

03-522-CD
Melissa Lynne Hess, et al vs. Milestone Properties, Et al

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

vs.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,

Defendants

CIVIL ACTION - AT LAW

No. 03-522-CD

Type of Pleading:

COMPLAINT

Filed on Behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 05911
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED

APR 09 2003

William A. Shaw
Prothonotary

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

MELISSA LYNNE HESS and	:	
DOUGLAS HESS, her husband,	:	
Plaintiffs	:	
vs.	:	No.
MILESTONE PROPERTIES, INC.	:	
J.J. GUMBERG COMPANY,	:	
and WASHINGTON PLAZA	:	
ASSOCIATES LIMITED	:	
PARTNERSHIP,	:	
Defendants	:	

NOTICE

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

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

Court Administrator
Clearfield County Courthouse
231 E. Market Street
Clearfield, PA 16830

(814) 765-2641 Ext. 1303

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

MELISSA LYNNE HESS and	:	
DOUGLAS HESS, her husband,	:	
Plaintiffs	:	
vs.	:	No.
MILESTONE PROPERTIES, INC.,	:	
J.J. GUMBERG COMPANY,	:	
and WASHINGTON PLAZA	:	
ASSOCIATES LIMITED	:	
PARTNERSHIP,	:	
Defendants	:	

COMPLAINT

AND NOW, comes the Plaintiffs, Melissa Lynne Hess and Douglas Hess, by their attorneys, Hanak, Guido and Taladay and hereby bring the within Complaint, averring as follows:

1. Plaintiffs are Melissa Lynne Hess and Douglas Hess, husband and wife of 303 South Avenue, DuBois, Clearfield County, Pennsylvania 15801.
2. Defendant Milestone Properties, Inc., is a corporation doing business within the Commonwealth of Pennsylvania with offices at 150 E. Palm Meadow Park Drive, Boca Raton, Florida 33432.
3. Defendant J.J. Gumberg Company is a limited partnership with a place of business at 1051 Brinton Road, Pittsburgh, Pennsylvania 15221.
4. Defendant Washington Plaza Associates Limited Partnership is a limited partnership with an address registered with the Pennsylvania Department of State, Corporation Bureau, of c/o

Corporation Service Company, 2704 Commerce Drive, Harrisburg, Pennsylvania 17110.

5. Defendant Milestone Properties and/or Defendant Washington Plaza Associates Limited Partnership is the owner of a certain piece or parcel of real estate located in Sandy Township, Clearfield County, Pennsylvania, and commonly known as the "Sandy Plaza" and the adjacent parking areas.

6. Defendant J.J. Gumberg Company, at all times relevant hereto, possessed, occupied or otherwise controlled the Sandy Plaza and the adjacent parking areas under Agreement with Defendant Milestone Properties and Defendant Washington Plaza Associates Limited Partnership.

7. Among the business renting commercial space in the Sandy Plaza is the BiLo division of Riverside Markets, which operates a supermarket including a food store and pharmacy at the southern end of the Plaza.

8. On or about May 13, 2001, the Plaintiffs traveled to the Sandy Plaza for the purpose of patronizing the BiLo market.

9. Adjacent to the BiLo market is an asphalt parking lot which at all times relevant hereto was owned by Defendant Milestone Properties and controlled by Defendant Milestone Properties and/or Defendant J.J. Gumberg.

10. Husband Plaintiff parked the family car in one of the designated parking spots in front of the BiLo market and Wife and Husband Plaintiff proceeded to walk toward the store. Suddenly and without warning, Wife Plaintiff's left ankle encountered a "pothole" which caused her to twist her ankle, resulting in severe and permanent injury.

11. The defective pavement or "pothole" in question had apparently been previously identified and marked for repair by either or both of the Defendants.

12. Wife's injuries were solely and proximately caused by the negligence of the Defendants, individually or in concert, which negligence is as follows:

- (a) In permitting an uneven or defective asphalt surface in an area of the parking lot where they knew or should have known that business invitees would be walking; and
- (b) In failing to timely and adequately remedy dangerous irregularities in the pavement;
- (c) In failing to adequately barricade, mark, or otherwise render inaccessible the defect in the asphalt, resulting in a dangerous condition to business invitees upon the premises; and
- (d) In failing to adequately warn business invitees upon the premises of the defective and dangerous condition.

13. As a direct and proximate result of Defendants' negligence, Wife Plaintiff has incurred injuries, including, but not limited to, the following:

- (a) Severe ankle sprain with injury to ankle ligaments and peroneal tendons;
- (b) Destabilization of left foot and ankle;
- (c) Protracted loss of mobility and function of left foot and ankle;
- (d) Permanent impairment of the use of her left foot and ankle;
- (e) Severe pain, suffering and discomfort; and

(f) Increased risk of arthritis, scar tissue, and weakened ligaments of the left foot and ankle.

14. As a direct and proximate result of Defendants' negligence, Wife Plaintiff has incurred medical bills in the amount of \$6,891.34 for which Defendants are responsible.

15. As a direct and proximate result of Defendants' negligence, Husband Plaintiff has suffered the loss of society, companionship, service and consortium of Wife Plaintiff.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount in excess of \$25,000.00.

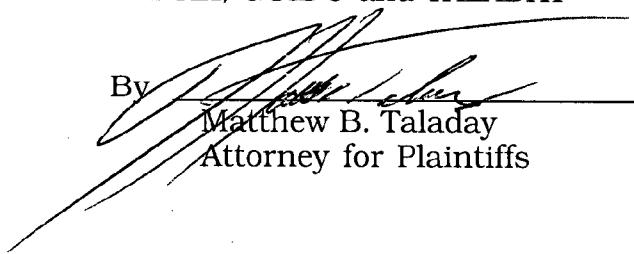
A JURY TRIAL IS DEMANDED.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By

Matthew B. Taladay
Attorney for Plaintiffs

A handwritten signature in black ink, appearing to read "Matthew B. Taladay", is written over a horizontal line. The signature is fluid and cursive, with "Matthew B." on the top line and "Taladay" on the bottom line.

VERIFICATION

I, MELISSA LYNNE HESS and DOUGLAS HESS, do hereby verify that I have read the foregoing COMPLAINT. The statements therein are correct to the best of my personal knowledge or information and belief.

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

Date: 03-20-03

Melissa Lynne Hess
Melissa Lynne Hess

Douglas Hess
Douglas Hess

FILED
in 71100 134 PD 85.00
APR 09 2003 144 to Sherry
William A. Shaw
Prothonotary 144 to Atty

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

vs.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,

Defendants

CIVIL ACTION - AT LAW

No. 2003-522-CD

Type of Pleading:

Affidavit of Service

Filed on Behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 05911
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED

APR 30 2003

William A. Shaw
Prothonotary

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

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

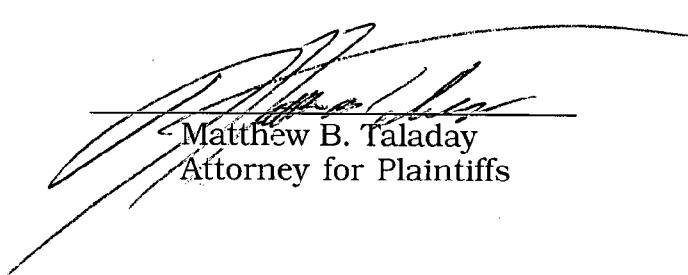
vs. : No. 2003-522-CD

MILESTONE PROPERTIES, INC.
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,

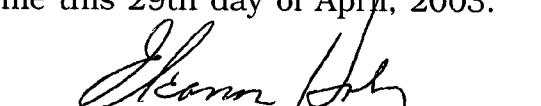
Defendants :

AFFIDAVIT OF SERVICE

I hereby certify that on April 25, 2003, I served by
Certified Mail No. 7099 3220 0011 0187 8273, Return Receipt
Requested, a Court certified copy of Complaint upon Milestone
Properties, Inc., 150 E. Palm Meadow Park Drive, Boca Raton, Florida
33432. Return Receipt Card is attached hereto as Exhibit "A".


Matthew B. Taladay
Attorney for Plaintiffs

Sworn to and subscribed before
me this 29th day of April, 2003.



Notary

Notarial Seal
Eleanor Haky, Notary Public
DuBois, Clearfield County
My Commission Expires Mar. 24, 2004

Member, Pennsylvania Association of Notaries

SENDER: COMPLETE THIS SECTION

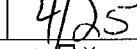
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MILESTONE PROPERTIES INC.
150 E PALM MEADOW PARK DRIVE
BOCA RATON FL 33432

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

Agent
 Addressee

B. Received by (Printed Name)**C. Date of Delivery**

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- | | |
|--|---|
| <input checked="" type="checkbox"/> Certified Mail | <input type="checkbox"/> Express Mail |
| <input type="checkbox"/> Registered | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Insured Mail | <input type="checkbox"/> C.O.D. |

4. Restricted Delivery? (Extra Fee) Yes**2. Article Number**

(Transfer from service label)

7099 3220 0011 0187 8273

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

EXHIBIT "A"

FILED NO
cc

10:30 AM
APR 30 2003

CL
KAY

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

v.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

CIVIL ACTION - LAW

NO. 03-522-CD

PRAECIPE FOR APPEARANCE

Filed on behalf of Defendant, Milestone
Properties, Inc.

Counsel of Record for this Party:

JOHN K. ERYAN, ESQUIRE
Pa. I.D. #62901

ZIMMER KUNZ, PLLC
Firm #920
3300 USX Tower
Pittsburgh, PA 15219

(412) 281-8000

FILED NO
m 10/35/01
cc
MAY 22 2003
Sgt

William A. Shaw
Prothonotary

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

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

v.

NO. 03-522-CD

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

PRAECIPE FOR APPEARANCE

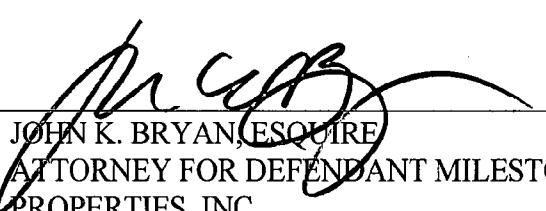
TO: PROTHONOTARY

Kindly enter my appearance on behalf of the defendant, MILESTONE
PROPERTIES, INC., in the above captioned matter.

Respectfully submitted,

**ZIMMER KUNZ
PROFESSIONAL LIMITED LIABILITY COMPANY**

BY _____


JOHN K. BRYAN, ESQUIRE
ATTORNEY FOR DEFENDANT MILESTONE
PROPERTIES, INC.

3300 USX Tower
Pittsburgh, PA 15219-2702

(412) 281-8000

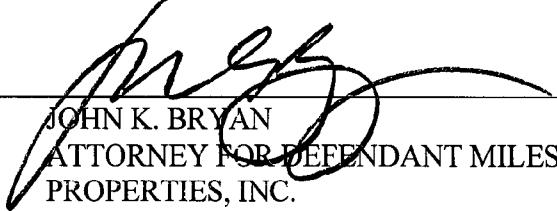
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within **PRAECIPE FOR APPEARANCE** was forwarded to counsel below named by U. S. Mail on the 20 day of May, 2003.

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P O Box 487
DuBois PA 15801

J.J. Gumberg Company
1051 Brinton Road
Pittsburgh PA 15221

**ZIMMER KUNZ
PROFESSIONAL LIMITED LIABILITY COMPANY**

BY 

JOHN K. BRYAN
ATTORNEY FOR DEFENDANT MILESTONE
PROPERTIES, INC.

