2002-1811-CD
MARSHALL E. RUGH VS WAL-MART STORES, INC.

No. 02-1811-CD

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife	**JAMES A. NADDEO, ESQ.**
vs.	
WAL-MART STORES, INC., a corporation	**PATRICK J. LOUGHNEY, ESQ.** Dell, Moser, Lane & Loughney, LLC, 525 William Penn Place Suite 3700 PGH 15219 412-471-1180
and	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES	**ANN B. WOOD, ESQ.**
vs.	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES	**ANN B. WOOD, ESQ.**
vs.	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE, and	**PAUL J. WALSH, III, ESQ.** Summers, McDonnell, Walsh & Skeel The Gulf Tower, Ste. 2400 707 Grant St., PGH 15219 412-261-3232
BOYLES INSURANCE, INC.	**BRYAN K. SHRECKENGOST, ESQ.** Pietragallo, Bosick & Gordon One Oxford Centre, 38th Flr. PGH 15219 412-263-2000

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

MARSHALL E. RUGH
and ANNA M. RUGH,
husband and wife,
Plaintiffs,

v.

WAL-MART STORES, INC.,
a corporation,
Defendant.

No. 02 - 1811 - CD

Type of Pleading:

COMPLAINT

Filed on behalf of:
Plaintiffs

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 18 2002
8/3:35/no
William A. Shaw
Prothonotary/Clerk of Courts
1 Cert to Atty

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
	*	No. 02 - - CD
v.	*	
WAL-MART STORES, INC., a corporation, Defendant.	*	

NOTICE

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

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

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
	*	No. 02 - - CD
v.	*	
WAL-MART STORES, INC., a corporation, Defendant.	*	

COMPLAINT

NOW come the Plaintiffs, Marshall E. Rugh and Anna M. Rugh, and by their attorney, James A. Naddeo, Esquire, set forth the following:

1. That the Plaintiffs are Marshall E. Rugh and Anna M. Rugh, husband and wife, who reside at R. D. 1, Box 247, Frenchville, Pennsylvania 16836.

2. That the Defendant is Wal-Mart Stores, Inc., a corporation, which conducts business in the Commonwealth of Pennsylvania having an office located at 100 Super Center Drive, Clearfield, Pennsylvania 16830.

COUNT I

Anna M. Rugh v. Wal-Mart Stores, Inc.

3. That at all times referred to herein the Defendant maintained a retail store known as Wal-Mart Super Center located on Route 879, Clearfield, Lawrence Township, Clearfield County, Pennsylvania, which facility includes an automotive center.

4. That appurtenant to the Wal-Mart Super Center and Automotive Center referred to in Paragraph 3 hereof, which is incorporated herein by reference, is a large public parking area with islands containing ornamental trees and wood chips/gravel to enhance the appearance of the islands.

5. That one of the islands referred to Paragraph 4 hereof is approximately 24 feet by 10 feet in size and is erected approximately 150 feet from the automotive center.

6. That on or about September 10, 2001, Plaintiff proceeded to the Wal-Mart Super Center described in Paragraph 3 hereof which is incorporated herein by reference.

7. That after the Plaintiffs completed their shopping they proceeded to the parking area where the Plaintiff, Marshall E. Rugh, attempted to start the 1994 Chrysler owned by the Plaintiffs.

8. That when the Plaintiff, Marshall E. Rugh, started his vehicle, he noticed that the heat gauge was elevated and immediately turned off the engine.

9. That the Plaintiff, Marshall E. Rugh, proceeded to the Automotive Center where he obtained the service of Defendant's employee to repair his vehicle.

10. That the Plaintiff, Marshall E. Rugh, was informed by Defendant's employee that he was incapable of

repairing the vehicle on site and recommended that the car be removed closer to the Automotive Center until it could be towed.

11. That the Plaintiff, Marshall E. Rugh, followed the instructions of Defendant's employee and moved his vehicle and parked it to the east side of the island described in Paragraph 4 hereof.

12. That after parking their vehicle, Plaintiffs exited the car for the purpose of entering the Automotive Center to call a towing service as directed by Defendant's employee.

13. That the Plaintiff, Anna M. Rugh, proceeded approximately 5 to 10 feet toward Defendant's Automotive Center at which time she slipped and fell on debris which had migrated from the island described in Paragraph 4 hereof unto the surface of the parking area.

14. That the Defendant was guilty of the following negligence, recklessness and carelessness which was the proximate cause of the accident and the injuries received by the Plaintiff, Anna M. Rugh, as follows:

A. Defendant failed to inspect the parking area;

B. Defendant failed to warn customers of the debris on the parking area;

C. Defendant failed to remove debris from the parking area;

D. Defendant failed to use due care under all of the circumstances of the case.

15. That as a result of the fall described in Paragraph 13 hereof, which is incorporated herein by reference, the Plaintiff, Anna M. Rugh, struck her head on the curbed parking area of the island and hit her pelvis on the paved parking surface causing numerous and serious injuries hereinafter set forth:

A. Multiple brusies and contusions;

B. Multiple fractures of the pelvis.

16. That the Plaintiff, Anna M. Rugh, claims a reasonable amount for the following:

A. A reasonable amount for pain and suffering; past, present and future;

B. Cost of replacing household services;

C. Privation and inconvenience due to the injuries and treatment, past, present and future;

D. Mental anguish and depression resulting from the accident;

E. Other damages allowable by law.

WHEREFORE, Plaintiff, Anna M. Rugh, claims unliquidated damages in an amount in excess of Twenty Thousand ($20,000.00) Dollars. Jury Trial Demanded.

COUNT II

Marshall E. Rugh v. Wal-Mart Stores, Inc.

17. That the Plaintiff, Marshall E. Rugh, incorporates Paragraphs 1 through 16 of this Complaint by reference and makes them a part hereof.

18. That the Plaintiff, Marshall E. Rugh, is the husband of Anna M. Rugh, having been married to the said Anna M. Rugh on August 14, 1965.

19. That the Plaintiff, Marshall E. Rugh, has resided with his wife, Anna M. Rugh, since the date of the parties' marriage and has continued to reside with her up to and including the time of the filing of this Complaint.

20. That as a result of the injuries suffered by the Plaintiff, Anna M. Rugh, the Plaintiff, Marshall E. Rugh, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.

WHEREFORE, Plaintiff, Marshall E. Rugh, claims unliquidated damages in an amount in excess of Twenty thousand ($20,000.00) Dollars. Jury Trial Demanded.

James A. Naddeo
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared ANNA M. RUGH, 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 her knowledge, information and belief.

Anna M. Rugh

Anna M. Rugh

SWORN and SUBSCRIBED before me this 30th day of October, 2002.

Linda C. Lewis

Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2003

JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

FILED

NOV 18 2002

William A. Shaw
Prothonotary/Clerk of Courts

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation,

Defendant.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

PRAECIPE FOR APPEARANCE

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	CIVIL DIVISION
	No. 02-1811-CD
Plaintiffs,	
Vs.	JURY TRIAL DEMANDED
WAL-MART STORES, INC., a corporation,	
Defendant.	

PRAECIPE FOR APPEARANCE

TO THE PROTHONOTARY:

Kindly enter the appearance of Dell, Moser, Lane & Loughney, LLC, Patrick J. Loughney, Esquire and Danielle M. Vugrinovich, Esquire on behalf of Defendant Wal-Mart Stores, Inc., with regard to the above-captioned matter.

Respectfully submitted

Dell, Moser, Lane & Loughney, LLC

By: _____
Patrick J. Loughney, Esquire
Attorneys for Wal-Mart Stores, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Wal-Mart Stores, Inc.'s Praecipe for Appearance has been served by U.S. Mail, postage prepaid, this 26th day of March, 2002, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

Patrick J. Loughney, Esquire

FILED
m/ 1:37
DEC 0 2 2002
William A. Shaw
Prothonotary

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

MARSHALL E. RUGH
and ANNA M. RUGH,
husband and wife,
Plaintiffs,

v.

WAL-MART STORES, INC.,
a corporation,
and JAMES BAILOR, t/d/b/a
B&D ENTERPRISES,
Defendants.

No. 02 - 1811 - CD

Type of Pleading:

AMENDED COMPLAINT

Filed on behalf of:
Plaintiffs

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 17 2002

William A. Shaw
Prothonotary

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
	*	No. 02 - 1811 - CD
v.	*	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTEPRISES, Defendants.	*	

NOTICE

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
	*	No. 02 - 1811 - CD
v.	*	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTEPRISES, Defendants.	*	

AMENDED COMPLAINT

NOW come the Plaintiffs, Marshall E. Rugh and Anna M. Rugh, and by their attorney, James A. Naddeo, Esquire, set forth the following:

1. That the Plaintiffs are Marshall E. Rugh and Anna M. Rugh, husband and wife, who reside at R. D. 1, Box 247, Frenchville, Pennsylvania 16836.

2. That the Defendant, Wal-Mart Stores, Inc., is a corporation, which conducts business in the Commonwealth of Pennsylvania having an office located at 100 Super Center Drive, Clearfield, Pennsylvania 16830.

3. That the Defendant, James Bailor, is an individual trading and doing business as D&B Enterprises, of 602 Susquehanna Avenue, Curwensville, Pennsylvania 16833.

COUNT I

Anna M. Rugh v. Wal-Mart Stores, Inc.

4. That at all times referred to herein the Defendant, Wal-Mart Stores, Inc., maintained a retail store known as Wal-Mart Super Center located on Route 879, Clearfield, Lawrence Township, Clearfield County, Pennsylvania, which facility includes an automotive center.

5. That appurtenant to the Wal-Mart Super Center and Automotive Center referred to in Paragraph 4 hereof, which is incorporated herein by reference, is a large public parking area with islands containing ornamental trees and wood chips/gravel to enhance the appearance of the islands.

6. That one of the islands referred to Paragraph 5 hereof is approximately 24 feet by 10 feet in size and is erected approximately 150 feet from the automotive center.

7. That on or about September 10, 2001, Plaintiff proceeded to the Wal-Mart Super Center described in Paragraph 4 hereof which is incorporated herein by reference.

8. That after the Plaintiffs completed their shopping they proceeded to the parking area where the Plaintiff, Marshall E. Rugh, attempted to start the 1994 Chrysler owned by the Plaintiffs.

9. That when the Plaintiff, Marshall E. Rugh, started his vehicle, he noticed that the heat gauge was elevated and immediately turned off the engine.

10. That the Plaintiff, Marshall E. Rugh, proceeded to the Automotive Center where he obtained the service of Defendant's employee to repair his vehicle.

11. That the Plaintiff, Marshall E. Rugh, was informed by an employee of the Defendant, Wal-Mart Stores, Inc., that he was incapable of repairing the vehicle on site and recommended that the car be removed closer to the Automotive Center until it could be towed.

12. That the Plaintiff, Marshall E. Rugh, followed the instructions of Defendant's, Wal-Mart Stores, Inc., employee and moved his vehicle and parked it to the east side of the island described in Paragraph 5 hereof.

13. That after parking their vehicle, Plaintiffs exited the car for the purpose of entering the Automotive Center to call a towing service as directed by Defendant's, Wal-Mart Stores, Inc., employee.

14. That the Plaintiff, Anna M. Rugh, proceeded approximately 10 to 15 feet toward Defendant's, Wal-Mart Stores, Inc., Automotive Center at which time she slipped and fell on debris which had migrated from the island described in Paragraph 5 hereof unto the surface of the parking area.

15. That the Defendant, Wal-Mart Stores, Inc., was guilty of the following negligence, recklessness and carelessness which was the proximate cause of the accident and the injuries received by the Plaintiff, Anna M. Rugh, as follows:

A. Defendant failed to inspect the parking area;

B. Defendant failed to warn customers of the debris on the parking area;

C. Defendant failed to remove debris from the parking area;

16. That as a result of the fall described in Paragraph 14 hereof, which is incorporated herein by reference, the Plaintiff, Anna M. Rugh, struck her head on the curbed parking area of the island and hit her pelvis on the paved parking surface causing numerous and serious injuries hereinafter set forth:

A. Multiple bruises and contusions;

B. Multiple fractures of the pelvis.

17. That the Plaintiff, Anna M. Rugh, claims a reasonable amount for the following:

A. A reasonable amount for pain and suffering; past, present and future;

B. Cost of replacing household services;

C. Privation and inconvenience due to the injuries and treatment, past, present and future;

D. Mental anguish and depression resulting from the accident;

E. Other damages allowable by law.

WHEREFORE, Plaintiff, Anna M. Rugh, claims unliquidated damages against the Defendant, Wal-Mart Stores, Inc., in an amount in excess of Twenty Thousand ($20,000.00) Dollars. Jury Trial Demanded.

COUNT II

Marshall E. Rugh v. Wal-Mart Stores, Inc.

18. That the Plaintiff, Marshall E. Rugh, incorporates Paragraphs 1 through 17 of this Complaint by reference and makes them a part hereof.

19. That the Plaintiff, Marshall E. Rugh, is the husband of Anna M. Rugh, having been married to the said Anna M. Rugh on August 14, 1965.

20. That the Plaintiff, Marshall E. Rugh, has resided with his wife, Anna M. Rugh, since the date of the parties' marriage and has continued to reside with her up to and including the time of the filing of this Complaint.

21. That as a result of the injuries suffered by the Plaintiff, Anna M. Rugh, the Plaintiff, Marshall E. Rugh, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.

WHEREFORE, Plaintiff, Marshall E. Rugh, claims unliquidated damages against the Defendant, Wal-Mart Stores, Inc., in an amount in excess of Twenty thousand ($20,000.00) Dollars. Jury Trial Demanded.

COUNT III

Anna M. Rugh v. James Bailor, t/a/d/a B&D Enterprises

22. That the Plaintiff, Anna M. Rugh, incorporates Paragraphs 1 through 21 of this Amended Complaint by reference and makes them a part hereof.

23. That the Plaintiff, Anna M. Rugh, believes and therefore avers that at the time of her accident the Defendant, James Bailor, t/d/b/a B&D Enterprises, was contracted by Wal-Mart Stores, Inc. to maintain the public parking area pertinent to the facilities located at the Wal-Mart Super Center, Route 879, Clearfield, Lawrence Township, Clearfield County, Pennsylvania.

24. That the Defendant, James Bailor, t/d/b/a B&D Enterprises, was guilty of the following negligence,

recklessness and carelessness which was the proximate cause of the accident and the injuries received by the Plaintiff, Anna M. Rugh, as follows:

A. Defendant failed to inspect the parking area;

B. Defendant failed to warn Wal-Mart customers of the debris on the parking area;

C. Defendant failed to remove debris from the parking area;

D. Defendant failed to use due care under all of the circumstances of the case.

WHEREFORE, Plaintiff, Anna M. Rugh, claims unliquidated damages against the Defendant, James Bailor, t/d/b/a B&D Enterprises in an amount in excess of Twenty Thousand ($20,000.00) Dollars. Jury Trial Demanded.

COUNT IV

Marshall E. Rugh v. James Bailor, t/a/d/a B&D Enterprises

25. That the Plaintiff, Marshall E. Rugh, incorporates Paragraphs 1 through 24 of this Amended Complaint by reference and makes them a part hereof.

26. That the Plaintiff, Marshall E. Rugh, is the husband of Anna M. Rugh, having been married to the said Anna M. Rugh on August 14, 1965.

27. That the Plaintiff, Marshall E. Rugh, has resided with his wife, Anna M. Rugh, since the date of the parties' marriage and has continued to reside with her up to and including the time of the filing of this Complaint.

28. That as a result of the injuries suffered by the Plaintiff, Anna M. Rugh, the Plaintiff, Marshall E. Rugh, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.

WHEREFORE, Plaintiff, Marshall E. Rugh, claims unliquidated damages against the Defendant, James Bailor, t/d/b/a B&D Enterprises, in an amount in excess of Twenty Thousand ($20,000.00) Dollars. Jury Trial Demanded.

James A. Naddeo
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

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

Marshall E. Rugh

SWORN and SUBSCRIBED before me this 16th day of December, 2002.

Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2003

JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

FILED
0 10:38 BM
DEC 17 2002
William A. Shaw
Prothonotary

1cc to Sheriff
1cc 2 Atty.

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, And JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 22252(d)

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

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

TO: ALL PARTIES

You are hereby notified to file a written response to the enclosed ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 2252(d) within (20) days from service hereof or a default judgment may be entered against you.

Patrick J. Loughney, Esquire

FILED

DEC 23 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	CIVIL DIVISION
	No. 02-1811-CD
Plaintiffs,	
Vs.	JURY TRIAL DEMANDED
WAL-MART STORES, INC., a corporation, And JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	
Defendants.	

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA R.C.P. 2252(d)

AND NOW, comes Defendant, Wal-Mart Stores, Inc., (hereinafter referred to as "Wal-Mart") by and through its attorneys, Dell, Moser, Lane & Loughney, LLC and Patrick J. Loughney, Esquire, and files the within Answer, New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d) to Plaintiffs' Amended Complaint.

1. To the extent that Plaintiffs aver that Wal-Mart maintained the parking area for the condition of which Plaintiffs complain, then pursuant to Pennsylvania Rules of Civil Procedure the same is denied. On the contrary, it is averred that such maintenance had been sub-contracted to Co-Defendant James Bailor t/d/b/a B&D Enterprises, as is set forth in Exhibit 1 attached to this Answer and New Matter.

2. The averments of fact contained in the Plaintiffs' Amended Complaint are denied pursuant to Pa. R.C.P. 1029(e).

WHEREFORE, Defendant Wal-Mart Stores, Inc. denies that it is liable to any party and demanded judgment in its favor.

NEW MATTER

3. Should investigation or discovery in this case reveal the statute of limitations has not been tolled, then the defense of the statute of limitations is pled.

NEW MATTER PURSUANT TO PA. R.C.P. 2252(d)

4. The averments contained within Plaintiffs' Amended Complaint against James Bailor t/d/b/a B&D Enterprises (hereinafter referred to as "B&D Enterprises", are incorporated by reference for the purposes of this joinder only without admitting the truth of the same.

5. The terms and conditions of Exhibit "1" are incorporated by reference in this cross-claim.

6. Any responsibility for maintenance of the area in which Plaintiff fell was the responsibility of B&D Enterprises as set forth in Exhibit 1.

7. Wal-Mart demands both contractual and common law defense and indemnification from B&D Enterprises.

WHEREFORE, it is denied that Wal-Mart is liable to any party to this action. If it is found liable, it demands contribution contribution and/or indemnification from B&D Enterprises.

Respectfully submitted

Dell, Moser, Lane & Loughney, LLC

By: _____
Patrick J. Loughney, Esquire
Attorneys for Wal-Mart Stores, Inc.

plaintiff's Exhibit copy Will 325 12/9/02

Outside Maintenance Agreement

THIS AGREEMENT is made as of the 1 day of May 2000 between **Wal-Mart Stores, Inc.** a Delaware corporation, of 2001 South East Tenth Street, Bentonville, Arkansas 72712-6489 ("Owner") and _____("Contractor").

NOW, THEREFORE, for and in consideration of the obligations and other valuable considerations and covenants, the sufficiency of which is hereby acknowledged, Owner and Contractor do hereby agree as follows:

1. Preliminary--Definitions:

a. "Outside Maintenance Service" shall include landscaping and/or irrigation work, snow removal services, or parking lot sweeping as defined in Exhibit A attached hereto and made a part hereof, under the "Scope of Work".

b "Scope of Work" shall define the type and scope of the outside maintenance service work that this contract intends to cover.

c. "Work" shall be defined as any service provided within the defined Scope of Work.

2. General Requirements:

(2.1) The Contractor shall purchase and maintain such insurance as indicated below and with the limits listed below. Such insurance shall protect Owner and the Contractor from claims which may arise out of or result from the operations under this Agreement whether such operations are by himself, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance contracts shall contain a Waiver of Subrogation in favor of Owner and its affiliates.

Certificates of Insurance, acceptable to Owner, MUST BE RECEIVED by Owner before Owner will execute this Agreement or before any Work is performed, whichever is the earliest date. Failure to provide the proper Certificate of Insurance as required may result in the cancellation of the award of this Agreement or cancellation of this Agreement. The certification must indicate that the limits listed below are provided and that the insurance will not be canceled during the term of this contract without thirty (30) days prior written notice by registered mail to Owner.

HOLDER SHOULD READ: WAL-MART STORES, INC., ITS SUBSIDIARIES & ITS AFFILIATES, 2001 SE 103H ST., Bentonville, AR 72716-6489.

Insurance policies meeting these requirements shall remain in effect for the duration of the Work. No payments to the Contractor will be authorized unless current Certificates of Insurance have been filed with Owner.

In no case should insurance coverage be less than:
- Statutory Workers' Compensation and Employer's Liability---$500,000 per occurrence.
- Commercial General Liability including Contractual Liability---$250,000.
- Business Auto Liability Coverage---$250,000.

The Contractor shall be responsible for securing Certificates of Insurance from all subcontractors for insurance coverage limits indicated above and shall make such Certificates available to Owner upon request.

(2.2) All requests for service(s) that are not included within the Scope of Work must be in writing and approved by Owner at Owner's sole discretion. Contractor shall not start additional work (which is not included in the Scope of Work) until the Owner's authorized representative has approved the request in writing. Failure to obtain advance approval before starting the additional work shall result in non-payment.

(2.3) The Owner may take any reasonable action necessary to control damage or protect the health, safety and welfare of the public in the event of problems involving the "Outside Maintenance Service" Such action on the part of the Owner shall not relieve the Contractor of any responsibilities related to any problems relating thereto.

EXHIBIT tabbies 1

No part of the Work set forth herein shall be performed in any location or manner which may endanger the health, safety and welfare of the public now or in the future. Means, methods, techniques, sequencing, etc. are the sole responsibility of the Contractor.

(2.4) Contractor warrants and guarantees that all Work specified herein is to be performed in a workmanlike manner acceptable to Owner, which shall be the sole judge of quality of Work. In the event the Work proves to be unacceptable to Owner prior to the time payment is made, Contractor shall have ten(10) days to correct such defects at Contractor's own reasonable expense, with payment then due upon completion of the corrections(s). If Contractor fails to correct such defects to Owner's satisfaction within the time specified above, Owner shall have the right to correct the defects and deduct the cost thereof from the amount owed to Contractor by the Owner. In the event any defects in the Work are discovered by Owner after paying Contractor, then, upon receipt of notice from Owner, Contractor shall have ten(10) days to correct the defects at Contractor's own expense. If Contractor fails to correct such defects to the satisfaction of Owner, which shall be at the sole discretion of Owner, within the time specified, Owner shall have the right to cure and correct such defects and invoice the Contractor for such expenditures. Contractor shall within ten(10) days from receipt thereof, reimburse Owner for any and all cost incurred therein.

(2.5) Contractor shall coordinate its schedule in performing the Work with the applicable Owner location's Store Manager.

(2.6) Owner may terminate this Agreement without cause upon fifteen (15) day's prior written notice to Contractor.

(2.7) Contractor agrees that he/she shall assume sole and complete responsibility for the Work, including safety of all persons and property; and that the Contractor shall defend, indemnify, and hold the Owner and tenants harmless from any and all liability, real or alleged, in connection with the Contractor's, Contractor's employees, agents and subcontractors performance of the Work set forth herein, excepting for liability arising from the sole negligence of the Owner or tenants. Contractor shall ensure that all equipment utilized on the premises is provided with proper safety guards.

(2.8) The Contractor shall, throughout the course of the Work set forth herein, comply with all rules, ordinances, regulations, etc. set forth by agencies having jurisdiction, which apply to the premises, the Contractor, and/or contractor's employees and subcontractors.

(2.9) The Contractor shall ensure that all Contractor's employees, agents, and subcontractors present a neat, clean, appearance and conduct themselves in a business-like manner at all times while on Owner's property. Owner strongly encourages all Contractors to provide uniforms for their employees, agents, and subcontractors.

(2.10) This Agreement shall not be enforceable against Wal-Mart (or any of it's affiliates) unless, on behalf of Wal-Mart, this Agreement is executed by the applicable Divisional Manager assigned to the Wal-Mart location at which the Scope of Work is to be performed.

3. Scope of Work:

Contractor shall provide services at Wal-Mart Stores, Inc. Store/Sam's Club Store #2128, address: 100 Super Center ("Property") as set forth in the Scope of Work attached hereto as Exhibit "A" and made a part hereof. This Agreement is contingent upon the execution of Exhibit "A" by both parties.

4. Payment:

Owner shall make payment to Contractor within thirty (30) days after receipt of the Contractor's invoice at the address designated in this Agreement. Time required to process Contractor's invoice may be extended by Owner if required documentation is not submitted with each invoice.

Invoices must have the following information in order for payment to be made:

1. Invoice number
2. Invoice date
3. Date(s) that the service(s) was provided
4. Detailed description of service(s) provided
5. Itemized invoice amount
6. Wal-Mart/Sam's store number
7. Contractor's Wal-Mart vendor number
8. Attached "Work Completion Report" signed by Store Manager.

NOTE: Invoice for regular monthly contract service must show ONLY the regular monthly charge and no other charges. Approved additional charges must be invoiced separately.

All invoices should be sent to:

Wal-Mart Real Estate Accounting
PO Box X055
Bentonville, AR 72712

5. Pricing.

Pricing on Exhibit A shall include all labor (whether by Contractor or subcontractor) materials, taxes, permit fees (if applicable), and equipment.

6. Entire Agreement:

This Agreement constitutes the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Agreement is the result of good faith arms length negotiations. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

7. Successors:

It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or federal government. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

8. Notices:

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, or similar overnight delivery service, to the address of either party below. Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall

If to the Contractor:
NAME B&D Enterprises
ADDRESS 602 Susquehanna Ave.
CITY, STATE, ZIP Curwensville Pa. 16833
ATTN: _____

If to Owner:
WAL-MART STORES, INC.
2001 S.E. 10th Street
Bentonville, AR 72712-6489
Attn: Maintenance Division

:bts:

Contractor shall pay off and discharge any and all debts and obligations incurred pursuant to performing the Work, including but not limited to obligations owed to suppliers of material and subcontractors.

10. Term of Agreement:

This Agreement is for a period of 24 months, which may be terminated pursuant to Owner's right of termination set forth in paragraph (2.6) herein, and shall be effective as of the date written above. This Agreement shall automatically extend from year to year unless the same is terminated by Wal-Mart upon at lease thirty (30) days written notice prior to the end of the initial term of this Agreement or the extended term of this Agreement or unless terminated by Wal-Mart pursuant to it's right of termination set forth in paragraph (2.6) herein.

11. Severability:

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby; and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year set out.

CONTRACTOR:

B+D Enterprises

Jim Bailor 5/5/00

By: Date:

Jim Bailor

Print Name

(814) 236-0764

Phone

WAL-MART STORES, INC.

5-10-00

By: Date:

Tim Fox DM

Print Name Title:
(District Manager)

(814) 375-5010

Phone

Wal-Mart/Sam's Store No. 2129

More copy

Exhibit A

SCOPE OF WORK
SWEEPING

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 4/30/00

The Contractor shall provide sweeping and related maintenance services Work located at the Wal-Mart Store, Inc./Sam's Club # 2129, address: 100 Super Center Dr as follows:

- Areas are to be swept ("Areas") at intervals as listed below.
- Areas include, but are not limited to, parking lot, sidewalks, truck wells, and rear of the building.
- Contractor will report immediately any unusual findings such as graffiti, vandalism, excess trash being dumped on the property, vehicles blocking removal, or any other dangerous situation discovered on the property by providing a photograph of the unusual finding to the owner.

Contractor shall provide the Work set forth herein, per occurrence as set forth herein:

_____ Daily
_____ Weekly
_____ Bi-Weekly
_____ One Time per Month
_____ Intervals of # 3 per Week

Price per occurrence: $ 315.00 [redacted]

Acknowledged and Agreed to by:

CONTRACTOR:

B+D Enterprises
Name of Contractor

Jim Bailor 5/3/00
By: Date:

Jim Bailor
Print Name

OWNER:

WAL-MART STORES, INC.

5-10-00
By: Date:

Tim Fox D.M.
Print Name Title:
(District Manager)

Wal. 325

VERIFICATION

I, Patrick J. Loughney, attorney for Wal-Mart Stores, Inc., pursuant to Pa.R.C.P. 1024(c)(2), verify that the averments of fact made in this foregoing Answer, New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d) are true and correct and based upon my personal knowledge, information or belief. I understand that averments of fact in said document are made subject to the penalties of 18 Pa. C.S. §4904, relating to the unsworn falsifications to authorities. This Verification is made by the undersigned due to lack of sufficient time to obtain a Verification from Wal-Mart Stores, Inc., and will be provided when available.

Date: 12/20/02

Patrick J. Loughney, Esquire
Attorney for Wal-Mart Stores, Inc,

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 22252(d)** has been served by U.S. Mail, postage prepaid, this 20th day of June, 2002, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

James Bailor
B & D Enterprises
602 Susquehanna Avenue
Curwensville, PA 16833

Patrick J. Loughney, Esquire

FILED NO CC
m/ 1:27 BH
DEC 23 2002

William A. Shaw
Prothonotary

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

MARSHALL E. RUGH
and ANNA M. RUGH,
husband and wife,
Plaintiffs,

v.

WAL-MART STORES, INC.,
a corporation,
and JAMES BAILOR, t/d/b/a
B&D ENTERPRISES,
Defendants.

No. 02 - 1811 - CD

Type of Pleading:

ACCEPTANCE OF SERVICE

Filed on behalf of:
Plaintiffs

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
3:39 BA NOCC
DEC 23 2002

William A. Shaw
Prothonotary

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
	*	No. 02 - 1811 - CD
v.	*	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Defendants.	*	

ACCEPTANCE OF SERVICE

I, Patrick J. Loughney, Esquire, do hereby accept service of the Amended Complaint filed by James A. Naddeo, Esquire, on behalf of the Defendant, Wal-Mart Stores, Inc., in the above-captioned action.

Patrick J. Loughney, Esquire

Date: 12/16/02

Lap over margin

JAMES A. NADDEO
ATTORNEY AT LAW
211 ½ EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES

Additional Defendant

NO. 02-1811-CD

JURY TRIAL DEMANDED

Type of Pleading:

DEFENDANT, BAILOR'S, ANSWER TO DEFENDANT, WAL-MART'S, NEW MATTER PURSUANT TO PA.R.C.P. 2252(d)

Filed on Behalf of:
James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant

Counsel of Record for this Party:

Ann B. Wood, Esquire
Supreme Court No. 23364

Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
(814) 765-5537

Attorney For Plaintiffs:

James A. Naddeo, Esquire
Supreme Court No. 06820

JAMES A. NADDEO & ASSOCIATES
211½ E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Attorney For Defendant, Wal-Mart Stores, Inc.:

Patrick J. Loughney, Esquire
Supreme Court No. 23163

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219
Phone: (412) 471-1180
Fax: (412) 471-9012

FILED

JAN 09 2003

William A. Shaw
Prothonotary

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	

DEFENDANT, BAILOR'S, ANSWER TO DEFENDANT, WAL-MART'S, NEW MATTER PURSUANT TO PA.R.C.P. 2252(d)

AND NOW, COMES the Defendant, JAMES BAILOR, t/d/b/a B&D ENTERPRISES, (hereinafter referred to as "Bailor") by and through his attorneys, Bell, Silberblatt & Wood, and Ann B. Wood, Esquire, and sets forth his Answer as follows:

4. The answers contained in Defendant, Bailor's, Answer to Plaintiffs' Amended Complaint are incorporated herein by reference as though set forth herein.

5. Paragraph 5 of the New Matter being an incorporation of an Exhibit, no answer is required thereto. If an answer is required thereto, it is acknowledged that Exhibit 1 attached to

Defendant, Wal-Mart's, New matter is the Agreement between Defendant, Wal-Mart, and Defendant, Bailor, but it is specifically denied that said Agreement made Defendant, Bailor, completely responsible for the maintenance and supervision of the Defendant, Wal-Mart's, parking lot in question, as his duties were limited to that work included under Exhibit "A" of said Agreement.

6. Paragraph 6 of Defendant, Wal-Mart's, New Matter is denied as stated and on the contrary it is averred that the responsibility for the maintenance of area in which Plaintiff fell was not the sole responsibility of Defendant, B&D Enterprises, but remained the obligation of Defendant, Wal-Mart.

7. Paragraph 7 of Defendant, Wal-Mart's, New Matter is denied as stated and on the contrary it is averred that the Defendant, B&D Enterprises does not owe Defendant, Wal-Mart, either contractual or common law defense or indemnification.

WHEREFORE, it is denied that Bailor is liable to any party in this action. If he is found liable, he demands contribution and/or indemnification from Wal-Mart.

Respectfully submitted,

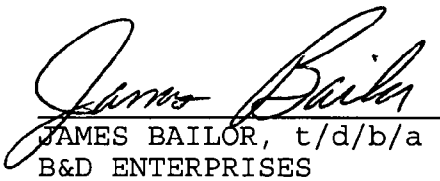
BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

VERIFICATION

I, JAMES BAILOR, t/d/b/a B&D Enterprises, state that the within statements in the foregoing Defendant, Bailor's, Answer to Defendant, Wal-Mart's, New Matter Pursuant to Pa.R.C.P. 2252(d) are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.



JAMES BAILOR, t/d/b/a
B&D ENTERPRISES

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of Defendant, Bailor's, Answer to Defendant, Wal-Mart's, New Matter Pursuant to Pa.R.C.P. 2252(d) with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on January 9, 2003:

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
211½ East Locust Street
Marino Building
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:
Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
NO.02-1811-CD

MARSHALL E. RUGH and ANNA M. RAUGH,
husband and wife, PLAINTIFFS
vs.
WAL-MART STORES, INC., a
Corporation, and JAMES BAILOR,
t/d/b/a B&D ENTERPRISES,
DEFENDANTS
vs.
JAMES BAILOR, t/d/b/a B&D
ENTERPRISES, ADDITIONAL DEFENDANT

DEFENDANT, BAILOR'S, ANSWER TO
DEFENDANT,WAL-MART'S, NEW
MATTER PURSUANT TO PA.R.C.P.
2252(d)

FILED 4cc Atty Wood
01:14 BOL
JAN 09 2003
William A. Shaw
Prothonotary

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES

Additional Defendant

NO. 02-1811-CD

JURY TRIAL DEMANDED

Type of Pleading:

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA.R.C.P. 2252(d) TO PLAINTIFFS' AMENDED COMPLAINT

Filed on Behalf of:
James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant

Counsel of Record for this Party:

Ann B. Wood, Esquire
Supreme Court No. 23364

Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
(814) 765-5537

Attorney For Plaintiffs:

James A. Naddeo, Esquire
Supreme Court No. 06820

JAMES A. NADDEO & ASSOCIATES
211½ E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Attorney For Defendant, Wal-Mart Stores, Inc.:

Patrick J. Loughney, Esquire
Supreme Court No. 23163

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219
Phone: (412) 471-1180
Fax: (412) 471-9012

FILED

JAN 09 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA.
CIVIL DIVISION

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	

NOTICE TO PLEAD

TO ALL PARTIES:

You are hereby notified to file a written response to the enclosed Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Plaintiffs' Amended Complaint within twenty (20) days from service hereof or a judgment may be entered against you.

BELL, SILBERBLATT & WOOD
By:

Ann B Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a B&D
Enterprises

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA.R.C.P. 2252(d) TO PLAINTIFFS' AMENDED COMPLAINT

AND NOW, COMES the Defendant, JAMES BAILOR, t/d/b/a B&D ENTERPRISES, (hereinafter referred to as "Bailor") by and through his attorneys, Bell, Silberblatt & Wood, and Ann B. Wood, Esquire, and files an Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Plaintiffs' Amended Complaint as follows:

1. Paragraph 1 of the Complaint is admitted.

2. Paragraph 2 of the Complaint is admitted.

3. Paragraph 3 of the Complaint is admitted.

4. Paragraph 4 of the Complaint, to the extent that Bailor maintained the parking area in the condition of which the Plaintiffs complained, then such allegation is denied. On the contrary, it is averred that, though Bailor has been contracted to

sweep the parking lot of the Co-Defendant, Wal-Mart Stores, Inc., (hereinafter referred to as "Wal-Mart") Wal-Mart remains in full control of its parking area and is responsible for overseeing the conditions thereon.

5. The averments of fact contained in Plaintiffs' Amended Complaint are denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Defendant, Bailor, denies he is liable to any party and demands judgment in his favor.

NEW MATTER

6. Should investigation or discovery in this case reveal that the statute of limitations has not been tolled, then the defense of the statute of limitations is pled.

NEW MATTER PURSUANT TO PA.R.C.P. 2252(d)

James Bailer, t/d/b/a B&D Enterprises vs.
Wal-Mart Stores, Inc.

7. The averments contained in Plaintiffs' Amended Complaint against Wal-Mart Stores, Inc., (hereinafter referred to as "Wal-Mart") are incorporated by reference for the purposes of this joinder only without admitting the truth of the same.

8. That pursuant to an Outside Maintenance Agreement, dated May 1, 2000, Wal-Mart and Bailor entered into an agreement for the sweeping of the Wal-Mart premises, including the parking lot.

9. That pursuant to that contract in Paragraph 2.5, Bailor was to perform scheduled sweeping under the direction and supervision of the applicable local store manager.

10. That in March, 2001, the then store manager, believed to be Roger Gates, through his secretary, Susan Kavelack, notified Bailor to reduce his sweeping of the Wal-Mart premises to one (1) time per week.

11. That the once a week sweeping schedule has been maintained since March, 2001.

12. That Wal-Mart maintains full control of its parking area and has the responsibility to supervise that area and the responsibility to observe vandalism, excessive trash, vehicles blocking the parking lot, and any other dangerous situation on the property.

13. That as Wal-Mart controls the number of visits to its property by Bailor, Wal-Mart has the duty to observe the conditions

of its parking area and to notify Bailor should it discover a situation which requires additional sweeping under his contract.

14. That Wal-Mart is guilty of negligence, recklessness and carelessness which resulted in the conditions alleged by Plaintiffs as follows:

(a) That Wal-Mart failed to warn Wal-Mart customers of debris on the parking area;

(b) That Wal-Mart failed to notify Bailor of debris in the parking area which needed his attention and required additional work beyond his directed one (1) sweeping per week.

(c) That Wal-Mart failed to properly maintain the condition of its parking lot.

15. That any responsibility for the supervision of the parking area in which Plaintiff, Anna M. Rugh, fell was within the responsibility of Wal-Mart at the time of the occurrence.

WHEREFORE, it is denied that Bailor is liable to any party in this action. If he is found to be liable, he demands contribution and/or indemnification from Wal-Mart.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

VERIFICATION

I, JAMES BAILOR, t/d/b/a B&D Enterprises, state that the within statements in the foregoing Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Plaintiffs' Amended Complaint are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

JAMES BAILOR, t/d/b/a
B&D ENTERPRISES

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Plaintiffs' Amended Complaint with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on January 9, 2003:

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
211½ East Locust Street
Marino Building
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:
Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
Civil Action
No.02-1811-CD

Marshall E. Rugh and Anna M. Rugh, husband and wife, Plaintiffs
vs.
Wal-Mart Stores, Inc., a Corporation, and James Bailor, t/d/b/a B&D Enterprises, Defendants
vs.
James Bailor, t/d/b/a B&D Enterprises, Additional Defendant

Answer, New Matter and New Matter Pursuant to PA.R.C.P. 2252(d) To Plaintiffs' Amended Complaint

FILED 4 cc Atty Wood
012:14-BCL
JAN 09 2003
BCL
William A. Shaw
Prothonotary

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES

Additional Defendant

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants

NO. 02-1811-CD

JURY TRIAL DEMANDED

Type of Pleading:

COMPLAINT TO JOIN ADDITIONAL DEFENDANT UNDER PA.R.C.P. 2252(a)

Filed on Behalf of:
James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant

Counsel of Record for this Party:

Ann B. Wood, Esquire
Supreme Court No. 23364

Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
(814) 765-5537

Attorney For Plaintiffs:

James A. Naddeo, Esquire
Supreme Court No. 06820

JAMES A. NADDEO & ASSOCIATES
211½ E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Attorney For Defendant, Wal-Mart Stores, Inc.:

Patrick J. Loughney, Esquire
Supreme Court No. 23163

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219
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FILED

JAN 09 2003

William A. Shaw
Prothonotary

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

NOTICE TO DEFEND

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

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

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
2nd & Market Streets
Clearfield, Pennsylvania 16830
Telephone (814) 765-2641 Ex. 5982

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

COMPLAINT TO JOIN ADDITIONAL DEFENDANT UNDER PA.R.C.P. 2252(a)

AND NOW, COMES the Defendant, JAMES BAILOR, t/d/b/a B&D ENTERPRISES, (hereinafter referred to as "Bailor") by and through his attorneys, Bell, Silberblatt & Wood, and Ann B. Wood, Esquire, and files the following Complaint against Additional Defendant pursuant to Pa.R.C.P. 2252(a):

1. That the Additional Defendant, Roger R. Hull, is an individual, trading and doing business as HSJ Lawncare, (hereinafter referred to as "HSJ Lawncare") of P.O. Box 260,

Grampian, Pennsylvania 16838.

2. That the Additional Defendant, Boyles Insurance, Inc., is a corporation which conducts business in the Commonwealth of Pennsylvania, (hereinafter referred to as "Boyles") having an office located at 11 Nichols Street, Clearfield, Pennsylvania 16830.

COUNT I

James Bailor, t/d/b/a B&D Enterprises vs.
Roger R. Hull, t/d/b/a HSJ Lawncare

3. That the averments contained in Plaintiffs' Amended Complaint against Wal-Mart Stores, Inc. and against James Bailor, t/d/b/a B&D Enterprises, are incorporated by reference for purposes of this joinder only without admitting the truth of the same.

4. To the extent the Plaintiffs aver that Wal-Mart or Bailor maintained the parking area for the conditions of which Plaintiffs complained, it is averred that such maintenance had been subcontracted by Wal-Mart to Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, as set forth in Exhibit "1" attached to this Complaint.

5. That pursuant to said Contract, the responsibility for the maintenance of the landscaping, including the islands described in Plaintiffs' Complaint, were the responsibility of the Additional Defendant, HSJ Lawncare, to remove and properly dispose

of debris from the landscape areas.

6. That the Additional Defendant, HSJ Lawncare, was guilty of the following negligence, recklessness and carelessness, which was the approximate cause of the Plaintiff, Anna M. Rugh's, accident and injuries as follows:

(a) That the Additional Defendant, HSJ Lawncare, failed to inspect the planted areas as required by his Contract;

(b) That the Additional Defendant, HSJ Lawncare, failed to remove and properly dispose of debris from the landscape areas;

(c) That the Additional Defendant, HSJ Lawncare, failed to use due care under all of the circumstances of the case.

7. That any responsibility for the maintenance of the debris in the area in which the Plaintiff fell was the responsibility of HSJ Lawncare as set forth in Exhibit "1".

WHEREFORE, it is denied that Bailor is liable to any party in this action. If he is found liable, he demands contribution and/or indemnification from HSJ Lawncare.

COUNT II

James Bailor, t/d/b/a B&D Enterprises vs.
Boyles Insurance, Inc.

8. That the averments contained in Plaintiffs' Amended Complaint against Wal-Mart Stores, Inc. and against James Bailor, t/d/b/a B&D Enterprises, are incorporated by reference for purposes of this joinder only without admitting the truth of the same.

9. That on or about March, 1995, the Original Defendant, Bailor, contacted the Additional Defendant, Boyles, to provide him with the appropriate insurance necessary to protect his commercial activities.

10. That the Defendant, Bailor, relied upon the expertise of the Additional Defendant, Boyles, and its agents and employees to recommend full and proper coverage of Defendant, Bailor's, commercial enterprise.

11. That the Additional Defendant, Boyles, issued a policy or policies for purposes of providing insurance to Bailor.

12. That the Additional Defendant, Boyles, failed to recommend or provide any commercial general liability insurance for Defendant, Bailor.

13. That the Defendant, Bailor, has continued to operate his commercial enterprise believing that he had received the appropriate coverages as recommended by Additional Defendant, Boyles, since March, 1995.

14. That Additional Defendant, Boyles, was guilty of the following negligence, recklessness and carelessness as follows:

(a) That Additional Defendant, Boyles, failed to provide or recommend to Bailor the appropriate general commercial liability coverage;

(b) That Additional Defendant, Boyles, failed to provide appropriate coverage to Bailor knowing that Bailor was relying upon the expertise and experience of Additional Defendant, Boyles, to provide such coverage as would be necessary to allow the operation of Bailor's business under circumstances that any liabilities arising from that business would be covered;

(c) That the Additional Defendant, Boyles, failed to use due care under all of the circumstances of the case.

15. That the Defendant, Bailor, demands common law defense and indemnification from Additional Defendant, Boyles, based upon its failure to provide and/or recommend the appropriate coverage for his commercial enterprise.

WHEREFORE, it is denied that Bailor is liable to any party in this action. If he is found liable, he demands contribution and/or indemnification from Boyles Insurance, Inc.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

VERIFICATION

I, JAMES BAILOR, t/d/b/a B&D Enterprises, state that the within statements in the foregoing Complaint To Join Additional Defendant Under Pa.R.C.P. 2252(a) are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

JAMES BAILOR, t/d/b/a
B&D ENTERPRISES

Exhibit A

SCOPE OF WORK
LANDSCAPING:

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 4/1/2000

A. The Contractor shall provide regular maintenance services as outlined in this Agreement.

B. The Contractor shall examine the landscape, including irrigation, on a weekly basis, looking for problems or potential problems with the landscape.

C. The Contractor shall provide at his/her own risk and sole expense, all labor, materials, tools, equipment, insurance, transportation, hauling, dumping, and all other items needed to provide the services outlined in this Agreement.

D. The Contractor shall make minor replacements and repairs to the landscape facilities as part of the required Work set forth herein. Major items needing replacement or repair shall be reported to the Owner's authorized representative within one week of occurrence. A minor item would be something that takes less than 30 minutes to repair using minimal replacement parts. A broken or plugged sprinkler nozzle would be an example of a minor item. Some specific guidelines for determining if an item is minor or major are given in the section pertaining to each item.

E. Any facilities or Property damaged or destroyed as a result of the Contractor's operations on the premises shall be repaired or replaced at the Contractor's sole expense.

I. CARE OF PLANTED AREAS

A. Trees: Shall be maintained by Contractor in a healthy, vigorous growing condition, free from disease and large concentrations of pests.

1. Contractor shall prune trees that are under fourteen (14) tall once a year to remove dead, diseased, broken, dangerous, or crossing branches and as required herein. Pruning trees that are fourteen (14) or taller will be considered additional work. A written quote for pruning such trees should be separately submitted by Contractor to Owner and detailed in a separate work order.

2. Contractor shall prune trees only in appropriate months. Prune in accordance with generally accepted standards for proper pruning.

3. Contractor shall discard all tree trimmings away from the premises using a legal method.

4. Any tree found to be dead due to negligence by the Contractor should be replaced by Contractor within two weeks of death of such at the Contractor's expense. Replacement of trees that die due to mechanical damage will be paid for as additional work. A quote for all replacements must be submitted to Owner for Owner's approval and detailed in a separate work order.

5. Trees planted as a visual screen or noise buffer may be pruned as needed only to remove dead, diseased, broken, dangerous, or crossing branches. Some municipalities prohibit pruning trees without a permit. Contractor shall check with local authorities prior to pruning. The Contractor is responsible for obtaining and paying for any required permits.

B. Shrubs (including vines). Shall be kept by Contractor in a healthy, vigorous condition, free from disease and large concentrations of pests.

1. Shrubs shall be pruned by Contractor as needed to remove branches that are dead, broken, extending beyond the face of curbs or sidewalks, or are climbing building walls (unless they are intended to climb the wall, such as climbing vines).

2. When it is necessary to prune shrubs, Contractor shall prune them into natural, mounding forms. Contractor shall not shear shrubs into topiary (shapes) or formal hedges unless specifically instructed to do so in writing by the Owner's authorized representative.

3. Any shrub found to be dead due to negligent acts by the Contractor should be replaced within two (2) weeks of death at the Contractor's sole expense. Replacement of shrubs that die due to mechanical damage will be paid for as additional Work. A written quote for replacement is to be submitted by Contractor to Owner and detailed in a separate work order.

C. Fertilizer application.

1. Contractor shall fertilize all grass areas two times per year: spring, and fall. Additional applications will be applied if required with prior approval by Owner. All applications will be at the rate specified by the manufacturer. Contractor will fertilize all plants two times per year with proper fertilizers. No additional payment shall be made for the required fertilizer applications. Contractor must ensure that the application of fertilizer is done by a licensed applicator, if required by any state, local, or federal regulations.

D. Weed control

1. Weeds in planted areas, sidewalks, curbs, gutters, or pavement shall be removed or killed weekly by Contractor as the weeds emerge. Weeds shall be removed by Contractor (not just killed) if they are larger than 2" (5 cm) in height or diameter. Contractor shall dispose of weeds away from the premises. Pre and post-emergent herbicides may be used at the Contractor's option. Contractor must ensure that the application of any and all pre and post-emergent herbicides is done by a licensed applicator, if required by any state, local, or federal regulations. Owner will make no additional payments for herbicide applications. The cost of all weed control Work shall be included in the Agreement price for landscape maintenance.

2. Contractor shall do regular maintenance of the mulch or decorative rock layer, which shall minimize weeds in shrub and groundcover areas. All mulched areas shall be re-mulched by Contractor one time each year to maintain a 2" thickness. The mulch material shall be provided by Contractor and be of the same type as existing unless otherwise specified by Owner.

E. Lawns:

1. Contractor shall keep lawns in a healthy, vigorous condition, free of disease and pests, except as noted below.

2. Lawn height shall be maintained by Contractor between 3" and 5" and shall not exceed 5" (13 cm) at any time.

3. Contractor shall mow, edge and trim lawns weekly or as required to maintain an even, well-groomed appearance. Sidewalks, straight curb runs and large planting areas shall be edged by Contractor utilizing a vertical blade-edger. String trimmers may be used in other areas. Note: Contractors shall remove trash from areas to be mowed prior to mowing.

4. Contractor shall remove visible lawn clippings and dispose of them away from the premises in a legal manner. The Contractor is encouraged to use mulching mowers that cut clippings into small pieces that sift down into the lawn.

5. Any lawn area that is killed or dies due to Contractor negligence shall be replaced at the Contractor's sole expense, within two (2) weeks of the loss. If lawn loss was due to mechanical damage, replacement costs will be paid as additional Work. If lawn loss is due to mechanical damage, Contractor shall submit a quote to Owner for replacement and the quote must be detailed in a separate work order

6. Contractor shall hand water as needed to supplement natural rainfall or permanent irrigation system and maintain plantings in a healthy, stress-free condition. It is the Contractor's responsibility to make sure that plants receive adequate water regardless of weather conditions. It is also the Contractor's responsibility to ensure that plants are not over watered.

II. IRRIGATION ***(This section is deleted for properties that are not irrigated.)***

A. It is the Contractor's responsibility to make sure that the irrigation system is maintained and operates properly.

B. It is the responsibility of the Contractor to conserve water and assure that all-watering rules and regulations are followed. Any penalties, fines, or citations for watering ordinance violations and relating to such shall be paid the by Contractor.

C. The Contractor is responsible for the complete operation and maintenance of the irrigation systems. The Contractor shall examine the irrigation system for damage or malfunction weekly and shall report any damage or malfunction to the Owner's authorized representative in writing.

D. Contractor shall repair Minor Repairs with the irrigation system as defined herein (broken heads, risers and minor leaks). Owner will make no additional payment to Contractor for said Minor Repairs. Major Repairs to the irrigation system such as pump failures, etc., will be reported to Owner and repaired according to a separate written agreement between Owner and Contractor.

1. " Minor Repairs" include, but are not limited to, cleaning out irrigation lines, adjustment of spray heads and nozzles, adjusting zone controls, programming main controller, maintenance of spray heads and nozzles, including replacement of minor parts, minor leaks in lines, risers, laterals or other system components.

2. "Major Repairs" include, but are not limited to, major line breaks, repair and/or replacement of valves, controllers, pumps and backflow-preventers. Contractor shall submit a quote to Owner for repair and/or replacement of major components, and obtain written authorization from Owner prior to proceeding with such Work.

3. Owner reserves the right to determine whether a repair to the irrigation system will be considered Major or Minor. Nothing contained in this section shall relieve the Contractor from acting in a responsible manner in the event of an emergency involving the irrigation system to protect Property, and ensure the safety of all persons, and immediately curtail wholesale waste of water.

E. When breakdowns or malfunctions exist, the Contractor shall hand water, if necessary, to maintain all plant material in a healthy condition.

F. The Contractor shall maintain the irrigation system, including cleaning of filter screens yearly or more often if needed, and flushing pipes part of this system where applicable. WINTERIZATION. As a minimum, the system shall be shut down at the irrigation meter, and all zones shall be blown down with compressed air until all water has been evacuated from the system. Care will be exercised to ensure all heads are secured from ingress of rainwater and mud while system is Repressurized. Controller will be shut down. Contractor shall ensure the backflow preventer is completely drained and suitably protected from freezing.

G. Any replacement of irrigation system components shall be made by Contractor with materials of the same manufacturer and model as the original equipment. Substitutions of materials other than original equipment will be approved only when the original equipment has been discontinued and are no longer available for purchase at any location. The substituted equipment must be completely compatible with the original and must be approved in writing in advance by the Owner's authorized representative.

H. All repairs to the irrigation system shall be identical to the original installation, unless approved in writing by the Owner's authorized representative. If a change to the installation will result in lower future maintenance costs, less frequent breakage, or an increase in public safety, request authorization in writing to make the change from the Owner's authorized representative.

I. Contractor shall check for leaking valves, water running across sidewalks, water standing in puddles, or any other condition which hampers the correct operation of the irrigation System or the public safety. The Contractor shall carefully observe plant materials for signs of wilting, indicating a lack of water. Plants that die due to irrigation system failure will be considered to have died due to the Contractor's negligence or acts and shall be replaced at the Contractor's sole expense.

III. LITTER REMOVAL

A. All litter shall be removed by the Contractor from ~~sidewalks~~, ~~gutters~~, and all planted areas each week. In no case shall trash, litter, or leaves be blown or swept by the Contractor onto the Property of others. All trash, litter, leaves, etc. shall be collected, hauled away, and disposed of by the Contractor away from the premises.

B. In addition to removing all litter from sidewalks, ~~gutters~~ and planted areas, the Contractor shall remove and dispose of any large miscellaneous debris or trash in the parking lot. For the purpose of this Agreement, "large" shall mean items the size of a small beverage cup or larger. The intent of this requirement is that the Contractor and it's workers should take sufficient pride in the appearance of the Property that they would pick up any significant litter they come across on the premises. Sweeping of the parking lots is not included in this Agreement. Contractor shall remove all litter from planting areas and sidewalks, regardless of the size of the litter. Contractor shall notify Owner in writing, with clear photographs attached, of excessive trash accumulation on the Property.

IV. CHEMICALS, HERBICIDES, PESTICIDES

A. All chemicals shall be used in accordance with label directions and the manufacturers recommended handling methods. Registered chemicals shall be handled in accordance with all applicable regulations. Registered chemicals shall be used only on the advice of a qualified, licensed, if required, pest control advisor. Nothing in this specification shall be construed to be the advice of, or to substitute for the advice of, a pest control adviser.

B. Pesticides shall not be applied within one hour of the start of operating hours of the store. In the event that it is not possible to complete the application by one hour prior to business hours (i.e. 24-hour locations), applications shall be made at times when customer presence is minimal. Areas to be treated shall be blocked off and warning signs posted.

C. The Contractor shall take precautions to keep persons away from pesticide and herbicide-treated areas until the applied material is fully dry and the treated area is safe for entry. Follow the recommendations of the pesticide manufacturer and all applicable governmental and industry regulations.

V. PAYMENT

Owner agrees to pay the Contractor a total of $ 127.20 PER VISIT ~~per year~~ during the term of this agreement, payable in monthly payments of $ _____ each.

Additional Scope of Work

Acknowledged and Agreed to by:

CONTRACTOR:

HSI Lawncare
Name of Contractor

3-29-00
By: Date:

Roger R. Hollowell
Print Name

OWNER:

WAL-MART STORES, INC.

4-10-00
By. Date:

Tim Fox
Print Name Title
(District Manager)

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	
Plaintiffs	No.08-1811-CD
vs.	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	JURY TRIAL DEMANDED
Defendants	
vs.	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	
Additional Defendant	
vs.	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of Complaint To Join Additional Defendant Under Pa.R.C.P. 2252(a) with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on January 9, 2003:

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
211½ East Locust Street
Marino Building
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:

Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
Civil Division
No.08-1811-CD

MARSHALL E. RUGH AND ANNA M. RUGH, HUSBAND AND WIFE, PLAINTIFFS
vs.
WAL-MART STORES, INC., A CORPORATION, AND JAMES BAILOR, t/d/b/a B&D ENTERPRISES,
DEFENDANTS
vs.
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,
ADDITIONAL DEFENDANT
vs.
ROGER R. HULL, t/d/b/a HSJ LAWNCARE AND BOYLES INSURANCE, INC.,
ADDITIONAL DEFENDANTS

COMPLAINT TO JOIN ADDITIONAL DEFENDANT UNDER PA.R.C.P. 2252(a)

FILED 4 cc Atty Wood
012:14 BN
JAN 09 2008
William A. Shaw
Prothonotary

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
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P. O. BOX 670
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, And JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

VERIFICATION TO ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 22252(d)

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

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

FILED

JAN 10 2003

William A. Shaw
Prothonotary

WAL.325

VERIFICATION

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

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

Date: 12-23-02

Roger Gates, Manager

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Wal-Mart Stores, Inc.'s Verification to Answer, New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d)** has been served by U.S. Mail, postage prepaid, this 8th day of January, 2003, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

James Bailor
B & D Enterprises
602 Susquehanna Avenue
Curwensville, PA 16833

Patrick J. Loughney, Esquire

FILED NO CC
m/ 1:45 Bell
JAN 10 2003

William A. Shaw
Prothonotary

WAL325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

NOTICE OF SERVICE

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
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FILED

JAN 10 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

NOTICE OF SERVICE

I hereby certify that a true and correct copy of Defendant Wal-Mart Stores, Inc.'s Notice of Deposition was served on the 13th day of January, 2003 by U.S. Mail, postage prepaid, upon counsel for Defendant James Bailor, t/d/b/a B&D Enterprises.

DELL, MOSER, LANE & LOUGHNEY

Patrick J. Loughney, Esquire
Counsel for Defendant Wal-Mart Stores, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Wal-Mart Stores, Inc.'s Notice of Service** has been served by U.S. Mail, postage prepaid, this 14th day of January, 2003, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 679
Clearfield, PA 16830
Counsel for Defendants James Bailor, t/d/b/a B&D Enterprises

Roger R. Hull t/d/b/a HSJ Lawncare
P. O. Box 260
Grampian, PA 16838
Additional Defendants

Boyles Insurance
11 Nichols Street
Clearfield, PA 16830
Additional Defendant

Patrick J. Loughney, Esquire

FILED NO CC
01:45 BH
JAN 16 2003
GD

William A. Shaw
Prothonotary

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

NOTICE OF SERVICE

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

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

FILED

JAN 16 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

NOTICE OF SERVICE

I hereby certify that a true and correct copy of Defendant Wal-Mart Stores, Inc.'s Notice of Deposition was served on the 13th day of January, 2003 by U.S. Mail, postage prepaid, upon Additional Defendants Roger R. Hull, t/d/b/a HSJ Lawncare and Boyles Insurance, Inc.

DELL, MOSER, LANE & LOUGHNEY

Patrick J. Loughney, Esquire
Counsel for Defendant Wal-Mart Stores, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Wal-Mart Stores, Inc.'s Notice of Service** has been served by U.S. Mail, postage prepaid, this 14th day of January, 2003, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 679
Clearfield, PA 16830
Counsel for Defendants James Bailor, t/d/b/a B&D Enterprises

Roger R. Hull t/d/b/a HSJ Lawncare
P. O. Box 260
Grampian, PA 16838
Additional Defendants

Boyles Insurance
11 Nichols Street
Clearfield, PA 16830
Additional Defendant

Patrick J. Loughney, Esquire

FILED NO CC
m/ 1:45 BK
JAN 16 2003
Gest
ACA

William A. Shaw
Prothonotary

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BCYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

PRAECIPE TO ISSUE WRIT TO JOIN ADDITIONAL DEFENDANT ROGER R. HULL, t/d/b/a HSJ LAWNCARE

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

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

FILED

JAN 17 2003
m/12:20 / wm
William A. Shaw
Prothonotary

WRIT ISSUED TO ATTY.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	CIVIL DIVISION
	No. 02-1811-CD
Plaintiffs,	
Vs.	JURY TRIAL DEMANDED
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	
Defendants,	
Vs.	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants.	

PRAECIPE TO ISSUE WRIT TO JOIN ADDITIONAL DEFENDANT ROGER R. HULL, t/d/b/a HSJ LAWNCARE

TO THE PROTHONOTARY:

Please issue a Writ of Join Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare to the above-captioned action.

Respectfully submitted,

Dell, Moser, Lane & Loughney, LLC

By: Danielle M. Vugrinovich
Danielle M. Vugrinovich, Esquire
Attorneys for Wal-Mart Stores, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of PRAECIPE TO ISSUE WRIT TO JOIN ADDITIONAL DEFENDANT ROGER R. HULL, t/d/b/a HSJ LAWNCARE has been served by U.S. Mail, postage prepaid, this 16th day of January, 2003, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 679
Clearfield, PA 16830
Counsel for Defendants James Bailor, t/d/b/a B&D Enterprises

Roger R. Hull t/d/b/a HSJ Lawncare
P. O. Box 260
Grampian, PA 16838
Additional Defendants

Boyles Insurance
11 Nichols Street
Clearfield, PA 16830
Additional Defendant

Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire

FILED

JAN 17 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WRIT TO JOIN ADDITIONAL DEFENDANT

Marshall E. Rugh and Anna M. Rugh
husband and wife
Plaintiff(s)

Vs.

Wal-Mart Stores, Inc.a corporation, and James Bailor, t/d/b/a B & D Enterprises;
Defendant(s)

2002-01811-C

Vs.

Roger R. Hull, t/d/b/a HSJ Lawncare and Boyles Insurance, Inc.
Additional Defendant(s)

To: Roger R. Hull, t/d/b/a HSJ Lawncare:

You are notified that Danielle M. Vugrinovich, Esq. has joined you as an additional defendant in this action, which you are required to defend.

Dated: January 17, 2003

_____
Prothonotary

Filing Attorney: Danielle M. Vugrinovich, Esq.
437 Grant Street
Pittsburgh, PA 15219

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

MARSHALL E. RUGH
and ANNA M. RUGH,
husband and wife,
Plaintiffs,

v.

WAL-MART STORES, INC.,
a corporation,
and JAMES BAILOR, t/d/b/a
B&D ENTERPRISES,
Defendants.

No. 02 - 1811 - CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

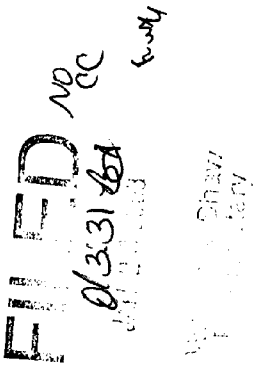
James A. Naddeo, Esq.
Pa I.D. 06820

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

FILED

JAN 23 2003

William A. Shaw
Prothonotary



Lap over margin

JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.
#11177

CIVIL DIVISION

Docket No.: 02-1811-CD

PRAECIPE FOR APPEARANCE
(Jury Trial Demanded)

Filed on Behalf of the Defendant: Roger R. Hull, t/d/b/a HSJ Lawncare

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

SUMMERS, McDONNELL, WALSH & SKEEL
Firm #911

The Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

(412) 261-3232

FILED

JAN 27 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

(Jury Trial Demanded)

PRAECIPE FOR APPEARANCE

TO: THE PROTHONOTARY

Kindly enter the Appearance of the undersigned, Paul J. Walsh III, Esquire, of the law firm of Summers, McDonnell, Walsh & Skeel, on behalf of the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, in the above case.

JURY TRIAL DEMANDED

Respectfully submitted,

SUMMERS, McDONNELL, WALSH & SKEEL

By _____

Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Praecipe for Appearance has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 22nd of January, 2003.

James A. Naddeo, Esquire
211½ E. Locust St.
P.O. box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 E. Locust St.
P.O. Box 670
Clearfield, PA 16830
(Counsel for Defendant/Additional Defendant,
James Bailor t/d/b/a B&D Enterprises)

Patrick J. Loughney, Esquire
Dell, Moser, Lane & Loughney
437 Grant St.
1300 Frick Bldg.
Pittsburgh, PA 15219
(Counsel for Defendant, Wal-Mart Stores, Inc.)

SUMMERS, McDONNELL, WALSH & SKEEL

By _____
Paul J. Walsh III, Counsel for Additional
Defendant, Roger R. Hull, t/d/b/a
HSJ Lawncare

FILED no cc

JAN 27 2003

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13331

RUGH, MARSHALL E. & ANNA M.

02-1811-CD

VS.

WAL-MART STORES, INC.

COMPLAINT

SHERIFF RETURNS

NOW NOVEMBER 21, 2002 AT 1:10 PM EST SERVED THE WITHIN COMPLAINT ON WAL-MART STORES INC., DEFENDANT AT EMPLOYMENT, 100 SUPER CENTER DRIVE, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO LEE DIXON, ASST. MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING.

Return Costs

Cost	Description
20.37	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY; ATTY.

FILED
01/4/2003 6N
JAN 27 2003

William A. Shaw
Prothonotary

Sworn to Before Me This

27th Day Of Jan. 2003

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
Sheriff

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13436

RUGH, MARSHALL E. & ANNA M. 02-1811-CD

VS.

WAL-MART STORES, INC. & BAILOR, JAMES t/d/b/a

AMENDED COMPLAINT

SHERIFF RETURNS

NOW DECEMBER 23, 2002 AT 8:55 AM EST SERVED THE WITHIN AMENDED COMPLAINT ON JAMES BAILOR T/D/B/A B & D ENTERPRISES, DEFENDANT AT CLEARFIELD COUNTY COURTHOUSE, SHERIFF'S DEPT., MARKET STREET, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JAMES BAILOR A TRUE AND ATTESTED COPY OF THE ORIGINAL AMENDED COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: DAVIS

Return Costs

Cost	Description
27.17	SHFF. HAWKINS PD. BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

5th Day Of Feb 2003

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
Sheriff

FILED

FEB 05 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plainitffs,

vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

No. 02-1811-CD

PRELIMINARY OBJECTION TO COMPLAINT TO JOIN ADDITIONAL DEFENDANTS UNDER Pa. R.C.P. 2252(a)

Filed on Behalf of:

BOYLES INSURANCE, INC., Additional Defendant

Counsel of Record for this Party:

BRYAN K. SHRECKENGOST, ESQUIRE
Pa. I.D. # 69098

PIETRAGALLO, BOSICK & GORDON
Firm #834
One Oxford Centre-38th Floor
Pittsburgh, Pennsylvania 15219
(412) 263-2000

Attorney for Defendant, Wal-Mart Stores, Inc.:

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

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, Pennsylvania 15219
(412) 471-1180

Attorney for James Bailor, t/d/b/a B&D Enterprises:

Ann B. Wood, Esquire
Pa. I.D. #23364

BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, Pennsylvania 16820
(814) 765-5537

Attorney for Plaintiff:

James A. Naddeo, Esquire
Pa. I.D. #06820

JAMES A. NADDEO & ASSOCIATES
211 ½ E. Locust Street
P.O. Box 552
Clearfield, Pennsylvania 16830
(814) 765-1601

JURY TRIAL DEMANDED

FILED
FEB 10 2003
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	)	
Plaintiffs,	)	
	)	No. 08-1811-CD
vs.	)	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	)	
Defendants,	)	JURY TRIAL DEMANDED
vs.	)	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES	)	
Additional Defendant,	)	
vs.	)	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	)	
Additional Defendants.	)	

PRELIMINARY OBJECTION TO COMPLAINT TO JOIN ADDITIONAL DEFENDANT UNDER Pa. R.C.P. 2252(a)

AND NOW, comes the Additional Defendant, Boyles Insurance, Inc., (hereinafter referred to as "Boyles"), by and through its attorneys, Pietragallo, Bosick & Gordon, and files the following Preliminary Objection to the Complaint to Join Additional Defendant under Pa. R.C.P. 2252(a), stating as follows:

1. On or about December 17, 2002, Plaintiffs, Marshall E. Rugh and Anna M. Rugh, husband and wife, filed their Amended Complaint in this action setting forth various causes of action purportedly arising out of an alleged slip and fall incident in the parking lot of the Wal-Mart Super Center located on Route 879, Clearfield, Lawrence Township, Clearfield County, Pennsylvania. Attached hereto as Exhibit "A" is a copy of the Rughs' Amended Complaint.

2. As set forth in their Amended Complaint, the Rughs allege various theories of liability against Wal-Mart Stores, Inc. and James Bailor, t/d/b/a B&D Enterprises, sounding in negligence and premises liability. Exhibit "A".

3. On or about January 9, 2003, James Bailor, t/d/b/a B&D Enterprises filed a Complaint to Join Additional Defendant under Pa. R.C.P. 2252(a), seeking to join, among others, Boyles Insurance, Inc. Attached hereto as Exhibit "B" is a copy of Bailor's Complaint to Join Additional Defendant Under Pa. R.C.P. 2252(a) filed on behalf of James Bailor, t/d/b/a B&D Enterprises.

4. As set forth in Count II of Bailor's Complaint to Join, Bailor is attempting to join Boyles as an additional defendant on a theory that Boyles failed to provide or recommended to Bailor a policy or policies of insurance that might provide coverage to Bailor for claims of the type asserted by the Rughs in this action. Exhibit "B", Count II.

PRELIMINARY OBJECTION PURSUANT TO Pa. R.C.P. 1028(a)(5)
MISJOINDER OF A CAUSE OF ACTION

5. Pennsylvania Rule of Civil Procedure 1028(a)(5) provides that a party may file preliminary objections based upon misjoinder of a cause of action.

6. Bailor's allegations of alleged liability against Boyles are based upon a separate and distinct transaction, the procuring of or failure to procure insurance, than is the incident which forms the basis of Rugh' s claims against Wal-Mart and Bailor in this action.

7. Boyles should not be joined as an additional defendant because the claim(s) sought to be asserted against Boyles do not involve a common factual background or common factual or legal questions with the Rughs' claims in the present action.

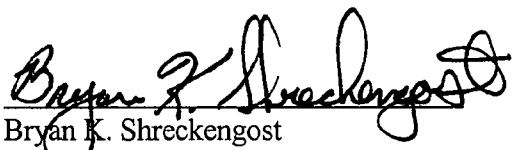
8. As a matter of law, Bailor's claim(s) against Boyles cannot be joined in this action. Stokes v. Loyal Order of Moose Lodge No. 696, 502 Pa. 460, 466 A.2d 1341 (1983).

WHEREFORE, Boyles Insurance, Inc., respectfully requests that this Honorable Court sustain this Preliminary Objection and dismiss Count II of Bailor's Complaint to Join Additional Defendant under Pa. R.C.P. 2252(a), with prejudice.

Dated: February 7th, 2003

Respectfully submitted,

Pietragallo, Bosick & Gordon

By: 

Bryan K. Shreckengost
Pa. I.D. # 69098

PIETRAGALLO, BOSICK & GORDON
Firm #834
One Oxford Centre-38th Floor
Pittsburgh, Pennsylvania 15219
(412) 263-2000

BOYLES INSURANCE, INC., Additional Defendant

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the within **PRELIMINARY OBJECTIONS TO COMPLAINT TO JOIN ADDITIONAL DEFENDANTS UNDER Pa. R.C.P. 2252(a)** was forwarded via Federal Express-Next Day Delivery, this 7th day of February, 2003, to counsel of record as follows:

James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
211 ½ E. Locust Street
P.O. Box 552
Clearfield, Pennsylvania 16830
Attorney for Plaintiff

Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, Pennsylvania 15219
Attorney for Defendant, Wal-Mart Stores, Inc.

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, Pennsylvania 16820
Attorney for James Bailor, t/d/b/a B&D Enterprises

Roger R. Hull, t/d/b/a HSJ Lawncare
P.O. 260
Grampian, Pennsylvania 16838

BRYAN K. SHRECKENGOST

A

EXPRESS MAIL
JAN 22 2003
Media Professional Inc.

Filed
12/17/02

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

MARSHALL E. RUGH
and ANNA M. RUGH,
husband and wife,
Plaintiffs,

v.

WAL-MART STORES, INC.,
a corporation,
and JAMES BAILOR, t/d/b/a
B&D ENTERPRISES,
Defendants.

No. 02 - 1811 - CD

Type of Pleading:

AMENDED COMPLAINT

Filed on behalf of:
Plaintiffs

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

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
v.	*	No. 02 - 1811 - CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTEPRISES, 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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
	*	No. 02 - 1811 - CD
v.	*	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTEPRISES, Defendants.	*	

AMENDED COMPLAINT

NOW come the Plaintiffs, Marshall E. Rugh and Anna M. Rugh, and by their attorney, James A. Naddeo, Esquire, set forth the following:

1. That the Plaintiffs are Marshall E. Rugh and Anna M. Rugh, husband and wife, who reside at R. D. 1, Box 247, Frenchville, Pennsylvania 16836.

2. That the Defendant, Wal-Mart Stores, Inc., is a corporation, which conducts business in the Commonwealth of Pennsylvania having an office located at 100 Super Center Drive, Clearfield, Pennsylvania 16830.

3. That the Defendant, James Bailor, is an individual trading and doing business as D&B Enterprises, of 602 Susquehanna Avenue, Curwensville, Pennsylvania 16833.

COUNT I

Anna M. Rugh v. Wal-Mart Stores, Inc.

4. That at all times referred to herein the Defendant, Wal-Mart Stores, Inc., maintained a retail store known as Wal-Mart Super Center located on Route 879, Clearfield, Lawrence Township, Clearfield County, Pennsylvania, which facility includes an automotive center.

5. That appurtenant to the Wal-Mart Super Center and Automotive Center referred to in Paragraph 4 hereof, which is incorporated herein by reference, is a large public parking area with islands containing ornamental trees and wood chips/gravel to enhance the appearance of the islands.

6. That one of the islands referred to Paragraph 5 hereof is approximately 24 feet by 10 feet in size and is erected approximately 150 feet from the automotive center.

7. That on or about September 10, 2001, Plaintiff proceeded to the Wal-Mart Super Center described in Paragraph 4 hereof which is incorporated herein by reference.

8. That after the Plaintiffs completed their shopping they proceeded to the parking area where the Plaintiff, Marshall E. Rugh, attempted to start the 1994 Chrysler owned by the Plaintiffs.

9. That when the Plaintiff, Marshall E. Rugh, started his vehicle, he noticed that the heat gauge was elevated and immediately turned off the engine.

10. That the Plaintiff, Marshall E. Rugh, proceeded to the Automotive Center where he obtained the service of Defendant's employee to repair his vehicle.

11. That the Plaintiff, Marshall E. Rugh, was informed by an employee of the Defendant, Wal-Mart Stores, Inc., that he was incapable of repairing the vehicle on site and recommended that the car be removed closer to the Automotive Center until it could be towed.

12. That the Plaintiff, Marshall E. Rugh, followed the instructions of Defendant's, Wal-Mart Stores, Inc., employee and moved his vehicle and parked it to the east side of the island described in Paragraph 5 hereof.

13. That after parking their vehicle, Plaintiffs exited the car for the purpose of entering the Automotive Center to call a towing service as directed by Defendant's, Wal-Mart Stores, Inc., employee.

14. That the Plaintiff, Anna M. Rugh, proceeded approximately 10 to 15 feet toward Defendant's, Wal-Mart Stores, Inc., Automotive Center at which time she slipped and fell on debris which had migrated from the island described in Paragraph 5 hereof unto the surface of the parking area.

15. That the Defendant, Wal-Mart Stores, Inc., was guilty of the following negligence, recklessness and carelessness which was the proximate cause of the accident and the injuries received by the Plaintiff, Anna M. Rugh, as follows:

A. Defendant failed to inspect the parking area;

B. Defendant failed to warn customers of the debris on the parking area;

C. Defendant failed to remove debris from the parking area;

16. That as a result of the fall described in Paragraph 14 hereof, which is incorporated herein by reference, the Plaintiff, Anna M. Rugh, struck her head on the curbed parking area of the island and hit her pelvis on the paved parking surface causing numerous and serious injuries hereinafter set forth:

A. Multiple bruises and contusions;

B. Multiple fractures of the pelvis.

17. That the Plaintiff, Anna M. Rugh, claims a reasonable amount for the following:

A. A reasonable amount for pain and suffering; past, present and future;

B. Cost of replacing household services;

C. Privation and inconvenience due to the injuries and treatment, past, present and future;

D. Mental anguish and depression resulting from the accident;

E. Other damages allowable by law.

WHEREFORE, Plaintiff, Anna M. Rugh, claims unliquidated damages against the Defendant, Wal-Mart Stores, Inc., in an amount in excess of Twenty Thousand ($20,000.00) Dollars. Jury Trial Demanded.

COUNT II

Marshall E. Rugh v. Wal-Mart Stores, Inc.

18. That the Plaintiff, Marshall E. Rugh, incorporates Paragraphs 1 through 17 of this Complaint by reference and makes them a part hereof.

19. That the Plaintiff, Marshall E. Rugh, is the husband of Anna M. Rugh, having been married to the said Anna M. Rugh on August 14, 1965.

20. That the Plaintiff, Marshall E. Rugh, has resided with his wife, Anna M. Rugh, since the date of the parties' marriage and has continued to reside with her up to and including the time of the filing of this Complaint.

21. That as a result of the injuries suffered by the Plaintiff, Anna M. Rugh, the Plaintiff, Marshall E. Rugh, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.

WHEREFORE, Plaintiff, Marshall E. Rugh, claims unliquidated damages against the Defendant, Wal-Mart Stores, Inc., in an amount in excess of Twenty thousand ($20,000.00) Dollars. Jury Trial Demanded.

COUNT III

Anna M. Rugh v. James Bailor, t/a/d/a B&D Enterprises

22. That the Plaintiff, Anna M. Rugh, incorporates Paragraphs 1 through 21 of this Amended Complaint by reference and makes them a part hereof.

23. That the Plaintiff, Anna M. Rugh, believes and therefore avers that at the time of her accident the Defendant, James Bailor, t/d/b/a B&D Enterprises, was contracted by Wal-Mart Stores, Inc. to maintain the public parking area pertinent to the facilities located at the Wal-Mart Super Center, Route 879, Clearfield, Lawrence Township, Clearfield County, Pennsylvania.

24. That the Defendant, James Bailor, t/d/b/a B&D Enterprises, was guilty of the following negligence,

recklessness and carelessness which was the proximate cause of the accident and the injuries received by the Plaintiff, Anna M. Rugh, as follows:

A. Defendant failed to inspect the parking area;

B. Defendant failed to warn Wal-Mart customers of the debris on the parking area;

C. Defendant failed to remove debris from the parking area;

D. Defendant failed to use due care under all of the circumstances of the case.

WHEREFORE, Plaintiff, Anna M. Rugh, claims unliquidated damages against the Defendant, James Bailor, t/d/b/a B&D Enterprises in an amount in excess of Twenty Thousand ($20 000.00) Dollars. Jury Trial Demanded.

COUNT IV

Marshall E. Rugh v. James Bailor, t/a/d/a B&D Enterprises

25. That the Plaintiff, Marshall E. Rugh, incorporates Paragraphs 1 through 24 of this Amended Complaint by reference and makes them a part hereof.

26. That the Plaintiff, Marshall E. Rugh, is the husband of Anna M. Rugh, having been married to the said Anna M. Rugh on August 14, 1965.

27. That the Plaintiff, Marshall E. Rugh, has resided with his wife, Anna M. Rugh, since the date of the parties' marriage and has continued to reside with her up to and including the time of the filing of this Complaint.

28. That as a result of the injuries suffered by the Plaintiff, Anna M. Rugh, the Plaintiff, Marshall E. Rugh, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.

WHEREFORE, Plaintiff, Marshall E. Rugh, claims unliquidated damages against the Defendant, James Bailor, t/d/b/a B&D Enterprises, in an amount in excess of Twenty Thousand ($20,000.00) Dollars. Jury Trial Demanded.

James A. Naddeo
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA)

ss.

COUNTY OF CLEARFIELD)

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

Marshall E. Rugh

Marshall E. Rugh

SWORN and SUBSCRIBED before me this 16th day of December, 2002.

Linda C. Lewis

Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2003

B

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES

Additional Defendant

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants

NO. 02-1811-CD

EXPRESS MAIL

JAN 22 2003

Media Professional Inc.

JURY TRIAL DEMANDED

Type of Pleading:

COMPLAINT TO JOIN ADDITIONAL DEFENDANT UNDER PA.R.C.P. 2252(a)

Filed on Behalf of:
James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant

Counsel of Record for this Party:

Ann B. Wood, Esquire
Supreme Court No. 23364

Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
(814) 765-5537

Attorney For Plaintiffs:

James A. Naddeo, Esquire
Supreme Court No. 06820

JAMES A. NADDEO & ASSOCIATES
211½ E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Attorney For Defendant, Wal-Mart Stores, Inc.:

Patrick J. Loughney, Esquire
Supreme Court No. 23163

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219
Phone: (412) 471-1180
Fax: (412) 471-9012

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

JAN 09 2003

Attest.

Prothonotary/
Clerk of Courts

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

NOTICE TO DEFEND

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

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

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
2nd & Market Streets
Clearfield, Pennsylvania 16830
Telephone (814) 765-2641 Ex. 5982

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	
Plaintiffs	No.08-1811-CD
vs.	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	JURY TRIAL DEMANDED
Defendants	
vs.	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	
Additional Defendant	
vs.	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants	

COMPLAINT TO JOIN ADDITIONAL DEFENDANT UNDER PA.R.C.P. 2252(a)

AND NOW, COMES the Defendant, JAMES BAILOR, t/d/b/a B&D ENTERPRISES, (hereinafter referred to as "Bailor") by and through his attorneys, Bell, Silberblatt & Wood, and Ann B. Wood, Esquire, and files the following Complaint against Additional Defendant pursuant to Pa.R.C.P. 2252(a):

1. That the Additional Defendant, Roger R. Hull, is an individual, trading and doing business as HSJ Lawncare, (hereinafter referred to as "HSJ Lawncare") of P.O. Box 260,

Grampian, Pennsylvania 16838.

2. That the Additional Defendant, Boyles Insurance, Inc., is a corporation which conducts business in the Commonwealth of Pennsylvania, (hereinafter referred to as "Boyles") having an office located at 11 Nichols Street, Clearfield, Pennsylvania 16830.

COUNT I

James Bailor, t/d/b/a B&D Enterprises vs.
Roger R. Hull, t/d/b/a HSJ Lawncare

3. That the averments contained in Plaintiffs' Amended Complaint against Wal-Mart Stores, Inc. and against James Bailor, t/d/b/a B&D Enterprises, are incorporated by reference for purposes of this joinder only without admitting the truth of the same.

4. To the extent the Plaintiffs aver that Wal-Mart or Bailor maintained the parking area for the conditions of which Plaintiffs complained, it is averred that such maintenance had been subcontracted by Wal-Mart to Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, as set forth in Exhibit "1" attached to this Complaint.

5. That pursuant to said Contract, the responsibility for the maintenance of the landscaping, including the islands described in Plaintiffs' Complaint, were the responsibility of the Additional Defendant, HSJ Lawncare, to remove and properly dispose

of debris from the landscape areas.

6. That the Additional Defendant, HSJ Lawncare, was guilty of the following negligence, recklessness and carelessness, which was the approximate cause of the Plaintiff, Anna M. Rugh's, accident and injuries as follows:

(a) That the Additional Defendant, HSJ Lawncare, failed to inspect the planted areas as required by his Contract;

(b) That the Additional Defendant, HSJ Lawncare, failed to remove and properly dispose of debris from the landscape areas;

(c) That the Additional Defendant, HSJ Lawncare, failed to use due care under all of the circumstances of the case.

7. That any responsibility for the maintenance of the debris in the area in which the Plaintiff fell was the responsibility of HSJ Lawncare as set forth in Exhibit "1".

WHEREFORE, it is denied that Bailor is liable to any party in this action. If he is found liable, he demands contribution and/or indemnification from HSJ Lawncare.

COUNT II

James Bailor, t/d/b/a B&D Enterprises vs. Boyles Insurance, Inc.

8. That the averments contained in Plaintiffs' Amended Complaint against Wal-Mart Stores, Inc. and against James Bailor, t/d/b/a B&D Enterprises, are incorporated by reference for purposes of this joinder only without admitting the truth of the same.

9. That on or about March, 1995, the Original Defendant, Bailor, contacted the Additional Defendant, Boyles, to provide him with the appropriate insurance necessary to protect his commercial activities.

10. That the Defendant, Bailor, relied upon the expertise of the Additional Defendant, Boyles, and its agents and employees to recommend full and proper coverage of Defendant, Bailor's, commercial enterprise.

11. That the Additional Defendant, Boyles, issued a policy or policies for purposes of providing insurance to Bailor.

12. That the Additional Defendant, Boyles, failed to recommend or provide any commercial general liability insurance for Defendant, Bailor.

13. That the Defendant, Bailor, has continued to operate his commercial enterprise believing that he had received the appropriate coverages as recommended by Additional Defendant, Boyles, since March, 1995.

14. That Additional Defendant, Boyles, was guilty of the following negligence, recklessness and carelessness as follows:

(a) That Additional Defendant, Boyles, failed to provide or recommend to Bailor the appropriate general commercial liability coverage;

(b) That Additional Defendant, Boyles, failed to provide appropriate coverage to Bailor knowing that Bailor was relying upon the expertise and experience of Additional Defendant, Boyles, to provide such coverage as would be necessary to allow the operation of Bailor's business under circumstances that any liabilities arising from that business would be covered;

(c) That the Additional Defendant, Boyles, failed to use due care under all of the circumstances of the case.

15. That the Defendant, Bailor, demands common law defense and indemnification from Additional Defendant, Boyles, based upon its failure to provide and/or recommend the appropriate coverage for his commercial enterprise.

WHEREFORE, it is denied that Bailor is liable to any party in this action. If he is found liable, he demands contribution and/or indemnification from Boyles Insurance, Inc.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

VERIFICATION

I, JAMES BAILOR, t/d/b/a B&D Enterprises, state that the within statements in the foregoing Complaint To Join Additional Defendant Under Pa.R.C.P. 2252(a) are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

JAMES BAILOR, t/d/b/a
B&D ENTERPRISES

EXHIBIT A

SCOPE OF WORK
LANDSCAPING:

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 4/1/2000

A. The Contractor shall provide regular maintenance services as outlined in this Agreement.

B. The Contractor shall examine the landscape, including irrigation, on a weekly basis, looking for problems or potential problems with the landscape.

C. The Contractor shall provide at his/her own risk and sole expense, all labor, materials, tools, equipment, insurance, transportation, hauling, dumping, and all other items needed to provide the services outlined in this Agreement.

D. The Contractor shall make minor replacements and repairs to the landscape facilities as part of the required Work set forth herein Major items needing replacement or repair shall be reported to the Owner's authorized representative within one week of occurrence. A minor item would be something that takes less than 30 minutes to repair using minimal replacement parts. A broken or plugged sprinkler nozzle would be an example of a minor item. Some specific guidelines for determining if an item is minor or major are given in the section pertaining to each item.

E. Any facilities or Property damaged or destroyed as a result of the Contractor's operations on the premises shall be repaired or replaced at the Contractor's sole expense.

I. CARE OF PLANTED AREAS

A. Trees: Shall be maintained by Contractor in a healthy, vigorous growing condition, free from disease and large concentrations of pests.

1. Contractor shall prune trees that are under fourteen (14) tall once a year to remove dead, diseased, broken, dangerous, or crossing branches and as required herein. Pruning trees that are fourteen (14) or taller will be considered additional work. A written quote for pruning such trees should be separately submitted by Contractor to Owner and detailed in a separate work order.

2. Contractor shall prune trees only in appropriate months. Prune in accordance with generally accepted standards for proper pruning.

3. Contractor shall discard all tree trimmings away from the premises using a legal method.

4. Any tree found to be dead due to negligence by the Contractor should be replaced by Contractor within two weeks of death of such at the Contractor's expense. Replacement of trees that die due to mechanical damage will be paid for as additional work A quote for all replacements must be submitted to Owner for Owner's approval and detailed in a separate work order.

5. Trees planted as a visual screen or noise buffer may be pruned as needed only to remove dead, diseased, broken, dangerous, or crossing branches. Some municipalities prohibit pruning trees without a permit. Contractor shall check with local authorities prior to pruning. The Contractor is responsible for obtaining and paying for any required permits.

B. Shrubs (including vines). Shall be kept by Contractor in a healthy, vigorous condition, free from disease and large concentrations of pests.

1. Shrubs shall be pruned by Contractor as needed to remove branches that are dead, broken, extending beyond the face of curbs or sidewalks, or are climbing building walls (unless they are intended to climb the wall, such as climbing vines).

2. When it is necessary to prune shrubs, Contractor shall prune them into natural, mounding forms. Contractor shall not shear shrubs into topiary (shapes) or formal hedges unless specifically instructed to do so in writing by the Owner's authorized representative.

3. Any shrub found to be dead due to negligent acts by the Contractor should be replaced within two (2) weeks of death at the Contractor's sole expense. Replacement of shrubs that die due to mechanical damage will be paid for as additional Work. A written quote for replacement is to be submitted by Contractor to Owner and detailed in a separate work order.

C. Fertilizer application.

1. Contractor shall fertilize all grass areas two times per year: spring, and fall. Additional applications will be applied if required with prior approval by Owner. All applications will be at the rate specified by the manufacturer. Contractor will fertilize all plants two times per year with proper fertilizers. No additional payment shall be made for the required fertilizer applications. Contractor must ensure that the application of fertilizer is done by a licensed applicator, if required by any state, local, or federal regulations.

D. Weed control

1. Weeds in planted areas, sidewalks, curbs, gutters, or pavement shall be removed or killed weekly by Contractor as the weeds emerge. Weeds shall be removed by Contractor (not just killed) if they are larger than 2" (5 cm) in height or diameter. Contractor shall dispose of weeds away from the premises. Pre and post-emergent herbicides may be used at the Contractor's option. Contractor must ensure that the application of any and all pre and post-emergent herbicides is done by a licensed applicator, if required by any state, local, or federal regulations. Owner will make no additional payments for herbicide applications. The cost of all weed control Work shall be included in the Agreement price for landscape maintenance.

2. Contractor shall do regular maintenance of the mulch or decorative rock layer, which shall minimize weeds in shrub and groundcover areas. All mulched areas shall be re-mulched by Contractor one time each year to maintain a 2" thickness. The mulch material shall be provided by Contractor and be of the same type as existing unless otherwise specified by Owner.

E. Lawns:

1. Contractor shall keep lawns in a healthy, vigorous condition, free of disease and pests, except as noted below.

2. Lawn height shall be maintained by Contractor between 3" and 5" and shall not exceed 5" (13 cm) at any time.

3. Contractor shall mow, edge and trim lawns weekly or as required to maintain an even, well-groomed appearance. Sidewalks, straight curb runs and large planting areas shall be edged by Contractor utilizing a vertical blade-edger. String trimmers may be used in other areas. Note: Contractors shall remove trash from areas to be mowed prior to mowing.

4. Contractor shall remove visible lawn clippings and dispose of them away from the premises in a legal manner. The Contractor is encouraged to use mulching mowers that cut clippings into small pieces that sift down into the lawn.

5. Any lawn area that is killed or dies due to Contractor negligence shall be replaced at the Contractor's sole expense, within two (2) weeks of the loss. If lawn loss was due to mechanical damage, replacement costs will be paid as additional Work. If lawn loss is due to mechanical damage, Contractor shall submit a quote to Owner for replacement and the quote must be detailed in a separate work order

6. Contractor shall hand water as needed to supplement natural rainfall or permanent irrigation system and maintain plantings in a healthy, stress-free condition. It is the Contractor's responsibility to make sure that plants receive adequate water regardless of weather conditions. It is also the Contractor's responsibility to ensure that plants are not over watered.

II. IRRIGATION *(This section is deleted for properties that are not irrigated.)*

A. It is the Contractor's responsibility to make sure that the irrigation system is maintained and operates properly.

B. It is the responsibility of the Contractor to conserve water and assure that all-watering rules and regulations are followed. Any penalties, fines, or citations for watering ordinance violations and relating to such shall be paid the by Contractor.

C. The Contractor is responsible for the complete operation and maintenance of the irrigation systems. The Contractor shall examine the irrigation system for damage or malfunction weekly and shall report any damage or malfunction to the Owner's authorized representative in writing.

D. Contractor shall repair Minor Repairs with the irrigation system as defined herein (broken heads, risers and minor leaks). Owner will make no additional payment to Contractor for said Minor Repairs. Major Repairs to the irrigation system such as pump failures, etc., will be reported to Owner and repaired according to a separate written agreement between Owner and Contractor.

1. "Minor Repairs" include, but are not limited to, cleaning out irrigation lines, adjustment of spray heads and nozzles, adjusting zone controls, programming main controller, maintenance of spray heads and nozzles, including replacement of minor parts, minor leaks in lines, risers, laterals or other system components.

2. "Major Repairs" include, but are not limited to, major line breaks, repair and/or replacement of valves, controllers, pumps and backflow-preventers. Contractor shall submit a quote to Owner for repair and/or replacement of major components, and obtain written authorization from Owner prior to proceeding with such Work.

3. Owner reserves the right to determine whether a repair to the irrigation system will be considered Major or Minor. Nothing contained in this section shall relieve the Contractor from acting in a responsible manner in the event of an emergency involving the irrigation system to protect Property, and ensure the safety of all persons, and immediately curtail wholesale waste of water.

E. When breakdowns or malfunctions exist, the Contractor shall hand water, if necessary, to maintain all plant material in a healthy condition.

F. The Contractor shall maintain the irrigation system, including cleaning of filter screens yearly or more often if needed, and flushing pipes part of this system where applicable. WINTERIZATION. As a minimum, the system shall be shut down at the irrigation meter, and all zones shall be blown down with compressed air until all water has been evacuated from the system. Care will be exercised to ensure all heads are secured from ingress of rainwater and mud while system is Repressurized. Controller will be shut down. Contractor shall ensure the backflow preventer is completely drained and suitably protected from freezing.

G. Any replacement of irrigation system components shall be made by Contractor with materials of the same manufacturer and model as the original equipment. Substitutions of materials other than original equipment will be approved only when the original equipment has been discontinued and are no longer available for purchase at any location. The substituted equipment must be completely compatible with the original and must be approved in writing in advance by the Owner's authorized representative.

H. All repairs to the irrigation system shall be identical to the original installation, unless approved in writing by the Owner's authorized representative. If a change to the installation will result in lower future maintenance costs, less frequent breakage, or an increase in public safety, request authorization in writing to make the change from the Owner's authorized representative.

I. Contractor shall check for leaking valves, water running across sidewalks, water standing in puddles, or any other condition which hampers the correct operation of the irrigation System or the public safety. The Contractor shall carefully observe plant materials for signs of wilting, indicating a lack of water. Plants that die due to irrigation system failure will be considered to have died due to the Contractor's negligence or acts and shall be replaced at the Contractor's sole expense.

III. LITTER REMOVAL

A. All litter shall be removed by the Contractor from ~~sidewalks~~, ~~gutters~~, and all planted areas each week. In no case shall trash, litter, or leaves be blown or swept by the Contractor onto the Property of others. All trash, litter, leaves, etc. shall be collected, hauled away, and disposed of by the Contractor away from the premises.

B. In addition to removing all litter from sidewalks, ~~gutters~~ and planting areas, the Contractor shall remove and dispose of any large miscellaneous debris or ~~trash~~ in the parking lot. For the purpose of this ~~Agreement~~, "large" shall mean items the size of a small beverage cup or larger. The intent of this requirement is that the Contractor and it's workers should take sufficient pride in the appearance of the Property that they would pick up any significant litter they come across on the premises. Sweeping of the parking lots is not included in this Agreement. Contractor shall remove all litter from planting areas and sidewalks, regardless of the size of the litter. Contractor shall notify Owner in writing, with clear photographs attached, of excessive trash accumulation on the Property.

IV. CHEMICALS, HERBICIDES, PESTICIDES

A. All chemicals shall be used in accordance with label directions and the manufacturers recommended handling methods. Registered chemicals shall be handled in accordance with all applicable regulations. Registered chemicals shall be used only on the advice of a qualified, licensed, if required, pest control advisor. Nothing in this specification shall be construed to be the advice of, or to substitute for the advice of, a pest control adviser.

B. Pesticides shall not be applied within one hour of the start of operating hours of the store. In the event that it is not possible to complete the application by one hour prior to business hours (i.e 24-hour locations), applications shall be made at times when customer presence is minimal. Areas to be treated shall be blocked off and warning signs posted.

C. The Contractor shall take precautions to keep persons away from pesticide and herbicide-treated areas until the applied material is fully dry and the treated area is safe for entry. Follow the recommendations of the pesticide manufacturer and all applicable governmental and industry regulations.

V. PAYMENT

Owner agrees to pay the Contractor a total of $ 127.20 PER VISIT ~~per year~~ during the term of this agreement, payable in monthly payments of $ _____ each.

Additional Scope of Work

Acknowledged and Agreed to by:

CONTRACTOR:

HSI Lawncare
Name of Contractor

[signature] 3-29-00
By Date:

Roger R. Hollowood
Print Name

OWNER:

WAL-MART STORES, INC.

[signature] 4-10-00
By. Date:

Tim Fox
Print Name Title
(District Manager)

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of Complaint To Join Additional Defendant Under Pa.R.C.P. 2252(a) with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on January 9, 2003:

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
211½ East Locust Street
Marino Building
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:

Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	)	
Plaintiffs,	)	No. 08-1811-CD
vs.	)	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	)	
Defendants,	)	JURY TRIAL DEMANDED
vs.	)	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES	)	
Additional Defendant,	)	
vs.	)	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	)	
Additional Defendants.	)	

ORDER OF COURT

AND NOW, this ____ day of February, 2003, upon consideration of the Preliminary Objection filed by Boyles Insurance, Inc., it is hereby ORDERED that said Preliminary Objection is sustained and Count II of the Complaint to Join Additional Defendant under Pa. R.C.P. 2252(a) filed by James Bailor, t/d/b/a B&D Enterprises is dismissed, with prejudice.

BY THE COURT:

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

#11177

CIVIL DIVISION

Docket No.: 02-1811-CD

PRAECIPE FOR RULE TO FILE COMPLAINT TO JOIN ADDITIONAL DEFENDANT

(Jury Trial Demanded)

Filed on Behalf of the Additional Defendant: Roger R. Hull, t/d/b/a HSJ Lawncare

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

SUMMERS, McDONNELL, WALSH & SKEEL
Firm #911

The Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

(412) 261-3232

FILED

FEB 10 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

(Jury Trial Demanded)

PRAECIPE FOR RULE TO FILE COMPLAINT TO JOIN ADDITIONAL DEFENDANT

TO: Prothonotary

Kindly rule the Defendant, Wal-Mart Stores, Inc., to file a Complaint to Join Roger R. Hull, t/d/b/a HSJ Lawncare, as an Additional Defendant in the above-captioned matter.

