

01-1516-CD  
LARRY D. ALLEN et al -vs- MICHAEL SPEED et al

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,

Plaintiff,

v.

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,

Defendants.

\* No. 01 - 1516 - CD

\* Type of Pleading:

\* COMPLAINT

\* Filed on behalf of:

\* Plaintiff

\* Counsel of Record for  
this party:

\* James A. Naddeo, Esq.  
\* Pa I.D. 06820

\* 211 1/2 E. Locust Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

**FILED**

SEP 11 2001

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,

\*

\*

\*

Plaintiff,

\*

\*

v.

\* No. 01 - - CD

\*

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,

\*

\*

\*

Defendants.

\*

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your 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.

COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURT HOUSE  
Market and Second Streets  
Clearfield, PA 16830

(814) 765-2641

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

C O M P L A I N T

NOW COMES the Plaintiff, Larry D. Allen, t/d/b/a Larry Allen Construction, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff is Larry D. Allen, t/d/b/a Larry Allen Construction, whose principal place of business is RD2 Box 354B, Morrisdale, Pennsylvania, 16858.
2. That the Defendant, Michael Speed, is a *sui juris*, adult individual who resides at RD3, Philipsburg, Pennsylvania, 16866.
3. That the Defendant, Wendy Shoemaker, now believed to be known as Wendy Speed, is a *sui juris* adult individual who resides at RD3, Philipsburg, Pennsylvania, 16866.
4. That it is believed and therefore averred that Defendants are now husband and wife.

COUNT I

5. That in October, 2000, Plaintiff and Defendants entered into a written Contract whereby Plaintiff was to construct a new home for the Defendants for the total cost of One Hundred Five Thousand Four Hundred (\$105,400.00) Dollars.

6. That a signed copy of said Contract was provided to Defendants by Plaintiff which Contract is believed to be in Plaintiff's possession, an unsigned copy of said Contract is attached hereto as Exhibit "A".

7. That Plaintiff entered the site upon which Defendants' dwelling was to be constructed on or about the last part of October or the early part of November, 2000.

8. That from the time Plaintiff entered upon Defendants' home site, the Plaintiff continuously performed in a workman-like manner, the construction required by the parties Contract until March, 2001.

9. That in March, 2001, Defendant, Michael Speed, directed that Plaintiff remove himself and his workmen from the Defendants' home site.

10. That at the time the Defendant, Michael Speed, directed Plaintiff and his employees to remove themselves from Defendants' home site and discontinue the work, there was a balance due to Plaintiff on the parties contract in the amount

of Twenty One Thousand One Hundred Thirty Three and 65/100 (\$21,133.65) Dollars, which amount represents the materials purchased by Plaintiff from various suppliers and incorporated in the dwelling that Plaintiff had been constructing for the Defendants.

11. That Plaintiff has demanded that the Defendants pay to him the balance owed upon the Contract, attached hereto as Exhibit "A", in the amount of Twenty One Thousand One Hundred Thirty Three and 65/100 (\$21,133.65) Dollars, but Defendants have failed and/or refused to pay Plaintiff.

WHEREFORE, Plaintiff claims damages from the Defendants in the amount of Twenty One Thousand One Hundred Thirty Three and 65/100 (\$21,133.65) Dollars with interest thereon from March, 2001.

COUNT II

12. That the Plaintiff incorporates Paragraphs One through Eight of the first count of this Complaint by reference and makes them a part hereof.

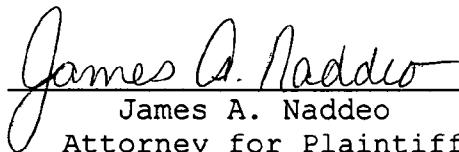
13. That during the time that Plaintiff was engaged in constructing a dwelling for the Defendants, the Defendants at various times requested Plaintiff to perform extra work, which work was not contemplated by the terms of the Contract attached hereto as Exhibit "A".

14. That a schedule of the extra work performed by Plaintiff at the request of the Defendants along with the reasonable value of the work performed is attached hereto as Exhibit "B".

15. That the total value of the extra work as appears from the schedule attached hereto as Exhibit "B" is Ten Thousand Three Hundred Seventy Seven and 84/100 (\$10,377.84) Dollars.

16. That Plaintiff has made a demand upon Defendants to pay for the extra work identified in Exhibit "B", but Defendants have failed and/or refused to do so.

WHEREFORE, Plaintiff claims damages from the Defendants in the amount of Ten Thousand Three Hundred Seventy Seven and 84/100 (\$10,377.84) Dollars with interest thereon from March, 2001.

  
James A. Naddeo  
James A. Naddeo  
Attorney for Plaintiff

**Larry Allen Construction**  
Rd.2 box 354b  
Morrisdale, Pa.  
16878  
814-345-5425

To Mike Speed and Wendy Shoemaker,  
My company proposes to build a new home using blueprints agreed upon.  
Included in home package,  
30x54 crawl space  
open joist floor system  
3/4 floor sheathing  
2x6 wall construction  
7/16 osb wall sheathing  
trussed roof  
5/8 roof sheathing  
40 year shingles  
200 amp service  
hot water heat  
air condition  
pine trim  
colonial masonite doors  
R-38 ceiling  
R-19 walls and floors  
1 6' whirlpool tub unit  
deck front and back  
roof over front deck  
1/2 drywall  
primed and painted

**ALLOWANCES**

entry doors \$800  
floor coverings \$7000  
kitchen including faucets \$5500  
bathroom including faucets \$3500  
type of siding \$2600  
lighting fixtures \$500

total cost of home  
\$105400.00

Acceptance of proposal owners  
Mike Speed

Wendy Shoemaker

Contractor  
Larry Allen

Qty	Craft @	Hours	Unit	Material	Labor	Equipment	Total
<b>Changes to home</b>							
<b>Septic system and leach field with tank includes backhoe work</b>							
<b>1,000 gallon with leach field</b>							
1.00	7P@18.00	ea		1,200.00	727.00	0.00	1,927.00
<b>Roof truss system for heavy load, per square foot</b>							
<b>6/12 slope, cathedral ceiling</b>							
1.00	6C@.0120	sf		1,400.00	0.39	0.09	1,400.48
<b>1/2" drywall installed</b>							
<b>replace, hung only (no tape, coating or texture)</b>							
180.00	6D@1.980	sf		55.80	68.40	0.00	124.20
<b>Interior doors two extra closets includes framing and material</b>							
<b>replace, hardboard wood-textured and embossed</b>							
2.00	1C@4.000	ea		168.00	80.00	0.00	248.00
<b>2" x 4" interior partition wall, per lf includes drywall</b>							
<b>replace, 8' tall 16" on center</b>							
6.00	6C@1.446	lf		42.90	47.16	0.00	90.06
<b>Exterior door jamb custom cut and build out</b>							
<b>replace, paint-grade pine</b>							
3.00	1C@6.000	ea		42.00	120.00	0.00	162.00
<b>Exterior door jamb &amp; casing</b>							
<b>replace, oak</b>							
1.00	1C@3.000	ea		0.00	60.00	0.00	60.00
<b>Roof truss system, per square foot</b>							
<b>6/12 slope</b>							
384.00	6C@6.912	sf		933.12	226.56	34.56	1,194.24
<b>Oriented strand board (OSB) sheathing</b>							
<b>5/8" thick, replace</b>							
500.00	6C@8.000	sf		445.00	260.00	0.00	705.00
<b>Laminated asphalt shingles</b>							
<b>replace, standard grade (250 to 300 lb)</b>							
5.00	6R@10.30	sq		348.00	423.50	0.00	771.50
<b>Steel entry door</b>							
<b>replace, standard grade</b>							
1.00	1C@2.500	ea		0.00	50.00	0.00	50.00
<b>Exterior French door</b>							
<b>remove, exterior French door and install new doors</b>							
4.00	1D@6.000	ea		0.00	148.00	0.00	148.00

Qty	Craft @	Hours	Unit	Material	Labor	Equipment	Total
<b>120 volt outlet installed than changed to designer color and device replace, outlet</b>							
11.00	9E@2.486		ea	93.50	85.03	0.00	178.53
<b>Vinyl siding remove because of laps remove and reinstall</b>							
200.00	1D@10.00		sf	0.00	248.00	0.00	248.00

COMMONWEALTH OF PENNSYLVANIA)

ss.

COUNTY OF CLEARFIELD

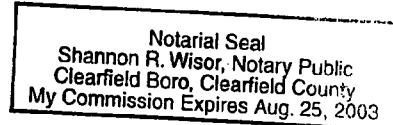
)

Before me, the undersigned officer, personally appeared LARRY D. ALLEN, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Larry D. Allen  
Larry D. Allen

SWORN and SUBSCRIBED before me this 7th day of September, 2001.

Shannon R. Wisor



CLEARFIELD, PENNSYLVANIA 16830  
P.O. BOX 552  
211 1/2 EAST LOCUST STREET  
ATTORNEY AT LAW  
JAMES A. NADDEO

\_\_\_\_\_  
Lap over margin \_\_\_\_\_

FILED

SEP 11 2001 naddeo pd 580.00  
WJD-381 (cc) William A. Shaw  
Prothonotary  
acc Sheriff

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

Sheriff Docket # 11511

ALLEN, LARRY D. t/d/b/a LARRY ALLEN CONSTRUCTION

01-1516-CD

VS.

SPEED, MICHAEL and WENDY SHOEMAKER n/k/a WENDY SPEED

**COMPLAINT**

**SHERIFF RETURNS**

**NOW SEPTEMBER 17, 2001, DENNY NAU, SHERIFF OF CENTRE COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHINCOMPLAINT ON MICHAEL SPEED AND WENDY SHOEMAKER N/K/A WENDY SPEED, DEFENDANTS.**

**NOW OCTOBER 1, 2001 SERVED THE WITHIN COMPLAINT ON MICHAEL SPEED AND WENDY SHOEMAKER N/K/A WENDY SPEED, DEFENDANTS BY DEPUTIZING THE SHERIFF OF CENTRE COUNTY. THE RETURN OF SHERIFF NAU IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED BOTH COPIES ON MIKE SPEED.**

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**Return Costs**

Cost	Description
45.74	SHFF. HAWKINS PAID BY: ATTY.
52.00	SHFF. NAU PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.
<u>117.74</u>	

**FILED**

NOV 02 2001

01/01/2001

William A. Shaw

Prothonotary

Sworn to Before Me This

*2nd Day Of November 2001*  
*11/01/01*

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

So Answers,

*Chester A. Hawkins*  
*by Marilyn Harris*  
Chester A. Hawkins  
Sheriff

# SHERIFF'S OFFICE

## CENTRE COUNTY

#1651

11/11

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

<b>SHERIFF SERVICE</b> <b>PROCESS RECEIPT, AND AFFIDAVIT OF RETURN</b>	INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. Please type or print legibly. Do not detach any copies.
---	--

1. Plaintiff(s) <i>Larry D Allen et al/b/a</i> <i>Larry Allen Construction</i>	2. Case Number <i>01-1516-CD</i>
3. Defendant(s) <i>Michael Speed &amp; Wendy Shoemaker n/k/a</i> <i>Wendy Speed</i>	4. Type of Writ or Complaint: <i>Complaint</i>

SERVE →	5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold. <i>Wendy Speed</i>
AT	6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code) <i>RR #3 Box 363A, Glass City, Pa. 16866</i>

7. Indicate unusual service: <input type="checkbox"/> Reg Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Deputize <input type="checkbox"/> Post <input type="checkbox"/> Other
---

Now, 20 I SHERIFF OF CENTRE COUNTY, PA., do hereby depose the Sheriff of County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. Sheriff of Centre County

#### 8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE

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

9. Print/Type Name and Address of Attorney/Originator	10. Telephone Number	11. Date
12. Signature		

#### SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE

13. I acknowledge receipt of the writ or complaint as indicated above.	SIGNATURE of Authorized CCSD Deputy of Clerk and Title	14. Date Filed	15. Expiration/Hearing Date
--	--	----------------	-----------------------------

#### TO BE COMPLETED BY SHERIFF

16. Served and made known to Mike Speed, on the 1 day of Oct,  
20 01, at 3:30 o'clock, P m., at SAME AS ABOVE ADDRESS, County of Centre

Commonwealth of Pennsylvania, in the manner described below:

- Defendant(s) personally served.
- Adult family member with whom said Defendant(s) resides(s). Relationship is Husband
- Adult in charge of Defendant's residence.
- Manager/Clerk of place of lodging in which Defendant(s) resides(s).
- Agent or person in charge of Defendant's office or usual place of business.
- \_\_\_\_\_ and officer of said Defendant company.
- Other \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

Defendant not found because:

- Moved  Unknown  No Answer  Vacant  Other \_\_\_\_\_

Remarks:

Advance Costs	Docket	Service	Sur Charge	Affidavit	Mileage	Postage	Misc.	Total Costs	Costs Due or Refund
<u>75.00</u>	<u>9.00</u>	<u>15.00</u>	<u>—</u>	<u>3.50</u>	<u>21.00</u>	<u>.50</u>	<u>3.00</u>	<u>52.00</u>	<u>23.00</u>

17. AFFIRMED and subscribed to before me this 17

20. day of Oct 2001

23. Corinne Peters

Notary Public  
Corinne Peters, Notary Public  
Bellefonte Boro, Centre County  
My Commission Expires Sept. 5, 2005

24. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE  
OF AUTHORIZED AUTHORITY AND TITLE.