In The Court of Common Pleas of Clearfield County, Pennsylvania

HESS, MELISSA LYNNE & DOUGLAS

vs. 1

MILESTONE PROPERTIES INC a

Sheriff Docket # 13916

03-522-CD

COMPLAINT

SHERIFF RETURNS

NOW APRIL 15, 2003, JACK LOTWICK, SHERIFF OF DAUPHIN COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON WASHINGTON PLAZA ASSOCIATES LIMITED PARTNERSHIP, DEFENDANT.

NOW APRIL 17, 2003 SERVED THE WITHIN COMPLAINT ON WASHINGTON PLAZA ASSOCIATES LIMITED PARTNERSHIP, DEFENDANT BY DEPUTIZING THE SHERIFF OF DAUPHIN COUNTY. THE RETURN OF SHERIFF LOTWICK IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED AMY AUMAN, CSR.

NOW APRIL 15, 2003, PETER DEFAZIO, SHERIFF OF ALLEGHENY COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON J.J. GUMBERG COMPANY, DEFENDANT.

NOW APRIL 22, 2003 SERVED THE WITHIN COMPLAINT ON J.J. GUMBERG COMPANY, DEFENDANT BY DEPUTIZING THE SHERIFF OF ALLEGHENY COUNTY. THE RETURN OF SHERIFF DEFAZIO IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED PERSON IN CHARGE.

FILED
BPO 2000 B8
MAY 30 2003

William A. Shaw
Prothonotary

Return Costs

Cost	Description
43.57	SHERIFF HAWKINS PAID BY: ATTY CK# 12595
20.00	SURCHARGE PAID BY: ATTY CK# 12604
29.25	DAUPHIN CO. SHFF PAID BY: ATTY.
50.00	ALLEGHENY CO. SHFF. PAID BY: ATTY.
3.00	NOTARY (ALLEGHENY CO.) PAID BY: ATTY.

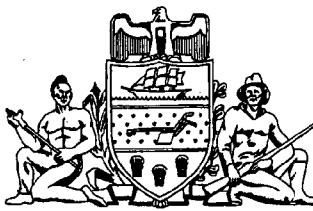
Sworn to Before Me This

30 Day Of May 2003
Chester A. Hawkins

So Answers,

Chester A. Hawkins
by Marilyn Harr
Chester A. Hawkins
Sheriff

Office of the Sheriff



Mary Jane Snyder
Real Estate Deputy

William T. Tully
Solicitor

J. Daniel Basile
Chief Deputy

Michael W. Rinehart
Assistant Chief Deputy

Dauphin County
Harrisburg, Pennsylvania 17101
ph: (717) 255-2660 fax: (717) 255-2889

Jack Lotwick
Sheriff

Commonwealth of Pennsylvania : HESS MELISSA
County of Dauphin : WASHINGTON PLAZA ASSOCIATES LIMITED PA

Sheriff's Return

No. 0915-T - - - 2003
OTHER COUNTY NO. 03 522 CD

AND NOW: April 17, 2003 at 10:45AM served the within

COMPLAINT upon
WASHINGTON PLAZA ASSOCIATES LIMITED PART by personally handing
C/O CORPORATION SERVICE COMPANY
to AMY AUMAN (CSR) 1 true attested copy(ies)
of the original COMPLAINT and making known
to him/her the contents thereof at 2704 COMMERCE DRIVE
SUITE B
HARRISBURG, PA 17110-0000

Sworn and subscribed to
before me this 17TH day of APRIL, 2003

Stephen C. (Marina)

PROTHONOTARY

So Answers,

J.R. Lotwick

Sheriff of Dauphin County, Pa.

By

John Herzog
Deputy Sheriff

Sheriff's Costs: \$29.25 PD 04/17/2003

RCPT NO 177732

HERZOG



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

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

ROBERT SNYDER
CHIEF DEPUTY

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Pg.13916

MELISSA LYNNE HESS & DOUGLAS HESS

TERM & NO. 03-522-CD

VS

DOCUMENT TO BE SERVED:

MILESTONE PROPERTIES INC. al

COMPLAINT

SERVE BY: 05/09/2003

MAKE REFUND PAYABLE TO:

HANAK, GUIDO & TALADAY, ATTYS.

SERVE: WASHINGTON PLAZA ASSOCIATES LIMITED PARTNERSHIP

ADDRESS: c/o Corporation Service Company, 2704 Commerce Drive, Harrisburg, Pa. 17110

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF OF DAUPHIN COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 15th Day of APRIL 2003

Respectfully,

A handwritten signature in black ink, appearing to read "Chester A. Hawkins".

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY



COUNTY OF DAUPHIN
HARRISBURG, PA.

J. R. LOTWICK
SHERIFF OF DAUPHIN COUNTY
OFFICIAL RECEIPT

RECEIPT NUMBER... 177732

RECEIPT DATE... 04/17/2003

RECEIVED FROM.... HANAK GUIDO AND TALA

OPERATOR.... HAH

DESCRIPTION.... (1) CIVIL ACTION-NOTICE

DOCKET NUMBER.... 0915T 2003

DEFENDANT.... WASHINGTON PLAZA ASO

COUNTY.... *****26.75

STATE.... *****.00

AGENCY.... *****2.50

TOTAL.... *****29.25

CASH.... *****.00

CHECK.... *****29.25

RECD. BY

A handwritten signature in black ink, appearing to read "J. R. Lotwick".

FW (4)

48638

PETER R. DEFAZIO
Sheriff

ALLEGHENY COUNTY SHERIFF'S DEPARTMENT
436 GRANT STREET
PITTSBURGH, PA 15219-2496
PHONE (412) 350-4700

DENNIS SKOSNIK
Chief Deputy

PLAINTIFF Melissa & Douglas Hess

VS

DEFT. Milestone Properties Inc a1

ADD. DEFT. Serve: J.J. Gumberg Company

ADD. DEFT. 1051 Brintron Road

GARNISHEE Pittsburgh, PA 15221

ADDRESS _____

MUNICIPALITY or CITY WARD BRADDOCK HILLS

DATE: 4-17 1903

ATTY'S Phone 814-371-7768

ATTY. _____

ADDRESS Matthew PA 15221

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

Now April 15 1903, I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby depelize the Sheriff of Allegheny County to execute this Writ and make return thereof according to law

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

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

MAKE	MODEL	MOTOR NUMBER	SERIAL NUMBER	LICENSE NUMBER
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

SHERIFF'S OFFICE USE ONLY

I hereby CERTIFY AND RETURN that on the 22 day of April, 19 2003 at 10:39 o'clock A.M./P.M. Address Above/Address Below. County of Allegheny, Pennsylvania

I have served in the manner described below:

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

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

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

Regular Mail Why _____

Notarial Seal
Sheila A. O'Brien, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires June 19, 2003

Member, Pennsylvania Association of Notaries

APR 28 2003

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

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

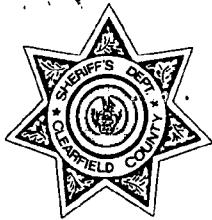
ATTEMPTS _____ / _____ / _____ / _____ / _____ / _____ /

PETER R. DEFAZIO, Sheriff

By Wm Gleel
Deputy

District _____

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



CHESTER A. HAWKINS
SHERIFF

**Sheriff's Office
Clearfield County**

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

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

ROBERT SNYDER
CHIEF DEPUTY

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Pg.13916

MELISSA LYNNE HESS & DOUGLAS HESS

TERM & NO. 03-522-CD

VS

DOCUMENT TO BE SERVED:

MILESTONE PROPERTIES INC. al

COMPLAINT

SERVE BY: 05/09/2003

MAKE REFUND PAYABLE TO:

HANAK, GUIDO & TALADAY, ATTYS.

SERVE: J.J. GUMBERG COMPANY

ADDRESS: 1051 BRINTON ROAD, PITTSBURGH, PA. 15221

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF OF ALLEGHENY COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 15th Day of APRIL 2003

Respectfully,

A handwritten signature in black ink, appearing to read "Chester A. Hawkins".

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

vs.

MILESTONE PROPERTIES, INC.; J.J.
GUMBERG COMPANY; and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

CIVIL DIVISION

No. 03-522-^{CD}DC

PRAECIPE FOR APPEARANCE

Filed on behalf of Defendant, J.J. Gumberg
Company

Counsel of Record:

Kenneth J. Nolan, Esquire
PA I.D. #32422

CAMPBELL, NOLAN & DALY
350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4596

Firm I.D. #763

FILED

JUN 02 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

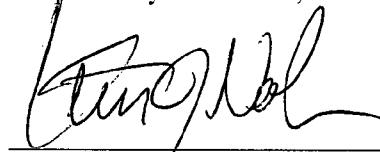
MELISSA LYNNE HESS and DOUGLAS)	CIVIL DIVISION
HESS, her husband,)	
)	No. 03-522-DC
Plaintiffs,)	
)	
vs.)	
)	
MILESTONE PROPERTIES, INC.; J.J.)	
GUMBERG COMPANY; and)	
WASHINGTON PLAZA ASSOCIATES)	
LIMITED PARTNERSHIP,)	
)	
Defendants.)	

PRAECIPE FOR APPEARANCE

TO: WILLIAM SHAW, PROTHONOTARY:

Kindly enter my appearance in the above-captioned case on behalf of J.J. Gumberg Company, Defendant.

Respectfully Submitted,



Kenneth J. Nolan, Esquire
Attorney for Defendant, J.J. Gumberg Company

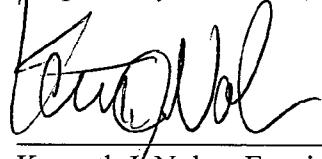
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE FOR APPEARANCE was sent to the following by regular first class mail this 29th day of May, 2003:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

John K. Bryan, Esquire
Zimmer Kunz
3300 USX Tower
Pittsburgh, PA 15219

Respectfully Submitted,



Kenneth J. Nolan, Esquire
Attorney for Defendant, J.J. Gumberg
Company

350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4596

FILED
JUN 11 2003
cc
JUN 02 2003
6:00 AM
FBI

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

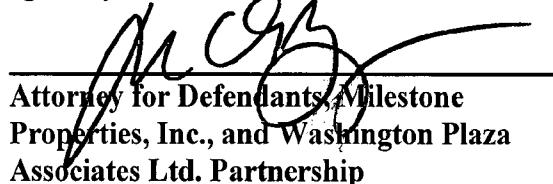
v.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

TO: All Parties

***You are hereby notified to file a written
response to the enclosed NEW MATTER and
NEW MATTER PURSUANT TO RULE
2252(D) within twenty (20) days from service
hereof or a judgment may be entered
against you.***



Attorney for Defendants, Milestone
Properties, Inc., and Washington Plaza
Associates Ltd. Partnership

CIVIL ACTION – LAW

NO. 03-522-CD

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

Filed on behalf of Defendants, Milestone
Properties, Inc., and Washington Plaza
Associates Ltd. Partnership

Counsel of Record for this Party:

JOHN K. BRYAN, ESQUIRE
Pa. I.D. #62901

ZIMMER KUNZ, PLLC
Firm #920
3300 USX Tower
Pittsburgh, PA 15219

(412) 281-8000

FILED

JUN 18 2003

William A. Shaw
Prothonotary

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

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

v.

NO. 03-522-CD

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

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

AND NOW, come the Defendants, Milestone Properties, Inc., and Washington Plaza Associates Ltd. Partnership, by and through their attorneys, ZIMMER KUNZ, PLLC and JOHN K. BRYAN, ESQUIRE and file the within Answer, New Matter and New Matter Pursuant to Rule 2252(d), whereof the following are statements:

ANSWER

1. Admitted, upon information and belief.
2. Denied. This Defendant is a Delaware corporation which does not conduct business in Pennsylvania. Moreover, this Defendant's correct address is 200 Congress Park Drive, Suite 103, Delray Beach, Florida, 33445.
3. Admitted, upon information and belief.
4. Admitted.