Respectfully submitted,

SUMMERS, McDONNELL, WALSH & SKEEL

By _____
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Praecipe for Rule to File Complaint to Join has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 5th day of February, 2003.

James A. Naddeo, Esquire
211½ E. Locust St.
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 E. Locust St.
P.O. Box 670
Clearfield, PA 16830
(Counsel for Defendant/Additional Defendant, James Bailor t/d/b/a B&D Enterprises)

Patrick J. Loughney, Esquire
Dell, Moser, Lane & Loughney
437 Grant St.
1300 Frick Bldg.
Pittsburgh, PA 15219
(Counsel for Defendant, Wal-Mart Stores, Inc.)

Boyles Insurance
11 Nichols Street
Clearfield, PA 16830
(Additional Defendant)

SUMMERS, McDONNELL, WALSH & SKEEL

By _____
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

FILED No CC
m/2:05 BH 1 Rule to Atty
FEB 10 2003

William A. Shaw
Prothonotary

COPY

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

Marshall E. Rugh and Anna M. Rugh,
husband and wife
Plaintiffs

Case No. 02-1811-CD

Vs.

Wal-Mart Stores, Inc., a corporation, and
James Bailor, t/d/b/a B & D Enterprises,
Defendants

vs.

James Bailor, t/d/b/a B & D Enterprises

vs.

Roger R. Hull, t/d/b/a HSJ Lawncare and
Boyles Insurance, Inc.

RULE TO FILE COMPLAINT

TO: Wal-Mart Stores, Inc., a corporation

YOU ARE HEREBY RULED to file a Complaint to Join Roger R. Hull, t/d/b/a HSJ Lawncare, as an Additional Defendant in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: 02/10/03

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13513

RUGH, MARSHALL E. & ANNA M. 02-1811-CD

VS.

WAL-MART STORES, INC. -vs- BAILOR, JAMES t/d/b/a -vs- HULL, ROGER

COMPLAINT TO JOIN ADDITIONAL DEFENDANT; DEFENDANT BAILOR'S ANSWER; ANSWER, MATTER; AMENDED COMPLAINT; ANSWER,NEW MATTER

SHERIFF RETURNS

NOW JANUARY 20, 2003 AT 9:41 AM EST SERVED THE WITHIN COMPLAINT TO JOIN ADDITIONAL DEENDANT; DEFENDANT BAILOR'S ANSWER; ANSWER NEW MATTER; AMEDNED COMPLAINT; ANSWER & NEW MATTER ON BOYLES INSURANCE INC., ADDL. DEFT. AT EMPLOYMENT, 11 NICHOLS ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CINDY McLAUGHLIN, SEC. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO JOIN ADDL. DEFT. ETC. AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: MORGILLO

NOW JANUARY 21. 2003 AT 10:51 AM EST SERVED THE WITHIN COMPLAINT TO JOIN ADDITONAL DEFENDANT; DEFENDANT BAILOR'S ANSWER; ANSWER NEW MATTER; AMENDED COMPLAINT; ANSWER & NEW MATTER ON ROGER R. HULL t/d/b/a HSJ LAWNCARE, DEFENDANT AT RESIDENCE, PO BOX 260, GRAMPIAN, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ROGER R. HULL A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO JOIN ADDL. DEFT. ETC. AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
41.97	SHFF. HAWKINS PAID BY; ATTY.
20.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

11th Day Of Feb. 2003

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
Sheriff

FILED

FEB 11 2003
0/11:30 a.m.
William A. Shaw
Prothonotary

no cc

WAL.325

WAL.325
2/18/03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

ACCEPTANCE OF SERVICE

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

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

FILED

FEB 18 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

ACCEPTANCE OF SERVICE

I, Roger R. Hull t/d/b/a HSJ Lawncare, Additional Defendant, am authorized to and do accept service of the attached Writ of Join Additional Defendant Roger R. Hull t/d/b/a HSJ Lawncare in this action. Attached hereto as Exhibit "A" is the Writ to Join Additional Defendant Roger R. Hull t/d/b/a HSJ Lawncare.

Date: 1-30-03

Roger R. Hull t/d/b/a HSJ Lawncare

WAL 325 1201

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WRIT TO JOIN ADDITIONAL DEFENDANT

Marshall E. Rugh and Anna M. Rugh
husband and wife
Plaintiff(s)

Vs.

Wal-Mart Stores, Inc.a corporation, and James Bailor, t/d/b/a B & D Enterprises;
Defendant(s)

2002-01811-C

Vs.

Roger R. Hull, t/d/b/a HSJ Lawncare and Boyles Insurance, Inc.
Additional Defendant(s)

To: Roger R. Hull, t/d/b/a HSJ Lawncare:

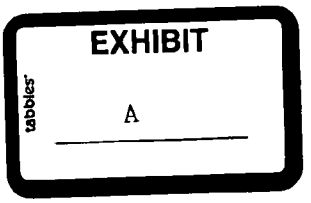
You are notified that Danielle M. Vugrinovich, Esq. has joined you as an additional defendant in this action, which you are required to defend.

Dated: January 17, 2003

Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

Filing Attorney: Danielle M. Vugrinovich, Esq.
437 Grant Street
Pittsburgh, PA 15219



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **ACCEPTANCE OF SERVICE** has been served by U.S. Mail, postage prepaid, this 13th day of February, 2003, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 679
Clearfield, PA 16830
Counsel for Defendant James Bailor, t/d/b/a B&D Enterprises

Paul Walsh, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219
Counsel for Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare

Bryan K. Shreckengost, Esquire
PIETRAGALLO BOSICK & GORDON
38th Floor, One Oxford Centre
Pittsburgh, PA 15219
Counsel for Additional Defendant Boyles Insurance, Inc.

Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire

FILED no cc
m/2:03 BA
FEB 18 2003

William A. Shaw
Prothonotary

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

DEFENDANT WAL-MART STORES, INC.'S REPLY TO JAMES BAILOR t/d/b/a B&D ENTERPRISES' NEW MATTER PURSUANT TO PA. R.C.P. 2252(d)

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

FILED

FEB 24 2003

William A. Shaw
Prothonotary

DELL, MOSER, LANE & LOUGHNEY, LLC
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437 Grant Street
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Pittsburgh, PA 15219

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

FILED

FEB 2 4 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	CIVIL DIVISION
	No. 02-1811-CD
Plaintiffs,	
Vs.	JURY TRIAL DEMANDED
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	
Defendants,	
Vs.	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants.	

DEFENDANT WAL-MART STORES, INC.'S REPLY TO JAMES BAILOR t/d/b/a B&D ENTERPRISES' NEW MATTER PURSUANT TO PA. R.C.P. 2252(d)

AND NOW, comes Defendant Wal-Mart Stores, Inc., by and through its attorneys, Dell, Moser, Lane & Loughney, LLC, Patrick J. Loughney, Esquire and Danielle M. Vugrinovich, Esquire, and files the within Reply to James Bailor t/d/b/a B&D Enterprises' New Matter Pursuant to Pa. R.C.P. 2252(d):

1. The allegations contained within Paragraph 7 of Defendant Bailor's Answer require no response. However, to the extent a response is deemed necessary, said allegations are

denied pursuant to Pa. R.C.P. 1029(e). Wal-Mart Stores, Inc. incorporates herein its Answer, New Matter and New Matter pursuant to Pa.R.C.F. 2252(d).

2. The allegations contained within Paragraph 8 of Bailor's Answer are admitted.

3. The allegations contained within Paragraph 9 of Bailor's Answer are admitted in part and denied in part. It is admitted that pursuant to Paragraph 2.5, Bailor was to coordinate its schedule in performing the duties set forth in the Outside Maintenance Agreement and Exhibit A of the Outside Maintenance Agreement with Wal-Mart's store manager. However, it is denied that pursuant to Paragraph 2.5, Bailor was to perform scheduled sweeping under the direction and supervision of the applicable local store manager and strict proof thereof is demanded at the time of trial.

4. The allegations contained within Paragraph 10 of Bailor's Answer are admitted in part and denied in part. It is admitted that Roger Gates, store manager of the Clearfield Wal-Mart, notified B&D Enterprises to reduce sweeping to the Wal-Mart premises from three times per week to one time per week. However, it is denied that Susan Kavelak spoke with B&D Enterprises regarding the reduction in the sweeping schedule. Additionally, it is denied that such conversation took place in March of 2001. To the contrary, it is believed such conversation took place in June of 2001. With regard to the allegations that are denied, strict proof is demanded at the time of trial.

5. The allegations contained within Paragraph 11 of Bailor's Answer are denied and strict proof thereof is demanded at the time of trial.

6. The allegations contained within Paragraph 12 of Bailor's Answer are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e). It is admitted that Wal-Mart has

control of its parking lot to the extent it subcontracts such duties to other entities. In the present case, Wal-Mart subcontracted its parking lot sweeping and landscaping duties to B & D Enterprises and HSJ Lawncare, therefore, such entities were responsible for the maintenance and control of the Wal-Mart parking lot in accordance with the duties set forth in their respective contracts with Wal-Mart. Therefore, any allegation that Wal-Mart has full unfettered control of its parking lot is denied and strict proof thereof is demanded at the time of trial. *See, Outside Maintenance Agreement and Exhibit "A" dated May 1, 2000 between Wal-Mart Stores, Inc. and B & D Enterprises attached hereto as Exhibit "A" and Outside Maintenance Agreement and Exhibit "A" dated May 1, 2000 between Wal-Mart Stores, Inc. and HSJ Lawncare attached hereto as Exhibit "B."*

7. The allegations contained within Paragraph 13 of Bailor's Answer are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

8. The allegations contained within Paragraph 14 of Bailor's Answer and its sub-parts are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

9. The allegations contained within Paragraph 15 of Bailor's Answer are conclusions to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

WHEREFORE, Defendant Wal-Mart Stores, Inc. demands judgment in its favor and against all other parties in this action.

Respectfully submitted,

Dell, Moser, Lane & Loughney, LLC

By: Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire
Attorneys for Wal-Mart Stores, Inc.

district 1079

Outside Maintenance Agreement

THIS AGREEMENT is made as of the 1 day of May 2002, between **Wal-Mart Stores, Inc.** a Delaware corporation, of 2001 South East Tenth Street, Bentonville, Arkansas 72712-6489 ("Owner") and _____("Contractor").

NOW, THEREFORE, for and in consideration of the obligations and other valuable considerations and covenants, the sufficiency of which is hereby acknowledged, Owner and Contractor do hereby agree as follows:

1. Preliminary--Definitions:

a. "Outside Maintenance Service" shall include landscaping and/or irrigation work, snow removal services, or parking lot sweeping as defined in Exhibit A attached hereto and made a part hereof, under the "Scope of Work".

b. "Scope of Work" shall define the type and scope of the outside maintenance service work that this contract intends to cover.

c. "Work" shall be defined as any service provided within the defined Scope of Work.

2. General Requirements:

(2.1) The Contractor shall purchase and maintain such insurance as indicated below and with the limits listed below. Such insurance shall protect Owner and the Contractor from claims which may arise out of or result from the operations under this Agreement whether such operations are by himself, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance contracts shall contain a Waiver of Subrogation in favor of Owner and its affiliates.

Certificates of Insurance, acceptable to Owner, MUST BE RECEIVED by Owner before Owner will execute this Agreement or before any Work is performed, whichever is the earliest date. Failure to provide the proper Certificate of Insurance as required may result in the cancellation of the award of this Agreement or cancellation of this Agreement. The certification must indicate that the limits listed below are provided and that the insurance will not be canceled during the term of this contract without thirty (30) days prior written notice by registered mail to Owner.

HOLDER SHOULD READ: WAL-MART STORES, INC., ITS SUBSIDIARIES & ITS AFFILIATES, 2001 SE 103H ST., Bentonville, AR 72716-6489.

Insurance policies meeting these requirements shall remain in effect for the duration of the Work. No payments to the Contractor will be authorized unless current Certificates of Insurance have been filed with Owner.

In no case should insurance coverage be less than:
- Statutory Workers' Compensation and Employer's Liability---$500,000 per occurrence.
- Commercial General Liability including Contractual Liability---$250,000.
- Business Auto Liability Coverage---$250,000.

The Contractor shall be responsible for securing Certificates of Insurance from all subcontractors for insurance coverage limits indicated above and shall make such Certificates available to Owner upon request.

(2.2) All requests for service(s) that are not included within the Scope of Work must be in writing and approved by Owner at Owner's sole discretion. Contractor shall not start additional work (which is not included in the Scope of Work) until the Owner's authorized representative has approved the request in writing. Failure to obtain advance approval before starting the additional work shall result in non-payment.

(2.3) The Owner may take any reasonable action necessary to control damage or protect the health, safety and welfare of the public in the event of problems involving the "Outside Maintenance Service" Such action on the part of the Owner shall not relieve the Contractor of any responsibilities related to any problems relating thereto.

EXHIBIT A

No part of the Work set forth herein shall be performed in any location or manner which may endanger the health, safety and welfare of the public now or in the future. Means, methods, techniques, sequencing, etc. are the sole responsibility of the Contractor.

(2.4) Contractor warrants and guarantees that all Work specified herein is to be performed in a workmanlike manner acceptable to Owner, which shall be the sole judge of quality of Work. In the event the Work proves to be unacceptable to Owner prior to the time payment is made, Contractor shall have ten(10) days to correct such defects at Contractor's own reasonable expense, with payment then due upon completion of the corrections(s). If Contractor fails to correct such defects to Owner's satisfaction within the time specified above, Owner shall have the right to correct the defects and deduct the cost thereof from the amount owed to Contractor by the Owner. In the event any defects in the Work are discovered by Owner after paying Contractor, then, upon receipt of notice from Owner, Contractor shall have ten(10) days to correct the defects at Contractor's own expense. If Contractor fails to correct such defects to the satisfaction of Owner, which shall be at the sole discretion of Owner, within the time specified, Owner shall have the right to cure and correct such defects and invoice the Contractor for such expenditures. Contractor shall within ten(10) days from receipt thereof, reimburse Owner for any and all cost incurred therein.

(2.5) Contractor shall coordinate its schedule in performing the Work with the applicable Owner location's Store Manager.

(2.6) Owner may terminate this Agreement without cause upon fifteen (15) day's prior written notice to Contractor.

(2.7) Contractor agrees that he/she shall assume sole and complete responsibility for the Work, including safety of all persons and property; and that the Contractor shall defend, indemnify, and hold the Owner and tenants harmless from any and all liability, real or alleged, in connection with the Contractor's, Contractor's employees, agents and subcontractors performance of the Work set forth herein, excepting for liability arising from the sole negligence of the Owner or tenants. Contractor shall ensure that all equipment utilized on the premises is provided with proper safety guards.

(2.8) The Contractor shall, throughout the course of the Work set forth herein, comply with all rules, ordinances, regulations, etc. set forth by agencies having jurisdiction, which apply to the premises, the Contractor, and/or contractor's employees and subcontractors.

(2.9) The Contractor shall ensure that all Contractor's employees, agents, and subcontractors present a neat, clean, appearance and conduct themselves in a business-like manner at all times while on Owner's property. Owner strongly encourages all Contractors to provide uniforms for their employees, agents, and subcontractors.

(2.10) This Agreement shall not be enforceable against Wal-Mart (or any of it's affiliates) unless, on behalf of Wal-Mart, this Agreement is executed by the applicable Divisional Manager assigned to the Wal-Mart location at which the Scope of Work is to be performed.

3. Scope of Work:

Contractor shall provide services at Wal-Mart Stores, Inc. Store/Sam's Club Store #2125, address: 100 Super Center ("Property") as set forth in the Scope of Work attached hereto as Exhibit "A" and made a part hereof. This Agreement is contingent upon the execution of Exhibit "A" by both parties.

4. Payment:

Owner shall make payment to Contractor within thirty (30) days after receipt of the Contractor's invoice at the address designated in this Agreement. Time required to process Contractor's invoice may be extended by Owner if required documentation is not submitted with each invoice.

Invoices must have the following information in order for payment to be made:

1. Invoice number
2. Invoice date
3. Date(s) that the service(s) was provided
4. Detailed description of service(s) provided
5. Itemized invoice amount
6. Wal-Mart/Sam's store number
7. Contractor's Wal-Mart vendor number
8. Attached "Work Completion Report" signed by Store Manager.

NOTE: Invoice for regular monthly contract service must show ONLY the regular monthly charge and no other charges. Approved additional charges must be invoiced separately.

All invoices should be sent to:

Wal-Mart Real Estate Accounting
PO Box X055
Bentonville, AR 72712

5. Pricing.

Pricing on Exhibit A shall include all labor (whether by Contractor or subcontractor) materials, taxes, permit fees (if applicable), and equipment.

6. Entire Agreement:

This Agreement constitutes the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Agreement is the result of good faith arms length negotiations. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

7. Successors:

It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or federal government. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

8. Notices:

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, or similar overnight delivery service, to the address of either party below. Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall

If to the Contractor:
NAME B & D Enterprises
ADDRESS 602 Susquehanna Ave.
CITY, STATE, ZIP Curwensville Pa. 16833
ATTN: _____

If to Owner:
WAL-MART STORES, INC.
2001 S.E. 10th Street
Bentonville, AR 72712-6489
Attn: Maintenance Division

:bts:

Contractor shall pay off and discharge any and all debts and obligations incurred pursuant to performing the Work, including but not limited to obligations owed to suppliers of material and subcontractors.

10. Term of Agreement:

This Agreement is for a period of 24 months, which may be terminated pursuant to Owner's right of termination set forth in paragraph (2.6) herein, and shall be effective as of the date written above. This Agreement shall automatically extend from year to year unless the same is terminated by Wal-Mart upon at lease thirty (30) days written notice prior to the end of the initial term of this Agreement or the extended term of this Agreement or unless terminated by Wal-Mart pursuant to it's right of termination set forth in paragraph (2.6) herein.

11. Severability:

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby; and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year set out.

CONTRACTOR:

B & D Enterprises

Jim Bailor 5/5/00

By: Date:

Jim Bailor

Print Name

(814) 236-0764

Phone

WAL-MART STORES, INC.

5-10-00

By: Date:

Tim Fox DM

Print Name Title:
(District Manager)

(814) 375-5010

Phone

Wal-Mart/Sam's Store No. 2129

Original Copy

Exhibit A

SCOPE OF WORK
SWEEPING

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 4/30/00

The Contractor shall provide sweeping and related maintenance services Work located at the Wal-Mart Store, Inc./Sam's Club # 2129, address: 100 SUPER CENTER DR as follows:

- Areas are to be swept ("Areas") at intervals as listed below.
- Areas include, but are not limited to, parking lot, sidewalks, truck wells, and rear of the building.
- Contractor will report immediately any unusual findings such as graffiti, vandalism, excess trash being dumped on the property, vehicles blocking removal, or any other dangerous situation discovered on the property by providing a photograph of the unusual finding to the owner.

Contractor shall provide the Work set forth herein, per occurrence as set forth herein:

_____ Daily
_____ Weekly
_____ Bi-Weekly
_____ One Time per Month
_____ Intervals of # 3 per Week

Price per occurrence: $ 315.00 Estimated more OR Less

Acknowledged and Agreed to by:

CONTRACTOR:

B+D ENTERPRISES
Name of Contractor

Jim Bailor 5/3/00
By: Date:

Jim Bailor
Print Name

OWNER:

WAL-MART STORES, INC.

5-10-00
By: Date:

Tim Fox D.M
Print Name Title:
(District Manager)

WAC 335 2/14/03

Outside Maintenance Agreement

THIS AGREEMENT is made as of the 1 day of May 2003, between **Wal-Mart Stores, Inc.** a Delaware corporation, of 2001 South East Tenth Street, Bentonville, Arkansas 72712-6489 ("Owner") and _____("Contractor").

NOW, THEREFORE, for and in consideration of the obligations and other valuable considerations and covenants, the sufficiency of which is hereby acknowledged, Owner and Contractor do hereby agree as follows:

1. Preliminary--Definitions:

a. "Outside Maintenance Service" shall include landscaping and/or irrigation work, snow removal services, or parking lot sweeping as defined in Exhibit A attached hereto and made a part hereof, under the "Scope of Work".

b. "Scope of Work" shall define the type and scope of the outside maintenance service work that this contract intends to cover.

c. "Work" shall be defined as any service provided within the defined Scope of Work.

2. General Requirements:

(2.1) The Contractor shall purchase and maintain such insurance as indicated below and with the limits listed below. Such insurance shall protect Owner and the Contractor from claims which may arise out of or result from the operations under this Agreement whether such operations are by himself, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance contracts shall contain a Waiver of Subrogation in favor of Owner and its affiliates.

Certificates of Insurance, acceptable to Owner, MUST BE RECEIVED by Owner before Owner will execute this Agreement or before any Work is performed, whichever is the earliest date. Failure to provide the proper Certificate of Insurance as required may result in the cancellation of the award of this Agreement or cancellation of this Agreement. The certification must indicate that the limits listed below are provided and that the insurance will not be canceled during the term of this contract without thirty (30) days prior written notice by registered mail to Owner.

HOLDER SHOULD READ: WAL-MART STORES, INC., ITS SUBSIDIARIES & ITS AFFILIATES, 2001 SE 103H ST., Bentonville, AR 72716-6489.

Insurance policies meeting these requirements shall remain in effect for the duration of the Work. No payments to the Contractor will be authorized unless current Certificates of Insurance have been filed with Owner.

In no case should insurance coverage be less than:
- Statutory Workers' Compensation and Employer's Liability---$500,000 per occurrence.
- Commercial General Liability including Contractual Liability---$250,000.
- Business Auto Liability Coverage---$250,000.

The Contractor shall be responsible for securing Certificates of Insurance from all subcontractors for insurance coverage limits indicated above and shall make such Certificates available to Owner upon request.

(2.2) All requests for service(s) that are not included within the Scope of Work must be in writing and approved by Owner at Owner's sole discretion. Contractor shall not start additional work (which is not included in the Scope of Work) until the Owner's authorized representative has approved the request in writing. Failure to obtain advance approval before starting the additional work shall result in non-payment.

(2.3) The Owner may take any reasonable action necessary to control damage or protect the health, safety and welfare of the public in the event of problems involving the "Outside Maintenance Service" Such action on the part of the Owner shall not relieve the Contractor of any responsibilities related to any problems relating thereto.

No part of the Work set forth herein shall be performed in any location or manner which may endanger the health, safety and welfare of the public now or in the future. Means, methods, techniques, sequencing, etc. are the sole responsibility of the Contractor.

EXHIBIT B tabbies

(2.4) Contractor warrants and guarantees that all Work specified herein is to be performed in a workmanlike manner acceptable to Owner, which shall be the sole judge of quality of Work. In the event the Work proves to be unacceptable to Owner prior to the time payment is made, Contractor shall have ten(10) days to correct such defects at Contractor's own reasonable expense, with payment then due upon completion of the corrections(s). If Contractor fails to correct such defects to Owner's satisfaction within the time specified above, Owner shall have the right to correct the defects and deduct the cost thereof from the amount owed to Contractor by the Owner. In the event any defects in the Work are discovered by Owner after paying Contractor, then, upon receipt of notice from Owner, Contractor shall have ten(10) days to correct the defects at Contractor's own expense. If Contractor fails to correct such defects to the satisfaction of Owner, which shall be at the sole discretion of Owner, within the time specified, Owner shall have the right to cure and correct such defects and invoice the Contractor for such expenditures. Contractor shall within ten(10) days from receipt thereof, reimburse Owner for any and all cost incurred therein.

(2.5) Contractor shall coordinate its schedule in performing the Work with the applicable Owner location's Store Manager.

(2.6) Owner may terminate this Agreement without cause upon fifteen (15) day's prior written notice to Contractor.

(2.7) Contractor agrees that he/she shall assume sole and complete responsibility for the Work, including safety of all persons and property; and that the Contractor shall defend, indemnify, and hold the Owner and tenants harmless from any and all liability, real or alleged, in connection with the Contractor's, Contractor's employees, agents and subcontractors performance of the Work set forth herein, excepting for liability arising from the sole negligence of the Owner or tenants. Contractor shall ensure that all equipment utilized on the premises is provided with proper safety guards.

(2.8) The Contractor shall, throughout the course of the Work set forth herein, comply with all rules, ordinances regulations, etc. set forth by agencies having jurisdiction, which apply to the premises, the Contractor and/or contractor's employees and subcontractors.

(2.9) The Contractor shall ensure that all Contractor's employees, agents, and subcontractors present a neat clean, appearance and conduct themselves in a business-like manner at all times while on Owner property. Owner strongly encourages all Contractors to provide uniforms for their employees, agents, and subcontractors.

(2.10) This Agreement shall not be enforceable against Wal-Mart (or any of it's affiliates) unless, on behalf of Wal-Mart, this Agreement is executed by the applicable Divisional Manager assigned to the Wal-Mart location at which the Scope of Work is to be performed.

3. Scope of Work:

Contractor shall provide services at Wal-Mart Stores, Inc. Store/Sam's Club Store #____ , address: _____ ("Property") as set forth in the Scope of Work attached hereto as Exhibit "A" and made a part hereof. This Agreement contingent upon the execution of Exhibit "A" by both parties.

4. Payment:

Owner shall make payment to Contractor within thirty (30) days after receipt of the Contractor's invoice at the address designat in this Agreement. Time required to process Contractor's invoice may be extended by Owner if required documentation is n submitted with each invoice.

ices must have the following information in order for payment to be made:

1. Invoice number
2. Invoice date
3. Date(s) that the service(s) was provided
4. Detailed description of service(s) provided
5. Itemized invoice amount
6. Wal-Mart/Sam's store number
7. Contractor's Wal-Mart vendor number
8. Attached "Work Completion Report" signed by Store Manager.

NOTE: Invoice for regular monthly contract service must show ONLY the regular monthly charge and no other charges. Approved additional charges must be invoiced separately.

All invoices should be sent to:

Wal-Mart Real Estate Accounting
PO Box X055
Bentonville, AR 72712

5. Pricing:

Pricing on Exhibit A shall include all labor (whether by Contractor or subcontractor) materials, taxes, permit fees (if applicable), and equipment.

6. Entire Agreement:

This Agreement constitutes the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Agreement is the result of good faith arms length negotiations. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

7. Successors:

It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or federal government. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

8. Notices:

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, or similar overnight delivery service, to the address of either party below. Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall

If to the Contractor:
NAME HST Lawncare
ADDRESS PO Box 260
CITY, STATE, ZIP Grampian, PA 16838
ATTN: Roger Hill

If to Owner:
WAL-MART STORES, INC.
2001 S.E. 10th Street
Bentonville, AR 72712-6489
Attn: Maintenance Division

...bts:

Contractor shall pay off and discharge any and all debts and obligations incurred pursuant to performing the Work, including but not limited to obligations owed to suppliers of material and subcontractors.

10. Term of Agreement:

This Agreement is for a period of 24 months, which may be terminated pursuant to Owner's right of termination set forth in paragraph (2.6) herein, and shall be effective as of the date written above. This Agreement shall automatically extend from year to year unless the same is terminated by Wal-Mart upon at lease thirty (30) days written notice prior to the end of the initial term of this Agreement or the extended term of this Agreement or unless terminated by Wal-Mart pursuant to it's right of termination set forth in paragraph (2.6) herein.

11. Severability:

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby; and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year set out.

CONTRACTOR:

By: 5-8-06 Date:

Roger R. Hill
Print Name

814-236-3040
Phone

WAL-MART STORES, INC.

By: 5-16-06 Date:

Tim Fox DM
Print Name Title:
(District Manager)

(814) 375-5010
Phone

Wal-Mart/Sam's Store No. 2121

Exhibit A

SCOPE OF WORK
LANDSCAPING:

WO#290321
VI#287661

CORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 4/1/2000

APR 17 2000

A. The Contractor shall provide regular maintenance services as outlined in this Agreement.

B. The Contractor shall examine the landscape, including irrigation, on a weekly basis, looking for problems or potential problems with the landscape.

C. The Contractor shall provide at his/her own risk and sole expense, all labor, materials, tools, equipment, insurance, transportation, hauling, dumping, and all other items needed to provide the services outlined in this Agreement.

D. The Contractor shall make minor replacements and repairs to the landscape facilities as part of the required Work set forth herein. Major items needing replacement or repair shall be reported to the Owner's authorized representative within one week of occurrence. A minor item would be something that takes less than 30 minutes to repair using minimal replacement parts. A broken or plugged sprinkler nozzle would be an example of a minor item. Some specific guidelines for determining if an item is minor or major are given in the section pertaining to each item.

E. Any facilities or Property damaged or destroyed as a result of the Contractor's operations on the premises shall be repaired or replaced at the Contractor's sole expense.

I. CARE OF PLANTED AREAS

A. Trees: Shall be maintained by Contractor in a healthy, vigorous growing condition, free from disease and large concentrations of pests.

1. Contractor shall prune trees that are under fourteen (14') tall once a year to remove dead, diseased, broken, dangerous, or crossing branches and as required herein. Pruning trees that are fourteen (14') or taller will be considered additional work. A written quote for pruning such trees should be separately submitted by Contractor to Owner and detailed in a separate work order.

2. Contractor shall prune trees only in appropriate months. Prune in accordance with generally accepted standards for proper pruning.

3. Contractor shall discard all tree trimmings away from the premises using a legal method.

4. Any tree found to be dead due to negligence by the Contractor should be replaced by Contractor within two weeks of death of such at the Contractor's expense. Replacement of trees that die due to mechanical damage will be paid for as additional work. A quote for all replacements must be submitted to Owner for Owner's approval and detailed in a separate work order.

5. Trees planted as a visual screen or noise buffer may be pruned as needed only to remove dead, diseased, broken, dangerous, or crossing branches. Some municipalities prohibit pruning trees without a permit. Contractor shall check with local authorities prior to pruning. The Contractor is responsible for obtaining and paying for any required permits.

B. Shrubs (including vines): Shall be kept by Contractor in a healthy, vigorous condition, free from disease and large concentrations of pests.

1. Shrubs shall be pruned by Contractor as needed to remove branches that are dead, broken, extending beyond the face of curbs or sidewalks, or are climbing building walls (unless they are intended to climb the wall, such as climbing vines).

2. When it is necessary to prune shrubs, Contractor shall prune them into natural, mounding forms. Contractor shall not shear shrubs into topiary (shapes) or formal hedges unless specifically instructed to do so in writing by the Owner's authorized representative.

3. Any shrub found to be dead due to negligent acts by the Contractor should be replaced within two (2) weeks of death at the Contractor's sole expense. Replacement of shrubs that die due to mechanical damage will be paid for as additional Work. A written quote for replacement is to be submitted by Contractor to Owner and detailed in a separate work order.

.ion.

.r shall fertilize all grass areas two times per year: spring, and fall. Additional applications will be applied if required with approval by Owner. All applications will be at the rate specified by the manufacturer. Contractor will fertilize all plants two .es per year with proper fertilizers. No additional payment shall be made for the required fertilizer applications. Contractor must .nsure that the application of fertilizer is done by a licensed applicator, if required by any state, local, or federal regulations.

.eed control:

1. Weeds in planted areas, sidewalks, curbs, gutters, or pavement shall be removed or killed weekly by Contractor as the weeds emerge. Weeds shall be removed by Contractor (not just killed) if they are larger than 2" (5 cm) in height or diameter. Contractor shall dispose of weeds away from the premises. Pre and post-emergent herbicides may be used at the Contractor's option. Contractor must ensure that the application of any and all pre and post-emergent herbicides is done by a licensed applicator, if required by any state, local, or federal regulations. Owner will make no additional payments for herbicide applications. The cost of all weed control Work shall be included in the Agreement price for landscape maintenance.

2. Contractor shall do regular maintenance of the mulch or decorative rock layer, which shall minimize weeds in shrub and groundcover areas. All mulched areas shall be re-mulched by Contractor one time each year to maintain a 2" thickness. The mulch material shall be provided by Contractor and be of the same type as existing unless otherwise specified by Owner.

B. Lawns:

1. Contractor shall keep lawns in a healthy, vigorous condition, free of disease and pests, except as noted below.

2. Lawn height shall be maintained by Contractor between 3" and 5" and shall not exceed 5" (13 cm) at any time.

3. Contractor shall mow, edge and trim lawns weekly or as required to maintain an even, well-groomed appearance. Sidewalks, straight curb runs and large planting areas shall be edged by Contractor utilizing a vertical blade-edger. String trimmers may be used in other areas. Note: Contractors shall remove trash from areas to be mowed prior to mowing.

4. Contractor shall remove visible lawn clippings and dispose of them away from the premises in a legal manner. The Contractor is encouraged to use mulching mowers that cut clippings into small pieces that sift down into the lawn.

5. Any lawn area that is killed or dies due to Contractor negligence shall be replaced at the Contractor's sole expense, within two (2) weeks of the loss. If lawn loss was due to mechanical damage, replacement costs will be paid as additional Work. If lawn loss is due to mechanical damage, Contractor shall submit a quote to Owner for replacement and the quote must be detailed in a separate work order.

6. Contractor shall hand water as needed to supplement natural rainfall or permanent irrigation system and maintain plantings in a healthy, stress-free condition. It is the Contractor's responsibility to make sure that plants receive adequate water regardless of weather conditions. It is also the Contractor's responsibility to ensure that plants are not over watered.

II. IRRIGATION (This section is deleted for properties that are not irrigated.)

A. It is the Contractor's responsibility to make sure that the irrigation system is maintained and operates properly.

B. It is the responsibility of the Contractor to conserve water and assure that all-watering rules and regulations are followed. Any penalties, fines, or citations for watering ordinance violations and relating to such shall be paid the by Contractor.

C. The Contractor is responsible for the complete operation and maintenance of the irrigation systems. The Contractor shall examine the irrigation system for damage or malfunction weekly and shall report any damage or malfunction to the Owner's authorized representative in writing.

all repair Minor Repairs with the irrigation system as defined herein (broken heads, risers and minor leaks). Owner will make onal payment to Contractor for said Minor Repairs. Major Repairs to the irrigation system such as pump failures, etc., will be d to Owner and repaired according to a separate written agreement between Owner and Contractor.

1. "Minor Repairs" include, but are not limited to, cleaning out irrigation lines, adjustment of spray heads and nozzles, adjusting zone controls, programming main controller, maintenance of spray heads and nozzles, including replacement of minor parts, minor leaks in lines, risers, laterals or other system components.

2. "Major Repairs" include, but are not limited to, major line breaks, repair and/or replacement of valves, controllers, pumps and backflow-preventers. Contractor shall submit a quote to Owner for repair and/or replacement of major components, and obtain written authorization from Owner prior to proceeding with such Work.

3. Owner reserves the right to determine whether a repair to the irrigation system will be considered Major or Minor. Nothing contained in this section shall relieve the Contractor from acting in a responsible manner in the event of an emergency involving the irrigation system to protect Property, and ensure the safety of all persons, and immediately curtail wholesale waste of water.

E. When breakdowns or malfunctions exist, the Contractor shall hand water, if necessary, to maintain all plant material in a healthy condition.

F. The Contractor shall maintain the irrigation system, including cleaning of filter screens yearly or more often if needed, and flushing pipes part of this system where applicable. WINTERIZATION: As a minimum, the system shall be shut down at the irrigation meter, and all zones shall be blown down with compressed air until all water has been evacuated from the system. Care will be exercised to ensure all heads are secured from ingress of rainwater and mud while system is Repressurized. Controller will be shut down. Contractor shall ensure the backflow preventer is completely drained and suitably protected from freezing.

G. Any replacement of irrigation system components shall be made by Contractor with materials of the same manufacturer and model as the original equipment. Substitutions of materials other than original equipment will be approved only when the original equipment has been discontinued and are no longer available for purchase at any location. The substituted equipment must be completely compatible with the original and must be approved in writing in advance by the Owner's authorized representative.

H. All repairs to the irrigation system shall be identical to the original installation, unless approved in writing by the Owner's authorized representative. If a change to the installation will result in lower future maintenance costs, less frequent breakage, or an increase in public safety, request authorization in writing to make the change from the Owner's authorized representative.

Contractor shall check for leaking valves, water running across sidewalks, water standing in puddles, or any other condition which hampers the correct operation of the irrigation System or the public safety. The Contractor shall carefully observe plant materials for signs of wilting, indicating a lack of water. Plants that die due to irrigation system failure will be considered to have died due to the Contractor's negligence or acts and shall be replaced at the Contractor's sole expense.

II. LITTER REMOVAL

A. All litter shall be removed by the Contractor from sidewalks, gutters, and all planted areas each week. In no case shall trash, litter, or leaves be blown or swept by the Contractor onto the Property of others. All trash, litter, leaves, etc. shall be collected, hauled away, and disposed of by the Contractor away from the premises.

B. In addition to removing all litter from sidewalks, gutters, and planted areas, the Contractor shall remove and dispose of any large miscellaneous debris or trash in the parking lot. For the purpose of this agreement, "large" shall mean items the size of a small beverage cup or larger. The intent of this requirement is that the Contractor and it's workers should take sufficient pride in the appearance of the Property that they would pick up any significant litter they come across on the premises. Sweeping of the parking lots is not included in this Agreement. Contractor shall remove all litter from planting areas and sidewalks, regardless of the size of the litter. Contractor shall notify Owner in writing, with clear photographs attached, of excessive trash accumulation on the Property.

EMICALS, HERBICIDES, PESTICIDES

All chemicals shall be used in accordance with label directions and the manufacturers recommended handling methods. Registered chemicals shall be handled in accordance with all applicable regulations. Registered chemicals shall be used only on the advice of a qualified, licensed, if required, pest control advisor. Nothing in this specification shall be construed to be the advice of, or to substitute for the advice of, a pest control adviser.

B. Pesticides shall not be applied within one hour of the start of operating hours of the store. In the event that it is not possible to complete the application by one hour prior to business hours (i.e. 24-hour locations), applications shall be made at times when customer presence is minimal. Areas to be treated shall be blocked off and warning signs posted.

C. The Contractor shall take precautions to keep persons away from pesticide and herbicide-treated areas until the applied material is fully dry and the treated area is safe for entry. Follow the recommendations of the pesticide manufacturer and all applicable governmental and industry regulations.

V. PAYMENT

Owner agrees to pay the Contractor a total of $ 127.20 PER VISIT ~~per year~~ during the term of this agreement, payable in monthly payments of $ _____ each.

Additional Scope of Work

Acknowledged and Agreed to by:

CONTRACTOR:

HST Lawncare
Name of Contractor

[signature] 3-29-00
By: Date:

Roger R. Hollowell
Print Name

OWNER:

WAL-MART STORES, INC.

[signature] 4-10-00
By: Date:

Tim Fox
Print Name Title:
(District Manager)

WAL 325
2/20/03

WAL.325

VERIFICATION

I verify that the averments of fact made in this foregoing Reply to James Bailor t/d/b/a B&D Enterprises' New Matter Pursuant to Pa. R.C.P. 2252(d) are true and correct to the best of my knowledge, information or belief. I understand that averments of fact in said document are made subject to the penalties of 18 Pa. C.S. § 4904, relating to the unsworn falsifications to authorities.

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

Date: 2-14-03

Roger Gates, Manager

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **DEFENDANT WAL-MART STORES, INC.'S REPLY TO JAMES BAILOR t/d/b/a B&D ENTERPRISES' NEW MATTER PURSUANT TO PA. R.C.P. 2252(d)** has been served by U.S. Mail, postage prepaid, this 20th day of January 2003, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 679
Clearfield, PA 16830
Counsel for Defendant James Bailor, t/d/b/a B&D Enterprises

Paul Walsh, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219
Counsel for Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare

Bryan K. Shreckengost, Esquire
PIETRAGALLO BOSICK & GORDON
38th Floor, One Oxford Centre
Pittsburgh, PA 15219
Counsel for Additional Defendant Boyles Insurance, Inc.

Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire

FILED no cc
1:42 BK
FEB 24 2003

William A. Shaw
Prothonotary

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs vs. WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Defendants vs. JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Additional Defendant vs. ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC., Additional Defendants	NO. 02-1811-CD JURY TRIAL DEMANDED Type of Pleading: CERTIFICATE OF SERVICE Filed on Behalf of: James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant Counsel of Record for this Party: Ann B. Wood, Esquire Supreme Court No. 23364 Bell, Silberblatt & Wood 318 East Locust Street P.O. Box 670 Clearfield, PA 16830 (814) 765-5537

FILED

MAR 06 2003
01:30 pm
William A. Shaw
Prothonotary/Clerk of Courts

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	
Plaintiffs	No.08-1811-CD
vs.	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	JURY TRIAL DEMANDED
Defendants	
vs.	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	
Additional Defendant	
vs.	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of Defendant Bailor's Answers To Defendant Hull's Request For Production Of Documents with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on March 5, 2003:

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
211½ East Locust Street
Marino Building
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:
Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

Attorney For Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare:
Paul J. Walsh, III, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

Attorney for Additional Defendant, Boyles Insurance, Inc.
Bryan K. Shreckengost, Esquire
PIETRAGALLO, BOSICK & GORDON
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO.02-1811-CD

MARSHALL E. RUGH AND ANNA M. RUGH,
HUSBAND AND WIFE, PLAINTIFFS
VS.
WAL-MART STORES, INC., A CORPORATION,
AND JAMES BAILOR, t/d/b/a B&D
ENTERPRISES, DEFENDANTS
VS.
JAMES BAILOR, t/d/b/a B&D
ENTERPRISES, Additional Defendant

VS.
ROGER R. HULL, t/d/b/a HSJ
LAWNCARE AND BOYLES INSURANCE,
INC., ADDITIONAL DEFENDANTS

CERTIFICATE OF SERVICE

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

FILED
MAR 06 2003
William A. Shaw
Prothonotary/Clerk of Courts

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

WAL-MART STORES, INC.'S COMPLAINT TO JOIN ADDITIONAL DEFENDANT ROGER R. HULL t/d/b/a HSJ LAWNCARE UNDER PA. R.C.P. 2252(a)

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

FILED

MAR 14 2003

William A. Shaw
Prothonotary

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

NOTICE TO DEFEND

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
P.O. Box 549
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

WAL-MART STORES, INC.'S COMPLAINT TO JOIN ADDITIONAL DEFENDANT ROGER R. HULL t/d/b/a HSJ LAWNCARE UNDER PA. R.C.P. 2252(a)

AND NOW, comes Defendant Wal-Mart Stores, Inc., by and through its counsel, Dell, Moser, Lane & Loughney, LLC, and Danielle M. Vugrinovich, Esquire, and files the following Complaint to Join Additional Defendant Roger R. Hull t/d/b/a HSJ Lawncare pursuant to Pa. R.C.P 2252(a):

1. Plaintiff Marshall E. Rugh and Anna M. Rugh, husband and wife, are adult individuals residing in Clearfield County, Pennsylvania.

2. Defendant Wal-Mart Stores, Inc., is a Delaware corporation, doing business throughout the Commonwealth of Pennsylvania, specifically, in this case, in Clearfield County, Pennsylvania.

3. In their Amended Complaint, Plaintiffs allege that Original Defendants, Wal-Mart Stores, Inc. and James Bailor t/d/b/a B&D Enterprises were responsible for the personal injuries Anna M. Rugh sustained while traversing across the Clearfield Wal-Mart's parking lot. *See, Plaintiffs' Amended Complaint attached hereto as Exhibit "A."*

4. Plaintiffs' Amended Complaint alleges that Anna M. Rugh sustained personal injuries as a result of a trip and fall on "debris" which had migrated from an island containing ornamental trees and wood chips/gravel in the parking lot. *See, Amended Complaint.*

5. Original Defendant, Wal-Mart Stores, Inc. has filed an Answer and New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) in which it has denied any and all liability. *See, Original Defendant Wal-Mart Stores, Inc.'s Answer, New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d) attached hereto as Exhibit "B."*

6. On or about January 9, 2003, James Bailor t/d/b/a B&D Enterprises filed a Complaint to Join Additional Defendant Roger R. Hull t/d/b/a HSJ Lawncare and Boyles Insurance, Inc. in the above-captioned matter. *See, Complaint to Join Additional Defendant Roger R. Hull t/d/b/a HSJ Lawncare and Boyles Insurance, Inc. attached hereto as Exhibit "C."*

7. Additional Defendant Roger R. Hull is an adult individual t/d/b/a HSJ Lawncare with an address of P.O. Box 260, Grampian, PA 16838.

COUNT I

WAL-MART STORES, INC'S vs. ROGER R. HULL t/d/b/a HSJ LAWNCARE

8. The averments contained within Plaintiffs' Amended Complaint are incorporated by reference herein for the purposes of this joinder only and without admitting the truth of any such averments.

9. To the extent Plaintiffs aver that Wal-Mart Stores, Inc. maintained the parking area for the conditions of which Plaintiffs complain, it is averred that such maintenance had been sub-contracted by Wal-Mart Stores, Inc. to Original Defendant James Bailor t/d/b/a B&D Enterprises and Roger R. Hull t/d/b/a HSJ Lawncare pursuant to the Outside Maintenance Agreements entered into between Wal-Mart Stores, Inc. and James Bailor t/d/b/a B&D Enterprises and Wal-Mart Stores, Inc. and Roger R. Hull t/d/b/a HSJ Lawncare. *See, Outside Maintenance Agreement between Wal-Mart Stores, Inc. and James Bailor t/d/b/a B&D Enterprises, attached hereto as Exhibit "D" and Outside Maintenance Agreement between Wal-Mart Stores, Inc. and Roger R. Hull t/d/b/a HSJ Lawncare, attached hereto as Exhibit "E."*

10. Defendant Wal-Mart Stores, Inc. incorporates herein Count I of Defendant James Bailor t/d/b/a B&D Enterprises' Complaint to Join Additional Defendant Roger R. Hull t/d/b/a HSJ Lawncare as against Roger R. Hull t/d/b/a HSJ Lawncare.

11. Pursuant to Section 2.7 of the Outside Maintenance Agreement between Wal-Mart Stores, Inc. and Roger R. Hull t/d/b/a HSJ Lawncare Services dated May 1, 2000:

> Contractor agrees that he/she shall assume sole and complete responsibility for the Work, including safety of all persons and property; and that the Contractor shall defend, indemnify, and hold the Owner and tenants harmless from any and all liability, real or alleged, in connection with the Contractor's, Contractor's employees, agents and sub-contractors performance of the Work set forth herein accepting for liability arising from the sole negligence of the Owner or tenants ...

12. If it is determined at the time of trial that the Plaintiffs are entitled to a recovery, which is specifically denied by Wal-Mart Stores, Inc., then, Wal-Mart Stores, Inc. avers that any injuries and/or damages allegedly sustained by Plaintiffs were the direct and proximate result of the actions, negligence and/or carelessness of Roger R. Hull t/d/b/a HSJ Lawncare and that Roger R. Hull t/d/b/a HSJ Lawncare is solely, jointly and/or severally liable to the Plaintiffs.

13. If it is determined at the time of trial that the Plaintiffs are entitled to a recovery, which is specifically denied by Wal-Mart Stores, Inc., then, Wal-Mart Stores, Inc. avers that pursuant to the Outside Maintenance Agreement, Roger R. Hull t/d/b/a HSJ Lawncare is contractually obligated to indemnify, defend, and hold harmless Wal-Mart Stores, Inc. for any and all losses and damages awarded to Plaintiffs as a result thereof.

WHEREFORE, Defendant Wal-Mart Stores, Inc. demands judgment in its favor and against all other parties. Furthermore, if Defendant Wal-Mart Stores, Inc. is found liable, it demands contribution and/or indemnification from Roger R. Hull t/d/b/a HSJ Lawncare.

Respectfully submitted

DELL, MOSER, LANE & LOUGHNEY, LLC

By: Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire
Attorneys for Wal-Mart Stores, Inc.

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

MARSHALL E. RUGH
and ANNA M. RUGH,
husband and wife,
Plaintiffs,

v.

WAL-MART STORES, INC.,
a corporation,
and JAMES BAILOR, t/d/b/a
B&D ENTERPRISES,
Defendants.

No. 02 - 1811 - CD

Type of Pleading:

AMENDED COMPLAINT

Filed on behalf of:
Plaintiffs

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

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
v.	*	No. 02 - 1811 - CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTEPRISES, 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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
v.	*	No. 02 - 1811 - CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTEPRISES, Defendants.	*	

AMENDED COMPLAINT

NOW come the Plaintiffs, Marshall E. Rugh and Anna M. Rugh, and by their attorney, James A. Naddeo, Esquire, set forth the following

1. That the Plaintiffs are Marshall E. Rugh and Anna M. Rugh, husband and wife, who reside at R. D. 1, Box 247, Frenchville, Pennsylvania 16836.

2. That the Defendant, Wal-Mart Stores, Inc., is a corporation, which conducts business in the Commonwealth of Pennsylvania having an office located at 100 Super Center Drive, Clearfield, Pennsylvania 16830.

3. That the Defendant, James Bailor, is an individual trading and doing business as D&B Enterprises, of 602 Susquehanna Avenue, Curwensville, Pennsylvania 16833.

COUNT I

Anna M. Rugh v. Wal-Mart Stores, Inc.

4. That at all times referred to herein the Defendant, Wal-Mart Stores, Inc., maintained a retail store known as Wal-Mart Super Center located on Route 879, Clearfield, Lawrence Township, Clearfield County, Pennsylvania, which facility includes an automotive center.

5. That appurtenant to the Wal-Mart Super Center and Automotive Center referred to in Paragraph 4 hereof, which is incorporated herein by reference, is a large public parking area with islands containing ornamental trees and wood chips/gravel to enhance the appearance of the islands.

6. That one of the islands referred to Paragraph 5 hereof is approximately 24 feet by 10 feet in size and is erected approximately 150 feet from the automotive center.

7. That on or about September 10, 2001, Plaintiff proceeded to the Wal-Mart Super Center described in Paragraph 4 hereof which is incorporated herein by reference.

8. That after the Plaintiffs completed their shopping they proceeded to the parking area where the Plaintiff, Marshall E. Rugh, attempted to start the 1994 Chrysler owned by the Plaintiffs.

9. That when the Plaintiff, Marshall E. Rugh, started his vehicle, he noticed that the heat gauge was elevated and immediately turned off the engine.

10. That the Plaintiff, Marshall E. Rugh, proceeded to the Automotive Center where he obtained the service of Defendant's employee to repair his vehicle.

11. That the Plaintiff, Marshall E. Rugh, was informed by an employee of the Defendant, Wal-Mart Stores, Inc., that he was incapable of repairing the vehicle on site and recommended that the car be removed closer to the Automotive Center until it could be towed.

12. That the Plaintiff, Marshall E. Rugh, followed the instructions of Defendant's, Wal-Mart Stores, Inc., employee and moved his vehicle and parked it to the east side of the island described in Paragraph 5 hereof.

13. That after parking their vehicle, Plaintiffs exited the car for the purpose of entering the Automotive Center to call a towing service as directed by Defendant's, Wal-Mart Stores, Inc., employee.

14. That the Plaintiff, Anna M. Rugh, proceeded approximately 10 to 15 feet toward Defendant's, Wal-Mart Stores, Inc., Automotive Center at which time she slipped and fell on debris which had migrated from the island described in Paragraph 5 hereof unto the surface of the parking area.

15 That the Defendant, Wal-Mart Stores, Inc., was guilty of the following negligence, recklessness and carelessness which was the proximate cause of the accident and the injuries received by the Plaintiff, Anna M. Rugh, as follows:

A. Defendant failed to inspect the parking area;

B. Defendant failed to warn customers of the debris on the parking area;

C. Defendant failed to remove debris from the parking area;

D. Defendant failed to use due care under all of the circumstances of the case.

16. That as a result of the fall described in Paragraph 14 hereof, which is incorporated herein by reference, the Plaintiff, Anna M. Rugh, struck her head on the curbed parking area of the island and hit her pelvis on the paved parking surface causing numerous and serious injuries hereinafter set forth:

A. Multiple bruises and contusions;

B. Multiple fractures of the pelvis.

17. That the Plaintiff, Anna M. Rugh, claims a reasonable amount for the following:

A. A reasonable amount for pain and suffering; past, present and future;

B. Cost of replacing household services;

C. Privation and inconvenience due to the injuries and treatment, past, present and future;

D. Mental anguish and depression resulting from the accident;

E. Other damages allowable by law.

WHEREFORE, Plaintiff, Anna M. Rugh, claims unliquidated damages against the Defendant, Wal-Mart Stores, Inc., in an amount in excess of Twenty Thousand ($20,000.00) Dollars. Jury Trial Demanded.

COUNT II

Marshall E. Rugh v. Wal-Mart Stores, Inc.

18. That the Plaintiff, Marshall E. Rugh, incorporates Paragraphs 1 through 17 of this Complaint by reference and makes them a part hereof.

19. That the Plaintiff, Marshall E. Rugh, is the husband of Anna M. Rugh, having been married to the said Anna M. Rugh on August 14, 1965.

20. That the Plaintiff, Marshall E. Rugh, has resided with his wife, Anna M. Rugh, since the date of the parties' marriage and has continued to reside with her up to and including the time of the filing of this Complaint.

21. That as a result of the injuries suffered by the Plaintiff, Anna M. Rugh, the Plaintiff, Marshall E. Rugh, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.

WHEREFORE, Plaintiff, Marshall E. Rugh, claims unliquidated damages against the Defendant, Wal-Mart Stores, Inc., in an amount in excess of Twenty thousand ($20,000.00) Dollars. Jury Trial Demanded.

COUNT III

Anna M. Rugh v. James Bailor, t/a/d/a B&D Enterprises

22. That the Plaintiff, Anna M. Rugh, incorporates Paragraphs 1 through 21 of this Amended Complaint by reference and makes them a part hereof.

23 That the Plaintiff, Anna M. Rugh, believes and therefore avers that at the time of her accident the Defendant, James Bailor, t/d/b/a B&D Enterprises, was contracted by Wal-Mart Stores, Inc. to maintain the public parking area pertinent to the facilities located at the Wal-Mart Super Center, Route 879, Clearfield, Lawrence Township, Clearfield County, Pennsylvania.

24. That the Defendant, James Bailor, t/d/b/a B&D Enterprises, was guilty of the following negligence,

recklessness and carelessness which was the proximate cause of the accident and the injuries received by the Plaintiff, Anna M. Rugh, as follows:

A. Defendant failed to inspect the parking area;

B. Defendant failed to warn Wal-Mart customers of the debris on the parking area;

C. Defendant failed to remove debris from the parking area;

D. Defendant failed to use due care under all of the circumstances of the case.

WHEREFORE, Plaintiff, Anna M. Rugh, claims unliquidated damages against the Defendant, James Bailor, t/d/b/a B&D Enterprises in an amount in excess of Twenty Thousand ($20,000.00) Dollars. Jury Trial Demanded.

COUNT IV

Marshall E. Rugh v. James Bailor, t/a/d/a B&D Enterprises

25. That the Plaintiff, Marshall E. Rugh, incorporates Paragraphs 1 through 24 of this Amended Complaint by reference and makes them a part hereof.

26. That the Plaintiff, Marshall E. Rugh, is the husband of Anna M. Rugh, having been married to the said Anna M. Rugh on August 14, 1965.

27. That the Plaintiff, Marshall E. Rugh, has resided with his wife, Anna M. Rugh, since the date of the parties' marriage and has continued to reside with her up to and including the time of the filing of this Complaint.

28. That as a result of the injuries suffered by the Plaintiff, Anna M. Rugh, the Plaintiff, Marshall E. Rugh, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.

WHEREFORE, Plaintiff, Marshall E. Rugh, claims unliquidated damages against the Defendant, James Bailor, t/d/b/a B&D Enterprises, in an amount in excess of Twenty Thousand ($20,000.00) Dollars. Jury Trial Demanded.

James A. Naddeo
Attorney for Plaintiffs

WAL325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, And JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 22252(d)

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

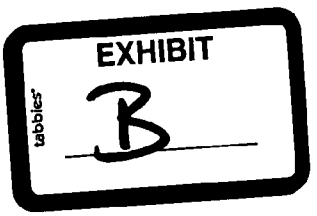
DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

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

TO: ALL PARTIES

You are hereby notified to file a written response to the enclosed ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 2252(d) within (20) days from service hereof or a default judgment may be entered against you.

Patrick J. Loughney, Esquire



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	CIVIL DIVISION
	No. 02-1811-CD
Plaintiffs,	
Vs.	JURY TRIAL DEMANDED
WAL-MART STORES, INC., a corporation, And JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	
Defendants.	

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA R.C.P. 2252(d)

AND NOW, comes Defendant, Wal-Mart Stores, Inc., (hereinafter referred to as "Wal-Mart") by and through its attorneys, Dell, Moser, Lane & Loughney, LLC and Patrick J. Loughney, Esquire, and files the within Answer, New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d) to Plaintiffs' Amended Complaint.

1. To the extent that Plaintiffs aver that Wal-Mart maintained the parking area for the condition of which Plaintiffs complain, then pursuant to Pennsylvania Rules of Civil Procedure the same is denied. On the contrary, it is averred that such maintenance had been sub-contracted to Co-Defendant James Bailor t/d/b/a B&D Enterprises, as is set forth in Exhibit 1 attached to this Answer and New Matter.

2. The averments of fact contained in the Plaintiffs' Amended Complaint are denied pursuant to Pa. R.C.P. 1029(e).

WHEREFORE, Defendant Wal-Mart Stores, Inc. denies that it is liable to any party and demanded judgment in its favor.

NEW MATTER

3. Should investigation or discovery in this case reveal the statute of limitations has not been tolled, then the defense of the statute of limitations is pled.

NEW MATTER PURSUANT TO PA. R.C.P. 2252(d)

4. The averments contained within Plaintiffs' Amended Complaint against James Bailor t/d/b/a B&D Enterprises (hereinafter referred to as "B&D Enterprises", are incorporated by reference for the purposes of this joinder only without admitting the truth of the same.

5. The terms and conditions of Exhibit "1" are incorporated by reference in this cross-claim.

6. Any responsibility for maintenance of the area in which Plaintiff fell was the responsibility of B&D Enterprises as set forth in Exhibit 1.

7. Wal-Mart demands both contractual and common law defense and indemnification from B&D Enterprises.

WHEREFORE, it is denied that Wal-Mart is liable to any party to this action. If it is found liable, it demands contribution contribution and/or indemnification from B&D Enterprises.

Respectfully submitted

Dell, Moser, Lane & Loughney, LLC

By: _____
Patrick J. Loughney, Esquire
Attorneys for Wal-Mart Stores, Inc.

Outside Maintenance Agreement

THIS AGREEMENT is made as of the 1 day of May 2000 **between Wal-Mart Stores, Inc.** a Delaware corporation, of 2001 South East Tenth Street, Bentonville, Arkansas 72712-6489 ("Owner") and _____("Contractor").

NOW, THEREFORE, for and in consideration of the obligations and other valuable considerations and covenants, the sufficiency of which is hereby acknowledged, Owner and Contractor do hereby agree as follows:

1. Preliminary--Definitions:

a. "Outside Maintenance Service" shall include landscaping and/or irrigation work, snow removal services, or parking lot sweeping as defined in Exhibit A attached hereto and made a part hereof, under the "Scope of Work".

b "Scope of Work" shall define the type and scope of the outside maintenance service work that this contract intends to cover.

c. "Work" shall be defined as any service provided within the defined Scope of Work.

2. General Requirements:

(2.1) The Contractor shall purchase and maintain such insurance as indicated below and with the limits listed below. Such insurance shall protect Owner and the Contractor from claims which may arise out of or result from the operations under this Agreement whether such operations are by himself, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance contracts shall contain a Waiver of Subrogation in favor of Owner and its affiliates.

Certificates of Insurance, acceptable to Owner, MUST BE RECEIVED by Owner before Owner will execute this Agreement or before any Work is performed, whichever is the earliest date. Failure to provide the proper Certificate of Insurance as required may result in the cancellation of the award of this Agreement or cancellation of this Agreement. The certification must indicate that the limits listed below are provided and that the insurance will not be canceled during the term of this contract without thirty (30) days prior written notice by registered mail to Owner.

HOLDER SHOULD READ: WAL-MART STORES, INC., ITS SUBSIDIARIES & ITS AFFILIATES, 2001 SE 10TH ST., Bentonville, AR 72716-6489.

Insurance policies meeting these requirements shall remain in effect for the duration of the Work. No payments to the Contractor will be authorized unless current Certificates of Insurance have been filed with Owner.

In no case should insurance coverage be less than:
- Statutory Workers' Compensation and Employer's Liability---$500,000 per occurrence.
- Commercial General Liability including Contractual Liability---$250,000.
- Business Auto Liability Coverage---$250,000.

The Contractor shall be responsible for securing Certificates of Insurance from all subcontractors for insurance coverage limits indicated above and shall make such Certificates available to Owner upon request.

(2.2) All requests for service(s) that are not included within the Scope of Work must be in writing and approved by Owner at Owner's sole discretion. Contractor shall not start additional work (which is not included in the Scope of Work) until the Owner's authorized representative has approved the request in writing. Failure to obtain advance approval before starting the additional work shall result in non-payment.

(2.3) The Owner may take any reasonable action necessary to control damage or protect the health, safety and welfare of the public in the event of problems involving the "Outside Maintenance Service" Such action on the part of the Owner shall not relieve the Contractor of any responsibilities related to any problems relating thereto.

EXHIBIT tabbies 1

No part of the Work set forth herein shall be performed in any location or manner which may endanger the health, safety and welfare of the public now or in the future. Means, methods, techniques, sequencing, etc. are the sole responsibility of the Contractor.

(2.4) Contractor warrants and guarantees that all Work specified herein is to be performed in a workmanlike manner acceptable to Owner, which shall be the sole judge of quality of Work. In the event the Work proves to be unacceptable to Owner prior to the time payment is made, Contractor shall have ten(10) days to correct such defects at Contractor's own reasonable expense, with payment then due upon completion of the corrections(s). If Contractor fails to correct such defects to Owner's satisfaction within the time specified above, Owner shall have the right to correct the defects and deduct the cost thereof from the amount owed to Contractor by the Owner. In the event any defects in the Work are discovered by Owner after paying Contractor, then, upon receipt of notice from Owner, Contractor shall have ten(10) days to correct the defects at Contractor's own expense. If Contractor fails to correct such defects to the satisfaction of Owner, which shall be at the sole discretion of Owner, within the time specified, Owner shall have the right to cure and correct such defects and invoice the Contractor for such expenditures. Contractor shall within ten(10) days from receipt thereof, reimburse Owner for any and all cost incurred therein.

(2.5) Contractor shall coordinate its schedule in performing the Work with the applicable Owner location's Store Manager.

(2.6) Owner may terminate this Agreement without cause upon fifteen (15) day's prior written notice to Contractor.

(2.7) Contractor agrees that he/she shall assume sole and complete responsibility for the Work, including safety of all persons and property; and that the Contractor shall defend, indemnify, and hold the Owner and tenants harmless from any and all liability, real or alleged, in connection with the Contractor's, Contractor's employees, agents and subcontractors performance of the Work set forth herein, excepting for liability arising from the sole negligence of the Owner or tenants. Contractor shall ensure that all equipment utilized on the premises is provided with proper safety guards.

(2.8) The Contractor shall, throughout the course of the Work set forth herein, comply with all rules, ordinances, regulations, etc. set forth by agencies having jurisdiction, which apply to the premises, the Contractor, and/or contractor's employees and subcontractors.

(2.9) The Contractor shall ensure that all Contractor's employees, agents, and subcontractors present a neat, clean, appearance and conduct themselves in a business-like manner at all times while on Owner's property. Owner strongly encourages all Contractors to provide uniforms for their employees, agents, and subcontractors.

(2.10) This Agreement shall not be enforceable against Wal-Mart (or any of it's affiliates) unless, on behalf of Wal-Mart, this Agreement is executed by the applicable Divisional Manager assigned to the Wal-Mart location at which the Scope of Work is to be performed.

3. Scope of Work:

Contractor shall provide services at Wal-Mart Stores, Inc. Store/Sam's Club Store #2125, address: 100 Super Center ("Property") as set forth in the Scope of Work attached hereto as Exhibit "A" and made a part hereof. This Agreement is contingent upon the execution of Exhibit "A" by both parties.

4. Payment:

Owner shall make payment to Contractor within thirty (30) days after receipt of the Contractor's invoice at the address designated in this Agreement. Time required to process Contractor's invoice may be extended by Owner if required documentation is not submitted with each invoice.

Invoices must have the following information in order for payment to be made:

1. Invoice number
2. Invoice date
3. Date(s) that the service(s) was provided
4. Detailed description of service(s) provided
5. Itemized invoice amount
6. Wal-Mart/Sam's store number
7. Contractor's Wal-Mart vendor number
8. Attached "Work Completion Report" signed by Store Manager.

NOTE: Invoice for regular monthly contract service must show ONLY the regular monthly charge and no other charges. Approved additional charges must be invoiced separately.

All invoices should be sent to:

Wal-Mart Real Estate Accounting
PO Box X055
Bentonville, AR 72712

5. Pricing.

Pricing on Exhibit A shall include all labor (whether by Contractor or subcontractor) materials, taxes, permit fees (if applicable), and equipment.

6. Entire Agreement:

This Agreement constitutes the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Agreement is the result of good faith arms length negotiations. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

7. Successors:

It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or federal government. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

8. Notices:

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, or similar overnight delivery service, to the address of either party below. Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall

If to the Contractor:
NAME B&D Enterprises
ADDRESS 602 Susquehanna Ave.
CITY, STATE, ZIP Curwensville Pa. 16833
ATTN: _____

If to Owner:
WAL-MART STORES, INC.
2001 S.E. 10th Street
Bentonville, AR 72712-6489
Attn: Maintenance Division

:bts:

Contractor shall pay off and discharge any and all debts and obligations incurred pursuant to performing the Work, including but not limited to obligations owed to suppliers of material and subcontractors.

10. Term of Agreement:

This Agreement is for a period of 24 months, which may be terminated pursuant to Owner's right of termination set forth in paragraph (2.6) herein, and shall be effective as of the date written above. This Agreement shall automatically extend from year to year unless the same is terminated by Wal-Mart upon at lease thirty (30) days written notice prior to the end of the initial term of this Agreement or the extended term of this Agreement or unless terminated by Wal-Mart pursuant to it's right of termination set forth in paragraph (2.6) herein.

11. Severability:

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby; and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year set out.

CONTRACTOR:

B & D Enterprises

Jim Bailor 5/5/00
By: Date:

Jim Bailor
Print Name

(814) 236-0764
Phone

WAL-MART STORES, INC.

5-10-00
By: Date:

Tim Fox DM
Print Name Title:
(District Manager)

(814) 375-5010
Phone

Wal-Mart/Sam's Store No. 2129

more copy

Exhibit A

SCOPE OF WORK
SWEEPING

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 4/30/00

The Contractor shall provide sweeping and related maintenance services Work located at the Wal-Mart Store, Inc./Sam's Club # 2129, address: 100 Super Center Dr as follows:

- Areas are to be swept ("Areas") at intervals as listed below.
- Areas include, but are not limited to, parking lot, sidewalks, truck wells, and rear of the building.
- Contractor will report immediately any unusual findings such as graffiti, vandalism, excess trash being dumped on the property, vehicles blocking removal, or any other dangerous situation discovered on the property by providing a photograph of the unusual finding to the owner.

Contractor shall provide the Work set forth herein, per occurrence as set forth herein:

____ Daily
____ Weekly
____ Bi-Weekly
____ One Time per Month
____ Intervals of # 3 per Week

Price per occurrence: $ 315.00 [redacted]

Acknowledged and Agreed to by:

CONTRACTOR:

B+D Enterprises
Name of Contractor

Jim Bailor 5/3/00
By: Date:

Jim Bailor
Print Name

OWNER:

WAL-MART STORES, INC.

5-10-00
By: Date:

Tim Fox D.M.
Print Name Title:
(District Manager)

Wal. 325

VERIFICATION

I, Patrick J. Loughney, attorney for Wal-Mart Stores, Inc., pursuant to Pa.R.C.P. 1024(c)(2), verify that the averments of fact made in this foregoing Answer, New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d) are true and correct and based upon my personal knowledge, information or belief. I understand that averments of fact in said document are made subject to the penalties of 18 Pa. C.S. §4904, relating to the unsworn falsifications to authorities. This Verification is made by the undersigned due to lack of sufficient time to obtain a Verification from Wal-Mart Stores, Inc., and will be provided when available.

Date: 12/26/02

Patrick J. Loughney, Esquire
Attorney for Wal-Mart Stores, Inc,

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 22252(d)** has been served by U.S. Mail, postage prepaid, this 20th day of June, 2002, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

James Bailor
B & D Enterprises
602 Susquehanna Avenue
Curwensville, PA 16833

Patrick J. Loughney, Esquire

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

W.327
1/10/03

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES

Additional Defendant

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants

NO. 02-1811-CD

JURY TRIAL DEMANDED

Type of Pleading:

COMPLAINT TO JOIN ADDITIONAL DEFENDANT UNDER PA.R.C.P. 2252(a)

Filed on Behalf of:
James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant

Counsel of Record for this Party:

Ann B. Wood, Esquire
Supreme Court No. 23364

Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
(814) 765-5537

Attorney For Plaintiffs:

James A. Naddeo, Esquire
Supreme Court No. 06820

JAMES A. NADDEO & ASSOCIATES
211½ E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Attorney For Defendant, Wal-Mart Stores, Inc.:

Patrick J. Loughney, Esquire
Supreme Court No. 23163

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219
Phone: (412) 471-1180
Fax: (412) 471-9012

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

JAN 09 2003

Attest.

Prothonotary/
Clerk of Courts

EXHIBIT
tabbies
C

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

NOTICE TO DEFEND

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

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

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
2nd & Market Streets
Clearfield, Pennsylvania 16830
Telephone (814) 765-2641 Ex. 5982

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

COMPLAINT TO JOIN ADDITIONAL DEFENDANT
UNDER PA.R.C.P. 2252(a)

AND NOW, COMES the Defendant, JAMES BAILOR, t/d/b/a B&D ENTERPRISES, (hereinafter referred to as "Bailor") by and through his attorneys, Bell, Silberblatt & Wood, and Ann B. Wood, Esquire, and files the following Complaint against Additional Defendant pursuant to Pa.R.C.P. 2252(a):

1. That the Additional Defendant, Roger R. Hull, is an individual, trading and doing business as HSJ Lawncare, (hereinafter referred to as "HSJ Lawncare") of P.O. Box 260,

Grampian, Pennsylvania 16838.

2. That the Additional Defendant, Boyles Insurance, Inc., is a corporation which conducts business in the Commonwealth of Pennsylvania, (hereinafter referred to as "Boyles") having an office located at 11 Nichols Street, Clearfield, Pennsylvania 16830.

COUNT I

James Bailor, t/d/b/a B&D Enterprises vs.
Roger R. Hull, t/d/b/a HSJ Lawncare

3. That the averments contained in Plaintiffs' Amended Complaint against Wal-Mart Stores, Inc. and against James Bailor, t/d/b/a B&D Enterprises, are incorporated by reference for purposes of this joinder only without admitting the truth of the same.

4. To the extent the Plaintiffs aver that Wal-Mart or Bailor maintained the parking area for the conditions of which Plaintiffs complained, it is averred that such maintenance had been subcontracted by Wal-Mart to Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, as set forth in Exhibit "1" attached to this Complaint.

5. That pursuant to said Contract, the responsibility for the maintenance of the landscaping, including the islands described in Plaintiffs' Complaint, were the responsibility of the Additional Defendant, HSJ Lawncare, to remove and properly dispose

of debris from the landscape areas.

6. That the Additional Defendant, HSJ Lawncare, was guilty of the following negligence, recklessness and carelessness, which was the approximate cause of the Plaintiff, Anna M. Rugh's, accident and injuries as follows:

(a) That the Additional Defendant, HSJ Lawncare, failed to inspect the planted areas as required by his Contract;

(b) That the Additional Defendant, HSJ Lawncare, failed to remove and properly dispose of debris from the landscape areas;

(c) That the Additional Defendant, HSJ Lawncare, failed to use due care under all of the circumstances of the case.

7. That any responsibility for the maintenance of the debris in the area in which the Plaintiff fell was the responsibility of HSJ Lawncare as set forth in Exhibit "1".

WHEREFORE, it is denied that Bailor is liable to any party in this action. If he is found liable, he demands contribution and/or indemnification from HSJ Lawncare.

COUNT II

James Bailor, t/d/b/a B&D Enterprises vs.
Boyles Insurance, Inc.

8. That the averments contained in Plaintiffs' Amended Complaint against Wal-Mart Stores, Inc. and against James Bailor, t/d/b/a B&D Enterprises, are incorporated by reference for purposes of this joinder only without admitting the truth of the same.

9. That on or about March, 1995, the Original Defendant, Bailor, contacted the Additional Defendant, Boyles, to provide him with the appropriate insurance necessary to protect his commercial activities.

10. That the Defendant, Bailor, relied upon the expertise of the Additional Defendant, Boyles, and its agents and employees to recommend full and proper coverage of Defendant, Bailor's, commercial enterprise.

11. That the Additional Defendant, Boyles, issued a policy or policies for purposes of providing insurance to Bailor.

12. That the Additional Defendant, Boyles, failed to recommend or provide any commercial general liability insurance for Defendant, Bailor.

13. That the Defendant, Bailor, has continued to operate his commercial enterprise believing that he had received the appropriate coverages as recommended by Additional Defendant, Boyles, since March, 1995.

14. That Additional Defendant, Boyles, was guilty of the following negligence, recklessness and carelessness as follows:

(a) That Additional Defendant, Boyles, failed to provide or recommend to Bailor the appropriate general commercial liability coverage;

(b) That Additional Defendant, Boyles, failed to provide appropriate coverage to Bailor knowing that Bailor was relying upon the expertise and experience of Additional Defendant, Boyles, to provide such coverage as would be necessary to allow the operation of Bailor's business under circumstances that any liabilities arising from that business would be covered;

(c) That the Additional Defendant, Boyles, failed to use due care under all of the circumstances of the case.

15. That the Defendant, Bailor, demands common law defense and indemnification from Additional Defendant, Boyles, based upon its failure to provide and/or recommend the appropriate coverage for his commercial enterprise.

WHEREFORE, it is denied that Bailor is liable to any party in this action. If he is found liable, he demands contribution and/or indemnification from Boyles Insurance, Inc.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:

_____

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

VERIFICATION

I, JAMES BAILOR, t/d/b/a B&D Enterprises, state that the within statements in the foregoing Complaint To Join Additional Defendant Under Pa.R.C.P. 2252(a) are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

JAMES BAILOR, t/d/b/a
B&D ENTERPRISES

Exhibit A

SCOPE OF WORK
LANDSCAPING:

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 7/1/2005

A. The Contractor shall provide regular maintenance services as outlined in this Agreement.

B. The Contractor shall examine the landscape, including irrigation, on a weekly basis, looking for problems or potential problems with the landscape.

C. The Contractor shall provide,at his/her own risk and sole expense, all labor, materials, tools, equipment, insurance, transportation, hauling, dumping, and all other items needed to provide the services outlined in this Agreement.

D. The Contractor shall make minor replacements and repairs to the landscape facilities as part of the required Work set forth herein Major items needing replacement or repair shall be reported to the Owner's authorized representative within one week of occurrence. A minor item would be something that takes less than 30 minutes to repair using minimal replacement parts. A broken or plugged sprinkler nozzle would be an example of a minor item. Some specific guidelines for determining if an item is minor or major are given in the section pertaining to each item.

E. Any facilities or Property damaged or destroyed as a result of the Contractor's operations on the premises shall be repaired or replaced at the Contractor's sole expense.

I. CARE OF PLANTED AREAS

A. Trees: Shall be maintained by Contractor in a healthy, vigorous growing condition, free from disease and large concentrations of pests.

1. Contractor shall prune trees that are under fourteen (14) tall once a year to remove dead, diseased, broken, dangerous, or crossing branches and as required herein. Pruning trees that are fourteen (14) or taller will be considered additional work. A written quote for pruning such trees should be separately submitted by Contractor to Owner and detailed in a separate work order.

2. Contractor shall prune trees only in appropriate months. Prune in accordance with generally accepted standards for proper pruning.

3. Contractor shall discard all tree trimmings away from the premises using a legal method.

4. Any tree found to be dead due to negligence by the Contractor should be replaced by Contractor within two weeks of death of such at the Contractor's expense. Replacement of trees that die due to mechanical damage will be paid for as additional work A quote for all replacements must be submitted to Owner for Owner's approval and detailed in a separate work order.

5. Trees planted as a visual screen or noise buffer may be pruned as needed only to remove dead, diseased, broken, dangerous, or crossing branches. Some municipalities prohibit pruning trees without a permit. Contractor shall check with local authorities prior to pruning. The Contractor is responsible for obtaining and paying for any required permits.

B. Shrubs (including vines). Shall be kept by Contractor in a healthy, vigorous condition, free from disease and large concentrations of pests.

1. Shrubs shall be pruned by Contractor as needed to remove branches that are dead, broken, extending beyond the face of curbs or sidewalks, or are climbing building walls (unless they are intended to climb the wall, such as climbing vines).

2. When it is necessary to prune shrubs, Contractor shall prune them into natural, mounding forms. Contractor shall not shear shrubs into topiary (shapes) or formal hedges unless specifically instructed to do so in writing by the Owner's authorized representative.

3 Any shrub found to be dead due to negligent acts by the Contractor should be replaced within two (2) weeks of death at the Contractor's sole expense. Replacement of shrubs that die due to mechanical damage will be paid for as additional Work. A written quote for replacement is to be submitted by Contractor to Owner and detailed in a separate work order.

C Fertilizer application.

1. Contractor shall fertilize all grass areas two times per year: spring, and fall. Additional applications will be applied if required with prior approval by Owner. All applications will be at the rate specified by the manufacturer. Contractor will fertilize all plants two times per year with proper fertilizers. No additional payment shall be made for the required fertilizer applications. Contractor must ensure that the application of fertilizer is done by a licensed applicator, if required by any state, local, or federal regulations.

D. Weed control:

1. Weeds in planted areas, sidewalks, curbs, gutters, or pavement shall be removed or killed weekly by Contractor as the weeds emerge. Weeds shall be removed by Contractor (not just killed) if they are larger than 2" (5 cm) in height or diameter. Contractor shall dispose of weeds away from the premises. Pre and post-emergent herbicides may be used at the Contractor's option. Contractor must ensure that the application of any and all pre and post-emergent herbicides is done by a licensed applicator, if required by any state, local, or federal regulations. Owner will make no additional payments for herbicide applications. The cost of all weed control Work shall be included in the Agreement price for landscape maintenance.

2. Contractor shall do regular maintenance of the mulch or decorative rock layer, which shall minimize weeds in shrub and groundcover areas. All mulched areas shall be re-mulched by Contractor one time each year to maintain a 2" thickness. The mulch material shall be provided by Contractor and be of the same type as existing unless otherwise specified by Owner.

E. Lawns:

1. Contractor shall keep lawns in a healthy, vigorous condition, free of disease and pests, except as noted below.

2. Lawn height shall be maintained by Contractor between 3" and 5" and shall not exceed 5" (13 cm) at any time.

3. Contractor shall mow, edge and trim lawns weekly or as required to maintain an even, well-groomed appearance. Sidewalks, straight curb runs and large planting areas shall be edged by Contractor utilizing a vertical blade-edger. String trimmers may be used in other areas. Note: Contractors shall remove trash from areas to be mowed prior to mowing.

4. Contractor shall remove visible lawn clippings and dispose of them away from the premises in a legal manner. The Contractor is encouraged to use mulching mowers that cut clippings into small pieces that sift down into the lawn.

5. Any lawn area that is killed or dies due to Contractor negligence shall be replaced at the Contractor's sole expense, within two (2) weeks of the loss. If lawn loss was due to mechanical damage, replacement costs will be paid as additional Work. If lawn loss is due to mechanical damage, Contractor shall submit a quote to Owner for replacement and the quote must be detailed in a separate work order

6. Contractor shall hand water as needed to supplement natural rainfall or permanent irrigation system and maintain plantings in a healthy, stress-free condition. It is the Contractor's responsibility to make sure that plants receive adequate water regardless of weather conditions. It is also the Contractor's responsibility to ensure that plants are not over watered.

II. IRRIGATION *(This section is deleted for properties that are not irrigated.)*

A. It is the Contractor's responsibility to make sure that the irrigation system is maintained and operates properly.

B. It is the responsibility of the Contractor to conserve water and assure that all watering rules and regulations are followed. Any penalties, fines, or citations for watering ordinance violations and relating to such shall be paid the by Contractor.

C. The Contractor is responsible for the complete operation and maintenance of the irrigation systems. The Contractor shall examine the irrigation system for damage or malfunction weekly and shall report any damage or malfunction to the Owner's authorized representative in writing.

D. Contractor shall repair Minor Repairs with the irrigation system as defined herein (broken heads, risers and minor leaks). Owner will make no additional payment to Contractor for said Minor Repairs. Major Repairs to the irrigation system such as pump failures, etc., will be reported to Owner and repaired according to a separate written agreement between Owner and Contractor.

1. " Minor Repairs" include, but are not limited to, cleaning out irrigation lines, adjustment of spray heads and nozzles, adjusting zone controls, programming main controller, maintenance of spray heads and nozzles, including replacement of minor parts, minor leaks in lines, risers, laterals or other system components.

2. "Major Repairs" include, but are not limited to, major line breaks, repair and/or replacement of valves, controllers, pumps and backflow-preventers. Contractor shall submit a quote to Owner for repair and/or replacement of major components, and obtain written authorization from Owner prior to proceeding with such Work.

3. Owner reserves the right to determine whether a repair to the irrigation system will be considered Major or Minor. Nothing contained in this section shall relieve the Contractor from acting in a responsible manner in the event of an emergency involving the irrigation system to protect Property, and ensure the safety of all persons, and immediately curtail wholesale waste of water.

E. When breakdowns or malfunctions exist, the Contractor shall hand water, if necessary, to maintain all plant material in a healthy condition.

F. The Contractor shall maintain the irrigation system, including cleaning of filter screens yearly or more often if needed, and flushing pipes part of this system where applicable. WINTERIZATION. As a minimum, the system shall be shut down at the irrigation meter, and all zones shall be blown down with compressed air until all water has been evacuated from the system. Care will be exercised to ensure all heads are secured from ingress of rainwater and mud while system is Repressurized. Controller will be shut down. Contractor shall ensure the backflow preventer is completely drained and suitably protected from freezing.

G. Any replacement of irrigation system components shall be made by Contractor with materials of the same manufacturer and model as the original equipment. Substitutions of materials other than original equipment will be approved only when the original equipment has been discontinued and are no longer available for purchase at any location. The substituted equipment must be completely compatible with the original and must be approved in writing in advance by the Owner's authorized representative.

H. All repairs to the irrigation system shall be identical to the original installation, unless approved in writing by the Owner's authorized representative. If a change to the installation will result in lower future maintenance costs, less frequent breakage, or an increase in public safety, request authorization in writing to make the change from the Owner's authorized representative.

I. Contractor shall check for leaking valves, water running across sidewalks, water standing in puddles, or any other condition which hampers the correct operation of the irrigation System or the public safety. The Contractor shall carefully observe plant materials for signs of wilting, indicating a lack of water. Plants that die due to irrigation system failure will be considered to have died due to the Contractor's negligence or acts and shall be replaced at the Contractor's sole expense.

III. LITTER REMOVAL

A. All litter shall be removed by the Contractor from ~~sidewalks, gutters~~ and all planted areas each week. In no case shall trash, litter, or leaves be blown or swept by the Contractor onto the Property of others. All trash, litter, leaves, etc. shall be collected, hauled away, and disposed of by the Contractor away from the premises.

B. In addition to removing all litter from sidewalks, gutters and planted areas, the Contractor shall remove and dispose of any large miscellaneous debris or trash in the parking lot. For the purpose of this Agreement, "large" shall mean items the size of a small beverage cup or larger. The intent of this requirement is that the Contractor and it's workers should take sufficient pride in the appearance of the Property that they would pick up any significant litter they come across on the premises. Sweeping of the parking lots is not included in this Agreement. Contractor shall remove all litter from planting areas and sidewalks, regardless of the size of the litter. Contractor shall notify Owner in writing, with clear photographs attached, of excessive trash accumulation on the Property.

IV. CHEMICALS, HERBICIDES, PESTICIDES

A. All chemicals shall be used in accordance with label directions and the manufacturers recommended handling methods. Registered chemicals shall be handled in accordance with all applicable regulations. Registered chemicals shall be used only on the advice of a qualified, licensed, if required, pest control advisor. Nothing in this specification shall be construed to be the advice of, or to substitute for the advice of, a pest control adviser.

B. Pesticides shall not be applied within one hour of the start of operating hours of the store. In the event that it is not possible to complete the application by one hour prior to business hours (i.e 24-hour locations), applications shall be made at times when customer presence is minimal. Areas to be treated shall be blocked off and warning signs posted.

C. The Contractor shall take precautions to keep persons away from pesticide and herbicide-treated areas until the applied material is fully dry and the treated area is safe for entry. Follow the recommendations of the pesticide manufacturer and all applicable governmental and industry regulations.

V. PAYMENT

Owner agrees to pay the Contractor a total of $ 127.20 Per Visit ~~per year~~ during the term of this agreement, payable in monthly payments of $ _____ each. flat

Additional Scope of Work

Acknowledged and Agreed to by:

CONTRACTOR:

HSI Lawncare
Name of Contractor

3-29-00
By: Date:

Roger P. Hall, Owner
Print Name

OWNER:

WAL-MART STORES, INC.

4-10-00
By: Date:

Tim Fox
Print Name Title
(District Manager)

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of Complaint To Join Additional Defendant Under Pa.R.C.P. 2252(a) with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on January 9, 2003:

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
211½ East Locust Street
Marino Building
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:

Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

WAL 325
Please copy 12/9/02

Outside Maintenance Agreement

THIS AGREEMENT is made as of the 1 day of May 2002 between **Wal-Mart Stores, Inc.** a Delaware corporation, of 2001 South East Tenth Street, Bentonville, Arkansas 72712-6489 ("Owner") and _____("Contractor").

NOW, THEREFORE, for and in consideration of the obligations and other valuable considerations and covenants, the sufficiency of which is hereby acknowledged, Owner and Contractor do hereby agree as follows:

1. Preliminary--Definitions:

a. "Outside Maintenance Service" shall include landscaping and/or irrigation work, snow removal services, or parking lot sweeping as defined in Exhibit A attached hereto and made a part hereof, under the "Scope of Work".

b "Scope of Work" shall define the type and scope of the outside maintenance service work that this contract intends to cover.

c. "Work" shall be defined as any service provided within the defined Scope of Work.

2. General Requirements:

(2.1) The Contractor shall purchase and maintain such insurance as indicated below and with the limits listed below. Such insurance shall protect Owner and the Contractor from claims which may arise out of or result from the operations under this Agreement whether such operations are by himself, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance contracts shall contain a Waiver of Subrogation in favor of Owner and its affiliates.

Certificates of Insurance, acceptable to Owner, MUST BE RECEIVED by Owner before Owner will execute this Agreement or before any Work is performed, whichever is the earliest date. Failure to provide the proper Certificate of Insurance as required may result in the cancellation of the award of this Agreement or cancellation of this Agreement. The certification must indicate that the limits listed below are provided and that the insurance will not be canceled during the term of this contract without thirty (30) days prior written notice by registered mail to Owner.

HOLDER SHOULD READ: WAL-MART STORES, INC., ITS SUBSIDIARIES & ITS AFFILIATES, 2001 SE 103H ST., Bentonville, AR 72716-6489.

Insurance policies meeting these requirements shall remain in effect for the duration of the Work. No payments to the Contractor will be authorized unless current Certificates of Insurance have been filed with Owner.

In no case should insurance coverage be less than:
- Statutory Workers' Compensation and Employer's Liability---$500,000 per occurrence.
- Commercial General Liability including Contractual Liability---$250,000.
- Business Auto Liability Coverage---$250,000.

The Contractor shall be responsible for securing Certificates of Insurance from all subcontractors for insurance coverage limits indicated above and shall make such Certificates available to Owner upon request.

(2.2) All requests for service(s) that are not included within the Scope of Work must be in writing and approved by Owner at Owner's sole discretion. Contractor shall not start additional work (which is not included in the Scope of Work) until the Owner's authorized representative has approved the request in writing. Failure to obtain advance approval before starting the additional work shall result in non-payment.

(2.3) The Owner may take any reasonable action necessary to control damage or protect the health, safety and welfare of the public in the event of problems involving the "Outside Maintenance Service" Such action on the part of the Owner shall not relieve the Contractor of any responsibilities related to any problems relating thereto.

EXHIBIT
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No part of the Work set forth herein shall be performed in any location or manner which may endanger the health, safety and welfare of the public now or in the future. Means, methods, techniques, sequencing, etc. are the sole responsibility of the Contractor.

(2.4) Contractor warrants and guarantees that all Work specified herein is to be performed in a workmanlike manner acceptable to Owner, which shall be the sole judge of quality of Work. In the event the Work proves to be unacceptable to Owner prior to the time payment is made, Contractor shall have ten(10) days to correct such defects at Contractor's own reasonable expense, with payment then due upon completion of the corrections(s). If Contractor fails to correct such defects to Owner's satisfaction within the time specified above, Owner shall have the right to correct the defects and deduct the cost thereof from the amount owed to Contractor by the Owner. In the event any defects in the Work are discovered by Owner after paying Contractor, then, upon receipt of notice from Owner, Contractor shall have ten(10) days to correct the defects at Contractor's own expense. If Contractor fails to correct such defects to the satisfaction of Owner, which shall be at the sole discretion of Owner, within the time specified, Owner shall have the right to cure and correct such defects and invoice the Contractor for such expenditures. Contractor shall within ten(10) days from receipt thereof, reimburse Owner for any and all cost incurred therein.

(2.5) Contractor shall coordinate its schedule in performing the Work with the applicable Owner location's Store Manager.

(2.6) Owner may terminate this Agreement without cause upon fifteen (15) day's prior written notice to Contractor.

(2.7) Contractor agrees that he/she shall assume sole and complete responsibility for the Work, including safety of all persons and property; and that the Contractor shall defend, indemnify, and hold the Owner and tenants harmless from any and all liability, real or alleged, in connection with the Contractor's, Contractor's employees, agents and subcontractors performance of the Work set forth herein, excepting for liability arising from the sole negligence of the Owner or tenants. Contractor shall ensure that all equipment utilized on the premises is provided with proper safety guards.

(2.8) The Contractor shall, throughout the course of the Work set forth herein, comply with all rules, ordinances, regulations, etc. set forth by agencies having jurisdiction, which apply to the premises, the Contractor, and/or contractor's employees and subcontractors.

(2.9) The Contractor shall ensure that all Contractor's employees, agents, and subcontractors present a neat, clean, appearance and conduct themselves in a business-like manner at all times while on Owner's property. Owner strongly encourages all Contractors to provide uniforms for their employees, agents, and subcontractors.

(2.10) This Agreement shall not be enforceable against Wal-Mart (or any of it's affiliates) unless, on behalf of Wal-Mart, this Agreement is executed by the applicable Divisional Manager assigned to the Wal-Mart location at which the Scope of Work is to be performed.

3. Scope of Work:

Contractor shall provide services at Wal-Mart Stores, Inc. Store/Sam's Club Store #2129, address: 100 Super Center ("Property") as set forth in the Scope of Work attached hereto as Exhibit "A" and made a part hereof. This Agreement is contingent upon the execution of Exhibit "A" by both parties.

4. Payment:

Owner shall make payment to Contractor within thirty (30) days after receipt of the Contractor's invoice at the address designated in this Agreement. Time required to process Contractor's invoice may be extended by Owner if required documentation is not submitted with each invoice.

Invoices must have the following information in order for payment to be made:

1. Invoice number
2. Invoice date
3. Date(s) that the service(s) was provided
4. Detailed description of service(s) provided
5. Itemized invoice amount
6. Wal-Mart/Sam's store number
7. Contractor's Wal-Mart vendor number
8. Attached "Work Completion Report" signed by Store Manager.

NOTE: Invoice for regular monthly contract service must show ONLY the regular monthly charge and no other charges. Approved additional charges must be invoiced separately.

All invoices should be sent to:

Wal-Mart Real Estate Accounting
PO Box X055
Bentonville, AR 72712

5. Pricing.

Pricing on Exhibit A shall include all labor (whether by Contractor or subcontractor) materials, taxes, permit fees (if applicable), and equipment.

6. Entire Agreement:

This Agreement constitutes the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Agreement is the result of good faith arms length negotiations. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

7. Successors:

It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or federal government. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

8. Notices:

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, or similar overnight delivery service, to the address of either party below. Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall

If to the Contractor:
NAME B&D Enterprises
ADDRESS 602 Susquehanna Ave.
CITY, STATE, ZIP Clearfield Co. 16833
ATTN: _____

If to Owner:
WAL-MART STORES, INC.
2001 S.E. 10th Street
Bentonville, AR 72712-6489
Attn: Maintenance Division

Debts:

Contractor shall pay off and discharge any and all debts and obligations incurred pursuant to performing the Work, including but not limited to obligations owed to suppliers of material and subcontractors.

10. Term of Agreement:

This Agreement is for a period of 24 months, which may be terminated pursuant to Owner's right of termination set forth in paragraph (2.6) herein, and shall be effective as of the date written above. This Agreement shall automatically extend from year to year unless the same is terminated by Wal-Mart upon at lease thirty (30) days written notice prior to the end of the initial term of this Agreement or the extended term of this Agreement or unless terminated by Wal-Mart pursuant to it's right of termination set forth in paragraph (2.6) herein.

11. Severability:

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby; and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year set out.

CONTRACTOR:

B & D Enterprises

Jim Bailor 5/5/00

By: Date:

Jim Bailor

Print Name

(814) 236-0764

Phone

WAL-MART STORES, INC.

5-10-00

By: Date:

Tim Fox DM

Print Name Title:
(District Manager)

(814) 375-5010

Phone

Wal-Mart/Sam's Store No. 2129

More copy

Exhibit A

SCOPE OF WORK
SWEEPING

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 4/30/00

The Contractor shall provide sweeping and related maintenance services Work located at the Wal-Mart Store, Inc./Sam's Club # 2129, address: 100 Supercenter Dr as follows:

- Areas are to be swept ("Areas") at intervals as listed below.
- Areas include, but are not limited to, parking lot, sidewalks, truck wells, and rear of the building.
- Contractor will report immediately any unusual findings such as graffiti, vandalism, excess trash being dumped on the property, vehicles blocking removal, or any other dangerous situation discovered on the property by providing a photograph of the unusual finding to the owner.

Contractor shall provide the Work set forth herein, per occurrence as set forth herein:

_____ Daily
_____ Weekly
_____ Bi-Weekly
_____ One Time per Month
_____ Intervals of # 3 per Week

Price per occurrence: $ 315.00 [redacted]

Acknowledged and Agreed to by:

CONTRACTOR:

B+D Enterprises
Name of Contractor

Jim Bailor 5/3/00
By: Date:

Jim Bailor
Print Name

OWNER:

WAL-MART STORES, INC.

5-10-00
By: Date:

Tim Fox D.M.
Print Name Title:
(District Manager)

WAL 325 2/1/03

Outside Maintenance Agreement

THIS AGREEMENT is made as of the 1 day of May 2003, between **Wal-Mart Stores, Inc.** a Delaware corporation, of 2001 South East Tenth Street, Bentonville, Arkansas 72712-6489 ("Owner") and _____("Contractor").

NOW, THEREFORE, for and in consideration of the obligations and other valuable considerations and covenants, the sufficiency of which is hereby acknowledged, Owner and Contractor do hereby agree as follows:

1. Preliminary--Definitions:

a. "Outside Maintenance Service" shall include landscaping and/or irrigation work, snow removal services, or parking lot sweeping as defined in Exhibit A attached hereto and made a part hereof, under the "Scope of Work".

b. "Scope of Work" shall define the type and scope of the outside maintenance service work that this contract intends to cover.

c. "Work" shall be defined as any service provided within the defined Scope of Work.

2. General Requirements:

(2.1) The Contractor shall purchase and maintain such insurance as indicated below and with the limits listed below. Such insurance shall protect Owner and the Contractor from claims which may arise out of or result from the operations under this Agreement whether such operations are by himself, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance contracts shall contain a Waiver of Subrogation in favor of Owner and its affiliates.

Certificates of Insurance, acceptable to Owner, MUST BE RECEIVED by Owner before Owner will execute this Agreement or before any Work is performed, whichever is the earliest date. Failure to provide the proper Certificate of Insurance as required may result in the cancellation of the award of this Agreement or cancellation of this Agreement. The certification must indicate that the limits listed below are provided and that the insurance will not be canceled during the term of this contract without thirty (30) days prior written notice by registered mail to Owner.

HOLDER SHOULD READ: WAL-MART STORES, INC., ITS SUBSIDIARIES & ITS AFFILIATES, 2001 SE 103H ST., Bentonville, AR 72716-6489.

Insurance policies meeting these requirements shall remain in effect for the duration of the Work. No payments to the Contractor will be authorized unless current Certificates of Insurance have been filed with Owner.

In no case should insurance coverage be less than:
- Statutory Workers' Compensation and Employer's Liability---$500,000 per occurrence.
- Commercial General Liability including Contractual Liability---$250,000.
- Business Auto Liability Coverage---$250,000.

The Contractor shall be responsible for securing Certificates of Insurance from all subcontractors for insurance coverage limits indicated above and shall make such Certificates available to Owner upon request.

(2.2) All requests for service(s) that are not included within the Scope of Work must be in writing and approved by Owner at Owner's sole discretion. Contractor shall not start additional work (which is not included in the Scope of Work) until the Owner's authorized representative has approved the request in writing. Failure to obtain advance approval before starting the additional work shall result in non-payment.

(2.3) The Owner may take any reasonable action necessary to control damage or protect the health, safety and welfare of the public in the event of problems involving the "Outside Maintenance Service" Such action on the part of the Owner shall not relieve the Contractor of any responsibilities related to any problems relating thereto.

EXHIBIT
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No part of the Work set forth herein shall be performed in any location or manner which may endanger the health, safety and welfare of the public now or in the future. Means, methods, techniques, sequencing, etc. are the sole responsibility of the Contractor.

(2.4) Contractor warrants and guarantees that all Work specified herein is to be performed in a workmanlike manner acceptable to Owner, which shall be the sole judge of quality of Work. In the event the Work proves to be unacceptable to Owner prior to the time payment is made, Contractor shall have ten(10) days to correct such defects at Contractor's own reasonable expense, with payment then due upon completion of the corrections(s). If Contractor fails to correct such defects to Owner's satisfaction within the time specified above, Owner shall have the right to correct the defects and deduct the cost thereof from the amount owed to Contractor by the Owner. In the event any defects in the Work are discovered by Owner after paying Contractor, then, upon receipt of notice from Owner, Contractor shall have ten(10) days to correct the defects at Contractor's own expense. If Contractor fails to correct such defects to the satisfaction of Owner, which shall be at the sole discretion of Owner, within the time specified, Owner shall have the right to cure and correct such defects and invoice the Contractor for such expenditures. Contractor shall within ten(10) days from receipt thereof, reimburse Owner for any and all cost incurred therein.

