

00-375-CD  
CARLA CARELLA -vs- WAL-MART

|  |     |           |  |
|--|-----|-----------|--|
| No. 00-  | -CD |           |  |
| Carla Carella  |     |           |  |
| v.   |     |           |  |
| Wal-Mart   |     |           |  |
|  |     | Complaint |  |
| <p style="text-align: center;"><b>FILED</b></p> <p style="text-align: center;">MAR 27 2001<br/> <i>John S. Hartman</i><br/>   William A. Shaw<br/>   Prothonotary</p> <p style="text-align: right;">PD 80.00<br/>   4cc<br/>   att, Kranzband</p>  |     |           |  |
| <p style="text-align: right;"> <b>Sabat, Collins &amp; Finarfield</b><br/>   ATTORNEYS &amp; COUNSELORS AT LAW<br/>   218 SOUTH SECOND STREET<br/>   CLEARFIELD, PENNSYLVANIA 16830<br/>   (814) 765-5552 (814) 765-6555   </p> <p style="text-align: right;">COMMERCIAL PRINTING CO., CLEARFIELD, PA.</p> |     |           |  |

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

(24)

Carla Carella,  
Plaintiff

: No. 00-375-CD

:

v.

:

(11) Wal-Mart,  
Defendant

:

:

: Type of Pleading:  
Complaint

:

:

: Filed on behalf of:  
Carla Carella

:

:

:

:

:

:

:

: Counsel for this party:  
Gary A. Knaresboro, Esquire

:

:

:

: Supreme Court No. 52097

: Sobel, Collins & Knaresboro  
Attorneys at Law  
: 218 South Second Street  
Clearfield, PA 16830  
: (814) 765-6555  
: (814) 765-6210 FAX

FILED

MAR 27 2000

William A. Shaw  
Prothonotary

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

Carla Carella, : No. 00- -CD  
Plaintiff :  
v. :  
Wal-Mart, :  
Defendant

NOTICE

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

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

Office of the Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641

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

CARLA CARELLA, : No. 00- -CD  
Plaintiff

v. :

WAL-MART, :  
Defendant

COMPLAINT

AND NOW, comes the Plaintiff, Carla Carella, by and through her attorney, Gary A. Knaresboro, Esquire, and sets forth the following averments:

1. That the Plaintiff is Carla Carella, an adult individual, residing at RD 1, Box 153, Clearfield, Pennsylvania.
2. That the Defendant is Wal-Mart, a corporation conducting and maintaining a business at 2129, 100 Supercenter Drive, Clearfield, Pennsylvania.
3. That on April 6, 1998, at approximately 9:00 p.m., the plaintiff visited the said store located in Clearfield County, for the purpose of purchasing various articles therein.
4. That on the day and time aforementioned, the plaintiff reached for two (2) Rubbermaid items on the bottom shelf, when stacks of garbage cans from the top shelf fell on the plaintiff's head, knocking her unconscious.
5. That the said top shelf, on the day and time aforementioned containing stacked garbage cans, one inside the other, and approximately 15 cans and lids fell approximately 8 feet onto the plaintiff's head.
6. That after the plaintiff was regaining consciousness, one

Wal-mart employee was standing at one end of the aisle watching the plaintiff.

7. That the said Wal-Mart employee failed to render assistance to the plaintiff.

8. After several minutes the plaintiff walked to the front of the said store and asked for help.

9. That on April 6, 1998 the plaintiff was taken to the Clearfield Hospital Emergency Room.

10. That due to injuries suffered on the day and time aforementioned, the plaintiff is receiving medical treatment, continues to suffer daily, missed and is unable to work the same number of days and hours, when compared to dates before April 6, 1998.

11. That at all times herein mentioned, the Defendant, it's agents, and/or employees, operated, managed and controlled the Wal-Mart Store located in Clearfield County, Pennsylvania.

12. That is the duty of the Defendant, it's agents and/or employees to jointly and severally keep and maintain the aforementioned store and it's shelves and merchandise in a safe manner to prevent injuries.

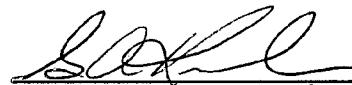
13. That at times mentioned herein, the Defendant, it's agents and/or employees disregarded their duties aforesaid and negligently, carelessly, wrongfully, and unlawfully, maintained and permitted a defective, dangerous and unsafe condition to exist , to constitute a hazard and menace to the safety of the plaintiff.

14. That the injuries sustained by the plaintiff were caused solely by reason of the joint and several negligence of the

defendant, it's agents and/or employees.

WHEREFORE, the plaintiff claims damages from defendant in an amount not in excess of \$20,000.00, but in excess of \$15,000.00.

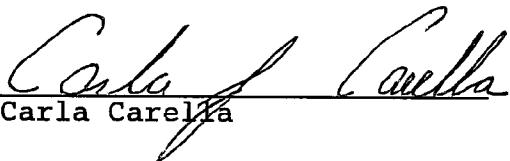
Respectfully submitted,



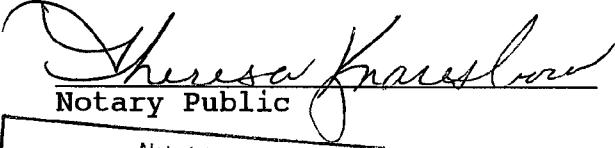
\_\_\_\_\_  
Attorney for Plaintiff  
Gary A. Knaresboro, Esquire  
Sobel, Collins & Knaresboro  
218 S. Second Street  
Clearfield, PA 16830

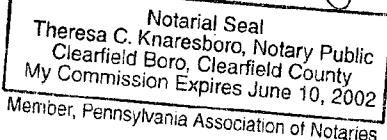
COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF CLEARFIELD : SS  
:

Personally appeared before me, a Notary Public, in and for the County and State aforesaid, Carla Carella, who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing, Complaint are true and correct to the best of her knowledge, information and belief.

  
Carla Carella

Sworn and subscribed before me  
this 24 day of March,  
2000.

  
Theresa C. Knaresboro  
Notary Public



GARY A. KNARESBORO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CARELLA, CARLA  
VS  
WAL-MART

00-375-CD

COMPLAINT

SHERIFF RETURNS

NOW MARCH 29, 2000 AT 2:53 PM EST SERVED THE WITHIN  
COMPLAINT ON WALMART, DEFENDANT AT EMPLOYMENT #2129 100  
SUPERCENTER DRIVE, CLEARFIELD, CLEARFIELD COUNTY,  
PENNSYLVANIA BY HANDING TO RON ORRIS, CO-MANAGER A TRUE AND  
ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO  
HIM THE CONTENTS THEREOF.

SERVED BY: NEVLING

19.33 SHFF. HAWKINS PAID BY: ATTY  
10.00 SURCHARGE PAID BY: ATTY

SWORN TO BEFORE ME THIS

7th DAY OF April 2000  
William A. Shaw

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co., Clearfield, PA.

SO ANSWERS,

*Chester A. Hawkins*  
*by Marilyn Harr*

CHESTER A. HAWKINS  
SHERIFF

FILED

APR 07 2000  
03:07  
William A. Shaw  
Prothonotary E K&B

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

CARLA CARELLA,

CIVIL DIVISION

Plaintiff,

No. 00-375-CD

vs.

Issue No.

WAL-MART,

JURY TRIAL DEMANDED

Defendant.

**PRAECIPE FOR APPEARANCE**

Code:

Filed on behalf of WAL-MART, Defendant

Counsel of Record for this Party:

Juliet L. Abel, Esquire  
Pa. I.D. #80000

**GORR, MOSER, DELL & LOUGHNEY**  
Firm #753

1300 Frick Building  
Pittsburgh, PA 15219

Phone: (412) 471-1180  
Fax: (412) 471-9012

**FILED**

APR 10 2000

William A. Shaw  
Prothonotary

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

CARLA CARELLA,

CIVIL DIVISION

Plaintiff,

No. 00-375-CD

vs.

JURY TRIAL DEMANDED

WAL-MART,

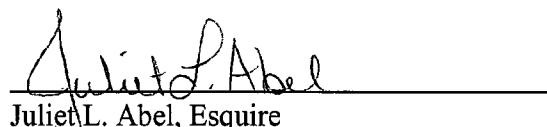
Defendant.

**PRAECIPE FOR APPEARANCE**

TO: Prothonotary

Please enter the appearance of Attorney Juliet L. Abel and the law firm of Gorr, Moser, Dell & Loughney on behalf of Defendant, Wal-Mart.