5. Admitted in part and denied in part. It is denied that the Defendant, Milestone Properties, Inc. (hereinafter "Milestone"), is an owner of any portion of the referenced real estate. It is admitted that the Defendant, Washington Plaza Associates Limited Partnership (hereinafter "Washington Plaza"), is the beneficial owner of a portion of the subject real estate.

6. Admitted in part and denied in part. It is denied that Milestone had an agreement with Defendant, J.J. Gumberg Company (hereinafter "Gumberg"). Likewise it is denied that Washington Plaza had such an agreement with Gumberg. Upon information and belief, it is admitted that Gumberg possessed, occupied or otherwise controlled a portion of the real estate at or adjacent to Sandy Plaza.

7. Admitted.

8. After reasonable investigation, Defendants are without knowledge sufficient to form a belief as to the truth or falsity of the averments contained herein and, therefore, deny the same and demand strict proof thereof at time of trial.

9. To the extent that the averments of this paragraph are directed to Gumberg, the same require no response. As to Milestone, the averments of this paragraph are specifically denied and strict proof thereof is demanded at time of trial.

10. After reasonable investigation, Defendants are without knowledge sufficient to form a belief as to the truth or falsity of the same and, therefore, deny the same.

11. After reasonable investigation, Defendants are without knowledge sufficient to form a belief as to the truth or falsity of the same and, therefore, deny the same.

12. The averments of this paragraph state legal conclusions which require no response. Inasmuch a response may be required, however, the averments of this paragraph and each of its subparagraphs are denied generally pursuant to Pa.R.C.P. 1029(e).

13. The averments of this paragraph state legal conclusions which require no response.

Inasmuch a response may be required, however, the averments of this paragraph and each of its subparagraphs are denied generally pursuant to Pa.R.C.P. 1029(e).

14. The averments of this paragraph state legal conclusions which require no response.

Inasmuch a response may be required, however, the averments of this paragraph are denied generally pursuant to Pa.R.C.P. 1029(e).

15. The averments of this paragraph state legal conclusions which require no response.

Inasmuch a response may be required, however, the averments of this paragraph are denied generally pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Defendants Milestone Properties, Inc., and Washington Plaza Associates Ltd. Partnership demand judgment in their favor and against all other parties with costs of suit sustained.

NEW MATTER

16. Defendants incorporate herein by reference thereto, their Answer as though the same were fully set forth at length below.

17. Plaintiffs' claims are barred by the applicable statute of limitations.

18. Defendants set forth the Pennsylvania Comparative Negligence Statute, 42 Pa. C.S.A. § 7102 as a bar to Plaintiffs' cause of action.

19. Defendants aver that the Plaintiff assumed the risk of any and all injuries and damages and, therefore, cannot now seek recovery for same.

20. While denying all liability, should it be determined that Defendants bear lawful responsibility for alleged harm to the Plaintiff arising as a result of the accident described in the Complaint, then it is denied that all of the harm described in the Complaint is lawfully related to

the accident and, to the contrary, a substantial amount of the harm described can be attributed to pre-existing conditions and accidents or subsequent conditions and accidents for which Defendants are not liable.

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

22. Plaintiff has failed to state a cause of action upon which relief may be granted.

23. Plaintiff's injuries and damages, if any, were caused by a person, party or entity over whom these Defendants had no control or right of control. Any condition that may have caused or in any way contributed to Plaintiff's alleged incident was an open and obvious condition.

WHEREFORE, Defendants Milestone Properties, Inc., and Washington Plaza Associates Ltd. Partnership demand judgment in their favor and against all other parties with costs of suit sustained.

NEW MATTER PURSUANT TO RULE 2252(D)

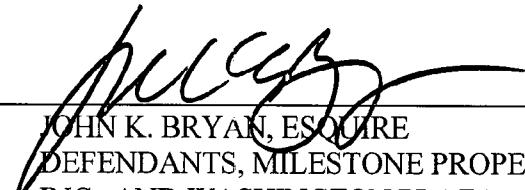
24. Defendants Milestone and Washington Plaza re-allege each and every allegation of their foregoing Answer as if enumerated at length herein and incorporate those averments by reference.

25. These Defendants deny that they are liable to the Plaintiffs upon any cause of action whatsoever. However, for purposes of preserving its right to indemnification and/or contribution, these Defendants incorporate herein by reference the averments of the Plaintiffs' Complaint

directed solely against the Co-Defendant J. J. Gumberg Company as though the same were set forth at length herein. In the event it is determined that any liability is owed to the Plaintiff, these Defendants aver that Co-Defendant Gumberg is liable on the cause of action pleaded by the Plaintiff. In the event it is determined that any liability is owed to the Plaintiffs, these Defendants aver that Co-Defendant Gumberg is solely liable to the Plaintiff, jointly and severally liable with these Defendants, liable directly to the Plaintiffs or liable over to these Defendants upon the cause of action stated by the Plaintiffs in their Complaint.

Respectfully submitted,

**ZIMMER KUNZ
PROFESSIONAL LIMITED LIABILITY COMPANY**

BY 

JOHN K. BRYAN, ESQUIRE
DEFENDANTS, MILESTONE PROPERTIES,
INC., AND WASHINGTON PLAZA
ASSOCIATES LTD. PARTNERSHIP

3300 USX Tower
Pittsburgh, PA 15219-2702

(412) 281-8000

Court of Common Pleas
Clearfield County, Pennsylvania
NO. 03-522-CD

VERIFICATION

I, Patrick S. Kirse, being the Vice President,
of **MILESTONE PROPERTIES, INC.**, one of the defendants herein, do verify that I am
authorized to execute this Verification on its behalf and further that the averments of fact made in
the within **ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE**
2252(D) are true and correct based on knowledge, information and belief.

I understand that false statements herein are made subject to penalty of 18
Pa. C.S.A. paragraph 4904 relating to unsworn falsification to authorities, which provides that if I
make knowingly false averments, I may be subject to criminal penalties.



Date: 6/12/03

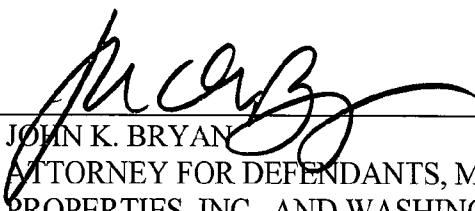
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within **ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE 2252(D)** was forwarded to counsel below named by U. S. Mail on the 16 day of June, 2003.

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P O Box 487
DuBois PA 15801

Kenneth J. Nolan, Esquire
Campbell, Nolan & Daly
Suite 350
Two Chatham Center
Pittsburgh PA 15219

**ZIMMER KUNZ
PROFESSIONAL LIMITED LIABILITY COMPANY**

BY 

JOHN K. BRYAN
ATTORNEY FOR DEFENDANTS, MILESTONE
PROPERTIES, INC., AND WASHINGTON
PLAZA ASSOCIATES LTD. PARTNERSHIP

FILED

NO
cc

NOV 10 2003
10:32 AM
JUN 18 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

v.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

CIVIL ACTION – LAW

NO. 03-522-CD

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

Filed on behalf of Defendants, Milestone
Properties, Inc., and Washington Plaza
Associates Ltd. Partnership

Counsel of Record for this Party:

JOHN K. BRYAN, ESQUIRE
Pa. I.D. #62901

ZIMMER KUNZ, PLLC
Firm #920
3300 USX Tower
Pittsburgh, PA 15219

(412) 281-8000

FILED

JUN 18 2003

William A. Shaw
Prothonotary

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

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

v.

NO. 03-522-CD

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

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

TO: PROTHONOTARY

Kindly take notice that the Defendants, Milestone Properties, Inc., and Washington
Plaza Associates Ltd. Partnership have served the plaintiffs, Melissa Lynne Hess and Douglas
Hess, by United States Mail with Interrogatories and Request for Production of Documents on the

16 day of June, 2003 in the above captioned matter.

Respectfully submitted,

**ZIMMER KUNZ
PROFESSIONAL LIMITED LIABILITY COMPANY**

BY _____

JOHN K. BRYAN
ATTORNEY FOR DEFENDANTS, MILESTONE
PROPERTIES, INC., AND WASHINGTON
PLAZA ASSOCIATES LTD. PARTNERSHIP

CERTIFICATE OF SERVICE

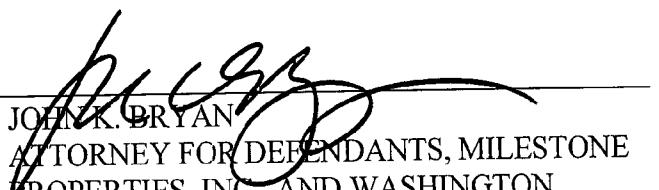
This is to certify that a true and correct copy of the within **NOTICE OF SERVICE OF
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS** was
forwarded to counsel below named by U. S. Mail on the 18 day of June, 2003.

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P O Box 487
DuBois PA 15801

Kenneth J. Nolan, Esquire
Campbell, Nolan & Daly
Suite 350
Two Chatham Center
Pittsburgh PA 15219

**ZIMMER KUNZ
PROFESSIONAL LIMITED LIABILITY COMPANY**

BY _____


JOHN K. BRYAN
ATTORNEY FOR DEFENDANTS, MILESTONE
PROPERTIES, INC., AND WASHINGTON
PLAZA ASSOCIATES LTD. PARTNERSHIP

FILED

10:30 AM
JUN 18 2003
SAC
KED

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

vs.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,

Defendants

CIVIL ACTION - AT LAW

No. 03-522-CD

Type of Pleading:

REPLY TO NEW MATTER

Filed on Behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 05911
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED

JUL 08 2003

William A. Shaw
Prothonotary

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

MELISSA LYNNE HESS and DOUGLAS HESS, her husband, Plaintiffs	:	
vs.	:	No. 03-522-CD
MILESTONE PROPERTIES, INC. J.J. GUMBERG COMPANY, and WASHINGTON PLAZA ASSOCIATES LIMITED PARTNERSHIP,	:	
Defendants	:	

REPLY TO NEW MATTER

AND NOW, come the Plaintiffs, Melissa Lynne Hess and Douglas Hess, by their attorneys, Hanak, Guido and Taladay and hereby reply to New Matter of Defendant Milestone Properties and Defendant Washington Plaza as follows:

16. Plaintiffs incorporate by reference paragraphs 1 through 15 of the Complaint.

17. No response required.

18. Denied.

19. Denied.

20. Denied.

21. The averments of paragraph 21 set forth a conclusion of law to which no response is required.

22. No response required.

23. Denied.

WHEREFORE, Plaintiffs demand judgment in their favor.

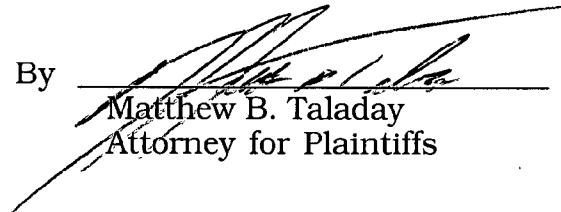
24. - 25. These averments are directed at parties other than Plaintiffs, therefore, no response is required.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By


Matthew B. Taladay
Attorney for Plaintiffs

VERIFICATION

I, MELISSA LYNNE HESS and DOUGLAS HESS, do hereby verify that I have read the foregoing REPLY TO NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

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

Date: Dec 27-03

Melissa L. Hess
Melissa Lynne Hess

D. H. Hess
Douglas Hess

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

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

vs.

