

04-19-CD  
MARY C. KRUSZEWSKI VS. JEFFREY W. RICE

Mary Kruszewski vs. Jeffrey Rice  
2004-19-CD

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

MARY C. KRUSZEWSKI, D.O. :

-vs- : No. 04-19-CD

JEFFREY W. RICE :

**FILED**

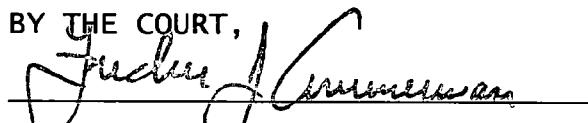
MAR 31 2004

William A. Shaw  
Prothonotary/Clerk of Courts

O R D E R

NOW, this 30th day of March, 2004, this being the date set for argument on the Motion to Consolidate filed on behalf of Mary C. Kruszewski, D.O.; there being no objection to the request, it is the ORDER of this Court that the above captioned action and the action filed with this Court to No. 03-1903-CD be and are hereby consolidated. The Court notes that all future filings shall be to case no. 03-1903-CD, wherein Jeffrey W. Rice is the Plaintiff and Mary C. Kruszewski is the Defendant. The Court further notes that the parties have both agreed that the claim by Mary C. Kruszewski is against Jeffrey W. Rice as an individual and not Jeffrey W. Rice, D.N.D, P.C. Therefore, the caption of the case filed to No. 03-1903-CD is hereby amended to include Jeffrey W. Rice as an individual plaintiff.

BY THE COURT,

  
President Judge



## NOTICE OF APPEAL

FROM

## DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No.

04-19-CD

## NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT	Jeffrey W. Rice			MAG. DIST. NO. OR NAME OF D.J.	46-3-01
ADDRESS OF APPELLANT	90 Beaver Drive			CITY	PA
DATE OF JUDGMENT	IN THE CASE OF (Plaintiff)			STATE	ZIP CODE
12/4/03	Mary C. Kruszyewski, D.O.			(Defendant)	
CLAIM NO.				VS.	
CV 105	474-03	Jeffrey W. Rice			
LT 19				Signature of Appellant or His Attorney or Agent	

This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B.

This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.

If appellant was claimant (see Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.

Signature of Prothonotary or Deputy

## PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

PRAECIPE: To Prothonotary

Enter rule upon Mary C. Kruszyewski, D.O., appellee(s), to file a complaint in this appeal  
 Name of appellee(s)

(Common Pleas No. \_\_\_\_\_) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

RULE: To Mary C. Kruszyewski, D.O., appellee(s)  
 Name of appellee(s)

Signature of appellant or his attorney or agent

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: 1-5-04

Signature of Prothonotary or Deputy

FILED

JAN 05 2004

William A. Shaw  
 Prothonotary

COURT FILE TO BE FILED WITH PROTHONOTARY

# FILED

JAN 05 2004

William A. Shaw  
Prothonotary

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## PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

*(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing the notice of appeal. Check applicable boxes)*

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF \_\_\_\_\_ ; ss

**AFFIDAVIT:** I hereby swear or affirm that I served

a copy of the Notice of Appeal, Common Pleas No. \_\_\_\_\_, upon the District Justice designated therein on (date of service) \_\_\_\_\_, 19\_\_\_\_\_,  by personal service  by (certified) (registered) mail, sender's receipt attached hereto, and upon the appellee, (name) \_\_\_\_\_, on \_\_\_\_\_, 19\_\_\_\_\_,  by personal service  by (certified) (registered) mail, sender's receipt attached hereto.

and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom the Rule was addressed on \_\_\_\_\_, 19\_\_\_\_\_,  by personal service  by (certified) (registered) mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_\_

*Signature of affiant*

*Signature of official before whom affidavit was made*

*Title of official*

My commission expires on \_\_\_\_\_, 19\_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: CLEARFIELD

Mag. Dist. No.:

**46-3-01**

DJ Name: Hon.

**PATRICK N. FORD**  
309 MAPLE AVENUE  
P.O. BOX 452  
DUBOIS, PA

Telephone: (814) 371-5321      15801

**ATTORNEY DEF PRIVATE :**

**CHRIS MOHNEY**  
90 BEAVER DRIVE APT/STE 201A  
DUBOIS, PA 15801

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

PLAINTIFF:

**KRUSZEWSKI, D.O., MARY C.**  
190 W. PARK AVENUE  
DUBOIS, PA 15801

NAME and ADDRESS

DEFENDANT:

**RICE, JEFFREY W.**  
90 BEAVER DRIVE  
DUBOIS, PA 15801

NAME and ADDRESS

Docket No.: **CV-0000474-03**  
Date Filed: **11/04/03**



04-19-CD

**THIS IS TO NOTIFY YOU THAT:**

Judgment: FOR PLAINTIFF

Judgment was entered for: (Name) **KRUSZEWSKI, D.O., MARY C.**

Judgment was entered against: (Name) **RICE, JEFFREY W.**

in the amount of \$ **2,392.78** on: (Date of Judgment) **12/04/03**

Defendants are jointly and severally liable. (Date & Time) \_\_\_\_\_

Damages will be assessed on: \_\_\_\_\_

This case dismissed without prejudice.

Amount of Judgment	\$ <b>2,276.28</b>
Judgment Costs	\$ <b>116.50</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
<b>Total</b>	\$ <b>2,392.78</b>

Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127 \$ \_\_\_\_\_

Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
<b>=====</b>	
<b>Certified Judgment Total</b>	\$ _____

Portion of Judgment for physical damages arising out of residential lease \$ \_\_\_\_\_

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR DISTRICT JUSTICES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE DISTRICT JUSTICE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE DISTRICT JUSTICE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

12-4-03 Date Patrick N. Ford - PNF, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

Date \_\_\_\_\_, District Justice

My commission expires first Monday of January, **2006** .

SEAL

## PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF Clearfield ss

AFFIDAVIT: I hereby swear or affirm that I served

a copy of the Notice of Appeal, Common Pleas No. 04-19-C.D., upon the District Justice designated therein on (date of service) 1/6/04,  by personal service  by (certified) (registered) mail, sender's receipt attached hereto, and upon the appellee, (name) Mary C. Kruszcynski, P.O., c/o Steven L. Subkawsky, Esq., on (date) 1/6/04,  by personal service  by (certified) (registered) mail, sender's receipt attached hereto.

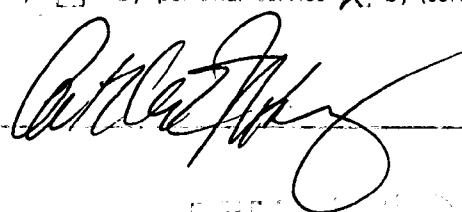
and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom the Rule was addressed on 1/6/04,  by personal service  by (certified) (registered) mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME  
THIS 6<sup>th</sup> DAY OF Jan, 2004

Shane S. Emerick  
Signature of official before whom affidavit was made

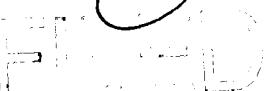
Notary Public  
Title of official

My commission expires on 4/22/04, 10.

  
Signature of affiant

0 9:40 AM NOCC

JAN 08 2004

  
P

WIT: W. A. S.  
10/10/04

## NOTICE OF APPEAL

COURT OF COMMON PLEAS  
*Clearfield County*  
 JUDICIAL DISTRICT  
*4/6/03*

FROM  
 DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 04-19-CD

## NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT	<u>Jeffrey W. Rice</u>			MAG. DIST. NO. OR NAME OF D.J.	<u>46-3-01</u>	
ADDRESS OF APPELLANT	<u>90 Beaver Drive</u>			CITY	STATE	ZIP CODE
DATE OF JUDGMENT	<u>12/4/03</u>			<u>Mary C. Krusgewski, D.O.</u>	(Defendant)	
CLAIM NO.	<u>CV # 474-03</u>			VS.	<u>Jeffrey W. Rice</u>	
<u>LT 19</u>			SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT <u>Jeffrey W. Rice</u>			

This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B.

This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.

If appellant was Claimant (see Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.

Signature of Prothonotary or Deputy

## PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

PRAECIPE: To Prothonotary

Enter rule upon

Mary C. Krusgewski, D.O.

Name of appellee(s)

, appellee(s), to file a complaint in this appeal

(Common Pleas No. \_\_\_\_\_) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

RULE: To Mary C. Krusgewski, D.O., appellee(s)

Name of appellee(s)

Signature of appellant or his attorney or agent

Jeffrey W. Rice

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: 1-5-04

Signature of Prothonotary or Deputy

William B. Brown

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

JAN 05 2004

Attest.

*William B. Brown*  
 Prothonotary/  
 Clerk of Courts

19

<b>U.S. Postal Service</b> <b>CERTIFIED MAIL RECEIPT</b> <i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
<del>2985</del> OFFICIAL USE	
2985	Postage \$ .37
7443	Certified Fee <b>2.30</b>
0000	Return Receipt Fee (Endorsement Required) <b>1.75</b>
0000	Restricted Delivery Fee (Endorsement Required)
7440	Total Postage & Fees <b>\$ 4.42</b>
Postmark Here	
<i>Sent To</i> <b>Steven L. Sablowsky, Esquire</b> <i>Street, Apt. No.; 285 E. Waterfront Drive</i> <i>or PO Box No. Suite 160</i> <i>City, State, ZIP+4 Homestead, PA 15120</i> <small>PS Form 3800, January 2001</small> <small>See Reverse for Instructions</small>	

19

<b>U.S. Postal Service</b> <b>CERTIFIED MAIL RECEIPT</b> <i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
<del>2977</del> OFFICIAL USE	
2977	Postage \$ .37
7443	Certified Fee <b>2.30</b>
0000	Return Receipt Fee (Endorsement Required) <b>1.75</b>
0000	Restricted Delivery Fee (Endorsement Required)
7440	Total Postage & Fees <b>\$ 4.42</b>
Postmark Here	
<i>Sent To</i> <b>Honorable Patrick Ford</b> <i>Street, Apt. No.;</i> <i>or PO Box No.</i> <i>309 Maple Avenue</i> <i>City, State, ZIP+4 DuBois, PA 15801</i> <small>PS Form 3800, January 2001</small> <small>See Reverse for Instructions</small>	

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: CLEARFIELD

Mag. Dist. No.:

46-3-01

DJ Name: Hon.

PATRICK N. FORD

Address: 309 MAPLE AVENUE  
P.O. BOX 452  
DUBOIS, PA

Telephone: (814) 371-5321 15801

PATRICK N. FORD  
309 MAPLE AVENUE  
P.O. BOX 452  
DUBOIS, PA 15801

NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE

PLAINTIFF:

KRUSZEWSKI, D.O., MARY C.  
190 W. PARK AVENUE  
DUBOIS, PA 15801

NAME and ADDRESS

DEFENDANT:

RICE, JEFFREY W.  
90 BEAVER DRIVE  
DUBOIS, PA 15801

VS.