(2.5) Contractor shall coordinate its schedule in performing the Work with the applicable Owner location's Store Manager.

(2.6) Owner may terminate this Agreement without cause upon fifteen (15) day's prior written notice to Contractor.

(2.7) Contractor agrees that he/she shall assume sole and complete responsibility for the Work, including safety of all persons and property; and that the Contractor shall defend, indemnify, and hold the Owner and tenants harmless from any and all liability, real or alleged, in connection with the Contractor's, Contractor's employees, agents and subcontractors performance of the Work set forth herein, excepting for liability arising from the sole negligence of the Owner or tenants. Contractor shall ensure that all equipment utilized on the premises is provided with proper safety guards.

(2.8) The Contractor shall, throughout the course of the Work set forth herein, comply with all rules, ordinances regulations, etc. set forth by agencies having jurisdiction, which apply to the premises, the Contractor and/or contractor's employees and subcontractors.

(2.9) The Contractor shall ensure that all Contractor's employees, agents, and subcontractors present a neat clean, appearance and conduct themselves in a business-like manner at all times while on Owner property. Owner strongly encourages all Contractors to provide uniforms for their employees, agents, and subcontractors.

(2.10) This Agreement shall not be enforceable against Wal-Mart (or any of it's affiliates) unless, on behalf of Wal-Mart, this Agreement is executed by the applicable Divisional Manager assigned to the Wal-Mart location at which the Scope of Work is to be performed.

3. Scope of Work:

Contractor shall provide services at Wal-Mart Stores, Inc. Store/Sam's Club Store #____ , address: _____ ("Property") as set forth in the Scope of Work attached hereto as Exhibit "A" and made a part hereof. This Agreement contingent upon the execution of Exhibit "A" by both parties.

4. Payment:

Owner shall make payment to Contractor within thirty (30) days after receipt of the Contractor's invoice at the address designated in this Agreement. Time required to process Contractor's invoice may be extended by Owner if required documentation is not submitted with each invoice.

ices must have the following information in order for payment to be made:

1. Invoice number
2. Invoice date
3. Date(s) that the service(s) was provided
4. Detailed description of service(s) provided
5. Itemized invoice amount
6. Wal-Mart/Sam's store number
7. Contractor's Wal-Mart vendor number
8. Attached "Work Completion Report" signed by Store Manager.

NOTE: Invoice for regular monthly contract service must show ONLY the regular monthly charge and no other charges. Approved additional charges must be invoiced separately.

All invoices should be sent to:

Wal-Mart Real Estate Accounting
PO Box X055
Bentonville, AR 72712

5. Pricing:

Pricing on Exhibit A shall include all labor (whether by Contractor or subcontractor) materials, taxes, permit fees (if applicable), and equipment.

6. Entire Agreement:

This Agreement constitutes the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Agreement is the result of good faith arms length negotiations. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

7. Successors:

It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or federal government. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

8. Notices:

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, or similar overnight delivery service, to the address of either party below. Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall

If to the Contractor:
NAME HST Lawncare
ADDRESS PO Box 260
CITY, STATE, ZIP Grampian, PA 16838
ATTN: Roger Hill

If to Owner:
WAL-MART STORES, INC.
2001 S.E. 10th Street
Bentonville, AR 72712-6489
Attn: Maintenance Division

...bts:

Contractor shall pay off and discharge any and all debts and obligations incurred pursuant to performing the Work, including but not limited to obligations owed to suppliers of material and subcontractors.

10. Term of Agreement:

This Agreement is for a period of 24 months, which may be terminated pursuant to Owner's right of termination set forth in paragraph (2.6) herein, and shall be effective as of the date written above. This Agreement shall automatically extend from year to year unless the same is terminated by Wal-Mart upon at lease thirty (30) days written notice prior to the end of the initial term of this Agreement or the extended term of this Agreement or unless terminated by Wal-Mart pursuant to it's right of termination set forth in paragraph (2.6) herein.

11. Severability:

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby; and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year set out.

CONTRACTOR:

By: 5-8-06
Date:

Roger R. Hill
Print Name

814-236-3040
Phone

WAL-MART STORES, INC.

By: 5-10-06
Date:

Tim Fox DM
Print Name Title:
(District Manager)

(814) 375-5010
Phone

Wal-Mart/Sam's Store No. 2121

Exhibit A

SCOPE OF WORK
LANDSCAPING:

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 4/1/2000

A. The Contractor shall provide regular maintenance services as outlined in this Agreement.

B. The Contractor shall examine the landscape, including irrigation, on a weekly basis, looking for problems or potential problems with the landscape.

C. The Contractor shall provide at his/her own risk and sole expense, all labor, materials, tools, equipment, insurance, transportation, hauling, dumping, and all other items needed to provide the services outlined in this Agreement.

D. The Contractor shall make minor replacements and repairs to the landscape facilities as part of the required Work set forth herein. Major items needing replacement or repair shall be reported to the Owner's authorized representative within one week of occurrence. A minor item would be something that takes less than 30 minutes to repair using minimal replacement parts. A broken or plugged sprinkler nozzle would be an example of a minor item. Some specific guidelines for determining if an item is minor or major are given in the section pertaining to each item.

E. Any facilities or Property damaged or destroyed as a result of the Contractor's operations on the premises shall be repaired or replaced at the Contractor's sole expense.

1. CARE OF PLANTED AREAS

A. Trees: Shall be maintained by Contractor in a healthy, vigorous growing condition, free from disease and large concentrations of pests.

1. Contractor shall prune trees that are under fourteen (14) tall once a year to remove dead, diseased, broken, dangerous, or crossing branches and as required herein. Pruning trees that are fourteen (14) or taller will be considered additional work. A written quote for pruning such trees should be separately submitted by Contractor to Owner and detailed in a separate work order.

2. Contractor shall prune trees only in appropriate months. Prune in accordance with generally accepted standards for proper pruning.

3. Contractor shall discard all tree trimmings away from the premises using a legal method.

4. Any tree found to be dead due to negligence by the Contractor should be replaced by Contractor within two weeks of death of such at the Contractor's expense. Replacement of trees that die due to mechanical damage will be paid for as additional work. A quote for all replacements must be submitted to Owner for Owner's approval and detailed in a separate work order.

5. Trees planted as a visual screen or noise buffer may be pruned as needed only to remove dead, diseased, broken, dangerous, or crossing branches. Some municipalities prohibit pruning trees without a permit. Contractor shall check with local authorities prior to pruning. The Contractor is responsible for obtaining and paying for any required permits.

B. Shrubs (including vines). Shall be kept by Contractor in a healthy, vigorous condition, free from disease and large concentrations of pests.

1. Shrubs shall be pruned by Contractor as needed to remove branches that are dead, broken, extending beyond the face of curbs or sidewalks, or are climbing building walls (unless they are intended to climb the wall, such as climbing vines).

2. When it is necessary to prune shrubs, Contractor shall prune them into natural, mounding forms. Contractor shall not shear shrubs into topiary (shapes) or formal hedges unless specifically instructed to do so in writing by the Owner's authorized representative.

3. Any shrub found to be dead due to negligent acts by the Contractor should be replaced within two (2) weeks of death at the Contractor's sole expense. Replacement of shrubs that die due to mechanical damage will be paid for as additional Work. A written quote for replacement is to be submitted by Contractor to Owner and detailed in a separate work order.

C. Fertilizer application.

1. Contractor shall fertilize all grass areas two times per year: spring, and fall. Additional applications will be applied if required with prior approval by Owner. All applications will be at the rate specified by the manufacturer. Contractor will fertilize all plants two times per year with proper fertilizers. No additional payment shall be made for the required fertilizer applications. Contractor must ensure that the application of fertilizer is done by a licensed applicator, if required by any state, local, or federal regulations.

D. Weed control:

1. Weeds in planted areas, sidewalks, curbs, gutters, or pavement shall be removed or killed weekly by Contractor as the weeds emerge. Weeds shall be removed by Contractor (not just killed) if they are larger than 2" (5 cm) in height or diameter. Contractor shall dispose of weeds away from the premises. Pre and post-emergent herbicides may be used at the Contractor's option. Contractor must ensure that the application of any and all pre and post-emergent herbicides is done by a licensed applicator, if required by any state, local, or federal regulations. Owner will make no additional payments for herbicide applications. The cost of all weed control Work shall be included in the Agreement price for landscape maintenance.

2. Contractor shall do regular maintenance of the mulch or decorative rock layer, which shall minimize weeds in shrub and groundcover areas. All mulched areas shall be re-mulched by Contractor one time each year to maintain a 2" thickness. The mulch material shall be provided by Contractor and be of the same type as existing unless otherwise specified by Owner.

E. Lawns:

1. Contractor shall keep lawns in a healthy, vigorous condition, free of disease and pests, except as noted below.

2. Lawn height shall be maintained by Contractor between 3" and 5" and shall not exceed 5" (13 cm) at any time.

3. Contractor shall mow, edge and trim lawns weekly or as required to maintain an even, well-groomed appearance. Sidewalks, straight curb runs and large planting areas shall be edged by Contractor utilizing a vertical blade-edger. String trimmers may be used in other areas. Note: Contractors shall remove trash from areas to be mowed prior to mowing.

4. Contractor shall remove visible lawn clippings and dispose of them away from the premises in a legal manner. The Contractor is encouraged to use mulching mowers that cut clippings into small pieces that sift down into the lawn.

5. Any lawn area that is killed or dies due to Contractor negligence shall be replaced at the Contractor's sole expense, within two (2) weeks of the loss. If lawn loss was due to mechanical damage, replacement costs will be paid as additional Work. If lawn loss is due to mechanical damage, Contractor shall submit a quote to Owner for replacement and the quote must be detailed in a separate work order.

6. Contractor shall hand water as needed to supplement natural rainfall or permanent irrigation system and maintain plantings in a healthy, stress-free condition. It is the Contractor's responsibility to make sure that plants receive adequate water regardless of weather conditions. It is also the Contractor's responsibility to ensure that plants are not over watered.

II. IRRIGATION (This section is deleted for properties that are not irrigated.)

A. It is the Contractor's responsibility to make sure that the irrigation system is maintained and operates properly.

B. It is the responsibility of the Contractor to conserve water and assure that all-watering rules and regulations are followed. Any penalties, fines, or citations for watering ordinance violations and relating to such shall be paid the by Contractor.

C. The Contractor is responsible for the complete operation and maintenance of the irrigation systems. The Contractor shall examine the irrigation system for damage or malfunction weekly and shall report any damage or malfunction to the Owner's authorized representative in writing.

D. Contractor shall repair Minor Repairs with the irrigation system as defined herein (broken heads, risers and minor leaks). Owner will make no additional payment to Contractor for said Minor Repairs. Major Repairs to the irrigation system such as pump failures, etc., will be reported to Owner and repaired according to a separate written agreement between Owner and Contractor.

1. " Minor Repairs" include, but are not limited to, cleaning out irrigation lines, adjustment of spray heads and nozzles, adjusting zone controls, programming main controller, maintenance of spray heads and nozzles, including replacement of minor parts, minor leaks in lines, risers, laterals or other system components.

2. "Major Repairs" include, but are not limited to, major line breaks, repair and/or replacement of valves, controllers, pumps and backflow-preventers. Contractor shall submit a quote to Owner for repair and/or replacement of major components, and obtain written authorization from Owner prior to proceeding with such Work.

3. Owner reserves the right to determine whether a repair to the irrigation system will be considered Major or Minor. Nothing contained in this section shall relieve the Contractor from acting in a responsible manner in the event of an emergency involving the irrigation system to protect Property, and ensure the safety of all persons, and immediately curtail wholesale waste of water.

E. When breakdowns or malfunctions exist, the Contractor shall hand water, if necessary, to maintain all plant material in a healthy condition.

F. The Contractor shall maintain the irrigation system, including cleaning of filter screens yearly or more often if needed, and flushing pipes part of this system where applicable. WINTERIZATION: As a minimum, the system shall be shut down at the irrigation meter, and all zones shall be blown down with compressed air until all water has been evacuated from the system. Care will be exercised to ensure all heads are secured from ingress of rainwater and mud while system is Repressurized. Controller will be shut down. Contractor shall ensure the backflow preventer is completely drained and suitably protected from freezing.

G. Any replacement of irrigation system components shall be made by Contractor with materials of the same manufacturer and model as the original equipment. Substitutions of materials other than original equipment will be approved only when the original equipment has been discontinued and are no longer available for purchase at any location. The substituted equipment must be completely compatible with the original and must be approved in writing in advance by the Owner's authorized representative.

H. All repairs to the irrigation system shall be identical to the original installation, unless approved in writing by the Owner's authorized representative. If a change to the installation will result in lower future maintenance costs, less frequent breakage, or an increase in public safety, request authorization in writing to make the change from the Owner's authorized representative.

I. Contractor shall check for leaking valves, water running across sidewalks, water standing in puddles, or any other condition which hampers the correct operation of the irrigation System or the public safety. The Contractor shall carefully observe plant materials for signs of wilting, indicating a lack of water. Plants that die due to irrigation system failure will be considered to have died due to the Contractor's negligence or acts and shall be replaced at the Contractor's sole expense.

III. LITTER REMOVAL

A. All litter shall be removed by the Contractor from ~~sidewalks~~, ~~gutters~~, and all planted areas each week. In no case shall trash, litter, or leaves be blown or swept by the Contractor onto the Property of others. All trash, litter, leaves, etc. shall be collected, hauled away, and disposed of by the Contractor away from the premises.

B. In addition to removing all litter from sidewalks, ~~gutters~~ and planted areas, the Contractor shall remove and dispose of any large miscellaneous debris or trash in the parking lot. For the purpose of this Agreement, "large" shall mean items the size of a small beverage cup or larger. The intent of this requirement is that the Contractor and it's workers should take sufficient pride in the appearance of the Property that they would pick up any significant litter they come across on the premises. Sweeping of the parking lots is not included in this Agreement. Contractor shall remove all litter from planting areas and sidewalks, regardless of the size of the litter. Contractor shall notify Owner in writing, with clear photographs attached, of excessive trash accumulation on the Property.

IV. CHEMICALS, HERBICIDES, PESTICIDES

A. All chemicals shall be used in accordance with label directions and the manufacturers recommended handling methods. Registered chemicals shall be handled in accordance with all applicable regulations. Registered chemicals shall be used only on the advice of a qualified, licensed, if required, pest control advisor. Nothing in this specification shall be construed to be the advice of, or to substitute for the advice of, a pest control adviser.

B. Pesticides shall not be applied within one hour of the start of operating hours of the store. In the event that it is not possible to complete the application by one hour prior to business hours (i.e. 24-hour locations), applications shall be made at times when customer presence is minimal. Areas to be treated shall be blocked off and warning signs posted.

C. The Contractor shall take precautions to keep persons away from pesticide and herbicide-treated areas until the applied material is fully dry and the treated area is safe for entry. Follow the recommendations of the pesticide manufacturer and all applicable governmental and industry regulations.

V. PAYMENT

Owner agrees to pay the Contractor a total of $ 127.20 PER VISIT ~~per year~~ during the term of this agreement, payable in monthly payments of $ _____ each.

Additional Scope of Work

Acknowledged and Agreed to by:

CONTRACTOR:

HSJ Lawncare
Name of Contractor

3-29-00
By: Date:

Roger R. Hall, Owner
Print Name

OWNER:

WAL-MART STORES, INC.

4-10-00
By: Date:

Tim Fox
Print Name Title:
(District Manager)

WAL 325

WAL.325

VERIFICATION

I verify that the averments of fact made in this foregoing **WAL-MART STORES, INC.'S COMPLAINT TO JOIN ADDITIONAL DEFENDANT ROGER R. HULL t/d/b/a HSJ LAWNCARE UNDER PA. R.C.P. 2252(a)** are true and correct to the best of my knowledge, information or belief. I understand that averments of fact in said document are made subject to the penalties of 18 Pa. C.S. § 4904, relating to the unsworn falsifications to authorities.

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

Date: 2/28/03

Roger Gates, Manager

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **WAL-MART STORES, INC.'S COMPLAINT TO JOIN ADDITIONAL DEFENDANT ROGER R. HULL t/d/b/a HSJ LAWNCARE UNDER PA. R.C.P. 2252(a)** has been served by U.S. Mail, postage prepaid, this 12th day of March, 2003, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 679
Clearfield, PA 16830
Counsel for Defendant James Bailor, t/d/b/a B&D Enterprises

Paul Walsh, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219
Counsel for Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare

Bryan K. Shreckengost, Esquire
PIETRAGALLO BOSICK & GORDON
38th Floor, One Oxford Centre
Pittsburgh, PA 15219
Counsel for Additional Defendant Boyles Insurance, Inc.

Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire

FILED
MAR 14 2003
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

ANSWER, NEW MATTER & NEW MATTER PURSUANT TO RULE 2252(d) TO DEFENDANT, JAMES BAILOR'S, t/d/b/a B&D ENTERPRISES, COMPLAINT TO JOIN ADDITIONAL DEFENDANT

(Jury Trial Demanded)

Filed on Behalf of the Additional Defendant: Roger R. Hull, t/d/b/a HSJ Lawncare

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

SUMMERS, McDONNELL, WALSH & SKEEL
Firm #911

The Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

(412) 261-3232

TO: PLAINTIFF/DEFENDANTS/ ADDITIONAL DEFENDANTS

You are hereby notified to file a written response to the enclosed Answer, New Matter and New Matter Pursuant to Rule 2252(d) within twenty (20) days from service hereof or a judgment may be entered against you.

SUMMERS, McDONNELL, WALSH & SKEEL
#11177

FILED

MAR 20 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

(Jury Trial Demanded)

ANSWER, NEW MATTER & NEW MATTER PURSUANT TO RULE 2252(d) TO DEFENDANT, JAMES BAILOR'S, t/d/b/a B&D ENTERPRISES, COMPLAINT TO JOIN ADDITIONAL DEFENDANT

AND NOW, comes the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, by and through his undersigned attorneys, Summers, McDonnell, Walsh & Skeel, and Paul J. Walsh III, Esquire, and files the following Answer, New Matter & New Matter Pursuant to Rule 2252(d) to the Defendant, James Bailor's, t/d/b/a B&D Enterprises, Complaint to Join Additional Defendant and states as follows:

I. ANSWER

1. Paragraph 1 of the Defendant's Complaint to Join states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is admitted.

2. Paragraph 2 of the Defendant's Complaint to Join is not directed towards this Additional Defendant and requires no response.

COUNT I
James Bailor, t/d/b/a B&D Enterprises vs.
Roger R. Hull, t/d/b/a HSJ Lawncare

3. Paragraph 3 of the Defendant's Complaint to Join requires no response. To the extent that a response is deemed necessary, said averment is denied. To the contrary and in response thereto, this Additional Defendant herein refers to and incorporates his hereinafter set forth responses, New Matter and New Matter Pursuant to Rule 2252(d).

4. Paragraph 4 of the Defendant's Complaint to Join states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied as stated. To the contrary, this Additional Defendant avers that the contract speaks for itself and in no way did this Additional Defendant assume duties and/or obligations not set forth in said agreement. By way of further answer, this Additional Defendant herein refers to and incorporates his previously set forth responses, hereinafter set forth responses, New Matter and New Matter Pursuant to Rule 2252(d).

5. Paragraph 5 of the Defendant's Complaint to Join states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied as stated. To the contrary, this Additional Defendant avers that the contract speaks for itself and in no way did this Additional Defendant assume duties and/or obligations not set forth in said agreement. By way of further answer, this Additional Defendant herein refers to and incorporates his previously set forth responses, hereinafter set forth responses, New Matter and New Matter Pursuant to Rule 2252(d).

6. Paragraphs 6 and 7 of the Defendant's Complaint to Join state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said averments are denied. By way of further answer, this Additional Defendant herein refers to and incorporates his previously set forth responses, hereinafter set forth responses, New Matter and New Matter Pursuant to Rule 2252(d).

WHEREFORE, the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, denies that he is liable to the Plaintiffs, the original Defendants, and the Co-Additional Defendant or, in the alternative, while denying liability on the part of this Additional Defendant, the Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are liable over to this Additional Defendant for indemnity and/or contribution for any monies which this Additional Defendant may be found liable and/or responsible to the Plaintiffs or to other parties in this suit.

COUNT II

James Bailor, t/d/b/a B&D Enterprises vs.
Boyles Insurance, Inc.

7. Paragraphs 8 through 15 are not directed towards this Additional Defendant and therefore require no responses. By way of further answer, this Additional Defendant herein refers to and incorporates his previously set forth responses, hereinafter set forth responses, New Matter and New Matter Pursuant to Rule 2252(d).

WHEREFORE, the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, denies that he is liable to the Plaintiffs, the original Defendants, and the Co-Additional Defendant or, in the alternative, while denying liability on the part of this Additional Defendant, the Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are liable over to this Additional Defendant for indemnity and/or contribution for any monies which this Additional Defendant may be found liable and/or responsible to the Plaintiffs or to other parties in this suit.

II. NEW MATTER

8. Paragraphs 1 through 7 are herein referred to and incorporated as if set forth fully at length.

9. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, any injuries and/or damages alleged by the Plaintiffs were the result of superseding, intervening, and/or independent causes over which this Additional Defendant had no control and in no way participated.

10. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant raises all affirmative defenses set forth in Pa.R.C.P. 1030 to the Plaintiffs' claims, including the legal doctrines of payment, accord and satisfaction, release, waiver, estoppel, and the statute of limitations.

11. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers any and all ambiguities interpreting the referenced contract must be interpreted against the drafter, Wal-Mart.

12. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers the injuries and damages alleged by the Plaintiff-Wife were the result of a pre-existing condition unrelated to this accident and/or occurrence.

13. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers that Plaintiff-Wife failed to mitigate her damages by ignoring the advice of medical providers.

14. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers that the Plaintiffs may not recover any medical expense reimbursements in excess of amounts accepted as full payment in satisfaction by medical providers pursuant to Moorhead v. Crozer Medical Center.

15. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant reserves the right to assert

any and all other affirmative defenses which discovery may reveal appropriate and/or proper.

WHEREFORE, the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, denies that he is liable to the Plaintiffs, the original Defendants, and the Co-Additional Defendant or, in the alternative, while denying liability on the part of this Additional Defendant, the Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are liable over to this Additional Defendant for indemnity and/or contribution for any monies which this Additional Defendant may be found liable and/or responsible to the Plaintiffs or to other parties in this suit.

III. NEW MATTER PURSUANT TO RULE 2252(d)

16. Paragraphs 1 through 15 are herein referred to and incorporated as if set forth fully at length.

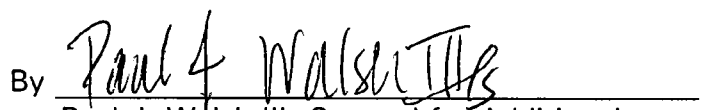
17. This Additional Defendant denies and continues to deny that he is liable to the Plaintiffs upon any theory. Should the Plaintiffs be entitled to recover from this Additional Defendant, although it is denied that the Plaintiffs are so entitled, then this Additional Defendant is entitled to indemnification and/or contribution from Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., or other co-defendants and/or additional defendants who may hereafter be named in this action. For purposes of asserting such rights of indemnification and contribution, this Additional Defendant herein refers to and incorporates the Plaintiffs' Complaint, although by making such

reference, this Additional Defendant makes no admission as to the truth or falsity of any factual allegations contained therein.

WHEREFORE, the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, avers that Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are solely liable to the Plaintiffs or, in the alternative, while denying liability on the part of this Additional Defendant, the Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are liable over to this Additional Defendant for indemnity and/or contribution for any monies which this Additional Defendant may be found liable and/or responsible to the Plaintiffs or to other parties n this suit.

Respectfully submitted,

SUMMERS, McDONNELL, WALSH & SKEEL

By 

Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

VERIFICATION

I, Roger R. Hull, verify that I am the owner of HSJ Lawncare, verify that the statements made in the foregoing Answer, New Matter & New Matter Pursuant to Rule 2252(d) to the Defendant, James Bailor's, t/d/b/a B&D Enterprises, Complaint to Join Additional Defendant, are true and correct to the best of my knowledge, information and belief. To the extent that the content of the Answer, New Matter & New Matter Pursuant to Rule 2252(d) to the Defendant, James Bailor's, t/d/b/a B&D Enterprises, Complaint to Join Additional Defendant, is permitted by Pennsylvania Rules of Civil Procedure, I have relied upon counsel in verifying the same.

1-30-03
(Date)

Roger R. Hull
(Name)

#11177

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer, New Matter and New Matter Pursuant to Rule 2252(d) has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 18 day of March, 2003:

James A. Naddeo, Esquire
211½ E. Locust St.
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 E. Locust St.
P.O. Box 670
Clearfield, PA 16830
(Counsel for Defendant/Additional Defendant, James Bailor t/d/b/a B&D Enterprises)

Patrick J. Loughney, Esquire
Dell, Moser, Lane & Loughney
437 Grant St.
1300 Frick Bldg.
Pittsburgh, PA 15219
(Counsel for Defendant, Wal-Mart Stores, Inc.)

SUMMERS, McDONNELL, WALSH & SKEEL

By Paul J. Walsh III

Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

FILED NO CC
MAR 20 2003

William A. Shaw
Prothonotary

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs vs. WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Defendants	NO. 02-1811-CD JURY TRIAL DEMANDED Type of Pleading: CERTIFICATE OF SERVICE
vs. JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Additional Defendant vs. ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC., Additional Defendants	Filed on Behalf of: James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant Counsel of Record for this Party: Ann B. Wood, Esquire Supreme Court No. 23364 Bell, Silberblatt & Wood 318 East Locust Street P.O. Box 670 Clearfield, PA 16830 (814) 765-5537

FILED

APR 29 2003

William A. Shaw
Prothonotary

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of Answers to Interrogatories and Requests For Production Of Documents Directed to Defendant James Bailor t/b/d/a B&D Enterprises with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on April 29, 2003 :

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
211½ East Locust Street
Marino Building
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:
Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

Attorney For Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare:
Paul J. Walsh, III, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

Attorney for Additional Defendant, Boyles Insurance, Inc.
Bryan K. Shreckengost, Esquire
PIETRAGALLO, BOSICK & GORDON
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No.021811-CD

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Additional Defendant

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC., Additional Dfendants

CERTIFICATE OF SERVICE

FILED
01 11:04 BL
APR 29 2003
William A. Shaw
Prothonotary

NO CC
E
KBA

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant

vs.

WAL-MART STORES, INC.,

Additional Defendant

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants

NO. 02-1811-CD

JURY TRIAL DEMANDED

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on Behalf of:
James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant

Counsel of Record for this Party:

Ann B. Wood, Esquire
Supreme Court No.23364

Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
(814) 765-5537

FILED

APR 30 2003

William A. Shaw
Prothonotary

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
WAL-MART STORES, INC.,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of Defendant Bailor's Brief In Opposition To Preliminary Objections Of Defendant Boyles To Complaint To Join Additional Defendants Under Pa.R.C.P. 2252(a) with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on April 30, 2003 :

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
211½ East Locust Street
Marino Building
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:
Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

Attorney For Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare:
Paul J. Walsh, III, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

Attorney for Additional Defendant, Boyles Insurance, Inc.
Bryan K. Shreckengost, Esquire
PIETRAGALLO, BOSICK & GORDON
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION -JURY TRIAL DEMANDED
No.02-1811-CD

MARSHAL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiff

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B& D ENTERPRISES, Defendants

vs.

JAMES A. BAILOR, t/d/b/a B&D ENTERPRISES, Additional Defendant

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC., Additional Defendant

CERTIFICATE OF SERVICE

FILED

APR 30 2003

01 11:44 c.m.

William A. Shaw
Prothonotary

no cc

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

TO: PLAINTIFFS & DEFENDANTS

You are hereby notified to file a written response to the enclosed Answer and New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

SUMMERS, McDONNELL, WALSH & SKEEL, L.L.P.

#11177

CIVIL DIVISION

Docket No.: 02-1811-CD

ANSWER, NEW MATTER AND NEW MATTER 2252(d) TO DEFENDANT, WAL-MART STORES, INC.'S COMPLAINT TO JOIN ADDITIONAL DEFENDANT

(Jury Trial Demanded)

Filed on Behalf of the Additional Defendant: Roger R. Hull, t/d/b/a HSJ Lawncare

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

SUMMERS, McDONNELL, WALSH & SKEEL
Firm #911

The Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

(412) 261-3232

FILED

APR 30 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,
vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,
vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,
vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

(Jury Trial Demanded)

ANSWER, NEW MATTER AND NEW MATTER 2252(d) TO DEFENDANT, WAL-MART STORES, INC.'S COMPLAINT TO JOIN ADDITIONAL DEFENDANT

AND NOW, comes the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, by and through its undersigned attorneys, Summers, McDonnell, Walsh & Skeel, LLP, and Paul J. Walsh III, Esquire, and files the following Answer, New Matter and New Matter 2252(d) and in support thereof avers as follows:

ANSWER

1. Paragraphs 1 and 2 of the Complaint to Join Additional Defendant are denied pursuant to Pa.R.C.P. 1029(c) and 1029(e). After reasonable investigation, this Additional Defendant has insufficient knowledge or information as to the truth or falsity of said averments and therefore, said averments are denied and strict proof thereof is demanded at the time of trial.

2. Paragraphs 3 through 6 of the Complaint to Join state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said averments are denied as stated. To the contrary, this Additional Defendant avers that the pleadings speak for themselves. By way of further answer, this Additional Defendant herein refers to and incorporates its previously set forth responses, hereinafter set forth responses, New Matter and New Matter 2252(d).

3. Paragraph 7 of the Complaint to Join is admitted.

COUNT I

WAL-MART STORES, INC. v. ROGER HULL T/D/B/A HSJ LAWNCARE

4. Paragraph 8 of the Complaint to Join requires no response. To the extent that a response is deemed necessary, said allegations are denied as they state legal conclusions to which no responses are required.

5. Paragraph 9 of the Complaint to Join states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied as stated. To the contrary, this Additional Defendant avers that the contract speaks for itself and in no way did this Additional Defendant assume duties and/or obligations not set forth in said agreement. By way of further answer, this Additional Defendant herein refers to and incorporates its previously set forth responses, hereinafter set forth responses, New Matter and New Matter 2252(d).

6. Paragraph 10 of the Complaint to Join requires no response. To the extent that a response is deemed necessary, said allegation is denied as it states a legal conclusion to which no response is required.

7. Paragraph 11 of the Complaint to Join states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment

is denied as stated. To the contrary, this Additional Defendant avers that the contract speaks for itself and in no way did this Additional Defendant assume duties and/or obligations not set forth in said agreement. By way of further answer, this Additional Defendant herein refers to and incorporates its previously set forth responses, hereinafter set forth responses, New Matter and New Matter 2252(d).

8. Paragraphs 12 and 13 of the Complaint to Join state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and 1029(e). After reasonable investigation, this Additional Defendant has insufficient knowledge or information as to the truth or falsity of said averments and therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Additional Defendant herein refers to and incorporates its previously set forth responses, hereinafter set forth responses, New Matter and New Matter 2252(d).

WHEREFORE, this Additional Defendant, Roger Hull t/d/b/a HSJ Lawncare, denies that he is liable to the Plaintiffs, the Original Defendants and the Co-Additional Defendant, or, in the alternative, while denying liability on the part of this Additional Defendant, the Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises, and Additional Defendant, Boyles Insurance, Inc., are liable over to this Additional Defendant for indemnity and/or contribution for any monies which this Additional Defendant may be found liable and/or responsible to the Plaintiffs or to other parties in this lawsuit.

II. NEW MATTER

9. Paragraphs 1 through 8 are herein referred to and incorporated as if set forth fully at length.

10. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, any injuries and/or damages alleged by the Plaintiffs were the result of superseding, intervening, and/or independent causes over which this Additional Defendant had no control and in no way participated.

11. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant raises all affirmative defenses set forth in Pa.R.C.P. 1030 to the Plaintiffs' and Original Defendant's claims, including the legal doctrines of payment, accord and satisfaction, release, waiver, estoppel, and the statute of limitations.

12. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers any and all ambiguities interpreting the referenced contract must be interpreted against the drafter, Wal-Mart.

13. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers the injuries and damages alleged by the Plaintiff-Wife were the result of a pre-existing condition unrelated to this accident and/or occurrence.

14. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant pleads the contributory, causal negligence of the Original Defendants and Additional Defendant, Boyles Insurance and the provisions of the Pennsylvania Comparative Negligence Act as a complete or partial bar to any recovery by the Original Defendant in this action.

15. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant pleads the contributory, causal

negligence of the Plaintiff and the provisions of the Pennsylvania Comparative Negligence Act as a complete or partial bar to any recovery by the Plaintiff in this action.

16. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers that Plaintiff-Wife failed to mitigate her damages by ignoring the advice of medical providers.

17. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers that the Plaintiffs may not recover any medical expense reimbursements in excess of amounts accepted as full payment in satisfaction by medical providers pursuant to Moorhead v. Crozer Medical Center.

18. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant reserves the right to assert any and all other affirmative defenses which discovery may reveal appropriate and/or proper.

WHEREFORE, the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, denies that he is liable to the Plaintiffs, the original Defendants, and the Co-Additional Defendant or, in the alternative, while denying liability on the part of this Additional Defendant, the Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are liable over to this Additional Defendant for indemnity and/or contribution for any monies which this Additional Defendant may be found liable and/or responsible to the Plaintiffs or to other parties in this suit.

III. NEW MATTER PURSUANT TO RULE 2252(d)

19. Paragraphs 1 through 18 are herein referred to and incorporated as if set forth fully at length.

20. This Additional Defendant denies and continues to deny that he is liable to the Plaintiffs upon any theory. Should the Plaintiffs be entitled to recover from this Additional Defendant, although it is denied that the Plaintiffs are so entitled, then this Additional Defendant is entitled to indemnification and/or contribution from Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., or other co-defendants and/or additional defendants who may hereafter be named in this action. For purposes of asserting such rights of indemnification and contribution, this Additional Defendant herein refers to and incorporates the Plaintiffs' Complaint, although by making such reference, this Additional Defendant makes no admission as to the truth or falsity of any factual allegations contained therein.

WHEREFORE, the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, avers that Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are solely liable to the Plaintiffs or, in the alternative, while denying liability on the part of this Additional Defendant, the Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are liable over to this Additional Defendant for indemnity and/or contribution for any monies which this Additional Defendant may be found liable and/or responsible to the Plaintiffs or to other parties in this suit.

Respectfully submitted,

SUMMERS, McDONNELL, WALSH & SKEEL

By _____
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

VERIFICATION

I, Roger R. Hull, verify that I am the Owner of HSJ Lawncare, verify that the statements made in the foregoing **Answer, New Matter & New Matter Pursuant to Rule 2252(d) to the Defendant, Wal-Mart Stores, Inc., Complaint to Join Additional Defendant** are true and correct to the best of my knowledge, information and belief. To the extent that the content of **Answer, New Matter & New Matter Pursuant to Rule 2252(d) to the Defendant, Wal-Mart Stores, Inc., Complaint to Join Additional Defendant** is permitted by Pennsylvania Rules of Civil Procedure, I have relied upon counsel in verifying the same.

3-30-03
(Date)

Roger R. Hull
(Name)

#11177

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Answer, New Matter and New Matter 2252(d)** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 28 day of April, 2003.

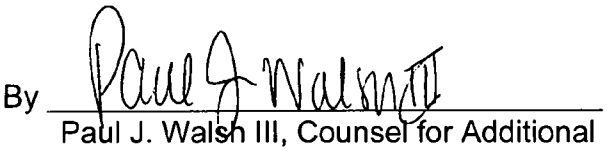
James A. Naddeo, Esquire
211½ E. Locust St.
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 E. Locust St.
P.O. Box 670
Clearfield, PA 16830
(Counsel for Defendant/Additional Defendant, James Bailor t/d/b/a B&D Enterprises)

Patrick J. Loughney, Esquire
Dell, Moser, Lane & Loughney
437 Grant St.
1300 Frick Bldg.
Pittsburgh, PA 15219
(Counsel for Defendant, Wal-Mart Stores, Inc.)

Brian Schrenkengost, Esquire
Pietragallo, Bosick & Gordon
One Oxford Center
38th Floor
Pittsburgh, PA 15219
(Counsel for Boyles Insurance, Co.)

SUMMERS, McDONNELL, WALSH & SKEEL

By 
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

FILED
m/1:40-BH
APR 30 2003

William A. Shaw
Prothonotary

cc Atty Walsh

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC , a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

WAL-MART STORES, INC.'S REPLY TO ROGER R. HULL t/d/b/a HSJ LAWNCARE'S NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 2252(d)

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
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FILED
MAY 14 2003
m/12:30/lm
William A. Shaw
Prothonotary
No c/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	CIVIL DIVISION
Plaintiffs,	No. 02-1811-CD
Vs.	JURY TRIAL DEMANDED
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	
Defendants,	
Vs.	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants.	

WAL-MART STORES, INC.'S REPLY TO ROGER R. HULL t/d/b/a HSJ LAWNCARE'S NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 2252(d)

AND NOW, comes Defendant Wal-Mart Stores, Inc., by and through its counsel, Dell, Moser, Lane & Loughney, LLC, and Danielle M. Vugrinovich, Esquire, and files the following Reply to New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d) of Roger R. Hull t/d/b/a HSJ Lawncare ("HSJ"):

1. The allegations contained within Paragraph 9 of HSJ's New Matter require no response. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

2. The allegations contained within Paragraph 10 of HSJ's New Matter are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

3. The allegations contained within Paragraph 11 of HSJ's New Matter are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

4. The allegations contained within Paragraph 12 of HSJ's New Matter are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

5. The allegations contained within Paragraph 13 of HSJ's New Matter are admitted.

6. The allegations contained within Paragraph 14 of HSJ's New Matter are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

7. The allegations contained within Paragraph 15 of HSJ's New Matter are admitted.

8. The allegations contained within Paragraph 16 of HSJ's New Matter are admitted.

9. The allegations contained within Paragraph 17 of HSJ's New Matter are admitted.

10. The allegations contained within Paragraph 18 of HSJ's New Matter are conclusions of law to which no response is required However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

WHEREFORE, Original Defendant, Wal-Mart Stores, Inc. demands judgment in its favor and against all other parties.

WAL-MART STORES, INC.'S REPLY TO ROGER R. HULL t/d/b/a HSJ'S NEW MATTER PURSUANT TO PA. R.C.P. 2252(d)

11. The allegations contained within Paragraph 19 of HSJ's New Matter Pursuant to Pa. R.C.P. 2252(d) require no response. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

12. The allegations contained within Paragraph 20 of HSJ's New Matter Pursuant to Pa. R.C.P. 2252(d) are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

WHEREFORE, Original Defendant, Wal-Mart Stores, Inc. demands judgment in its favor and against all other parties.

Respectfully submitted,

Dell, Moser, Lane & Loughney, LLC

By: Danielle M. Vugrinovich
Danielle M. Vugrinovich, Esquire
Attorneys for Wal-Mart Stores, Inc.

WAL.325

VERIFICATION

I verify that the averments of fact made in this foregoing **WAL-MART STORES, INC.'S REPLY TO ROGER R. HULL t/d/b/a HSJ LAWNCARE'S NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 2252(d)** are true and correct to the best of my knowledge, information or belief. I understand that averments of fact in said document are made subject to the penalties of 18 Pa. C.S. § 4904, relating to the unsworn falsifications to authorities.

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

Date: 5/6/03

Roger Gates, Manager

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **WAL-MART STORES, INC.'S REPLY TO ROGER R. HULL t/d/b/a HSJ LAWNCARE'S NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 2252(d)** has been served by U.S. Mail, postage prepaid, this 12th day of May, 2003, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 679
Clearfield, PA 16830
Counsel for Defendant James Bailor, t/d/b/a B&D Enterprises

Paul Walsh, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219
Counsel for Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare

Bryan K. Shreckengost, Esquire
PIETRAGALLO BOSICK & GORDON
38th Floor, One Oxford Centre
Pittsburgh, PA 15219
Counsel for Additional Defendant Boyles Insurance, Inc.

Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

Attorney for Plaintiff:
James A. Naddeo, Esquire
Pa. I.D. #06820
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Attorney for Roger R. Hull, t/d/b/a HSJ Lawncare:
Paul J. Walsh, III, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL, L.L.P.
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

JURY TRIAL DEMANDED

No. 02-1811-CD

PRELIMINARY OBJECTIONS TO ADDITIONAL DEFENDANT ROGER R. HULL t/d/b/a/ HSJ LAWNCARE'S ANSWER, NEW MATTER AND NEW MATTER 2252(d) TO DEFENDANT WAL-MART STORES, INC'S COMPLAINT TO JOIN ADDITIONAL DEFENDANTS

Filed on Behalf of:
BOYLES INSURANCE, INC., Additional Defendant

Counsel of Record for this Party:
BRYAN K. SHRECKENGOST, ESQUIRE
Pa. I.D. # 69098
PIETRAGALLO, BOSICK & GORDON
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(412) 263-2000

Attorney for Defendant, Wal-Mart Stores, Inc.:
Patrick J. Loughney, Esquire
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Attorney for James Bailor, t/d/b/a B&D Enterprises:
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FILED
MAY 1 ? 2003
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	)	
Plaintiffs,	)	No. 08-1811-CD
vs.	)	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	)	
Defendants,	)	JURY TRIAL DEMANDED
vs.	)	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES	)	
Additional Defendant,	)	
vs.	)	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	)	
Additional Defendants.	)	

PRELIMINARY OBJECTIONS TO ADDITIONAL DEFENDANT ROGER R. HULL t/d/b/a/ HSJ LAWNCARE'S ANSWER, NEW MATTER AND NEW MATTER 2252(d) TO DEFENDANT WAL-MART STORES, INC'S COMPLAINT TO JOIN ADDITIONAL DEFENDANTS

AND NOW, comes the Additional Defendant, Boyles Insurance, Inc., (hereinafter referred to as "Boyles"), by and through its attorneys, Pietragallo, Bosick & Gordon, and files the following Preliminary Objections stating as follows:

1. On or about December 17, 2002, Plaintiffs, Marshall E. Rugh and Anna M. Rugh, husband and wife, filed their Amended Complaint in this action setting forth various causes of action purportedly arising out of an alleged slip and fall incident in the parking lot of the Wal-Mart

Super Center located on Route 879, Clearfield, Lawrence Township, Clearfield County, Pennsylvania. Attached hereto as Exhibit "A" is a copy of the Rughs' Amended Complaint.

2. As set forth in their Amended Complaint, the Rughs allege various theories of liability against Wal-Mart Stores, Inc. and James Bailor, t/d/b/a B&D Enterprises, sounding in negligence and premises liability. Exhibit "A".

3. On or about January 9, 2003, James Bailor, t/d/b/a B&D Enterprises filed a Complaint to Join Additional Defendant under Pa. R.C.P. 2252(a), seeking to join Roger Hull t/d/b/a HSJ Lawncare ("Hull") and Boyles Insurance, Inc. as additional defendants in the Rughs' action. Attached hereto as Exhibit "B" is a copy of Bailor's Complaint to Join Additional Defendant Under Pa. R.C.P. 2252(a) filed on behalf of James Bailor, t/d/b/a B&D Enterprises.

4. Thereafter, Wal-Mart filed a similar Complaint to Join adding Hull as an Additional Defendant in this action.

5. The connection between the Rughs' personal injury claims and Wal-Mart, Hull and Bailor is that Wal-Mart owned the premises on which Mrs. Rugh allegedly fell and Hull and Bailor had service contracts with Wal-Mart for various aspects of the lawncare and sweeping of the parking lot.

6. As set forth in Count II of Bailor's Complaint to Join, Bailor is attempting to join Boyles as an additional defendant on a theory that Boyles failed to provide or recommended to Bailor a policy or policies of insurance that might provide coverage to Bailor for claims of the type asserted by the Rughs in this action. Exhibit "B", Count II.

7. Boyles has filed preliminary objections to Bailor's Complaint to Join asserting, *inter alia*, that Bailor's allegations of alleged liability against Boyles are based upon a separate and distinct transaction, the procuring of or failure to procure insurance, than is the incident which forms the basis of Rughs' claims against Wal-Mart, Hull and Bailor and that the attempted joinder

of Boyles as an additional defendant with regard to the Rughs' personal injury claims is improper and contrary to law.

8. In Hull's Answer, New Matter and New Matter 2252(d) to Wal-Mart's Complaint to Join, Hull now asserts, and attempts to join Boyles as an additional defendant to this action, the theory that Boyles is liable over to Hull for indemnity and/or contribution for any amounts which Hull may be found liable or responsible to the Rughs, Wal-Mart or Bailor. Attached hereto as Exhibit "C" is a copy of Hull's Answer, New Matter and New Matter 2252(d) to Defendant Wal-Mart Stores, Inc.'s Complaint to Join Additional Defendant.

9. There is no basis in law or fact for Hull's contentions as to Boyles.

PRELIMINARY OBJECTION PURSUANT TO Pa. R.C.P. 1028(a)(4)
LEGAL INSUFFICIENCY OF A PLEADING (DEMURRER)

10. Pennsylvania Rule of Civil Procedure 1028(a)(4) provides that a party may file preliminary objections based upon the legal insufficiency of a pleading.

11. Nowhere in Hull's Answer and New Matter does Hull assert any basis, whether contractual or otherwise, for the contention that Boyles could be liable to Hull for contribution or indemnity if Hull is found to be liable to the Rughs, Wal-Mart or Bailor with regard to the Rughs' personal injury claim.

12. Nowhere in Hull's Answer and New Matter does Hull assert any basis whatsoever, whether contractual or otherwise, for a finding that there ever existed any relationship whatsoever between Hull and Boyles that could support Hull's claim for contribution or indemnity from Boyles.

13. The only documentary basis for Hull's assertion of claims for contribution and indemnity and the attempted joinder of Boyles as an additional defendant is found in Hull's incorporation by reference of the Rughs' Complaint. See Exhibit "C", ¶ 20 ("For purposes of

asserting such rights of indemnification and contribution, this Additional Defendant [Hull] herein refers to and incorporates the Plaintiff's Complaint. . . ."). Plaintiffs' Complaint was superseded as the operative pleading with the filing of Plaintiff's Amended Complaint and, in any event, no claim or any basis for contribution or indemnity is asserted against Boyles in either Plaintiffs' Complaint or Amended Complaint.

14. Notwithstanding the complete absence of any factual or legal basis for Hull's claims against Boyles, Hull asserts in the "Wherefore" clauses following paragraphs 8 and 14 of his Answer and New Matter that Boyles is liable over to Hull for contribution and indemnity. Exhibit "C".

15. Similarly, in Paragraph 14 of his Answer and New Matter, Hull asserts that Boyles' alleged negligence (apparently in failing to procure insurance, which is the only other claim that any other party has pled against Boyles) is a complete or partial bar to the Rughs' personal injury claims. Exhibit "C". Hull articulates no basis for his contention that Boyles' alleged failure to procure insurance for Bailor somehow caused or contributed to Mrs. Rugh's purported fall in the Wal-Mart parking lot. In the complete absence of any basis for such an allegation of causation as to the Rughs' alleged injuries, Hull's claim for contribution and indemnity from Boyles fails on its face.

14. Boyles cannot be liable to Hull for contribution or indemnity as to the Rughs' claims since the only basis for any assertion of alleged liability against Boyles are found in the allegations of Bailor's Complaint to join and Bailor's allegations are based upon a separate and distinct transaction, the procuring of or failure to procure insurance, than is the incident which forms the basis of Rugh' s claims against Wal-Mart, Hull and Bailor in this action.

15. Nowhere in any of the voluminous pleadings filed in this action has any party ever alleged that any act or omission of Boyles caused or contributed to Mrs. Rugh's alleged fall in the Wal-Mart parking lot.

16. In the complete absence of any factual allegations that could support Hull's claims for contribution and indemnity, those claims as well as the attempted joinder of Boyles to assert those claims fails.

WHEREFORE, Boyles Insurance, Inc., respectfully requests that this Honorable Court sustain this Preliminary Objection and dismiss, with prejudice, each and every claim for contribution and indemnity asserted against Boyles Insurance, Inc. set forth in Roger R. Hull t/d/b/a/ HSJ Lawncare's Answer, New Matter and New Matter 2252(d) to Defendant Wal-Mart Stores, Inc.'s Complaint to Join Additional Defendant.

PRELIMINARY OBJECTION PURSUANT TO Pa. R.C.P. 1028(a)(5)
MISJOINDER OF A CAUSE OF ACTION

17. Pennsylvania Rule of Civil Procedure 1028(a)(5) provides that a party may file preliminary objections based upon misjoinder of a cause of action.

18. Hull's allegations of alleged liability for contribution and indemnity as against Boyles are based upon a separate and distinct transaction, Boyles alleged failure to procure insurance for Bailor, than is the incident which forms the basis of Rugh' s claims against Wal-Mart, Hull and Bailor in this action.

19. Boyles should not be joined as an additional defendant because the claim(s) sought to be asserted by Hull against Boyles do not involve a common factual background or common factual or legal questions with the Rughs' claims in the present action.

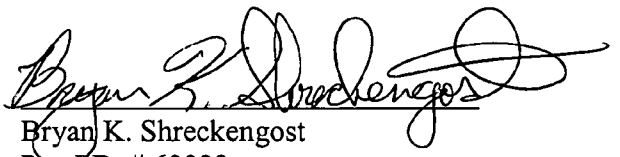
20. As a matter of law, Hull's claims against Boyles for contribution and indemnity cannot be joined in this action. Stokes v. Loyal Order of Moose Lodge No. 696, 502 Pa. 460, 466 A.2d 1341 (1983).

WHEREFORE, Boyles Insurance, Inc., respectfully requests that this Honorable Court sustain this Preliminary Objection and dismiss, with prejudice, each and every claim for contribution and indemnity asserted against Boyles Insurance, Inc. set forth in Roger R. Hull t/d/b/a/ HSJ Lawncare's Answer, New Matter and New Matter 2252(d) to Defendant Wal-Mart Stores, Inc.'s Complaint to Join Additional Defendant.

Dated: May 15, 2003

Respectfully submitted,

Pietragallo, Bosick & Gordon

By: 

Bryan K. Shreckengost
Pa. I.D. # 69098

PIETRAGALLO, BOSICK & GORDON
Firm #834
One Oxford Centre-38th Floor
Pittsburgh, Pennsylvania 15219
(412) 263-2000

Attorneys for BOYLES INSURANCE, INC.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the within PRELIMINARY OBJECTIONS TO ADDITIONAL DEFENDANT ROGER R. HULL t/d/b/a/ HSJ LAWNCARE'S ANSWER, NEW MATTER AND NEW MATTER 2252(d) TO DEFENDANT WAL-MART STORES, INC'S COMPLAINT TO JOIN ADDITIONAL DEFENDANTS was served via United States First Class Mail, postage pre-paid, this 15th day of May, 2003, to counsel of record as follows:

James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
211 ½ E. Locust Street
P.O. Box 552
Clearfield, Pennsylvania 16830
Attorney for Plaintiff

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, Pennsylvania 16820
Attorney for James Bailor, t/d/b/a B&D Enterprises

Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
1300 Frick Building
437 Grant Street
Pittsburgh, Pennsylvania 15219
Attorneys for Wal-Mart Stores, Inc.

Paul J. Walsh, III, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL, L.L.P.
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219
Attorney for Roger R. Hull, t/d/b/a HSJ Lawncare

BRYAN K. SHRECKENGOST

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs, vs. WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Defendants, vs. JAMES BAILOR, t/d/b/a B&D ENTERPRISES Additional Defendant, vs. ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC., Additional Defendants.	)	No. 08-1811-CD JURY TRIAL DEMANDED

ORDER OF COURT

AND NOW, this ____ day of May, 2003, upon consideration of the Preliminary Objections filed by Boyles Insurance, Inc., it is hereby ORDERED that said Preliminary Objections are sustained and each and every claim for contribution and indemnity asserted against Boyles Insurance, Inc. set forth in Roger R. Hull t/d/b/a/ HSJ Lawncare's Answer, New Matter and New Matter 2252(d) to Defendant Wal-Mart Stores, Inc.'s Complaint to Join Additional Defendant is dismissed with prejudice.

BY THE COURT:

_____ J.

EXHIBIT A

EXPRESS MAIL
JAN 22 2003
Media Professional Inc.

Filed
12/17/02

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

MARSHALL E. RUGH
and ANNA M. RUGH,
husband and wife,
Plaintiffs,

v.

WAL-MART STORES, INC.,
a corporation,
and JAMES BAILOR, t/d/b/a
B&D ENTERPRISES,
Defendants.

No. 02 - 1811 - CD

Type of Pleading:

AMENDED COMPLAINT

Filed on behalf of:
Plaintiffs

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

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
	*	No. 02 - 1811 - CD
v.	*	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTEPRISES, 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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
	*	No. 02 - 1811 - CD
v.	*	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Defendants.	*	

AMENDED COMPLAINT

NOW come the Plaintiffs, Marshall E. Rugh and Anna M. Rugh, and by their attorney, James A. Naddeo, Esquire, set forth the following:

1. That the Plaintiffs are Marshall E. Rugh and Anna M. Rugh, husband and wife, who reside at R. D. 1, Box 247, Frenchville, Pennsylvania 16836.

2. That the Defendant, Wal-Mart Stores, Inc., is a corporation which conducts business in the Commonwealth of Pennsylvania having an office located at 100 Super Center Drive, Clearfield, Pennsylvania 16830.

3. That the Defendant, James Bailor, is an individual trading and doing business as D&B Enterprises, of 602 Susquehanna Avenue, Curwensville, Pennsylvania 16833.

COUNT I

Anna M. Rugh v. Wal-Mart Stores, Inc.

4. That at all times referred to herein the Defendant, Wal-Mart Stores, Inc., maintained a retail store known as Wal-Mart Super Center located on Route 879, Clearfield, Lawrence Township, Clearfield County, Pennsylvania, which facility includes an automotive center.

5. That appurtenant to the Wal-Mart Super Center and Automotive Center referred to in Paragraph 4 hereof, which is incorporated herein by reference, is a large public parking area with islands containing ornamental trees and wood chips/gravel to enhance the appearance of the islands.

6. That one of the islands referred to Paragraph 5 hereof is approximately 24 feet by 10 feet in size and is erected approximately 150 feet from the automotive center.

7. That on or about September 10, 2001, Plaintiff proceeded to the Wal-Mart Super Center described in Paragraph 4 hereof which is incorporated herein by reference.

8. That after the Plaintiffs completed their shopping they proceeded to the parking area where the Plaintiff, Marshall E. Rugh, attempted to start the 1994 Chrysler owned by the Plaintiffs.

9. That when the Plaintiff, Marshall E. Rugh, started his vehicle, he noticed that the heat gauge was elevated and immediately turned off the engine.

10. That the Plaintiff, Marshall E. Rugh, proceeded to the Automotive Center where he obtained the service of Defendant's employee to repair his vehicle.

11. That the Plaintiff, Marshall E. Rugh, was informed by an employee of the Defendant, Wal-Mart Stores, Inc., that he was incapable of repairing the vehicle on site and recommended that the car be removed closer to the Automotive Center until it could be towed.

12. That the Plaintiff, Marshall E. Rugh, followed the instructions of Defendant's, Wal-Mart Stores, Inc., employee and moved his vehicle and parked it to the east side of the island described in Paragraph 5 hereof.

13. That after parking their vehicle, Plaintiffs exited the car for the purpose of entering the Automotive Center to call a towing service as directed by Defendant's, Wal-Mart Stores, Inc., employee.

14. That the Plaintiff, Anna M. Rugh, proceeded approximately 10 to 15 feet toward Defendant's, Wal-Mart Stores, Inc., Automotive Center at which time she slipped and fell on debris which had migrated from the island described in Paragraph 5 hereof unto the surface of the parking area.

15. That the Defendant, Wal-Mart Stores, Inc., was guilty of the following negligence, recklessness and carelessness which was the proximate cause of the accident and the injuries received by the Plaintiff, Anna M. Rugh, as follows:

A. Defendant failed to inspect the parking area;

B. Defendant failed to warn customers of the debris on the parking area;

C. Defendant failed to remove debris from the parking area;

16. That as a result of the fall described in Paragraph 14 hereof, which is incorporated herein by reference, the Plaintiff, Anna M. Rugh, struck her head on the curbed parking area of the island and hit her pelvis on the paved parking surface causing numerous and serious injuries hereinafter set forth:

A. Multiple bruises and contusions;

B. Multiple fractures of the pelvis.

17. That the Plaintiff, Anna M. Rugh, claims a reasonable amount for the following:

A. A reasonable amount for pain and suffering; past, present and future;

B. Cost of replacing household services;

C. Privation and inconvenience due to the injuries and treatment, past, present and future;

D. Mental anguish and depression resulting from the accident;

E. Other damages allowable by law.

WHEREFORE, Plaintiff, Anna M. Rugh, claims unliquidated damages against the Defendant, Wal-Mart Stores, Inc., in an amount in excess of Twenty Thousand ($20,000.00) Dollars. Jury Trial Demanded.

COUNT II

Marshall E. Rugh v. Wal-Mart Stores, Inc.

18. That the Plaintiff, Marshall E. Rugh, incorporates Paragraphs 1 through 17 of this Complaint by reference and makes them a part hereof.

19. That the Plaintiff, Marshall E. Rugh, is the husband of Anna M. Rugh, having been married to the said Anna M. Rugh on August 14, 1965.

20. That the Plaintiff, Marshall E. Rugh, has resided with his wife, Anna M. Rugh, since the date of the parties' marriage and has continued to reside with her up to and including the time of the filing of this Complaint.

21. That as a result of the injuries suffered by the Plaintiff, Anna M. Rugh, the Plaintiff, Marshall E. Rugh, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.

WHEREFORE, Plaintiff, Marshall E. Rugh, claims unliquidated damages against the Defendant, Wal-Mart Stores, Inc., in an amount in excess of Twenty thousand ($20,000.00) Dollars. Jury Trial Demanded.

COUNT III

Anna M. Rugh v. James Bailor, t/a/d/a B&D Enterprises

22. That the Plaintiff, Anna M. Rugh, incorporates Paragraphs 1 through 21 of this Amended Complaint by reference and makes them a part hereof.

23. That the Plaintiff, Anna M. Rugh, believes and therefore avers that at the time of her accident the Defendant, James Bailor, t/d/b/a B&D Enterprises, was contracted by Wal-Mart Stores, Inc. to maintain the public parking area pertinent to the facilities located at the Wal-Mart Super Center, Route 879, Clearfield, Lawrence Township, Clearfield County, Pennsylvania.

24. That the Defendant, James Bailor, t/d/b/a B&D Enterprises, was guilty of the following negligence,

recklessness and carelessness which was the proximate cause of the accident and the injuries received by the Plaintiff, Anna M. Rugh, as follows:

A. Defendant failed to inspect the parking area;

B. Defendant failed to warn Wal-Mart customers of the debris on the parking area;

C. Defendant failed to remove debris from the parking area;

D. Defendant failed to use due care under all of the circumstances of the case.

WHEREFORE, Plaintiff, Anna M. Rugh, claims unliquidated damages against the Defendant, James Bailor, t/d/b/a B&D Enterprises in an amount in excess of Twenty Thousand ($20 000.00) Dollars. Jury Trial Demanded.

COUNT IV

Marshall E. Rugh v. James Bailor, t/a/d/a B&D Enterprises

25. That the Plaintiff, Marshall E. Rugh, incorporates Paragraphs 1 through 24 of this Amended Complaint by reference and makes them a part hereof.

26. That the Plaintiff, Marshall E. Rugh, is the husband of Anna M. Rugh, having been married to the said Anna M. Rugh on August 14, 1965.

27. That the Plaintiff, Marshall E. Rugh, has resided with his wife, Anna M. Rugh, since the date of the parties' marriage and has continued to reside with her up to and including the time of the filing of this Complaint.

28. That as a result of the injuries suffered by the Plaintiff, Anna M. Rugh, the Plaintiff, Marshall E. Rugh, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.

WHEREFORE, Plaintiff, Marshall E. Rugh, claims unliquidated damages against the Defendant, James Bailor, t/d/b/a B&D Enterprises, in an amount in excess of Twenty Thousand ($20,000.00) Dollars. Jury Trial Demanded.

James A. Naddeo
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

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

Marshall E. Rugh

Marshall E. Rugh

SWORN and SUBSCRIBED before me this 16th day of December, 2002.

Linda C. Lewis

Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2003

EXHIBIT B

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES

Additional Defendant

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants

1-9-03

NO. 02-1811-CD

EXPRESS MAIL

JAN 22 2003

Media Professional Inc.

JURY TRIAL DEMANDED

Type of Pleading:

COMPLAINT TO JOIN ADDITIONAL DEFENDANT UNDER PA.R.C.P. 2252(a)

Filed on Behalf of:
James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant

Counsel of Record for this Party:

Ann B. Wood, Esquire
Supreme Court No. 23364

Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
(814) 765-5537

Attorney For Plaintiffs:

James A. Naddeo, Esquire
Supreme Court No. 06820

JAMES A. NADDEO & ASSOCIATES
211½ E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Attorney For Defendant, Wal-Mart Stores, Inc.:

Patrick J. Loughney, Esquire
Supreme Court No. 23163

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219
Phone: (412) 471-1180
Fax: (412) 471-9012

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

JAN 08 2003

Attest.

Prothonotary/
Clerk of Courts

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	
Plaintiffs	No.08-1811-CD
vs.	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	JURY TRIAL DEMANDED
Defendants	
vs.	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	
Additional Defendant	
vs.	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants	

NOTICE TO DEFEND

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

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

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
2nd & Market Streets
Clearfield, Pennsylvania 16830
Telephone (814) 765-2641 Ex. 5982

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

COMPLAINT TO JOIN ADDITIONAL DEFENDANT UNDER PA.R.C.P. 2252(a)

AND NOW, COMES the Defendant, JAMES BAILOR, t/d/b/a B&D ENTERPRISES, (hereinafter referred to as "Bailor") by and through his attorneys, Bell, Silberblatt & Wood, and Ann B. Wood, Esquire, and files the following Complaint against Additional Defendant pursuant to Pa.R.C.P. 2252(a):

1. That the Additional Defendant, Roger R. Hull, is an individual, trading and doing business as HSJ Lawncare, (hereinafter referred to as "HSJ Lawncare") of P.O. Box 260,

Grampian, Pennsylvania 16838.

2. That the Additional Defendant, Boyles Insurance, Inc., is a corporation which conducts business in the Commonwealth of Pennsylvania, (hereinafter referred to as "Boyles") having an office located at 11 Nichols Street, Clearfield, Pennsylvania 16830.

COUNT I

James Bailor, t/d/b/a B&D Enterprises vs.
Roger R. Hull, t/d/b/a HSJ Lawncare

3. That the averments contained in Plaintiffs' Amended Complaint against Wal-Mart Stores, Inc. and against James Bailor, t/d/b/a B&D Enterprises, are incorporated by reference for purposes of this joinder only without admitting the truth of the same.

4. To the extent the Plaintiffs aver that Wal-Mart or Bailor maintained the parking area for the conditions of which Plaintiffs complained, it is averred that such maintenance had been subcontracted by Wal-Mart to Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, as set forth in Exhibit "1" attached to this Complaint.

5. That pursuant to said Contract, the responsibility for the maintenance of the landscaping, including the islands described in Plaintiffs' Complaint, were the responsibility of the Additional Defendant, HSJ Lawncare, to remove and properly dispose

of debris from the landscape areas.

6. That the Additional Defendant, HSJ Lawncare, was guilty of the following negligence, recklessness and carelessness, which was the approximate cause of the Plaintiff, Anna M. Rugh's, accident and injuries as follows:

(a) That the Additional Defendant, HSJ Lawncare, failed to inspect the planted areas as required by his Contract;

(b) That the Additional Defendant, HSJ Lawncare, failed to remove and properly dispose of debris from the landscape areas;

(c) That the Additional Defendant, HSJ Lawncare, failed to use due care under all of the circumstances of the case.

7. That any responsibility for the maintenance of the debris in the area in which the Plaintiff fell was the responsibility of HSJ Lawncare as set forth in Exhibit "1".

WHEREFORE, it is denied that Bailor is liable to any party in this action. If he is found liable, he demands contribution and/or indemnification from HSJ Lawncare.

COUNT II

James Bailor, t/d/b/a B&D Enterprises vs.
Boyles Insurance, Inc.

8. That the averments contained in Plaintiffs' Amended Complaint against Wal-Mart Stores, Inc. and against James Bailor, t/d/b/a B&D Enterprises, are incorporated by reference for purposes of this joinder only without admitting the truth of the same.

9. That on or about March, 1995, the Original Defendant, Bailor, contacted the Additional Defendant, Boyles, to provide him with the appropriate insurance necessary to protect his commercial activities.

10. That the Defendant, Bailor, relied upon the expertise of the Additional Defendant, Boyles, and its agents and employees to recommend full and proper coverage of Defendant, Bailor's, commercial enterprise.

11. That the Additional Defendant, Boyles, issued a policy or policies for purposes of providing insurance to Bailor.

12. That the Additional Defendant, Boyles, failed to recommend or provide any commercial general liability insurance for Defendant, Bailor.

13. That the Defendant, Bailor, has continued to operate his commercial enterprise believing that he had received the appropriate coverages as recommended by Additional Defendant, Boyles, since March, 1995.

14. That Additional Defendant, Boyles, was guilty of the following negligence, recklessness and carelessness as follows:

(a) That Additional Defendant, Boyles, failed to provide or recommend to Bailor the appropriate general commercial liability coverage;

(b) That Additional Defendant, Boyles, failed to provide appropriate coverage to Bailor knowing that Bailor was relying upon the expertise and experience of Additional Defendant, Boyles, to provide such coverage as would be necessary to allow the operation of Bailor's business under circumstances that any liabilities arising from that business would be covered;

(c) That the Additional Defendant, Boyles, failed to use due care under all of the circumstances of the case.

15. That the Defendant, Bailor, demands common law defense and indemnification from Additional Defendant, Boyles, based upon its failure to provide and/or recommend the appropriate coverage for his commercial enterprise.

WHEREFORE, it is denied that Bailor is liable to any party in this action. If he is found liable, he demands contribution and/or indemnification from Boyles Insurance, Inc.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

VERIFICATION

I, JAMES BAILOR, t/d/b/a B&D Enterprises, state that the within statements in the foregoing Complaint To Join Additional Defendant Under Pa.R.C.P. 2252(a) are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

JAMES BAILOR, t/d/b/a
B&D ENTERPRISES

Exhibit A

SCOPE OF WORK
LANDSCAPING:

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER _____
START DATE 4/1/2000

A. The Contractor shall provide regular maintenance services as outlined in this Agreement.

B. The Contractor shall examine the landscape, including irrigation, on a weekly basis, looking for problems or potential problems with the landscape.

C. The Contractor shall provide, at his/her own risk and sole expense, all labor, materials, tools, equipment, insurance, transportation, hauling, dumping, and all other items needed to provide the services outlined in this Agreement.

D. The Contractor shall make minor replacements and repairs to the landscape facilities as part of the required Work set forth herein. Major items needing replacement or repair shall be reported to the Owner's authorized representative within one week of occurrence. A minor item would be something that takes less than 30 minutes to repair using minimal replacement parts. A broken or plugged sprinkler nozzle would be an example of a minor item. Some specific guidelines for determining if an item is minor or major are given in the section pertaining to each item.

E. Any facilities or Property damaged or destroyed as a result of the Contractor's operations on the premises shall be repaired or replaced at the Contractor's sole expense.

I. CARE OF PLANTED AREAS

A. Trees: Shall be maintained by Contractor in a healthy, vigorous growing condition, free from disease and large concentrations of pests.

1. Contractor shall prune trees that are under fourteen (14) tall once a year to remove dead, diseased, broken, dangerous, or crossing branches and as required herein. Pruning trees that are fourteen (14) or taller will be considered additional work. A written quote for pruning such trees should be separately submitted by Contractor to Owner and detailed in a separate work order.

2. Contractor shall prune trees only in appropriate months. Prune in accordance with generally accepted standards for proper pruning.

3. Contractor shall discard all tree trimmings away from the premises using a legal method.

4. Any tree found to be dead due to negligence by the Contractor should be replaced by Contractor within two weeks of death of such at the Contractor's expense. Replacement of trees that die due to mechanical damage will be paid for as additional work. A quote for all replacements must be submitted to Owner for Owner's approval and detailed in a separate work order.

5. Trees planted as a visual screen or noise buffer may be pruned as needed only to remove dead, diseased, broken, dangerous, or crossing branches. Some municipalities prohibit pruning trees without a permit. Contractor shall check with local authorities prior to pruning. The Contractor is responsible for obtaining and paying for any required permits.

B. Shrubs (including vines). Shall be kept by Contractor in a healthy, vigorous condition, free from disease and large concentrations of pests.

1. Shrubs shall be pruned by Contractor as needed to remove branches that are dead, broken, extending beyond the face of curbs or sidewalks, or are climbing building walls (unless they are intended to climb the wall, such as climbing vines).

2. When it is necessary to prune shrubs, Contractor shall prune them into natural, mounding forms. Contractor shall not shear shrubs into topiary (shapes) or formal hedges unless specifically instructed to do so in writing by the Owner's authorized representative.

3. Any shrub found to be dead due to negligent acts by the Contractor should be replaced within two (2) weeks of death at the Contractor's sole expense. Replacement of shrubs that die due to mechanical damage will be paid for as additional Work. A written quote for replacement is to be submitted by Contractor to Owner and detailed in a separate work order.

C Fertilizer application.

1. Contractor shall fertilize all grass areas two times per year: spring, and fall. Additional applications will be applied if required with prior approval by Owner. All applications will be at the rate specified by the manufacturer. Contractor will fertilize all plants two times per year with proper fertilizers. No additional payment shall be made for the required fertilizer applications. Contractor must ensure that the application of fertilizer is done by a licensed applicator, if required by any state, local, or federal regulations.

D. Weed control

1. Weeds in planted areas, sidewalks, curbs, gutters, or pavement shall be removed or killed weekly by Contractor as the weeds emerge. Weeds shall be removed by Contractor (not just killed) if they are larger than 2" (5 cm) in height or diameter. Contractor shall dispose of weeds away from the premises. Pre and post-emergent herbicides may be used at the Contractor's option. Contractor must ensure that the application of any and all pre and post-emergent herbicides is done by a licensed applicator, if required by any state, local, or federal regulations. Owner will make no additional payments for herbicide applications. The cost of all weed control Work shall be included in the Agreement price for landscape maintenance.

2. Contractor shall do regular maintenance of the mulch or decorative rock layer, which shall minimize weeds in shrub and groundcover areas. All mulched areas shall be re-mulched by Contractor one time each year to maintain a 2" thickness. The mulch material shall be provided by Contractor and be of the same type as existing unless otherwise specified by Owner.

E. Lawns:

1. Contractor shall keep lawns in a healthy, vigorous condition, free of disease and pests, except as noted below.

2. Lawn height shall be maintained by Contractor between 3" and 5" and shall not exceed 5" (13 cm) at any time.

3. Contractor shall mow, edge and trim lawns weekly or as required to maintain an even, well-groomed appearance. Sidewalks, straight curb runs and large planting areas shall be edged by Contractor utilizing a vertical blade-edger. String trimmers may be used in other areas. Note: Contractors shall remove trash from areas to be mowed prior to mowing.

4. Contractor shall remove visible lawn clippings and dispose of them away from the premises in a legal manner. The Contractor is encouraged to use mulching mowers that cut clippings into small pieces that sift down into the lawn.

5. Any lawn area that is killed or dies due to Contractor negligence shall be replaced at the Contractor's sole expense, within two (2) weeks of the loss. If lawn loss was due to mechanical damage, replacement costs will be paid as additional Work. If lawn loss is due to mechanical damage, Contractor shall submit a quote to Owner for replacement and the quote must be detailed in a separate work order

6. Contractor shall hand water as needed to supplement natural rainfall or permanent irrigation system and maintain plantings in a healthy, stress-free condition. It is the Contractor's responsibility to make sure that plants receive adequate water regardless of weather conditions. It is also the Contractor's responsibility to ensure that plants are not over watered.

II. IRRIGATION ***(This section is deleted for properties that are not irrigated.)***

A. It is the Contractor's responsibility to make sure that the irrigation system is maintained and operates properly.

B. It is the responsibility of the Contractor to conserve water and assure that all watering rules and regulations are followed. Any penalties, fines, or citations for watering ordinance violations and relating to such shall be paid the by Contractor.

C. The Contractor is responsible for the complete operation and maintenance of the irrigation systems. The Contractor shall examine the irrigation system for damage or malfunction weekly and shall report any damage or malfunction to the Owner's authorized representative in writing.

D. Contractor shall repair Minor Repairs with the irrigation system as defined herein (broken heads, risers and minor leaks). Owner will make no additional payment to Contractor for said Minor Repairs. Major Repairs to the irrigation system such as pump failures, etc., will be reported to Owner and repaired according to a separate written agreement between Owner and Contractor.

1. "Minor Repairs" include, but are not limited to, cleaning out irrigation lines, adjustment of spray heads and nozzles, adjusting zone controls, programming main controller, maintenance of spray heads and nozzles, including replacement of minor parts, minor leaks in lines, risers, laterals or other system components.

2. "Major Repairs" include, but are not limited to, major line breaks, repair and/or replacement of valves, controllers, pumps and backflow-preventers. Contractor shall submit a quote to Owner for repair and/or replacement of major components, and obtain written authorization from Owner prior to proceeding with such Work.

3. Owner reserves the right to determine whether a repair to the irrigation system will be considered Major or Minor. Nothing contained in this section shall relieve the Contractor from acting in a responsible manner in the event of an emergency involving the irrigation system to protect Property, and ensure the safety of all persons, and immediately curtail wholesale waste of water.

E. When breakdowns or malfunctions exist, the Contractor shall hand water, if necessary, to maintain all plant material in a healthy condition.

F. The Contractor shall maintain the irrigation system, including cleaning of filter screens yearly or more often if needed, and flushing pipes part of this system where applicable. WINTERIZATION. As a minimum, the system shall be shut down at the irrigation meter, and all zones shall be blown down with compressed air until all water has been evacuated from the system. Care will be exercised to ensure all heads are secured from ingress of rainwater and mud while system is Repressurized. Controller will be shut down. Contractor shall ensure the backflow preventer is completely drained and suitably protected from freezing.

G. Any replacement of irrigation system components shall be made by Contractor with materials of the same manufacturer and model as the original equipment. Substitutions of materials other than original equipment will be approved only when the original equipment has been discontinued and are no longer available for purchase at any location. The substituted equipment must be completely compatible with the original and must be approved in writing in advance by the Owner's authorized representative.

H. All repairs to the irrigation system shall be identical to the original installation, unless approved in writing by the Owner's authorized representative. If a change to the installation will result in lower future maintenance costs, less frequent breakage, or an increase in public safety, request authorization in writing to make the change from the Owner's authorized representative.

I. Contractor shall check for leaking valves, water running across sidewalks, water standing in puddles, or any other condition which hampers the correct operation of the irrigation System or the public safety. The Contractor shall carefully observe plant materials for signs of wilting, indicating a lack of water. Plants that die due to irrigation system failure will be considered to have died due to the Contractor's negligence or acts and shall be replaced at the Contractor's sole expense.

III. LITTER REMOVAL

A. All litter shall be removed by the Contractor from ~~sidewalks, gutters~~, and all planted areas each week. In no case shall trash, litter, or leaves be blown or swept by the Contractor onto the Property of others. All trash, litter, leaves, etc. shall be collected, hauled away, and disposed of by the Contractor away from the premises.

B. In addition to removing all litter from sidewalks, ~~gutters~~ and planted areas, the Contractor shall remove and dispose of any large miscellaneous debris ~~or trash~~ in the parking lot. For the purpose of this agreement, "large" shall mean items the size of a small beverage cup or larger. The intent of this requirement is that the Contractor and it's workers should take sufficient pride in the appearance of the Property that they would pick up any significant litter they come across on the premises. Sweeping of the parking lots is not included in this Agreement. Contractor shall remove all litter from planting areas and sidewalks, regardless of the size of the litter. Contractor shall notify Owner in writing, with clear photographs attached, of excessive trash accumulation on the Property.

IV. CHEMICALS, HERBICIDES, PESTICIDES

A. All chemicals shall be used in accordance with label directions and the manufacturers recommended handling methods. Registered chemicals shall be handled in accordance with all applicable regulations. Registered chemicals shall be used only on the advice of a qualified, licensed, if required, pest control advisor. Nothing in this specification shall be construed to be the advice of, or to substitute for the advice of, a pest control adviser.

B. Pesticides shall not be applied within one hour of the start of operating hours of the store. In the event that it is not possible to complete the application by one hour prior to business hours (i.e 24-hour locations), applications shall be made at times when customer presence is minimal. Areas to be treated shall be blocked off and warning signs posted.

C. The Contractor shall take precautions to keep persons away from pesticide and herbicide-treated areas until the applied material is fully dry and the treated area is safe for entry. Follow the recommendations of the pesticide manufacturer and all applicable governmental and industry regulations.

V. PAYMENT

Owner agrees to pay the Contractor a total of $ 127.20 PER VISIT ~~per year~~ during the term of this agreement, payable in monthly payments of $ _____ each.

flat

Additional Scope of Work

Acknowledged and Agreed to by:

CONTRACTOR:

HSI Lawncare
Name of Contractor

3-29-00
By Date:

Roger P. Hill, Owner
Print Name

OWNER:

WAL-MART STORES, INC.

4-10-00
By. Date:

Tim Fox
Print Name Title
(District Manager)

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of Complaint To Join Additional Defendant Under Pa.R.C.P. 2252(a) with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on January 9, 2003:

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
211½ East Locust Street
Marino Building
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:

Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

EXHIBIT C

E+D-6124 TB

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

TO: PLAINTIFFS & DEFENDANTS

You are hereby notified to file a written response to the enclosed Answer and New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

SUMMERS, McDONNELL, WALSH & SKEEL, L.L.P.

#11177

CIVIL DIVISION

Docket No.: 02-1811-CD

ANSWER, NEW MATTER AND NEW MATTER 2252(d) TO DEFENDANT, WAL-MART STORES, INC.'S COMPLAINT TO JOIN ADDITIONAL DEFENDANT

(Jury Trial Demanded)

Filed on Behalf of the Additional Defendant: Roger R. Hull, t/d/b/a HSJ Lawncare

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

SUMMERS, McDONNELL, WALSH & SKEEL
Firm #911

The Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

(412) 261-3232

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,
vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,
vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,
vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

(Jury Trial Demanded)

ANSWER, NEW MATTER AND NEW MATTER 2252(d) TO DEFENDANT, WAL-MART STORES, INC.'S COMPLAINT TO JOIN ADDITIONAL DEFENDANT

AND NOW, comes the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, by and through its undersigned attorneys, Summers, McDonnell, Walsh & Skeel, LLP, and Paul J. Walsh III, Esquire, and files the following Answer, New Matter and New Matter 2252(d) and in support thereof avers as follows:

ANSWER

1. Paragraphs 1 and 2 of the Complaint to Join Additional Defendant are denied pursuant to Pa.R.C.P. 1029(c) and 1029(e). After reasonable investigation, this Additional Defendant has insufficient knowledge or information as to the truth or falsity of said averments and therefore, said averments are denied and strict proof thereof is demanded at the time of trial.

2. Paragraphs 3 through 6 of the Complaint to Join state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said averments are denied as stated. To the contrary, this Additional Defendant avers that the pleadings speak for themselves. By way of further answer, this Additional Defendant herein refers to and incorporates its previously set forth responses, hereinafter set forth responses, New Matter and New Matter 2252(d).

3. Paragraph 7 of the Complaint to Join is admitted.

COUNT I

WAL-MART STORES, INC. v. ROGER HULL T/D/B/A HSJ LAWNCARE

4. Paragraph 8 of the Complaint to Join requires no response. To the extent that a response is deemed necessary, said allegations are denied as they state legal conclusions to which no responses are required.

5. Paragraph 9 of the Complaint to Join states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied as stated. To the contrary, this Additional Defendant avers that the contract speaks for itself and in no way did this Additional Defendant assume duties and/or obligations not set forth in said agreement. By way of further answer, this Additional Defendant herein refers to and incorporates its previously set forth responses, hereinafter set forth responses, New Matter and New Matter 2252(d).

6. Paragraph 10 of the Complaint to Join requires no response. To the extent that a response is deemed necessary, said allegation is denied as it states a legal conclusion to which no response is required.

7. Paragraph 11 of the Complaint to Join states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment

is denied as stated. To the contrary, this Additional Defendant avers that the contract speaks for itself and in no way did this Additional Defendant assume duties and/or obligations not set forth in said agreement. By way of further answer, this Additional Defendant herein refers to and incorporates its previously set forth responses, hereinafter set forth responses, New Matter and New Matter 2252(d).

8. Paragraphs 12 and 13 of the Complaint to Join state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and 1029(e). After reasonable investigation, this Additional Defendant has insufficient knowledge or information as to the truth or falsity of said averments and therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Additional Defendant herein refers to and incorporates its previously set forth responses, hereinafter set forth responses, New Matter and New Matter 2252(d).

WHEREFORE, this Additional Defendant, Roger Hull t/d/b/a HSJ Lawncare, denies that he is liable to the Plaintiffs, the Original Defendants and the Co-Additional Defendant, or, in the alternative, while denying liability on the part of this Additional Defendant, the Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises, and Additional Defendant, Boyles Insurance, Inc., are liable over to this Additional Defendant for indemnity and/or contribution for any monies which this Additional Defendant may be found liable and/or responsible to the Plaintiffs or to other parties in this lawsuit.

II. NEW MATTER

9. Paragraphs 1 through 8 are herein referred to and incorporated as if set forth fully at length.

10. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, any injuries and/or damages alleged by the Plaintiffs were the result of superseding, intervening, and/or independent causes over which this Additional Defendant had no control and in no way participated.

11. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant raises all affirmative defenses set forth in Pa.R.C.P. 1030 to the Plaintiffs' and Original Defendant's claims, including the legal doctrines of payment, accord and satisfaction, release, waiver, estoppel, and the statute of limitations.

12. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers any and all ambiguities interpreting the referenced contract must be interpreted against the drafter, Wal-Mart.

13. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers the injuries and damages alleged by the Plaintiff-Wife were the result of a pre-existing condition unrelated to this accident and/or occurrence.

14. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant pleads the contributory, causal negligence of the Original Defendants and Additional Defendant, Boyles Insurance and the provisions of the Pennsylvania Comparative Negligence Act as a complete or partial bar to any recovery by the Original Defendant in this action.

15. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant pleads the contributory, causal

negligence of the Plaintiff and the provisions of the Pennsylvania Comparative Negligence Act as a complete or partial bar to any recovery by the Plaintiff in this action.

16. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers that Plaintiff-Wife failed to mitigate her damages by ignoring the advice of medical providers.

17. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers that the Plaintiffs may not recover any medical expense reimbursements in excess of amounts accepted as full payment in satisfaction by medical providers pursuant to Moorhead v. Crozer Medical Center.

18. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant reserves the right to assert any and all other affirmative defenses which discovery may reveal appropriate and/or proper.

WHEREFORE, the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, denies that he is liable to the Plaintiffs, the original Defendants, and the Co-Additional Defendant or, in the alternative, while denying liability on the part of this Additional Defendant, the Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are liable over to this Additional Defendant for indemnity and/or contribution for any monies which this Additional Defendant may be found liable and/or responsible to the Plaintiffs or to other parties in this suit.

III. NEW MATTER PURSUANT TO RULE 2252(d)

19. Paragraphs 1 through 18 are herein referred to and incorporated as if set forth fully at length.

20. This Additional Defendant denies and continues to deny that he is liable to the Plaintiffs upon any theory. Should the Plaintiffs be entitled to recover from this Additional Defendant, although it is denied that the Plaintiffs are so entitled, then this Additional Defendant is entitled to indemnification and/or contribution from Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., or other co-defendants and/or additional defendants who may hereafter be named in this action. For purposes of asserting such rights of indemnification and contribution, this Additional Defendant herein refers to and incorporates the Plaintiffs' Complaint, although by making such reference, this Additional Defendant makes no admission as to the truth or falsity of any factual allegations contained therein.

WHEREFORE, the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, avers that Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are solely liable to the Plaintiffs or, in the alternative, while denying liability on the part of this Additional Defendant, the Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are liable over to this Additional Defendant for indemnity and/or contribution for any monies which this Additional Defendant may be found liable and/or responsible to the Plaintiffs or to other parties in this suit.

Respectfully submitted,

SUMMERS, McDONNELL, WALSH & SKEEL

By _____
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

VERIFICATION

I, Roger R. Hull, verify that I am the Owner of HSJ Lawncare, verify that the statements made in the foregoing **Answer, New Matter & New Matter Pursuant to Rule 2252(d) to the Defendant, Wal-Mart Stores, Inc., Complaint to Join Additional Defendant** are true and correct to the best of my knowledge, information and belief. To the extent that the content of **Answer, New Matter & New Matter Pursuant to Rule 2252(d) to the Defendant, Wal-Mart Stores, Inc., Complaint to Join Additional Defendant** is permitted by Pennsylvania Rules of Civil Procedure, I have relied upon counsel in verifying the same.

3-30-03
(Date)

Roger R Hull
(Name)

#11177

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Answer, New Matter and New Matter 2252(d)** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 28 day of April, 2003.

James A. Naddeo, Esquire
211½ E. Locust St.
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 E. Locust St.
P.O. Box 670
Clearfield, PA 16830
(Counsel for Defendant/Additional Defendant, James Bailor t/d/b/a B&D Enterprises)

Patrick J. Loughney, Esquire
Dell, Moser, Lane & Loughney
437 Grant St.
1300 Frick Bldg.
Pittsburgh, PA 15219
(Counsel for Defendant, Wal-Mart Stores, Inc.)

Brian Schrenkengost, Esquire
Pietragallo, Bosick & Gordon
One Oxford Center
38th Floor
Pittsburgh, PA 15219
(Counsel for Boyles Insurance, Co.)

SUMMERS, McDONNELL, WALSH & SKEEL

By Paul J. Walsh III
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

FILED 2cc
01 1:26 bcl Atty
MAY 19 2003
Rees

William A. Shaw
Prothonotary

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife	:	
-vs-	:	No. 02 – 1811 – CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES	:	
-vs-	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES	:	
-vs-	:	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.	:	

FILED

MAY 2 [illegible]3

William A. Shaw
Prothonotary

OPINION AND ORDER

This matter comes before the Court on Preliminary Objections to Complaint to Join Additional Defendants filed on behalf of Boyles Insurance, Inc. From the record it appears that wife-plaintiff was injured in a fall on premises owned by Wal-Mart Stores, Inc. who joined James Bailor t/d/b/a B&D Enterprises, as an additional defendant alleging certani contractual obligations of Bailor to maintain the Wal-Mart parking lot. Bailor now seeks to join Boyles Insurance, Inc., Bailor's insurance carrier, alleging that Boyles was guilty of negligence in failing to provide the necessary insurance to Bailor. Boyles has filed Preliminary Objections against the Complaint to Join and this Court does herein grant said Preliminary Objections.

While Bailor may have a separage claim against Boyles, it involves a separate transaction and different facts than those upon which Plaintiffs' claim is based. The two claims

do not present common questions of law or facts and the proofs required for the insurance claim are entirely separate from those the Plaintiffs will present on the original cause of action. to permit these claims to proceed at the same trial would merely result in confusing the jury and this Court is satisfied that should Bailor wish to pursue his allegations, he must do so against Boyles Insurance, Inc. and therefore enters the following:

ORDER

NOW, this 22nd day of May, 2003, upon consideration of Preliminary Objections to Complaint to Join Additional Defendant as set forth above, it is the ORDER of this Court that said Objections be and are hereby sustained and Complaint dismissed.

By the Court,

President Judge

FILED
01 3:30 BH
MAY 22 2003
William A. Shaw
Prothonotary

1CC Atty Naddeo
1CC Atty Loughney
1CC Atty Wood
1CC Atty P. Walsh
1CC Atty Shreckengost
1CC D. Mikesell

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

#11177

CIVIL DIVISION

Docket No.: 02-1811-CD

STIPULATION OF COUNSEL

(Jury Trial Demanded)

Filed on Behalf of the Additional Defendant: Roger R. Hull, t/d/b/a HSJ Lawncare

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

SUMMERS, McDONNELL, WALSH & SKEEL
Firm #911

The Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

(412) 261-3232

FILED

JUL 28 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMOPN PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,
Plaintiffs,

CIVIL DIVISION

Docket No.: 02-1811-CD

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,
Defendants,

JURY TRIAL DEMANDED

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,
Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,
Additional Defendants.

STIPULATION OF COUNSEL

The below signed counsel, on behalf of their respective clients, hereby stipulate to the dismissal, with prejudice, of all claims of Additional Defendant, Roger R. Hull t/d/b/a HSJ Lawncare, for contribution and/or indemnity that were or could have been asserted against Boyles Insurance, Inc. in Hull's Answer, New Matter and New Matter Pursuant to Rule 2252(d) to Defendant Wal-Mart Sores, Inc.'s Complaint to Join Additional Defendant.

SUMMERS, McDONNELL, WALSH & SKEEL

By: Paul J. Walsh III
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

PIETRAGALLO, BOSICK & GORDON

By: Bryan K. Shreckengost
Bryan K. Shreckengost, Counsel for Boyles Insurance, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Stipulation of Counsel** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 24 day of July, 2003.

James A. Naddeo, Esquire
211½ E. Locust St.
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 E. Locust St.
P.O. Box 670
Clearfield, PA 16830
(Counsel for Defendant/Additional Defendant, James Bailor t/d/b/a B&D Enterprises)

Patrick J. Loughney, Esquire
Dell, Moser, Lane & Loughney
437 Grant St.
1300 Frick Bldg.
Pittsburgh, PA 15219
(Counsel for Defendant, Wal-Mart Stores, Inc.)

Bryan Shreckengost, Esquire
Pietragallo, Bosick & Gordon
One Oxford Center
38th Floor
Pittsburgh, PA 15219
(Counsel for Boyles Insurance, Co.)

SUMMERS, McDONNELL, WALSH & SKEEL

By _____
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

FILED NO CC
m 11:25 BH
JUL 28 2003
William A. Shaw
Prothonotary/Clerk of Courts

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

WAL-MART STORES, INC.'S MOTION FOR SUMMARY JUDGMENT

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
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1300 Frick Building
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Phone: (412) 471-1180
Fax: (412) 471-9012

FILED

JUL 17 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

WAL-MART STORES, INC.'S MOTION FOR SUMMARY JUDGMENT

AND NOW, comes Defendant Wal-Mart Stores, Inc., by and through its counsel, Dell, Moser, Lane & Loughney, LLC, and Patrick J. Loughney, Esquire, and files the instant Motion for Summary Judgment, stating as follows:

1. The instant case arises out of an alleged slip and fall accident that occurred on September 10, 2001.

2. On said date, wife-Plaintiff alleges to have fallen on debris in the parking lot area outside of the Clearfield Wal-Mart store.

3. During her deposition, wife-Plaintiff testified that she assumes that she fell on a small stone which had migrated from a nearby island of ornamental trees because she saw a stone on the ground after she fell. See deposition transcript of Anna Rugh, p. 12, attached hereto in its entirety as Exhibit "A".

4. However, Wife-Plaintiff did not see the small stone before she fell and there were no witnesses as to what actually caused her to fall.

5. Proving that an accident happened, or the existence of an opportunity for it to happen, in the manner alleged, is entirely insufficient to establish negligence. Houston v. Republic Athletic Association, 343 Pa. 218, 22 A.25 715 (1941); Hillelson v. Renner, 183 Pa. Super. 148, 130 A.2d 212 (1957).

6. Plaintiff must go further and show not only the defendant's negligence, but that the injuries complained of were the result of such negligence. Dubois v. City of Wilkes-Barre, 410 Pa. 155, 189 A.2d 166 (1963).

7. In the instant case, there is no direct evidence that the small stone was the cause of wife-Plaintiff's fall and, therefore, there is no genuine issue of material fact that Plaintiffs cannot establish a prima facie case of negligence and that Wal-Mart Stores, Inc. is entitled to summary judgment with respect to all claims asserted against it.

8. Alternatively, assuming, *arguendo*, that there is sufficient direct evidence that the Plaintiff fell on a small stone in the parking lot, which there is not, Wal-Mart Stores, Inc. is nevertheless entitled to summary judgment as there is no evidence that Wal-Mart Stores, Inc. caused the stone to be in the parking lot or that it had actual or constructive knowledge of the presence of the stone.

9. It is axiomatic that the mere happening of an accident is insufficient to establish liability. Martino v. Great Atlantic & Pacific Tea Co., 419 Pa. 229, 213, A.2d 608, 610 (1965); Swift v. Northeastern Hospitals of Philadelphia, 456 Pa. Super. 330, 690 A.2d 719, 722 (1997), *alloc. den.*, 701 A.2d 577 (Pa. 1997).

10. To establish liability, the Plaintiffs must prove that the Defendant created the condition of which they complain or that Defendant knew or in the exercise of reasonable care should have known of the existence of the condition. Hess v. Sunray Drug Co., 387 Pa. 199, 127 A.2d 699 (1956); Moultrey v. Great Atlantic & Pacific Tea Co., 281 Pa. Super. 525, 422 A.2d 593, 596 (1980); Rodgers v. Horn & Hard Hat Baking Co., 183 Pa. Super. 83, 127 A.2d 762, 764 (1956).

11. In the instant case, wife-Plaintiff testified during her deposition that she does not know what caused the small stone to be in the parking lot. See Exhibit "A", p.14.

12. Further, wife-Plaintiff conceded that she does not know how long the small stone had been in the parking lot or whether Wal-Mart Stores, Inc. knew of its existence. See Exhibit "A", p.14.

13. As there is no evidence that Wal-Mart Stores, Inc. caused the small stone to be in the parking lot or that it had actual or constructive knowledge of its existence, there is no genuine issue of material fact that Plaintiffs are unable to establish a prima facie case of negligence and that Wal-Mart Stores, Inc. is entitled to summary judgment with respect to all claims asserted against it.

WHEREFORE, Defendant Wal-Mart Stores, Inc. respectfully requests that this Honorable Court grant its Motion for Summary Judgment with respect to all claims asserted against it.

Respectfully submitted,

Dell, Moser, Lane & Loughney, LLC

By: _____

Patrick Loughney, Esquire
Attorneys for Wal-Mart Stores, Inc.

WAL 325

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5/12/03

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs, vs. WAL-MART STORES, INC., a corporation, and JAMES BAILOR tdba B&D ENTERPRISES, Defendants, vs. JAMES BAILOR, tdba B&D ENTERPRISES Additional Defendant, vs. ROGER R. HULL, tdba HSJ LAWNCARE and BOYLES INSURANCE, INC., Additional Defendants.) No. 02-1811-CD

DEPOSITION OF ANNA M. RUGH, taken on behalf of the Defendants in the above-entitled cause, pursuant to the provisions of the Pennsylvania Rules of Civil Procedure of the Commonwealth of Pennsylvania, before Theodore E. Wawrzyniak, Registered Merit Reporter-Notary Public, at the Clearfield County Courthouse, 230 East Market Street, 1st Floor Annex, Commissioner's Office, Clearfield, PA 16830, on May 5, 2003, at 9:20 a.m.

WAWRZYNIAK REPORTING SERVICE
1250 Arline Drive
North Huntingdon, PA 15642
(724) 864-6993

APPEARANCES:

FOR THE PLAINTIFFS:
JAMES A. NADDEO, ESQ.
JAMES A. NADDEO & ASSOCIATES
211 1/2 East Locust Street
Clearfield, PA 16830

FOR THE DEFENDANT WAL-MART:
PATRICK J. LOUGHNEY, ESQ.
DELL MOSER LANE & LOUGHNEY
1300 Frick Building
Pittsburgh, PA 15219

FOR THE DEFENDANT HULL:
TRISHA A. ZAKEN, ESQ.
SUMMERS McDONNELL WALSH & SKEEL
2400 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219

APPEARANCES: (Continued)

FOR THE DEFENDANT BOYLES:
BRYAN K. SHRECKENGOST, ESQ.
PIETRAGALLO BOSICK & GORDON
38th Floor - One Oxford Centre
Pittsburgh, PA 15219

FOR THE DEFENDANT BAILOR:
ANN B. WOOD, ESQ.
BELL SILVERBLATT & WOOD
318 East Locust Street
Clearfield, PA 16830

ALSO PRESENT:
MARSHALL E. RUGH

INDEX OF EXAMINATION

WITNESS
ANNA M. RUGH

DIRECT EXAMINATION
BY MR. LOUGHNEY - PAGE 5

CROSS-EXAMINATION
BY MS. WOOD - PAGE 63

CROSS-EXAMINATION
BY MR. ZAKEN - PAGE 70

REDIRECT EXAMINATION
BY MR. LOUGHNEY - PAGE 75

EXHIBIT
tabbies
A

ANNA M. RUGH, being first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOUGHNEY:

Q. I am Pat Loughney. I represent Wal-Mart in the lawsuit that you filed as a result of an accident that happened in the Clearfield Wal-Mart parking lot on September 10, 2001.

If I could, we have had a conversation with your counsel off the record, because the answers to interrogatories indicate that the accident was September 21, and checking with the towing record, I believe the accident is September 10, is that right, Jim?

MR. NADDEO: That is correct.

BY MR. LOUGHNEY:

Q. If I ask you what date it is, could you tell me, or wouldn't you be able to remember that?

A. Why wouldn't I remember?

Q. What date did the accident happen?

A. September 10.

Q. Very good. And just as you have done now, when I ask you questions, it will be important to answer verbally, yes or no, and not nod your head.

And if you don't understand my questions at

any time, please tell me and I will repeat them or the court reporter can reread them.

Just because you don't understand the question doesn't mean that you should have.

A lot of times when we read the transcript, sometimes the questions don't make sense.

So if you don't understand the question, let me know. Is that all right?

A. All right.

Q. If you need to take a break at any time for any reason, use the bathroom, talk to your attorney, we can do that.

The only thing I would ask is if there is a question pending at the time, could you please answer before you take your break? Is that all right?

A. All right.

Q. Are you taking any medications today?

A. Yes.

Q. What are you taking right now?

A. Oh, boy.

Q. Let me ask you this.

Are you able to understand the questions that I ask and give answers to those questions you know the answers to?

A. Yes.

Q. So whatever medication you are taking doesn't affect your ability to think?

A. No.

Q. Is that correct?

A. Okay.

Q. The accident on September 10, 2001, tell me how it happened.

A. I was walking to the back of the building and I slipped on one of them little pebbles or stones that fell out of those little islands where they have trees, and I fell down on it, and my husband came and picked me up, and I skinned the side of my face.