No. 03-522-CD

MILESTONE PROPERTIES, INC.
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,

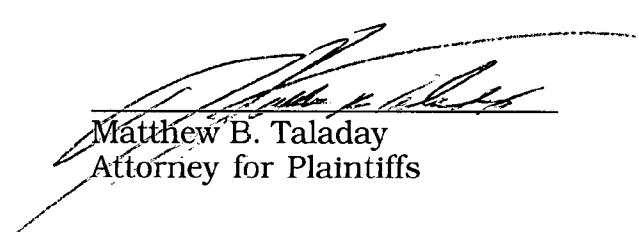
Defendants

CERTIFICATE OF SERVICE

I certify that on the 7th day of July, 2003, a true and correct copy of the foregoing Reply to New Matter was sent via first class mail, postage prepaid, to the following:

John K. Bryan, Esq.
Attorney for Defendants Milestone Properties,
Inc. and Washington Plaza Associates
Ltd. Partnership
Zimmer Kunz
3300 USX Tower
Pittsburgh, PA 15219-2702

Kenneth J. Nolan, Esq.
Attorney for Defendant J.J. Gumberg Company
Campbell, Nolan & Daly
350 Two Chatham Center
Pittsburgh, PA 15219


Matthew B. Taladay
Attorney for Plaintiffs

FILED

in 10:14 CR No. 62
JUL 08 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs : CIVIL ACTION - AT LAW
vs. : No. 2003-522-CD
MILESTONE PROPERTIES, INC., J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA ASSOCIATES LIMITED
PARTNERSHIP, Defendants : Type of Pleading:
Plaintiffs : Notice of Service
Counsel of Record for This Party:
Matthew B. Taladay, Esq.
Supreme Court No. 05911
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801
814-371-7768
JURY TRIAL DEMANDED

FILED

JUL 28 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

vs.

No. 2003-522-CD

MILESTONE PROPERTIES, INC.
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,

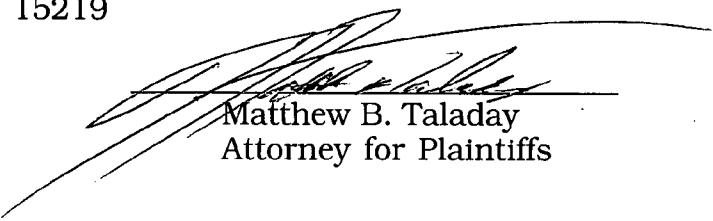
Defendants

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being
counsel of record for Defendant, do hereby certify that I propounded
on Defendants, via United States mail, first class, postage pre-paid,
this 25th day of July, 2003, Plaintiffs' DISCOVERY RESPONSES to the
below indicated person, at said address, being counsel of record for
the Defendants:

John K. Bryan, Esq.
Attorney for Defendants Milestone Properties, Inc.
and Washington Plaza Associates Ltd. Partnership
Zimmer Kunz, PLLC
3300 USX Tower
Pittsburgh, PA 15219

Kenneth J. Nolan, Esq.
Attorney for Defendant J.J. Gumberg Company
Campbell, Nolan & Daly
350 Two Chatham Center
Pittsburgh, PA 15219


Matthew B. Taladay
Attorney for Plaintiffs

FILED
M 17.5 2003
JUL 28 2003
Clerk
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

vs.

MILESTONE PROPERTIES, INC.; J.J.
GUMBERG COMPANY; and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

CIVIL DIVISION

No. 03-522-DC

REPLY TO NEW MATTER PURSUANT
TO RULE 2252(d)

Filed on behalf of Defendant, J.J. Gumberg
Company

Counsel of Record:

Kenneth J. Nolan, Esquire
PA I.D. #32422

CAMPBELL, NOLAN & DALY
350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4596

Firm I.D. #763

FILED

SEP 29 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS)	CIVIL DIVISION
HESS, her husband,)	
)	No. 03-522-DC
Plaintiffs,)	
)	
vs.)	
)	
MILESTONE PROPERTIES, INC.; J.J.)	
GUMBERG COMPANY; and)	
WASHINGTON PLAZA ASSOCIATES)	
LIMITED PARTNERSHIP,)	
)	
Defendants.)	

REPLY TO NEW MATTER PURSUANT TO RULE 2252(d)

AND NOW, comes the defendant, J.J. Gumberg Co. by its attorney, Kenneth J. Nolan, Esquire, and files the following Reply to the New Matter Pursuant to Rule 2252(d) of the Pennsylvania Rules of Civil Procedure:

1. To the extent that paragraph 24 of co-defendants' cross-claim does not assert any factual claims against this defendant, then no response to paragraph 24 is required. In the event that there are incorporated allegations which require a response of this defendant, then the same are specifically denied.

2. Paragraph 25 of co-defendants' cross-claim contains conclusions of law to which no reply is required of this defendant. In the event that a response is required, then the allegations are denied. To the extent that co-defendants have incorporated the allegations of plaintiffs' complaint against this defendant, then in reply thereto, this defendant incorporates its response to that complaint as though the same were set forth at length herein. By way of further reply, it is specifically denied that this defendant was negligent and further denied that this

defendant is liable to plaintiffs or to any other parties. It is specifically denied that this defendant may be solely liable to the plaintiff, jointly and severally liable with the co-defendants, liable directly to the plaintiffs, or liable over to the co-defendants. On the contrary, an agreement between this defendant and the owner was in full force and effect at the time of the incident in question, which agreement contained a provision that the owner agreed to indemnify and hold this defendant harmless from and against any and all demands, claims and suits of any kind whatsoever.

WHEREFORE, this defendant denies any and all liability and demands that judgment be entered in its favor and against all other parties.

Respectfully Submitted,

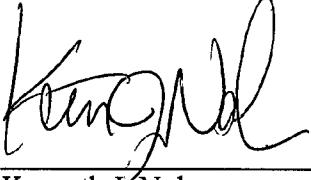


Kenneth J. Nolan, Esquire
Attorney for Defendant, J.J. Gumberg Company

VERIFICATION

I, Kenneth J. Nolan, Esquire, hereby state that I am the attorney for J.J. Gumberg Company, and being authorized to do so, state the facts contained in the within Reply to New Matter Pursuant to Rule 2252(d) are true and correct, not from my own information, but from information supplied to me by J.J. Gumberg Company.

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



Kenneth J. Nolan

Date: 9/22/03

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within REPLY to NEW MATTER was sent to the following by regular first class mail this 24th day of September, 2003:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

John K. Bryan, Esquire
Zimmer Kunz
3300 USX Tower
Pittsburgh, PA 15219

Respectfully Submitted,



Kenneth J. Nolan, Esquire
Attorney for Defendant, J.J. Gumberg
Company

350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4596

FILED
M 1:50 AM C/C
SEP 29 2003
KRS

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

vs.

MILESTONE PROPERTIES, INC.; J.J.
GUMBERG COMPANY; and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

CIVIL DIVISION

No. 03-522-DC

ANSWER, NEW MATTER and NEW
MATTER PURSUANT to RULE 2252 (d)

Filed on behalf of Defendant, J.J. Gumberg
Company

Counsel of Record:

Kenneth J. Nolan, Esquire
PA I.D. #32422

CAMPBELL, NOLAN & DALY
350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4596

Firm I.D. #763

TO: Plaintiff & Milestone/Washington Plaza
YOU ARE HEREBY NOTIFIED TO
FILE A WRITTEN RESPONSE TO
THE ENCLOSED (New Matter & 2252(d))
WITHIN TWENTY (20) DAYS FROM
SERVICE HEREON OR A JUDGMENT
MAY BE ENTERED AGAINST YOU.

Attorney for

J.J. Gumberg, Esq.

FILED

OCT 09 2003
MJD:001 no cc
William A. Shaw
Prothonotary/Clerk of Courts
KES

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS)	CIVIL DIVISION
HESS, her husband,)	
)	No. 03-522-DC
Plaintiffs,)	
)	
vs.)	
)	
MILESTONE PROPERTIES, INC.; J.J.)	
GUMBERG COMPANY; and)	
WASHINGTON PLAZA ASSOCIATES)	
LIMITED PARTNERSHIP,)	
)	
Defendants.)	

ANSWER, NEW MATTER and NEW MATTER PURSUANT to RULE 2252 (d)

AND NOW, comes the defendant J.J. Gumberg Co., by its attorney Kenneth J. Nolan, Esquire, and files the following Answer, New Matter, and New Matter Pursuant to Rule 2252(d) of the Pennsylvania Rules of Civil Procedure:

1. After reasonable investigation, this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint. Said paragraph is therefore denied and strict proof is demanded.
2. Paragraph 2 contains allegations relating to a party other than this defendant and therefore no response is required.
3. Paragraph 3 is admitted in part and denied in part. It is admitted that defendant's address, as it appears in the paragraph 3 of the Complaint, is accurate. It is denied that defendant's name is JJ Gumberg Company. On the contrary, defendant's name is J.J. Gumberg Co. It is further denied that this defendant is a limited partnership. On the contrary, this defendant is a corporation.
- 4-5. Paragraphs 4 and 5 of plaintiffs' Complaint contain allegations relating to parties other than this defendant and therefore no response is required of this defendant.

6. Paragraph 6 is denied as stated. Prior to receipt of plaintiffs' Complaint, this defendant was not aware of an entity known as Washington Plaza Associates Limited Partnership. At no time has this defendant, to its knowledge, had a contract or agreement with said entity. By way of further answer, this defendant did have an agreement with Tacoma Plaza, Inc. concerning management of a portion of the subject premises. A true and correct copy of the agreement is attached hereto as Exhibit "A". At some time prior to plaintiffs' accident, without this defendant's knowledge, it appears that Tacoma Plaza, Inc. conveyed its interest in the premises to defendant Milestone Properties. This defendant continued performing its management function in strict accordance with the agreement with Tacoma Plaza, Inc. and continued to be paid in consideration for the performance of said contractual undertakings by Milestone Properties up to and including the time of the accident. By way of further response, it is denied that this defendant possessed, occupied, or otherwise controlled the premises, insofar as the claims in this case are concerned, to the extent that this defendant was not involved in the repair of potholes.

7. Paragraph 7 is admitted in part and denied in part. To extent that it is alleged or implied that BiLo was a tenant of this defendant, the same is denied. It is admitted that BiLo occupied premises in the Sandy Plaza.

8. After reasonable investigation, this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of plaintiffs' Complaint. Strict proof is demanded. By way of further response, this defendant was never made aware of an accident until August 10, 2001.

9. To the extent that the allegation of control is a legal conclusion or conclusion of law, no response to the same is required. It is admitted that the asphalt parking lot, or at least the portion

thereof, was owned by defendant Milestone Properties. By way of further response, it is denied that this defendant, within the framework of the claims in this case, controlled the asphalt parking lot.

10. After reasonable investigation, this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10. Paragraph 10 is therefore denied and strict proof is demanded.

11. After reasonable investigation, this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11. Strict proof is demanded.

12-15. Paragraphs 12 through 15, inclusive of plaintiffs' Complaint are denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, this defendant denies any and all liability and demands that the Complaint be dismissed and that judgment be entered in favor of this defendant and against plaintiffs.

NEW MATTER

16. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

17. The acts or omissions giving rise to the injuries, losses or damages alleged in the plaintiffs' Complaint were the result of an independent or intervening cause or causes over which this defendant had no control or in any way participated.

18. The injuries, losses and damages alleged in plaintiffs' Complaint were caused or contributed to by the negligence or lack of care on the part of the wife plaintiff or other individuals or entities for whose contact this defendant is not liable.