NAME and ADDRESS

Docket No.: CV-0000474-03  
Date Filed: 11/04/03



THIS IS TO NOTIFY YOU THAT:

Judgment:

FOR PLAINTIFF

04-19-CD

<input checked="" type="checkbox"/> Judgment was entered for: (Name) <u>KRUSZEWSKI, D.O., MARY C.</u>	
<input checked="" type="checkbox"/> Judgment was entered against: (Name) <u>RICE, JEFFREY W.</u>	
in the amount of \$ <u>2,392.78</u> on:	(Date of Judgment) <u>12/04/03</u>
<input type="checkbox"/> Defendants are jointly and severally liable.	(Date & Time) _____
<input type="checkbox"/> Damages will be assessed on:	FILED M 11/14/03 JAN 09 2004 William A. Shaw Prothonotary/Clerk of Courts
<input type="checkbox"/> This case dismissed without prejudice.	Amount of Judgment \$ <u>2,276.28</u> Judgment Costs \$ <u>116.50</u> Interest on Judgment \$ <u>.00</u> Attorney Fees \$ <u>.00</u> Total \$ <u>2,392.78</u>
<input type="checkbox"/> Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127 \$ _____	Post Judgment Credits \$ _____ Post Judgment Costs \$ _____ =====
<input type="checkbox"/> Portion of Judgment for physical damages arising out of residential lease \$ _____	Certified Judgment Total \$ _____

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR DISTRICT JUSTICES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE DISTRICT JUSTICE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE DISTRICT JUSTICE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

12-4-03 Date Patrick N. Ford - PNF, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

Date \_\_\_\_\_, District Justice

My commission expires first Monday of January, 2006 .

SEAL

# CIVIL/LANDLORD TENANT WORKSHEET



Case Name: **KRUSZEWSKI, D.O., MARY C.**  
**VS RICE, JEFFREY W.**

Docket No.: **CV-0000474-03**

Hearing Date: 12/02/03

Hearing Time: 2:30 P

Cross Complaint Filed (Date): \_\_\_\_\_ Cross Complaint Amount: \$ \_\_\_\_\_

Defendant intends to defend (Date): 11/13/03  Stayed on (Date): \_\_\_\_\_

Plaintiff so notified (Date): 11/13/03  Stayed until further notice.

Hearing was held on (Date): \_\_\_\_\_ Defendant appeared at hearing:

Defendant did not appear.  Not represented.

Plaintiff did not appear.  Represented by: \_\_\_\_\_

Residential Lease?  Y  N

## DISPOSITION

Judgment for plaintiff: \_\_\_\_\_

Judgment for defendant: \_\_\_\_\_  
 (Name) \_\_\_\_\_

Judgment entered on (Date): \_\_\_\_\_ Notice of judgment given on (Date): \_\_\_\_\_

The amount of rent per month as established by the District Justice, is \$ \_\_\_\_\_

The total amount of the Security Deposit is \$ \_\_\_\_\_

Total Amount Established by DJ	Less	Security Deposit Applied	= Adjudicated Amount
Rent in Arrears	\$ _____	– \$ _____	= \$ _____
Physical Damages Leasehold Property	\$ _____	– \$ _____	= \$ _____
Damages/Unjust Detention	\$ _____	– \$ _____	= \$ _____
<input type="checkbox"/> Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127	Less Amt. Due Defendant from Cross Complaint	– \$ _____	
<input type="checkbox"/> Defendants are jointly and severally liable.		Interest (if provided by lease)	\$ _____
<input type="checkbox"/> Possession granted.		Amount of Judgment	\$ <u>2276.28</u>
<input type="checkbox"/> Possession not granted.		Judgment Costs <i>that</i>	\$ _____
<input type="checkbox"/> Grant Possession if money Judgment is not Satisfied by time of eviction.		Attorney Fees <i>were paid</i>	\$ _____
<input type="checkbox"/> Order for Possession Requested		Total Judgment	\$ _____
<input type="checkbox"/> Order for Possession Issued			
<input type="checkbox"/> Order for Possession Reissued			
<input type="checkbox"/> Appeal Filed			
<input type="checkbox"/> Supersedeas Attached			
<input type="checkbox"/> Supersedeas Terminated			
<input type="checkbox"/> Dismissal without prejudice (Date): _____			
<input type="checkbox"/> Transferred to (Date): _____			
<input type="checkbox"/> Settled (Date): _____			
<input type="checkbox"/> Damages will be assessed on (Date): _____ (Time): _____			
<input type="checkbox"/> Levy is stayed for _____ days, or			
<input type="checkbox"/> Objection to Levy has been filed and a hearing will be held on (Date): _____ (Time): _____			
<input type="checkbox"/> Objection to levy denied; sale to be rescheduled			

Judgment and cost satisfied (Date): \_\_\_\_\_  
 (By whom notified): \_\_\_\_\_

Continued to (Date): \_\_\_\_\_ (Time): \_\_\_\_\_  
 At the request of:

Plaintiff

Defendant

Notice of continuance given on (Date): \_\_\_\_\_

generally stayed.

## FINAL DISPOSITION MADE BY:

(District Justice)

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: CLEARFIELD

Mag. Dist. No.:	<b>46-3-01</b>
DJ Name: Hon.	
<b>PATRICK N. FORD</b>	
Address:	<b>309 MAPLE AVENUE</b>
	<b>P.O. BOX 452</b>
	<b>DUBOIS, PA 15801</b>
Telephone:	<b>(814) 371-5321</b>

**CIVIL COMPLAINT**

PLAINTIFF:  NAME AND ADDRESS  
 Mary C. Kruszewski, D.O.  
 190 W. Park Avenue  
 DuBois, PA 15801

DEFENDANT:  VS.  NAME AND ADDRESS  
 Jeffrey W. Rice  
 90 Beaver Drive  
 DuBois, PA 15801

Docket No.: **CV 474-03**  
 Date Filed:



	AMOUNT	DATE PAID
FILING COSTS	\$ <u>110.50</u>	/ /
POSTAGE	\$ _____	/ /
SERVICE COSTS	\$ _____	/ /
CONSTABLE ED.	\$ _____	/ /
TOTAL	\$ _____	/ /

TO THE DEFENDANT: The above named plaintiff(s) asks judgment against you for \$ 7,776.28 together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated):

Plaintiff, while a tenant at Defendant's building at 90 Beaver Drive, Suite 214D, incurred utility costs for other tenants due to Defendant's improperly metering Plaintiff's demised premises to include other tenant leasehold premises. Those additional utility costs were \$2,276.28.

Plaintiff also left various fixtures at the premises which the Defendant has kept and not returned to Plaintiff, including cabinets, counters and countertops, at a value of \$5,500.00.

Plaintiff's claim totals \$7,776.28.

I, Mary C. Kruszewski, verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) related to unsworn falsification to authorities.

Mary C. Kruszewski  
(Signature of Plaintiff or Authorized Agent)

Plaintiff's Attorney: Steven L. Sablowsky, Esq. Address: 285 E. Waterfront Drive  
 Telephone: 412-464-2230 Suite 160  
Homestead, PA 15120

IF YOU INTEND TO ENTER A DEFENSE TO THIS COMPLAINT, YOU SHOULD SO NOTIFY THIS OFFICE IMMEDIATELY AT THE ABOVE TELEPHONE NUMBER. YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.

If you have a claim against the plaintiff which is within district justice jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing.

If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation.

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

**46-3-01**

DJ Name: Hon.

**PATRICK N. FORD**  
Address: **309 MAPLE AVENUE**  
**P.O. BOX 452**  
**DUBOIS, PA**  
Telephone: **(814) 371-5321**

**15801**

**PATRICK N. FORD**  
**309 MAPLE AVENUE**  
**P.O. BOX 452**  
**DUBOIS, PA 15801**

**CIVIL ACTION  
HEARING NOTICE**

PLAINTIFF:

**KRUSZEWSKI, D.O., MARY C.**  
**190 W. PARK AVENUE**  
**DUBOIS, PA 15801**

NAME and ADDRESS

DEFENDANT:

**RICE, JEFFREY W.**  
**90 BEAVER DRIVE**  
**DUBOIS, PA 15801**

VS.

NAME and ADDRESS

Docket No.: **CV-0000474-03**  
Date Filed: **11/04/03**



A civil complaint has been filed against you in the above captioned case. A hearing has been set in this matter for:

Date:	<b>11/25/03</b>	Place: <b>DISTRICT COURT 46-3-01</b>
Time:	<b>9:45 AM</b>	<b>309 MAPLE AVENUE</b> <b>P.O. BOX 452</b> <b>DUBOIS, PA 15801</b>

**NOTICE TO DEFENDANT**

If you intend to enter a defense file a written notice of your intent to appear and your telephone number.

**YOU MUST APPEAR AT THE HEARING OR YOUR DEFENSE WILL BE ENTERED AGAINST YOU BY DEFECT.**

If you have a claim against the plaintiff, you must file it on a separate complaint. If you do not appear at the hearing, you must file it on a separate complaint.

Pursuant to PA.R.CP.D.J. No. 342 filed for failure of judgment creditor to appear.

Failure to appear immediately at the above

date set for the hearing, or to file a written notice of your intent to appear, less you do, judgment may be entered against you.

If you have a claim against the plaintiff, you must file it on a separate complaint before the date set for the hearing.

If you do not appear at the hearing, judgment may be entered in a supplementary action.

If the defendant enters a Notice of Intent to Defend, you will be notified of the date and time of the scheduled hearing and must appear.

If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation.

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: CLEARFIELD

RECEIPT OF PAYMENT

Mag. Dist. No.:

46-3-01

DJ Name: Hon.

PATRICK N. FORD

Address: 309 MAPLE AVENUE

P.O. BOX 452

DUBOIS, PA

Telephone: (814) 371-5321

15801



REMITTER :

MARY C. KRUSZEWSKI, D.O.  
190 W. PARK AVENUE  
DUBOIS, PA 15801

Docket No.: CV-0000474-03  
Date Filed: 11/04/03

RECEIPT NO:	095800	DATE:	11/04/03	PAGE:	1
SOURCE:	PAID AT WINDOW		AMOUNT RECEIVED:	\$	116.50
METHOD:	PAID BY CHECK		AMOUNT APPLIED:	\$	116.50
CHECK#:	05895		COLLATERAL APPLIED:	\$	.00
			CHANGE:	\$	.00
MANUAL RECEIPT#:					
CITATION#:			NEXT PAYMENT AMOUNT:		
COSTS INCLUDED ON:			NEXT PAYMENT DATE:		
			NEXT PMT TYPE:		

PAYMENT DESCRIPTION	BALANCE FWD	AMT APPLIED	CURRENT BAL
JUDICIAL COMPUTER PROJECT	8.50	8.50-	.00
ACCESS TO JUSTICE	1.50	1.50-	.00
POSTAGE	10.00	10.00-	.00
COMMONWEALTH COST- HB627	64.34	64.34-	.00
FILING FEES 17-CTY	32.16	32.16-	.00
=====	=====	=====	=====
TOTAL	116.50	116.50-	.00
CURRENT BALANCE DUE	.00		

RECV'D FROM KRUSZEWSKI, D.O., MARY C.  
MKA THANK YOU!

