

02-940-CD

C. Rosenberger vs Fezell's Shop & Save

02

02-940-CD
CAROLINE ROSENBERGER -vs- FEZZELL'S SHOP AND SAVE

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,

Plaintiff,

v.

FEZEIL'S SHOP & SAVE,

Defendant.

No. _____ of 2002, C.A.

PRAECIPE FOR WRIT OF SUMMONS

FILED

JUN 13 2002

Q1938/Attly Natale
William A. Shaw *pr \$80.00*
Prothonotary

Frank A. Natale, II, Esquire
Law Office of Frank A. Natale, II
2616 Wilmington Road
Suite F

New Castle, PA 16105
(724) 658-5822

(724) 658-1819 - fax
PA I.D. No. 71804

1cc & writ to Shaw
3cc & writ to ally.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,

: CIVIL ACTION

:
: 02-940-CD

PLAINTIFF,

: NO. _____ OF 2002, C.A.

V.

:

:

FEZELL'S SHOP & SAVE,

: TYPE OF PLEADING:

: Praecipe for Writ of Summons

DEFENDANT.

:

: FILED ON BEHALF OF:

: Plaintiff, Caroline Rosenberger

:

: COUNSEL OF RECORD:

: Frank A. Natale, II, Esquire

: 2616 Wilmington Road

: Suite F

: New Castle, PA 16105

: (724) 658-5822

: PA I.D. # 71804

:

FILED

JUN 13 2002

William A. Shaw
Prothonotary

SHERIFF, CLEARFIELD COUNTY

_____, 2002

Sir: There will be placed in your hands for service a WRIT OF SUMMONS
captioned as follows:

CAROLINE ROSENBERGER,
(Plaintiff)

VS.

FEZELL'S SHOP & SAVE
(Defendant)

The Defendant will be found at: FEZELL'S SHOP & SAVE, 1000 South Brady,
DuBois, Pennsylvania 15801.

Please serve any authorized agent to accept service of the within WRIT OF SUMMONS.



Frank A. Natale, II, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER

CIVIL DIVISION

Plaintiff,

No.: 2002-00940-CD

vs.

FEZELL'S SHOP & SAVE

TYPE OF PLEADING:

Defendant.

PRAECIPE FOR APPEARANCE

Filed on behalf of:

DEFENDANT

Counsel of record for this party:

Stephen M. Elek, Esquire
Pa. I.D. #47205

LAW OFFICES MICHAEL P. SOSSO

DDI Plaza One, Suite 300
1225 Washington Pike
Bridgeville, PA 15017
(412) 914-1058

JURY TRIAL DEMANDED

Praecipe for Appearance.doc

FILED

JUL 11 2002

m/1:28/nock
William A. Shaw
Prothonotary

Copy CA
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

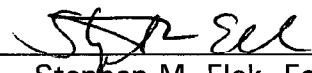
CAROLINE ROSENBERGER)	CIVIL DIVISION
)	
Plaintiff,	)	No.: 2002-00940-CD
)	
vs.)	
)	
FEZELL'S SHOP & SAVE,)	
)	
Defendant.)	

PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY OF CLEARFIELD COUNTY:

Kindly enter my appearance on behalf of the Defendant, Fezell's Shop &
Save, with respect to the above captioned case.

LAW OFFICES MICHAEL P. SOSSO

By 
Stephen M. Elek, Esquire
Attorney for Defendant,
Fezell's Shop & Save

JURY TRIAL DEMANDED

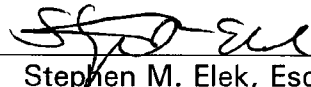
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **PRAECIPE FOR APPEARANCE** has been sent to the following by first class U.S. mail, postage prepaid, this 9th day of July, 2002.

Frank A. Natale, Esquire
P.O. Box 5137
New Castle, PA 16105
(Counsel for Plaintiff)

LAW OFFICES MICHAEL P. SOSSO

By


Stephen M. Elek, Esquire
Attorney for Defendant,
Fezell's Shop & Save

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER

CIVIL DIVISION

Plaintiff,

No.: 2002-00940-CD

vs.

FEZELL'S SHOP & SAVE

TYPE OF PLEADING:

Defendant.

**PRAECIPE FOR RULE
TO FILE A COMPLAINT**

Filed on behalf of:
DEFENDANT

Counsel of record for this party:

Stephen M. Elek, Esquire
Pa I.D. #47205

LAW OFFICES MICHAEL P. SOSSO
DDI Plaza One, Suite 300
1225 Washington Pike
Bridgeville, PA 15017
412/914-1058

JURY TRIAL IS DEMANDED

Rule to File.doc

FILED

JUL 11 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

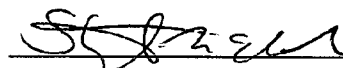
CAROLINE ROSENBERGER	)	CIVIL DIVISION
)	
Plaintiff,	)	No.: 2002-00940-CD
)	
vs.)	
)	
FEZELL'S SHOP & SAVE,)	
)	
Defendant.)	

PRAECIPE FOR RULE TO FILE A COMPLAINT

TO: Prothonotary

Please issue a rule upon plaintiff, Caroline Rosenberger, to file a complaint in the above action.

LAW OFFICES MICHAEL P. SOSSO



Stephen M. Elek
Attorney for Defendant
Fezell's Shop & Save

Date: July 9, 2002

FILED

JUL 11 2002

07/3341 ath, elec (Rule to Ath)
William A. Shaw
Prothonotary ~~WAS~~

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

Caroline Rosenberger

Vs.
Fezell's Shop & Save

Case No. 2002-00940-CD

RULE TO FILE COMPLAINT

TO: Caroline Rosenberger

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: July 11, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER

CIVIL DIVISION

Plaintiff,

No.: 2002-00940-CD

vs.

FEZELL'S SHOP & SAVE

TYPE OF PLEADING:

Defendant.

**PROOF OF SERVICE OF RULE
TO FILE A COMPLAINT**

Filed on behalf of:
DEFENDANT

Counsel of record for this party:

Stephen M. Elek, Esquire
Pa. I.D. #47205

LAW OFFICES MICHAEL P. SOSSO
DDI Plaza One, Suite 300
1225 Washington Pike
Bridgeville, PA 15017
(412) 914-1058

JURY TRIAL DEMANDED

Proof of Service.doc

FILED

JUL 29 2002
m.b.001nocc
William A. Shaw
Prothonotary
K21

CAROLINE ROSENBERGER) CIVIL DIVISION
)
 Plaintiff,) No.: 2002-00940-CD
)
 vs.)
)
 FEZELL'S SHOP & SAVE,)
)
 Defendant.)

We hereby notify/certify that a true and correct copy of the Rule to File a Complaint was served on Plaintiff's Counsel by Certified Mail Return Receipt Requested on July 19, 2002. A copy of proof of service is attached hereto.

LAW OFFICES MICHAEL P. SOSSO

By Stephen M. Elek
Stephen M. Elek, Esquire
Attorney for Defendant,
Fezell's Shop 'N Save

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

Caroline Rosenberger

Vs.
Fezell's Shop & Save

Case No. 2002-00940-CD

RULE TO FILE COMPLAINT

TO: Caroline Rosenberger

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.



William A. Shaw, Prothonotary

Dated: July 11, 2002

7000 0600 0029 3880 0526

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

Postage	\$ 37
Certified Fee	230
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.42

Postmark Here
 PITTSBURGH PA 15243 CEDARHURST BRANCH
 JUL 18 2002
 USPS

Recipient's Name (Please Print Clearly) (to be completed by mailer)
 Frank A. Natale, Esquire
 Street, Apt. No., or P.O. Box No.
 2616 Wilmington Road
 City, State, ZIP+4
 New Castle PA 16105

PS Form 3800, February 2000 See Reverse for Instructions

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:

Frank A. Natale, Esquire
 2616 Wilmington Road
 New Castle, PA 16105

2. Article Number (Copy from service label)

7000 0600 0029 3880 0526

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

7-19

C. Signature

X *Frank A. Natale*

☐ 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

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket #

12634

ROSENBERGER, CAROLINE

02-940-CD

VS.