19. The rights of the plaintiffs in this action are diminished or fully barred by the wife-plaintiff's contributory/comparative negligence in accordance with the Pennsylvania Comparative Negligence Law, 42 Pa. C.S.A. Section 7102.

20. Plaintiffs' action is barred by virtue of the wife-plaintiffs' voluntary assumption of a known risk.

21. Plaintiffs' action is barred by virtue of the applicable statute of limitations.

22. On September 28, 1983, this defendant entered into an agreement with the owner of the premises, Tacoma Plaza, Inc. whereby this defendant would be paid consideration of \$200.00 per month for the performance of various maintenance responsibilities. The said agreement is attached to this pleading as Exhibit "A".

23. This defendant was not responsible for repairing potholes, patching potholes, filling potholes, or any other work relating to potholes. On the contrary, this defendant's responsibilities with respect to maintenance of the parking area was to keep the parking area striped, cleaned and free of foreign objects, debris, obstructions, standing water, and ice and snow. In addition, this defendant was responsible for maintaining and replacing the exterior landscaping and keeping and maintaining adequate lighting fixtures and lighting facilities in the parking area.

24. Without this defendant's knowledge, Tacoma Plaza, Inc. conveyed its interests in the subject property to Milestone Properties.

25. After Tacoma Plaza, Inc. conveyed its ownership interest to Milestone, but before this defendant knew of said transaction, this defendant continued to perform its maintenance responsibilities as per its agreement with Tacoma Plaza, Inc. and continued to be paid a \$200.00 monthly figure by Milestone.

26. At no time was the September 28, 1983 agreement modified in writing by any party.

27. To the extent that paragraph 5 of the agreement requires that the owner indemnify and hold this defendant harmless from and against any and all claims and suits, then this defendant cannot be liable.

WHEREFORE, this defendant denies any and all liability and demands that the Complaint be dismissed and that judgment be entered in favor of this defendant and against the plaintiffs.

NEW MATTER PURSUANT TO RULE 2252(b)

28. If, at the time of trial, plaintiffs are entitled to recover and this defendant is held liable, a liability it expressly denies, and in that event, in the alternative, it is averred that Milestone Properties, Inc. and Washington Plaza Associates Limited Partnership were negligent and that their negligence was the sole and proximate cause of plaintiffs' alleged damages or in the alternative, said co-defendants are jointly and severally liable with this defendant, who would be entitled to contribution or said co-defendants would be liable over to this defendant by way of indemnity for all sums which may be recovered. As a grounds of liability against said co-defendants, this defendant in the alternative incorporates by reference as though set forth at length herein the allegations of negligence against said co-defendants as set forth in plaintiffs' Complaint as well as paragraphs 22 through 27, inclusive of this defendant's New Matter.

29. This defendant incorporates the terms of the agreement attached hereto as Exhibit "A" for purposes of seeking indemnity from Milestone Properties, Inc. and/or Washington Plaza Associates Limited Partnership.

WHEREFORE, this defendant denies any and all liability and demands that the judgment be entered in its favor and against the other parties to this lawsuit.

Respectfully Submitted,



Kenneth J. Nolan, Esquire
Attorney for Defendant, J.J. Gumberg Company

EXHIBIT “A”

AGREEMENT

New owner of Kroger parcel:
Milestone Properties, Inc.
150 E. Palmetto Park Drive, 4th Floor
Boca Raton, FL 33432
(561) 394-9533
Confirmed 5/21/98 (effective date unkno

This agreement made this 28th day of Sept 1983 by and
between Tacoma Plaza Inc. herein called the owner, and J. J. Gumberg Co.
herein called manager, in consideration of the mutual covenants and premises:

Now and therefore, the parties hereto do hereby agree as follows:

1) Services of the manager: Manager will perform all of the landlord obligations under a certain lease dated June 16, 1981 between Gumberg Associates - Sandy Plaza and the Kroger Company, all at the expense of owner, said obligations are to include but are not limited to the following:

- A) Manager will contract for the maintenance of the common area and will pay only from owner's funds all vendor invoices for these services and will use its best efforts to recover the costs for same from Kroger.
- B) Manager will pay only from owner's funds, all tax and insurance bills for the property and will use its best efforts to recover the costs for same from Kroger.
- C) Manager will provide monthly reports to the owner which will include (but not limited to) copies of all received tax bills, insurance bills and Kroger invoices.

2) Consideration: Owner agrees to pay manager for its services the sum of \$200.00 per month which shall be paid by owner on the first business day of each month without requirement of invoicing by manager and to begin July 1, 1983.

3) Term: The term of this agreement shall be for a period of one year. It may be renewed, by mutual consent, for additional one year periods.

4) Termination: This agreement may be terminated by either party upon 30 day notification.

5) Owner indemnifies and holds Manager harmless from and against any and all demands, claims and suits of any kind whatsoever, including attorney's fees, witness fees, costs of defense, liabilities and other expenses for damage to person or property, including but not limited to any employee, agent, servant, independent contractor, employees of such persons, or any guest or occupant of the property, in any way arising from the management of the property. Owner will carry at its own expense, necessary public liability and workmen's compensation insurance adequate to protect the interests of the parties hereto, which policies shall be so written as to protect the manager in the same manner and to the same extent they protect the owner, and will name the manager as co-insured and furnish copies of such policies or certificates of such insurance coverage to manager. The manager also shall not be liable to owner for any error of judgment or for any mistake of fact of law, or for anything which it may do or refrain from doing hereinafter, except in cases of willful misconduct or gross negligence.

Page Two

AGREEMENT

6) This agreement constitutes the entire agreement between the parties it supercedes all previous agreements and understandings and to be effective any modification of this agreement must be in writing by the party to be charged thereby.

TACOMA PLAZA INC.

Janice Miller

J. J. GUMBERG CO.

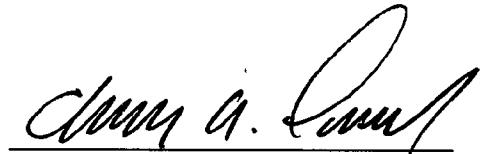
Howard Gumberg
President

JK

VERIFICATION

I, Charles A. Donald, Senior Vice President of J.J. Gumberg Company, do hereby verify that I have read the foregoing Answer, New Matter and New Matter Pursuant to Rule 2252(d) and state that the averments therein are true and correct to the best of my knowledge, information and belief.

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

A handwritten signature in black ink, appearing to read "Charles A. Donald", is written over a horizontal line.

Date: October 1, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within ANSWER, NEW MATTER and NEW MATTER PURSUANT to RULE 2252 (d) was sent to the following by regular first class mail this 7th day of October, 2003:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

John K. Bryan, Esquire
Zimmer Kunz
3300 USX Tower
Pittsburgh, PA 15219

Respectfully Submitted,



Kenneth J. Nolan, Esquire
Attorney for Defendant, J.J. Gumberg
Company

350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4596

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

v.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

CIVIL ACTION – LAW

NO. 03-522-CD

**REPLY TO NEW MATTER PURSUANT
TO RULE 2252(D) OF J.J. GUMBERG
COMPANY**

Filed on behalf of Defendants, Milestone
Properties, Inc., and Washington Plaza
Associates Ltd. Partnership

Counsel of Record for this Party:

JOHN K. BRYAN, ESQUIRE
Pa. I.D. #62901

ZIMMER KUNZ, PLLC
Firm #920
3300 USX Tower
Pittsburgh, PA 15219

(412) 281-8000

FILED

NOV 13 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

v.

NO. 03-522-CD

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

**REPLY TO NEW MATTER PURSUANT TO
RULE 2252(D) OF J.J. GUMBERG COMPANY**

AND NOW, come the Defendants, Milestone Properties, Inc., and Washington
Plaza Associates Ltd. Partnership, by and through their attorneys, ZIMMER KUNZ, PLLC and
JOHN K. BRYAN, ESQUIRE and file the within Reply to the New Matter Pursuant to
Rule 2252(d) of J.J. Gumberg Company, whereof the following are statements:

28. The averments of this paragraph state legal conclusions which require no response.
To the extent a response may be necessary, the averments of this paragraph are denied generally
pursuant to Pa.R.C.P. 1029(e). By way of further answer, these defendants incorporate herein by
reference the averments of their previously filed Answer, New Matter and New Matter Pursuant to
Rule 2252(d).

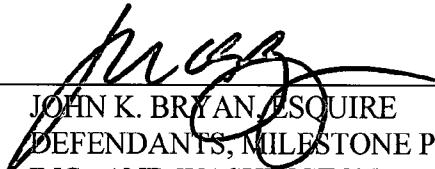
29. These defendants aver that the Agreement in question does not require
indemnification of J.J. Gumberg Company for J.J. Gumberg Company's own negligence.

Court of Common Pleas
Clearfield County, Pennsylvania
NO. 03-522-CD

WHEREFORE, Defendants, Milestone Properties, Inc., and Washington Plaza Associates Ltd. Partnership, demand judgment in their favor and against the Plaintiffs with costs of suit sustained.

Respectfully submitted,

**ZIMMER KUNZ
PROFESSIONAL LIMITED LIABILITY COMPANY**

BY 

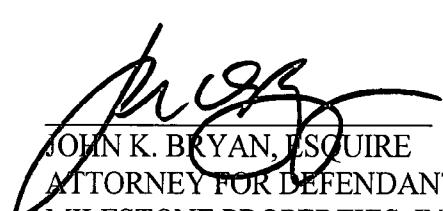
JOHN K. BRYAN, ESQUIRE
DEFENDANTS, MILESTONE PROPERTIES,
INC., AND WASHINGTON PLAZA
ASSOCIATES LTD. PARTNERSHIP

3300 USX Tower
Pittsburgh, PA 15219-2702

(412) 281-8000

VERIFICATION

I, JOHN K. BRYAN, ESQUIRE, Counsel of Record for the defendant herein, depose and say that I am counsel for Defendants, Milestone Properties, Inc., and Washington Plaza Associates Ltd. Partnership, said parties in the above matter; that I am authorized to make this verification on behalf of said parties; that the facts set forth in the foregoing **REPLY TO NEW MATTER PURSUANT TO RULE 2252(D) OF J.J. GUMBERG COMPANY** are true and correct, not of my own knowledge, but from information supplied to me by said party; that the foregoing pleading includes conclusions of law and averments of fact averred by other parties to this action and not within the personal knowledge of the defendant; that the purpose of this verification is to expedite litigation; this verification is made pursuant to Rule 1024(c) of the Pennsylvania Rules of Civil Procedure; and that a verification by this party will be furnished if requested. This statement is made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.



JOHN K. BRYAN, ESQUIRE
ATTORNEY FOR DEFENDANTS,
MILESTONE PROPERTIES, INC., AND
WASHINGTON PLAZA ASSOCIATES
LTD. PARTNERSHIP

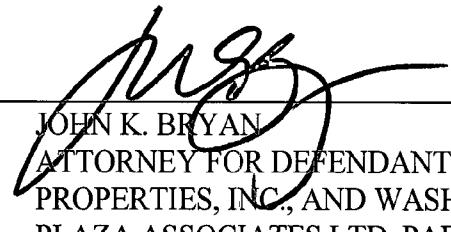
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within **REPLY TO NEW MATTER PURSUANT TO RULE 2252(D) OF J.J. GUMBERG COMPANY** was forwarded to counsel below named by U. S. Mail on the 11 day of November, 2003.