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

**46-3-01**

DJ Name: Hon.

**PATRICK N. FORD**  
Address: **309 MAPLE AVENUE**  
**P.O. BOX 452**  
**DUBOIS, PA**  
Telephone: **(814) 371-5321**

**15801**

**PATRICK N. FORD**  
**309 MAPLE AVENUE**  
**P.O. BOX 452**  
**DUBOIS, PA 15801**

**NOTICE OF INTENT TO DEFEND**

PLAINTIFF:

**KRUSZEWSKI, D.O., MARY C.**  
**190 W. PARK AVENUE**  
**DUBOIS, PA 15801**

NAME and ADDRESS

DEFENDANT:

**RICE, JEFFREY W.**  
**90 BEAVER DRIVE**  
**DUBOIS, PA 15801**

VS.

NAME and ADDRESS

Docket No.: **CV-0000474-03**  
Date Filed: **11/04/03**



**HEARING: CIVIL ACTION HEARING**

Date: <b>12/02/03</b>	Place: <b>DISTRICT COURT 46-3-01</b>
Time: <b>2:30 PM</b>	<b>309 MAPLE AVENUE</b> <b>P.O. BOX 452</b> <b>DUBOIS, PA 15801</b>

**PLAINTIFF: KRUSZEWSKI, D.O., MARY C.**

You are hereby notified that the defendant named below has given notice of his intent to present a defense at the hearing in the above case.

**DEFENDANT: RICE, JEFFREY W.**

11/13/03

Date

Patrick N. Ford

, District Justice

My commission expires first Monday of January, **2006**.

**SEAL**

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: CLEARFIELD

NOTICE OF CONTINUANCE

Mag. Dist. No.:

**46-3-01**

DJ Name: Hon.

**PATRICK N. FORD**

Address: **309 MAPLE AVENUE  
P.O. BOX 452  
DUBOIS, PA**

Telephone: **(814) 371-5321 15801**

PLAINTIFF:

NAME and ADDRESS

**KRUSZEWSKI, D.O., MARY C.  
190 W. PARK AVENUE  
DUBOIS, PA 15801**

VS.

DEFENDANT:

NAME and ADDRESS

**RICE, JEFFREY W.  
90 BEAVER DRIVE  
DUBOIS, PA 15801**

Docket No.: **CV-0000474-03**  
Date Filed: **11/04/03**



**PATRICK N. FORD  
309 MAPLE AVENUE  
P.O. BOX 452  
DUBOIS, PA 15801**

Please note that the hearing in the above captioned case, which was scheduled to occur on: 11/25/03  
has been continued to:

Date:	<b>12/02/03</b>	Place: <b>DISTRICT COURT 46-3-01 309 MAPLE AVENUE</b>
Time:	<b>2:30 PM</b>	<b>P.O. BOX 452 DUBOIS, PA 15801</b>

If you have any questions, please contact this office immediately.

Continuance requested by: **DISTRICT JUSTICE**

If you are disabled and require assistance, please contact the Magisterial District office at the address above.

11/13/03 Date

Patrick N. Ford

, District Justice

My commission expires first Monday of January, **2006**

SEAL

# Goldblum Sablowsky

Goldblum and Sablowsky, LLC  
285 East Waterfront Drive  
Suite 160  
Homestead, PA 15120

12/2  
1.30

P: 412-464-2230  
F: 412-464-2231  
[www.gsllclaw.com](http://www.gsllclaw.com)

October 27, 2003

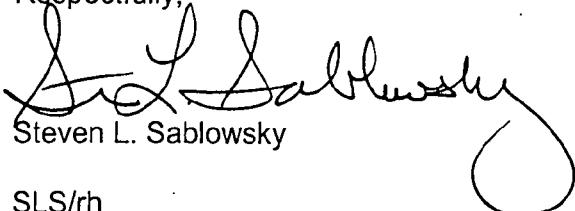
Patrick N. Ford  
District Justice  
309 Maple Avenue  
P.O. Box 452  
DuBois, PA 15801

Re: Jeffrey W. Rice, D.M.D., P.C. v.  
Mary C. Kruszewski, D.O.  
No. CV 447-03

Dear District Justice Ford:

Please be advised that Defendant, Mary C. Kruszewski, intends to enter a defense to the Complaint filed in this action, and that the undersigned will be representing the Defendant, at the hearing scheduled for November 25, 2003 at 9:45 a.m.

Respectfully,

  
Steven L. Sablowsky

SLS/rh

cc: Jeffrey W. Rice, D.M.D., P.C.

**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:**

Jeffrey W. Rice

CV 47403

**2. Article  
(Trans)**

7002 2410 0000 3957 2367

PS Form 3811, August 2001

Domestic Return Receipt

2ACPRI-03-Z-0985

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

Theresa Delony  Agent  
 Addressee

**B. Received by (Printed Name)**

Theresa Delony 11-7-03

**C. Date of Delivery**

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

**3. Service Type**

<input 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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY C. KRUSZEWSKI, D.O.

CIVIL DIVISION

Plaintiff,

No. 04-19-CD

v.

JEFFREY W. RICE,

COMPLAINT IN CIVIL ACTION

Defendant.

Filed on behalf of  
Mary C. Kruszewski, D.O.  
Plaintiff

Counsel of Record for this Party:

Steven L. Sablowsky, Esquire  
PA ID No. 20703

Goldblum and Sablowsky, LLC  
285 E. Waterfront Drive  
Suite 160  
Homestead, PA 15120

(412) 464-2230

FILED

JAN 26 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

MARY C. KRUSZEWSKI, D.O., )  
Plaintiff, )  
vs. )  
No. 04-19-CD  
JEFFREY W. RICE, )  
Defendant. )

**NOTICE TO DEFEND**

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

William Shaw, Prothonotary  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641

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

MARY C. KRUSZEWSKI, D.O., )  
Plaintiff, )  
vs. ) No. 04-19-CD  
JEFFREY W. RICE, )  
Defendant. )

COMPLAINT IN CIVIL ACTION

AND NOW COMES, the Plaintiff, MARY C. KRUSZEWSKI, D.O., by her attorneys, Steven L. Sablowsky, Esquire, Goldblum and Sablowsky, LLC, and for her complaint respectfully states as follows:

1. Plaintiff, Mary C. Kruszewski, D.O., is an individual with an office at 190 W. Park Avenue, DuBois, Pennsylvania 15801.
2. Defendant, Jeffrey W. Rice, is an individual transacting business at 90 Beaver Drive, DuBois, Pennsylvania 15801.
3. On or about February 15, 1995, Defendant entered into a Lease with Michael Kush, M.D., for the premises located at 90 Beaver Drive, DuBois, Pennsylvania 15801, Suite 214 D (the "Lease"). A true and correct copy of the Lease is attached hereto as Exhibit "A."

4. Thereafter, beginning on or about May, 1997, Plaintiff continued to pay the lease obligations of Michael Kush, M.D., through the Lease expiration date of January 14, 2000, in the monthly amount of \$2,500.00.

5. At the expiration of the Lease term on January 14, 2000, Plaintiff remained at the premises. Thereafter, beginning in March, 2000, Plaintiff's rent was reduced to \$1,250.00 per month. The reduced rental amount was agreed to by Defendant.

6. The rental rate of \$1,250.00 was timely paid on a monthly basis by Plaintiff from February, 2000 through March 31, 2003.

7. Under the terms of Section Fifteen of the Lease, Plaintiff became a holdover tenant at the expiration of the Lease on January 14, 2000, except, effective March 2000, the monthly rental was reduced to \$1,250.00 by the agreement between Plaintiff and Defendant.

8. No new lease was executed by Plaintiff and Defendant at the time the monthly rent decreased to \$1,250.00 in March, 2000.

9. By letter dated March 3, 2003, Plaintiff notified Defendant that she was vacating the premises and the lease would terminate effective May 1, 2003.

10. Plaintiff vacated the leasehold premises on or about April 30, 2003.

#### **COUNT I – BREACH OF CONTRACT**

11. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 10 above.

12. In addition to her monthly rent of \$1,250.00, Plaintiff had to pay the cost of utilities, as stated at Section Eight of the Lease.

13. During the holdover period, Plaintiff complained to Defendant that her electrical utility charges were very high; however, Defendant took no action to resolve the complaint.

14. Thereafter, after numerous independent investigations by Plaintiff to determine why the electrical bills were so high, Plaintiff discovered the electrical connections at the rented premises improperly included electricity for other tenants.

15. Defendant has since acknowledged that Plaintiff's electricity costs included the use of electric by other tenants of Defendant.

16. Plaintiff's total electric bill for other tenant use of electricity was \$2,276.28 as computed by Dennis Martella, CPA. A true and correct copy of said computation is attached hereto as Exhibit "B."

17. Due to Defendant's negligent actions, Plaintiff incurred utility costs of \$2,276.28 that were not rightfully hers.

WHEREFORE, Plaintiff, Mary C. Kruszewski, demands judgment against Defendant, Jeffrey W. Rice, in an amount in excess of \$10,000.00, plus interest and costs.

#### COUNT II - CONVERSION

18. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 17 above.

19. When the Plaintiff vacated the premises on or about April 30, 2003, Plaintiff left certain fixtures, countertops and counters which were rightfully hers under Section Seventeen of the Lease.

20. Those fixtures, countertops and counters had a value of \$8,261.30 as determined by Dennis C. Martella, CPA. A true and correct copy of that valuation is shown on Exhibit "B."

21. Defendant has refused to allow Plaintiff to remove those fixtures and to the best of Plaintiff's knowledge has taken possession of those fixtures.

22. Due to Defendant's wrongful taking and conversion of those fixtures, counters and countertops, Plaintiff was unable to remove those assets to obtain their rightful values.

WHEREFORE, Plaintiff, Mary C. Kruszewski, D.O., demands judgment against Defendant, Jeffrey W. Rice, in an amount in excess of \$10,000.00, plus interest and costs.

**COUNT III – FRAUD**

23. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 22 above.

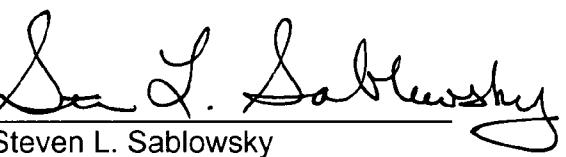
24. At least from the date that Plaintiff notified Defendant of the excessive electric charges, Defendant knew that Plaintiff's electric charges included usage by other tenants.

25. In fact, Plaintiff believes that Defendant or his agents personally installed the wiring that connected the electric supply of other tenants to the supply of Plaintiff.

26. Defendant's fraudulent actions were a breach of the lease between the parties, entitling Plaintiff to the return of all rent paid to Defendant and to punitive damages.

WHEREFORE, Plaintiff, Mary C. Kruszewski, D.O., demands judgment against Defendant, Jeffrey W. Rice, in an amount in excess of \$10,000.00, plus interest and costs.

GOLDBLUM AND SABLOWSKY, LLC

By:   
Steven L. Sablowsky

285 E. Waterfront Drive  
Suite 160  
Homestead, PA 15120  
(412) 464-2230

Attorneys for Plaintiff

OFFICE LEASE

BETWEEN

JEFFREY W. RICE

A  
N  
D

MICHAEL KUSH, M.D.

