

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

(Plaintiff)

1145 Oak Grove Road

(Street Address)

Morrisdale, PA 16858

(City, State ZIP)

VS.

RAYMOND MILLER and
~~MARY MILLER, Husband and Wife,~~
(Defendant)

4701 3rd Avenue, West

(Street Address)

Bradenton, FL 34209-2813

(City, State ZIP)

CIVIL ACTION

No. 07-1346-CD

Type of Case: CIVIL

Type of Pleading: Praecipe for
Writ of Summons

Filed on Behalf of:

Plaintiffs Jennifer Lamb and Nicholas Lamb

(Plaintiff/Defendant)

Bryan S. Neiderhiser, Esquire

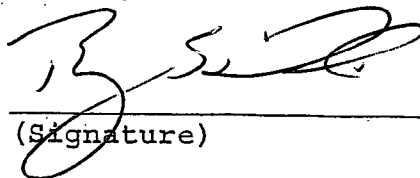
(Filed by)

Marcus & Mack, P.C.
57 S. 6th Street, P. O. Box 1107
Indiana, PA 15701

(Address)

(724) 349-5602

(Phone)



(Signature)

FILED

AUG 21 2007

William A. Shaw
Prothonotary/Clerk of Courts

Att'y ad.
85.00
rec'd 2 writs
to Att'y

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No.

Plaintiffs,

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

JURY TRIAL DEMANDED

PRAECIPE FOR WRIT OF SUMMONS

Filed on behalf of Plaintiff

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No.

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

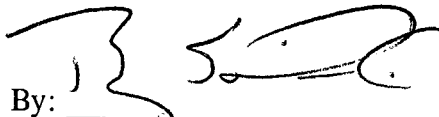
PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY OF SAID COURT:

Please issue a Writ of Summons in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: 

Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

August 20, 2007

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

COPY

SUMMONS

**Jennifer Lamb and
Nicholas Lamb, her husband**

Vs.

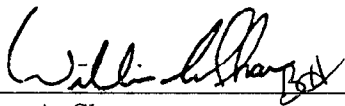
NO.: 2007-01346-CD

**Raymond Miller and
Mary Miller, Husband and Wife**

TO: RAYMOND MILLER
MARY MILLER

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 08/21/2007



William A. Shaw
Prothonotary

Issuing Attorney:

Bryan S. Neiderhiser
Marcus & Mack
Indiana, PA 15701
(724) 349-5602

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

FILED

SEP 14 2007

M/1235/c

William A. Shaw
Prothonotary/Clerk of Courts

(62)

1 case to Hays

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

AFFIDAVIT OF SERVICE

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

AFFIDAVIT OF SERVICE

I, Bryan S. Neiderhiser, Esquire, Attorney for the above-captioned Plaintiffs, do hereby certify that I have served a Writ of Summons upon the Defendant, Raymond Miller, at 4701 3rd Avenue, West, Bradenton, FL 34209-2813, on the 30th day of August, 2007, by sending the same Certified Mail, Article No. 7006 2760 0004 9844 6955, return receipt attached.

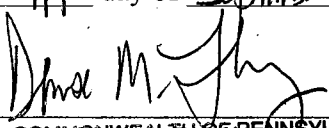
Respectfully submitted,

MARCUS & MACK, P.C.

By: 

Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

Sworn and subscribed to before me
this 11th day of September, 2007.


COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Denise M. Fleming, Notary Public
Indiana Boro, Indiana County
My Commission Expires Nov. 30, 2010
Member, Pennsylvania Association of Notaries

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Raymond Miller
4701 3rd Avenue, West
Bradenton, FL 34209-2813

2. Article Number

(Transfer from service label)

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ *Ray Miller*☐ Agent☐ Addressee

B. Received by (Printed Name)

RAY MILLER

C. Date of Delivery

*8/30/07*D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

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

4. Restricted Delivery? (Extra Fee)

☐ Yes

7006 2760 0004 9844 6955

Domestic Return Receipt

N. Lamb

102595-02-M-1540

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

FILED

SEP 14 2007

ml:35(w)

William A. Shaw
Prothonotary/Clerk of Courts

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

I came to (GK)
Attn

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

AFFIDAVIT OF SERVICE

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

AFFIDAVIT OF SERVICE

I, Bryan S. Neiderhiser, Esquire, Attorney for the above-captioned Plaintiffs, do hereby certify that I have served a Writ of Summons upon the Defendant, Mary Miller, at 4701 3rd Avenue, West, Bradenton, FL 34209-2813, on the 30th day of August, 2007, by sending the same Certified Mail, Article No. 7006 2760 0004 9844 6962, return receipt attached.

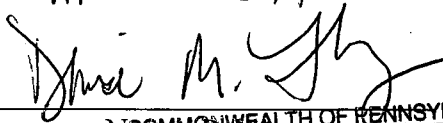
Respectfully submitted,

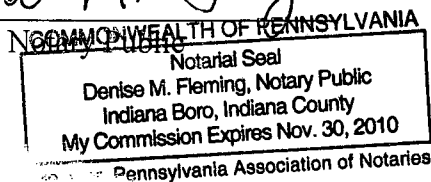
MARCUS & MACK, P.C.

By: 

Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

Sworn and subscribed to before me
this 11th day of September, 2007.





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:

Mary Miller
4701 3rd Avenue, West
Brenton, FL 34209-2813

2. Article Number

(Transfer from service label)

7006 2760 0004 9844 6962

PS Form 3811, February 2004

Domestic Return Receipt *U.Lmb*

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Ray Miller☐ Agent☐ Addressee

B. Received by (Printed Name)

Ray Miller

C. Date of Delivery

*2/30/07*D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

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

4. Restricted Delivery? (Extra Fee)

☐ Yes

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

FILED *NO CC*
mli:cc/gh
DEC 20 2007 *(GP)*

William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants

NOTICE TO DEFEND

TO: RAYMOND MILLER AND MARY MILLER, HUSBAND AND WIFE:

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 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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT REDUCED FEE OR NO FEE.

David S. Meholick, Court Administrator
CLEARFIELD County Courthouse
230 E. Market Street
CLEARFIELD, PA 16830
(814) 765-2641 Ext. 5982

MARCUS & MACK, P.C.

By: 

Bryan S. Neiderhiser, Esquire
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

COMPLAINT

AND NOW, come the Plaintiffs, Jennifer Lamb and Nicholas Lamb, her husband, by their attorneys, Bryan S. Neiderhiser, Esquire, and MARCUS & MACK and file the following Complaint as follows:

1. Plaintiffs are married adult individuals who reside in Morrisdale, Clearfield County, Pennsylvania.
2. Defendants Raymond Miller and Mary Miller, husband and wife, are married adult individuals who are believed to reside at 520 Okolona Road, Church Hill, TN 37642-6066.
3. At all times relevant, Defendants had, individually and/or together, under their care, control, custody, maintenance and supervision, the premises located at 304 Quarry Avenue, DuBois, Clearfield County, Pennsylvania, (hereinafter referred to as the "Premises"), and were,

at all times relevant hereto, alone and/or together, the owners, managers, overseers and/or lessors of said Premises where Plaintiffs resided.

4. At all times relevant, Defendants had under their care, control, custody, maintenance and supervision, the particular area in the Premises where this incident occurred, and a certain coal furnace, chimney, flue and/or component parts. Said coal furnace was located in the basement of the within Premises.

5. On or about January 7, 2006, Plaintiff Jennifer Lamb, went to the basement of the Premises to empty ashes out of the Furnace. When she opened the bottom hatch/door of the Furnace, an incident occurred throwing Plaintiff backwards resulting in her contacting a wall and/or window, causing injuries to Plaintiff Jennifer Lamb hereinafter set forth.

6. At all times relevant, Plaintiffs were tenants of Defendants' Premises and were authorized by Defendants to be on the Premises and in the area where this incident occurred.

7. At all times relevant, the Defendants, either individually or jointly, had the duty to maintain the Premises, Furnace, chimney, flue and/or component parts in a safe condition.

8. At the aforementioned times and place, the presence of and/or use of the Furnace, chimney, flue and/or component parts in its then existing state constituted a dangerous condition.

9. At all times relevant, the Defendants, either individually or jointly, had actual and/or constructive knowledge of and/or should have known, of the dangerous condition of the Furnace, chimney, flue and/or component parts.

10. The Defendants, either individually and/or jointly, caused and/or created this dangerous condition.

11. This incident and resultant injuries were caused and/or contributed to by the individual and/or joint conduct of any, some and/or all of the Defendants as herein described.

COUNT I - NEGLIGENCE

**Plaintiffs Jennifer Lamb and Nicholas Lamb, her husband, vs.
Defendants Raymond Miller and Mary Miller, husband and wife**

12. Each of the above paragraphs is incorporated herein by reference.

13. The aforesaid accident was caused and/or contributed to by the negligence, carelessness, and/or recklessness of Defendants in general and in the following particulars:

- a. In failing to provide a secure and safe Furnace, chimney, flue and/or component parts on/in the Premises;
- b. In failing to inspect the Furnace, chimney, flue and/or component parts so as to discover the dangerous and unsafe condition it presented to people living on the premises, such as the Plaintiffs;
- c. In failing to remedy the dangerous and unsafe condition of the Furnace, chimney, flue and/or component parts when Defendants knew or should have known that such condition created an unreasonable risk of harm to persons such as Plaintiffs and that such persons would not be in a position to discover the dangerous and unsafe conditions that the Furnace, chimney, flue and/or component parts and/or situation presented;
- d. In failing to warn persons such as the Plaintiffs of the possible risk and dangerous and unsafe condition of using the Furnace, chimney, flue and/or component parts;
- e. In failing to clean, check and/or perform routine maintenance work on the Furnace, chimney, flue and/or component parts;
- f. In failing to hire appropriate trained and/or professional personnel and/or plumbers and/or heating contractors with expertise in Furnace, chimney, flue and/or component parts cleaning and repairs to clean, check and/or perform routine maintenance work on the Furnace, chimney, flue and/or component parts;
- g. In failing to warn Plaintiffs of the existence of the dangerous condition;

- h. In failing to utilize safety precautions/devices in place on the Furnace, chimney, flue and/or component parts;
- i. In permitting the presence of an improperly and/or unsafely installed Furnace, chimney, flue and/or component parts;
- j. In causing the incident by allowing the presence and/or use of an improperly and/or unsafely-installed Furnace, chimney, flue and/or component parts;
- k. In failing to properly maintain and/or inspect the Furnace, chimney, flue and/or its component parts; and
- l. In being otherwise negligent, careless and/or reckless.