25. Date Received

# SHERIFF'S OFFICE

## CENTRE COUNTY

#1651

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

<b>SHERIFF SERVICE</b> <b>PROCESS RECEIPT, AND AFFIDAVIT OF RETURN</b>				<b>INSTRUCTIONS FOR SERVICE OF PROCESS:</b> You must file one instruction sheet for each defendant. Please type or print legibly. Do not detach any copies.							
1. Plaintiff(s) <b>LARRY D. ALLEN &amp; wife</b> <b>Larry Allen Construction</b>				2. Case Number <b>01-1516-CD</b>							
3. Defendant(s) <b>Michael SPEED &amp; Wendy Shoemaker aka</b> <b>Wendy Speed</b>				4. Type of Writ or Complaint: <b>Complaint</b>							
<b>SERVE</b> <b>→ AT</b>		5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold. <b>Michael Speed</b> 6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code) <b>RR#3 Box 363A, Glass City, Pa. 16866</b>									
7. Indicate unusual service: <input type="checkbox"/> Reg Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Deputize <input type="checkbox"/> Post <input type="checkbox"/> Other											
Now, <b>20</b> I SHERIFF OF CENTRE COUNTY, PA., do hereby depose the Sheriff of County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. <b>Sheriff of Centre County</b>											
8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE											
<b>NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN</b> – Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.											
9. Print/Type Name and Address of Attorney/Originator				10. Telephone Number			11. Date				
							12. Signature				
<b>SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE</b>											
13. I acknowledge receipt of the writ or complaint as indicated above.		14. Signature of Authorized CCSD Deputy of Clerk and Title				14. Date Filed		15. Expiration/Hearing Date			
<b>TO BE COMPLETED BY SHERIFF</b>											
16. Served and made known to <b>Michael Speed</b> , on the <b>1</b> day of <b>Oct.</b> , 20 <b>01</b> , at <b>3:30</b> o'clock, <b>P</b> m., at <b>SAME AS ABOVE ADDRESS</b> , County of Centre Commonwealth of Pennsylvania, in the manner described below:											
<input checked="" type="checkbox"/> Defendant(s) personally served. <input type="checkbox"/> Adult family member with whom said Defendant(s) resides(s). Relationship is _____ <input type="checkbox"/> Adult in charge of Defendant's residence. <input type="checkbox"/> Manager/Clerk of place of lodging in which Defendant(s) resides(s). <input type="checkbox"/> Agent or person in charge of Defendant's office or usual place of business. <input type="checkbox"/> _____ and officer of said Defendant company. <input type="checkbox"/> Other _____											
On the _____ day of _____, 20_____, at _____ o'clock, _____ M. Defendant not found because: <input type="checkbox"/> Moved <input type="checkbox"/> Unknown <input type="checkbox"/> No Answer <input type="checkbox"/> Vacant <input type="checkbox"/> Other _____											
Remarks:											
Advance Costs <b>75.00</b>	Docket <b>9.00</b>	Service <b>15.00</b>	Sur Charge <b>—</b>	Affidavit <b>.350</b>	Mileage <b>21.00</b>	Postage <b>.50</b>	Misc. <b>3.00</b>	Total Costs <b>52.00</b>	Costs Due or Refund <b>23.00</b>		
17. AFFIRMED and subscribed to before me this <b>17</b> 20. day of <b>Oct</b> 2001 23. <b>Carrie Beter</b> Notary Public											
18. Signature of Dep. Sheriff <b>Teddy Mean</b>											
19. Date <b>10-1-01</b>											
20. Signature of Sheriff											
21. Date <b>22. Date</b>											
<b>SHERIFF OF CENTRE COUNTY</b>											
Notarial Seal My Commission Expires: Notary Public Bellefonte, Pa., Centre County Member, Pennsylvania Association of Notaries				Amount Pd. _____ Page _____							
24. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE OF AUTHORIZED AUTHORITY AND TITLE Member, Pennsylvania Association of Notaries											
25. Date Received											



**Sheriff's Office  
Clearfield County**

CHESTER A. HAWKINS  
SHERIFF

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

471783.AA  
OFFICE (814) 765-2641  
AFTER 4:00 P.M. (814) 765-1533  
CLEARFIELD COUNTY FAX  
(814) 765- 5915

DARLENE SHULTZ  
CHIEF DEPUTY  
MARGARET PUTT  
OFFICE MANAGER

MARILYN HAMM  
DEPT. CLERK  
PETER F. SMITH  
SOLICITOR

**DEPUTATION**

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

LARRY D. ALLEN t/d/b/à  
LARRY ALLEN CONSTRUCTION

TERM & NO. 01-1516-CD

vs

**SERVE BY:** 10/11/01

MICHAEL SPEED & WENDY SHOEMAKER n/k/a  
WENDY SPEED

or  
**HEARING DATE:**

DOCUMENT TO BE SERVED:

COMPLAINT

**MAKE REFUND PAYABLE TO:** JAMES ANDNADDEO, Attorney

**SERVE:** MICHAEL SPEED AND WENDY SHOEMAKER n/k/a WENDY SPEED

**ADDRESS:** RR#3 Box 363A, Glass City, Pa.

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF of CENTRE County Pennsylvania to execute this writ.

This Deputation being made at the request and risk of the Plaintiff this 17th day of SEPTEMBER 2001.

Respectfully,

CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY

Pg 1783.AA  
Pd 7/5/01

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,

Plaintiff,

v.

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,

Defendants.

\* No. 01 - 1516 - CD

\* Type of Pleading:

\* Certificate of Service

\* Filed on behalf of:  
\* Plaintiff

\* Counsel of Record for  
\* this party:

\* James A. Naddeo, Esq.  
\* Pa I.D. 06820

\* 211 1/2 E. Locust Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

**FILED**

NOV 07 2001

0103512ccatty  
William A. Shaw  
Prothonotary  
Nobles

JKL

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

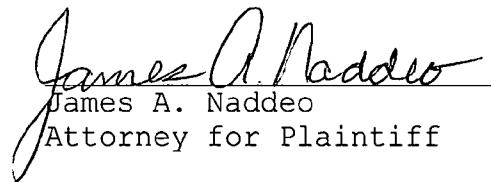
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Default filed in the above-captioned action was served on the following persons and in the following manner on the 7th day of November, 2001:

First-Class Mail, Postage Prepaid

Michael Speed  
RR3 Box 363A  
Philipsburg, PA 16866

Wendy Speed  
RR3 Box 363A  
Philipsburg, PA 16866

  
James A. Naddeo  
Attorney for Plaintiff

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,

No. 01-1516-CD

Plaintiff/Defendant in  
Counterclaim,

v.

MICHAEL SPEED and WENDY  
SHOEMAKER, a/k/a/ WENDY  
SPEED,

Defendants/Plaintiffs in  
Counterclaim.

**ANSWER, COUNTERCLAIM & NEW  
MATTER**

Filed on behalf of Defendants/Plaintiffs in  
Counterclaim

Counsel of Record for this Party:

Gerald L. Shoemaker, Jr., Esquire  
PA I.D. # 85990

GILLOTTI, CAPRISTO & BECK, P.C.  
310 Grant Street  
Suite 215 Grant Building  
Pittsburgh, PA 15219

(412) 391-4242

**JURY TRIAL DEMANDED**

**FILED**

NOV 19 2001

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION, No. 01-1516-CD

Plaintiff/Defendant in  
Counterclaim,

v.

MICHAEL SPEED and WENDY  
SHOEMAKER, a/k/a WENDY  
SPEED,

Defendants/Plaintiffs in  
Counterclaim.

**ANSWER, COUNTERCLAIM & NEW MATTER**

AND NOW, comes the Defendants/Plaintiffs in Counterclaim, MICHEAL SPEED and WENDY SHOEMAKER a/k/a WENDY SPEED, by and through their undersigned counsel, Gerald L. Shoemaker, Jr., Esquire and the law firm of Gillotti, Capristo & Beck, P.C., to file the the within Answer, Counterclaim and New Matter and in support thereof aver as follows:

1. The averments in Paragraph 1 are admitted.
2. The averments in Paragraph 2 are admitted.
3. The averments in Paragraph 3 are admitted.
4. The averments in Paragraph 4 are admitted.

**COUNT I**

5. The averments in Paragraph 5 are admitted.
6. The averments in Paragraph 6 are admitted.
7. The averments in Paragraph 7 are admitted.

8. The averments in Paragraph 8 are denied. It is specifically denied that the Defendant performed in a workmanlike manner the construction required by the parties' contract. To the contrary, the Plaintiff/Defendant in counterclaim failed to complete the construction in a workmanlike manner prior to his termination.

9. The averments in Paragraph 9 are admitted. By way of further response, Defendant, Michael Speed, requested that Plaintiff remove himself from the premises after continuous breaches of the contract and after Plaintiff refused or failed to remedy those breaches which are more fully set forth the Paragraph 25 hereof.

10. The averments in Paragraph 10 are denied. To the contrary, there were no further balances due to Plaintiff as Plaintiff continued to breach the contract in numerous respects and Plaintiff failed to remedy those breaches which are more fully set forth in Paragraph 25 hereof.

11. The averments in Paragraph 11 are admitted and denied. It is admitted that Plaintiff made a demand on Defendants for the amount of Twenty-one Thousand One Hundred Thirty Three Dollars and Sixty-five Cents (\$21,133.65). It is denied that Defendants owe any money to Plaintiff due to Plaintiff's continuous breaches of the contract and after Plaintiff refused or failed to remedy those breaches which are more fully set forth the Paragraph 25 hereof.

WHEREFORE, Defendants/Plaintiffs in Counterclaim request judgment in their favor and against Plaintiff.

**JURY TRIAL DEMANDED**

**COUNT II**

12. Paragraph 12 merely incorporates that prior paragraphs and no response is necessary. To the extent that a response is necessary, Defendants/Plaintiffs in Counterclaim hereby incorporate their answers to averments 1 through 11 as if fully set forth herein.

13. The averments in Paragraph 13 are denied. It is specifically denied that the Defendants/Plaintiffs in Counterclaim requested the Plaintiff to do additional work. To the contrary, Defendants/Plaintiffs in Counterclaim merely requested that Plaintiff perform his work as required under the contract and to the specifications of the blueprints, which Plaintiff failed to do.

14. The averments in Paragraph 14 are denied. It is specifically denied that the Defendants/Plaintiffs in Counterclaim requested the Plaintiff to do additional work. To the contrary, Defendants/Plaintiffs in Counterclaim merely requested that Plaintiff perform his work as required under the contract and to the specifications of the blueprints, which Plaintiff failed to do.

15. The averments in Paragraph 15 are denied. It is specifically denied that the Defendants/Plaintiffs in Counterclaim requested the Plaintiff to do additional work. To the contrary, Defendants/Plaintiffs in Counterclaim merely requested that Plaintiff perform his work as required under the contract and to the specifications of the blueprint, which Plaintiff failed to do.

16. The averments in Paragraph 16 are admitted and denied. It is admitted that Plaintiff made a demand on Defendants for the amount of Ten Thousand Three Hundred Seventy-seven Dollars and Eighty-Four Cents (\$10,377.84). It is denied that Defendants owe any money to Plaintiff due to Plaintiff's continuous breaches of the contract and after Plaintiff refused or failed to remedy those breaches which are more fully set forth the Paragraph 25 hereof.

WHEREFORE, Defendants/Plaintiffs in Counterclaim request judgment in their favor and against Plaintiff.

**JURY TRIAL DEMANDED**

**COUNTERCLAIMS**  
**COUNT I**  
**BREACH OF CONTRACT**

17. The averments contained in paragraphs 1 through 16 are hereby incorporated by

reference.

18. On or about October 2000, Plaintiff and Defendants entered into a contract (hereinafter referred to as "contract") whereby Plaintiff agreed to be general contractor for the construction of Defendants' residence at R.R. #3, Box 363, Philipsburg, Centre County, Pennsylvania.

19. At all times hereto, the construction phase was handled by Plaintiff, who acted as the general contractor for the subject property.

20. The contract price for the construction of Defendant's residence was \$105,400, of which a substantial sum was paid to Plaintiff.

21. Under the terms of the contract, Plaintiff agreed with Defendants:

- a. that Plaintiff would complete all work contracted for in a good and workmanlike manner;
- b. that Plaintiff would guarantee the quality of materials and workmanship furnished by him would be of top quality and would repair and/or replace any defects in the materials or workmanship furnished by Plaintiff, his subcontractors and material suppliers at no cost to Defendants;
- c. that Plaintiff would complete all work in accordance with the plans and specifications which were made part of the contract; and
- d. that the plans and specifications were appropriate, adequate and sufficient to construct a residence which was structurally sound and in compliance with applicable building codes and municipal ordinances.

22. At all times material hereto, Plaintiff had direct responsibility for supervising and coordinating the construction activities of all subcontractors.

23. Defendants duly performed all terms, covenants, and conditions on their part to be performed, except those terms, covenants or conditions which were excused or made impossible due to Plaintiff's breaches as hereinafter set forth.

24. Plaintiff materially breached the contract with Defendants both generally and in the following particulars:

- a. the materials and/or workmanship provided by Plaintiff were defective;
- b. the work was not performed by Plaintiff in a good and workmanlike manner;
- c. the work performed by Plaintiff failed to conform to the requirements of the contract, the plans and/or specifications;
- d. some of the work performed by Plaintiff and/or Plaintiff's subcontractors was in violation of the applicable building codes and/or municipal ordinances; and
- e. Plaintiff has failed and refused to remedy the deficiencies in the material and work provided.

25. The Plaintiff's material breaches of contract with Defendants include but are not limited to the following:

- a. pvc pipes that were installed did not pass code;
- b. there are two existing cracks in the foundation of the residence;
- c. the front deck is two feet off-center;
- d. the rear deck is not properly screwed down;
- e. electrical box location is not in compliance with code due to improper ventilation;
- f. the light fixture in the master bedroom is off-center;
- g. the cabinets were not installed;
- h. there are rods coming from the ceiling of the kitchen/dining room which are not in line with the cabinets and if the cabinets were in line with the rods, the cabinets would not be square;
- i. the wall in the common bathroom is not square;
- j. there was no cable hook-up in one of the bedrooms;
- k. some electrical outlets do not work due to improper wiring;

1. by failing to install materials from Defendants' prior residence and retaining these items;
- m. the shingles used for roofing have only a 20-year guarantee as opposed to the 40-year guarantee as provided for in the contract;
- n. the Defendants were forced to do work that was to be done by the Plaintiff and to find and pay subcontractors directly while Plaintiff was still employed as general contractor despite the clear dictates of the contract;
- o. the Defendants were forced to pay for materials directly despite the dictates of the contract.

26. By reason of Plaintiff's breaches of contract, Defendants at various times requested that the Plaintiff correct the defects in material and/or workmanship but Defendant has failed and refused to do so. Consequently, Defendants are seeking damages for the cost to remedy the defects in workmanship and material provided by Plaintiff.

27. As a direct and proximate cause of the breaches hereinabove set forth, Defendants have incurred and will incur expense for completion and/or correction of the work and materials for the project. Paragraph 25 hereto and all its subparagraphs are incorporated herein by reference as if fully set forth in full.

28. By reason of the above stated breaches by Plaintiff and as a direct and proximate cause thereof, Defendants have incurred and will continue to incur costs and expenses and have suffered and will continue to suffer direct, indirect, consequential, general, and special damages in an amount currently unknown to Defendants but which damages will include:

- a. costs and expenses associated with completing the work required to be performed under the terms of the contract;
- b. costs and expenses associated with correcting and/or replacing the work performed and materials supplied by Plaintiff and/or his subcontractors and suppliers that is defective, not in compliance with the requirements of the contract, plans and specifications, not in compliance with the express and implied warranties arising thereunder, or not in compliance with applicable

building codes and/or municipal ordinances;

- c. costs and expenses associated with inspecting and analyzing the condition of the Defendants' residence;
- d. costs and expenses associated with developing and implementing the necessary corrective measures which costs are still being employed;
- e. the Defendants have been and will be deprived of the full use and enjoyment of their residence;
- f. the Defendants have been deprived of the benefit of their bargain with Plaintiff;
- g. the value of Defendants' residence has been impaired and diminished;
- h. the costs identified in Paragraph 25;
- i. the costs incurred by Defendants, including but not limited to costs of suit and attorney's fees.

WHEREFORE, Defendants, MICHAEL SPEED and WENDY SHOEMAKER, a/k/a WENDY SPEED, hereby demand judgment in their favor and against Plaintiff, LARRY D. ALLEN, t/d/b/a LARRY ALLEN CONSTRUCTION, in an amount in excess of TWENTY FIVE THOUSAND (\$25,000) DOLLARS, plus costs, interest and attorney's fees.