Exhibit "A"

OFFICE SPACE LEASE

LEASE made this 15 day of February, 1995, by and between **JEFFREY W. RICE**, 90 Beaver Drive, DuBois, Pennsylvania, party of the first part, hereinafter referred to as Lessor;

A

N

D

**MICHAEL KUSH, M.D.**, of DuBois, Pennsylvania, party of the second part, hereinafter referred to as Lessee.

WHEREAS, Lessor is the owner of certain premises described below, having office space therein for lease; and

WHEREAS, the parties desire to enter into a lease agreement defining their respective rights, duties and liabilities relating to the premises.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that in consideration of the above recitals which are incorporated herein by reference thereto, and of the mutual covenants contained herein, the parties agree as follows:

SECTION ONEDESCRIPTION OF PREMISES

Lessor leases to Lessee office space located in building known as 90 Beaver Drive, DuBois, Pennsylvania.

SECTION TWOTERM OF LEASE

The term of this lease shall be for five (5) years which lease shall commence on the 15th day of February, 1995, and shall terminate on the 14th day of January, 2000, unless Lessee has exercised the option to renew under the provisions set forth herein, if any are contained. Lessee shall surrender the premises to Lessor immediately upon termination of the lease.

SECTION THREEDELIVERY OF POSSESSION

If, for any reason, Lessor cannot deliver possession of the premises at the commencement of the term, this lease shall not be void or voidable, nor shall Lessor be liable to Lessee for any loss or damage resulting therefrom. However, there shall be a proportionate reduction in total rental, covering the period between the commencement of the term and the actual delivery of the premises to Lessee, or, in the alternative the term of the lease shall be extended for such period of time in the event of a late delivery by Lessor.

SECTION FOURRENTAL

During the term of this lease Lessee agrees to pay to the Lessor rental as follows:

Three Thousand Seven Hundred Fifty (3,750) square feet at \$8.00 per square foot annually, payable in monthly installments of \$2,500.00 per month in advance on the fifteenth day of each month.

If the term of this lease shall commence or end on a day other than the first day of the month, Lessee shall pay rental equal to 1/30th of the monthly rental multiplied by the number of rental days of such fractional month.

A rental payment shall be delinquent if not paid by the 10th day after which it is due. On Lessee's failure to pay the rental on a timely basis, Lessor shall have the right, in addition to any other rights it may have under the law, to terminate this lease by giving the Lessee fifteen (15) days notice in writing of the default and upon the failure of the Lessee to pay the rent within the fifteen (15) day period the lease will thereupon be forfeited.

#### SECTION FIVE

##### RESTRICTIONS ON USE

No use shall be made or permitted to be made that shall result in (1) waste on the premises, (2) a public or private nuisance that may disturb the quiet enjoyment of other tenants in the building, (3) improper, unlawful, or objectionable use, including sale, storage, or preparation, of food, alcoholic beverages or materials generating an odor on the premises, or (4) noises or vibrations that may disturb other tenants. Lessee shall

comply with all governmental regulations and statutes affecting the premises either now or in the future.

#### SECTION SIX

##### ABANDONING PREMISES OR PERSONAL PROPERTY

Lessee shall not vacate or abandon the premises at any time during the term, but if Lessee does vacate or abandon the premises or is dispossessed by process of law, any personal property belonging to Lessee and left on the premises shall be deemed abandoned at the option of Lessor and shall become the property of Lessor.

#### SECTION SEVEN

##### TAXES

Lessor shall pay all real estate taxes on the office space which is the subject of this lease.

#### SECTION EIGHT

##### UTILITIES

Lessee shall pay for all gas and electric consumed as a result of its occupation of the premises. Lessor shall furnish all water, sewage and garbage collection required by Lessee in the normal conduct of its business on the premises.

#### SECTION NINE

##### ALTERATIONS AND MODIFICATION - REPAIRS

Lessee has inspected the premises, and the premises are now in a tenantable and good condition. Lessee shall take good care of the premises and shall not alter, repair, or change the

premises without the written consent of Lessor. All alterations, improvements, and changes that Lessee may desire shall be done either by or under the direction of Lessor, but at the expense of Lessee and shall become the property of Lessor and remain on the premises, except that at the option of Lessor, Lessee shall, at its expense, remove from the premises all partitions, counters, railings, and similarly installed improvements when surrendering the premises. All damage or injury done to the premises by Lessee or any person who may be in or on the premises with the consent of Lessee shall be paid for by Lessee. Lessee shall, at the termination of this lease, surrender the premises to Lessor in as good condition and repair as reasonable and proper use thereof will permit.

Lessor shall be responsible for repairs and maintenance to the leased premises. Lessee shall permit Lessor and its agents to enter the premises at all reasonable times to inspect the premises, maintain the building and premises, make repairs, alterations, or additions to the premises, or any portion of the building, including the erection of scaffolding, props, or other mechanical devices, to post notices of non-liability for alterations, additions or repairs.

#### SECTION TEN

##### DESTRUCTION OF PREMISES

In the event of a partial destruction of the premises during the term from any cause, Lessor shall forthwith repair the

same, provided the repairs can be made within ninety (90) days under the laws and regulations of applicable governmental authorities. Any partial destruction shall neither annul nor void this lease, except that Lessee shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by Lessee in the premises. In the event that Lessor does not elect to make repairs that cannot be made in the specified time, or those repairs cannot be made under the laws and regulations of the applicable governmental authorities, this lease may be terminated at the option of either party. In the event all repairs to the premises are not made within 180 days, this lease may be terminated at the option of either party. Should the building in which the demised premises are situated be destroyed to the extent of not less than fifty percent (50%) of the replacement cost thereof, Lessor may elect to terminate this lease, whether the demised premises are damaged or not. A total destruction of the building in which the premises are situated shall terminate this lease.

SECTION ELEVEN

CONDEMNATION

A condemnation of the entire building or a condemnation of the portion of the premises occupied by Lessee shall result in a termination of this lease agreement. Lessor shall receive the

total of any consequential damages awarded as a result of condemnation proceedings. All future rent installments to be paid by Lessee under this lease shall be terminated.

#### SECTION TWELVE

##### BREACH OR DEFAULT

Lessee shall have breached this lease and shall be considered in default hereunder if (1) Lessee fails to pay any rent when due and does not make the delinquent payment within fifteen (15) days after receipt of notice thereof from Lessor, or (2) Lessee fails to perform or comply with any of the covenants or conditions of this lease and such failure continues for a period of fifteen (15) days after receipt of notice thereof from Lessor.

#### SECTION THIRTEEN

##### EFFECT OF BREACH

In the event of a breach of this lease as set forth in Section Twelve, the rights of Lessor shall be as follows:

(1) Lessor shall have the right to cancel and terminate this lease, as well as all of the right, title, and interest of Lessee hereunder, by giving to Lessee not less than ten (10) days notice of the cancellation and termination. On expiration of the time fixed in the notice, this lease and the right, title, and interest of Lessee hereunder shall terminate in the same manner and with the same force and effect, except as to Lessee's liability, as if the date fixed in the notice of cancellation and termination were the end of the term herein originally determined.

After termination, Lessor may relet the premises or any part thereof for any term without terminating the lease, at the rent and on the terms as Lessor may choose, providing the rent is at a reasonable market rate. Lessor may make alterations and repairs to the premises. The duties and liabilities of the parties if the premises are relet as provided herein shall be as follows:

a) Lessor shall have the right to apply the rent received from reletting the premises (1) to rent due under this lease, or (2) to payment of future rent under this lease as it becomes due.

b) If the new Lessee does not pay a rent installment promptly to Lessor, and the rent installment has been credited in advance of payment to the indebtedness of Lessee other than rent, or if rentals from the new lessee have been otherwise applied by Lessor as provided for herein, and during any rent installment period, are less than the rent payable for the corresponding installment period under this lease, Lessee shall pay Lessor the deficiency, separately for each rent installment deficiency period and before the end of that period.

SECTION FOURTEEN

OPTION TO RENEW

Lessee shall have the option to renew this lease one time for an identical term as provided herein for each renewal. Written notice of intention to renew must be furnished Lessor sixty (60)

days prior to expiration of the lease or any renewal hereunder. The rental shall be subject to renegotiation at the time of any renewal, but all other terms and conditions shall remain as provided herein.

#### SECTION FIFTEEN

##### HOLDING OVER

If Lessee holds possession of the premises after the term of this lease, Lessee shall become a tenant from month-to-month on the terms herein specified, and Lessee shall continue to be a month-to-month tenant until the tenancy shall be terminated by Lessor, or until Lessee has given to Lessor a written notice at least one month prior to the date of termination of the monthly tenancy of its intention to terminate the tenancy.

#### SECTION SIXTEEN

##### JANITORIAL AND CLEANING SERVICES

Lessor agrees to provide snow removal, janitorial and cleaning services for the common areas appurtenant to the leased premises at Lessor's expense.

#### SECTION SEVENTEEN

Lessee agrees to be liable for the purchase of any cabinetree or countertops and Lessor agrees to incur any expenses incurred in the installation of any cabinetree or countertops for examining rooms on the leased premises at the time of installation. At the termination of this lease, the Lessee may, at his option,

remove the cabinetree and countertops, but Lessee shall reimburse Lessor for any and all repair required for damage to the leased premises as a result of the removal of the cabinetree and countertops, including the expense of repainting, and to restore the leased premises to their original condition.

SECTION EIGHTEEN

Lessee agrees to pay Lessor a sign fee of \$150.00 to be paid to Lessor upon execution of this Lease.

Jeffrey W. Rice, Lessor

Michael Kush, M.D., Lessee

## MEMO

DATE: October 28, 2003  
 TO: Steven L. Sablowsky, Esq.  
 FROM: DCM  
 SUBJECT: Kruszewski/Rice  
 VIA: Facsimile 412-464-2231

Steve,

Pursuant to your request regarding the utility bills that Dr. Mary paid for space occupied by the Veteran's Administration, (hereinafter "VA") I have compiled the total utility bills paid by Dr. Mary for the period of November 2000 through April 2003. The original space leased by Dr. Mary contained 3,750 square feet. I have estimated the square footage lost as of November 6, 2000 to the VA to be approximately 25% of the total space. (Copy of a DCM floor plan schematic enclosed.) The utility bills and allocation are as follows:

PERIOD	TOTAL UTILITIES	PRO RATA %	VA %	UTILITIES ATTRIBUTABLE TO VA
2000 YR.	3,977.24	16.7	25	166.05
2001 YR.	2,846.20	100	25	711.55
2002 YR.	4,245.63	100	25	1,061.41
JAN - APR 2003	1,349.08	100	25	337.27
<b>UTILITIES ATTRIBUTABLE TO VA PAID BY DR. MARY</b>				<b>2,276.28</b>

Since Dr. Mary had the use of the total space until November 2000, that year's utilities were pro rated for the final two months of 2000, i.e., 2/12.