GORR, MOSER, DELL & LOUGHNEY

  
\_\_\_\_\_  
Juliet L. Abel, Esquire

Suite 1300 Frick Building  
437 Grant Street  
Pittsburgh, PA 15219-6002

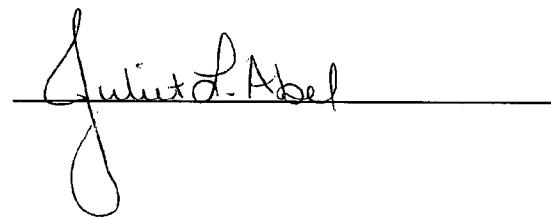
Phone: 412-471-1180

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within Praeclipe for Appearance was served upon all counsel of record by United States mail, first class, postage prepaid, this 16<sup>th</sup> day of April, 2000.

Gary A. Knaresboro, Esquire  
SOBEL, COLLINS & KNARESBORO  
218 South Second Street  
Clearfield, PA 16830  
*Counsel for Plaintiff*

GORR, MOSER, DELL & LOUGHNEY

  
Julius L. Sobel

**FILED**

APR 10 2000  
IN 8:48 AM  
William A. Shaw  
Prothonotary  
FEB

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

CARLA CARELLA,

CIVIL DIVISION

Plaintiff,

No. 00-375-CD

vs.

Issue No.

WAL-MART,

JURY TRIAL DEMANDED

Defendant.

**ANSWER**

Code:

Filed on behalf of WAL-MART, Defendant

Counsel of Record for this Party:

Juliet L. Abel, Esquire  
Pa. I.D. #80000

**GORR, MOSER, DELL & LOUGHNEY**  
Firm #753

1300 Frick Building  
Pittsburgh, PA 15219

Phone: (412) 471-1180  
Fax: (412) 471-9012

**FILED**

APR 10 2000

William A. Shaw  
Prothonotary

**ANSWER**

AND NOW, comes the defendant, Wal-Mart, by and through its attorneys, Juliet L. Abel, Esquire, and GORR, MOSER, DELL & LOUGHNEY, and sets forth the following averments:

1. The within defendant is without sufficient knowledge and/or information to form a belief as to the truth of the averments contained within Paragraph 1 of the plaintiff's Complaint, and the same are denied and strict proof demanded at the time of trial.
2. The averments contained within Paragraph 2 of plaintiff's Complaint are admitted.
3. The within defendant is without sufficient knowledge and/or information to form a belief as to the truth of the averments contained within Paragraph 3 of the plaintiff's Complaint, and the same are denied and strict proof demanded at the time of trial.
4. The allegations contained in Paragraph 4 of Plaintiff's Complaint are denied pursuant to Pa. R.C.P. 1029(e).
5. The within defendant is without sufficient knowledge and/or information to form a belief as to the truth of the averments contained within Paragraph 5 of the plaintiff's Complaint, and the same are denied and strict proof demanded at the time of trial.

6. The within defendant is without sufficient knowledge and/or information to form a belief as to the truth of the averments contained within Paragraph 6 of the plaintiff's Complaint, and the same are denied and strict proof demanded at the time of trial.

7. The within defendant is without sufficient knowledge and/or information to form a belief as to the truth of the averments contained within Paragraph 7 of the plaintiff's Complaint, and the same are denied and strict proof demanded at the time of trial.

8. The within defendant is without sufficient knowledge and/or information to form a belief as to the truth of the averments contained within Paragraph 8 of the plaintiff's Complaint, and the same are denied and strict proof demanded at the time of trial.

9. The within defendant is without sufficient knowledge and/or information to form a belief as to the truth of the averments contained within Paragraph 9 of the plaintiff's Complaint, and the same are denied and strict proof demanded at the time of trial.

10. The within defendant is without sufficient knowledge and/or information to form a belief as to the truth of the averments contained within Paragraph 10 of the plaintiff's Complaint, and the same are denied and strict proof demanded at the time of trial.

11. The averments contained within Paragraph 11 are admitted in part and denied in part. It is admitted that the defendant, as a corporation, acts through its agents and employees. It is further admitted that the defendant operated and managed the Wal-Mart store in Clearfield County, Pennsylvania. However, to the extent inferred, it is denied that Wal-Mart had exclusive control over the area at issue, as many shoppers are regularly in that area.

12. The averments contained within Paragraph 12 of plaintiff's Complaint constitute legal conclusions to which no responsive pleading is necessary.

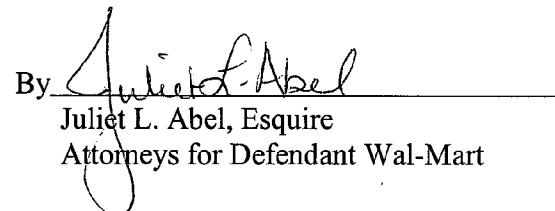
13. The averments contained within Paragraph 13 of plaintiff's Complaint are denied pursuant to Pa.R.C.P. 1029(e).

14. The averments contained within Paragraph 14 of plaintiff's Complaint are denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Wal-Mart respectfully requests this Honorable Court to enter judgment in its favor.

Respectfully submitted,

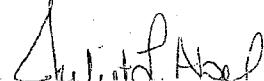
GORR, MOSER, DELL & LOUGHNEY

By   
Juliet L. Abel, Esquire  
Attorneys for Defendant Wal-Mart

## VERIFICATION

I, Juliet L. Abel, attorney for defendant, Wal-Mart, pursuant to Pa.R.C.P. 1024(c)(2), verify that the averments of fact made in this foregoing PLEADING are true and correct and based upon my personal knowledge, information or belief. I understand that averments of fact in said document are made subject to the penalties of 18 Pa. C.S. §4904, relating to the unsworn falsifications to authorities. This Verification is made by the undersigned due to lack of sufficient time to obtain a Verification from Wal-Mart Stores, Inc. and will be provided when available.

Date: 4/6/08

  
\_\_\_\_\_  
Juliet L. Abel, Esquire  
Attorney for Defendant Wal-Mart

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within Answer was served upon counsel for the plaintiff, Gary A. Knaresboro, Esquire, by United States mail, first class, postage prepaid, at his offices located at Sobel, Collins & Knaresboro, 218 South Second Street, Clearfield, Pennsylvania, 16830, on the 16<sup>th</sup> day of April, 2000.

GORR, MOSER, DELL & LOUGHNEY

By Juliet L. Abel  
Juliet L. Abel, Esquire  
Attorneys for Defendant Wal-Mart

FILED

APR 10 2000  
MIS 48 NOCC  
William A. Shaw  
Prothonotary

GR

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

CARLA CARELLA,

CIVIL DIVISION

Plaintiff,

No. 00-375-CD

vs.

Issue No.

WAL-MART,

JURY TRIAL DEMANDED

Defendant.

**VERIFICATION TO ANSWER**

Code:

Filed on behalf of WAL-MART, Defendant

Counsel of Record for this Party:

Juliet L. Abel, Esquire  
Pa. I.D. #80000

**GORR, MOSER, DELL & LOUGHNEY**  
Firm #753

1300 Frick Building  
Pittsburgh, PA 15219

Phone: (412) 471-1180  
Fax: (412) 471-9012

**FILED**

APR 26 2000

William A. Shaw  
Prothonotary

### VERIFICATION

I verify that the averments of fact made in this foregoing ANSWER are true and correct to the best of my knowledge, information or belief. I understand that averments of fact in said document are made subject to the penalties of 18 Pa. C.S. § 4904, relating to the unsworn falsifications to authorities.

I am authorized to make this verification on behalf of Wal-Mart Stores, Inc. because of my position as manager.

Date: 4/10/00

  
\_\_\_\_\_  
Mel Knezevich, Manager

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Defendant's Verification to Answer was served upon all counsel of record by United States mail, first class, postage prepaid, this 24<sup>th</sup> day of April, 2000.

Gary A. Knaresboro, Esquire  
SOBEL, COLLINS & KNARESBORO  
218 South Second Street  
Clearfield, PA 16830  
*Counsel for Plaintiff*

GORR, MOSER, DELL & LOUGHNEY

Melvin Engstler

FILED

APR 26 2009  
M 1851 NOCC  
William A. Shaw  
Prothonotary  
EFC

Lap over margin

No. 00-375-CD

Carla Carella

v.

Wal-Mart

Motion for Protective  
Order

FILED

MAY 23 2000

51259/Decatty  
William A. Shaw  
Prothonotary

Kranich

Sobel, Ouline & Kranich

ATTORNEYS & COUNSELORS AT LAW  
218 SOUTH SECOND STREET  
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-5552 (814) 765-6555

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

Carla Carella,  
Plaintiff

v.