Q. You are indicating the right side. You are pointing to?

A. To this side.

Q. Is that the right side?

A. Right.

Q. What happened to the right side of your face?

A. I skinned it and had blood. It opened the skin a little bit.

And then I couldn't get up, and my husband come and picked me up.

Q. What direction did you fall, forward, backwards, sideways?

A. Sideways.

Q. To which side?

A. Right side.

Q. And what part of your body hit the ground first, do you know?

A. Well, I would say my head, because the island is up here and my head hit here and the ground is here.

Q. Here?

A. My head hit the ground, the island first.

Q. Is that the curb you are indicating?

A. Yes.

Q. How high was the curb?

A. I don't know. Four inches maybe, maybe six.

Q. So the right side of your face actually hit the curb, is that right?

A. Yes.

Q. Did you have a sense of any other part of your body hitting any part of the ground or the curb?

A. What do you mean?

Q. Did you feel any part of your body strike anything else?

A. Just I was hurting so bad I couldn't get up.

Q. If I ask you, do you have a recollection of any other parts of your body hitting any other part of the island, or the curb or the ground, you couldn't tell me that, is that correct?

A. The only thing I can tell you is I had to have help to get up. I couldn't get up on my own.
Q. You said that you, I think, fell on the pebble. Is that the word you used?
A. Well, you call -- I call it pebbles. I call them little stones.
Q. How do you know that's what you fell on?
A. Well, I felt the stones when I hit my head. That's what skinned my face, the little rough stones.
Q. How do you know that what you fell on was the pebble, the little stone, and we'll use stones.
How do you know that's what caused you to fall?
A. Well, I know I slipped on them.
Q. How do you know that?
A. There was some on the ground. They were off the island. They were on the ground.
Q. When did you first see the little stones on the ground?
A. I didn't see them till I fell on them, and I felt my feet slip.
Q. Which foot were you stepping with when you fell, do you know?
A. Huh?

Q. Was it your right foot?
A. Right foot.
Q. And describe the sensation.
Did you have a sensation of your foot slipping?
A. I had a sensation my foot slipping, then I got like -- like anytime you fall, it kind of dazes you.
And that's when he came in and helped me up, because I couldn't get up.
Q. When you fell, did you know that your foot slipped on little stones?
A. I know my feet slipped. My foot slipped on the stones.
Q. Now, what kind of shoes did you have on?
A. Same thing I got on right now, same ones.
Q. May I look?
A. An athletic shoe.
Q. Like?
A. They were Reeboks.
Q. Reeboks?
A. Yes.
Q. Could I see the sole on them?
A. Huh?

(Counsel examining shoe)

BY MR. LOUGHNEY:
Q. They are rippled soles?
A. Yes.
Q. You were walking with those shoes.
Now, did you have a sensation first of slipping or hitting yourself first, what was it?
A. I felt the sensation of my head hitting the berm first.
Q. So the first recollection you had is your head hitting the berm?
A. Yes.
Q. How can you testify then that your foot slipped?
I am not trying to trick you. I am trying to understand how you understood your foot slipped on stones.
A. It was the only thing there. Them little stones on the floor, on the ground you slid on.
Q. You are assuming that's what you fell on?
A. I know that's what I fell on.
Q. Before you hit your head, what did you sense about how you fell, before you hit your head?
A. I don't know how to answer that one.
Q. Do you know? Do you have any --

A. I didn't expect to fall. I was just walking.
Q. What I am trying to understand is, did you conclude later because these stones were there that's what you fell on?
A. Yes.
Q. Did you see the stones before you fell?
A. No.
Q. When you hit your face, were you knocked unconscious, do you know?
A. No, I wasn't unconscious. I just -- that's a hard question.
Q. Okay.
A. You fall, you fall.
Q. Were you stunned?
A. Not stunned. I just -- I knew I had fell and knew I needed help.
Q. When did you see the little stones?
A. When I saw him picking me up I saw all these little stones around the island.
Q. What size were they?
A. They were just little wee stones that -- they weren't pebbles like you see in the city.
They were stones. I don't know where they had them hauled in from, but they were mixed in with dirt.
Q. Were they of a uniform size?

A. All different sizes.
Q. What was the smallest and what was the largest you can remember?
A. I don't remember that.
Q. Were they smooth or rough?
A. They were rough.
Q. Do you know where they came from?
A. No, I don't.
Q. You say there was an island where you fell, is that right, what you hit your face on?
A. No.
Q. Were there little stones in the island?
A. Yes.
Q. Were they of similar size and --
A. They were like all bunches of little stones all sizes.
Q. The ones that were in the island, were they -- were they similar to the ones that you saw on the ground?
A. Yes.
Q. These stones, were there just a couple on the ground outside the island, or were there lots of them?
A. Just a couple, not too many.
Q. Okay.
A. I think they clean them up every so often or

something when people go through there.
Q. Why do you think that?
A. I don't know. Because you don't see them all over.

(Pause)

BY MR. LOUGHNEY:
Q. Do you know how the stones got on the ground where you fell?
A. No, I don't.
Q. Do you know how long they were there prior to your fall?
A. No, I didn't.
Q. Did anyone from Wal-Mart tell you they knew those stones were there?
A. No, they didn't.
Q. Did anyone from Wal-Mart tell you how the stones -- they knew how the stones got there?
A. No, I didn't question anybody.
Q. Do you know whether anyone from Wal-Mart caused those stones to be on the ground where you fell?
A. No, I don't.
Q. Do you know how long they were there?
A. No, I don't.

Q. Did anyone from Wal-Mart or anyplace else tell you how long they were there?
A. No.
Q. Did you have pain in your face after you fell?
A. I didn't have a pain in my face. It just busted the skin open and the blood come running.
Q. Did you have pain in any part of your body after you fell, right after you fell?
A. No, it just hurt. Not pain, it hurt.
Q. Were you carrying anything when you fell?
A. No.
Q. What was the weather like? Was it raining or was it dry?
A. It was like the sky was nice. It was like this weather.
Q. Was it --
A. It wasn't raining, but it was just kind of cloudy, getting dark.
Q. Was the ground wet anyplace?
A. No.
Q. Were you walking with a cane or any type of assistance?
A. No, walking just on my own.
Q. Where was your husband when you fell, do you

know?
A. He was waiting for a guy to come that was going to haul the car out. We had to get it fixed.
Q. Did you and your husband get out of the car together?
A. Yes.
Q. How far away was he from you when you fell, do you know?
A. I don't know. Maybe twice this room in length.
Q. A twenty-five foot room or something?
MR. NADDEO: I would say, no. It's not that, but I'm not a judge of that.

BY MR. LOUGHNEY:
Q. In relationship to anything else like a baseball field or home to first base, anything like that?
A. No.
Q. You can't describe it?
A. No.
Q. Were you intending to go with him in to talk to the people at Wal-Mart about the car?
A. We already talked to the mechanic about the car.

Q. What were you doing then at the time? Were you going back to your car?
A. The mechanic told us to take it in the back till the wrecker come to take it to the garage because they couldn't fix it.
Q. I'm sorry. So then were you on the way back to your car at this time?
A. No. I had got out of the car, and he was headed towards the garage.
Q. He was --
A. I was just out there waiting.
Q. You and your husband -- why were you at Wal-Mart?
A. Well, to tell you the truth, we shop there for everything. We don't go anywhere else.
Q. I am talking about that day. Why were you there?
A. We bought some kind of medicine. I don't remember what we bought.
Q. At Wal-Mart?
A. At Wal-Mart.
Q. So you already purchased it?
A. Yes. We had already purchased it.
Q. And what was your intent after that? Were you going back to the car to leave?

A. Yes, we was going home.
Q. And then what happened about the car?
A. When he -- when he discovered it wouldn't move, a lady came out and said -- showed him a piece of thing she found under her car, and here it was under ours. And see, we was trying to give it to everybody else, and he went down to get a mechanic then and I stayed in the car.
Q. So there was something wrong with your car? It wouldn't start?
A. Wouldn't move.
Q. It started but it wouldn't move?
A. Yes.
Q. Okay.
A. So the mechanic told us to take it down back and wait for the wrecker to come pick it up.
Q. You buy your medicine, you go out to the car, is that right?
A. Right.
Q. Now, when you got out of your car to go into Wal-Mart, did you walk the same way that you walked when you fell?
A. Yes. Did I walk the same way?
Q. Did you take the same path from your car to Wal-Mart?

A. We always park in front and walk down in the store in the front door.
Q. But what I am asking is when you parked and walked in the front door to get your medicine, did you walk through the same area that you would walk when you fell?
A. Yes -- no. You are getting me all screwed up.

(Counsel conferring)

BY MR. LOUGHNEY:
Q. Would it help if I ask you to draw a sketch? Would that help you?
A. What's that?
Q. If you could draw a sketch of -- can you draw a sketch of the store and where you were parked and where the island is and where the --
A. I guess I could draw.
Q. Okay.
A. I am not a very good drawer.
Q. Do you want a pencil or a pen?
A. A pen is better. You can't erase it out then.

(Discussion off the record)

THE WITNESS: This, I would say, is the parking lot.

BY MR. LOUGHNEY:
Q. Make it real big. Mark that with a PL.
A. We go in the front door.

(Witness drawing)

THE WITNESS: That's the store.

BY MR. LOUGHNEY:
Q. How about for the parking lot. Could you mark PL on that so we know?
A. This is the store.
Q. Mark that with an S.

(Witness doing as requested)

BY MR. LOUGHNEY:
Q. You are spelling out store. That's good.
A. I am not a very good writer.
Q. Is this the parking lot?

A. This is the parking lot.
Q. Okay.
A. Okay. I went in and bought my medicine down here at the pharmacy.
Q. Mark P on that, please.

(Witness doing as requested)

MR. LOUGHNEY: Okay.
THE WITNESS: When he came out and we went in this door and came back out this door.
When he couldn't get the car to move, or the car -- it would run, but it wouldn't move at the time.
I think I'm right. No, it did move because we drove it down back.
Anyhow, he went down to the park -- down to the garage to see if the guy would come look at it, and I stayed in the car down where we was parked here right along the front row. I would say second, first row, second row.

BY MR. LOUGHNEY:
Q. Can you mark C for your car there, please?
A. Huh?
Q. Can you mark a C, or maybe your counsel could

do that if that would be easier.
MR. NADDEO: Let's do it this way.
THE WITNESS: Maybe you can draw better than I can. I am not a very good drawer.
MR. NADDEO: Is that where the car was originally parked?
THE WITNESS: Yes, right.
MR. NADDEO: There is a car here.
THE WITNESS: And he went down, walked down the road. He walked down this road and went to the back and the garage is back here.
MR. LOUGHNEY: Mark G. Maybe your attorney can do that.
MR. NADDEO: Let's put just a little building back here.
Go ahead. I am sorry. You should do that. You put the garage back there.
THE WITNESS: Yes, I am putting the garage back here.

(Witness doing as requested)

THE WITNESS: And this is all your -- the islands are all in here. I think there were like three in a row, I think.

It was getting dark. I don't remember that part.
MR. LOUGHNEY: Write G for the garage.
THE WITNESS: That's the garage.
MR. NADDEO: Down here.

(Witness doing as requested)

THE LOUGHNEY: The islands were by the garage?
THE WITNESS: The islands is all along here.

(Witness indicating)

THE WITNESS: These are all islands in here, along here.

(Witness doing as requested)

THE WITNESS: And then the driveway comes around here. I hope you understand this.
MR. LOUGHNEY: Sort of.
THE WITNESS: This is the driveway here.
The mechanic told him to bring the car down and park it down here where a wrecker could pick it up along this road here.

MR. NADDEO: Mark this car as number 1 position and this is car --
THE WITNESS: The same car.
MR. NADDEO: -- number 2 position.
MR. LOUGHNEY: Maybe where she is sketching islands, can you --
THE WITNESS: Yes, that's right there.

(Witness doing as requested)

MR. NADDEO: And we will mark these as islands here.
THE WITNESS: All along here are the islands.
MR. NADDEO: Okay. We will just mark these.
THE WITNESS: This all in here is an open field.
MR. NADDEO: Okay. There you go.
MR. LOUGHNEY: Okay.
THE WITNESS: Do you understand it now?
MR. LOUGHNEY: Yes. I think that helps.

BY MR. LOUGHNEY:
Q. So you were first parked in the parking lot -- in the parking lot where car 1 is?
A. Right.

Q. And you had gone in, and did your husband go in as well to get medicine?
A. Yes.
Q. Did you both go in together?
A. Yes. We always go together. You never see one, unless you see both.
Q. So you went in and came out?
A. Right.
Q. And then your car wouldn't work?
A. We found this piece out of the car. It wouldn't shift gears or something. Wasn't it, Marshall?
MR. RUGH: It was a gear.

BY MR. LOUGHNEY:
Q. So your car -- then were you able to drive your car back to the garage, is that right?
A. He drove it back.
Q. Marshall, he drove it back?
A. Right.
Q. Then when you got back to the garage --
A. I got out of the car when he did.
Q. Okay.
A. And he went in the garage, and I am out here running around, just running around.
Q. You just walked.

Okay. So you hadn't traveled that area when you went in to get your medicine, is that correct?
A. No.
Q. Okay.
A. You are not supposed to go in that back door unless you are going to get your car fixed.
Q. Now, are the islands in the parking lot in the middle of the parking lot or is there parking spaces on either side of the islands?
A. Pretty much so.
Q. So you were there, you were just walking in the area waiting for him to come out, is that right?
A. Yes.
Q. And I don't want you to guess at an answer, and if I am not right, you can disagree with me.
A. We were waiting for the wrecker to come get the car.
Q. All right.
A. Then I went in the garage and called my daughter to come get me to take us home.
Q. Now, when you went in the garage to use the phone, did you walk along the same path that you did when you fell?
Do you understand what I mean by that?
You had to go from your car into the garage to

make a call, is that correct?
A. Yes. I followed my husband back in the back door.
Q. Okay. So you went into the garage?
A. Right.
Q. Now, that route that you took from your car to the garage when you came out, is that when the accident occurred, after you made the call?
A. No, it happened before that.
Q. It happened before?
A. The guys in the garage knew about it.
Q. All right.
A. Because they had to get a key to unlock the telephone for me to make the phone call.
Q. And what was the reason for your phone call to your daughter again?
A. To take us home because we couldn't take our car home.
Q. Now, when you went into the garage to make a phone call, you already had fallen, is that correct?
A. I already fell, yes.
Q. Do you know whether anybody saw you fall?
A. A lady, she didn't see me fall, she saw my husband picking me up.
Q. Do you know her name?

A. I don't know her name, and I don't know if she works there or whether she didn't work there.
Q. Did she have any like a Wal-Mart name tag on or anything like that?
A. I didn't pay attention to that.
Q. What did she say to you, anything?
A. She asked me if she could get me a wet towel to wipe my face off.
And I said, no. I would wait till I got home.
Q. Now, when you called your daughter, did you tell her you had fallen?
A. No, I didn't tell her.
Q. Okay.
A. She didn't know what happened. I just told her our car broke down.
She didn't know what happened till she came and got us.
Q. What's your daughter's name?
A. Carol Nottingham.
Q. Can you spell that, please?
A. C-A-R-O-L, Nottingham.
Q. I'm sorry. The regular spelling, Nottingham?
A. Yes.
Q. Where does she live?
A. Here in Clearfield.

Q. Do you happen to know her address and phone number?
A. It is called Paradise now.
Q. Okay.
A. They changed the address.
Q. Could you give us her address? Do you know it?
A. You mean did anybody give my daughter the address?
Q. No. Do you know her address now that you can give it to us?
A. Yes, they just call it Paradise, Pennsylvania.
Q. Is there a street number or a route number?
A. I don't know if there is a route number or not.
Q. What about her phone number. Do you know her phone number?
A. Her number is 765-4558.
Q. And did anyone come with her?
A. No.
Q. What did you tell her when she got there?
A. We just told her the car broke down and we was waiting for the wrecker to come and take us home, and asked if she would come and get us and take us home.

Q. Now, when she arrived, did she arrive at Wal-Mart?
A. Yes.
Q. How long after the fall?
A. Maybe a half hour.
Q. What time of day was the fall, by the way, do you remember?
A. It was early evening.
Q. Was it light or dark?
A. It was light.
Q. So now when she comes to the Wal-Mart to pick you up, relate the conversation as best you can.
Who said what to whom?
A. When she came to Wal-Mart she asked us what happened, and we told her the car broke down and we wanted to know -- we wanted her to take us home.
Q. Okay.
A. And then we had the wrecker pick up our car to take it to a wrecker, or to get a garage.
And then the next morning we had her come back and get us and bring us back up town.
Q. Did you ever have a conversation with her that day about your fall?
A. No.
Q. Did you ever have a conversation with her

about your fall?
A. Well, she knew I had fell.
I told her where I fell back there, but that's it.
Q. That's what I mean. What did you tell her? When did you tell her you fell?
A. When she got there to Wal-Mart.
Q. Did you tell her what caused you to fall?
A. No, I didn't.
Q. Did she ask you what caused you to fall?
A. That I don't remember.
Q. When you were walking right before you fell, were you looking where you were walking?
A. Well, I am like everybody that takes a walk, you just start walking. You don't pay attention to what's here or what is there.
Q. You had earlier testified that you thought you fell on the stones, is that right?
A. Right.
Q. And that you first noticed the stones when your husband came over to help you, is that right?
A. Yes.
Q. If you had been looking when you were walking, could you have seen those stones, do you think?
A. Yes.

Q. When did you first go to any medical provider because of your fall?
A. September 10th, I think.
Q. Was it the 10th?
A. No, wait. It couldn't have been the 10th.

(Pause)

THE WITNESS: I would to have call and find out what my first date was.
I had an appointment to go over to State College to begin with.

BY MR. LOUGHNEY:
Q. So you already had an appointment scheduled?
A. Right.
Q. And we had talked before we started the deposition about dates.
Does that refresh your recollection about maybe when you went?
Was it a couple of weeks or couple days?
A. It was a couple of weeks, it seems like, because I am old fashioned.
When I fell I didn't run to the doctor and say I cut my finger. I try to doctor myself.

And when my pain was getting worse instead of getting better, I knew that I had to find something was wrong with it.

Q. What pain are you referring to?

A. Where my pelvis was broke. I could barely walk.

Q. When did you first notice pain in your pelvis after the accident, when?

A. I noticed the pain the next morning.

Q. Okay.

A. After you lay there all night, then you know you got something wrong.

Q. Did you ever have any pain in your pelvis --

A. No.

Q. -- before?

A. No.

Q. Which side of the pelvis was it?

A. The right side.

Q. Could you describe the pain you had the next morning?

A. It was just sharp walking, sharp pain when you go to walk.

Every day it got worse and every day I would bathe it more and try to get -- use a heat pad and everything else, but nothing eased the pain.

Q. Now, the first pain was a sharp pain, you said --

A. Right.

Q. -- the morning after?

A. Yes.

Q. How long did that pain last?

A. It lasted a few minutes at a time.

Q. Did you take any medicine or medication for it?

A. Yes. Like I said, I got pain pills and I took them for --

Q. Where did you get the pain -- what were the pain pills that you got?

A. I got them from my doctor.

Q. Who is that?

A. Doctor Sarkar. He left -- I think they sent him out of town.

Q. I'm sorry.

A. Doctor Sarkar, S-A-R-K-A-R.

Q. Now, did you call him to get pain pills?

A. No, I had some that I had gotten off him before.

Q. So this wasn't -- and what were you taking pain pills for?

A. Arthritis. Everybody has got it.

Q. Do you know the name of the --

A. Yes, Darvocet.

Q. Did you take anymore pain pills after the fall than you did before the fall?

A. No, I took -- I took them on a schedule like I was supposed to.

Q. And you said your pain got worse?

A. Right.

Q. In your hip, we are talking about, I'm sorry, your right pelvis, is that right?

A. Right.

Q. So when I say pain, is it limited to right pelvis?

A. Well, it's in your pelvis. It's more like to the right than it is to the left.

Q. Did you also have pain in the left side of your pelvis?

A. No.

Q. Did you have any other pain that you attribute to the fall other than your right pelvis?

A. When the -- the doctor thought I had something the matter with my spine.

He thought I needed to get an x-ray, and that's how I come to get more pain pills.

They were giving me pain pills for my spine

hurting and it wasn't my spine. It was a break in my pelvis bone.

Q. Did you have problems with your spine before the accident?

A. No, no.

Q. Can you describe the pain?

The records indicate -- can we use that date, September 26, that you went to your doctor?

Would that -- if we said September 26, could we say that and --

A. That's about it, yes.

Q. That's about it?

A. Yes.

Q. Between September 10 and September 26, please tell me how your pain progressed in your right hip.

A. Each day I would walk it would get worse, and every night I would use a heat pad.

In fact, I went and bought one the whole body length. I thought it was going to cure my back and my pelvis and everything else, but it didn't do nothing. It was just -- there was nothing there to help it.

So that's when the doctor thought I had something the matter with my spine.

Q. So the first time that you went to the doctor they said you had a problem with your spine?

A. Yes.
Q. Is that right?
A. Yes.
Q. Did you complain about a pain in your spine?
A. No. Just because my back hurt they figured it was something in my spine.
Q. When did your back start to hurt?
A. After I fell.
Q. How long after you fell?
A. The next day. I told you the next day it started hurting, and each morning I would get up it would be hurting that much more.
Q. I thought it was the right pelvis?
A. It is the right side, but your pelvis bone, you can work it in all ways
Q. I am not trying to restrict you.
I am trying to find out every part of your body that hurt because of the fall.
A. I am going to tell you this. I don't know whether I am saying this right or not, but since this fall I can't even lift my left leg.
Now, what causes that? To get in the car I have to lift up my left leg to get in the car, and that never happened until I broke my pelvis.
So why your pelvis operates more than that on

your body than you think.
Q. And I am not arguing with you or debating it. I am just trying to find out wherever you had pain.
After the accident, as I understand, you had no pain until the morning after the accident, is that correct?
A. Right, right.
Q. And where was that pain the morning after the accident?
A. It was towards my back. We thought it was in the back.
I will be honest with you. That doctor thought I had cancer in the back, and then when they took the x-rays and double x-rayed they discovered there was no cancer in my spine whatever.
Q. So the pain you had the morning after the accident was in your back, is that correct?
A. Yes, it went to my back and down like in my legs. It would hurt me to walk.
Q. What part of your back did you have pain in the day after the accident?
A. Well, just like down the end of your pelvis, down the end of your tailbone.
Q. That's where you had the pain?
A. Yes.

Q. Did you have pain in any other part of your body other than the tailbone?
A. No. Just in the front of my pelvis bone and down my legs.
My husband had to help me to walk around. I couldn't walk by myself.
Q. The stones that you fell on, you said there were a couple. Could you estimate how many?
A. No. When something like that happens you don't stop and count the stones laying on the ground.
Q. Could you estimate the area like how big of an area it was?
A. Well, like in an area where a car had parked.
Q. So you had pain in your tailbone, right, the day -- the morning after the accident pain in your tailbone?
A. Right.
Q. At that time was there pain in your back as well?
A. Down the back of my legs and down the front of my legs.
Q. Both legs?
A. Both legs. That's why they thought it was my spine.
Q. Okay.

A. I saw the x-rays for my tailbone -- for my spine, and to me on the x-rays it looked like it was the right-hand side, but I'm not -- no doctor to read x-rays.
Q. Did you have any low back pain prior to the fall on September 10, 2001?
A. No.
Q. Did you have any pain in your pelvis area prior to September 10, 2001?
A. No.
Q. Did you have any pain in your legs prior to September 10, 2001?
A. No.
Q. Now, this problem in your tailbone, your back and your legs, tell me how that progressed between September 10, 2001 and September 26, 2001.
A. It just -- the pain just kept getting worse.
Q. Do you know whether you went to both State College and to Punxsutawney on September 26, 2001?
A. What's that now?
Q. Do you recall whether you went to get medical treatment both at State College and Punxsutawney in 2001 on September 26?
A. Punxsutawney?
Q. Punxsutawney. The reason I am asking is we

have records from Geisinger both in State College and in Punxsutawney.

A. Never went to Punxsutawney. Somebody's records are wrong.

MS. WOOD: Phillipsburg.

BY MR. LOUGHNEY:

Q. I'm sorry. Phillipsburg.

A. Okay. Phillipsburg was my regular doctor. Doctor Sarkar. He is our family doctor.

Q. Did you go see him before you went to see Doctor Ratner?

A. Right.

Q. You did?

A. Yes.

Q. Did you see them both the same day, do you know?

A. Let's tell you something here straight. I go to Doctor Sarkar for my family doctor.

Well, when I was hurting so bad he sent me to Doctor Wolf.

I don't know if you have Doctor Wolf there or not, but he is suppose to be a cancer specialist.

Well, he said, well, there wasn't nothing he could do unless I went to Phillipsburg or State College,

and had a test run and x-rays taken for cancer in the spine.

Because I was hurting so bad in front and back both and whether they -- when Doctor Ratner seen me there on the bed -- no, I didn't go to see Doctor Ratner that day, but he saw me on the bed and he asked me what I was there for.

And I told him and he said that there is no such thing as you having cancer in your spine. He said, we have had too many x-rays of you. I know better.

So he said we're going -- he said when I come back -- now this is the way he works.

He went to see the doctor that does the x-rays for your spine, and he came back and he said we are not going to x-ray your spine because there is nothing there wrong. And the x-ray guy went to my husband in the meantime and told him the same thing.

He said, she don't have no cancer in her spine, but he said let us run some more tests, and we'll find out what's wrong.

And that's when they found that my pelvis bone was broke and it affected my spine as well as my legs and my tailbone and everything else.

Q. That was the first visit after the fall? This all happened then?

A. That all happened the same day.

Q. That was the first visit after your fall, is that correct?

A. To State College for Doctor Ratner's when he found this tailbone broke.

It wasn't my first visit to Ratner.

Q. No, but what I mean is, the information you just told us about, that was told to you the first visit you went to your doctors after the fall, is that correct?

A. Right, right.

Q. Now, at the time you went to the doctor's on September 26, the first day after -- you went after the fall, were you having hip pain?

A. No. I have arthritis and everybody's got pain.

Like, in fact, to tell you the truth they told me I had a lot of arthritis in my neck, too.

Q. What I mean is, were you having pain in your hip when you went to --

A. I go for Doctor Ratner or Doctor Sarkar for pain -- for pain pills.

Q. What were you getting pain pills for prior to the fall?

A. For arthritis.

Q. In what part of your body?

A. My legs and my hips and my back.

Q. Prior to the fall at Wal-Mart on September 10, 2001, did you have any other falls from -- for any reason?

A. No.

Q. Were you having problems with your tailbone prior to the fall at Wal-Mart?

A. No.

Q. Did you have any problems with pulling sensations in your leg, either leg prior to the fall at Wal-Mart?

A. No.

Q. Did you have any hip problems prior to the fall at Wal-Mart?

A. No.

Q. Now, the information that you got when you went to the doctor's on September 26, 2001 about your pelvis, let's focus on the pelvis.

What exactly did they tell you was wrong with the pelvis?

A. He just said he thought maybe I had cancer there.

Q. Is that Wolf?

A. That was Wolf.

Q. And he is the cancer specialist?
A. He is suppose to be a cancer specialist.
Q. He thought you had cancer of the pelvis?
A. Yes.
Q. And then who told you that wasn't the problem or wasn't the case?
A. Doctor Sarkar or Doctor Ratner, and I don't know the doctor that x-rayed my spine that day.
He told us his name, but he's suppose to be the specialist that does the x-rays for your spine and pelvis and things like that.
Q. Okay.
A. In State College. I don't know his name.
Q. Is it --
A. They surely sent it to you.
Q. Is that doctor with Geisinger?
A. Yes.

(Discussion off the record)

BY MR. LOUGHNEY:
Q. Let me ask you, did any doctor ever tell you that your pelvis fracture, fractures were caused by the fall at Wal-Mart?
A. They can't tell you how it caused it. They

know I fell.
They know it was caused by the fall, but they don't know -- they can't prove it like I can't prove it either.
Q. I am asking you, did you ever -- did they ever ask you, take a history from you about the fall?
A. No.
Q. Did you ever tell them about the fall?
A. Yes, I told them about the fall.
Q. Who did you tell about the fall?
A. Doctor Ratner and the guy that took the x-rays.
Q. The first time you went there you told them about the fall?
A. Well, I told Doctor Sarkar, too.
Q. What did you say about it?
A. Doctor Sarkar is the one that sent me to Doctor Wolf and then Doctor Wolf got mad because I went to Doctor Ratner.
Q. Wolf was upset? Why was that?
A. Doctor Wolf got disappointed because he wasn't right.
Q. Wolf, he wasn't right about what?
A. Because he thought it was my spine and they said it wasn't.

Q. Who is they, Sarkar?
A. No. Doctor Wolf didn't like it because they told him that it wasn't my spine. It was my pelvis that was causing my trouble.
Q. Who is the they?
A. Doctor Ratner and doctor -- this doctor that took the x-rays.
A specialist don't like to be wrong.
Q. That's Wolf?
A. That's Wolf.
Q. He thought your problem was cancer in your back, is that right?
A. Right.

(Pause)

BY MR. LOUGHNEY:
Q. Prior to the accident at Wal-Mart, did you ever have any problems staggering when you walked?
A. Did I what?
Q. Any problems staggering when you walked?
A. No.
Q. I think you indicated that you never had any prior falls that you can recall, is that correct, or did you?

A. I said I didn't have any falls.
Q. No prior falls?
A. No prior falls.
Q. Prior to the accident at Wal-Mart?
A. Besides that, none.
Q. Did you have any broken bones prior to the fall at Wal-Mart?
A. Did I what?
Q. Prior broken bones?
A. Before I went to Wal-Mart?
Q. Before the fall at Wal-Mart?
A. Not that I recall of.
Q. Prior to the fall at Wal-Mart, did you ever have any problems bending?
A. What?
Q. Bending?
A. Bending?
Q. Yes.
A. No.
Q. Did you ever, prior to the fall at Wal-Mart, did you ever have any problems standing?
A. No.
Q. Prior to the fall at Wal-Mart, did you ever have any problems walking?
A. No.

Q. What problems do you have physically, since your fall at Wal-Mart, that you relate to the fall at Wal-Mart?
A. What problems is what now?
Q. Do you have any physical problems since the fall at Wal-Mart that you feel are caused because of the fall at Wal-Mart?
A. Anything I have now I blame it all on the fall.
Q. What are those problems?
A. I just hurt when I get up in the morning. I hurt. I try to work around the house and I hurt.
Q. What hurts?
A. Your bones. I am 83 years old.
Q. Okay.
A. And they all hurt.
Q. I understand, but I am saying, what problems do you feel were caused by Wal-Mart?
What physical problems do you have now that you feel are caused by the fall at Wal-Mart?
A. I feel that when I try to go in the car I have to lift my left leg up. I can't pick it up. We have a van.
You have to crawl in backwards or else you crawl in on one side and I have to lift my left leg in

order to get it in the van.
Q. And has anyone told you what that problem is?
A. No.
Q. Has anyone told you that's been caused by the injuries you sustained in the fall at Wal-Mart?
A. No.
Q. Why do you feel it's related to Wal-Mart?
A. Because it wasn't that way before.
Q. What else wasn't the way before the fall at Wal-Mart that you now complain about?
A. I just didn't hurt like I do. I can't walk like I used to.
Q. How are you restricted in walking?
A. I can walk so far, and then my legs will hurt.
The doctor told me last week move more legs. I said how am I going to move more legs when you live in a trailer.
Q. Which doctor was that?
A. That's doctor -- what's my new family doctor?
Q. Is that the doctor at Geisinger?
A. Yes, he's the new one.
MR. NADDEO: He took Sarkar's place.
THE WITNESS: He took Sarkar's place.
Marshall, do you remember his name?

MR. RUGH: No.

(Pause)

MR. NADDEO: I have it in here.
THE WITNESS: It starts with a P.

BY MR. LOUGHNEY:
Q. Beside the left leg problem getting in the car and your walking, do you have any other physical problems that you are relating to Wal-Mart?
A. I don't know how to explain it.
My pain is there. There is times my pain goes to my pelvis like it will feel like I just fell.
Then there's times it's just like numb, you know, like not when it's going to rain, it hurts. Just across my pelvis bone. No place else.
Q. Okay.
A. Did you find it?
MR. NADDEO: We'll get it.
MR. LOUGHNEY: Do you want me to break?
THE WITNESS: No. I was going to get my purse to see if I had his name in there.

(Pause)

BY MR. LOUGHNEY:
Q. Other than your pelvis, your leg and walking, any other problems that you are relating to the Wal-Mart fall?
A. Say that again.
Q. Besides your left leg problem, getting into the car, your walking and the pain in your pelvis you just told us about, any other problems that you are relating to Wal-Mart?
A. No. I have one little problem but maybe you have it wrote down.
Q. What's that?
A. I went in the Wal-Mart pharmacy after this happened and asked her to write out all my medicines, and I said, give it to me back to September 1st because I wasn't sure what we bought that day.
Q. Okay.
A. Well, September 10 is blacked out. They can read every one but September 10.
That's the only thing I have against Wal-Mart. They ain't fair.
Q. Do you think --
A. They should have given me the write out for what I bought on September 10th. It's blacked out so

that I couldn't read it.
Q. Did you ask them about that?
A. No, I didn't. Because I felt I didn't want to get the pharmacy in trouble.
Q. Why would the pharmacy be in trouble?
A. Well, I don't know Maybe they didn't think I would notice it.
Q. But I mean why would they -- why do you think that Wal-Mart would black out your prescription of September 10?
A. Because they didn't want nobody to know I bought the medicine there.
Q. Why?
A. They want to deny I was there.
Did you get one of them?
MR. MADDEO: We'll talk about that after.

BY MR. LOUGHNEY:
Q. Did you tell anybody at Wal-Mart the day of the fall that you had fallen there?
A. No.
Q. Did you ever tell anybody at Wal-Mart that you fell?
A. No.
Q. Why would you think they would want to black

out September 10th?
A. Because I was asked what I was there for, and I couldn't remember, and I know that I was there, and I know I bought medicine, but I couldn't remember what kind.
So I went and asked the pharmacist for a write out and September is marked out. The date, not what I bought, just the date that I wasn't there, and I was there.
Q. You are using -- what is it a walker now that you use?
A. Huh.
Q. You use a walker to get around now?
A. I use a walker when I can. Sometimes I hurt too bad I have to use a wheelchair.
Q. Did you ever use a cane or a walker or a wheelchair --
A. I tried the cane but I don't --
Q. -- prior to September 10 --
A. No.
Q. -- 2001?
A. No.
Q. Is your current doctor Doctor Parry, P-A-R-R-Y?
A. No, Pilgrim, Doctor Pilgrim.

Q. Have you ever seen any doctor that you feel was specifically for your injuries sustained in the fall at Wal-Mart on September 10, 2001?
A. What's that now?
Q. Did you ever go to any doctor or any other health care provider specifically for injuries sustained at Wal-Mart in September 10, on September 10, 2001?
A. The only ones I saw was Doctor Ratner, who like I told you, and the x-ray guy. That's the only doctors.
Q. What I am asking is, did you ever make any special visit to any health care provider because of Wal-Mart?
A. No.
Q. Do you attribute any restrictions in your ability to do work around the home because of the fall at Wal-Mart?
A. Say that again.
Q. Are you restricted in any way from doing any work around the home?
A. Yes.
Q. Do you attribute that to the fall at Wal-Mart, that restriction?
A. Right.
Q. You do?

A. I have a housekeeper that comes in and does the work.
Q. That's what I am asking you first.
Do you attribute your restriction to do work around the home to the injuries you sustained at Wal-Mart?
A. Yes.
Q. Now, what are those restrictions?
A. I can't lift nothing.
Q. Anything else?
A. I can't do hard work -- I can't like wash the clothes. I can't scrub the floor.
Q. Okay.
A. For example, I went to town with him the other day, and I was so wore out when I got home I had to go lay down just going to the store and walking, and going in and back out, pulling a few things off the shelf and sticking it in my cart.
Q. And you earlier said you had to hire a housekeeper?
A. Yes, we had to get a housekeeper through the Area of Aging.
Q. Now, did you get this housekeeper after the Wal-Mart accident?
A. After the accident, yes.

Q. And it's through -- where is it through again, please?
A. Huh?
Q. What agency is it through?
A. The Area of Aging.
Q. Okay.
A. It's all over. It's the Area of Aging. It's on Locust Street in Clearfield.
Q. And you didn't have any help through them prior to the Wal-Mart accident, is that correct?
A. No.
Q. That's a yes, is that correct?
A. That's correct.
Q. Did you have any housekeepers prior to the Wal-Mart fall from any other source either directly hired or through anybody else?
A. No.
Q. So you did all your own housework before?
A. Right.
Q. Does anyone live with you at home besides your husband?
A. No.
Q. At the time of the Wal-Mart accident, did anyone live at home with you?
A. No.

Q. Have you been restricted in any social activities because of the injuries you sustained at the fall at Wal-Mart?
A. No.
Q. Has your marriage been affected in any way, that is both physically or emotionally?
A. No.

(Pause)

BY MR. LOUGHNEY:
Q. Have you had to make any modifications to your home because of injuries you sustained --
A. Yes, we had to have a --
Q. -- injuries you sustained in the fall at Wal-Mart?
A. Since I fell at Wal-Mart I had to have a ramp put in.

(Pause)

BY MR. LOUGHNEY:
Q. How long was Doctor Sarkar -- is it pronounced Sarkar?
A. Sarkar.

Q. Sarkar. How long was he your family doctor?
A. A couple years.
Q. Before that who was?
A. I can't remember. At these medical centers you have one so long and then they trade you off.

(Pause)

BY MR. LOUGHNEY:
Q. In some of your records from Doctor Sarkar and I'll just read this and ask you if it refreshes your recollection.
That in 1990 you fell and hit your tailbone. Do you recall that?
A. I fell and hurt my tailbone?
Q. Hit your tailbone. Do you recall that?
A. No.
Q. That in '97 you fell and fractured your left humerus. Do you remember that?
A. No.
Q. That in 1997 you noted the acute onset of staggeriness since the fall and winter of that year, and that you noticed if you turned quickly, or you look up or bend over you will stagger.
Does that refresh your recollection about

anything like that?
A. That was in December. That's when I fell and slipped on the ice.
Q. In what year?
A. I don't know what year, but it's about two, maybe three, maybe two-and-a-half years.

(Pause)

BY MR. LOUGHNEY:
Q. What's your current weight?
A. One hundred thirty pounds.
Q. Have you lost weight since the Wal-Mart accident, do you know?
A. Yes.
Q. And what's your height, please?
A. Five foot one.
Q. And was the weight loss a planned weight loss?
A. No.
Q. Why do you feel you lost the weight, or actually do you remember what you weighed at the time of the Wal-Mart accident?
A. About 147, 148 pounds, or somewhere around there.

Q. And it's, I am sorry, what do weigh now, 130 you said?

I'm sorry. I didn't write it down. What do you weigh now?

A. I weigh 130 pound.

Q. And this weight loss of approximately 28 pounds was not planned, is that correct?

A. No.

Q. Do you know why you lost the weight?

A. I don't know.

(Pause)

BY MR. LOUGHNEY:

Q. In the office note of September 4, 2001, there is a reference to your having trouble bending, standing and walking.

You were having a pulling sensation down your left leg. Do you recall that?

A. Say this again.

Q. There's an office note of September 4, 2001 saying you are still having pain in your left hip and your coccyx for the past week.

You were having trouble standing, bending and walking and you were having a pulling sensation down

your left leg. Do you recall that?

A. I don't recall that, but the guy always -- every time I went in they tell me it was my arthritis.

So they tie one to the other, and I don't know.

Q. Do you recall then having those complaints?

A. Huh?

Q. On September 4, 2001?

A. Did I what?

Q. Do you recall having those complaints on September 4, 2001?

A. No.

Q. No?

A. No.

(Pause)

BY MR. LOUGHNEY:

Q. Any reason why you didn't tell the people at the garage in Wal-Mart that you fell?

A. No. I was just anxious to get out of there and get home.

My daughter can't see very good at night and she wanted us to hurry up and get going.

MR. LOUGHNEY: That's all I have.

(Recess taken)

CROSS-EXAMINATION

BY MS. WOOD:

Q. Mrs. Rugh, I am Ann Wood. I am an attorney here in Clearfield, and I represent Mr. Bailor who works -- who has a contract with Wal-Mart. He sweeps their parking lot.

A. Yes.

Q. If you don't hear what I say or you don't understand me, speak up, okay?

A. Okay.

Q. I just have a couple of questions.

At the time you were at Wal-Mart on the day that you went shopping, you were asked if you were carrying anything.

A. Right.

Q. Did you have a purse that you were carrying?

A. Yes.

Q. When you fell, did you have your purse with you?

A. Yes.

Q. So you were carrying your purse?

A. Yes.

Q. Were you carrying any packages of any kind?

A. No.

Q. Is your purse heavy?

A. Kind of.

Q. The parking lot at Wal-Mart that you drew, did you mark on there where you were when you fell? Look at your drawing here.

A. I am not a very good drawer.

Q. It's a fine drawing for what we need.

Where were you when you fell?

A. Wait till I see my own drawing here.

Q. Okay. Here's the garage at Wal-Mart.

You have got it marked with a G, and your car -- you ended up waiting for the wrecker is car number 2.

A. Right. Okay. I was up in here. There was an open field in here.

Q. Okay.

A. And I was -- there was like -- I will say there was three rows -- I am saying there was three rows of islands, and I was headed in this middle one because I got to walk out to the edge of that field.

Q. So you had walked back in the back part of the parking lot?

A. Right.

Q. Do you want to mark with a pen approximately

where you think you were?
A. I was in the -- I was still in the -- let's say this is the third one in the middle and I was over here. I was here.

(Witness drawing)

BY MS. WOOD:
Q. You were near the island close to the garage?
A. Right.
Q. Okay. And why don't we mark the area that you have just labeled with an R?
A. Yes.
Q. So you are marking in an island back by the garage?
A. Ain't that an awful drawing.
Q. It's fine for our purposes.
Mrs. Rugh, when you fell, were you just strolling around?
A. Just walking around waiting for the wrecker to come for the car.
Q. You weren't going to any particular place in the store or in the parking lot?
A. No, not at that time.
Q. Were you looking down and watching where you

were walking?
A. Well, more or less you just walk when you are taking a walk.
Q. When you first began to fall, felt yourself first going, did you feel like you slipped on something at that point?
A. Yes. I knew where I slipped on something, but I didn't know till afterwards that the pebbles were there, the little stones like where they get along the beach or wherever they get them.
Q. After you fell and before you saw the doctors that we've been talking about on September 26 when you saw Doctor Ratner?
A. Un-huh.
Q. Did you physically go to any other doctor between this 10th of September and the 26th?
A. No.
Q. Did you have any tests at any doctor's office or hospital between the 10th of September and the 26th?
A. Not that I recall.
Q. I think you testified that you had some existing pain medication?
A. Yes.
Q. Did you talk to any of the doctors that you had seen prior to your appointment on the 26th after the

fall?
A. I can't recall.
Q. When you talked about the appointment on the 26th of September, you said you had already had that appointment scheduled?
A. I must have if I -- I didn't keep records of anything that I fell or anything.
Q. Do you know why or who was sending you to State College on the 26th?
A. Who sent me?
Q. Yes.
A. Doctor Sarkar sent me to Doctor Wolf and Doctor Wolf sent me to State College.
Q. Was this some doctoring you were doing before the fall?
Had you already started this -- seeing these different doctors before the date you fell?
A. No. I saw Doctor Sarkar all the time.
Q. Had he set up any of the appointments to see Doctor Wolf or Doctor Ratner before the date of the fall?
A. He sent me to Doctor Wolf.
Q. Before the 10th of September when you fell?
A. No. No. He didn't send me to anybody after I fell.

Q. Did you go in to see Doctor Sarkar before you went to see Doctor Wolf or Doctor Ratner?
A. Yes, I was in there, but I don't know what for.
Q. Did you see Doctor Wolf at all before September 10th?
A. No.
Q. But you don't recall whether you had that appointment already set up?
A. I can't recall.
Q. You have said you were taking pain medication for your arthritis?
A. Yes.
Q. Where in your body were you having pain from the arthritis?
A. You have arthritis all through your body, so when you get up in the morning you are hurting. You take your pain medicine. That's all I can tell you.
Q. Did your back hurt with arthritis?
A. My back hurts and my shoulders hurts and my neck hurts.
Q. Did your legs hurt at all with arthritis?
A. Huh?
Q. Did your legs hurt at all?
A. Yes.

Q. Did your hip area hurt?
A. No, not too bad. When it is going to rain, it hurts.
Q. This was before the fall?
A. Yes, I would say before I fell.
Q. How long had you been taking pain medication for your arthritis before the fall?
A. Gee, I don't know. I don't keep a date on that either.
Q. Has it been a couple of months, a couple of years?
A. Well, at least a couple of years.
Q. The house that you live in, is it a one-story or a two-story house?
A. We live in a trailer now, one-story.
Q. At the time of the fall, did you live in a one-story or a two-story house or the trailer?
A. We lived in the trailer.
Q. Did you live in the same trailer you are living in now?
A. Yes. We had a big house and our house caught fire. That's why we are in a trailer.
Q. You have not -- because of the fall or since the fall you have not moved?
A. No no, because where the house sat the

trailer sits in the same spot.
Q. And the only thing you have had to do to the trailer since you fell has been a ramp?
A. Yes.

(Pause)

MS. WOOD: I have nothing further. Thank you.

CROSS-EXAMINATION

BY MS. ZAKEN:
Q. Mrs. Rugh, my name is Trisha Zaken. I represent another contractor at Wal-Mart.
I have a few questions for you, and I do apologize if I am being repetitive because I did come in a little late so I missed some of the questions that had been asked of you earlier.
On the day that you had fallen at Wal-Mart, what type of shoes were you wearing?
A. Reeboks. The same ones I got on now.
Q. Can I take a look at them?
A. Sure.

(Discussion off the record)

BY MS. ZAKEN:
Q. Now, I noted from the medical records that I have reviewed that you had a history of high blood pressure, is that true?
A. No.
Q. You don't have a medical history of high blood pressure?
A. No. I never had high blood pressure.
Q. On the day of this fall, were you taking any medications?
A. Just like pain medicine for --
Q. For your arthritis?
A. Right.
Q. You weren't taking anything other than pain medication?
A. Well, I take a heart pill that's suppose to be for your heart and your blood pressure and all that.
Q. Do you recall what the name of that heart pill was?
A. It's called Norvasc.
Q. Did you ever experience any type of dizziness or lightheadedness when you took Norvasc?
A. No.
Q. I see today you are wearing glasses, correct?
A. Not all the time.

Q. Were you wearing them on the day of your fall?
A. No.
Q. You were not?
A. I don't need the glasses. I can show you a pair I have in my purse, but he likes me with my glasses on, so I put them on.
Q. Do you know why you have to wear glasses or why do you? I am sorry.
A. I had my eyes operated on and I had implants put on.
So the only reason I wear glasses is when I have to read something small.
Q. Where do you get your eyes checked?
A. At Doctor Kleinhart in State College or Phillipsburg.
Q. I'm sorry. What was the name of the doctor?
A. Doctor Kleinhart.
Q. Prior to this fall in September of 2001, when was the last time you had seen Doctor Kleinhart?
A. Seen who?
Q. Doctor Kleinhart, your eye doctor.
A. It was only a couple of months.
Q. So maybe July?
A. Because I just got these glasses not too

long, about six months ago.
Q. On the day that you fell at Wal-Mart, were you wearing glasses?
A. No.
Q. How long has Doctor Kleinhart been your eye doctor?
A. About five years.
Q. Yes.
A. He is also a specialist.

(Pause)

BY MS. ZAKEN:
Q. I was listening to your testimony earlier when you were talking about your fall and you said -- you described what you believe you fell on to be stones, is that correct?
A. Yes.
Q. Do you know where those stones came from?
A. No, I don't.
Q. Did you see any other stones in any other area of the parking lot either before or after you had fallen?
A. I didn't look.
Q. Okay. Do you have any outstanding medical

bills?
A. Huh?
Q. Do you have any outstanding medical bills for any treatment that you claim is related to your fall, the injuries that you received in your fall, after your fall?
A. My hospital insurance was paid by Geisinger Gold and my Medicare takes up the rest.
Q. Did you have to pay any of your medical bills out of your own pocket?
A. No.
Q. Okay.
A. The only thing I pay is for an office call and it's $5.00.
Q. I noted in your medical records also that you had a history of smoking cigarettes?
A. I what?
Q. You have a history of smoking cigarettes?
A. Yes.
Q. Do you still smoke?
A. Yes.
Q. How much do you smoke?
A. Well, a pack lasts me two or three days.
Q. Okay.
A. I smoke a menthol light.

Q. Did you wear any type of morphine patch before your fall on September 10th?
A. Take what?
Q. A morphine patch. I saw in some of the medical records that you used a morphine patch.
A. Yes.
Q. Did you use that before September 10th?
A. No.
Q. No?
A. No.
Q. It was after your fall --
A. After I fell, I wear this. That is what these are.
MS. ZAKEN: Those are all the questions that I have. Thank you.
MR. SHRECKENGOST: I have no questions.

REDIRECT EXAMINATION

BY MR. LOUGHNEY:
Q. Do you have children?
A. Huh?
Q. Do you have any children?
A. Yes, they are all grown; none at home.
Q. Are they in the area?
A. Some of them.

Q. How many children do you have?
A. I had ten.
Q. And how many live in the area?
A. How many live in the area?
Q. Yes.
A. Two boys and three girls.
Q. Are the girls married?
A. Yes.
Q. What are their married names?
A. Well, Carol is divorced now.
Q. Carol Nottingham?
A. Shirley was divorced.
Q. What was Shirley's married name?
A. Huh?
Q. What was Shirley's married name?
A. Her name was Rougex, R-O-U-G-E-X.
Q. And before that she was Hemphill?
A. She was a Hemphill.
Q. And --
A. And Carol was a Hemphill.
Q. They married brothers?
A. They are sisters, the brothers, and Nancy was a Hemphill.
They live in like Clearfield and Phillipsburg. The boys are all gone but two.

Q. And were you married before --
A. Yes.
Q. -- your current husband?
A. Yes.
Q. What was the last name of any sons that were not?
A. Huh?
Q. Do you have any sons that are not last named Rugh?
A. No.
Q. Thank you.
A. I have one son here in Clearfield and one lives down where I live.
Q. And their last names are Rugh?
A. No.
Q. They are not Rugh?
A. No, they are not Rugh.
Q. What are their last names?
A. Swisher.
Q. S-W-I-S-H-E-R?
A. Right.
Q. What are their first names?
A. Leonard is one and Bryce is the other.
MR. LOUGHNEY: That's all I have. Do you want to read it?

MR. NADDEO: No, we'll waive.

(Signature waived)

(Deposition concluded at 10:58 a.m.)

WAWRZYNIAK REPORTING SERVICE 724-864-6993

Commonwealth of Pennsylvania)
County of Westmoreland)

I, Theodore E. Wawrzyniak, Registered Professional Reporter-Notary Public, in and for the Commonwealth of Pennsylvania, do hereby certify that the witness, ANNA M. RUGH, was first duly sworn by me to testify to the truth, the whole truth, and nothing but the truth, and that the foregoing deposition was taken at the time and place stated herein; and that said deposition was recorded stenographically by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witness.

I further certify that the inspection, reading and signing of said deposition were waived by counsel for the respective parties and by the witness.

I further certify that I'm not a relative, employee or attorney of any of the parties, or a relative or employee of either counsel, and that I'm in no way interested directly or indirectly in this action

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this _____day of_____, 2003. _____

Theodore E. Wawrzyniak, Notary Public-Registered Professional Reporter.

WAWRZYNIAK REPORTING SERVICE 724-864-6993

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,)
Plaintiffs,)
vs.) No. 02-1811-CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR tdba B&D ENTERPRISES,)
Defendants,)
vs.)
JAMES BAILOR, tdba B&D ENTERPRISES)
Additional Defendant,)
vs.)
ROGER R. HULL, tdba HSJ LAWNCARE and BOYLES INSURANCE, INC.,)
Additional Defendants.)

DEPOSITION OF MARSHALL E. RUGH, taken on behalf of the Defendants in the above-entitled cause, pursuant to the provisions of the Pennsylvania Rules of Civil Procedure of the Commonwealth of Pennsylvania, before Theodore E. Wawrzyniak, Registered Merit Reporter-Notary Public, at the Clearfield County Courthosue, 230 East Market Street, 1st Floor Annex, Commissioner's Office, Clearfield, PA 16830, on May 5, 2003, at 10:59 a.m.

WAWRZYNIAK REPORTING SERVICE
1250 Arline Drive
North Huntingdon, PA 15642
(724) 864-6993

APPEARANCES:

FOR THE PLAINTIFFS:
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FOR THE DEFENDANT HULL:
TRISHA A. ZAKEN, ESQ.
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APPEARANCES: (Continued)

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Clearfield, PA 16830

ALSO PRESENT:
ANNA M. RUGH

WAWRZYNIAK REPORTING SERVICE 724-864-6993

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WAWRZYNIAK REPORTING SERVICE 724-864-6993

MARSHALL E. RUGH, being first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOUGHNEY:

Q. Good morning, Mr. Rugh.
My name is Pat Loughney, and you were here when we spoke to your wife, is that correct?
Were you here for her deposition?

A. Yes.

Q. And I think at one point she mentioned you were hard of hearing?

A. That's right.

Q. Were you able to hear the questions and answers here today or not?

A. Yes, I heard them.

Q. Did you understand the instructions about not guessing and making sure you know the answer and if you don't understand to let us know?

A. Yes.

Q. Did you hear that?

A. Yes.

Q. What year were you and Mrs. Rugh married, please?

A. I think it was 1955.

Q. Okay.

WAWRZYNIAK REPORTING SERVICE 724-864-6993

A. '55.
Q. Would you be in trouble for that or not? I thought I saw '65, and maybe I am wrong. Was it '55?
A. I think so, yes.
MRS. RUGH: '65.

BY MR. LOUGHNEY:
Q. Did you and Mrs. Rugh have any children?
A. No.
Q. Together?
A. No.
Q. Do you have any children from any other marriage?
A. I have four.
Q. Are any of them in Clearfield County?
A. No, they are all out-of-town.
Q. Did you see your wife fall?
A. No, I was getting out of the car.
I was -- wait a minute.
I was getting out of the car when I went into the car area in the K Mart -- Wal-Mart to get the telephone, and I come out and she was already falling. She was already down on the ground, on the pavement.
Q. Do you recall going to the Wal-Mart that day to get a prescription filled?

A. No, I don't.
Q. You don't recall or you didn't?
A. I don't recall, you know.
MRS. RUGH: Pardon me. Can I say something?
He also had a stroke, so he is hard of remembering.

BY MR. LOUGHNEY:
Q. Can you remember anything about September 10th, 2001?

(Pause)

THE WITNESS: Not very well, no.

BY MR. LOUGHNEY:
Q. If I ask you how your wife is doing physically since September 10, 2001, and what her problems are and how she may have been different after September 10, could you say anything about that or can't you remember?
A. I can remember. She was not the same as she was before that the accident.
Q. What differences do you remember?
A. Her housework and what she does around the

house. Other than that, I don't know.
Q. What can you recall about that?
Is this something that's different since her Wal-Mart accident?
A. Yes, so -- I don't know.

(Pause)

(Discussion off the record)

MR. LOUGHNEY: I have no further questions.

CROSS-EXAMINATION

BY MS. WOOD:
Q. Mr. Rugh, how old are you?
A. I think 78.
MS. WOOD: Thank you.

REDIRECT EXAMINATION

BY MR. LOUGHNEY:
Q. Your wife said you had a stroke.
Do you remember when you had that?
A. About 15 years ago, I guess.
MRS. RUGH: Nine years ago.

BY MR. LOUGHNEY:
Q. Did you drive to Wal-Mart or you don't remember?
A. Yes, I drove up there.
Q. Do you remember driving there?
A. Yes.
Q. Do you remember picking your wife up, helping her up?
A. Yes.
Q. Do you remember what she said about anything when you picked her up?
A. I don't remember what she said, but her face was all -- her eye was blackened and her face was all -- where she fell on the stones.
Q. Did you see the stones?
A. No, I didn't see.
Q. Why did you mention stones? What caused --
A. When she fell her eyes was blackened for, I don't know.
MR. LOUGHNEY: I have nothing further.

(Deposition concluded at 11:03 a.m.)

Commonwealth of Pennsylvania)
County of Westmoreland)

I, Theodore E. Wawrzyniak, Registered Professional Reporter-Notary Public, in and for the Commonwealth of Pennsylvania, do hereby certify that the witness, MARSHALL E. RUSH, was first duly sworn by me to testify to the truth, the whole truth, and nothing but the truth, and that the foregoing deposition was taken at the time and place stated herein; and that said deposition was recorded stenographically by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witness.

I further certify that the inspection, reading and signing of said deposition were waived by counsel for the respective parties and by the witness.

I further certify that I'm not a relative, employee or attorney of any of the parties, or a relative or employee of either counsel, and that I'm in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this _____day of_____, 2003. _____
Theodore E. Wawrzyniak, Notary Public-Registered Professional Reporter.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **WAL-MART STORES, INC.'S MOTION FOR SUMMARY JUDGMENT** has been served by U.S. Mail, postage prepaid, this 17 day of July, 2003, upon all counsel of record as follows:

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William A. Shaw
Prothonotary

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

PRAECIPE FOR ARGUMENT OF DEFENDANT WAL-MART STORES, INC.'S MOTION FOR SUMMARY JUDGMENT

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

PRAECIPE FOR ARGUMENT
OF
DEFENDANT WAL-MART STORES, INC.'S
MOTION FOR SUMMARY JUDGMENT

TO THE COURT ADMINISTRATOR:

Please place Defendant Wal-Mart Stores, Inc.'s Motion for Summary Judgment on the next available argument list. Wal-Mart Stores, Inc.'s Motion and Brief in Support thereof has already been filed with the Court.

Respectfully submitted,

Dell, Moser, Lane & Loughney, LLC

By: Danielle M. Vugrinovich
Danielle M. Vugrinovich, Esquire
Attorneys for Wal-Mart Stores, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **PRAECIPE FOR ARGUMENT OF DEFENDANT WAL-MART STORES, INC.'S MOTION FOR SUMMARY JUDGMENT** has been served by U.S. Mail, postage prepaid, this 2nd day of September 2003, upon all counsel of record as follows:

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Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant

vs.

WAL-MART STORES, INC.,

Additional Defendant

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants

NO. 02-1811-CD

JURY TRIAL DEMANDED

Type of Pleading:

JAMES BAILOR'S, t/d/b/a B&D ENTERPRISES, REPLY TO ROGER R. HULL, t/b/d/a HSJ LAWNCARE'S NEW MATTER PURSUANT TO PA.R.C.P. 2252(d)

Filed on Behalf of:
James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant

Counsel of Record for this Party:

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

JAMES BAILOR'S, t/d/b/a B&D ENTERPRISES, REPLY TO ROGER R. HULL, t/d/b/a HSJ LAWNCARE'S NEW MATTER PURSUANT TO PA.R.C.P. 2252(d)

AND NOW COMES the Defendant, JAMES BAILOR, t/d/b/a B&D ENTERPRISES, by and through his counsel, Bell, Silberblatt & Wood and Ann B. Wood, Esquire, and files the following reply to New Matter pursuant to PA. R.C.P. 2252(d):

11. The allegations contained in Paragraph 19 of Roger R. Hull, t/d/b/a HSJ LAWNCARE'S New Matter, pursuant to PA. R.C.P. 2252(d) require no response. However, to the extent that a

response is deemed necessary and said allegations apply to Defendant Bailor, t/d/b/a B&D Enterprises, said allegations are denied pursuant to PA. R.C.P. 1029(e).

12. The allegations contained in Paragraph 20 of Roger R. Hull, t/d/b/a HSJ LAWNCARE'S New Matter, pursuant to PA. R.C.P. 2252(d) are conclusions of law which require no response. However, to the extent that a response is deemed necessary and said allegations apply to Defendant Bailor, t/d/b/a B&D Enterprises, said allegations are denied pursuant to PA. R.C.P. 1029(e).

WHEREFORE, Original Defendant, James Bailer, t/d/b/a B&D Enterprises, demands judgment in its favor and against all other parties.

Respectfully submitted,

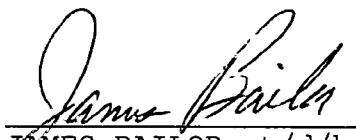
BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

VERIFICATION

I, JAMES BAILOR, t/d/b/a B&D Enterprises, state that the within statements in the foregoing James Bailer's, t/d/b/a B&D ENTERPRISES, Reply To Roger R. Hull, t/d/b/a HSJ Lawncare's New Matter, Pursuant to PA. R.C.P. 2252(d) are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.



JAMES BAILOR, t/d/b/a
B&D ENTERPRISES

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
WAL-MART STORES, INC.,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of James Bailer's, t/d/b/a B&D ENTERPRISES, Reply To Roger R. Hull, t/d/b/a HSJ LAWNCARE'S New Matter Pursuant to PA. R.C.P. 2252(d) with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on September 5, 2003:

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By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
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B&D Enterprises

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION -JURY TRIAL DEMANDED
NO.02-1811-CD

Marshall E. Rugh and Anna M. Rugh, husband and wife, Plaintiffs
vs.
Wal-Mart Stores, Inc., a Corporation and James Bailor, t/d/b/a B&D Enterprises, Defendants
vs.
James Bailor, t/d/b/a B&D Enterprises, Additional Defendant
vs.
Wal-Mart Stores, Inc., Additional Defendant,
vs.
Roger R. Hull, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, Inc., Additional Defendants

JAMES BAILOR'S t/d/b/a B&D ENTERPRISES, REPLY TO ROGER R. HULL, t/d/b/a HSJ LAWNCARE'S NEW MATTER PURSUANT TO PA.R.C.P. 2252(d)

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

MARSHALL E. RUGH
and ANNA M. RUGH,
husband and wife,
Plaintiffs,

v.

WAL-MART STORES, INC.,
a corporation,
and JAMES BAILOR, t/d/b/a
B&D ENTERPRISES,
Defendants.

No. 02 - 1811 - CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiffs

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William A. Shaw
Prothonotary/Clerk of Courts

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
	*	No. 02 - 1811 - CD
v.	*	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTEPRISES, Defendants.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiffs' First Request for Production of Documents Directed to Defendant Wal-Mart Stores, Inc., and Notice of Taking Deposition of Roger Gates in the above-captioned action were served on the following persons and in the following manner on the 19th day of November, 2003:

First-Class Mail, Postage Prepaid

Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Paul J. Walsh, Esquire
SUMMERS, McDONNELL, WALSH & KEEL, LLP
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Plaintiffs

JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

FILED
NOV 19 2003
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William A. Shaw
Prothonotary/Clerk of Courts

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

MARSHALL E. RUGH
and ANNA M. RUGH,
husband and wife,
Plaintiffs,

v.

WAL-MART STORES, INC.,
a corporation,
and JAMES BAILOR, t/d/b/a
B&D ENTERPRISES,
Defendants.

No. 02 - 1811 - CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiffs

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 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
	*	No. 02 - 1811 - CD
v.	*	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTEPRISES, Defendants.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Taking Deposition of Roger Gates in the above-captioned action was served on the following persons and in the following manner on the 26th day of January, 2004:

First-Class Mail, Postage Prepaid

Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Paul J. Walsh, Esquire
SUMMERS, McDONNELL, WALSH & KEEL, LLP
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

Bryan Shreckengost, Esquire
PIETRAGALLO, BOSICK & GORDAN
One Oxford Center, 38th Fl.
Pittsburgh, PA 15219

James A. Naddeo, Esquire
Attorney for Plaintiffs

JAMES A. NADDEO
ATTORNEY AT LAW
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

FILED
JAN 26 2004
William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

FILED

MAR 10 2004

William A. Shaw
Prothonotary

CONSENT ORDER

AND NOW, this 10th day of March, 2004, upon consent of counsel for Wal-Mart and counsel for Plaintiff, Plaintiff's counsel, and other defense counsel, at a mutually convenient date, can inspect those portions of any safety manual at the Wal-Mart Clearfield reference to parking lot maintenance.

CONSENTED TO:

James A. Naddeo

James A. Naddeo, Esquire
Counsel for Plaintiff

Patrick J. Loughney, Esquire
Counsel for Wal-Mart Stores, Inc.

BY THE COURT,

Judge J. Zimmerman

FILED
0 12:21 BH 2cc atty Naddeo
MAR 10 2004

William A. Shaw
Prothonotary

WAL 325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

PRAECIPE FOR ARGUMENT OF DEFENDANT WAL-MART STORES, INC.'S MOTION FOR SUMMARY JUDGMENT

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

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

FILED

APR 0 1 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

PRAECIPE FOR ARGUMENT OF DEFENDANT WAL-MART STORES, INC.'S MOTION FOR SUMMARY JUDGMENT

TO: COURT ADMINISTRATOR

Please place Defendant Wal-Mart Stores, Inc.'s Motion for Summary Judgment on the next available argument list. Wal-Mart Stores, Inc.'s Motion and Brief in Support thereof has already been filed with the Court.

Respectfully submitted,

Dell, Moser, Lane & Loughney, LLC

By: Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire
Attorneys for Wal-Mart Stores, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Wal-Mart's Praecipe for Argument of Motion for Summary Judgment has been served by U.S. Mail, postage prepaid, this 30th day of March, 2004, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 679
Clearfield, PA 16830
Counsel for Defendant James Bailor, t/d/b/a B&D Enterprises

Trisha A. Zaken, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219
Counsel for Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare

Bryan K. Shreckengost, Esquire
PIETRAGALLO BOSICK & GORDON
38th Floor, One Oxford Centre
Pittsburgh, PA 15219
Counsel for Additional Defendant Boyles Insurance, Inc.

Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire

FILED No CC
m/3:31 BM
APR 0 1 2004
William A. Shaw
Prothonotary/Clerk of Courts

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife	:	
vs.	:	No. 02-1811-CD
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES	:	
vs.	:	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE AGENCY, INC.	:	

ORDER

NOW, this 5th day of April, 2004, upon consideration of Defendant Wal-Mart Stores, Inc.'s Motion for Summary Judgment, a Rule is hereby issued upon the parties to Appear and Show Cause why the Motion should not be granted. Argument is scheduled the 7 day of May, 2004, at 1:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

APR 05 2004

William A. Shaw
Prothonotary

FILED
6 cc & Service Memo to atty Loughney
APR 0 5 2004

William A. Shaw
Prothonotary

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

AFFIDAVIT OF SERVICE

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Fittsburgh, PA 15219

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

FILED

APR 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

File No.:

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

Before me, the undersigned authority, a Notary Public in and for said Commonwealth and County, personally appeared, Patrick J. Loughney, Esquire, counsel for Wal-Mart Stores, Inc., Defendant in Civil Action No. 02-1811-CD of the Court of Common Pleas of Clearfield County, who being dully sworn according to law, deposes and says a copy of the April 5, 2004 Order of Court, Motion for Summary Judgment and Brief and Affidavit of Service were served on:

James A. Naddeo, Esquire
211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 679
Clearfield, PA 16830

Trisha A. Zaken, Esquire
Summers, McDonnell, Walsh & Skeel
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

Bryan K. Shreckengost, Esquire
Pietragallo Bosick & Gordon
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

via U.S. Mail, 5:00 p.m. mail pick-up, postage pre-paid, on April 7, 2004.

Patrick J. Loughney, Esquire
Counsel for Wal-Mart Stores, Inc.

Sworn to and subscribed
before me this 7th day of
April, 2004.

Notary Public

Notarial Seal
Linda A. Curtis, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Aug. 27, 2004
Member, Pennsylvania Association of Notaries

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Affidavit of Service has been served by U.S. Mail, postage prepaid, this 7th day of April, 2004, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 679
Clearfield, PA 16830
Counsel for Defendant James Bailor, t/d/b/a B&D Enterprises

Trisha A. Zaken, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219
Counsel for Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare

Bryan K. Shreckengost, Esquire
PIETRAGALLO BOSICK & GORDON
38th Floor, One Oxford Centre
Pittsburgh, PA 15219
Counsel for Additional Defendant Boyles Insurance, Inc.

Patrick J. Loughney, Esquire

FILED NO CC
m/1:22BH
APR 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE,

Additional Defendant.

CIVIL DIVISION

Docket No.: 02-1811-CD

MOTION FOR SUMMARY JUDGMENT

(Jury Trial Demanded)

Filed on Behalf of the Additional Defendant: Roger R. Hull, t/d/b/a HSJ Lawncare

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

SUMMERS, McDONNELL, WALSH & SKEEL
Firm #911

The Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

(412) 261-3232

#11177

FILED

APR 14 2004
m/1:30/cm
William A. Shaw
Prothonotary/Clerk of Courts
NO CENT COPIES

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE,

Additional Defendant.

CIVIL DIVISION

Docket No.: 02-1811-CD

(Jury Trial Demanded)

MOTION FOR SUMMARY JUDGMENT

AND NOW, comes the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, by and through its attorneys, Summers, McDonnell, Walsh & Skeel, and Paul J. Walsh III, Esquire, and hereby moves this Court for Summary Judgment and in support thereof avers the following:

1. This matter arises out of an alleged slip and fall accident that occurred in Original Defendant, Wal-Mart Stores, Inc.'s (hereinafter referred to as Wal-Mart),

parking area on September 10, 2001. See Plaintiffs' Amended Complaint at ¶¶ 1-14; attached heretc and marked as Exhibit "A".

2. Plaintiff-wife alleges that she slipped and fell on debris that had migrated from an island onto the surface of the Wal-Mart parking area. See Plaintiffs' Amended Complaint at ¶¶ 14-16.

3. Plaintiffs allege that Original Defendants, Wal-Mart and James Bailor, t/d/b/a B&D Enterprises (hereinafter referred to as Bailor), were negligent in failing to inspect the parking area, failing to remove debris from the parking area, and failing to warn customers of the debris in the parking area. See Plaintiffs' Amended Complaint at ¶¶ 15 and 24.

4. On or about January 9, 2003, Bailor filed a Complaint to Join this Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare (hereinafter referred to as Hull or this Defendant), alleging that Hull failed to inspect the planted areas, and failed to remove and properly dispose of debris from the landscaped areas. See Bailor's Complaint to Join Additional Defendant Hull at ¶ 6; attached hereto and marked as Exhibit "B".

5. On or about March 12, 2003, Wal-Mart filed its Complaint to Join this Additional Defendant, Hull, alleging that Hull is contractually obligated to indemnify, defend, and hold harmless Wal-Mart for any damages awarded to Plaintiffs as a result of Wal-Mart's negligence. See Wal-Mart's Complaint to Join Additional Defendant Hull at ¶ 6; attached hereto and marked as Exhibit "C".

6. On or about May 1, 2000, this Defendant entered into a contract with Wal-Mart to provide Wal-Mart with lawn mowing and landscaping services. The contract did **not** impose a contractual duty on the part of Hull to remove debris from Wal-Mart's

parking areas. See Outside Maintenance Agreement between Wal-Mart and Hull; attached hereto and marked as Exhibit "D".

7. In fact, this Defendant's contract with Wal-Mart specifically excluded provisions requiring Hull to remove debris from Wal-Mart's parking lot areas. It also excluded maintenance of the decorative rock layer within Wal-Mart's premises. See Exhibit "D". Wal-Mart Co-Manager Ronald Orris initialed the sections of the contract that limited this Defendant's scope of work. See Deposition Transcript of Ronald Orris, p. 11, lines 4-25, and p. 12, lines 1-11; attached hereto as Exhibit "E". Thus, pursuant to the contract, this Defendant did not have a duty to remove debris from Wal-Mart's parking lot.

8. On or about May 1, 2000, Bailor entered into a contract with Wal-Mart to provide Wal-Mart with services that included, but were not limited to, sweeping of Wal-Mart's parking area. This contract imposed a duty on the part of Bailor to sweep Wal-Mart's parking areas three (3) times per week. See Outside Maintenance Agreement between Wal-Mart and Bailor; attached hereto and marked as Exhibit "F".

9. Prior to the date of alleged accident, Wal-Mart Manager Roger Gates decided to reduce the number of times per week Bailor was to sweep Wal-Mart's parking area from three (3) times per week to one (1) per week some time in June or July of 2001. See Deposition Transcript of Roger Gates, pgs. 23-24, lines 8-25 and 1-4 respectively; attached hereto and marked as Exhibit "G".

10. Prior to Plaintiff-wife's alleged accident on September 10, 2001, this Defendant last performed landscaping services at Wal-Mart on or about August 14, 2001. See HSJ Lawncare Invoice dated August 15, 2001; attached hereto and marked as Exhibit "H"

11. Defendant Bailor swept the Wal-Mart parking lot four (4) times between August 19, 2001, and September 10, 2001, including the morning of the alleged accident. See Deposition Transcript of James Bailor, pgs. 19-20, lines 2-25 and 1-4 respectively; attached hereto and marked as Exhibit "I". See also B&D Invoice #121 dated August 28, 2001, and #133 dated September 24, 2001; attached hereto and marked as Exhibit "J".

12. Defendant Bailor testified that the sweeper he used to sweep the parking lot was able to pick up mulch and/or stones that may have been used in the island, which is the same material that Plaintiff-wife alleges to have caused her fall. See Exhibit "I", p. 27-28, lines 16-25 and 1-5 respectively.

13. In addition to the sweeping performed by Mr. Bailor, all Wal-Mart employees were to inspect the parking lot area on **a daily basis**. See Deposition Transcript of Melvin Knezevich, p. 36, lines 5-15; attached hereto and marked as Exhibit "K".

14. On or about July 14, 2003, Wal-Mart filed a Motion for Summary Judgment and Brief in Support Thereof. Wal-Mart argues that Plaintiffs are unable to present a *prima facie* case that the injuries Plaintiff-wife sustained were caused by Wal-Mart's alleged negligence, and that Plaintiffs are unable to raise a genuine issue of material fact that Wal-Mart had actual or constructive notice of the alleged condition. See Wal-Mart Motion for Summary Judgment and Brief in Support Thereof; attached hereto and marked as Exhibit "M".

16. In that Plaintiffs do not have a direct right of recovery against Hull and Wal-Mart's Complaint to Join this Defendant alleges that Hull is contractually obligated to indemnify, defend, and hold harmless Wal-Mart for any damages awarded to

Plaintiffs as a result of Wal-Mart's negligence, this Defendant incorporates by reference Wal-Mart's Motion for Summary Judgment and arguments therein.

I. THIS DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW WHERE PLAINTIFFS ARE UNABLE TO OFFER EVIDENCE REGARDING THE CAUSE OF THE FALL.

17. There is no direct evidence as to the cause of Plaintiff-wife's alleged fall. As such, Plaintiffs cannot establish a *prima facie* case of negligence and summary judgment is warranted.

18. This Defendant hereby incorporates Wal-Mart's Motion for Summary Judgment and Brief in Support, previously filed.

WHEREFORE, this Defendant respectfully requests this Honorable Court to grant this Motion for Summary Judgment.

II. IN THE ALTERNATIVE, THIS DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW SINCE THIS DEFENDANT DID NOT HAVE ANY DUTY TO INSPECT FOR OR REMOVE DEBRIS WITHIN WAL-MART'S PARKING AREA.

19. The alleged cause of Plaintiff-wife's slip and fall did not arise out of any breach of this Defendant's duty as defined by the scope of this Defendant's contract with Wal-Mart. Specifically, this Defendant was not under a duty to sweep, clean or remove debris form Wal-Mart's parking lot.

20. The scope of this Defendant's contractual duty included maintaining Wal-Mart's planted areas and mowing the lawn. See Exhibit "D".

21. Pursuant to the this Defendant's contract with Wal-Mart, this Defendant was only to provide Wal-Mart with lawn mowing and landscaping services. The contract did **not** impose a contractual duty on the part of this Defendant to remove debris from Wal-Mart's parking areas. See Outside Maintenance Agreement between Wal-Mart and Hull; attached hereto and marked as Exhibit "D".

22. In fact, this Defendant's contract with Wal-Mart specifically excluded provisions requiring Hull to remove debris from Wal-Mart's parking lot areas. It also excluded maintenance of the decorative rock layer within Wal-Mart's premises. See Exhibit "D". Wal-Mart Co-Manager Ronald Orris initialed the sections of the contract that limited this Defendant's scope of work. See Deposition Transcript of Ronald Orris, p. 11, lines 4-25, and p. 12, lines 1-11; attached hereto as Exhibit "E". Thus, pursuant to the contract, this Defendant did not have a duty to remove debris from Wal-Mart's parking lot.

23. It is clear that this Defendant did not have a duty to sweep, clean or otherwise remove debris from Wal-Mart's parking lot. Rather, it was the responsibility of Defendant Bailor and/or Defendant Wal-Mart to inspect and remove debris from Wal-Mart's parking lot. This Defendant is entitled to judgment as a matter of law.

WHEREFORE, this Defendant respectfully request this Honorable Court to enter the attached Order, granting this Defendant's Motion for Summary Judgment and dismissing Plaintiffs' and the Original Defendants' Complaints with prejudice imposed.

Respectfully submitted,

SUMMERS, McDONNELL, WALSH & SKEEL

By _____
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Motion for Summary Judgment** has been mailed to counsel of record via U.S. first class mail, postage pre-paid, this 12 day of April, 2004.

James A. Naddeo, Esquire
211½ E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 E. Locust Street
P.O. Box 670
Clearfield, PA 16830
(Counsel for Defendant/Additional Defendant, James Bailor t/d/b/a B&D Enterprises)

Patrick J. Loughney, Esquire
Dell, Moser, Lane & Loughney
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219
(Counsel for Defendant, Wal-Mart Stores, Inc.)

SUMMERS, McDONNELL, WALSH & SKEEL

By _____
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

CP

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife	:	
vs.	:	No. 02-1811-CD
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES	:	
vs.	:	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE AGENCY, INC.	:	

ORDER

NOW, this 16th day of April, 2004, upon consideration of Attorney Walsh's Motion for Summary Judgment, a Rule is hereby issued upon the parties to Appear and Show Cause why the Motion should not be granted. Argument is scheduled the 7 day of May, 2004, at 1:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

FILED

APR 16 2004

William A. Shaw
Prothonotary

BY THE COURT:

Judge J. Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

02:19 5 cc to atty Walsh w/ service memo

APR 16 2004

William A. Shaw
Prothonotary

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	
Plaintiffs	NO. 02-1811-CD
vs.	JURY TRIAL DEMANDED
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	Type of Pleading: MOTION FOR SUMMARY JUDGMENT
Defendants	
vs.	Filed on Behalf of: James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	Counsel of Record for this Party:
Additional Defendant	Ann B. Wood, Esquire
vs.	Supreme Court No.23364
WAL-MART STORES, INC.,	Bell, Silberblatt & Wood
Additional Defendant	318 East Locust Street
	P.O. Box 670
vs.	Clearfield, PA 16830
	(814) 765-5537
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants	

FILED
MAR 27 2004
Prothonotary/Clerk of Courts

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
WAL-MART STORES, INC.	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

MOTION FOR SUMMARY JUDGMENT

NOW COMES, the Original/Additional Defendant, JAMES BAILOR, t/d/b/a B&D ENTERPRISES, by and through his attorney, Ann B. Wood, Esquire, and hereby moves this Court for Summary Judgment and in support thereof avers the following:

1. This matter arises out of an alleged slip and fall incident that occurred on or about September 10, 2001 in the

parking lot of the Clearfield store belonging to Original Defendant, Wal-Mart Stores, Inc. (hereinafter referred to as ("Wal-Mart"). See Plaintiffs' Amended Complaint attached hereto and marked as Exhibit "A".

2. The Plaintiff alleges that she slipped and fell on debris that had fallen out of an island onto the surface of the Wal-Mart parking area. See Plaintiffs' Amended Complaint attached hereto and marked as Exhibit "A".

3. The Plaintiffs allege that Original Defendants, Wal-Mart and James Bailor, t/d/b/a Enterprises, (hereinafter referred to as "Bailor") were negligent in failing to inspect the parking area, in failing to remove debris from the parking area and in failing to warn customers of debris in the parking area. See Plaintiffs' Amended Complaint attached hereto and marked as Exhibit "A".

4. On or about December 20, 2002, Wal-Mart filed an Answer, New Matter and New Matter Pursuant to Pa.R.C.P.2252(d) joining Bailor as an Additional Defendant alleging that Bailor failed to properly clean the parking area and further alleging that Bailor had a contractual obligation with Wal-Mart to oversee all of the maintenance of the Wal-Mart parking area. See Wal-Mart's New Matter Pursuant to Pa.R.C.P. 2252(d) attached hereto and marked as Exhibit "B".

5. On or about January 9, 2003, Bailor filed a Complaint to join Roger R. Hull, t/d/b/a HSJ Lawncare, hereinafter referred to as "Hull", as an Additional Defendant alleging that Hull failed to inspect the planted areas and failed to remove and properly dispose of the debris from the landscaped areas. See Bailor's Complaint to Join Additional Defendant Hull attached hereto and marked as Exhibit "C".

6. On or about January 9, 2003, Bailor filed an Answer to the Amended Complaint, New Matter and New Matter Pursuant to Pa.R.C.P.2252(d) joining Wal-Mart as an Additional Defendant alleging that Wal-Mart was responsible for the maintenance of its parking areas. See Bailor's Answer to New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) attached hereto and marked as Exhibit "D".

7. That on or about April 28, 2003, Hull filed an Answer and New Matter Pursuant to 2252(d) joining Defendants, Wal-mart and Bailor, alleging that they were responsible for the maintenance of the parking area and/or were responsible for indemnification to the Defendant Hull. See Hull's Answer, New Matter and New Matter Pursuant to 2252(d) to Defendant Wal-Mart's Complaint attached hereto and marked as Exhibit "E".

8. That on or about May 1, 2000, Bailor entered into a contract with Wal-Mart to provide the Clearfield Wal-Mart with

sweeping and related maintenance services, including the parking lot, sidewalks, truck wells, and rear of the building. The contract provided for those services initially three (3) times a week. See Outside Maintenance Agreement between Wal-Mart and Bailor attached hereto and marked as Exhibit "F".

9. That prior to the alleged accident, then Wal-Mart Manager, Roger Gates, reduced the number of sweepings per week by Bailor from three (3) times a week to one (1) time a week in early Summer of 2001. See deposition transcript of Roger Gates, page 23, lines 8 to 25, and page 24, lines 1 through 4, attached hereto and marked as Exhibit "G". See deposition transcript of James Bailor, page 11, line 2, through Page 12, line 9, attached hereto and marked as Exhibit "H".

10. That in addition to the once weekly sweeping of the Wal-Mart Parking Lot by Defendant Bailor, Wal-Mart had in place a number of safeguards to assure that debris in the parking lot was spotted and removed for safety sake, including as follows: the regular policing and inspections of the parking lot area by all managers and co-managers. See deposition of Ronald L. Orris, pages 29 through 33, attached hereto and marked as Exhibit "I"; deposition of Melvin Knezevich, pages 21 through 23, attached hereto and marked as Exhibit "J"; and deposition of Roger Gates, page 26, line 21, through 34, line 12, attached hereto and marked as Exhibit "K".

11. In addition to the management responsibility for inspecting the parking lot, Wal-Mart has a regular plan for other employees to inspect the parking lot on a daily basis. See deposition of Ronald L. Orris, pages 29 through 33, attached hereto as Exhibit "I"; deposition of Roger Gates, page 34, line 18, through page 40, line 3, attached hereto and marked as Exhibit "G"; and deposition of Melvin Knezevich, page 31 through 36, 39 through 40, and page 43, attached hereto and marked as Exhibit "J".

12. That as part of Wal-Mart's regular job description for stock person/cart pusher on page 3 under daily tasks includes the responsibility for cleaning up spills immediately and making sure the parking lot is secure ("i.e., no lights are burned out, *no hazards,* etc.") Italic added. See Stock Person/Cart Pusher Job Description attached hereto and marked as Exhibit "K".

13. That Wal-Mart has, as part of its regular Risk Control Procedures, set up with priority items identified, including parking lot maintenance as set forth on page 2 of the risk control information, specifically including "working with store planning, if your store had issues with landscaping rocks as an incident cause". See Risk Control Slip and Fall Solution Manual pages attached hereto and marked as Exhibit "L".

14. That the normal practice of the Wal-Mart Stores would be to clean up any debris or spillage discovered in the

parking lot themselves during those time intervals between the once a week cleaning by Bailor and they would not call Bailor to come back in to perform additional services. See deposition transcript of Ronald L. Orris, page 23, attached here to and marked as Exhibit "I"; and deposition of Roger Gates, page 51, line 14, through page 52, line 15, attached hereto and marked as Exhibit "G".

15. That there have been no complaints about the work performed by Bailor in his sweeping during his performance of his contract with Wal-Mart. See deposition transcript of James Bailor, page 28, lines 6 through 11, attached hereto and marked as Exhibit "H".

16. That during her deposition, Plaintiff Wife testified that she assumed she fell on a small stone that had come from a nearby island, because she saw a stone on the ground after she fell. See deposition transcript of Anna Rugh, page 12 attached hereto and marked as Exhibit "M".

17. That the Plaintiff in no way has connected the possible existence of a stone on the ground with her actual fall. As such, the Plaintiffs have failed to establish any negligence on the part of Bailor in any way connected with her fall.

18. In the present case, there is no direct evidence that a small stone or other debris was the cause of Plaintiff's fall and; therefore, no genuine issue of material fact. The Plaintiffs cannot establish a *prima facie* case of negligence and Bailor is entitled to summary judgment with respect to all claims asserted against him.

19. Alternately, even assuming that there was sufficient direct evidence that Plaintiff fell on a small stone in the Wal-Mart Parking Lot, which is denied, Bailor is still entitled to summary judgment, as there is no evidence that Bailor caused the stone to be in the parking lot or that he had actual or constructive knowledge of the stone, nor had any duty to the Plaintiff to prevent stones from being in the parking lot at the time of the Plaintiff's alleged accident.

20. Further, in relation to the claims of contractual indemnification against Bailor through Wal-Mart's New Matter joining Bailor as an Additional Defendant, it is clear from the evidence that the correct interpretation of the contract does not put sole nor primary maintenance of the Wal-Mart Parking Lot on Bailor, whose sole responsibility is to sweep and remove debris once a week.

21. While Bailor had the responsibility to sweep the parking lot once a week, it is clear his responsibility to remove

trash and debris is limited only to that time period and only as to the areas of the parking lot that are accessible to him during the time he performs his services. See deposition transcript of James Bailor attached hereto and marked as Exhibit "H".

22. There is no evidence that Bailor was ever negligent int the performance of his weekly sweeping duty. See deposition transcript of James Bailor attached hereto and marked as Exhibit "H".

23. This Defendant would incorporate Wal-Mart's Motion for Summary Judgment and its Brief in support thereof in relation to Plaintiff's failure to establish a *prima facie* case of negligence and summary judgment is warranted therefore.

24. In the alternative, Bailor is entitled to judgment as a matter of law, because Bailor did not have full responsibility for the maintenance of the Wal-Mart Parking Lot beyond the once a week sweeping and as such, Defendant Bailor had no duty, under its contract or otherwise, to sweep, clean, or remove debris from Wal-Mart's Parking Lot at times other than its actual sweeping. Therefore, the alleged cause of Plaintiff's fall did not arise out of any breach of Bailor's duty to perform his contractual weekly sweeping.

25. That the scope of the duty to clean debris from Wal-Mart's Parking Lot is limited contractually to the once a week cleaning with Wal-Mart taking the responsibility for the inspection, maintenance and removal of debris from the parking lot at all times. It is clear that the responsibility to inspect and remove debris from the Wal-Mart Parking Lot during all times relevant hereto was that of Wal-Mart.

WHEREFORE, Bailor respectfully requests the Honorable Court to grant Defendant s Motion for Summary Judgment and to dismiss Plaintiffs' Complaint and Original Defendant Wal-Mart's and Additional Defendant Hull's Complaints with prejudice.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	
Plaintiffs	No.08-1811-CD
vs.	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	JURY TRIAL DEMANDED
Defendants	
vs.	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	
Additional Defendant	
vs.	
WAL-MART STORES, INC.,	
Additional Defendant	
vs.	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of MOTION FOR SUMMARY JUDGMENT with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on April 27, 2004:

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:
Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
525 William Penn Place
Suite 3700
Pittsburgh, PA 15219

Attorney For Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare:
Paul J. Walsh, III, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

Attorney for Former Additional Defendant, Boyles Insurance, Inc.
Bryan K. Shreckengost, Esquire
PIETRAGALLO, BOSICK & GORDON
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

Filed
12/17/02

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

MARSHALL E. RUGH
and ANNA M. RUGH,
husband and wife,
Plaintiffs,

v.

WAL-MART STORES, INC.,
a corporation,
and JAMES BAILOR, t/d/b/a
B&D ENTERPRISES,
Defendants.

No. 02 - 1811 - CD

Type of Pleading:

AMENDED COMPLAINT

Filed on behalf of:
Plaintiffs

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

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
v.	*	No. 02 - 1811 - CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTEPRISES, 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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
v.	*	No. 02 - 1811 - CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTEPRISES, Defendants.	*	

AMENDED COMPLAINT

NOW come the Plaintiffs, Marshall E. Rugh and Anna M. Rugh, and by their attorney, James A. Naddeo, Esquire, set forth the following:

1. That the Plaintiffs are Marshall E. Rugh and Anna M. Rugh, husband and wife, who reside at R. D. 1, Box 247, Frenchville, Pennsylvania 16836.

2. That the Defendant, Wal-Mart Stores, Inc., is a corporation, which conducts business in the Commonwealth of Pennsylvania having an office located at 100 Super Center Drive, Clearfield, Pennsylvania 16830.

3. That the Defendant, James Bailor, is an individual trading and doing business as D&B Enterprises, of 602 Susquehanna Avenue, Curwensville, Pennsylvania 16833.

COUNT I

Anna M. Rugh v. Wal-Mart Stores, Inc.

4. That at all times referred to herein the Defendant, Wal-Mart Stores, Inc., maintained a retail store known as Wal-Mart Super Center located on Route 879, Clearfield, Lawrence Township, Clearfield County, Pennsylvania, which facility includes an automotive center.

5. That appurtenant to the Wal-Mart Super Center and Automotive Center referred to in Paragraph 4 hereof, which is incorporated herein by reference, is a large public parking area with islands containing ornamental trees and wood chips/gravel to enhance the appearance of the islands.

6. That one of the islands referred to Paragraph 5 hereof is approximately 24 feet by 10 feet in size and is erected approximately 150 feet from the automotive center.

7. That on or about September 10, 2001, Plaintiff proceeded to the Wal-Mart Super Center described in Paragraph 4 hereof which is incorporated herein by reference.

8. That after the Plaintiffs completed their shopping they proceeded to the parking area where the Plaintiff, Marshall E. Rugh, attempted to start the 1994 Chrysler owned by the Plaintiffs.

9. That when the Plaintiff, Marshall E. Rugh, started his vehicle, he noticed that the heat gauge was elevated and immediately turned off the engine.

10. That the Plaintiff, Marshall E. Rugh, proceeded to the Automotive Center where he obtained the service of Defendant's employee to repair his vehicle.

11. That the Plaintiff, Marshall E. Rugh, was informed by an employee of the Defendant, Wal-Mart Stores, Inc., that he was incapable of repairing the vehicle on site and recommended that the car be removed closer to the Automotive Center until it could be towed.

12. That the Plaintiff, Marshall E. Rugh, followed the instructions of Defendant's, Wal-Mart Stores, Inc., employee and moved his vehicle and parked it to the east side of the island described in Paragraph 5 hereof.

13. That after parking their vehicle, Plaintiffs exited the car for the purpose of entering the Automotive Center to call a towing service as directed by Defendant's, Wal-Mart Stores, Inc., employee.

14. That the Plaintiff, Anna M. Rugh, proceeded approximately 10 to 15 feet toward Defendant's, Wal-Mart Stores, Inc., Automotive Center at which time she slipped and fell on debris which had migrated from the island described in Paragraph 5 hereof unto the surface of the parking area.

15. That the Defendant, Wal-Mart Stores, Inc., was guilty of the following negligence, recklessness and carelessness which was the proximate cause of the accident and the injuries received by the Plaintiff, Anna M. Rugh, as follows:

A. Defendant failed to inspect the parking area;

B. Defendant failed to warn customers of the debris on the parking area;

C. Defendant failed to remove debris from the parking area;

16. That as a result of the fall described in Paragraph 14 hereof, which is incorporated herein by reference, the Plaintiff, Anna M. Rugh, struck her head on the curbed parking area of the island and hit her pelvis on the paved parking surface causing numerous and serious injuries hereinafter set forth:

A. Multiple bruises and contusions;

B. Multiple fractures of the pelvis.

17. That the Plaintiff, Anna M. Rugh, claims a reasonable amount for the following:

A. A reasonable amount for pain and suffering; past, present and future;

B. Cost of replacing household services;

C. Privation and inconvenience due to the injuries and treatment, past, present and future;

D. Mental anguish and depression resulting from the accident;

E. Other damages allowable by law.

WHEREFORE, Plaintiff, Anna M. Rugh, claims unliquidated damages against the Defendant, Wal-Mart Stores, Inc., in an amount in excess of Twenty Thousand ($20,000.00) Dollars. Jury Trial Demanded.

COUNT II

Marshall E. Rugh v. Wal-Mart Stores, Inc.

18. That the Plaintiff, Marshall E. Rugh, incorporates Paragraphs 1 through 17 of this Complaint by reference and makes them a part hereof.

19. That the Plaintiff, Marshall E. Rugh, is the husband of Anna M. Rugh, having been married to the said Anna M. Rugh on August 14, 1965.

20. That the Plaintiff, Marshall E. Rugh, has resided with his wife, Anna M. Rugh, since the date of the parties' marriage and has continued to reside with her up to and including the time of the filing of this Complaint.

21. That as a result of the injuries suffered by the Plaintiff, Anna M. Rugh, the Plaintiff, Marshall E. Rugh, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.

WHEREFORE, Plaintiff, Marshall E. Rugh, claims unliquidated damages against the Defendant, Wal-Mart Stores, Inc., in an amount in excess of Twenty thousand ($20,000.00) Dollars. Jury Trial Demanded.

COUNT III

Anna M. Rugh v. James Bailor, t/a/d/a B&D Enterprises

22. That the Plaintiff, Anna M. Rugh, incorporates Paragraphs 1 through 21 of this Amended Complaint by reference and makes them a part hereof.

23. That the Plaintiff, Anna M. Rugh, believes and therefore avers that at the time of her accident the Defendant, James Bailor, t/d/b/a B&D Enterprises, was contracted by Wal-Mart Stores, Inc. to maintain the public parking area pertinent to the facilities located at the Wal-Mart Super Center, Route 879, Clearfield, Lawrence Township, Clearfield County, Pennsylvania.

24. That the Defendant, James Bailor, t/d/b/a B&D Enterprises, was guilty of the following negligence,

recklessness and carelessness which was the proximate cause of the accident and the injuries received by the Plaintiff, Anna M. Rugh, as follows:

A. Defendant failed to inspect the parking area;

B. Defendant failed to warn Wal-Mart customers of the debris on the parking area;

C. Defendant failed to remove debris from the parking area;

D. Defendant failed to use due care under all of the circumstances of the case.

WHEREFORE, Plaintiff, Anna M. Rugh, claims unliquidated damages against the Defendant, James Bailor, t/d/b/a B&D Enterprises in an amount in excess of Twenty Thousand ($20 000.00) Dollars. Jury Trial Demanded.

COUNT IV

Marshall E. Rugh v. James Bailor, t/a/d/a B&D Enterprises

25. That the Plaintiff, Marshall E. Rugh, incorporates Paragraphs 1 through 24 of this Amended Complaint by reference and makes them a part hereof.

26. That the Plaintiff, Marshall E. Rugh, is the husband of Anna M. Rugh, having been married to the said Anna M. Rugh on August 14, 1965.

27. That the Plaintiff, Marshall E. Rugh, has resided with his wife, Anna M. Rugh, since the date of the parties' marriage and has continued to reside with her up to and including the time of the filing of this Complaint.

28. That as a result of the injuries suffered by the Plaintiff, Anna M. Rugh, the Plaintiff, Marshall E. Rugh, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.

WHEREFORE, Plaintiff, Marshall E. Rugh, claims unliquidated damages against the Defendant, James Bailor, t/d/b/a B&D Enterprises, in an amount in excess of Twenty Thousand ($20,000.00) Dollars. Jury Trial Demanded.

James A. Naddeo
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

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

Marshall E. Rugh

Marshall E. Rugh

SWORN and SUBSCRIBED before me this 16th day of December, 2002.

Linda C. Lewis

Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2003

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, And JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 22252(d)

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

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

TO: ALL PARTIES

You are hereby notified to file a written response to the enclosed ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 2252(d) within (20) days from service hereof or a default judgment may be entered against you.

Patrick J. Loughney, Esquire

EXHIBIT

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"B"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, And JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA R.C.P. 2252(d)

AND NOW, comes Defendant, Wal-Mart Stores, Inc., (hereinafter referred to as "Wal-Mart") by and through its attorneys, Dell, Moser, Lane & Loughney, LLC and Patrick J. Loughney, Esquire, and files the within Answer, New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d) to Plaintiffs' Amended Complaint.

1. To the extent that Plaintiffs aver that Wal-Mart maintained the parking area for the condition of which Plaintiffs complain, then pursuant to Pennsylvania Rules of Civil Procedure the same is denied. On the contrary, it is averred that such maintenance had been sub-contracted to Co-Defendant James Bailor t/d/b/a B&D Enterprises, as is set forth in Exhibit 1 attached to this Answer and New Matter.

2. The averments of fact contained in the Plaintiffs' Amended Complaint are denied pursuant to Pa. R.C.P. 1029(e).

WHEREFORE, Defendant Wal-Mart Stores, Inc. denies that it is liable to any party and demanded judgment in its favor.

NEW MATTER

3. Should investigation or discovery in this case reveal the statute of limitations has not been tolled, then the defense of the statute of limitations is pled.

NEW MATTER PURSUANT TO PA. R.C.P. 2252(d)

4. The averments contained within Plaintiffs' Amended Complaint against James Bailor t/d/b/a B&D Enterprises (hereinafter referred to as "B&D Enterprises", are incorporated by reference for the purposes of this joinder only without admitting the truth of the same.

5. The terms and conditions of Exhibit "1" are incorporated by reference in this cross-claim.

6. Any responsibility for maintenance of the area in which Plaintiff fell was the responsibility of B&D Enterprises as set forth in Exhibit 1.

7. Wal-Mart demands both contractual and common law defense and indemnification from B&D Enterprises.

WHEREFORE, it is denied that Wal-Mart is liable to any party to this action. If it is found liable, it demands contribution contribution and/or indemnification from B&D Enterprises.

Respectfully submitted

Dell, Moser, Lane & Loughney, LLC

By: _____
Patrick J. Loughney, Esquire
Attorneys for Wal-Mart Stores, Inc.