FEZELL'S SHOP & SAVE

SUMMONS

SHERIFF RETURNS

NOW JUNE 19, 2002 AT 9:15 AM DST SERVED THE WITHIN SUMMONS ON
FEZELL'S SHOP & SAVE, DEFENDANT AT EMPLOYMENT, PO BOX 506, 200 COMMONS
DRIVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JANET
LUTHER, OFFICE MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS
AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVE BY: MCCLEARY

Return Costs

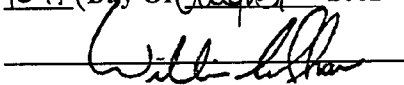
Cost Description

30.69 SHFF. HAWKINS PAID BY: ATTY.

10.00 SURCHARGE PAID BY; ATTY.


Sworn to Before Me This

12th Day Of August 2002



WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,


Chester A. Hawkins
Sheriff

FILED

AUG 12 2002

014'00

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,

Plaintiff,

v.

FEZELL'S SHOP & SAVE,

Defendant.

NO. 2002-00940-CD

COMPLAINT

FILED

AUG 19 2002

10/2/03/3cc atty.

William A. Shaw
Proprietary

Law Office of Frank A. Natale, II
Frank A. Natale, II, Esquire
2616 Wilmington Road
Suite F
New Castle, PA 16105
(724) 658-5822

Natale
EKS

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

CAROLINE ROSENBERGER,	:	CIVIL ACTION
	:	
PLAINTIFF,	:	NO. 2002-00940-CD
V.	:	
	:	
FEZELL'S SHOP & SAVE,	:	
	:	
DEFENDANT.	:	

NOTICE TO DEFEND AND CLAIM RIGHTS

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

Janice Mays

Dave Miholich, Court Administrator
Clearfield County Courthouse
Second & Market Street
Clearfield, PA 16830
Telephone: (814) 765-2641 EXT. 5982

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Lawrence County, Pennsylvania is required by law to comply with American with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

FILED

AUG 1 9 2002

William A. Shaw
Prothonotary

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

CAROLINE ROSENBERGER,	: CIVIL ACTION
	:
V.	: NO. 2002-00940-CD
	:
FEZELL'S SHOP & SAVE,	:
	:
DEFENDANT.	:

COMPLAINT

AND NOW, comes the Plaintiff, Caroline Rosenberger, by and through her attorney, Frank A. Natale, II, Esquire and states the following:

1. Plaintiff, Caroline Rosenberger is an adult individual residing at 1117 Grant Street, Reynoldsville, Clearfield County, Pennsylvania 15851.
2. Defendant is Fezells' Shop & Save, operating as a business at 1000 S. Brady Street, DuBois, Pennsylvania, 15801.
3. On July 17, 2000 Plaintiff was a customer at Defendant's place of business, when she slipped and fell in a aisle of the store.
4. Plaintiff was caused to fall by an area of moisture or an accumulation of liquid on the floor of the store.
5. Fezell's Shop & Save's negligent action or negligent failure to act, caused and/or contributed to the fall which Plaintiff suffered injured on July 17, 2000.
5. Defendant was negligent in the following ways:
 - (a) Failure to warn Plaintiff of the dangerous condition that existed due to a wet floor;

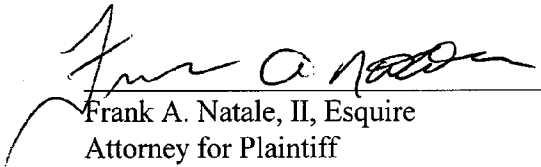
- (b) Failure to implement safety measures to avoid injury to its customers;
- (c) Failure to install proper lighting for the customer shopping areas;
- (d) Failure to maintain a safe environment for its customers, including Plaintiff;
- (e) Failure to remove the dangerous condition (the accumulation of liquid);
- (f) In creating a dangerous condition by allowing liquid to accumulate on its shopping areas floors;
- (g) Failure to take necessary and reasonable precautions to prevent the injury of its patrons;
- (h) Failure to implement and follow a regular maintenance schedule; and
- (i) Failure to implement and follow a regular inspection schedule.

6. As a direct and proximate result of the Defendant's negligent acts or omission of action the Plaintiff suffered the following:

- (a) injury to her right knee and leg;
- (b) chronic pain of the right knee;
- (c) inability to perform the daily activities that she was accustomed to;
- (d) inability to enjoy extracurricular activities that she engaged in prior to this incident; and
- (e) inability to enjoy activities with the minor granddaughter that she cares for daily.

7. As a direct and proximate cause of Defendant's negligence Plaintiff has incurred medical expenses in order to treat her medical conditions as merited above.

WHEREFORE, Plaintiff claims damages in excess of \$ 25,000.00 and a jury trial is demanded.



Frank A. Natale, II, Esquire
Attorney for Plaintiff

VERIFICATION

I, CAROLINE ROSENBERGER, verify that the facts set forth in the foregoing COMPLAINT are true and correct. I understand that false statements herein are made are subject to the penalties of Pa. C. S. § 4904 relating to unsworn falsification to authorities.

Date: August 9, 2002

Caroline Rosenberger
Caroline Rosenberger

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER

Plaintiff,

vs.

FEZELL'S SHOP & SAVE

Defendant.

CIVIL DIVISION

No.: 2002-00940-CD

TYPE OF PLEADING:

ANSWER AND NEW MATTER

Filed on behalf of:

DEFENDANT

Counsel of record for this party:

Stephen M. Elek, Esquire
Pa. I.D. #47205

LAW OFFICES MICHAEL P. SOSSO
DDI Plaza One, Suite 300
1225 Washington Pike
Bridgeville, PA 15017
(412) 914-1058

JURY TRIAL DEMANDED

Answer and New Matter.doc

FILED

AUG 29 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER

Plaintiff,

VS.

FEZELL'S SHOP & SAVE,

Defendant.

CIVIL DIVISION

No.: 2002-00940-CD

NOTICE TO PLEAD

TO: ALL COUNSEL/PARTIES:

You are hereby notified to file a written response to the enclosed Answer and New Matter and New Matter Under Rule 2252(d) to Plaintiff's Amended Complaint within twenty (20) days from service hereof or a judgment may be entered against you.

JURY TRIAL DEMANDED

LAW OFFICES MICHAEL P. SOSSO

By

Stephen M. Elek, Esquire
Attorney for Defendant,
Fezell's Shop 'N Save

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER	)	CIVIL DIVISION
)	
Plaintiff,	)	No.: 2002-00940-CD
)	
vs.)	
)	
FEZELL'S SHOP & SAVE,)	
)	
Defendant.)	

ANSWER AND NEW MATTER

AND NOW, comes the Defendant, Fezell's Shop 'N SaVe, by and through it's counsel, Law Offices Michael P. Sosso and Stephen M. Elek, Esquire, and files the following Answer and New Matter to Plaintiff's Complaint in support whereof it is averred as follows:

1. After reasonable investigation, this Defendant is presently without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in Paragraph 1 of Plaintiff's Complaint. The same are therefore denied and strict proof thereof is demanded at time of trial.

2. Paragraph 2 of Plaintiff's Complaint is denied as stated. It is specifically denied that Defendant, Fezell's Shop 'N Save is currently operating a business at 1000 S. Brady Street, Dubois, PA 15801. To the contrary, the Defendant Store has been closed and is no longer in operation.

2. Paragraph 3 of Plaintiff's Complaint is admitted in part and denied in

part. It is admitted that on July 17, 2000, Defendant operated a place of business known as Fezell's Shop 'N Save. By way of further response to the allegations in Paragraph 3 of Plaintiff's Complaint, after reasonable investigation, the Defendant is presently without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in Paragraph 3 of Plaintiff's Complaint. The same are therefore denied and strict proof thereof is demanded at time of trial.