Additionally, the following costs were abandoned at the time Dr. Mary vacated the VA space in 2000 and when she moved in 2003:

	et al Costs
Sharps containers	
Soap dispensers	4 each - estimated cost
Paper towel holders	
Folding wall desks	
Countertops, wall cabinets, base cabinets, vanities	cost
<b>TOTAL</b>	<b>10,537.58</b>

*ABR* Exhibit "B"

VERIFICATION

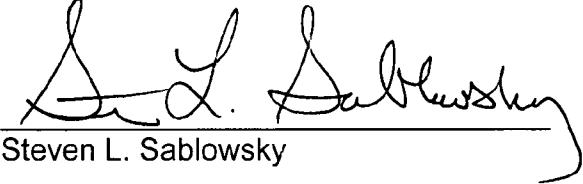
I hereby verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief, and I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsifications to authorities.

  
Mary C. Kruszewski, D.C.

CERTIFICATE OF SERVICE

I, Steven L. Sablowsky, do hereby certify that on this 23<sup>rd</sup> day of January, 2004, a true and correct copy of the foregoing Complaint in Civil Action was served by first-class United States mail, postage prepaid, on Defendant's counsel of record, addressed as follows:

Christopher E. Mohney, Esquire  
90 Beaver Drive  
Suite 201A  
DuBois, PA 15801

  
\_\_\_\_\_  
Steven L. Sablowsky

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

MARY C. KRUSZEWSKI, D.O., : NO. 04-19-C.D.  
: :  
PLAINTIFF : TYPE OF PLEADING:  
: PRELIMINARY OBJECTIONS  
: :  
VS. : FILED ON BEHALF OF:  
: DEFENDANT  
: :  
DEFENDANT : COUNSEL OF RECORD:  
: CHRISTOPHER E. MOHNEY, ESQUIRE  
: :  
: SUPREME COURT NO. 63494  
: :  
: 90 BEAVER DRIVE, SUITE 201 A  
: DUBOIS, PA 15801  
: (814) 375-1044

**FILED**

**FEB 18 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

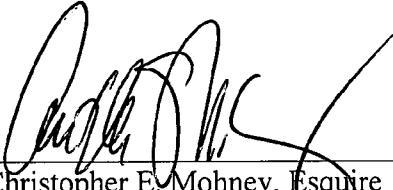
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MARY C. KRUSZEWSKI, D.O., :  
: :  
PLAINTIFF :  
: :  
VS. : NO. 04-19-C.D.  
: :  
JEFFREY W. RICE, :  
: :  
DEFENDANT :  
:

**NOTICE TO PLEAD**

In accordance with Rules 1026 and 1361 of the Pennsylvania Rules of Civil Procedure, you are notified to file a written response to the within PRELIMINARY OBJECTIONS within twenty (20) days from service hereof or a default judgment may be entered against you.

By:



---

Christopher E. Mohney, Esquire  
Attorney for Defendant  
90 Beaver Drive, Suite 102A  
DuBois, PA 15801  
(814) 375-1044  
Pa. I.D. # 63494

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

MARY C. KRUSZEWSKI, D.O., :  
: PLAINTIFF :  
: VS. : NO. 04-19-C.D.  
: :  
: JEFFREY W. RICE, :  
: :  
: DEFENDANT :  
:

**PRELIMINARY OBJECTIONS**

AND NOW, Defendant JEFFREY W. RICE, by his attorney, CHRISTOPHER E. MOHNEY, ESQUIRE, and files the following Preliminary Objections to Plaintiff's Complaint:

**COUNT I – PRELIMINARY OBJECTION PURSUANT TO**  
**Pa. R.C.P. 1028(a)(3)**

1. Pennsylvania Rule of Civil Procedure No. 1019(b) provides that averments of fraud shall be averred with particularity.
2. In Count III of Plaintiff's Complaint, Plaintiff alleges a cause of action in fraud against Defendant, Jeffrey W. Rice.
3. Plaintiff has failed to plead the averments of fraud with particularity insofar as Plaintiff has nowhere alleged specifically whom (from or to), when, where, or what Defendant allegedly misrepresented to Plaintiff.
4. Plaintiff's manner of pleading its cause of action for fraud against Defendant fails to put Defendant on notice as to what Plaintiff intends to prove at trial and further prevents Defendant from preparing to meet such proof with its own evidence.

5. A Plaintiff alleging fraud must set forth exact statements or actions which allegedly constitute fraudulent misrepresentations. McClellan v. Health Maintenance Organization of Pennsylvania, 604A.2d 1053 (Pa. Super. 1992), appealed denied 616 A.2d 985, appeal after remand 660 A.2d (1997), appeal granted 672 A.2d 308, affirmed 686 A.2d 801.
6. The requisite elements of fraud to be plead with particularity are (1) misrepresentation, (2) an utterance thereof, (3) an intention by the maker to induce the recipient thereby, (4) a justifiable reliance by recipient on the misrepresentation, and (5) damages to recipient as approximate result of the misrepresentations. Rivello v. New Jersey Auto Full Insurance Underwriting Association, 638 A.2d 253 (Pa. Super. 1994).

7. Averments of fraud must be made with particularity and must be sufficient to convince the Court that averments are not merely subterfuge. Bash v. Bell Telephone Company of Pennsylvania, 601 A.2d 825 (Pa. Super. 1992).

WHEREFORE, Defendant Jeffrey W. Rice respectfully requests this Honorable Court to direct Plaintiff, Mary C. Kruszewski, D.O., to plead with particularity the facts upon which allegations of fraud are based in her Complaint.

**COUNT II – PRELIMINARY OBJECTION PURSUANT TO**  
**Pa. R.C.P. 1028 (a) (4)**

8. Count I of Plaintiff's Complaint is entitled "Breach of Contract".
9. Count II of Plaintiff's Complaint is entitled "Conversion".
10. Count III of Plaintiff's Complaint is entitled "Fraud".
11. Count I and III of Plaintiff's Complaint are based on the same allegations.

12. Under Pennsylvania's "gist of the action" doctrine, tort claims can not be maintained when they essentially duplicate an action for breach of an underlying contract.

Sunquest Information Systems, Inc. v. Dean Witter Reynolds, Inc., 40 F.Supp.2d 644 (W.D. Pa. 1999).

13. To be construed as a tort action, the wrong ascribed to a Defendant must be the gist of the action with the contract being collateral. A contract action may not be converted into a tort action simply alleging that the conduct in question was done wantonly.

Phico Insurance Company v. Presbyterian Medical Services Corporation, 663 A.2d 753, 757 (Pa. Super. 1995).

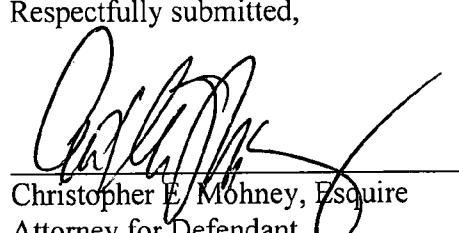
14. In Count II of her Complaint, Plaintiff purports to advance a claim sounding in conversion, while by her very allegations, Plaintiff is alleging breach of contract. See paragraph 19 of Plaintiff's Complaint.

15. In Count III of her Complaint, purporting to advance a claim of fraud, Plaintiff again specifically references Defendant's actions as being a "... breach of the lease...". See paragraph 26 of Plaintiff's Complaint.

WHEREFORE, Defendant Jeffrey W. Rice respectfully requests that Plaintiff's Counts II and III be dismissed.

Respectfully submitted,

By:

  
Christopher E. Mohney, Esquire  
Attorney for Defendant

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

MARY C. KRUSZEWSKI, D.O.,

PLAINTIFF

VS.

NO. 04-19-C.D.

JEFFREY W. RICE,

DEFENDANT

**CERTIFICATE OF SERVICE**

I, Christopher E. Mohney, Esquire, do hereby certify that on this 16<sup>th</sup> day of February, 2004, I caused to be served by First Class United States Mail, postage prepaid, true and correct copy of Preliminary Objections upon counsel for the Plaintiff, namely:

Steven L. Sablosky, Esquire  
Goldblum and Sablowsky, LLC  
285 E. Waterfront Drive  
Suite 160  
Homestead, PA 15120



Christopher E. Mohney, Esquire  
Attorney for Defendant

FILED  
FEB 18 2004  
10:00 AM  
2004

William A. Shaw  
Prothonotary/Clerk of Courts

Attn: Mohney  
EAS

LAW OFFICES  
**CHRISTOPHER E. MOHNEY**  
90 BEAVER DRIVE - SUITE 201A  
DUBOIS, PA 15801

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY C. KRUSZEWSKI, D.O., )  
Plaintiff, ) CIVIL DIVISION  
v. ) No. 04-19-CD  
JEFFREY W. RICE, )  
Defendant. ) PLAINTIFF'S REPLY TO  
 ) DEFENDANT'S PRELIMINARY  
 ) OBJECTIONS

Filed on behalf of Plaintiff:

Mary C. Kruszewski, D.O.

Counsel of Record for this Party:

Steven L. Sablowsky, Esquire  
PA ID #20703

Mitchel Zemel, Esquire  
PA ID #75593

Goldblum and Sablowsky, LLC  
285 E. Waterfront Drive  
Suite 160  
Homestead, PA 15120

(412) 464-2230

**FILED**

**FEB 27 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY C. KRUSZEWSKI, D.O., )  
                                  )  
                                  )  
Plaintiff,                   ) CIVIL DIVISION  
                                  )  
                                  )  
v.                            ) No. 04-19-CD  
                                  )  
                                  )  
JEFFREY W. RICE,           )  
                                  )  
                                  )  
Defendant.                   )

**PLAINTIFF'S REPLY TO DEFENDANT'S PRELIMINARY OBJECTIONS**

AND NOW, comes Plaintiff, Mary C. Kruszewski, D.O., by her attorneys, Steven L. Sablowsky, Esquire, Mitchel Zemel, Esquire and Goldblum and Sablowsky, LLC, and files the following Reply to Defendant's Preliminary Objections.

Defendant has filed Preliminary Objections on two bases. The first basis is pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(3), which requires that fraud be averred with particularity. The second is pursuant to Rule 1028(a)(4), and avers that Plaintiff is attempting to duplicate her contract action through tort claims. Because neither of Defendant's preliminary objections have merit, Plaintiff respectfully requests this Court dismiss the Preliminary Objections and direct Defendant to answer the Complaint.

**I. FRAUD**

Plaintiff has averred in her Complaint that Defendant knowingly connected the electrical supply of other tenants to the supply of Plaintiff, thereby forcing Plaintiff to pay electric charges that were not incurred by her. Plaintiff further averred that Defendant

acknowledged that such improper wiring had occurred, and further averred that Defendant took no action to rectify the situation.

While the law of the Commonwealth requires that the elements of fraud be plead with particularity, the ultimate goal of this requirement is to enable the Defendant to prepare a defense.

Averments of fraud are meaningless epithets unless sufficient facts are set forth which will permit an inference that the claim is not without foundation or offered simply to harass the opposing party and to delay the pleader's own obligation... The pleadings must adequately explain the nature of the claim to the opposing party so as to permit him to prepare a defense and they must be sufficient to convince the court that the averments are not merely subterfuge.