Outside Maintenance Agreement

Xtreme copy 12/1/02

THIS AGREEMENT is made as of the 1 day of May 2000 between Wal-Mart Stores, Inc. a Delaware corporation, of 2001 South East Tenth Street, Bentonville, Arkansas 72712-6489 ("Owner") and _____("Contractor").

NOW, THEREFORE, for and in consideration of the obligations and other valuable considerations and covenants, the sufficiency of which is hereby acknowledged, Owner and Contractor do hereby agree as follows:

1. Preliminary--Definitions:

a. "Outside Maintenance Service" shall include landscaping and/or irrigation work, snow removal services, or parking lot sweeping as defined in Exhibit A attached hereto and made a part hereof, under the "Scope of Work".

b "Scope of Work" shall define the type and scope of the outside maintenance service work that this contract intends to cover.

c. "Work" shall be defined as any service provided within the defined Scope of Work.

2. General Requirements:

(2.1) The Contractor shall purchase and maintain such insurance as indicated below and with the limits listed below. Such insurance shall protect Owner and the Contractor from claims which may arise out of or result from the operations under this Agreement whether such operations are by himself, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance contracts shall contain a Waiver of Subrogation in favor of Owner and its affiliates.

Certificates of Insurance, acceptable to Owner, MUST BE RECEIVED by Owner before Owner will execute this Agreement or before any Work is performed, whichever is the earliest date. Failure to provide the proper Certificate of Insurance as required may result in the cancellation of the award of this Agreement or cancellation of this Agreement. The certification must indicate that the limits listed below are provided and that the insurance will not be canceled during the term of this contract without thirty (30) days prior written notice by registered mail to Owner.

HOLDER SHOULD READ: WAL-MART STORES, INC., ITS SUBSIDIARIES & ITS AFFILIATES, 2001 SE 10TH ST., Bentonville, AR 72716-6489.

Insurance policies meeting these requirements shall remain in effect for the duration of the Work. No payments to the Contractor will be authorized unless current Certificates of Insurance have been filed with Owner.

In no case should insurance coverage be less than:
- Statutory Workers' Compensation and Employer's Liability---$500,000 per occurrence.
- Commercial General Liability including Contractual Liability---$250,000.
- Business Auto Liability Coverage---$250,000.

The Contractor shall be responsible for securing Certificates of Insurance from all subcontractors for insurance coverage limits indicated above and shall make such Certificates available to Owner upon request.

(2.2) All requests for service(s) that are not included within the Scope of Work must be in writing and approved by Owner at Owner's sole discretion. Contractor shall not start additional work (which is not included in the Scope of Work) until the Owner's authorized representative has approved the request in writing. Failure to obtain advance approval before starting the additional work shall result in non-payment.

(2.3) The Owner may take any reasonable action necessary to control damage or protect the health, safety and welfare of the public in the event of problems involving the "Outside Maintenance Service" Such action on the part of the Owner shall not relieve the Contractor of any responsibilities related to any problems relating thereto.

EXHIBIT
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No part of the Work set forth herein shall be performed in any location or manner which may endanger the health, safety and welfare of the public now or in the future. Means, methods, techniques, sequencing, etc. are the sole responsibility of the Contractor.

(2.4) Contractor warrants and guarantees that all Work specified herein is to be performed in a workmanlike manner acceptable to Owner, which shall be the sole judge of quality of Work. In the event the Work proves to be unacceptable to Owner prior to the time payment is made, Contractor shall have ten(10) days to correct such defects at Contractor's own reasonable expense, with payment then due upon completion of the corrections(s). If Contractor fails to correct such defects to Owner's satisfaction within the time specified above, Owner shall have the right to correct the defects and deduct the cost thereof from the amount owed to Contractor by the Owner. In the event any defects in the Work are discovered by Owner after paying Contractor, then, upon receipt of notice from Owner, Contractor shall have ten(10) days to correct the defects at Contractor's own expense. If Contractor fails to correct such defects to the satisfaction of Owner, which shall be at the sole discretion of Owner, within the time specified, Owner shall have the right to cure and correct such defects and invoice the Contractor for such expenditures. Contractor shall within ten(10) days from receipt thereof, reimburse Owner for any and all cost incurred therein.

(2.5) Contractor shall coordinate its schedule in performing the Work with the applicable Owner location's Store Manager.

(2.6) Owner may terminate this Agreement without cause upon fifteen (15) day's prior written notice to Contractor.

(2.7) Contractor agrees that he/she shall assume sole and complete responsibility for the Work, including safety of all persons and property; and that the Contractor shall defend, indemnify, and hold the Owner and tenants harmless from any and all liability, real or alleged, in connection with the Contractor's, Contractor's employees, agents and subcontractors performance of the Work set forth herein, excepting for liability arising from the sole negligence of the Owner or tenants. Contractor shall ensure that all equipment utilized on the premises is provided with proper safety guards.

(2.8) The Contractor shall, throughout the course of the Work set forth herein, comply with all rules, ordinances, regulations, etc. set forth by agencies having jurisdiction, which apply to the premises, the Contractor, and/or contractor's employees and subcontractors.

(2.9) The Contractor shall ensure that all Contractor's employees, agents, and subcontractors present a neat, clean, appearance and conduct themselves in a business-like manner at all times while on Owner's property. Owner strongly encourages all Contractors to provide uniforms for their employees, agents, and subcontractors.

(2.10) This Agreement shall not be enforceable against Wal-Mart (or any of it's affiliates) unless, on behalf of Wal-Mart, this Agreement is executed by the applicable Divisional Manager assigned to the Wal-Mart location at which the Scope of Work is to be performed.

3. Scope of Work:

Contractor shall provide services at Wal-Mart Stores, Inc. Store/Sam's Club Store #2105, address: 100 Super Center ("Property") as set forth in the Scope of Work attached hereto as Exhibit "A" and made a part hereof. This Agreement is contingent upon the execution of Exhibit "A" by both parties.

4. Payment:

Owner shall make payment to Contractor within thirty (30) days after receipt of the Contractor's invoice at the address designated in this Agreement. Time required to process Contractor's invoice may be extended by Owner if required documentation is not submitted with each invoice.

Invoices must have the following information in order for payment to be made:

1. Invoice number
2. Invoice date
3. Date(s) that the service(s) was provided
4. Detailed description of service(s) provided
5. Itemized invoice amount
6. Wal-Mart/Sam's store number
7. Contractor's Wal-Mart vendor number
8. Attached "Work Completion Report" signed by Store Manager.

NOTE: Invoice for regular monthly contract service must show ONLY the regular monthly charge and no other charges. Approved additional charges must be invoiced separately.

All invoices should be sent to:

Wal-Mart Real Estate Accounting
PO Box X055
Bentonville, AR 72712

5. Pricing.

Pricing on Exhibit A shall include all labor (whether by Contractor or subcontractor) materials, taxes, permit fees (if applicable), and equipment.

6. Entire Agreement:

This Agreement constitutes the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Agreement is the result of good faith arms length negotiations. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

7. Successors:

It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or federal government. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

8. Notices:

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, or similar overnight delivery service, to the address of either party below. Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall

If to the Contractor:
NAME B&D Enterprises
ADDRESS 602 Susquehanna Ave.
CITY, STATE, ZIP Curwensville Pa. 16833
ATTN: _____

If to Owner:
WAL-MART STORES, INC.
2001 S.E. 10th Street
Bentonville, AR 72712-6489
Attn: Maintenance Division

:bts:

Contractor shall pay off and discharge any and all debts and obligations incurred pursuant to performing the Work, including but not limited to obligations owed to suppliers of material and subcontractors.

10. Term of Agreement:

This Agreement is for a period of 24 months, which may be terminated pursuant to Owner's right of termination set forth in paragraph (2.6) herein, and shall be effective as of the date written above. This Agreement shall automatically extend from year to year unless the same is terminated by Wal-Mart upon at lease thirty (30) days written notice prior to the end of the initial term of this Agreement or the extended term of this Agreement or unless terminated by Wal-Mart pursuant to it's right of termination set forth in paragraph (2.6) herein.

11. Severability:

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby; and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year set out.

CONTRACTOR:

B & O Enterprises

Jim Bailor 5/5/00

By: Date:

Jim Bailor

Print Name

(814) 236-0764

Phone

WAL-MART STORES, INC.

5-10-00

By: Date:

Tim Fox DM

Print Name Title:
(District Manager)

(814) 375-5010

Phone

Wal-Mart/Sam's Store No. 2129

More copy

Exhibit A

SCOPE OF WORK
SWEEPING

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 4/30/00

The Contractor shall provide sweeping and related maintenance services Work located at the Wal-Mart Store, Inc./Sam's Club # 2129, address: 100 Super Center Dr as follows:

- Areas are to be swept ("Areas") at intervals as listed below.
- Areas include, but are not limited to, parking lot, sidewalks, truck wells, and rear of the building.
- Contractor will report immediately any unusual findings such as graffiti, vandalism, excess trash being dumped on the property, vehicles blocking removal, or any other dangerous situation discovered on the property by providing a photograph of the unusual finding to the owner.

Contractor shall provide the Work set forth herein, per occurrence as set forth herein:

_____ Daily
_____ Weekly
_____ Bi-Weekly
_____ One Time per Month
_____ Intervals of # 3 per Week

Price per occurrence: $ 315.00 [redacted]

Acknowledged and Agreed to by:

CONTRACTOR:

B+D Enterprises
Name of Contractor

Jim Bailor 5/3/00
By: Date:

Jim Bailor
Print Name

OWNER:

WAL-MART STORES, INC.

5-10-00
By: Date:

Tim Fox D.M.
Print Name Title:
(District Manager)

Wal. 325

VERIFICATION

I, Patrick J. Loughney, attorney for Wal-Mart Stores, Inc., pursuant to Pa.R.C.P. 1024(c)(2), verify that the averments of fact made in this foregoing Answer, New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d) are true and correct and based upon my personal knowledge, information or belief. I understand that averments of fact in said document are made subject to the penalties of 18 Pa. C.S. §4904, relating to the unsworn falsifications to authorities. This Verification is made by the undersigned due to lack of sufficient time to obtain a Verification from Wal-Mart Stores, Inc., and will be provided when available.

Date: 12/26/02

Patrick J. Loughney, Esquire
Attorney for Wal-Mart Stores, Inc,

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 22252(d)** has been served by U.S. Mail, postage prepaid, this 20th day of June, 2002, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

James Bailor
B & D Enterprises
602 Susquehanna Avenue
Curwensville, PA 16833

Patrick J. Loughney, Esquire

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

COMPLAINT TO JOIN ADDITIONAL DEFENDANT
UNDER PA.R.C.P. 2252(a)

AND NOW, COMES the Defendant, JAMES BAILOR, t/d/b/a B&D ENTERPRISES, (hereinafter referred to as "Bailor") by and through his attorneys, Bell, Silberblatt & Wood, and Ann B. Wood, Esquire, and files the following Complaint against Additional Defendant pursuant to Pa.R.C.P. 2252(a):

1. That the Additional Defendant, Roger R. Hull, is an individual, trading and doing business as HSJ Lawncare, (hereinafter referred to as "HSJ Lawncare") of P.O. Box 260,

EXHIBIT
tabbies
"C"

Grampian, Pennsylvania 16838.

2. That the Additional Defendant, Boyles Insurance, Inc., is a corporation which conducts business in the Commonwealth of Pennsylvania, (hereinafter referred to as "Boyles") having an office located at 11 Nichols Street, Clearfield, Pennsylvania 16830.

COUNT I

James Bailor, t/d/b/a B&D Enterprises vs.
Roger R. Hull, t/d/b/a HSJ Lawncare

3. That the averments contained in Plaintiffs' Amended Complaint against Wal-Mart Stores, Inc. and against James Bailor, t/d/b/a B&D Enterprises, are incorporated by reference for purposes of this joinder only without admitting the truth of the same.

4. To the extent the Plaintiffs aver that Wal-Mart or Bailor maintained the parking area for the conditions of which Plaintiffs complained, it is averred that such maintenance had been subcontracted by Wal-Mart to Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, as set forth in Exhibit "1" attached to this Complaint.

5. That pursuant to said Contract, the responsibility for the maintenance of the landscaping, including the islands described in Plaintiffs' Complaint, were the responsibility of the Additional Defendant, HSJ Lawncare, to remove and properly dispose

of debris from the landscape areas.

6. That the Additional Defendant, HSJ Lawncare, was guilty of the following negligence, recklessness and carelessness, which was the approximate cause of the Plaintiff, Anna M. Rugh's, accident and injuries as follows:

(a) That the Additional Defendant, HSJ Lawncare, failed to inspect the planted areas as required by his Contract;

(b) That the Additional Defendant, HSJ Lawncare, failed to remove and properly dispose of debris from the landscape areas;

(c) That the Additional Defendant, HSJ Lawncare, failed to use due care under all of the circumstances of the case.

7. That any responsibility for the maintenance of the debris in the area in which the Plaintiff fell was the responsibility of HSJ Lawncare as set forth in Exhibit "1".

WHEREFORE, it is denied that Bailor is liable to any party in this action. If he is found liable, he demands contribution and/or indemnification from HSJ Lawncare.

COUNT II

James Bailor, t/d/b/a B&D Enterprises vs. Boyles Insurance, Inc.

8. That the averments contained in Plaintiffs' Amended Complaint against Wal-Mart Stores, Inc. and against James Bailor, t/d/b/a B&D Enterprises, are incorporated by reference for purposes of this joinder only without admitting the truth of the same.

9. That on or about March, 1995, the Original Defendant, Bailor, contacted the Additional Defendant, Boyles, to provide him with the appropriate insurance necessary to protect his commercial activities.

10. That the Defendant, Bailor, relied upon the expertise of the Additional Defendant, Boyles, and its agents and employees to recommend full and proper coverage of Defendant, Bailor's, commercial enterprise.

11. That the Additional Defendant, Boyles, issued a policy or policies for purposes of providing insurance to Bailor.

12. That the Additional Defendant, Boyles, failed to recommend or provide any commercial general liability insurance for Defendant, Bailor.

13. That the Defendant, Bailor, has continued to operate his commercial enterprise believing that he had received the appropriate coverages as recommended by Additional Defendant, Boyles, since March, 1995.

14. That Additional Defendant, Boyles, was guilty of the following negligence, recklessness and carelessness as follows:

(a) That Additional Defendant, Boyles, failed to provide or recommend to Bailor the appropriate general commercial liability coverage;

(b) That Additional Defendant, Boyles, failed to provide appropriate coverage to Bailor knowing that Bailor was relying upon the expertise and experience of Additional Defendant, Boyles, to provide such coverage as would be necessary to allow the operation of Bailor's business under circumstances that any liabilities arising from that business would be covered;

(c) That the Additional Defendant, Boyles, failed to use due care under all of the circumstances of the case.

15. That the Defendant, Bailor, demands common law defense and indemnification from Additional Defendant, Boyles, based upon its failure to provide and/or recommend the appropriate coverage for his commercial enterprise.

WHEREFORE, it is denied that Bailor is liable to any party in this action. If he is found liable, he demands contribution and/or indemnification from Boyles Insurance, Inc.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:

_____

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

VERIFICATION

I, JAMES BAILOR, t/d/b/a B&D Enterprises, state that the within statements in the foregoing Complaint To Join Additional Defendant Under Pa.R.C.P. 2252(a) are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

JAMES BAILOR, t/d/b/a
B&D ENTERPRISES

SCOPE OF WORK
LANDSCAPING:

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 4/1/2005

A. The Contractor shall provide regular maintenance services as outlined in this Agreement.

B. The Contractor shall examine the landscape, including irrigation, on a weekly basis, looking for problems or potential problems with the landscape.

C. The Contractor shall provide,at his/her own risk and sole expense, all labor, materials, tools, equipment, insurance, transportation, hauling, dumping, and all other items needed to provide the services outlined in this Agreement.

D. The Contractor shall make minor replacements and repairs to the landscape facilities as part of the required Work set forth herein. Major items needing replacement or repair shall be reported to the Owner's authorized representative within one week of occurrence. A minor item would be something that takes less than 30 minutes to repair using minimal replacement parts. A broken or plugged sprinkler nozzle would be an example of a minor item. Some specific guidelines for determining if an item is minor or major are given in the section pertaining to each item.

E Any facilities or Property damaged or destroyed as a result of the Contractor's operations on the premises shall be repaired or replaced at the Contractor's sole expense.

I. CARE OF PLANTED AREAS

A. Trees: Shall be maintained by Contractor in a healthy, vigorous growing condition, free from disease and large concentrations of pests.

1. Contractor shall prune trees that are under fourteen (14) tall once a year to remove dead, diseased, broken, dangerous, or crossing branches and as required herein. Pruning trees that are fourteen (14) or taller will be considered additional work. A written quote for pruning such trees should be separately submitted by Contractor to Owner and detailed in a separate work order.

2. Contractor shall prune trees only in appropriate months. Prune in accordance with generally accepted standards for proper pruning.

3. Contractor shall discard all tree trimmings away from the premises using a legal method.

4. Any tree found to be dead due to negligence by the Contractor should be replaced by Contractor within two weeks of death of such at the Contractor's expense. Replacement of trees that die due to mechanical damage will be paid for as additional work. A quote for all replacements must be submitted to Owner for Owner's approval and detailed in a separate work order.

5. Trees planted as a visual screen or noise buffer may be pruned as needed only to remove dead, diseased, broken, dangerous, or crossing branches. Some municipalities prohibit pruning trees without a permit. Contractor shall check with local authorities prior to pruning. The Contractor is responsible for obtaining and paying for any required permits.

B. Shrubs (including vines). Shall be kept by Contractor in a healthy, vigorous condition, free from disease and large concentrations of pests.

1. Shrubs shall be pruned by Contractor as needed to remove branches that are dead, broken, extending beyond the face of curbs or sidewalks, or are climbing building walls (unless they are intended to climb the wall, such as climbing vines).

2. When it is necessary to prune shrubs, Contractor shall prune them into natural, mounding forms. Contractor shall not shear shrubs into topiary (shapes) or formal hedges unless specifically instructed to do so in writing by the Owner's authorized representative.

3 Any shrub found to be dead due to negligent acts by the Contractor should be replaced within two (2) weeks of death at the Contractor's sole expense. Replacement of shrubs that die due to mechanical damage will be paid for as additional Work. A written quote for replacement is to be submitted by Contractor to Owner and detailed in a separate work order.

C. Fertilizer application.

1. Contractor shall fertilize all grass areas two times per year: spring, and fall. Additional applications will be applied if required with prior approval by Owner. All applications will be at the rate specified by the manufacturer. Contractor will fertilize all plants two times per year with proper fertilizers. No additional payment shall be made for the required fertilizer applications. Contractor must ensure that the application of fertilizer is done by a licensed applicator, if required by any state, local, or federal regulations.

D. Weed control:

1. Weeds in planted areas, sidewalks, curbs, gutters, or pavement shall be removed or killed weekly by Contractor as the weeds emerge. Weeds shall be removed by Contractor (not just killed) if they are larger than 2" (5 cm) in height or diameter. Contractor shall dispose of weeds away from the premises. Pre and post-emergent herbicides may be used at the Contractor's option. Contractor must ensure that the application of any and all pre and post-emergent herbicides is done by a licensed applicator, if required by any state, local, or federal regulations. Owner will make no additional payments for herbicide applications. The cost of all weed control Work shall be included in the Agreement price for landscape maintenance.

2. Contractor shall do regular maintenance of the mulch or decorative rock layer, which shall minimize weeds in shrub and groundcover areas. All mulched areas shall be re-mulched by Contractor one time each year to maintain a 2" thickness. The mulch material shall be provided by Contractor and be of the same type as existing unless otherwise specified by Owner.

E. Lawns:

1. Contractor shall keep lawns in a healthy, vigorous condition, free of disease and pests, except as noted below

2. Lawn height shall be maintained by Contractor between 3" and 5" and shall not exceed 5" (13 cm) at any time.

3. Contractor shall mow, edge and trim lawns weekly or as required to maintain an even, well-groomed appearance. Sidewalks, straight curb runs and large planting areas shall be edged by Contractor utilizing a vertical blade-edger. String trimmers may be used in other areas. Note: Contractors shall remove trash from areas to be mowed prior to mowing.

4. Contractor shall remove visible lawn clippings and dispose of them away from the premises in a legal manner. The Contractor is encouraged to use mulching mowers that cut clippings into small pieces that sift down into the lawn.

5. Any lawn area that is killed or dies due to Contractor negligence shall be replaced at the Contractor's sole expense, within two (2) weeks of the loss. If lawn loss was due to mechanical damage, replacement costs will be paid as additional Work. If lawn loss is due to mechanical damage, Contractor shall submit a quote to Owner for replacement and the quote must be detailed in a separate work order

6. Contractor shall hand water as needed to supplement natural rainfall or permanent irrigation system and maintain plantings in a healthy, stress-free condition. It is the Contractor's responsibility to make sure that plants receive adequate water regardless of weather conditions. It is also the Contractor's responsibility to ensure that plants are not over watered.

II. IRRIGATION (*This section is deleted for properties that are not irrigated.*)

A. It is the Contractor's responsibility to make sure that the irrigation system is maintained and operates properly.

B. It is the responsibility of the Contractor to conserve water and assure that all watering rules and regulations are followed. Any penalties, fines, or citations for watering ordinance violations and relating to such shall be paid the by Contractor.

C. The Contractor is responsible for the complete operation and maintenance of the irrigation systems. The Contractor shall examine the irrigation system for damage or malfunction weekly and shall report any damage or malfunction to the Owner's authorized representative in writing.

D. Contractor shall repair Minor Repairs with the irrigation system as defined herein (broken heads, risers and minor leaks). Owner will make no additional payment to Contractor for said Minor Repairs. Major Repairs to the irrigation system such as pump failures, etc., will be reported to Owner and repaired according to a separate written agreement between Owner and Contractor.

1. " Minor Repairs" include, but are not limited to, cleaning out irrigation lines, adjustment of spray heads and nozzles, adjusting zone controls, programming main controller, maintenance of spray heads and nozzles, including replacement of minor parts, minor leaks in lines, risers, laterals or other system components.

2. "Major Repairs" include, but are not limited to, major line breaks, repair and/or replacement of valves, controllers, pumps and backflow-preventers. Contractor shall submit a quote to Owner for repair and/or replacement of major components, and obtain written authorization from Owner prior to proceeding with such Work.

3. Owner reserves the right to determine whether a repair to the irrigation system will be considered Major or Minor. Nothing contained in this section shall relieve the Contractor from acting in a responsible manner in the event of an emergency involving the irrigation system to protect Property, and ensure the safety of all persons, and immediately curtail wholesale waste of water.

E. When breakdowns or malfunctions exist, the Contractor shall hand water, if necessary, to maintain all plant material in a healthy condition.

F. The Contractor shall maintain the irrigation system, including cleaning of filter screens yearly or more often if needed, and flushing pipes part of this system where applicable. WINTERIZATION. As a minimum, the system shall be shut down at the irrigation meter, and all zones shall be blown down with compressed air until all water has been evacuated from the system. Care will be exercised to ensure all heads are secured from ingress of rainwater and mud while system is Repressurized. Controller will be shut down. Contractor shall ensure the backflow preventer is completely drained and suitably protected from freezing.

G. Any replacement of irrigation system components shall be made by Contractor with materials of the same manufacturer and model as the original equipment. Substitutions of materials other than original equipment will be approved only when the original equipment has been discontinued and are no longer available for purchase at any location. The substituted equipment must be completely compatible with the original and must be approved in writing in advance by the Owner's authorized representative.

H. All repairs to the irrigation system shall be identical to the original installation, unless approved in writing by the Owner's authorized representative. If a change to the installation will result in lower future maintenance costs, less frequent breakage, or an increase in public safety, request authorization in writing to make the change from the Owner's authorized representative.

I. Contractor shall check for leaking valves, water running across sidewalks, water standing in puddles, or any other condition which hampers the correct operation of the irrigation System or the public safety. The Contractor shall carefully observe plant materials for signs of wilting, indicating a lack of water. Plants that die due to irrigation system failure will be considered to have died due to the Contractor's negligence or acts and shall be replaced at the Contractor's sole expense.

III. LITTER REMOVAL

A. All litter shall be removed by the Contractor from ~~sidewalks, gutters~~, and all planted areas each week. In no case shall trash, litter, or leaves be blown or swept by the Contractor onto the Property of others. All trash, litter, leaves, etc. shall be collected, hauled away, and disposed of by the Contractor away from the premises.

B. In addition to removing all litter from sidewalks, gutters and planting areas, the Contractor shall remove and dispose of any large miscellaneous debris or trash in the parking lot. For the purpose of this Agreement, "large" shall mean items the size of a small beverage cup or larger. The intent of this requirement is that the Contractor and it's workers should take sufficient pride in the appearance of the Property that they would pick up any significant litter they come across on the premises. Sweeping of the parking lots is not included in this Agreement. Contractor shall remove all litter from planting areas and sidewalks, regardless of the size of the litter. Contractor shall notify Owner in writing, with clear photographs attached, of excessive trash accumulation on the Property.

IV. CHEMICALS, HERBICIDES, PESTICIDES

A. All chemicals shall be used in accordance with label directions and the manufacturers recommended handling methods. Registered chemicals shall be handled in accordance with all applicable regulations. Registered chemicals shall be used only on the advice of a qualified, licensed, if required, pest control advisor. Nothing in this specification shall be construed to be the advice of, or to substitute for the advice of, a pest control adviser.

B. Pesticides shall not be applied within one hour of the start of operating hours of the store. In the event that it is not possible to complete the application by one hour prior to business hours (i.e 24-hour locations), applications shall be made at times when customer presence is minimal. Areas to be treated shall be blocked off and warning signs posted.

C. The Contractor shall take precautions to keep persons away from pesticide and herbicide-treated areas until the applied material is fully dry and the treated area is safe for entry. Follow the recommendations of the pesticide manufacturer and all applicable governmental and industry regulations.

V. PAYMENT

Owner agrees to pay the Contractor a total of $ 127.20 PER VISIT ~~per year~~ during the term of this agreement, payable in monthly payments of $ _____ each.

Additional Scope of Work

Acknowledged and Agreed to by:

CONTRACTOR:

HSI Lawncare
Name of Contractor

3-29-00
By: Date:

Roger R. Hollowood
Print Name

OWNER:

WAL-MART STORES, INC.

4-10-00
By. Date:

Tim Fox
Print Name Title
(District Manager)

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of Complaint To Join Additional Defendant Under Pa.R.C.P. 2252(a) with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on January 9, 2003:

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
211½ East Locust Street
Marino Building
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:

Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES

Additional Defendant

NO. 02-1811-CD

JURY TRIAL DEMANDED

Type of Pleading:

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA.R.C.P. 2252(d) TO PLAINTIFFS' AMENDED COMPLAINT

Filed on Behalf of:
James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant

Counsel of Record for this Party:

Ann B. Wood, Esquire
Supreme Court No. 23364

Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
(814) 765-5537

Attorney For Plaintiffs:

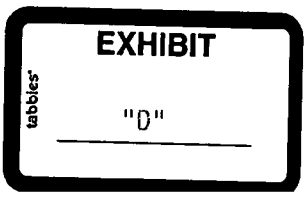
James A. Naddeo, Esquire
Supreme Court No. 06820

JAMES A. NADDEO & ASSOCIATES
211½ E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Attorney For Defendant, Wal-Mart Stores, Inc.:

Patrick J. Loughney, Esquire
Supreme Court No. 23163

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219
Phone: (412) 471-1180
Fax: (412) 471-9012



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA.
CIVIL DIVISION

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	

NOTICE TO PLEAD

TO ALL PARTIES:

You are hereby notified to file a written response to the enclosed Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Plaintiffs' Amended Complaint within twenty (20) days from service hereof or a judgment may be entered against you.

BELL, SILBERBLATT & WOOD
By:

Ann B Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a B&D
Enterprises

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	

ANSWER, NEW MATTER AND NEW MATTER
PURSUANT TO PA.R.C.P. 2252(d) TO PLAINTIFFS' AMENDED COMPLAINT

AND NOW, COMES the Defendant, JAMES BAILOR, t/d/b/a B&D ENTERPRISES, (hereinafter referred to as "Bailor") by and through his attorneys, Bell, Silberblatt & Wood, and Ann B. Wood, Esquire, and files an Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Plaintiffs' Amended Complaint as follows:

1. Paragraph 1 of the Complaint is admitted.

2. Paragraph 2 of the Complaint is admitted.

3. Paragraph 3 of the Complaint is admitted.

4. Paragraph 4 of the Complaint, to the extent that Bailor maintained the parking area in the condition of which the Plaintiffs complained, then such allegation is denied. On the contrary, it is averred that, though Bailor has been contracted to

sweep the parking lot of the Co-Defendant, Wal-Mart Stores, Inc., (hereinafter referred to as "Wal-Mart") Wal-Mart remains in full control of its parking area and is responsible for overseeing the conditions thereon.

5. The averments of fact contained in Plaintiffs' Amended Complaint are denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Defendant, Bailor, denies he is liable to any party and demands judgment in his favor.

NEW MATTER

6. Should investigation or discovery in this case reveal that the statute of limitations has not been tolled, then the defense of the statute of limitations is pled.

NEW MATTER PURSUANT TO PA.R.C.P. 2252(d)

James Bailer, t/d/b/a B&D Enterprises vs.
Wal-Mart Stores, Inc.

7. The averments contained in Plaintiffs' Amended Complaint against Wal-Mart Stores, Inc., (hereinafter referred to as "Wal-Mart") are incorporated by reference for the purposes of this joinder only without admitting the truth of the same.

8. That pursuant to an Outside Maintenance Agreement, dated May 1, 2000, Wal-Mart and Bailor entered into an agreement for the sweeping of the Wal-Mart premises, including the parking lot.

9. That pursuant to that contract in Paragraph 2.5, Bailor was to perform scheduled sweeping under the direction and supervision of the applicable local store manager.

10. That in March, 2001, the then store manager, believed to be Roger Gates, through his secretary, Susan Kavelack, notified Bailor to reduce his sweeping of the Wal-Mart premises to one (1) time per week.

11. That the once a week sweeping schedule has been maintained since March, 2001.

12. That Wal-Mart maintains full control of its parking area and has the responsibility to supervise that area and the responsibility to observe vandalism, excessive trash, vehicles blocking the parking lot, and any other dangerous situation on the property.

13. That as Wal-Mart controls the number of visits to its property by Bailor, Wal-Mart has the duty to observe the conditions

of its parking area and to notify Bailor should it discover a situation which requires additional sweeping under his contract.

14. That Wal-Mart is guilty of negligence, recklessness and carelessness which resulted in the conditions alleged by Plaintiffs as follows:

(a) That Wal-Mart failed to warn Wal-Mart customers of debris on the parking area;

(b) That Wal-Mart failed to notify Bailor of debris in the parking area which needed his attention and required additional work beyond his directed one (1) sweeping per week.

(c) That Wal-Mart failed to properly maintain the condition of its parking lot.

15. That any responsibility for the supervision of the parking area in which Plaintiff, Anna M. Rugh, fell was within the responsibility of Wal-Mart at the time of the occurrence.

WHEREFORE, it is denied that Bailor is liable to any party in this action. If he is found to be liable, he demands contribution and/or indemnification from Wal-Mart.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

VERIFICATION

I, JAMES BAILOR, t/d/b/a B&D Enterprises, state that the within statements in the foregoing Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Plaintiffs' Amended Complaint are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

JAMES BAILOR, t/d/b/a
B&D ENTERPRISES

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Plaintiffs' Amended Complaint with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on January 9, 2009:

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
211½ East Locust Street
Marino Building
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:
Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

RECEIVED APR 30 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

TO: PLAINTIFFS & DEFENDANTS

You are hereby notified to file a written response to the enclosed Answer and New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

SUMMERS, McDONNELL, WALSH & SKEEL, L.L.P.

#11177

CIVIL DIVISION

Docket No.: 02-1811-CD

ANSWER, NEW MATTER AND NEW MATTER 2252(d) TO DEFENDANT, WAL-MART STORES, INC.'S COMPLAINT TO JOIN ADDITIONAL DEFENDANT

(Jury Trial Demanded)

Filed on Behalf of the Additional Defendant: Roger R. Hull, t/d/b/a HSJ Lawncare

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

SUMMERS, McDONNELL, WALSH & SKEEL
Firm #911

The Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

(412) 261-3232

EXHIBIT

tabbies

"E"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

(Jury Trial Demanded)

ANSWER, NEW MATTER AND NEW MATTER 2252(d) TO DEFENDANT, WAL-MART STORES, INC.'S COMPLAINT TO JOIN ADDITIONAL DEFENDANT

AND NOW, comes the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, by and through its undersigned attorneys, Summers, McDonnell, Walsh & Skeel, LLP, and Paul J. Walsh III, Esquire, and files the following Answer, New Matter and New Matter 2252(d) and in support thereof avers as follows:

ANSWER

1. Paragraphs 1 and 2 of the Complaint to Join Additional Defendant are denied pursuant to Pa.R.C.P. 1029(c) and 1029(e). After reasonable investigation, this Additional Defendant has insufficient knowledge or information as to the truth or falsity of said averments and therefore, said averments are denied and strict proof thereof is demanded at the time of trial.

2. Paragraphs 3 through 6 of the Complaint to Join state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said averments are denied as stated. To the contrary, this Additional Defendant avers that the pleadings speak for themselves. By way of further answer, this Additional Defendant herein refers to and incorporates its previously set forth responses, hereinafter set forth responses, New Matter and New Matter 2252(d).

3. Paragraph 7 of the Complaint to Join is admitted.

COUNT I

WAL-MART STORES, INC. v. ROGER HULL T/D/B/A HSJ LAWNCARE

4. Paragraph 8 of the Complaint to Join requires no response. To the extent that a response is deemed necessary, said allegations are denied as they state legal conclusions to which no responses are required.

5. Paragraph 9 of the Complaint to Join states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is denied as stated. To the contrary, this Additional Defendant avers that the contract speaks for itself and in no way did this Additional Defendant assume duties and/or obligations not set forth in said agreement. By way of further answer, this Additional Defendant herein refers to and incorporates its previously set forth responses, hereinafter set forth responses, New Matter and New Matter 2252(d).

6. Paragraph 10 of the Complaint to Join requires no response. To the extent that a response is deemed necessary, said allegation is denied as it states a legal conclusion to which no response is required.

7. Paragraph 11 of the Complaint to Join states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment

is denied as stated. To the contrary, this Additional Defendant avers that the contract speaks for itself and in no way did this Additional Defendant assume duties and/or obligations not set forth in said agreement. By way of further answer, this Additional Defendant herein refers to and incorporates its previously set forth responses, hereinafter set forth responses, New Matter and New Matter 2252(d).

8. Paragraphs 12 and 13 of the Complaint to Join state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and 1029(e). After reasonable investigation, this Additional Defendant has insufficient knowledge or information as to the truth or falsity of said averments and therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Additional Defendant herein refers to and incorporates its previously set forth responses, hereinafter set forth responses, New Matter and New Matter 2252(d).

WHEREFORE, this Additional Defendant, Roger Hull t/d/b/a HSJ Lawncare, denies that he is liable to the Plaintiffs, the Original Defendants and the Co-Additional Defendant, or, in the alternative, while denying liability on the part of this Additional Defendant, the Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises, and Additional Defendant, Boyles Insurance, Inc., are liable over to this Additional Defendant for indemnity and/or contribution for any monies which this Additional Defendant may be found liable and/or responsible to the Plaintiffs or to other parties in this lawsuit.

II. NEW MATTER

9. Paragraphs 1 through 8 are herein referred to and incorporated as if set forth fully at length.

10. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, any injuries and/or damages alleged by the Plaintiffs were the result of superseding, intervening, and/or independent causes over which this Additional Defendant had no control and in no way participated.

11. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant raises all affirmative defenses set forth in Pa.R.C.P. 1030 to the Plaintiffs' and Original Defendant's claims, including the legal doctrines of payment, accord and satisfaction, release, waiver, estoppel, and the statute of limitations.

12. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers any and all ambiguities interpreting the referenced contract must be interpreted against the drafter, Wal-Mart.

13. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers the injuries and damages alleged by the Plaintiff-Wife were the result of a pre-existing condition unrelated to this accident and/or occurrence.

14. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant pleads the contributory, causal negligence of the Original Defendants and Additional Defendant, Boyles Insurance and the provisions of the Pennsylvania Comparative Negligence Act as a complete or partial bar to any recovery by the Original Defendant in this action.

15. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant pleads the contributory, causal

negligence of the Plaintiff and the provisions of the Pennsylvania Comparative Negligence Act as a complete or partial bar to any recovery by the Plaintiff in this action.

16. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers that Plaintiff-Wife failed to mitigate her damages by ignoring the advice of medical providers.

17. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant avers that the Plaintiffs may not recover any medical expense reimbursements in excess of amounts accepted as full payment in satisfaction by medical providers pursuant to Moorhead v. Crozer Medical Center.

18. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Additional Defendant reserves the right to assert any and all other affirmative defenses which discovery may reveal appropriate and/or proper.

WHEREFORE, the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, denies that he is liable to the Plaintiffs, the original Defendants, and the Co-Additional Defendant or, in the alternative, while denying liability on the part of this Additional Defendant, the Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are liable over to this Additional Defendant for indemnity and/or contribution for any monies which this Additional Defendant may be found liable and/or responsible to the Plaintiffs or to other parties in this suit.

III. NEW MATTER PURSUANT TO RULE 2252(d)

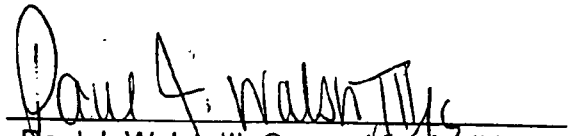
19. Paragraphs 1 through 18 are herein referred to and incorporated as if set forth fully at length.

20. This Additional Defendant denies and continues to deny that he is liable to the Plaintiffs upon any theory. Should the Plaintiffs be entitled to recover from this Additional Defendant, although it is denied that the Plaintiffs are so entitled, then this Additional Defendant is entitled to indemnification and/or contribution from Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., or other co-defendants and/or additional defendants who may hereafter be named in this action. For purposes of asserting such rights of indemnification and contribution, this Additional Defendant herein refers to and incorporates the Plaintiffs' Complaint, although by making such reference, this Additional Defendant makes no admission as to the truth or falsity of any factual allegations contained therein.

WHEREFORE, the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, avers that Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are solely liable to the Plaintiffs or, in the alternative, while denying liability on the part of this Additional Defendant, the Defendants, Wal-Mart Stores, Inc., James Bailor, t/d/b/a B&D Enterprises and Additional Defendant, Boyles Insurance, Inc., are liable over to this Additional Defendant for indemnity and/or contribution for any monies which this Additional Defendant may be found liable and/or responsible to the Plaintiffs or to other parties in this suit.

Respectfully submitted,

SUMMERS, McDONNELL, WALSH & SKEEL

By 

Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

VERIFICATION

I, Roger R. Hull, verify that I am the Owner of HSJ Lawncare, verify that the statements made in the foregoing **Answer, New Matter & New Matter Pursuant to Rule 2252(d) to the Defendant, Wal-Mart Stores, Inc., Complaint to Join Additional Defendant** are true and correct to the best of my knowledge, information and belief. To the extent that the content of **Answer, New Matter & New Matter Pursuant to Rule 2252(d) to the Defendant, Wal-Mart Stores, Inc., Complaint to Join Additional Defendant** is permitted by Pennsylvania Rules of Civil Procedure, I have relied upon counsel in verifying the same.

3-30-03
(Date)

Roger R Hull
(Name)

#11177

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Answer, New Matter and New Matter 2252(d)** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 28 day of April, 2003.

James A. Naddeo, Esquire
211½ E. Locust St.
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 E. Locust St.
P.O. Box 670
Clearfield, PA 16830
(Counsel for Defendant/Additional Defendant, James Bailor t/d/b/a B&D Enterprises)

Patrick J. Loughney, Esquire
Dell, Moser, Lane & Loughney
437 Grant St.
1300 Frick Bldg.
Pittsburgh, PA 15219
(Counsel for Defendant, Wal-Mart Stores, Inc.)

Brian Schrenkengost, Esquire
Pietragallo, Bosick & Gordon
One Oxford Center
38th Floor
Pittsburgh, PA 15219
(Counsel for Boyles Insurance, Co.)

SUMMERS, McDONNELL, WALSH & SKEEL

By Paul J. Walsh III
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

Outside Maintenance Agreement

THIS AGREEMENT is made as of the 1 day of MAY 2004 between Wal-Mart Stores, Inc. a Delaware corporation, of 2001 South East Tenth Street, Bentonville, Arkansas 72712-6489 ("Owner") and _____ ("Contractor").

NOW, THEREFORE, for and in consideration of the obligations and other valuable considerations and covenants, the sufficiency of which is hereby acknowledged, Owner and Contractor do hereby agree as follows:

1. Preliminary--Definitions:

a. "Outside Maintenance Service" shall include landscaping and/or irrigation work, snow removal services, or parking lot sweeping as defined in Exhibit A attached hereto and made a part hereof, under the "Scope of Work".

b. "Scope of Work" shall define the type and scope of the outside maintenance service work that this contract intends to cover.

c. "Work" shall be defined as any service provided within the defined Scope of Work.

2. General Requirements:

(2.1) The Contractor shall purchase and maintain such insurance as indicated below and with the limits listed below. Such insurance shall protect Owner and the Contractor from claims which may arise out of or result from the operations under this Agreement whether such operations are by himself, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance contracts shall contain a Waiver of Subrogation in favor of Owner and its affiliates.

Certificates of Insurance, acceptable to Owner, MUST BE RECEIVED by Owner before Owner will execute this Agreement or before any Work is performed, whichever is the earliest date. Failure to provide the proper Certificate of Insurance as required may result in the cancellation of the award of this Agreement or cancellation of this Agreement. The certification must indicate that the limits listed below are provided and that the insurance will not be canceled during the term of this contract without thirty (30) days prior written notice by registered mail to Owner.

HOLDER SHOULD READ: WAL-MART STORES, INC., ITS SUBSIDIARIES & ITS AFFILIATES, 2001 SE 10TH ST., Bentonville, AR 72716-6489.

Insurance policies meeting these requirements shall remain in effect for the duration of the Work. No payments to the Contractor will be authorized unless current Certificates of Insurance have been filed with Owner.

In no case should insurance coverage be less than:
- Statutory Workers' Compensation and Employer's Liability—$500,000 per occurrence.
- Commercial General Liability including Contractual Liability—$250,000.
- Business Auto Liability Coverage—$250,000.

The Contractor shall be responsible for securing Certificates of Insurance from all subcontractors for insurance coverage limits indicated above and shall make such Certificates available to Owner upon request.

(2.2) All requests for service(s) that are not included within the Scope of Work must be in writing and approved by Owner at Owner's sole discretion. Contractor shall not start additional work (which is not included in the Scope of Work) until the Owner's authorized representative has approved the request in writing. Failure to obtain advance approval before starting the additional work shall result in non-payment.

(2.3) The Owner may take any reasonable action necessary to control damage or protect the health, safety and welfare of the public in the event of problems involving the "Outside Maintenance Service" Such action on the part of the Owner shall not relieve the Contractor of any responsibilities related to any problems relating thereto.

No part of the Work set forth herein shall be performed in any location or manner which may endanger the health, safety and welfare of the public now or in the future. Means, methods, techniques, sequencing, etc. are the sole responsibility of the Contractor.

EXHIBIT
tabbies
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(2.4) Contractor warrants and guarantees that all Work specified herein is to be performed in a workmanlike manner acceptable to Owner, which shall be the sole judge of quality of Work. In the event the Work proves to be unacceptable to Owner prior to the time payment is made, Contractor shall have ten(10) days to correct such defects at Contractor's own reasonable expense, with payment then due upon completion of the corrections(s). If Contractor fails to correct such defects to Owner's satisfaction within the time specified above, Owner shall have the right to correct the defects and deduct the cost thereof from the amount owed to Contractor by the Owner. In the event any defects in the Work are discovered by Owner after paying Contractor, then, upon receipt of notice from Owner, Contractor shall have ten(10) days to correct the defects at Contractor's own expense. If Contractor fails to correct such defects to the satisfaction of Owner, which shall be at the sole discretion of Owner, within the time specified, Owner shall have the right to cure and correct such defects and invoice the Contractor for such expenditures. Contractor shall within ten(10) days from receipt thereof, reimburse Owner for any and all cost incurred therein.

(2.5) Contractor shall coordinate its schedule in performing the Work with the applicable Owner location's Store Manager.

(2.6) Owner may terminate this Agreement without cause upon fifteen (15) day's prior written notice to Contractor.

(2.7) Contractor agrees that he/she shall assume sole and complete responsibility for the Work, including safety of all persons and property; and that the Contractor shall defend, indemnify, and hold the Owner and tenants harmless from any and all liability, real or alleged, in connection with the Contractor's, Contractor's employees, agents and subcontractors performance of the Work set forth herein, excepting for liability arising from the sole negligence of the Owner or tenants. Contractor shall ensure that all equipment utilized on the premises is provided with proper safety guards.

(2.8) The Contractor shall, throughout the course of the Work set forth herein, comply with all rules, ordinances, regulations, etc. set forth by agencies having jurisdiction, which apply to the premises, the Contractor, and/or contractor's employees and subcontractors.

(2.9) The Contractor shall ensure that all Contractor's employees, agents, and subcontractors present a neat, clean, appearance and conduct themselves in a business-like manner at all times while on Owner's property. Owner strongly encourages all Contractors to provide uniforms for their employees, agents, and subcontractors.

(2.10) This Agreement shall not be enforceable against Wal-Mart (or any of it's affiliates) unless, on behalf of Wal-Mart, this Agreement is executed by the applicable Divisional Manager assigned to the Wal-Mart location at which the Scope of Work is to be performed.

3. Scope of Work:

Contractor shall provide services at Wal-Mart Stores, Inc. Store/Sam's Club Store #2125, address: 100 Success Center ("Property") as set forth in the Scope of Work attached hereto as Exhibit "A" and made a part hereof. This Agreement is contingent upon the execution of Exhibit "A" by both parties.

4. Payment:

Owner shall make payment to Contractor within thirty (30) days after receipt of the Contractor's invoice at the address designated in this Agreement. Time required to process Contractor's invoice may be extended by Owner if required documentation is not submitted with each invoice.

2

Invoices must have the following information in order for payment to be made:

1. Invoice number
2. Invoice date
3. Date(s) that the service(s) was provided
4. Detailed description of service(s) provided
5. Itemized invoice amount
6. Wal-Mart/Sam's store number
7. Contractor's Wal-Mart vendor number
8. Attached "Work Completion Report" signed by Store Manager.

NOTE: Invoice for regular monthly contract service must show ONLY the regular monthly charge and no other charges. Approved additional charges must be invoiced separately.

All invoices should be sent to:

Wal-Mart Real Estate Accounting
PO Box X055
Bentonville, AR 72712

5. Pricing.

Pricing on Exhibit A shall include all labor (whether by Contractor or subcontractor) materials, taxes, permit fees (if applicable), and equipment.

6. Entire Agreement:

This Agreement constitutes the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Agreement is the result of good faith arms length negotiations. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

7. Successors:

It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or federal government. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

8. Notices:

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, or similar overnight delivery service, to the address of either party below. Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall

If to the Contractor:
NAME B & D Enterprises
ADDRESS 602 Susquehanna Ave.
CITY, STATE, ZIP Curwensville Pa. 16833
ATTN: _____

If to Owner:
WAL-MART STORES, INC.
2001 S.E. 10th Street
Bentonville, AR 72712-6489
Attn: Maintenance Division

Date:

Contractor shall pay off and discharge any and all debts and obligations incurred pursuant to performing the Work, including but not limited to obligations owed to suppliers of material and subcontractors.

Term of Agreement:

This Agreement is for a period of 24 months, which may be terminated pursuant to Owner's right of termination set forth in paragraph (2.6) herein, and shall be effective as of the date written above. This Agreement shall automatically extend from year to year unless the same is terminated by Wal-Mart upon at lease thirty (30) days written notice prior to the end of the initial term of this Agreement or the extended term of this Agreement or unless terminated by Wal-Mart pursuant to it's right of terminarion as forth in paragraph (2.6) herein.

I. Severability:

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year set out.

CONTRACTOR:

Entexprises

5/15/00
Date:

[illegible]
Title

1236-0764

WAL-MART STORES, INC.

5-10-00
By: Date:

[illegible]
Print Name/Title:
District Manager

(814) 371-5010
Phone:

Wal-Mart/Sam's Store No. 2129

4

Original Copy

Exhibit A

SCOPE OF WORK
SWEEPING

STORE # 2129

STORE MANAGER MEL KNEZEVICH

MAINTENANCE MANAGER

START DATE 4/30/00

The Contractor shall provide sweeping and related maintenance services Work located at the Wal-Mart Store, Inc./Sam's Club # 2129, address: 100 SUPERCENTER DR as follows:

- Areas are to be swept ("Areas") at intervals as listed below.
- Areas include, but are not limited to, parking lot, sidewalks, truck wells, and rear of the building.
- Contractor will report immediately any unusual findings such as graffiti, vandalism, excess trash being dumped on the property, vehicles blocking removal, or any other dangerous situation discovered on the property by providing a photograph of the unusual finding to the owner.

Contractor shall provide the Work set forth herein, per occurrence as set forth herein:

_____ Daily
_____ Weekly
_____ Bi-Weekly
_____ One Time per Month
_____ Intervals of # 3 per Week

Price per occurrence: $ 315.00 Estimated more or Less

Acknowledged and Agreed to by:

CONTRACTOR:

B+D Enterprises
Name of Contractor

Jim Bailor 5/3/00
By: Date:

Jim Bailor
Print Name

OWNER:

WAL-MART STORES, INC.

5-10-00
By: Date:

Tim Fox DM
Print Name Title:
(District Manager)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, Husband and Wife, Plaintiffs	*	CIVIL DIVISION
vs.	*	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR t/d/b/a B&D Enterprises, Defendants	*	
vs.	*	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Additional Defendant	*	
vs.	*	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE, and BOYLES INSURANCE, INC., Additional Defendant	*	NO. 02-1811-CD

Deposition of : ROGER GATES

Date : Friday, February 27, 2004
10:17 a.m.

Place : Law Offices of
James A. Naddeo, Esquire
211 1/2 East Locust Street
Clearfield, PA 16830

Reported by : Elizabeth Schreiber Nissel
RPR and Notary Public

APPEARANCES:

JAMES A. NADDEO, Esquire
appeared on behalf of the Plaintiffs

PATRICK LOUGHNEY, Esquire
appeared on behalf of Defendant Wal-Mart

ANN B. WOOD, Esquire
appeared on behalf of Defendant Bailor

TRISHA A. ZAKEN, Esquire
appeared on behalf of Defendant Hull

BRYAN K. SHRECKENGOST, Esquire
appeared on behalf of Defendant Boyles Ins.

INDEX OF WITNESS, ROGER GATES

DIRECT	CROSS	REDIRECT	RECROSS
4(Naddeo)	48(Wood)	67(Naddeo)	70(Zaken)

INDEX OF EXHIBITS

DESCRIPTION	IDENTIFIED
A. Response to Request for Production of Documents -- Invoices	65

MR. LOUGHNEY: To the extent that Wal-Mart's filed any discovery responses that indicate that Mel Knezevich was the manager at the store at the time of the accident, we would like to amend that. It was Roger Gates who was the manager on September 10, 2001.

(Off-the-record discussion.)

ROGER GATES, called as a witness, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. NADDEO:

Q. Would you state your name, please?
A. Roger Gates.
Q. Where do you currently reside?
A. Latrobe.
Q. How long have you lived in Latrobe?
A. Since November of 2003.
Q. Prior to that where did you live?
A. DuBois.
Q. How long did you live in DuBois?
A. Approximately two and a half years.
Q. From when to when?
A. April of 2001 till October or -- 2003.
Q. What is your current occupation?
A. Store manager.
Q. For whom?

EXHIBIT tabbies "G"

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A. Wal-Mart.
Q. How long have you been a store manager for Wal-Mart?
A. Six years.
Q. That would go back to roughly 1998?
A. Yeah.
Q. You became a store manager in that year?
A. Yes.
Q. What store were you assigned to in 1998?
A. Niagara Falls, New York.
Q. Was that a supercenter?
A. No.
Q. How long did you act as manager of the store in Niagara Falls?
A. Three and a half years.
Q. After you were transferred from the Niagara store, where did you go?
A. Clearfield, Pennsylvania.
Q. Do you recall when you arrived at Clearfield?
A. March of 2001.
Q. And is that when you took up residence in DuBois?
A. I took up residence in April of 2001 in DuBois.
Q. Are you married?
A. Yes.
Q. Was your family with you when you worked in

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Clearfield?
A. Yes.
Q. When you were manager of the Clearfield Wal-Mart Supercenter, who were your co-managers?
A. George Stout.
Q. Did you only have one co-manager?
A. I had one to begin with, and then in December of 2002 I got another co-manager.
Q. All right. In September of 2001 -- that's the time I want you to focus on.
A. Yes.
Q. You were the overall manager of the Wal-Mart Supercenter in Clearfield.
A. Yes.
Q. You had one co-manager at that time?
A. Yes.
Q. And his name was George Stout.
A. Yes.
Q. Did he remain as a co-manager at the Clearfield Supercenter after you left?
A. No.
Q. Do you know when Mr. Stout left as a co-manager?
A. February, roughly, of 2003.
Q. And I'm sorry. I know you gave me this date. But when did you leave Clearfield?

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A. October 2003.
Q. Now, as the manager of the Wal-Mart Supercenter, do you have or did you receive some type of job description?
MR. LOUGHNEY: You mean what his job description was?
BY MR. NADDEO:
Q. Yeah. Did you have a written job description?
A. I don't believe so.
Q. Did you ever receive or have in your possession a written job description for the position that you maintain for Wal-Mart from 1998 to the present?
A. No.
Q. Does Wal-Mart produce or publish written job descriptions for employees?
A. For hourly associates, yes.
Q. But not for management.
A. No.
Q. What did you understand your duties to be as the manager of the Clearfield Supercenter?
A. Total responsibility of running and operating the store.
Q. Did that responsibility include monitoring safety, both inside the store and in the parking areas?
A. Yes.
Q. Did you formulate the safety policy for the

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Clearfield Supercenter?
A. No.
Q. Who did formulate the safety policy?
A. Corporate.
Q. And in what form was that safety policy communicated to you as the manager of the store?
A. Through various policies.
Q. Okay. Now, you've answered my question, but I'm not sure I understand the answer. Were these written policies of some type?
A. Yes.
Q. And in what form did the written policies take? Were they in the form of a leaflet? Pamphlet form? Book form?
A. All policies are on what -- on a computer. We have our own computer system, and you can look up any policy you wish by going in and looking at it.
Q. All right. Now, we've taken some prior depositions in this case and I've gotten conflicting, I guess, responses to the question. I have one witness told me that there was a written manual. That's not the case as far as you know.
MR. LOUGHNEY: Well, object to the form. You're asking him to comment on someone else's testimony.
MR. NADDEO: No, no. I'm asking whether -- let me

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rephrase the question.
To your knowledge does Wal-Mart publish a written safety manual? And by that I mean some type of book.
THE WITNESS: Yes. Yes.
BY MR. NADDEO:
Q. Okay.
A. These -- this would also be on those -- on that wire that I'm talking about or the pipeline on this computer system.
Q. All right. So --
A. Those things that lie within that book would be policies and different things with safety.
Q. All right. Let me make sure --
A. Um-hmm.
Q. If I'm hearing this correct, it sounds like you're both right.
A. Yeah.
Q. Wal-Mart does in fact publish some type of safety procedures for the operation of their stores.
A. Correct.
Q. Do those safety procedures deal with the interior of the store itself?
A. Yes.
Q. Do those safety procedures also deal with the parking area?

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A. Yes.
Q. And the manner in which the parking area is to be maintained?
A. Yes.
Q. All right. Now, do I understand that there is a publication -- and by publication, I mean a written document, and I'm going to refer to it as a book or manual -- in which those safety regulations are incorporated?
A. Yes.
Q. And as manager of the store, do you have possession of that book?
A. It would be located within the store, yes.
Q. All right. But it would be under your supervision and control.
A. Yes.
Q. The book.
A. Yes.
Q. Now, in addition to the book there's what has been described by you and -- previously as a pipeline.
A. Yes.
Q. Now, by pipeline, I understand that to be some type of Internet communication.
A. Yeah.
Q. And that it's possible to access the safety

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regulations through the Internet.
A. Yes.
Q. So that Wal-Mart, your employer, publishes its safety regulations in two fashions: One in written book form and one through Internet access.
A. Yes.
Q. And either is accessible by you as the store manager.
A. Yes.
Q. Now, in this particular case I've asked Wal-Mart to produce for me the safety -- a copy of the safety rules and regulations that were in effect on September the 10th of 2001.
A. Yes.
Q. And in response to that I received three items.
MR. LOUGHNEY: I have copies.
MR. NADDEO: Okay. Fine. One is titled Courtesy Patrol Program.
MR. LOUGHNEY: Do you have a question about it?
BY MR. NADDEO:
Q. Yeah. Are you familiar with that videotape?
A. I don't recall.
Q. Do you have any idea what it deals with?
A. I would only be guessing.
Q. Do you have -- well, then you have no knowledge of

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whether this particular videotape deals with safety. And by safety I'm not talking about security but safety regulations in the parking areas.
A. I don't know.
Q. Now, I received another video cassette titled The Wal-Mart Maintenance Program. Are you familiar with that video?
A. Yes.
Q. And do you know what is encompassed within that video?
A. No.
Q. But you've heard of it.
A. Yes.
Q. Have you ever watched it?
A. I can't recall.
Q. Do you know whether there's anything in this video which deals with safety rules or regulations within the interior of the complex?
A. I wouldn't know.
Q. The third thing I received is a -- I guess this is a --
Can we go off the record a minute?
(Off-the-record discussion.)
BY MR. NADDEO:
Q. All right. The third thing I received is a -- what

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I'm -- what is titled Maxell, M-a-x-e-l-l -- which I believe is a brand name -- and it says CD-R Music 80, and then it has some numbers on it. Are you familiar with that disk?
A. No.
Q. Do you know what is contained within that disk?
A. No.
Q. Do you know whether this is a computer generated -- is it some kind of computer generated disk that can be used through the Internet?
A. Possibly, but I don't know.
Q. In the six years that you have been a store manager for Wal-Mart, have the -- has the company made any changes in the -- I'm going to talk about two areas: First of all, the written safety manual, and I want to ask you about that first. Has the company made any changes in the written safety manual in the six years that you have been a store manager for Wal-Mart?
A. Not that I'm aware of.
Q. Has the company made any change in the safety regulations that it publishes through the Internet in the six years that you have been a store manager for Wal-Mart?
A. Not that I'm aware.
Q. So that if I were to get a copy of the manual that's in effect today, it would be the same as the manual

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that was in effect on September 10 of 2001.
A. No.
MR. LOUGHNEY: Objection to the form. He's not aware of any changes. I'd have to compare --
MR. NADDEO: To your knowledge.
THE WITNESS: To my knowledge I don't know of any changes, but I also don't know if it would be the same or not.
MR. NADDEO: Of course, I can't compare them because you've refused to produce them, but that's okay. We'll deal with that I guess later.
The next question is, as far as you know, to your knowledge, the regulations, safety rules and regulations that are published through the Internet, have they changed since September of 2001?
THE WITNESS: I wouldn't know.
BY MR. NADDEO:
Q. You don't know.
A. I don't know.
Q. Have you had occasion to access the safety rules and regulations through the Internet?
A. Have I had the opportunity?
Q. Not the -- have you had occasion to actually look them up, access them, read -- have them sent to you?
A. No.

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Q. Have you had occasion to read the manual that incorporates those safety regulations?
A. No.
Q. Do you know whether the safety regulations that are contained in the manual are the same as the safety regulations that are communicated through the Internet?
A. I would believe so, yes.
Q. You're sure of that.
MR. LOUGHNEY: Well --
THE WITNESS: No. I'm only guessing. I mean -- I'm not guessing.
BY MR. NADDEO:
Q. All right. Let's --
A. No.
Q. Let's go back. You answered that you've never actually accessed the safety regulations through the Internet.
A. Well, no, I -- I would only be guessing if I told you I did or I didn't because I can't recall. I mean, I'm sure there's been times I've looked up stuff throughout, but I can't recall and I couldn't give you a specific date or time or -- or even an instance.
Q. Okay. I'm not -- my only question was, have you ever had occasion to access, to go into the Internet and review any of the safety regulations?

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A. Yes.
Q. But you don't remember when and where you did that.
A. No.
Q. How about the manual? Have you ever had to make reference to the manual to ascertain safety rules, regulations or policy?
A. No.
Q. You never looked at the manual.
A. On the paper copy, no.
Q. All right. So if I were to ask you to compare the Internet version with the paper version, you can't do that.
A. No.
Q. Because you never looked at the paper version.
A. Correct.
Q. Now, let's go back to changes. Again, I believe your testimony is that to your knowledge there have been no changes in the policy since you started in 1998, to your knowledge.
A. To my knowledge.
Q. And that would also be true as far as the manual is concerned.
A. Correct.
Q. Now, if I were to ask you specific questions as to the safety regulations and policy in effect in September

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of 2001, would you be able to answer any of those questions?
A. Yes.
Q. Now, let's talk about that.
A. Okay.
Q. Did the -- what safety rules, regulations or policy was contained in the manual pertaining specifically to the outside area or the parking lot of the Clearfield Supercenter in September of 2001? That was a bit of a convoluted question, but you understand it?
A. Yeah, because I told you that I didn't look in the manual, so if I tell you what's in that manual, I can't -- but I know, to make that -- I know from my own personal knowledge and experience --
Q. Okay. So I asked you from the manual, and the answer is you don't know because you haven't looked at it.
A. Yeah.
Q. Now, based on your experience and knowledge as a manager for Wal-Mart, are you familiar with the safety regulations and policy in effect at the Clearfield Supercenter in September of 2000?
A. Yeah.
Q. What were they?
MR. LOUGHNEY: It's broad. For everything or --

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BY MR. NADDEO:
Q. I'm just talking about the parking area.
A. Well, for the parking lot to be clean.
Q. Okay. Let's stop there. Why -- what was the purpose of keeping it clean?
A. Purposes would be to have it look presentable as well as any hazards that would be out there.
Q. And by hazards, you mean debris of some kind?
A. Debris.
Q. Something that could cause somebody to trip or fall?
A. Yes.
Q. So --
A. Or slip.
Q. If it was some type of liquid that was spilled.
A. Yes.
Q. So the first policy was to keep the parking area clean. Anything else?
A. I would look for potholes, any holes in the pavement.
Q. That would be for structural defects.
A. Yes.
Q. Anything else?
A. Sidewalk, you know, the sidewalk to be in good shape.

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Q. That's also both structural and clean?
A. Yeah.
Q. Any other --
A. Parking lot lights, you would want to make sure the lighting was good.
Q. And these -- these regulations either apply to safety -- apply not only to safety but to appearance.
A. Yes.
Q. Cosmetics.
A. Yes.
Q. Want the place to look good, is that right?
A. Yes.
Q. So that basically the policy was to keep the parking area clean of debris and to be sure that -- certain there were no structural problems either in the pavement, the sidewalks or the lighting.
A. Correct.
Q. Did I miss anything?
A. Not that I'm aware.
Q. Now, what was -- what was the policy for keeping the parking area clean?
MR. LOUGHNEY: You mean -- that's pretty broad. Do you understand the question?
THE WITNESS: The policy would be to keep it clean.

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BY MR. NADDEO:
Q. Let me ask you different -- how -- were there any specific policies in place as to how that was to be accomplished?
A. We would maintain that through outside agency and through ourselves, our own associates.
Q. Okay. Let's talk about outside agencies first.
A. Um-hmm.
Q. Do I understand that you contracted with someone to keep the lot clean?
A. Yes.
Q. And do you know who -- with whom you had contracted in Clearfield in September of 2001?
A. B&D Enterprises.
MR. NADDEO: I think the B&D contract was attached as an exhibit.
MR. LOUGHNEY: I have a copy here.
(Off-the-record discussion.)
BY MR. NADDEO:
Q. Now, you and your counsel are looking at a document titled Outside Maintenance Agreement dated May 1, 2000. Have you ever seen that document prior to today?
A. No.
Q. Are you acquainted with a Tim Fox?
A. I -- he was my DM in 2001, district manager.

Q. As district manager, did he have authority to enter into outside -- to enter into maintenance agreements with outside contractors?
A. Yes.
Q. All right. And again, your answer was that you have never seen this particular contract prior to today.
A. No.
Q. You are not familiar with it.
A. No.
Q. Do you know -- do you recall from your own memory who was contracted to sweep the parking area of the Clearfield Supercenter in 2001?
A. I would -- B&D.
Q. All right. So you were aware that B&D had been contracted to do that work.
A. Yes.
Q. Now, would you please refer to the last page of the B&D contract?
MR. LOUGHNEY: Is that the signature page, Page 4?
MR. NADDEO: Signature page, yes. Just above the signatures there's a line that said, "Contractor shall provide the work set forth herein per occurrence as --"
MR. LOUGHNEY: Where are you reading?
MR. NADDEO: "Contractor shall provide the work set forth --"

MR. LOUGHNEY: You're on a different page.
MR. NADDEO: I'm sorry. I'm on the signature page.
MR. LOUGHNEY: You're Exhibit A.
MR. NADDEO: I'm sorry, Exhibit A, yes.
"Contractor shall provide the work set forth herein per occurrence as set forth herein," and it says "Intervals of three per week."
THE WITNESS: Yes.
BY MR. NADDEO:
Q. While you were manager of the Clearfield Wal-Mart Supercenter, was it your understanding that the parking lot was to be swept three times per week?
A. Yes.
Q. Now, it has been indicated in some prior depositions that at some point the three times per week was changed to once per week.
A. Yes.
Q. You're aware of that.
A. Yes.
Q. Let's start with the three times per week first. Whose decision was it to have the parking area swept three times per week?
A. Mel's.
Q. That would be the --
A. Previous store manager before me.

Q. The manager.
A. Yes.
Q. And is that normally the responsibility of the manager?
A. Yes.
Q. It's the manager who makes that decision.
A. Yes.
Q. All right. Now, it was cut back from three days per week to one day per week.
A. Yes.
Q. When was that done?
A. Summer of 2001.
Q. Summer to me means --
A. I believe June or July probably of that summer.
MR. LOUGHNEY: We can get the exact time from the invoices from B&D.
MR. NADDEO: I think for our purposes we're -- thank you, but --
MR. LOUGHNEY: All right.
BY MR. NADDEO:
Q. But you're sure that was changed sometime in the summer.
A. Yes.
Q. Would that be as early as June?
A. Yes.

Q. Whose decision was it to reduce the number of times the parking lot was swept from three per week to one per week?
A. My decision.
Q. And what was the basis for that decision?
A. This store, the parking lot stayed very clean, and I didn't see a need for doing it three times a week.
Q. Was there any change in the amount of traffic that you got in the parking lot in the summer of 2001?
A. Don't believe so.
Q. So your -- the traffic flow was consistent with prior --
A. Yeah.
Q. Okay. So the use of the parking lot hadn't changed.
A. No.
Q. Did you ever take a census to determine how many cars went in and out of there per day?
A. No. No.
Q. Mel, your predecessor, guesstimated that thousands. Does that sound right to you?
A. Yes.
Q. So there were still thousands of cars going in there daily in September of 2001?
A. Yes.

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Q. When was the sweeping normally performed?
A. Before I switched, before I changed it?
Q. Yeah. Let's talk about when you were doing it three times a week.
A. I was unaware. I could not tell you when they did.
Q. All right. There has been some indication in prior testimony that it was either done at night or before traffic got heavy in the morning. Does that --
A. I've seen it in the morning, early morning, 6:00, 5:00.
Q. Also before the traffic gets heavy.
A. Yes.
Q. Which makes -- would be the obvious time to do it.
A. Yes.
Q. And was that continued, that policy continued when you reduced it to one time per week?
A. Yes.
Q. Was it still done basically early in the morning?
A. Yes, on Sunday -- early Monday morning.
Q. And would -- was that day selected for a reason?
A. It would be -- yes.
Q. What was the reason?
A. For the beginning of the week, and I knew that that would be the slowest time to get it done.
Q. Two reasons.

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A. Yeah.
Q. It was the start of the week, and it was the slowest traffic period.
A. Yeah.
Q. What did you understand the duties of B&D to be besides sweep the parking area, if there was any other obligation?
A. That would be my understanding, to sweep the parking area, to clean the perimeter of the building with the sweeper.
Q. Okay. To remove any debris.
A. Yes.
Q. And remove any hazards.
A. Yes.
Q. If B&D, during the course of performing their sweeping of the area, discovered or found any debris or hazards, did you require -- ask them to report it to you?
A. I can't recall.
Q. Did B&D ever report a specific condition to you?
A. Not to my knowledge.
Q. Now, on the days that B&D did not sweep the parking area, what type of surveillance did you maintain to ascertain whether there was any debris, structural defects, et cetera?
A. I personally would drive around the building every

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morning before -- before I would start, and that would also -- different levels of management would look at the parking lot as they came to work.
Q. So on the days that you didn't sweep, you would personally drive around the parking lot.
A. Even on the days of sweeping, I drove around. That was my ritual every morning.
Q. Okay. What time did you get to work in the morning?
A. Between 6:30 and 7:00.
Q. And that would be at a low traffic time, right?
A. Yes.
Q. And you would drive around 6:30 and 7:00 and inspect the parking lot personally.
A. Yeah.
Q. Now, throughout the course of the day would you make any further inspections of the parking lot personally?
A. Yes.
Q. And what was your custom?
A. When I would go to lunch, I would go out to my truck and look at the lot, and then coming back from lunch I would drive around the building also.
Q. Okay. So that each day at lunchtime you would actually get in your truck and drive --

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A. Not every day at lunchtime.
Q. Did you have a schedule?
A. No.
Q. This was random?
A. Yes.
Q. In an average week, how many days a week would you drive around at lunchtime?
A. Two to three.
Q. And that would be -- that would be an actual get-in-my-truck-and-drive-around.
A. Well, when I would come back from lunch, I would take a lap around and then park.
Q. Now, I've got to try to visualize that supercenter in my mind to ask you these questions, but would I be correct in saying and believing that there is a large parking -- public parking area to the front of the store?
A. Yes.
Q. And that that parking lot extends around to the side of the store?
A. If you were looking at the store, it would extend to the left side of the store.
Q. Right. And the main part of the store is comprised of a supermarket?
A. Yes.
Q. And also I guess what I'd call a regular -- what

would be the term?
A. GM --
Q. A GM?
A. -- side of the store.
Q. A GM side. Is there also an automotive center at the Clearfield facility?
A. Yes.
Q. Where is the automotive center in relation to the supermarket and the GM?
A. It's on the GM side, and it's on the left side of the building looking --
Q. If you're facing the building?
A. Yeah, left back side.
Q. Is there also public parking on the left side of the GM --
A. Yes.
Q. -- portion of the building? Let me finish my question.
A. Okay.
Q. And in front of the automotive center?
A. Yes.
Q. In terms of use, is the front parking lot used more frequently than the side lot in front of the auto center, if you know?
A. Yes.

MR. LOUGHNEY: Off the record.
(Off-the-record discussion.)
MR. LOUGHNEY: We've been talking off the record. I just want to put this on about the two videotapes that were asked about earlier. The courtesy patrol is for areas that are in more, I guess, dangerous neighborhoods about patrolling parking lots, break-ins, things like that. And the Wal-Mart maintenance program is all interior. And there is no courtesy patrol out at Clearfield.
MR. NADDEO: I was going to ask -- we got it on the record. That's fine. Yeah. We agree.
MR. LOUGHNEY: Yeah. Right.
BY MR. NADDEO:
Q. Let me just clarify. One of the video cassettes we've just referred to on the record is titled Courtesy Patrol Program. While you were the manager of the Clearfield Supercenter, was there a Courtesy Patrol Program in effect?
A. No.
Q. Was there ever a Courtesy Patrol Program in effect in Clearfield, to your knowledge?
A. No.
Q. Now, at this point we have you driving around the parking area every morning and on an average of two to

three times a week at noon or lunchtime.
A. Um-hmm.
Q. Just so I -- so we have our time frame, when somebody says lunchtime to me, I -- a time appears in my -- what time did you go to lunch?
A. Roughly around noon.
(Off-the-record discussion.)
BY MR. NADDEO:
Q. Now, did you ever do any other personal surveillance of the parking lot during the course of the day other than your routine morning drive-around and your routine drive-arounds at lunchtime?
A. Sometimes when I would leave at the end of the day, I would go around the back side of the building and look at it.
Q. Just the back side?
A. Well, around; I'd go around.
Q. Drive around the perimeter?
A. Yeah. And sometimes I would walk -- I would actually walk around the building.
(Attorney Zaken now present.)
BY MR. NADDEO:
Q. All right. You did that in the evenings.
A. No. The walking was throughout the day, sometimes.
Q. Let's talk and get the driving out of the way

first.
A. Yeah.
Q. You would drive around the building in the mornings?
A. Yeah.
Q. You would drive around the building two or three times at noon during an average week.
A. Yeah.
Q. And in the evening you would drive around the building how many times?
A. Maybe once a week, twice a week.
Q. Once to twice a week.
A. Yes.
Q. Now, when we talk about driving around the parking lot, did you circle the perimeter of the parking lot or did you actually drive through various parts of the parking lot?
A. Just -- at morning and at the lunchtime I would drive through the parking lot. At -- when I would leave, sometimes I would go around the building, up along the side. There's an exit to the left of the building if you're looking at it. I would exit that way sometimes instead of taking the other exit on the right side of the building.
Q. Okay. So that this -- this -- these -- the

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surveillance you're -- in the vehicle was more than just driving around the parking lot. You actually would weave through the parking area?

A. I would drive -- in the morning I would actually cut across the aisles because it's low traffic time, not much cars in the parking lot, so I could actually drive across it. At lunchtime I would either go down the aisles by the gas station and cut across, or I would go across the front of the store.

Q. How about in the evening?

A. In the evening I would -- if you were looking at the building, I would drive around the right side of the building, around the back, up the left side of the building, past the automotive department and exit that side of the store.

Q. Now, you've testified that you've also walked through the parking lot. Was your custom to walk through the --

A. Sometimes, yes.

Q. On an average week, how many times did you walk through the lot?

A. I couldn't -- I couldn't put a number on it.

Q. When you walked through the lot, can you tell me what -- how you -- where you went, how you went through the lot?

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A. I would just go -- I would exit through the garden center usually and walk around the perimeter of the building, just looking for any debris or any type of things that needed corrected.

Q. Did you ever walk up and down the aisles?

A. No.

Q. So you would look for things you could see from the perimeter.

A. Yes.

Q. As opposed to actually going up and down the aisles.

A. Yes.

Q. Now, again we've had some prior testimony that what you've described was sort of the responsibility of everybody in management, people -- other management people?

A. Other eyes looked at it, yes.

Q. What other eyes looked at the parking lot?

A. Management, you know, assistant managers, co-manager.

Q. And when you were there, that would be Mr. Stout?

A. Yes.

Q. All right. And do you know what his custom was as far as inspecting the parking area?

A. No.

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Q. You would have to ask him that?

A. Yes.

Q. But you -- it's your testimony that he did perform that function.

A. Yes.

Q. In addition to Mr. Stout, what other management personnel made personal surveillance of the parking area?

A. Assistant managers.

Q. Who would -- can you identify any of those?

A. Lee Dixon, Charles Allen.

Q. A-L-L --

A. -- E-N. I'm trying to think to that time frame. I'm forgetting who my assistants were back then.

MR. LOUGHNEY: He's going to read it. Maybe he'll remember more, and then he can do an errata sheet.

BY MR. NADDEO:

Q. Now, I think you've presumed what I meant to ask you, and I think you presumed accurately. These are individuals who worked at the store in September of 2001.

A. Two -- yeah. I'm positive Lee did. Charles, I didn't know when he got there. That might have -- he may have not been there at the time -- at that time.

Q. Now, your counsel has indicated that you will have a right to review this deposition.

A. Yeah.

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Q. And make corrections and so forth.

A. Um-hmm.

Q. When you review the deposition, if you can -- if you recollect or can identify other management personnel who conducted surveillance of the parking lot, will you provide it at that time?

A. Yes.

Q. Those -- the identity of those individuals.

A. Yes.

Q. Okay. Now, in respect to those individuals, do you know exactly what surveillance they did on a weekly or daily basis?

A. No.

Q. All right. So again we would have to ask them.

A. Yes.

Q. Do you know, for instance, whether they drove around in their cars or actually walked through the lot?

A. I don't know.

Q. You don't know any of those things.

A. No.

Q. But you are sure that they did periodically conduct some type of surveillance of the parking area.

A. Yes.

Q. Okay. And to your knowledge was the purpose of that surveillance to be sure that the parking area was

clean and that there were no structural defects?
A. Yes.
Q. Other than the management personnel that you've described, did anyone else have responsibility to conduct surveillance of the parking area for debris or structural defects?
A. Safety team.
Q. And how many people were assigned to the safety team?
A. Approximately 15.
Q. You said 15 people assigned in September of --
A. Approximately. I'm --
Q. I understand.
A. Yes.
Q. Now, I'm not going to ask you to name them, but would you be able to, from some record, identify those people, go back and identify them?
A. Probably.
Q. And when you're reviewing the deposition, would you be able to provide those names?
A. I wouldn't because I'm not at this store now.
Q. But somebody would be able to --
A. Yes.
Q. -- tell us who those individuals were.
A. Yes.

Q. There's a record of who was on the safety team?
A. Yes.
Q. Where would that record be maintained?
A. Probably within a file.
Q. And where would the file be kept?
A. At the store.
Q. The store being the Clearfield Supercenter?
A. Yes. Yeah.
Q. What did you understand the duties of the safety team to be?
A. Safety team duties would be to be proactive within the store and outside of the store looking for any type of safety issues; also in -- if they found it, their duty would be to notify me.
Q. Was there any set policy, for instance, that if I was on the safety team, I was obliged to -- my day was Monday to walk through the parking lot?
A. There would be -- they do specific meetings, and they have specific obligations. I don't know if it's a weekly obligation to look at the parking lot or a monthly one, but I know it's one or the other.
Q. When you say they, you mean each member of the team --
A. The safety team in general, yes.
Q. But each member of the team had either a weekly or

monthly obligation to --
A. Once a week or once a month.
Q. Do you remember which it was?
A. I don't recall.
Q. And was that surveillance of the parking area to be done in a vehicle, or were they to do it on foot?
A. On foot.
Q. An on-foot inspection.
A. On -- on -- yeah, walking.
Q. Was there any policy as to what time of the day or night they were to walk the parking area?
A. No.
Q. That was up to the individual person.
A. Yes.
Q. All right. Now, so far we have the management team making routine inspections of the parking area.
A. Um-hmm.
Q. Either in -- by vehicle or by foot.
A. Um-hmm.
MR. LOUGHNEY: You have to say yes or no.
THE WITNESS: Yes. Sorry.
BY MR. NADDEO:
Q. We have 15 members on your safety team who were required to make a surveillance of the parking area either by auto or on foot.

A. Yes.
Q. I'm sorry, just on foot.
A. On foot, yes.
Q. I'm sorry, not by auto.
A. Yeah.
Q. Anyone else?
A. No.
Q. How about stockmen or the people who handled the shopping carts? Were they responsible to --
A. They weren't responsible. I would say no.
Q. Would you agree --
A. Have they ever come to me and let me know of something? Yes.
Q. All right. Are the shop -- is the area where you place the shopping carts, when you come out of the store, to the front of the building or to the side of the building?
A. To the front of the building.
Q. Okay. So stockmen would only be -- as a general proposition -- would be walking to and from the store from the front to the front parking area.
A. Generally, but there would be occasions where they would have to go to the sides and get the carts that were left on each side of the store.
Q. Because people sometimes would leave carts where

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they don't belong.
A. Yes.
MR. LOUGHNEY: Jim, I'm just going to object to the form of the question that he's responsible because, I think it's -- I don't think you're getting a responsive answer to the question about the stockmen. And I'll state this if it helps you or not. The -- all associates are responsible to always be aware of whatever goes on. As far as a specific assignment of responsibility, I think that's how he took it.
MR. NADDEO: Well, that's how I meant it.
MR. LOUGHNEY: All right.
BY MR. NADDEO:
Q. Let me go back if the question wasn't clear. Do the stockmen have specific responsibility to conduct surveillance in the parking area?
A. I would be unaware of that.
Q. Are you acquainted with Ron Orris?
A. Yes.
Q. Do you know him?
A. Yes.
Q. Was he at one point a co-manager at the Clearfield Wal-Mart Supercenter?
A. Yes, before I arrived.
Q. Did Mr. Orris to your knowledge have any

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responsibility for determining the number of times that the parking lot was swept?
A. I don't know.
Q. It's your testimony that the number of times that the lot is swept bears no relationship to the amount of traffic that you have in the lots.
A. Correct.
Q. That's just an independent determination made by the store manager.
A. Yes.
Q. Where are you presently --
A. Latrobe.
Q. Latrobe, yes. We went through that. Is that a supercenter?
A. Yes.
Q. Does that -- do you regularly sweep the supercenter at Latrobe?
A. They have been. Winter's a little different. They sweep it as they can because of the weather.
Q. What is the -- what is the contract in the -- Latrobe for sweeping the lot?
A. That I couldn't -- I wouldn't know yet.
Q. Well, is it more than once a week?
A. I believe so.
Q. How many times do you sweep the lot in Latrobe?

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A. I don't know.
Q. You are the manager.
A. Yes.
Q. Aren't you supposed to know that?
A. Yeah.
Q. Okay. Is that something that you could also determine for me and answer when you have an opportunity to review your deposition?
A. Yes. I would like to state that Latrobe's a new store, and we've yet to really set up a lot of contracts.
Q. All right. Before Latrobe were you in -- where were you?
A. Niagara Falls, New York.
Q. Niagara, Clearfield, Latrobe.
A. Yeah.
Q. That was the pecking order.
A. Um-hmm.
Q. When did the Latrobe store open?
A. January of -- 21st of January of this year.
Q. Okay. Do I understand then that you haven't had an opportunity to decide how often that store needs to be swept?
A. Correct. The reason being, one could put down they want it swept seven nights a week, but the weather, if there's snow and ice on the ground, you know, you can't

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sweep.
Q. Well, let's be fair to your situation.
A. Yeah.
Q. That store just opened. It's winter. I assume you spent more time plowing it so far than sweeping it. Correct?
A. Yeah. You're correct.
Q. And when the snow melts, you're going to have to make a decision as to how often you feel that should be swept?
A. That is true.
Q. And you haven't gotten to that point yet.
A. No.
Q. So you're not going to be able to answer that question when you review this deposition.
A. I appreciate that.
Q. Are you?
A. No.
Q. Not likely?
A. Yes.
Q. Depends possibly when you review the deposition. If it's two months from now, you might be able to answer me.
A. Yes.
Q. And if you can, you will.

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A. Yes.
Q. Fair?
A. Yes.
Q. Let's go to Niagara Falls. You were the manager there?
A. Yes.
Q. How often was that swept?
A. I don't know. I would say five nights a week.
Q. So just based on your history with Wal-Mart --
A. Yeah.
Q. -- it was five nights a week in Niagara.
A. Um-hmm.
Q. Three nights a week in Clearfield until you arrived, and it was switched to one night per week.
A. Yes.
Q. Was it ever switched back to anything other than one night a week?
A. Not to my knowledge.
MR. LOUGHNEY: One day a week.
THE WITNESS: One day --
MS. WOOD: One time a week.
MR. NADDEO: One time a week?
THE WITNESS: Yeah.
MR. LOUGHNEY: Right.

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BY MR. NADDEO:
Q. And as far as the Latrobe facility's concerned, we've been through that.
A. Yes.
Q. All right. To your knowledge if I were to be able to get my hands on this written manual that we've referred to earlier, that manual would not have any specifications as to how frequently the parking area should be swept.
A. Not to my knowledge.
Q. Were you aware that someone had slipped and fallen into the -- in the parking lot at the Wal-Mart Supercenter in September of 2001?
A. No.
Q. To your knowledge was a report ever filed on that accident?
A. No.
Q. Have you personally checked the records there to determine whether or not a report exists?
A. Yes.
Q. Okay. And the answer is no, there is no report.
A. There is a report now because --
Q. Let me -- yeah. Let me clar -- was there any report made the day of the accident?
A. No.
Q. When did the -- when was the report made, to your

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knowledge?
A. To my knowledge I believe it was made when the papers were served.
Q. For the lawsuit.
A. I believe so.
Q. At that point somebody generated a report.
A. Yes.
Q. But up to that point there's no paper record of this accident.
A. Not that I'm aware of.
Q. Do you know of any employees at the time of the accident in September of 2001 who may have been knowledgeable that it occurred?
A. No.
Q. Would there be a list available of the persons employed at the automotive center on September 10 of 2001?
A. Yes.
Q. And would that record also be at the Clearfield Supercenter?
A. Yes.
Q. That record -- would that record still be available and maintained today?
A. Yes.
Q. Would it be some kind of employment record?
A. Yes.

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Q. Would that include a schedule as to who was on duty at certain times of the day?
A. Yes.
Q. Who's the current manager of the store?
A. Kate Mora, M-o-r-a.
Q. How long has she been the manager?
A. Since October.
Q. Of last year?
A. 2003.
Q. She took over for you?
A. Yes.
MR. NADDEO: I think that's all the questions I have.

CROSS EXAMINATION

BY MS. WOOD:
Q. You indicated that it was your decision to reduce the sweeping from three times a week to one time a week.
A. Yeah.
Q. Did you communicate that to Mr. Bailor?
A. I believe so.
Q. Did you have any other occasions to be in contact directly with Mr. Bailor?
A. No.
Q. Do you recall ever speaking to him in relation to any debris, anything for his job performance as to

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sweeping or anything like that?
A. I can't recall, no.
Q. Were you satisfied with the sweeping that was being done?
A. Yes.
Q. Where did you park when you parked at the building?
A. I would park on the grocery side, sort of in the aisles going down the hill. So if you were looking at the store, I would park to the right of it.
Q. Did you ever park around by the automotive section?
A. Periodically.
Q. Did you have any kind of regular routine as to moving around or --
A. No.
Q. In relation to your safety team, just so that I'm sure I understand, were there group -- obligation as a group to check the parking lot, or were particular individuals within the safety team assigned -- "For this week you'll be in charge of checking the parking lot"?
A. A group. It would be a group. The group would be responsible.
Q. So that as a group, all -- approximately 15 individuals had a responsibility to check out the parking lot at some period of time. You said a weekly or monthly obligation.

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A. Yeah.
Q. Does the safety team change?
A. The safety team, they would have -- they would be given the duties -- they would break them out during the meeting, so I wouldn't -- I couldn't give you three specific people that checked the lot.
Q. But if there were 15 people maybe on any one given week, three or four of them --
A. Three or four would have checked the lot and the perimeter of the building. Other ones would have checked the inside safety --
Q. And that responsibility changed within the team?
A. Yes.
Q. So at any given time out of your approximately 15 members of the team, three or four might be at any given time responsible for checking the parking lot.
A. Yes.
Q. All right. As to your stockmen or cart pushers as we call them here in Clearfield, if I'm understanding correctly, they weren't told specifically, "It is your job to look at -- for problems in the parking lot." Is that correct?
A. I don't know. One might look at their -- as I discussed earlier -- job descriptions for hourly associates.

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Q. What would your expectation have been as they were --
A. My expectation would be that they would look and let me know of any issues that arose in the parking lot.
Q. During your time here at the Clearfield store, did you ever have an instance or instances where the stockmen reported problems in the parking lot?
A. Yes.
Q. Can you give us an example of what --
A. A snake was in the parking lot.
Q. Okay.
(Off-the-record discussion.)
BY MS. WOOD:
Q. In an instance when a particular hazard -- say a spill, whether it be a liquid or someone broke a jar of spaghetti sauce or something like that or dumped motor oil -- when you would get a report that something like that had occurred in the parking lot, how did you handle it?
A. I would try to correct it as soon as I could.
Q. When you say correct it, who would you have do the cleanup?
A. I'd either have maintenance do it or a cart pusher.
Q. Would you ever contact Mr. Bailor to come in and do extra cleanup?

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A. I don't -- I don't know.
Q. To your recollection have you ever done that?
A. I can't recall that I've done that.
Q. If you had a report of a bag of trash or debris blowing around the parking lot, would it be your expectation that your in-store personnel would clean that up?
A. Yes.
Q. To your recollection did you ever have Mr. Bailor come and do an extra cleanup?
A. Not to my recollection.
Q. So if there was an incident that occurred between his regular sweeping dates, it was handled by store personnel.
A. Yes.
Q. In this --
A. I want to say that I can think of a time when I might have called him out to do an extra day, but I can't recall for sure, and I don't know why. But that was out of the norm if I did.
Q. And that was because the parking lots for whatever reason seemed to have more debris than usual?
A. I don't -- I wouldn't know why I called him out that day.
Q. But you wouldn't call him if somebody came into the

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store, bought motor oil, went out to the parking lot, was putting it in and spilled some.
A. No.
Q. You wouldn't call him for that kind of a cleanup.
A. No.
Q. This illusive manual we keep referring to, in that written instrument or document would you expect it to define who was responsible for checking the parking lot and how frequently?
A. Yes. I would assume.
MS. WOOD: I have no further questions.

CROSS EXAMINATION

BY MS. ZAKEN:
Q. I'm Trisha Zaken. I represent Roger Hull and HSJ Lawncare. I have a few questions for you.
A. Okay.
Q. First of all, do you know Roger Hull?
A. I believe I know him.
Q. Do you recall working with him when you were at the Clearfield store?
A. I remember -- if it's the same guy -- talking to the gentleman at the courtesy desk. And he had explained to me that he had done the work -- he had done the lawn care when Mel was there, and he was interested in if I was going to keep him on because I was new to the store.

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Q. Okay. When did you begin working at the Clearfield store?
A. March of 2001.
Q. Okay. Do you recall what it was that Mr. Hull did for Wal-Mart, what Mr. Hull -- or HSJ Lawncare did for Wal-Mart?
A. I would -- through our conversation, I -- he was to mow the grass. I believe he took care of the shrubbery around the store and pick up trash.
Q. Did you ever enter into any contracts with Mr. Hull or HSJ Lawncare?
MR. LOUGHNEY: Him personally or Wal-Mart?
MS. ZAKEN: I'm asking him personally.
THE WITNESS: I don't know if it was verbal or --
BY MS. ZAKEN:
Q. Did you ever see a contract with Roger Hull and HSJ --
A. I don't remember.
Q. If you wait till I ask the question -- she's going to get confused, and it will be hard to read the transcript.
A. I'm sorry.
Q. That's fine; perfectly natural. I'll ask the question again. Had you ever seen a contract entered into between Wal-Mart and Roger Hull and HSJ Lawncare?

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A. Not to my knowledge.
Q. I'm going to show you something that's been produced in discovery. It is a contract. Mr. Gates, this is a contract that's been produced in discovery, and I just want you to take a quick look at that and let me know if you've ever seen it before.
A. No.
MR. LOUGHNEY: You mean before today.
THE WITNESS: I haven't seen it before today.
BY MS. ZAKEN:
Q. Before today. So if I asked you your understanding of what this contract said, you wouldn't know.
A. No.
Q. Did you ever observe Roger Hull or anyone else from HSJ Lawncare perform the lawn-mowing services at Wal-Mart?
A. Yes.
Q. When you observed them, what would they be doing or he be doing?
A. Mowing.
Q. Did you actually see him work on shrubbery?
A. No.
Q. Did you actually see him remove trash?
A. I want to strike what I said about the no. I did see him work on shrubbery.
Q. Okay. You did see him work on shrubbery?

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A. Yes.
Q. Where was the shrubbery located?
A. In the beds throughout the parking lot.
Q. Now, it is my understanding that the area of the accident occurred near the auto service of the Wal-Mart store.
A. Yes.
Q. So if you're looking at Wal-Mart, the front of the store, the area of this incident occurred on the left-hand side?
A. Yes.
Q. And there are two to three islands in that area?
A. Yes.
Q. Is it two or three? Do you know?
A. No.
Q. Okay.
A. Three. Three.
Q. There's three?
A. Yeah.
Q. These three islands that we're talking about, is there shrubbery within those islands?
A. Yes.
Q. Have you ever seen Roger Hull or anyone from HSJ Lawncare work on that shrubbery?
A. No.

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Q. Did you ever see Mr. Hull or anyone from HSJ Lawncare remove debris from the parking lot?
A. No.
Q. Did you ever ask him or anyone from HSJ Lawncare to remove debris from the parking lot?
A. Yes.
Q. You did?
A. Yes.
Q. And when was that?
A. Conversation at the courtesy desk.
Q. And when was this conversation?
A. Shortly after I arrived at the store, either April or early May, I would assume.
Q. Okay. And was anyone else present when you had this conversation?
A. No.
Q. So in the spring of 2001?
A. Yes.
Q. You had a conversation with Mr. Hull at the courtesy desk?
A. Yeah.
MR. LOUGHNEY: Was your question, Trish, whether or not he asked Hull to remove debris? Is that --
MS. ZAKEN: Yes. I believe that was my question.
MR. LOUGHNEY: And he answered yes.

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MS. ZAKEN: And his answer was yes.
And when you asked Mr. Hull to do this, what was his response?
THE WITNESS: Yes.
BY MS. ZAKEN:
Q. When you were discussing this with him, did you refer to any type of contracts that he had?
A. There was just a discussion that he had done the work previously before I arrived there, and he was wanting to know if I was going to keep him on or --
Q. Um-hmm.
A. -- or not.
Q. Okay.
A. So -- I want to say I talked to him about debris because my previous experience at my previous store, that was a big big issue in New York.
Q. Niagara Falls.
A. Yeah, based on the location of that store, so --
Q. When you were having this discussion in the spring of 2001 with Mr. Hull at the courtesy desk, did you discuss the rate of pay -- the rate he would be paid?
A. I don't recall.
Q. Do you recall if there was ever a change in the rate that he was paid while you were at the Wal-Mart store?

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A. I don't recall.
Q. Did you ever deal with any invoices from HSJ Lawncare to Wal-Mart?
A. I didn't, no.
Q. Have you ever seen them?
A. No.
Q. Who would deal with the invoices?
A. The invoice clerk.
Q. At the time you had this conversation with Mr. Hull in the spring of 2001, did you also simultaneously employ B&D contracting?
A. Yes.
Q. And what -- I'm sorry, B&D Enterprises.
A. (Nods head affirmatively.)
Q. And what was the purpose of having B&D Enterprises work for Wal-Mart?
A. Parking lot sweeping.
Q. Okay. Is there a difference between -- in your mind is there a difference between debris removal and parking lot sweeping?
MR. LOUGHNEY: That's a pretty broad question. Object to the form. And maybe you want to ask what the specific reference was to debris if there was any. Maybe that would be an easier way to get there.

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BY MS. ZAKEN:
Q. When you were discussing with Mr. Hull in the spring of 2001 that you wanted him to do debris removal -- correct?
A. Um-hmm.
Q. From where did you want this debris removed?
A. From the parking lot, perimeter of the parking lot, the roads leading down to the bottom, to the main highway, those areas.
Q. Okay. So it would entail removal of debris in the parking lot.
A. Yes.
Q. And at this same time you also had B&D Enterprises performing debris removal from the parking lot. Correct?
A. Yes.
Q. And it's my understanding that you don't know if there was a discussion about the rate Mr. Hull would be paid?
A. No. May I state also that I would not expect the lawn care service and the shrubbery person to actually physically go down each aisle of the store and remove trash.
Q. Well, what was your expectation?
A. Shrubbery, the bedding areas of the store and the perimeter of the store, the grassy area.

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Q. Okay.
A. And the hillsides leading up to the store.
Q. Okay. What did Mr. Hull say in response to this request that you had?
A. I believe he was fine with it.
Q. Okay. Do you know how often Mr. Hull would be at the Wal-Mart store performing --
A. I don't know.
Q. Am I correct your testimony is you had never seen any invoices with HSJ Lawncare?
A. No.
Q. While you were at the Clearfield store, did you have any problems with the work that Mr. Hull did?
MR. LOUGHNEY: You mean -- that's pretty broad.
BY MS. ZAKEN:
Q. Any problems with any work that he did?
A. I want to -- I don't think I was very satisfied with the work that he had performed.
Q. And why?
A. Because I didn't have him do it then the following year or this final year that I was here.
Q. Okay. Why were you not satisfied with his --
A. I don't feel that he had done the work to my satisfaction as far as the beds, the -- the beds within the parking lot.

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Q. Okay.
A. And the debris cleanup.
Q. Okay. Did you ever put this in writing, make any --
A. No.
Q. -- notice to him about this?
A. No. I just didn't enlist his services the following year.
Q. Okay. Did you ever have any discussions with Mr. Hull about your dissatisfaction with his --
A. No.
Q. You have to wait until I ask the question before you respond.
A. I'm sorry.
Q. That's fine. Did you ever have any discussions with Mr. Hull about your dissatisfaction with his work?
A. No.
Q. Do you know when he stopped performing his services at the Clearfield store?
A. No.
Q. And you had never seen any contracts that he had entered into prior to your coming to the Clearfield store.
A. No.
Q. Did you ever speak with Ron Orris regarding Mr. Hull's work at the Clearfield store?

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A. No.
Q. How about Mr. Knezevich?
A. No.
Q. Have you spoken with Mr. Hull since you were notified of this incident?
A. No.
Q. In September of 2001 you were at the Clearfield store. Correct?
A. Yes.
Q. Do you recall if Mr. Hull was required to perform lawn-mowing services, shrubbery work that you have described to me, in that month?
A. I would assume, yes.
Q. And if he were there, would there be invoices generated reflecting that he had been there doing his work?
A. Yes.
MS. ZAKEN: Pat, are you aware of any invoices from --
MR. LOUGHNEY: Off the record.
(Off-the-record discussion.)
BY MS. ZAKEN:
Q. While he's looking at those, Mr. Gates, I'm going to show you some discovery responses that were propounded on behalf of Wal-Mart. These responses are not verified

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by anyone -- by Wal-Mart, but I'd like you to take a look at the invoices that are attached to these discovery responses and let me know if you've ever seen them before.
A. I can't recall seeing this one, although I did see it because that's my initials.
Q. Okay. Very good. I'm glad I asked this question then. Okay. So which invoice are you looking at?
A. 4-26-01.
Q. And could you read what the description of the work is on the April 26, 2001, invoice?
A. Wal-Mart Supercenter Mowing Vendor No. 287661.
Q. And do you know if your conversation with Mr. Hull wherein you requested him to do debris removal occurred before April 2001 or after April 2001?
A. I would assume before.
Q. And you said that the -- you initialed this April 26, 2001, invoice?
A. Yes.
Q. Okay. Is there a set procedure that is entailed when you initial invoices?
A. No.
Q. Why would you initial this invoice?
A. I don't know. I wasn't required to.
Q. Okay. All right. Let's look at the last invoice on -- in this discovery response. It's dated August 14,

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2001.
A. (Witness complies.)
MR. LOUGHNEY: 15th, isn't it?
MS. ZAKEN: Did I say 14th?
MR. LOUGHNEY: Work done on the 14th.
BY MS. ZAKEN:
Q. Do you see the invoice that I'm referring to?
A. Yes.
Q. Did you initial that one?
A. No.
Q. Do you know why you would have initialed the one in April but not the one in August?
A. No.
Q. And again, if you could just look at the August invoice for me and read what -- the description of the work performed?
A. Wal-Mart Supercenter Mowing Vendor No. 287661.
MS. ZAKEN: Okay. I'd like to have these marked as an exhibit. I don't know if there were previous exhibits marked. Were there?
MR. NADDEO: No.
(Off-the-record discussion.)
(Response to Request for Production of Documents -- Invoices -- marked Gates Deposition Exhibit A.)