**JURY TRIAL DEMANDED**

**COUNT II**  
**BREACH OF EXPRESS AND IMPLIED WARRANTIES**

- 29. The averments contained in paragraphs 1 through 28 are hereby incorporated by reference.
- 30. Plaintiff expressly and impliedly warranted and represented to Defendants:
  - a. that Plaintiff would complete all the work contracted for in a good and workmanlike manner;
  - b. that the quality of materials and workmanship furnished by him would be of top quality and in accordance with the plans and specifications;

- c. that the plans and specifications were appropriate, adequate and sufficient to construct the residence which was structurally sound and in compliance with applicable building codes and municipal ordinances;
- d. that the materials and workmanship furnished by Plaintiff were appropriate, adequate and sufficient to construct the residence and in compliance with applicable building codes and municipal ordinances;
- e. that the residence, when constructed, would be habitable;
- f. that the residence, when constructed, would be properly constructed, structurally sound and in compliance with applicable building codes and municipal ordinances.

31. The defects in the Defendants' residence, which are set out more fully above, constitute a material breach by Plaintiff of his express and implied warranties to Defendants.

32. As a direct and proximate result of Plaintiff's breach of express and implied warranties, including, without limitation, Plaintiff's warranty of habitability and warranty of workmanlike construction, Defendants have suffered the costs and damages set forth in Paragraph 25 hereto.

WHEREFORE, Defendants, MICHAEL SPEED and WENDY SHOEMAKER, a/k/a WENDY SPEED, hereby demand judgment in their favor and against Plaintiff, LARRY D. ALLEN, t/d/b/a LARRY ALLEN CONSTRUCTION, in an amount in excess of TWENTY FIVE THOUSAND (\$25,000) DOLLARS, plus costs, interest and attorney's fees.

**JURY TRIAL DEMANDED**

**COUNT III**  
**NEGLIGENCE**

33. The averments contained in paragraphs 1 through 32 are hereby incorporated by reference.

34. Plaintiff knew or should have known that the activities that he was performing on the

property and the materials he used on the Defendants' residence were improper, inadequate, negligent and careless and that the finished condition of the residence was or would not have been structurally sound, not properly constructed, not in accordance with the applicable building codes and inadequate and/or insufficient for habitation.

35. Plaintiff acted in a negligent, careless and reckless manner both generally and in the following particulars:

- a. by failing to properly perform and/or supervise the construction of Defendants' residence;
- b. in employing personnel or utilizing subcontractors who are not sufficiently qualified to construct a residence free from defects and deficiencies;
- c. in failing to properly supervise the construction of Defendants' residence to ensure that the completed construction was free from defects and deficiencies;
- d. by designing and/or constructing an inadequate residence that was not structurally sound and not in compliance with applicable building codes and municipal ordinances;
- e. in employing personnel utilizing subcontractors and consultants who were not sufficiently qualified to design and/or construct an adequate residence;
- f. in purchasing and/or installing materials which were inadequate and/or improper for their actual use;
- g. in failing to ensure that all construction activities were in compliance with all applicable codes and/or municipal ordinances;
- h. in constructing the Defendants' residence in a manner inconsistent with the accepted minimum standards of the trade.

36. As a direct and proximate cause of the negligent, careless and reckless conduct of Plaintiff as aforesaid, Defendants have suffered the injuries and damages set forth in Paragraph 25.

WHEREFORE, Defendants, MICHAEL SPEED and WENDY SHOEMAKER, a/k/a WENDY SPEED, hereby demand judgment in their favor and against Plaintiff, LARRY D. ALLEN,

t/d/b/a LARRY ALLEN CONSTRUCTION, in an amount in excess of TWENTY FIVE THOUSAND (\$25,000) DOLLARS, plus costs, interest and attorney's fees.

**JURY TRIAL DEMANDED**

**COUNT IV**  
**UNFAIR TRADE PRACTICES**

37. The averments contained in paragraphs 1 through 36 are hereby incorporated by reference.

38. Plaintiff's breaches of warranties relating to construction and true condition of Defendants' residence constitute a violation or violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §202-1 *et seq.*, because such conduct:

- a. failed to comply with the warranties and guarantees given to Defendants;
- b. represented to Defendants that the residence and property was of a particular standard, quality or grade when it is of another;
- c. represented to Defendants that the residence had certain characteristics, uses or benefits that they do not have.

39. As a direct and proximate cause of Plaintiff's violation of the Unfair Trade Practices and Consumer Protection Law, Defendants have suffered the injuries and damages set forth in Paragraph 25 hereto.

WHEREFORE, Defendants, MICHAEL SPEED and WENDY SHOEMAKER, a/k/a WENDY SPEED, hereby demand judgment in their favor and against Plaintiff, LARRY D. ALLEN, t/d/b/a LARRY ALLEN CONSTRUCTION, in an amount in excess of TWENTY FIVE THOUSAND (\$25,000) DOLLARS, plus costs, interest and attorney's fees.

**JURY TRIAL DEMANDED**

**NEW MATTER**

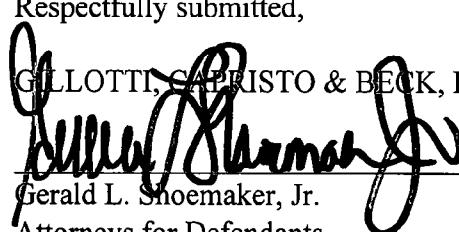
40. The averments contained in paragraphs 1 through 39 are hereby incorporated by reference.
41. Plaintiff's complaint fails to state a claim for which relief can be granted.
42. Plaintiff's claims are barred by the statute of limitations.
43. Plaintiff's claims are barred by the doctrine of estoppel.
44. Plaintiff's claims are barred by the doctrine of laches.
45. Plaintiff's claims are barred by the doctrine of waiver.
46. Plaintiff's claims are barred by the doctrine of res judicata, collateral estoppel and issue preclusion.
47. The Plaintiff would be unjustly enriched if he were awarded the money he seeks from Defendants.
48. Plaintiff's claims are barred by the doctrine of accord and satisfaction.
49. Plaintiff's claims are barred by the doctrine of impossibility of performance.
50. This Court lacks jurisdiction to hear Plaintiff's claims.
51. This Court is not the proper venue within which to litigate Plaintiff's claims.

WHEREFORE, Defendants/Plaintiffs in Counterclaim request judgment in their favor and against Plaintiff.

**JURY TRIAL DEMANDED**

Respectfully submitted,

GILLOTTI, CAPRISTO & BECK, P.C.

  
Gerald L. Shoemaker, Jr.  
Attorneys for Defendants

**VERIFICATION**

We, MICHAEL SPEED and WENDY SPEED, the undersigned, do hereby acknowledge and verify that we are the Defendants/Plaintiffs in Counterclaim in the foregoing Answer Counterclaim and New Matter and that the facts contained therein are true and correct to the best of our knowledge, information and belief.

We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

11-19-01  
DATE

  
MICHAEL SPEED

11-19-01  
DATE

  
WENDY SPEED

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,

Plaintiff,

v.

No. 01 - 1516 - CD

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,

Defendants.

Type of Pleading:

Answer To Counterclaim  
and New Matter

Filed on behalf of:  
Plaintiff

Counsel of Record for  
this party:

James A. Naddeo, Esq.  
Pa I.D. 06820

211 1/2 E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(814) 765-1601

**FILED**

DEC 13 2001

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

**ANSWER TO COUNTERCLAIM**

NOW COMES the Plaintiff, Larry D. Allen, t/d/b/a Larry  
Allen Construction, and by his attorney, James A. Naddeo,  
Esquire, sets for the following Answer to New Matter:

**COUNT I**

17. Paragraph 17 is denied. In further answer  
thereto, Plaintiff incorporates the allegations of his Complaint  
by reference and makes them a part hereof.

18. Paragraph 18 is admitted.

19. Paragraph 19 is admitted as stated. In further  
answer thereto it is alleged the Defendant, Michael Speed, in  
many instances made construction decisions which were in  
conflict with that of Plaintiff.

20. Paragraph 20 is admitted in so far as it states  
that the contract price was \$105,400. The remainder of said

allegation is neither admitted nor denied for the reason that it fails to allege an ultimate fact, but on the contrary it is a conclusion.

21. Paragraph 21 is denied and to the contrary it is alleged that the contract signed by the parties contains none of the express warranties alleged by Defendant as appears from the contract attached to Plaintiff's Complaint as Exhibit "A", which contract is incorporated herein by reference.

22. Paragraph 22 is denied and to the contrary it is alleged that during the course of construction, the Defendants hired various subcontractors over which Plaintiff had no control. In further answer thereto it is believed that said contractors worked under the supervision and control of Defendants.

23. Paragraph 23 States a conclusion to which no answer is required. To the extent that an answer may be required said allegation is denied and on the contrary it is alleged that Defendants directly interfered with the construction of the dwelling by employing various subcontractors who worked under Defendants' direct supervision and control thereby causing Plaintiff a loss of profit.

24. Paragraph 24 states a conclusion to which no answer is required. To the extent that an answer may be

required, it is generally denied. In further answer thereto, Plaintiff alleges as follows:

a. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

b. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

c. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

d. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

e. Is denied and on the contrary it is alleged that Plaintiff was never afforded an opportunity to complete construction or correct any defects that may have existed for the reason that Defendants ordered Plaintiff from their property on or about the first week of March, 2001.

25. Paragraph 25 states a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied. In further answer thereto, Plaintiff alleges as follows:

a. Denied and on the contrary it is alleged that the water pipes installed by Plaintiff complied with all Federal, State or Local Codes.

b. Admitted as stated. In further answer thereto it is alleged that said cracks were caused by Defendants failure to tar the foundation walls which prevented Plaintiff from back filling prior to the onset of frost. In further answer thereto it is alleged that the cracks were repaired by Plaintiff's mason at no cost to Defendants.

c. Admitted as stated. In further answer thereto it is alleged that Plaintiff gave Defendants an appropriate credit for the cost of extending the deck.

d. Admitted as stated. In further answer thereto it is alleged that the deck was incomplete when Plaintiff was ordered from Defendants' property.

e. Denied and on the contrary it is alleged that all electrical work was in compliance with code and had passed inspection prior to Plaintiff being directed to remove himself from Defendants' property.

f. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

g. Admitted as stated. In further answer thereto it is alleged that Defendants ordered Plaintiff to remove himself from their property prior to Plaintiff having an opportunity to install the cabinets.

h. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

i. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

j. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

k. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

l. Denied and on the contrary it is alleged that Plaintiff's Contract with Defendants called for demolition of Defendants' prior residence and removal of all debris with the exception of a rear porch roof and post which were salvaged and left on Defendants' premises.

m. Admitted as stated. In further answer thereto it is alleged that 20-year shingles were used at the

insistence of Defendants who selected alternate materials. In further answer thereto it is alleged that Plaintiff gave Defendants appropriate credit for the difference in cost between 20-year and 40-year shingles.

n. Denied and on the contrary it is alleged that Defendants were never required to employ subcontractors but on the contrary did so in violation of their Agreement with Plaintiff who lost profit on the work that he was entitled to perform.

o. It is denied that Defendants were ever forced to pay for materials. It is admitted, however, that Defendants, on occasion, purchased materials which they preferred over the materials called for by the contract. In further answer thereto it is alleged that Plaintiff gave Defendants appropriate credit for said purchases.

26. Paragraph 26 is denied and on the contrary it is alleged that Defendants directed Plaintiff to remove his men, equipment and materials from Defendants' premises during the first week of March, 2001, thereby preventing Plaintiff from completing the construction and/or rectifying any defects that may have been then and there existing.

27. Paragraph 27 states a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

28. Paragraph 28 states a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied. In further answer thereto Plaintiff alleges as follows:

a. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

b. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

c. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

d. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

e. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

f. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

g. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

h. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

i. Denied in that after reasonable investigation Plaintiff is without knowledge or information to form a belief as to the truth of said averment.

WHEREFORE, Plaintiff requests judgment as set forth in his Complaint.

COUNT II

29. Plaintiff incorporates the allegations of his Complaint and the answers to Paragraphs 17 through 28 of Defendants' Counterclaim by reference and makes them a part hereof.

30. Paragraph 30 states a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

31. Paragraph 31 states a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

32. Paragraph 32 states a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

WHEREFORE, Plaintiff requests judgment as set forth in his Complaint.

COUNT III

33. Plaintiff incorporates the allegations of his Complaint and the answers to Paragraphs 17 through 32 of Defendants' Counterclaim by reference and makes them a part hereof.

34. Paragraph 34 states a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

35. Paragraph 32 states a conclusion to which no answer is required. To the extent that an answer may be required Plaintiff alleges as follows:

a. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

b. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

c. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

d. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

e. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

f. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

g. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

h. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

36. Paragraph 36 states a conclusion of law to which no answer is required.

WHEREFORE, Plaintiff requests judgment as set forth in his Complaint.

COUNT IV

37. Plaintiff incorporates the allegations of his Complaint and the answers to Paragraphs 17 through 36 of Defendants' Counterclaim by reference and makes them a part hereof.

38. Paragraph 38 states a conclusion of law to which no answer is required. In further answer thereto Plaintiff alleges as follows:

a. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

b. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

c. States a conclusion to which no answer is required. To the extent that an answer may be required, it is generally denied.

39. Paragraph 39 states a conclusion of law to which no answer is required.

WHEREFORE, Plaintiff requests judgment as set forth in his Complaint.

**ANSWER TO NEW MATTER**

40. Plaintiff incorporates the allegations of his Complaint and the answers to Paragraphs 17 through 39 of Defendants' Counterclaim by reference and makes them a part hereof.

41. Paragraph 41 states a conclusion of law to which no answer is required.

42. Paragraph 42 states a conclusion of law to which no answer is required.

43. Paragraph 43 states a conclusion of law to which no answer is required.

44. Paragraph 44 states a conclusion of law to which no answer is required.

45. Paragraph 45 states a conclusion of law to which no answer is required.

46. Paragraph 46 states a conclusion of law to which no answer is required.

47. Paragraph 47 states a conclusion of law to which no answer is required.

48. Paragraph 48 states a conclusion of law to which no answer is required.

49. Paragraph 49 states a conclusion of law to which no answer is required.

50. Paragraph 50 states a conclusion of law to which no answer is required.

51. Paragraph 51 states a conclusion of law to which no answer is required.

WHEREFORE, Plaintiff requests judgment as set forth in his Complaint.

James A. Naddeo  
James A. Naddeo  
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA)

ss.

COUNTY OF CLEARFIELD

)

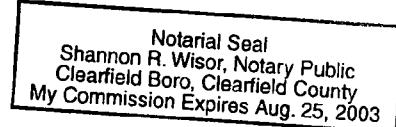
Before me, the undersigned officer, personally appeared LARRY D. ALLEN, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Answer to New Matter and Counterclaim are true and correct to the best of his knowledge, information and belief.

