

02-1871-CD  
LUCILLE LENKED vs. FRATERNAL ORDER OF EAGLES #965

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

LUCILLE LENKERD, an individual,  
Plaintiff

: CIVIL DIVISION  
:  
: No. 1871, 2002, C.D.

v.

FALLS CREEK FRATERNAL ORDER  
OF EAGLES, NO. 965, a  
Pennsylvania Corporation,  
Defendant

: Type of Pleading:  
: **COMPLAINT**  
:  
: Filed on Behalf of:  
: Plaintiff  
:  
: Counsel of Record for  
: This Party:  
: Mary L. Pothoven, Esq.  
: Supreme Court ID No. 72164  
: 600 Main Street  
: PO Box 218  
: Reynoldsville, PA 15851  
: (814) 653-2243

**FILED**

NOV 27 2002

William A. Shaw  
Prothonotary

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

LUCILLE LENKERT,	:	
Plaintiff	:	CIVIL DIVISION
	:	
	:	No. _____, 2002, C.D.
v.	:	
	:	
	:	
FALLS CREEK FRATERNAL ORDER	:	
OF EAGLES, NO. 965, a	:	
Pennsylvania Corporation,	:	
Defendant	:	

## NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your 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 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.

KEYSTONE LEGAL SERVICES, INC.  
211 1/2 EAST LOCUST STREET  
CLEARFIELD, PA 16830  
814/765-9646

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

LUCILLE LENKRD,	:	
Plaintiff	:	CIVIL DIVISION
	:	
	:	No. ____, 2002, C.D.
v.	:	
	:	
	:	
FALLS CREEK FRATERNAL ORDER	:	
OF EAGLES, NO. 965, a	:	
Pennsylvania Corporation,	:	
Defendant	:	

**COMPLAINT**

AND NOW, comes the Plaintiff, by her attorney, MARY L. POTHOVEN, ESQUIRE, and brings this Complaint of which the following is a concise statement:

1. Plaintiff, Lucille Lenkerd, is an adult individual residing at RD #3, PO Box 34, Reynoldsville, PA 15851.
2. Defendant, Falls Creek Fraternal Order of Eagles, No. 965, is a Pennsylvania Corporation, duly registered in the Commonwealth of Pennsylvania with a place of business on Jefferson Avenue, Falls Creek, Jefferson County, Pennsylvania 15840.
3. At all times material hereto Defendant acted by and through its agent, servants and employees who acted in the course and scope of their authority and employment.

4. Defendant owns a building on Jefferson Avenue, Falls Creek, Jefferson County, Pennsylvania, and conducts therein a business under the name of Fall Creek Fraternal Order of Eagles, No. 965.

5. The business premises of the Defendant was open to and used by the general public including Plaintiff, Lucille Lenkerd, at all times relevant hereto.

6. At all times relevant hereto, Defendant had the duty to maintain Defendant's business premises in a reasonably safe condition for business invitees, including Plaintiff, Lucille Lenkerd. In violation of such duty, Defendant negligently permitted and maintained on such business the following dangerous conditions, creating an unreasonable risk of injury to business invitees, including Plaintiff:

(a) A set of stairs just inside the handicapped entrance at the back of the building, which stairs are exceedingly steep, without a landing and in an area which is poorly lit.

7. On December 14, 2000, Defendant was holding a holiday dinner for Senior Citizens at their place of business.

8. On December 14, 2000, the Plaintiff and members of her family went to Defendant's place of business to attend the holiday dinner. They entered Defendant's premises through the back handicapped accessible entrance as Plaintiff's brother-in-

law has physical disabilities for which he desired to use the handicapped entrance.

9. Prior to December 14, 2000, Plaintiff had never been to Defendant's place of business and was unfamiliar with the layout of the building. Upon entering Defendant's business through the rear handicapped entrance, Plaintiff observed the bar to the right and a door to the left. Plaintiff and her party believed the way to the dining room was through the door to the left. Plaintiff opened the door while talking with her companions. The door opened quickly inward over what turned out to be stairs going down to a basement instead of a hallway or toward the dining area as Plaintiff and her companions had believed. The door opened in over the stairs and the suddenness caused Plaintiff to accidentally step forward causing her to lose her balance. As there was no landing at the top of the steps, she fell down approximately 14 - 16 steps, which were very steep, and fell owing to the dangerous conditions above.

10. As the proximate result of the negligence of Defendant, Plaintiff was injured in her health, strength and vitality. Plaintiff sustained bodily injuries and shock to her nervous system, which have caused and will continue to cause great mental and physical pain and suffering for the rest of her natural life, all to Plaintiff's damage in an amount in excess of the minimum jurisdiction of this Court.

11. As a further proximate result of the negligence of the Defendant, Plaintiff has incurred medical, hospital and related expenses in excess of \$73,000.00 and will continue to incur medical, hospital and related expenses in excess of \$40,000.00.

12. Prior to the aforesaid accident, it was the policy of Defendant to keep the doorway over the stairs locked at all times to protect the public from its dangers.

13. On the date of the accident herein, Defendant, by and through its agents, servants and employees, failed to maintain its own policy and left the door unlocked, exposing business invitees to unreasonable risk of injury.

14. As a direct and proximate result of Defendant's negligence, the Plaintiff suffered various injuries including, but not limited to an open comminuted left femur fracture.