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MS. ZAKEN: Do you know generally when Mr. Hull would stop mowing the lawn throughout the year?
MR. LOUGHNEY: Would start?
BY MS. ZAKEN:
Q. Stop, like seasonal-wise. Obviously he didn't do it in the wintertime. Correct?
A. Yeah. No.
Q. You don't know when he stopped?
A. I assume when the grass quit growing.
Q. I don't know when that happens. I thought you would know when he would stop.
A. I mow up until October, November sometimes, if the weather -- so I would assume he should have been mowing into the fall.
Q. Okay. I just want to clarify one thing. I apologize if I'm being redundant. At the time you had this conversation with Mr. Hull in the spring of 2001 at the customer service desk, you were not -- were you aware that there was already a contract in effect?
A. Yes.
Q. And you did not refer to that contract?
A. No.
Q. And you didn't draft another contract?
A. No.
Q. You didn't establish anything in writing about your

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conversation with Mr. Hull.
A. Not in writing, no.
Q. And there was no discussion about the rate he would be paid.
A. Can't recall.
MS. ZAKEN: Okay. I think those are all the questions I have for you.
THE WITNESS: All right.
REDIRECT EXAMINATION
BY MR. NADDEO:
Q. I just -- I guess I'm not clear on your discussion with Mr. Hull. Were you asking him to clean debris out of the islands and the grass, or were you asking him to clean debris off of the paved part of the --
A. Islands, the grass and the hillsides leading up to the store.
Q. Okay. So you weren't expecting him to clean any debris off of the paved parking area.
A. No.
Q. So even if there was debris let's say adjacent to one of the islands, that wasn't his job. He was just supposed to take care of the island? Is that --
A. If I paid for landscaping and I -- and there was landscaping laying outside of the bed, I would expect him to put it back in the bed since I paid for that. Okay.

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Q. But other forms of debris weren't his responsibility.
A. No.
Q. But if it's something that emanated from the bed itself, you would expect that to be cleaned up --
A. Yes.
Q. -- or replaced.
A. Yes.
Q. Would that be whether he put it there or not? In other words, if he did it during the course of his work, he was supposed to clean it up. But let's say some customer walked through the bed and kicked debris onto the parking area. Would he be obligated to clean that?
A. No.
Q. And I guess I want to go back to one other thing about your safety people. And I -- just sort of ask what Ms. Wood had asked you concerning that. She indicated that at any one point in time there would be as many as three to four members of your safety committee who were responsible to conduct surveillance in the parking area.
A. Um-hmm.
Q. Was that an honor system that you -- when they were told to do it, you just assumed they followed and --
A. It would be an actual --
Q. Let me finish. Or did they actually have to report

or fill something in?
A. There was an actual checkoff.
Q. So if it was my turn to look through the parking lot, I would do it, and then there would be some record that I -- I did my duty that day.
A. Yes.
Q. And those records would also be kept at the Clearfield store?
A. Yes.
Q. Those records would still be maintained today although this incident occurred several years ago, to your knowledge?
A. Yes.
MR. LOUGHNEY: I'm not sure of their record retention policy, I'm not sure that long. I don't know. Whatever you want additionally today, just put it in a letter form and we'll check. I mean, the fact that he says they're there, you know, doesn't mean they're there.
MR. NADDEO: I'm not sure why we're -- I'm just asking questions. Whether they're there or not is another story.
As far as you know, they're there.
THE WITNESS: Yes.
MR. NADDEO: That's all I wanted to know. That's all.

MS. WOOD: Nothing further.
MR. SHRECKENGOST: I have no questions.
MR. LOUGHNEY: Do you want -- generally the witness -- do you want to be included in the loop or not because I'm just not sure of your status.
MR. SHRECKENGOST: That's fine. I'm just here to observe today.

RECROSS EXAMINATION

BY MS. ZAKEN:
Q. Mr. Gates, in September of 2001, how often was Mr. Bailor performing parking lot sweeping?
A. Once a week.
Q. And when did the change go from three times per week to once a wake?
A. June or July.
MS. ZAKEN: That's all I have.
MR. LOUGHNEY: We'll read.
(The deposition was concluded at 11:44 a.m.)

• • •

CERTIFICATE OF COURT REPORTER

I, Elizabeth Schreiber Nissel, a notary public in and for the Commonwealth of Pennsylvania, do hereby certify that the witness, ROGER GATES, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition was taken at the time and place stated herein; and that the proceedings are contained fully and accurately, to the best of my ability, in the notes taken by me on the deposition of the above petition and that it is a correct transcript of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 4th day of March, 2004.

Elizabeth Schreiber Nissel,
RPR and Notary Public

WAL.325

11177
DJSC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

WAL-MART STORES, INC.'S RESPONSE TO ROGER R. HULL t/d/b/a HSJ LAWNCARE SERVICE'S SUPPLEMENTAL REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

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

DEPOSITION EXHIBIT
GATES - A
2-27-04
PENGAD 800-631-6989

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

WAL-MART STORES, INC.'S RESPONSE TO ROGER R. HULL t/d/b/a HSJ LAWNCARE SERVICES' SUPPLEMENTAL REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3

3. Please provide all invoices and payments for services exchanged between Original Defendant Wal-Mart and the Additional Defendant HSJ Lawncare between April 2000 and September 2001.

ANSWER:

Please see attached invoices dated 4/26/01, 5/22/01, 6/18/01, 6/27/01, 7/9/01, 7/23/01, and 8/15/01.

Respectfully submitted,

Dell, Moser, Lane & Loughney, LLC

By: Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire
Attorneys for Wal-Mart Stores, Inc.

Invoice

5/2/02

HSJ Lawncare and Landscaping
PO Box 260
Grampian, PA 16838

(814)236-3040 FX:(814)236-8730

Invoice No.	Invoice Date
02001016	04/26/01

Sold To: Wal-Mart Supercenter
100 Supercenter Dr
Vend # 287661 WO# 290321
Clearfield, PA 16830

Div01

Purchase Order Number	Date Ordered	Date Shipped	Payment Due	Salesperson
	04/26/01	04/26/01	04/26/01	

Terms	Notes
UPON RECEIPT	

Reference	Description	Amount
WAL-MART	Wal-Mart Supercenter Mowing Vend# 287661	120.00
NOTE	Done on Apr26, 2001	0.00

Invoice

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HSJ Lawncare and Landscaping
PO Box 260
Grampian, PA 16838

(814)236-3040 FX:(814)236-8730

Invoice No.	Invoice Date
02001023	05/09/01

Sold To: Wal-Mart Supercenter
100 Supercenter Dr
Vend # 287661 WO# 290321
Clearfield, PA 16830

Purchase Order Number	Date Ordered	Date Shipped	Payment Due	Salesperson
	05/09/01	05/09/01	05/09/01	

Terms	Notes
UPON RECEIPT	

Reference	Description	Amount
WAL-MART	Wal-Mart Supercenter Mowing Vend# 287661	120.00
NOTE	Mowing done on May 8, 2001	0.00

Message

SubTotal	120.00
Sales Tax	7.20
Shipping	
TOTAL	127.20

Invoice

HSJ Lawncare and Landscaping
PO Box 260
Grampian, PA 16838

(814)236-3040 FX:(814)236-8730

Invoice No.	Invoice Date
02001016	05/22/01

11164

Sold To: Wal-Mart Supercenter
100 Supercenter Dr
Vend # 287661 WO# 290321
Clearfield, PA 16830

Purchase Order Number	Date Ordered	Date Shipped	Payment Due	Salesperson
	05/22/01	05/22/01	05/22/01	

Terms	Notes
UPON RECEIPT	

Reference	Description	Amount
WAL-MART	Wal-Mart Supercenter Mowing Vend# 287661	120.00
NOTE	Done on May 21, 2001	0.00

Message

SubTotal	120.00
Sales Tax	7.20
Shipping	
TOTAL	127.20

Invoice

HSJ Lawncare and Landscaping
PO Box 260
Grampian, PA 16838

(814)236-3040 FX:(814)236-8730

Invoice No.	Invoice Date
02001038	06/20/01

Sold To: Wal-Mart Supercenter
100 Supercenter Dr
Vend # 287661 WO# 290321
Clearfield, PA 16830

Purchase Order Number	Date Ordered	Date Shipped	Payment Due	Salesperson
	06/20/01	06/20/01	06/20/01	

Terms	Notes
UPON RECEIPT	

Reference	Description	Amount
WAL-MART	Wal-Mart Supercenter Mowing Vend# 287661	120.00
NOTE	Done on June 19, 2001	0.00

Message

SubTotal	120.00
Sales Tax	7.20
Shipping	
TOTAL	127.20

Invoice

HSJ Lawncare and Landscaping
PO Box 260
Grampian, PA 16838

(814)236-3040 FX:(814)236-8730

Invoice No.	Invoice Date
02001046	06/25/01

Sold To: Wal-Mart Supercenter
100 Supercenter Dr
Vend # 287661 WO# 290321
Clearfield, PA 16830

985

Purchase Order Number	Date Ordered	Date Shipped	Payment Due	Salesperson
	06/25/01	06/25/01	06/25/01	

Terms	Notes
UPON RECEIPT	

Reference	Description	Amount
WAL-MART	Wal-Mart Supercenter Mowing Vend# 287661	120.00
NOTE	Done on June 27, 2001	0.00

Message

SubTotal	120.00
Sales Tax	7.20
Shipping	
TOTAL	127.20

Invoice

HSJ Lawncare and Landscaping
PO Box 260
Grampian, PA 16838

(814)236-3040 FX:(814)236-8730

Invoice No.	Invoice Date
02001049	07/10/01

Sold To: Wal-Mart Supercenter
100 Supercenter Dr
Vend # 287661 WO# 290321
Clearfield, PA 16830

Purchase Order Number	Date Ordered	Date Shipped	Payment Due	Salesperson
	07/10/01	07/10/01	07/10/01	

Terms	Notes
UPON RECEIPT	

Reference	Description	Amount
WAL-MART	Wal-Mart Supercenter Mowing Vend# 287661	120.00
NOTE	Done on July 9, 2001	0.00

Message

SubTotal	120.00
Sales Tax	7.20
Shipping	
TOTAL	127.20

Invoice

HSJ Lawncare and Landscaping
PO Box 260
Grampian, PA 16838

(814)236-3040 FX:(814)236-8730

287661 755

Invoice No.	Invoice Date
02001058	07/29/01

Sold To: Wal-Mart Supercenter
100 Supercenter Dr
Vend # 287661 WO# 290321
Clearfield, PA 16830

B# 1221

Purchase Order Number	Date Ordered	Date Shipped	Payment Due	Salesperson
	07/29/01	07/29/01	07/29/01	

Terms	Notes
UPON RECEIPT	

Reference	Description	Amount
WAL-MART	Wal-Mart Supercenter Mowing Vend# 287661	120.00
NOTE	done on 7/23/01	0.00

Message

SubTotal	120.00
Sales Tax	7.20
Shipping	
TOTAL	127.20

Invoice

HSJ Lawncare and Landscaping
PO Box 260
Grampian, PA 16838

(814)236-3040 FX:(814)236-8730

Invoice No.	Invoice Date
02001068	08/15/01

01235

Sold To: Wal-Mart Supercenter
100 Supercenter Dr
Vend # 287661 WO# 290321
Clearfield, PA 16830

Purchase Order Number	Date Ordered	Date Shipped	Payment Due	Salesperson
	08/15/01	08/15/01	08/15/01	

Terms	Notes
UPON RECEIPT	

Reference	Description	Amount
WAL-MART	Wal-Mart Supercenter Mowing Vend# 287661	120.00
NOTE	done on 8/14/01	0.00

Message

SubTotal	120.00
Sales Tax	7.20
Shipping	
TOTAL	127.20

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, Husband and Wife. Plaintiffs	*	CIVIL DIVISION
vs.	*	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR t/d/b/a B&D Enterprises. Defendants	*	
vs.	*	
JAMES BAILOR, t/d/b/a B&D Enterprises. Additional Defendant	*	
vs.	*	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and Boyles Insurance, INC., Additional Defendant	*	NO. 02-1811-CD

Deposition of : JAMES EDWARD BAILOR

Date : Friday, February 27, 2004
12:00 noon

Place : Law Offices of
James A. Naddeo, Esquire
211 1/2 East Locust Street
Clearfield, PA 16830

Reported by : Elizabeth Schreiber Nissel
RPR and Notary Public

APPEARANCES:

JAMES A. NADDEO, Esquire
appeared on behalf of the Plaintiffs

PATRICK LOUGHNEY, Esquire
appeared on behalf of Defendant Wal-Mart

ANN B. WOOD, Esquire
appeared on behalf of Defendant Bailor

TRISHA A. ZAKEN, Esquire
appeared on behalf of Defendant Hull

BRYAN K. SHRECKENGOST, Esquire
appeared on behalf of Defendant Boyles Ins.

INDEX OF WITNESS, JAMES EDWARD BAILOR

DIRECT	CROSS	REDIRECT	RECROSS
4(Zaken)	23(Naddeo)	26(Loughney)	

INDEX OF EXHIBITS

DESCRIPTION	IDENTIFIED
A. Outside Maintenance Agreement	10
B. Invoice 133 dated 9-24-01	20

JAMES EDWARD BAILOR, called as a witness, was sworn and testified as follows:

MS. WOOD: As we start these, I would like to note for the record that we were requested to produce certain invoices. We have available for review, if anyone wants to see them, all of his invoices, the originals, however I have made copies and have provided to counsel copies of the B&D invoices specifically for the period requested, which was June of 2001 through September of 2001.

MS. ZAKEN: Okay. Thank you.

DIRECT EXAMINATION

BY MS. ZAKEN:

Q. Could you please state your full name?

A. James Edward Bailor.

Q. Mr. Bailor, my name is Trisha Zaken, and I represent Roger Hull and HSJ Lawncare in a lawsuit filed by Mr. and Mrs. Rugh. I asked you to come here today to give deposition testimony. Have you ever given deposition testimony before?

A. No.

Q. Let me give you a few ground rules before we begin. First and foremost, keep all of your responses to questions verbal, which means no shaking of the head, shrugging of the shoulders, huh-uhs or uh-huhs, because those responses are not easily understood once the

EXHIBIT
tabbies
"H"

transcript is compiled. Do you understand that instruction?
A. Yes.
Q. Okay. Also, if you could wait until I ask the full question before you respond; often times you know what the question is going to be and you're anxious to give your response, but I'd ask that you wait until the question is fully asked before you give your answer. Do you understand that instruction?
A. Yes.
Q. Also, if you don't understand a question that I ask you, I'd ask you that you ask me to rephrase it. Otherwise I'm going to assume that you understood the question as it has been asked of you. Do you understand that instruction?
A. Yes.
Q. And you're here today represented by counsel. If at any time you'd like to speak with your counsel, just let us know. We can step outside of the room to accommodate that. Okay?
A. Yes.
Q. Where do you currently resides?
A. 602 Susquehanna Avenue, Curwensville, Pennsylvania.
Q. I'm sorry. What was it? Curwensville?
A. Curwensville.

Q. K-i-r --
A. C-u-r-w-e-n-s-v-i-l-l-e.
Q. Social Security number?
A. 189-44-0366.
Q. And your date of birth.
A. 7-27-51.
Q. Are you married?
A. No.
Q. Any children?
A. Yes.
Q. What are the ages of your children?
A. Thirty-two and thirty.
Q. Do they reside in Clearfield County?
A. Yes.
Q. Names, please, of your children?
A. Sandra Warren, W-a-r-r-e-n, and Christopher Bailor.
Q. Did you graduate high school?
A. Yes.
Q. From which school?
A. Curwensville.
Q. And what year did you graduate?
A. 1969.
Q. Did you go into the service after high school?
A. No.
Q. Did you go to college or any --

A. No.
Q. No?
A. No.
Q. How about vo-tech schools?
A. No.
Q. And do you currently operate B&D Enterprises?
A. Yes, I do.
Q. Could you tell me what type of business that is?
A. It's a mobile street sweeping and parking lot cleaning business.
Q. Is it a sole proprietorship? Corporation?
A. Sole proprietor.
Q. And how long have you been operating B&D Enterprises?
A. Since 1994.
Q. What did you do prior to that?
A. Ran heavy equipment.
Q. Were you employed by a particular entity, or were you --
A. Do you mean the name of the company?
Q. Um-hmm, yes.
A. Yes.
Q. And what was the name of that company?
A. Moravian Run Reclamation.
Q. Sorry. What was that again?

A. Moravian Run Reclamation company.
Q. And how long did you work for them?
A. I think seven years, but I'm not positive.
Q. That would take you back to about 1987? And then you went into business?
A. No, for Moravian, I worked for them for three years, and then before that I worked for -- would have been RB Contracting.
Q. What does -- what did RB Contracting do?
A. Coal mining. I was a heavy equipment operator for them also.
Q. Did you hold any certificates or licenses in conjunction with operating the heavy equipment with R&B or Moravian?
A. No.
Q. Have you ever been convicted of a crime involving theft or deception within the past ten years?
A. No.
Q. B&D Enterprises, in 2001 how many employees did you have?
A. None. I do everything myself.
Q. Has it always been like that --
A. Yes.
Q. -- since 1994? Wait until I complete the question. And in 2001, how many contracts did you have with

businesses for parking lot sweeping?
A. Actual written contract, I had three.
Q. And do you know who those contracts were with?
A. Wal-Mart, PennDOT and Reliant Energy.
Q. And correct me if I'm wrong, but you do parking lot sweeping. That's exclusively what B&D does?
A. Yes.
Q. What kind of equipment do you use for parking lot sweeping?
A. I have a truck with a sweeper unit mounted on the back.
Q. You have just one truck?
A. Yes.
Q. Do you recall when you began sweeping parking lots for Wal-Mart and Clearfield?
A. I believe it was May of 2000.
Q. I have a copy of a contract that you entered into with Wal-Mart. I'd just like you to take a look at that and let me know if this is the contract that you entered into.
A. Yes. This is it.
Q. Okay. So Mr. Bailor, you've identified the Outside Maintenance Agreement dated May 1, 2000, is the contract that you had entered into with Wal-Mart for parking lot sweeping. Correct?

A. Yes.
Q. Was this contract in effect in September of 2001?
A. Yes.
MR. LOUGHNEY: Did you mark that?
MS. ZAKEN: Not yet.
Other than the Outside Maintenance Agreement that's dated May 1, 2000, did you enter into any other contracts with Wal-Mart?
THE WITNESS: No.
MS. ZAKEN: I'd like to mark this as Bailor Exhibit A.
(Outside Maintenance Agreement marked Bailor Deposition Exhibit A.)
(Off-the-record discussion.)
BY MS. ZAKEN:
Q. Do you recall who you spoke with when you entered into this contract?
A. Yes, Mel Knezevich.
Q. And if you note on here, there's a Scope of Work exhibit to the Outside Maintenance Agreement. It's actually the fifth page of what's been identified as Exhibit A.
A. Okay.
Q. Do you recall -- do you recognize this page, Exhibit A, Scope of Work, Sweeping?

A. Yes.
Q. And if you note towards the middle of the page it -- it indicates that you are to perform the work at intervals of three times per week. Was that your understanding of what you were supposed to do?
A. Yes.
Q. Now, there's been some testimony that at some point your sweeping was reduced to one time per week.
A. That's right.
Q. Do you recall when that was?
A. That was in May of 2001.
Q. So in May of 2001 your sweeping went from three times per week to one time per week.
A. That's correct.
Q. Do you know why that happened?
A. They never really gave me a reason. They just called up and said the manager had decided to change; that he wanted me to change it from three times to one.
Q. Did they reduce what they paid you?
A. Well, I got paid for each time that I was there, so --
Q. Okay. So you were paid per -- each time --
A. Per visit. I'm paid per visit, yes.
Q. Did you speak with any particular person from Wal-Mart when you went from three times per week to one

time per week?
A. Yes.
Q. Who was that?
A. Sue Kavelak.
Q. And your testimony is they didn't give you a reason why.
A. No. She just called me up and said that the manager wanted me to change it from three times per week to one.
Q. Do you know who the manager was at that time?
A. Roger Gates.
Q. Did you ever have any conversations with Roger Gates?
A. No.
Q. Describe for me what you did when you went to Wal-Mart? Whether it was three times per week or once per week, what did you do when you went there, in your capacity as an employee of B&D?
A. I myself ran the sweeper truck. I went completely around the building, through all the parking lots, sweeping up dirt and debris.
Q. How long would it take you?
A. Roughly four hours.
Q. At what time of the day would you typically go and do the parking lot sweeping?

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A. 4:30 a.m.
Q. Now, obviously in the wintertime you don't do parking lot sweeping. Correct?
A. They wanted me to go whenever the weather was permitting, when I could, if it was one time per month or two times per month, just depending on the weather.
Q. And who would determine whether -- would they call you and say, "You know, it is the middle of January, but we still want you to come here this week and do some parking lot sweeping"? Or did you just determine that on your own?
A. No. They left that up to me.
Q. I want to ask you some questions on a particular area in this parking lot. If you're looking at the Wal-Mart store, there's the auto service station on the left-hand side and there's parking areas right outside of that automotive service station. Do you know where I'm referring to?
A. Yes.
Q. And there are also two or three islands in that area? Do you know what I'm referring to if I say islands?
A. (Nods head affirmatively.)
Q. Were you -- did you sweep or do parking lot sweeping when you went to the -- to Wal-Mart in that area to -- near the service station?

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A. Yes.
Q. Okay. Did you ever have any problems with rocks or debris in that area that stuck out in your mind?
A. Not any more than any of the other parking area It was pretty much the same. There was nothing outstanding.
Q. You mean the parking area at the Wal-Mart store.
A. Yes.
Q. Did you ever look inside those islands that are outside of the automotive service station?
A. Yes.
Q. Do you know what was inside of those?
A. Some of them have gravel or river stone. Some of them have like a mulch material, like a bark mulch. And I think all of them had trees planted in them.
Q. Roger Hull, I want to ask you some questions about Roger Hull. Do you know Roger Hull?
A. Yes, I do.
Q. How do you know Roger Hull?
A. He lived six miles from me. He was a member of the fire company. I knew him through the fire company. Also we had a racecar together. He was -- we were both in the pit crew for the racecar.
Q. And how long have you known him?
A. I'm not sure. I'm going to say --

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Q. I'm not going to hold you to it. It's fine if you don't remember.
A. I'm going to say ten years.
Q. Would you consider yourself a social acquaintance with Mr. Hull?
A. Yes.
Q. Did you ever have any type of employment endeavors with him? In other words, did you ever work with him on any particular type of project or on any particular type of business?
A. One time he contracted me to sweep an area in St. Marys for an Ames Department Store that he took care of.
Q. Do you know what role he played in that with Ames or with --
A. He had the contract for parking lot maintenance, and he subcontracted me to sweep it one time in the spring.
Q. Do you know why he subcontracted you to sweep?
A. Because he did not have a sweeper.
Q. Do you recall the date of that?
A. It would have been either April or May of I think 2000 and 2001.
Q. So it was roughly the same time that you held the contract with Wal-Mart.
A. Um-hmm.

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Q. Okay. When you were at Wal-Mart, did you ever see Roger Hull performing mowing services or any type of landscaping services?
A. No.
Q. Did you ever hear of any problems with his work at Wal-Mart?
A. No.
Q. Did he ever make any complaints to you about problems he was having doing his work at Wal-Mart?
A. No.
Q. Did you ever go to him and say, "Hey, I've noticed that your -- there's a problem with your work here"?
A. No.
Q. Okay. Did you have any discussions with Mr. Hull about this lawsuit?
A. Yes.
Q. Okay. When were those?
A. It would have been whenever I first received the lawsuit in the mail, so it would have been January --
Q. When this lawsuit was filed.
A. Yes, when the lawsuit was filed.
MR. NADDEO: That wouldn't be true. We didn't sue him. He didn't get it when the lawsuit was filed. He would have gotten it sometime after that.
MS. ZAKEN: When he was sued, I think --

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MS. WOOD: Should we note on the record, you filed an original complaint and he was not a party, but you filed an amended complaint and he was sued by you at that time.

MR. NADDEO: I thought he was joined by somebody else.

MR. LOUGHNEY: I think Hull was joined.

MS. WOOD: Shall we go off the record for a moment?

(Off-the-record discussion.)

MS. WOOD: The answer is, when he got served with the complaint is when he talked to Hull, whenever that was.

THE WITNESS: I think it would have been January -- January of 2002, would it have been?

BY MS. ZAKEN:

Q. When you spoke with him after you were brought into this lawsuit, what was the nature of your conversation with him?

A. I called him up and asked him if he had received any papers that -- and I explained to him about the lawsuit, of what was going on. He said he hadn't received anything, and that was the extent of our conversation.

Q. Okay. At the time you received the papers, lawsuit, did you know what -- did you have any knowledge of this incident happening before you were served with the

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papers?

A. No.

Q. In your conversations with Mr. Hull, was he aware of this incident happening before you had this discussion with him?

A. No.

Q. Did you subsequently come to learn what the plaintiff, Miss Anna Rugh, is alleging had happened?

A. Yes.

Q. And what is your understanding of what she's alleging?

A. I'm sorry. What do you mean?

Q. What do you under -- I'm asking your own words of what you understand Anna Rugh, the woman who fell in the parking lot -- what is your understanding of what she's alleging caused her fall?

A. That she tripped or slipped on some debris around an island and fell.

(Off-the-record discussion.)

BY MS. ZAKEN:

Q. Mr. Bailor, I'm looking at some invoices that your attorney has produced in response to my request for you to bring these invoices to your deposition today, and I'd like you to take a look at the last page which is your September 2001 invoice.

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A. (Witness complies.)

Q. Does that -- is that the -- Invoice 133, is that an invoice you submitted to Wal-Mart for work performed in September of 2001?

A. Yes.

Q. And according to this invoice, you had swept the parking lot four times: On September 3, September 10, September 17 and September 24. Is that correct?

A. That's right.

Q. Okay. At each -- let me ask you this. In the month of September 2001 do you recall ever seeing Roger Hull at Wal-Mart?

A. No.

Q. In September of 2001 do you have a specific recollection of seeing any type of landscaping material, whether it be rocks or mulch, in the parking lot?

A. Yes.

Q. Where?

A. Around every island.

Q. Around every island?

A. Yes.

Q. And when you would sweep the parking lot, would you sweep up this landscaping material?

A. Yes.

Q. September 10, 2001, do you recall what time you

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would have performed your sweeping?

A. 4:30 a.m.

Q. And that would last approximately four hours.

A. That's right.

Q. If there were any problems that you noted while you were performing your parking lot sweeping, would you note that on any other type of document?

A. No.

MR. LOUGHNEY: Are you going to mark those?

MS. ZAKEN: Actually I don't know how I'm -- actually can we take the September invoice and mark it as Exhibit B -- I think is what I'm on?

(Invoice 133 dated 9-24-01 marked Bailor Deposition Exhibit B.)

BY MS. ZAKEN:

Q. Mr. Bailor, do you know of any other contractors hired by Wal-Mart to perform any other type of outside work to the grounds or property?

A. No.

Q. And is your testimony that you never really actually saw Roger Hull at Wal-Mart? Correct?

A. No.

Q. Is that your testimony? You never saw him at Wal-Mart?

A. I never saw Roger. But like I said, I'm there at

4:30 in the morning.
Q. So you never saw him there. Correct?
A. No.
Q. Have you ever seen a contract that he entered into between Wal-Mart -- with Wal-Mart?
A. I received a copy.
Q. Throughout the course of this?
A. Throughout the course of this lawsuit.
Q. Okay. Did you ever have any discussions with Roger Hull about the work that he performed at Wal-Mart?
A. No.
Q. No. Okay. Are you still working for Wal-Mart?
A. Yes.
Q. How often are you sweeping their parking lots now?
A. Through the winter do you mean?
Q. No, just say generally.
A. Once a month -- or once a week. I'm sorry.
Q. It is still once a week that you sweep parking lots?
A. Yes.
Q. And who at the Clearfield store do you report to or work with?
A. Sue Kavelak is the person that I talk to.
Q. She was the individual who originally requested you to reduce from three times per week to one time per week?

A. Yes.
Q. How often do you meet or have any discussions with management at Wal-Mart pertaining to your job?
A. I never have, other than when I signed the original contract.
Q. Okay. Does Wal-Mart ever advise you or keep you updated as to policies that they implement regarding maintenance or safety guidelines that they follow as they apply to the outside grounds?
A. No. They have never talked to me about that.
Q. Have you attended any type of safety meetings or training sessions that are held by Wal-Mart?
A. No.
Q. This incident occurred on September 10, 2001. And according to the invoice that's been previously marked as Exhibit B, you were also there on September 10, 2001. Correct?
A. Yes.
Q. Do you recall seeing Roger Hull there that day?
A. No.
Q. Do you have any reason to believe that he was there that day?
A. No. I don't -- I don't know.
Q. In fact you typically -- you testified that you had never seen him at Wal-Mart.

A. No. I never saw him at Wal-Mart.
MS. ZAKEN: I think those are all the questions I have for you, Mr. Bailor?

CROSS EXAMINATION

BY MR. NADDEO:
Q. Mr. Bailor, your counsel has presented us with a series of copies of invoices that you directed to Wal-Mart. The first invoice is dated June 25 of 2001.
A. Um-hmm.
Q. And that applies to service rendered on 6-1 of that year?
A. Yes.
Q. And 6-4.
A. Yes.
Q. The first service -- the second service was three days later.
A. Yes.
Q. 6-1 to 6-4. The next service was rendered on 6-11 which was seven days later and 6-18 which was seven days after that and so forth, and I think, if I go through the intervals that you worked, would be seven-day intervals.
A. Six to seven days.
Q. Six- to seven-day intervals.
A. Yes.
Q. Do I understand then that Wal-Mart changed your

contract in early June from three times a week to one time a week? That's what the invoices would seem to indicate.
A. No. They changed it in May.
Q. Okay. So it was actually in May that --
A. May was when they changed it to once a week.
Q. Can you explain why then in June you swept within three days?
A. No, I can't.
Q. All right. I don't know if it's important. It was your custom to sweep the parking area at 4:30 in the morning?
A. Yes. I've done them at that time since I started.
Q. So it's always been done at 4:30.
A. Yes.
Q. Is it dark at that time?
A. Yes.
Q. So you would -- did you sweep by the light of the moon, or was there some artificial lighting there?
A. They have artificial lighting in the parking lot, plus my truck has lights on.
Q. Has headlights, right?
A. Plus it has lights that shine down where you're sweeping also.
Q. So if you're sweeping at night, you can see what you're doing.

A. Yes.
Q. At 4:30 in the morning could you guesstimate the number or average number of vehicles that would be in the parking area at Wal-Mart at that time?
A. Probably 50 cars, and there can be any number of tractor and trailers, anywhere from three to twelve tractor and trailers.
Q. On occasion did you have to move vehicles in order to complete your job?
A. No. I worked around them.
Q. So if there was a car parked in a particular area, you wouldn't sweep in that area.
A. No. I would have to go around it.
Q. How about a tractor-trailer?
A. I would have to go around it.
Q. Now, if there was a tractor-trailer in the aisleway, you would go around the tractor-trailer?
A. Yes.
Q. You wouldn't have that vehicle moved and then sweep through the aisle.
A. I would go around him. And then a lot of times they will move them, and then I go back and sweep that area.
Q. Were there times when you weren't able to sweep a specific area?

A. Yes.
MR. NADDEO: That's all I have.

CROSS EXAMINATION

BY MR. LOUGHNEY:
Q. Good afternoon, Mr. Bailor. I'm Pat Loughney. I represent Wal-Mart. On your contract, Exhibit A, there's a -- on the signature page that is your signature. Correct?
A. Correct.
Q. And there's a document that's from Erie Insurance Group about additional insured, Wal-Mart. Do you see that?
A. Yes.
Q. Do you recall the circumstances in which that coverage was generated? And I'm talking about, did you talk to your agent? Did you show the agent the contract, Exhibit A, and that's what the agent gave you?
A. No. I did not show him the contract. I talked to the agent and told him that I needed Wal-Mart added to my insurance as an additional insured, and that's why it was done.
Q. Do you have general liability coverage? Do you know what that is?
A. I do now, but I thought I did at this time, but later --

Q. But you didn't --
A. Later I found out I did not.
Q. Now, you had testified -- I think the terms you used were the islands had -- I think it was gravel, river stone and mulch.
A. Yes.
Q. In your mind is gravel and river stone different?
A. They are different, yes.
Q. Now, particularly in reference to the islands in the parking lot area for the tire and lube express -- do you know what I mean by that?
A. Yes.
Q. Do you recall how many islands there were there or are there still?
A. I believe there's three.
Q. Do you know what is contained in the beds of those islands?
A. In those ones I believe it's mulch.
Q. Does your -- and I think you testified that when you sweep, that there is mulch and stones --
A. Yes.
Q. -- around the islands, outside the bed? Is that what you meant?
A. Yes.
Q. And does that include the river stone as well?

A. Yes.
Q. And does your street sweeper pick up the gravel, if it's gravel, the mulch if it's mulch and the river stone if it's river stone?
A. Yes.
Q. Did you ever have any discussion with anyone at Wal-Mart about the work you did, whether or not you were getting the job done that you needed to get done?
A. I asked Sue every time I would talk to her. I would ask her if my work was satisfactory, and she would tell me then, yes, that it was.
Q. Did you ever tell them that you couldn't get your work done one time a week that you needed to get done?
A. No.
MR. LOUGHNEY: That's all I have.
MS. ZAKEN: Mr. Bailor, you have the right to review your transcript to make sure that the court reporter has transcribed everything that you have said correctly, which I'm sure she has.
MR. LOUGHNEY: Well --
(Off-the-record discussion.)
MS. WOOD: We'd like to review and sign.
MS. ZAKEN: I'm advising him of his right to do that. I'm sorry. I didn't mean to suggest that he shouldn't. I just want to make sure that the court

reporter knows I'm not --

So you're going to read.

MS. WOOD: Yes.

(Off-the-record discussion.)

(The deposition was concluded at 12:40 p.m.)

* * *

CERTIFICATE OF COURT REPORTER

I, Elizabeth Schreiber Nissel, a notary public in and for the Commonwealth of Pennsylvania, do hereby certify that the witness, JAMES EDWARD BAILOR, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition was taken at the time and place stated herein; and that the proceedings are contained fully and accurately, to the best of my ability, in the notes taken by me on the deposition of the above petition and that it is a correct transcript of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 4th day of March, 2004.

Elizabeth Schreiber Nissel,
RPR and Notary Public

reporter knows I'm not --

So you're going to read.

MS. WOOD: Yes.

(Off-the-record discussion.)

(The deposition was concluded at 12:40 p.m.)

* * *

CERTIFICATE OF COURT REPORTER

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 4th day of March, 2004.

Elizabeth Schreiber Nissel,
RPR and Notary Public

District 1127

Outside Maintenance Agreement

THIS AGREEMENT is made as of the 1 day of May 2002 between Wal-Mart Stores, Inc. a Delaware corporation, of 2001 South East Tenth Street, Bentonville, Arkansas 72712-6489 ("Owner") and _____("Contractor").

NOW, THEREFORE, for and in consideration of the obligations and other valuable considerations and covenants, the sufficiency of which is hereby acknowledged, Owner and Contractor do hereby agree as follows:

1. Preliminary--Definitions:

a. "Outside Maintenance Service" shall include landscaping and/or irrigation work, snow removal services, or parking lot sweeping as defined in Exhibit A attached hereto and made a part hereof, under the "Scope of Work".

b. "Scope of Work" shall define the type and scope of the outside maintenance service work that this contract intends to cover.

c. "Work" shall be defined as any service provided within the defined Scope of Work.

2. General Requirements:

(2.1) The Contractor shall purchase and maintain such insurance as indicated below and with the limits listed below. Such insurance shall protect Owner and the Contractor from claims which may arise out of or result from the operations under this Agreement whether such operations are by himself, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance contracts shall contain a Waiver of Subrogation in favor of Owner and its affiliates.

Certificates of Insurance, acceptable to Owner, MUST BE RECEIVED by Owner before Owner will execute this Agreement or before any Work is performed, whichever is the earliest date. Failure to provide the proper Certificate of Insurance as required may result in the cancellation of the award of this Agreement or cancellation of this Agreement. The certification must indicate that the limits listed below are provided and that the insurance will not be canceled during the term of this contract without thirty (30) days prior written notice by registered mail to Owner.

HOLDER SHOULD READ: WAL-MART STORES, INC., ITS SUBSIDIARIES & ITS AFFILIATES, 2001 SE 103H ST., Bentonville, AR 72716-6489.

PENGAD 800-631-6989
DEPOSITION EXHIBIT
BAILOR-A
CSN 2-27-04

Insurance policies meeting these requirements shall remain in effect for the duration of the Work. No payments to the Contractor will be authorized unless current Certificates of Insurance have been filed with Owner.

In no case should insurance coverage be less than:
- Statutory Workers' Compensation and Employer's Liability---$500,000 per occurrence.
- Commercial General Liability including Contractual Liability---$250,000.
- Business Auto Liability Coverage---$250,000.

The Contractor shall be responsible for securing Certificates of Insurance from all subcontractors for insurance coverage limits indicated above and shall make such Certificates available to Owner upon request.

(2.2) All requests for service(s) that are not included within the Scope of Work must be in writing and approved by Owner at Owner's sole discretion. Contractor shall not start additional work (which is not included in the Scope of Work) until the Owner's authorized representative has approved the request in writing. Failure to obtain advance approval before starting the additional work shall result in non-payment.

(2.3) The Owner may take any reasonable action necessary to control damage or protect the health, safety and welfare of the public in the event of problems involving the "Outside Maintenance Service" Such action on the part of the Owner shall not relieve the Contractor of any responsibilities related to any problems relating thereto.

No part of the Work set forth herein shall be performed in any location or manner which may endanger the health, safety and welfare of the public now or in the future. Means, methods, techniques, sequencing, etc. are the sole responsibility of the Contractor.

(2.4) Contractor warrants and guarantees that all Work specified herein is to be performed in a workmanlike manner acceptable to Owner, which shall be the sole judge of quality of Work. In the event the Work proves to be unacceptable to Owner prior to the time payment is made, Contractor shall have ten(10) days to correct such defects at Contractor's own reasonable expense, with payment then due upon completion of the corrections(s). If Contractor fails to correct such defects to Owner's satisfaction within the time specified above, Owner shall have the right to correct the defects and deduct the cost thereof from the amount owed to Contractor by the Owner. In the event any defects in the Work are discovered by Owner after paying Contractor, then, upon receipt of notice from Owner, Contractor shall have ten(10) days to correct the defects at Contractor's own expense. If Contractor fails to correct such defects to the satisfaction of Owner, which shall be at the sole discretion of Owner, within the time specified, Owner shall have the right to cure and correct such defects and invoice the Contractor for such expenditures. Contractor shall within ten(10) days from receipt thereof, reimburse Owner for any and all cost incurred therein.

(2.5) Contractor shall coordinate its schedule in performing the Work with the applicable Owner location's Store Manager.

(2.6) Owner may terminate this Agreement without cause upon fifteen (15) day's prior written notice to Contractor.

(2.7) Contractor agrees that he/she shall assume sole and complete responsibility for the Work, including safety of all persons and property; and that the Contractor shall defend, indemnify, and hold the Owner and tenants harmless from any and all liability, real or alleged, in connection with the Contractor's, Contractor's employees, agents and subcontractors performance of the Work set forth herein, excepting for liability arising from the sole negligence of the Owner or tenants. Contractor shall ensure that all equipment utilized on the premises is provided with proper safety guards.

(2.8) The Contractor shall, throughout the course of the Work set forth herein, comply with all rules, ordinances, regulations, etc. set forth by agencies having jurisdiction, which apply to the premises, the Contractor, and/or contractor's employees and subcontractors.

(2.9) The Contractor shall ensure that all Contractor's employees, agents, and subcontractors present a neat, clean, appearance and conduct themselves in a business-like manner at all times while on Owner's property. Owner strongly encourages all Contractors to provide uniforms for their employees, agents, and subcontractors.

(2.10) This Agreement shall not be enforceable against Wal-Mart (or any of it's affiliates) unless, on behalf of Wal-Mart, this Agreement is executed by the applicable Divisional Manager assigned to the Wal-Mart location at which the Scope of Work is to be performed.

3. Scope of Work:

Contractor shall provide services at Wal-Mart Stores, Inc. Store/Sam's Club Store #2125, address: 100 Super Center ("Property") as set forth in the Scope of Work attached hereto as Exhibit "A" and made a part hereof. This Agreement is contingent upon the execution of Exhibit "A" by both parties.

4. Payment:

Owner shall make payment to Contractor within thirty (30) days after receipt of the Contractor's invoice at the address designated in this Agreement. Time required to process Contractor's invoice may be extended by Owner if required documentation is not submitted with each invoice.

Invoices must have the following information in order for payment to be made:

1. Invoice number
2. Invoice date
3. Date(s) that the service(s) was provided
4. Detailed description of service(s) provided
5. Itemized invoice amount
6. Wal-Mart/Sam's store number
7. Contractor's Wal-Mart vendor number
8. Attached "Work Completion Report" signed by Store Manager.

NOTE: Invoice for regular monthly contract service must show ONLY the regular monthly charge and no other charges. Approved additional charges must be invoiced separately.

All Invoices should be sent to:

Wal-Mart Real Estate Accounting
PO Box X055
Bentonville, AR 72712

5. Pricing.

Pricing on Exhibit A shall include all labor (whether by Contractor or subcontractor) materials, taxes, permit fees (if applicable), and equipment.

6. Entire Agreement:

This Agreement constitutes the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Agreement is the result of good faith arms length negotiations. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

7. Successors:

It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or federal government. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

8. Notices:

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, or similar overnight delivery service, to the address of either party below. Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall

If to the Contractor:
NAME B & O Enterprises
ADDRESS 602 Susquehanna Ave.
CITY, STATE, ZIP Curwensville Pa. 16833
ATTN: _____

If to Owner:
WAL-MART STORES, INC.
2001 S.E. 10h Street
Bentonville, AR 72712-6489
Attn: Maintenance Division

:bts:

Contractor shall pay off and discharge any and all debts and obligations incurred pursuant to performing the Work, including but not limited to obligations owed to suppliers of material and subcontractors.

10. Term of Agreement:

This Agreement is for a period of 24 months, which may be terminated pursuant to Owner's right of termination set forth in paragraph (2.6) herein, and shall be effective as of the date written above. This Agreement shall automatically extend from year to year unless the same is terminated by Wal-Mart upon at lease thirty (30) days written notice prior to the end of the initial term of this Agreement or the extended term of this Agreement or unless terminated by Wal-Mart pursuant to it's right of termination set forth in paragraph (2.6) heroin.

11. Severability:

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby; and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year set out.

CONTRACTOR:

B & L Enterprises

Jim Bailor 5/5/02
By: Date:

Jim Bailor
Print Name

(814) 236-0764
Phone

WAL-MART STORES, INC.

5-10-02
By: Date:

Tim Fox DM
Print Name Title:
(District Manager)

(814) 375-5010
Phone

Wal-Mart/Sam's Store No. 2129

Original Copy

Exhibit A

SCOPE OF WORK
SWEEPING

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 4/30/00

The Contractor shall provide sweeping and related maintenance services Work located at the Wal-Mart Store, Inc./Sam's Club # 2129, address: 100 SUPER CENTER DR as follows:

- Areas are to be swept ("Areas") at intervals as listed below.
- Areas include, but are not limited to, parking lot, sidewalks, truck wells, and rear of the building.
- Contractor will report immediately any unusual findings such as graffiti, vandalism, excess trash being dumped on the property, vehicles blocking removal, or any other dangerous situation discovered on the property by providing a photograph of the unusual finding to the owner.

Contractor shall provide the Work set forth herein, per occurrence as set forth herein:

_____ Daily
_____ Weekly
_____ Bi-Weekly
_____ One Time per Month
_____ Intervals of # 3 per Week

Price per occurrence: $ 315.00 Estimated more or Less

Acknowledged and Agreed to by:

CONTRACTOR:

B+D Enterprises
Name of Contractor

Jim Bailor 5/3/00
By: Date:

Jim Bailor
Print Name

OWNER:

WAL-MART STORES, INC.

5-10-00
By: Date:

Tim Fox D.M.
Print Name Title:
(District Manager)

Form **W-9**
(Rev. March 1994)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do NOT send to the IRS.

Please print or type

Name (If joint names, list first and circle the name of the person or entity whose number you enter in Part I below. See instructions on page 2 if your name has changed.)
JAMES E. BAILOR

Business name (Sole proprietors see instructions on page 2.)
B+O ENTERPRISES

Please check appropriate box: ☒ Individual/Sole proprietor ☐ Corporation ☐ Partnership ☐ Other ▶

Address (number, street, and apt. or suite no.)
602 SUSQUEHANNA AVE.

City, state, and ZIP code
CURWENSVILLE, PA. 16833

Requester's name and address (optional)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). For sole proprietors, see the instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How To Get a TIN below.

Social security number

OR

Employer identification number
25-1719514-10

Note: *If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.*

Part II For Payees Exempt From Backup Withholding (See Part II instructions on page 2) ▶

Part III Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

Certification Instructions.—You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, the acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (Also see Part III Instructions on page 2.)

Sign Here — Signature ▶ James E. Bailor — Date ▶ 5/3/00

Section references are to the Internal Revenue Code.

Purpose of Form.—A person who is required to file an information return with the IRS must get your correct TIN to report income paid to you, real estate transactions, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA. Use Form W-9 to give your correct TIN to the requester (the person requesting your TIN) and, when applicable, (1) to certify the TIN you are giving is correct (or you are waiting for a number to be issued), (2) to certify you are not subject to backup withholding, or (3) to claim exemption from backup withholding if you are an exempt payee. Giving your correct TIN and making the appropriate certifications will prevent certain payments from being subject to backup withholding.

Note: *If a requester gives you a form other than a W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.*

What is Backup Withholding?—Persons making certain payments to you must withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding." Payments that could be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, your payments will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or
2. The IRS tells the requester that you furnished an incorrect TIN, or
3. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
4. You do not certify to the requester that you are not subject to backup withholding under 3 above (for reportable interest and dividend accounts opened after 1983 only), or
5. You do not certify your TIN. See the Part III instructions for exceptions.

Certain payees and payments are exempt from backup withholding and information reporting. See the Part II instructions and the separate Instructions for the Requester of Form W-9.

How To Get a TIN.—If you do not have a TIN, apply for one immediately. To apply, get Form SS-5, Application for a Social Security Number Card (for individuals), from your local office of the Social Security Administration, or Form SS-4, Application for Employer Identification Number (for businesses and all other entities), from your local IRS office.

If you do not have a TIN, write "Applied For" in the space for the TIN in Part I, sign and date the form, and give it to the requester. Generally, you will then have 60 days to get a TIN and give it to the requester. If the requester does not receive your TIN within 60 days, backup withholding, if applicable, will begin and continue until you furnish your TIN.

ERIE Insurance Group Change Request

COMMERCIAL AUTO

Policy Nbr: Q03 3033239 N
Agent Nbr: AA4304
Effective: 03/30/2000 to 03/30/2001
Agent Name: RONALD P BOYLES JR

Insured: B & D ENTERPRISES
Change Effective: 05/01/2000 Amendment

01. Detailed Instructions
*ADD ADDITIONAL INSURED FOR AUTO#10 07 INTL W/SWE
EPER AS FOLLOWS:
WAL-MART STORES, INC.
100 WAL-MART DRIVE
WOODLAND, PA 16881

IMPORTANT: If this change affects any other ERIE policy, please submit a separate change request for each policy.

Date: 05/01/00

Change form completed by: JJB

Signature of named insured (if required): _____

R24045 28963-426-00424-6 27398

Department of the Treasury
Internal Revenue Service
PHILADELPHIA, PA 19255

Date of this notice: SEP. 2, 1996
Taxpayer Identifying Number: 25-1795240
Form: 2363 Tax Period:

For assistance you may call us at:

JAMES E BAILOR
B & D ENTERPRISES
602 SUSQUEHANNA AVE
CURWENSVILLE PA 16833-1529020

412-281-0112 LOCAL PIT
1-800-829-1040 OTHER

WE CHANGED YOUR NAME AND/OR ADDRESS

THANK YOU FOR YOUR CORRESPONDENCE. AS YOU REQUESTED, WE'VE MADE THE FOLLOWING CHANGES TO YOUR NAME AND/OR ADDRESS:

NAME AND ADDRESS PREVIOUSLY SHOWN ON YOUR ACCOUNT	NAME AND ADDRESS NOW SHOWN ON YOUR ACCOUNT
JAMES E BAILOR B & D ENTERPRISES 602 SUSQUEHANNA AVE CURWENSVILLW PA 16833-1529020	JAMES E BAILOR B & D ENTERPRISES 602 SUSQUEHANNA AVE CURWENSVILLE PA 16833-1529020

IF YOU DON'T AGREE WITH THIS CHANGE, PLEASE LET US KNOW.

INVOICE

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B & D ENTERPRISES

602 Susquehanna Avenue
CURWENSVILLE, PA 16833
Phone: (814) 236-0764
Fax: (814) 236-1310

Date 9/24/01

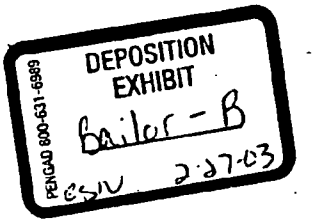
Name WAL-MART #2129

Address

City Clearfield, Pa.

Date	Hours	Description	Total
9/3		Sweeping Lot	252.00
9/10			252.00
9/17			252.00
9/24			252.00
		PD	
		Total Amount Due	1008.00

1½% per month interest will be added to all unpaid balances after 30 days.



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	)	
Plaintiffs,	)	CIVIL DIVISION
vs.	)	Docket No. 02-1811-CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	)	
Defendants,	)	
vs.	)	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	)	
Additional Defendant,	)	
vs.	)	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	)	
Additional Defendants.	)	

DEPOSITION OF RONALD L. ORRIS, taken pursuant to the Pennsylvania Rules of Civil Procedure, before Jean Martin Koopman, Court Reporter-Notary Public in and for the Commonwealth of Pennsylvania, on Wednesday, August 27, 2003, at the law offices of Bell, Silberblatt & Wood, 318 East Locust Street, Clearfield, Pennsylvania 16830, commencing at 2:14 o'clock p.m.

COPY

EXHIBIT
tabbies
"I"

APPEARANCES

On behalf of the Plaintiffs:
James A. Naddeo, Esquire
211 1/2 East Locust Street
P.O. Box 552
Clearfield, PA 16830

On behalf of the Additional Defendant, Roger R. Hull t/d/b/a HSJ Lawncare:
Trisha A. Zaken, Esquire
Summers, McDonnell, Walsh & Skeel, L.L.P.
The Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

On behalf of the Defendant, Wal-Mart Stores, Inc.:
Danielle M. Vugrinovich, Esquire
Dell, Moser, Lane & Loughney, L.L.C.
1300 Frick Building
437 Grant Street
Pittsburgh, PA 15219-6002

On behalf of the Defendant/Additional Defendant, James Bailor t/d/b/a B&D Enterprises:
Ann B. Wood, Esquire
Bell, Silberblatt & Wood
P.O. Box 670
318 East Locust Street
Clearfield, PA 16830

On behalf of the Defendant, Boyles Insurance, Inc.:
Phillip P. DiLucente, Esquire
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

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WITNESS: RONALD L. ORRIS

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Mr. Naddeo	23

(No exhibits.)

PROCEEDINGS

(2:14 o'clock p.m.)

RONALD L. ORRIS,

the deponent, having been first duly sworn, was deposed and testified as follows:

EXAMINATION

BY MS. ZAKEN:

Q. Would you please state your full name.

A. Ronald L. Orris, O-r-r-i-s.

Q. Mr. Orris, my name is Trisha Zaken. I represent HSJ Lawncare and Roger Hull in the lawsuit that was filed by Mr. and Mrs. Rugh. This lawsuit arises out of a trip and fall incident that occurred at the Clearfield Wal-Mart store in September of 2001. I've asked you to come here today to give deposition testimony, and you were kind enough to come.

A. Okay.

Q. Have you ever given deposition testimony before?

A. No.

Q. Let me just give you a few ground rules before we get going. You can see that there's a court reporter here. She's taking down everything that is asked of you and everything that you say. So if you could please keep your voice up, keep your responses

verbal, which means no shaking of the head, no shrugging of the shoulders, no uh-huhs or huh-uhs, because those can't be transcribed very easily.

Do you understand that instruction?

A. Okay.

Q. Also, if at any time you don't understand a question that I ask you, please ask me to rephrase it. Otherwise, I will assume that you have understood the question as it has been asked.

Do you understand that instruction?

A. Yes, I do.

Q. Also, if you need a break at any time, just let me know. I don't anticipate you being here that long.

A. Okay.

Q. Mr. Orris, where do you currently reside?

A. 159 Kennedy Street, Bradford, Pennsylvania.

Q. What is your Social Security number?

A. 183-34-9839.

Q. Date of birth?

A. April 30, 1944.

Q. Are you married?

A. Yes.

Q. Your wife's name?

A. Theresa, spelled T-h-e-r-e-s-a, middle initial M.

Q. Do you have any children over the age of 16 that reside in Clearfield County?
A. No.
Q. Have you ever been convicted of a crime involving theft or deception within the past ten years?
A. No.
Q. Where are you currently employed?
A. At Wal-Mart in Bradford.
Q. How long have you been employed at the Bradford store?
A. Since December 31, 2001.
Q. And I'm assuming prior to that, you were employed at the Clearfield store?
A. I was, yes.
Q. When did you stop working at the Clearfield store?
A. I left Clearfield, I believe it was May 19, 2000.
Q. When you were at the Clearfield store, what was your title?
A. Co-manager.
Q. What were your job responsibilities as co-manager?
A. I was in charge of the food side of the store.
Q. Now, when you say "the food side of the store,"

are you referring to like the grocery side of the store?
A. Grocery side, yes, uh-huh.
Q. How long had you been employed at the Clearfield store?
A. Approximately nine months.
Q. So from about July of '99 to May of 2000?
A. Yes.
Q. As part of your duties or responsibilities as co-manager, did you ever enter into any contracts or retain any type of subcontractors on behalf of Wal-Mart?
A. Yes.
Q. What type of contracts or what type of subcontractors would you deal with?
A. Well, the only ones I've ever dealt with are the ones we're here to talk about today.
Q. B&D Enterprises --
A. Right.
Q. -- and HSJ Lawncare?
A. Yes, yes.
Q. Did you actually go out and seek the services of either B&D or HSJ?
A. If I remember -- and I'm not absolutely sure. I'll tell you that right now. I'm not sure if they had

already been on board and we just redid the agreement. I believe that's how it happened, but I'm not absolutely sure on that.
Q. Within the nine months that you worked at the Clearfield store, however, you did work with B&D Enterprises and HSJ Lawncare?
A. Yes.
Q. Do you know Roger Hull?
A. Yes.
Q. Did you know Roger outside of the contractual relationship between Wal-Mart and HSJ Lawncare?
A. No.
Q. Do you have specific recollections of working with HSJ or Roger Hull while you were employed at the Clearfield Wal-Mart?
A. Do you mean things that happened?
Q. Yes.
A. Not really. I mean, I know they did the work for us, but as far as we really didn't have a lot of contact, because -- you know. The only time we would probably ever have contact is if they weren't doing their job.
Q. Well, let's back up a bit. What did HSJ Lawncare do for Wal-Mart?
A. The landscaping that I remember, yes.

Q. When you say "landscaping," does that include lawn mowing services?
A. Does that include what?
Q. Lawn mowing services.
A. Yes, yes, uh-huh.
Q. When you say "landscaping," could you describe for me what landscaping Mr. Hull or HSJ employees did at Wal-Mart?
A. I think it was primarily just the grass, and I can't remember what else was included in that, to be honest with you, but I know they did the grass for sure.
Q. So you specifically recall them mowing the grass at Wal-Mart?
A. I used to see them do it every morning what I drove to work. That's the only reason I remember that.
Q. Do you know how often they would mow the lawn or the grass at Wal-Mart?
A. I would think probably once a week.
Q. At the time you were the co-manager at the Clearfield store, who was responsible for paying invoices such as invoices for lawn mowing services?
A. That would be handled through our home office.
Q. Through the home office?
A. Yes.

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Q. Did you have any problems with the services that were provided by Roger Hull or HSJ Lawncare?
A. I don't recall any.
Q. If there were problems with what he was doing at Wal-Mart, would you be involved in making sure that things were taken care of?
A. If it was delegated to me, yes.
Q. If it wasn't delegated to you, who else would it be delegated to?
A. Well, it could have been -- there was another co-manager at the time, Peter Brown. It could have been Pete, or Mel might do it himself.
Q. Do you recall hearing anything from Mr. Brown about problems that he had or observed with HSJ Lawncare services?
A. I don't recall any.
Q. Where is Pete Brown right now?
A. He is in Saint Marys, Pennsylvania.
Q. You guys move around a lot.
A. Yeah, we do. Four times in six years, but I'm home now.
Q. I'm going to show you what has been previously marked as Knezevich Exhibit A, and I'm going to ask that you take a look at it. It's an eight-page document. The first page says, "Outside Maintenance

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Agreement." I'm going to just ask that you take a few minutes and look that over. Okay?
A. Uh-huh.
Q. Have you taken a look at this eight-page document that's entitled "Outside Maintenance Agreement"?
A. Yes.
Q. I'm going to ask you to turn to Exhibit 1, which begins on page 5, and I believe that goes to page 8.
A. Okay.
Q. Page 5, which is entitled "Exhibit 1" at the bottom says, "Scope of Work, Landscaping."
A. Okay.
Q. Have you seen this document before?
A. Yes.
Q. Are those your initials that are placed on various parts of this Scope Of Work, Landscaping agreement at pages 6 and 7?
A. Yes, they are.
Q. Do you recall putting these initials on this particular Scope Of Work agreement?
A. Do I recall doing it?
Q. Yes.
A. I mean, it was three years ago. I mean, those

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are my initials. I can just tell you that.
Q. You take no issue with the fact that those are your initials?
A. Oh, no. Those are mine, yes.
Q. Those are your initials?
A. Yeah, those are mine, and that's my handwriting.
Q. This is a contract with HSJ Lawncare; correct?
A. Yes.
Q. And it's dated May 1 of 2000?
A. Uh-huh.
Q. Which would have been approximately about a month before you left?
A. Uh-huh.
Q. Or within the month that you left the Clearfield store?
A. Right.
Q. Do you recall negotiating or talking to Roger Hull about this contract?
A. It's very limited, what I remember, to be honest with you.
Q. Why don't you tell me what you do remember.
A. I remember that we had two different -- I believe we had two different groups. One that did our snow removal, and one that did the cutting of our

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grass. As far as details, I really don't remember.
Q. If you look at page 7 under Section III, "Litter Removal," you will note that subsection A and subsection B both have some deletions with your initials by them.
A. Okay.
Q. There's another set of initials. Do you know those to be Roger Hull's?
A. I really don't.
Q. So you don't know whose initials those are?
A. No.
Q. Do you recall why these deletions were made out of Section III, the Litter Removal?
A. It would be just speculation. I really don't. I mean, the speculation would be that he was handling just cutting the grass, but I really don't know.
MS. VUGRINOVICH: I'm going to object. If he doesn't know what they are, I don't want him to guess at an answer.
BY MS. ZAKEN:
Q. Would you agree that Section III, sub A has deleted from the provisions that the contractor in this situation, HSJ Lawncare, was to remove litter from the "sidewalks," and I don't know what the second word is that's deleted. Do you know what that second word is

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that's deleted in subsection A?
A. "Gutters."
Q. Gutters?
A. I think. I think it's gutters.
Q. And you don't know why, or --
A. I really don't.
Q. -- what led to the deletions of those provisions of the contract?
A. No, I really don't.
Q. If you'll take a look at subsection B under Litter Removal on page 7 of Exhibit A, that whole section is crossed out; correct?
A. Yes, it is.
Q. And that section begins with, "In addition to removing all litter from sidewalks... the Contractor shall remove and dispose of any large miscellaneous debris or trash in the parking lot"; is that correct?
A. That's what it says, yes.
Q. Do you know if the reason this was deleted was because you already had a contractor to remove litter from the sidewalks and the parking lots?
A. Again, I really don't remember.
Q. But it's your understanding that since these provisions that are in Section III were removed, that Roger Hull or HSJ Lawncare was not responsible for

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doing those items?
A. That's what it appears, yes.
Q. I also want to ask you some questions -- I'm not done on this one. Sorry.
A. Okay.
Q. If you will take a look at Section I on page 5, "Care Of Planted Areas." Do you see where I'm talking about?
A. Oh, okay. All right.
Q. At the Clearfield store, what were the planted areas?
A. Oh, God. I will be honest with you, I haven't been back there in three years. Really, unless I was there right now, I wouldn't be able to tell you.
Q. Let me ask you this: Did you ever see Roger Hull do anything to any planted areas at the Clearfield store?
A. The only thing I remember is him cutting the grass.
Q. Let me ask you this: The invoices that were drafted for subcontracting services such as the services provided by HSJ Lawncare, would it itemize every specific task that would have been performed and that would have been paid for by Wal-Mart?
A. I have no idea.

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Q. You don't know?
A. That's all handled by home office.
Q. Through the home office?
A. Right.
Q. Have you ever seen any invoices for HSJ Lawncare mowing services?
A. No.
MS. ZAKEN: Those are all the questions I have for right now.
EXAMINATION
BY MS. WOOD:
Q. Mr. Orris, I have a few questions for you. I'm Ann Wood, and I represent Mr. Bailor who does business as B&D Enterprises.
You indicated in response to a prior question that you did know Mr. Bailor and B&D Enterprises?
A. Yes.
Q. How did you know him?
A. Just from when we made the agreement.
Q. Were you involved in making the agreement with Mr. Bailor?
A. It was probably more of a combined effort between myself and the store manager, Mel Knezevich. I made them up, and usually what will happen is he will review them. If he feels they're okay, then we have

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the contractors come in and sign the agreement.
Q. You should have a copy sitting up there that's marked as Knezevich Exhibit B.
A. Yes.
Q. I'm going to refer you specifically to the last page of that where it says, "Scope of Work, Sweeping."
A. Which page?
Q. It's Exhibit A. It's the last page in that packet.
A. Oh, okay. Okay.
Q. Would you have been the one who prepared that page?
A. Yeah. The handwriting at the top where it says, "2129, Mel Knezevich, 4/30/00," that's my handwriting.
Q. Is it your handwriting where it identifies the store number and the address in the next section down there?
A. Oh, okay. Where it says, "2129." Yes, it is.
Q. Is it your handwriting two sections down where it has "Intervals of # per week" and it says "3"? Is that your handwriting?
A. That is not my handwriting.
Q. Do you know whose that would have been?
A. I have no idea.

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Q. What about the "Price per occurrence," is that your handwriting?
A. No, it's not.
Q. Would you have had anything to do with determining how many times a week the sweeping was to occur?
A. Probably, because what we usually do is the two co-managers and the store manager will sit down and decide what's going to be the most economical for our store. So I may have been involved in that. I don't know for sure.
Q. Now, this is the contract for the Clearfield store. During the time you were there, and I realize you left --
A. Right after that.
Q. -- right after this. Who was the manager when you left?
A. It was Mel Knezevich.
Q. Do you know who Roger Gates is?
A. I know Roger Gates, yes.
Q. Who is he?
A. He was the store manager after Mel left.
Q. Are you aware of or familiar with any changes in terms of the Scope Of Work as it appears on this contract?

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A. You mean after?
Q. Anything that you have known after the time that you put it together originally.
A. No.
Q. Did you have any responsibility in terms of overseeing the sweeping of the parking lot?
A. It was all of our responsibilities. So yes.
Q. Did you specifically check the parking lots?
A. We would check the parking lot every morning when we came in.
Q. When you left Clearfield, I presume there were other co-managers. Is that part of their normal job responsibilities?
A. Yes.
Q. What is your understanding of the job that was to be done by Mr. Bailor under this contract?
A. To be honest with you, I really don't remember what all we required him to do. I mean, I just don't remember.
Q. That's fine. As best you can remember.
A. Okay.
Q. Let's broaden the question a little bit. In setting up a contract for sweeping, what was your expectations in setting up the contract that that job would include?

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A. I could probably best answer that for the store I'm in right now. We generally have them do it every other day, the sweeping.
Q. When they sweep, what do they include in the sweeping?
A. The entire parking lot area.
Q. What time of the day do you normally expect that kind of work to be done?
A. We would prefer it would be done at night or early, early morning before there is any traffic in the parking lot.
Q. Is your Bradford store open 24 hours?
A. Yes.
Q. The Clearfield store was also open 24 hours?
A. Yes.
Q. What is your expectation about sweeping where there are cars in the parking lot?
A. We realize they're not going to be able to get every square inch, but if there is litter where there are cars, then they can't really do anything about that.
Q. Is there someone within the store chain of command who checks after the sweeping is done to see that the work is done?
A. In the store I'm in right now, my overnight

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managers do that.
Q. When you were in Clearfield, would there have been somebody who was responsible?
A. It would have probably been the same circumstance, yes.
Q. In relation to the store you're at now --
(Cellular phone interruption and discussion off the record.)
BY MS. WOOD:
Q. In the store that you're in now, what is the practice in terms of the intervals when the sweeping has been done, but they're not there constantly, if there is some debris in the parking lot in the time when the sweeping is not expected to be done?
A. Do you mean, what do we do with it?
Q. Yes.
A. We have someone take care of it.
Q. Who is that someone?
A. Usually it's our people that are out in the parking lot in the morning. We refer to them as stockmen.
Q. Are they responsible for checking the areas?
A. Yes.
Q. When you were at Clearfield, did you have stockmen who were responsible for that?

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A. Yes.
Q. And they were responsible for checking the parking lot areas?
A. Yes.
Q. How often did they do that?
A. I mean, it's supposed to be an ongoing thing. If we see litter, we tell -- actually, it's everybody's responsibility. If I come in in the morning and there would be litter there and it hadn't been swept the night before, more than likely I would say, would you -- if the stockman was there, I would ask him to go sweep that litter up.
Q. But who is responsible in a store? Whether it be Clearfield or Bradford where you are now, in terms of chain of command, if someone notices debris in the parking lot, to whom do they report that?
A. Management.
Q. Is there a particular chain of command as to how that goes?
A. Whoever is on duty.
Q. To whomever that is reported, are they responsible for seeing that it's cleaned up, or do they have to report it to you?
A. No. They will make sure it gets done.
Q. If there was something, debris that was noticed

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in the parking lot, would you expect Mr. Bailor to come back and pick it up?
A. If he had done it that day, I would, yes. I mean, if that was his scheduled day, I would expect him to come back.
Q. Did you ever have any problems with Mr. Bailor not sweeping?
A. I don't recall.
Q. I know you were there for a very short time.
A. Yeah. I don't recall any.
Q. But if something happened, say someone dropped a jar and it broke in the parking lot and it was not the scheduled time for the sweeper to be there, who would take care of cleaning that up?
A. We would take care of that.
Q. You wouldn't have any expectation of notifying Mr. Bailor to come and do that?
A. No.
MS. WOOD: I don't have any other questions.
MS. VUGRINOVICH: I have no questions.
EXAMINATION
BY MR. NADDEO:
Q. Mr. Orris, my name is Jim Naddeo. I represent the Plaintiffs in this action. Okay?

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I understand that when you were at Clearfield, your title was co-manager?
A. Yes.
Q. What are the duties of a co-manager at the Wal-Mart Super Center?
A. Actually, there can be two different sets of responsibilities. The one would be that, in my case, I handled everything on the food side of the store. The other co-manager handled everything in what we refer to as general merchandise, which would be everything else in the store.
Q. As co-manager, did you have any safety responsibilities?
A. We all have safety responsibilities.
Q. Does Wal-Mart have any form of published safety standards?
A. A form of published...? Well, I mean, yes.
Q. Do you have a book or a manual?
A. Yes.
Q. There is a book or a manual?
A. I'm trying to remember what it's referred to as. What specifically are you looking for?
Q. Well, is there any document where I could go and look at the safety procedures that are implemented at one of the Wal-Mart stores? In other words, does

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the company publish safety standards?
A. I mean, we have a safety board. We have a list of things that we do like, for an example, in a power outage. We have safety meetings every week, and we take the notes of that safety meeting. So there are letters that come down to our safety team every week, things that we should be looking for for safety.
There's not an actual book that we use, but that's pretty much how we handle our safety. We have a weekly safety meeting with a team of associates, plus myself and one other member of management.
Q. And you also received bulletins of some type?
A. Right, and what the bulletins are is what they expect our expectations to be for that week for our safety meetings.
Q. Who is "they"?
A. Our home office.
Q. So the home office gives you some type of safety bulletin?
A. Yes.
Q. Now, I have reason to believe that there are certain safety standards published by the home office or someone in the Wal-Mart organization that you can access through the internet if you are a manager or a co-manager possibly at one of the stores. Is that

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true?
A. Well, we have a -- like I will give you an example. One of our safety issues is our risers up over our merchandise. So we have a manual that shows us how those risers are supposed to be set up. So maybe that's what you're referring to.
Q. Do you have any kind of manual that tells you or gives you any instructions as to how to maintain the parking area of one of the stores?
A. I have never seen anything like that.
Q. Do you know whether there are any standards that are published over the internet by the home office that instructs a manager or co-manager as to how the parking area is to be maintained?
A. I don't recall anything like that.
Q. You were asked some questions concerning a document that has been marked as Exhibit B, and specifically in reference to the number of times per week that the parking area was to be swept.
A. Okay.
Q. And according to the contract that you reviewed, the number was three.
A. Okay.
Q. Who determined that the parking lot should be swept three times a week as opposed to daily or once a

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week?
A. In the case of the Clearfield store, I'm not sure who made the final decision, but, again, I will use my store. We do it as a management team, deciding how many times we think our parking lot needs to be swept.
Q. Does the home office have any input with respect to that decision?
A. This contract would be signed by our district manager. If he feels that we need more than three times a week, he would tell us that. It would then go to our regional office, and our regional could also say, you know, you need to do it more times a week. So there are a lot of people involved in it.
Generally, they do rely on us to make that decision. As an example, my store opened in March of last year. So in the beginning, we did have more frequency, because we were so busy in the beginning. When it leveled off, then we went to three times a week.
Q. I see. So would it be fair to say that the number of times you sweep a parking area is related to maybe the amount of traffic that you get in the parking area?
A. Yes.

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Q. Is that one of the things you look at?
A. Yes.
Q. Is that the only thing you look at?
A. I can't think of anything else right offhand.
Q. Are you aware of any published standards through your company or otherwise, which would provide you with a standard, ratio of use to the number of times you should sweep?
A. No.
Q. So that's a judgment call on the part of the management --
A. Store manager, yes.
Q. -- team, or whoever makes that decision?
A. Yes, uh-huh.
Q. Is that right?
A. Yes, sir.
Q. Now, apparently back in May, somebody had made a decision that the Clearfield parking lot only had to be swept three times a week?
A. Correct.
Q. That's according to the contract?
A. According to the contract.
Q. And I believe some time after that, it was reduced to one time per week? You don't know?
A. I wasn't there.

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Q. But if, in fact, it was reduced to one time per week, that decision would have been made by the manager and the management team?
A. Yes, sir.
Q. If it was reduced to one time a week, the assumption would be that the traffic had diminished?
A. I can't answer that.
Q. Now, on the days when the parking lot is not swept, does your company or do you designate any particular employee to be responsible for inspecting and supervising the parking area?
A. Again, it's whoever. When you drive in in the morning, as a member of management, it's our responsibility to check the parking lot.
Q. My question was --
A. And then do we designate someone?
Q. Yes.
A. The stockmen who I referred to before.
Q. When you say "stockmen" --
A. Those are the people that are out in our parking lot taking care of the shopping carts. The parking lot is their area, yes.
Q. So when you use the term "stockmen", you mean stockmen plural?
A. Yes, yes.

Q. That's not one stockman?
A. Well, now, in Clearfield -- it's kind of funny, but in Clearfield, they refer to them as "cart pushers," but I hate that term. So I always call mine stockmen.
Q. Okay. But my point is, this isn't one individual?
A. No, no.
Q. This is multiple individuals?
A. Multiple, yes. Usually at least two at any given time.
Q. My question was, do you designate any one individual to inspect the parking lot? The answer then is no?
A. No.
Q. It's the stockmen's responsibility, and there is more than one stockman?
A. Yes.
Q. Now, the Clearfield store is what we call a Super?
A. Super Center.
Q. Super Center, so that would have a food division?
A. Yes.
Q. General merchandising division, and also an

auto care center?
A. Yes.
Q. Is that right?
A. Yes.
Q. Are there stockmen in the area of the auto center?
A. No. Well, the stockmen pretty much are for the whole store, for the entire store.
Q. But why would stockmen go around by the auto center?
A. If there are shopping carts back there, they have to go back and get them. Their job is to remove the shopping carts.
Q. I understand. I guess I've never seen a shopping cart at the auto center. Are they there?
A. Oh, yes, yes. We leave them there so if they drop their car off and they want to go in the store and shop, there's a shopping cart there for them rather than walking all the way back through the front.
Q. So the stockmen would have occasion to get into that area of the parking lot, also?
A. Yes.
Q. If they were going to retrieve the shopping carts?
A. Yes.

Q. Other than the general understanding that the stockmen are to keep an eye on the parking area for debris or other hazards, is there any other person designated to do or to monitor that type of situation?
A. I mean, I would hope that -- you know. I mean, I have a lot of managers in our store, and that's our job to keep an eye on anything like that. So it's more or less everybody's job.
Q. I think you mentioned, in response to one of the other attorney's questions, that you checked the parking lot every day?
A. Yes, at my store. Now in the Clearfield store, you can't drive around it. I don't think you can drive around it. I'm trying to remember. At my store in the morning, every member of management has to drive around the building before they park their car, and that's how we do it.
Q. Was that the policy at Clearfield when you were there?
A. Yes. I mean, every Wal-Mart is that way.
Q. Every manager drives around the store?
A. Yes, to check for litter or to check for anything.
Q. Now, that's done in the morning?
A. When you come to work and when you leave work.

Q. So it's done twice a day?
A. Yes.
Q. In between time, we're still relying on the stockmen?
A. And when you go to lunch. You're always looking for things, and in between that, it would be the stockmen, correct.
Q. Let me just get back to the driving around the store and make sure I understand that. It was the policy in Clearfield and in your present store in Bradford for all management people to drive around the parking lot when they came to work in the morning?
A. Yes.
Q. They also were to do that in the evening when they left?
A. Yes.
Q. Do they do that at lunchtime, also?
A. No.
Q. Again, between the morning and the evening, that would be the general duty of the --
A. Of the stockmen.
Q. Of the stockmen?
A. Right.
Q. That's how you understand it?
A. Yes.

Q. You left the Clearfield store on May 19 of 2000?
A. Correct.
Q. And it's your understanding that a gentleman by the name of Roger Gates became the overall manager after Mel left?
A. Yes.
Q. Do you know where Mr. Gates is currently? Is he still employed by Wal-Mart, if you know?
A. Clearfield Wal-Mart.
Q. Oh, is he still the manager here?
A. Yes, yes.
MR. NADDEO: That's all the questions I have. Thank you.
EXAMINATION
BY MS. ZAKEN:
Q. One quick one. Do you know if there are written job descriptions for manager and your stockmen?
A. There is for the stockmen.
Q. Where is that written job description kept?
A. In our personnel office.
MS. ZAKEN: That's all. Do you have anything?
MS. VUGRINOVICH: I don't have anything. We're going to read.

(Witness excused.)
(Signature not waived.)
(Deposition concluded at 2:53 o'clock p.m.)
- - -

DEPOSITION OF RONALD L. ORRIS
CHANGES AND/OR CORRECTIONS

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I, RONALD L. ORRIS, having read the foregoing deposition, certify that all corrections to the deposition that I desire to make, together with my reasons for such corrections, appear on the preceding page, and I further certify that the foregoing deposition is a true record of my testimony.

_____
RONALD L. ORRIS

_____
DATE

JMK

CERTIFICATION

I hereby certify pursuant to Pa.R.C.P. No. 4017(d) that the witness, RONALD L. ORRIS, was duly sworn by me and that the foregoing deposition is a true record of the testimony of the witness.

The foregoing certification does not apply to any reproduction of this transcript in any respect unless under the direct control and/or direction of the certifying reporter.

_____

Jean Martin Koopman
Notary Public

My Commission expires October 26, 2004.

- - - -

C E R T I F I C A T I O N

I hereby certify pursuant to Pa.R.C.P. No. 4017(d) that the witness, **RONALD L. ORRIS**, was duly sworn by me and that the foregoing deposition is a true record of the testimony of the witness.

The foregoing certification does not apply to any reproduction of this transcript in any respect unless under the direct control and/or direction of the certifying reporter.

Jean Martin Koopman

Notary Public

Notarial Seal
Jean Martin Koopman, Notary Public
Green Tree Boro, Allegheny County
My Commission Expires Oct 26 2004
Member, Pennsylvania Association of Notaries

My Commission expires October 26, 2004.

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DEPOSITION OF RONALD L. ORRIS

CHANGES AND/OR CORRECTIONS

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I, RONALD L. ORRIS, having read the foregoing deposition, certify that all corrections to the deposition that I desire to make, together with my reasons for such corrections, appear on the preceding page, and I further certify that the foregoing deposition is a true record of my testimony.

RONALD L. ORRIS

12/3/03

DATE

December 3, 2003

Notarial Seal
Jody A. Zimmerman, Notary Public
Bradford, McKean County
My Commission Expires Apr. 7, 2005
Member, Pennsylvania Association of Notaries

JMK

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	)	
Plaintiffs,	)	CIVIL DIVISION
vs.	)	Docket No. 02-1811-CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	)	
Defendants,	)	
vs.	)	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	)	
Additional Defendant,	)	
vs.	)	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	)	
Additional Defendants.	)	

DEPOSITION OF MELVIN KNEZEVICH, taken pursuant to the Pennsylvania Rules of Civil Procedure, before Jean Martin Koopman, Court Reporter-Notary Public in and for the Commonwealth of Pennsylvania, on Wednesday, August 27, 2003, at the law offices of Bell, Silberblatt & Wood, 318 East Locust Street, Clearfield, Pennsylvania 16830, commencing at 1:00 o'clock p.m.

COPY

EXHIBIT "J"

APPEARANCES

On behalf of the Plaintiffs:
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On behalf of the Additional Defendant, Roger R. Hull t/d/b/a HSJ Lawncare:
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On behalf of the Defendant, Wal-Mart Stores, Inc.:
Danielle M. Vugrinovich, Esquire
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On behalf of the Defendant, Boyles Insurance, Inc.:
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Mr. Naddeo	25, 42

KNEZEVICH DEPOSITION EXHIBITS	MARKED FOR IDENTIFICATION
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B (Outside Maintenance Agrmnt, district copy)	18

PROCEEDINGS

(1:17 o'clock p.m.)

MELVIN KNEZEVICH,

the deponent, having been first duly sworn, was deposed and testified as follows:

EXAMINATION

BY MS. ZAKEN:

Q. Would you please state your name.

A. Melvin Knezevich.

Q. Would you spell your last name, please.

A. Yes. K-n-e-z-e-v-i-c-h.

Q. Mr. Knezevich, my name is Trisha Zaken. I represent Roger Hull and HSJ Lawncare in a lawsuit that was filed by Mr. and Mrs. Rugh. I've asked you to come here today to give deposition testimony regarding some type of contracts that were entered into between Wal-Mart, B&D, and also HSJ Lawncare.

Have you ever given deposition testimony before?

A. Yes.

Q. Under what circumstances did you give deposition testimony?

A. There was another accident case in one of the stores in the Pittsburgh area that I worked in.

Q. Was it a slip and fall incident?

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A. Yes.
Q. Was that an Allegheny County case?
A. Yes. Well, the store was in Butler.
Q. Actually in Butler?
A. Cranberry Township. So I'm not sure if it was on the border there, which one it went to.
Q. Well, just as a refresher, I'm going to give you a few instructions to abide by while we go through this deposition just to make it easier on everyone.
I'm going to be asking you a series of questions. I would ask that you keep your voice up, and keep your responses to my questions verbal. You can see there's a court reporter here. So she can't really transcribe a shaking of the head or the shrugging of the shoulders. Okay?
A. Okay.
Q. Also, if at any time you don't understand a question that I ask you, ask me to rephrase it. Otherwise, I will assume that you've understood the question as it has been asked. Do you --
A. Okay.
Q. -- understand that instruction?
A. Yes.
Q. Also, if you could please wait until the question is fully asked before you give your response.

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I know sometimes you will know what the question is going to be before it's finished, but just if you could wait so the court reporter can get everything down correctly. Okay?
A. Okay.
Q. What is your current address?
A. 105 Collingwood Court, C-O-L-L-I-N-G-wood Court, and that's in Cranberry Township, 16066.
Q. Your Social Security number?
A. 169-46-0380.
Q. Date of birth?
A. 11/10/53.
Q. Are you married?
A. No.
Q. Any children --
A. No.
Q. -- over age 16?
A. (Witness shook head.)
Q. Have you ever served in the military?
A. No.
Q. In that you're under oath today, I'm going to ask if you've ever been convicted of a crime involving theft or deception within the last ten years?
A. No.
Q. Where are you currently employed?

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A. At Wal-Mart in Cranberry Township.
Q. How long have you been employed by Wal-Mart?
A. Almost seven years. It will be seven years in February.
Q. What is your position there?
A. Store manager.
Q. How long have you been the store manager?
A. At that store, two and a half years.
Q. Prior to being the store manager, what were you doing?
A. I was in the Clearfield store as the store manager.
Q. What years were you the manager in the Clearfield store?
A. I have to think back. Three years was in March of this year, 2002, 2001. So it was almost two years. So it would have been 1999 to 2001 around April or March to maybe April or March.
Q. March or April of 2001?
A. Yes, by the time I left.
Q. And then you went to the Cranberry store?
A. Right.
Q. What was your job description as the store manager in the Clearfield store?
A. Basically, just running the whole business,

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merchandising, operations of the store, taking care of the associates and the customers. I was just in charge of the whole thing.
Q. Were you authorized to enter into contracts on behalf of Wal-Mart?
A. Usually we had to get either home office or district manager approval before we signed off on anything. They are very strict about that for the last several years about not signing anything without somebody's approval.
Q. Did you have any involvement in retaining any type of subcontractors for Wal-Mart?
A. I'm not sure I know what you mean by a subcontractor.
Q. For instance, in this case, there were two Defendants that were subcontracted to do lawn mowing services and parking lot cleaning. Were you authorized to hire those type of subcontractors?
A. We were to find local people to do that for us, lawn care and cleaning the parking lot, but we usually had to get a contract that was authorized through the home office.
Q. When you were a store manager at Wal-Mart, did you ever endeavor to find a contractor such as lawn mowing services or parking lot cleaning?

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A. There has been one or two times over the years. Usually whatever store I went to, if they had somebody they had been using, I just went with whatever worked, but there have been times. I think in Clearfield, the litter removal, the guy that cleaned the parking lot, the one guy that was doing it for a while, his truck broke down or something. We had to locate another person, but usually I just dealt with whoever was there.

Q. The questions I'm going to be asking you are going to pertain to the Clearfield store. Okay?

A. Okay.

Q. You just referenced someone that you had hired for litter removal. Who was that?

A. I don't remember the name. I know whoever was doing it, he had a problem with his truck, and he just stopped doing it, and we had to locate somebody else to do it. I know we did inquiries to find out who other stores in the area were using, and we did end up finding somebody else, but I don't remember the name.

Q. Do you ever recall working with anyone from HSJ Lawncare or with Roger Hull while you were at the Clearfield store?

A. No.

Q. I'm going to show you a copy of a contract that

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has been produced in discovery.

MS. ZAKEN: I don't know if I made enough copies.

MS. VUGRINOVICH: I have a copy.

MS. WOOD: We can make more if you need them.

(Discussion off the record.)

BY MS. ZAKEN:

Q. I'm going to show you what will be marked as Exhibit A. On the top, it says, "Outside Maintenance Agreement." I'm going to ask you to take a look at that for a few minutes. Okay? There are eight pages, I believe.

A. By looking at this, are you asking me to read every bit of it?

Q. No. Just take a look over it. Then assuming there's no objection, I will ask you some questions later.

Have you had the opportunity to look that over?

A. Yes.

Q. Have you ever seen this document before?

A. I probably have. It looks like it was sent to me. He has my name on the one thing.

Q. If you could turn to the fifth page.

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MS. ZAKEN: Can we go off the record for a second.

(Discussion off the record.)

BY MS. ZAKEN:

Q. Mr. Knezevich, if you could please turn to page 5 of the exhibit that's in front of you right now. At the top of page 5, it says, "Scope of Work, Landscaping." Do you see where I'm at?

A. Right.

Q. And it has your name as the "Store Manager"?

A. Right.

Q. Have you ever seen this document before?

A. Like I said, I probably have, but I don't remember. It was several years ago, but I probably did if it did come to the store and it had my name on it.

Q. Well, the date on page 5 is April 1, 2000. Would you have been at the Clearfield store in April of 2000?

A. Yes.

MS. ZAKEN: I would like to mark this as Exhibit A if there is no objection.

MR. NADDEO: Excuse me. Are you referring to the May 1?

MS. ZAKEN: No, page 5.

MR. NADDEO: This is the document,

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though.

MS. ZAKEN: Yes, yes.

MR. NADDEO: Are you offering the landscaping part or the whole thing?

MS. ZAKEN: The whole thing.

(Knezevich Deposition Exhibit A was marked for identification.)

(Discussion off the record.)

BY MS. ZAKEN:

Q. The "Scope of Work, Landscaping" contract, which starts at page 5 of this exhibit, has a section. If you turn to Section III, which would be on page 7 of the packet that I gave you, there is a section on "Litter Removal." Do you see where I'm referring to?

A. Yes, down towards the bottom.

Q. You will note that there's a Subsection A and B under Litter Removal; correct?

A. Okay.

Q. Are those your initials?

A. No.

Q. Do you know whose initials those are?

A. I believe one of them might have been my co-manager, Ron Orris.

Q. Did Ron have responsibility in terms of contracts or monitoring subcontractors for Wal-Mart?

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A. He could have. Co-managers are usually managers in training. They have the same abilities or things that the store manager does. They a lot of times -- like I said, this had my name on it. So I may have delegated it to Ron and said, here, can you follow up on this? Be sure we get the signatures we need.
Q. Do you have any recollection of working with Roger Hull or HSJ Lawncare at the Clearfield Wal-Mart store?
A. I'm sure I did talk to these people at some point. Like I said, it's three years ago, and I have talked to so many people since then. I don't know if I would recognize them, but I'm sure I did have some contact with them.
Q. Other than this document here where your name is listed as the store manager on the Scope Of Work agreement, do you have any specific recollection in dealing with any type of lawn mowing or landscaping services at Wal-Mart?
A. Again, I know I've talked to people over the years, but I don't know specifically what I may have said to these gentlemen, the representatives.
Q. Do you think that Ron Orris would have more knowledge of this type of agreement?
A. I couldn't speak for what his knowledge is.

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His initials are on there. He may remember more than I do.
Q. While you were at the Clearfield store, do you recall having any problems with any type of a landscaper that was hired by Wal-Mart?
A. I don't recall.
Q. How about lawn mowing?
A. I don't recall any problems.
Q. I have another similar contract that I want to show you as well.
MS. WOOD: Off the record.
(Discussion off the record.)
BY MS. ZAKEN:
Q. Mr. Knezevich, I'm going to show you another document that I have. It's a seven-page document. I'm going to ask you to do the same thing that you did before. Take a look at it before I ask you some questions about it.
A. Okay.
MS. WOOD: I only have five pages.
MS. VUGRINOVICH: Yes, so do I.
MS. ZAKEN: I think my copy has the actual tax ID information and the insurance information. Do you want to make an objection?
MS. WOOD: I would like to see what

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you've got.
MS. ZAKEN: We can go off the record.
(Discussion off the record.)
MS. ZAKEN: For clarity sake, I will just take the last two pages off of the exhibit.
BY MS. ZAKEN:
Q. Let's try this again. Mr. Knezevich, I've put in front of you a document that's not seven pages, but five pages long. Have you had an opportunity to look over that?
A. Yes.
Q. Have you ever seen this document before?
A. Again, I may have, but I've seen so many documents and papers over my years that I don't recall.
Q. Well, let me ask you this: Do you have any specific recollection of dealing with B&D Enterprises?
A. I can't remember specifically. Like I said, I very well may have talked to these people and worked out agreements with them, but I don't remember the specific instance of it.
Q. Do you know exactly what it is they would have done for the Clearfield store without referring to this document?
A. Without referring to this, I wouldn't know offhand, no.

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Q. Who is Tim Fox?
A. He was our district manager at the time.
Q. Where is he located out of?
A. Now?
Q. Yes.
A. I believe he is a store manager in Tennessee. I'm not sure which store.
Q. In May of 2000, where would he have been stationed or located?
A. His district office would have been in Du Bois, and he was the district manager over our district. There were like six stores at the time.
Q. If you could look at the last page of this document, and that would be page 5 of Exhibit A.
A. Yes.
Q. At the top it says, "Scope of Work, Sweeping." Do you see what I'm talking about?
A. Yes.
Q. And then it identifies the Wal-Mart store as -- is that 2129 or 2124?
A. 29.
Q. 2129?
A. Yes.
Q. Would you agree with me that according to Exhibit A, the "Scope Of Work, Sweeping" that is for

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the B&D Enterprises contract, it states that the contractor is to sweep all areas, including the "parking lot, sidewalks, truck wells, and the rear of the building"?
A. Yeah. That's what it says on there.
MS. ZAKEN: I would like to have this marked as Exhibit B.
(Knezevich Deposition Exhibit B was marked for identification.)
BY MS. ZAKEN:
Q. When you were employed at the Clearfield store, do you recall any complaints regarding excessive litter or debris in the parking lot?
A. I don't recall any, no.
Q. Do you recall any trip and fall incidents in the parking lot?
A. I can't say I remember one offhand. There may have been, but I don't recall one offhand.
Q. You weren't employed at the Clearfield store in September of 2001; correct?
A. No. I think I would have been in Cranberry by then. I think I left in March or April.
Q. The Plaintiff in this case, Anna Rugh, alleges that she tripped in the parking lot in September of 2001, I believe. Have you heard anything about this

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trip and fall incident, other than what you've heard from your attorneys?
A. Not since I was notified to be here.
MS. ZAKEN: That's all the questions I have.
MR. DiLUCENTE: None.
MS. WOOD: I have a few.
EXAMINATION
BY MS. WOOD:
Q. You've heard her instructions and the same apply. I'm Ann Wood, and I'm the attorney for James Bailor, who trades and does business as B&D Enterprises.
A. Okay.
Q. Do you recall dealing with Mr. Bailor as B&D Enterprises when you were here in Clearfield?
A. Again, I very well may have. I just can't remember offhand what he looks like or what we may have talked about.
Q. You were asked to look at this contract that has been marked as Knezevich Exhibit B, specifically referring to Exhibit A, "Scope of Work, Sweeping" on page 5.
What was your understanding as the Clearfield store manager as to the work that would have been

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performed, not looking at the contract language, but what would your expectations, as the store manager here, have been for Mr. Bailor's type of work to be complete?
A. Usually we had agreements that it would be done three days a week, like on Monday, Wednesday, Friday. They would do it overnight when there were very little cars in the parking lot, the least amount of cars. We were open 24 hours.
Usually they did the sidewalks. I think they had a blower, a leaf blower or something to blow it off the sidewalks, and then they had a machine to sweep the parking lot to clean it up. Basically, the sidewalks and the parking lot areas is what we would expect them to clean for us.
Q. Now, looking at Exhibit A, the contract in front of you, how many times a week would this contract call for that to be performed?
A. Three per week, like I told you.
Q. During the time you were the manager, do you recall any changes to the number of times on the contract?
A. I don't recall any. Usually three was about regular for Wal-Mart stores.
Q. Do you have any personal knowledge to any

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changes to that timing that may have occurred since you left Clearfield?
A. No, I don't.
Q. Who is Roger Gates, do you know?
A. He's the current store manager.
Q. When did you indicate the sweeping would normally be done?
A. Overnight.
Q. What would happen if there were cars in the parking lot?
A. They would have to go around them. They didn't wait until the cars moved. There would be employees that worked there overnight, and their cars would be there for eight hours or so. They would be there for a while doing the whole parking lot. So hopefully, the ones that belonged to customers, they would get those areas, but there would be parts of the parking lot where a car was parked that they wouldn't be able to get that night.
Q. Within the store hierarchy when you were in Clearfield, was there anyone who was responsible for overseeing or checking the parking lot on a regular basis?
A. It's kind of everybody's, all management's responsibility to check the store. We're supposed to

drive around the back of the building every day when we come to work just to be sure there's no debris, just to be a good neighbor and make sure nothing is messy.

Management is supposed to, when they come in in the morning, if they see something out there, make somebody aware and to get it cleaned up, get our own maintenance people. If we see something on the sidewalk, we wouldn't wait for someone to come the next night or two nights later to clean it up.

Q. That's exactly where I was headed. In terms of the activity at the store, if there was something, a jar of spaghetti sauce that smashed in the parking lot or an oil spill near the automotive center, would you contact your contractor, your sweeper to come and clean this up, or would somebody at the store take care of it?

A. No. We would take care of it right away just so it wouldn't be a hazard to anybody.

Q. If someone came into the store to report to, say, somebody standing by the door there, what was the chain of instructions or commands for getting things cleaned up?

A. They would usually notify a member of management so that somebody would be aware of it, and it would be taken care of.

Q. So you did not contact or expect Mr. Bailor or someone in his position sweeping to come any time there was a spill or debris that was discovered in the parking lot?

A. No, we wouldn't.

Q. Under your understanding of the contract and how it worked, would you have even thought to have contacted him to come pick up something in the parking lot, or would you have just expected to take care of it yourself?

A. No, we would take care of it ourselves. The only time we would call him was if we felt for some reason that he didn't do something that he should have. I don't recall anything like that.

MS. WOOD: I have no further questions.

EXAMINATION

BY MS. VUGRINOVICH:

Q. I just have a few questions that are kind of along the same lines as Ann's about B&D.

Can you tell us what you recall were the landscaping duties for the subcontractor that was responsible for the landscaping?

A. I believe we were only concerned about them cutting the grass. I don't think there was anything else with any other part of it.

Q. Would the subcontractor be responsible for the landscaping required to basically keep up after themselves? Any clippings, anything that was left over from their duties, were they required to clean up?

A. I would assume so, but I don't know if there was anything specifically stated that way. I don't think we would let them leave a mess.

Q. Do you recall the islands that were in the parking lot at the Clearfield Wal-Mart?

A. Vaguely.

Q. Can you describe the composition of them? What I'm getting at is, were they mulch? Were they stones?

A. I can't say for sure. Being in my store for two and a half years, I know mine are mulch, but I can't say I can picture the ones in Clearfield.

MS. VUGRINOVICH: Okay. That's all I have.

MS. ZAKEN: I have some follow-up.

EXAMINATION

BY MS. ZAKEN:

Q. With regard to the landscaping subcontractors that you hired, did you have separate landscaping contractors and separate lawn mowing contractors?

A. I don't recall having two different people.

MS. ZAKEN: I don't have any other

questions.

EXAMINATION

BY MR. NADDEO:

Q. I have a turn. You thought you were done; right?

A. That's all right.

Q. I'm sorry. How do you pronounce your last name?

A. Knezevich.

Q. Knezevich. I have a funny last name, too. I don't mean to be impertinent.

A. That's all right.

Q. I just didn't want to get it wrong. My name is Jim Naddeo. I represent the Plaintiffs in this case, and I have a few questions, also.

I understand that you were the manager of the Clearfield store from 1999 until March or April of 2001?

A. Right.

Q. And that your job description involved the total operation. You were responsible for merchandising and the general operations of the store.

A. Right.

Q. That would include safety; is that correct?

A. Right.

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Q. So you were the person who was primarily responsible for implementing any safety rules or regulations?
A. Well, more making sure that we follow the company's policies on safety.
Q. Right. And the company did have some policies on safety?
A. Yes.
Q. Now, I want to specifically refer to the parking area. Did the company have policies pertinent to safety within the parking area of the Wal-Mart Super Center in Clearfield?
A. They would have ones for the parking area, yes.
Q. Are those published in some form?
A. I'm sure they are in our safety policies and procedures guidelines.
Q. So you received some kind or you have as the store manager access to some type of safety manual?
A. I wouldn't say a manual. Most of the stuff we have is on what we call the pipeline. It's kind of like the store internet informational thing. So there's not as much in books anymore. Most of it is on the internet, and we can print up whatever we need.
Q. So if I wanted to know what the safety procedures are for the parking area at the Clearfield

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Wal-Mart, I could get on-line and get those safety procedures?
A. I don't know if anybody outside the company could.
Q. Well, I understand that. That was a dumb question. If I were the store manager, I could get on-line and get those safety procedures?
A. Yes.
Q. Is that correct?
A. Yes.
Q. Did you ever have occasion to actually access those safety procedures?
A. I don't recall actually pulling up something specifically for the parking lot.
Q. Well, now, if you were in charge of safety, isn't that something you would have to know as store manager, that you would have to be familiar with that policy?
A. Yes, but, like I said, I don't know if I have ever actually pulled up the policy myself. We actually have a safety committee that looks at things at the store, also.
Q. Let me ask a different question. Were you, at the time you were the store manager, familiar with the safety policy for the parking area?