WHEREFORE, Plaintiffs Jennifer Lamb and Nicholas Lamb, her husband, demand judgment against Defendants Raymond Miller and Mary Miller, husband and wife, in an amount in excess of jurisdiction of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT II - DAMAGES

**Plaintiff Jennifer Lamb vs. Defendants Raymond Miller
and Mary Miller, husband and wife**

14. Each of the above paragraphs is incorporated herein by reference.

15. As a result of the negligence, carelessness and/or recklessness of any, some and/or both of the Defendants, Plaintiff Jennifer Lamb suffered the following injuries:

- a. Right upper arm pain; right forearm first-degree burns, pain and numbness;
- b. Severe pain and discomfort in arm;
- c. Severe injury to her right arm;
- d. Pain in the base of skull and back of head and forehead and left ear;
- e. Headaches and migraines; blurred and double vision;
- f. Severe pain and discomfort in her head, skull and left ear;
- g. Severe injury to her head, skull and left ear;

- h. Straightening of normal lordosis due to muscle spasms, central protrusion of C5-C6 disc and degeneration of C5-C6;
- i. Whiplash/cervical strain and neck pain, cervical radiculopathy;
- j. Severe pain and discomfort in her cervical spine;
- k. Severe injury to her cervical spine;
- l. Disc degeneration and herniation at T8-T9 and T9-T10;
- m. Pain and sprain in thoracic spine with muscle spasms;
- n. Severe pain and discomfort in her thoracic spine;
- o. Severe injury to her thoracic spine;
- p. Muscle spasms and pain in her lumbar spine;
- q. Severe pain and discomfort in her lumbar spine;
- r. Severe injury to her lumbar spine;
- s. Bruise/contusion hematoma on back and back sprain;
- t. Severe pain and discomfort in her back;
- u. Severe pain to her back;
- v. Chest pain, difficulty breathing, coughing and wheezing;
- w. Severe pain and discomfort to her chest;
- x. Severe injury to her chest;
- y. Ligamentous strain;
- z. Severe pain and discomfort in her ligaments;
- aa. Severe injury to her ligaments;
- bb. Severe emotional distress and shock to his nerves and nervous system;
- cc. Other injuries and damages recoverable by law; and
- dd. Some or all of the above injuries may be permanent in nature.

16. As a result of the aforesaid injuries, Plaintiff Jennifer Lamb has suffered the following damages:

- a. She has incurred in the past, and will incur in the future, substantial medical expenses;
- b. She has suffered in the past, and will suffer in the future, substantial pain, suffering and inconvenience and the loss of certain of the ordinary pleasures of life;
- c. She may sustain in the future, loss of earnings and/or earning capacity;
- d. She has sustained in the past, and will sustain in the future, other emotional, economic and physical harm; and,
- e. She has sustained in the past, and will sustain in the future, physical scarring and disfigurement.

COUNT III - LOSS OF CONSORTIUM

**Plaintiff Nicholas Lamb vs. Defendants Raymond Miller
and Mary Miller, husband and wife**

17. Each of the above paragraphs is incorporated herein by reference.

18. At all times relevant hereto Plaintiff Nicholas Lamb was married to, and resided with, Plaintiff Jennifer Lamb.

19. As a result of the injuries to his spouse, the husband-plaintiff has lost the society, comfort and services of his spouse.

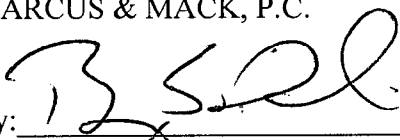
20. As a result of the injuries to his spouse, the husband-plaintiff has in the past and/or may in the future be required to expend substantial sums of money for his wife's medical expenses.

WHEREFORE, Plaintiff Nicholas Lamb demands judgment against Defendants
Raymond Miller and Mary Miller, husband and wife, in an amount in excess of the jurisdictional
limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

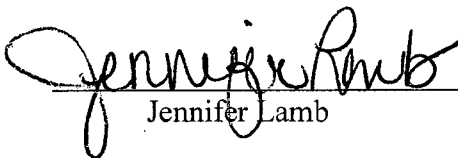
Respectfully submitted,

MARCUS & MACK, P.C.

By: 
Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

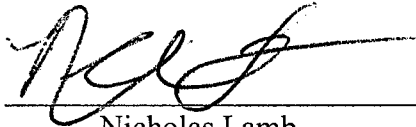
VERIFICATION

I, Jennifer Lamb, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.


Jennifer Lamb

VERIFICATION

I, Nicholas Lamb, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.



Nicholas Lamb

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS'**
COMPLAINT was mailed, U.S. First Class mail, to the following this 19th day of
December, 2007:

Defendant Raymond Miller
520 Okolona Road
Church Hill, TN 37642-6066

Defendant Mary Miller
520 Okolona Road
Church Hill, TN 37642-6066

Cindy L. Hester

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JENNIFER LAMB and
NICHOLAS LAMB, her
husband,

Plaintiffs

vs.

No. 07-1346 CD

RAYMOND MILLER and
MARY MILLER, husband
and wife,

Defendants

FILED NO
01/11/23/08 CC
JAN 15 2008 @K

William A. Shaw
Prothonotary/Clerk of Courts

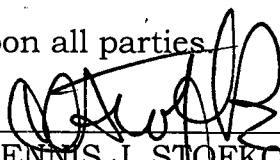
ENTRY OF APPEARANCE

Please enter my appearance for Defendants in the above matter. Papers
may be served at the address listed below.

DEMAND FOR JURY TRIAL

Pursuant to Rule 1007.1 of the Pennsylvania Rules of Civil Procedure, as
amended, a Jury Trial is demanded on all issues raised by the pleadings in this
action.

I certify this Entry of Appearance and Demand for Jury Trial shall be
served forthwith by ordinary mail upon all parties.


DENNIS J. STOFKO, ESQUIRE
P.O. Box 5500
Johnstown, Pa. 15904
814 262-0064
ID 27638

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

Plaintiffs,

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

No. 07 - 1346 - CD

JURY TRIAL DEMANDED

FILED

FEB 05 2008

William A. Shaw

Prothonotary/Clerk of Courts

1. Let to Arry

AFFIDAVIT OF SERVICE

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

AFFIDAVIT OF SERVICE

I, Bryan S. Neiderhiser, Esquire, Attorney for the above-captioned Plaintiffs, do hereby certify that I have served a copy of the Complaint upon the Defendant, Raymond Miller, at 1521 Hickory Valley Road, Apt. 702, Chattanooga, TN 37421, on the 9th day of January, 2008, by sending the same Certified Mail, Article No. 7007 0220 0003 9368 9558, sender's return receipt attached, along with the signed return receipt card evidencing service on January 31, 2008.

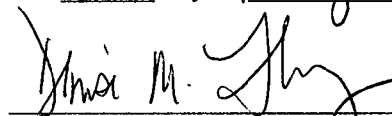
Respectfully submitted,

MARCUS & MACK, P.C.

By: 

Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

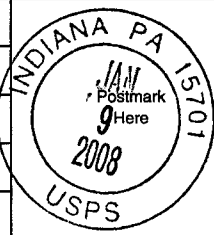
Sworn and subscribed to before me
this 4th day of February, 2008.



Notary Public of PENNSYLVANIA
Notarial Seal
Denise M. Fleming, Notary Public
Indiana Boro, Indiana County
My Commission Expires Nov. 30, 2010
Member, Pennsylvania Association of Notaries

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Sent To: <u>Raymond Miller</u>	
Street, Apt. No., or PO Box No. <u>1521 Hickory Valley Rd Apt 702</u>	
City, State, ZIP+4 <u>Chattanooga, TN 37421</u>	

PS Form 3800, August 2006 See Reverse for Instructions

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1. Article Addressed to:
Raymond Miller
1521 Hickory Valley Rd.
Apt 702
Chattanooga, TN
37421

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[Signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Raymond Miller

C. Date of Delivery
JAN 31 2008

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

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☐ Registered ☒ Return Receipt for Merchandise
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4. Restricted Delivery? (Extra Fee) ☐ Yes

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AFFIDAVIT OF SERVICE**
REGARDING SERVICE OF COMPLAINT ON DEFENDANT RAYMOND MILLER
was mailed, U.S. First Class mail, to the following this 4th day of February,
2008:

Dennis J. Stofko, Esquire
969 Eisenhower Blvd., Suite E
PO Box 5500
Johnstown, PA 15904

B. S. D. C.
0

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

Plaintiffs,

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

No. 07 - 1346 - CD

JURY TRIAL DEMANDED

FILED

FEB 05 2008

M/11:55/10
William A. Shaw
Prothonotary/Clerk of Courts
i Cent to Ann

AFFIDAVIT OF SERVICE

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

AFFIDAVIT OF SERVICE

I, Bryan S. Neiderhiser, Esquire, Attorney for the above-captioned Plaintiffs, do hereby certify that I have served a copy of the Complaint upon the Defendant, Mary Miller, at 1521 Hickory Valley Road, Apt. 702, Chattanooga, TN 37421 on the 9th day of January, 2008, by sending the same Certified Mail, Article No. 7006 2760 0004 9846 2405, return receipt attached, along with the signed return receipt card evidencing service on January 15, 2008.