4. Paragraph 4 of Plaintiff's Complaint is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

5. First Paragraph 5 of Plaintiff's Complaint is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

5. Second Paragraph 5 of Plaintiff's Complaint including all of it's subparagraphs, is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

6. Paragraph 6 of Plaintiff's Complaint, including all of it's subparagraphs, is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

7. Paragraph 7 of Plaintiff's Complaint is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

WHEREFORE, Defendant, Fezell's Shop 'N Save, denies that it is indebted to the Plaintiff in the sums demanded or in any sum whatsoever.

NEW MATTER

By way of further defense, Defendant, Fezell's Shop 'N Save, avers:

8. If Plaintiff suffered injuries and damages as alleged the same are as a result of her own negligence. Generally and in the following particulars:

- a. In failing to watch where she was walking;
- b. in failing to avoid the alleged hazardous condition when in the exercise of reasonable care she saw or should have seen the alleged hazardous situation;
- c. in wearing improper footwear for the conditions which she would be encountering;
- d. in not being in a condition to appropriately navigate the terrain which she would encounter; and
- e. in walking in an area where a reasonable person would have known not to walk.

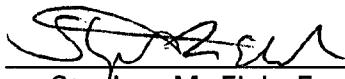
9. Plaintiff's claim is barred in whole or in part by application of the applicable statute of limitations.

10. Plaintiff's injuries may have been caused in whole or in part by Plaintiff's failure to mitigate her damages.

WHEREFORE, Defendant, Fezell's Shop 'N Save, denies that it is indebted to the Plaintiff in the sums demanded or in any sum whatsoever.

Respectfully submitted,

LAW OFFICES MICHAEL P. SOSSO

By 
Stephen M. Elek, Esquire
Attorney for Defendant,
Fezell's Shop 'n Save

VERIFICATION

I hereby certify that the foregoing averments of fact in the foregoing ANSWER and NEW MATTER are true and correct and based upon my personal knowledge, information or belief. I understand that these averments of fact are made subject to the penalties of 18 Purdons Consolidated Statutes §4904, relating to unsworn falsification to authorities.

Date: 08/26/2002

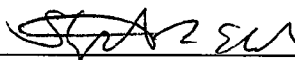
By: Gail Grube
Gail Grube

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **DEFENDANT'S ANSWER**
AND NEW MATTER has been sent to the following by first class U.S. mail, postage
prepaid, this 27th day of August, 2002.

Frank A. Natale, Esquire
P.O. Box 5137
New Castle, PA 16105
(Counsel for Plaintiff)

LAW OFFICES MICHAEL P. SOSSO

By 
Stephen M. Elek, Esquire
Attorney for Defendant,
Fezell's Shop & Save

FILED

MJ: 01-80
AUG 29 2002

William A. Shaw
Prothonotary

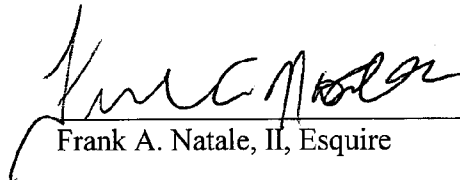
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IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,	: CIVIL ACTION
	:
PLAINTIFF,	: NO. 2002-00940-CD
V.	:
	:
FEZELL'S SHOP & SAVE,	:
	:
DEFENDANT.	:

CERTIFICATE OF SERVICE

AND NOW, this 26th day of August, 2002, I, FRANK A. NATALE, II, hereby
certify that on 26th day of August, 2002, I sent by first class mail, postage prepaid, a
certified copy of Plaintiff's Complaint, in the above captioned case to Stephen Elek,
Esquire at Law Offices of Michael Sosso, DDI Piazza One, 1225 Washington Pike, Suite
300, Bridgville, Pennsylvania 15017.


Frank A. Natale, II, Esquire

FILED

AUG 29 2002

William A. Shaw
Prothonotary

FILED

11cc

M/12:56:01
Aug 29 2002

Atty Natalie

William A. Shaw
Prothonotary



CAROLINE ROSENBERGER,
Plaintiff,
v.
FEZEIL'S SHOP & SAVE,
Defendant.

ANSWER TO NEW MATTER

SEP 18 2002

William A. Shaw
Prothonotary

Law Office of Frank A. Natale, II
Frank A. Natale, II, Esquire
2616 Wilmington Road
Suite F
New Castle, PA 16105
(724) 658-5822

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

CAROLINE ROSENBERGER,	:	CIVIL ACTION
	:	
PLAINTIFF,	:	NO. 2002-00940-CD
V.	:	
	:	
FEZELL'S SHOP & SAVE,	:	
	:	
DEFENDANT.	:	

ANSWER TO NEW MATTER

AND NOW, comes, Caroline Rosenberger, by and through her attorney,
Frank A. Natale, II, Esquire, and submits the following in response to
Defendant's New Matter:

8. Plaintiff denies allegations contained in Defendant's New Matter
paragraph No. 8 (a.-e.). More specifically Defendant's paragraph No. 8 is denied
based upon the fact that it is an insufficient pleading containing a mere allegation
which amounts to a conclusion of law.

8a. Plaintiff specifically denies this allegation in that there is no
evidence available to suggest Plaintiff was not watching where she was walking
and walking in a designated aisleway of the store.

8b. Plaintiff denies the allegation in that the liquid, which caused the
hazard on Defendant's floor was clear - lacking in any color, such that a
consumer/business invitee would not realize that a hazard existed. Additionally
the nature of the store dictates that business invitees utilize Defendant's

FILED

SEP 16 2002

William A. Shaw
Prothonotary

designated aisleways to browse the shelves and cases where the store is promoting items for consumers to purchase.

8c. Plaintiff denies the allegations in Defendant's paragraph No. 8 (c) as there is no evidence upon which this allegation has been made. To the contrary Plaintiff was wearing acceptable everyday footwear.

8d. Plaintiff denies the allegations set forth in Defendant's paragraph 8(d). This count is not plead with enough specificity. In the event that an answer is required, Plaintiff denies this allegation as she was able to ambulate on a level surface.

8e. Plaintiff denies the allegations set forth in Defendant's paragraph 8(e). To the contrary, the nature of the store dictates that business invitees/customers utilize Defendant's designated aisleways to browse the shelves and cases where the store is promoting items to consumers for purchase. Plaintiff was in a designated aisleway of Defendant's facility.


9. Plaintiff specifically denies the allegations set forth in the Defendant's paragraph No. 9. To the contrary, the Statue of Limitations would have expired on July 16, 2002. The Writ of Summons was filed on June 13, 2002 and was served upon the Defendant on June 19, 2002 at 9:15 A.M., and was accepted/received by Janet Luther, an authorized employee of the Defendant's facility.

10. Plaintiff denies the allegations set forth in Defendant's paragraph 10. Plaintiff sought medical treatment in a timely manner and followed the

medical advice of her physician(s). Plaintiff's Complaint sets forth her injuries and damages in paragraphs 6 and 7.

WHEREFORE, Plaintiff denies the allegations set forth in Defendant's New Matter and demands a jury trial.

Respectfully Submitted,



Frank A. Natale, II, Esquire

VERIFICATION

I, CAROLINE ROSENBERGER, verify that the facts set forth in the foregoing
ANSWER TO NEW MATTER are true and correct. I understand that false statements herein
are made are subject to the penalties of Pa. C. S. § 4904 relating to unsworn falsification to
authorities.

Date: 9-11-08

Caroline Rosenberger
Caroline Rosenberger

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,	: CIVIL ACTION
	:
PLAINTIFF,	: NO. 2002-00940-CD
V.	:
	:
FEZELL'S SHOP & SAVE,	:
	:
DEFENDANT.	:

CERTIFICATE OF SERVICE

AND NOW, this 13th day of September, 2002, I, FRANK A. NATALE, II,
hereby certify that on 13th day of September, 2002, I sent by first class mail,
postage prepaid, a certified copy of Plaintiff's Answer to New Matter, in the
above captioned case to Stephen M. Elek, Esq., LAW OFFICES OF MICHAEL P.
SOSSO, DDI Plaza One, 1225 Washington Pike, Suite 300, Bridgeville, PA 15017


Frank A. Natale, II, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER

Plaintiff,

vs.

FEZELL'S SHOP & SAVE

Defendant.