Bata v. Central-Penn National Bank of Philadelphia, 423 Pa. 373, 379-80, 224 A.2d 174 (1966), cert. denied, 386 U.S. 1007, 87 S. Ct. 1348, 18 L. Ed. 2d 433 (1967).

Despite Defendant's allegation to the contrary, Plaintiff did specifically plead the fraudulent actions of Defendant, adequately explaining the claim and establishing they are not "simply subterfuge."

While it is true that the facts which form the basis of the fraud claim are contained in the breach of contract portion of the complaint, all such facts have been incorporated into the fraud count, and therefore Defendant is well aware of the facts forming the basis for the fraud allegations, and can prepare a defense, should one exist.

## **II. PRELIMINARY OBJECTIONS PURSUANT TO PARCP 1028(a)(4)**

Plaintiff cannot ascertain from Defendant's motion what the specific objection is to the Complaint. There is no legal basis whatsoever to dismiss a conversion claim simply because of breach of contract claim also exists. They are two wholly separate claims, with neither being dependent upon the other.

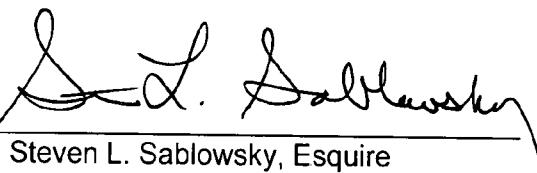
Defendant's argument that tort claims cannot be maintained when they essentially duplicate an action for breach of a contact is generally true. However, there is an important difference between contract and tort claims. This difference is that tort claims "lie from the breach of duties imposed as a matter of social policy while [contract claims] lie from the breach of duties imposed by mutual consensus." Bash v. Bell Telephone Company of Pennsylvania, 411 Pa. Super. 347, 601 A.2nd 825, 829 (Pa. Super. 1992).

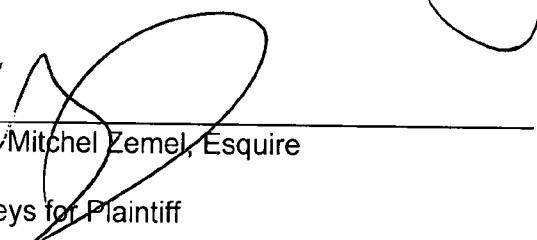
Defendant had no legal basis upon which to withhold Plaintiff's personal property, and therefore a claim for conversion exists. See Pittsburgh Construction Company v. Paul Griffith and Saundra Griffith, 2003 Pa. Super. 374, 834 A.2nd 572 (Pa. Super. 2003). Further, as the Griffith court notes, the "gist of the action" doctrine has not been explicitly adopted in Pennsylvania. Id., at 583.

### CONCLUSION

As Defendant's preliminary objections are without merit, Plaintiff requests this Court deny the objections and direct plaintiff to answer the complaint.

GOLDBLUM AND SABLOWSKY, LLC

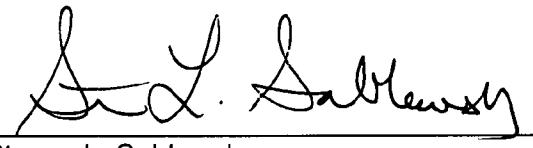
By:   
Steven L. Sablowsky, Esquire

By:   
Mitchel Zemel, Esquire  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I do hereby certify that on the 25<sup>th</sup> day of February, 2004, a true and correct copy of the foregoing Plaintiff's Reply to Defendant's Preliminary Objections was served by first-class United States mail, postage prepaid, on the following counsel of record:

Christopher E. Mohney, Esquire  
90 Beaver Drive  
Suite 201A  
DuBois, PA 15801

  
\_\_\_\_\_  
Steven L. Sablowsky

ax

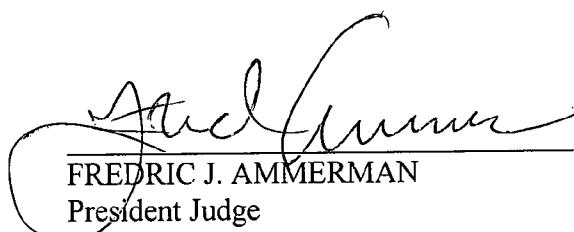
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

MARY C. KRUSZEWAKI, D.O. :  
vs. : No. 04-19-CD  
: :  
JEFFREY W. RICE :  
:

**ORDER**

NOW, this 3 day of March, 2004, upon consideration of Defendant's Preliminary Objections, a Rule is hereby issued upon the Plaintiff to Appear and Show Cause why the Objections should not be granted. Argument is scheduled the 30 day of March, 2004, at 9:30 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

**FILED**

MAR 04 2004

William A. Shaw  
Prothonotary

CX

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY C. KRUSZEWSKI, D.O., )  
Plaintiff, ) CIVIL DIVISION  
v. ) No. 04-19-CD  
JEFFREY W. RICE, ) MOTION TO CONSOLIDATE  
Defendant. )

Filed on behalf of Plaintiff:

Mary C. Kruszewski, D.O.

Counsel of Record for this Party:

Steven L. Sablowsky, Esquire  
PA ID #20703

Mitchel Zemel, Esquire  
PA ID #75593

Goldblum and Sablowsky, LLC  
285 E. Waterfront Drive  
Suite 160  
Homestead, PA 15120

(412) 464-2230

**FILED**

**FEB 27 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY C. KRUSZEWSKI, D.O., )  
Plaintiff, ) CIVIL DIVISION  
vs. ) No. 04-19-CD  
JEFFREY W. RICE, )  
Defendant. )

**MOTION TO CONSOLIDATE**

AND NOW, comes the Plaintiff, Mary C. Kruszewski, D.O., by her attorneys, Steven L. Sablowsky, Esquire, Mitchel Zemel, Esquire and Goldblum and Sablowsky, LLC, and files the following Motion to Consolidate. In support thereof, she respectfully represents to the Court as follows:

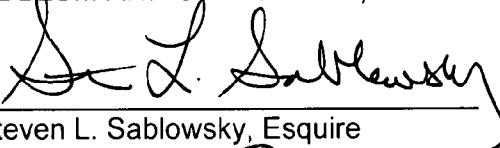
1. Plaintiff filed the above-captioned Complaint on or about January 26, 2004.
2. On or about January 20, 2004, Defendant herein filed an action captioned Jeffrey W. Rice, D.M.D., P.C. v. Mary C. Kruszewski, D.O., Case No. 03-1903 CD. A copy of said Complaint is attached hereto as Exhibit "A".
3. Both actions stem from the same transaction, namely, the Lease of property at 90 Beaver Drive, Suite 214D, DuBois, Pennsylvania 15801.
4. In the interest of judicial economy, Plaintiff herein respectfully requests that this Court consolidate the two (2) actions for all purposes.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court consolidate  
Case No. 03-1903 CD with the above-captioned action.

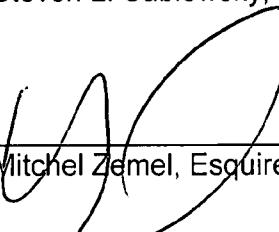
Respectfully submitted,

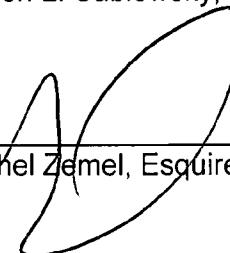
GOLDBLUM AND SABLOWSKY, LLC

By:

  
Steven L. Sablowsky, Esquire

By:

  
Mitchel Zemel, Esquire

  
Attorneys for Plaintiff

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

JEFFREY W. RICE, D.M.D., P.C., : CASE NO.: 03-1903 C.D.  
: :  
PLAINTIFF : TYPE OF PLEADING:  
: : COMPLAINT  
VS. : :  
: FILED ON BEHALF OF:  
MARY C. KRUSZEWSKI, D.O., : PLAINTIFF  
: :  
DEFENDANT : COUNSEL OF RECORD:  
: : CHRISTOPHER E. MOHNEY, ESQUIRE  
: :  
: SUPREME COURT NO.: 63494  
: :  
: 90 BEAVER DRIVE, SUITE 201 A  
: : DUBOIS, PA 15801  
: : (814) 375-1044

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

JEFFREY W. RICE, D.M.D., P.C., : CASE NO.: 03-1903 C.D.  
PLAINTIFF : TYPE OF PLEADING:  
VS. : COMPLAINT  
MARY C. KRUSZEWSKI, D.O., : FILED ON BEHALF OF:  
DEFENDANT : PLAINTIFF

**NOTICE**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIM 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.

WILLIAM SHAW, PROTHONOTARY  
CLEARFIELD COUNTY COURTHOUSE  
CLEARFIELD, PA 16830  
(814) 765-2641

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

JEFFREY W. RICE, D.M.D., P.C., : CASE NO.: 03-1903 C.D.  
: :  
PLAINTIFF : TYPE OF PLEADING:  
: COMPLAINT  
: VS.  
: :  
: FILED ON BEHALF OF:  
MARY C. KRUSZEWSKI, D.O., : PLAINTIFF  
: :  
: DEFENDANT :  
: :

COMPLAINT

AND NOW, comes the Plaintiff, **JEFFREY W. RICE, D.M.D., P.C.**, by and through its counsel, **CHRISTOPHER E. MOHNEY, ESQUIRE**, and files the following causes of action against **Defendant MARY C. KRUSZEWSKI, D.O.**, and in support thereof avers as follows:

BACKGROUND

1. Plaintiff **JEFFREY W. RICE, D.M.D., P.C.** is a corporation duly incorporated under the laws of the Commonwealth of Pennsylvania, with a place of business located at 90 Beaver Drive, DuBois, Clearfield County Pennsylvania 15801.
2. Defendant **MARY C. KRUSZEWSKI, D.O.**, is an adult individual with a place of business at 190 West Park Avenue, DuBois, Clearfield County, Pennsylvania 15801.
3. Plaintiff **JEFFREY W. RICE, D.M.D., P.C.** is vested with title to real estate located at 90 Beaver Drive, DuBois, Clearfield County, Pennsylvania 15801, upon which an office complex is constructed, more commonly known as "The Rice Complex".

4. Defendant **MARY C. KRUSZEWSKI, D.O.**, had possession of Suite 214 D of The Rice Complex from February 15, 1995 through February, 2000 incient to a written lease of Michael Kush, M.D. that Defendant assumed.

5. Defendant **MARY C. KRUSZEWSKI, D.O.**, had continued, uninterrupted possession of Suite 214 D of The Rice Complex from February 2000 through the end of April, 2003.

**COUNT I – BREACH OF WRITTEN LEASE**

6. Paragraphs 1 through 5 of this Complaint are incorporated herein by reference and as if set forth at length.

7. Attached hereto as Exhibit "A" is copy of Office Space Lease dated the year of 2000.

8. All of the handwriting on Exhibit "A" was that of Defendant Mary C. Kruszewski, D.O., or one of her duly authorized representatives.

