

03-682-CD  
IN RE: ALEXIS ZELENSKY



7  
15

Date: 05/30/2003

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 10:08 AM

ROA Report

Page 1 of 2

Case: 2002-00181-CD

Current Judge: John K. Reilly Jr.

inda Radaker vs. Milestone Properties, Inc., JJ Gumberg Company, Gumberg Associates-Sandy Plaza, Pollino Excavating  
Civil Other

Date	Judge
02/07/2002	No Judge
Filing: Civil Complaint Paid by: Hanak, Guido & Taladay Receipt number: 1837958 Dated: 02/07/2002 Amount: \$80.00 (Check) 6 cert. to atty. Dubois	
03/01/2002	No Judge
Entry of Appearance on behalf of Defendant, Pollino Excavating. Filed by s/Joseph P. Green, Esq. Cert of Svc no cc	
03/06/2002	No Judge
Praecipe For Appearance, on behalf of Defendant: Milestone Properties, Inc. Filed by s/Bruce E. Rende, Esquire Cert of Svc no cc	
03/12/2002	No Judge
Answer and New Matter Filed by Defendant Pollino Excavating. Filed by s/Joseph P. Green, Esq. Verification s/Raymond Pollino Certificate of Service no cc	
03/15/2002	No Judge
Praecipe for Appearance, on behalf of JJ Gumberg Company, a/k/a Gumberg Assoc.-Sandy Plaza, s/Robert J. Behling, Esq. No CC	
03/19/2002	No Judge
Affidavit of Service, Complaint upon Milestone Properties, Inc., filed by s/Jeffrey S. DuBois, Esq. No CC	
04/05/2002	No Judge
Notice of Service of Interrogatories and Request for Production of Documents Directed to Defendant, Pollino Excavating. S/Bruce E. Rende, Esq. no cc	
	No Judge
Notice of Service of Interrogatories and Request For Production of Documents Directed to Defendants, J. J. Gumberg Company, a/k/a Gumberg Associates-Sandy Plaza. Filed by s/Bruce E. Rende, Esq. no cc	
04/15/2002	No Judge
Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	
05/03/2002	No Judge
Answer, New Matter, and New Matter Pursuant to Pa. R.C.P. 2252(d). Filed by s/Bruce E. Rende, Esq. Verification s/Raymond R. Crozier Certificate of Service no cc	
05/20/2002	No Judge
Reply of Defendant Pollino Excavating to New Matter Filed by Defendant Milestone Properties, Inc. Filed by s/Joseph P. Green, Esq. Statement Relating to Absence of Verification s/Joseph P. Green, Esq. Certificate of Service no cc	
06/14/2002	No Judge
Reply to New Matter Pursuant to Rule 2252(d) of Defendant Milestone Properties, Inc. Filed by s/Robert J. Behling, Esq. Verification s/Sam Vidnovic Certificate of Service no cc	
07/10/2002	No Judge
Answer, New Matter and New Matter Pursuant to Rule 2252(d). filed by s/Robert J. Behling, Esq. Certificate of Service no cc	
07/29/2002	No Judge
Reply by Defendant Pollino Excavating to New Matter Raised by Defendants JJ Gumberg Company, a/k/a Gumberg Associates-Sandy Plaza. Filed by s/Joseph P. Green, Esq. Verification s/Raymond Pollino Certificate of Service no cc	
09/13/2002	No Judge
Certificate of Service of Defendants' First Set of Interrogatories and Request for Production of Documents Directed to Plaintiff upon Atty DuBois, Atty Rende and Atty Green s/Robert J. Behling, Esq. no cc	
10/18/2002	No Judge
Entry of Appearance on behalf of Defendant, Pollino Excavating by Joseph P. Green, Esq.	
	No Judge
Filing: Notice of Taking Deposition on Oral Examination Pursuant to RCP No. 4007.1.	
10/28/2002	No Judge
Motion to Compel Discovery Responses filed by Defendant. No CC.	

Date: 06/05/2003

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 08:46 AM

ROA Report

Page 1 of 1

Case: 2003-00682-CD

Current Judge: John K. Reilly Jr.

