yearly checkup as far as, you know, what the status
8 of your injuries are?

9 A He's not going to sign me off.

10 Q He's not going to sign you off?

11 A No.

12 Q Does he still have you doing any kind of
13 rehab or things like that?

14 A I'm supposed to do them at home.

15 Q So you have home exercises to do?

16 A Yeah.

17 Q Are you currently on any kind of
18 medication for either the wrist or the --

19 A No.

20 Q So you went back. Did you actually make
21 it back to work, I guess, in twelve weeks because
22 you said you had to?

23 A Yeah. It was very hard, but I went back.

24 Q What did you do at work, what kind of
25 work, when you went back, did you...

1 A The same things. I used this hand a lot
2 (indicating) because I couldn't even squeeze.

3 Q Did they offer you any kind of opportunity
4 to maybe have a different type of job where it
5 wouldn't be so hard until you felt better, or did
6 you have to do the same job?

7 A The same job.

8 Q How long do you think, when you went back
9 after the 12 weeks, where you were kind of
10 struggling with the injuries?

11 A Probably a couple of months.

12 Q Okay. And would it be fair to say that
13 eventually it got better and you were able to work a
14 little better and kind of back to normal?

15 A Yeah. It will never be like it should be,
16 but...

17 Q When you say that, why would you say that?

18 A Because he says it will never get any
19 better.

20 Q So does something bother you right now
21 with it or...

22 A Sometimes.

23 Q When you say "it," are you talking about
24 your wrist or your knee?

25 A Both. I have trouble with both off and

1 on.

2 Q So what kind of trouble do you have,
3 actually, when you have trouble with them?

4 A Like this one, I get pain (indicating.)

5 Q When you say "this one," you're talking
6 about your left knee?

7 A Yeah.

8 Q So you get pain in it? Are you able to
9 walk and do things or what kind of...

10 A I don't take off work, so you have to.

11 Q Okay. And is the wrist, do you still have
12 complications with your wrist?

13 A Not a lot.

14 Q So you're kind of telling me that it's
15 more your knee that gives you trouble still?

16 A Yeah.

17 Q I read a statement that you gave to a
18 Candy Hamman. I don't know if you remember this, it
19 was a phone statement a year or so ago.

20 A Oh, the one where I probably messed up.

21 Q Did you, besides that statement, did you
22 give a statement to anybody else, or is that the
23 only statement that you recall giving to somebody?

24 THE WITNESS: Was that the one that we did
25 in here?

1 MR. DUBOIS: Yes. That's the only one.

2 BY MR. GRINE:

3 Q Was that the only statement that you've
4 given?

5 A Yes.

6 Q Do you have any other type of claims or
7 lawsuits currently out besides this one, or is this
8 the only lawsuit that you're involved in?

9 A This is the only one.

10 MR. GRINE: I don't have any other
11 questions right now. Thank you.

12

13 EXAMINATION

14

15 BY MR. BEHLING:

16 Q Linda, can you hear me okay?

17 A Yeah.

18 Q Maybe I'll move because I don't want you
19 to turn your head for the reporter. I'll just go
20 straight across and that will make it easier.

21 (Discussion held off record.)

22 BY MR. BEHLING:

23 Q Okay. Why don't we start as it relates to
24 your current medical. When was the last time you've
25 seen a doctor?

1 A We have to go every two years, working at
2 the hospital.

3 Q Well, let me ask you this question. When
4 was the last time you saw a doctor for any injuries
5 that you relate to the events that occurred at the
6 shopping center that day?

7 A It was in 2000. I mean, yeah, 2000, this
8 year.

9 Q In 2002?

10 A Yeah.

11 Q Do you know when in 2002? Was it a long
12 time ago? Because we're almost through 2002. Was
13 it in the summer, was it last winter or was it this
14 fall when the kids would have gone back to school?

15 A No, I would say summer.

16 Q Summer. Which doctor would that have
17 been?

18 A The one I went to.

19 Q Would it have been Dr. Schrantz?

20 A Yeah, that's it.

21 Q I have medical records from Dr. Schrantz,
22 I believe, and I have office records, and if I'm not
23 mistaken, the last office record that I have is in
24 September of 2000. So you're saying that you have
25 seen him since September of 2000?

1 A Yes.

2 MR. BEHLING: Jeff, do you have any office
3 records beyond September of 2000?

4 MR. DUBOIS: I don't know.

5 MR. BEHLING: Why don't you take a look?
6 I'll keep on going.

7 BY MR. BEHLING:

8 Q When you would go to the doctor, would the
9 doctor ask you how you felt?

10 A Yes.

11 Q And since the doctor was there to treat
12 you and help you, would you tell the doctor the
13 truth?

14 A Yes.

15 Q In the doctor's office notes, for example,
16 in September of 2000, you were there to follow up
17 for both your wrist and your knee?

18 A Yes.

19 Q In the doctor's note on September of 2000,
20 it said, (Reading): She says she has absolutely no
21 symptoms in the left knee. That
22 means you're having no problem, no
23 pain at all. The right wrist is
24 stiff, but it is not particularly
25 tender. She is very pleased with

1 the results.

2 Now, in September of 2000, did you tell
3 your doctor that?

4 A I guess.

5 Q You don't have a specific recollection one
6 way or the other; is that what you're telling me?

7 A Yes.

8 Q Do you have any reason to know why he
9 would put something like that in his note if you
10 didn't have a discussion along those lines with him?

11 A I don't know.

12 Q Did you get along with your doctor?

13 A Yeah.

14 Q Is there anything that you cannot do now
15 that you could do before the accident?

16 A You mean like cleaning?

17 Q Let's talk about what you do in these
18 categories: What you do at your job, what you do at
19 home, taking care of the house or doing things for
20 the kids, or what you do from social or recreational
21 standpoints.

22 Let's talk about your job. When you went
23 back to work after this accident, you told us for a
24 while you used your good hand.

25 A Yeah.

1 Q How long did that go on that you relied on
2 one hand until you got back to using both hands?

3 A I would probably say a couple of months.

4 Q All right. Is there anything, after those
5 couple of months, is there anything at work that you
6 cannot do now that you could do before this
7 accident?

8 A Probably not.

9 Q As part of your job, is there stairs that
10 you have to go up and down?

11 A Yes.

12 Q Did you have to, do you clean out, you
13 know, the garbage and take the garbage out and put
14 it in like a big cart?

15 A Yes.

16 Q Do you have to push that cart around to
17 other rooms or other offices?

18 A Yes.

19 Q And do you have to ultimately empty the
20 garbage and replace trashliners and things like
21 that?

22 A Yes.

23 Q Do you have to mop or vacuum or use any
24 type of broom or other device as it relates to the
25 flooring?

1 A Unless we're short, no.

2 Q If you're short, you would have to?

3 A Yes.

4 Q Okay. Is there someone else who has that
5 job, that has to do the flooring aspect of it unless
6 you're short?

7 A Yes.

8 Q When you're short, what type of things
9 would you have to do as it related to maintaining
10 the floors?

11 A The sweeper and the mopping.

12 Q Now, how about at home? Are you primarily
13 responsible for everything that goes on at home?

14 A Yes.

15 Q As far as cooking?

16 A Yes, I guess.

17 Q Cooking, cleaning?

18 A Uh-huh.

19 Q Is that yes?

20 A Yes.

21 Q Laundry?

22 A Yes.

23 Q Shopping for the food?

24 A No.

25 Q Who does the food shopping?

1 A My son.

2 Q Okay. But the cooking, cleaning, those
3 types of things, laundry, that's your
4 responsibility?

5 A Yes.

6 Q Is there any limitation in you performing
7 those unfortunately thankless tasks that moms have
8 to do?

9 A At home I'm fine, but like if we're short,
10 the mopping does bother me.

11 Q The mopping, you can do it, but it bothers
12 you?

13 A Yeah. By the end of the night, my hand
14 hurts.

15 Q It's your hand because you're holding onto
16 the mop with your hands as opposed to your leg?

17 A Yeah, yeah.

18 Q Okay. Now, we went through home, we went
19 through the job. Let's talk about, do you have any
20 hobbies? Do you read or do you knit or crochet, or
21 do you bowl or play bingo or anything like that?

22 A I read. That's about it.

23 Q Did you read before the accident, as well?

24 A Yes.

25 Q Did you have any activities that I have

1 described, such as, you know, bowling or jogging or
2 anything like that before the accident?

3 A No, I never did any of that.

4 Q Okay. If you didn't do it before, I guess
5 you're not doing it now, right?

6 A No.

7 Q Now, how long has it been since you've
8 taken any prescription medication for the injuries
9 that you sustained in the accident?

10 A I'm not sure.

11 Q I assume that for several weeks afterwards
12 you were on some varying kind of medications. I saw
13 some references to some pain medication in here.

14 A Yeah.

15 Q But after three or four months, do you
16 think you would have been done with all the pain
17 medication from a prescription standpoint?

18 A I'm not sure.

19 Q All right. How about over-the-counter?
20 Today, this is 2002, do you routinely take any
21 over-the-counter medication or supplements that you
22 take because of the injuries or the conditions you
23 feel you have as a result of this accident?

24 A No.

25 Q Now, as it relates to your employment and

1 your time off of work and your wages, I understand
2 from looking at the file there was a as a part of
3 your employment package, you had a disability policy
4 that was issued by UNUM Insurance Company?

5 A Yeah, that's our disability insurance.

6 Q So they were sending you checks after a
7 waiting period?

8 A Yeah, after your 30 days.

9 Q After 30 days. And that would pay for a
10 percentage of your income?

11 A Yes.

12 Q Do you know how much those individual
13 checks were?

14 A No, not offhand.

15 Q Because of your employment with the
16 hospital, did you have health insurance?

17 A Yes.

18 Q Do you have any medical bills that you're
19 aware of that need to be paid that haven't been paid
20 by somebody?

21 A Yes.

22 Q What are those medical bills? Whose are
23 they and how much are they, if you know?

24 A What do you mean, who are they?

25 Q Well, for example, is it a doctor, is it a

1 therapist, or is it the hospital?