15. As a direct and proximate result of said injuries the Plaintiff has suffered emotional and physical suffering, inconvenience and agony and will continue to suffer the same indefinitely into the future.

16. As a direct and proximate result of said injuries, the Plaintiff has incurred and in the future will incur various expenses and bills for necessary and reasonable medical services and treatment in an effort to care for and alleviate her injuries.

17. As a direct and proximate result of said injuries, the Plaintiff incurred various expenses and bills to modify her home to accommodate her residual physical limitations resulting from her injuries.

18. Because of said injuries, Plaintiff's general health, strength and vitality has been impaired and diminished and will continue to be so indefinitely into the future and her ability to enjoy and live a full and beneficial life has been impaired and diminished and will continue to be so indefinitely into the future.

19. As a result of the injuries she suffered, Plaintiff has incurred various miscellaneous expenses.

20. Because of said injuries, the Plaintiff has suffered permanent bodily injuries resulting in permanent physical limitations.

21. The aforesaid accident and the aforesaid injuries resulting to the Plaintiff occurred solely as the result of the negligence, carelessness and recklessness of Defendant, who was in exclusive control and possession of the business premises and the subject stairway, which said negligence, carelessness and recklessness consisted of at least the following:

(a) Failing to provide adequate safeguards to prevent the injury to Plaintiff;

(b) Failing to keep the door leading to the stairway locked;

(c) Defendant carelessly and negligently maintained, kept and controlled the business premises staircase so that, as a direct and proximate result, Plaintiff was injured;

(d) Defendant carelessly and negligently failed to keep in a good and safe condition the staircase, although Defendant knew or in the exercise of ordinary care should have known that such failure was likely to result in injury to persons, including Plaintiff, entering and leaving the premises through the rear handicapped entrance;

(e) Defendant negligently, carelessly and improperly failed to provide proper lighting above the staircase to make visible the stairs and the lack of landing on the top;

(f) Failing to assure the stairway was maintained in a safe and proper manner;

(g) Failing to provide adequate safeguards to prevent injury to Plaintiff; and

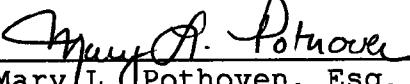
(h) Being otherwise negligent, careless and reckless under the circumstances.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of the mandatory arbitration limits,

interests, costs and such other relief the Court deems appropriate.

Respectfully submitted by:

Date: November 25, 2002

  
Mary L. Pothoven  
Mary L. Pothoven, Esq.  
Attorney for Plaintiff

**VERIFICATION**

I, Lucille Lenkerd, verify the facts set forth in the foregoing Complaint is true and correct to the best of my knowledge, information and belief and that I understand that false statements herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authority.

  
Lucille Lenkerd

**FILED**  
M 204 6A Pd 85-00  
NOV 27 2002 1,1,cc to act  
,cc to sheriff

William A. Shaw  
Prothonotary

**BARRY A. KRONTHAL, ESQUIRE**  
**Pa. Supreme Court I.D. No. 55672**  
**MARGOLIS EDELSTEIN**  
**P. O. Box 932**  
**Harrisburg, PA 17108-0932**  
Telephone: (717) 975-8114  
Facsimile: (717) 975-8124  
E-Mail: bkronthal@margolisedelstein.com

Attorneys for  
Defendant  
File#47650.4-00002

---

LUCILLE LENKED, an individual : COURT OF COMMON PLEAS  
Plaintiff : CLEARFIELD COUNTY,  
: PENNSYLVANIA  
versus : : NO. 1871, 2002, C.D.  
FALLS CREEK FRATERNAL ORDER : : CIVIL ACTION LAW  
OF EAGLES, No. 965, a :  
Pennsylvania Corporation :  
Defendant : :

**PRAECIPE TO ENTER APPEARANCE**

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

Kindly enter my appearance on behalf of Defendant, Falls Creek Fraternal Order of Eagles, No. 965, with regard to the above-captioned matter. I am authorized to accept service on behalf of said Defendant.

DATE: 1/13/02

By:

*MARGOLIS EDELSTEIN*  
Barry A. Kronthal, Esquire  
Attorney No. 55672  
3510 Trindle Road  
Camp Hill, PA 17011  
717-975-8114

*REC'D*

JAN 15 2003

William A. Shaw  
Prothonotary

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that I have this 13 day of January, 2003, served a true and correct copy of the foregoing upon the person(s) and in the manner indicated below:

**Service by First Class Mail,**  
**Postage Prepaid, Addressed as Follows:**

Querino Torretti, Esquire  
600 Main Street  
P.O. Box 218  
Reynoldsville, PA 15851

MARGOLIS EDELSTEIN

By:

Carol Moose  
Carol Moose

113181 NO  
JAN 15 1963  
E. E. E.  
Kodak

William A. Shaw  
Frotnary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13378

LENKED, LUCILLE

02-1871-CD

VS.

FALLS CREEK FRATERNAL ORDER OF EAGLES NO 965

COMPLAINT

**SHERIFF RETURNS**

---

NOW DECEMBER 12, 2002 THOMAS DEMKO, SHERIFF OF JEFFERSON COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON FALLS CREEK FRATERNAL ORDER OF EAGLES #965, DEFENDANT.

NOW DECEMBER 19, 2002 SERVED THE WITHIN COMPLAINT ON FALLS CREEK FRATERNAL ORDER OF EAGLES #965, DEFENDANT BY DEPUTIZING THE SHERIFF OF JEFFERSON COUNTY. THE RETURN OF SHERIFF DEMKO IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED P.I.C.