CIVIL DIVISION

No.: 2002-00940-CD

Type of Pleading:

**NOTICE/CERTIFICATE OF SERVICE
OF DEFENDANT'S FIRST SET OF
INTERROGATORIES DIRECTED TO
PLAINTIFF**

Filed on behalf of:

DEFENDANT

Counsel of record for this party:

Stephen M. Elek, Esquire
Pa. I.D. #47205

LAW OFFICES MICHAEL P. SOSSO
DDI Plaza One, Suite 300
1225 Washington Pike
Bridgeville, PA 15017
(412) 914-1058

JURY TRIAL DEMANDED

Notice of Svc of Interrogatories.doc

FILED

DEC 02 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

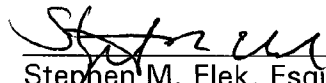
CAROLINE ROSENBERGER	)	CIVIL DIVISION
)	
Plaintiff,	)	No.: 2002-00940-CD
)	
vs.)	
)	
FEZELL'S SHOP & SAVE,)	
)	
Defendant.)	

**NOTICE/CERTIFICATE OF SERVICE OF DEFENDANT'S FIRST SET
OF INTERROGATORIES DIRECTED TO PLAINTIFF**

TO: PROTHONOTARY OF CLEARFIELD COUNTY, PA

Kindly take notice that the Defendant, Fezell's Shop & Save, has served Defendant's First Set of Interrogatories Directed to Plaintiff, by mailing to the following by first class U.S. Mail, this 28th day of November, 2002.

Frank A. Natale, Esquire
2616 Wilmington Road
New Castle, PA 16105 (Counsel for Plaintiff)


Stephen M. Elek, Esquire
Attorney for Defendant,
Fezell's Shop & Save

William A. Shaw
Prothonotary

RECEIVED
MAY 11 1984
LAW OFFICE

NO
cc
~~cc~~

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

CAROLINE ROSENBERGER,

PLAINTIFF,

V.

FEZELL'S SHOP & SAVE,

DEFENDANT.

: CIVIL ACTION

:

:

: NO. 2002-00940-CD

:

:

: TYPE OF PLEADING:

: NOTICE OF SERVICE OF

: DISCOVERY

:

: FILED ON BEHALF OF:

: Plaintiff, Caroline Rosenberger

:

: COUNSEL OF RECORD:

: Frank A. Natale, II, Esquire

: 2616 Wilmington Road

: Suite F

: New Castle, PA 16105

: (724) 658-5822

: PA I.D. # 71804

:

FILED

JAN 31 2003

**William A. Shaw
Prothonotary**

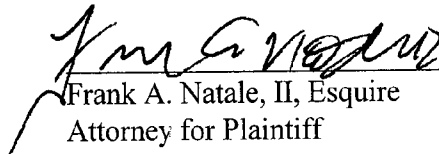
IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CAOLINE ROSENBERGER,	: CIVIL ACTION
	:
PLAINTIFF,	: NO. 2002-00940-CD
V.	:
	:
FEZELL'S SHOP & SAVE,	:
	:
DEFENDANT.	:
	:

NOTICE OF SERVICE OF INTERROGATORIES
AND REQUEST FOR PRODUCTION
OF DOCUMENTS TO PLAINTIFF

This is to certify that the Interrogatories and Request for Production of Documents were served upon defendant's counsel, Stephen Elek, Esquire, at the Law Offices of Michael P. Sosso, DDI Plaza One, 1225 Washington Pike, Suite 300, Bridgeville, PA 15017, via first class mail, postage prepaid this 29 day of January, 2003.

Respectfully Submitted,

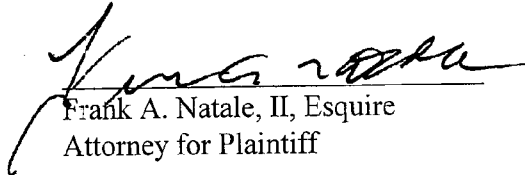

Frank A. Natale, II, Esquire
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Notice of Service of
Discovery has been served upon all known counsel of records this 29 day of
January, 2003, via first class mail, addressed as follows:

Stephen M. Elek, Esq.
LAW OFFICES OF MICHAEL P. SOSSO
DDI Plaza One
1225 Washington Pike
Suite 300
Bridgeville, PA 15017

Respectfully Submitted,


Frank A. Natale, II, Esquire
Attorney for Plaintiff

FILED

JAN 31 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER

Plaintiff,

vs.

FEZELL'S SHOP & SAVE

Defendant.

CIVIL DIVISION

No.: 2002-00940-CD

Type of Pleading:

**NOTICE/CERTIFICATE OF SERVICE
OF DEFENDANT'S ANSWERS TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

Filed on behalf of:

DEFENDANT

Counsel of record for this party:

Stephen M. Elek, Esquire
Pa. I.D. #47205

LAW OFFICES MICHAEL P. SOSSO
DDI Plaza One, Suite 300
1225 Washington Pike
Bridgeville, PA 15017
(412) 914-1058

JURY TRIAL DEMANDED

Notice of Svc of ATIs and RRFPD.doc

FILED

MAR 06 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

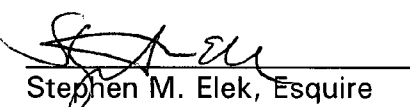
CAROLINE ROSENBERGER	)	CIVIL DIVISION
)	
Plaintiff,	)	No.: 2002-00940-CD
)	
vs.)	
)	
FEZELL'S SHOP & SAVE,)	
)	
Defendant.)	

**NOTICE/CERTIFICATE OF SERVICE OF DEFENDANT'S ANSWERS TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: PROTHONOTARY OF CLEARFIELD COUNTY, PA

Kindly take notice that the Defendant, Fezell's Shop & Save, has served Defendant's Answers to Interrogatories and Response to Request for Production of Documents to Plaintiff, by mailing to the following by first class U.S. Mail, this 4th day of March, 2003.

Frank A. Natale, Esquire
2616 Wilmington Road
New Castle, PA 16105
(Counsel for Plaintiff)


Stephen M. Elek, Esquire
Attorney for Defendant,
Fezell's Shop & Save

FILED

MAR 11 21 2003

MAR 06 2003

(KAB)
NO
CC

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,

Plaintiff,

vs.

FEZELL'S SHOP & SAVE,

Defendant.

CIVIL DIVISION

No.: 2002-00940-CD

Type of Pleading:

NOTICE OF DEPOSITION

Filed on behalf of:

DEFENDANT

Counsel of record for this party:

Stephen M. Elek, Esquire
Pa. I.D. #47205

LAW OFFICES MICHAEL P. SOSSO
DDI Plaza One, Suite 300
1225 Washington Pike
Bridgeville, PA 15017
(412) 914-1058

JURY TRIAL DEMANDED

Notice of Deposition.doc

FILED

APR 16 2003

m/11235/a
William A. Shaw
Prothonotary
for No Cont Cont

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,	)	CIVIL DIVISION
)	
Plaintiff,	)	No.: 2002-00940-CD
)	
vs.)	
)	
FEZELL'S SHOP & SAVE,)	
)	
Defendant.)	

NOTICE OF DEPOSITION

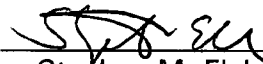
TO: Carol Rosenberger
c/o Frank Natale, Esquire
2616 Wilmington Road
Suite F
New Castle, PA 16105

TAKE NOTICE that your deposition will be taken pursuant to Rule 4007.1 of the Pennsylvania Rules of Civil Procedure, as amended, before a Notary Public, authorized by law to administer oaths on **Tuesday, April 29, 2003, at 1:00 p.m.**, in the office of Frank Natale, Esquire, 2616 Wilmington Road, Suite F, New Castle, PA 16105, at which time and place you are asked to appear and take part as such shall be fitting and proper.

This deposition will be recorded by a stenographer for a written statement.