9. All of the initials on Exhibit "A" attached hereto are those of Defendant Mary C. Kruszewski, D.O. and written by Defendant Mary C. Kruszewski, D.O. personally.

10. The signature on page 10 of Exhibit "A" is that of Defendant Mary C. Kruszewski, D.O.

11. Exhibit "A" attached hereto is signed on behalf of Plaintiff by Jeffrey W. Rice, the copy actually appended having been signed by Dr. Rice on or near November 24, 2003.

12. The rent due under the lease, pursuant to Section 4, Rental, is \$8.00 per square foot annually.

13. The premises 214 D rented from Plaintiff by Defendant is 2,787 square feet, resulting in a monthly rent of \$1,858.00.

14. Defendant Mary C. Kruszewski, D.O. vacated the premises effective May 1, 2003.

15. Defendant Mary C. Kruszewski, D.O. has failed to pay rent to Plaintiff Jeffrey W. Rice, D.M.D., P.C. from May 1, 2003 to date.

16. The terms of the written lease attached as Exhibit "A" is five years, pursuant to Section Two, Term of Lease, commencing November 1, 2000.

17. To date, Plaintiff has been unable to re-let Defendant's abandoned premises.

18. The deficiency rent due under the lease for the months of November, 2000 through April, 2003, is the difference of the rent due in the monthly amount of \$1,858.00, less the amount of rent actually paid from Defendant to Plaintiff in the amount of \$1,250.00, a deficiency of \$18,240.00.

19. The rent due under the lease for the months of May, 2003 through January, 2004 is \$16,722.00.

20. There is due and owing to Plaintiff the sum of \$34,962.00 for back rent under the lease.

21. Defendant owes Plaintiff, pursuant to terms of the lease, continuing monthly rent of \$1,858.00 through November 1, 2005.

22. Defendant, despite repeated demands by Plaintiff, has failed and still refuses to pay Plaintiff rent owing, or any portion thereof.

WHEREFORE, Plaintiff Jeffrey W. Rice, D.M.D., P.C., demands judgment against the Defendant in the amount of \$34,962.00, with interest and costs as allowed

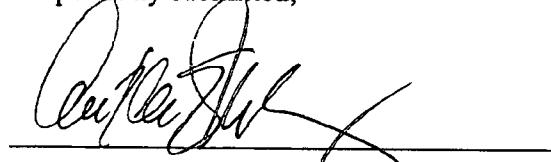
under Pennsylvania law, and such additional sums as may become delinquent by the time of judgment, and costs.

**COUNT II – BREACH OF ORAL LEASE**

23. Paragraphs 1 through 22 of this Complaint are incorporated herein by reference and as if set forth at length.
24. In the sole event a trier of fact determines there is no valid written lease between the parties (Plaintiff Jeffrey W. Rice, D.M.D., P.C. contends there is valid written lease), the parties had an existing valid year to year lease for the premises.
25. From March of 2000 through April of 2003, Defendant Mary C. Kruszewski, D.O. occupied the premises.
26. From March 2000 through April of 2003, Defendant paid Plaintiff monthly rent in the amount of \$1,250.00.
27. Pursuant to 68 P.S. § 250.202, Defendant paid monthly rent for more than twelve (12) consecutive months, creating a tenancy from year to year.
28. Defendant has failed to properly notify Plaintiff of notice to terminate lease on end of term pursuant to Pennsylvania Landlord/Tenant Act.
29. There is due and owing Plaintiff the sum of \$11,250.00 for back rent pursuant to the terms of the lease, through January, 2004.
30. There remains due and owing until the sooner of date of judgment and/or termination of lease, the sum of \$1,250.00 per month for rent.
31. Defendant, despite repeated demands by Plaintiff, has failed and refused and still refuses to pay Plaintiff the amount of back rent, or any portion thereof.

WHEREFORE, Plaintiff JEFFREY W. RICE, D.M.D., P.C. demands judgment against Defendant MARY C. KRUSZEWSKI, D.O. in the amount of \$11,250.00, with interest and costs as allowed under Pennsylvania law, and such additional rent sums as may become delinquent by the sooner of time of judgment or termination of term of lease, and costs.

Respectfully submitted,



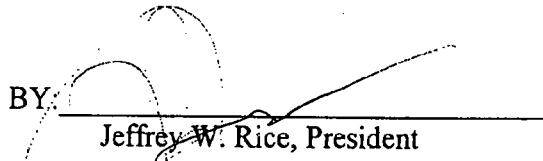
Christopher E. Mohney, Esquire  
Attorney for Plaintiff

**VERIFICATION**

I, JEFFREY W. RICE, President of JEFFREY W. RICE, D.M.D., P.C., being duly authorized to make this verification, 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 is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn fabrication to authorities, which provides if I make knowingly false averments I may be subject to criminal penalties.

JEFFREY W. RICE, D.M.D., P.C.

BY:   
Jeffrey W. Rice, President

Date: 1-20-04

OFFICE SPACE LEASE

, 2000

LEASE made this XX day of XXXX, 96, by and M.J.R.  
between **JEFFREY W. RICE**, 90 Beaver Drive, DuBois, Pennsylvania,  
party of the first part, hereinafter referred to as Lessor;

A

N

D

Mary C. Kruszewski, D.O.

~~Michael J. Rice, M.D.~~ of DuBois, Pennsylvania, party of the second  
part, hereinafter referred to as Lessee.

WHEREAS, Lessor is the owner of certain premises  
described below, having office space therein for lease; and

WHEREAS, the parties desire to enter into a lease  
agreement defining their respective rights, duties and liabilities  
relating to the premises.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that in  
consideration of the above recitals which are incorporated herein  
by reference thereto, and of the mutual covenants contained herein,  
the parties agree as follows:

SECTION ONE

DESCRIPTION OF PREMISES

that  
Lessor leases to Lessee office space located in building  
known as 90 Beaver Drive, DuBois, Pennsylvania, that is presently  
used by Lessee, provided however Lessee agrees to  
allow Lessor to reduce her present space, as  
previously agreed between the parties, so long as  
Lessor makes those leasehold improvements stated  
below prior to said space reduction, at Lessor's  
cost. The leasehold improvements are:

1. A hall closet to be built in the rear hallway.
2. Remove the door in the back offices and replace it  
with a wall, insulated to reduce noise.
3. Add cabinets and a sink to the 2 front offices.
4. Replace carpeting with vinyl floor in the 2 front office
5. Add ventilation to reduce heat in the new ultrasound  
room.

EX.A.

## SECTION TWO

### TERM OF LEASE

The term of this lease shall be for five (5) years which lease shall commence on the ~~15th~~<sup>1st</sup> day of ~~December~~, ~~1995~~ <sup>November, 2000</sup> and shall ~~and shall~~ <sup>and shall</sup> ~~Mike~~ terminate on the ~~14th~~<sup>1st</sup> <sup>November, 2005</sup> day of ~~January~~, ~~2000~~, unless Lessee has exercised the option to renew under the provisions set forth herein, if any are contained. Lessee shall surrender the premises to Lessor immediately upon termination of the lease.

## SECTION THREE

### DELIVERY OF POSSESSION

If, for any reason, Lessor cannot deliver possession of the premises at the commencement of the term, this lease shall not be void or voidable, nor shall Lessor be liable to Lessee for any loss or damage resulting therefrom. However, there shall be a proportionate reduction in total rental, covering the period between the commencement of the term and the actual delivery of the premises to Lessee, or, in the alternative the term of the lease shall be extended for such period of time in the event of a late delivery by Lessor.

## SECTION FOUR

### RENTAL

During the term of this lease Lessee agrees to pay to the Lessor rental as follows:

(to be measured)

Three Thousand Seven Hundred Fifty (3,750) square feet at

\$8.00 per square foot annually, payable in monthly installments of

(to be determined)

\$2,500.00 per month ~~beginning~~ on the fifteenth day of each month,

beginning November 15, 2000. mc

If the term of this lease shall commence or end on a day other than the first day of the month, Lessee shall pay rental equal to 1/30th of the monthly rental multiplied by the number of rental days of such fractional month.

A rental payment shall be delinquent if not paid by the 10th day after which it is due. On Lessee's failure to pay the rental on a timely basis, Lessor shall have the right, in addition to any other rights it may have under the law, to terminate this lease by giving the Lessee fifteen (15) days notice in writing of the default and upon the failure of the Lessee to pay the rent within the fifteen (15) day period the lease will thereupon be forfeited.

## SECTION FIVE

### RESTRICTIONS ON USE

No use shall be made or permitted to be made that shall result in (1) waste on the premises, (2) a public or private nuisance that may disturb the quiet enjoyment of other tenants in the building, (3) improper, unlawful, or objectionable use, including sale, storage, or preparation, of food, alcoholic beverages or materials generating an odor on the premises, or (4) noises or vibrations that may disturb other tenants. Lessee shall

comply with all governmental regulations and statutes affecting the premises either now or in the future.

#### SECTION SIX

##### ABANDONING PREMISES OR PERSONAL PROPERTY

Lessee shall not vacate or abandon the premises at any time during the term, but if Lessee does vacate or abandon the premises or is dispossessed by process of law, any personal property belonging to Lessee and left on the premises shall be deemed abandoned at the option of Lessor and shall become the property of Lessor.

#### SECTION SEVEN

##### TAXES

Lessor shall pay all real estate taxes on the office space which is the subject of this lease.

#### SECTION EIGHT

##### UTILITIES

Lessee shall pay for all gas and electric consumed as a result of its occupation of the premises. Lessor shall furnish all water, sewage and garbage collection required by Lessee in the normal conduct of its business on the premises.

#### SECTION NINE

##### ALTERATIONS AND MODIFICATION - REPAIRS

Lessee has inspected the premises, and the premises are now in a tenantable and good condition. Lessee shall take good care of the premises and shall not alter, repair, or change the

premises without the written consent of Lessor. All alterations, improvements, and changes that Lessee may desire shall be done either by or under the direction of Lessor, but at the expense of Lessee and shall become the property of Lessor and remain on the premises, except that at the option of Lessor, Lessee shall, at its expense, remove from the premises all partitions, counters, railings, and similarly installed improvements when surrendering the premises. All damage or injury done to the premises by Lessee or any person who may be in or on the premises with the consent of Lessee shall be paid for by Lessee. Lessee shall, at the termination of this lease, surrender the premises to Lessor in as good condition and repair as reasonable and proper use thereof will permit.

Lessor shall be responsible for repairs and maintenance to the leased premises. Lessee shall permit Lessor and its agents to enter the premises at all reasonable times to inspect the premises, maintain the building and premises, make repairs, alterations, or additions to the premises, or any portion of the building, including the erection of scaffolding, props, or other mechanical devices, to post notices of non-liability for alterations, additions or repairs.