IN RE: Alexis Zelensky

Civil In RE

Date		Judge
05/06/2003	Filing: Civil Complaint Paid by: McGee, Daniel (attorney for Zelensky, Alexis) Receipt number: 1859711 Dated: 05/06/2003 Amount: \$85.00 (Check) No cc.	No Judge ✓
05/08/2003	RULE TO SHOW CAUSE, AND NOW, this 8th day of May, 2003, Granted upon Respondents. This Rule is returnable for Argument or Hearing the 9th day of June, 2003, at 9:30 a.m. by the Court, s/JKR,JR.,P.J. 2 cc Atty Daniel McGee	John K. Reilly Jr. ✓

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

FILED

MAY 06 2003

In the Interest of )  
ALEXIS ZELENSKY, a minor )

No. 2003-682-CD

William A. Shaw  
Prothonotary

**PETITION FOR COURT APPROVAL  
OF SETTLEMENT INVOLVING A MINOR**

NOW COME Petitioners, Laurie A. Zelensky and Edward J. Zelensky, parents and natural guardians of Alexis Zelensky, a minor, and Petition this Honorable Court, pursuant to 20 Pa. C.S.A. 5144, 5102, and 3323 and Pennsylvania Rule of Civil Procedure 2039, to enter an Order permitting settlement and compromise of the claim of said minor and in support thereof aver as follows:

1. Laurie A. Zelensky and Edward J. Zelensky, hereafter collectively "Petitioners," are adult individuals residing in Grassflat, Clearfield County, Pennsylvania (16839), with a mailing address of Post Office Box 92, Grassflat, Pennsylvania (16839), and are the parents and natural guardians of Alexis Zelensky, a minor.

2. Alexis Zelensky is a minor whose date of birth is August 16, 1993, and who resides with her parents in Grassflat, Clearfield County, Pennsylvania (16839).

3. Defendants Greg Rougeux and Helaine Rougeux are adult individuals residing at Clearfield Street, Post Office Box 35, Grassflat, Clearfield County, Pennsylvania (16839).

4. On or about March 8, 2002, Greg Rougeux and Helaine Rougeux, hereafter "Defendants," owned, possessed, controlled, and maintained a certain dog which Plaintiffs believe is a mixed breed including Rottweiler.

5. On March 8, 2002, Laurie A. Zelensky and Alexis Zelensky were walking on Clearfield Street near Defendants' property and Defendants' dog, without provocation, attacked and bit Laurie A. Zelensky causing injuries to her left arm.

6. At all times relevant hereto, Alexis Zelensky was present nearby and witnessed the attack by Defendants' dog upon her mother, Laurie A. Zelensky.

7. As a result of Alexis Zelensky's witnessing of the attack on her mother, Alexis Zelensky suffered mental and emotional anguish and distress, fear of dogs, and fear of going outside, which distress was manifested in physical symptoms including stomachaches, trouble sleeping, and nightmares.

8. While she did not receive any medical treatment, Alexis Zelensky was upset and talked about the incident frequently in the weeks immediately following the incident and still is anxious and fearful around dogs and reluctant to be outside.

9. Defendants are insured by Tuscarora-Wayne Mutual Insurance Company and are represented by Attorney John Flounlacker in defense of claims arising from this incident.

10. Petitioners and Defendants have negotiated a settlement on behalf of Petitioners and said minor child, Alexis Zelensky, for claims arising from the said incident. Without admitting Defendants' liability, Tuscarora-Wayne Mutual Insurance Company has agreed to pay the sum of Thirty-seven Thousand Five Hundred (\$37,500.00) Dollars to Laurie A. Zelensky and Edward J. Zelensky for their claims and the sum of Two Thousand Five Hundred (\$2,500.00) Dollars for the claim of Alexis Zelensky for negligent infliction of emotional distress arising from the said incident. Attached hereto as Exhibit "A" is a "Full and Final Release" for release of the claim of Alexis Zelensky to be signed by Petitioners upon approval of settlement by the Court.

11. Delafield, McGee, Jones & Kauffman, L.L.P. was retained as counsel by Petitioners to pursue claims for themselves and Alexis Zelensky arising from said incident. The agreement is a Contingent Fee Agreement which provides for a fee in the amount of one-third (1/3) of the gross recovery plus out-of-pocket expenses. However, counsel is waiving any fee with respect to the claim of Alexis Zelensky, a minor.

12. Attached to this Petition and marked as Exhibits "B", "C" and "D" are the following documents indicating approval of the minor's settlement and distribution of funds:

A. Exhibit "B" - Statement of Counsel for  
Petitioners;

B. Exhibit "C" - Statement of Counsel for Defendants;  
and

C. Exhibit "D" - Consent to Settlement by Laurie A.  
Zelensky and Edward J. Zelensky.

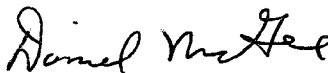
13. Pursuant to 20 Pa. C.S.A. 5114, 5102, and 3323 and  
Pennsylvania Rule of Civil Procedure 2039, Petitioners seek the  
Court's approval of the proposed settlement and distribution of  
settlement proceeds with respect to Alexis Zelensky, a minor, as  
set forth in the attached Order.

WHEREFORE, it is respectfully requested that this Honorable  
Court approve the settlement and compromise of the said minor's  
claim as set forth in the attached Order.