Larry D. Allen

Larry D. Allen

SWORN and SUBSCRIBED before me this 10th day of December, 2001.

Shannon R. Wisor



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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Answer to Counterclaim and New Matter filed in the above-captioned action was served on the following persons and in the following manner on the 13th day of December, 2001:

First-Class Mail, Postage Prepaid

Gerald L. Shoemaker, Jr., Esquire  
Gillotti, Capristo & Beck, PC  
Suite 215, Grant Building  
310 Grant Street  
Pittsburgh, PA 15219-2201

  
\_\_\_\_\_  
James A. Naddeo  
Attorney for Plaintiff

CLERFIELD, PENNSYLVANIA 16830  
PO. BOX 552  
211 1/2 EAST LOCUST STREET  
ATTORNEY AT LAW  
JAMES A. NADDEO

\_\_\_\_\_  
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**FILED**

01/03/01 1:00  
DEC 13 2001 Atty Nadded

William A. Shaw  
Prothonotary

*WAS*

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,

Plaintiff,

v.

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,

Defendants.

\* No. 01 - 1516 - CD

\* Type of Pleading:

\* Notice of Taking  
\* Deposition for Purpose  
\* of Copying Records Only

\* Filed on behalf of:  
\* Plaintiff

\* Counsel of Record for  
\* this party:

\* James A. Naddeo, Esq.  
\* Pa I.D. 06820

\* 211 1/2 E. Locust Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

**FILED**

DEC 19 2001

015391/catty Naddeo  
William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

NOTICE OF TAKING DEPOSITION  
FOR PURPOSE OF COPYING RECORDS ONLY

TO: Diana Mina  
Loss Draft Department  
Homecoming Financial  
333 South Anita Drive, Suite 500  
Orange, CA 92868

NOTICE IS HEREBY GIVEN that pursuant to the Rules of Civil Procedure, the oral deposition of Diana Mina, of Homecoming Financial will be taken on Tuesday, January 8, 2002, at 3:00pm, at the office of James A. Naddeo, 211 1/2 East Locust Street, Clearfield, Pennsylvania, 16830.

The deponent is directed to bring with her, Defendant's, Michael Speed, Construction Inspection Reports concerning Loan No.: 0431354968.

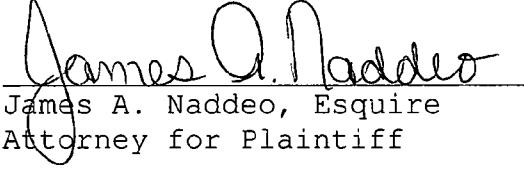
It is not necessary for the deponent to personally appear at the deposition if the information requested is forwarded to the office of the undersigned by the date scheduled for this

deposition. If the file is forwarded by the scheduled date, then it will not be necessary for the deponent to personally appear to give testimony, there will be no interrogation and no attorneys will be present.

THE PRIMARY PURPOSE OF THIS DEPOSITION IS TO OBTAIN THE CONSTRUCTION INSPECTION REPORTS OF HOMECOMING FINANCIAL PERTAINING TO MICHAEL SPEED, LOAN NO.: 0431354968.

A complete set of reports contained in the loan file of Michael Speed will be provided to all counsel at their expense and upon their written request.

Dated: 12.19.01

  
\_\_\_\_\_  
James A. Naddeo, Esquire  
Attorney for Plaintiff

AFFIDAVIT

COMMONWEALTH OF \_\_\_\_\_ \*  
\* SS  
COUNTY OF \_\_\_\_\_ \*

Personally appeared before me, a Notary Public, in and for said Commonwealth and County, Diana Mina, who being duly sworn according to law, deposes and says that the following facts are true and correct based upon her best knowledge, information and belief.

1. That the undersigned is \_\_\_\_\_.
2. That the foregoing inspection reports of Michael Speed, Loan No.: 0431354968 are a reproduction of the original file in my possession as such \_\_\_\_\_.
3. That the foregoing inspection reports represent a true, accurate and complete set of inspection documents contained in Michael Speed's file relating to Loan No.: 0431354968.

---

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

---

Notary Public

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

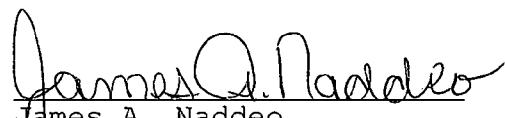
**CERTIFICATE OF SERVICE**

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Notice of Taking Deposition for Purpose of Copying Records Only along with Subpoena filed in the above-captioned action was served on the following persons and in the following manner on the 19th day of December, 2001:

First-Class Mail, Postage Prepaid

Diana Mina  
Loss Draft Department  
Homecoming Financial  
333 South Anita Drive, Suite 500  
Orange, CA 92868

Gerald L. Shoemaker, Jr., Esquire  
Gillotti, Capristo & Beck, PC  
Suite 215, Grant Building  
310 Grant Street  
Pittsburgh, PA 15219-2201

  
James A. Naddeo  
Attorney for Plaintiff

CLERAFFIELD, PENNSYLVANIA 16830  
21 1/2 EAST LOCUST STREET  
ATTORNEY AT LAW  
JAMES A. NADDEO  
\_\_\_\_\_  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,

Plaintiff,

v.

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,

Defendants.

\* No. 01 - 1516 - CD

\* Type of Pleading:

\* Certificate of Service

\* Filed on behalf of:

\* Plaintiff

\* Counsel of Record for  
this party:

\* James A. Naddeo, Esq.  
\* Pa I.D. 06820

\* 211 1/2 E. Locust Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

**FILED**

JAN 21 2002

01104211cc atty  
William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

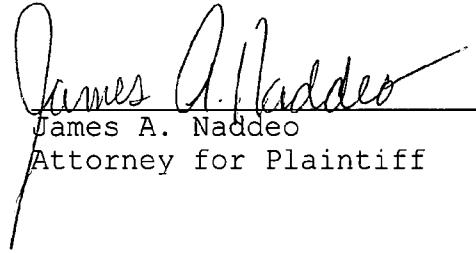
**CERTIFICATE OF SERVICE**

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Taking Deposition of Defendant, Michael Speed, filed in the above-captioned action was served on the following persons and in the following manner on the 21st day of January, 2002:

First-Class Mail, Postage Prepaid

Gerald L. Shoemaker, Jr., Esquire  
Gillotti, Capristo & Beck, PC  
Suite 215, Grant Building  
310 Grant Street  
Pittsburgh, PA 15219-2201

ASAP Court Reporting  
PO Box 345  
Ebensburg, PA 15931

  
\_\_\_\_\_  
James A. Naddeo  
Attorney for Plaintiff

CLERAFFIELD, PENNSYLVANIA 16830  
P.O. BOX 552  
211 1/2 EAST LOCUST STREET  
ATTORNEY AT LAW  
JAMES A. NADDEO

\_\_\_\_\_  
Lap over margin \_\_\_\_\_

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,

Plaintiff,

v.

No. 01 - 1516 - CD

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,

Defendants.

Type of Pleading:

Certificate of Service

Filed on behalf of:

Plaintiff

Counsel of Record for  
this party:

James A. Naddeo, Esq.

Pa I.D. 06820

211 1/2 E. Locust Street

P.O. Box 552

Clearfield, PA 16830

(814) 765-1601

**FILED**

JAN 21 2002

010:42:10:00  
William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,

Plaintiff,

v.

No. 01 - 1516 - CD

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,

Defendants.

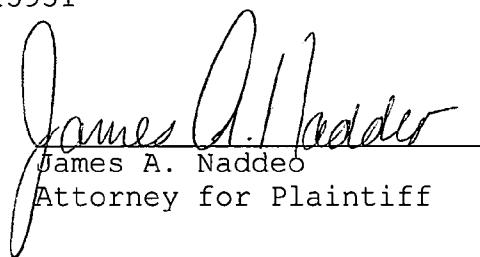
**CERTIFICATE OF SERVICE**

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Taking Deposition of Defendant, Wendy Speed, filed in the above-captioned action was served on the following persons and in the following manner on the 21st day of January, 2002:

First-Class Mail, Postage Prepaid

Gerald L. Shoemaker, Jr., Esquire  
Gillotti, Capristo & Beck, PC  
Suite 215, Grant Building  
310 Grant Street  
Pittsburgh, PA 15219-2201

ASAP Court Reporting  
PO Box 345  
Ebensburg, PA 15931

  
James A. Naddeo  
Attorney for Plaintiff

CLEARFIELD, PENNSYLVANIA 16830  
PO. BOX 552  
211½ EAST LOGCUST STREET  
ATTORNEY AT LAW  
JAMES A. NADDEO

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,

Plaintiff,

v.

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,

Defendants.

\* No. 01 - 1516 - CD

\* Type of Pleading:

\* **PRAECIPE TO LIST FOR  
TRIAL**

\* Filed on behalf of:  
\* Plaintiff

\* Counsel of Record for  
this party:

\* James A. Naddeo, Esq.  
\* Pa I.D. 06820

\* 211 1/2 E. Locust Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

**FILED**

**MAR 28 2002**

**William A. Shaw  
Prothonotary**

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

**PRAECIPE TO LIST FOR TRIAL**

TO THE PROTHONOTARY:

Please place the above-captioned matter on the next list for trial. In support thereof I certify the following:

1. There are no Motions outstanding.
2. Discovery has been completed and the case is ready for trial.
3. The case is to be heard jury.
4. Notice of the Praecipe has been given to opposing counsel.
5. The time for trial is estimated at two (2) days.

Date: 3/28/02

James A. Naddeo  
James A. Naddeo, Esquire  
Attorney for Plaintiff

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

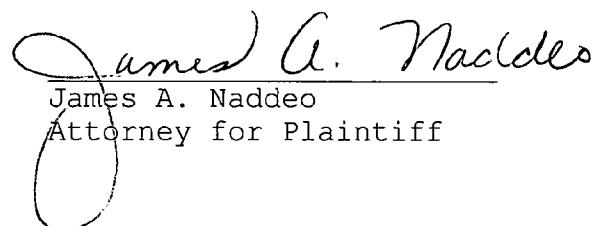
LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Praeclipe to List for Trial filed in the above-captioned action was served on the following person and in the following manner on the 28th day of March, 2002:

First-Class Mail, Postage Prepaid

Gerald L. Shoemaker, Jr., Esquire  
Gillotti, Capristo & Beck, PC  
Suite 215, Grant Building  
310 Grant Street  
Pittsburgh, PA 15219-2201

  
James A. Naddeo  
Attorney for Plaintiff

CLERFIELD, PENNSYLVANIA 16830  
PO. BOX 552  
211 1/2 EAST LOCUST STREET  
ATTORNEY AT LAW  
JAMES A. NADDEO

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**FILED**

MAR 28 2002

0103411C Catty Masdeo  
William A. Shaw  
Prothonotary

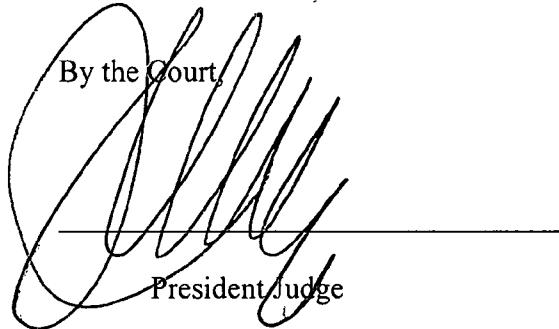
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*EJG*

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

LARRY D. ALLEN, t/d/b/a :  
LARRY ALLEN CONSTRUCTION :  
: :  
-vs- : No. 01 - 1516 - CD  
: :  
MICHAEL SPEED and WENDY :  
SHOEMAKER, now known as :  
WENDY SPEED : :  
:

**PRE-TRIAL ORDER**

NOW, this 27<sup>th</sup> day of August, 2002, following pre-trial conference in the  
above-captioned matter, it is the ORDER of this Court that jury selection shall be had on  
Friday, August 30, 2002, at 9:00 a.m. with trial by jury to commence on Monday, December  
16, 2002, at 9:00 a.m.

By the Court,  
  
President Judge

**FILED**

AUG 27 2002

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,

Plaintiff,

v.

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,

Defendants.

\* No. 01 - 1516 - CD

\* Type of Pleading:

\* **ANSWER TO MOTION TO  
WITHDRAW ENTRY OF  
APPEARANCE**

\* Filed on behalf of:  
\* Plaintiff

\* Counsel of Record for  
\* this party:

\* James A. Naddeo, Esq.  
\* Pa I.D. 06820

\* 211 1/2 E. Locust Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

**FILED**

AUG 30 2002

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

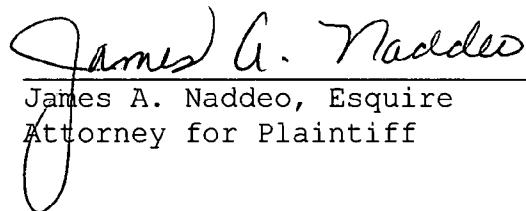
ANSWER TO MOTION TO  
WITHDRAW ENTRY OF APPEARANCE

NOW COMES the Plaintiff, Larry D. Allen, t/d/b/a Larry  
Allen Construction, and by his attorney, James A. Naddeo,  
Esquire, sets for the following Answer to Motion to Withdraw  
Entry of Appearance:

1. Admitted.
2. Denied. After reasonable investigation Plaintiff  
is without knowledge or information sufficient to form a belief as  
to the truth of said averment.
3. Denied. After reasonable investigation Plaintiff  
is without knowledge or information sufficient to form a belief as  
to the truth of said averment.

WHEREFORE, Plaintiff respectfully requests that  
counsel's Motion to Withdraw Entry of Appearance be denied pending  
hearing.

Respectfully submitted,

  
\_\_\_\_\_  
James A. Naddeo, Esquire  
Attorney for Plaintiff

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Plaintiff's Answer to Motion to Withdraw Entry of Appearance filed in the above-captioned action was served on the following person and in the following manner on the 30th day of August, 2002:

First-Class Mail, Postage Prepaid

Gerald L. Shoemaker, Jr., Esquire  
Gillotti, Capristo & Beck, PC  
Suite 215, Grant Building  
310 Grant Street  
Pittsburgh, PA 15219-2201

*James A. Naddeo*  
James A. Naddeo  
Attorney for Plaintiff

CLEARFIELD, PENNSYLVANIA 16830  
P.O. BOX 552  
211 1/2 EAST LOCUST STREET  
ATTORNEY AT LAW  
JAMES A. NADDEO

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**FILED**

AUG 30 2007  
07:52 a.m.  
William A. Shaw  
Prothonotary

One Cece to attorney

ESQ

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
Plaintiff, \*  
\*  
v. \*  
\* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
Defendants. \*

**FILED**

OCT 31 2002

RULE

William A. Shaw  
Prothonotary

AND NOW, this 31<sup>st</sup> day of October, 2002, upon  
consideration of the attached Petition, a Rule is hereby issued  
upon Defendants to show cause why the Motion should not be  
granted. Rule Returnable the 25 of November, 2002, at  
9:00 A.m. in Courtroom No. 1 for hearing.