Respectfully submitted,

LAW OFFICES OF MICHAEL P. SOSSO

By: 
Stephen M. Elek, Esquire
Attorney for Defendant

CERTIFICATE OF SERVICE

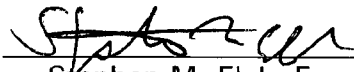
I hereby certify that a true and correct copy of the **DEFENDANT'S NOTICE OF DEPOSITION** has been sent to the following by first class U.S. mail, postage prepaid, this 19th day of April, 2003.

Frank A. Natale, Esquire
P.O. Box 5137
New Castle, PA 16105
(Counsel for Plaintiff)

Susan Mears, Court Reporter
372 Fruitwood Drive
Bethel Park, PA 15102

LAW OFFICES MICHAEL P. SOSSO

By



Stephen M. Elek, Esquire
Attorney for Defendant,
Fezell's Shop & Save

FILED

APR 16 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,

: CIVIL ACTION

PLAINTIFF,

: NO. 2002-00940-CD

V.

FEZELL'S SHOP & SAVE,

: TYPE OF PLEADING:
: NOTICE OF SERVICE OF
: DISCOVERY

DEFENDANT.

:
: FILED ON BEHALF OF:
: Plaintiff, Caroline Rosenberger
:
: COUNSEL OF RECORD:
: Frank A. Natale, II, Esquire
: 2616 Wilmington Road
: Suite F
: New Castle, PA 16105
: (724) 658-5822
: PA I.D. # 71804
:

FILED ¹⁰cc
m/1:41a/6/1
NOV 08 2004 EGK

William A. Shaw
Prothonotary/Clerk of Courts

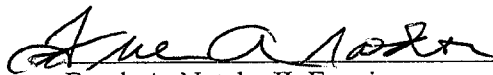
**IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA**

CAOLINE ROSENBERGER,	:	CIVIL ACTION
	:	
V.	:	NO. 2002-00940-CD
	:	
FEZELL'S SHOP & SAVE,	:	
	:	
DEFENDANT.	:	
	:	
	:	

NOTICE OF SERVICE OF SECOND SET OF INTERROGATORIES
DIRECTED TO DEFENDANT

This is to certify that the Second Set of Interrogatories were served upon defendant's counsel, Stephen Elek, Esquire, at the Law Offices of Michael P. Sosso, DDI Plaza One, 1225 Washington Pike, Suite 300, Bridgeville, PA 15017, via first class mail, postage prepaid this 5 day of November, 2004.

Respectfully Submitted,




Frank A. Natale, II, Esquire
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Notice of Service of
Discovery has been served upon all known counsel of records this 5 day of
November, 2004, via first class mail, addressed as follows:

Stephen M. Elek, Esquire
LAW OFFICES OF MICHAEL P. SOSSO
DDI Plaza One
1225 Washington Pike
Suite 300
Bridgeville, PA 15017

Respectfully Submitted,


Frank A. Natale, II, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER

Plaintiff,

vs.

FEZELL'S SHOP & SAVE

Defendant.

CIVIL DIVISION

No.: 2002-00940-CD

Type of Pleading:

**NOTICE/CERTIFICATE OF SERVICE
OF DEFENDANT'S ANSWERS TO
PLAINTIFF'S SECOND SET OF
INTERROGATORIES**

Filed on behalf of:

DEFENDANT

Counsel of record for this party:

Stephen M. Elek, Esquire
Pa. I.D. #47205

**O'BRIEN, RULIS, BOCHICCHIO
& SOSSO, LLC**
DDI Plaza One, Suite 300
1225 Washington Pike
Bridgeville, PA 15017
(412) 914-1058

JURY TRIAL DEMANDED

Notice of Svc of ATIs 2

FILED

NOV 29 2004 *WV*

M/12:30/a

William A. Shaw
Prothonotary

no C/C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

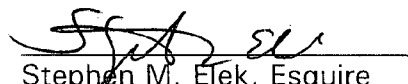
CAROLINE ROSENBERGER	)	CIVIL DIVISION
)	
Plaintiff,	)	No.: 2002-00940-CD
)	
vs.)	
)	
FEZELL'S SHOP & SAVE,)	
)	
Defendant.)	

**NOTICE/CERTIFICATE OF SERVICE OF DEFENDANT'S ANSWERS
TO PLAINTIFF'S SECOND SET OF INTERROGATORIES**

TO: PROTHONOTARY OF CLEARFIELD COUNTY, PA

Kindly take notice that the Defendant, Fezell's Shop & Save, has served Defendant's Answers to Plaintiff's Second Set of Interrogatories, by mailing to the following by first class U.S. Mail, this 24th day of November, 2004.

Frank A. Natale, Esquire
2616 Wilmington Road
New Castle, PA 16105
(Counsel for Plaintiff)


Stephen M. Elek, Esquire
Attorney for Defendant,
Fezell's Shop & Save

FILED

NOV 29 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,

Plaintiff,

vs.

FEZELL'S SHOP & SAVE,

Defendant.

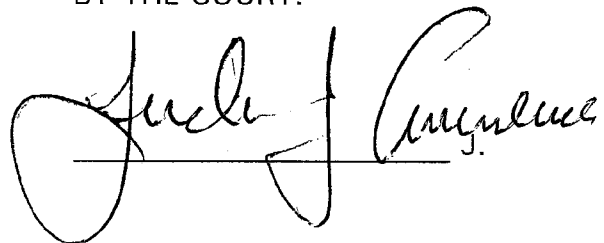
CIVIL DIVISION


No.: 2002-00940-CD

ORDER OF COURT

AND NOW, this 9th day of March, 2005, upon consideration of Defendant, Fezell's Shop & Save's Motion for Sanctions it is hereby ordered, adjudged, and decreed that argument on said Motion for Sanctions is hereby scheduled for the 29 day of March, 2005, at 1:30 o'clock P.m. in court room number 1. Any responsive briefs must be filed on or before the 28 day of March, 2005.

BY THE COURT:




FILED iec
03/13/05 AnyElek
MAR 09 2005 w/memo Re:
William A. Shaw service
Prothonotary/Clerk of Courts (see attached)



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

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,	)	CIVIL DIVISION
)	
Plaintiff,	)	No.: 2002-00940-CD
)	
vs.)	
)	
FEZELL'S SHOP & SAVE,)	
)	
Defendant.)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2005, upon consideration of Defendant, Fezell's Shop & Save's Motion for Sanctions, said Motion is GRANTED. Plaintiff is Ordered to reimburse Defendants in the amount of \$650.00 within 30 days of the date of this Order.

BY THE COURT:

_____ J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,	)	CIVIL DIVISION
)	
Plaintiff,	)	No.: 2002-00940-CD
)	
vs.)	
)	
FEZELL'S SHOP & SAVE,)	
)	
Defendant.)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2005, upon consideration of Defendant, Fezell's Shop & Save's Motion for Sanctions, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff will attend the next available scheduled IME or be precluded from presenting any expert evidence at trial concerning her medical condition. There will be no continuances or cancellation without good cause shown.

BY THE COURT:

_____ J.

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,

Plaintiff,

vs.

FEZELL'S SHOP & SAVE,

Defendant.

CIVIL DIVISION

No.: 2002-00940-CD

Type of Pleading:

MOTION FOR SANCTIONS

Filed on behalf of:

DEFENDANT

Counsel of record for this party:

Stephen M. Elek, Esquire

Pa. I.D. #47205

**O'BRIEN, RULIS, BOCHICCHIO
& SOSSO, LLC**

DDI Plaza One, Suite 300

1225 Washington Pike

Bridgeville, PA 15017

(412) 914-1058

JURY TRIAL DEMANDED

Motion for Sanctions

FILED ^{icc}
at m/12:44 PM ^{Atty}
MAR 07 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,	)	CIVIL DIVISION
)	
Plaintiff,	)	No.: 2002-00940-CD
)	
vs.)	
)	
FEZELL'S SHOP & SAVE,)	
)	
Defendant.)	