Wal-Mart,  
Defendant

: No. 00-375-CD  
:  
:  
:  
: Type of Pleading:  
: Motion for Protective  
: Order

: Filed on behalf of:  
: Carla Carella

: Counsel for this party:  
: Gary A. Knaresboro, Esquire

: Supreme Court No. 52097

: Sobel, Collins & Knaresboro  
: Attorneys at Law  
: 218 South Second Street  
: Clearfield, PA 16830  
: (814) 765-6555  
: (814) 765-6210 FAX

**FILED**

**MAY 23 2000**

William A. Shaw  
Prothonotary

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

Carla Carella, :  
Plaintiff : No. 00-375-00  
: :  
v. :  
: :  
Wal-Mart, :  
Defendant

**ORDER**

AND NOW, this 24<sup>th</sup> day of May, 2000, upon  
consideration of the attached Motion, a rule is hereby issued upon  
Defendant to show cause why the Motion should not be granted. Rule  
returnable the 13<sup>th</sup> day of June, 2000 for filing a  
written response.

**NOTICE**

A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF  
YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING  
MOTION FOR SPECIAL RELIEF BY ENTERING A WRITTEN APPEARANCE  
PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR  
DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU  
ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT  
YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT  
FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT.  
YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

**FILED**

**MAY 24 2000**

William A. Shaw  
Prothonotary

FILED

2006 A 5 YAN

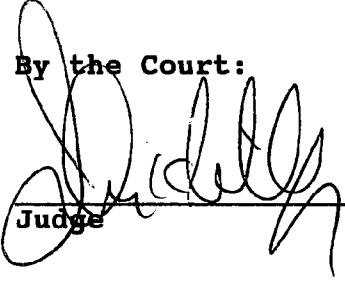
WENATCHEE,  
WASHINGTON

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

Court Administrator  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. 50-51

By the Court:

Judge



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

Carla Carella, :  
Plaintiff : No. 00-375-CD  
:   
v. :  
:   
Wal-Mart, :  
Defendant

MOTION FOR PROTECTIVE ORDER

AND NOW, Carla Carella, Plaintiff above named, and by her Attorney Gary A. Knaresboro, Esquire, move the Court for a Protective Order pursuant to Pennsylvania Rule of Civil Procedure 4012 as follows:

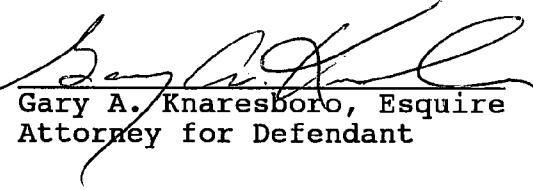
1. Defendant has filed Interrogatories directed to Plaintiff pursuant to Pennsylvania Rules of Civil Procedure.
2. Said Interrogatories contain 96 numbered interrogatories and approximately 254 questions for answer.
3. The plaintiff seeks a Protective Order from the following numbered interrogatories: 64, 65, 66, 67, 68, 84, 85, 86, 87, 90 and 95.
4. That the numbered interrogatories listed above deal with legal theory, confidential communication and irrelevant requests.
5. That the Pennsylvania Rule of Civil Procedure Sections 4011 and 4012 allows the court to limit interrogatories as justice requires to protect a party.
6. That the plaintiff has answered all interrogatories except those listed above.

FILED

MAY 23 1971  
William A. Shaw  
Prothonotary  
FCC

WHEREFORE, the plaintiff requests that the court issue an Order directing the plaintiff need not respond to the interrogatories numbered 64, 65, 66, 67, 68, 84, 85, 86, 87, 90 and 95.

Respectfully submitted,



Gary A. Knaresboro, Esquire  
Attorney for Defendant

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

CARLA CARELLA,

CIVIL DIVISION

Plaintiff,

No. 00-375-CD

vs.

Issue No.

WAL-MART,

JURY TRIAL DEMANDED

Defendant.

**PRAECIPE TO PLACE CASE ON  
ARBITRATION LIST**

Code:

Filed on behalf of WAL-MART, Defendant

Counsel of Record for this Party:

Patrick J. Loughney, Esquire  
Pa. I.D. #23163

**GORR, MOSER, DELL & LOUGHNEY**  
Firm #753

1300 Frick Building  
Pittsburgh, PA 15219

Phone: (412) 471-1180  
Fax: (412) 471-9012

**FILED**

NOV 15 2000

William A. Shaw  
Prothonotary

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

CARLA CARELLA, ) Civil Action  
Plaintiff, ) No. 00-375-CD  
v. )  
WAL-MART, )  
Defendant. )

## **PRAECLP TO PLACE CASE ON ARBITRATION LIST**

To: Prothonotary

Kindly place the above-captioned matter on the next available arbitration list as all discovery has been completed, pleadings are closed and all preliminary motions have been resolved. The value of this case is unknown.

**Parties:**

Carla Carella, Plaintiff

Gary A. Knaresboro, Esquire

Wal-Mart Stores, Inc., Defendant

Patrick J. Loughney, Esquire

*May 24*  
Patrick J. Loughney, Esquire  
Gorr, Moser, Dell & Loughney  
437 Grant Street  
1300 Frick Building  
Pittsburgh, PA 15219  
Counsel for Defendant Wal-Mart  
Stores, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Defendant's Praeclipe to Place Case on Arbitration List was served upon all counsel of record by United States mail, first class, postage prepaid, this 13<sup>th</sup> day of November, 2000.

Gary A. Knaresboro, Esquire  
SOBEL, COLLINS & KNARESBORO  
218 South Second Street  
Clearfield, PA 16830  
*Counsel for Plaintiff*

GORR, MOSER, DELL & LOUGHNEY

Melody Engen

**FILED**

Atty Longhren pd. \$20.00

NOV 15 2000

ON 11141 COPY TO CA

William A. Shan

Prothonotary

EM

EM



OFFICE OF COURT ADMINISTRATOR  
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE  
230 EAST MARKET STREET  
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK  
COURT ADMINISTRATOR

PHONE: (814) 765-~~2641~~ 7649  
FAX: 1-814-765-6089

MARCY KELLEY  
DEPUTY COURT ADMINISTRATOR

December 4, 2000

Gary A. Knareboro, Esquire  
Sobel, Collins & Knaresboro  
218 South Second Street  
Clearfield, PA 16830

Patrick J. Loughney, Esquire  
Gorr, Moser, Dell & Loughney  
1300 Frick Building  
Pittsburgh, PA 15219

RE: CARLA CARELLA

vs.

WAL-MART  
No. 00-375-CD

**FILED**  
01/01/00  
DEC 13 2000  
William A. Shaw  
Prothonotary

Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held Tuesday, February 6, 2001. The following have been appointed to the Board of Arbitrators:

Thomas F. Morgan, Esquire  
Richard H. Milgrub, Esquire  
William Lynn Hollen, Esquire  
Mark A. Falvo, Esquire  
Christopher E. Mohney, Esquire

If you wish to strike an Arbitrator, you must notify the undersigned within seven (7) days from the date of this letter the name you wish stricken from the list.

You will be notified at a later date the exact time of the Arbitration Hearing.

Very truly yours,  
*Marcy Kelley*  
Marcy Kelley  
Deputy Court Administrator



OFFICE OF COURT ADMINISTRATOR  
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE  
230 EAST MARKET STREET, SUITE 228  
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK  
COURT ADMINISTRATOR

PHONE: (814) 765-2641  
FAX: 1-814-765-5089 7647

MARCY KELLEY  
DEPUTY COURT ADMINISTRATOR

December 14, 2000

Gary A. Knareboro, Esquire  
Sobel, Collins & Knaresboro  
218 South Second Street  
Clearfield, PA 16830

Patrick J. Loughney, Esquire  
Gorr, Moser, Dell & Loughney  
1300 Frick Building  
Pittsburgh, PA 15219

RE: CARLA CARELLA  
vs.  
WAL-MART  
No. 00-375-CD

FILED

DEC 13 2000

William A. Shaw  
Prothonotary

Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held Tuesday, February 6, 2001 at 1:00 P.M. The following have been appointed as the Board of Arbitrators:

William Lynn Hollen, Esquire, Chairman  
Mark A. Falvo, Esquire  
Christopher E. Mohney, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven (7) days prior to the scheduled Arbitration. The original should be forwarded to the Court Administrator's Office and copies to opposing counsel and the Board of Arbitrators. For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form is enclosed as well as a copy of said Local Rule of Court.

Very truly yours,  
*Marcy Kelley*  
Marcy Kelley  
Deputy Court Administrator

cc: William Lynn Hollen, Esquire  
Mark A. Falvo, Esquire  
Christopher E. Mohney, Esquire

No. 00-375-CD

Carla Carella, Plaintiff

vs.