2 A I would say the hospital.

3 Q Okay.

4 A And money-wise, I don't know.

5 Q Did you give all that information to your
6 lawyer?

7 A Yes.

8 Q So you think that there are some unpaid
9 medical bills as a result of this?

10 A Yes.

11 Q And you think it's primarily the hospital?

12 A Yes.

13 Q Was there some sort of deductible or
14 co-pay associated with your health plan, as far as
15 you know?

16 A I don't think so.

17 Q Did you return to your previous position
18 with the hospital? That is, did they give you your
19 old job back?

20 A Yes.

21 Q So you were not demoted or your hours
22 weren't reduced when you returned to work? They
23 were glad to have you back and you went back to your
24 old job?

25 A Yes.

1 Q I have here a general site survey of the
2 plaza, of Sandy Plaza. Do you want to take a look
3 at this, please?

4 A (Reviewing.)

5 Q All right?

6 A Okay.

7 Q Now, first I'm going to ask you about the
8 stores and then I'm going to ask you about the
9 parking lot. The stores that we see here, they're
10 outlined, starting with Kmart and working down the
11 pizza shop and there's another small retail,
12 Gambrello, the Deb Shop, Rentway, the liquor store,
13 CVS and Bi-Lo, are these generally the stores that
14 were there at the time of this accident?

15 A I think Deb's was there. This one might
16 not have been (indicating.)

17 Q You're talking about CitiFinancial?

18 A Yeah.

19 Q But your intended destination was the
20 Rentway store, correct?

21 A Yeah.

22 Q Would you agree with me that at the time
23 of the accident, that moving up from the Bi-Lo, that
24 the Bi-Lo was there?

25 A Yeah, they've been there for years.

1 Q Then next to the Bi-Lo was the drug store?

2 A Yeah.

3 Q Next to the drugstore was the liquor
4 store?

5 A Yeah.

6 Q And next to the liquor store was the
7 Rentway store?

8 A Yes.

9 Q Okay. Does this drawing, which is Drawing
10 No. SP-1 --

11 MR. BEHLING: Is there a date on that,
12 Jeff?

13 MR. DUBOIS: 2/12/98.

14 BY MR. BEHLING:

15 Q -- 2/12/98 there, by this engineering
16 firm, does this generally depict the way the center
17 is laid out, with the Kmart kind of at the one end
18 and then these retail shops running down this way
19 toward the main road?

20 A Yes.

21 Q Do you know whether the parking stalls on
22 the day of this accident were aligned in this
23 fashion? By that I mean, they seem to be completely
24 perpendicular to the travel lanes in the center, or
25 were they on an angle?

1 A No, they were like they are now.

2 Q And "like they are now" is on an angle?

3 A We was just up there.

4 Q Do you recall whether they were on an
5 angle or whether they were perpendicular like this?
6 Now, I'm talking about now. We were just there
7 about two hours ago, an hour ago.

8 A Probably at an angle.

9 Q Okay. Now, can you mark with a circle
10 where you believe, in a general sense, I don't want
11 you to actually have to pick out the exact spot. If
12 you can, that would be great, but do I understand
13 you don't know exactly where you were parked?

14 A No.

15 Q I'm correct in that assumption?

16 A Yes.

17 Q Okay. So I'm not asking you, then, to
18 pick a spot, and I know that when you draw a circle
19 for me, it's going to indicate the general area.

20 A Okay.

21 Q You can make the circle as small as you
22 want or you can make the circle as big as you want.
23 Okay? But I'd like you to draw a circle and I'd
24 like you to put your initials in it for me. Okay?

25 A Okay.

1 Q Now, this was about at nine o'clock in the
2 morning?

3 A Yes.

4 Q Are all of these businesses open at nine
5 o'clock in the morning or are only some of them open
6 at nine o'clock in the morning?

7 A I would say probably some of them.

8 Q This being in February, kids are in
9 school. How would you describe how many cars were
10 in the parking lot? Was it easy to find a place to
11 park?

12 A Yes, very easy.

13 Q Why don't you, here's a pen, and like I
14 said, with that limitation, knowing you don't know
15 exactly where, that you're going to give me a
16 general area, draw a circle as large or as small as
17 you would like and put your initials in it.

18 A (Witness complies.)

19 Q All right. Now, when you got out of the
20 car that day, do you remember anything other than
21 slipping and falling?

22 A I remember there was somebody looking
23 outside, but we didn't go in and get her name.

24 Q But that was afterwards, right? When you
25 said you remember someone looking outside --

1 A Yeah.

2 Q -- that was something you noticed
3 afterwards?

4 A Yeah, afterwards.

5 Q I'm talking about as you were getting out
6 of the vehicle, do you remember anything other than
7 starting to get out of the truck and stepping out of
8 the truck and slipping and falling?

9 A No.

10 Q When you were on the ground, you said it
11 felt wet?

12 A Yes.

13 Q Were your clothes wet?

14 A Yes.

15 Q When I say "your clothes," would you
16 describe for me which parts of your clothes were
17 wet?

18 A My pants was wet and my coat was wet.

19 Q Okay. Now, your pants, are we talking
20 about the bottom part of your pants or kind of like
21 the seat, where you would have -- I assume you ended
22 up at some point on your buttocks, sitting on the
23 ground?

24 A Yeah.

25 Q Okay. Are you talking about the back of

1 your pants, anything that would have been touching
2 the ground would have been wet, or are you talking
3 about any particular area?

4 A Like, I would say the leg type thing.

5 Q Okay. And your coat, was your coat long
6 enough to cover your buttocks?

7 A I don't think so.

8 Q Which part of your coat was wet?

9 A The bottom half.

10 Q The bottom part?

11 A Yes.

12 Q How about any of the sleeves?

13 A Excuse me, it might have been because I
14 did lay down.

15 Q You did lay all the way down?

16 A Yeah.

17 Q Were you wearing a hat?

18 A No.

19 Q When you laid down, did you feel wet or
20 did you feel actual ice or snow?

21 A Wet.

22 Q How long do you believe you laid on the
23 ground?

24 A Not long.

25 Q A minute? Two minutes? Your husband

1 helped you --

2 A Yeah.

3 Q -- you didn't lay there and wait for
4 paramedics or anything like that?

5 A No. Maybe between five and ten minutes.

6 Q Okay. Did you see any other cars pull in
7 or pull out?

8 A No.

9 Q Was it when you were on the ground looking
10 that you saw the person in the liquor store looking
11 out? I'm trying to get that sequence.

12 A I don't think so. I think it was after I
13 was back in the truck.

14 Q After you were back in the truck? When
15 you were laying on the ground did you feel any,
16 other than wet, did you feel any garbage or glass or
17 cans or any other debris?

18 A No.

19 Q All right. One of your medical records
20 from the doctor indicated that your other knee
21 injury on the other side --

22 A Yes.

23 Q -- that you had surgery on that knee. Is
24 that accurate or inaccurate?

25 A No, it's true, a long time ago.

1 Q Okay. Well, maybe I misunderstood your
2 answers earlier. I understood that you had an
3 injury to your other knee and I thought that you
4 said that you couldn't go back to work because you
5 were just off because of your son and, therefore,
6 you had to hop around and work through it.

7 A Well, wait a minute. Okay. When I first
8 got married, I hurt this other one.

9 Q Okay.

10 A And that's the one we're talking about.
11 And then when I fell down my steps, I hurt the same
12 one again.

13 Q All right. Well, let me make sure that
14 we're talking about the same thing. A long time
15 ago, you had hurt your right knee?

16 A Yes.

17 Q Is that correct?

18 A Yeah.

19 Q And was it a similar type of injury or
20 fracture?

21 A No, because I had surgery on it at that
22 time.

23 Q Okay. Well, that was the treatment. My
24 question was, were you told it was a similar type of
25 injury, that it was a fracture around your knee?

1 A Probably not because I did my knee and leg
2 both at the same time.

3 Q You did your knee and leg. Who was your
4 doctor for that injury?

5 A Dr. Barley.

6 Q And what hospital was that?

7 A It was at our hospital. He's retired now.
8 He's no longer at the hospital.

9 Q Approximately what year was that?

10 A '71, '72.

11 Q And you fell then?

12 A Yeah, I fell down steps.

13 Q You fell down steps. Was that at home?

14 A No.

15 Q Where was that?

16 A I was baby-sitting somebody's kids.

17 Q Let's see, you were born in '53, so that
18 would have made you about 18 or 19 years old?

19 A Yeah.

20 Q So you fell at someone else's home?

21 A Yeah.

22 Q Or were you baby-sitting over at your
23 house?

24 A No, I wasn't at my house.

25 Q Then another time, you fell and injured,

1 reinjured, the right knee, but that's when you said
2 you couldn't take any time off from work?

3 A Right.

4 Q When was that injury; do you remember?

5 A In the '90s. I couldn't get no records
6 for that.

7 Q And that was a fall at home?

8 A Yeah.

9 Q Do you remember how you fell back in the
10 '70s?

11 A No, I don't.

12 Q Do you remember how you fell in the '90s,
13 when you, I'll call it, injured your right knee
14 again?

15 A All I know is I fell.

16 Q Then you had -- did you have any other
17 falls besides those two?

18 A No.

19 Q Then you had this fall in 2000 at the
20 plaza, right?

21 A Yes.

22 Q Then you had a fall a couple of days later
23 in 2000, or a near fall, where you fractured your
24 wrist?

25 A Yes.

1 Q And that was at home. Did you have
2 anymore falls?

3 A No.

4 Q Now, the surgery you got back in the '70s,
5 what did you understand that surgery was for?

6 A For my knee.

7 Q What did they do, do you know?

8 A They took a half a cartry (sic) out, I
9 think.

10 Q They took a half a --

11 A Cartry (sic). It's a bone you have in
12 your knee.

13 Q So they took a piece of bone out of your
14 knee?

15 A Yes.

16 Q Were you in a cast?

17 A Yes.

18 Q Did you have to go through therapy after
19 that?

20 A It's been so long ago, I don't remember.

21 Q All right. Did you have ever any problems
22 with your right knee other than when you first
23 injured it in the '70s and when you fell at home in
24 the '90s?