MOTION FOR SANCTIONS

AND NOW, comes the Defendant, Fezell's Shop & Save, by and through its counsel, O'Brien, Rulis, Bochicchio & Sosso, LLC, and Stephen M. Elek, Esquire, and files the following Motion for Sanctions, in support whereof it is averred as follows:

1. Defendant, Fezell's Shop & Save, by and through its counsel, scheduled an Independent Medical Evaluation of Plaintiff, Caroline Rosenberger, to take place on Monday, January 17, 2005 at 3:15 p.m.

2. On November 23, 2004, undersigned counsel notified Plaintiff's counsel of the January 17, 2005 Independent Medical Evaluation of Plaintiff. (See copy of correspondence to Frank Natale, Esquire, dated November 5, 2004 attached hereto and marked as Exhibit "A").

3. Plaintiff's counsel contacted undersigned counsel requesting that transportation be provided for Plaintiff to attend the scheduled Independent Medical Evaluation.

4. On December 7, 2004, undersigned counsel arranged for Plaintiff's transportation with Walt Yarnell & Associates, and notified Plaintiff's counsel of said travel arrangement.

5. On January 14, 2005 undersigned counsel received a call from Plaintiff's counsel stating that the Plaintiff wanted her husband and granddaughter to travel with her to the Independent Medical Evaluation. Plaintiff's counsel informed Defendant's counsel that the transportation company would only transport the Plaintiff due to liability issues. Defense counsel informed Plaintiff's counsel that this was an issue between Plaintiff and Walt Yarnell & Associates and therefore was unable to intervene or change their procedures. Defense counsel informed Plaintiff's counsel that Plaintiff would still be required to attend the IME.

6. Apparently Plaintiff's counsel was able to resolve this issue.

7. On Monday, January 17, 2005, Plaintiff's counsel called and informed undersigned counsel that Plaintiff was unable to attend her IME due to sickness. Undersigned counsel requested that a doctor's excuse be faxed to this office, but was informed that Plaintiff was unsure if she was going to the doctors.

8. Due to Plaintiff's failure to attend the January 17, 2005 Independent Medical Examination, Defendant was forced to cancel the Independent Medical Evaluation and incur a cancellation fee in the amount of \$600.00. (Please see attached cancellation invoice from Tri Rivers dated January 18, 2005, attached hereto and marked as Exhibit "B").

9. Due to Plaintiff's failure to attend the January 17, 2005 Independent Medical Evaluation, Defendant was forced to cancel the transportation


arrangements and incur a cancellation fee of \$50.00. (Please see attached cancellation invoice from Walt Yarnell and Associates dated February 4, 2005, attached hereto and marked as Exhibit "C").

10. Because of the difficulties encountered with the scheduling of the IME, defense counsel requests an order compelling Plaintiff to attend the next available IME or be precluded from presenting any medical evidence at trial. No continuances be granted except for good cause shown.

WHEREFORE, Defendant, Fezell's Shop N Save, respectfully requests that this Honorable Court impose sanctions on Plaintiff and Plaintiff's counsel for failing to attend the Independent Medical Evaluation and require Plaintiff to reimburse the Defendant in the sum of \$650.00 for cancellation costs. Also, it is requested that an order be issued compelling attendance at a future Independent Medical Evaluation.

Respectfully submitted,

**O'BRIEN, RULIS, BOCHICCHIO &
SOSSO, LLC**

By 
Stephen M. Elek, Esquire
Attorney for Defendant,
Fezell's Shop & Save

O'BRIEN, RULIS,
BOCHICCHIO & SOSSO, LLC

ATTORNEYS AT LAW

DDI Plaza One
Suite 300
1225 Washington Pike
Bridgeville, PA 15017

Telephone: (412) 914-1058
Facsimile: (412) 914-1003

November 23, 2004

Frank A. Natale, Esquire
2616 Wilmington Road
Suite F
New Castle, PA 16105

Re: Caroline Rosenberger v. Fezell's Shop & Save
Clearfield County No.: 2002-00940-CD

Dear Mr. Natale:

Please be advised that I have scheduled your client for an Independent Medical Evaluation in regard to the above-reference matter. The examination will be performed by D. Kelly Agnew, M.D., on the date and at the place and time listed below:

Date: Monday January 17, 2005
Time: 3:15 p.m.
Location: Butler Bone and Joint Center
250 B Butler Commons
Butler, PA 16001
Phone: (412) 369-9988

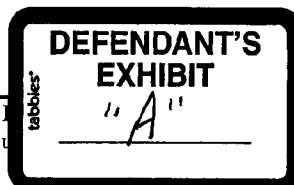
I am enclosing directions provided by the doctor's office. Should your client require further directions for this appointment, your client can contact the physician's office directly at the phone number listed above. I am also enclosing a questionnaire that the doctor has requested that your client complete and bring to the appointment.

Kindly have your client bring to this appointment, the films of any diagnostic studies that have been performed such as x-rays, mylograms/CT scans, MRI's, etc.

Very truly yours,

Joanne M. Meehan
Joanne M. Meehan
Paralegal to Stephen M. Elek

jmm
Natale, Frank 10



Enclosure
Pittsburgh Office: 100 Fifth Avenue, Fifth Floor
Philadelphia Office: 1515 Market Street, Suite 1002

Telephone: (412) 566-1717
Telephone: (215) 246-9628



TRI RIVERS

Bone and Joint Medicine and Surgery

Passavant Professional Building
9104 Babcock Boulevard
Suite 2120
Pittsburgh, PA 15237
Phone: 412.369.9988
FAX: 412.367.1572
ime@tririversconsulting.com
www.tririversconsulting.com

Orthopedic Surgery

W. Scott Nettrour, M.D.
Lewis F. Nettrour, M.D.
Michael W. Weiss, M.D.
D. Kelly Agnew, M.D.
William D. Abraham, M.D.
Trenton M. Gause, M.D.
Thomas S. Muzzonigro, M.D.
F. X. Plunkett, M.D.

Neurosurgery

J. William Bookwalter, III, M.D.
Francis T. Ferraro, M.D.
Donald M. Whiting, M.D.

Neurology

David M. Lobas, M.D.

Pulmonary/Internal Medicine

Thomas L. Schauble, M.D., F.C.C.P.

General Surgery

Randall R. Draper, M.D.

Oral and Maxillofacial Surgery

R. Kent Galey, D.M.D.

Urological Surgery

Daniel J. Cole, M.D.

Plastic Surgery

Bernard I. Cohen, D.D.S., M.D.

Podiatry

Steven A. Conner, D.P.M., J.D.

Chiropractic

Roy H. Schmitt, D.C.

Pathology

Richard L. Myerowitz, M.D.

Radiology

Surendra Pawar, M.D.

Medical Legal Manager

LuAnn Dugan

Chief Executive Officer

Brent L. Bodily, M.S.H.A.

January 18, 2005

Stephen Elek, Esquire

Law Office Michael P. Sosso

DDI Plaza One 1225 Washington Pike Suite 300

Bridgeville, PA 15017

RE: ROSENBERGER, CAROLINE

SSN: 181-44-5360

Services performed by: **D. KELLY AGNEW MD**

01/17/2005

Cancellation of Independent Medical Evaluation
cancelled 1-17-05

\$600.00

Total Invoice:

\$600.00

Amount Paid:

\$0.00

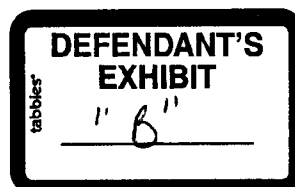
BALANCE DUE:

\$600.00

Please make check payable to:

TRI RIVERS CONSULTING SERVICES, INC.

TIN: 25-1798774



FEB - 7 2005



WALT YARNALL & ASSOCIATES, INC.

February 4, 2005

05-1100-ORB

Ms. Joanne Meehan
O'Brien Rulis Bohecchio
DDI Plaza 1, Ste. 300
1225 Washington Pike
Bridgeville, PA 15017

Reference: Carol Rosenberger, Claim Number: PC004825

Dear Ms. Meehan:

Based upon your request on January 7, 2005, an agent from this office was scheduled to transport Ms. Rosenberger to and from a scheduled appointment on January 17, 2005. The appointment was with Dr. Agnew, 250B Butler Commons, Butler, PA. On January 17, 2005, at 8:30 a.m., this office received a call from your office stating that the claimant was ill and the transportation was cancelled.