Wal-Mart, Defendant

Motion to Reschedule  
Arbitration

**FILED**

FEB 01 2001

cc atty/Colle  
William A. Shaw  
Prothonotary

*EPL*

Schel, Collins & Marshall  
ATTORNEYS & COUNSELORS AT LAW  
218 SOUTH SECOND STREET  
CLEARFIELD, PENNSYLVANIA 16830  
(814) 765-5552

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

Carla Carella,  
Plaintiff

v. : No. 00-375-CD

Wal-Mart,  
Defendant

: **MOTION TO RESCHEDULE  
ARBITRATION**

: Filed on behalf of:  
Plaintiff

: Counsel for this party:  
Ronald L. Collins, Esquire

: Supreme Court No. 36744

: Sobel, Collins & Knaresboro  
Attorneys at Law  
218 South Second Street  
Clearfield, PA 16830

: (814)765-5552

FAX (814)765-6210

**FILED**

FEB 01 2001

William A. Shaw  
Prothonotary

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

CARLA CARELLA

: No. 00-375-CD

vs.

WAL-MART

**ORDER**

NOW, this 31 day of January, 2001, upon presentation and consideration of Plaintiff's Motion to Reschedule Arbitration filed in the above captioned matter, it is the ORDER of this Court that said Arbitration be and is hereby RESCHEDULED to Friday, March 16, 2001 at 1:00 P.M. and the original Arbitrators selected, William Lynn Hollen, Esquire, Mark A. Falvo, Esquire and Christopher E. Mohney, Esquire, shall remain the same for said rescheduled Arbitration Hearing.

BY THE COURT:

William A. Shaw  
Prothonotary

**FILED**

FEB 01 2001

William A. Shaw  
Prothonotary

FILED

FEB 01 2001  
019301-000-0000  
William A. Straw  
Prothonotary  
EPA

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

Carla Carella,  
Plaintiff

v. : No. 00-375-CD

Wal-Mart,  
Defendant

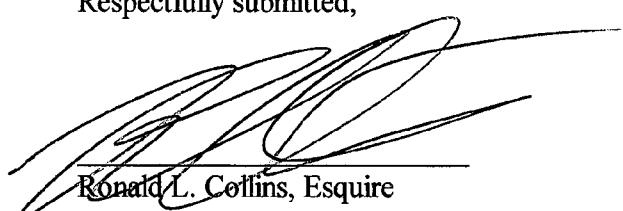
**MOTION TO RESCHEDULE ARBITRATION**

AND NOW, Comes Plaintiff, Carla Carella, by and through Sobel, Collins & Knaresboro, Attorneys at Law, who moves your Honorable Court as follows:

1. That Arbitration in the above captioned matter is scheduled to commence on February 6, 2001.
2. That counsel for the Plaintiff, Gary A. Knaresboro, Esquire, has contracted pneumonia and is physically unable to represent Plaintiff on the scheduled date.
3. That attached hereto is a letter from Mr. Knaresboro's treating physician indicating that he will be unable to work on the date scheduled for Arbitration.

WHEREFORE, Plaintiff respectfully moves your Honorable Court to reschedule the Arbitration to be held in the above captioned matter.

Respectfully submitted,

  
Ronald L. Collins, Esquire

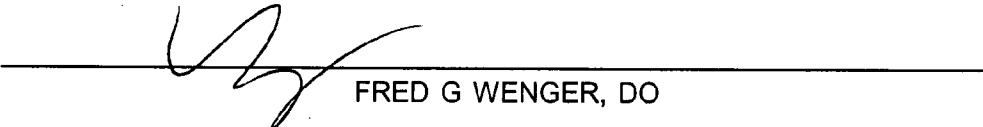
**DuBois Regional Medical Center - Emergency Department**  
**100 Hospital Ave.**  
**DuBois, PA 15801**  
**(814)371-2200**

**Patient: Gary Knaresboro, 426233**  
**Date: 01/28/2001 Time: 18:56**

**RETURN TO WORK INSTRUCTIONS**

Gary Knaresboro was discharged on 1/28/01. Gary should be able to return to work after released by the doctor.

Gary needs the following work limitations: Gary was seen in the Emergency Department on 1/28/01 and was diagnosed with pneumonia. Because of this illness, it is anticipated that Gary will be ill for 1-2 weeks, and should not return to work until released by his family physician.

  
**FRED G WENGER, DO**

**Fred G. Wenger Jr., DO, FACP**  
**OS-006728-L**  
**BW-1828613**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

Carla Carella  
Vs.  
Wal-Mart

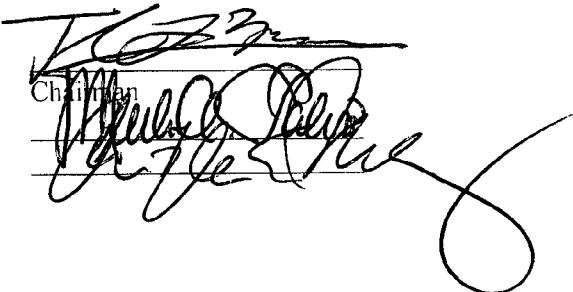
No. 2000-00375-CD

**OATH OR AFFIRMATION OF ARBITRATORS**

Now, this 10th day of May, 2001, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

William Lynn Hollen, Esq.

Mark A. Falvo, Esq.  
Christopher E. Mohney, Esq.

  
Chairman

Sworn to and subscribed before me this  
May 10, 2001

William A. Shaw  
Prothonotary

**AWARD OF ARBITRATORS**

Now, this 10<sup>th</sup> day of May, 2001, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows:

*for Plaintiff in the amount of \$1,500, plus costs  
& interest:*

**FILED**

MAY 11 2001

William A. Shaw  
Prothonotary

*I ~~do~~ respectfully dissent and  
would find in favor of defendant.*  
(Continue if needed on reverse.)

**ENTRY OF AWARD**

Now, this 10<sup>th</sup> day of May, 2001, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

**WITNESS MY HAND AND THE SEAL OF THE COURT**

Prothonotary  
By William A. Shaw

FILED

APR 13 2001  
MAY 17 2001  
William A. Shaw  
Prothonotary  
Amy Abel

Notice to  
Amy Loughran,  
Amy Karsberg,  
Amy Abel

Carla Carella

Vs.

Wal-Mart

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY  
No. 2000-00375-CD

NOTICE OF AWARD

TO: PATRICK J. LOUGHNEY

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on May 10, 2001 and have awarded:

For Plaintiff in the amount of \$1,500.00, plus costs and interest.

William A. Shaw  
Prothonotary  
By \_\_\_\_\_

May 10, 2001

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

Carla Carella

Vs.

Wal-Mart

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY  
No. 2000-00375-CD

NOTICE OF AWARD

TO: GARY A. KNARESBORO

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on May 10, 2001 and have awarded:

For Plaintiff in the amount of \$1,500.00, plus costs and interest.

William A. Shaw  
Prothonotary  
By \_\_\_\_\_

May 10, 2001

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

Carla Carella : IN THE COURT OF COMMON PLEAS  
Vs. : OF CLEARFIELD COUNTY  
Wal-Mart : No. 2000-00375-CD

NOTICE OF AWARD

TO: Juliet L. Abel, Esq.

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on May 10, 2001 and have awarded:

For Plaintiff in the amount of \$1,500.00, plus costs and interest.

William A. Shaw  
Prothonotary  
By \_\_\_\_\_

May 10, 2001

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

WAL-MART STORES, INC.  
REPORT OF CUSTOMER INCIDENT

(1) STORE LOCATION: Clayfield, Penna WAL-MART 166  
 (2) STORE NO. 2179

(3) MANAGEMENT MEMBER REPORTING INCIDENT: MARTY KOSUT  
 SS # 1169-48-9673

(4) DATE OF INCIDENT: APRIL 1, 1998 TIME: 10:15 A.M. P.M.  
 DATE INCIDENT REPORTED TO STORE: APRIL 1, 1998 TIME: 10:30 A.M. P.M.

(5) REPORTED LOCATION OF INCIDENT: PLASTIC Dept

(6) NAME OF ALLEGED INJURED PERSON: CARLA CARELLA  
 PHONE # (814) 765-2070 Sex: F  
 Home Address: RD1 BOX 153 (Approx.) Age: 35  
 City: Clayfield, PA State: PA Zip: 16830 Date of Birth: \_\_\_\_\_  
 DID CUSTOMER WEAR GLASSES OR CONTACTS? YES NO   
 WHAT TYPE OF SHOES DID CUSTOMER HAVE ON? Sneakers

(7) NAME OF COMPANION: CURTIS BURKE PHONE # (814) 765-9174  
 Address: 27 Bear Street City: Albion State: PA Zip: 16830

(8) CUSTOMER(S) WHO MAY HAVE OBSERVED SOMETHING RELATING TO INCIDENT:  
 NAME: \_\_\_\_\_ PHONE # (\_\_\_\_\_  
 Address: N/A City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 NAME: \_\_\_\_\_ PHONE # (\_\_\_\_\_  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

(9) ASSOCIATE(S) WHO MAY HAVE FACTS RELATING TO INCIDENT:  
 NAME: \_\_\_\_\_ SSN \_\_\_\_\_  
 Closest Relative: \_\_\_\_\_ Phone # (\_\_\_\_\_  
 Address: N/A City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 NAME: \_\_\_\_\_ SSN \_\_\_\_\_  
 Closest Relative: \_\_\_\_\_ Phone # (\_\_\_\_\_  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

(10) NAME, ADDRESS OF MANUFACTURER OR SUPPLIER OF PRODUCT OR MACHINE IN THE ACCIDENT: \_\_\_\_\_

(11) WHAT DID ALLEGED INJURED PERSON SAY HAPPENED:  
Customer of plastic on bottom shelf - a stack of plastic cups fell off bottom shelf in the back of the case.