---

Return Costs

Cost	Description
27.55	SHFF. HAWKINS PAID BY: ATTY.
32.40	SHFF. DEMKO PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

01/2:40  
01/20/03  
C.A.H.

Sworn to Before Me This

3<sup>rd</sup> Day Of Feb 2003  
WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins  
by Marilyn Harris  
Chester A. Hawkins  
Sheriff

No. 02-1871-CD

Personally appeared before me, Kirk Brudnock, Deputy for Thomas A. Demko, Sheriff of Jefferson County, Pennsylvania, who according to law deposes and says that on December 19, 2002 at 4:30 o'clock P.M. served the Notice and Complaint upon FALLS CREEK FATHERAL ORDER OF EAGLES NO. 965, Defendant, at Jefferson Avenue, Sandy Township, by handing to the person in charge a time of service, a true and attested copy of the Notice and Complaint and by making known to them the contents thereof.

Advance Costs Received:	\$125.00
My Costs:	\$ 30.40 Paid
Prothy:	\$ 2.00
Total Costs:	\$ 32.40
Refunded:	\$ 92.60

Sworn and subscribed *2<sup>nd</sup>*  
to before me this *2<sup>nd</sup>*  
day of *January 2003*  
By *Kirk Brudnock*

My Commission Expires The  
First Monday January 2003

So Answers,

*Kirk Brudnock* Deputy  
*Thomas A. Demko* Sheriff  
JEFERSON COUNTY, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LUCILLE LENKERT, an individual,

Plaintiff

v.

FALLS CREEK FRATERNAL ORDER OF  
EAGLES, No. 965, a Pennsylvania  
Corporation,

Defendants

**JURY TRIAL DEMANDED**

CIVIL DIVISION

*02-1871-CJ*  
No. 1871, 2002, C.D.

**PRAECIPE FOR WITHDRAWAL OF  
APPEARANCE/ENTRY OF  
APPEARANCE**

Filed on behalf of:  
**DEFENDANT**

Counsel of Record for this party:  
**Rebecca A. Sember, Esquire**  
**Pa. I.D. #74584**

**ZIMMER KUNZ**  
**PROFESSIONAL LIMITED LIABILITY**  
**COMPANY**  
Firm #920  
3300 USX Tower  
Pittsburgh, PA 15219

(412) 281-8000

**FILED**

**FEB 04 2004**

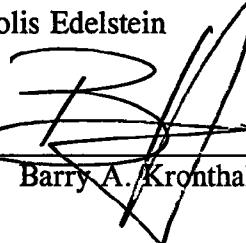
William A. Shaw  
Prothonotary/Clerk of Courts

**PRAECIPE FOR WITHDRAWAL OF APPEARANCE**

TO: PROTHONOTARY

Kindly withdraw the appearance of Barry A. Kronthal, Esquire and Margolis Edelstein on behalf of the defendant.

Margolis Edelstein

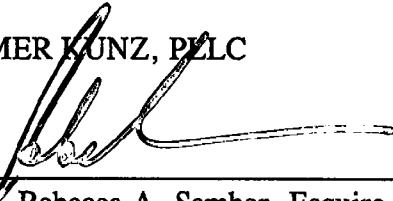
By: 

Barry A. Kronthal, Esquire

**PRAECIPE FOR APPEARANCE**

Kindly enter my appearance on behalf of the defendant in the above-captioned matter.

ZIMMER KUNZ, PELC

By: 

Rebecca A. Sember, Esquire

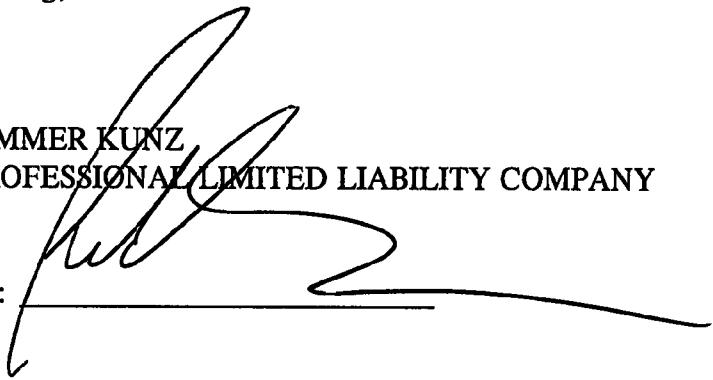
**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the within document was  
forwarded to counsel below named by United States Mail on the 21<sup>st</sup> day of February, 2004.

Querino Torretti, Esquire  
600 Main Street  
P.O. Box 218  
Reynoldsville, PA 15851

Barry A. Kronthal, Esquire  
Margolis Edelstein  
P.O. Box 932  
Harrisburg, PA 17108-0932

ZIMMER KUNZ  
PROFESSIONAL LIMITED LIABILITY COMPANY

By: 

FILED NO  
M 11:06 AM  
FEB 04 2004  
WAS  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LUCILLE LENKED, an individual,

Plaintiff

v.

FALLS CREEK FRATERNAL ORDER OF  
EAGLES, No. 965, a Pennsylvania  
Corporation,

Defendant.

**JURY TRIAL DEMANDED**

CIVIL DIVISION

No. 1871, 2002, C.D.