25 A Yes, it hurt a lot.

1 Q It hurt a lot both of those times?

2 A And then after I fell the second time, all
3 the pain left.

4 Q In the '90s? You mean after you fell in
5 the '90s?

6 A Yeah.

7 Q So it bothered you between the '70s and
8 the '90s?

9 A Yeah.

10 Q And then when you reinjured it and you
11 healed from that, then it didn't bother you anymore?

12 A No.

13 Q Okay. I want to go over some of your
14 medical providers and then I'll be done, to make
15 sure I have them all. Then we'll know exactly who
16 they are. DuBois Medical Center?

17 A Yes.

18 Q Emergency room, the day of the accident,
19 2/14?

20 A Yes.

21 Q DuBois Medical Center Emergency Room,
22 2/19, when you hurt your wrist?

23 A Yes.

24 Q Surgery at DuBois Medical Center for your
25 wrist because it wasn't healing straight?

1 A Yes.

2 Q Was that what you understand, that your
3 wrist was not healing straight, that's why they put
4 those pins in?

5 A Yes.

6 Q And those pins were put in on the outside,
7 correct?

8 A Yes. A big rod was from here to there
9 (indicating.)

10 Q And you went back to the emergency room on
11 5/19?

12 A That's to take the pin out.

13 Q Oh, that was for the pin removal. Okay.
14 And then, of course, your treatment with Dr.
15 Schrantz?

16 A Yes.

17 MR. BEHLING: All right. I don't have any
18 further questions.

19 MR. GRINE: I don't either.

20 MR. DUBOIS: No questions and we'll waive.

21

22 (Deposition concluded at 2:29 p.m.)

23

24

25

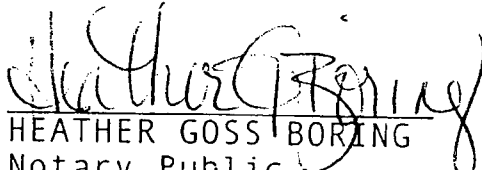
1 COUNTY OF CLINTON :
2 COMMONWEALTH OF PENNSYLVANIA : SS

3 I, HEATHER GOSS BORING, Reporter-Notary Public,
4 authorized to administer oaths within and
5 for the Commonwealth of Pennsylvania and take
6 depositions in the trial of causes, do hereby
7 certify that the foregoing is the testimony of
8 LINDA RADAKER.

9 I further certify that before the taking of said
10 deposition, the witness was duly sworn; that the
11 questions and answers were taken down
12 stenographically by the said HEATHER GOSS BORING, a
13 Reporter-Notary Public, approved and agreed to, and
14 afterwards reduced to typewriting under the
15 direction of the said Reporter.

16 I further certify that the proceedings and
17 evidence are contained fully and accurately in the
18 notes taken by me in the within deposition, and that
19 this copy is a correct transcript of the same.

20 In testimony whereof, I have hereunto subscribed
21 my hand this 30th day of December, 2002.

22
23 
24 HEATHER GOSS BORING
Notary Public

25 My commission expires
on February 17, 2003

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	

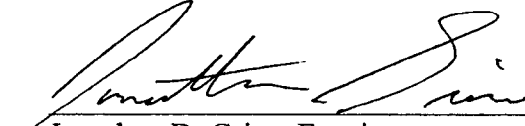
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Summary Judgment and Brief were deposited in the United States mail, postage prepaid, in State College, Pennsylvania, on the 31st day of January, 2003 addressed to the following:

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Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Bruce Rende, Esq.
2300 One Mellon Bank Center
Pittsburgh, PA 15219

Robert Behling, Esq.
One Oxford Center, 38th Floor
301 Grant Street
Pittsburgh, PA 15219


Jonathan D. Grine, Esquire

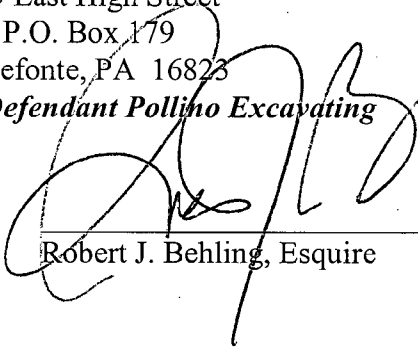
CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within pleading was forwarded by first class mail, postage prepaid, this 10th day of February, 2003, upon the following individuals:

Jeffrey S. DuBois, Esquire
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498 Jeffers Street
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Attorneys for Plaintiff

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Attorneys for Defendant Milestone Properties, Inc.

Jonathan D. Grine, Esquire
Lee, Martin, Green & Reiter, Inc.
115 East High Street
P.O. Box 179
Bellefonte, PA 16823
Attorneys for Defendant Pollino Excavating



Robert J. Behling, Esquire

FILED No
cc
M 1/24/03
FEB 12 2003

William A. Shaw
Prothonotary

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

LINDA RADAKER,

Plaintiffs

vs.

No. 2002-181, C.D.

MILESTONE PROPERTIES, INC.,

JJ GUMBERG COMPANY, a/k/a

GUMBERG ASSOCIATES-SANDY

PLAZA and POLLINO EXCAVATING,:

Defendants

FILED

MAY 16 2003

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA

SS:

William A. Shaw
Prothonotary

COUNTY OF CLEARFIELD

I, LINDA RADAKER, state the following:

On February 14, 2003, I was injured when I slipped on a patch of ice in the K Mart parking lot in Sandy Township, Clearfield County, Pennsylvania.

Specifically, on that day, I finished work at approximately 7:30 a.m. From there, I went out to eat breakfast at a local restaurant in DuBois, Pennsylvania. Although it was very cold, I had no problem walking outside either at my place of employment or at the restaurant, and I did not see nor detect any ice.

Afterwards, we went to a store located in the K Mart Plaza in Sandy Township, Clearfield County. After we pulled into the parking lot in a parking space, I opened the door and put my foot onto the ground and immediately slipped on a patch of ice. Because of the fact the fall broke my kneecap, I could not get up and just laid there on the

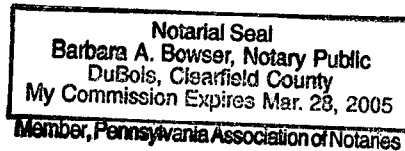
ice. My husband had to come over and pick me up and put me back into the car. Because that particular area was icy, my husband had to hold onto the car as he came around to my side and help me back in the car.

Linda A. Radaker
Linda Radaker

Sworn and subscribed before me

this 15th day of May, 2003.

Barbara A. Bowser
Notary Public



FILED

8/20/05
MAY 16 2003

3 cc
Amy Dubois

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

LINDA RADAKER,

Plaintiff

CIVIL ACTION – LAW

No. 2002-181-CD

v.

MILESTONE PROPERTIES, INC., JJ
GUMBERG COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA and
POLLINO EXCAVATING,

Defendants

MOTION TO STRIKE THE AFFIDAVIT
OF LINDA RADAKER

Filed on behalf of DEFENDANTS, JJ
GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA

Counsel of Record for this Party:

ROBERT J. BEHLING, ESQUIRE
Pa. I.D. #30659

PIETRAGALLO, BOSICK & GORDON
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One Oxford Centre
301 Grant Street, 38th Floor
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JURY TRIAL DEMANDED

FILED

MAY 23 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

LINDA RADAKER,	)	CIVIL ACTION – LAW
)	
Plaintiff	)	No. 2002-181-CD
)	
v.)	
)	
MILESTONE PROPERTIES, INC., JJ)	
GUMBERG COMPANY, a/k/a GUMBERG)	
ASSOCIATES-SANDY PLAZA and)	
POLLINO EXCAVATING,)	
)	
Defendants)	

MOTION TO STRIKE THE AFFIDAVIT OF LINDA RADAKER

AND NOW come the Defendants, J J Gumberg Co. a/k/a Gumberg Associates - Sandy Plaza, by and through its attorneys, Pietragallo, Bosick & Gordon, and hereby files following Motion To Strike The Affidavit of Linda Radaker, averring as follows:

1. This case involves a slip and fall in a commercial parking lot, which occurred on or about February 14, 2000 at Sandy Plaza, Clearfield County, Pennsylvania.
2. Defendant J J Gumberg Company is the possessor of the lot in question.
3. Although discovery is not closed, J J Gumberg respectfully submits that all discovery relevant to the issues raised in the Motion for Summary Judgment has been completed.
4. The deposition of the only witness, Linda Radaker, was concluded on November 20, 2002.
5. Defendant J J Gumberg filed a Motion for Summary Judgment and Brief in Support thereof on February 10, 2003.

6. Via letter dated March 20, 2003 and in accordance with local rules, the Clearfield County Court Administrator indicated that Plaintiff's Reply Brief was due April 9, 2003. Said Correspondence is attached hereto and marked as Exhibit 1.

7. That same letter set forth the dates for oral argument for May 16, 2003.

8. Plaintiff filed the Reply Brief on April 9, 2003.

9. Plaintiff failed to attach or refer to any exhibits in the Reply Brief.

10. On May 15, 2003, at 2:45 p.m., Plaintiff's counsel faxed a copy of an Affidavit of Linda Radaker signed on May 15, 2003. Said Affidavit is attached hereto and marked as Exhibit 2.

11. The Affidavit was not attached nor did it refer to any Motion or Brief.

I. MOTION TO STRIKE

12. J J Gumberg respectfully request this Court strike the Affidavit of Linda Radaker.

13. Said Affidavit is untimely by six weeks, not filed in accordance with local rules and fails to refer to any pleadings, motions or briefs filed in this matter.

14. Said Affidavit is nothing more than a blatant last ditch and inappropriate attempt to defeat the Motion for Summary Judgment by unsupported means.

15. For the foregoing reasons, the Affidavit should be stricken.

II. IN THE ALTERNATIVE, SAID AFFIDAVIT FAILS TO DEFEAT DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

16. Should the Court consider the Affidavit, J J Gumberg respectfully submits the Affidavit does not defeat the Motion for Summary Judgment.

17. The Plaintiff and only witness was deposed November 20, 2002. Said transcript is attached to J J Gumberg's Motion for Summary Judgment as Exhibit 2.

18. During the course of the deposition, the Plaintiff was questioned in excruciating detail concerning the conditions that existed at the time of the fall.

19. At no time during the deposition did Plaintiff indicate or describe any artificial condition with the lot, the existence of hills or ridges and/or a condition which would give rise to notice by the Defendant.

20. Plaintiff was asked very specific questions throughout the deposition by counsel for J J Gumberg as well as counsel for Defendant Pollino Excavating.