Please find attached an invoice which represents reimbursement for services rendered and expenses incurred. If you have any questions regarding this activity, please feel free to contact us at any time.

Thank you, your business is greatly appreciated.

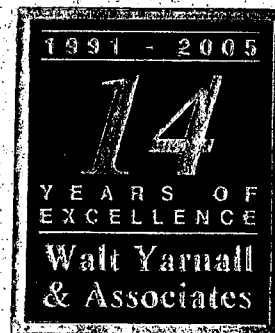
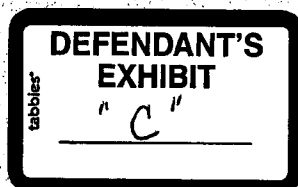
Sincerely,

Margit K. Yarnall/eae

MARGIT K. YARNALL
Client Relations

MKY:eae

Enclosure



Corporate Office • 624 Pittsburgh Street, Springdale, PA 15144

724.275.9903 • 800.861.1839 • Fax 724.275.9904 • E-mail: info@YarnallPI.com

Walt Yarnall & Associates, Inc.

February 4, 2005

Invoice #: 05-1100-ORB/1

EIN: 25-1753492

Ms. Joanne Meehan
O'Brien Rulis Bohecchio
DDI Plaza 1, Ste. 300
1225 Washington Pike
Bridgeville, PA 15017

Reference: Carol Rosenberger, Claim Number: PC004825

FOR THE PERIOD THRU JANUARY 17, 2005

<u>DATE</u>	<u>HOURS</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
1/17/05		Same Day Cancellation Fee	\$ 50.00

**TOTAL DUE
UPON RECEIPT..... \$ 50.00**

Please Include Invoice Number and Remit Check to:

**Walt Yarnall & Associates, Inc.
624 Pittsburgh Street, Springdale, PA 15144**

PROMPT PAYMENT IS APPRECIATED. THANK YOU.

Invoice

624 Pittsburgh Street, Springdale, PA 15144

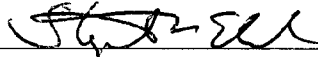
724.275.9903 * 800.861.1839 * 724.275.9904 Fax

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **DEFENDANT'S MOTION FOR SANCTIONS** has been sent to the following by first class U.S. mail, postage prepaid, this 4th day of March, 2005.

Frank A. Natale, Esquire
P.O. Box 5137
New Castle, PA 16105
(Counsel for Plaintiff)

**O'BRIEN, RULIS, BOCHICCHIO
& SOSSO, LLC**

By 
Stephen M. Elek, Esquire
Attorney for Defendant,
Fezell's Shop & Save

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER, : CIVIL ACTION
:
PLAINTIFF, : NO. 2002-00940-CD
:
V. :
:
FEZELL'S SHOP & SAVE, :
:
DEFENDANT. :
:
:

AFFIDAVIT OF CAROLINE ROSENBERGER

AND NOW, to wit, comes Caroline Rosenberger, who swears and deposes that:

1. During the evening of January 16, 2005, I became ill with the stomach flu.
2. I could not contact Attorney Natale's office because it was after office hours.
3. My symptoms included nausea, vomiting, diarrhea and fever.
4. I called Attorney Natale's office the morning of January 17th to advise that I was ill and in no condition to ride/travel the distance to or attend the scheduled IME.

Caroline Rosenberger
Caroline Rosenberger

PSA Frank A. Natale

Sworn to and subscribed

before me this 29th day
of March, 2005.

Linda L. Bialowas

Notary Public
COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Linda L. Bialowas, Notary Public
Neshannock Twp., Lawrence County
My Commission Expires Mar. 2, 2009
Member, Pennsylvania Association of Notaries

FILED ^{GP} NO
03:30 PM CC
MAR 29 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CAROLINE ROSENBERGER :
-VS- : No. 02-940-CD
FEZELL'S SHOP & SAVE :

FILED ^{DEC}
MAR 31 2005 ^{Atty's:}
William A. Shaw ^{Natale}
Prothonotary/Clerk of Courts ^{Eick}

O R D E R

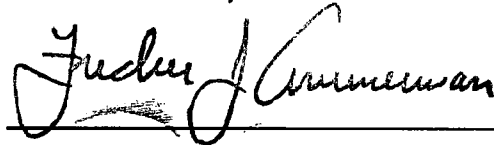
NOW, this 29th day of March, 2005, following argument on the Defendant's Motion for Sanctions and the Plaintiff's Counterclaim for Sanctions, it is the ORDER of this Court as follows: The Plaintiff, Caroline Rosenberger, shall appear at the office of Dr. D. Kelly Agnew, located at 250-B Butler Commons, Butler, Pennsylvania, on June 13, 2005, at such a time as is directed by Defense counsel in order that an Independent Medical Examination may be performed and completed. The Plaintiff shall cooperate in all regards with the doctor relative the Independent Medical Examination. As agreed, Defense shall be responsible for arranging transportation of the Plaintiff and, if she so desires, her husband to and from their home. The Plaintiff shall appear unless rendered unable to do so by extraordinary circumstances. In this regard, the Court defines extraordinary circumstances as the death of an immediate family member, or the Plaintiff or an immediate family member suffering

severe trauma or illness, which will be confirmed by a doctor's report being provided to counsel for the Defendant within no more than ten (10) days from the date of the IME.

In the event that the Plaintiff does not cooperate and/or appear, the Court will, upon petition and presentation of appropriate proof, award money damages, including attorney's fees.

In all other regards, the motions filed by both parties are denied.

BY THE COURT,

A handwritten signature in cursive script, reading "Frederick J. Ammerman", is written over a horizontal line.

President Judge

CA

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,

: CIVIL ACTION

:

:

PLAINTIFF,

: NO. 2002-00940-CD

:

V.

:

FEZELL'S SHOP & SAVE,

: TYPE OF PLEADING:

: COUNTERMOTION FOR

: SANCTIONS

:

DEFENDANT.

: FILED ON BEHALF OF:

: Plaintiff, Caroline Rosenberger

:

: COUNSEL OF RECORD:

: Frank A. Natale, II, Esquire

: 2616 Wilmington Road

: Suite F

: New Castle, PA 15105

: (724) 658-5822

: PA I.D. # 71804

:

FILED

MAR 31 2005

WAS
BY

William A. Shaw
Prothonotary/Clerk of Courts

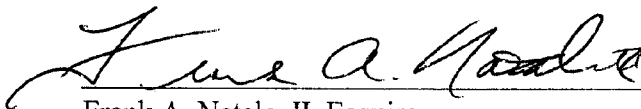
**IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA**

CAROLINE ROSENBERGER,	:	CIVIL ACTION
	:	
V.	:	NO. 2002-00940-CD
	:	
FEZELL'S SHOP & SAVE,	:	
	:	
DEFENDANT.	:	
	:	
	:	
	:	

NOTICE OF PRESENTATION

TO: Stephen M. Elek, Esquire

PLEASE TAKE NOTICE that the within Countermotion shall be presented before the Judge on the 29th day of March, 2005, in Courtroom No. 1, Cambria County, Pennsylvania, at the Cambria County Courthouse, 200 South Center Street, Ebensburg, Pennsylvania.



Frank A. Natale, II, Esquire
Attorney for Plaintiff

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

CAROLINE ROSENBERGER,	: CIVIL ACTION
	:
PLAINTIFF,	: NO. 2002-00940-CD
V.	:
	:
FEZELL'S SHOP & SAVE,	:
	:
DEFENDANT.	:
	:
	:

COUNTERMOTION FOR SANCTIONS

AND NOW, comes Plaintiff, Caroline Rosenberger, by and through her counsel, Frank A. Natale, II, Esquire, and files a Countermotion for Sanctions for the Court's consideration as follows:

1. Plaintiff cancelled an IME that was scheduled for January 17, 2005 due to illness.
2. Plaintiff's illness was contagious and impaired her health enough that she could not travel to the IME nor to a doctor's office to get an excuse explaining why she could not attend the scheduled IME.