**NOTICE OF SERVICE OF  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS**

Filed on behalf of:  
DEFENDANT

Counsel of Record for this party:  
**Rebecca A. Sember, Esquire**  
Pa. I.D. #74584

**ZIMMER KUNZ  
PROFESSIONAL LIMITED LIABILITY  
COMPANY**  
Firm #920  
3300 U.S. Steel Tower  
Pittsburgh, PA 15219

(412) 281-8000

**FILED**

**FEB 13 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LUCILLE LENKERTD, an individual,

CIVIL DIVISION

Plaintiff

No. 1871, 2002, C.D.

v.

FALLS CREEK FRATERNAL ORDER OF  
EAGLES, No. 965, a Pennsylvania  
Corporation,

Defendant.

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

TO: PROTHONOTARY

Kindly take notice that Defendant, FALLS CREEK FRATERNAL ORDER OF EAGLES, NO. 965 has served the Plaintiff, LUCILLE LENKERTD with Interrogatories and Request for Production of Documents, by mailing same to her counsel of record, Querino Torretti, Esquire, 600 Main Street, P.O. Box 218, Reynoldsville, PA 15851, on this 11<sup>th</sup> day of February 2004.

ZIMMER KUNZ P.L.L.C.

BY:

  
REBECCA SEMBER, ESQUIRE  
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within document was forwarded to counsel below named by United States Mail on the 11 day of February, 2004.

Querino Torretti, Esquire  
600 Main Street  
P.O. Box 218  
Reynoldsville, PA 15851

ZIMMER KUNZ, P.L.L.C

By: 

REBECCA SEMBER, ESQUIRE  
ATTORNEYS FOR DEFENDANT

FILED  
M 10:40 AM  
FEB 13 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LUCILLE LENKERD, an individual,

CIVIL DIVISION

Plaintiff

No. 1871, 2002, C.D.

v.

FALLS CREEK FRATERNAL ORDER OF  
EAGLES, No. 965, a Pennsylvania  
Corporation,

ANSWER AND NEW MATTER TO  
PLAINTIFF'S COMPLAINT

Filed on behalf of:  
DEFENDANT

Defendant.

Counsel of Record for this party:  
Rebecca A. Sember, Esquire  
Pa. I.D. #74584

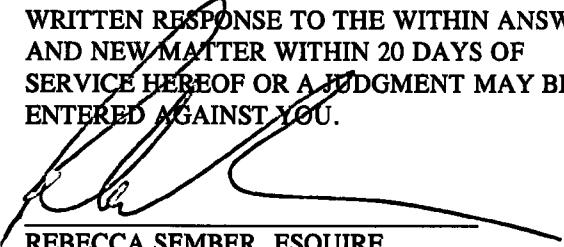
ZIMMER KUNZ  
PROFESSIONAL LIMITED LIABILITY  
COMPANY

Firm #920  
3300 USX Tower  
Pittsburgh, PA 15219

(412) 281-8000

NOTICE TO PLEAD: PLAINTIFF

YOU ARE HEREBY NOTIFIED TO FILE A  
WRITTEN RESPONSE TO THE WITHIN ANSWER  
AND NEW MATTER WITHIN 20 DAYS OF  
SERVICE HEREOF OR A JUDGMENT MAY BE  
ENTERED AGAINST YOU.

  
REBECCA SEMBER, ESQUIRE  
ATTORNEYS FOR DEFENDANT

**JURY TRIAL DEMANDED**

**FILED**

**FEB 19 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LUCILLE LENKERD, an individual,

CIVIL DIVISION

Plaintiff

No. 1871, 2002, C.D.

v.

FALLS CREEK FRATERNAL ORDER OF  
EAGLES, No. 965, a Pennsylvania  
Corporation,

Defendant.

**ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT**

AND NOW, comes Defendant, FALLS CREEK FRATERNAL ORDER OF EAGLES, NO. 965, by and through its attorneys, REBECCA SEMBER, ESQUIRE and ZIMMER KUNZ, P.L.L.C. and file the within Answer and New Matter to Plaintiff's Complaint as follows:

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

2. Paragraph 2 of Plaintiff's Complaint is admitted. By way of further answer, it is admitted that the Falls Creek Fraternal Order of Eagles No. 965 is a non profit corporation duly authorized to act as such by the Commonwealth of Pennsylvania.

3. To the extent paragraph 3 of Plaintiff's Complaint asserts that this Defendant acted through various agents, servants and employees during the course and scope of their authority and employment, without naming said individuals, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 3; therefore, same are deemed denied and strict proof thereof is demanded at trial.

4. Paragraphs 4 and 5 of Plaintiff's Complaint are admitted.

5. To the extent paragraph 6 of Plaintiff's Complaint asserts any factual averments of negligence on the part of this answering Defendant, said averments are denied pursuant to Pa. R.C.P. 1029(e). By way of further answer, to the extent paragraph 6 contains conclusions of law, no response is required. To the extent a response may be deemed required, said conclusions of law are denied and strict proof thereof is demanded at trial. By way of further answer, this answering Defendant specifically denies any dangerous condition contained therein on the property as asserted by Plaintiff.

6. Paragraph 7 of Plaintiff's Complaint is admitted.

7. After reasonable investigation, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 8 of Plaintiff's Complaint; therefore, same are deemed denied and strict proof thereof is demanded at trial.