NOTICE

A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH  
TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING  
PETITION, YOU MUST TAKE ACTION 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.

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  
CLEARFIELD, PA 16830  
(814) 765-2641, Ext. 5982

BY THE COURT,

Judge

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff,

v.

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,  
Defendants.

\*  
\*  
\*  
\*  
\* No. 01 - 1516 - CD  
\*

\*  
\*  
\*  
\*  
\*  
\*

Type of Pleading:

\* **CERTIFICATE OF SERVICE**

\*  
\*  
\* Filed on behalf of:  
\* Plaintiff  
\*  
\* Counsel of Record for  
\* this party:  
\*  
\*  
\* James A. Naddeo, Esq.  
\* Pa I.D. 06820  
\*  
\* 211 1/2 E. Locust Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

FILED

OCT 31 2002

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,

Plaintiff,

v.

\* No. 01 - 1516 - CD

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,

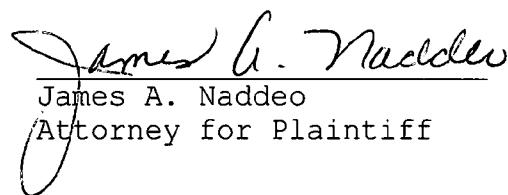
Defendants.

**CERTIFICATE OF SERVICE**

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Motion in Limine filed in the above-captioned action was served on the following person and in the following manner on the 31st day of October, 2002:

First-Class Mail, Postage Prepaid

Gerald L. Shoemaker, Jr., Esquire  
Gillotti, Capristo & Beck, PC  
Suite 215, Grant Building  
310 Grant Street  
Pittsburgh, PA 15219-2201

  
James A. Naddeo  
Attorney for Plaintiff

CLERARFIELD, PENNSYLVANIA 16830  
P.O. BOX 552  
211 1/2 EAST LOCUST STREET  
ATTORNEY AT LAW  
JAMES A. NADDEO

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FILED

013:4281  
OCT 31 2002  
6cc  
KJF

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION, Plaintiff : CIVIL ACTION - AT LAW  
vs. : No. 01-1516-CD  
MICHAEL SPEED and WENDY SHOEMAKER, now known as  
WENDY SPEED, Defendants : Type of Pleading:  
Praeclipe for  
Substitution of Counsel  
Filed on behalf of:  
Defendants  
Counsel of Record for This  
Party:  
Matthew B. Taladay, Esq.  
Supreme Court No. 49663  
Hanak, Guido and Taladay  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801  
814-371-7768

**FILED**

NOV 25 2002

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff

vs.

No. 01-1516-CD

MICHAEL SPEED and WENDY  
SHOEMAKER, now known as  
WENDY SPEED,

Defendants :

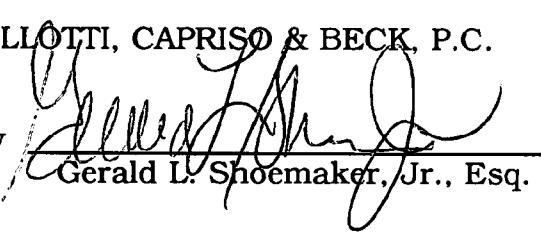
PRAECIPE FOR SUBSTITUTION OF COUNSEL

TO THE PROTHONOTARY:

Kindly withdraw my appearance on behalf of the  
Defendants, Michael Speed and Wendy Shoemaker, now known as  
Wendy Speed, in the above captioned matter.

GILLOTTI, CAPRISO & BECK, P.C.

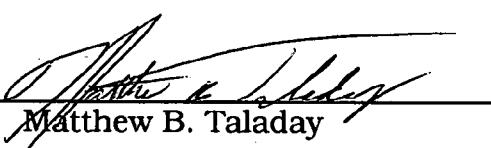
By

  
Gerald L. Shoemaker, Jr., Esq.

Kindly enter my appearance on behalf of the Defendants.

HANAK, GUIDO and TALADAY

By

  
Matthew B. Taladay

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff

vs.

MICHAEL SPEED and WENDY  
SHOEMAKER, now known as  
WENDY SPEED,

Defendants

CIVIL ACTION - AT LAW

No. 01-1516-CD

Type of Pleading:

**DEFENDANTS' RESPONSE  
TO PLAINTIFF'S MOTION  
IN LIMINE**

Filed on behalf of:

**DEFENDANTS**

Counsel of Record for This  
Party:

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

814-371-7768

**FILED**

NOV 25 2002

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a :  
LARRY ALLEN CONSTRUCTION, :  
Plaintiff :  
vs. :  
MICHAEL SPEED and WENDY :  
SHOEMAKER, now known as :  
WENDY SPEED, :  
Defendants :

**DEFENDANTS' RESPONSE TO**  
**PLAINTIFF'S MOTION IN LIMINE**

AND NOW, comes the Defendants, MICHAEL SPEED and WENDY SHOEMAKER, now known as WENDY SPEED, by and through their attorneys, HANAK, GUIDO AND TALADAY, and set forth the following:

1. Plaintiffs filed their Complaint in the above captioned matter on September 11, 2001.
2. On November 19, 2001, Attorney Gerald Shoemaker filed Defendants' Answer and New Matter.
3. He did so with the understanding that Defendants would subsequently obtain other trial counsel.
4. Defendants then met with Attorney Anthony Gerace and were under the understanding that he would represent Defendants in the above captioned matter.
5. Attorney Gerace had contacts with Plaintiff's counsel in regard to the above captioned matter.

6. On July 24, 2002, Attorney Shoemaker forwarded Attorney Gerace a Petition to Substitute Counsel and a Notice of the Call of the List to be held on August 1, 2002. See attached letter marked as Exhibit "A".

7. At the Call of the List, Defendant, MICHAEL SPEED, was present and informed the Court that Attorney Gerace would be representing Defendants in the above captioned matter.

8. On August 8, 2002, Attorney Shoemaker forwarded Notice of the Pre-Trial Conference on the above captioned matter to Attorney Gerace. See attached letter marked as Exhibit "B".

9. Thereafter, Attorney Gerace notified Attorney Shoemaker and Defendants that he would not represent Defendants in the above captioned matter.

10. Attorney Shoemaker attended the pre-trial conference held on August 27, 2002.

11. At that time, Attorney Shoemaker informed the Court of Attorney Gerace's refusal to represent the Defendants.

12. Attorney Shoemaker also informed the Court that he intended to file a written Motion to Continuance and a Motion to Withdraw.

13. The Court informed him that these motions would be denied. With this in mind, Attorney Shoemaker did not file these Motions.

14. At the pre-trial conference, the Court inquired about Defendants' failure to file a Pre-Trial Statement.

15. Attorney Shoemaker then informed the Court of his previously belief and reliance thereon that Attorney Gerace was representing Defendant and was preparing a Pre-Trial Statement.

16. Soon after the Pre-Trial Conference, Attorney Shoemaker retained Walter G. M. Schneider, III, P.E., of John C. Hoss, Inc., as an expert witness.

17. Shortly after receiving Mr. Schneider's report, Attorney Shoemaker prepared a Pre-Trial Statement. This Pre-Trial Statement was filed on October 5, 2002.

18. In his report, Mr. Schneider offers his expert opinion as to the substantive claims made by both parties. As such, Mr. Schneider's report does not present any new claim that would surprise or prejudice Plaintiffs.

19. Prior to Defendant's filing of their Pre-Trial Statement, a jury was selected and trial date was set for December 16, 2002.

20. Defendants have new obtained the undersigned counsel to represent them in this case and a Praecipe for Substitution of Counsel has been filed with the Prothonotary.

21. Defendants and their undersigned counsel are prepared to proceed to trial as scheduled.

22. Plaintiffs' claim prejudice due to the fact that Plaintiffs' counsel is scheduled to appear at trial in another court on December 16, 2002.

23. It is Defendants' belief that Plaintiffs' counsel must have scheduled a conflicting trial under the mistaken belief that

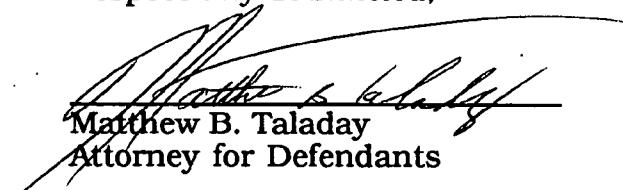
Defendants' tardiness in filing a Pre-Trial Statement somehow put them out of Court and relieved Plaintiffs from their obligation to appear at trial in the above captioned matter and prove their claim.

24. Even if in the event that Defendants call no witnesses or produce no evidence at trial, Plaintiffs still carry the burden of presenting their case at trial and subjecting their witnesses to Defendants' cross examination.

25. Plaintiffs' claim of prejudice based on his counsel scheduling of a conflicting trial is without merit.

WHEREFORE, Defendants respectfully request this Honorable Court to deny Plaintiff's Motion in Limine.

Respectfully submitted,

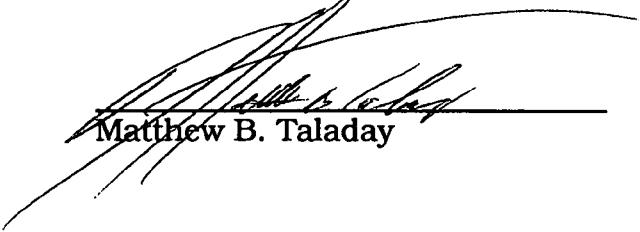


Matthew B. Taladay  
Attorney for Defendants

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 25<sup>th</sup> day of November, 2002, I served a copy of the within Defendants' Response to Plaintiff's Motion in Limine, by personally handing a copy of the same, to:

James A. Naddeo, Esq.  
211-1/2 E. Locust Street  
Clearfield, PA 16830

  
Matthew B. Taladay

## GILLOTTI, CAPRISTO &amp; BECK, P.C.

ATTORNEYS AT LAW

SUITE 215 • GRANT BUILDING  
310 GRANT STREET  
PITTSBURGH, PENNSYLVANIA 15219-2201  
TELEPHONE (412) 391-4242  
FAX (412) 391-7693

July 24, 2002

Anthony Gerace, Esquire  
Dunaway, Weyandt, McCormick,  
Gerace & McGlaughlin  
919 University Drive  
State College, PA 16801

*Re: Larry D. Allen et al. v. Michael and Wendy Speed, nee Shoemaker*

Dear Mr. Gerace:

It is my understanding that you have been and will be representing Mr. and Mrs. Speed in the above-captioned action. As you are aware, I drafted the Answer and Counterclaim. My name, therefore, is coming up as counsel of record. I received the enclosed notice from the Court of Common Pleas of Clearfield County, which set the call for August 1, 2002 at 10:00 a.m. I trust you will be handling this. To that end, I enclose for your signature and filing a Praecept to Substitute Counsel. If you would kindly provide me with a copy of the document once it has been executed and filed, I would appreciate it.

Should you have any questions, certainly feel free to contact me.

Very truly yours,

GILLOTTI, CAPRISTO & BECK, P.C.

By Gerald L. Shoemaker, Jr.  
Gerald L. Shoemaker, Jr.

GLS:tt  
Enclosure  
cc: Mr. & Mrs. Michael Speed

EXHIBIT "A"

## GILLOTTI, CAPRISTO &amp; BECK, P.C.

ATTORNEYS AT LAW

SUITE 215 • GRANT BUILDING  
310 GRANT STREET  
PITTSBURGH, PENNSYLVANIA 15219-2201  
TELEPHONE (412) 391-4242  
FAX (412) 391-7693

August 8, 2002

Anthony Gerace, Esquire  
Dunaway, Weyant, McCormick,  
Gerace & McGlaughlin  
919 University Drive  
State College, PA 16801

*Re: Larry D. Allen et al. v. Michael and Wendy Speed, nee Shoemaker*

Dear Mr. Gerace:

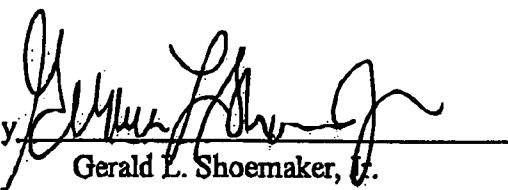
I have not received a copy of the Praecipe to Substitute Counsel in the above matter. If you would kindly send me a copy, I would appreciate it. Since you are representing Mr. & Ms. Speed, I enclose a copy of Plaintiff's Pre-Trial Memorandum, which I received this day.

Should you have any questions, certainly feel free to contact me.

Very truly yours,

GILLOTTI, CAPRISTO & BECK, P.C.

By

  
Gerald L. Shoemaker, Jr.

GLS:tt

Enclosure

cc: Mr. & Mrs. Michael Speed

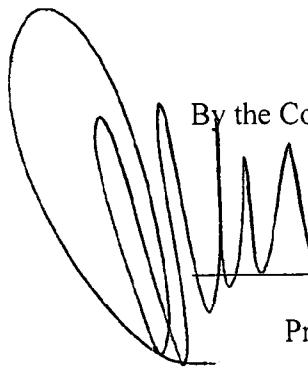
EXHIBIT "B"

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

LARRY D. ALLEN t/d/b/a :  
LARRY ALLEN CONSTRUCTION :  
: :  
-vs- : No. 01 - 1516 - CD  
: :  
MICHAEL SPEED and WENDY :  
SHOEMAKER, now known as :  
WENDY SPEED : :

**ORDER**

NOW, this 25<sup>th</sup> day of November, 2002, this being the day and date set for argument into Motion in Limine filed on behalf of Plaintiff above-named, under the provisions of Clearfield County Rule of Civil Procedure 212.4, it is the ORDER of this Court that said Motion be and is hereby granted and Defendant's witness Walter G. M. Schneider, III, shall be and is hereby precluded from testifying at trial with regards to any matter contained in his report.

By the Court,  
  
President Judge

**FILED**

NOV 20 2002

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff

vs.

MICHAEL SPEED and WENDY  
SHOEMAKER, now known as  
WENDY SPEED,

Defendants

CIVIL ACTION - AT LAW

No. 01-1516-CD

Type of Pleading:

**DEFENDANTS' MOTION  
FOR RECONSIDERATION  
OF ORDER IN LIMINE**

Filed on behalf of:

DEFENDANTS

Counsel of Record for This  
Party:

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

814-371-7768

**FILED**

DEC 03 2002

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff

vs.

No. 01-1516-CD

MICHAEL SPEED and WENDY  
SHOEMAKER, now known as  
WENDY SPEED,

Defendants :

**DEFENDANTS' MOTION FOR  
RECONSIDERATION OF ORDER IN LIMINE**

AND NOW, comes the Defendants, MICHAEL SPEED and WENDY SHOEMAKER, now known as WENDY SPEED, by and through their attorneys, HANAK, GUIDO AND TALADAY, and hereby present the within motion for reconsideration:

1. Plaintiff has filed with this Court a Motion in Limine seeking to preclude the testimony of Defendants' proffered expert witness, Walter G.M. Schneider, III, P.E. The basis of this motion is Defendants' failure to comply with Local Rule 212.4 in that Defendants, through prior counsel, did not file a pre-trial statement containing the expert witness statement until October 25, 2002.