#### SECTION TEN

##### DESTRUCTION OF PREMISES

In the event of a partial destruction of the premises during the term from any cause, Lessor shall forthwith repair the

same, provided the repairs can be made within ninety (90) days under the laws and regulations of applicable governmental authorities. Any partial destruction shall neither annul nor void this lease, except that Lessee shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by Lessee in the premises. In the event that Lessor does not elect to make repairs that cannot be made in the specified time, or those repairs cannot be made under the laws and regulations of the applicable governmental authorities, this lease may be terminated at the option of either party. In the event all repairs to the premises are not made within 180 days, this lease may be terminated at the option of either party. Should the building in which the demised premises are situated be destroyed to the extent of not less than fifty percent (50%) of the replacement cost thereof, Lessor may elect to terminate this lease, whether the demised premises are damaged or not. A total destruction of the building in which the premises are situated shall terminate this lease.

#### SECTION ELEVEN

##### CONDEMNATION

A condemnation of the entire building or a condemnation of the portion of the premises occupied by Lessee shall result in a termination of this lease agreement. Lessor shall receive the

total of any consequential damages awarded as a result of condemnation proceedings. All future rent installments to be paid by Lessee under this lease shall be terminated.

#### SECTION TWELVE

##### BREACH OR DEFAULT

Lessee shall have breached this lease and shall be considered in default hereunder if (1) Lessee fails to pay any rent when due and does not make the delinquent payment within fifteen (15) days after receipt of notice thereof from Lessor, or (2) Lessee fails to perform or comply with any of the covenants or conditions of this lease and such failure continues for a period of fifteen (15) days after receipt of notice thereof from Lessor.

#### SECTION THIRTEEN

##### EFFECT OF BREACH

In the event of a breach of this lease as set forth in Section Twelve, the rights of Lessor shall be as follows:

(1) Lessor shall have the right to cancel and terminate this lease, as well as all of the right, title, and interest of Lessee hereunder, by giving to Lessee not less than ten (10) days notice of the cancellation and termination. On expiration of the time fixed in the notice, this lease and the right, title, and interest of Lessee hereunder shall terminate in the same manner and with the same force and effect, except as to Lessee's liability, as if the date fixed in the notice of cancellation and termination were the end of the term herein originally determined.

After termination, Lessor may relet the premises or any part thereof for any term without terminating the lease, at the rent and on the terms as Lessor may choose, providing the rent is at a reasonable market rate. Lessor may make alterations and repairs to the premises. The duties and liabilities of the parties if the premises are relet as provided herein shall be as follows:

a) Lessor shall have the right to apply the rent received from reletting the premises (1) to rent due under this lease, or (2) to payment of future rent under this lease as it becomes due.

b) If the new Lessee does not pay a rent installment promptly to Lessor, and the rent installment has been credited in advance of payment to the indebtedness of Lessee other than rent, or if rentals from the new lessee have been otherwise applied by Lessor as provided for herein, and during any rent installment period, are less than the rent payable for the corresponding installment period under this lease, Lessee shall pay Lessor the deficiency, separately for each rent installment deficiency period and before the end of that period.

#### SECTION FOURTEEN

#### OPTION TO RENEW

Lessee shall have the option to renew this lease one time for an identical term as provided herein for each renewal. Written notice of intention to renew must be furnished Lessor sixty (60)

days prior to expiration of the lease or any renewal hereunder. The rental shall be subject to renegotiation at the time of any renewal, but all other terms and conditions shall remain as provided herein.

#### SECTION FIFTEEN

##### HOLDING OVER

If Lessee holds possession of the premises after the term of this lease, Lessee shall become a tenant from month-to-month on the terms herein specified, and Lessee shall continue to be a month-to-month tenant until the tenancy shall be terminated by Lessor, or until Lessee has given to Lessor a written notice at least one month prior to the date of termination of the monthly tenancy of its intention to terminate the tenancy.

#### SECTION SIXTEEN

##### JANITORIAL AND CLEANING SERVICES

Lessor agrees to provide snow removal, janitorial and cleaning services for the common areas appurtenant to the leased premises at Lessor's expense.

#### SECTION SEVENTEEN

Lessee agrees to be liable for the purchase of any cabinetree or countertops and Lessor agrees to incur any expenses incurred in the installation of any cabinetree or countertops for examining rooms on the leased premises at the time of installation. At the termination of this lease, the Lessee may, at his option,

remove the cabinetree and countertops, but Lessee shall reimburse Lessor for any and all repair required for damage to the leased premises as a result of the removal of the cabinetree and countertops, including the expense of repainting, and to restore the leased premises to their original condition.

SECTION EIGHT

~~Lessee agrees to pay Lessor a sign fee of \$150.00 to be paid to Lessor upon execution of this lease.~~

~~Jeffrey W. Rice, Lessor~~

~~Michael Rush, M.D., Lessor~~

~~Jeffrey W. Rice, Lessor~~

Mary C. Kruszeniski  
Mary C. Kruszeniski, D.O., Lessee

## OFFICE LEASE

## BETWEEN

JEFFREY W. RICE

D N A

WAGNER KRZESIŃSKI  
Mary C. Krzesiński DO

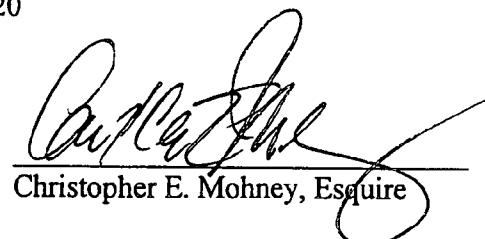
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION - AT LAW

JEFFREY W. RICE, D.M.D., P.C., : CASE NO.: 03-1903 C.D.  
PLAINTIFF : TYPE OF PLEADING:  
VS. : COMPLAINT  
MARY C. KRUSZEWSKI, D.O., : FILED ON BEHALF OF:  
DEFENDANT : PLAINTIFF

CERTIFICATE OF SERVICE

I, Christopher E. Mohney, Esquire, do hereby certify that on this 20<sup>th</sup> day of January, 2004, I caused to be served by First Class United States Mail, postage prepaid, Complaint on the following:

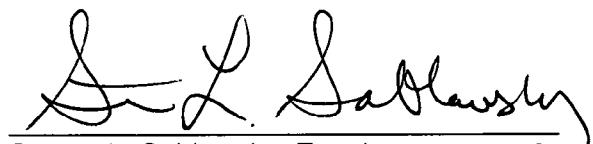
Steven L. Sablowsky, Esquire  
Goldblum and Sablowsky  
285 East Waterfront Drive  
Suite 160  
Homestead, PA 15120

  
Christopher E. Mohney, Esquire

CERTIFICATE OF SERVICE

I do hereby certify that on the 25<sup>th</sup> day of February, 2004, a true and correct copy of the foregoing Motion to Consolidate was served by first-class United States mail, postage prepaid, on the following counsel of record:

Christopher E. Mohney, Esquire  
90 Beaver Drive  
Suite 201A  
DuBois, PA 15801

  
\_\_\_\_\_  
Steven L. Sablowsky, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY C. KRUSZEWSKI, D.O., )  
Plaintiff, )  
vs. )  
JEFFREY W. RICE, )  
Defendant. )  
No. 04-19-CD

ORDER OF COURT

AND NOW, to-wit, this \_\_\_\_\_ day of \_\_\_\_\_, 2004, upon  
consideration of the foregoing Motion to Consolidate, it is hereby ORDERED that Case No.  
03-1903 CD be consolidated with the above-captioned action.

BY THE COURT

J.

CP

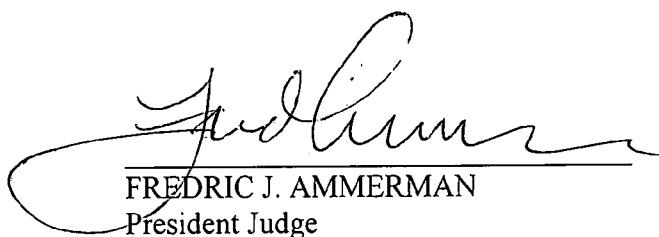
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

MARY C. KRUSZEWAKI, D.O. :  
vs. : No. 04-19-CD  
: :  
JEFFREY W. RICE : :

**ORDER**

NOW, this 3 day of March, 2004, upon consideration of Plaintiff's Motion to Consolidate, a Rule is hereby issued upon the Defendant to Appear and Show Cause why the Motion should not be granted. Argument is scheduled the 30 day of March, 2004, at 9:30 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

**FILED**

MAR 04 2004

William A. Shaw  
Prothonotary

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

MARY C. KRUSZEWSKI, D.O. :  
:  
vs. : No. 04-19-CD  
:  
JEFFREY W. RICE :  
:

ORDER

AND NOW, this 10<sup>th</sup> day of March, 2004, it is the ORDER of the Court that argument on Plaintiffs' Motion to Consolidate and Defendant's Preliminary Objections in the above matter has been rescheduled from 9:30 A.M. to 2:30 P.M. on Tuesday, March 30, 2004, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

FILED

MAR 10 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY C. KRUSZEWSKI, D.O.

CIVIL DIVISION

Plaintiff,

No. 04-19-CD

v.

JEFFREY W. RICE,

AFFIDAVIT OF SERVICE

Defendant.

Filed on behalf of  
Mary C. Kruszewski, D.O.  
Plaintiff

Counsel of Record for this Party:

Steven L. Sablowsky, Esquire  
PA ID No. 20703

Goldblum and Sablowsky, LLC  
285 E. Waterfront Drive  
Suite 160  
Homestead, PA 15120

(412) 464-2230

**FILED**

**MAR 15 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

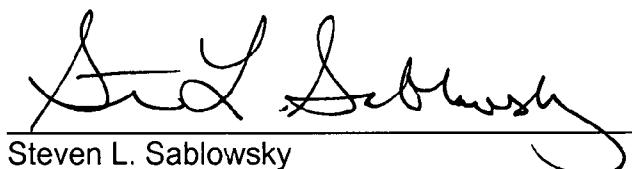
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY C. KRUSZEWSKI, D.O., )  
Plaintiff, ) CIVIL DIVISION  
v. ) No. 04-19-CD  
JEFFREY W. RICE, )  
Defendant. )

**AFFIDAVIT OF SERVICE**

COMMONWEATLH OF PENNSYLVANIA )  
COUNTY OF ALLEGHENY ) SS:  
                                    )

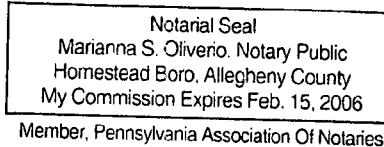
BEFORE ME, the undersigned authority, personally appeared Steven L. Sablowsky, Esq., attorney for plaintiff, who, being duly sworn according to law, deposes and says that on the 9<sup>th</sup> day of March, 2004, the Orders of Court dated March 3, 2004 (together with true and correct copies of the underlying pleadings) were served on defendant's counsel, Christopher E. Mohney, Esquire, 90 Beaver Drive, Suite 201A, DuBois, PA 15801, by first-class United States mail.



\_\_\_\_\_  
Steven L. Sablowsky

Sworn to and subscribed  
before me this 9<sup>th</sup> day  
of March, 2004

Marianna S. Oliverio  
Notary Public



3.35 Waterbury Dyna  
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FILED NOCC  
MAR 15 2004 1:30 PM  
William A. Shaw  
Prothonotary/Clerk of Courts  
*E. H. S.*