21. At no time did Plaintiff describe anything other than a wet ground. (See Plaintiff's deposition attached as Exhibit 2 of Defendant's J J Gumberg's Motions for Summary Judgment, pages 18, 51-53).

22. Contrary to the Plaintiff's Reply Brief, at no time during the deposition of the Plaintiff describe the existence of ice or snow.

23. The only reference to ice and snow was the Plaintiff's speculation that it was icy because she fell; however, Plaintiff could not describe the weather conditions, which existed. (See Exhibit 2, pages 12-17).

24. In contrast, but not subject to cross examination, Plaintiff in the Affidavit describes a "patch of ice" and a "particular area [that] was icy", which was never mentioned during the course of the deposition.

26. Even with the Affidavit, should it be considered, Plaintiff has failed to make a prima facie cause of action for negligence based upon a slip and fall caused by icy conditions.

27. The case before this Court is factually identical to Roland v. Kravco, Inc. 513 A.2d 1029, (Pa.Super. 1986), which holds that evidence of a wet surface, without more, does not establish a dangerous condition.

28. Plaintiff wants the Court to consider an Affidavit produced less than 24 hours before argument, not subject to cross-examination, as sufficient to avoid Summary Judgment. The Court should consider not only the motive for filing the Affidavit at such a late date, but the sufficiency of the contents of the Affidavit.

29. Defendant J J Gumberg relies on the record developed to date wherein all the parties had the opportunity to cross-examination and/or rehabilitate the witness to illustrate that no genuine issue of material fact is present which would create a legitimate jury question concerning liability.

WHEREFORE, J J Gumberg respectfully requests this Honorable Court grant this Motion for Summary Judgment.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

BY 
 Robert J. Behling, Esquire

Attorneys for Defendants J J GUMBERG
COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA



CGM-51066

OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

March 20, 2003

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Joseph P. Green, Esquire
Lee, Martin, Green & Reiter, Inc.
Post Office Box 179
Bellefonte, PA 16823

RE: LINDA RADAKER

vs.

MILESTONE PROPERTIES, INC., al
No. 02-181-CD

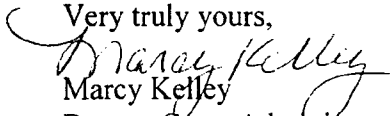
Dear Counsel:

With regard to the above matter, Attorneys Behling and Green have filed Motions for Summary Judgment and Briefs in support thereof on behalf of Defendants. Plaintiff's reply Brief(s) will be due on or before Wednesday, April 9, 2003.

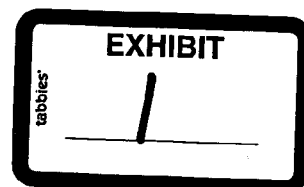
Oral argument in this case has been scheduled for **Friday, May 16, 2003** **at 3:00 P.M.**, in Chambers, Clearfield County Courthouse, Clearfield, PA.

You should file your original Brief with the undersigned and forward copies to opposing counsel.

Very truly yours,


Marcy Kelley
Deputy Court Administrator

cc: Honorable John K. Reilly, Jr.



DECLARATION OF INTEREST

I, the undersigned, do hereby certify that I am and control copy of this within pleading

was forwarded to the Clerk of the Court, this 10th day of May, 2003, for filing in the above captioned case.

Joseph S. DiStasio, Jr.
Esquire
403 Lexington Street
P.O. Box 437
Dorchester, MA 02122
(Tel: 617-816-5111)

James E. Hendon, Jr.
Esquire
3300 Commonwealth Avenue
Pittsburgh, PA 15219
(Tel: 412-261-1111)

William A. Shaw
Prothonotary

MAY 23 2003

FILED

NO
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JUL 1 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

LINDA RADAKER,)	CIVIL ACTION – LAW
)	
Plaintiff	)	No. 2002-181-CD
)	
v.)	
)	
MILESTONE PROPERTIES, INC., JJ)	
GUMBERG COMPANY, a/k/a GUMBERG)	
ASSOCIATES-SANDY PLAZA and)	
POLLINO EXCAVATING,)	
)	
Defendants)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2003, upon consideration of the foregoing Motion To Strike Affidavit of Linda Radaker, it is hereby ORDERED, ADJUDGED and DECREED that Defendant J J Gumberg's Motion for Summary Judgment is GRANTED.

BY THE COURT:

_____, J.

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

LINDA RADAKER

-vs-

No. 02 – 181 – CD

MILESTONE PROPERTIES, INC., J.J.
GUMBERG COMPANY, a/k/a GUMBERG:
ASSOCIATES-SANDY PLAZA AND
POLLINO EXCAVATING

OPINION AND ORDER

Defendants above-named have moved for Summary Judgment alleging that based on the deposition of Plaintiff Linda Radaker, taken on November 20, 2002, there is insufficient evidence or testimony to sustain Plaintiff's allegation of ice in the parking lot resulting in her slipping and falling. Briefs were submitted in accordance with this Court's briefing schedule and oral argument set for May 16, 2003. On May 15, 2003, Plaintiff's counsel faxed their Affidavit of Linda Radaker executed that date in which she attempted to supplement her deposition testimony. Counsel for Defendants have filed a Motion to Strike this Affidavit as being self-serving and filed after the pleadings were closed for the purpose of Summary Judgment. This Court agrees and does grant the Motion to Strike the Affidavit of Linda Radaker filed May 15, 2003, and enters the following:

FILED

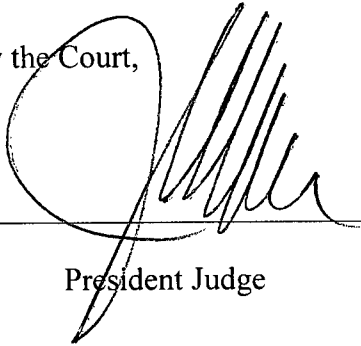
MAY 23 2003

William A. Shaw
Prothonotary

ORDER

NOW, this 30th day of May, 2003, upon consideration of Motion to Strike Affidavit of Linda Radaker filed on behalf of Defendants above-named, it is the ORDER of this Court that said Motion be and is hereby granted.

By the Court,



President Judge

FILED

MAY 30 2003

William A. Shaw
Prothonetary

WAS

1cc Atty Dubois
1cc Atty Rende
1cc Atty Behling
1cc Atty Green
1cc Atty Mikessell

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

LINDA RADAKER

-vs-

No. 02 - 181 - CD

MILESTONE PROPERTIES, INC., J.J.
GUMBERG COMPANY, a/k/a GUMBERG:
ASSOCIATES-SANDY PLAZA AND
POLLINO EXCAVATING

FILED

MAY 30 2003

OPINION AND ORDER

William A. Shaw
Prothonotary

Plaintiff above-named as filed a Complaint alleging negligence against the Defendants for allowing ice to accumulate in their parking lot which caused Plaintiff to slip and fall and suffer personal injuries. Defendants have filed a Motion for Summary Judgment alleging that the deposition of the Plaintiff taken November 20, 2002, does not support the allegation of ice existing in the subject parking lot and causing Plaintiff's injuries.

On February 14, 2000, one Candy Hammond, apparently an investigator for the insurance carrier for Defendants, questioned Linda Radaker and this also has been reduced to a typewritten transcript and filed by Plaintiff on May 23, 2003. In the transcript of the February 14, 2000, interview, Plaintiff does state that the condition of the parking lot was icy.

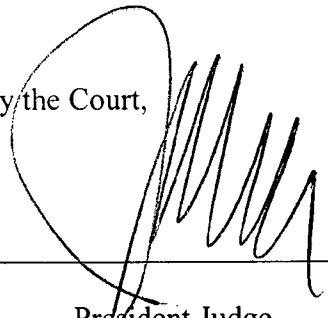
For this Court to consider only the deposition of Plaintiff it would be constrained to grant Defendant's Motion for Summary Judgment based on the February 14, 2000 interview. This Court is of the opinion that there is sufficient evidence of ice in the parking lot resulting in her fall to permit the same to be determined by a trier of fact. The transcript of the February 14, 2000, interview, while filed late, nevertheless differs from the Affidavit stricken by this Court in that it was provided even before her deposition testimony

and therefore, cannot be claimed as a self-serving document filed at the eleventh hour, and therefore this Court enters the following:

ORDER

NOW, this 30th day of May, 2003, upon consideration of Motion for Summary Judgment filed on behalf of Defendants above-named, and argument and briefs thereon, it is the ORDER of this Court that said Motion be and is hereby dismissed in accordance with the foregoing Opinion.

By the Court,



President Judge

FILED

013:44-801
MAY 30 2003

William A. Shaw
Prothonotary



1 CC Atty's Dubois, Lende,
Behling, Green
1 CC D. M. Kesell

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

LINDA RADAKER,

Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY PLAZA
and POLLINO EXCAVATING,

Defendants

)
: No. 2002-181-CD
) JURY TRIAL DEMANDED
:
) Type of Pleading:
: **Motion for Reconsideration**
) **of Court Opinion and Order**
: **Dated May 30, 2003**
) Filed on Behalf of:
: **Defendant Pollino Excavating**

Counsel of Record for this Party:

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State College, PA 16803
814-237-6291

FILED

JUN 06 2003

William A. Show
Prothonotary

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	

DEFENDANT POLLINO EXCAVATING'S
MOTION FOR RECONSIDERATION OF THIS COURT'S OPINION AND ORDER
DATED MAY 30, 2003

AND NOW comes Defendant Pollino Excavating, by and through its attorneys, LEE, MARTIN, GREEN & REITER, INC., and files the within Motion for Reconsideration of this Court's Opinion and Order Dated May 30, 2003, the following of which is a statement:

1. On February 3, 2003, Defendant Pollino Excavating filed a Motion for Summary Judgment and a Brief in Support of Motion for Summary Judgment.
2. On March 20, 2003, this Honorable Court issued an April 9, 2003 briefing deadline for Plaintiff's reply brief and scheduled oral argument on the Motion for Summary Judgment for May 16, 2003 at 3:00 P.M.
3. Defendant Pollino Excavating filed a Brief in Response to Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment on or about April 30, 2003.
4. On May 15th, the day before oral argument, Plaintiff's counsel filed an affidavit by Plaintiff.