(12) OUR COMMENTS ON HOW INCIDENT OCCURRED:  
She looked at cups on 3rd shelf, not pushing them all the way back and when she bent over to look at bottom shelf the cups fell on her.

(13) NATURE OF ALLEGED INJURY: headache, stiff neck

(14) DID ALLEGED INJURED PERSON GO TO DOCTOR OR HOSPITAL?  
 YES NO  IF 'YES', WHERE? \_\_\_\_\_

(15) AMBULANCE CALLED? YES NO

(16) DID ALLEGED INJURED PERSON MAKE ANY COMMENTS ABOUT WHETHER HE/SHE WAS GOING TO SUE; OR WHETHER WAL-MART SHOULD PAY THE MEDICAL BILLS; OR WHETHER WAL-MART SHOULD COVER THE EXPENSES?  
 YES NO

(17) MANAGERS NAME: Marty Kosut SIGNATURE: Marty Kosut

(18) INCIDENT REPORTED TO: Marty TIME: 10:15 A.M. P.M. A

---

SOBEL, COLLINS & KNARESBORO  
ATTORNEYS AT LAW

218 SOUTH SECOND ST.  
CLEARFIELD, PA 16830  
(814) 765-5552 (814) 765-6555

Hollywood Shop v Pa Gas & Water  
411 A.2d 509 (1979)

Dougherty v. Great Atlantic  
& Pacific Tea Co.  
289 A.2d 747

the disposition of assets imposed with a trust. It seems to us that it should have complied with this request even though the Commonwealth or the Attorney General had not appeared before it. The plaintiff was a proper body to receive and administer these funds. It had provided all of the machinery necessary therefor and was thoroughly acquainted with the purposes for which the funds had been created.

Decree is reversed and the record is remanded to the court below for the entry of a decree in accordance with the reasoning of this opinion.

RHODES, P. J., and WRIGHT, J., did not participate in the consideration or decision of this case.



192 Pa.Super. 244

**Miriam COHEN and Jacob H. Cohen,  
Appellants,**

v.

**PENN FRUIT COMPANY, Inc.**

Superior Court of Pennsylvania.

April 13, 1960.

Action by husband and wife in trespass to recover for personal injuries sustained by the wife when a can of fruit juice struck her foot. From judgments entered in the Municipal Court of Philadelphia County at No. 611, January Term, 1959, John Robert Jones, J., the husband and wife appealed. The Superior Court, Nos. 474 and 475, October Term, 1959, Montgomery, J., held that the "exclusive control doctrine" was not applicable and that the plaintiffs failed to meet the burden of proving that the can fell because of defendant's negligence.

Judgments affirmed.

#### 1. Negligence ☞121(2)

The doctrine of *res ipsa loquitur* has no application in cases involving injuries to an invitee of a storekeeper.

#### 2. Negligence ☞121(2), 134(1)

In customer's action for injuries, negligence of a storekeeper must be established by evidence or inferred under recognized circumstances, as when the thing which causes the injury is shown to be under the management of the defendants and the accident is such as in the ordinary course of things does not happen if those who have management use proper care, it affords reasonable evidence, in the absence of explanation, that the accident arose from want of care.

#### 3. Negligence ☞121(2)

As basis for application of the "exclusive control doctrine", it must appear that negligent cause producing the injury was wholly and exclusively in the possession and under control or management of the defendant or his agents, and although such control does not necessarily mean actual physical control but rather the right to such control, where either access to superior knowledge or evidence does not exclude the possibility of an intervening fault, plaintiff is not entitled to benefit from the exclusive control doctrine.

See publication *Words and Phrases*, for other judicial constructions and definitions of "Exclusive Control Doctrine".

#### 4. Evidence ☞14

It is a well-known fact that it is the habit of customers in self-service stores to pick up and handle merchandise displayed upon the counters.

#### 5. Negligence ☞121(3)

In action for injuries sustained by customer in a self-service store when a can of fruit juice fell and struck her foot, where no employee of the defendant was handling the cans nor was even near them, "exclusive control doctrine" had no application.

LIBRARY  
COHR, MOSER, DELI & LOUGHNEY

**6. Negligence  $\Leftrightarrow$  121(1), 134(5)**

In customer's action for injuries sustained in self-service store when a can of fruit juice fell on her foot, plaintiff must meet the burden of proving that the can fell because of defendant's negligence either in arranging the cans in a dangerous position or in failing to use due care to determine that the displays had become dangerous by the handling thereof by customers and thereafter failing to correct the situation, and under the evidence, the customer did not meet the burden.

**7. Negligence  $\Leftrightarrow$  61(1), 121(5)**

Where there are several possibilities of the cause of the accident for which plaintiff seeks recovery and none is clearly shown, a verdict in plaintiff's favor would not be tenable, since it is a burden of plaintiff to individuate that cause for which the defendant is liable.

---

Norman Shigon, Philadelphia, for appellants.

Samuel Kagle, Oscar Brown, Philadelphia, for appellee.

Before RHODES, P. J., and GUNTHER, WRIGHT, WOODSIDE, ERVIN, WATKINS and MONTGOMERY, JJ.

MONTGOMERY, Judge.

These two appeals are from judgments entered in favor of the appellee (defendant) in the Municipal Court of Philadelphia County after a trial without a jury before the Hon. John Robert Jones, J.

The actions below were in trespass for personal injuries sustained by Miriam Cohen as a result of a can of fruit juice falling and striking the small toe of her right foot. Appellants are husband and wife.

In lieu of printing the record of testimony, the following agreed statement of facts has been filed, viz. (as limited to the occurrence):

"On October 6, 1958, about 10:30 a. m., Miriam Cohen, accompanied by

her sister, Mrs. Sims, did her weekly shopping at defendant's self-service store located at Castor Avenue and Magee Street in Philadelphia. Each utilized a shopping cart into which they placed merchandise selected from the shelves and counters. They entered the aisle where juices were displayed. Mrs. Sims preceded plaintiff. The juices were displayed on shelves on three levels. The fruit juices were segregated from the vegetable juices by a 'separator.' The fruit juices were to plaintiff's left, and the vegetable juices were to her right. She reached for a jar of tomato juice on the second shelf and a can of pineapple juice, which was to her left, struck the 'last toe of her right foot'. She did not see the can fall. The can was seven inches high and contained forty-six ounces of fluid.

"Mrs. Sims testified that as she passed the juice shelves she noticed that the cans were 'disarranged \* \* \* they were stacked one on top of the other'.

"Plaintiff testified 'the cans were in a pyramid form \* \* \* one can in between two but it didn't come to a point'. Other customers were shopping in the aisle at the time, and plaintiff was obliged to wait until another shopper left the shelf before she could obtain the tomato juice."

On these facts the trial judge concluded that:

(1) there is no evidence of negligence chargeable against the defendant;

(2) the principle or rule of *res ipsa loquitur* does not apply; and

(3) the doctrine of exclusive control does not apply for the reason that the evidence of the cause of the accident is not equally available to both parties but is peculiarly and exclusively accessible to and within the possession of the plaintiff, not the defendant.

Although the defendant offered no evidence, in view of the agreed statement of facts it is unnecessary to discuss the rights of the trial judge in accepting or rejecting plaintiff's evidence *in toto*.

[1,2] The doctrine of *res ipsa loquitur* has no application in cases involving injuries to an invitee of a storekeeper. *DeClerico v. Gimbel Bros., Inc.*, 160 Pa.Super. 197, 50 A.2d 716; *Royers v. Horn & Hardart Baking Co.*, 183 Pa.Super. 83, 127 A.2d 762. Therefore, the negligence of the storekeeper must be established by evidence or inferred under recognized circumstances as "When the thing which causes the injury is shown to be under the management of the defendants, and the accident is such as, in the ordinary course of things, does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants that the accident arose from a want of care." *Miller v. Hickey*, 368 Pa. 317, 81 A.2d 910, 917; *Jones v. Sanitary Market Co.*, 185 Pa.Super. 163, 137 A.2d 859; *Angelelli v. Albert J. Mansmann Co.*, 168 Pa.Super. 275, 77 A.2d 678.