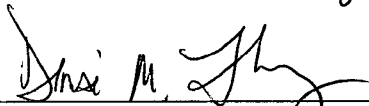
Respectfully submitted,

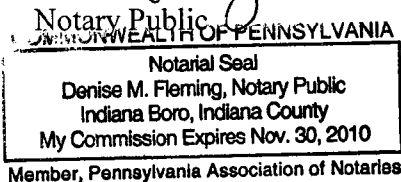
MARCUS & MACK, P.C.

By: 

Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

Sworn and subscribed to before me
this 4th day of February, 2008.





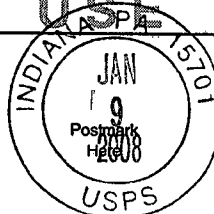
7006 2760 0004 9846 2405

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OFFICIAL USE

Postage	\$
Certified Fee	2.65
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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$



Sent To: Mary Miller
Street, Apt. No.,
or PO Box No. 1521 Hickory Valley Rd Apt 702
City, State, ZIP+4 Chattanooga, TN 37421

PS Form 3800, August 2006

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Mary Miller
1521 Hickory Valley Rd.
Apt 702
Chattanooga, TN
37421

COMPLETE THIS SECTION ON DELIVERY

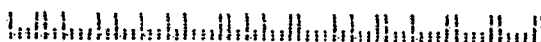
A. Signature [Signature] ☐ Agent ☐ Addressee
B. Received by (Printed Name) [Signature] C. Date of Delivery

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

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery (Extra Fee) ☐ Yes

2. 1
PS Fo



102595-02-M-1540

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

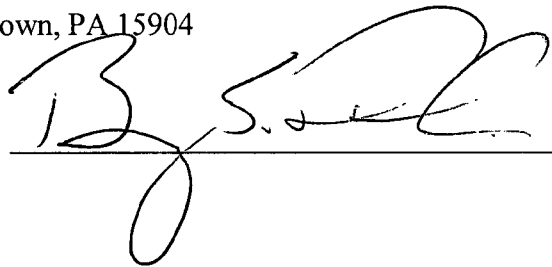
RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AFFIDAVIT OF SERVICE**
REGARDING SERVICE OF COMPLAINT ON DEFENDANT MARY MILLER
was mailed, U.S. First Class mail, to the following this 4th day of February,
2008:

Dennis J. Stofko, Esquire
969 Eisenhower Blvd., Suite E
PO Box 5500
Johnstown, PA 15904

A handwritten signature in black ink, appearing to read 'D. Stofko', is written over a horizontal line.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

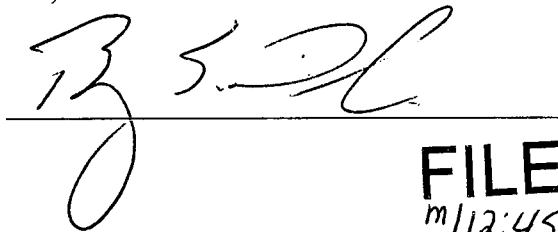
RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' FIRST SET OF INTERROGATORIES DIRECTED TO DEFENDANTS** was mailed, U.S. First Class mail, to the following this 4th day of Feb., 2008:

Dennis J. Stofko, Esquire
969 Eisenhower Blvd., Suite E
PO Box 5500
Johnstown, PA 15904



FILED 1 CC 144,
m/12:45cm
FEB 06 2008


William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

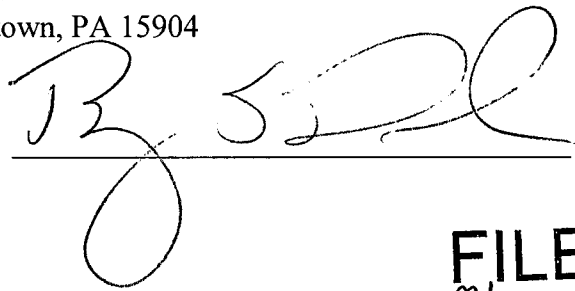
RAYMOND MILLER and
MARY MILLER, Husband and Wife,


Defendants.

NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS** was mailed, U.S. First Class mail, to the following this 4th day of Feb., 2008:

Dennis J. Stofko, Esquire
969 Eisenhower Blvd., Suite E
PO Box 5500
Johnstown, PA 15904



FILED ICC Atty
m/12:45cm
FEB 06 2008


William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JENNIFER LAMB and
NICHOLAS LAMB, her
husband,

Plaintiffs

vs.

No. 07-1346 CD

RAYMOND MILLER and
MARY MILLER, husband
and wife,

Defendants

ANSWER AND NEW MATTER

Counsel of record for this party:
Dennis J. Stofko, Esquire
P.O. Box 5500
Johnstown, Pa. 15904
814 262-0064
ID 27638

TO THE PLAINTIFFS:

You are hereby notified to reply to
the enclosed New Matter within 20
days of service hereof or a default
judgment may be entered against you.

FILED *no cc*
M) 10:43 *OK*
FEB 12 2008 *@*

William A. Shaw
Prothonotary/Clerk of Courts

ANSWER AND NEW MATTER

NOW COME the Defendants by and through counsel, Dennis J. Stofko and files the following Answer and New Matter to Plaintiffs' Complaint.

1. Denied. After reasonable investigation, the Defendants are without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

2. Admitted.

3. Admitted in part, denied in part. It is admitted that at all times relevant hereto the defendants were the owners of property located at 304 Quarry Avenue, Dubois, Clearfield County, Pennsylvania. The balance of the averment is denied in that at the time of the allegations in Plaintiffs' complaint the defendants were landlords out of possession and the exclusive possession, custody, control, maintenance and supervision was with the Plaintiffs herein.

4. See Answer 4.

5. Denied. After reasonable investigation, the Defendants are without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

6. Admitted in part, denied in part. It is admitted that the Plaintiffs were tenants at the time of the allegations made in plaintiffs' complaint. It is specifically denied that plaintiffs are permitted to conduct activities with a coal

furnace. To the contrary, the plaintiffs were repeatedly told not to utilize the coal furnace as there was a gas furnace on the premises.

7. Denied. Paragraph 7 contains a conclusion of law to which no responsive pleading is required.

8. Denied. Paragraph 8 contains a conclusion of law to which no responsive pleading is required.

9. Denied. Paragraph 9 contains a conclusion of law to which no responsive pleading is required.

10. Denied. Paragraph 10 contains a conclusion of law to which no responsive pleading is required.

11. Denied. Paragraph 11 contains a conclusion of law to which no responsive pleading is required.

12. Denied. See previous Answers.

13. Denied. Paragraph 13 contains conclusions of law to which no responsive pleading is required.

WHEREFORE, Defendants request Plaintiffs' Complaint be dismissed.

14. Denied. See previous Answers.

15. Denied. After reasonable investigation, the Defendants are without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

16. Denied. After reasonable investigation, the Defendants are without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

17. Denied. See previous Answers.

18. Denied. After reasonable investigation, the Defendants are without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

19. Denied. After reasonable investigation, the Defendants are without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

20. Denied. After reasonable investigation, the Defendants are without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

WHEREFORE, Defendants request Plaintiffs' Complaint be dismissed.

NEW MATTER

21. At all times material herein the Defendants were landlords out of possession and the premises were under the complete care, custody, control of the Plaintiffs herein. The Defendants raise this as an affirmative defense and a bar to Plaintiffs' claim.

22. By way of further Answer, the Defendants aver that at the time of the Plaintiffs' occupying the premises in 2004 they were specifically and unequivocally instructed not to use the coal furnace.

23. Furthermore the Defendants informed the Plaintiffs they were only to use the gas furnace. In furtherance of that the Defendants removed all coal from the premises.

24. Defendants aver that in the event the Plaintiffs were injured in any way because of use of the coal furnace, the Plaintiffs assumed the risk of injury as they were informed previously not to utilize the same.

25. The Defendants are informed, believe and therefore aver that the Plaintiffs are contributorily negligent and/or comparatively negligent and Plaintiffs are thus barred from recovery of any damages under the terms of the Pennsylvania Comparative Negligence Act. Act No. July 9, 1976 Pl. 855 No. 152 and the Act of April 28, 1978, Pl. 202 No. 53 Section 10 (89), 42 Pa. CSA Section 7102A, effective as to the causes of action arising on or after January 7, 2006 as the Plaintiff's causal negligence is greater than the negligence, if any, of the Defendants.

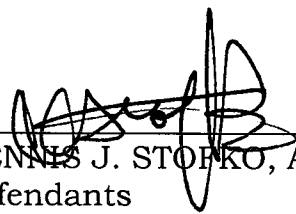
26. In the alternative pursuant to the aforesaid provisions of the Pennsylvania Comparative Negligence Act, 42 Pa. CSA Section 7102A any damage which the Plaintiffs may have legally suffered and can prove at trial

and which are not otherwise barred by any of the defenses asserted in this Answer and New Matter should be diminished in proportion to the amount of negligence attributed to the Plaintiffs.

27. The Defendants raises the statute of limitations as an affirmative defense to any and all causes of action raised by the Plaintiffs in the complaint.

28. The Defendants aver that the Plaintiffs mishandled, misused and failed to properly operate the coal furnace without having the proper instruction or training.

WHEREFORE, Defendants request judgment on their behalf.

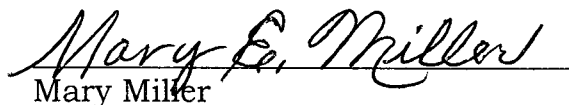


DENNIS J. STOPKO, Attorney for
Defendants

We, Raymond Miller and Mary Miller, husband and wife, do hereby state that the statements made in the foregoing Answer and New Matter are true and correct to the best of our knowledge, information and belief.