5. At the May 16th oral argument, this Honorable Court struck the Plaintiff's affidavit and did not consider it in its decision on Defendants' Motion for Summary Judgment.

6. At the May 16th oral argument, Plaintiff's counsel made overtures that he would file an unsworn transcript of a February 14, 2000 phone conversation between Plaintiff and Candy Hammond, an insurance carrier representative, for the Court's consideration in its decision on Defendants' Motions for Summary Judgment.

7. At the May 16th oral argument both counsel for Defendant Pollino Excavating and Defendant JJ Gumberg Company orally stated that if Plaintiff's counsel attempted to file said transcript, Defendants would file a Motion to Strike based on the untimeliness of the filing and the possible inadmissibility of the filing.

8. On June 2, 2003, Counsel for Defendant Pollino Excavating received a copy of this Honorable Court's Opinion and Order dated May 30, 2003 denying Defendants' Motions for Summary Judgment.

9. A reading of the Opinion revealed that the February 14, 2000 unsworn phone conversation transcript had been filed with the Court on May 23, 2003.

10. A further reading of the Court's Opinion revealed that said transcript was given considerable weight in the Court's consideration and ultimate dismissal of Defendants' Motions for Summary Judgment.

11. A June 3, 2003 telephone call to the Clearfield Prothonotary's office yielded a copy of the transcript that was filed by Plaintiff's counsel.

12. The filed unsworn phone conversation transcript does not have a certificate of service evidencing service on the other parties.

13. Plaintiff's counsel covertly filed the unsworn phone conversation transcript with this Honorable Court without serving the transcript on moving Defendants.

14. Plaintiff's counsel's conduct is in direct violation of Rule 440 (a)(1) of the Pennsylvania Rules of Civil Procedure which states that "[c]opies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action."

15. The only logical reason that Defendant Pollino Excavating's counsel can surmise from Plaintiff's counsel's conduct is that he wanted to keep Defendants from moving to strike the transcript from being part of the record for the Court's consideration of the pending Motion for Summary Judgment.

16. Moving Defendant respectfully submits that the filing of the transcript and the Court's consideration of the transcript in rendering a decision on the Motion for Summary Judgment was an error of law for the following reasons:

a. Under Pennsylvania Rule of Civil Procedure 1035, the record on summary judgment includes "the pleadings and any depositions, answers to interrogatories, admissions on file and supporting affidavits."

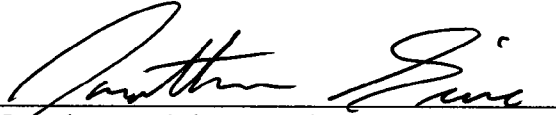
b. Unsworn exhibits and documents not complying with Pennsylvania Rule of Civil Procedure 1035 may not be considered part of the record on summary judgment.

Wheeler v. Johns-Manville Corp., 493 A.2d 120, 122 (Pa.Super. 1985).

c. Specifically, a statement made by a party during an unsworn telephone conversation, which was later transcribed, could not be considered as part of the record for summary judgment purposes. Overbeck v. Cates, 700 A.2d 970, 974 (Pa.Super. 1997).

WHEREFORE, Defendant Pollino Excavating respectfully request this Honorable Court to grant its Motion for Reconsideration of the Opinion and Order dated May 30, 2003, and summary judgment be entered in favor of Defendant Pollino Excavating.

LEE, MARTIN, GREEN & REITER, INC.

By: 
Jonathan D. Grine, Esquire PA ID# 85746
Attorneys for Defendant Pollino Excavating
101 Innovation Blvd., Suite 311
State College, PA 16803
(814) 237-6291

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

LINDA RADAKER,)	
Plaintiff	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	

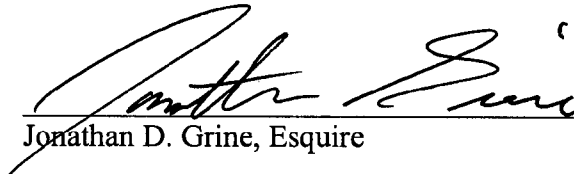
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Reconsideration of Court's Opinion and Order Dated May 30, 2003 was deposited in the United States mail, postage prepaid, in State College, Pennsylvania, on the 5th day of June, 2003 addressed to the following:

Jeffrey S. DuBois, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Bruce Rende, Esq.
2300 One Mellon Bank Center
Pittsburgh, PA 15219

Robert Behling, Esq.
One Oxford Center, 38th Floor
301 Grant Street
Pittsburgh, PA 15219


Jonathan D. Grine, Esquire

William A Shaw
Prothonotary

FILED
m 11-11-03
JUL 06 2003
cc
[Signature]

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

LINDA RADAKER,
Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING,
Defendants

No. 2002-181 C. D.

Type of Pleading:

**RESPONSE TO DEFENDANT
POLLINO EXCAVATING'S
MOTION FOR RECONSIDERATION**

Filed on Behalf of:
PLAINTIFF

Counsel of Record for
This Party:

Jeffrey S. DuBois, Esq.
Supreme Court I.D. 62074
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

FILED

JUN 12 2003

William A. Shaw
Prothonotary

1900-1901

1902-1903

1904-1905

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1910-1911

1912-1913

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

LINDA RADAKER,
Plaintiff

vs.

No. 2002-181 C. D.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING, :
Defendants :

**PLAINTIFF'S RESPONSE TO DEFENDANT
POLLINO EXCAVATING'S MOTION FOR RECONSIDERATION**

AND NOW, comes the Plaintiff, Linda Radaker, by and through her attorneys, Hanak, Guido and Taladay, and files this response to Defendant Pollino Excavating's Motion for Reconsideration:

1. Plaintiff objects to the completely inaccurate and unsubstantiated Motion for Reconsideration filed by Defendant Pollino Excavating.
2. To begin with, counsel for Plaintiff clearly set forth at the Oral Argument that a recorded statement had already been taken of Plaintiff, and had been taken much earlier than the deposition.
3. In his motion, counsel for Defendant accuses counsel for Plaintiff to "covertly file the unsworn phone conversation transcript with this Honorable Court without serving the transcript on moving Defendant".

4. Not only is this completely inaccurate as a copy of the same was provided to all counsel of record, but is also completely despicable and unprofessional of counsel to make such an accusation without first doing an investigation.

5. In fact, the undersigned caused copies of the transcript to go out as soon as possible, as the next business day after the court papers were filed was a holiday, specifically Memorial Day, and counsel was out of the office for the next two days. Therefore, not only does Exhibit "A" show that said transcript was sent to all counsel of record, but was also done the first day the undersigned could have done the same.

6. In their Motion, counsel for Defendant goes on to make the allegation that counsel for Plaintiff was attempting to keep Defendants from moving to strike the transcript from being part of the record or for the Court's consideration.

7. Once again counsel for Defendant Pollino Excavating is being completely unprofessional and inaccurate as said transcript was fully discussed before all parties and the Court at Oral Argument. Moreover, it was stated by the Court the same could be submitted.

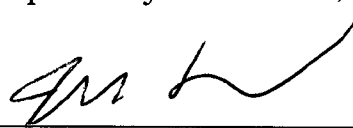
8. Such bold allegations by counsel for Defendant Pollino Excavating are not only extremely disappointing coming from an attorney but is also a weak attempt to do whatever it takes to keep from losing on its motion.

9. Additionally, the Court's reading was not solely dependent upon the transcript, but was also based upon the deposition, in its entirety, as well as the pleadings.

10. Therefore, the Court made the proper ruling in denying the Motion for Summary Judgment based upon the pleadings, as well as the entire content of the deposition, and on that alone, the Court could have sufficiently denied Defendant's Motion for Summary Judgment.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to dismiss Defendant Pollino Excavating's Motion for Reconsideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. DuBois', is written over a horizontal line.

Jeffrey S. DuBois
Attorney for Plaintiff

HANAK, GUIDO and TALADAY
Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

Telephone: (814) 371-7768
Fax: (814) 371-1974

498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Nicole Hanak Bankovich
Jeffrey S. DuBois
S. Casey Bowers

May 29, 2003

Bruce E. Rende, Esq.
Robb, Leonard & Mulvihill
2300 One Mellon Center
Pittsburgh, PA 15219

Robert J. Behling, Esq.
Pietragallo, Bosick & Gordon
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

Joseph P. Green, Esq.
Leek, Martin, Green & Reiter, Inc.
115 East High Street
P. O. Box 179
Bellefonte, PA 16823-0179

Re: Radaker v. Milestone Properties, et a.
Your File No. 02-13980M/R

Gentlemen:

Enclosed please find a copy of Linda Radaker's statement given to Candy Hammond of Erie Insurance on February 6, 2001.

Thank you for your attention to this matter.

Sincerely,



Jeffrey S. DuBois

JSD/bab
Enc.

EXHIBIT "A"

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

LINDA RADAKER,
Plaintiff

vs.

No. 2002-181 C. D.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING.,
Defendants


CERTIFICATE OF SERVICE

I do hereby certify that on the 11th day of June, 2003, I served a copy of the within Plaintiff's Response to Defendant Pollino Excavating's Motion for Reconsideration, by first class mail, postage prepaid, to the following:

Joseph P. Green, Esq.
Leek, Martin, Green & Reiter, Inc.
115 East High Street
P. O. Box 179
Bellefonte, PA 16823

Bruce E. Rende, Esq.
Robb, Leonard & Mulvihill
2300 One Mellon Bank Center
Pittsburgh, PA 15219

Robert J. Behling, Esq.
Pietragallo, Boslick & Gordon
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219



Jeffrey S. DuBois
Attorney for Plaintiff

FILED

M 10:34 AM
JUN 12 2003

William A. Shaw
Prothonotary

NO
CC

105

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

LINDA RADAKER,

Plaintiff

v.