Respectfully submitted,

DELAFIELD, MCGEE, JONES  
& KAUFFMAN, L.L.P.

Date: 5-5-03

By:   
Daniel McGee, Esquire  
Attorney for Petitioners  
Attorney I.D. No. 26019  
300 S. Allen St., Suite 300  
State College, PA 16801-4841  
(814) 237-6278

## **FULL AND FINAL RELEASE**

For and in consideration of payment to **LAURIE A. ZELENSKY** and **EDWARD J. ZELENSKY** as parents and natural guardians of **ALEXIS ZELENSKY** (a minor) of the sum of **Two Thousand, Five Hundred 50/100 Dollars** (\$2,500.00), We, **LAURIE A. ZELENSKY** and **EDWARD J. ZELENSKY** (hereinafter sometimes referred to as "Releasers"), do hereby release and forever discharge **GREG ROUGEUX, HELAINE ROUGEUX** and **TUSCARORA-WAYNE MUTUAL INSURANCE COMPANY**, (hereinafter sometimes referred to collectively as "Releasees") their insurers, employees, agents, and any and all other persons and firms, of and from any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses, compensation, consequential damage, or any other thing whatsoever including claims not only for personal injuries and damages on account of or in any way growing out of, any and all known and unknown personal injuries, debts, and property damage resulting or to result from a dog bite incident involving the Minor Alexis Zelensky that occurred on or about March 8, 2002 in Clearfield County, Pennsylvania.

We hereby acknowledge and assume all risk, chance, or hazard that the said injuries or damages may be or become permanent, progressive, greater, or more extensive than is now known, anticipated, or expected. No promise or inducement which is not herein expressed has been made to me and in executing this Release. We do not rely upon any statement or representation made by any person, firm, or corporation, hereby released or any agent, physician, doctor, or other person representing them or any



of them concerning the nature, extent, or duration of said damages or losses, or the legal liability therefore.

We understand that this settlement is the compromise of a disputed claim and that the payment is not to be construed as an admission of liability on the part of the persons, firms, and/or corporations hereby released by whom liability is expressly denied.

We further certify, state, acknowledge, warrant, and declare that each and every person, attorney, carrier, entity or association which claims to have a lien on the proceeds of this settlement arising out of this incident, lawsuit, or litigation, is aware of this Release and its terms and We understand that said released parties hereunder are relying expressly upon this unconditional express warranty in making payment hereunder.

The Releasors accept responsibility for satisfying any liens that have been asserted against this recovery by any healthcare provider or insurer, and hereby discharge the Releasees from any such responsibility.

In further consideration of the above payment, We for ourselves, our heirs, next of kin, executors, administrators, successors, or assigns, covenant and agree to indemnify and hold harmless **GREG ROUGEUX, HELAINE ROUGEUX and TUSCARORA-WAYNE MUTUAL INSURANCE COMPANY**, their agents, employees, insurance carriers, and attorneys, from all claims, demands, and suits for damages, costs, loss of services, expenses, or compensation which may arise in the future on account of or in any way growing out of the injuries or damages we sustained in this incident.

This Release contains the entire agreement between the parties hereto and the terms of this Release are contractual and not a mere recital.

We certify that we are over eighteen (18) years of age and we further state that we have carefully read the foregoing Release and we know the contents thereof and we have signed the same as our free act and intending to be legally bound thereby.

**IN WITNESS WHEREOF**, we have hereunto set our hands and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

**WITNESSETH:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**LAURIE A. ZELENSKY as parent  
and natural guardian of Alexis Zelensky**

\_\_\_\_\_  
**EDWARD J. ZELENSKY as parent  
and natural guardian of Alexis Zelensky**

COMMONWEALTH OF

:

COUNTY OF

:

:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me personally appeared **LAURIE A. ZELENSKY and EDWARD J. ZELENSKY**, known to me to be the person whose name is subscribed to the within Release, and acknowledged that he executed the same for the purposes therein contained.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

STATEMENT OF COUNSEL FOR PETITIONERS

As attorney on behalf of Petitioners, I, DANIEL MCGEE, Esquire, confirm that the terms of settlement are as set forth in the attached Petition and recommend to the Court that settlement of the claim of ALEXIS ZELENSKY in the amount of Two Thousand Five Hundred (\$2,500.00) Dollars be approved as set forth in the Petition.

Date: 5-5-03



  
\_\_\_\_\_  
Daniel McGee, Esquire

EXHIBIT "B"

STATEMENT OF COUNSEL FOR DEFENDANTS

As attorney on behalf of Defendants, GREG ROUGEUX and  
HELAINÉ ROUGEUX, I, JOHN FLOUNLACKER, Esquire, hereby confirm  
that the terms of settlement are as set forth in the attached  
Petition and hereby join in the request that the Court approve  
the settlement of the claim of ALEXIS ZELENSKY as set forth in  
the attached Petition and Order.