We understand that these averments of fact are made subject to the penalties of 18 Pa. CSA 4904 relating to unsworn falsification to authorities.


Raymond Miller


Mary Miller

Dated: 02/02/08

NOT A VERIFICATION

NOT A VERIFICATION

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

**PLAINTIFFS' REPLY TO
DEFENDANTS' NEW MATTER**

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

FILED ^{NO} ^{CC}
3/12/44/01
FEB 28 2008 (GP)

William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

PLAINTIFFS' REPLY TO DEFENDANTS NEW MATTER

AND NOW, come the Plaintiffs, Jennifer Lamb and Nicholas Lamb, her husband, by their attorneys, Bryan S. Neiderhiser, Esquire, and MARCUS & MACK and file the following Reply to Defendants' New Matter as follows:

21. Paragraph 21 of Defendants' New Matter is admitted in part and denied in part. It is admitted that Defendants were landlords of the premises. The remaining averments of Paragraph 21 are specifically denied. It is specifically denied that Defendants were landlords out of possession and that the premises were under the complete care, custody, control of the Plaintiffs herein and that Defendants may raise this as an affirmative defense, and it is denied that this alleged defense serves as a bar to Plaintiffs' claims. To the contrary, Defendants had, individually and/or together, under their care, control, custody, maintenance and supervision, the subject premises and were, at all times relevant hereto, alone and/or together, the owners, managers, overseers and/or lessors of said premises where Plaintiffs resided and were responsible for upkeep and maintenance of the premises and specifically with regard to the home's heating system. Strict proof to the contrary is demanded at trial.

22. Paragraph 22 of Defendants' New Matter is specifically denied. It is denied that at the time of Plaintiffs' occupying the premises in 2004, that they were specifically and unequivocally instructed not to use the coal furnace. By way of further answer, when Plaintiffs visited the premises prior to moving in, Defendant Raymond Miller specifically instructed Plaintiff Nicholas Lamb that they would need to use the coal furnace because the gas furnace only heated the first floor of the 3-story premises. During the first winter of Plaintiffs' lease of the premises, they attempted to only use the gas furnace at the premises, but their water pipes froze. When Plaintiff Jennifer Lamb called Defendants to advise of the frozen pipes, Defendant Raymond Miller advised her that they (the Plaintiffs) would need to use the coal furnace, otherwise their water pipes would continue to freeze. Strict proof to the contrary is demanded at trial.

23. Paragraph 23 of Defendants' New Matter is specifically denied. It is denied that Defendants informed the Plaintiffs that they were only to use the gas furnace and that the Defendants removed all coal from the premises. Further, as described in Plaintiffs' responses above, on at least two occasions, Defendant Raymond Miller instructed Plaintiffs to use the subject coal furnace. Strict proof to the contrary is demanded at trial.

24. Paragraph 24 of Defendants' New Matter states conclusions of law to which no response is required. Further, the Pennsylvania Rules of Civil Procedure provide that the affirmative defense of assumption of the risk is deemed denied without need for a response. To the extent that a response is deemed necessary, Paragraph 24 is specifically denied. It is denied that Plaintiff s assumed the risk of injury, and it is denied they were informed previously not to utilize the coal furnace. By way of further answer, Plaintiff Jennifer Lamb's injuries were caused and/or contributed to by the individual and/or joint conduct of any, some or all of the Defendants

herein as set forth in the Complaint. Further, as described in Plaintiffs' responses above, on at least two occasions, Defendant Raymond Miller instructed Plaintiffs to use the subject coal furnace. Further, Defendants, as landlords, were obligated to provide a safe method of heating the home. Strict proof to the contrary is demanded at the time of trial.

25. Paragraph 25 of Defendants' New Matter states conclusions of law to which no response is required. Further, the Pennsylvania Rules of Civil Procedure provide that the affirmative defenses of contributory negligence and/or comparative negligence are deemed denied without need for a response. To the extent that a response is deemed necessary, Paragraph 25 is specifically denied. It is denied that the affirmative defenses of contributory negligence and/or comparative negligence bar Plaintiffs from recovery of any damages under the terms of the Pennsylvania Comparative Negligence Act. By way of further answer, and at all times relevant hereto, Plaintiffs acted in a careful, reasonable and prudent manner and in no way were contributorily negligent and/or comparatively negligent. Strict proof to the contrary is demanded at trial.

26. Paragraph 26 of Defendants' New Matter states conclusions of law to which no response is required. Further, the Pennsylvania Rules of Civil Procedure provide that the affirmative defenses of contributory negligence and/or comparative negligence are deemed denied without need for a response. To the extent that a response is deemed necessary, Paragraph 26 is specifically denied. It is denied that any damages which Plaintiffs have suffered are barred by any of the defenses asserted in Defendants' Answer and New Matter. It is further denied that any damages which Plaintiffs have suffered should be diminished in proportion to the amount of negligence attributed to the Plaintiffs. By way of further answer, and at all times relevant hereto, Plaintiffs acted in a careful, reasonable and prudent manner and in no way were

contributorily negligent, comparatively negligent or negligent in any other manner. Strict proof to the contrary is demanded at trial.

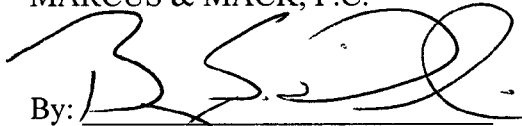
27. Paragraph 27 of Defendants' New Matter states conclusions of law to which no response is required. To the extent that a response is deemed necessary, Paragraph 27 is specifically denied. It is denied that the statute of limitations is an affirmative defense to any and all causes of action raised by Plaintiffs in the Complaint. By way of further answer, Plaintiffs' claims were brought in a timely and proper manner and in accordance with all applicable statutes of limitations. Further, Plaintiffs have diligently prosecuted the present action. Strict proof to the contrary is demanded at trial.

28. Paragraph 28 of Defendants' New Matter is specifically denied. It is denied that Plaintiffs mishandled, misused and failed to properly operate the coal furnace without having the proper instruction or training. To the contrary, Defendants, either individually or jointly, had the duty to maintain the coal furnace, chimney, flue and/or component parts in a safe condition and/or had the duty to properly train/instruct the Plaintiffs in the use of the furnace. By way of further answer, Plaintiffs properly used the coal furnace. Strict proof to the contrary is demanded at trial.

WHEREFORE, Plaintiffs request that this Honorable Court dismiss Defendants' New Matter and judgment be entered in their favor.

Respectfully submitted,

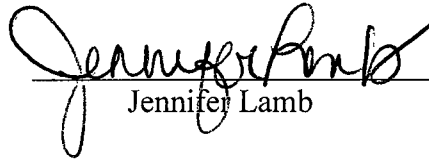
MARCUS & MACK, P.C.

By: 

Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

VERIFICATION

I, Jennifer Lamb, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.



Jennifer Lamb

VERIFICATION

I, Nicholas Lamb, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.



Nicholas Lamb

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

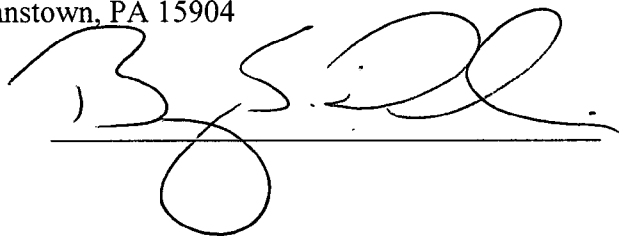
RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' REPLY TO DEFENDANTS' NEW MATTER** was mailed, U.S. First Class mail, to the following this 27th day of February, 2008:

Dennis J. Stofko, Esquire
969 Eisenhower Blvd., Suite E
PO Box 5500
Johnstown, PA 15904

A handwritten signature in black ink, appearing to read "D. Stofko", is written over a horizontal line. The signature is stylized with large, sweeping loops.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

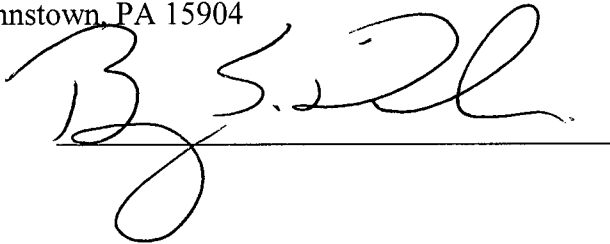
NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS'**

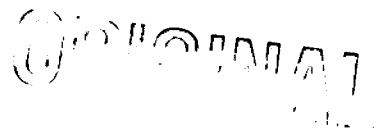
RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS were mailed, U.S.

First Class mail, to the following this 21st day of March, 2008:

Dennis J. Stofko, Esquire
969 Eisenhower Blvd., Suite E
PO Box 5500
Johnstown, PA 15904



FILED NO CC
MAR 24 2008
William A. Shaw
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

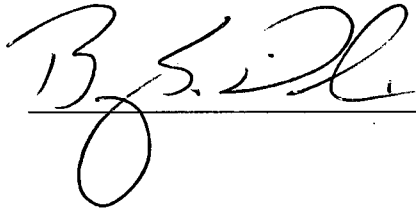
RAYMOND MILLER and
MARY MILLER, Husband and Wife,


Defendants.

NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' ANSWERS TO INTERROGATORIES** were mailed, U.S. First Class mail, to the following this 21st day of March, 2008:

Dennis J. Stofko, Esquire
969 Eisenhower Blvd., Suite E
PO Box 5500
Johnstown, PA 15904



FILED *no cc*
MT 12:52 PM
MAR 24 2008

William A. Shaw
Prothonotary/Clerk of Courts

05-11-08
11/11

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

**NOTICE OF DEPOSITION OF
DEFENDANT, RAYMOND MILLER**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

FILED *no cc*

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APR 16 2008

William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

**NOTICE OF DEPOSITION OF
DEFENDANT, RAYMOND MILLER**

Filed on behalf of Plaintiffs

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF DEFENDANT, RAYMOND MILLER** to Counsel for Defendant, Dennis J. Stofko, Stofko Law Office, 696 Eisenhower Boulevard, Suite E, PO Box 5500, Johnstown, PA 15904, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: 

Bryan S. Neiderhiser, Esquire

MARCUS & MACK, P.C.

57 South Sixth Street

P.O. Box 1107

Indiana, PA 15701

Telephone: 724-349-5602

Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.


RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **DEFENDANT, RAYMOND MILLER** will be taken on oral examination at the Marcus and Mack Law Office located at 57 South Sixth Street, Indiana, PA 15701, at 9:30 a.m. on Wednesday, July 2, 2008 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: 

Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: April 15, 2008

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

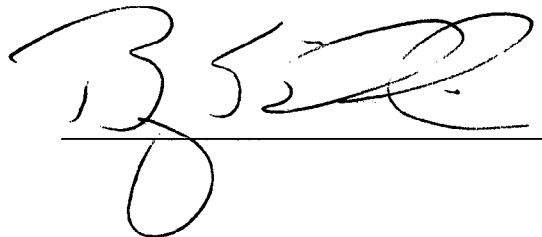
Defendants.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF
DEPOSITION was served by U.S. First Class Mail, postage prepaid this 15th day of April 2008,
upon the following:

Dennis J. Stofko, Esquire
Stofko Law Office
696 Eisenhower Boulevard, Suite E
PO Box 5500
Johnstown, PA 15904

PHONE: (814) 262-0064

A handwritten signature in black ink, appearing to read 'D. Stofko', is written over a horizontal line.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

**NOTICE OF DEPOSITION OF
DEFENDANT, MARY MILLER**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:
Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

FILED *no cc*
mt: 2/2/08
APR 16 2008 *LD*

William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

**NOTICE OF DEPOSITION OF
DEFENDANT, MARY MILLER**

Filed on behalf of Plaintiffs

NOTICE OF SERVICE

Please take note that the undersigned has served **NOTICE OF DEPOSITION OF DEFENDANT, MARY MILLER** to Counsel for Defendant, Dennis J. Stofko, Stofko Law Office, 696 Eisenhower Boulevard, Suite E, PO Box 5500, Johnstown, PA 15904, on behalf of the Plaintiffs in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By: 

Bryan S. Neiderhiser, Esquire

MARCUS & MACK, P.C.

57 South Sixth Street

P.O. Box 1107

Indiana, PA 15701

Telephone: 724-349-5602

Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

NOTICE OF DEPOSITION
PURSUANT TO PA. R.C.P. 4007.1

Notice is given that, pursuant to Pa. R.C.P. No. 4007.1, the deposition of **DEFENDANT**, **MARY MILLER** will be taken on oral examination at the Marcus and Mack Law Office located at 57 South Sixth Street, Indiana, PA 15701, immediately following the completion of Raymond Miller's deposition which is scheduled for 9:30 a.m. on Wednesday, July 2, 2008 and at any and all adjournments thereof.

MARCUS & MACK, P.C.

By: 

Bryan S. Neiderhiser, Esquire
MARCUS & MACK, P.C.
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

Dated: April 15, 2008

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

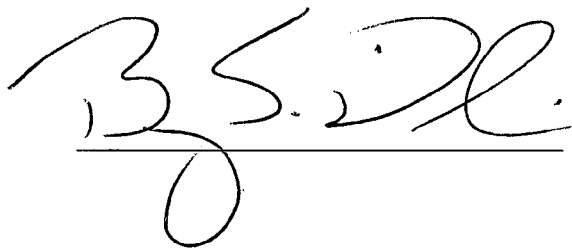
Defendants.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE OF
DEPOSITION was served by U.S. First Class Mail, postage prepaid this 15th day of April 2008,
upon the following:

Dennis J. Stofko, Esquire
Stofko Law Office
696 Eisenhower Boulevard, Suite E
PO Box 5500
Johnstown, PA 15904

PHONE: (814) 262.0064

A handwritten signature in black ink, appearing to read "B.S. De.", is written over a horizontal line. A large, stylized loop is drawn below the line, extending from the end of the signature.

UA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB and NICHOLAS
LAMB, her husband,

Plaintiffs,

vs.

RAYMOND MILLER and MARY
MILLER, husband and wife,

Defendants.

No. 07-1346 CD

FILED *no cc*
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S
William A. Shaw
Prothonotary/Clerk of Courts

MOTION FOR SUMMARY JUDGMENT

NOW COME, the Defendants, Raymond Miller and Mary Miller, by and through their counsel, Dennis J. Stofko and files the following Motion for Summary Judgment.

1. This case arises from an incident that occurred on January 7, 2006, in the basement of a residence located at 304 Quarry Drive, DuBois, Clearfield County, Pennsylvania.

2. Prior to said date, on July 22, 2004, the Plaintiffs, Jennifer Lamb and Nicholas Lamb, entered into a twelve (12) month residential lease agreement with Defendants, Raymond Miller and Mary Miller, to rent the aforesaid residence.

3. At the conclusion of the lease term on July 29, 2005, Plaintiffs agreed to rent the residence from Defendants on a month-to-month basis.

4. On January 7, 2006, Plaintiff, Jennifer Lamb, went to the basement of the residence to remove the ashes from a coal furnace.

5. While opening the ash door, it is alleged that "an incident occurred throwing Plaintiff backwards resulting in her contacting a wall and/or window." Plaintiffs' Complaint ¶ 5.

6. As a result of the incident, Plaintiff alleges to have sustained personal injuries for which she has made a claim against Defendants.

7. Plaintiffs' Complaint purports to assert a cause of action for negligence against Defendants.

8. Under Pennsylvania law, a landlord may be held liable for negligence for bodily harm suffered by his or her tenants *caused by dangerous conditions* on portions of the property retained in the landlord's control, if the landlord, by exercising reasonable care, could have discovered the dangerous condition and made the dangerous condition safe. See: Smith v. M.P.W. Realty Co., 423 Pa. 536 (1967).

9. In order for a Plaintiff to establish a viable cause of action in negligence, Plaintiff must demonstrate:

- 1) Defendant owed Plaintiff a duty;
- 2) Defendant failed to conform with that duty;
- 3) *a close causal connection between Defendant's failure and the resulting injuries to Plaintiff;*
- 4) that Plaintiff sustained an actual loss or damage because of Defendant's breach. See Morena v. South Hills Health System, 462 A.2d 680, 684 (Pa. 1983) (emphasis added).

10. The depositions of the Plaintiff, Jennifer Lamb, and the Defendants, Raymond Miller and Mary Miller were taken on September 4, 2008.

11. Defendants aver that the record is clear that Plaintiffs have failed to adduce any evidence that identifies or defines the dangerous condition that caused Plaintiff's alleged injuries.

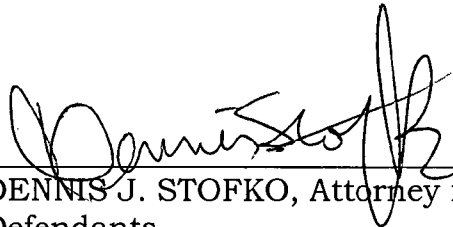
12. Defendants further aver that the record is clear that since Plaintiffs

have not and cannot identify the dangerous condition, Plaintiffs have failed adduce any evidence to establish the required causal connection between Defendants' alleged negligence and Plaintiff Jennifer Lamb's injuries.

13. Accordingly, Defendants aver that there is no genuine issue of material fact remaining, and consequently Defendants are entitled to judgment as a matter of law.

WHEREFORE, Defendants, Raymond Miller and Mary Miller, request that your Honorable Court grant their motion for summary judgment dismissing Plaintiff's Complaint.

Respectfully Submitted,

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

DENNIS J. STOFKO, Attorney for the Defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB and NICHOLAS
LAMB, her husband,

Plaintiffs,

vs.

RAYMOND MILLER and MARY
MILLER, husband and wife,

Defendants.

No. 07-1346 CD

RECEIVED

NOV 26 2008

Court Administrator's
Office

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

NOW COME, the Defendants, Raymond Miller and Mary Miller, by and through their counsel Dennis J. Stofko and files the following Brief in Support of Motion for Summary Judgment.

FACTS

This case arises from an incident that occurred on January 7, 2006, in the basement of a residence located at 304 Quarry Drive, DuBois, Clearfield County, Pennsylvania.

Prior to said date, on July 22, 2004, the Plaintiffs, Jennifer Lamb and Nicholas Lamb, entered into a twelve (12) month residential lease agreement with Defendants, Raymond Miller and Mary Miller, to rent the residence. At the conclusion of the lease term on July 29, 2005, Plaintiffs agreed to continue renting the residence from Defendants on a month-to-month basis.

On January 7, 2006, Plaintiff Jennifer Lamb, went to the basement of the residence to remove ashes from a coal furnace. While opening the ash door, it is alleged that "an incident occurred throwing Plaintiff backwards resulting in her contacting a wall and/or window." Complaint ¶ 5.

As a result of this "incident", Plaintiff alleges to have sustained personal injuries for which she has made a claim against Defendants. Plaintiffs' Complaint purports to assert a cause of action in negligence against Defendants. Defendants have filed a Motion for Summary Judgment asserting that Plaintiffs have failed to adduce any evidence to establish the required causal connection between Defendants' alleged negligence and Plaintiff Jennifer Lamb's resulting injuries.