MILESTONE PROPERTIES, INC., JJ
GUMBERG COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA and
POLLINO EXCAVATING,

Defendants

CIVIL ACTION – LAW

No. 2002-181-CD

JOINDER

Filed on behalf of DEFENDANTS, JJ
GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA

Counsel of Record for this Party:

ROBERT J. BEHLING, ESQUIRE
Pa. I.D. #30659

PIETRAGALLO, BOSICK & GORDON
Firm #834
One Oxford Centre
301 Grant Street, 38th Floor
Pittsburgh, PA 15219

(412) 263-2000

JURY TRIAL DEMANDED

FILED

JUN 13 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

LINDA RADAKER,	)	CIVIL ACTION – LAW
)	
Plaintiff	)	No. 2002-181-CD
)	
v.)	
)	
MILESTONE PROPERTIES, INC., JJ)	
GUMBERG COMPANY, a/k/a GUMBERG)	
ASSOCIATES-SANDY PLAZA and)	
POLLINO EXCAVATING,)	
)	
Defendants)	

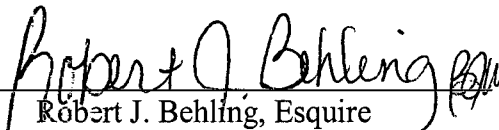
JOINDER

AND NOW come the Defendants, JJ Gumberg Co. a/k/a Gumberg Associates - Sandy Plaza, by and through its attorneys, Pietragallo, Bosick & Gordon, and hereby files following Joinder:

The Defendant, JJ Gumberg Co. a/k/a Gumberg Associates - Sandy Plaza joins in the Defendant Pollino Excavating's Motion for Reconsideration of Court Opinion and Order dated May 30, 2003 and argument thereof is filed of record with this Honorable Court.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

BY 
Robert J. Behling, Esquire

Attorneys for Defendants J J GUMBERG
COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA

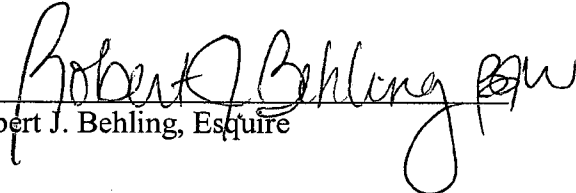
CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within JOINDER was forwarded via facsimile, this 10th day of June, 2003, upon the following individuals:

Jeffrey S. DuBois, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorneys for Plaintiff

Bruce E. Rende, Esquire
Robb, Leonard & Mulvihill
2300 One Mellon Bank Center
Pittsburgh, PA 15219
Attorneys for Defendant Milestone Properties, Inc.

Jonathan D. Grine, Esquire
Lee, Martin, Green & Reiter, Inc.
115 East High Street
P.O. Box 179
Bellefonte, PA 16823
Attorneys for Defendant Pollino Excavating


Robert J. Behling, Esquire

THE COURT OF COMMONS OF THE UNITED STATES OF AMERICA

IN SENATE

REPORT OF THE

COMMISSIONER OF THE

William A. Shaw
Prothonotary

JUN 13 2003

FILED

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CA

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

LINDA RADAKER,
Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING,
Defendants

No. 2002-181, C. D.

Type of Pleading:

**MOTION FOR
CONTINUANCE**

Filed on Behalf of:
PLAINTIFF

Counsel of Record for
This Party:
Jeffrey S. DuBois, Esq.
Supreme Court I.D. No. 62074
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

FILED

JUN 24 2003

William A. Shaw
Prothonotary

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

LINDA RADAKER,

Plaintiff

vs.

No. 2002-181, C.D.

MILESTONE PROPERTIES, INC.,

JJ GUMBERG COMPANY, a/k/a

GUMBERG ASSOCIATES-SANDY

PLAZA and POLLINO EXCAVATING,;

Defendants

MOTION FOR CONTINUANCE

AND NOW, comes the Plaintiff, LINDA RADAKER, by and through her attorneys, HANAK, GUIDO AND TALADAY, and presents the following Motion for Continuance:

1. The above captioned case has been scheduled by this Honorable Court for an argument on Friday, July 11, 2003, at 2:00 p.m.
2. The undersigned will be out of his office on said date and will consequently be unavailable, and therefore, not be able to attend said argument on behalf of the Plaintiff.
3. It is in the best interest of the Plaintiff to have counsel there on her behalf, and the undersigned would therefore request a continuance in this matter.

WHEREFORE, Plaintiff requests this Honorable Court to grant a continuance of the argument scheduled for July 11, 2003.

Respectfully submitted,



Jeffrey S. DuBois
Attorney for Plaintiff

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

LINDA RADAKER,
Plaintiff

vs.

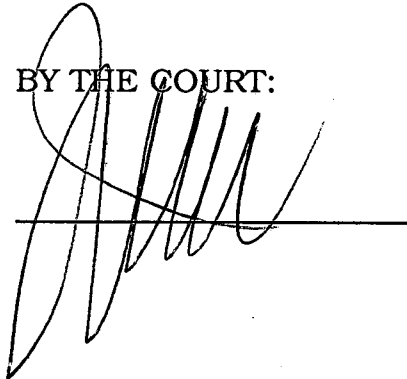
No. 2002-181, C.D.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY
PLAZA and POLLINO EXCAVATING,
Defendants

ORDER OF COURT

AND NOW, this 25th day of June, 2003, the Plaintiff's
Motion for Continuance is hereby granted. Argument in the above
captioned matter shall be continued until the 22 day of
July, 2003, at 9:30 o'clock A m.

BY THE COURT:



FILED

JUN 25 2003

William A. Shaw
Prothonotary

FILED

01:42 PM JCC & Kelly Ruland
JUN 25 2003 *RET*

William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

I do hereby certify that on the 24th day of June, 2003, I served a copy of the within Motion for Continuance, by first class mail, postage prepaid, to the following:

Joseph P. Green, Esq.
Leek, Martin, Green & Reiter, Inc.
115 East High Street
P. O. Box 179
Bellefonte, PA 16823

Bruce E. Rende, Esq.
Robb, Leonard & Mulvihill
2300 One Mellon Bank Center
Pittsburgh, PA 15219

Robert J. Behling, Esq.
Pietragallo, Boslick & Gordon
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219



Jeffrey S. DuBois

FILED

8 9:0754 rec 2003

JUN 24 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,

Plaintiff,

vs.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES, SANDY,
PLAZA and POLLINO EXCAVATING,

Defendant.

CIVIL ACTION - LAW

No. 2002-181-C.D.

**STIPULATION FOR VOLUNTARY
DISMISSAL OF MILESTONE
PROPERTIES, INC.**

Filed on behalf of Defendant: Milestone
PROPERTIES, INC.

Counsel of Record for this Party:

Bruce E. Rende, Esquire
PA I.D. #52714

ROBB LEONARD MULVIHILL
Firm #249
2300 One Mellon Center
Pittsburgh, PA 15219

(412) 281-5431

JURY TRIAL DEMANDED

FILED

JUN 27 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,

CIVIL ACTION - LAW

Plaintiff,

No. 2002-181-C.D.

VS:

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES, SANDY
PLAZA and POLLINO EXCAVATING,

Defendants.

STIPULATION FOR VOLUNTARY DISMISSAL OF
MILESTONE PROPERTIES, INC.

AND NOW, comes the Plaintiff, LINDA RADAKER, by and through her attorneys, HANAK, GUIDO & TALADAY and JEFFREY S. DuBOIS, ESQUIRE, and the Defendants, MILESTONE PROPERTIES, INC., by and through its attorneys, ROBB, LEONARD & MULVIHILL and BRUCE E. RENDE, ESQUIRE; J.J. GUMBERG COMPANY, a/k/a GUMBERG ASSOCIATES, by and through its attorneys, PIETRAGALLO, BOSICK & GORDON and ROBERT BEHLING, ESQUIRE; and POLLINO EXCAVATING, by and through its attorneys, LEE, MARTIN, GREEN & REITER, INC., and JOSEPH P. GREEN, ESQUIRE, who hereby agree and stipulate that Defendant, MILESTONE PROPERTIES, INC., may be and hereby is dismissed,

with prejudice, as a Defendant in the above-captioned lawsuit and that its name may be and is removed from the caption of this matter.

Respectfully submitted,

HANAK, GUIDO & TALADAY

By: 

Jeffrey S. DuBois, Esquire
Attorneys for Plaintiff

ROBB, LEONARD & MULVIHILL

By: 

Bruce E. Rende, Esquire
Attorneys for Defendant, Milestone
Properties, Inc.

PIETRAGALLO, BOSICK & GORDON

By: 

Robert Behling, Esquire
Attorneys for Defendant, JJ Gumberg
Company, a/k/a Gumberg Associates-Sandy
Plaza

LEE, MARTIN GREEN & REITER, INC.

By: 

Joseph P. Green, Esquire
Attorneys for Defendant, Pollino Excavating

JUN - 9 2003

FILED

M 11:07 AM
JUN 27 2003

William A. Shaw
Prothonotary

NO
cc.

copy to C/A

CA

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

LINDA RADAKER

-vs-

No. 02 - 181 - CD

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES, SANDY
PLAZA and POLLINO EXCAVATING

ORDER

NOW, this 1st day of July, 2003, in accordance with the stipulation filed on June 27, 2003, it is the ORDER of this Court that Defendant Milestone Properties, Inc. shall be and is hereby dismissed with prejudice as a party Defendant.

By the Court,



President Judge

FILED

JUL 01 2003

William A. Shaw
Prothonotary

FILED

1cc Atty DuBois

01/23:32 201

1cc Atty Behling

JUL 01 2003

1cc Atty Green

William A. Shaw
Prothonotary

WAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,

Plaintiff

v.

MILESTONE PROPERTIES, INC., JJ
GUMBERG COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA and POLLINO
EXCAVATING,

Defendants

CIVIL ACTION – LAW

No. 2002-181-CD

MOTION FOR CONTINUANCE

Filed on behalf of DEFENDANTS, JJ
GUMBERG COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA

Counsel of Record for this Party:

ROBERT J. BEHLING, ESQUIRE
Pa. I.D. #30659

PIETRAGALLO, BOSICK & GORDON
Firm #834
One Oxford Centre
301 Grant Street, 38th Floor
Pittsburgh, PA 15219

(412) 263-2000

JURY TRIAL DEMANDED

FILED

JUL 10 2003

William A. Shaw
Prethenotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,

Plaintiff

v.