2. Defendants, through current counsel, have filed a Response to the Motion in Limine contending that while there was not technical compliance with the Local Rule of Procedure, the Defendants should nevertheless be permitted to offer testimony of

their expert in that Plaintiff would suffer no prejudice and notice was timely.

3. Oral Argument on this Motion was held before this Honorable Court on November 25, 2002 at which time Plaintiff's Motion in Limine was granted and the Court issued an Order, attached hereto as Exhibit "A", precluding any testimony from Defendants' proffered witness.

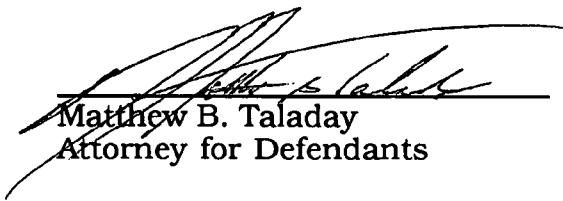
4. Based on discussions at oral argument, it is the understanding of Defendants' counsel that the Court has entered this Order for the reason that Plaintiff's were precluded from conducting voir dire regarding any bias or prejudice of potential jurors arising from knowledge or contact or dealings with the Defendants' expert witness. Defendants' counsel respectfully suggests that any potential prejudice of the jury panel could be explored at additional voir dire, to be conducted prior to the commencement of trial in this matter to determine whether any of the potential jurors would be unable to fairly decide this case on the evidence presented or would give undue weight to expert testimony if Defendants' expert were permitted to testify.

5. Defendants are severely hampered in their ability to defend this case and to assert the matters set forth in the Counterclaim without expert testimony. Plaintiff will suffer no undue prejudice by permitting the testimony of Defendants' expert witness in that the issues which are subject to testimony are factually set forth

in the Answer to Complaint, New Matter and Counterclaim and are well known to the Plaintiff.

WHEREFORE, it is respectfully requested that this Court grant reconsideration of its Order in Limine and issue an Order rescinding the prior Order in Limine and permitting Defendants' expert, Walter G.M. Schneider, III, to testify.

Respectfully submitted,



Matthew B. Taladay  
Attorney for Defendants

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

LARRY D. ALLEN t/d/b/a	:	
LARRY ALLEN CONSTRUCTION	:	
:		
-vs-	:	No. 01-1516-CD
:		
MICHAEL SPEED and WENDY	:	
SHOEMAKER, now known as	:	
WENDY SPEED	:	

**ORDER**

NOW, this 25<sup>th</sup> day of November, 2002, this being the day and date set for argument into Motion in Limine filed on behalf of Plaintiff above-named, under the provisions of Clearfield County Rule of Civil Procedure 212.4, it is the ORDER of this Court that said Motion be and is hereby granted and Defendant's witness Walter G. M. Schneider, III, shall be and is hereby precluded from testifying at trial with regards to any matter contained in his report.

By the Court,

/s/ JOHN K. REILLY, JR.

---

President Judge

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

NOV 26 2002

Attest.

*John K. Reilly*  
Prothonotary/  
Clerk of Courts

**EXHIBIT "A"**

**FILED**

10:35 AM  
DEC 03 2002  
1cc to  
Motion to CA

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff

vs.

No. 01-1516-CD

MICHAEL SPEED and WENDY  
SHOEMAKER, now known as  
WENDY SPEED,

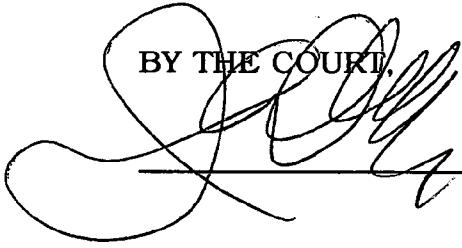
Defendants :

ORDER

AND NOW, this 11 day of December, 2002, Defendants'  
Motion for Reconsideration of Order in Limine is hereby

       granted;  
       denied.

BY THE COURT,



J.

**FILED**

DEC 12 2002

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff

vs.

No. 01-1516-CD

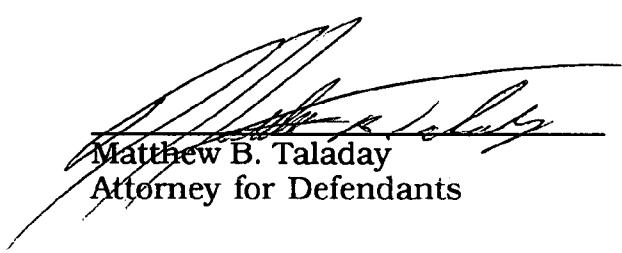
MICHAEL SPEED and WENDY  
SHOEMAKER, now known as  
WENDY SPEED,

Defendants :

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 2nd day of December, 2002,  
I served a copy of the within Defendants' Motion for Reconsideration  
of Order in Limine, by United States first class mail, to:

James A. Naddeo, Esq.  
Attorney for Plaintiff  
211-1/2 E. Locust Street  
Clearfield, PA 16830

  
Matthew B. Taladay  
Attorney for Defendants

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

**FILED**

DEC 12 2002

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

**MOTION TO STRIKE AMENDED ANSWER**  
**COUNTERCLAIM AND NEW MATTER**

NOW COMES the Plaintiff, Larry D. Allen, t/d/b/a Larry Allen Construction, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

1. That Plaintiff's Complaint in this matter was filed on October 1, 2001.
2. That Defendants filed an Answer, Counterclaim and New Matter on November 19, 2001.
3. That Plaintiff filed an Answer to Defendant's Counterclaim and New Matter on December 13, 2001.
4. That Plaintiff filed a Praecept to list this action for trial on March 28, 2002.
5. That Plaintiff filed a Pre-Trial Statement on August 7, 2002.

6. That a Pre-Trial Conference was held in this matter on August 27, 2002.

7. That jury selection was held on August 30, 2002.

8. That Defendants filed their Pre-Trial Statement on October 23, 2002, which Statement for the first time identified Defendants' expert.

9. That Plaintiff filed a Motion in Limine seeking to have the Court prohibit the testimony of Defendants' expert for reasons of prejudice to Plaintiff's case.

10. That by Order of Court dated November 25, 2002, the Court granted Plaintiff's Motion in Limine and precluded the testimony of Walter G. M. Schneider, III, Defendants' alleged witness.

11. That Plaintiff's counsel received a Motion for Reconsideration of the Court's Order of November 25, 2002, on December 4, 2002.

12. That Plaintiff filed an Answer to Defendant's Motion for Reconsideration on December 4, 2002.

13. That Defendant's Motion for Reconsideration has never been scheduled for argument.

14. That on December 12, 2002, Plaintiff's counsel received a copy of a pleading titled "Amended Answer, Counterclaim and New Matter".

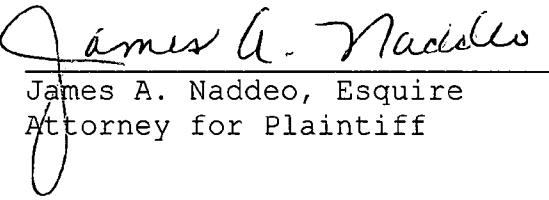
15. That said pleading sets forth for the first time in this litigation the basis for the amounts claimed by Defendants in their Counterclaim.

16. That the Amended Answer, Counterclaim and New Matter filed by Defendant was neither filed with the consent of Plaintiff's counsel nor with leave of Court as required by Pa.R.C.P. 1033.

17. That to permit Defendants to file an amended pleading three (3) working days prior to trial will irreparably prejudice Plaintiff in the preparation of his case in that Plaintiff has already prepared for trial on the theory that Defendants' original Answer, Counterclaim and New Matter failed to specify the manner in which Defendants had calculated their alleged damages thereby providing Plaintiff no opportunity to contest those alleged damages.

WHEREFORE, Plaintiff respectfully requests that Defendants' Amended Answer, Counterclaim and New Matter be stricken.

Respectfully submitted,

  
\_\_\_\_\_  
James A. Naddeo, Esquire  
Attorney for Plaintiff

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

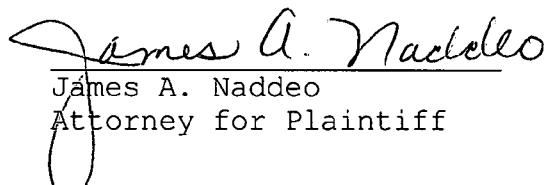
LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Motion to Strike Amended Answer, Counterclaim and New Matter filed in the above-captioned action was served on the following person and in the following manner on the 12th day of December, 2002:

First-Class Mail, Postage Prepaid

Matthew B. Taladay, Esquire  
HANAK, GUIDO and TALADAY  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

  
James A. Naddeo  
Attorney for Plaintiff

CLERARFIELD, PENNSYLVANIA 16830  
R.O. BOX 552  
211 1/2 EAST LOCUST STREET  
ATTORNEY AT LAW  
JAMES A. NADDEO

— Lap over margin —

FILED *rec* *10/26*  
O/3:33 AM  
DEC 12 2002  
Amy Naddeo

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff

vs.

MICHAEL SPEED and WENDY  
SHOEMAKER, now known as  
WENDY SPEED,

Defendants

CIVIL ACTION - AT LAW

No. 01-1516-CD

Type of Pleading:

Certificate  
of Service

Filed on behalf of:

Defendants

Counsel of Record for This  
Party:

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

814-371-7768

FILED

DEC 13 2007

(200)

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff

vs. : No. 01-1516-CD

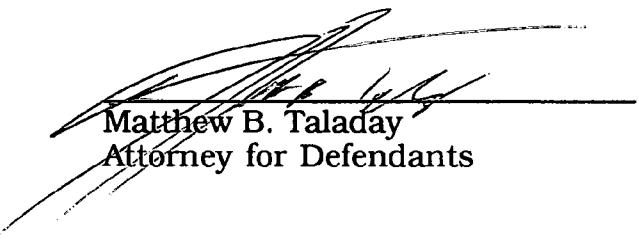
MICHAEL SPEED and WENDY  
SHOEMAKER, now known as  
WENDY SPEED,

Defendants :

CERTIFICATE OF SERVICE

I certify that on the 12th day of December, 2002, a true and correct copy of the Defendants' Amended Answer, New Matter and Counterclaim was hand delivered to the following counsel of record:

James A. Naddeo, Esq.  
Attorney for Plaintiff  
211-1/2 E. Locust Street  
Clearfield, PA 16830

  
Matthew B. Taladay  
Attorney for Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff

vs.

MICHAEL SPEED and WENDY  
SHOEMAKER, now known as  
WENDY SPEED,

Defendants

CIVIL ACTION - AT LAW

No. 01-1516-CD

Type of Pleading:

DEFENDANTS' REQUESTED  
JURY INSTRUCTIONS

Filed on behalf of:

Defendants

Counsel of Record for This  
Party:

Matthew B. Taladay, Esq.  
PA I.D. #49663  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

FILED <sup>NO</sup>  
<sup>13:17 BH</sup> <sub>cc</sub>  
DEC 17 2002

William A. Shaw  
Prothonotary  
*[Signature]*

PL  
Here - United Name  
deb Pay for it

## CONTRACT

A contract is a legally enforceable agreement between two or more parties who have each promised to do, ~~or refrain from doing~~, some lawful act. Whether oral or written, a contract is enforceable if its terms clearly express what each party intended and expected. If the terms of the agreement are not definite and certain, any uncertainty may be clarified by examining the circumstances surrounding the bargain. In this case, it is agreed that there was a contract between the Plaintiff and the Defendants. *Standard Jury Instruction - 15.00 (as modified)*

falling which - ~~need not~~ pay

Accepted

Modified

Refused

## **AMBIGUITY**

**If the terms of a written contract are ambiguous or uncertain, and one of the parties is solely responsible for preparing the written contract, any ambiguity or uncertainty in the contract must be resolved against the party who prepared the contract and in favor of the party who did not prepare the written contract. Reid vs. Sovereign Camp W.O.W., 17 A.2d 890, 340 Pa. 400 (1941).**

**Accepted**

**Modified**

**Refused**

15.04

## BREACH OF CONTRACT - GENERALLY

*Each party claims the other breached this*  
*unwritten K*

Failure of a party to a contract to perform in accordance with its terms gives the other party a cause of action for breach. A breach of contract occurs when a party to the contract fails to perform any contractual duty of immediate performance, or violates an obligation, engagement or duty.

Not every nonperformance, however, is to be considered a breach of the contract. If you find that the nonperformance was trivial, and thus that the contract was substantially performed, you must also find that a breach of the contract has not occurred.

*Performance Prevented*  
15.06

Accepted

Modified

Refused

## 15.21 DAMAGES - GENERALLY

Where one party to a contract breaches that contract, the other party may recover for those injuries which have been proved to you with reasonable certainty. Any compensation awarded for injury is termed "damages." Generally, the measure of damages is that sum which will compensate the plaintiff for the loss sustained. If you find that defendant breached the contract, you must then decide, based on the evidence plaintiff has presented, what amount of money will compensate plaintiff for those injuries which were a direct and foreseeable result of the breach, ~~and which the parties could have reasonably foreseen with certainty at the time they made the contract.~~

*and to the  
contrary*  
*performance breached*  
*18.06*

Accepted

Modified

Refused

**DAMAGES - BREACH OF CONTRACT FOR CONSTRUCTION -  
MEASURE OF DAMAGES UNCOMPLETED CONTRACT**

If you find that the defendants breached the contract and you find that the plaintiff's performance under the contract was not completed at the time the contract was terminated, plaintiff's measure of damages is the amount remaining unpaid on the contract price, less the reasonable cost of completing the work. In other words, the contractor may collect the amount that he would have received if the contract had been completed, minus the expense that the contractor avoided by not completing the job. Chervenak, Keane & Co., Inc. (CKC Associates) vs. Hotel Rittenhouse Associates, Inc., 477 A.2d 482, 382 Pa.Super. 357.

Accepted

Modified

Refused

## DAMAGES ON COUNTERCLAIM

The Defendants, Michael and Wendy Speed, have filed a counterclaim against the Plaintiff, Larry Allen Construction, alleging that Plaintiff breached the contract by performing work which was defective and did not comply with the contract specifications and that Plaintiff failed to complete and pay for all the labor and material that were Plaintiff's obligation under the contract. If you find that the Plaintiff breached the contract, you must determine the Defendants' measure of damages by calculating the cost of completing the contract or correcting the defective work, minus the unpaid part of the contract price.