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P O Box 487
DuBois PA 15801

Kenneth J. Nolan, Esquire
Campbell, Nolan & Daly
Suite 350
Two Chatham Center
Pittsburgh PA 15219

**ZIMMER KUNZ
PROFESSIONAL LIMITED LIABILITY COMPANY**

BY 

JOHN K. BRYAN
ATTORNEY FOR DEFENDANTS, MILESTONE
PROPERTIES, INC., AND WASHINGTON
PLAZA ASSOCIATES LTD. PARTNERSHIP

FILED
NOV 10 2003
NOV 13 2003
cc
E
[Handwritten signature]
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs : CIVIL ACTION - AT LAW
No. 2003-522-CD

vs.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,
Defendants : Type of Pleading:
Certificate of Service

Filed on Behalf of:
Plaintiffs

Counsel of Record for This
Party:
Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801
814-371-7768

JURY TRIAL DEMANDED

FILED

NOV 24 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

MELISSA LYNNE HESS and :
DOUGLAS HESS, her husband, :
Plaintiffs :
vs. : No. 2003-522-CD
MILESTONE PROPERTIES, INC. :
J.J. GUMBERG COMPANY, :
and WASHINGTON PLAZA :
ASSOCIATES LIMITED :
PARTNERSHIP, :
Defendants :

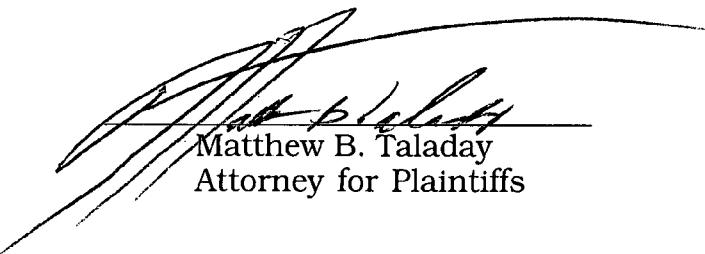
CERTIFICATE OF SERVICE

I certify that on the 21st day of November, 2003, an original Notice of Deposition of Ron Koloskee, a copy of which is attached hereto, was sent via first class mail, postage prepaid, to the following:

Kenneth J. Nolan, Esq.
Attorney for Defendant J.J. Gumberg Company
Campbell, Nolan & Daly
350 Two Chatham Center
Pittsburgh, PA 15219

With a copy to:

John K. Bryan, Esq.
Attorney for Defendants Milestone Properties, Inc.
and Washington Plaza Associates Ltd. Partnership
Zimmer Kunz, PLLC
3300 USX Tower
Pittsburgh, PA 15219


Matthew B. Taladay
Attorney for Plaintiffs

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

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

vs.

No. 2003-522-CD

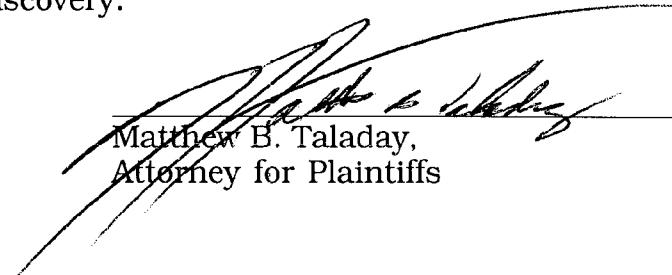
MILESTONE PROPERTIES, INC.
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,

Defendants

NOTICE OF DEPOSITION

TO: Ron Koloskee
c/o Kenneth J. Nolan, Esq.

TAKE NOTICE that your deposition by oral examination
will be taken on **Friday, December 5, 2003 at 1:00 p.m.** at the law
office of Hanak, Guido and Taladay, 498 Jeffers Street, DuBois,
Pennsylvania. This deposition is being taken for the purpose of
discovery and for use at trial, pursuant to the Pennsylvania Rules of
Civil Procedure regarding Discovery.


Matthew B. Taladay,
Attorney for Plaintiffs

cc: Schreiber Reporting Service

FILED NO
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

vs.

MILESTONE PROPERTIES, INC.; J.J.
GUMBERG COMPANY; and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

CIVIL DIVISION

No. 03-522-CD

NOTICE OF DEPOSITION

Filed on behalf of Defendant, J.J. Gumberg
Company

Counsel of Record:

Kenneth J. Nolan, Esquire
PA I.D. #32422

CAMPBELL, NOLAN & DALY
350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4596

Firm I.D. #763

FILED

FEB 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

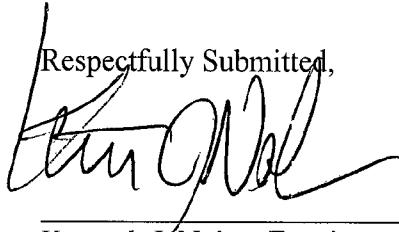
NOTICE OF DEPOSITION

TO: Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

TAKE NOTICE that the oral deposition of Douglas Hess will be taken pursuant to the Pennsylvania Rules of Civil Procedure before a Notary Public duly authorized by law to administer oaths on March 12, 2004 at 12:00 p.m. The deposition will take place at the office of Matthew Taladay, Esquire, 498 Jeffers Street, DuBois, Pennsylvania 15801.

The scope and purpose of the deposition is to inquire into all of the facts and circumstances surrounding the events set forth in the Complaint and/or other pleadings filed in this litigation, including the identity and whereabouts of witnesses who may testify at trial.

Respectfully Submitted,



Kenneth J. Nolan, Esquire
Attorney for Defendant, J.J. Gumberg Company

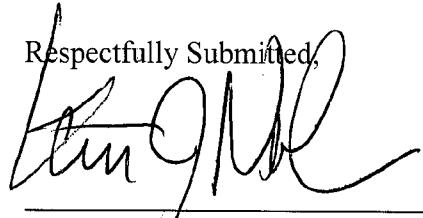
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within NOTICE OF DEPOSITION
was sent to the following by regular first class mail this 10th day of February, 2004:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

John K. Bryan, Esquire
Zimmer Kunz
3300 USX Tower
Pittsburgh, PA 15219

Respectfully Submitted,



Kenneth J. Nolan, Esquire
Attorney for Defendant, J.J. Gumberg
Company

350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4596

FILED

NO
cc

3/15/04
FEB 12 2004
9 AM

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

vs.

MILESTONE PROPERTIES, INC.; J.J.
GUMBERG COMPANY; and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

CIVIL DIVISION

No. 03-522-CD

NOTICE OF DEPOSITION

Filed on behalf of Defendant, J.J. Gumberg
Company

Counsel of Record:

Kenneth J. Nolan, Esquire
PA I.D. #32422

CAMPBELL, NOLAN & DALY
350 Twc Chatham Center
Pittsburgh, PA 15219
(412) 263-4596

Firm I.D. #763

FILED

FEB 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

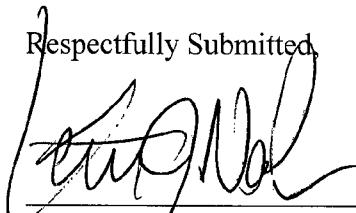
NOTICE OF DEPOSITION

TO: Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

TAKE NOTICE that the oral deposition of Melissa Lynne Hess will be taken pursuant to the Pennsylvania Rules of Civil Procedure before a Notary Public duly authorized by law to administer oaths on March 12, 2004 at 11:00 a.m. The deposition will take place at the office of Matthew Taladay, Esquire, 498 Jeffers Street, DuBois, Pennsylvania 15801.

The scope and purpose of the deposition is to inquire into all of the facts and circumstances surrounding the events set forth in the Complaint and/or other pleadings filed in this litigation, including the identity and whereabouts of witnesses who may testify at trial.

Respectfully Submitted,



Kenneth J. Nolan, Esquire
Attorney for Defendant, J.J. Gumberg Company

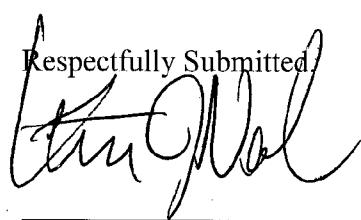
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within NOTICE OF DEPOSITION was sent to the following by regular first class mail this 10th day of February, 2004:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

John K. Bryan, Esquire
Zimmer Kunz
3300 USX Tower
Pittsburgh, PA 15219

Respectfully Submitted,



Kenneth J. Nolan, Esquire
Attorney for Defendant, J.J. Gumberg
Company

350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4596

FILED NO AC
MJS/BS
FEB 12 2004
FEB

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

vs.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,

Defendants

CIVIL ACTION - AT LAW

No. 03-522-CD

Type of Pleading:

REPLY TO NEW MATTER

Filed on Behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 05911
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED

MAY 04 2004

William A. Shaw
Prothonotary

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

MELISSA LYNNE HESS and	:	
DOUGLAS HESS, her husband,	:	
Plaintiffs	:	
vs.	:	No. 03-522-CD
MILESTONE PROPERTIES, INC.	:	
J.J. GUMBERG COMPANY,	:	
and WASHINGTON PLAZA	:	
ASSOCIATES LIMITED	:	
PARTNERSHIP,	:	
Defendants	:	

REPLY TO NEW MATTER

AND NOW, come the Plaintiffs, Melissa Lynne Hess and Douglas Hess, by their attorneys, Hanak, Guido and Taladay and hereby reply to New Matter of Defendant J. J. Gumberg Company as follows:

16. This paragraph sets forth a conclusion of law to which no response is required.
17. Denied. The injuries of the Plaintiffs are the direct and proximate result of the negligence of the Defendants as set forth more fully in the Complaint.
18. Denied. The injuries of the Plaintiffs are the direct result of the negligence of the Defendants as set forth more fully in the Complaint.
19. This paragraph sets forth a conclusion of law to which no response is required.

20. This paragraph sets forth a conclusion of law to which no response is required.

21. This paragraph sets forth a conclusion of law to which no response is required.

22. After reasonable investigation, this Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of New Matter of Defendant, J. J. Gumberg Company in Paragraph 22. Therefore, these allegations are denied and strict proof thereof is demanded at the time of trial.

23. After reasonable investigation, this Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of New Matter of Defendant, J. J. Gumberg Company in Paragraph 23. Therefore, these allegations are denied and strict proof thereof is demanded at the time of trial.

24. After reasonable investigation, this Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of New Matter of Defendant, J. J. Gumberg Company in Paragraph 24. Therefore, these allegations are denied and strict proof thereof is demanded at the time of trial.

25. After reasonable investigation, this Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of New Matter of Defendant, J. J. Gumberg Company in Paragraph 25. Therefore, these allegations are denied and strict proof thereof is demanded at the time of trial.

26. After reasonable investigation, this Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of New Matter of Defendant, J. J. Gumberg Company in Paragraph 26. Therefore, these allegations are denied and strict proof thereof is demanded at the time of trial.

27. After reasonable investigation, this Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of New Matter of Defendant, J. J. Gumberg Company in Paragraph 27. Therefore, these allegations are denied and strict proof thereof is demanded at the time of trial.

NEW MATTER PURSUANT TO RULE 2252(b)

These allegations are directed at parties other than the Plaintiffs and therefore no response is required.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By

Matthew B. Taladay
Attorney for Plaintiffs

VERIFICATION

We, MELISSA LYNNE HESS and DOUGLAS HESS, do hereby verify that we have read the foregoing REPLY TO NEW MATTER. The statements therein are correct to the best of our personal knowledge or information and belief.