MILESTONE PROPERTIES, INC., JJ
GUMBERG COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA and POLLINO
EXCAVATING,

Defendants

) CIVIL ACTION – LAW

) No. 2002-181-CD

MOTION FOR CONTINUANCE

AND NOW come the Defendant, JJ Gumberg Co. a/k/a Gumberg Associates—Sandy Plaza, by and through its attorneys, Pietragallo, Bosick & Gordon, and files the following Motion for Continuance and avers as follows:

1. The above-captioned case has been scheduled by this Honorable Court for argument on July 22, 2003, at 9:30 a.m.
2. Due to a conflict in his schedule, counsel is unable to attend this argument on behalf of the defendant.
3. Defendant has contacted all counsel, and said counsel consents to this continuance.

WHEREFORE, Defendant, JJ Gumberg Co., a/k/a Gumberg Associates—Sandy Plaza, respectfully requests this Honorable Court grant a continuance of the argument scheduled for July 22, 2003.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

BY

Robert J. Behling, Esquire
Bobbi Jo Wagner, Esquire
Attorneys for Defendants J J GUMBERG
COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,

Plaintiff

v.

MILESTONE PROPERTIES, INC., JJ
GUMBERG COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA and
POLLINO EXCAVATING,

Defendants

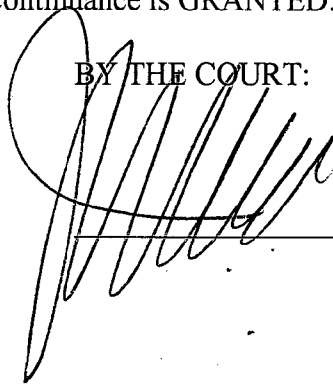
) CIVIL ACTION - LAW

) No. 2002-181-CD

ORDER OF COURT

AND NOW, this 14th day of July, 2003, upon consideration of the
foregoing Motion for Continuance, it is hereby ORDERED, ADJUDGED and DECREED that
Defendant J J Gumberg's Motion for Continuance is GRANTED.

BY THE COURT:

_____, J.

FILED

JUL 14 2003

William A. Shaw
Prothonotary

ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA

VS.

JOHN DOE

IN RE: [illegible]

FILED

CLERK OF COURT

U.S. DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

William A. Shaw
Prothonotary

JUL 14 2003

FILED

03:55:41

2003

Handwritten: J. Behling

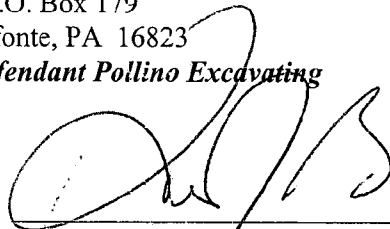
CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within MOTION FOR CONTINUANCE was forwarded by U.S. First-Class Mail, this 8th day of July, 2003, upon the following individuals:

Jeffrey S. DuBois, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorneys for Plaintiff

Bruce E. Rende, Esquire
Robb, Leonard & Mulvihill
2300 One Mellon Bank Center
Pittsburgh, PA 15219
Attorneys for Defendant Milestone Properties, Inc.

Jonathan D. Grine, Esquire
Lee, Martin, Green & Reizer, Inc.
115 East High Street
P.O. Box 179
Bellefonte, PA 16823
Attorneys for Defendant Pollino Excavating



Robert J. Behling, Esquire
Bobbi Jo Wagner, Esquire

**PIETRAGALLO BOSICK & GORDON
ATTORNEYS AT LAW**

THE THIRTY-EIGHTH FLOOR
ONE OXFORD CENTRE
PITTSBURGH, PENNSYLVANIA 15219

TELEPHONE NO.: 412-263-2000
FACSIMILE NO.: 412-261-5295

Bobbi Jo Wagner
CGU 51066

Direct Dial No.: (412) 263-1827
E-mail: BJW@PBandG.com

July 8, 2003

VIA FACSIMILE 1-814-765-7659

Prothonotary's Office
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830

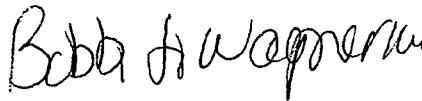
**RE: Linda Radaker v. Milestone Properties, Inc., et al.
No. 2002-181-CD**

Dear Sir/Madam:

Enclosed for filing is the original of Defendants Gumberg's Motion for Continuance of argument scheduled for July 22, 2003. Please be advised that all parties have been contacted and consent to said Motion. Please forward the signed Order along with the enclosed extra cover sheet, which I ask you stamp with the time and date of filing in the envelope provided for your convenience.

Thank you for your cooperation in this matter.

Very truly yours,



Robert J. Behling
Bobbi Jo Wagner

BJW/kaw
Enclosures

cc w/enc.: Jeffrey S. DuBois, Esquire (via facsimile 1-814-371-1974)
Bruce E. Rende, Esquire (via facsimile 412-281-3711)
Jonathan D. Grine, Esquire (via facsimile 1-814-355-5024)

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

LINDA RADAKER

-vs-

No. 02 – 181 – CD

MILESTONE PROPERTIES, INC. J.J.
GUMBERG COMPANY, a/k/a GUMBERG:
ASSOCIATES-SANDY PLAZA AND
POLLINO EXCAVATING

OPINION AND ORDER

The above-captioned slip and fall case involves allegations of negligence against the Defendants for allowing ice to accumulate in their parking lot, causing the Plaintiff to slip and fall and suffer personal injuries. Following Motions for Summary Judgment filed on behalf of the Defendants, and argument and briefs thereon, this Court issued an Opinion and Order dated May 30, 2003, dismissing said Motions.

Defendants have now moved for reconsideration of said Opinion and Order alleging that this Court relied on inadmissible evidence submitted by the Plaintiff in reaching its conclusion therein.

The evidence referred to is a transcript of a telephone conversation between Plaintiff and an insurance adjuster which contains Plaintiff's only reference to ice in the subject parking lot. As this Court indicated in its initial Opinion, absent this telephone conversation transcript, the Court would be constrained to grant the Motions for Summary Judgment. In the Motion for Reconsideration, Defendants argue that as an unsworn document, the transcript does not comply with Pennsylvania Rule of Civil Procedure 1035 and further in their brief argue that since the transcript would not be admissible at trial, it cannot be considered by this Court in determining a Motion for Summary Judgment.

FILED

NOV 05 2003

William A. Shaw
Prothonotary

This Court agrees with Defendants as the transcript is clearly not admissible at trial in the matter. The Court is satisfied that the Superior Court opinion in Liles v. Balmer, 389 Pa. Super. 451, 567 A.2d 691 (Pa. Super., Dec 11, 1989) controls. In Liles, the Superior Court held:

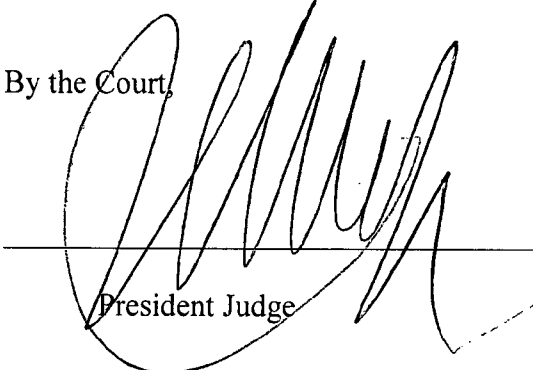
To avoid summary judgment the non-moving party must set forth specific facts by way of affidavit, or as otherwise provided in [Rule 1035], demonstrating that a genuine factual issue exists. (Citations omitted) The inquiry in deciding a motion for summary judgment "is whether the admissible evidence in the record, in whatever form, from whatever source, considered in the light most favorable to the respondent to the motion, fails to establish a prima facie case or defense." (Emphasis added)

Therefore, since the transcript of the telephone conversation would be inadmissible at trial, it was improperly considered by this Court in denying Defendants' Motions for Summary Judgment and therefore, the Court enters the following:

ORDER

NOW, this 5th day of November, 2003, upon consideration of Motion for Reconsideration filed on behalf of Defendants above-named, the Court being satisfied that the Motion is well taken, it is the ORDER of this Court that Opinion and Order dated May 30, 2003 shall be and is hereby rescinded and Summary Judgment entered in favor of Defendants above-named.

By the Court,



President Judge

FILED

3:45 PM
NOV 05 2003
1cc atty. Dublin
1cc atty. Brown
2cc atty. Balling
1cc atty. McIsaac

William A. Shaw
Prothonotary

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

LINDA RADAKER,

Plaintiff

Vs.

MILESTONE PROPERTIES, INC.,

JJ GUMBERG COMPANY, a/k/a

GUMBERG ASSOCIATES-

SANDY PLAZA and POLLINO

EXCAVATING,

Defendants

No. 2002-181-CD

Type of Pleading:

MOTION FOR RECONSIDERATION

Filed on Behalf of:

PLAINTIFF

Counsel of Record for this Party:

Jeffrey S. DuBois

Supreme Court No. 62074

190 West Park Avenue, Suite #5

DuBois, PA 15801

(814) 375-5598

FILED

NOV 17 2003

William A. Shaw
Prothonotary/Clerk of Courts


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

LINDA RADAKER, : No. 2002-181-CD
Plaintiff :
Vs. :
MILESTONE PROPERTIES, INC., :
JJ GUMBERG COMPANY, a/k/a :
GUMBERG ASSOCIATES- :
SANDY PLAZA and POLLINO :
EXCAVATING, :
Defendants :

ORDER

AND NOW, this 25th day of November, 2003, in consideration of the
Plaintiff's Motion for Reconsideration, a Hearing has been scheduled for
Dec. 30, 2003, at 9:30 o'clock 11 .M., in Courtroom 1 of the
Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:


Judge

FILED

NOV 25 2003

William A. Chew
Prothonotary

FILED

3:04 PM

NOV 25 2003

[Signature]

300 & 11th St. Auburn

William A. Shaw
Prothonotary

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

LINDA RADAKER,	:	No. 2002-181-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a	:	
GUMBERG ASSOCIATES-	:	
SANDY PLAZA and POLLINO	:	
EXCAVATING,	:	
Defendants	:	

MOTION FOR RECONSIDERATION

AND NOW, comes the Plaintiff, Linda Radaker, by and through her attorney, Jeffrey S. DuBois, Esquire, who files this Request for Reconsideration to the Courts granting of Defendants' Motion for Summary Judgment.