ISSUE

- I. Whether Defendants Motion for Summary Judgment should be granted where the evidence, when viewed in the light most favorable to Plaintiffs, fails to establish a causal connection between Defendants' alleged negligence and Plaintiff's alleged injuries?

Answer: AFFIRMATIVE.

STANDARD OF REVIEW

Pennsylvania Courts grant a motion for summary judgment in whole or in part "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert reports." Pa.R.C.P. 1035.2(1), 42 Pa.C.S.A.; Dean v. Commonwealth, Department of Transportation, 751 A.2d 1130, 1132 (Pa. 2000); Keller v. Volkswagen of America, Inc., 733 A.2d 642 (Pa.Super. 1999). An issue is genuine only if the evidence is such that a reasonable jury could find for the non-moving party. Bowers v. Huffy Corporation, 741 F.Supp. 1187 (E.D. Pa. 1990) citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

Likewise, courts grant summary judgment when, "after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial

would require the issues to be submitted to the jury.” Pa.R.C.P. 1035.2(2), 42 Pa.C.S.A.; Keller, 733 A.2d at 643.

In other words, summary judgment is procedurally proper in cases where the adverse party bearing the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense in which a jury would require the issues to be submitted to the jury. Pa.R.Civ.P. 1035.2, 42 Pa.C.S.A. This Honorable Court is required to view the record in a light most favorable to the non-moving party, resolving all doubts as to the existence of a genuine issue of material fact against the moving party. Pennsylvania State University v. County of Centre, 615 A.2d 303 (Pa. 1992). Furthermore, the non-moving party, seeking to withstand a Motion for Summary Judgment, must adduce sufficient evidence on an issue essential to its case, and on which the burden rests, such that a jury could return a verdict in its favor. Washington v. Baxter, 719 A.2d 733 (Pa. 1998). Failure to adduce this evidence establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Summary Judgment is a procedural means that works to eliminate the waste of time and resources of litigants, as well as the courts, where a trial would be a useless formality. First v. Zem Zem Temple, 454 Pa.Super. 548, 551, 686 A.2d 18, 20 (1996).

DISCUSSION

In the present matter the evidence, when viewed in the light most favorable to the Plaintiff, establishes that reasonable minds could not differ in the conclusion that Plaintiffs have failed to adduce any evidence that identifies or defines the dangerous condition that caused Plaintiff’s alleged injuries. Accordingly, the record

is clear that Plaintiffs have not and cannot establish the required causal connection between Defendants' alleged acts or omissions and Plaintiff's resulting injuries.

Under Pennsylvania law, a landlord may be held liable for negligence for bodily harm suffered by his or her tenants *caused by dangerous conditions* on portions of the property retained in the landlord's control, if the landlord, by exercising reasonable care, could have discovered the dangerous condition and made the dangerous condition safe. See: Smith v. M.P.W. Realty Co., 423 Pa. 536 (1967).

In order for a Plaintiff to establish a viable cause of action in negligence, the Plaintiff must demonstrate the following:

- 1) Defendant owed Plaintiff a duty;
- 2) Defendant failed to conform with that duty;
- 3) *a close causal connection between Defendant's failure and the resulting injuries to Plaintiff;*
- 4) that Plaintiff sustained an actual loss or damage because of Defendant's breach. See Morena v. South Hills Health System, 462 A.2d 680, 684 (Pa. 1983) (emphasis added).

In the present matter, no genuine issue of material fact exists since Plaintiffs have failed to adduce any evidence of a causal connection between Defendants' alleged negligence and Plaintiff's alleged injuries. Plaintiffs' Complaint alleges that a dangerous condition existed and caused Plaintiff's injuries, however the Plaintiffs have failed to adduce any evidence that identifies or defines this dangerous condition.

Plaintiff at her deposition indicated that from the time her family moved into the residence in August of 2004 to the date of the incident January 7, 2006, her family used the subject furnace without incident. (Lamb Deposition, at 12; 51) During that time her family never had the furnace serviced and no one other than

she and her husband made contact with the furnace. (Lamb Deposition, at 30 – 31; 49 - 50). According to the Plaintiff, the incident of January 7, 2006 was totally unexpected.

“Q. Had you ever heard that there was ever any type of problem with this furnace even before the Millers owned this house; did any of the neighbors say listen, that furnace had been a problem when so and so owned the house, or anything like that?

A. No.

Q. So as far as you know, this event that happened in January of 2006 was totally unexpected from your point of view, correct?

A. Correct.

Q. Because the furnace never acted up in any way to indicate to you any type of problem, did it?

A. No.” (Lamb Deposition, at 50 line 16 through page 51 line 3).

Additionally, Plaintiff testified that during her family’s occupancy of the residence, she made contact with the furnace “hundreds” of times.

“A. Can you repeat that?

Q. Yes. How many times did you operate this coal furnace by way of starting it up, maintaining it during the course of the day, including taking out the ashes; how many times would you estimate you had that type of contact with this furnace before the day of the accident?

A. Several.

Q. Would it be hundreds?

A. Yeah.” (Lamb Deposition, at 27 line 7 through line 16).

During Plaintiff’s Deposition, she testified that for a week or more prior to the incident, the furnace had been in continuous operation. *Id.* at 26. She testified that during that time her or her husband would check on the furnace four (4) times a day. *Id.* at 27. According to the Plaintiff, prior to the incident, she last checked on

the furnace at 1:00 a.m.. *Id.* at 29. At that time, Plaintiff took out the ashes and added more coal. *Id.* at 35.

Plaintiff testified that the subject incident occurred around 11:00 a.m. when she went to check on the furnace. *Id.* at 25. She explained that at that time she went down to the basement to check on the furnace and take out the ashes. *Id.* at 29. While opening the ash drawer, Plaintiff testified that she remembers seeing fire and then feeling as if she had been hit. *Id.* at 39.

Plaintiff explained that she believes the fire and impact came from the fuel door which is located just above the ash door on the front of the furnace.

“Q. Where did you see fire? You can use these pictures if you want to.

A. The top door. This door.

Q. That’s where you put the fuel in?

A. Yeah.

Q. Fire was coming from where?

A. Out of this door.

Q. Any particular area of the door?

A. The whole door.

Q. Just so that I’m clear, was the door still latched?

A. No. Apparently it blew open.

Q. Did you see the door blow open?

A. I don’t—the only things I remember after opening the ash door is fire and feeling like I got hit.

Q. But the door that you’re referring to, the top door or the fuel door is intact as we look at that photograph; is that correct?

A. Correct.

Q. Is it your belief that during this accident that the door blew off or just blew open?

A. Blew open.” (Lamb Deposition, page 38 line 22 through page 39 line 19).

Plaintiff testified that prior to opening the ash door she did not hear or see anything unusual about the furnace. *Id.* at 37, 38. Additionally, prior to opening the ash door, Plaintiff testified that she not feel any unusual heat coming from the furnace. *Id.* at 38. As was stated previously, Plaintiff said the incident was unexpected. *Id.* at 50. More specifically Plaintiff testified:

“Q. What happened this day that was different than the other days?

A. Nothing.” (Lamb Deposition, at 27 line 17 through line 19).

Additionally, Plaintiff testified:

“Q. So as far as you’re concerned, when you went down to the furnace everything seemed to be as it was typically?

A. Correct.” (Lamb Deposition, at 38 line 9 through line 12).

During Plaintiff’s Deposition, she had no knowledge or information about the furnace’s alleged dangerous condition or what caused the incident.

“Q. You filed a lawsuit against Mr. and Mrs. Miller?

A. Yes.

Q. For your injuries?

A. Yes.

Q. Alleging that the coal furnace was defective in some way. How was the coal furnace defective, if you know?

A. It exploded.

Q. Do you know why it exploded?

A. No.

Q. Has anyone, excluding your counsel, ever given you opinion as to what happened, what caused the explosion?

A. No.

Q. Have you ever discussed this matter with any expert who has come out to take a look at the coal furnace to find out what happened?

A. No.

Q. So as I understand it, other than the furnace exploding on the day that this accident happened, you don't have any information as to – personal knowledge as to what defect there exists, if any, with this furnace?

A. Correct.” (Lamb Deposition, at 27 line 20 through page 28 line 24).

The depositions of Defendants, Raymond and Mary Miller, were also taken. During their depositions, neither of the Defendants had any knowledge of a dangerous condition existing in the furnace. (R. Miller Deposition, at 18, 20, 47; M. Miller Deposition, at 10, 14, 25). Additionally, both testified that prior to Plaintiffs' occupancy of the residence the furnace operated without incident or difficulty. (R. Miller Deposition, at 18, 20, 47; M. Miller Deposition at 10, 14, 25).

CONCLUSION

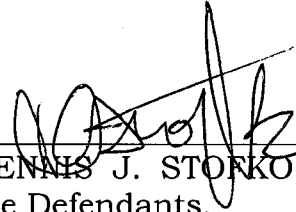
The record establishes that reasonable minds could not differ in the conclusion that Plaintiffs have failed to adduce any evidence that identifies or defines the dangerous condition that caused Plaintiff's alleged injuries. Consequently, Plaintiffs have not and cannot establish the required causal connection between Defendants' alleged negligence and Plaintiff's alleged injuries.

The depositions of Plaintiff Jennifer Lamb and Defendants Raymond Miller and Mary Miller have revealed no evidence of a dangerous condition existing in the furnace prior to the subject incident. To the contrary, the testimony of Plaintiff and Defendants reveals that the furnace in question functioned properly and without

incident prior to January 7, 2006. To date, Plaintiffs have not adduced any evidence of a dangerous condition that existed in the furnace, consequently they are unable to establish causation a requisite element of their negligence claim.

As a result of this failure, there is no genuine issue of material fact and Defendants are entitled to judgment as a matter of law.

Respectfully Submitted:



DENNIS J. STORKO, Attorney for
the Defendants.