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A. I think I am.
Q. What was that safety policy?
A. Basically, just keeping it neat and clean and free of something that could be a trip hazard or a slip hazard.
Q. Well, I understand that would be the general obligation, but did the policy include specific instructions as to how that was to be accomplished?
A. I don't know the exact wording.
Q. For instance, I see in one of the contracts, and I believe it has been identified as Exhibit B, that the parking area was to be swept three times a week?
A. Yes.
Q. Was that a Wal-Mart policy? Was that a Clearfield store policy created by you? Who decided that it should be swept three times a week?
A. I don't know that offhand. The five stores that I've been in for Wal-Mart, that was the norm. So I don't know if there is an actual written policy saying how many times it should be, but three is what I've been used to. So that sounded fine to me.
Q. So if there was such a policy, it could be accessed over the internet by one of the store managers?
A. I'm sure there would be information in there,

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yes.
Q. But it's your experience that the custom in the Wal-Mart stores with which you have been associated is to sweep the parking area three times per week?
A. Right.
Q. And you don't know where that comes from?
A. I couldn't tell you that I actually saw something on paper.
Q. And you don't know why it's three times a week rather than seven times a week or one time a week?
A. No, I don't.
Q. Of the various Wal-Mart stores with which you have been associated, are some busier than others?
A. Yes.
Q. First of all, how many stores have you personally been associated with, either as a manager or assistant manager?
A. Well, five of them, but two of them would have been in the same store. So maybe four different stores, but I was in one of them two different times.
Q. So only four different stores?
A. Yes, four different stores.
Q. Of the four stores that you've managed or been involved with the management, which was the busiest?
A. Probably the one I'm in now in Cranberry

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Township.
Q. Cranberry Township, how would it compare with Clearfield?
A. A little bit busier. That store doesn't have the grocery side. It's not a Super Center as the Clearfield one is, but we are a busy Division 1. So it seems like we are busier in total than this one.
Q. So you would have more vehicular traffic in the parking lot in Cranberry than you would in Clearfield?
A. I think so, yes.
Q. Did anybody ever take a census to determine how many vehicles enter or leave the Wal-Mart parking lot at Clearfield in the course of a day?
A. Not to my knowledge.
Q. Nobody takes that kind of census?
A. No. If they did, they never told me.
Q. Would that have any bearing on how often you would police the parking lot, the amount of traffic?
A. I have never heard of any ratio with relationship to how many vehicles per how many times you sweep. So I don't know.
Q. So as far as the safety regulations that you would get from the internet, you're not aware of any safety regulation that would indicate a ratio of vehicles to the number of times you should sweep the

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parking lot?
A. I'm not aware of any.
Q. Now, there's no question that part of your job was to see that the safety policies were carried out?
A. Right.
Q. And as a general proposition, that would include policing the parking area?
A. Yes. We should be aware of what's out there.
Q. Be sure that it's free of debris or any other type of hazard that might injure a customer; right?
A. Right.
Q. And that was a general policy?
A. Well, it's kind of understood for all Wal-Mart associates, not just management, to be part of the safety of the store. They are encouraged to talk to us, and that we all keep an eye open for anything.
Q. Keep an eye open for anything that might hurt one of the customers?
A. Right.
Q. A good policy?
A. Or an associate.
Q. That's a good policy; right?
A. Right.
Q. Now, again, with respect to the parking area, we know that it was swept three times a day; right?

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A. A week.
Q. I'm sorry, three times a week.
A. Right.
Q. That was according to the contract that you had with the provider?
A. Right.
Q. Now, there were some questions asked about what happened on the days when the parking lot was not swept, who kept an eye on it, and I believe you've answered that question. That would have been anybody in the store?
A. Right.
Q. Was there a designated safety person who worked under you?
A. We have a safety team of associates.
Q. A safety team?
A. Team, and there is an associate team leader, and there is also an assistant manager who oversees the team.
Q. Does that committee fluctuate in terms of the membership?
A. Yes.
Q. That can change?
A. Yes.
Q. How often does that change?

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A. They usually like to keep the same people on there for six months or so. If they have people on there that are very good or some people that are mechanically inclined or have some first aid knowledge, they may be on the team all the time.
Q. Now, you mentioned a team. How many members are on the team?
A. It fluctuates. It could be eight or ten. I have had teams that are as many as 20 to 30 just because of the amount of people that are interested and the amount of people in the store.
Q. But there is also one supervisory person who is in charge of the team or committee?
A. Right.
Q. And that would be some assistant manager?
A. Well, there is an assistant manager that oversees the team. There is also an hourly associate that's considered the team leader.
Q. Now, does the team leader change every six months, also?
A. Not necessarily.
Q. The team leader may have a longer duration in office, so to speak?
A. Right. It depends on their desire and how good a job they're doing.

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Q. How about the supervisory person?
A. The assistant manager probably changes from time to time, because management changes from time to time.
Q. Now, if I am a Wal-Mart employee and I'm looking for conditions, and I see something that needs to be cleaned up, to whom do I report that? To somebody on the committee?
A. They could tell somebody on the committee, but usually they went to a member of management just to make sure that it was going to be taken care of.
Q. Now, was any specific person or persons designated to inspect the parking lot on a daily basis?
A. I'm not sure about a daily basis. Usually each member of the team is given an area of the store to keep an eye on. One person might be in charge of the fire extinguishers. One person might be in charge of what we call the spill stations to make sure we have the broom and dust pan, make sure the tools are all there in case there is a spill in the store.
One person might be in charge of walking the back room, taking a look back there. Another person is probably going to be in charge of checking the outside, but it might not have been on a daily basis. It might have been a couple times a week. I can't say

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for sure.
Q. Well, let me make sure I understand that. Is it your testimony that there would be one person designated to inspect the parking area on a daily basis?
A. On a daily basis, probably not.
Q. The designated person, how often are they instructed to check the parking lot?
A. I would say that person on that team is usually looking for something more than just a piece of paper. They are looking for deficiencies, maybe a cracked sidewalk, or a pot hole, or something that's not going to change from day to day.
Q. Yeah, I appreciate that, but I'm not sure you've answered my question.
A. Okay.
Q. Let me go back. I understand that there was a person designated to inspect the parking area, other than the contractor who was hired to sweep it?
A. Right.
Q. That person was not designated to inspect the parking area on a daily basis?
A. Right.
Q. Do you know how often that person was instructed to inspect the parking area?

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A. For like structural deficiencies, things like that, probably on a weekly basis.
Q. Weekly as opposed to daily?
A. Right.
Q. So that we had a contractor sweeping three days a week?
A. Yes.
Q. And we had an employee designated to actually inspect the parking area once a week?
A. Right, officially.
Q. Otherwise, you were relying on the general proposition that everybody in the store, everybody employed by Wal-Mart was to keep an eye on things?
A. Right. With over 300 associates, there's a lot of eyes checking it on a daily basis.
Q. Okay, I understand that. But in terms of designated persons, we had again the contractor and we had some individual who was also given the specific obligation to inspect the parking area?
A. Right.
Q. Is that right?
A. Right.
Q. Now, I know that you didn't take a census, but do you have any sense of how many vehicles go in and out of the Wal-Mart Super Center on a daily basis?

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A. I'm sure it's thousands, but I wouldn't have a clue as to the exact number.
Q. Thousands is probably a good guess. That would be your judgment?
A. I'm just guessing here.
Q. Now, there were some questions asked, and I don't know if you can answer these, concerning the islands that were at the Clearfield store?
A. Yeah. I just don't remember them specifically.
Q. I understand. The islands where you are currently located have mulch in them?
A. Yes.
Q. You have been associated with four different stores, including Clearfield?
A. Right.
Q. Do you have any recollection of what type of material was on the island at the other stores, other than Clearfield?
A. No.
Q. Now, there is a document, which has been identified as Exhibit A, which I believe purports to be a contract between the Clearfield Super Center and HSJ.
MR. NADDEO: Is that right, is that your contract?
MS. ZAKEN: That's right.

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BY MR. NADDEO:
Q. That contract purports to define the scope of HSJ's duties; is that right?
A. Yes.
Q. It's titled "Scope of Work, Landscaping"?
A. Yes.
Q. Now, would you please refer to III, Litter Removal, Subsection A.
A. Okay.
Q. Now, could you read along with me. I want to make sure I'm reading this correctly.
"All litter shall be removed by the Contractor from..." And then there's an interlineation. Some parts are deleted and initialled; is that correct?
A. Yes.
Q. "...and all planted areas each week."
A. Right.
Q. What is your understanding of that obligation? What does that mean to you? What is the contractor supposed to do in relation to the planted areas?
A. That they should remove the litter.
Q. From the area?
A. From the planted areas.
Q. Would that contractor be responsible for any litter that is around the planted areas?

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A. Well, it doesn't say that specifically. I'm not sure.
Q. You don't know?
A. Yeah.
Q. To your knowledge, that wasn't contemplated by this contract, to your knowledge?
A. Yeah. I mean, just what it says there.
Q. For instance, if you had a planted area in one of the islands, the landscaper would be responsible only for the island and the debris within the island?
A. From what it says here, yes.
Q. The contractor would not be responsible for any debris laying, let's say, outside or around the island?
A. According to what it says here, no, but I don't remember if they did or not.
Q. But according to the contract, they would not be responsible for that; correct?
A. Not according to the contract, no.
Q. That would be more in line with the person who does the sweeping?
A. I would assume so.
Q. Is that something the person who sweeps should be responsible for?
A. I would assume so.
Q. Would that also be something that the employee

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designated to inspect the parking area would be responsible to report?
A. Well, if any employee saw some litter out there or something, they would report it.
Q. I understand any employee. My question is back to we've already established that you have one employee designated to inspect the parking lot on a weekly basis.
A. Yes, but, again, that was more for structural damage, not really for litter.
Q. So if that employee saw some litter around one of the planted areas or islands, mulch, stones, something like that, he wouldn't be obligated to report that?
A. That might not be part of his job description that he was supposed to do as part of his safety walk, but just being an associate, he should tell somebody that there's some litter that we need to clean up.
Q. Isn't debris a safety hazard?
A. Yes.
Q. Well, isn't his job to report safety hazards?
A. As any associate's job would be, yes.
Q. Your last association with the Clearfield store was in March or April of 2001?
A. Right.

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Q. Do you know whether Wal-Mart's safety policies have changed since March or April of 2001?
A. I don't know of any major changes, no. There may be a different structure to their safety team or a different leader, but I don't know of any major changes.
Q. Would I be correct then in stating that the safety procedures in place when you worked at Clearfield are the same safety features that are in place today at the store in Cranberry?
A. I would think so.
Q. They haven't changed?
A. Not that I know of.
Q. So that if I were to access the safety procedures for the parking area for Wal-Mart stores, I could get that either through Cranberry or through Clearfield?
A. It should be the same information for all stores.
Q. It should be the same information. It's standardized, to your knowledge?
A. To my knowledge, yes.
MR. NADDEO: That's all the questions I have. Thank you.

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EXAMINATION
BY MS. ZAKEN:
Q. I do have a few follow-up questions.
Do you know how often the lawn was mowed before you left? Was it done once a week, once a month?
A. I don't remember.
Q. Who was responsible for paying the invoices for subcontracting services?
A. Our invoice clerk in the store.
Q. Who would that have been in the summer of 2001?
A. Her name was Sue, but I can't remember her last name offhand.
Q. So your testimony is you don't recall how often lawn mowing services were performed in the summer?
A. I don't remember.
Q. But according to your review of that contract, the litter removal or the sweeping of the parking lot was three times a week?
A. Yes.
MS. ZAKEN: That's all I have.
EXAMINATION
BY MR. NADDEO:
Q. I've had an afterthought. You mentioned earlier, I think in response to one of the other

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attorney's questions, that when the person designated to sweep the parking area did that work, that occasionally there would be cars that couldn't be moved?
A. Yes, occasionally.
Q. And those would possibly be cars that were owned and operated by employees who were there for an extended period of time?
A. Yes. We had people that worked all three shifts.
Q. What provisions are made for the debris or other materials that might be under one of those cars? How does that get moved?
A. Well, like I said, if we saw anything that was there the next morning or after they left, we have maintenance people and we have associates who would just pick stuff up on their way in.
Q. So in regard to that type of thing, you would have to rely on the employees to be vigilant?
A. Right.
Q. About that type of debris?
A. Right.
Q. Debris that the sweeper couldn't get; is that right?
A. Right.

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Q. That wouldn't be the job of the designated person who inspected the parking lot?
A. Again, if he noticed or she noticed something, whoever it was, they would let somebody know, whether it be debris or a pot hole or whatever, anything that might be a safety hazard.
MR. NADDEO: Thank you.
EXAMINATION
BY MS. WOOD:
Q. I have to get my two cents in.
A. Okay.
Q. In looking at the contract which was marked Exhibit B, which is the sweeping contract, the present contract that was put in place that you've identified called for three times a week, and you've indicated that was the custom, based on your experience?
A. Yes.
Q. Have you ever run in to a situation where that custom was varied?
A. I personally haven't.
Q. Are you aware of any times where that may have been changed?
A. No, I'm not.
Q. If it was to be changed, who would make that decision?

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A. I would assume any decision like that would have to be agreed to by the district manager or home office.
Q. What role would the store manager play in making that decision?
A. Probably just to help relay that information on to whoever. If the home office decided they should be there five days a week, or if the district manager felt it wasn't cleaned often enough and hurt the appearance of the store, we would probably go to the local person we have for that and express that interest.
Q. Could the contract also be cut as well as increased?
A. I guess it could be.
Q. You have no knowledge of the present situation at the Clearfield store?
A. No.
Q. Also, in relation to the landscaping, the debris in the vicinity of the island, Mr. Naddeo was asking you for an interpretation in response to only the items or content of the island itself. If in the course of the work that was performed, the landscaper knocked some debris off or pulled off some leaves or did something and it landed in the parking lot, would your expectation be that that type of debris would be

cleaned up whether it was in the island or the adjacent parking lot?

A. I'm sure if I had knowledge of that, I would have talked to them and said, if you make a mess outside of the area that you're contracted to do, if you made the mess, you should clean it up.

MS. WOOD: That's all. I think we are done.

MS. ZAKEN: What do you want to do about signature?

MS. VUGRINOVICH: We want to read it.

(Witness excused.)

(Signature not waived.)

(Deposition concluded at 2:10 o'clock p.m.)

- - -

DEPOSITION OF MELVIN KNEZEVICH
CHANGES AND/OR CORRECTIONS

PAGE LINE NOW READS: _____

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jmk

I, MELVIN KNEZEVICH, having read the foregoing deposition, certify that all corrections to the deposition that I desire to make, together with my reasons for such corrections, appear on the preceding page, and I further certify that the foregoing deposition is a true record of my testimony.

_____

MELVIN KNEZEVICH

_____

DATE

JMK

CERTIFICATION

I hereby certify pursuant to Pa.R.C.P. No. 4017(d) that the witness, MELVIN KNEZEVICH, was duly sworn by me and that the foregoing deposition is a true record of the testimony of the witness.

The foregoing certification does not apply to any reproduction of this transcript in any respect unless under the direct control and/or direction of the certifying reporter.

_____

Jean Martin Koopman
Notary Public

My Commission expires October 26, 2004.

- - - -

C E R T I F I C A T I O N

I hereby certify pursuant to Pa.R.C.P. No. 4017(d) that the witness, **MELVIN KNEZEVICH**, was duly sworn by me and that the foregoing deposition is a true record of the testimony of the witness.

The foregoing certification does not apply to any reproduction of this transcript in any respect unless under the direct control and/or direction of the certifying reporter.

Jean Martin Koopman

Notary Public

Notarial Seal
Jean Martin Koopman, Notary Public
Green Tree Boro, Allegheny County
My Commission Expires Oct. 26, 2004
Member, Pennsylvania Association of Notaries

My Commission expires October 26, 2004.

Hard Copy

Outside Maintenance Agreement

THIS AGREEMENT is made as of the 1 day of MAY 2000, between **Wal-Mart Stores, Inc.** a Delaware corporation, of 2001 South East Tenth Street, Bentonville, Arkansas 72712-6489 ("Owner") and _____("Contractor").

NOW, THEREFORE, for and in consideration of the obligations and other valuable considerations and covenants, the sufficiency of which is hereby acknowledged, Owner and Contractor do hereby agree as follows:

1. Preliminary--Definitions:

a. "Outside Maintenance Service" shall include landscaping and/or irrigation work, snow removal services, or parking lot sweeping as defined in Exhibit A attached hereto and made a part hereof, under the "Scope of Work".

b. "Scope of Work" shall define the type and scope of the outside maintenance service work that this contract intends to cover.

c. "Work" shall be defined as any service provided within the defined Scope of Work.

2. General Requirements:

(2.1) The Contractor shall purchase and maintain such insurance as indicated below and with the limits listed below. Such insurance shall protect Owner and the Contractor from claims which may arise out of or result from the operations under this Agreement whether such operations are by himself, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance contracts shall contain a Waiver of Subrogation in favor of Owner and its affiliates.

Certificates of Insurance, acceptable to Owner, MUST BE RECEIVED by Owner before Owner will execute this Agreement or before any Work is performed, whichever is the earliest date. Failure to provide the proper Certificate of Insurance as required may result in the cancellation of the award of this Agreement or cancellation of this Agreement. The certification must indicate that the limits listed below are provided and that the insurance will not be canceled during the term of this contract without thirty (30) days prior written notice by registered mail to Owner.

HOLDER SHOULD READ: WAL-MART STORES, INC., ITS SUBSIDIARIES & ITS AFFILIATES, 2001 SE 103H.ST., Bentonville, AR 72716-6489.

Insurance policies meeting these requirements shall remain in effect for the duration of the Work. No payments to the Contractor will be authorized unless current Certificates of Insurance have been filed with Owner.

In no case should insurance coverage be less than:
- Statutory Workers' Compensation and Employer's Liability—$500,000 per occurrence.
- Commercial General Liability including Contractual Liability—$250,000.
- Business Auto Liability Coverage—$250,000.

The Contractor shall be responsible for securing Certificates of Insurance from all subcontractors for insurance coverage limits indicated above and shall make such Certificates available to Owner upon request.

(2.2) All requests for service(s) that are not included within the Scope of Work must be in writing and approved by Owner at Owner's sole discretion. Contractor shall not start additional work (which is not included in the Scope of Work) until the Owner's authorized representative has approved the request in writing. Failure to obtain advance approval before starting the additional work shall result in non-payment.

(2.3) The Owner may take any reasonable action necessary to control damage or protect the health, safety and welfare of the public in the event of problems involving the "Outside Maintenance Service" Such action on the part of the Owner shall not relieve the Contractor of any responsibilities related to any problems relating thereto.

Knezevich DEPOSITION EXHIBIT A 9K-9/27/03

No part of the Work set forth herein shall be performed in any location or manner which may endanger the health, safety and welfare of the public now or in the future. Means, methods, techniques, sequencing, etc. are the sole responsibility of the Contractor.

(2.4) Contractor warrants and guarantees that all Work specified herein is to be performed in a workmanlike manner acceptable to Owner, which shall be the sole judge of quality of Work. In the event the Work proves to be unacceptable to Owner prior to the time payment is made, Contractor shall have ten(10) days to correct such defects at Contractor's own reasonable expense, with payment then due upon completion of the corrections(s). If Contractor fails to correct such defects to Owner's satisfaction within the time specified above, Owner shall have the right to correct the defects and deduct the cost thereof from the amount owed to Contractor by the Owner. In the event any defects in the Work are discovered by Owner after paying Contractor, then, upon receipt of notice from Owner, Contractor shall have ten(10) days to correct the defects at Contractor's own expense. If Contractor fails to correct such defects to the satisfaction of Owner, which shall be at the sole discretion of Owner, within the time specified, Owner shall have the right to cure and correct such defects and invoice the Contractor for such expenditures. Contractor shall within ten(10) days from receipt thereof, reimburse Owner for any and all cost incurred therein.

(2.5) Contractor shall coordinate its schedule in performing the Work with the applicable Owner location's Store Manager.

(2.6) Owner may terminate this Agreement without cause upon fifteen (15) day's prior written notice to Contractor.

(2.7) Contractor agrees that he/she shall assume sole and complete responsibility for the Work, including safety of all persons and property; and that the Contractor shall defend, indemnify, and hold the Owner and tenants harmless from any and all liability, real or alleged, in connection with the Contractor's, Contractor's employees, agents and subcontractors performance of the Work set forth herein, excepting for liability arising from the sole negligence of the Owner or tenants. Contractor shall ensure that all equipment utilized on the premises is provided with proper safety guards.

(2.8) The Contractor shall, throughout the course of the Work set forth herein, comply with all rules, ordinances, regulations, etc. set forth by agencies having jurisdiction, which apply to the premises, the Contractor, and/or contractor's employees and subcontractors.

(2.9) The Contractor shall ensure that all Contractor's employees, agents, and subcontractors present a neat, clean, appearance and conduct themselves in a business-like manner at all times while on Owner's property. Owner strongly encourages all Contractors to provide uniforms for their employees, agents, and subcontractors.

(2.10) This Agreement shall not be enforceable against Wal-Mart (or any of it's affiliates) unless, on behalf of Wal-Mart, this Agreement is executed by the applicable Divisional Manager assigned to the Wal-Mart location at which the Scope of Work is to be performed.

3. Scope of Work:

Contractor shall provide services at Wal-Mart Stores, Inc. Store/Sam's Club Store #_____ , address: _____ ("Property") as set forth in the Scope of Work attached hereto as Exhibit "A" and made a part hereof. This Agreement is contingent upon the execution of Exhibit "A" by both parties.

4. Payment:

Owner shall make payment to Contractor within thirty (30) days after receipt of the Contractor's invoice at the address designated in this Agreement. Time required to process Contractor's invoice may be extended by Owner if required documentation is not submitted with each invoice.

ices must have the following information in order for payment to be made:

1. Invoice number
2. Invoice date
3. Date(s) that the service(s) was provided
4. Detailed description of service(s) provided
5. Itemized invoice amount
6. Wal-Mart/Sam's store number
7. Contractor's Wal-Mart vendor number
8. Attached "Work Completion Report" signed by Store Manager.

NOTE: Invoice for regular monthly contract service must show ONLY the regular monthly charge and no other charges. Approved additional charges must be invoiced separately.

l invoices should be sent to:

al-Mart Real Estate Accounting
) Box X055
entonville, AR 72712

. Pricing.

Pricing on Exhibit A shall include all labor (whether by Contractor or subcontractor) materials, taxes, permit fees (if applicable), and equipment.

. Entire Agreement:

This Agreement constitutes the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Agreement is the result of good faith arms length negotiations. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

7. Successors:

It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or federal government. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

8. Notices:

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, or similar overnight delivery service, to the address of either party below. Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall

If to the Contractor:
NAME HGT Lawncare
ADDRESS PO Box 260
CITY, STATE, ZIP Grampian PA 16838
ATTN: Reggie Hill

If to Owner:
WAL-MART STORES, INC.
2001 S.E. 10th Street
Bentonville, AR 72712-6489
Attn: Maintenance Division

...ts:

Contractor shall pay off and discharge any and all debts and obligations incurred pursuant to performing the Work, including but not limited to obligations owed to suppliers of material and subcontractors.

10. Term of Agreement:

This Agreement is for a period of 24 months, which may be terminated pursuant to Owner's right of termination set forth in paragraph (2.6) herein, and shall be effective as of the date written above. This Agreement shall automatically extend from year to year unless the same is terminated by Wal-Mart upon at lease thirty (30) days written notice prior to the end of the initial term of this Agreement or the extended term of this Agreement or unless terminated by Wal-Mart pursuant to it's right of termination set forth in paragraph (2.6) herein.

11. Severability:

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby; and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year set out.

CONTRACTOR:

By: Date: 5-8-00

Roger R. Hall
Print Name

814-236-3040
Phone

Wal-Mart/Sam's Store No. 2129

WAL-MART STORES, INC.

By: Date: 5-10-00

Tim Fox - DM
Print Name Title:
(District Manager)

(814) 375-5010
Phone

4

SCOPE OF WORK
LANDSCAPING:

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 7/1/2000

A. The Contractor shall provide regular maintenance services as outlined in this Agreement.

B The Contractor shall examine the landscape, including irrigation, on a weekly basis, looking for problems or potential problems with the landscape.

C. The Contractor shall provide,at his/her own risk and sole expense, all labor, materials, tools, equipment, insurance, transportation, hauling, dumping, and all other items needed to provide the services outlined in this Agreement.

D The Contractor shall make minor replacements and repairs to the landscape facilities as part of the required Work set forth herein. Major items needing replacement or repair shall be reported to the Owner's authorized representative within one week of occurrence. A minor item would be something that takes less than 30 minutes to repair using minimal replacement parts. A broken or plugged sprinkler nozzle would be an example of a minor item. Some specific guidelines for determining if an item is minor or major are given in the section pertaining to each item.

E Any facilities or Property damaged or destroyed as a result of the Contractor's operations on the premises shall be repaired or replaced at the Contractor's sole expense.

I. CARE OF PLANTED AREAS

A Trees: Shall be maintained by Contractor in a healthy, vigorous growing condition, free from disease and large concentrations of pests.

1. Contractor shall prune trees that are under fourteen (14) tall once a year to remove dead, diseased, broken, dangerous, or crossing branches and as required herein. Pruning trees that are fourteen (14) or taller will be considered additional work. A written quote for pruning such trees should be separately submitted by Contractor to Owner and detailed in a separate work order.

2. Contractor shall prune trees only in appropriate months. Prune in accordance with generally accepted standards for proper pruning.

3. Contractor shall discard all tree trimmings away from the premises using a legal method.

4. Any tree found to be dead due to negligence by the Contractor should be replaced by Contractor within two weeks of death of such at the Contractor's expense. Replacement of trees that die due to mechanical damage will be paid for as additional work. A quote for all replacements must be submitted to Owner for Owner's approval and detailed in a separate work order.

5 Trees planted as a visual screen or noise buffer may be pruned as needed only to remove dead, diseased, broken, dangerous, or crossing branches. Some municipalities prohibit pruning trees without a permit. Contractor shall check with local authorities prior to pruning. The Contractor is responsible for obtaining and paying for any required permits.

D Shrubs (including vines). Shall be kept by Contractor in a healthy, vigorous condition, free from disease and large concentrations of pests.

1. Shrubs shall be pruned by Contractor as needed to remove branches that are dead, broken, extending beyond the face of curbs or sidewalks, or are climbing building walls (unless they are intended to climb the wall, such as climbing vines).

2. When it is necessary to prune shrubs, Contractor shall prune them into natural, mounding forms. Contractor shall not shear shrubs into topiary (shapes) or formal hedges unless specifically instructed to do so in writing by the Owner's authorized representative.

3 Any shrub found to be dead due to negligent acts by the Contractor should be replaced within two (2) weeks of death at the Contractor's sole expense. Replacement of shrubs that die due to mechanical damage will be paid for as additional Work. A written quote for replacement is to be submitted by Contractor to Owner and detailed in a separate work order.

C Fertilizer application.

1 Contractor shall fertilize all grass areas two times per year: spring, and fall Additional applications will be applied if required with prior approval by Owner. All applications will be at the rate specified by the manufacturer Contractor will fertilize all plants two times per year with proper fertilizers. No additional payment shall be made for the required fertilizer applications. Contractor must ensure that the application of fertilizer is done by a licensed applicator, if required by any state, local, or federal regulations.

D Weed control

1. Weeds in planted areas, sidewalks, curbs, gutters, or pavement shall be removed or killed weekly by Contractor as the weeds emerge. Weeds shall be removed by Contractor (not just killed) if they are larger than 2" (5 cm) in height or diameter Contractor shall dispose of weeds away from the premises Pre and post-emergent herbicides may be used at the Contractor's option Contractor must ensure that the application of any and all pre and post-emergent herbicides is done by a licensed applicator, if required by any state, local, or federal regulations. Owner will make no additional payments for herbicide applications. The cost of all weed control Work shall be included in the Agreement price for landscape maintenance

2 Contractor shall do regular maintenance of the mulch or decorative rock layer, which shall minimize weeds in shrub and groundcover areas. All mulched areas shall be re-mulched by Contractor once each year to maintain a 2" thickness. The mulch material shall be provided by Contractor and be of the same type as existing unless otherwise specified by Owner.

E. Lawns:

1. Contractor shall keep lawns in a healthy, vigorous condition, free of disease and pests, except as noted below

2. Lawn height shall be maintained by Contractor between 3" and 5" and shall not exceed 5" (13 cm) at any time.

3. Contractor shall mow, edge and trim lawns weekly or as required to maintain an even, well-groomed appearance. Sidewalks, straight curb runs and large planting areas shall be edged by Contractor utilizing a vertical blade-edger. String trimmers may be used in other areas. Note: Contractors shall remove trash from areas to be mowed prior to mowing

4. Contractor shall remove visible lawn clippings and dispose of them away from the premises in a legal manner. The Contractor is encouraged to use mulching mowers that cut clippings into small pieces that sift down into the lawn.

5. Any lawn area that is killed or dies due to Contractor negligence shall be replaced at the Contractor's sole expense, within two (2) weeks of the loss If lawn loss was due to mechanical damage, replacement costs will be paid as additional Work. If lawn loss is due to mechanical damage, Contractor shall submit a quote to Owner for replacement and the quote must be detailed in a separate work order

6. Contractor shall hand water as needed to supplement natural rainfall or permanent irrigation system and maintain plantings in a healthy, stress-free condition. It is the Contractor's responsibility to make sure that plants receive adequate water regardless of weather conditions. It is also the Contractor's responsibility to ensure that plants are not over watered

II. IRRIGATION (*This section is deleted for properties that are not irrigated.*)

A. It is the Contractor's responsibility to make sure that the irrigation system is maintained and operates properly

B. It is the responsibility of the Contractor to conserve water and assure that all watering rules and regulations are followed. Any penalties, fines, or citations for watering ordinance violations and relating to such shall be paid the by Contractor.

C. The Contractor is responsible for the complete operation and maintenance of the irrigation systems. The Contractor shall examine the irrigation system for damage or malfunction weekly and shall report any damage or malfunction to the Owner's authorized representative in writing

6

D. Contractor shall repair Minor Repairs with the irrigation system as defined herein (broken heads, risers and minor leaks) Owner will make no additional payment to Contractor for said Minor Repairs. Major Repairs to the irrigation system such as pump failures, etc., will be reported to Owner and repaired according to a separate written agreement between Owner and Contractor.

1. "Minor Repairs" include, but are not limited to, clearing out irrigation lines, adjustment of spray heads and nozzles, adjusting zone controls, programming main controller, maintenance of spray heads and nozzles, including replacement of minor parts, minor leaks in lines, risers, laterals or other system components

2. "Major Repairs" include, but are not limited to, major line breaks, repair and/or replacement of valves, controllers, pumps and backflow preventers. Contractor shall submit a quote to Owner for repair and/or replacement of major components, and obtain written authorization from Owner prior to proceeding with such Work.

3. Owner reserves the right to determine whether a repair to the irrigation system will be considered Major or Minor. Nothing contained in this section shall relieve the Contractor from acting in a responsible manner in the event of an emergency involving the irrigation system to protect Property, and ensure the safety of all persons, and immediately curtail wholesale waste of water.

E. When breakdowns or malfunctions exist, the Contractor shall hand water, if necessary, to maintain all plant material in a healthy condition

F. The Contractor shall maintain the irrigation system, including cleaning of filter screens yearly or more often if needed, and flushing pipes part of this system where applicable. WINTERIZATION. As a minimum, the system shall be shut down at the irrigation meter, and all zones shall be blown down with compressed air until all water has been evacuated from the system. Care will be exercised to ensure all heads are secured from ingress of rainwater and mud while system is Repressurized Controller will be shut down. Contractor shall ensure the backflow preventer is completely drained and suitably protected from freezing.

G Any replacement of irrigation system components shall be made by Contractor with materials of the same manufacturer and model as the original equipment. Substitutions of materials other than original equipment will be approved only when the original equipment has been discontinued and are no longer available for purchase at any location. The substituted equipment must be completely compatible with the original and must be approved in writing in advance by the Owner's authorized representative.

H. All repairs to the irrigation system shall be identical to the original installation, unless approved in writing by the Owner's authorized representative. If a change to the installation will result in lower future maintenance costs, less frequent breakage, or an increase in public safety, request authorization in writing to make the change from the Owner's authorized representative.

I Contractor shall check for leaking valves, water running across sidewalks, water standing in puddles, or any other condition which hampers the correct operation of the irrigation System or the public safety. The Contractor shall carefully observe plant materials for signs of wilting, indicating a lack of water. Plants that die due to irrigation system failure will be considered to have died due to the Contractor's negligence or acts and shall be replaced at the Contractor's sole expense

III. LITTER REMOVAL

A. All litter shall be removed by the Contractor from ~~sidewalks, gutters~~, and all planted areas each week. In no case shall trash, litter, or leaves be blown or swept by the Contractor onto the Property of others All trash, litter, leaves, etc shall be collected, hauled away, and disposed of by the Contractor away from the premises.

B. In addition to removing all litter from sidewalks, ~~gutters~~ and planting areas, the Contractor shall remove and dispose of any large miscellaneous debris or trash in the parking lot. For the purpose of this section, "large" shall mean items the size of a small beverage cup or larger. The intent of this requirement is that the Contractor and it's workers should take sufficient pride in the appearance of the Property that they would pick up any significant litter they come across on the premises Sweeping of the parking lots is not included in this Agreement Contractor shall remove all litter from planting areas and sidewalks, regardless of the size of the litter. Contractor shall notify Owner in writing, with clear photographs attached, of excessive trash accumulation on the Property

IV. CHEMICALS, HERBICIDES, PESTICIDES

A. All chemicals shall be used in accordance with label directions and the manufacturers recommended handling methods. Registered chemicals shall be handled in accordance with all applicable regulations. Registered chemicals shall be used only on the advice of a qualified, licensed, if required, pest control advisor. Nothing in this specification shall be construed to be the advice of, or to substitute for the advice of, a pest control adviser.

B. Pesticides shall not be applied within one hour of the start of operating hours of the store. In the event that it is not possible to complete the application by one hour prior to business hours (i.e. 24-hour locations), applications shall be made at times when customer presence is minimal. Areas to be treated shall be blocked off and warning signs posted.

C. The Contractor shall take precautions to keep persons away from pesticide and herbicide-treated areas until the applied material is fully dry and the treated area is safe for entry. Follow the recommendations of the pesticide manufacturer and all applicable governmental and industry regulations.

V. PAYMENT

Owner agrees to pay the Contractor a total of $ 127.20 Per Visit per year during the term of this agreement, payable in monthly payments of $ _____ each flat

Additional Scope of Work

Acknowledged and Agreed to by:

CONTRACTOR:

Hillcrest

Name of Contractor

3.29.00

By Date

Roger P. Hillcrest

Print Name

OWNER:

WAL-MART STORES, INC.

Y.10.00

By Date

Tim Fox

Print Name Title
(District Manager)

District 1172

Outside Maintenance Agreement

THIS AGREEMENT is made as of the 1 day of May 2002 between Wal-Mart Stores, Inc. a Delaware corporation, of 2001 South East Tenth Street, Bentonville, Arkansas 72712-6489 ("Owner") and _____("Contractor").

NOW, THEREFORE, for and in consideration of the obligations and other valuable considerations and covenants, the sufficiency of which is hereby acknowledged, Owner and Contractor do hereby agree as follows:

1. Preliminary--Definitions:

a. "Outside Maintenance Service" shall include landscaping and/or irrigation work, snow removal services, or parking lot sweeping as defined in Exhibit A attached hereto and made a part hereof, under the "Scope of Work".

b. "Scope of Work" shall define the type and scope of the outside maintenance service work that this contract intends to cover.

c. "Work" shall be defined as any service provided within the defined Scope of Work.

2. General Requirements:

(2.1) The Contractor shall purchase and maintain such insurance as indicated below and with the limits listed below. Such insurance shall protect Owner and the Contractor from claims which may arise out of or result from the operations under this Agreement whether such operations are by himself, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance contracts shall contain a Waiver of Subrogation in favor of Owner and its affiliates.

Certificates of Insurance, acceptable to Owner, MUST BE RECEIVED by Owner before Owner will execute this Agreement or before any Work is performed, whichever is the earliest date. Failure to provide the proper Certificate of Insurance as required may result in the cancellation of the award of this Agreement or cancellation of this Agreement. The certification must indicate that the limits listed below are provided and that the insurance will not be canceled during the term of this contract without thirty (30) days prior written notice by registered mail to Owner.

HOLDER SHOULD READ: WAL-MART STORES, INC., ITS SUBSIDIARIES & ITS AFFILIATES, 2001 SE 103H ST., Bentonville, AR 72716-6489.

Insurance policies meeting these requirements shall remain in effect for the duration of the Work. No payments to the Contractor will be authorized unless current Certificates of Insurance have been filed with Owner.

In no case should insurance coverage be less than:
- Statutory Workers' Compensation and Employer's Liability---$500,000 per occurrence.
- Commercial General Liability including Contractual Liability---$250,000.
- Business Auto Liability Coverage---$250,000.

The Contractor shall be responsible for securing Certificates of Insurance from all subcontractors for insurance coverage limits indicated above and shall make such Certificates available to Owner upon request.

(2.2) All requests for service(s) that are not included within the Scope of Work must be in writing and approved by Owner at Owner's sole discretion. Contractor shall not start additional work (which is not included in the Scope of Work) until the Owner's authorized representative has approved the request in writing. Failure to obtain advance approval before starting the additional work shall result in non-payment.

(2.3) The Owner may take any reasonable action necessary to control damage or protect the health, safety and welfare of the public in the event of problems involving the "Outside Maintenance Service" Such action on the part of the Owner shall not relieve the Contractor of any responsibilities related to any problems relating thereto.

Kmetzvich DEPOSITION EXHIBIT B 12-8-27-03

No part of the Work set forth herein shall be performed in any location or manner which may endanger the health, safety and welfare of the public now or in the future. Means, methods, techniques, sequencing, etc. are the sole responsibility of the Contractor.

(2.4) Contractor warrants and guarantees that all Work specified herein is to be performed in a workmanlike manner acceptable to Owner, which shall be the sole judge of quality of Work. In the event the Work proves to be unacceptable to Owner prior to the time payment is made, Contractor shall have ten(10) days to correct such defects at Contractor's own reasonable expense, with payment then due upon completion of the corrections(s). If Contractor fails to correct such defects to Owner's satisfaction within the time specified above, Owner shall have the right to correct the defects and deduct the cost thereof from the amount owed to Contractor by the Owner. In the event any defects in the Work are discovered by Owner after paying Contractor, then, upon receipt of notice from Owner, Contractor shall have ten(10) days to correct the defects at Contractor's own expense. If Contractor fails to correct such defects to the satisfaction of Owner, which shall be at the sole discretion of Owner, within the time specified, Owner shall have the right to cure and correct such defects and invoice the Contractor for such expenditures. Contractor shall within ten(10) days from receipt thereof, reimburse Owner for any and all cost incurred therein.

(2.5) Contractor shall coordinate its schedule in performing the Work with the applicable Owner location's Store Manager.

(2.6) Owner may terminate this Agreement without cause upon fifteen (15) day's prior written notice to Contractor.

(2.7) Contractor agrees that he/she shall assume sole and complete responsibility for the Work, including safety of all persons and property; and that the Contractor shall defend, indemnify, and hold the Owner and tenants harmless from any and all liability, real or alleged, in connection with the Contractor's, Contractor's employees, agents and subcontractors performance of the Work set forth herein, excepting for liability arising from the sole negligence of the Owner or tenants. Contractor shall ensure that all equipment utilized on the premises is provided with proper safety guards.

(2.8) The Contractor shall, throughout the course of the Work set forth herein, comply with all rules, ordinances, regulations, etc. set forth by agencies having jurisdiction, which apply to the premises, the Contractor, and/or contractor's employees and subcontractors.

(2.9) The Contractor shall ensure that all Contractor's employees, agents, and subcontractors present a neat, clean, appearance and conduct themselves in a business-like manner at all times while on Owner's property. Owner strongly encourages all Contractors to provide uniforms for their employees, agents, and subcontractors.

(2.10) This Agreement shall not be enforceable against Wal-Mart (or any of it's affiliates) unless, on behalf of Wal-Mart, this Agreement is executed by the applicable Divisional Manager assigned to the Wal-Mart location at which the Scope of Work is to be performed.

3. Scope of Work:

Contractor shall provide services at Wal-Mart Stores, Inc. Store/Sam's Club Store #2125, address: 100 Supercenter Drive ("Property") as set forth in the Scope of Work attached hereto as Exhibit "A" and made a part hereof. This Agreement is contingent upon the execution of Exhibit "A" by both parties.

4. Payment:

Owner shall make payment to Contractor within thirty (30) days after receipt of the Contractor's invoice at the address designated in this Agreement. Time required to process Contractor's invoice may be extended by Owner if required documentation is not submitted with each invoice.

Invoices must have the following information in order for payment to be made:

1. Invoice number
2. Invoice date
3. Date(s) that the service(s) was provided
4. Detailed description of service(s) provided
5. Itemized invoice amount
6. Wal-Mart/Sam's store number
7. Contractor's Wal-Mart vendor number
8. Attached "Work Completion Report" signed by Store Manager.

NOTE: Invoice for regular monthly contract service must show ONLY the regular monthly charge and no other charges. Approved additional charges must be invoiced separately.

All Invoices should be sent to:

Wal-Mart Real Estate Accounting
PO Box X055
Bentonville, AR 72712

5. Pricing.

Pricing on Exhibit A shall include all labor (whether by Contractor or subcontractor) materials, taxes, permit fees (if applicable), and equipment.

6. Entire Agreement:

This Agreement constitutes the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Agreement is the result of good faith arms length negotiations. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

7. Successors:

It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or federal government. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

8. Notices:

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, or similar overnight delivery service, to the address of either party below. Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall

If to the Contractor:
NAME B & D Enterprises
ADDRESS 602 Susquehanna Ave.
CITY, STATE, ZIP Curwensville Pa. 16833
ATTN: _____

If to Owner:
WAL-MART STORES, INC.
2001 S.E. 10'h Street
Bentonville, AR 72712-6489
Attn: Maintenance Division

Debts:

Contractor shall pay off and discharge any and all debts and obligations incurred pursuant to performing the Work, including but not limited to obligations owed to suppliers of material and subcontractors.

10. Term of Agreement:

This Agreement is for a period of 24 months, which may be terminated pursuant to Owner's right of termination set forth in paragraph (2.6) herein, and shall be effective as of the date written above. This Agreement shall automatically extend from year to year unless the same is terminated by Wal-Mart upon at lease thirty (30) days written notice prior to the end of the initial term of this Agreement or the extended term of this Agreement or unless terminated by Wal-Mart pursuant to it's right of termination set forth in paragraph (2.6) herein.

11. Severability:

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby; and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year set out.

CONTRACTOR:

B & D Enterprises

Jim Bailor 5/5/02

By: Date:

Jim Bailor

Print Name

(814) 236-0764

Phone

WAL-MART STORES, INC.

5-10-02

By: Date:

Tim Fox DM

Print Name Title:
(District Manager)

(814) 375-5010

Phone

Wal-Mart/Sam's Store No. 2129

Original Copy

Exhibit A

SCOPE OF WORK
SWEEPING

STORE # 2129
STORE MANAGER MEL KNEZEVICH
MAINTENANCE MANAGER
START DATE 4/30/00

The Contractor shall provide sweeping and related maintenance services Work located at the Wal-Mart Store, Inc./Sam's Club # 2129, address: 100 Super Center Dr as follows:

- Areas are to be swept ("Areas") at intervals as listed below.
- Areas include, but are not limited to, parking lot, sidewalks, truck wells, and rear of the building.
- Contractor will report immediately any unusual findings such as graffiti, vandalism, excess trash being dumped on the property, vehicles blocking removal, or any other dangerous situation discovered on the property by providing a photograph of the unusual finding to the owner.

Contractor shall provide the Work set forth herein, per occurrence as set forth herein:

_____ Daily
_____ Weekly
_____ Bi-Weekly
_____ One Time per Month
_____ Intervals of # 3 per Week

Price per occurrence: $ 315.00 Estimated more OR Less

Acknowledged and Agreed to by:

CONTRACTOR:

B+D Enterprises
Name of Contractor

Jim Bailor 5/3/00
By: Date:

Jim Bailor
Print Name

OWNER:

WAL-MART STORES, INC.

5-10-00
By: Date:

Tim Fox BM
Print Name Title:
(District Manager)

Stock Person / Cart Pusher Job Description

Mission | Expectations | Resource List | Planner | Job Responsibilities

Stock Person/Cart Pusher Associate's Mission

You support your Store by:

- Maintaining store maintenance standards,
- Assisting Customers with purchases, and
- Maintaining adequate shopping carts and supplies for front end operations.

Stock Person/Cart Pusher Associate's Expectations

1. Provide Excellent Customer Service

- Practices a 10 Foot Attitude.
- Answers all Customer Service calls from other Associates.
- Communicates with other Stock/Cart Associates to ensure all calls are answered.
- Helps Customers find what they need.
- Demonstrates a high sense of urgency towards all assignments.
- Helps with other projects as needed.
- Maintains adequate supply of shopping carts for Customer use by:
  - Recovering carts from the parking lot (no more than ten (10) at a time).
  - Monitoring the supply of shopping carts in the Cart Corrals.
- Assists in Layaway.
- Provides Customer carry outs when needed, using proper lifting techniques.
- Assists while outside in the parking lot with anyone needing help loading his/her car, or getting inside (i.e. elderly, disabled, etc.).
- Obtains bags for the front end.

2. Safe Work Practices are Followed

- Helps keep restroom, vestibule and trash cans clean.
- Handles all spills promptly and uses "Caution" signs and cones.
- Helps keep fixture room organized.
- Is knowledgeable about emergency procedures (i.e. evacuations, codes, etc.).
- Is knowledgeable about lockout/tagout procedures.
- Follows proper lifting techniques.
- Properly uses all ladders.
- Makes bales in a timely manner.

NOTE: Must be at least 18 years of age to operate the baler!

- Follows all safety and emergency procedures.
- Hangs store signs using the proper ladder.
- Keeps parking lot clear of shopping carts.
- Is aware of vehicle traffic.
- Ensures OSHA guidelines are being followed properly.
- Follows equipment guidelines.

Summary

Maintains store maintenance standards, assists Customers with purchases and maintains adequate shopping carts and supplies for front end operations by performing the following duties:

Primary Responsibilities

Primary responsibilities are listed below. Other responsibilities may be assigned.

- Provides excellent Customer Service by:
  - Practicing a 10 Foot Attitude.
  - Answering all Customer Service calls from other Associates.
  - Communicating with other Stock/Cart Associates to ensure all calls are answered.
  - Helping Customers find what they need.
  - Demonstrating a high sense of urgency toward all assignments.
  - Helping with other projects as needed.
  - Assisting in Layaway.
  - Providing Customer carry outs when needed, using proper lifting techniques.
  - Assisting while outside in the parking lot with anyone needing help loading their car or getting inside (i.e. elderly, disabled, etc.).
  - Obtaining bags for the front end.
  - Maintaining an adequate supply of shopping carts for Customer use by:
    1. Recovering carts from the parking lot (no more than ten (10) at a time).
    2. Monitoring the supply of shopping carts in the Cart Corrals.
- Practices safe work habits by:
  - Helping keep restrooms, vestibule and trash cans clean.
  - Handling all spills promptly and using "CAUTION" signs and cones.
  - Helping keep the Fixture Room organized.
  - Being knowledgeable about emergency procedures (i.e. evacuations, codes, etc.).
  - Being knowledgeable about lockout/tagout procedures.
  - Following proper lifting techniques.
  - Properly using all ladders.
  - Making bales in a timely manner.

Must be 18 years of age or older to operate the Baler!

  - Following all safety and emergency procedures.
  - Hanging store signs using the proper ladder.
  - Keeping the parking lot clear of shopping carts.
  - Being aware of vehicle traffic in the parking lot.
  - Ensuring OSHA guidelines are being followed properly.
  - Following equipment guidelines.
- Demonstrates dependability through:
  - Working well with other Associates.
  - Working with a high sense of urgency.

Additional Responsibilities

Additional responsibilities may be assigned.

Qualification Requirements

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed are representative of the knowledge, skill and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Mathematical Skills

Ability to determine the number of individual things in a unit or group.

3. Dependability

- Works well with other Associates.
- Works with a high sense of urgency.

Stock Person/Cart Pusher Associate's Resource List

Personal Contacts:

- Day Maintenance Associate
- Customer Service Manager (CSM)
- Department Managers
- Personnel Manager
- Support Managers
- Assistant Managers
- Co-Manager
- Store Manager

Printed Materials and Videos:

- Please review your training plan for training materials/videos that are required for your position.

Additional Training:

- All applicable Satellite Broadcasts.
- On going training.

Stock Person/Cart Pusher Associate's Planner

Daily Tasks

- Smile and greet each Customer.
- Report to Supervisor for daily tasks.
- Provide excellent Customer Service (i.e. Customer carry outs, get merchandise off risers, etc.).
- Gather shopping carts from the parking lot on an on-going basis.
- Maintain shopping cart supply for Customers.
- Maintain store appearance by:
    - Cleaning spills immediately.
    - Correcting any safety hazards on the store premises.
    - Hanging signs.
- Make sure parking lot is secure (i.e. no lights are burned out, no hazards, etc.).
- Attend daily store meetings.

Weekly Tasks

- Attend weekly store meetings.

Stock Person/Cart Pusher Associate's Job Responsibilities

Job Code: 301
Reports to: Assistant Manager

Ability to add, subtract, multiply, divide and find percentages.

Basic Reading/Writing Skills

Ability to understand the meaning of written or printed matter and to record information by inscribing characters or symbols.

Certificates, Licenses and Registrations

The Associate must complete all Wal-Mart Basic and Advanced Training Modules and classes.

Physical Demands

The physical demands described here are representative of those that must be met by an Associate to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.

- The Associate is regularly required to bend, twist or squat.
- The Associate is regularly required to stand or walk.
- The Associate must frequently lift and/or move objects weighing at least 25 and up to 50 pounds (lbs.).
- The Associate will be required to perform tasks involving firm grasping.
- The Associate will be required to demonstrate sufficient coordination by performing tasks such as placing and screwing a small washer on a bolt, etc.
- The Associate may be required to perform tasks that require repetitive foot actions such as climbing.
- The Associate may be required to perform tasks that require reaching above the shoulder and below waist level.

Work Environment

The work environment characteristics described in this section are representative of those an Associate encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

- The noise level in the work environment is moderate.

Last Updated: August 4, 2000

Slip/Trip/Fall Solutions

The following action points will help us take care of our customers by reducing slip/trip and fall incidents. Challenge associates to offer more ideas to impact this issue. Cover these action points on conference calls, store visits and at district meetings with store managers.

SLIP/TRIP/FALL SOLUTIONS

1) Improve frequency and quality of Safety Sweep Program.
2) Develop a sense of urgency for Spill Response with associates.
3) Provide Handy Cones and paper towel dispensers in strategic slip/fall locations
4) Provide spill response stations in strategic slip/fall locations.
   Replenish "Spill Magic" spill response stations on a regular basis.
5) Update the Inclement Weather plan for the front entrance(s).
6) Check the Parking Lot for maintenance issues and re-paint curbs.
7) Review Day Floor Maintenance staffing and procedures with associates.
8) Review Stack Base and Endcap stacking practices with associates.
9) Develop morning watering program for Lawn and Garden department.
10) Review the safety sweep activities within the Supercenter fresh areas.

Safety Sweeps

Action Points:

1. Will be performed at least three times per day. Two times on Sundays.
2. Will involve a maintenance associate doing a broom sweep. Other associates will identify and correct hazards in their department.
3. Encourage associates to take different routes to breaks and lunch. They can fix any issue observed along the way.

Recommendations:

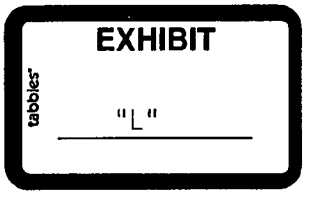
- Consider using a song selected by the associates to play when doing the safety sweep.
- Consider making a housekeeping award banner that can be hung in the best maintained department selected by management each week.

Increase the urgency of spill clean-up with associates. Management can lead by example.

Handy Cone order #: 99-28088 (See RMRM Section tab 13 for guidelines)

Is there an adequate number of caution cones and paper towel dispensers throughout the store.

Minimum Locations Required:



Cashier checkouts (Towels)	HBA
Entrance	Lawn and Garden
Radio Grill/ Food Service Area	Household Chemicals
Restrooms	Pets
Backrooms	Automotive department and TLE

Paper Towel Order #: 99-59835 (See RMRM Section tab 13 for guidelines)
Paper Towel Dispenser Order #: 99-59709

Have Spill Magic stations available.

Suggested Spill Response Station Locations:

- Check Out Area
- Lawn and Garden (pool / spa chemicals)
- Automotive
- Chemicals (soaps, cleaners, waxes, etc.)
- Paint Department
- Meat Department
- Produce Department
- Dairy Case
- Loading Dock

1. Division 1 = at least 4; Supercenters = at least 10.
2. Place these in strategic locations in the store.
3. Show the Spill Magic video and do a training demonstration.

Spill Magic Chemical order #: 99-26554 (See RMRM Section tab 13 for guidelines)
Additional products i.e. broom, broom handle, dust pan, dispenser bottle, disposal bags and spill response station may be ordered directly through the company @ (1 800 969-1467).

Have an inclement weather plan in place.

Action Points:

1. Involve the entrance and exit greeters.
2. Set expectations for these associates.
3. A wet mop and bucket will be available near store entrances.
4. Dry mats, in good repair, will be available in stores without permanent mats. These mats will be used in the vestibule and inside the store near entrances.
5. Have red tape available to secure the mat to the floor (Avoid folds).
6. Replenish umbrella bags at front entrance.

Umbrella Bags Order #: 99-11274 (See RMRM Section tab 13 for guidelines)
Additional entrance mats may be obtained by contacting Store Planning @ (501) 273-4747.

Parking Lot Maintenance.

Action Points:

1. Involve cart collectors and other associates on their way to work.
2. Put a fresh coat of yellow paint on curbs, car stops, speed bumps and landscaping curbs.
3. Repair all potholes and cracked cement sidewalk surfaces.
4. Work with store planning if your store has issues with landscaping rocks as an incident cause.
5. Paint or place bright colored tape on chains used to secure merchandise on the sidewalk.

Day Floor Maintenance.

Action Points:

1. Give clear direction and set expectations for day maintenance associates.
2. Have strong maintenance coverage between the hours 11:00 a.m. to 1:00 p.m. and 4:00 p.m. to 9:00 p.m. every day (higher customer times).
3. Temporarily mark off all floor hazards with red tape until the repair can be made. These hazards include broken or cracked tile and drains, missing rally tile strips and torn carpets and frayed carpet edges.
4. Non-slip flooring surfaces must never be waxed. These are used in the front entrances of our stores.
5. Have additional floor tiles and adhesive available for repairs and train associates.

Recommendations:

- Require specific attention and time for fixing all the front vestibule, entrance area and checkouts for hazards.
- Help maintenance associates plan tasks to be effective during the peak incident times listed above.
- Additionally focus on the HBA, Pets, Chemicals, Automotive, Hardware, Restrooms, Food or Grocery Departments.
- Provide red marking tape to all departments, each salaried manager and maintenance associate.
- Have a "fix-it" cart ready with all needed repair materials for minor floor hazards.

Night Floor Maintenance.

Action Points:

1. Involve night floor care associates, vendors and the night manager.
2. Yellow ropes and caution cones will be used to mark off floor surfaces being worked.
3. The floor will be completely dry before the ropes and cones are removed.
4. Make sure floor care associates are properly trained.

Freight Management.

Action Points:

1. Remove cardboard from the floor when working freight as soon as possible. This applies to both associates and vendors.
2. Pallet collection will be conducted every hour or as needed.
3. Stack bases and endcaps will be kept full and merchandise on each corner while filling.

Recommendations:

- Place large red dot stickers on the corners of each endcap bottom shelf.

Children in Carts.

Action Points:

1. Consider cookie cards or other incentives to encourage children to sit in the cart.

Lawn and Garden.

Action Points:

1. Conduct an early morning watering schedule during low customer traffic periods and wrap up hoses after use.

Grocery Store (Super Centers Only).

Action Points:

1. Place Spill Magic stations throughout the Grocery Area. Recommended locations include:
   - In front of the Radio Grill or vendor restaurant.
   - On poles or wall mounted throughout the grocery department.
2. Place caution cones, paper towel dispensers throughout the grocery area. Recommended locations include:
   - In front of the Radio Grill or vendor restaurant.
   - In the produce department.
   - On the sales floor near cost departments.
   - On poles through out the grocery department.
   - Anywhere Spill Magic stations are located.
3. Have wet mops, buckets and dry mops available for immediate use.
4. Consider placing carpet mats, in good repair, in front of:
   - The fresh cut fruit ice bed.
   - The produce wet cases.
   - The egg case
   - The chicken case.

   These carpet mats should be secured at the corners and cleaned weekly.

5. Adjust produce mister nozzles daily to avoid over spray on to the floor.
6. Place a bag dispenser beside the grape display.
7. Do not wax textured floor tile surfaces. These special tiles are used in our produce departments.

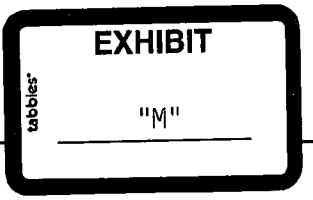
Last Updated: September 4, 2001

IN THE COURT OF COMMON PLEAS

CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,
Plaintiffs,
vs.) No. 02-1811-CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR tdba B&D ENTERPRISES,
Defendants,
vs.
JAMES BAILOR, tdba B&D ENTERPRISES
Additional Defendant,
vs.
ROGER R. HULL, tdba HSJ LAWNCARE and BOYLES INSURANCE, INC.,
Additional Defendants.

DEPOSITION OF ANNA M. RUGH, taken on behalf of the Defendants in the above-entitled cause, pursuant to the provisions of the Pennsylvania Rules of Civil Procedure of the Commonwealth of Pennsylvania, before Theodore E. Wawrzyniak, Registered Merit Reporter-Notary Public, at the Clearfield County Courthosue, 230 East Market Street, 1st Floor Annex, Commissioner's Office, Clearfield, PA 16830, on May 5, 2003, at 9:20 a.m.



WAWRZYNIAK REPORTING SERVICE

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(724) 864-6993

APPEARANCES:

FOR THE PLAINTIFFS:

JAMES A. NADDEO, ESQ.

JAMES A. NADDEO & ASSOCIATES

211 1/2 East Locust Street

Clearfield, PA 16830

FOR THE DEFENDANT WAL-MART:

PATRICK J. LOUGHNEY, ESQ.

DELL MOSER LANE & LOUGHNEY

1300 Frick Building

Pittsburgh, PA 15219

FOR THE DEFENDANT HULL:

TRISHA A. ZAKEN, ESQ.

SUMMERS McDONNELL WALSH & SKEEL

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APPEARANCES: (Continued)

FOR THE DEFENDANT BOYLES:

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FOR THE DEFENDANT BAILOR:

ANN B. WOOD, ESQ.
BELL SILVERBLATT & WOOD
318 East Locust Street
Clearfield, PA 16830

ALSO PRESENT:

MARSHALL E. RUGH

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ANNA M. RUGH, being first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOUGHNEY:

Q. I am Pat Loughney. I represent Wal-Mart in the lawsuit that you filed as a result of an accident that happened in the Clearfield Wal-Mart parking lot on September 10, 2001.

If I could, we have had a conversation with your counsel off the record, because the answers to interrogatories indicate that the accident was September 21, and checking with the towing record, I believe the accident is September 10, is that right, Jim?

MR. NADDEO: That is correct.

BY MR. LOUGHNEY:

Q. If I ask you what date it is, could you tell me, or wouldn't you be able to remember that?

A. Why wouldn't I remember?

Q. What date did the accident happen?

A. September 10.

Q. Very good. And just as you have done now, when I ask you questions, it will be important to answer verbally, yes or no, and not nod your head.

And if you don't understand my questions at

any time, please tell me and I will repeat them or the court reporter can reread them.

Just because you don't understand the question doesn't mean that you should have.

A lot of times when we read the transcript, sometimes the questions don't make sense.

So if you don't understand the question, let me know. Is that all right?

A. All right.

Q. If you need to take a break at any time for any reason, use the bathroom, talk to your attorney, we can do that.

The only thing I would ask is if there is a question pending at the time, could you please answer before you take your break? Is that all right?

A. All right.

Q. Are you taking any medications today?

A. Yes.

Q. What are you taking right now?

A. Oh, boy.

Q. Let me ask you this.

Are you able to understand the questions that I ask and give answers to those questions you know the answers to?

A. Yes.

Q. So whatever medication you are taking doesn't affect your ability to think?

A. No.

Q. Is that correct?

A. Okay.

Q. The accident on September 10, 2001, tell me how it happened.

A. I was walking to the back of the building and I slipped on one of them little pebbles or stones that fell out of those little islands where they have trees, and I fell down on it, and my husband came and picked me up, and I skinned the side of my face.

Q. You are indicating the right side. You are pointing to?

A. To this side.

Q. Is that the right side?

A. Right.

Q. What happened to the right side of your face?

A. I skinned it and had blood. It opened the skin a little bit.

And then I couldn't get up, and my husband come and picked me up.

Q. What direction did you fall, forward, backwards, sideways?

A. Sideways.

Q. To which side?
A. Right side.
Q. And what part of your body hit the ground first, do you know?
A. Well, I would say my head, because the island is up here and my head hit here and the ground is here.
Q. Here?
A. My head hit the ground, the island first.
Q. Is that the curb you are indicating?
A. Yes.
Q. How high was the curb?
A. I don't know. Four inches maybe, maybe six.
Q. So the right side of your face actually hit the curb, is that right?
A. Yes.
Q. Did you have a sense of any other part of your body hitting any part of the ground or the curb?
A. What do you mean?
Q. Did you feel any part of your body strike anything else?
A. Just I was hurting so bad I couldn't get up.
Q. If I ask you, do you have a recollection of any other parts of your body hitting any other part of the island, or the curb or the ground, you couldn't tell me that, is that correct?

A. The only thing I can tell you is I had to have help to get up. I couldn't get up on my own.

Q. You said that you, I think, fell on the pebble. Is that the word you used?

A. Well, you call -- I call it pebbles. I call them little stones.

Q. How do you know that's what you fell on?

A. Well, I felt the stones when I hit my head. That's what skinned my face, the little rough stones.

Q. How do you know that what you fell on was the pebble, the little stone, and we'll use stones.

How do you know that's what caused you to fall?

A. Well, I know I slipped on them.

Q. How do you know that?

A. There was some on the ground. They were off the island. They were on the ground.

Q. When did you first see the little stones on the ground?

A. I didn't see them till I fell on them, and I felt my feet slip.

Q. Which foot were you stepping with when you fell, do you know?

A. Huh?

Q. Was it your right foot?
A. Right foot.
Q. And describe the sensation.
Did you have a sensation of your foot slipping?
A. I had a sensation my foot slipping, then I got like -- like anytime you fall, it kind of dazes you.
And that's when he came in and helped me up, because I couldn't get up.
Q. When you fell, did you know that your foot slipped on little stones?
A. I know my feet slipped. My foot slipped on the stones.
Q. Now, what kind of shoes did you have on?
A. Same thing I got on right now, same ones.
Q. May I look?
A. An athletic shoe.
Q. Like?
A. They were Reeboks.
Q. Reeboks?
A. Yes.
Q. Could I see the sole on them?
A. Huh?

(Counsel examining shoe)

BY MR. LOUGHNEY:

Q. They are rippled soles?

A. Yes.

Q. You were walking with those shoes.

Now, did you have a sensation first of slipping or hitting yourself first, what was it?

A. I felt the sensation of my head hitting the berm first.

Q. So the first recollection you had is your head hitting the berm?

A. Yes.

Q. How can you testify then that your foot slipped?

I am not trying to trick you. I am trying to understand how you understood your foot slipped on stones.

A. It was the only thing there. Them little stones on the floor, on the ground you slid on.

Q. You are assuming that's what you fell on?

A. I know that's what I fell on.

Q. Before you hit your head, what did you sense about how you fell, before you hit your head?

A. I don't know how to answer that one.

Q. Do you know? Do you have any --

A. I didn't expect to fall. I was just walking.

Q. What I am trying to understand is, did you conclude later because these stones were there that's what you fell on?

A. Yes.

Q. Did you see the stones before you fell?

A. No.

Q. When you hit your face, were you knocked unconscious, do you know?

A. No, I wasn't unconscious. I just -- that's a hard question.

Q. Okay.

A. You fall, you fall.

Q. Were you stunned?

A. Not stunned. I just -- I knew I had fell and knew I needed help.

Q. When did you see the little stones?

A. When I saw him picking me up I saw all these little stones around the island.

Q. What size were they?

A. They were just little wee stones that -- they weren't pebbles like you see in the city.

They were stones. I don't know where they had them hauled in from, but they were mixed in with dirt.

Q. Were they of a uniform size?

A. All different sizes.
Q. What was the smallest and what was the largest you can remember?
A. I don't remember that.
Q. Were they smooth or rough?
A. They were rough.
Q. Do you know where they came from?
A. No, I don't.
Q. You say there was an island where you fell, is that right, what you hit your face on?
A. No.
Q. Were there little stones in the island?
A. Yes.
Q. Were they of similar size and --
A. They were like all bunches of little stones all sizes.
Q. The ones that were in the island, were they -- were they similar to the ones that you saw on the ground?
A. Yes.
Q. These stones, were there just a couple on the ground outside the island, or were there lots of them?
A. Just a couple, not too many.
Q. Okay.
A. I think they clean them up every so often or

something when people go through there.

Q. Why do you think that?

A. I don't know. Because you don't see them all over.

(Pause)

BY MR. LOUGHNEY:

Q. Do you know how the stones got on the ground where you fell?

A. No, I don't.

Q. Do you know how long they were there prior to your fall?

A. No, I didn't.

Q. Did anyone from Wal-Mart tell you they knew those stones were there?

A. No, they didn't.

Q. Did anyone from Wal-Mart tell you how the stones -- they knew how the stones got there?

A. No, I didn't question anybody.

Q. Do you know whether anyone from Wal-Mart caused those stones to be on the ground where you fell?

A. No, I don't.

Q. Do you know how long they were there?

A. No, I don't.

Q. Did anyone from Wal-Mart or anyplace else tell you how long they were there?

A. No.

Q. Did you have pain in your face after you fell?

A. I didn't have a pain in my face. It just busted the skin open and the blood come running.

Q. Did you have pain in any part of your body after you fell, right after you fell?

A. No, it just hurt. Not pain, it hurt.

Q. Were you carrying anything when you fell?

A. No.

Q. What was the weather like? Was it raining or was it dry?

A. It was like the sky was nice. It was like this weather.

Q. Was it --

A. It wasn't raining, but it was just kind of cloudy, getting dark.

Q. Was the ground wet anyplace?

A. No.

Q. Were you walking with a cane or any type of assistance?

A. No, walking just on my own.

Q. Where was your husband when you fell, do you

know?

A. He was waiting for a guy to come that was going to haul the car out. We had to get it fixed.

Q. Did you and your husband get out of the car together?

A. Yes.

Q. How far away was he from you when you fell, do you know?

A. I don't know. Maybe twice this room in length.

Q. A twenty-five foot room or something?

MR. NADDEO: I would say, no. It's not that, but I'm not a judge of that.

BY MR. LOUGHNEY:

Q. In relationship to anything else like a baseball field or home to first base, anything like that?

A. No.

Q. You can't describe it?

A. No.

Q. Were you intending to go with him in to talk to the people at Wal-Mart about the car?

A. We already talked to the mechanic about the car.

Q. What were you doing then at the time? Were you going back to your car?

A. The mechanic told us to take it in the back till the wrecker come to take it to the garage because they couldn't fix it.

Q. I'm sorry. So then were you on the way back to your car at this time?

A. No. I had got out of the car, and he was headed towards the garage.

Q. He was --

A. I was just out there waiting.

Q. You and your husband -- why were you at Wal-Mart?

A. Well, to tell you the truth, we shop there for everything. We don't go anywhere else.

Q. I am talking about that day. Why were you there?

A. We bought some kind of medicine. I don't remember what we bought.

Q. At Wal-Mart?

A. At Wal-Mart.

Q. So you already purchased it?

A. Yes. We had already purchased it.

Q. And what was your intent after that?

Were you going back to the car to leave?

A. Yes, we was going home.
Q. And then what happened about the car?
A. When he -- when he discovered it wouldn't move, a lady came out and said -- showed him a piece of thing she found under her car, and here it was under ours. And see, we was trying to give it to everybody else, and he went down to get a mechanic then and I stayed in the car.
Q. So there was something wrong with your car? It wouldn't start?
A. Wouldn't move.
Q. It started but it wouldn't move?
A. Yes.
Q. Okay.
A. So the mechanic told us to take it down back and wait for the wrecker to come pick it up.
Q. You buy your medicine, you go out to the car, is that right?
A. Right.
Q. Now, when you got out of your car to go into Wal-Mart, did you walk the same way that you walked when you fell?
A. Yes. Did I walk the same way?
Q. Did you take the same path from your car to Wal-Mart?

A. We always park in front and walk down in the store in the front door.

Q. But what I am asking is when you parked and walked in the front door to get your medicine, did you walk through the same area that you would walk when you fell?

A. Yes -- no. You are getting me all screwed up.

(Counsel conferring)

BY MR. LOUGHNEY:

Q. Would it help if I ask you to draw a sketch? Would that help you?

A. What's that?

Q. If you could draw a sketch of -- can you draw a sketch of the store and where you were parked and where the island is and where the --

A. I guess I could draw.

Q. Okay.

A. I am not a very good drawer.

Q. Do you want a pencil or a pen?

A. A pen is better. You can't erase it out then.

(Discussion off the record)

THE WITNESS: This, I would say, is the parking lot.

BY MR. LOUGHNEY:

Q. Make it real big. Mark that with a PL.

A. We go in the front door.

(Witness drawing)

THE WITNESS: That's the store.

BY MR. LOUGHNEY:

Q. How about for the parking lot. Could you mark PL on that so we know?

A. This is the store.

Q. Mark that with an S.

(Witness doing as requested)

BY MR. LOUGHNEY:

Q. You are spelling out store. That's good.

A. I am not a very good writer.

Q. Is this the parking lot?

A. This is the parking lot.

Q. Okay.

A. Okay. I went in and bought my medicine down here at the pharmacy.

Q. Mark P on that, please.

(Witness doing as requested)

MR. LOUGHNEY: Okay.

THE WITNESS: When he came out and we went in this door and came back out this door.

When he couldn't get the car to move, or the car -- it would run, but it wouldn't move at the time.

I think I'm right. No, it did move because we drove it down back.

Anyhow, he went down to the park -- down to the garage to see if the guy would come look at it, and I stayed in the car down where we was parked here right along the front row. I would say second, first row, second row.

BY MR. LOUGHNEY:

Q. Can you mark C for your car there, please?

A. Huh?

Q. Can you mark a C, or maybe your counsel could

do that if that would be easier.

MR. NADDEO: Let's do it this way.

THE WITNESS: Maybe you can draw better than I can. I am not a very good drawer.

MR. NADDEO: Is that where the car was originally parked?

THE WITNESS: Yes, right.

MR. NADDEO: There is a car here.

THE WITNESS: And he went down, walked down the road. He walked down this road and went to the back and the garage is back here.

MR. LOUGHNEY: Mark G. Maybe your attorney can do that.

MR. NADDEO: Let's put just a little building back here.

Go ahead. I am sorry. You should do that. You put the garage back there.

THE WITNESS: Yes, I am putting the garage back here.

(Witness doing as requested)

THE WITNESS: And this is all your -- the islands are all in here. I think there were like three in a row, I think.

It was getting dark. I don't remember that part.

MR. LOUGHNEY: Write G for the garage.

THE WITNESS: That's the garage.

MR. NADDEO: Down here.

(Witness doing as requested)

THE LOUGHNEY: The islands were by the garage?

THE WITNESS: The islands is all along here.

(Witness indicating)

THE WITNESS: These are all islands in here, along here.

(Witness doing as requested)

THE WITNESS: And then the driveway comes around here. I hope you understand this.

MR. LOUGHNEY: Sort of.

THE WITNESS: This is the driveway here.

The mechanic told him to bring the car down and park it down here where a wrecker could pick it up along this road here.

MR. NADDEO: Mark this car as number 1 position and this is car --

THE WITNESS: The same car.

MR. NADDEO: -- number 2 position.

MR. LOUGHNEY: Maybe where she is sketching islands, can you --

THE WITNESS: Yes, that's right there.

(Witness doing as requested)

MR. NADDEO: And we will mark these as islands here.

THE WITNESS: All along here are the islands.

MR. NADDEO: Okay. We will just mark these.

THE WITNESS: This all in here is an open field.

MR. NADDEO: Okay. There you go.

MR. LOUGHNEY: Okay.

THE WITNESS: Do you understand it now?

MR. LOUGHNEY: Yes. I think that helps.

BY MR. LOUGHNEY:

Q. So you were first parked in the parking lot -- in the parking lot where car 1 is?

A. Right.

Q. And you had gone in, and did your husband go in as well to get medicine?

A. Yes.

Q. Did you both go in together?

A. Yes. We always go together. You never see one, unless you see both.

Q. So you went in and came out?

A. Right.

Q. And then your car wouldn't work?

A. We found this piece out of the car. It wouldn't shift gears or something. Wasn't it, Marshall?

MR. RUGH: It was a gear.

BY MR. LOUGHNEY:

Q. So your car -- then were you able to drive your car back to the garage, is that right?

A. He drove it back.

Q. Marshall, he drove it back?

A. Right.

Q. Then when you got back to the garage --

A. I got out of the car when he did.

Q. Okay.

A. And he went in the garage, and I am out here running around, just running around.

Q. You just walked.

Okay. So you hadn't traveled that area when you went in to get your medicine, is that correct?

A. No.

Q. Okay.

A. You are not supposed to go in that back door unless you are going to get your car fixed.

Q. Now, are the islands in the parking lot in the middle of the parking lot or is there parking spaces on either side of the islands?

A. Pretty much so.

Q. So you were there, you were just walking in the area waiting for him to come out, is that right?

A. Yes.

Q. And I don't want you to guess at an answer, and if I am not right, you can disagree with me.

A. We were waiting for the wrecker to come get the car.

Q. All right.

A. Then I went in the garage and called my daughter to come get me to take us home.

Q. Now, when you went in the garage to use the phone, did you walk along the same path that you did when you fell?

Do you understand what I mean by that?

You had to go from your car into the garage to

make a call, is that correct?

A. Yes. I followed my husband back in the back door.

Q. Okay. So you went into the garage?

A. Right.

Q. Now, that route that you took from your car to the garage when you came out, is that when the accident occurred, after you made the call?

A. No, it happened before that.

Q. It happened before?

A. The guys in the garage knew about it.

Q. All right.

A. Because they had to get a key to unlock the telephone for me to make the phone call.

Q. And what was the reason for your phone call to your daughter again?

A. To take us home because we couldn't take our car home.

Q. Now, when you went into the garage to make a phone call, you already had fallen, is that correct?

A. I already fell, yes.

Q. Do you know whether anybody saw you fall?

A. A lady, she didn't see me fall, she saw my husband picking me up.

Q. Do you know her name?

A. I don't know her name, and I don't know if she works there or whether she didn't work there.

Q. Did she have any like a Wal-Mart name tag on or anything like that?

A. I didn't pay attention to that.

Q. What did she say to you, anything?

A. She asked me if she could get me a wet towel to wipe my face off.

And I said, no. I would wait till I got home.

Q. Now, when you called your daughter, did you tell her you had fallen?

A. No, I didn't tell her.

Q. Okay.

A. She didn't know what happened. I just told her our car broke down.

She didn't know what happened till she came and got us.

Q. What's your daughter's name?

A. Carol Nottingham.

Q. Can you spell that, please?

A. C-A-R-O-L, Nottingham.

Q. I'm sorry. The regular spelling, Nottingham?

A. Yes.

Q. Where does she live?

A. Here in Clearfield.

Q. Do you happen to know her address and phone number?

A. It is called Paradise now.

Q. Okay.

A. They changed the address.

Q. Could you give us her address? Do you know it?

A. You mean did anybody give my daughter the address?

Q. No. Do you know her address now that you can give it to us?

A. Yes, they just call it Paradise, Pennsylvania.

Q. Is there a street number or a route number?

A. I don't know if there is a route number or not.

Q. What about her phone number. Do you know her phone number?

A. Her number is 765-4558.

Q. And did anyone come with her?

A. No.

Q. What did you tell her when she got there?

A. We just told her the car broke down and we was waiting for the wrecker to come and take us home, and asked if she would come and get us and take us home.

Q. Now, when she arrived, did she arrive at Wal-Mart?

A. Yes.

Q. How long after the fall?

A. Maybe a half hour.

Q. What time of day was the fall, by the way, do you remember?

A. It was early evening.

Q. Was it light or dark?

A. It was light.

Q. So now when she comes to the Wal-Mart to pick you up, relate the conversation as best you can.

Who said what to whom?

A. When she came to Wal-Mart she asked us what happened, and we told her the car broke down and we wanted to know -- we wanted her to take us home.

Q. Okay.

A. And then we had the wrecker pick up our car to take it to a wrecker, or to get a garage.

And then the next morning we had her come back and get us and bring us back up town.

Q. Did you ever have a conversation with her that day about your fall?

A. No.

Q. Did you ever have a conversation with her

about your fall?

A. Well, she knew I had fell.

I told her where I fell back there, but that's it.

Q. That's what I mean. What did you tell her? When did you tell her you fell?

A. When she got there to Wal-Mart.

Q. Did you tell her what caused you to fall?

A. No, I didn't.

Q. Did she ask you what caused you to fall?

A. That I don't remember.

Q. When you were walking right before you fell, were you looking where you were walking?

A. Well, I am like everybody that takes a walk, you just start walking. You don't pay attention to what's here or what is there.

Q. You had earlier testified that you thought you fell on the stones, is that right?

A. Right.

Q. And that you first noticed the stones when your husband came over to help you, is that right?

A. Yes.

Q. If you had been looking when you were walking, could you have seen those stones, do you think?

A. Yes.

Q. When did you first go to any medical provider because of your fall?

A. September 10th, I think.

Q. Was it the 10th?

A. No, wait. It couldn't have been the 10th.

(Pause)

THE WITNESS: I would to have call and find out what my first date was.

I had an appointment to go over to State College to begin with.

BY MR. LOUGHNEY:

Q. So you already had an appointment scheduled?

A. Right.

Q. And we had talked before we started the deposition about dates.

Does that refresh your recollection about maybe when you went?

Was it a couple of weeks or couple days?

A. It was a couple of weeks, it seems like, because I am old fashioned.

When I fell I didn't run to the doctor and say I cut my finger. I try to doctor myself.

And when my pain was getting worse instead of getting better, I knew that I had to find something was wrong with it.

Q. What pain are you referring to?

A. Where my pelvis was broke. I could barely walk.

Q. When did you first notice pain in your pelvis after the accident, when?

A. I noticed the pain the next morning.

Q. Okay.

A. After you lay there all night, then you know you got something wrong.

Q. Did you ever have any pain in your pelvis --

A. No.

Q. -- before?

A. No.

Q. Which side of the pelvis was it?

A. The right side.

Q. Could you describe the pain you had the next morning?

A. It was just sharp walking, sharp pain when you go to walk.

Every day it got worse and every day I would bathe it more and try to get -- use a heat pad and everything else, but nothing eased the pain.

Q. Now, the first pain was a sharp pain, you said --

A. Right.

Q. -- the morning after?

A. Yes.

Q. How long did that pain last?

A. It lasted a few minutes at a time.

Q. Did you take any medicine or medication for it?

A. Yes. Like I said, I got pain pills and I took them for --

Q. Where did you get the pain -- what were the pain pills that you got?

A. I got them from my doctor.

Q. Who is that?

A. Doctor Sarkar. He left -- I think they sent him out of town.

Q. I'm sorry.

A. Doctor Sarkar, S-A-R-K-A-R.

Q. Now, did you call him to get pain pills?

A. No, I had some that I had gotten off him before.

Q. So this wasn't -- and what were you taking pain pills for?

A. Arthritis. Everybody has got it.

Q. Do you know the name of the --
A. Yes, Darvocet.
Q. Did you take anymore pain pills after the fall than you did before the fall?
A. No, I took -- I took them on a schedule like I was supposed to.
Q. And you said your pain got worse?
A. Right.
Q. In your hip, we are talking about, I'm sorry, your right pelvis, is that right?
A. Right.
Q. So when I say pain, is it limited to right pelvis?
A. Well, it's in your pelvis. It's more like to the right than it is to the left.
Q. Did you also have pain in the left side of your pelvis?
A. No.
Q. Did you have any other pain that you attribute to the fall other than your right pelvis?
A. When the -- the doctor thought I had something the matter with my spine.

He thought I needed to get an x-ray, and that's how I come to get more pain pills.

They were giving me pain pills for my spine

hurting and it wasn't my spine. It was a break in my pelvis bone.

Q. Did you have problems with your spine before the accident?

A. No, no.

Q. Can you describe the pain?

The records indicate -- can we use that date, September 26, that you went to your doctor?

Would that -- if we said September 26, could we say that and --

A. That's about it, yes.

Q. That's about it?

A. Yes.

Q. Between September 10 and September 26, please tell me how your pain progressed in your right hip.

A. Each day I would walk it would get worse, and every night I would use a heat pad.

In fact, I went and bought one the whole body length. I thought it was going to cure my back and my pelvis and everything else, but it didn't do nothing. It was just -- there was nothing there to help it.

So that's when the doctor thought I had something the matter with my spine.

Q. So the first time that you went to the doctor they said you had a problem with your spine?

A. Yes.
Q. Is that right?
A. Yes.
Q. Did you complain about a pain in your spine?
A. No. Just because my back hurt they figured it was something in my spine.
Q. When did your back start to hurt?
A. After I fell.
Q. How long after you fell?
A. The next day. I told you the next day it started hurting, and each morning I would get up it would be hurting that much more.
Q. I thought it was the right pelvis?
A. It is the right side, but your pelvis bone, you can work it in all ways.
Q. I am not trying to restrict you.

I am trying to find out every part of your body that hurt because of the fall.

A. I am going to tell you this. I don't know whether I am saying this right or not, but since this fall I can't even lift my left leg.

Now, what causes that? To get in the car I have to lift up my left leg to get in the car, and that never happened until I broke my pelvis.

So why your pelvis operates more than that on

your body than you think.

Q. And I am not arguing with you or debating it. I am just trying to find out wherever you had pain.

After the accident, as I understand, you had no pain until the morning after the accident, is that correct?

A. Right, right.

Q. And where was that pain the morning after the accident?

A. It was towards my back. We thought it was in the back.

I will be honest with you. That doctor thought I had cancer in the back, and then when they took the x-rays and double x-rayed they discovered there was no cancer in my spine whatever.

Q. So the pain you had the morning after the accident was in your back, is that correct?

A. Yes, it went to my back and down like in my legs. It would hurt me to walk.

Q. What part of your back did you have pain in the day after the accident?

A. Well, just like down the end of your pelvis, down the end of your tailbone.

Q. That's where you had the pain?

A. Yes.

Q. Did you have pain in any other part of your body other than the tailbone?

A. No. Just in the front of my pelvis bone and down my legs.

My husband had to help me to walk around. I couldn't walk by myself.

Q. The stones that you fell on, you said there were a couple. Could you estimate how many?

A. No. When something like that happens you don't stop and count the stones laying on the ground.

Q. Could you estimate the area like how big of an area it was?

A. Well, like in an area where a car had parked.

Q. So you had pain in your tailbone, right, the day -- the morning after the accident pain in your tailbone?

A. Right.

Q. At that time was there pain in your back as well?

A. Down the back of my legs and down the front of my legs.

Q. Both legs?

A. Both legs. That's why they thought it was my spine.

Q. Okay.

A. I saw the x-rays for my tailbone -- for my spine, and to me on the x-rays it looked like it was the right-hand side, but I'm not -- no doctor to read x-rays.

Q. Did you have any low back pain prior to the fall on September 10, 2001?

A. No.

Q. Did you have any pain in your pelvis area prior to September 10, 2001?

A. No.

Q. Did you have any pain in your legs prior to September 10, 2001?

A. No.

Q. Now, this problem in your tailbone, your back and your legs, tell me how that progressed between September 10, 2001 and September 26, 2001.

A. It just -- the pain just kept getting worse.

Q. Do you know whether you went to both State College and to Punxsutawney on September 26, 2001?

A. What's that now?

Q. Do you recall whether you went to get medical treatment both at State College and Punxsutawney in 2001 on September 26?

A. Punxsutawney?

Q. Punxsutawney. The reason I am asking is we

have records from Geisinger both in State College and in Punxsutawney.

A. Never went to Punxsutawney. Somebody's records are wrong.

MS. WOOD: Phillipsburg.

BY MR. LOUGHNEY:

Q. I'm sorry. Phillipsburg.

A. Okay. Phillipsburg was my regular doctor. Doctor Sarkar. He is our family doctor.

Q. Did you go see him before you went to see Doctor Ratner?

A. Right.

Q. You did?

A. Yes.

Q. Did you see them both the same day, do you know?

A. Let's tell you something here straight. I go to Doctor Sarkar for my family doctor.

Well, when I was hurting so bad he sent me to Doctor Wolf.

I don't know if you have Doctor Wolf there or not, but he is suppose to be a cancer specialist.

Well, he said, well, there wasn't nothing he could do unless I went to Phillipsburg or State College,

and had a test run and x-rays taken for cancer in the spine.

Because I was hurting so bad in front and back both and whether they -- when Doctor Ratner seen me there on the bed -- no, I didn't go to see Doctor Ratner that day, but he saw me on the bed and he asked me what I was there for.

And I told him and he said that there is no such thing as you having cancer in your spine. He said, we have had too many x-rays of you. I know better.

So he said we're going -- he said when I come back -- now this is the way he works.

He went to see the doctor that does the x-rays for your spine, and he came back and he said we are not going to x-ray your spine because there is nothing there wrong. And the x-ray guy went to my husband in the meantime and told him the same thing.

He said, she don't have no cancer in her spine, but he said let us run some more tests, and we'll find out what's wrong.

And that's when they found that my pelvis bone was broke and it affected my spine as well as my legs and my tailbone and everything else.

Q. That was the first visit after the fall? This all happened then?

A. That all happened the same day.

Q. That was the first visit after your fall, is that correct?

A. To State College for Doctor Ratner's when he found this tailbone broke.

It wasn't my first visit to Ratner.

Q. No, but what I mean is, the information you just told us about, that was told to you the first visit you went to your doctors after the fall, is that correct?

A. Right, right.

Q. Now, at the time you went to the doctor's on September 26, the first day after -- you went after the fall, were you having hip pain?

A. No. I have arthritis and everybody's got pain.

Like, in fact, to tell you the truth they told me I had a lot of arthritis in my neck, too.

Q. What I mean is, were you having pain in your hip when you went to --

A. I go for Doctor Ratner or Doctor Sarkar for pain -- for pain pills.

Q. What were you getting pain pills for prior to the fall?

A. For arthritis.

Q. In what part of your body?

A. My legs and my hips and my back.

Q. Prior to the fall at Wal-Mart on September 10, 2001, did you have any other falls from -- for any reason?

A. No.

Q. Were you having problems with your tailbone prior to the fall at Wal-Mart?

A. No.

Q. Did you have any problems with pulling sensations in your leg, either leg prior to the fall at Wal-Mart?

A. No.

Q. Did you have any hip problems prior to the fall at Wal-Mart?

A. No.

Q. Now, the information that you got when you went to the doctor's on September 26, 2001 about your pelvis, let's focus on the pelvis.

What exactly did they tell you was wrong with the pelvis?

A. He just said he thought maybe I had cancer there.

Q. Is that Wolf?

A. That was Wolf.

Q. And he is the cancer specialist?
A. He is suppose to be a cancer specialist.
Q. He thought you had cancer of the pelvis?
A. Yes.
Q. And then who told you that wasn't the problem or wasn't the case?
A. Doctor Sarkar or Doctor Ratner, and I don't know the doctor that x-rayed my spine that day.
He told us his name, but he's suppose to be the specialist that does the x-rays for your spine and pelvis and things like that.
Q. Okay.
A. In State College. I don't know his name.
Q. Is it --
A. They surely sent it to you.
Q. Is that doctor with Geisinger?
A. Yes.

(Discussion off the record)

BY MR. LOUGHNEY:
Q. Let me ask you, did any doctor ever tell you that your pelvis fracture, fractures were caused by the fall at Wal-Mart?
A. They can't tell you how it caused it. They

know I fell.

They know it was caused by the fall, but they don't know -- they can't prove it like I can't prove it either.

Q. I am asking you, did you ever -- did they ever ask you, take a history from you about the fall?

A. No.

Q. Did you ever tell them about the fall?

A. Yes, I told them about the fall.

Q. Who did you tell about the fall?

A. Doctor Ratner and the guy that took the x-rays.

Q. The first time you went there you told them about the fall?

A. Well, I told Doctor Sarkar, too.

Q. What did you say about it?

A. Doctor Sarkar is the one that sent me to Doctor Wolf and then Doctor Wolf got mad because I went to Doctor Ratner.

Q. Wolf was upset? Why was that?

A. Doctor Wolf got disappointed because he wasn't right.

Q. Wolf, he wasn't right about what?

A. Because he thought it was my spine and they said it wasn't.

Q. Who is they, Sarkar?

A. No. Doctor Wolf didn't like it because they told him that it wasn't my spine. It was my pelvis that was causing my trouble.

Q. Who is the they?

A. Doctor Ratner and doctor -- this doctor that took the x-rays.

A specialist don't like to be wrong.

Q. That's Wolf?

A. That's Wolf.

Q. He thought your problem was cancer in your back, is that right?

A. Right.

(Pause)

BY MR. LOUGHNEY:

Q. Prior to the accident at Wal-Mart, did you ever have any problems staggering when you walked?

A. Did I what?

Q. Any problems staggering when you walked?

A. No.

Q. I think you indicated that you never had any prior falls that you can recall, is that correct, or did you?

A. I said I didn't have any falls.
Q. No prior falls?
A. No prior falls.
Q. Prior to the accident at Wal-Mart?
A. Besides that, none.
Q. Did you have any broken bones prior to the fall at Wal-Mart?
A. Did I what?
Q. Prior broken bones?
A. Before I went to Wal-Mart?
Q. Before the fall at Wal-Mart?
A. Not that I recall of.
Q. Prior to the fall at Wal-Mart, did you ever have any problems bending?
A. What?
Q. Bending?
A. Bending?
Q. Yes.
A. No.
Q. Did you ever, prior to the fall at Wal-Mart, did you ever have any problems standing?
A. No.
Q. Prior to the fall at Wal-Mart, did you ever have any problems walking?
A. No.

Q. What problems do you have physically, since your fall at Wal-Mart, that you relate to the fall at Wal-Mart?

A. What problems is what now?

Q. Do you have any physical problems since the fall at Wal-Mart that you feel are caused because of the fall at Wal-Mart?

A. Anything I have now I blame it all on the fall.

Q. What are those problems?

A. I just hurt when I get up in the morning. I hurt. I try to work around the house and I hurt.

Q. What hurts?

A. Your bones. I am 83 years old.

Q. Okay.

A. And they all hurt.

Q. I understand, but I am saying, what problems do you feel were caused by Wal-Mart?

What physical problems do you have now that you feel are caused by the fall at Wal-Mart?

A. I feel that when I try to go in the car I have to lift my left leg up. I can't pick it up. We have a van.

You have to crawl in backwards or else you crawl in on one side and I have to lift my left leg in

order to get it in the van.

Q. And has anyone told you what that problem is?

A. No.

Q. Has anyone told you that's been caused by the injuries you sustained in the fall at Wal-Mart?

A. No.

Q. Why do you feel it's related to Wal-Mart?

A. Because it wasn't that way before.

Q. What else wasn't the way before the fall at Wal-Mart that you now complain about?

A. I just didn't hurt like I do. I can't walk like I used to.

Q. How are you restricted in walking?

A. I can walk so far, and then my legs will hurt.

The doctor told me last week move more legs. I said how am I going to move more legs when you live in a trailer.

Q. Which doctor was that?

A. That's doctor -- what's my new family doctor?

Q. Is that the doctor at Geisinger?

A. Yes, he's the new one.

MR. NADDEO: He took Sarkar's place.

THE WITNESS: He took Sarkar's place.

Marshall, do you remember his name?

MR. RUGH: No.

(Pause)

MR. NADDEO: I have it in here.

THE WITNESS: It starts with a P.

BY MR. LOUGHNEY:

Q. Beside the left leg problem getting in the car and your walking, do you have any other physical problems that you are relating to Wal-Mart?

A. I don't know how to explain it.

My pain is there. There is times my pain goes to my pelvis like it will feel like I just fell.

Then there's times it's just like numb, you know, like not when it's going to rain, it hurts. Just across my pelvis bone. No place else.

Q. Okay.

A. Did you find it?

MR. NADDEO: We'll get it.

MR. LOUGHNEY: Do you want me to break?

THE WITNESS: No. I was going to get my purse to see if I had his name in there.

(Pause)

BY MR. LOUGHNEY:

Q. Other than your pelvis, your leg and walking, any other problems that you are relating to the Wal-Mart fall?

A. Say that again.

Q. Besides your left leg problem, getting into the car, your walking and the pain in your pelvis you just told us about, any other problems that you are relating to Wal-Mart?

A. No. I have one little problem but maybe you have it wrote down.

Q. What's that?

A. I went in the Wal-Mart pharmacy after this happened and asked her to write out all my medicines, and I said, give it to me back to September 1st because I wasn't sure what we bought that day.

Q. Okay.

A. Well, September 10 is blacked out. They can read every one but September 10.

That's the only thing I have against Wal-Mart. They ain't fair.

Q. Do you think --

A. They should have given me the write out for what I bought on September 10th. It's blacked out so

that I couldn't read it.

Q. Did you ask them about that?

A. No, I didn't. Because I felt I didn't want to get the pharmacy in trouble.

Q. Why would the pharmacy be in trouble?

A. Well, I don't know. Maybe they didn't think I would notice it.

Q. But I mean why would they -- why do you think that Wal-Mart would black out your prescription of September 10?

A. Because they didn't want nobody to know I bought the medicine there.

Q. Why?

A. They want to deny I was there.

Did you get one of them?

MR. NADDEO: We'll talk about that after.

BY MR. LOUGHNEY:

Q. Did you tell anybody at Wal-Mart the day of the fall that you had fallen there?

A. No.

Q. Did you ever tell anybody at Wal-Mart that you fell?

A. No.

Q. Why would you think they would want to black

out September 10th?

A. Because I was asked what I was there for, and I couldn't remember, and I know that I was there, and I know I bought medicine, but I couldn't remember what kind.

So I went and asked the pharmacist for a write out and September is marked out. The date, not what I bought, just the date that I wasn't there, and I was there.

Q. You are using -- what is it a walker now that you use?

A. Huh.

Q. You use a walker to get around now?

A. I use a walker when I can. Sometimes I hurt too bad I have to use a wheelchair.

Q. Did you ever use a cane or a walker or a wheelchair --

A. I tried the cane but I don't --

Q. -- prior to September 10 --

A. No.

Q. -- 2001?

A. No.

Q. Is your current doctor Doctor Parry, P-A-R-R-Y?

A. No, Pilgrim, Doctor Pilgrim.

Q. Have you ever seen any doctor that you feel was specifically for your injuries sustained in the fall at Wal-Mart on September 10, 2001?

A. What's that now?

Q. Did you ever go to any doctor or any other health care provider specifically for injuries sustained at Wal-Mart in September 10, on September 10, 2001?

A. The only ones I saw was Doctor Ratner, who like I told you, and the x-ray guy. That's the only doctors.

Q. What I am asking is, did you ever make any special visit to any health care provider because of Wal-Mart?

A. No.

Q. Do you attribute any restrictions in your ability to do work around the home because of the fall at Wal-Mart?

A. Say that again.

Q. Are you restricted in any way from doing any work around the home?

A. Yes.

Q. Do you attribute that to the fall at Wal-Mart, that restriction?

A. Right.

Q. You do?

A. I have a housekeeper that comes in and does the work.

Q. That's what I am asking you first.

Do you attribute ycur restriction to do work around the home to the injuries you sustained at Wal-Mart?

A. Yes.

Q. Now, what are those restrictions?

A. I can't lift nothing.

Q. Anything else?

A. I can't do hard work -- I can't like wash the clothes. I can't scrub the floor.

Q. Okay.

A. For example, I went to town with him the other day, and I was so wore out when I got home I had to go lay down just going to the store and walking, and going in and back out, pulling a few things off the shelf and sticking it in my cart.

Q. And you earlier said you had to hire a housekeeper?

A. Yes, we had to get a housekeeper through the Area of Aging.

Q. Now, did you get this housekeeper after the Wal-Mart accident?

A. After the accident, yes.

Q. And it's through -- where is it through again, please?

A. Huh?

Q. What agency is it through?

A. The Area of Aging.

Q. Okay.

A. It's all over. It's the Area of Aging. It's on Locust Street in Clearfield.

Q. And you didn't have any help through them prior to the Wal-Mart accident, is that correct?

A. No.

Q. That's a yes, is that correct?

A. That's correct.

Q. Did you have any housekeepers prior to the Wal-Mart fall from any other source either directly hired or through anybody else?

A. No.

Q. So you did all your own housework before?

A. Right.

Q. Does anyone live with you at home besides your husband?

A. No.

Q. At the time of the Wal-Mart accident, did anyone live at home with you?

A. No.

Q. Have you been restricted in any social activities because of the injuries you sustained at the fall at Wal-Mart?

A. No.

Q. Has your marriage been affected in any way, that is both physically or emotionally?

A. No.

(Pause)

BY MR. LOUGHNEY:

Q. Have you had to make any modifications to your home because of injuries you sustained --

A. Yes, we had to have a --

Q. -- injuries you sustained in the fall at Wal-Mart?

A. Since I fell at Wal-Mart I had to have a ramp put in.

(Pause)

BY MR. LOUGHNEY:

Q. How long was Doctor Sarkar -- is it pronounced Sarkar?

A. Sarkar.

Q. Sarkar. How long was he your family doctor?

A. A couple years.

Q. Before that who was?

A. I can't remember. At these medical centers you have one so long and then they trade you off.

(Pause)

BY MR. LOUGHNEY:

Q. In some of your records from Doctor Sarkar, and I'll just read this and ask you if it refreshes your recollection.

That in 1990 you fell and hit your tailbone. Do you recall that?

A. I fell and hurt my tailbone?

Q. Hit your tailbone. Do you recall that?

A. No.

Q. That in '97 you fell and fractured your left humerus. Do you remember that?

A. No.

Q. That in 1997 you noted the acute onset of staggeriness since the fall and winter of that year, and that you noticed if you turned quickly, or you look up or bend over you will stagger.

Does that refresh your recollection about

anything like that?

A. That was in December. That's when I fell and slipped on the ice.

Q. In what year?

A. I don't know what year, but it's about two, maybe three, maybe two-and-a-half years.

(Pause)

BY MR. LOUGHNEY:

Q. What's your current weight?

A. One hundred thirty pounds.

Q. Have you lost weight since the Wal-Mart accident, do you know?

A. Yes.

Q. And what's your height, please?

A. Five foot one.

Q. And was the weight loss a planned weight loss?

A. No.

Q. Why do you feel you lost the weight, or actually do you remember what you weighed at the time of the Wal-Mart accident?