1. Pursuant to an Order of Court filed November 5, 2003, this Honorable Court granted Defendants' Motion for Summary Judgment.

2. In the Courts opinion, it states that it did rely upon the telephone transcript in first denying Defendants' Motion for Summary Judgment.

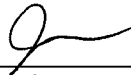
3. It cannot be disputed that said telephone transcript was part of the Discovery materials which were exchanged between the parties.

4. As is clearly set forth in Pa.R.C.P. 1035.1, for purposes of determining a Motion for Summary Judgment, the Court must consider all Discovery materials.

5. Because of the fact that Discovery materials in this case included said transcript, the Court must consider this and then consequently, in light of that, deny Defendants' Motion for Summary Judgment.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to reconsider its granting of Defendants' Motion for Summary Judgment, and issue a new Opinion dismissing Defendants' Motion for Summary Judgment.

Respectfully submitted,



Jeffrey S. DuBois
Attorney for Plaintiff

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

LINDA RADAKER, : No. 2002-181-CD
Plaintiff :
Vs. :
MILESTONE PROPERTIES, INC., :
JJ GUMBERG COMPANY, a/k/a :
GUMBERG ASSOCIATES- :
SANDY PLAZA and POLLINO :
EXCAVATING, :
Defendants :

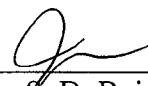
CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of November, 2003, I served a true and correct copy of the within Motion for Reconsideration by first class mail, postage prepaid, on the following:

Joseph P. Green, Esquire
Lee, Martin, Green & Reiter, Inc.
115 East High Street
P.O. Box 179
Bellefonte, PA 16823-0179

Bruce E. Rende, Esquire
Robb, Leonard & Mulvihill
2300 One Mellon Bank Center
Pittsburgh, PA 15219

Robert J. Behling, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eighth Floor
One Oxford Center
Pittsburgh, PA 15219



Jeffrey S. DuBois

Prothonotary/Clerk of Courts

William A. Shaw

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

LINDA RADAKER,

Plaintiff

vs.

MILESTONE PROPERTIES, INC.,
JJ GUMBERG COMPANY, a/k/a
GUMBERG ASSOCIATES-SANDY PLAZA
and POLLINO EXCAVATING,

Defendants

)
: No. 2002-181-CD
)
: Type of Pleading:
) **ANSWER TO MOTION FOR**
: **RECONSIDERATION**
)
: Filed on Behalf of:
) **Defendant Pollino Excavating**

Counsel of Record for this Party:

Joseph P. Green, Esq.
ID No. 19238
Lee, Martin, Green & Reiter, Inc.
115 East High Street
PO Box 179
Bellefonte, PA 16823
814-355-4769

JURY TRIAL DEMANDED

FILED

DEC 10 2003

William A. Shaw
Prothonotary

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

LINDA RADAKER,)	
Plaintiff ~	:	No. 2002-181-CD
)	
vs.	:	JURY TRIAL DEMANDED
)	
MILESTONE PROPERTIES, INC.,	:	
JJ GUMBERG COMPANY, a/k/a)	
GUMBERG ASSOCIATES-SANDY PLAZA	:	
and POLLINO EXCAVATING,)	
Defendants	:	

ANSWER TO MOTION FOR RECONSIDERATION
FILED ON BEHALF OF POLLINO EXCAVATING

Defendant Pollino Excavating hereby responds to Plaintiff's Motion for Reconsideration as follows:

1. Admitted.
- 2, 3 & 4. Denied as stated. The plaintiff's rationale as set forth in paragraphs 2 through 4 of her Motion for Reconsideration is faulty. As argued by Defendant Pollino Excavating, the court did properly grant summary judgment in this matter. In determining whether or not to grant such a motion, the Court is to consider only certain types of evidence which would be admissible at trial. In addition, the decisional law cited by Defendant Pollino Excavating clearly supports the grant of the summary judgment motion.
5. Denied. The assertions set forth by the plaintiff in paragraph 5 of her Motion for Reconsideration simply do not represent an accurate statement as to applicable law. It was not appropriate for the Court to consider the transcribed recorded statement of the plaintiff. The decisional law cited by Defendant Pollino Excavating is dispositive relative to this point. The trial court properly granted summary judgment in favor of defendants.

WHEREFORE, it is respectfully requested that Plaintiff's Motion for Reconsideration be denied.

NEW MATTER

6. At this point in time, the Order which granted summary judgment in favor of defendants is final and not subject to further review by the Trial Court inasmuch as no appeal has been filed to the appropriate appellate court within the 30 day time limit as provided by law.

7. A motion for reconsideration does not toll the 30 day appeal period unless the trial court expressly grants reconsideration within 30 days of a final order. See, Cheatham vs. Temple University Hospital, 743 A.2d 518 (Pa. Super. 1999). In addition, the scheduling of a hearing or even the issuance of a rule to show cause does not constitute an express grant of reconsideration. Witherspoon vs. Wal-Mart Stores, Inc., 814 A.2d 1222 (Pa. Super. 2002).

8. The Order of the Court of Common Pleas of Clearfield County dated November 5, 2003 constitutes a final Order as to which an appeal has not been taken to the appropriate appellate court. The plaintiff has, therefore, no legitimate basis upon which to seek reconsideration or any form of further review.

9. Plaintiff's motion raises nothing new nor does it add anything to the relevant discussion. Counsel for plaintiff is essentially repeating what was previously argued and rejected.

WHEREFORE, it is respectfully requested that Plaintiff's Motion for Reconsideration be denied.

LEE, MARTIN, GREEN & REITER, INC.

By:



Joseph P. Green, Esq., ID #19238
Attorney for Defendant Pollino Excavating
115 East High Street
PO Box 179
Bellefonte, PA 16823
814-355-4769

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

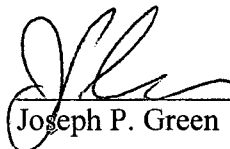
LINDA RADAKER,)
Plaintiff : No. 2002-181-CD
vs. : JURY TRIAL DEMANDED
MILESTONE PROPERTIES, INC., :
JJ GUMBERG COMPANY, a/k/a :
GUMBERG ASSOCIATES-SANDY PLAZA :
and POLLINO EXCAVATING, :
Defendants :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer to Motion for Reconsideration Filed by Defendant Pollino Excavating was deposited in the United States mail, postage prepaid, in Bellefonte, Pennsylvania, on the 9 day of Dec., 2003 addressed to the following:

Jeffrey S. DuBois, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

Robert Behling, Esq.
One Oxford Center, 38th Floor
301 Grant Street
Pittsburgh, PA 15219



Joseph P. Green

FILED

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(25)

DEC 10 2003

William A. Shaw
Prothonotary

(P) 12-30-04
938

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,

Plaintiff

v.

MILESTONE PROPERTIES, INC., JJ
GUMBERG COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA and POLLINO
EXCAVATING,

Defendants

CIVIL ACTION – LAW

No. 2002-181-CD

ANSWER TO MOTION FOR
RECONSIDERATION

Filed on behalf of DEFENDANTS, JJ
GUMBERG COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA

Counsel of Record for this Party:

ROBERT J. BEHLING, ESQUIRE
Pa. I.D. #30659

PIETRAGALLO, BOSICK & GORDON
Firm #834
One Oxford Centre
301 Grant Street, 38th Floor
Pittsburgh, PA 15219

(412) 263-2000

JURY TRIAL DEMANDED

FILED

DEC 19 2003

William A. Shaw
Prothonotary/Clerk of Courts

Defendants

Attorneys for Defendants J J GUMBERG
COMPANY, a/k/a GUMBERG
ASSOCIATES-SANDY PLAZA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA RADAKER,	)	CIVIL ACTION – LAW
)	
Plaintiff	)	No. 2002-181-CD
)	
v.)	
)	
MILESTONE PROPERTIES, INC., JJ)	
GUMBERG COMPANY, a/k/a GUMBERG)	
ASSOCIATES-SANDY PLAZA and)	
POLLINO EXCAVATING,)	
)	
Defendants)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2003, upon consideration of the foregoing Motion for Continuance, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff's Motion for Reconsideration is DENIED.

BY THE COURT:

_____, J.

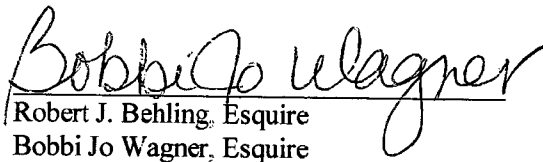
CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within ANSWER TO MOTION FOR RECONSIDERATION was forwarded by U.S. First-Class Mail, this 16th day of December, 2003, upon the following individuals:

Jeffrey S. DuBois, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorneys for Plaintiff

Bruce E. Rende, Esquire
Robb, Leonard & Mulvihill
2300 One Mellon Bank Center
Pittsburgh, PA 15219
Attorneys for Defendant Milestone Properties, Inc.

Jonathan D. Grine, Esquire
Lee, Martin, Green & Reiter, Inc.
115 East High Street
P.O. Box 179
Bellefonte, PA 16823
Attorneys for Defendant Pollino Excavating


Robert J. Behling, Esquire
Bobbi Jo Wagner, Esquire

CP

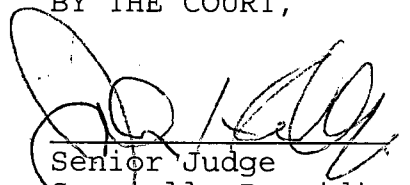
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

LINDA RADAKER :
VS. : NO. 02-181-CD
MILESTONE PROPERTIES, INC. J.J. :
GUMBERG COMPANY, a/k/a GUMBERG :
ASSOCIATES-SANDY PLAZA AND :
POLLINO EXCAVATING :

O R D E R

NOW, this 12th day of January, 2004, upon
consideration of Motion for Consideration filed on behalf of
Plaintiff above-named, it is the ORDER of this Court that said
Motion be and is hereby dismissed and the Opinion and Order of
this Court filed November 5, 2003, shall be and is hereby
affirmed.

BY THE COURT,


Senior Judge
Specially Presiding

FILED

JAN 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED
02:07:48
JAN 12 2004
cc Atty's Dubois, Bebling, Green
William A. Shaw
Prothonotary/Clerk of Courts