3. Defendant's request that Plaintiff be prevented from presenting medical records at trial simply because she was unable to attend an IME due to illness serves no purpose to further discovery or serve justice.

4. Granting Defendant's request to prevent Plaintiff from presenting medical records will severely prejudice the Plaintiff.

5. On January 17, 2005, the IME was cancelled on behalf of Mrs. Rosenberger. On February 15, 2005, Attorney Natale sent a letter to Attorney Elek asking if Defendant still intended to schedule Mrs. Rosenberger for an IME. No response was received. The next contact from Attorney Elek was a March 14, 2005 letter enclosing his Motion for Sanctions.

6. Plaintiff has been more than cooperative in rescheduling the IME.

7. Defendant has wasted the Court's time and counsel's time to hear a matter that could have been resolved between counsel for the parties.

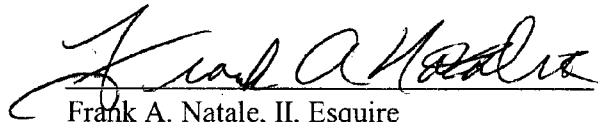
8. Plaintiff's counsel has had to expend time on her behalf to prepare this Countermotion and a Brief in Opposition to Defendant's Motion for Sanctions. Plaintiff's counsel now has to travel to Clearfield County for an argument on same. Travel time is approximately one hour each way.

9. The rescheduling of this IME is a matter that counsel could have amicably resolved without misusing the Court's time.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant Plaintiff's Countermotion for Sanctions, dismiss Defendant's Motion for Sanctions and issue an Order compelling Defendant's counsel to reschedule the IME of Mrs. Rosenberger and arrange transportation to same. Additionally, Plaintiff also

requests that the Order require the Defendant to reimburse attorneys fees for the preparation of pleadings, travel to and from and attendance of the hearing on Defendant's Motion for Sanctions.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Frank A. Natale, II", written over a horizontal line.

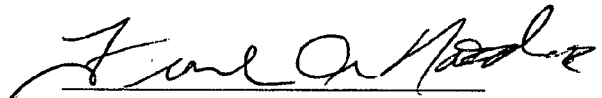
Frank A. Natale, II, Esquire
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Plaintiff's
Counter-motion for Sanctions has been served upon all known counsel of records this
_____ day of March, 2005, via first class mail, addressed as follows:

Stephen M. Elek, Esquire
LAW OFFICES OF MICHAEL P. SOSSO
DDI Plaza One
1225 Washington Pike
Suite 300
Bridgeville, PA 15017

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Frank A. Natale, II", written over a horizontal line.

Frank A. Natale, II, Esquire
Attorney for Plaintiff

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

CAROLINE ROSENBERGER,

: CIVIL ACTION

:

:

PLAINTIFF,

: NO. 2002-00940-CD

:

V.

:

FEZELL'S SHOP & SAVE,

: TYPE OF PLEADING:

: AFFIDAVIT OF SERVICE OF

: SUBPOENAS AND NOTICES OF

: DEPOSITION

DEFENDANT.

:

: FILED ON BEHALF OF:

: Plaintiff, Caroline Rosenberger

:

: COUNSEL OF RECORD:

: Frank A. Natale, II, Esquire

: 2616 Wilmington Road

: Suite F

: New Castle, PA 16105

: (724) 658-5822

: PA I.D. # 71804

:

FILED *no cc*
m 1:20 PM
AUG 29 2005
lm
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER, : CIVIL ACTION
:
PLAINTIFF, : NO. 2002-00940-CD
:
V. :
:
FEZELL'S SHOP & SAVE, :
:
DEFENDANT. :

AFFIDAVIT OF SERVICE OF SUBPOENAS AND NOTICES OF DEPOSITION

AND NOW, to wit, comes Frank A. Natale, II, Esquire, who swears and deposes
that:

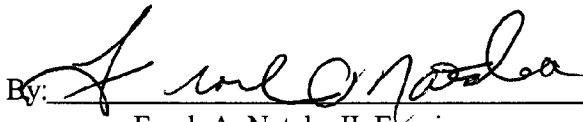
1. The undersigned is counsel for the Plaintiff, Caroline Rosenberger.
2. Subpoenas and Notices of Deposition were forwarded to the following by

Certified Mail, return receipt (attached hereto and marked Exhibit "A"):

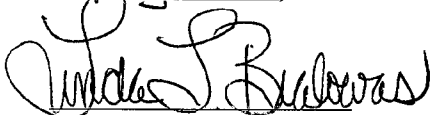
Mr. Carl Zwick
11 Station Street
Sykesville, PA 15865

Ms. Carolyn Frantz
RR #4, Box 411
Dubois, PA 15801

Respectfully submitted,

By: 
Frank A. Natale, II, Esquire
Attorneys for Plaintiff

Sworn to and subscribed
before me this 24th day
of August, 2005.



Notary Public
COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Linda L. Bialowas, Notary Public
Neshannock Twp., Lawrence County
My Commission Expires Mar. 2, 2009

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:

Mr. Carl Zwick
11 Station St.
Sykesville, PA 15865

2. Article Number
(Transfer from service label)

7002 0860 0007 7587 8362

PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-2509

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Carl J. Zwick* ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Carl J. Zwick

C. Date of Delivery

8-19-05

D. Is delivery address different from item 1? ☒ YesIf YES, enter delivery address below: ☐ No*126 N. Park St.*

3. Service Type

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

4. Restricted Delivery? (Extra Fee)

☐ Yes**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:

Ms. Carolyn Frantz
RR #4, Box 41
Dubois, PA 15801

2. Article Number
(Transfer from service label)

7002 0860 0007 7587 8379

PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-2509

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Shane Frantz* ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Shane Frantz

C. Date of Delivery

8-19-05

D. Is delivery address different from item 1? ☐ YesIf 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

EXHIBIT

A

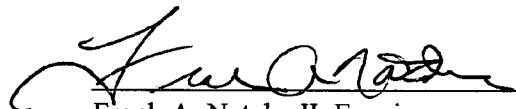
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Affidavit of Service of Subpoenas and Notices of Deposition has been served upon all known counsel of record this 24th day of August, 2005, via first class mail, addressed as follows:

Stephen M. Elek, Esquire
LAW OFFICES OF MICHAEL P. SOSSO
DDI Plaza One
1225 Washington Pike
Suite 300
Bridgeville, PA 15017

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Frank A. Natale, II", written over a horizontal line.

Frank A. Natale, II, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CAROLINE ROSENBERGER,

: CIVIL ACTION

:

:

PLAINTIFF,

: NO. 2002-00940-CD

:

V.

:

FEZELL'S SHOP & SAVE,

: TYPE OF PLEADING:

: PRAECIPE TO SETTLE AND

: DISCONTINUE

DEFENDANT.

:

: FILED ON BEHALF OF:

: Plaintiff, Caroline Rosenberger

:

: COUNSEL OF RECORD:

: Frank A. Natale, II, Esquire

: 2616 Wilmington Road

: Suite F

: New Castle, PA 16105

: (724) 658-5822

: PA I.D. # 71804

:

FILED *No 02*

m/3:52
DEC 19 2005

William A. Shaw
Prothonotary/Clerk of Courts


Cert. of Disc.
to Atty
Copy to CIA
GR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE TO SETTLE
AND DISCONTINUE has been served upon all known counsel of record this
_____ day of December, 2005, via first class mail, addressed as follows:

Stephen M. Elek, Esquire
LAW OFFICES OF MICHAEL P. SOSSO
DDI Plaza One
1225 Washington Pike
Suite 300
Bridgeville, PA 15017

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Frank A. Natale, II", written over a horizontal line.

Frank A. Natale, II, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

 COPY

CIVIL DIVISION

Caroline Rosenberger

Vs.

No. 2002-00940-CD

Fezell's Shop & Save

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on December 19, 2005, marked:

Settled and Discontinued

Record costs in the sum of \$80.00 have been paid in full by Frank A. Natale, II, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 19th day of December A.D. 2005.

William A. Shaw, Prothonotary