[3-5] As a necessary basis for the application of the exclusive control doctrine, it must appear that the negligent cause or thing which produced the injury was wholly and exclusively in the possession and under the control or management of the defendant or his agents. Although such control does not necessarily mean actual physical control but rather the right to such control, where either access to superior knowledge or the evidence does not exclude the possibility of an intervening fault, the plaintiff is not entitled to benefit from the exclusive control doctrine. The stack of cans from which the plaintiff claims the injuring can fell was in full view of the customers, who would have just as much knowledge of the cause of such a fall as the storekeeper. As a practical matter, the customer standing in front of the counter with an unobstructed view should be in a

better position than anyone else to know the cause of the fall. It is a well-known fact that it is the habit of customers in self-service stores to pick up and handle merchandise displayed upon the counters, and the agreed facts set forth that at the time of the accident there were other customers near the counter. It would be equally as reasonable to infer that some prior customer without the defendant's knowledge caused the stack of cans to become disarranged and in a position to topple as that the employees of the store had originally arranged the display negligently.

The defendant did not have such superior knowledge or control at the time of the injury to Mrs. Cohen. No employee of the defendant was handling the cans in the area at the time; none were even near them. Therefore, unless it can be said that the defendant is to be charged with responsibility for all of the merchandise from the time it places them on the display racks subject to handling by any customers who may wish to examine them until the time they are brought to the cashier's counter for the purpose of payment, the exclusive control doctrine has no application. We deem such a burden to be unreasonable and unrealistic since it would make every display of wares and merchandise for sale an insurer against accidents caused by their movement regardless of the cause.

[6] This case must rest on the general principle that the plaintiff must meet the burden of proving that the can fell because of defendant's negligence either in arranging the cans in a dangerous position or in failing to use due care to determine that the displays had become dangerous by the handling of the same, which might reasonably be expected of the customers, and thereafter failing to correct the situation.

The trial judge has found that the plaintiff did not meet this burden and we cannot say that he erred in his finding. There is no evidence to show from where the particular can which struck Mrs. Cohen came. She did not see it fall. Although the fruit

he  
ct  
lf-  
r-  
nd  
ne  
rs  
as  
is-  
ge  
is-  
iat  
lly

or  
n-  
he  
he  
ar-  
at  
re-  
m  
ks  
ho  
ne  
er  
ve  
Ve  
nd  
is-  
tyle  
eir

al  
he  
ise  
g-  
in  
at  
he  
n-  
nd

n-  
ot  
is  
tr-  
ie.  
sit

juices were to her left, she was struck on the right foot. There were three shelves and, although she reached for a jar of tomato juice on the second shelf, she cannot say from which shelf the can fell, if from any. It very well could have been dropped by a customer or fallen from one of the carts being pushed by a customer. Further, although the cans she saw were " \* \* \* in a pyramid form \* \* \* one can in between two but it didn't come to a point", whereas Mrs. Simms, her sister, said that the cans were "disarranged \* \* \* they were stacked one on top of the other", neither said that the stacks appeared dangerous or that there was a likelihood of their falling off the shelf.

Again, from what shelf did the can fall which struck and injured Mrs. Cohen? Since the ladies saw different arrangements, to which shelves were they referring? Lastly, if the arrangement of the cans did not appear dangerous to Mrs. Cohen and Mrs. Simms, why should the defendant be charged with notice of a dangerous condition?

The appellants in their brief rely on the following cases, which we consider to be distinguishable on their facts. In *Loch v. Confair*, 372 Pa. 212, 93 A.2d 451, an injury was sustained when a bottle of carbonated beverage exploded when it was lifted from the shelf. This is clearly distinguishable from the instant case since the storekeeper would have superior knowledge as to the causes of such explosion of which the customer could not possibly be aware. *Francois v. American Stores Co.*, 1957, 46 N.J.Super. 394, 134 A.2d 799, where cans of merchandise had been packed on top of packing cases just before the accident and at least three dozen cans toppled from their places, differs from the instant case in that there was not sufficient time for any intervening agent to alter the arrangement of the display between the defendant's stacking and the accident. The New Jersey courts applied the doctrine of *res ipsa loquitur*, which has been repeatedly rejected by Pennsylvania in this type of situation. The

decision in *Safeway Stores, Inc. v. Leake*, D.C.Mun.App.1959, 147 A.2d 439, was predicated on the failure of the defendant to provide a "reacher" for merchandise stacked out of the customer's normal reach and has no applicability to the facts in this case. *Baily v. American Stores Co.*, 71 Pa.Dist. & Co.R. 613, is completely different from the instant case in that all the facts as to causation are established. The can in that case fell when the plaintiff removed the can above it which apparently had been serving as an anchor or brace and thereby gave an inference of negligent stacking by the defendant. In the instant case the appellant claims the can fell from a completely different and disconnected stack from the one from which she had selected her purchase.

[7] Because there are so many uncertainties in the plaintiff's case and because several possibilities of the cause of the accident were indicated but none clearly shown, a verdict in the plaintiff's favor would not be tenable since it is the burden of the plaintiff to individuate that cause for which the defendant is liable. *Foley v. Pittsburgh-Des Moines Co.*, 363 Pa. 1, 68 A.2d 517; *Lott v. People's Natural Gas Co.*, 324 Pa. 517, 188 A. 582, 585.

Judgments affirmed.



102 Pa.Super. 25  
KELLER & VOELKER, INCORPORATED,  
Appellant,

v.

KELLETT AIRCRAFT CORPORATION.

Superior Court of Pennsylvania.

April 13, 1960.

Action against an aircraft company for preparation of plans and specifications and cost of test borings relating to factory and office building proposed to be erected by city and airports authority and to be

at the  
hough  
id one  
em or  
t this

hat the  
concur-  
e, argu-  
egarded  
was not  
it. Ex-  
i:  
1 why  
road  
Hem-  
e."

it treats  
triously.  
not be  
ighway  
the gar-  
involv-  
artling-  
his own  
oid the  
in his  
ging in  
d every

ect defi-  
trary to  
ain the  
a man-  
the dif-  
ity and  
Hemlin-  
titt into  
t extri-  
became  
al neg-  
question  
justifies  
l in the  
395 Pa.  
1 of the

iendo  
event

\* \* \* an examination of the court's charge in its entirety indicates that the jury [was] instructed that no verdict of negligence against any or all of the defendants could be rendered unless it were found that an act or omission to act on the part of them, or any of them, had caused and brought about this accident. The charge satisfied generally the requirement that negligence to be actionable shall have been the proximate cause of the accident \* \* \*."

[4] Finally, the appellant complains that the verdicts were excessive. The evidence is to the contrary. John L. Baer, Sr., suffered injuries to his back, legs, elbow and upper dorsal spine when he was thrown against the windshield. He is required to wear a brace with a steel hinge. His knee gives him pain and he must constantly use hot baths, hot compresses and rubbing alcohol. Prior to the accident he worked at the Federal Laboratories where he taught the proper use of sub-machine guns, tear gas, alcometer, and so on. He had to give up this employment:

"You can't teach the use of a sub-machine gun with one hand, and I had to have my cane. I couldn't throw so I couldn't teach the use of tear gas. I just wasn't active enough. That's all."

[5,6] Mrs. Baer's neck was injured in the crash. She was hospitalized for several days and must use heating pads for her neck; she has "terrific headaches", which last sometimes two days and she must take pain killers for relief. She is no longer able to do her housework and must employ others who come to her home from once to three times a week. She pays these women \$6 to \$8 a day. John L. Baer, Jr., was crushed between the steering wheel and the back of the front seat at the time of the crash. His knee was injured and he has had to treat it with hot packs, hot compresses and heating pad. The damage to his car amounted to \$1,089.15.

194 A.2d—57

On the subject of damages, the Court below said:

"The measure of damages was exclusively a question for the jury; and as we view it, the verdicts rendered were not so excessive as to shock the conscience of the Court."

The record justifies that conclusion.

We approve the order of the Court below denying the motions for judgment n. o. v. and a new trial.

Affirmed.



412 Pa. 401

Betty J. DOERFLINGER and Eugene  
Doerflinger, Her Husband.

v.

Sidney D. DAVIS and Meyer Feinberg, Indi-  
vidually and as Partners Trading as the  
Sterling Company, Appellants.

Supreme Court of Pennsylvania.

Nov. 12, 1963.

Action against store operators for injuries assertedly sustained because box six feet high and 2½ feet wide left standing on floor beside an aisle in store fell on plaintiff's head and shoulder. The Court of Common Pleas of Allegheny County at No. 2006 January Term, 1959, Robert Van der Voort, J., rendered judgment on a verdict for the plaintiff, and defendants appealed. The Supreme Court, Nos. 194, 195 March Term, 1963, Bell, C. J., held that while neither res ipsa loquitur nor exclusive control doctrine applied, the evidence was sufficient to take case to jury.