Date: 4/30/03

  
\_\_\_\_\_  
John Flounlacker, Esquire

CONSENT TO SETTLEMENT

WE, LAURIE A. ZELENSKY and EDWARD J. ZELENSKY, as parents and natural guardians of ALEXIS ZELENSKY, a minor, hereby affirm that we are familiar with the terms of the proposed settlement of the claim of ALEXIS ZELENSKY and approve of the proposed settlement and proposed distribution of funds.

This statement is hereby made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.

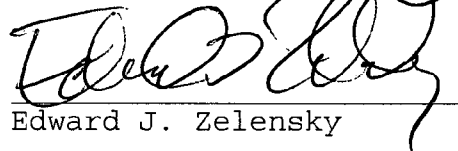
Date:

April 2, 2003

  
Laurie A. Zelensky

Date:

4.21.03

  
Edward J. Zelensky

VERIFICATION

LAURIE A. ZELENSKY deposes and states that the facts set forth in the foregoing pleading are true and correct to the best of her knowledge, information and belief and that the same are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Dated:

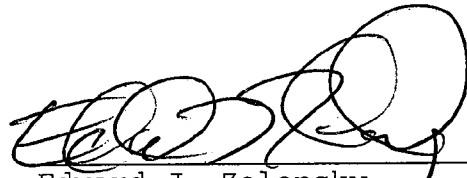
April 21, 2003

Laurie A. Zelensky  
Laurie A. Zelensky

VERIFICATION

EDWARD J. ZELENSKY deposes and states that the facts set forth in the foregoing pleading are true and correct to the best of his knowledge, information and belief and that the same are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Dated: 4.21.03

  
Edward J. Zelensky



In the Interest of )  
ALEXIS ZELENSKY, a minor ) No. 2003-\_\_\_\_\_

By: Daniel McGee  
Daniel McGee, Esquire  
Attorney for Petitioners  
Attorney I.D. No. 26019  
300 S. Allen St., Suite 300  
State College, PA 16801-4841  
(814) 237-6278

FILED

No. cc

MAY 11 3 30 PM '03  
MAY 06 2003  
Atty. Gen. 85.00

William A. Shaw  
Prothonotary

CA

No. 2003-682-CD

## RULE TO SHOW CAUSE


AND NOW, to-wit, this 8<sup>th</sup> day of May, 2003, upon consideration of the within pleading, a Rule is granted upon Respondents to show cause by the relief requested should not be granted.

This Rule is returnable for argument or hearing the 9<sup>th</sup>  
day of June, 2003, at 9:30 A.m. in Courtroom No. 1,  
Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

earfield, Pennsylvania.

BY THE COURT:



J.

FILED

MAY 08 2003

William A. Shaw  
Prothonotary

Petition for Court Approval  
of Settlement Involving a Minor

FILED

2019:41-861  
MAY 08 2003

William A. Shaw  
Prothonotary

2cc  
Atty Daniel McGee

EA

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

In the Interest of )  
ALEXIS ZELENSKY, a minor ) No. 2003- 682-CD

ORDER

AND NOW, this 9 day of June, 2003, upon consideration of the "Petition for Court Approval of Settlement Involving a Minor," it is hereby ORDERED and DECREED that settlement and compromise of the claim of ALEXIS ZELENSKY, a minor, in the above-captioned matter is hereby APPROVED. Petitioners are authorized to sign the "Full and Final Release" attached as Exhibit "A" to the said Petition. Within twenty (20) days of receipt of the executed Release, Tuscarora-Wayne Mutual Insurance Company shall pay to Petitioners the settlement sum of Two Thousand Five Hundred (\$2,500.00) Dollars.

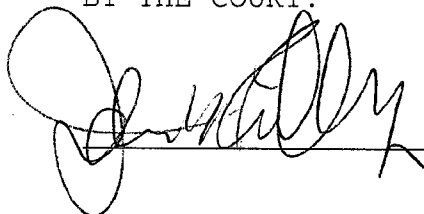
The monies received by Petitioners as parents and natural guardians of ALEXIS ZELENSKY, a minor, shall be placed in an insured savings account or Certificate of Deposit in the name of ALEXIS ZELENSKY and shall not be withdrawn until the said minor reaches her majority or the money is released pursuant to Court Order.

**FILED**

JUN 09 2003

William A. Shaw  
Prothonotary

BY THE COURT:

 J.

FILED

acc

019:22-81  
JUN 09 2003

AttyneGee

William A. Shaw  
Prosecutor

(K25)