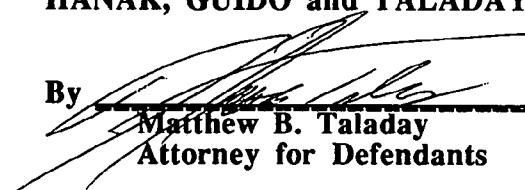
*Oelschlegel vs. Mutual Real Estate Investment Trust, 429 Pa.Super. 594, 633 A.2d 181.*

- Accepted
- Modified
- Refused

Respectfully submitted,

HANAK, GUIDO and TALADAY

By

  
Matthew B. Taladay  
Attorney for Defendants

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff,

v.

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,  
Defendants.

\* No. 01 - 1516 - CD

\* Type of Pleading:

\* **ANSWER TO MOTION FOR  
RECONSIDERATION**

\* Filed on behalf of:  
\* Plaintiff

\* Counsel of Record for  
\* this party:

\* James A. Naddeo, Esq.  
\* Pa I.D. 06820

\* 211 1/2 E. Locust Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

FILED

DEC 04 2002  
8/3/02  
William A. Shaw  
Prothonotary

1 (for to Attorney)

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

ANSWER TO DEFENDANT'S MOTION FOR  
RECONSIDERATION OF ORDER IN LIMINE

NOW COMES the Plaintiff, Larry D. Allen, t/d/b/a Larry  
Allen Construction, and by his attorney, James A. Naddeo,  
Esquire, sets for the following Answer:

1. Admitted.
2. Admitted but in further answer thereto, it is  
alleged that in addition to Defendants' failure to comply with  
the local rules, Defendants failed to identify their expert  
prior to jury selection and further failed to provide the  
identity of expert and report within sufficient time to conduct  
the deposition of Defendants' expert or to adequately prepare  
for trial in that Plaintiff's counsel has two jury trials  
scheduled to commence on the same date.

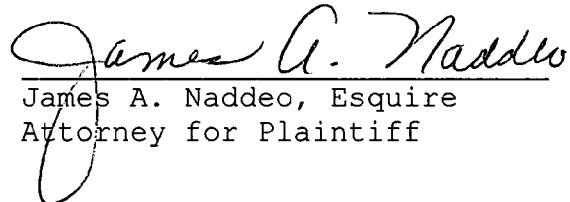
3. Admitted.

4. Plaintiff is unable to speak to the understanding of Defendants' counsel as to the reason for the Court's ruling. It is believed and therefore averred that in addition to possible prejudice to the jury panel, the Court also took into consideration Plaintiff's inability to depose Defendants' expert in advance of trial or to adequately prepare for two jury trials scheduled on the same date and finally to ascertain from the pleadings or from the report Defendants' expert the basis for the amount of damage claimed by Defendants in their counterclaim.

5. Denied in so far as it states Plaintiff will suffer no undue prejudice. To the contrary, it is alleged that Defendants' expert report fails to state any opinion upon which Plaintiff can ascertain the manner in which Defendants calculated the value of their counterclaim which cannot be determined from the pleadings nor from Defendants' Pre-Trial Statement thereby affording Plaintiff no opportunity to prepare a defense to whatever figures Defendants may attempt to prove at trial.

WHEREFORE, Plaintiff respectfully requests your Honorable Court to deny Defendant's Motion for Reconsideration.

Respectfully submitted,

  
James A. Naddeo  
James A. Naddeo, Esquire  
Attorney for Plaintiff

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

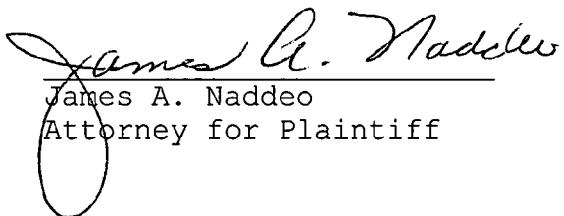
LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Answer to Motion for Reconsideration filed in the above-captioned action was served on the following person and in the following manner on the 4th day of December, 2002:

First-Class Mail, Postage Prepaid

Matthew B. Taladay, Esquire  
HANAK, GUIDO and TALADAY  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

  
\_\_\_\_\_  
James A. Naddeo  
Attorney for Plaintiff

CLEARFIELD, PENNSYLVANIA 16830  
P.O. BOX 552  
211 1/2, EAST LOCUST STREET  
ATTORNEY AT LAW  
JAMES A. NADDEO

Lap over margin

FILED

7/12/07

William A. Shaw  
Folio Secretary

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff

vs.

MICHAEL SPEED and WENDY  
SHOEMAKER, now known as  
WENDY SPEED,

Defendants

CIVIL ACTION - AT LAW

No. 01-1516-CD

Type of Pleading:

Amended Answer,  
Counterclaim and New  
Matter

Filed on behalf of:

Defendants/Plaintiffs in  
Counterclaim

Counsel of Record for This  
Party:

Matthew B. Taladay, Esq.  
PA I.D. #49663  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

**FILED**

DEC 11 2002

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff

vs.

No. 01-1516-CD

MICHAEL SPEED and WENDY  
SHOEMAKER, now known as  
WENDY SPEED,

Defendants :

**ANSWER, COUNTERCLAIM & NEW MATTER**

AND NOW, comes the Defendants/Plaintiffs in Counterclaim,  
MICHAEL SPEED and WENDY SHOEMAKER a/k/a WENDY SPEED, by  
and through their undersigned counsel, Gerald L. Shoemaker, Jr.,  
Esquire and the law firm of Gillotti, Capristo & Beck, P.C., to file the  
within Answer, Counterclaim and New Matter and in support thereof  
aver as follows:

1. The averments in Paragraph 1 are admitted.
2. The averments in Paragraph 2 are admitted.
3. The averments in Paragraph 3 are admitted.
4. The averments in Paragraph 4 are admitted.

**COUNT I**

5. The averments in Paragraph 5 are admitted.
6. The averments in Paragraph 6 are admitted.
7. The averments in Paragraph 7 are admitted.

8. The averments in Paragraph 8 are denied. It is specifically denied that the Defendant performed in a workmanlike manner the construction required by the parties' contract. To the contrary, the Plaintiff/Defendant in counterclaim failed to complete the construction in a workmanlike manner prior to his termination.

9. The averments in Paragraph 9 are admitted. By way of further response, Defendant, Michael Speed, requested that Plaintiff remove himself from the premises after continuous breaches of the contract and after Plaintiff refused or failed to remedy those breaches which are more fully set forth the Paragraph 25 hereof.

10. The averments in Paragraph 10 are denied. To the contrary, there were no further balances due to Plaintiff as Plaintiff continued to breach the contract in numerous respects and Plaintiff failed to remedy those breaches which are more fully set forth in Paragraph 25 hereof.

11. The averments in Paragraph 11 are admitted in part and denied in part. It is admitted that Plaintiff made a demand on Defendants for the amount of Twenty-one Thousand One Hundred Thirty Three Dollars and Sixty-five Cents (\$21,133.65). It is denied that Defendants owe any money to Plaintiff due to Plaintiff's continuous breaches of the contract and after Plaintiff refused or failed to remedy those breaches which are more fully set forth the Paragraph 25 hereof.

WHEREFORE, Defendants/Plaintiffs in Counterclaim request judgment in their favor and against Plaintiff.

**JURY TRIAL DEMANDED**

## **COUNT II**

12. Paragraph 12 merely incorporates that prior paragraphs and no response is necessary. To the extent that a response is necessary, Defendants/Plaintiffs in Counterclaim hereby incorporate their answers to averments 1 through 11 as if fully set forth herein.

13. The averments in Paragraph 13 are denied. It is specifically denied that the Defendants/Plaintiffs in Counterclaim requested the Plaintiff to do additional work. To the contrary, Defendants/Plaintiffs in Counterclaim merely requested that Plaintiff perform his work as required under the contract and to the specifications of the blueprints, which Plaintiff failed to do.

14. The averments in Paragraph 14 are denied. It is specifically denied that the Defendants/Plaintiffs in Counterclaim requested the Plaintiff to do additional work. To the contrary, Defendants/Plaintiffs in Counterclaim merely requested that Plaintiff perform his work as required under the contract and to the specifications of the blueprints, which Plaintiff failed to do.

15. The averments in Paragraph 15 are denied. It is specifically denied that the Defendants/Plaintiffs in Counterclaim requested the Plaintiff to do additional work. To the contrary, Defendants/Plaintiffs in Counterclaim merely requested that Plaintiff perform his work as required under the contract and to the specifications of the blueprints, which Plaintiff failed to do.

16. The averments in Paragraph 16 are admitted in part and denied in part. It is admitted that Plaintiff made a demand on Defendants for the amount of Ten Thousand Three Hundred Seventy-seven Dollars and Eighty-Four Cents (\$10,377.84). This demand was

not made until months after the contract was terminated. It is denied that Defendants owe any money to Plaintiff due to Plaintiff's continuous breaches of the contract and after Plaintiff refused or failed to remedy those breaches which are more fully set forth the Paragraph 25 hereof.

WHEREFORE, Defendants/Plaintiffs in Counterclaim request judgment in their favor and against Plaintiff.

**JURY TRIAL DEMANDED**

**NEW MATTER**

17. The averments contained in paragraphs 1 through 16 are hereby incorporated by reference.

18. On or about October 2000, Plaintiff and Defendants entered into a contract (hereinafter referred to as "contract") whereby Plaintiff agreed to be general contractor for the construction of Defendants' residence at R.R. #3, Box 363, Philipsburg, Centre County, Pennsylvania.

19. At all times hereto, the construction phase was handled by Plaintiff, who acted as the general contractor for the subject property.

20. The contract price for the construction of Defendant's residence was \$105,400, of which a substantial sum was paid to Plaintiff.

21. Under the terms of the contract, Plaintiff agreed with Defendants:

- a. that Plaintiff would complete all work contracted for in a good and workmanlike manner;
- b. that Plaintiff would guarantee the quality of materials and workmanship furnished by him would be of top quality and would repair and/or replace any defects in the materials or workmanship furnished by

Plaintiff, his subcontractors and material suppliers at no cost to Defendants;

- c. that Plaintiff would complete all work in accordance with the plans and specifications which were made part of the contract; and
- d. that the plans and specifications were appropriate, adequate and sufficient to construct a residence which was structurally sound and in compliance with applicable building codes and municipal ordinances.

22. At all times material hereto, Plaintiff had directed responsibility for supervising and coordinating the construction activities of all subcontractors.

23. Defendants duly performed all terms, covenants, and conditions on their part to be performed, except those terms covenants or conditions which were excused or made impossible due to Plaintiff's breaches as hereinafter set forth.

24. Plaintiff materially breached the contract with Defendant both generally and in the following particulars:

- a. the materials and/or workmanship provided by Plaintiff were defective;
- b. the work was not performed by Plaintiff in a good and workmanlike manner;
- c. the work performed by Plaintiff failed to conform to the requirements of the contract, the plans and/or specifications; and
- d. Plaintiff has failed and refused to remedy the deficiencies in the material and work provided.

25. The Plaintiff's material breaches of the contract with Defendants include but are not limited to the following:

- a. due to improper construction, the foundation of the residence has sustained cracking, which Plaintiff has failed to or refused to correct;

- b. Plaintiff failed to install the proper number of extended roof trusses and as a result of which Defendants' home is asymmetrical, the front deck is two feet off-center and two feet too narrow;
- c. the rear deck is not properly screwed down;
- d. the cabinets were not installed;
- e. there are rods coming from the ceiling of the kitchen/dining room which are not in line with the cabinets and if the cabinets were in line with the rods, the cabinets would not be square;
- f. there was no cable hook-up in one of the bedrooms;
- g. some electrical outlets do not work due to improper wiring;
- h. Plaintiff failed to install materials from Defendants' prior residence and retaining these items;
- i. the shingles used for roofing have only a 20-year guarantee as opposed to the 40-year guarantee as provided for in the contract;
- j. the Plaintiff failed to install block foundation under the front deck as specified in the home plans;
- k. the Plaintiff failed to install air conditioning in the home as set forth in the contract;
- l. the Defendants were forced to pay for materials directly despite the dictates of the contract;
- m. failure to install shutters and front deck support pillars as specified in the contract plans and drawings;
- n. Plaintiff failed to complete or cover underside of porch roof;
- o. Plaintiff failed to properly excavate foundation footings to a sufficient depth below ground surface; and
- p. Plaintiff's failed to place moisture barrier beneath the floor.

26. By reason of Plaintiff's breaches of contract, Defendants at various times requested that the Plaintiff corrected the defects in material and/or workmanship but Defendant has failed and refused to do so.

27. Based on Plaintiff's breach or non-completion of the contract, Defendants have been or will be caused to expend monies for labors and materials which were Plaintiff's obligation under the contract as follows:

	<u>Contract Allowance</u>
a. Purchase and install all floor coverings	\$ 7,000.00
b. Purchase and installation of all kitchen appliances and fixtures	5,500.00
c. Purchase and installation of all bathroom fixtures and applicances	3,500.00
d. Plumbing material and labor	2,500.00
e. Plastering and drywall finishing	3,000.00
f. Lighting fixtures	500.00
	<u>Cost of Completion</u>
g. Painting material and labor	900.00
h. Electrical outlets	62.55
i. Door knobs	143.55
j. Purchase of all doors	3,828.72
k. Air conditioner unit	4,500.00
l. Siding	650.00
	<u>Cost of Repair</u>
m. Add 2' roof truss and porch to specification	4,000.00
n. Cost difference for 20 years versus 40 year shingles	2,500.00

28. Defendants are entitled to offset against Plaintiff's claim the reasonable costs for material and labor as set forth above.

WHEREFORE, Defendants demand judgment in their favor.

## **COUNTERCLAIMS**

### **BREACH OF CONTRACT**

29. As a direct and proximate result of Plaintiff breach of contract as set forth in paragraph 25, Defendants have incurred and will continue to incur costs and expenses and has suffered and will continue to suffer direct, indirect, consequential, general and special damages.

30. By reason of the above stated breaches by Plaintiff and as a direct and proximate cause thereof, Defendants have incurred and will continue to incur costs and expenses and have suffered and will continue to suffer direct, indirect, consequential, general, and special damages in an amount currently unknown to Defendants but which damages will include:

- a. costs and expenses associated with completing the work required to be performed under the terms of the contract as set forth in paragraph 27;
- b. costs and expenses associated with correcting and/or replacing the work performed and materials supplied by Plaintiff and/or his subcontractors and suppliers that is defective, not in compliance with the requirements of the contract, plans and specifications;
- c. costs and expenses associated with inspecting and analyzing the condition of the Defendants' residence;
- d. costs and expenses associated with developing and implementing the necessary corrective measures which costs are still being employed;
- e. the Defendants have been and will be deprived of the full use and enjoyment of their residence;
- f. the Defendants have been deprived of the benefit of their bargain with Plaintiff;

- g. the value of Defendants' residence has been impaired and diminished;
- h. the costs incurred by Defendants, including but not limited to costs of suit and attorney's fees.

31. Defendants are entitled to be compensated for the reasonable costs to remedy the defects in their home or the diminution of the home's value caused by the defects.