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

Date: 05-02-04

Melissa Lynne Hess
Melissa Lynne Hess

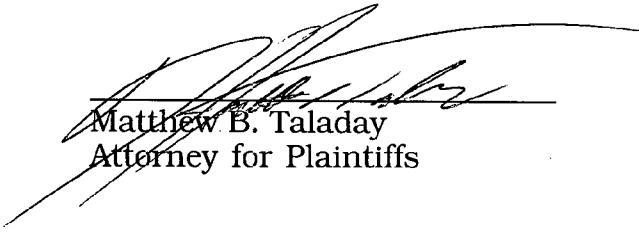
Douglas Hess
Douglas Hess

CERTIFICATE OF SERVICE

I certify that on the 4th day of May, 2004, a true and correct copy of the foregoing Reply to New Matter was sent via first class mail, postage prepaid, to the following:

John K. Bryan, Esq.
Attorney for Defendants Milestone Properties,
Inc. and Washington Plaza Associates
Ltd. Partnership
Zimmer Kunz
3300 USX Tower
Pittsburgh, PA 15219-2702

Kenneth J. Nolan, Esq.
Attorney for Defendant J.J. Gumberg Company
Campbell, Nolan & Daly
350 Two Chatham Center
Pittsburgh, PA 15219


Matthew B. Taladay
Attorney for Plaintiffs

FILED
13 M 10 cc
0 8:13 AM ECL
MAY 04 2004 KEP

William A. Shaw
Prothonotary

FILED

MAY 07 2004

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL TRIAL LISTING

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

CASE NUMBER	TYPE	TRIAL REQUESTED	DATE PRESENTED
			ESTIMATED TRIAL TIME
No. 03-522-CD Date Complaint Filed: 04/09/03	(x) Jury () Arbitration	() Non-Jury	3 Days

PLAINTIFF(S)

Melissa Lynne Hess and Douglas Hess ()

DEFENDANT(S)

Milestone Properties, Inc., J.J. Gumberg Company,
and Washington Plaza Associates Limited Partnership ()

Check Block if
a Minor is a
Party to the
Case

ADDITIONAL DEFENDANT(S)

()

JURY DEMAND FILED BY:

DATE JURY DEMAND FILED:

Plaintiff

04/09/03

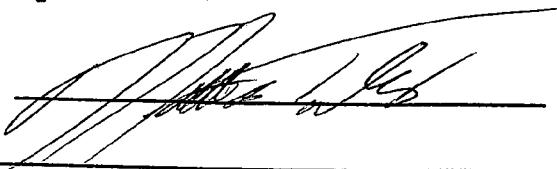
AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED

more than

\$25,000.00 () yes (x) no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.



FOR THE PLAINTIFF

TELEPHONE NUMBER

Matthew B. Taladay, Esq.

(814) 371-7768

FOR THE DEFENDANT

TELEPHONE NUMBER

John K. Bryan, Esq. (Milestone/Washington Plaza)

(412) 281-8000

Kenneth J. Nolan, Esq. (J.J. Gumberg)

(412) 263-4596

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

FILED

no
cc

MAY 6 2004

William A. Shaw
Prothonotary/Clerk of Courts

Copy to C/A

Q
JUL

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

FILED

JUN 04 2004

William A. Shaw
Prothonotary/Clerk of Courts

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

vs.

No. 2003-522-CD

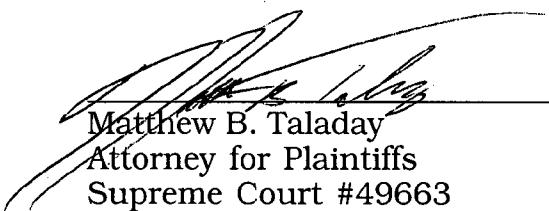
MILESTONE PROPERTIES, INC.
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,
Defendants

CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

As a prerequisite to service of subpoena for the production of documents and things pursuant to Rule 4009.22, Plaintiffs certify that

1. A notice of intent to serve subpoena with a copy of subpoena attached thereto was mailed or delivered to each party at least twenty (20) days prior to the date on which the subpoena is sought to be served;
2. A copy of the notice, including the proposed subpoena, is attached to this certificate;
3. No objection to the subpoena has been received; and
4. The subpoena which will be served is identical to the one attached to the notice of intent to serve the subpoena.

Date: June 3, 2004



Matthew B. Taladay
Attorney for Plaintiffs
Supreme Court #49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
(814) 371-7768

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

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

vs. : No. 2003-522-CD

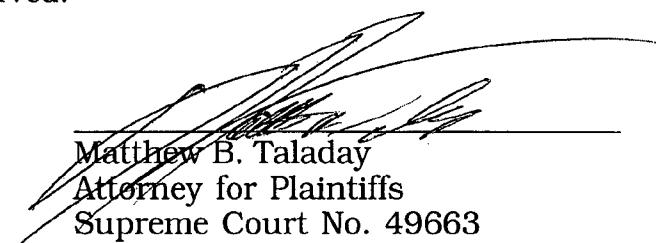
MILESTONE PROPERTIES, INC.
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,

Defendants

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

Plaintiffs, Melissa Lynne and Douglas Hess, intend to serve a subpoena identical to the one attached to this notice. You have twenty (20) days from the date listed below to file of record and serve upon the undersigned objections to the subpoena. If no objections are made, the subpoena may be served.

Date: May 13, 2004


Matthew B. Taladay
Attorney for Plaintiffs
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
(814) 371-7768

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Melissa Lynne Hess

*

Douglas Hess

Plaintiff(s)

Vs.

*

No. 2003-00522-CD

Milestone Properties, Inc.

*

J. J. Gumberg Company

Washington Plaza Associates LLC

Defendant(s)

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

TO: The Penn Traffic Company, P.O. Box 4737, Syracuse, NY 13221-4737
(Name of Person or Entity)

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

A photocopy of Incident Report dated May 13, 2001 involving
Melissa Hess in the parking lot of the BiLo Store, Sandy Plaza,
DuBois, Pennsylvania, which involved a slip and fall incident.

(Address)

498 Jeffers Street, P.O. Box 487, DuBois, PA 15801

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

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

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

NAME: Matthew B. Taladay, Esq.

ADDRESS: 498 Jeffers St., PO Box 487

DuBois PA 15801

TELEPHONE: (814) 371-7768

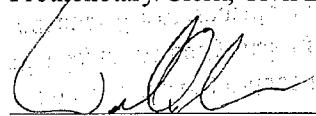
SUPREME COURT ID # 49663

ATTORNEY FOR: Plaintiffs

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



Deputy

DATE: Tuesday, May 11, 2004

Seal of the Court

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

FILED NO
M 10:54 AM CC
JUN 04 2004
William A. Shaw
Prothonotary/Clerk of Courts
[Handwritten signature]

03-522-CD

CA

CERTIFICATE OF SERVICE

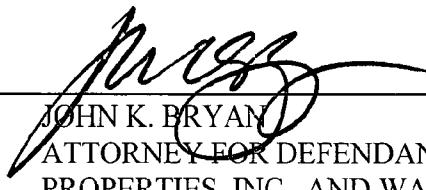
This is to certify that a true and correct copy of the within PRETRIAL STATEMENT was forwarded to counsel below named by U. S. Mail on the 4 day of August, 2004.

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P O Box 487
DuBois PA 15801

Kenneth J. Nolan, Esquire
Campbell, Nolan & Daly
Suite 350
Two Chatham Center
Pittsburgh PA 15219

**ZIMMER KUNZ
PROFESSIONAL LIMITED LIABILITY COMPANY**

BY


JOHN K. BRYAN
ATTORNEY FOR DEFENDANTS, MILESTONE
PROPERTIES, INC., AND WASHINGTON
PLAZA ASSOCIATES LTD. PARTNERSHIP

FILED
NO
03-11-04
AUG 06 2004

William A. Shaw
Prothonotary/Clerk of Courts



Court of Common Pleas
Clearfield County, Pennsylvania
NO. 03-522-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

v.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

CIVIL ACTION – LAW

NO. 03-522-CD

PRETRIAL STATEMENT

Filed on behalf of Defendants, Milestone
Properties, Inc., and Washington Plaza
Associates Ltd. Partnership

Counsel of Record for this Party:

JOHN K. BRYAN, ESQUIRE
Pa. I.D. #62901

ZIMMER KUNZ, PLLC
Firm #920
3300 USX Tower
Pittsburgh, PA 15219

(412) 281-8000

RECEIVED

AUG 06 2004

COURT ADMINISTRATOR'S
OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

v.

MILESTONE PROPERTIES, INC., J.J.
GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

CIVIL DIVISION
No. 2003-522-CD

**SUBSTITUTION OF APPEARANCE-
CHANGE OF LAW FIRM**

Filed on behalf of Defendant:
J.J. Gumberg Company

Counsel of Record for this Party:
Kenneth J. Nolan, Esquire
PA I.D. #32422

WHITE AND WILLIAMS LLP
The Frick Building
437 Grant Street, Suite 1001
Pittsburgh, PA 15219

FIRM NO. 683

(412) 566-3520

FILED *30 Box* NO *cc*
JUL 28 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

CIVIL DIVISION

No. 2003-522-CD

v.

MILESTONE PROPERTIES, INC., J.J.
GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

SUBSTITUTION OF APPEARANCE-CHANGE OF LAW FIRM

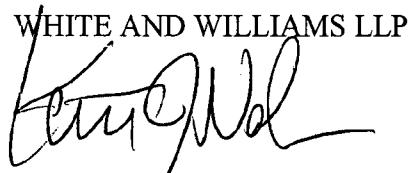
TO THE PROTHONOTARY:

Kindly substitute the appearance of Kenneth J. Nolan, Esquire, White and Williams LLP
for the prior law firm of Campbell, Nolan & Daly, as counsel of record for Defendant J.J.
Gumberg Company in regard to the above-captioned matter.

Respectfully submitted,

By:

WHITE AND WILLIAMS LLP


Kenneth J. Nolan, Esquire
PA I.D. #32422

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **SUBSTITUTION OF COUNSEL** has been served this 26 day of July 2004, via U.S. first-class mail, postage prepaid, to the following:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

John K. Bryan, Esquire
Zimmer Kunz
3300 USX Tower
600 Grant Street
Pittsburgh, PA 15219

WHITE and WILLIAMS LLP

By:


Kenneth J. Nolan, Esquire
PA I.D. #32422

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Pre-Trial Memorandum was served upon counsel of record by facsimile and first class, United States Mail, postage pre-paid this 6th day of August 2004, addressed as follows:

David J. Hopkins, Esquire
900 Beaver Drive
DuBois, PA 15801



Paul S. Guarnieri, Esquire

FILED *no cc*
01-25361
AUG 09 2004
jas
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DUBROOK, INC.,

CIVIL DIVISION

Plaintiff,

No. 01-552-CD

v.

PRE-TRIAL MEMORANDUM

R.L. JOHNSON CONSTRUCTION
CORP.,

Defendant.

Filed on behalf of Defendant,
R.L. Johnson Construction Corp.

Counsel of record for this Party:

Paul S. Guarnieri, Esquire
Pa. I.D. #55836

MALONE MIDDLEMAN, P.C.
Northridge Office Plaza
117 VIP Drive, Suite 310
Wexford, PA 15090

(724) 934-6888

RECEIVED

AUG 6 8 2004

COURT ADMINISTRATOR'S
OFFICE

CA

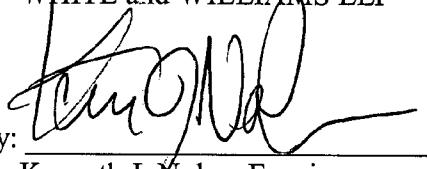
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PRETRIAL STATEMENT** has been served this 4th day of August 2004, via U.S. first-class mail, postage prepaid, to the following:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

John K. Bryan, Esquire
Zimmer Kunz
3300 USX Tower
600 Grant Street
Pittsburgh, PA 15219

WHITE and WILLIAMS LLP

By: 
Kenneth J. Nolan, Esquire
PA I.D. #32422

FILED *03:55:67* NO cc
AUG 09 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

v.