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

JENNIFER LAMB and
NICHOLAS LAMB, her
husband,

Plaintiffs

vs.

No. 07-1346 CD

RAYMOND MILLER and
MARY MILLER, husband
and wife,

Defendants

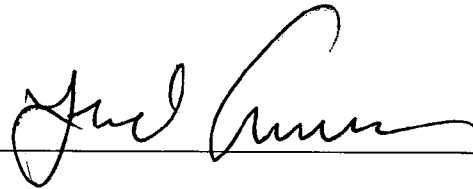
RULE

AND NOW this 2nd day of December, 2008

upon consideration of the Motion for Summary Judgment, a rule is
entered upon Plaintiffs to show cause why the Motion should not be
presented.

RULE RETURNABLE this 5th day of January, 2009 at
1100 o'clock A m. in Courtroom No. 1 in Clearfield
County Courthouse, Clearfield, Pennsylvania.

BY THE COURT.



FILED

DEC 02 2008

William A. Shaw
Prothonotary/Clerk of Courts

FILED

DEC 02 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/2/08

☒ You are responsible for serving all appropriate parties.
____ The Prothonotary's office has provided service to the following parties:
____ Plaintiff(s) _____ Plaintiff(s) Attorney _____ Other
____ Defendant(s) _____ Defendant(s) Attorney _____
____ Special Instructions:

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

Plaintiffs,

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

No. 07 - 1346 - CD

JURY TRIAL DEMANDED

FILED

DEC 16 2008

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William A. Shaw
Prothonotary/Clerk of Courts

1 copy to

Attys

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

PLAINTIFFS' RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

AND NOW, come the Plaintiffs, Jennifer Lamb and Nicholas Lamb, her husband, by their attorneys, Bryan S. Neiderhiser, Esquire, and MARCUS & MACK and file the following Response to Defendants' Motion for Summary Judgment as follows:

1. Admitted.
2. After reasonable investigation, Plaintiffs' undersigned counsel is without knowledge sufficient to respond to said allegations. Specifically, Plaintiffs did enter into a Lease with Defendants, however, a copy of said Lease has not been provided in discovery, therefore the exact terms have not been documented.
3. After reasonable investigation, Plaintiffs' undersigned counsel is without knowledge sufficient to respond to said allegations. Specifically, Plaintiffs did enter into a Lease with

Defendants, however, a copy of said Lease has not been provided in discovery, therefore the exact terms have not been documented.

4. Admitted.

5-6. Denied as stated. To the contrary and as is set forth in Paragraph 5 of Plaintiffs' Complaint, on or about January 7, 2006, Plaintiff Jennifer Lamb, went to the basement of the Premises to empty ashes out of the Furnace. When she opened one of the hatches/doors of the Furnace, an incident occurred throwing Plaintiff backwards resulting in her contacting a wall and/or window, causing injuries to Plaintiff Jennifer Lamb hereinafter set forth.

7. Admitted.

8. Admitted in part and denied in part. It is admitted that a landlord may be held liable for negligence for bodily harm suffered by his or her tenants caused by dangerous conditions on portions of the property retained in the landlord's control, if the landlord, by exercising reasonable care, could have discovered the dangerous condition and made the dangerous condition. See Smith v. M.P.W. Realty Co., 423 Pa. 536 (1967). However, a landlord has an affirmative duty to inspect the premises to identify and correct dangerous conditions.

9. Admitted.

10. Admitted.

11. Denied. Plaintiffs have retained an expert to testify regarding the cause of this incident. This matter requires expert testimony as the cause of this explosion-type incident is beyond the scope of knowledge of a lay person. As such, the Defendants' reliance upon party depositions as a basis for this Motion for Summary Judgment is misguided. Further, Defendant Mary Miller made admissions and/or statements against interest, which are set forth in the Plaintiffs' Brief and which won't be repeated herein at length, but which Plaintiffs incorporate as

if set forth herein, which necessitate the denial of Defendants' Motion for Summary Judgment. In short, Defendant Mary Miller admitted in her deposition that the Defendants were negligent. As such, there do exist material issues of fact sufficient for a jury to decide this matter. Accordingly, the Defendants' Motion for Summary Judgment should be denied.

12. Denied. Plaintiffs have retained an expert to testify regarding the cause of this incident. This matter requires expert testimony as the cause of this explosion-type incident is beyond the scope of knowledge of a lay person. As such, the Defendants' reliance upon party depositions as a basis for this Motion for Summary Judgment is misguided. Further, Defendant Mary Miller made admissions and/or statements against interest, which are set forth in the Plaintiffs' Brief and which won't be repeated herein at length, but which Plaintiffs incorporate as if set forth herein, which necessitate the denial of Defendants' Motion for Summary Judgment. In short, Defendant Mary Miller admitted in her deposition that the Defendants were negligent. As such, there do exist material issues of fact sufficient for a jury to decide this matter. Accordingly, the Defendants' Motion for Summary Judgment should be denied.

13. Denied. Plaintiffs have retained an expert to testify regarding the cause of this incident. This matter requires expert testimony as the cause of this explosion-type incident is beyond the scope of knowledge of a lay person. As such, the Defendants' reliance upon party depositions as a basis for this Motion for Summary Judgment is misguided. Further, Defendant Mary Miller made admissions and/or statements against interest, which are set forth in the Plaintiffs' Brief and which won't be repeated herein at length, but which Plaintiffs incorporate as if set forth herein, which necessitate the denial of Defendants' Motion for Summary Judgment. In short, Defendant Mary Miller admitted in her deposition that the Defendants were negligent.

As such, there do exist material issues of fact sufficient for a jury to decide this matter.

Accordingly, the Defendants' Motion for Summary Judgment should be denied.

WHEREFORE, Plaintiffs Jennifer Lamb and Nicholas Lamb, her husband, request that your Honorable Court dismiss Defendants' Motion for Summary Judgment with prejudice.

Respectfully submitted,

MARCUS & MACK, P.C.

By: 

Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

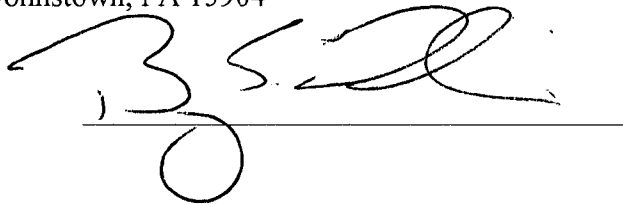
RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** was mailed, U.S. First Class mail, to the following this 15th day of December, 2008:

Dennis J. Stofko, Esquire
969 Eisenhower Blvd., Suite E
PO Box 5500
Johnstown, PA 15904

A handwritten signature in black ink, appearing to read 'D. Stofko', is written over a horizontal line.

FILED

0/3:13/01
JAN 07 2009

2CC Atty's:

Nederhiser
Stofko

5

William A. Shaw
Prothonotary/Clerk of Courts

CR

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

JENNIFER LAMB and)	
NICHOLAS LAMB, her husband)	
)	
VS.)	NO. 07-1346-CD
)	
RAYMOND MILLER AND MARY)	
MILLER, husband and wife)	

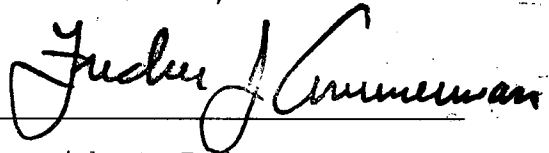
ORDER

NOW this 5th day of January, 2009, following argument as will appear of record on the Defendant's Motion for Summary Judgment; with the parties being in agreement that the Plaintiff shall be required to supply the expert report of Ronald Lapina concerning the coal furnace, it is the ORDER of this Court as follows.

1. Plaintiffs shall have no more than forty-five (45) days from this date in which to supply a true and correct copy of the expert report of Ronald Lapina to the Defense;
2. The Court Administrator shall cause further

argument on the Defendant's Motion for Summary Judgment to be rescheduled in approximately sixty (60) days from this date. Estimated time of the same is fifteen (15) minutes.

BY THE COURT,



President Judge

FILED

JAN 07 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/7/09

___ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) X Plaintiff(s) Attorney ___ Other

___ Defendant(s) X Defendant(s) Attorney

___ Special Instructions:

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

JENNIFER LAMB and NICHOLAS LAMB,
her husband,
Plaintiffs

vs.

RAYMOND MILLER and MARY MILLER,
husband and wife,
Defendants

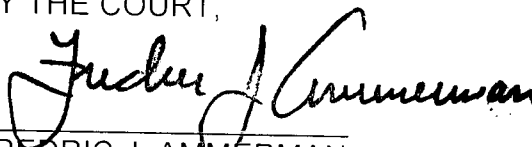
NO. 07-1346-CD

ORDER

NOW, this 6th day of January, 2009, it is the ORDER of this Court that additional argument on the Defendants' Motion for Summary Judgment be and is hereby scheduled for the 12th day of March, 2009 at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, PA 16830.

Fifteen minutes has been allotted for this proceeding.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

01/31/09
JAN 07 2009

William A. Shaw
Prothonotary/Clerk of Courts

2cc Attys:
Neiderhiser
Stofko

(611)

FILED

JAN 07 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/7/09

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

Plaintiffs,

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

No. 07 - 1346 - CD

JURY TRIAL DEMANDED

FILED

JAN 26 2009
m 12:05/10

William A. Shaw
Prothonotary/Clerk of Courts

2 CONF TO ATT

**MOTION TO WITHDRAW
AS COUNSEL**

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiffs
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

MOTION TO WITHDRAW AS COUNSEL

AND NOW, comes Marcus & Mack, P.C., and Bryan S. Neiderhiser, Esquire, Attorney of Record for the Plaintiffs, Jennifer Lamb and Nicholas Lamb, her husband, who files this Motion to Withdraw his appearance in the within matter and in support thereof respectfully represents the following:

1. Plaintiffs, Jennifer Lamb and Nicholas Lamb, her husband, reside at 1145 Oak Grove Road, Morrisdale, Clearfield County, Pennsylvania.
2. Plaintiffs initiated suit by filing a Praecipe for Writ of Summons on August 21, 2007.
3. In a meeting held on January 13, 2009, Plaintiffs' Counsel advised Plaintiffs that he no longer wished to represent the Plaintiffs in this matter, explained the reasons therefore, and advised that they should obtain new counsel in the above-captioned case.
4. Written discovery and depositions of the parties have been conducted, however, the case has not yet been listed for trial.