8. After reasonable investigation, this answering Defendant is without knowledge or information sufficient to form a belief as to the many averments contained in paragraph 9 of Plaintiff's Complaint. By way of further answer, to the extent paragraph 9 of

Plaintiff's Complaint asserts that there was any dangerous condition on the premises, said averments are denied pursuant to Pa. R.C.P. 1029(e).

9. To the extent paragraphs 10 and 11 of Plaintiff's Complaint assert any factual allegations of negligence against this answering Defendant, said allegations are denied pursuant to Pa. R.C.P. 1029(e). By way of further answer, to the extent paragraphs 10 and 11 of Plaintiff's Complaint assert factual averments concerning Plaintiff's alleged injuries and damages, after reasonable investigation, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of those averments; therefore, same are deemed denied and strict proof thereof is demanded at trial. By way of further answer, to the extent paragraphs 10 and 11 of Plaintiff's Complaint contain conclusions of law, no response is required. To the extent a response may be deemed required, said conclusions of law are denied and strict proof thereof is demanded at trial.

10. Paragraph 12 of Plaintiff's Complaint is admitted to the extent it asserts that it was the policy of Defendant to keep the doorway to said stairs locked. To the extent paragraph 12 of Plaintiff's Complaint attempts to assert factual averments this Defendant believed that any dangerous condition existed or was aware of any alleged dangerous condition; said averments are denied pursuant to Pa. R.C.P. 1029(e).

11. To the extent paragraph 13 of Plaintiff's Complaint asserts that the door to the basement was unlocked at the time of Plaintiff's fall, said allegation is admitted. To the extent paragraph 13 asserts that the unlocked door posed any risk of injury to a patron such as Plaintiff, said allegations are denied pursuant to Pa. R.C.P. 1029(e). By way of further answer, to the extent paragraph 13 asserts conclusions of law, no response is required. To the

extent a response may be deemed required, said conclusions of law are denied and strict proof thereof is demanded at trial. By way of further answer, to the extent paragraph 13 of Plaintiff's Complaint asserts that this Defendant acted through its agents, servants and employees at that time, without the naming of said individuals, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of those averments; therefore, same are deemed denied and strict proof thereof is demanded at trial.

12. To the extent paragraphs 14, 15, 16, 17, 18, 19 and 20 of Plaintiff's Complaint attempt to assert any factual allegations of negligence as to this answering Defendant, said allegations are denied pursuant to Pa. R.C.P. 1029(e). By way of further answer, to the extent said paragraphs attempt to assert factual allegations with regard to Plaintiff's alleged injuries and damages, after reasonable investigation, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of those averments; therefore, same are deemed denied and strict proof thereof is demanded at trial. To the extent paragraphs 14, 15, 16, 17, 18, 19 and 20 of Plaintiff's Complaint assert conclusions of law, no response is required. To the extent a response may be deemed required, said conclusions of law are denied and strict proof thereof is demanded at trial.

13. Paragraph 21 of Plaintiff's Complaint, including subparagraphs (a) through (h), are denied pursuant to Pa. R.C.P. 1029(e). By way of further answer, to the extent paragraph 21 of Plaintiff's Complaint asserts conclusions of law, no response is required. To the extent a response may be deemed required, said conclusions of law are denied and strict proof thereof is demanded at trial.

WHEREFORE, this answering Defendant denies liability to Plaintiff and demands judgment in its favor.

**NEW MATTER**

14. This Defendant incorporates herein by reference, paragraphs 1 through 13 of the Answer above as if fully set forth herein at length.

15. This Defendant raises as an affirmative defense the statute of limitations applicable to matters involving personal injury.

16. If during the course of discovery or trial it is demonstrated that Plaintiff failed to exercise reasonable care for her own personal well being due to the failure to properly follow treatments recommended by health care professionals or should it be demonstrated that Plaintiff have unreasonably refused treatment which would more than likely or not result in an improvement of her condition, then Plaintiff is barred from recovery to the extent that such unreasonable failure to make it.

17. In the event that Plaintiff proves the averments in the Complaint, the same being specifically denied, then this Defendant avers that the injuries complained of by the Plaintiff are pre-existing conditions and not caused or related to the incident raised in Plaintiff's Complaint and that no recovery may be had against them for such pre-existing conditions.

18. This answering Defendant is insured under a policy issued by Legion Insurance Company or one of its former subsidiaries that were merged into Legion Insurance Company (collectively Legion).

19. The Commonwealth Court of Pennsylvania entered an Order of Liquidation with a finding of insolvency against Legion Insurance Company on July 25, 2003.

20. As a result of the Liquidation Order, the provisions of 40 P.S. 991.1817(a) apply to Plaintiff's claim. Plaintiff is required to exhaust first her right under any insurance policy, including but not limited to claims under accident and health Insurance, worker's compensation insurance, Blue Cross/Blue Shield and all other coverages except for policies of insolvent insurer.

21. Any failure to exhaust other insurance bars Plaintiff's recovery, if any, in this action.

22. Upon information and belief, bills or damages related to the loss for which Plaintiff seeks recovery in this action were paid or are payable by accident and health insurance, Blue Cross/Blue Shield, worker's compensation insurance or other insurance. The Pennsylvania Property & Casualty Insurance Guaranty Association has asserted that any amounts that may be payable by it on behalf of Defendant is reduced by the amount of recovery under such other insurance.