MILESTONE PROPERTIES, INC., J.J.
GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

CIVIL DIVISION
No. 2003-522-CD

**PRE-TRIAL STATEMENT OF
DEFENDANT J.J. GUMBERG
COMPANY**

Filed on behalf of Defendant:
J.J. Gumberg Company

Counsel of Record for this Party:
Kenneth J. Nolan, Esquire
PA I.D. #32422

WHITE AND WILLIAMS LLP
The Frick Building
437 Grant Street, Suite 1001
Pittsburgh, PA 15219

FIRM NO. 683

(412) 566-3520

RECEIVED
AUG 09 2004
COURT ADMINISTRATOR'S
OFFICE

FILED

AUG 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FILED

MELISSA LYNNE HESS and
DOUGLAS HESS,

Plaintiffs

vs.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,
Defendants

*

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AUG 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

NO. 2003-522-C.D.

O R D E R

NOW, this 13th day of August, 2004, following Pre-Trial Conference with Plaintiff and counsel for the Defendants as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on August 26, 2004 commencing at 10:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

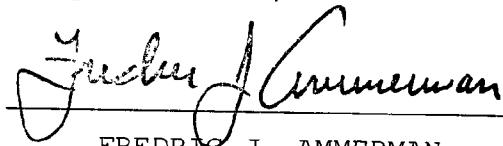
2. Jury Trial is hereby scheduled for two days, October 5, 2004 and October 6, 2004 commencing at 9:00 a.m. each day in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

3. All depositions which are to be used for trial presentation purposes shall be completed by absolutely no later than ninety (90) days prior to the commencement of trial or the same will not be available for use at trial. A copy of the transcript of any such deposition(s) shall be provided to opposing counsel within no more than fifteen (15) days following completion of the deposition(s).

4. Any party making objections relative the testimony to be provided by any witness in the form of a deposition at the time of Trial shall submit said objections to the Court, in writing, no later than thirty (30) days prior to the commencement of Trial. All objections shall reference specific page and line numbers within the deposition(s) in question along with that party's brief relative same. The opposing party shall submit its brief in opposition to said objections no later than fifteen (15) days prior to the commencement of Trial.

5. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than thirty (30) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than fifteen (15) days prior to trial.

By the Court,



FREDRIC J. AMMERMAN
President Judge

FILED

014-001301
AUG 13 2004

es

William A. Shaw
Prothonotary/Clerk of Courts

2 certified copies to Matthew B. Taladay, Esquire
2 certified copies to John K. Bryan, Esquire
1 copy to President Judge Ammerman
1 copy to Court Administrator

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

vs.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,

Defendants

CIVIL ACTION - AT LAW

No. 2003-522-CD

Type of Pleading:

Certificate of Service

Filed on Behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED NO CC
M 10:36 AM
SEP 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

vs. : No. 2003-522-CD

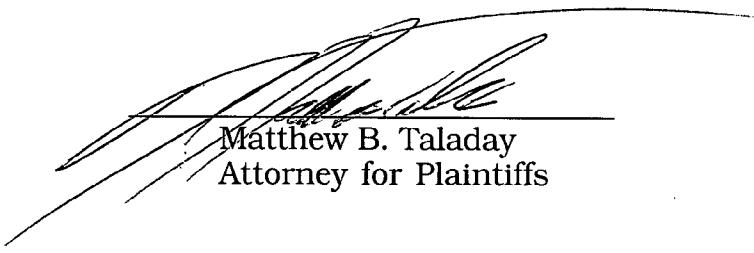
MILESTONE PROPERTIES, INC.
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,

Defendants

CERTIFICATE OF SERVICE

I certify that on the 8th day of September, 2004, an original Notice of Videotaped Deposition of Charles W. Rice, DPM, a copy of which is attached hereto, was sent via first class mail, postage prepaid, to the following:

John K. Bryan, Esq.
Attorney for Defendants
Zimmer Kurz, PLLC
3300 USX Tower
Pittsburgh, PA 15219


Matthew B. Taladay
Attorney for Plaintiffs

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

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

vs.

No. 2003-522-CD

MILESTONE PROPERTIES, INC.
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,

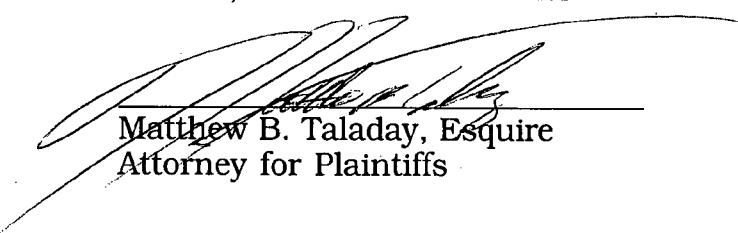
Defendants

NOTICE OF VIDEOTAPED DEPOSITION

TAKE NOTICE that Matthew B. Taladay will take the
Videotaped Deposition of Charles W. Rice, DPM for use at trial
pursuant to the applicable Rules of Civil Procedure, before an officer
duly authorized to administer oaths, at 90 Beaver Drive, Box 13,
DuBois, Pennsylvania, on Monday, September 20, 2004 at 1:00 p.m.
You are invited to attend.

The deposition will deal with facts and circumstances of
the incident described in the Complaint, the damages being sought,
and all other matters not privileged.

HANAK, GUIDO and TALADAY


Matthew B. Taladay, Esquire
Attorney for Plaintiffs

cc: Schreiber Reporting Service

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

v.

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

CIVIL ACTION – LAW

NO. 03-522-CD

**PRAECIPE FOR ENTRY AND
WITHDRAWAL OF APPEARANCE**

Filed on behalf of Defendants, Milestone
Properties, Inc., and Washington Plaza
Associates Ltd. Partnership

Counsel of Record for this Party:

JOHN K. BRYAN, ESQUIRE
Pa. I.D. #62901

ZIMMER KUNZ, PLLC
Firm #920
3300 USX Tower
Pittsburgh, PA 15219

(412) 281-8000

FILED *ew*
m/14/04
SEP 14 2004

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

MELISSA LYNNE HESS and DOUGLAS
HESS, her husband,

Plaintiffs,

v.

NO. 03-522-CD

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, and
WASHINGTON PLAZA ASSOCIATES
LIMITED PARTNERSHIP,

Defendants.

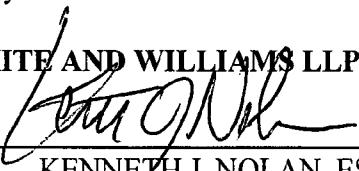
PRAECIPE FOR ENTRY AND WITHDRAWAL OF APPEARANCE

TO: Prothonotary

Kindly withdraw the appearance of Kenneth J. Nolan, Esquire, and White and
Williams LLP, on behalf of J.J. Gumberg Company in the above-referenced case.

WHITE AND WILLIAMS LLP

BY


KENNETH J. NOLAN, ESQUIRE

Kindly enter the appearance of John K. Bryan, Esquire, and Zimmer Kunz, PLLC,
on behalf of J.J. Gumberg Company in above-referenced case.

ZIMMER KUNZ, PLLC

BY


JOHN K. BRYAN, ESQUIRE

CERTIFICATE OF SERVICE

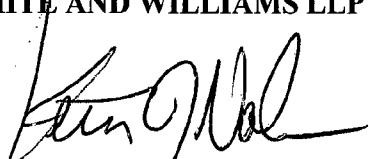
This is to certify that a true and correct copy of the within PRAECIPE FOR ENTRY AND WITHDRAWAL OF APPEARANCE was forwarded to counsel below named by U. S. Mail on the 9th September day of August, 2004.

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P O Box 487
DuBois PA 15801

John K. Bryan, Esquire
Zimmer Kunz, PLLC
3300 USX Tower
Pittsburgh, PA 15219

WHITE AND WILLIAMS LLP

BY


Kenneth J. Nolan, Esquire

COURT OF COMMON PLEAS, CLEARFIELD COUNTY
PENNSYLVANIA

CASE NO. 03-522-CD

Date of Jury Selection: August 26, 2004

Presiding Judge: Honorable Fredric J.
Ammerman, President Judge

MELISSA LYNNE HESS and
DOUGLAS HESS

VS

MILESTONE PROPERTIES, INC.,
J.J. GUMBERG COMPANY, and
~~WASHINGTON PLAZA ASSOCIATES~~
~~LIMITED PARTNERSHIP~~

Court Reporter: Cathy Prevost

Date of Trial: October 5, 2004

Date Trial Ended: Same

FILED

MEMBERS OF THE JURY

OCT 05 2004

0/3:30 AM

1. ROBERT KRAUS
2. AMY KRCHNAK
3. ROY TURNER
4. JOHN YOUNT
5. STEVEN SHAFFER
6. GARY KURTZ
- ALT #1 JEFF GOSS TO # 9

7. SHAWN GOSS William A. Shaw
8. CAROL FAHY Prothonotary
9. WILLIAM THOMAS NO SHOW
10. JANI HARPSTER
11. CARRIE WETZEL
12. PAULA DAVIS
- ALT #2 SUZZETTE HEISE

PLAINTIFF'S WITNESSES:

1. Melissa L Hess
2. Douglas Hess
3. DR Charles Rice deposition
4. Ronald Koloskie-on cross
5. _____
6. _____

DEFENDANT'S WITNESSES:

1. Ronald Koloskie
2. _____
3. _____
4. _____
5. _____
6. _____

PLAINTIFF'S ATTY: Matthew B. Taladay, Esq.

DEFENDANT'S ATTY: John K. Bryan, Esq.

ADDRESS TO JURY: _____

ADDRESS TO JURY: _____

JUDGE'S ADDRESS TO JURY: _____

JURY OUT: 2:48 pm JURY IN: 3:14 pm

VERDICT: for The Defendant.

FOREPERSON: #5

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

MELISSA LYNNE HESS and
DOUGLAS HESS, her husband,
Plaintiffs

vs.

No. 2003-522-CD

MILESTONE PROPERTIES, INC.
J.J. GUMBERG COMPANY,
and WASHINGTON PLAZA
ASSOCIATES LIMITED
PARTNERSHIP,

Defendants

FILED

OCT 05 2004
13:30
William A. Shaw
Prothonotary

VERDICT QUESTIONNAIRE

1. Do you find that the Defendant was negligent?

Yes _____

No

(If you answer "no" to this question, do not answer any further questions. Have the Foreperson sign the verdict form and return to the Courtroom. If you answer "yes" to this question, move on to Question No. 2.)

2. Was the negligence of the Defendant a factual cause in bringing about the Plaintiff's damages?

Yes _____

No _____

(If you answer "no" to this question, do not answer any further questions. Have the Foreperson sign the verdict form and return to the Courtroom. If you answer "yes" to this question, move on to Question No. 3.)

3. Was the Plaintiff contributorily negligent?

Yes _____

No _____

(If you answer "no" to this question, skip Question 4 and 5 move on to Question No. 6. If you answer "yes" to this question, move on to question #4.)

4. Was the Plaintiff's negligence a factual cause in bringing about her own injuries.

Yes _____

No _____

(If you answer "no" to this questions, proceed to Question No. 6; otherwise proceed to Question No. 5.)

5. State the respective percentages of negligence of Plaintiff and Defendant (to total 100%).

Plaintiff _____ %

Defendant _____ %

Total 100%

(If you found the Plaintiff's percentage of negligence to be 51% or greater, the Plaintiff cannot recover, and you should sign the verdict form and return to the courtroom. Otherwise, proceed to Question No. 6.)

6. State in a lump sum the amount of mcney damages which will fairly and adequately compensate Plaintiff.

\$ _____

Date: 10-5-2004

S. E. Shaff
(Foreperson)

FILED

OCT 05 2004

William A. Shaw
Prothonotary