25  
Affirmed.

Jones, J., dissented.

**1. Negligence  $\Leftrightarrow$  121(3), 136(21)**

Neither res ipsa loquitur nor exclusive control doctrine applied in action for in-

juries assertedly sustained when box six feet high and 2½ feet wide containing bicycle and left standing in defendant's store fell on plaintiff's head and shoulder, where there was no evidence as to whether box was resting on its own weight or was leaning against nearby wall, but evidence was sufficient to take case to jury.

2. Trial  $\Leftrightarrow$  189

An "example" charge is proper if it is given by way of illustration and court makes it clear to jury that example is illustrative only and that it is solely for jury to decide what verdict should be and for whom.

3. Appeal and Error  $\Leftrightarrow$  1064(1)

There was no basic or reversible error in charge on "present worth" in which judge included an "example" to aid the jury.

J. Lawrence McBride, H. A. Robinson, Dickie, McCamey, Chilcote & Robinson, Pittsburgh, for appellants.

Alexander Cooper, Melvin Schwartz, Pittsburgh, for appellees.

Before BELL, C. J., and MUSMANNO, JONES, COHEN, EAGEN, O'BRIEN and ROBERTS, JJ.

BELL, Chief Justice.

Defendant appeals from a judgment entered for plaintiff in an action of trespass for personal injuries. Defendant asks for judgment non obstante veredicto or alternatively a new trial.

The jury could have found the following facts: A very large and heavy box (the box was 6 feet high and 2½ feet wide), containing a bicycle, was left standing on the floor *beside an aisle* in defendant's store. The box fell on plaintiff's head and shoulder causing very severe injuries. There was no evidence as to whether the box was resting on its own weight or was leaning

against the nearby wall, or was fastened or secured in any way, or exactly what caused the box to fall. However, the testimony disclosed that the defendant said "*It shouldn't have been there in the first place*"; and after the accident, ordered it removed.

[1] While neither *res ipsa loquitur* nor the exclusive control doctrine applies, we believe that the totality of the aforesaid facts and circumstances amount to evidence of negligence which, though very slight, was sufficient to take the case to the jury. The case is, on its facts, distinguishable from *Stewart v. Morow*, 403 Pa. 459, 170 A.2d 338, where a small mirror, which rested on a mantelpiece in defendant's home, suddenly fell and injured plaintiff (a maid) while she was performing her household cleaning duties. The Court in that case correctly stated (1) that neither *res ipsa loquitur* nor the exclusive control doctrine applied; and (2) that there was not sufficient evidence of negligence to take the case to the jury.

The difference in the size and potentially dangerous condition of this huge box by the aisle of the store, and the small mirror on a mantel in the Stewart home, together with the other facts and circumstances above mentioned are sufficient to distinguish the Stewart case from the instant case.

[2, 3] Defendant asks for a new trial because of an alleged error in the Court's charge on "present worth," in which charge the Judge included an "example" to aid the jury. An "example" charge is proper if it is given by way of illustration or example and the Court makes clear to the jury that the example is illustrative only and that it is solely for the jury to decide what the verdict should be and for whom: *Littman v. Bell Telephone Co.*, 315 Pa. 370, 172 A. 687; *Reed v. American Dyewood Co.*, 231 Pa. 431, 80 A. 873. In *Littman v. Bell Telephone Co.*, *supra*, the Court said (315 Pa. page 378, 172 A. page 690): "Concrete illustrations may be used by the trial judge

ned  
hat  
sti-  
"It  
:e";  
zed.

nor  
we  
said  
nce  
ght,  
try.  
ible  
170  
est-  
me,  
id)  
old  
ase  
psa  
ine  
affi-  
the

illy  
by  
ror  
her  
ces  
iniant

ial  
it's  
ge  
the  
if  
ple  
hat  
it  
er-  
v.  
A.  
31  
le-  
Pa.  
ete  
ge

in explaining 'present worth.'" Furthermore, we find no basic or reversible error in the charge.

Judgment affirmed.

JONES, J., dissents and would enter Judgment N. O. V.



412 Pa. 452

**George COPES and Mary E. Copes, his wife,  
Appellants,**

v.

**J. Tyler WILLIAMS, Donald M. Jones and  
Flora M. Jones, his wife, and  
Joseph A. Thomas.**

Supreme Court of Pennsylvania.

Nov. 12, 1963.

Grantors' suit in equity to set aside an agreement of sale and deed for alleged fraud and deceit. The Common Pleas Court, No. 6 of Philadelphia County, Blanc, J., rendered a decree for defendants at No. 3552, March Term, 1961, In Equity, and plaintiffs appealed. The Supreme Court, No. 104 January Term, 1963, O'Brien, J., held that evidence sustained Chancellor's findings adverse to grantors.

Affirmed.

**1. Trial ☞405(1)**

Where no exceptions to findings of fact were filed, any possible errors therein were deemed to be waived.

**2. Deeds ☞211(3)**

**Vendor and Purchaser ☞44**

Evidence sustained Chancellor's findings adverse to grantors suing in equity

to set aside agreement of sale and deed on contentions of fraud and deceit.

Charlie I. Miller, Philadelphia, for appellant.

Benjamin F. Kirk, Philadelphia, for appellees Donald M. Jones and Flora M. Jones.

Leon S. Rosenthal, Philadelphia, for appellee Joseph A. Thomas.

Before BELL, C. J., and MUSMANNO, JONES, COHEN, EAGEN, O'BRIEN and ROBERTS, JJ.

O'BRIEN, Justice.

The plaintiffs-appellants, in August of 1960, purchased a home on Oxford Street in Philadelphia. Later in the same year, appellants, being in need of cash, listed the home for sale in the office of Thomas, a real estate broker, who employed Williams. Eventually, appellants entered into a sales agreement with Mr. and Mrs. Jones and, subsequently, conveyed the property to them by deed.

Appellants refused to surrender possession of the house and a landlord's distress was levied against them. Thereupon, appellants filed a complaint in equity seeking, inter alia, to set aside the agreement of sale and deed. They alleged that they never knowingly executed these instruments and that their signatures were procured, if at all, by fraud and deceit involving all of the defendants. They contended that they were merely borrowing money from the Joneses and that the sale of their house was not intended.

The Chancellor enjoined, preliminarily, Mr. and Mrs. Jones from encumbering or conveying the property and from taking any further action leading to an eviction of or collection of rents from appellants. The matter was then heard on the merits and the Chancellor entered an adjudica-

SUPREME COURT OF PENNSYLVANIA

95

**GORR, MOSER, DELL & LOUGHNEY**  
ATTORNEYS AT LAW

1300 FRICK BUILDING  
437 GRANT STREET  
PITTSBURGH, PENNSYLVANIA 15219-6002

TELEPHONE: 412/471-1180  
FAX: 412/471-9012  
E-MAIL: [gmdl@gmdl-law.com](mailto:gmdl@gmdl-law.com)  
[www.gormoser.com](http://www.gormoser.com)

MELISSA A. CORCINO♦  
RICHARD W. DELL, JR.  
PATRICK J. DOHENY, JR.  
SEAN P. HANNON†  
MARK R. LANE†  
PATRICK J. LOUGHNEY†  
SHARON M. MACENCZAK  
SCOTT A. MATTHEWS†

DONALD J. McCORMICK†‡  
PETER MOLINARO, JR.  
MELVIN L. MOSER\*†  
GEORGE A. POWER  
BRAD D. TRUST†  
CARY W. VALYO  
JOHN H. WILLIAMS, JR.  
ELEONORA M. ZYCH

♦ ALSO ADMITTED IN CA, DC, NJ  
† ALSO ADMITTED IN FL  
‡ ALSO ADMITTED IN OH  
† ALSO ADMITTED IN WV

*Of Counsel*  
ARTHUR R. GORR†  
GEORGE RAYNOVICH, JR.

January 26, 2001  
File No. Wal.166

David S. Meholick  
Court Administrator  
Clearfield County Courthouse  
230 East Market Street - Suite 228  
Clearfield, PA 16830

*Arb 2-26-01 - 100*

**Re: Carla Carella v. Wal-Mart  
Clearfield County No. 00-375-CD**

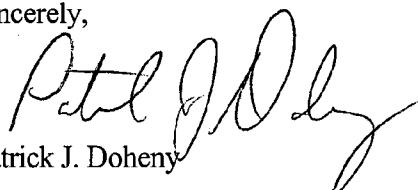
Dear Mr. Shaw:

Enclosed please find Wal-Mart's Pre-Trial Statement for filing. Also enclosed is an extra cover-sheet for the Pre-Trial Statement. Kindly time stamp the extra cover sheet and return it to my attention in the stamped return envelope I have provided.

By copy of this letter, I am providing copies of the Pre-Trial Statement to plaintiff's counsel and the arbitrators.