5. It is hereby requested that this Honorable Court grant the within Petition to Withdraw as counsel and issue a stay of all proceedings for sixty (60) days to enable Plaintiffs to secure new counsel.

6. Further, a Motion for Summary Judgment which was filed by the Defendants was argued before this Honorable Court on January 5, 2009. At that argument, this Court ordered that the Plaintiffs produce an expert report within forty-five (45) days and further argument on said motion was rescheduled for March 12, 2009. It is requested that the hearing on Defendants' Motion for Summary Judgment, which is scheduled for March 12, 2009, be continued until sixty (60) days after the Plaintiffs' deadline to obtain new counsel.

7. It is requested that Plaintiffs be given a forty-five (45) day extension from the expiration of the stay to allow them to submit an expert report. Finally, Dennis Stofko, Esquire, has entered an appearance on behalf of Defendants, and does not object to this motion.

8. None of the parties would be prejudiced by Plaintiffs' counsel's withdrawal at this time with the imposition of the above stay and the extension of the aforementioned deadlines.

9. As of this date, no new counsel has entered an appearance on behalf of the Plaintiffs.

10. Plaintiffs were served with notice of this Motion to Withdraw on January 23, 2009, at the following address, where they presently receive mail and reside:

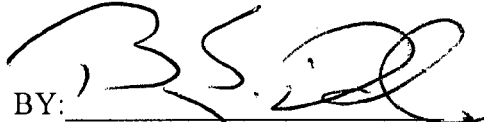
Jennifer Lamb
Nicholas Lamb
1145 Oak Grove Road
Morrisdale, PA 16858

WHEREFORE, Marcus & Mack, P.C., and Bryan S. Neiderhiser, Esquire, respectfully request that this Honorable Court enter an Order permitting them to withdraw their Appearance on behalf of Plaintiffs; grant a stay of all proceedings for sixty (60) days; grant Plaintiffs an

additional forty-five (45) days from that date in order to obtain an expert report; and continue the hearing on Defendants' Motion for Summary Judgment that is scheduled for March 12, 2009, for sixty (60) days from the expiration of the stay of proceedings.

Respectfully submitted,

MARCUS & MACK, P.C.

BY: 

Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

VERIFICATION

I, Bryan S. Neiderhiser, have read the foregoing Motion to Withdraw. The statements of fact contained therein are true and correct to the best of my personal knowledge, information and belief.

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

MARCUS & MACK, P.C.

Date: 01/23/09

By 

Bryan S. Neiderhiser, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

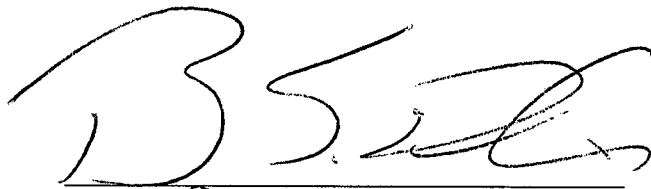
RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION TO
WITHDRAWAL AS COUNSEL** was mailed, U.S. First Class mail, to the following this 23rd
day of January, 2009:

Dennis J. Stofko, Esquire
969 Eisenhower Blvd., Suite E
PO Box 5500
Johnstown, PA 15904

A handwritten signature in black ink, appearing to read 'B. Neiderhiser', written over a horizontal line.

Bryan S. Neiderhiser, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

RULE

AND NOW, this 27th day of JANUARY, 2009, upon consideration of the within Motion to Withdraw, it is hereby Ordered that:

1. A Rule is issued upon the Plaintiffs to show cause why the moving party is not entitled to the relief requested;
2. Plaintiffs shall file an Answer to the Motion within 20 days of this date;
3. The Motion shall be decided under Pa. R.C.P. 206.7;
4. Argument shall be held on the 25th day of February, 2009, in Courtroom No. 1 of the Clearfield County Courthouse, 230 E. Market Street, Clearfield, Pennsylvania; and 3:00 p.m.
5. Notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:

Judith J. Krumm J.

5
FILED 2cc
01/10/4/10/09
JAN 28 2009
Amy Neiderhiser

William A. Shaw
Prothonotary/Clerk of Courts

(610)

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

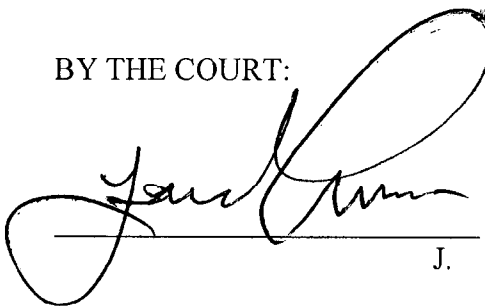
RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

ORDER OF COURT

AND NOW, this 25 day of Feb., 2009, on presentation of the within Motion to Withdraw as Counsel, it is hereby ORDERED, ADJUDGED, AND DECREED that Marcus & Mack, P.C., and Bryan S. Neiderhiser, Esquire, are hereby permitted to withdraw as legal counsel for Plaintiffs. It is further Ordered that a stay of all proceedings for sixty (60) days from the date of this Order be issued and that Plaintiffs are granted an additional forty-five (45) days from that date to obtain an expert report. It is also further Ordered that the hearing on Defendants' Motion for Summary Judgment scheduled for March 12, 2009, is continued for sixty (60) days from the expiration of the stay of proceedings to the 29th day of June, 2009 at 9:00 A.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:


J.

FILED
010:47624
FEB 27 2009

4cc
Amy Neiderhiser

William A. Shaw
Prothonotary/Clerk of Courts

FILED

FEB 27 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE 2/27/09

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

FILED
JAN 26 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

FILED ICC *Att*
m/12:25pm *Neiderhiser*
MAR - 5 2009

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

Bryan S. Neiderhiser, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496

ORIGINAL

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JENNIFER LAMB, and
NICHOLAS LAMB, her Husband,

No. 07 - 1346 - CD

Plaintiffs,

JURY TRIAL DEMANDED

vs.

RAYMOND MILLER and
MARY MILLER, Husband and Wife,

Defendants.

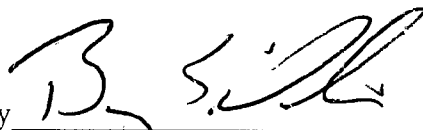
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Order of Court entered February 25, 2009, in the above-captioned matter was served upon the following by U.S. First Class Mail, postage pre-paid, this 3rd day of March, 2009:

Jennifer Lamb
Nicholas Lamb
1145 Oak Grove Road
Morrisdale, PA 16858

Dennis J. Stofko, Esquire
969 Eisenhower Blvd., Suite E
PO Box 5500
Johnstown, PA 15904

By


Bryan S. Neiderhiser, Esquire

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

JENNIFER LAMB and
NICHOLAS LAMB, her husband,
Plaintiffs

VS

RAYMOND MILLER and
MARY MILLER, husband and wife,
Defendants

No. 07-1346-CD

FILED

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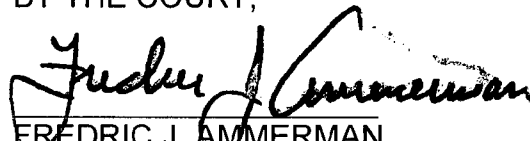
0/11/2009
William A. Shaw
Prothonotary/Clerk of Courts

ORDER

sent to NEIDERISKE
STOFKO + DECH

NOW, this 1st day of July, 2009, following argument on the Defendants' Motion for Summary Judgment; it is the ORDER of this Court that the Defendants' Motion for Summary Judgment be and is hereby GRANTED and the Plaintiffs' Complaint is hereby DISMISSED with prejudice.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

DATE: 7-1-09

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☒ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

Prothonotary/Clerk of Courts
William A. Shaw

JUL 01 2009

FILED

FILED

AUG 05 2009
M/17:20/W
William A. Shaw
Prothonotary/Clerk of Courts
1 cent to Att

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JENNIFER LAMB and
NICHOLAS LAMB, her
husband,

Plaintiffs

vs.

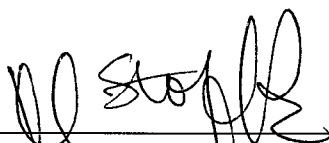
No. 07-1346 CD

RAYMOND MILLER and
MARY MILLER, husband
and wife,

Defendants

PRAECIPE

Please mark the above captioned matter ended, settled and discontinued
pursuant to the Order of Court entered and dated July 1, 2009.



DENNIS J. STOFKO, Attorney for
Defendants

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

JENNIFER LAMB and
NICHOLAS LAMB, her husband,
Plaintiffs

vs

RAYMOND MILLER and
MARY MILLER, husband and wife,
Defendants

*
*
*
*
*
*

No. 07-1346-CD

ORDER

NOW, this 1st day of July, 2009, following argument on the Defendants' Motion for Summary Judgment; it is the ORDER of this Court that the Defendants' Motion for Summary Judgment be and is hereby GRANTED and the Plaintiffs' Complaint is hereby DISMISSED with prejudice.

BY THE COURT,

/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

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

JUL 01 2009

Attest.

William A. Brown
Prothonotary/
Clerk of Courts