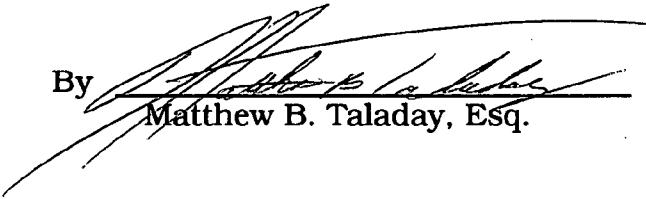
WHEREFORE, Defendants, MICHAEL SPEED and WENDY SHOEMAKER, a/k/a WENDY SPEED, hereby demand judgment in their favor and against Plaintiff, LARRY D. ALLEN, t/d/b/a LARRY ALLEN CONSTRUCTION, in an amount in excess of TWENTY FIVE THOUSAND (\$25,000) DOLLARS, plus costs, interest and attorney's fees.

**JURY TRIAL DEMANDED**

Respectfully submitted,

HANAK, GUIDO and TALADAY

By

  
Matthew B. Taladay, Esq.

**VERIFICATION**

I, MICHAEL SPEED and WENDY SPEED, do hereby verify that I have read the foregoing AMENDED ANSWER, COUNTERCLAIM AND NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

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

Date: 12-11-02

  
\_\_\_\_\_  
Michael Speed

  
\_\_\_\_\_  
Wendy Speed

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

FILED

JAN 29 2003

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*

Plaintiff, \*

v. \* No. 01 - 1516 - CD

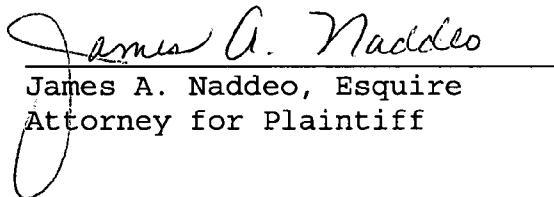
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*

Defendants. \*

**PRAECIPE TO ENTER JUDGMENT ON VERDICT**

TO THE PROTHONOTARY:

Please enter judgment in favor of Plaintiff and  
against Defendant, Michael Speed and Wendy Shoemaker, now known  
as Wendy Speed, in the amount of \$2,594.72 with interest from  
the date of the jury verdict entered in this matter on December  
16, 2002.

  
\_\_\_\_\_  
James A. Naddeo, Esquire  
Attorney for Plaintiff

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

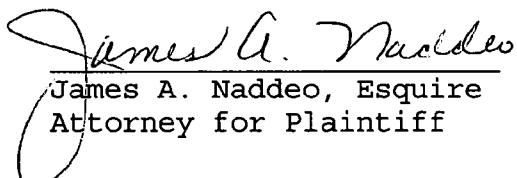
LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Praeclipe to Enter Judgment on Verdict filed in the above-captioned action was served on the following person and in the following manner on the 29th day of January, 2003:

First-Class Mail, Postage Prepaid

Matthew B. Taladay, Esquire  
HANAK, GUIDO and TALADAY  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

  
James A. Naddeo, Esquire  
Attorney for Plaintiff

CLEARFIELD, PENNSYLVANIA 16830  
P.O. BOX 552  
211 1/2 EAST LOCUST STREET  
ATTORNEY AT LAW  
JAMES A. NADDEO

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FILED

Aug Naddoo  
A.Y. Naddoo  
A.Y. Naddoo  
A.Y. Naddoo

10/3/4 3:45 PM  
JAN 2 2003

Notice to Def.

William A. Shaw  
Prothonotary

Statement to Aug  
10/3/4 3:45 PM  
JAN 2 2003

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,

\*

\*

Plaintiff,

\*

\*

v.

\* No. 01 - 1516 - CD

\*

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,

\*

\*

\*

\*

Defendants.

\*

NOTICE

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$2,594.72 with interest from December 16, 2002.

PROTHONOTARY

  
By \_\_\_\_\_

CCPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
STATEMENT OF JUDGMENT

Larry D. Allen t/d/b/a  
Larry Allen Construction  
Plaintiff(s)

No.: 2001-01516-CD

Real Debt: \$2,594.72

Atty's Comm:

Vs.

Costs: \$

Int. From:

Michael Speed and  
Wendy Shoemaker, now known  
as Wendy Speed  
Defendant(s)

Entry: \$20.00

Instrument: Judgment Verdict

Date of Entry: January 29, 2003

Expires: January 29, 2008

Certified from the record this 29th day of January, 2003.

---

William A. Shaw, Prothonotary

\*\*\*\*\*

SIGN BELOW FOR SATISFACTION

Received on \_\_\_\_\_, \_\_\_\_\_, of defendant full satisfaction of this Judgment,  
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

---

Plaintiff/Attorney

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff,

v.

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,  
Defendants.

\* No. 01 - 1516 - CD

\* Type of Pleading:

\* **MOTION IN LIMINE**

\* Filed on behalf of:  
\* Plaintiff

\* Counsel of Record for  
\* this party:

\* James A. Naddeo, Esq.  
\* Pa I.D. 06820

\* 211 1/2 E. Locust Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

**FILED**

OCT 28 2002

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
Defendants. \*

RULE

AND NOW, this 29 day of October, 2002, 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 11<sup>th</sup> of December, 2002, at  
1:30 P.m. in Courtroom NO. 1 for hearing.

NOTICE

A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH  
TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING  
PETITION, YOU MUST TAKE ACTION 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.

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  
CLEARFIELD, PA 16830  
(814) 765-2641

**FILED**

OCT 29 2002

William A. Shaw  
Prothonotary

BY THE COURT  
  
Judge

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

LARRY D. ALLEN, t/d/b/a \*  
LARRY ALLEN CONSTRUCTION, \*  
\*  
Plaintiff, \*  
\*  
v. \* No. 01 - 1516 - CD  
\*  
MICHAEL SPEED, and \*  
WENDY SHOEMAKER, now known \*  
as WENDY SPEED, \*  
\*  
Defendants. \*

**MOTION IN LIMINE**

NOW COMES the Plaintiff, Larry D. Allen, t/d/b/a Larry  
Allen Construction, and by his attorney, James A. Naddeo,  
Esquire, sets for the following:

1. That Pre-Trial Conference was held in the above-  
captioned matter on August 27, 2002.

2. That 46 J.D.R.C.P 212.4(e) provides as follows:

"(e) One week before the date set for the  
pre-trial conference each party shall submit to  
the Court and other counsel a pre-trial statement  
containing ..."

3. That Plaintiff filed a Pre-Trial Memorandum as  
required by 46 J.D.R.C.P 212.4(e).

4. That Defendant failed to file a Pre-Trial  
Memorandum in compliance with said Rule.

5. That on October 25, 2002, counsel for Plaintiff  
received a Pre-Trial Statement which includes a copy of a report

from John C. Haas Associates Inc. and lists Walter G. M. Schneider, III, P.E., as a witness.

6. That this matter is scheduled for jury trial in Clearfield County on Monday, December 16, 2002.

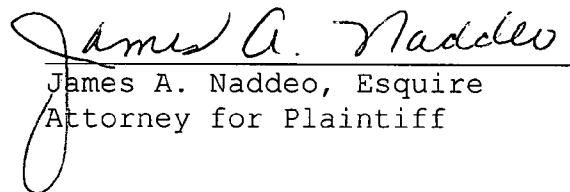
7. That Plaintiff's counsel has been directed to appear for a jury trial in another matter in Centre County on the same date, December 16, 2002.

8. That in order to accommodate the conflicting trial schedules, Plaintiff's counsel will be required to obtain substitute counsel to try the instant case or alternatively to try the case scheduled in Centre County.

9. That Defendants' failure to timely file their Pre-Trial Statement and otherwise comply with the provisions of 46 J.D.R.C.P 212.4(e) will irreparably prejudice Plaintiff in the preparation and trial of this case.

WHEREFORE, Plaintiff respectfully requests your Honorable Court to enter an Order prohibiting Defendants from calling at trial any expert witness whose report and identity was not disclosed in a timely manner as required by 46 J.D.R.C.P 212.4(e).

Respectfully submitted,

  
James A. Naddeo, Esquire  
Attorney for Plaintiff

CLERFIELD, PENNSYLVANIA 16830  
P.O. BOX 552  
211 1/2 EAST LOCUST STREET  
ATTORNEY AT LAW  
JAMES A. NADDEO

— Lap over margin —

**FILED**  
1CC  
OCT 11 2002  
28 2002  
Atty Nadeo  
Erg  
William A. Shaw  
Prothonotary

01-1516-CD

There is an implied warranty by the builder of a new home that the home he has built is constructed in a reasonably workmanlike manner. If you find that any portion of the work performed by the Plaintiff was not done in a reasonable and workmanlike manner, you should award the homeowners the reasonable cost of remedy of the deficiency. Fetzer vs. Vishneski, 582 A.2d 23, 399 Pa.Super. 218; Pittsburgh National Bank vs. Welton Beckett Associates, 601 F.Supp. 887.

*Just file*

Accepted

Modified

Refused

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bailegiR \_\_\_\_\_

COURT OF COMMON PLEAS, CLEARFIELD COUNTY  
PENNSYLVANIA

CASE NO. 01-1516-CD

Date of Jury Selection: August 30, 2002

Presiding Judge: John K. Reilly, Jr., P.J.

LARRY D. ALLEN, t/d/b/a LARRY  
ALLEN CONSTRUCTION

Court Reporter: Kathy Proost

VS  
MICHAEL SPEED and WENDY  
SHOEMAKER, now known as WENDY  
SPEED

Date of Trial: December 16, 2002

Date Trial Ended: Dec. 16, 2002

MEMBERS OF THE JURY

1. MICHELLE JORDAN
2. MARK PENTZ
3. MARK GUTSCHALL
4. HARRY WILSON
5. MARY BAILEY
6. JOSEPH JERN
- ALT #1 CARL KEPHART (*Moved to #7*)

7. TERESA BALL (NO SHOW)
8. DOUGLAS YOUNG
9. DANA THOMPSON
10. RICHARD BANNON
11. BETTY MITCHELL
12. ANDREW MANN
- ALT #2 BARBARA GODISSART

PLAINTIFF'S WITNESSES:

1. LARRY D. ALLEN
2. RICHARD T. HUGHES
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

DEFENDANT'S WITNESSES:

1. MICHAEL SPEED
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

PLAINTIFF'S ATTY: JAMES A. NADDEO, ESQ.

DEFENDANT'S ATTY: MATT TALADAL, ESQ.

ADDRESS TO JURY: 3:17 P.M.

ADDRESS TO JURY: 3:02 P.M.

JUDGE'S ADDRESS TO JURY: 3:44 P.M.

JURY OUT: 4:05 JURY IN: 4:55

VERDICT: FOR THE PLAINTIFF ---- \$2,594.72

DEC 17 2002

FOREPERSON: s/MARK PENTZ

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION  
VERSUS  
MICHAEL SPEED and SENDY SHOEMAKER,  
n/k/a WENDY SPEED

IN THE COURT OF COMMON PLEAS  
OF THE COUNTY OF CLEARFIELD, PA.

No. 01-1516-CD ~~10xx~~ 19

VERDICT

And now to wit: December 16, 2002 ~~10xx~~, we, the Jurors  
empanelled in the above entitled case, find A Verdict in Favor *Plaintiff* *2,594.72*

*Mark A. Bixby* Foreman

No. 01-1516-CD *Textron 18x*

LARRY D. ALLEN, t/d/ba/

LARRY ALLEN CONSTRUCTION

VERSUS

MICHAEL SPEED and WENDY SHOEMAKER

n/k/a. WENDY SPEED

VERDICT

Filed 19

Prothonotary

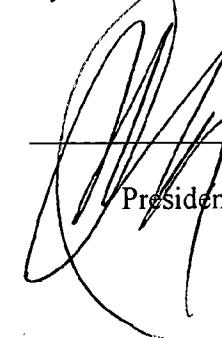
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

LARRY D. ALLEN, t/d/b/a :  
LARRY ALLEN CONSTRUCTION :  
: :  
-vs- : No. 01 - 1516 - CD  
: :  
MICHAEL SPEED and WENDY :  
SHOEMAKER, now known as :  
WENDY SPEED : :  
:

**ORDER**

NOW, this 16<sup>th</sup> day of December, 2002, upon consideration of Plaintiff's Motion to Strike Amended Complaint, Counterclaim and New Matter filed on behalf of Defendants above-named on December 11, 2002, it is the ORDER of this Court that said Motion shall be and is hereby granted to the extent that paragraph 25(j) shall be and is hereby stricken. In all other respects, Plaintiff's Motion shall be and is hereby dismissed.

By the Court,



---

President Judge

**FILED**

DEC 16 2002

William A. Shaw  
Prothonotary

**FILED**

cc Amy Maddeo  
013:52-BH, cc Amy Toloddy

DEC 10 2002

*Sp*

William A. Shaw  
Prothonotary

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff,

v.

MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,  
Defendants.

\* No. 01 - 1516 - CD

\* Type of Pleading:

\* Praeclipe to Transfer  
\* Judgment

\* Filed on behalf of:  
\* Plaintiff

\* Counsel of Record for  
\* this party:

\* James A. Naddeo, Esq.  
\* Pa I.D. 06820

\* 207 E. Market Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

FILED *b*

JUL 15 2005

11:55 AM

William A. Shaw

Prothonotary/Clerk of Courts

NO CERT COPY

CERT. COPY OF DOCKET

ENTRIES & JUDGMENTS TO

ATTY

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

LARRY D. ALLEN, t/d/b/a  
LARRY ALLEN CONSTRUCTION,  
Plaintiff,

\*  
\*  
\*  
\*

v.

\* No. 01 - 1516 - CD

\*  
\*  
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\*

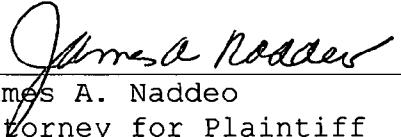
MICHAEL SPEED, and  
WENDY SHOEMAKER, now known  
as WENDY SPEED,  
Defendants.

\*  
\*  
\*  
\*

PRAECIPE TO TRANSFER JUDGMENT

TO THE PROTHONOTARY:

Please transfer the judgment entered in the above-captioned case to Centre County, Pennsylvania.

  
\_\_\_\_\_  
James A. Naddeo

Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
OFFICE OF THE PROTHONOTARY

**Larry D. Allen, t/d/b/a  
Larry Allen Construction**

**Vs.**

**NO. 2001-01516-CD**

**Michael Speed and  
Wendy Shoemaker, now known as Wendy Speed**

**CERTIFICATION OF DOCKET ENTRIES AND JUDGMENT**

I, William A. Shaw, Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania, do hereby certify that the attached is a certified and full copy of the docket entries in the above captioned case.

I further certify that a Judgment was entered in the above captioned matter in favor of Plaintiff and against Defendants Michael Speed and Wendy Shoemaker, now known as Wendy Speed on January 29, 2003, in the amount of 2,594.72.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the said Court, on the 15th day of July, A.D., 2005.

William A. Shaw  
Prothonotary

BY: \_\_\_\_\_  
Deputy