23. Plaintiff's recovery under such other insurance reduces any amount that may be found to be payable by Defendant in this action, to the same extent as recovery reduces any amount payable by the Pennsylvania Property & Casualty Insurance Guaranty Association.

24. Plaintiff's recovery is limited pursuant to the statutory cap as set forth in Pa. C.S. 40 P.S. 991.1803(b).

25. Plaintiff failed to heed written warnings located on the premises and is wholly responsible for her own injuries and damages.

26. This Defendant raises as an affirmative defense the statutory immunities provided to a non-profit corporations.

WHEREFORE, the Defendant, FALLS CREEK FRATERNAL ORDER OF EAGLES NO. 965 demands judgment in its favor and against the Plaintiff.

JURY TRIAL DEMANDED.

ZIMMER KUNZ, P.L.L.C.

BY: 

REBECCA SEMBER, ESQUIRE  
ATTORNEYS FOR DEFENDANT

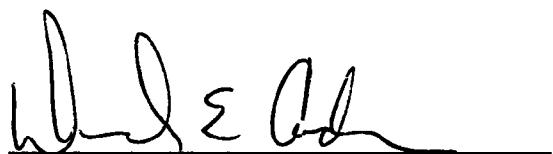
**VERIFICATION**

I, David E Coder, TRUSTEE of Falls Creek  
Name Title

Fraternal Order of Eagles No. 965 have read the foregoing ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT. The statements therein are correct to the best of my personal 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.

Date: 2-12-04



**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the within document was forwarded to counsel below named by United States Mail on the 17th day of February 2004.

Querino Torretti, Esquire  
600 Main Street  
P.O. Box 218  
Reynoldsville, PA 15851

ZIMMER KUNZ, P.L.L.C.  
By:   
REBECCA SEMBER, ESQUIRE  
ATTORNEYS FOR DEFENDANT

FILED NO  
M 10-40484  
FEB 19 2004  
KED

William A. Shaw  
Prothonotary/Clerk of Courts

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

LUCILLE LENKERD, an individual, :  
Plaintiff : CIVIL DIVISION  
:  
: No. 1871, 2002, C.D.  
:  
v. : Type of Pleading:  
: **CERTIFICATE OF SERVICE**  
:  
FALLS CREEK FRATERNAL ORDER : Filed on Behalf of:  
OF EAGLES, NO. 965, a : Plaintiff  
Pennsylvania Corporation, :  
Defendant : Counsel of Record for  
: This Party:  
: Mary L. Pothoven, Esq.  
: Supreme Court ID No. 72164  
: 600 Main Street  
: PO Box 218  
: Reynoldsville, PA 15851  
: (814) 653-2243

RECEIVED  
MARCH 31 2004

MAR 31 2004

William A. Law  
Pro'ctary

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

LUCILLE LENKRD,	:	
Plaintiff	:	CIVIL DIVISION
	:	
	:	No. 1871, 2002, C.D.
v.	:	
	:	
	:	
FALLS CREEK FRATERNAL ORDER	:	
OF EAGLES, NO. 965, a	:	
Pennsylvania Corporation,	:	
Defendant	:	

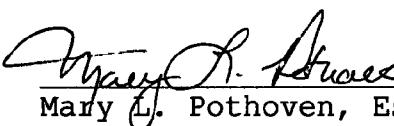
**CERTIFICATE OF SERVICE**

I, Mary L. Pothoven, Esquire, hereby attest a true copy of Plaintiff's Reply to Defendant's New Matter was served on Defendant by mailing a copy to its attorney, Rebeccar Sember, Esq., at her address of Zimmer Kunz, 3300 U.S. Steel Tower, Pittsburgh, PA 15219-2702 on March 30, 2004, by regular mail, postage prepaid.

Respectfully submitted:

Date:

3/30/04

  
Mary L. Pothoven, Esq.,  
Attorney for Plaintiff

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

LUCILLE LENKERD, an individual, :  
Plaintiff : CIVIL DIVISION  
: :  
: No. 1871, 2002, C.D.  
: :  
v. : Type of Pleading:  
: PLAINTIFF'S REPLY TO  
: DEFENDANT'S NEW MATTER  
: :  
FALLS CREEK FRATERNAL ORDER : Filed on Behalf of:  
OF EAGLES, NO. 965, a : Plaintiff  
Pennsylvania Corporation, :  
Defendant : Counsel of Record for  
: This Party:  
: Mary L. Pothoven, Esq.  
: Supreme Court ID No. 72164  
: 600 Main Street  
: PO Box 218  
: Reynoldsville, PA 15851  
: (814) 653-2243

FILED  
FEB 2004

MAR 3 1 2004

William A. Shaw  
Prothonotary

RECEIVED  
MAY 1 2004  
LIBRARY

MAR 31 2004

William A. Shaw  
Prothonotary

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

LUCILLE LENKERD, an individual, :  
Plaintiff : CIVIL DIVISION  
: :  
: No. 1871, 2002, C.D.  
: :  
v. : Type of Pleading:  
: **CERTIFICATE OF SERVICE**  
: :  
FALLS CREEK FRATERNAL ORDER : Filed on Behalf of:  
OF EAGLES, NO. 965, a : Plaintiff  
Pennsylvania Corporation, :  
Defendant : Counsel of Record for  
: This Party:  
: Mary L. Pothoven, Esq.  
: Supreme Court ID No. 72164  
: 600 Main Street  
: PO Box 218  
: Reynoldsville, PA 15851  
: (814) 653-2243