If you have any questions, please feel free to contact me.

Sincerely,

  
Patrick J. Doheny

PJD/lac  
Enclosure: Wal-Mart's Pre-Trial Statement  
Stamped return envelope  
cc (w/encl.): Gary A. Knaresboro, Esq.  
William Lynn Hollen, Esquire  
Mark A. Falvo, Esquire  
Christopher E. Mohney, Esquire

**RECEIVED**

**JAN 29 2001**

**COURT ADMINISTRATOR'S  
OFFICE**

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

CARLA CARELLA,

CIVIL DIVISION

Plaintiff,

No. 00-375-CD

vs.

Issue No.

WAL-MART,

JURY TRIAL DEMANDED

Defendant.

**WAL-MART'S PRE-TRIAL STATEMENT**

Code:

Filed on behalf of WAL-MART, Defendant

Counsel of Record for this Party:

Patrick J. Loughney, Esquire  
Pa. I.D. #23163

**GORR, MOSER, DELL & LOUGHNEY**  
Firm #753

1300 Frick Building  
Pittsburgh, PA 15219

Phone: (412) 471-1180  
Fax: (412) 471-9012

**RECEIVED**

**JAN 29 2001**

**COURT ADMINISTRATOR'S  
OFFICE**

**WAL-MART'S PRE-TRIAL STATEMENT**  
**PURSUANT TO LOCAL RULE 1306A**

AND NOW, comes the Defendant, Wal-Mart, by and through its attorneys, Gorr, Moser, Dell & Loughney and Patrick J. Doheny, Esquire, and files the within Pre-Trial Statement pursuant to Local Rule 1306A:

**A. Statement Of The Case**

This case arises out of an incident alleged to have occurred sometime in the evening of April 4, 1998. Plaintiff was shopping at the Clearfield Wal-Mart store where she claims that fifteen Rubbermaid containers fell from the top shelf onto her head.

Testimony will show that Wal-Mart is not liable to Plaintiff for any injuries she may have sustained. There is no evidence that Wal-Mart allowed a dangerous condition to exist on the premises for a period of time. Wal-Mart had no notice, either actual or constructive, that the Rubbermaid containers at issue in this case posed a danger to Wal-Mart customers.

Moreover, testimony will illustrate that any injuries Plaintiff may have suffered were caused solely by the negligence of Plaintiff, or by the negligence of unforeseen third parties.

**B. Citation To Applicable Case Law Or Statutes**

Restatement Second of Torts, §§ 343, 343A, 344.

Carrerder v. Fitter, 503 Pa. 178, 469 A.2d 120 (1983)

Moultrie v. Great A&P Tea Co., 281 Pa. Super. 525, 422 A.2d 593 (1980)

C. List of Witnesses

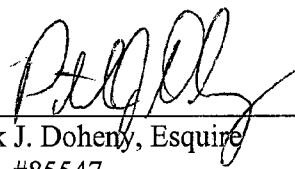
1. Marty Kosut  
P.O. Box 132  
Allport, PA 16821

D. Statement Of Damages

Not Applicable.

Respectfully submitted,

Gorr, Moser, Dell & Loughney

By:   
Patrick J. Doheny, Esquire  
Pa I.D. #85547  
Attorneys for Defendant Wal-Mart Stores, Inc.

1300 Frick Building  
437 Grant Street  
Pittsburgh, PA 15219

Phone: (412) 471-1180  
Fax: (412) 471-9012

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **WAL-MART'S PRE-TRIAL STATEMENT** was served upon all counsel of record by United States mail, first class, postage prepaid, this 26<sup>th</sup> day of January, 2001.

David S. Meholick  
Court Administrator  
Clearfield County Courthouse  
230 East Market Street, Suite 228  
Clearfield, PA 16830

Gary A. Knaresboro, Esquire  
SOBEL, COLLINS & KNARESBORO  
218 South Second Street  
Clearfield, PA 16830  
*Counsel for Plaintiff*

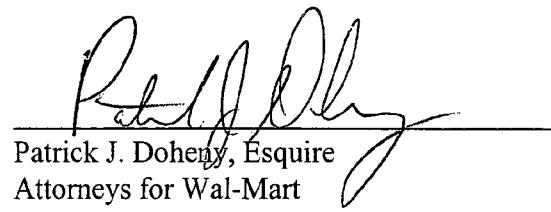
**ARBITRATORS**

William Lynn Hollen, Esquire  
1633 East Pleasant Valley Blvd.  
Altoona, PA 16602

Mark A. Falvo, Esquire  
7 Bigler Road  
Clearfield, PA 16830-1762

Christopher E. Mahoney, Esquire  
90 Beaver Drive  
Box 6  
DuBois, PA 15801

**GORR, MOSER, DELL & LOUGHNEY**

  
\_\_\_\_\_  
Patrick J. Doheny, Esquire  
Attorneys for Wal-Mart

**Sobel, Collins & Knaresboro**  
Attorneys at Law

218 South Second Street • Clearfield, Pennsylvania 16830 • Telephone 814-765-5552 • 814-765-6555 • Fax 814-765-6210

John A. Sobel, IV, Esquire  
Ronald L. Collins, Esquire  
Gary A. Knaresboro, Esquire  
May 1, 2001

APB 5-10-01

Dave Meholic, Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830

Theron G. Noble, Esquire  
414 Knarr Street  
DuBois, PA 15801

Christopher E. Mohney, Esquire  
90 Beaver Drive, Box 6  
DuBois, PA 15801

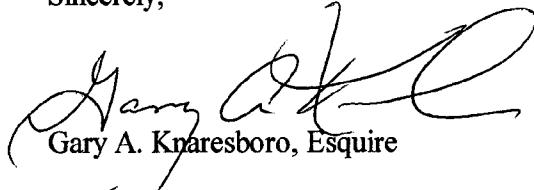
Mark A. Falvo, Esquire  
102 Williams Street  
Clearfield, PA 16830

*RE: Carla Carella v. Wal-Mart*  
No. 00-375-CD

Dear Gentlemen:

Enclosed please find the Plaintiff's pre-trial statement for the above mentioned case.

Sincerely,

  
Gary A. Knaresboro, Esquire  
GAK/aw

pc: Patrick J. Doheny, Esquire

**Sobel, Collins & Matthews**

ATTORNEYS & COUNSELORS AT LAW

218 SOUTH SECOND STREET

CLEARFIELD, PENNSYLVANIA 16830

(814) 765-5552      (814) 65-6555

I HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT  
COPY OF THE ORIGINAL FILED IN THIS MATTER.

ATTORNEY

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

Carla Carella,  
Plaintiff

v. : No. 00-375-CD

Wal-Mart,  
Defendant

: **PLAINTIFF'S PRE-TRIAL STATEMENT**

: Filed on behalf of:  
Plaintiff

: Counsel for this party:  
Gary A. Knaresboro, Esquire

: Supreme Court No. 52097

: Sobel, Collins & Knaresboro  
Attorneys at Law  
218 South Second Street  
Clearfield, PA 16830

: (814)765-5552

: FAX (814)765-6210

RECEIVED

MAY 03 2001

COURT ADMINISTRATOR'S  
OFFICE

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

Carla Carella,  
Plaintiff

v. : No. 00-375-CD

Wal-Mart,  
Defendant

**PLAINTIFF'S PRE-TRIAL STATEMENT**

**STATEMENT OF THE CASE**

On April 6, 1998, at approximately 9:00 p.m., the Plaintiff, Carla Carella was shopping at the Wal-Mart store, located at 2129, 100 Supercenter Drive, Clearfield, Pennsylvania. While shopping the Plaintiff reached for two Rubbermaid items located on the bottom shelf, as she was on her knees in a kneeling position, when approximately fifteen full size garbage cans stacked together containing the lids stacked inside, fell from the top shelf onto the Plaintiff's head. The Plaintiff was knocked unconscious. After gaining consciousness, the Plaintiff noticed a Wal-Mart employee standing at the end of the aisle watching. The Wal-Mart employee was asked to render help by the Plaintiff, and the employee turned and walked away. After several minutes, the Plaintiff walked to the front of the store and asked for help. The Plaintiff was taken to the Clearfield Hospital Emergency Room, and has continued to receive medical treatment for the injuries suffered on the said date.

**WITNESSES**

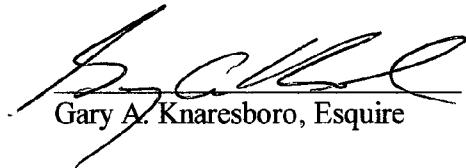
1. Carla Carella
2. Curtis Bunnell

3. Dr. Mark B. Casteel
4. Tina Nevling

EXHIBITS

1. Dr. Casteel's daily notes and invoices.
2. Clearfield Hospital invoices.

Respectfully submitted,



Gary A. Knaresboro, Esquire