RECEIVED

APR 02 2004

William A. Shaw  
Prothonotary, Clerk of Courts

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

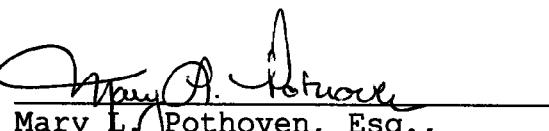
LUCILLE LENKRD, :  
Plaintiff : CIVIL DIVISION  
: :  
: No. 1871, 2002, C.D.  
v. :  
: :  
: :  
FALLS CREEK FRATERNAL ORDER :  
OF EAGLES, NO. 965, a :  
Pennsylvania Corporation, :  
Defendant : :

**CERTIFICATE OF SERVICE**

I, Mary L. Pothoven, Esquire, hereby attest a true copy of Plaintiff's Reply to Defendant's Request for the Production of Documents and Answers to Interrogatories Directed to Plaintiff were served on Defendant by mailing a copy to its attorney, Rebecca A. Sember, Esq., to her address of Zimmer Kunz, Firm #920, 3300 U.S. Steel Tower, Pittsburgh, PA 15219-2702 on March 31, 2004, by regular mail, postage prepaid.

Respectfully submitted:

Date: March 31, 2004

  
\_\_\_\_\_  
Mary L. Pothoven, Esq.,  
Attorney for Plaintiff

100-16074-1  
APR 2 2004  
tag

William A. Smith  
Prothonotary, Clerk of Courts

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

LUCILLE LENKERTD, an individual, :  
Plaintiff

: CIVIL DIVISION  
:  
: No. 1871, 2002, C.D.

v.

: Type of Pleading:  
: CERTIFICATE OF SERVICE

FALLS CREEK FRATERNAL ORDER  
OF EAGLES, NO. 965, a  
Pennsylvania Corporation,  
Defendant

: Filed on Behalf of:  
: Plaintiff  
:  
: Counsel of Record for  
: This Party:  
: Mary L. Pothoven, Esq.  
: Supreme Court ID No. 72164  
: 600 Main Street  
: PO Box 218  
: Reynoldsville, PA 15851  
: (814) 653-2243

FILED

JUN 03 2004

W/135/6

William A. Shaw

Prothonotary/Clerk of Courts

1 CERT TO ATT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LUCILLE LENKERD, an individual,

Plaintiff

v.

FALLS CREEK FRATERNAL ORDER OF  
EAGLES, No. 965, a Pennsylvania  
Corporation,

Defendant.

**JURY TRIAL DEMANDED**

CIVIL DIVISION

No. 1871, 2002, C.D.

**NOTICE OF SERVICE OF ANSWERS  
AND OBJECTIONS TO PLAINTIFF'S  
FIRST SET OF INTERROGATORIES  
AND RESPONSES TO REQUEST FOR  
PRODUCTION OF DOCUMENTS**

Filed on behalf of:  
DEFENDANT

Counsel of Record for this party:  
**Rebecca A. Sember, Esquire**  
Pa. I.D. #74584

**ZIMMER KUNZ  
PROFESSIONAL LIMITED LIABILITY  
COMPANY  
Firm #920  
3300 U.S. Steel Tower  
Pittsburgh, PA 15219**

(412) 281-8000

**FILED**

**JUL 14 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LUCILLE LENKERTD, an individual,

CIVIL DIVISION

Plaintiff

No. 1871, 2002, C.D.

v.

FALLS CREEK FRATERNAL ORDER OF  
EAGLES, No. 965, a Pennsylvania  
Corporation,

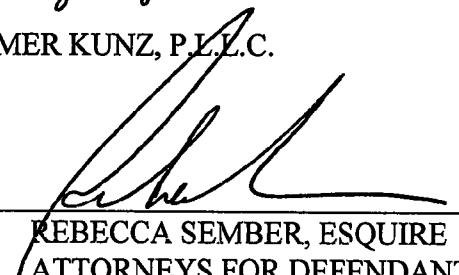
Defendant.

**NOTICE OF SERVICE OF ANSWERS AND OBJECTIONS TO**  
**PLAINTIFF'S FIRST SET OF INTERROGATORIES AND**  
**RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: PROTHONOTARY

Kindly take notice that Defendant, FALLS CREEK FRATERNAL ORDER OF EAGLES, NO. 965 has served the Plaintiff, LUCILLE LENKERTD with Answers and Objections to Plaintiff's First Set of Interrogatories and Responses to Request for Production of Documents, by mailing same to her counsel of record, Mary L. Pothaven, Esquire, 600 Main Street, P.O. Box 218, Reynoldsville, PA 15851, on this 12<sup>th</sup> day of July 2004.

ZIMMER KUNZ, P.L.L.C.

BY: 

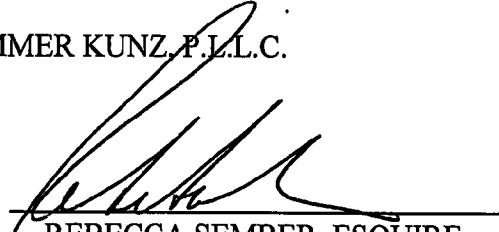
REBECCA SEMBER, ESQUIRE  
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within document was forwarded to counsel below named by United States Mail on the 12<sup>th</sup> day of July, 2004.

Mary L. Pothoven, Esquire  
600 Main Street  
P.O. Box 218  
Reynoldsville, PA 15851

ZIMMER KUNZ, P.L.L.C.

By: 

REBECCA SEMBER, ESQUIRE  
ATTORNEYS FOR DEFENDANT

111 NO  
MIL 2004  
JUL 14 2004  
W.A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LUCILLE LENKERT, an individual,

CIVIL DIVISION

Plaintiff

No. 1871, 2002, C.D.

v.

FALLS CREEK FRATERNAL ORDER OF  
EAGLES, No. 965, a Pennsylvania  
Corporation,

**PRAECIPE FOR WITHDRAWAL/  
ENTRY OF APPEARANCE**

Filed on behalf of:  
DEFENDANT

Defendants

Counsel of Record for this party:  
Rebecca A. Sember, Esquire  
Pa. I.D. #74584

**JURY TRIAL DEMANDED**

**RAWLE & HENDERSON LLP**  
535 Smithfield Street  
Suite 1000  
Pittsburgh, PA 15222  
(412) 261-5700

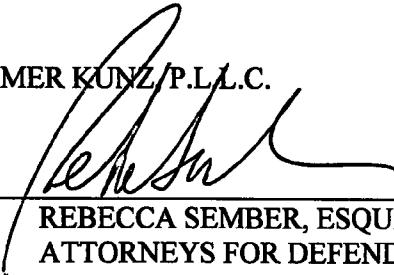
2cc  
M/11/2004 JUL 29 2004 Atty  
filed  
RECEIVED  
CLEARFIELD COUNTY  
PROBATE & CIVIL CLERK'S OFFICE  
Copy to CJA

**PRAECIPE FOR WITHDRAWAL OF APPEARANCE**

TO: PROTHONOTARY

Kindly withdraw the appearance of Rebecca Sember, Esquire and ZIMMER KUNZ, P.L.L.C. on behalf of the Defendant, FALLS CREEK FRATERNAL ORDER OF EAGLES, No. 965, a Pennsylvania corporation.

ZIMMER KUNZ, P.L.L.C.

By: 

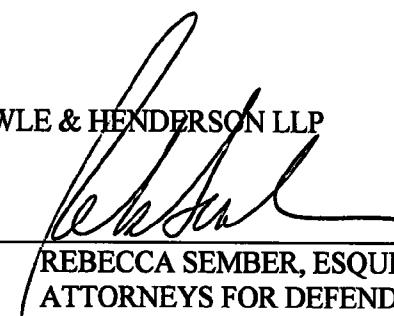
REBECCA SEMBER, ESQUIRE  
ATTORNEYS FOR DEFENDANT

**PRAECIPE FOR ENTRY OF APPEARANCE**

TO: PROTHONOTARY

Kindly enter the appearance of Rebecca Sember, Esquire, and Rawle & Henderson LLP on behalf of the Defendant, FALLS CREEK FRATERNAL ORDER OF EAGLES, No. 965, a Pennsylvania corporation.

RAWLE & HENDERSON LLP

BY: 

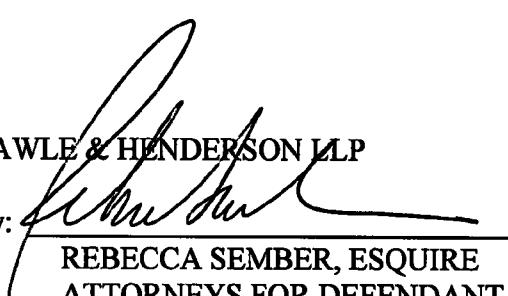
REBECCA SEMBER, ESQUIRE  
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within PRAECIPE FOR  
WITHDRAWAL/ENTRY OF APPEARANCE was forwarded to counsel below named by U.S.  
Mail, First-Class, postage pre-paid on the 21<sup>st</sup> day of July, 2004.

Mary L. Pothoven, Esquire  
600 Main Street  
P.O. Box 218  
Reynoldsville, PA 15851

RAWLE & HENDERSON LLP

By: 

REBECCA SEMBER, ESQUIRE  
ATTORNEYS FOR DEFENDANT

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

LUCILLE LENKERTD, an individual, :  
Plaintiff : CIVIL DIVISION  
:  
: No. 1871, 2002, C.D.  
:  
v. : Type of Pleading:  
: REQUEST FOR THE PRODUCTION  
: OF DOCUMENTS  
:  
FALLS CREEK FRATERNAL ORDER : Filed on Behalf of:  
OF EAGLES, NO. 965, a : Plaintiff  
Pennsylvania Corporation, :  
Defendant : Counsel of Record for  
: This Party:  
: Mary L. Pothoven, Esq.  
: Supreme Court ID No. 72164  
: 600 Main Street  
: PO Box 218  
: Reynoldsville, PA 15851  
: (814) 653-2243

FILED 2cc & 2Cert.  
m/3:54/01 of Disc. to Atty  
NOV 14 2005

William A. Shaw  
Prothonotary/Clerk of Courts

Copy to CJA  
60

**FILED**

**NOV 14 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

**Lucille Lenkerd**

Vs.  
**Fraternal Order of Eagles No. 965**

**No. 2002-01871-CD**

**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 November 14, 2005, marked:

Settled and Discontinued

Record costs in the sum of \$85.00 have been paid in full by Querino Torretti, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 14th day of November A.D. 2005.

---

William A. Shaw, Prothonotary