A. About 147, 148 pounds, or somewhere around there.

Q. And it's, I am sorry, what do weigh now, 130, you said?

I'm sorry. I didn't write it down. What do you weigh now?

A. I weigh 130 pound.

Q. And this weight loss of approximately 28 pounds was not planned, is that correct?

A. No.

Q. Do you know why you lost the weight?

A. I don't know.

(Pause)

BY MR. LOUGHNEY:

Q. In the office note of September 4, 2001, there is a reference to your having trouble bending, standing and walking.

You were having a pulling sensation down your left leg. Do you recall that?

A. Say this again.

Q. There's an office note of September 4, 2001 saying you are still having pain in your left hip and your coccyx for the past week.

You were having trouble standing, bending and walking and you were having a pulling sensation down

your left leg. Do you recall that?

A. I don't recall that, but the guy always -- every time I went in they tell me it was my arthritis.

So they tie one to the other, and I don't know.

Q. Do you recall then having those complaints?

A. Huh?

Q. On September 4, 2001?

A. Did I what?

Q. Do you recall having those complaints on September 4, 2001?

A. No.

Q. No?

A. No.

(Pause)

BY MR. LOUGHNEY:

Q. Any reason why you didn't tell the people at the garage in Wal-Mart that you fell?

A. No. I was just anxious to get out of there and get home.

My daughter can't see very good at night and she wanted us to hurry up and get going.

MR. LOUGHNEY: That's all I have.

(Recess taken)

CROSS-EXAMINATION

BY MS. WOOD:

Q. Mrs. Rugh, I am Ann Wood. I am an attorney here in Clearfield, and I represent Mr. Bailor who works -- who has a contract with Wal-Mart. He sweeps their parking lot.

A. Yes.

Q. If you don't hear what I say or you don't understand me, speak up, okay?

A. Okay.

Q. I just have a couple of questions.

At the time you were at Wal-Mart on the day that you went shopping, you were asked if you were carrying anything.

A. Right.

Q. Did you have a purse that you were carrying?

A. Yes.

Q. When you fell, did you have your purse with you?

A. Yes.

Q. So you were carrying your purse?

A. Yes.

Q. Were you carrying any packages of any kind?
A. No.
Q. Is your purse heavy?
A. Kind of.
Q. The parking lot at Wal-Mart that you drew, did you mark on there where you were when you fell? Look at your drawing here.
A. I am not a very good drawer.
Q. It's a fine drawing for what we need.
Where were you when you fell?
A. Wait till I see my own drawing here.
Q. Okay. Here's the garage at Wal-Mart.
You have got it marked with a G, and your car -- you ended up waiting for the wrecker is car number 2.
A. Right. Okay. I was up in here. There was an open field in here.
Q. Okay.
A. And I was -- there was like -- I will say there was three rows -- I am saying there was three rows of islands, and I was headed in this middle one because I got to walk out to the edge of that field.
Q. So you had walked back in the back part of the parking lot?
A. Right.
Q. Do you want to mark with a pen approximately

where you think you were?

A. I was in the -- I was still in the -- let's say this is the third one in the middle and I was over here. I was here.

(Witness drawing)

BY MS. WOOD:

Q. You were near the island close to the garage?

A. Right.

Q. Okay. And why don't we mark the area that you have just labeled with an R?

A. Yes.

Q. So you are marking in an island back by the garage?

A. Ain't that an awful drawing.

Q. It's fine for our purposes.

Mrs. Rugh, when you fell, were you just strolling around?

A. Just walking around waiting for the wrecker to come for the car.

Q. You weren't going to any particular place in the store or in the parking lot?

A. No, not at that time.

Q. Were you looking down and watching where you

were walking?

A. Well, more or less you just walk when you are taking a walk.

Q. When you first began to fall, felt yourself first going, did you feel like you slipped on something at that point?

A. Yes. I knew where I slipped on something, but I didn't know till afterwards that the pebbles were there, the little stones like where they get along the beach or wherever they get them.

Q. After you fell and before you saw the doctors that we've been talking about on September 26 when you saw Doctor Ratner?

A. Un-huh.

Q. Did you physically go to any other doctor between this 10th of September and the 26th?

A. No.

Q. Did you have any tests at any doctor's office or hospital between the 10th of September and the 26th?

A. Not that I recall.

Q. I think you testified that you had some existing pain medication?

A. Yes.

Q. Did you talk to any of the doctors that you had seen prior to your appointment on the 26th after the

fall?

A. I can't recall.

Q. When you talked about the appointment on the 26th of September, you said you had already had that appointment scheduled?

A. I must have if I -- I didn't keep records of anything that I fell or anything.

Q. Do you know why or who was sending you to State College on the 26th?

A. Who sent me?

Q. Yes.

A. Doctor Sarkar sent me to Doctor Wolf and Doctor Wolf sent me to State College.

Q. Was this some doctoring you were doing before the fall?

Had you already started this -- seeing these different doctors before the date you fell?

A. No. I saw Doctor Sarkar all the time.

Q. Had he set up any of the appointments to see Doctor Wolf or Doctor Ratner before the date of the fall?

A. He sent me to Doctor Wolf.

Q. Before the 10th of September when you fell?

A. No. No. He didn't send me to anybody after I fell.

Q. Did you go in to see Doctor Sarkar before you went to see Doctor Wolf or Doctor Ratner?

A. Yes, I was in there, but I don't know what for.

Q. Did you see Doctor Wolf at all before September 10th?

A. No.

Q. But you don't recall whether you had that appointment already set up?

A. I can't recall.

Q. You have said you were taking pain medication for your arthritis?

A. Yes.

Q. Where in your body were you having pain from the arthritis?

A. You have arthritis all through your body, so when you get up in the morning you are hurting. You take your pain medicine. That's all I can tell you.

Q. Did your back hurt with arthritis?

A. My back hurts and my shoulders hurts and my neck hurts.

Q. Did your legs hurt at all with arthritis?

A. Huh?

Q. Did your legs hurt at all?

A. Yes.

Q. Did your hip area hurt?

A. No, not too bad. When it is going to rain, it hurts.

Q. This was before the fall?

A. Yes, I would say before I fell.

Q. How long had you been taking pain medication for your arthritis before the fall?

A. Gee, I don't know. I don't keep a date on that either.

Q. Had it been a couple of months, a couple of years?

A. Well, at least a couple of years.

Q. The house that you live in, is it a one-story or a two-story house?

A. We live in a trailer now, one-story.

Q. At the time of the fall, did you live in a one-story or a two-story house or the trailer?

A. We lived in the trailer.

Q. Did you live in the same trailer you are living in now?

A. Yes. We had a big house and our house caught fire. That's why we are in a trailer.

Q. You have not -- because of the fall or since the fall you have not moved?

A. No, no, because where the house sat the

trailer sits in the same spot.

Q. And the only thing you have had to do to the trailer since you fell has been a ramp?

A. Yes.

(Pause)

MS. WOOD: I have nothing further. Thank you.

CROSS-EXAMINATION

BY MS. ZAKEN:

Q. Mrs. Rugh, my name is Trisha Zaken. I represent another contractor at Wal-Mart.

I have a few questions for you, and I do apologize if I am being repetitive because I did come in a little late so I missed some of the questions that had been asked of you earlier.

On the day that you had fallen at Wal-Mart, what type of shoes were you wearing?

A. Reeboks. The same ones I got on now.

Q. Can I take a look at them?

A. Sure.

(Discussion off the record)

BY MS. ZAKEN:

Q. Now, I noted from the medical records that I have reviewed that you had a history of high blood pressure, is that true?

A. No.

Q. You don't have a medical history of high blood pressure?

A. No. I never had high blood pressure.

Q. On the day of this fall, were you taking any medications?

A. Just like pain medicine for --

Q. For your arthritis?

A. Right.

Q. You weren't taking anything other than pain medication?

A. Well, I take a heart pill that's suppose to be for your heart and your blood pressure and all that.

Q. Do you recall what the name of that heart pill was?

A. It's called Norvasc.

Q. Did you ever experience any type of dizziness or lightheadedness when you took Norvasc?

A. No.

Q. I see today you are wearing glasses, correct?

A. Not all the time.

Q. Were you wearing them on the day of your fall?

A. No.

Q. You were not?

A. I don't need the glasses. I can show you a pair I have in my purse, but he likes me with my glasses on, so I put them on.

Q. Do you know why you have to wear glasses or why do you? I am sorry.

A. I had my eyes operated on and I had implants put on.

So the only reason I wear glasses is when I have to read something small.

Q. Where do you get your eyes checked?

A. At Doctor Kleinhart in State College or Phillipsburg.

Q. I'm sorry. What was the name of the doctor?

A. Doctor Kleinhart.

Q. Prior to this fall in September of 2001, when was the last time you had seen Doctor Kleinhart?

A. Seen who?

Q. Doctor Kleinhart, your eye doctor.

A. It was only a couple of months.

Q. So maybe July?

A. Because I just got these glasses not too

long, about six months ago.

Q. On the day that you fell at Wal-Mart, were you wearing glasses?

A. No.

Q. How long has Doctor Kleinhart been your eye doctor?

A. About five years.

Q. Yes.

A. He is also a specialist.

(Pause)

BY MS. ZAKEN:

Q. I was listening to your testimony earlier when you were talking about your fall and you said -- you described what you believe you fell on to be stones, is that correct?

A. Yes.

Q. Do you know where those stones came from?

A. No, I don't.

Q. Did you see any other stones in any other area of the parking lot either before or after you had fallen?

A. I didn't look.

Q. Okay. Do you have any outstanding medical

bills?

A. Huh?

Q. Do you have any outstanding medical bills for any treatment that you claim is related to your fall, the injuries that you received in your fall, after your fall?

A. My hospital insurance was paid by Geisinger Gold and my Medicare takes up the rest.

Q. Did you have to pay any of your medical bills out of your own pocket?

A. No.

Q. Okay.

A. The only thing I pay is for an office call and it's $5.00.

Q. I noted in your medical records also that you had a history of smoking cigarettes?

A. I what?

Q. You have a history of smoking cigarettes?

A. Yes.

Q. Do you still smoke?

A. Yes.

Q. How much do you smoke?

A. Well, a pack lasts me two or three days.

Q. Okay.

A. I smoke a menthol light.

Q. Did you wear any type of morphine patch before your fall on September 10th?

A. Take what?

Q. A morphine patch. I saw in some of the medical records that you used a morphine patch.

A. Yes.

Q. Did you use that before September 10th?

A. No.

Q. No?

A. No.

Q. It was after your fall --

A. After I fell, I wear this. That is what these are.

MS. ZAKEN: Those are all the questions that I have. Thank you.

MR. SHRECKENGOST: I have no questions.

REDIRECT EXAMINATION

BY MR. LOUGHNEY:

Q. Do you have children?

A. Huh?

Q. Do you have any children?

A. Yes, they are all grown; none at home.

Q. Are they in the area?

A. Some of them.

Q. How many children do you have?
A. I had ten.
Q. And how many live in the area?
A. How many live in the area?
Q. Yes.
A. Two boys and three girls.
Q. Are the girls married?
A. Yes.
Q. What are their married names?
A. Well, Carol is divorced now.
Q. Carol Nottingham?
A. Shirley was divorced.
Q. What was Shirley's married name?
A. Huh?
Q. What was Shirley's married name?
A. Her name was Rougex, R-O-U-G-E-X.
Q. And before that she was Hemphill?
A. She was a Hemphill.
Q. And --
A. And Carol was a Hemphill.
Q. They married brothers?
A. They are sisters, the brothers, and Nancy was a Hemphill.

They live in like Clearfield and Phillipsburg. The boys are all gone but two.

Q. And were you married before --
A. Yes.
Q. -- your current husband?
A. Yes.
Q. What was the last name of any sons that were not?
A. Huh?
Q. Do you have any sons that are not last named Rugh?
A. No.
Q. Thank you.
A. I have one son here in Clearfield and one lives down where I live.
Q. And their last names are Rugh?
A. No.
Q. They are not Rugh?
A. No, they are not Rugh.
Q. What are their last names?
A. Swisher.
Q. S-W-I-S-H-E-R?
A. Right.
Q. What are their first names?
A. Leonard is one and Bryce is the other.
MR. LOUGHNEY: That's all I have. Do you want to read it?

MR. NADDEO: No, we'll waive.

(Signature waived)

(Deposition concluded at 10:58 a.m.)

Commonwealth of Pennsylvania)
County of Westmoreland)

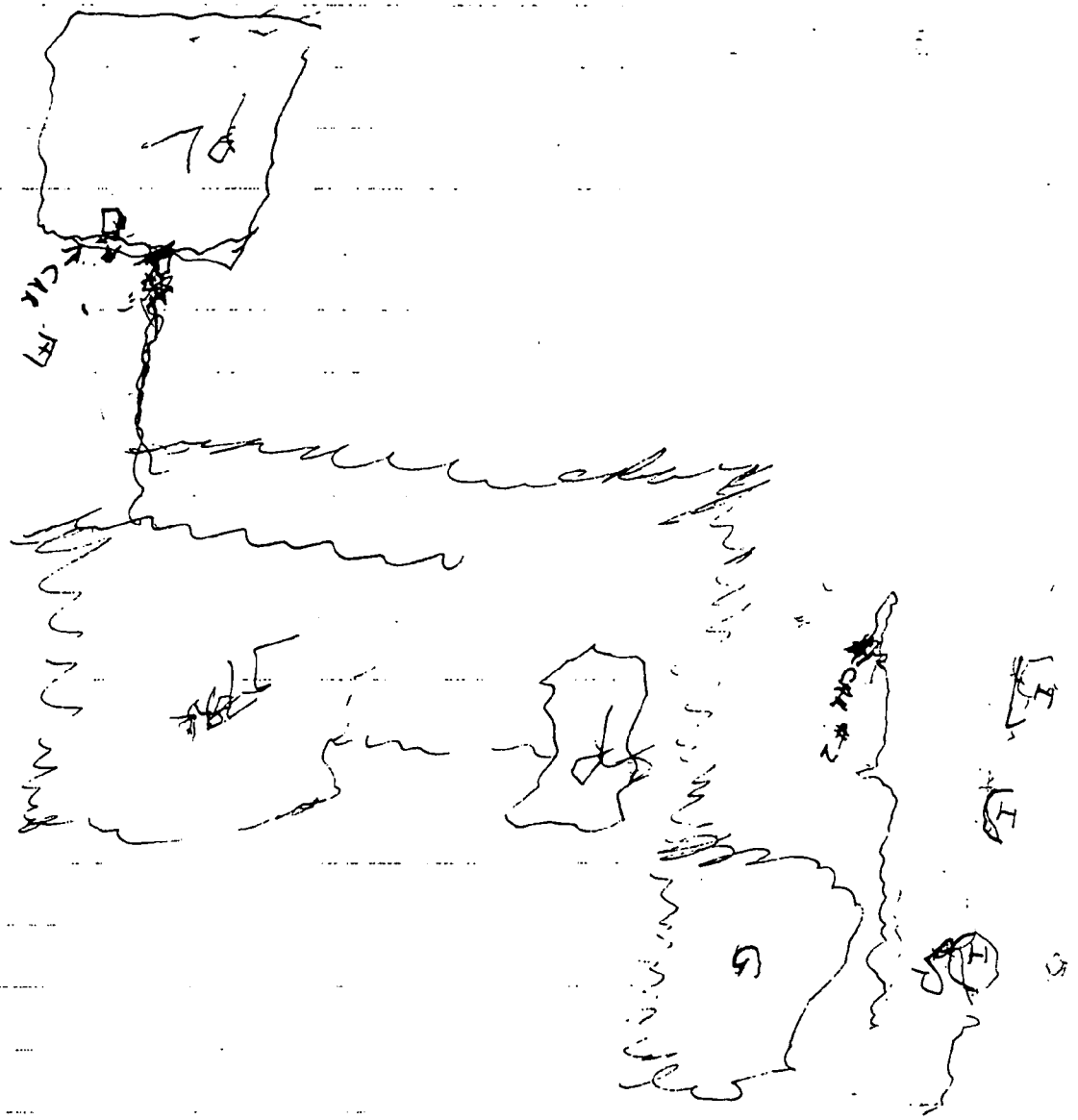
I, Theodore E. Wawrzyniak, Registered Professional Reporter-Notary Public, in and for the Commonwealth of Pennsylvania, do hereby certify that the witness, ANNA M. RUGH, was first duly sworn by me to testify to the truth, the whole truth, and nothing but the truth, and that the foregoing deposition was taken at the time and place stated herein; and that said deposition was recorded stenographically by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witness.

I further certify that the inspection, reading and signing of said deposition were waived by counsel for the respective parties and by the witness.

I further certify that I'm not a relative, employee or attorney of any of the parties, or a relative or employee of either counsel, and that I'm in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this _____day of_____, 2003. _____
Theodore E. Wawrzyniak, Notary Public-Registered Professional Reporter.

RVGH
EXHIBIT NO. 1
5-5-03
WAWRZYNIAK



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Prothonotary/Clerk of Courts
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	
Plaintiffs	NO. 02-1811-CD
vs.	JURY TRIAL DEMANDED
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	Type of Pleading: PRAECIPE TO PLACE CASE ON ARGUMENT LIST
Defendants	
vs.	Filed on Behalf of: James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	Counsel of Record for this Party:
Additional Defendant	
vs.	Ann B. Wood, Esquire Supreme Court No.23364
WAL-MART STORES, INC.,	Bell, Silberblatt & Wood 318 East Locust Street P.O. Box 670 Clearfield, PA 16830 (814) 765-5537
Additional Defendant	
vs.	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants	

APR 27 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
WAL-MART STORES, INC.,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

PRAECIPE TO PLACE CASE ON ARGUMENT LIST

TO: PROTHONOTARY:

Kindly schedule Defendant, James Bailor, t/d/b/a B&D Enterprises' Motion for Summary Judgment on May 7, 2004 at 1:30 P.M. with other arguments already scheduled in the present case.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

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Additional Defendant	
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WAL-MART STORES, INC.,	
Additional Defendant	
vs.	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of PRAECIPE TO PLACE CASE ON ARUGMENT LIST with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on April 27, 2004:

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By:

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Attorney For Defendant/
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B&D Enterprises

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CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION JURY TRIAL DEMANDED
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HUSBAND AND WIFE, PLAINTIFFS

VS.

WAL-MART STORES, INC., et al.,
DEFENDANTS

PRAECIPE TO PLACE CASE ON
ARGUMENT LIST

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Defendants	
vs.	Filed on Behalf of: James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	Counsel of Record for this Party:
Additional Defendant	Ann B. Wood, Esquire
vs.	Supreme Court No.23364
WAL-MART STORES, INC.,	Bell, Silberblatt & Wood
Additional Defendant	318 East Locust Street
vs.	P.O. Box 670
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	Clearfield, PA 16830
Additional Defendants	(814) 765-5537

APR 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

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Defendants	:
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JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:
Additional Defendant	:
vs.	:
WAL-MART STORES, INC.,	:
Additional Defendant	:
vs.	:
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:
Additional Defendants	:

ORDER

NOW, this 27th day of April, 2004, upon consideration of Attorney Wood's Motion for Summary Judgment, a Rule is hereby issued upon the parties to Appear and Show Cause why the Motion should not be granted. Argument is scheduled the 7 day of May, 2004, at 1:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, PA.

BY THE COURT:

Fredric J. Ammerman

Fredric J. Ammerman,
President Judge

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
WAL-MART STORES, INC.,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of RULE TO SHOW CAUSE with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on April 27, 2004 :

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:

Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
525 William Penn Place
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Pittsburgh, PA 15219

Attorney For Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare:

Paul J. Walsh, III, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL
Gulf Tower, Suite 2400
707 Grant Street
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Attorney for Former Additional Defendant, Boyles Insurance, Inc.

Bryan K. Shreckengost, Esquire
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One Oxford Centre
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTON - JURY TRIAL DEMANDED
No.02-1811-CD

MARSHALL E. RUGH AND ANNA M. RUGH, husband and wife, Plaintiffs

vs.

WAL-MART STORES, INC., et al.
Defendants

vs.

JAMES BAILOR, t/d/b/a B&D Enterprises, Additional Defendant

vs.

Wal-Mart Stores, Inc.,
Additional Defendant

vs.

Roger R. Hall, t/d/b/a HSJ Lawncare and ~~Boyles Insurance, Inc.~~,
Additional Defendants

RULE TO SHOW CAUSE

4 cc
Atty Wood

cd 2:17 ~~01~~ 2 cc

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CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

WAL-MART STORES, INC.'S RESPONSE TO ROGER HULL t/d/b/a HSJ LAWNCARE'S MOTION FOR SUMMARY JUDGMENT

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
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FILED

APR 30 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

WAL-MART STORES, INC.'S
RESPONSE TO
ROGER HULL t/d/b/a HSJ LAWNCARE'S MOTION FOR SUMMARY JUDGMENT

AND NOW, comes Defendant, Wal-Mart Stores, Inc., by and through its attorneys, Dell, Moser, Lane & Loughney, LLC, and Danielle M. Vugrinovich, Esquire, and files with following Response to Roger Hull t/d/b/a HSJ Lawncare's (hereinafter referred to "Hull") Motion for Summary Judgment, and in support thereof avers the following:

1. The allegations contained within Paragraph No. 1 of Hull's Motion for Summary Judgment are admitted.

2. The allegations contained within Paragraph No. 2 of Hull's Motion for Summary Judgment are admitted.

3. The allegations contained within Paragraph No. 3 of Hull's Motion for Summary Judgment refer to a document that speaks for itself. To the extent a response is deemed necessary, Wal-Mart Stores, Inc. incorporates its Answer, New Matter and New Matter Pursuant to Pa R.C.P. 2252(d) to Plaintiffs' Amended Complaint.

4. The allegations contained within Paragraph No. 4 of Hull's Motion for Summary Judgment refer to a document that speaks for itself and was not directed to this Defendant. Accordingly, no response is required of this Defendant.

5. The allegations contained within Paragraph No. 5 of Hull's Motion for Summary Judgment refer to a document that speaks for itself. To the extent a response is deemed necessary, Wal-Mart Stores, Inc. incorporates its Complaint to Join Roger Hull t/d/b/a HSJ Lawncare. By way of further clarification, Wal-Mart Stores, Inc. also brought a claim for common law indemnification, See, Complaint to Join, Paragraph 12.

6. The allegations contained within Paragraph No. 6 of Hull's Motion for Summary Judgment are admitted in part and denied in part. It is admitted that Hull and Wal-Mart Stores, Inc. entered into a Contract on or about May 1, 2000 to provide Wal-Mart with lawn mowing and landscaping services at the Clearfield, Pennsylvania location. However, it is denied that the Contract did not impose a duty on the part of Hull to remove "debris" from Wal-Mart's parking areas. To the contrary, the Contract appears as follows:

SECTION 3 - LITTER REMOVAL

A. All litter shall be removed by the Contractor (Hull) from ~~sidewalks~~, ~~gutters~~, and all planted areas each week. In no case shall trash, litter or leaves be blown or swept by the contractor onto the premises of others. All trash, litter, leaves, etc., shall be collected hauled away and disposed of by the Contractor away from the premises.

Moreover, the allegations refer to the Outside Maintenance Agreement between Wal-Mart and Hull, which is a document that speaks for itself. Furthermore, any allegation interpreting the duties imposed upon the parties by the Outside Maintenance Agreement is a conclusion of law to which no response is required. To the extent a response is deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029 (e).

7. The allegations contained within Paragraph No. 7 of Hull's Motion for Summary Judgment are admitted in part and denied in part. It is admitted that Ron Orris initialed sections of the contract limiting Hull's original scope of work. However, the allegations refer to the Outside Maintenance Agreement between Wal-Mart and Hull, which is a document that speaks for itself. To the extent a response is deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029 (e). Furthermore, any allegation interpreting the duties imposed upon the parties by the Outside Maintenance Agreement is a conclusion of law to which no response is required. To the extent a response is deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029 (e).

8. The allegations contained within Paragraph No. 8 of Hull's Motion for Summary Judgment are admitted in part and denied in part. It is admitted that on or about May 1, 2000, Bailor and Wal-Mart entered into a Contract. The remaining allegations refer to a writing that speaks for itself. Furthermore, any allegation interpreting the duties imposed upon the parties by the Outside Maintenance Agreement is a conclusion of law to which no response is required. To the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

9. The allegations contained within Paragraph No. 9 of Hull's Motion for Summary Judgment are admitted.

10. The allegations contained within Paragraph No. 10 of Hull's Motion for Summary Judgment are admitted.

11. The allegations contained with Paragraph No. 11 of Hull's Motion for Summary Judgment are admitted.

12. The allegations contained within Paragraph No. 12 of Hull's Motion for Summary Judgment are conclusory in nature and refer to writings that speak for themselves. To the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

13. The allegations contained within Paragraph No. 13 of Hull's Motion for Summary Judgment are denied. To the extent that Paragraph No. 13 implies that every Wal-Mart employee was required to inspect the parking lot on a daily basis, said allegation is denied. To the contrary, when any Wal-Mart employee was walking through the parking lot, he/she was asked to inspect the area in the parking lot where they were walking.

14. The allegations contained within Paragraph No. 14 of Hull's Motion for Summary Judgment are admitted.

15. (sic)

16. The allegations contained within Paragraph No. 16 of Hull's Motion for Summary Judgment are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

17. The allegations contained within Paragraph No. 17 of Hull's Motion for Summary Judgment are admitted.

18. The allegations contained within Paragraph No. 18 of Hull's Motion for Summary Judgment refer to a document that speaks for itself. Accordingly, no response is required.

19. The allegations contained within Paragraph 19 of Hull's Motion for Summary Judgment are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

20. The allegations contained within Paragraph No. 20 of Hull's Motion for Summary Judgment are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029(e).

21. The allegations contained within Paragraph No. 21 of Hull's Motion for Summary Judgment refer to a document that speaks for itself. Furthermore, the allegations contained within Paragraph 21 are conclusions of law to which no response is required. To the extent a response is deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029(e).

22. The allegations contained within Paragraph No. 22 of Hull's Motion for Summary Judgment are admitted in part and denied in part. It is admitted that Ron Orris initialed sections of the contract limiting Hull's original scope of work. However, the allegations refer to the Outside Maintenance Agreement between Wal-Mart and Hull, which is a document that speaks for itself. To the extent a response is deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029 (e). Furthermore, any allegation interpreting the duties imposed upon the parties by the Outside Maintenance Agreement is a conclusion of law to which no response is required. To the extent a response is deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029 (e).

23. The allegations contained within Paragraph No. 23 of Hull's Motion for Summary Judgment are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Defendant, Wal-Mart Stores, Inc., respectfully requests that this Honorable Court deny Roget R. Hull's t/d/b/a HSJ Lawncare's Motion for Summary Judgment to the extent it refers to the argument that no duty exists to defend, indemnify and hold harmless Wal-Mart Stores, Inc. However, Defendant, Wal-Mart Stores, Inc., joins in Hull's Motion for Summary Judgment to the extent it argues that Plaintiffs have failed to establish a *prima facie* case of negligence on the part of the Defendants and Additional Defendants.

Respectfully submitted,

Dell, Moser, Lane & Loughney, LLC

By: Danielle M. Vugrinovich
Danielle M. Vugrinovich, Esquire
Attorneys for Wal-Mart Stores, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **WAL-MART STORES, INC.'S RESPONSE TO ROGER HULL t/d/b/a HSJ LAWNCARE'S MOTION FOR SUMMARY JUDGMENT** has been served by U.S. Mail, postage prepaid, this 28th day of April, 2004, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
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BELL, SILBERBLATT & WOOD
318 East Locust Street
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Counsel for Defendant James Bailor, t/d/b/a B&D Enterprises

Trisha A. Zaken, Esquire
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Counsel for Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare

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Pittsburgh, PA 15219
Counsel for Additional Defendant Boyles Insurance, Inc.

Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

ORDER

AND NOW, this _____ day of _____, 2004, Additional Defendant Roger R. Hull t/d/b/a HSJ Lawncare's Motion for Summary Judgment is denied relative only to its argument pertaining to his obligation to defend, indemnify and hold harmless Wal-Mart Stores, Inc. under the Outside Maintenance Agreement entered into on May 1, 2000 and which has been attached to the Brief in Opposition to Hull's Motion for Summary Judgment as Exhibit "A."

BY THE COURT:

_____J.

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

PRAECIPE FOR ADDRESS CHANGE FOR DELL, MOSER. LANE & LOUGHNEY, LLC

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

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APR 3 0 2004

Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	CIVIL DIVISION
	No. 02-1811-CD
Plaintiffs,	
Vs.	JURY TRIAL DEMANDED
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	
Defendants,	
Vs.	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants.	

PRAECIPE FOR CHANGE OF ADDRESS
OF DELL, MOSER, LANE & LOUGHNEY, LLC

KINDLY enter as of record the following address change for Dell, Moser, Lane & Loughney, LLC:

Dell, Moser, Lane & Loughney, LLC
525 William Penn Place
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DELL, MOSER, LANE & LOUGHNEY, LLC

By: Danielle M. Vugrinovich
Danielle M. Vugrinovich, Esquire
Attorneys for Wal-Mart Stores, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of PRAECIPE FOR ADDRESS CHANGE FOR DELL, MOSER, LANE & LOUGHNEY, LLC has been served by U.S. Mail, postage prepaid, this 28th day of April, 2004, upon all counsel of record as follows:

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Counsel for Plaintiffs

Ann B. Wood, Esquire
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Counsel for Defendant James Bailor, t/d/b/a B&D Enterprises

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Counsel for Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare

Bryan K. Shreckengost, Esquire
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Counsel for Additional Defendant Boyles Insurance, Inc.

Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire

FILED No cc
11:00
APR 30 2004 Copy to CIA
William A. Shaw
Prothonotary/Clerk of Courts

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant

vs.

WAL-MART STORES, INC.,

Additional Defendant

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants

NO. 02-1811-CD

JURY TRIAL DEMANDED

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on Behalf of:
James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant

Counsel of Record for this Party:

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Supreme Court No.23364

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FILED

MAY 04 2004

William A. Shaw
Prothonotary

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	
Plaintiffs	No.08-1811-CD
vs.	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	JURY TRIAL DEMANDED
Defendants	
vs.	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	
Additional Defendant	
vs.	
WAL-MART STORES, INC.,	
Additional Defendant	
vs.	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of JAMES BAILOR, t/d/b/a B&D ENTERPRISES' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on May 4, 2004:

Attorney for Plaintiffs:
James A. Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
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Attorney For Defendant, Wal-Mart Stores, Inc.:
Patrick J. Loughney, Esquire
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Attorney For Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare:
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Attorney for Former Additional Defendant, Boyles Insurance, Inc.
Bryan K. Shreckengost, Esquire
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Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No.02-1811-CD

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs

vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Defendant, Et al.

CERTIFICATE OF SERVICE

FILED

MAY 04 2004

c/11:26 a.m.

William A. Shaw
Prothonotary

no cc

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COMMERCIAL PRINTING CO., CLEARFIELD, PA.

WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

WAL-MART STORES, INC.'S RESPONSE TO JAMES BAILOR t/d/b/a B&D ENTERPRISE'S MOTION FOR SUMMARY JUDGMENT

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

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FILED

MAY 06 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

WAL-MART STORES, INC.'S RESPONSE TO JAMES BAILOR t/d/b/a B&D ENTERPRISE'S MOTION FOR SUMMARY JUDGMENT

AND NOW, comes Defendant, Wal-Mart Stores, Inc., by and through its counsel, Dell, Moser, Lane & Loughney, LLC, and Danielle M. Vugrinovich, Esquire, and files the within Response to James Bailor t/d/b/a B&D Enterprise's Motion for Summary Judgment (hereinafter referred to as "Bailor").

1. The allegations contained within Paragraph No. 1 of Bailor's Motion for Summary Judgment refer to a writing that speaks for itself. To the extent a response is deemed necessary, it is admitted that Plaintiffs alleged such in their Amended Complaint.

2. The allegations contained within Paragraph No. 2 of Bailor's Motion for Summary Judgment refer to a writing that speaks for itself. To the extent a response is deemed necessary, it is admitted that Plaintiffs alleged such in their Amended Complaint.

3. The allegations contained within Paragraph No. 3 of Bailor's Motion for Summary Judgment refer to a writing that speaks for itself. To the extent a response is deemed necessary, it is admitted that Plaintiffs alleged such in their Amended Complaint.

4. The allegations contained within Paragraph No. 4 of Bailor's Motion for Summary Judgment refer to a writing that speaks for itself. To the extent a response is deemed necessary, it is admitted that Wal-Mart Stores, Inc. alleged such in its Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d). By way of further clarification, Wal-Mart's New Matter Pursuant to Pa. R.C.P. 2252(d) referred to the Outside Maintenance Agreement dated May 1, 2000 with respect to Bailor's contractual obligation to defend, indemnify and hold harmless Wal-Mart Stores, Inc. from any liability arising out of the performance of Bailor's work under the Outside Maintenance Agreement. Furthermore, Wal-Mart Stores, Inc. demanded common law indemnification from Bailor as well.

5. The allegations contained within Paragraph No. 5 of Bailor's Motion for Summary Judgment refer to a writing that speaks for itself. To the extent a response is deemed necessary, it is admitted that Bailor alleged such in his Complain to Join Hull.

6. The allegations contained within Paragraph No. 6 of Bailor's Motion for Summary Judgment refer to a writing that speaks for itself. To the extent a response is deemed necessary, it is admitted that Bailor alleged such in his Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Plaintiffs' Amended Complaint.

7. The allegations contained within Paragraph No. 7 of Bailor's Motion for Summary Judgment refer to a writing that speaks for itself. To the extent a response is deemed necessary, it is admitted that Hull alleged such in his Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Plaintiffs' Amended Complaint.

8. The allegations contained within Paragraph No. 8 of Bailor's Motion for Summary Judgment are admitted.

9. The allegations contained within Paragraph No. 9 of Bailor's Motion for Summary Judgment are admitted.

10. The allegations contained within Paragraph No. 10 of Bailor's Motion for Summary Judgment refer to writings that speak for themselves. As Paragraph 10 is conclusory in nature as it summarizes the testimony of Melvin Knezevich, Ronald Orris and Roger Gates, said allegation is denied and Wal-Mart Stores, Inc. refers to the actual testimony of those individuals.

11. The allegations contained within Paragraph No. 11 of Bailor's Motion for Summary Judgment refer to writings that speak for themselves. As Paragraph 11 is conclusory in nature as it summarizes the testimony of Melvin Knezevich, Ronald Orris and Roger Gates, said allegation is denied and Wal-Mart Stores, Inc. refers to the actual testimony of those individuals.

12. The allegations contained within Paragraph No. 12 of Bailor's Motion for Summary Judgment refer to a writing that speaks for itself. To the extent a response is deemed necessary, said allegations are admitted.

13. The allegations contained within Paragraph No. 13 of Bailor's Motion for Summary Judgment refer to a writing that speaks for itself. As Paragraph 13 is conclusory in

nature as it summarizes the text of the Risk Control Slip and Fall Solution Manual, said allegation is denied and Wal-Mart Stores, Inc. refers to the actual text of that document.

14. The allegations contained within Paragraph No. 14 of Bailor's Motion for Summary Judgment refer to writings that speak for themselves. As Paragraph 14 is conclusory in nature as it summarizes the testimony of Ronald Orris and Roger Gates, said allegation is denied and Wal-Mart Stores, Inc. refers to the actual testimony of those individuals.

15. The allegations contained within Paragraph No. 15 of Bailor's Motion for Summary Judgment refers to a writing that speaks for itself. As Paragraph 15 is conclusory in nature as it summarizes the testimony of James Bailor, said allegation is denied and Wal-Mart Stores, Inc. refers to the actual testimony of James Bailor.

16. The allegations contained within Paragraph No. 16 of Bailor's Motion for Summary Judgment are admitted.

17. The allegations contained within Paragraph No. 17 of Bailor's Motion for Summary Judgment are admitted.

18. The allegations contained within Paragraph No. 18 of Bailor's Motion for Summary Judgment are admitted in part and denied in part. It is admitted that Plaintiffs have offered no evidence to establish a *prima facie* case of negligence. However, it is denied that Bailor is entitled to Summary Judgment with respect to all claims asserted against him. If Wal-Mart Stores, Inc.'s Motion for Summary Judgment is denied, Bailor is not entitled to Summary Judgment with respect to the contractual and common law indemnification claims asserted against him by Wal-Mart Stores, Inc.

19. The allegations contained within Paragraph No. 19 of Bailor's Motion for Summary Judgment are conclusions of law to which no response is required. However, to the

extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e). Furthermore, pursuant to the Outside Maintenance Agreement between Wal-Mart Stores, Inc. and James Bailor t/d/b/a B&D Enterprises, Bailor is responsible to defend, indemnify and hold harmless Wal-Mart Stores, Inc. for any liability in connection with the performance of his work. *See, Outside Maintenance Agreement attached to Wal-Mart Stores, Inc.'s Brief in Opposition as Exhibit "B."*

20. The allegations contained within Paragraph No. 20 of Bailor's Motion for Summary Judgment are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied.

21. The allegations contained within Paragraph No. 21 of Bailor's Motion for Summary Judgment are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied.

22. The allegations contained within Paragraph No. 22 of Bailor's Motion for Summary Judgment are conclusory in nature and refer to a writing that speaks for itself. Furthermore, Defendant Bailor attempts to submit his own testimony as a basis for Summary Judgment in violation of *Nanty Glo Boro. v. American Surety Company*, 163 A 523 (Pa. 1936). To the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

23. The allegations contained within Paragraph No. 23 of Bailor's Motion for Summary Judgment require no response.

24. The allegations contained within Paragraph No. 24 of Bailor's Motion for Summary Judgment are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P.

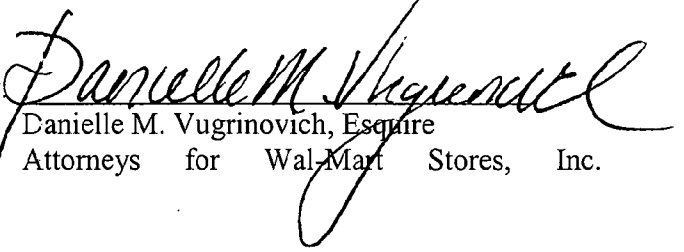
1029(e). Furthermore, pursuant to the Outside Maintenance Agreement, Bailor is required to defend, indemnify and hold harmless Wal-Mart Stores, Inc. for any liability in connection with the performance of the scope of work identified in that document.

25. The allegations contained within Paragraph No. 25 of Bailor's Motion for Summary Judgment are conclusions of law to which no response is required. However, to the extent a response is deemed necessary, said allegations are denied pursuant to Pa. R.C.P. 1029(e).

WHEREFORE, Defendant, Wal-Mart Stores, Inc., respectfully requests that this Honorable Court deny Bailor's Motion for Summary Judgment solely with respect to his argument based upon his contractual duties set forth in the Outside Maintenance Agreement dated May 1, 2000 by and between Wal-Mart Stores, Inc. and James Bailor t/d/b/a B&D Enterprises.

Respectfully submitted,

Dell, Moser, Lane & Loughney, LLC

By 
Danielle M. Vugrinovich, Esquire
Attorneys for Wal-Mart Stores, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **WAL-MART STORES, INC.'S RESPONSE TO JAMES BAILOR t/d/b/a B&D ENTERPRISE'S MOTION FOR SUMMARY JUDGMENT** has been served by U.S. Mail, postage prepaid, this 4th day of May, 2004, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 679
Clearfield, PA 16830
Counsel for Defendant James Bailor, t/d/b/a B&D Enterprises

Trisha A. Zaken, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219
Counsel for Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare

Bryan K. Shreckengost, Esquire
PIETRAGALLO BOSICK & GORDON
38th Floor, One Oxford Centre
Pittsburgh, PA 15219
Counsel for Additional Defendant Boyles Insurance, Inc.

Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire

FILED NO
m/11:10 BY CC
MAY 06 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband anc wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER E. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

ORDER OF COURT

AND NOW, this _____ day of _____, 2004, it is hereby ORDERED, ADJUDGED and DECREED that Bailor's Motion for Summary Judgment solely with respect to his argument based upon his contractual duties set forth in the Outside Maintenance Agreement dated May 1, 2000 by and between Wal-Mart Stores, Inc. and James Bailor t/d/b/a B&D Enterprises and common law indemnification is DENIED.

BY THE COURT,

_____ J.

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs,	:	
v.	:	No. 02-1811-CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Defendants,	:	
v.	:	
ROGER R. HULL, t/d/b/a/ HSJ LAWNCARE And BOYLES INSURANCE, INC.	:	
Additional Defendants.	:	

ORDER

AND NOW THIS 13th day of August 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Defendant James Bailor t/d/b/a/ B&D Enterprises, and after considering the record as a whole, the Court DENIES Defendant's Motion for Summary Judgment.

By the Court

President Judge

FILED

AUG 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED
0/4:00(6)
AUG 13 2004
E/AS
William A. Shaw
Prothonotary/Clerk of Courts

1cc Attys: Naddeo, P. Loughney, Wood, Walsh, Shrekengast

CA

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs,	:	
v.	:	No. 02-1811-CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Defendants,	:	
v.	:	
ROGER R. HULL, t/d/b/a/ HSJ LAWNCARE And BOYLES INSURANCE, INC.	:	
Additional Defendants.	:	

FILED

AUG 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW THIS 13th day of August 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Defendant Roger R. Hull t/d/b/a/ HSJ Lawncare, and after considering the record as a whole, the Court DENIES Defendant's Motion for Summary Judgment.

By the Court

President Judge

FILED
2/4:00/BY
AUG 13 2004
EAS
William A. Shaw
Prothonotary/Clerk of Courts

1 CC Attys: Naddeo, P. Loughney
Wood, Walsh,
Shreckengost

CP

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs,	:	
v.	:	No. 02-1811-CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Defendants,	:	
v.	:	
ROGER R. HULL, t/d/b/a/ HSJ LAWNCARE And BOYLES INSURANCE, INC.	:	
Additional Defendants.	:	

ORDER

AND NOW THIS 13th day of August 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Defendant Wal-Mart-Stores, Inc., and after considering the record as a whole, the Court DENIES Defendant's Motion for Summary Judgment.

By the Court

Judge Cummings
President Judge

FILED

AUG 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED
AUG 13 2004
William A. Shaw
Prothonotary/Clerk of Courts

1cc Attys:
Naddeo, P. Loughney,
Wood, Walsh,
Shreckengost

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

NOTICE OF SERVICE OF SECOND SET OF SUPPLEMENTAL INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS

(Jury Trial Demanded)

Filed on Behalf of the Additional Defendant: Roger R. Hull, t/d/b/a HSJ Lawncare

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

SUMMERS, McDONNELL, WALSH & SKEEL
Firm #911

The Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

(412) 261-3232

#11177

FILED NO CC
AUG 26 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

(Jury Trial Demanded)

NOTICE OF SERVICE OF SUPPLEMENTAL INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS

To: Prothonotary

The undersigned herein represents that a true and correct copy of the Notice of Service of Second Set of Supplemental Interrogatories and Request for Production of Documents Directed to Plaintiffs was sent to James Naddeo, Esquire, counsel for Plaintiffs on August 24, 2004.

Respectfully submitted,

SUMMERS, McDONNELL, WALSH & SKEEL

By _____

Paul J. Walsh III, Esquire
Counsel for Additional Defendant
Roger R. Hull, t/d/b/a HSJ Lawncare

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Notice of Service of Second Set of Supplemental Interrogatories and Request for Production of Documents Directed to Plaintiffs** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 24 day of August 2004.

James A. Naddeo, Esquire
211½ E. Locust St.
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 E. Locust St.
P.O. Box 670
Clearfield, PA 16830
(Counsel for Defendant/Additional Defendant, James Bailor t/d/b/a B&D Enterprises)

Patrick J. Loughney, Esquire
Dell, Moser, Lane & Loughney
437 Grant St.
1300 Frick Bldg.
Pittsburgh, PA 15219
(Counsel for Defendant, Wal-Mart Stores, Inc.)

SUMMERS, McDONNELL, WALSH & SKEEL

By _____
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

NOTICE OF SERVICE OF SUPPLEMENTAL INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT, JAMES BAILOR, t/d/b/a B&D ENTERPRISES

(Jury Trial Demanded)

Filed on Behalf of the Additional Defendant: Roger R. Hull, t/d/b/a HSJ Lawncare

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

SUMMERS, McDONNELL, WALSH & SKEEL
Firm #911

The Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

(412) 261-3232

#11177

FILED No CC
m12:42BH
AUG 26 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

(Jury Trial Demanded)

NOTICE OF SERVICE OF SUPPLEMENTAL INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT, JAMES BAILOR, t/d/b/a B&D ENTERPRISES

To: Prothonotary

The undersigned herein represents that a true and correct copy of the Notice of Service of Supplemental Interrogatories and Request for Production of Documents Directed to Defendant, James Bailor, t/d/b/a B&D Enterprieses, was sent to Ann B. Wood, Esquire, counsel for Defendant, James Bailor, on August 24, 2004.

Respectfully submitted,

SUMMERS, McDONNELL, WALSH & SKEEL

By _____

Paul J. Walsh III, Esquire
Counsel for Additional Defendant
Roger R. Hull, t/d/b/a HSJ Lawncare

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Notice of Service of Supplemental Interrogatories and Request for Production of Documents Directed to Defendant, James Bailor, t/d/b/a B&D Enterprises** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 31st day of August 2004.

James A. Naddeo, Esquire
211½ E. Locust St.
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 E. Locust St.
P.O. Box 670
Clearfield, PA 16830
(Counsel for Defendant/Additional Defendant, James Bailor t/d/b/a B&D Enterprises)

Patrick J. Loughney, Esquire
Dell, Moser, Lane & Loughney
437 Grant St.
1300 Frick Bldg.
Pittsburgh, PA 15219
(Counsel for Defendant, Wal-Mart Stores, Inc.)

SUMMERS, McDONNELL, WALSH & SKEEL

By _____
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

NOTICE OF SERVICE OF THIRD SET OF SUPPLEMENTAL INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO ORIGINAL DEFENDANT, WAL-MART STORES, INC.

(Jury Trial Demanded)

Filed on Behalf of the Additional Defendant: Roger R. Hull, t/d/b/a HSJ Lawncare

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

SUMMERS, McDONNELL, WALSH & SKEEL
Firm #911

The Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219

(412) 261-3232

#11177

FILED
m/2:42 BC
AUG 26 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

(Jury Trial Demanded)

NOTICE OF SERVICE OF THIRD SET OF SUPPLEMENTAL INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO ORIGINAL DEFENDANT, WAL-MART STORES, INC.

To: Prothonotary

The undersigned herein represents that a true and correct copy of the Notice of Service of Third Set of Supplemental Interrogatories and Request for Production of Documents Directed to Original Defendant, Wal-Mart Stores, Inc., was sent to Patrick Loughney, Esquire, counsel for Original Defendant on August 24, 2004.

Respectfully submitted,

SUMMERS, McDONNELL, WALSH & SKEEL

By _____

Paul J. Walsh II, Esquire
Counsel for Additional Defendant
Roger R. Hull, t/d/b/a HSJ Lawncare

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Notice of Service of Third Set of Supplemental Interrogatories and Request for Production of Documents Directed to Original Defendant** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 24 day of August 2004.

James A. Naddeo, Esquire
211½ E. Locust St.
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 E. Locust St.
P.O. Box 670
Clearfield, PA 16830
(Counsel for Defendant/Additional Defendant, James Bailor t/d/b/a B&D Enterprises)

Patrick J. Loughney, Esquire
Dell, Moser, Lane & Loughney
437 Grant St.
1300 Frick Bldg.
Pittsburgh, PA 15219
(Counsel for Defendant, Wal-Mart Stores, Inc.)

SUMMERS, McDONNELL, WALSH & SKEEL

By _____
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

#11177

CIVIL DIVISION

Docket No.: 02-1811-CD

PRAECIPE FOR SUBSTITUTION OF APPEARANCE

(Jury Trial Demanded)

Filed on Behalf of the Additional Defendant: Roger R. Hull, t/d/b/a HSJ Lawncare

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE
PA I.D. # 58843

TRISHA A. ZAKEN, ESQUIRE
PA I.D. #87531

WALSH, COLLIS & BLACKMER, L.L.C.
The Gulf Tower, Suite 2300
707 Grant Street
Pittsburgh, PA 15219

(412) 258-2255

FILED

SEP 07 2004
m/ 11:15 lc
William A. Shaw
Prothonotary
no clc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,
vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,
vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant,
vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

Docket No.: 02-1811-CD

(Jury Trial Demanded)

PRAECIPE FOR SUBSTITUTION OF APPEARANCE

TO: Prothonotary

Please substitute the appearance of Walsh, Collis & Blackmer, L.L.C., Paul J. Walsh III, Esquire, and Trisha A. Zaken, Esquire, in place of Summers, McDonnell, Walsh & Skeel as counsel on behalf of the Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare, in the above-captioned matter.

Respectfully submitted,

WALSH, COLLIS & BLACKMER, L.L.C.

By _____
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Praecipe for Substitution of Appearance** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this ___ day of September 2004:

James A. Naddeo, Esquire
211½ E. Locust St.
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 E. Locust St.
P.O. Box 670
Clearfield, PA 16830
(Counsel for Defendant/Additional Defendant, James Bailor t/d/b/a B&D Enterprises)

Patrick J. Loughney, Esquire
Dell, Moser, Lane & Loughney
525 William Penn Place
Suite 3700
Pittsburgh, PA 15219
(Counsel for Defendant, Wal-Mart Stores, Inc.)

Bryan Shreckengost, Esquire
Pietragallo, Bosick & Gordon
One Oxford Center
38th Floor
Pittsburgh, PA 15219
(Counsel for Boyles Insurance, Co.)

WALSH, COLLIS & BLACKMER, L.L.C.

By _____
Paul J. Walsh III, Counsel for Additional Defendant, Roger R. Hull, t/d/b/a HSJ Lawncare

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	
Plaintiffs	NO. 02-1811-CD
vs.	JURY TRIAL DEMANDED
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	Type of Pleading:
Defendants	CERTIFICATE OF SERVICE
vs.	Filed on Behalf of: James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	Counsel of Record for this Party:
Additional Defendant	Ann B. Wood, Esquire
vs.	Supreme Court No.23364
WAL-MART STORES, INC.,	Bell, Silberblatt & Wood
Additional Defendant	318 East Locust Street
vs.	P.O. Box 670
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	Clearfield, PA 16830
Additional Defendants	(814) 765-5537

FILED NO
cc
SEP 08 2004
William A. Shaw
Prothonotary/Clerk of Courts

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	
Plaintiffs	No.08-1811-CD
vs.	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	JURY TRIAL DEMANDED
Defendants	
vs.	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	
Additional Defendant	
vs.	
WAL-MART STORES, INC.,	
Additional Defendant	
vs.	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants	

CERTIFICATE OF SERVICE

I hereby certify that a copy of Answers To Supplemental Interrogatories and Request For Production Of Documents Directed To Defendant, James Bailor, t/d/b/a B&B Enterprises, with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on September 8, 2004:

Attorney for Plaintiffs:
James A.Naddeo, Esquire
JAMES A. NADDEO & ASSOCIATES
P.O. Box 552
Clearfield, Pennsylvania 16830

Attorney For Defendant, Wal-Mart Stores, Inc.:
Patrick J. Loughney, Esquire
DELL, MOSER, LANE & LOUGHNEY, LLC
525 William Penn Place
Suite 3700
Pittsburgh, PA 15219

Attorney For Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare:
Paul J. Walsh, III, Esquire
WALSH, COLLIS & BLACKMER, L.L.C.
Gulf Tower, Suite 2300
707 Grant Street
Pittsburgh, PA 15219

Attorney for Former Additional Defendant, Boyles Insurance, Inc.
Bryan K. Shreckengost, Esquire
PIETRAGALLO, BOSICK & GORDON
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
	*	No. 02 - 1811 - CD
v.	*	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Defendants,	*	
v.	*	Type of Pleading:
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC., Additional Defendants.	*	**PRAECIPE TO SETTLE AND DISCONTINUE**
	*	Filed on behalf of: Plaintiffs
	*	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
DEC 16 2004
0/3:30/
William A. Shaw
Prothonotary/Clerk of Courts
No CERT.

CERTIFIED OF DISC. TO ATTY & C/A.

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs,	*	
	*	No. 02 - 1811 - CD
v.	*	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTEPRISES, Defendants.	*	
v.	*	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC., Additional Defendants.	*	

PRAECIPE TO SETTLE AND DISCONTINUE

TO THE PROTHONOTARY:

Please mark the above-captioned case settled and discontinued.

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Plaintiffs

JAMES A. NADDEO
ATTORNEY AT LAW
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

45

FILED

DEC 16 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Marshall E. Rugh
Anna M. Rugh

Vs. **No. 2002-01811-CD**

Wal-Mart Stores, Inc.
James Bailor
B & D Enterprises
Roger R. Hull
HSJ Lawncare
Boyles Insurance, Inc.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on December 16, 2004, marked:

Settled and Discontinued

Record costs in the sum of $214.51 have been paid in full by Atty. Naddeo.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 16th day of December A.D. 2004.

_____
William A. Shaw, Prothonotary

02-1811-CD

Out as of 8/18/04:

8/18 7/17/03	Motion for Summary Judgment filed on behalf of Defendant Wal-Mart Stores, Inc. filed by Attorney Loughney
4/15/04	Praecipe to Place Case on Argument List filed by Paul J. Walsh, III
8/18 4/27/04	Motion for Summary Judgment filed by Ann B. Wood
8-25 - 8/13/04	Order, August 13, 2004: Motion for Summary Judgment-Lawncare
8-25 - 8/13/04	Order, August 13, 2004: Motion for Summary Judgment-B&D Enterprises
8-25 - 8/13/04	Order, August 13, 2004: Motion for Summary Judgment-Wal-Mart

Current Judge: Fredric Joseph Ammerman

Marshall E. Rugh, Anna M. Rugh vs. Wal-Mart Stores, Inc., James Bailor, B && D Enterprises, Roger R. Hull, HSJ Lawncare, Boyles Insurance, Inc.

Civil Other

Date		Judge
04/15/2004	Praecipe To Place Case On Argument List. filed by, s/Paul J. Walsh, III, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
04/16/2004	ORDER, NOW, this 16th day of April, 2004, re: A Rule is issued upon the parties to Appear and Show Cause why the Motion should not be granted. Argument is scheduled the 7th day of May, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 5 cc to Atty Walsh, w/service memo	Fredric Joseph Ammerman
04/27/2004	Motion For Summary Judgment. filed by, s/Ann B. Wood, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
	Praecipe To Place Case On Argument List. filed by, s/Ann B. Wood, Esquire Certificate of Service 4 cc Atty Wood	Fredric Joseph Ammerman
	ORDER, NOW, this 27th day of April, 2004, re: Rule issued upon parties. Argument scheduled the 7th day of May, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA, P.J. Certificate of Service 4 cc to Atty	Fredric Joseph Ammerman
04/30/2004	Praecipe For Address Change For Dell, Moser, Lane & Loughney, LLC. filed by, s/Danielle M. Vugrinovich, Esq. Certificate of Service no cc Copy to C/A	Fredric Joseph Ammerman
	Wal-Mart Stores, Inc's Response to roger Hull t/d/b/a HSJ Lawncare's Motion For Summary Judgment. filed by, s/Danielle M. Vugrinovich, Esq. Certificate of Service no cc	Fredric Joseph Ammerman
05/04/2004	Certificate of Service, James Bailoar, t/d/b/a B&D Enterprises' Brief In Support Of Motion For Summary Judgment upon James A. Naddeo, Esq., Patrick J. Loughney, Esq., Paul J. Walsh, III, Esq., and Bryan K. Shreckengost, Esq. filed by, s/ Ann B. Wood, Esquire no cc	Fredric Joseph Ammerman
05/06/2004	Wal-Mart Stores, Inc.'s Response To James Bailor t/d/b/a B&D Enterprise's Motion For Summary Judgment. s/Danielle M. Vugrinovich, Esquire Cert. of Serv. no cc	Fredric Joseph Ammerman
08/13/2004	Order, AND NOW THIS 13th day of August 2004, following oral argument and submission of briefs on the Motion for Summary Judgement filed on behalf of Defendant Roger R. Hull t/d/b/a HSJ Lawncare, and after considering the record as a whole, the Court DENIES Defendant's Motion for Summary Judgement. By the Court, Fredric Ammerman, President Judge, 1 cc attys: Naddeo, P. Loufhney, Wood, Walsh, Shrekengost.	Fredric Joseph Ammerman
	Order, AND NOW THIS 13th day of August, 2004, following oral argument and submission of briefs on the Motion fo Summary Judgment filed on behalf of Defendant James Bailor, t/d/b/a/ B&D Enterprises, and after considering the record as a whole, the Court DENIES Defendant's Motion for Summary Judgement. By the Court, Fredric J. Ammermanm President Judge. 1 cc Attys: Naddeo, P. Loughney, Wood, Walsh, Shrekengost.	Fredric Joseph Ammerman
	Order, AND NOW THIS 13th day of August, 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Defendant Wal-Mart-Stores, Inc., and after considering the record as a whole, the Court DENIES Defendant's Motion for Summary Judgment. By the Court, Fredric J. Ammerman, President Judge. 1 cc Attys: Naddeo, P. Loughney, Wood, Walsh, Shreckengost.	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

Marshall E. Rugh, Anna M. Rugh vs. Wal-Mart Stores, Inc., James Bailor, B && D Enterprises, Roger R. Hull, HSJ Lawncare, Boyles Insurance, Inc.

Civil Other

Date		Judge
05/22/2003	OPINON AND ORDER, NOW, this 22nd day of May, 2003, re: Preliminary Objections to Complaint to Join Additional Defendant as set forth above, it is the ORDER of this Court that said Objections be and are hereby SUSTAINED and Complaint DISMISSED. by the Court, s/JKR,JR.,P.J. 1 cc Atty Naddeo, Loughrey, Wood, P. Walsh, Shreckengrost, and Mikesell	John K. Reilly Jr.
07/17/2003	Motion for Summary Judgment filed on behalf of Defendant Wal-Mart Stores, Inc. filed by Att. Loughney	John K. Reilly Jr.
07/28/2003	Stipulation of Counsel. The below signed counsel, on behalf of their respective clients, hereby stipulate to the dismissal, with prejudice, of all claims of Additional Defendant, Roger R. Hull t/d/b/a HSJ Lawncare, for contribution and/or indemnity that were or could have been asserted against Boyles Insurance, Inc. in Hull's Answer, New Matter, and New Matter Pursuant to Rule 2252(d) to Defendant Wal-Mart Stores, Inc.'s Complaint to Join Additional Defendant. s/Paul J. Walsh, III, Esq. s/Bryan K. Shreckengost, Esq. Certificate of Service no cc	John K. Reilly Jr.
09/04/2003	Praecipe For Argument Of Defendant Wal-Mart Stores, Inc.'s Motion For Summary Judgment. s/Danielle M. Vugrinovich, Esquire Certificate of Service no cc Copy to CA	John K. Reilly Jr.
09/05/2003	James Bailor's t/d/b/a B&D Enterprises, Reply to Roger R. Hull, t/d/b/a HSJ Lawncare's New Matter Pursuant To PA. R.C.P. 2252(d). filed by s/Ann B. Wood Verification s/James Bailor Certificate of Service no cc	John K. Reilly Jr.
11/19/2003	Certificate Of Service, Plaintiffs' First Request for Production of Documents Directed to Defendant Wal-Mart Stores, Inc. and Notice of Taking Deposition of Roger Gates upon; Patrick J. Loughney, Esq,, Ann B. Wood, Esquire, and Paul J. Walsh, Esquire. filed by, s/James A. Naddeo, Esquire no cc	John K. Reilly Jr.
01/26/2004	Certificate of Service, Notice of Taking Deposition of Roger Gates upon Attys Loughney, Wood, Walsh, and Shreckengost. filed by, s/James A. Naddeo, Esq. no cc	John K. Reilly Jr.
03/10/2004	CONSENT ORDER, AND NOW, this 10th day of March, 2004, re: Inspection of those portions of any safety manual at the Wal-Mart Clearfield reference to parking lot maintenance. by the Court, s/FJA, P.J. 2 cc Atty Naddeo	Fredric Joseph Ammerman
04/01/2004	Praecipe For Argument Of Defendant Wal-Mart Stores, Inc's Motion For Summary Judgment. filed by, s/ DanielleM.Vagrinovich, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
04/05/2004	ORDER filed. NOW, this 5th day of April, 2004 a Rule is hereby issued upon the parties to Appear and Show Cause why the Motion should not be granted. S/FJA 6 CC and Service Memo to Atty. Loughney.	Fredric Joseph Ammerman
04/12/2004	Affidavit Of Service, April 5, 2004 Order of Court, Motion for Summary Judgmet and Affidavit of Service upon James A. Naddeo, Esq., Trisha A. Zaken, Esq., Ann B. Wood, esq. and Bryan K. Shreckengost, Esq. filed by, s/Patrick J. Loughney, Esq. Certificate of Service no cc	Fredric Joseph Ammerman
04/14/2004	Motion For Summary Judgment. filed by, s/Paul J. Walsh, III, Esquire Certificate of Service no cc	Fredric Joseph Ammerman

Marshall E. Rugh, Anna M. Rugh vs. Wal-Mart Stores, Inc., James Bailor, B && D Enterprises, Roger R. Hull, HSJ Lawncare, Boyles Insurance, Inc.

Civil Other

Date		Judge
02/10/2003	Praecipe For Rule To File Complaint To Join Additional Defendant. filed by s/Paul J. Walsh, III, Esq. Certificate of Service no cc 1 Rule to Atty	No Judge
02/11/2003	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
02/18/2003	Acceptance of Service of Writ to Join Additional Defendant Roger R. Hull t/d/b/aHSJ Lawncare. s/RogerR. Hull t/d/b/a HSJ Lawncare Certificate of Service no cc	No Judge
02/24/2003	Defendant Wal-Mart Stores, Inc's Reply To James Bailor t/d/b/a B&D Enterprises' New Matter Pursuant To Pa. R.C.P.2252(d). filed by s/Danielle M. Vugrinocich, Esquire Verification s/Roger Gates Certificate of Service no cc	No Judge
03/06/2003	Certificate of Service, Defendant Bailor's Answers To Defendant Hull's Request For Production of Documents upon JAMES A. NADDEO, ESQ., PATRICK J. LOUGHNEY,ESQ., PAUL J. WALSH, III, ESQ., and BRYAN K. SHRECKENGOST, ESQ. filed by s/Ann B. Wood, Esq. no cc	No Judge
03/14/2003	Wal-Mart Stores, Inc's Complaint To Join Additional Defendant Roger R. Hull t/d/b/a HSJ Lawncare Under PA. R.C.P. 2252(a) filed by s/Daniel M. Vugrinovich, Esquire Verification s/Roger Gates Certificate of Service no cc	No Judge
03/20/2003	Answer, New Matter & New Martter Pursuant To Rule 2252(d) To Defendant, James Bailor's, t/d/b/a B&D Enterprises, Complaint To Join Additional Defendant. filed by s/Paul J. Walsh, III, Esquire Verification s/Roger R. Hull Certificate of Service no cc	No Judge
04/29/2003	Certificate of Service, Answers to Interrogatories and Requests For Production of Documents Directed to Defendant James Bailor t/d/b/a B&D Enterprises upon: JAMES A. NADDEO, ESQUIRE, PATRICK J. LOUGHNEY, ESQUIRE, PAUL J. WALSH, III, ESQUIRE, and BRYAN K. SHRECKENGOST, ESQUIRE filed by s/Ann B. Wood, Esquire no cc	John K. Reilly Jr.
04/30/2003	Certificate of Service, Defendant Bailor's Brief In Opposition To Join Additional Defendants Under Pa.R.C.P. 2252(a) upon: JAMES A. NADDEO, ESQ., PATRICK J. LOUGHNEY, ESQ., PAUL J. WALSH, III, ESQ., and BRYAN K. SHRECKENGOST, ESQ. filed by s/Ann B. Wood, Esq. no cc	John K. Reilly Jr.
	Answer, New Matter, and New Matter 2252(d) To Defendant, Wal-Mart Stores, Inc.'s Complaint To Join Additional Defendant. filed by s/Paul J. Walsh, III, Esquire Verification s/Roger R. Hull Certificate of Service 1 cc Atty Walsh	John K. Reilly Jr.
05/14/2003	Filing: Wal-Mart Stores, Inc.'s Reply to Roger R. Hull's New Matter and New Matter Pursuant to PA R.C.P. 2252(d). No cc.	John K. Reilly Jr.
05/19/2003	Preliminary Objections To Additional Defendant Roger R. Hull t/d/b/a HSJ Lawncare's Answer, New Matter and New Matter 2252(d) to Defendant Wal-Mart Stores, Inc's Complaint To Join Additional Defendants. filed by s/Bryan K. Shreckengost, Esq. Certificate of Service 2 cc to Atty	John K. Reilly Jr.

Marshall E. Rugh, Anna M. Rugh vs. Wal-Mart Stores, Inc., James Bailor, B && D Enterprises, Roger R. Hull, HSJ Lawncare, Boyles Insurance, Inc.

Civil Other

Date		Judge
11/19/2002	Filing: Civil Complaint Paid by: Naddeo, James Receipt number: 1851643 Dated: 11/19/2002 Amount: $85.00 (Check) 1 cert. to Atty.	No Judge
12/02/2002	Praecipe For Appearance on Behalf of Defendant, WAL-MART STORES, INC. filed by s/Patrick J. Loughney, Esquire Certificate of Service no cc	No Judge
12/17/2002	Amended Complaint. filed by s/James A. Naddeo, Esquire Verification s/Marshall E. Rugh 1` cc to Sheriff, Atty.	No Judge
12/23/2002	Filing: Answer, New Matter and New Matter Pursuant to PA R.C.P. 22252. No CC.	No Judge
	Filling: Acceptance of Service of Amended Complaint filed by Atty. Naddeo on behalf of the Defendant. No cc.	No Judge
01/09/2003	Defendant, Bailor's Answer to Defendant, Wal-Mart's New Matter Pursuant to PA.R.C.P. 2252(d), filed by s/Ann B. Wood, Esq. Four CC Attorney Wood	No Judge
	Answer, New Matter and New Matter Pursuant to PA.R.C.P. 2252(d) to Plaintiff's Amended Complaint, filed by s/Ann B. Wood, Esq. Four CC Attorney Wood	No Judge
	Complaint to Join Additional Defendant under PA.R.C.P. 2252(a), filed by s/Ann B. Wood, Esq. Four CC Attorney Wood	No Judge
01/10/2003	Verification to Answer, New Matter and New Matter Pursuant to PA. R. C. P. 22252 (2) No cc. Filed by Atty. Loughney for Wal-Mart.	No Judge
01/16/2003	Notice of Service, Defendant Wal-Mart Stores, Inc.'s Notice of Deposition upon counsel for Defendant James Bailor, t/d/b/a B&D Enterprises. s/Patrick J. Loughney, Esq. Certificate of Service no cc	No Judge
	Notice of Service, Defendant Wal-Mart Stores, Inc.'s Notice of Deposition upon Additional Defendants Roger R. Hull, t/d/b/a HSJ Lawncare and Boyles Insurance, Inc. s/Patrick J. Loughney, Esq. Certificate of Service no cc	No Judge
01/17/2003	Praecipe to Issue Writ to Join Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare, filed by Atty. Vugrinovich Writ issued to Atty.	No Judge
01/23/2003	Certificate of Service Filed by Atty. Naddeo Served copy of Answers to Deft. Wal-Mart's First Set of Interrogatories Directed to Plaintiff and Response to Deft. Wal-Mart First Request for Production of Documents. upon Atty's Loughney & Wood.	No Judge
01/27/2003	Praecipe For Appearance on Behalf of Addional Defendant, ROGER R. HULL, t/d/b/a HSJ LAWNCARE. s/Paul J. Walsh, III, Esq. Certificate of Service no cc	No Judge
	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
02/05/2003	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
02/10/2003	Preliminary Objection to Complaint to Join Additional Defendants Under Pa.R.C.P. 2252 (a), filed on behalf of Boyles Insurance, Inc., additional defendant, filed by s/Bryan K. Shreckengost No CC	No Judge

DELL, MOSER, LANE & LOUGHNEY, LLC
ATTORNEYS AT LAW

525 WILLIAM PENN PLACE
SUITE 3700
PITTSBURGH, PENNSYLVANIA 15219-6002

TELEPHONE: 412-471-1180
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JOHN BURGESS (PA OH)
MICHAEL A. COHEN (PA OH TN WV)
RICHARD W. DELL, JR
SEAN P HANNON (PA OH)
NATHAN D. HUGHES
MARK R. LANE (PA WV)
PATRICK J. LOUGHNEY (PA WV)
SCOTT A. MATTHEWS (PA WV)
DONALD J. McCORMICK (PA WV OH)
SHARON M. MENCHYK

PETER MOLINARO, JR.
ELISABETH W. MOLNAR
GEORGE A. POWER
BRYAN J. SMITH (PA WV)
BRAD D. TRUST (PA WV)
CARY W. VALYO
DANIELLE VUGRINOVICH
ELEONORA M. ZYCH

August 5, 2004
File No. Wal. 325

Honorable Fredric J. Ammerman
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: Rugh vs. Wal-Mart Stores, Inc.
Clearfield County; No.: 02-1811-CD

Dear Judge Ammerman:

On May 7, 2004, you heard arguments on three Motions for Summary Judgment. None of us wants to miss the Orders, and if the Court is so inclined, would appreciate a timeframe as to when we may expect the Court's decision.

Sincerely,

Patrick J. Loughney

PJL/lac
cc.: James A. Naddeo, Esquire
Ann B. Wood, Esquire
Trisha Zaken, Esquire
Bryan K. Shreckengost, Esquire

(A) 5-7-04-130

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NATHAN D. HUGHES
MARK R. LANE (PA WV)
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SCOTT A. MATTHEWS (PA WV)
DONALD J. McCORMICK (PA WV OH)
SHARON M. MENCHYK

PETER MOLINARO, JR.
ELISABETH W. MOLNAR
MELVIN L. MOSER (PA WV)
GEORGE A. POWER
BRYAN J. SMITH (PA WV)
BRAD D. TRUST (PA WV)
CARY W. VALYO
DANIELLE VUGRINOVICH
ELEONORA M. ZYCH

May 4, 2004
File No. Wal. 325

Prothonotary
Clearfield County Courthouse
230 East Market Street
Suite 228
Clearfield, PA 16830

Re: Rugh vs. Wal-Mart Stores, Inc.
Clearfield County; No.: 02-1811-CD

Dear Prothonotary:

I am enclosing Wal-Mart Stores, Inc.'s Response to and Brief in Opposition to James Bailor t/d/b/a B&D Enterprises' Motion for Summary Judgment, regarding the above-referenced matter. Kindly file the originals date stamp the extra cover sheets and return same to my attention in the enclosed stamped, self-addressed envelope.

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

Very truly yours,

Danielle M. Vugrinovich

DMV/kdw
Enclosure: Brief in Opposition to Motion for Summary Judgment
Response to Motion for Summary Judgment
Extra Cover Sheet
Return envelope

cc w/encl.: Court Administrator
James A. Naddeo, Esquire
Ann B. Wood, Esquire
Trisha Zaken, Esquire
Bryan K. Shreckengost, Esquire

RECEIVED
MAY 06 2004
COURT ADMINISTRATOR'S OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

PRAECIPE FOR ARGUMENT OF DEFENDANT WAL-MART STORES, INC.'S MOTION FOR SUMMARY JUDGMENT

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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

Danielle M. Vugrinovich, Esquire
Pa. I.D. #88326

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753
437 Grant Street
1300 Frick Building
Pittsburgh, PA 15219

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

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

PRAECIPE FOR ARGUMENT OF DEFENDANT WAL-MART STORES, INC.'S MOTION FOR SUMMARY JUDGMENT

TO: COURT ADMINISTRATOR

Please place Defendant Wal-Mart Stores, Inc.'s Motion for Summary Judgment on the next available argument list. Wal-Mart Stores, Inc.'s Motion and Brief in Support thereof has already been filed with the Court.

Respectfully submitted,

Dell, Moser, Lane & Loughney, LLC

By: Danielle M. Vugrinovich
Danielle M. Vugrinovich, Esquire
Attorneys for Wal-Mart Stores, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Wal-Mart's Praecipe for Argument of Motion for Summary Judgment has been served by U.S. Mail, postage prepaid, this 30th day of March, 2004, upon all counsel of record as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830
Counsel for Plaintiffs

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 679
Clearfield, PA 16830
Counsel for Defendant James Bailor, t/d/b/a B&D Enterprises

Trisha A. Zaken, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219
Counsel for Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare

Bryan K. Shreckengost, Esquire
PIETRAGALLO BOSICK & GORDON
38th Floor, One Oxford Centre
Pittsburgh, PA 15219
Counsel for Additional Defendant Boyles Insurance, Inc.

Danielle M. Vugrinovich

Danielle M. Vugrinovich, Esquire

Law Offices
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318 East Locust Street
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Clearfield, PA 16830
e-mail: bswlaw @pennswoods.net
Writer's direct e-mail: annwood@pennswoods.net

RICHARD A. BELL
ANN B. WOOD

(814) 765-5537
fax (814) 765-9730

PAUL SILBERBLATT 1954-1985
F. CORTEZ BELL, JR. 1954-2002

OF COUNSEL:
DANIEL C. BELL

(A) 5-7-04-30

May 4, 2004

RE: Marshall E. Rugh and Anna M. Rugh, Plaintiffs vs. Wal-Mart Stores, Inc., a Corporation, and James Bailor, t/d/b/a B&D Enterprises, Defendants vs. James Bailor, t/d/b/a B&D, Enterprises, Et al. No.-02-1811-CD

Marcy Kelley
Deputy Court Administrator
CLEARFIELD COUNTY COURTHOUSE
230 East Market Street
Clearfield, PA 16830

Dear Marcy:

Enclosed you will find the Brief which we are filing with the Court in support of the Bailor Motion for Summary Judgment in the above captioned matter.

Very truly yours,

BELL, SILBERBLATT & WOOD

Ann B. Wood

Ann B. Wood

RECEIVED
MAY 04 2004
COURT ADMINISTRATOR'S OFFICE

ABW/nms
Enclosure
cc: James A. Naddeo, Esquire w/Encl.
Bryan K. Shreckengost, Esquire w/Encl.
Patrick J. Loughney, Esquire w/Encl.
James Bailor w/Encl.

HAND DELIVERED

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant

vs.

WAL-MART STORES, INC.,

Additional Defendant

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants

NO. 02-1811-CD

JURY TRIAL DEMANDED

Type of Pleading:

JAMES BAILOR, t/d/b/a B&D ENTERPRISES' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Filed on Behalf of:
James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant

Counsel of Record for this Party:

Ann B. Wood, Esquire
Supreme Court No.23364

Bell, Silberblatt & Wood
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
WAL-MART STORES, INC.	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

JAMES BAILOR, t/d/b/a B&D ENTERPRISES' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

AND NOW COMES Defendant, JAMES BAILOR t/d/b/a B&D ENTERPRISES, (hereinafter "Bailor") by his attorney, Ann B. Wood, Esquire, and submits this Brief in support of his Motion For Summary Judgment as follows:

Statement of Fact

The present case arises out of an alleged slip and fall accident which occurred on or about September 10, 2001 when the

Plaintiff Wife alleges she fell on debris in the parking lot outside of the Clearfield Wal-Mart Store.

The Original Defendants in the case are Wal-Mart, who is the property owner and manages the store, and James Bailor, t/d/b/a B&B Enterprises, who has a limited contract to sweep the Wal-Mart Parking Lot one (1) time a week. Bailor filed a Complaint to join Roger R. Hull, t/d/b/a HSJ Lawncare, as an Additional Defendant as the party responsible for the islands and planted areas from which the alleged debris had come.

At the present time, all three (3) Defendants have filed Motions For Summary Judgment arguing that no genuine issue of material facts exist and that Plaintiffs cannot establish a *prima facie* case of negligence against any of the Defendants, who are, therefore, entitled to summary judgment in respect to all claims.

Bailor would further aver that he is entitled to judgment as a matter of law because he had a limited contractual duty to sweep the Wal-Mart Parking Lot and as such, the evidence does not show any breach of his duty, therefore, there is no causal connection with the Plaintiff Wife and her fall.

Statement of Issues

1. WHETHER BAILOR IS ENTITLED TO SUMMARY JUDGMENT WHERE PLAINTIFFS ARE UNABLE TO OFFER EVIDENCE REGARDING THE CAUSE OF THE FALL?

SUGGESTED ANSWER: YES

2. WHETHER BAILOR IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW WHERE HE ONLY HAD A LIMITED DUTY TO SWEEP THE WAL-MART PARKING LOT AND AS SUCH, THERE WAS NO BREACH OF THAT DUTY OR NEGLIGENCE ON THE PART OF BAILOR?

SUGGESTED ANSWER: YES

Standard of Review

Motions for Summary Judgments in Pennsylvania are specifically governed by Pa.R.C.P. Rule 1035.2. The Court in examining those motions and the evidence put forth must make a determination on whether summary judgment should be entered, depending

> "upon an evidentiary record that either : 1) shows the material facts are undisputed or 2) contains insufficient evidence of facts to make out a *prima facie* cause of action or defense and, therefore, there is no issue to submit to a jury." Rabutino v. Freedom State Realty Company, Inc., 809 A.2d 933, 938 (Pa. Superior 2002); See also

Rauch v. Mike-Mayer, 783 A.2d 815, 823 (Pa.Superior 2001).

In examining whether the requirements of Rules 1035.2 are met, the Court looks as follows:

> "...if a defendant is the moving party, he may make the showing necessary to support the entrance of summary judgment by pointing to materials which indicate that the plaintiff is unable to satisfy an element of his cause of action. *Id.* Correspondingly, the non-moving party must adduce sufficient evidence on an issue essential to its case and on which it bears the burden of proof such that a jury could return a verdict favorable to the non-moving party." Rauch v. Mike-Mayer, supra, at 824.

Argument

1. BAILOR IS ENTITLED TO SUMMARY JUDGMENT WHERE PLAINTIFFS ARE UNABLE TO OFFER EVIDENCE REGARDING THE CAUSE OF THE FALL.

Bailor is entitled to judgment as a matter of law where Plaintiffs are unable to offer evidence regarding the cause of the fall.

The Plaintiff Wife, in her Complaint, claims to have slipped and fallen on debris that had come from an island in the Wal-Mart Parking Lot onto the parking lot surface. In her deposition, the Plaintiff Wife testified that she assumed she fell on a small stone that had come from an island because she saw the

stone on the ground after she fell. However, she presents confusion as to the cause of her fall. (See Deposition of Anna M. Rugh, Page 7 Lines 8 through 12 and Page 31, Lines 17 through 25 attached to Motion for Summary Judgment as Exhibit "M".)

There is no direct evidence as to the cause of the Plaintiff Wife's fall. There are no witnesses to the fall, nor is there evidence as to what caused the stone to be in the parking lot, nor how long it had been there. As such, the Plaintiffs are unable to establish a *prima facie* case of negligence and summary judgment should be granted. Bailor would incorporate by reference Wal-Mart's Motion For Summary Judgment and its Brief in support thereof as previously filed.

WHEREFORE, Bailor respectfully request the Honorable Court to grant his Motion for Summary Judgment and dismiss Plaintiffs' and Co-Defendants' Complaints with prejudice.

2. BAILOR IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW WHERE HE ONLY HAD A LIMITED DUTY TO SWEEP THE WAL-MART PARKING LOT AND AS SUCH, THERE WAS NO BREACH OF THAT DUTY OR NEGLIGENCE ON THE PART OF BAILOR.

Bailor is entitled to judgment as a matter of law as it is clear that he had a limited duty to remove debris from the Wal-Mart Parking Lot at the time of the alleged incident and there is

no evidence of any breach of that duty.

> "In order for liability to be imposed upon a defendant in a negligence action, the plaintiff must establish the following four elements: (1) the existence of a duty or obligation recognized by law; (2) a failure on the part of the defendant to conform to that duty, or a breach thereof; (3) a casual connection between the defendant's breach and the resulting injury; and (4) actual loss or damage suffered by complainant." Rabutino v. Freedom State Realty Company, Inc., supra at 938.

It is clear from the evidence put forth that Bailor had a limited contractual duty to sweep the debris from the Wal-Mart Parking Lot, which could included stones or landscape materials. (See Outside Maintenance Duty Agreement between Wal-Mart and Bailor attached to the Motion for Summary Judgment as Exhibit "F".) It is clear that Bailor's obligation under this contract, as modified by Wal-Mart Management, as evidenced by the testimony of Roger Gates, Wal-Mart Manager, was from three (3) times a week to one (1) a week.

The performance of Bailor's duties took approximately four (4) hours one (1) time a week when he would sweep those portions of the parking lot which were not occupied by other vehicles and traffic.

It is clear from the evidence that the primary responsibility for the maintenance of the Wal-Mart Parking Lot keeping it clear of debris and hazards is that of the Wal-Mart Personnel, including the managers, stock persons/cart pushers and safety teams (See deposition testimony of Ronald L. Orris, Roger Gates, and Melvin Knezevich, all part of Wal-Mart's Management of the Clearfield Store at various times, including the time of Plaintiff Wife's alleged fall, attached as Exhibit "G", "I", and "J" to the Motion for Summary Judgment), as well as in the documents produced by Wal-Mart on discovery for the stock persons/cart pushers job description. In that description, among the daily tasks for which they were responsible, are cleaning spills and making sure that the parking lot had no hazards. (See attached to the Motion for Summary Judgment as Exhibit "K".)

Wal-Mart further addresses the exact question of an alleged cause in this instance in their Risk Control Manual under Slip/Trip/Fall Solutions on Page 2 where it specifically directs the store personnel to establish a practice or policy in relation to maintenance as it relates to landscape rocks in the parking area, as well as general parking lot maintenance. (See Risk Control/Slip/Trip/Fall Solutions attached to the Motion for Summary Judgment as Exhibit "L".)

There is further no evidence from any of the testimony of the Wal-Mart Management that there has been any dissatisfaction or

failure on the part of Bailor to perform his normal, regular duties, which is further evidenced by the testimony of Bailor, himself, in his deposition, Page 28, Line 6 through 11, attached to the Motion for Summary Judgment as Exhibit "H". Further evidence can be interpreted from the fact that Bailor continues his contractual relationship with Wal-Mart for sweeping through the present time.

Bailor's responsibility was to sweep the parking lot on a weekly basis. There is no evidenced of a breach of that duty. Without specific evidence of a breach of that responsibility, the Plaintiffs cannot prove negligence on the part of Bailor. Therefore, summary judgment in favor of Bailor is proper.

Conclusion

Based upon the above argument, Bailor would respectfully request the Honorable Court to enter an Order granting summary judgment in favor of Bailor and dismissing it from this action with costs and prejudice.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No.02-1811-CD

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife, Plaintiffs

vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Defendants, Et al.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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CIVIL DIVISION

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs

vs.

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Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant

vs.

WAL-MART STORES, INC.,

Additional Defendant

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants

NO. 02-1811-CD

JURY TRIAL DEMANDED

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on Behalf of:
James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant

Counsel of Record for this Party:

Ann B. Wood, Esquire
Supreme Court No.23364

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WAL-MART STORES, INC.,	
Additional Defendant	
vs.	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	
Additional Defendants	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of JAMES BAILOR, t/d/b/a B&D ENTERPRISES' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on May 4, 2004:

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By:

Ann B. Wood

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Attorney For Defendant/
Additional Defendant,
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B&D Enterprises

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife	:	
-vs-	:	No. 02 – 1811 – CD
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES	:	
-vs-	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES	:	
-vs-	:	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.	:	

Current

OPINION AND ORDER

This matter comes before the Court on Preliminary Objections to Complaint to Join Additional Defendants filed on behalf of Boyles Insurance, Inc. From the record it appears that wife-plaintiff was injured in a fall on premises owned by Wal-Mart Stores, Inc. who joined James Bailor t/d/b/a B&D Enterprises, as an additional defendant alleging certani contractual obligations of Bailor to maintain the Wal-Mart parking lot. Bailor now seeks to join Boyles Insurance, Inc., Bailor's insurance carrier, alleging that Boyles was guilty of negligence in failing to provide the necessary insurance to Bailor. Boyles has filed Preliminary Objections against the Complaint to Join and this Court does herein grant said Preliminary Objections.

While Bailor may have a separage claim against Boyles, it involves a separate transaction and different facts than those upon which Plaintiffs' claim is based. The two claims

do not present common questions of law or facts and the proofs required for the insurance claim are entirely separate from those the Plaintiffs will present on the original cause of action. to permit these claims to proceed at the same trial would merely result in confusing the jury and this Court is satisfied that should Bailor wish to pursue his allegations, he must do so against Boyles Insurance, Inc. and therefore enters the following:

ORDER

NOW, this 22nd day of May, 2003, upon consideration of Preliminary Objections to Complaint to Join Additional Defendant as set forth above, it is the ORDER of this Court that said Objections be and are hereby sustained and Complaint dismissed.

By the Court,

_____

President Judge

§ 2252(a):17 —Insurers and indemnitors

West's Pa Digest 2d

Parties ⇐51(4)

A party who has contracted to indemnify an specific limited circumstances, such as incident to sc contractual purpose, may be joined as an addition dant in an action arising out of the happening of contemplated by the indemnity agreement.[25] A pı personal guaranty to the surety on a constructior the sort of special indemnity contract which will joinder of the guarantor as an additional defendant tion against the surety on the bond.[26] Under these stances it is said that the joinder is on the plaintiff's action and that the additional defendant's liabili party causing joinder arises out of the same fact plaintiff's injury.[27] The fact that the plaintiff has s tort claim while the additional defendant is join contract claim for the indemnity is not a valid obj the joinder.[28]

While it would appear from the literal terms of that the right to join one who is liable over to th party should include joinder of any express inc including an insurer,[29] such joinder is actually p only when the contract of indemnity particularly plates the loss for which the plaintiff claims, and n eral contract of indemnity which may include the ı action in its terms.[30] Thus, a defendant who claims additional defendant has a duty under an insuran ↓

25. DiLauro v. One Bala Ave. Associates, 357 Pa. Super. 209, 515 A.2d 939 (1986), related reference, 419 Pa. Super. 191, 615 A.2d 90 (1992); Nechwedowich v. Great Atlantic and Pacific Tea Co., Inc., 300 Pa. Super. 152, 446 A.2d 275 (1982).

26. Graybar Elec. Co. v. Bruns Elec., Inc., 5 Pa. D. & C.3d 429 (C.P. 1978).

27. DiLauro v. One Bala Ave. Associates, 357 Pa. Super. 209, 515 A.2d 939 (1986), related 419 Pa. Super. 191, 61 (1992).

28. Nechwedowich v. lantic and Pacific Tea Co Pa. Super. 152, 446 A.2d

29. Eads v. Smith, 276 129, 419 A.2d 129 (1980).

30. Stokes v. Loyal Moose Lodge No. 696, 50 466 A.2d 1341 (1983).

to indemnify the defendant on the plaintiff's claim may not join the insurer, because the insurance contract is a separate transaction from the insured loss on which the plaintiff sues.[31] Furthermore, the two claims do not present common questions of law or fact.[32] The proofs required for the insurance claim are entirely separate from those the plaintiff will adduce on the original cause of action.[33]

The same principle extends to a proposed additional defendant who is alleged to have been at fault in failing to procure insurance which should have provided indemnity for the defendant's liability to the plaintiff.[34] Also, the same rule applies when the conditions are reversed, that is, a casualty insurer in an action on the policy may not join as an additional defendant the party it alleges caused the plaintiff's loss. The claim on the insurance contract is not from the same occurrence as the negligence causing the injury.[35]

§ 2252(a):18 What constitutes being jointly or severally liable

West's Pa Digest 2d

Parties ⇐ 51(4)

The joinder as an additional defendant of a person alleged to be "jointly or severally liable" with the joining party is authorized upon the plaintiff's cause of action.[36] This covers situations in which both the defendant and the additional defendant are liable to the plaintiff, and their liabilities are

31. Stokes v. Loyal Order of Moose Lodge No. 696, 502 Pa. 460, 466 A.2d 1341 (1983); Garrett Electronics Corp. v. Kampel Enterprises, Inc., 382 Pa. Super. 352, 555 A.2d 216 (1989); Carlson v. Dunheimer, 17 Pa. D. & C.3d 134, 1980 WL 489 (C.P. 1980); Bowser v. Pleasant Const., Inc., 8 Pa. D. & C.3d 232 (C.P. 1978).

32. Nosak v. Thiel, 22 Pa. D. & C.3d 214, 1981 WL 537 (C.P. 1981);

33. Garrett Electronics Corp. v. Kampel Enterprises, Inc., 382 Pa. Super. 352, 555 A.2d 216 (1989).

34. Stokes v. Loyal Order of Moose Lodge No. 696, 502 Pa. 460, 466 A.2d 1341 (1983).

35. Genesis Leasing Corp. v. Maryland Cas. Co., 340 Pa. Super. 576, 490 A.2d 930 (1985).

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MARSHALL E. RUGH
and ANNA M. RUGH,
husband and wife,
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v.

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a corporation,
and JAMES BAILOR, t/d/b/a
B&D ENTERPRISES,
Defendants.

No. 02 - 1811 - CD

Type of Pleading:

PLAINTIFFS' BRIEF IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Filed on behalf of:
Plaintiffs

Counsel of Record for this party:

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THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M RUGH, husband and wife,	)	CIVIL DIVISION
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WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	)	
	)	
Defendants,	)	
	)	
vs.	)	
	)	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	)	
	)	
Additional Defendants.	)	

PLAINTIFFS' BRIEF IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Statement of the Facts

On September 10, 2001, Anna M. Rugh, plaintiff, fell on debris in the parking lot area outside of the Clearfield Wal-Mart store. The plaintiff testified in her deposition that she believes she fell on a small stone which had migrated from a nearby island of ornamental trees. Plaintiff did not see the small rock before she fell. Plaintiff did see the rock after she fell and believed that is what caused her to fall. There were no witnesses as to what actually happened.

Plaintiff testified in her deposition that she does not know what caused the small rock to be in the parking lot. Moreover, plaintiff testified that she does not know how long the small stone had been on the parking lot or that Wal-Mart Stores, Inc. knew of its existence.

However, plaintiff believes the small stone in the Wal-Mart parking lot is what caused her to fall. Wal-Mart as a business has a duty to inspect its premises to keep them safe for its invitees, or customers. The plaintiff has no way of knowing how long the small stone was in the parking lot or whether Wal-Mart knew of its existence. It is not her job to inspect the Wal-Mart parking lot.

For these reasons, as argued more fully below, a genuine issue of material fact exists and Wal-Mart, Inc. is not entitled to summary judgment on any of the claims asserted against it.

Statement of the Questions Involved

A. WHETHER WAL-MART STORES, INC. IS ENTITLED TO SUMMARY JUDGMENT AS THE PLAINTIFF IS UNABLE TO OFFER EVIDENCE SUFFICIENT TO RAISE A GENUINE ISSUE OF MATERIAL FACT REGARDING THE CAUSE OF HER FALL?

Suggested Answer: No.

B. WHETHER WAL-MART STORES, INC. IS ENTITLED TO SUMMARY JUDGMENT BECAUSE NO GENUINE ISSUE OF MATERIAL FACT EXISTS THAT IT DID NOT CREATE A HAZARDOUS CONDITION OR THAT IT HAD NEITHER ACTUAL NOR CONSTRUCTIVE NOTICE OF THE ALLEGED HAZARDOUS CONDITION?

Suggested Answer: No.

Standard of Review

Summary judgement is proper where the pleadings, depositions, answers to interrogatories, admissions and affidavits and other materials demonstrate that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Davis v. Resources for Human Development, Inc., 770 A.2d 353, 356 (Pa.Super. 2001). Under Pa.R.C.P. 1035.2(1) "any party may move for summary judgment in whole or in part as a matter of law:

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action **or defense which could be established by additional discovery or expert report,** or

(2) **if, after the completion of discovery relevant to the motion,** including the production of expert reports, an adverse party who will bear the burden of proof at trial had failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury."

Manzetti v. Mercy Hospital, 776 A.2d 938, 950-51 (Pa. 2001); Ghaner v. Bindi, 779 A.2d 585, 588 (Pa. Super 2001). Alternatively, summary judgment may be entered pursuant to Pa. R.C.P. 1035(2) following the completion of discovery if a party who bears the burden of proof a trial has failed to produce evidence of facts essential to the cause of action which would warrant the submission of the issue to a jury. Rieger v. Altoona Area School Dist., 768 A.2d 912, 914 (Pa. Commw. 2001). In both instances, " a proper grant of summary judgment depends upon the evidentiary record that either (1) shows the material facts are disputed or (2) contains insufficient evidence of facts to make out prima facie cause of action or defense." Basile v. H&R Block Inc., 777 A.2d 95 (Pa. Super. 2001).

When considering a motion for summary judgment, the record must be viewed in the light most favorable to the non-moving party with all doubts as to the existence of a factual issue being resolved against the movant. Pappas v. Asbel, 564 Pa. 407, 418, 768 A.2d 1089, 1095 (2001). Although the moving party bears the burden of proving the nonexistence of any genuine issue of fact, the non-moving party must adduce sufficient evidence regarding an essential issue on which he bears the burden of proof in order to successfully withstand a summary judgment

motion. Keystone Aerial Surveys Inc. v. Pennsylvania & Casualty Ins. Guaranty Ass'n, 777 A.2d 84, 89 (Pa. Super. 2001). However, in considering a motion for summary judgment, "it is not the court's function to decide facts, but to determine whether there are issues of fact to be tried." Bellefonte Area School District v. Deak, 7709 A.2d 1240, 1242 (Pa. Commw. 2001). Furthermore, summary judgment is appropriate only when there is no genuine issue of material fact and it is clear and free from doubt that the movant is entitled to judgment as a matter of law. Pappas, *supra*.

In the instant case discovery has not been completed by the plaintiff's attorney. There is no knowledge of how often Wal-Mart inspects its parking lot or how often it has a duty by law to inspect its parking lot according to how may people use the parking lot each day and how big it is, etc... There is still evidence that needs to be discovered by the plaintiff's attorney. Therefore, Rule 1035.2 applies because additional discovery is needed and summary judgment should not be granted to the defendant.

Argument

A. THERE IS A GENUINE ISSUE OF MATERIAL FACT REGARDING THE PLAINTIFF'S FALL.

Wal-Mart's negligence is a genuine issue of fact as to the cause of the plaintiff's fall because the record as a whole shows the plaintiff testified the small rock in the Wal-Mart parking lot is what caused her to fall. The defense in its brief in support of summary judgment selectively states Anna Rugh's deposition. The plaintiff clearly states in her deposition that she fell on the small rock. The fact that later in her deposition she may state that she did not see the small rock until after she fell and believes that she fell on the rock does not matter when

considering a motion for summary judgment. Conflicts in the plaintiff's testimony go to her credibility. Credibility is an issue for the jury to determine, not the basis of summary judgment.

"Questions of credibility must always be put before the jury as fact finder, and the judge must instruct the jury as to credibility considerations applicable to the case." Com. v. Snoke, 580 A.2d 295 (Pa. 1990). In Com. v. Martin the court held "discrepancies in testimony of individuals as to the events preceding the incident in question were for the jury to resolve." Com. v. Martin, 393 A.2d 23 (1978). Similarly the Court held in Bailey that the "plaintiff's credibility was for the jury alone to resolve." Bailey v. Pittsburgh Railways Company, 199 A.2d 460, (1964). Therefore, summary judgment should not be granted because credibility is an issue for the jury to decide.

B. PLAINTIFFS ARE ABLE TO RAISE A GENUINE ISSUE OF MATERIAL FACT THAT WAL-MART EITHER CREATED THE CONDITION OF WHICH THEY COMPLAIN OR THAT WAL-MART HAD ACTUAL OR CONSTRUCTIVE NOTICE OF THE ALLEGED CONDITION.

The Supreme Court of Pennsylvania held in Stimmel v Kerr, "that the duty incumbent on a possessor of land as to a business visitor is to keep the premises reasonably safe or to warn of dangers existing thereon which the occupier knows **or should know exist.** Stimmel v Kerr, 1959, 148 A.2d 232, 233, citing McCreery v Westmoreland Farm Bureau Co-operative Ass'n, 1947, 357 Pa. 567, 570, 55 A.2d 399.

The Supreme Court of Pennsylvania has said repeatedly that "it is incumbent upon the owner of premises upon which persons come by invitation, express or implied, to maintain such premises in a reasonably safe condition for the contemplated uses thereof and the purposes for which the invitation was extended." Morris v Atlantic and Pacific Tea Company, 1956, 121

A.2d 135, 137, citing Nettis v General Tire Co., 317 Pa. 204, 177 A. 39. "In an action by a customer and her husband against a store for damages sustained when the customer, after purchasing some groceries at the store, slipped and fell on an icy ridge in its parking lot as she was about to enter her husband's automobile, evidence presented **a question for jury** as to whether the store was negligent in not doing anything, or in not doing enough to prevent accidents . . . ." Morris v Atlantic and Pacific Tea Company, 1956, 121 A.2d 135, 138. The court in Morris also found that "the evidence sustained a jury finding that the store **failed in its obligation of exercising due care in the circumstances.**" Id.

Moreover, "the test of liability in tort action is whether defendant, by act or omission, injured another by disregarding duty imposed by law respecting such other." Ebbert v Philadelphia Electric Company, 330 Pa. 257, 269, 198 A. 323, 329. Wal-Mart may have disregarded the duty to inspect its parking lot imposed by law.

Similar to Stimmel, Morris, and Ebbert, Wal-Mart, as the owner of the premises upon which customers come, has a duty to maintain the premises in a reasonably safe condition or to warn customers of existing danger which Wal-Mart knows **or should know exist**. Also, the evidence in the instant case presents a question for the jury to decide as to whether Wal-Mart was negligent in not doing anything, or in not doing enough to prevent accidents. Therefore, Wal-Mart is not entitled to summary judgment as a matter of law.

"Before knowledge of a fault or other condition can be visited constructively, the situation must not only have existed a sufficient length of time for its due discovery but it must also be capable of ascertainment upon the inspection, observation or supervision legally required of the one sought to be bound with such knowledge." Reed, Admrx., v Duquesne Light Co. et

al., 354 Pa. 325, 47 A2d 136, 1946. There is a duty on owners of "reasonable inspection from time to time." Matlack v Pennsylvania Power and Light Co., 312 Pa. 206, 210, 167 A. 37.

In Bremer, the Superior Court of Pennsylvania found that "the owner had a duty to maintain its premises in a reasonably safe condition. Bremer v W.W. Smith, Inc., 191 A. 395, 126 Pa. Super. 408, 1937. "What will amount to constructive notice of defective or dangerous condition existing upon a defendant's premises, necessarily varies under the circumstances of each case. Some of the factors affecting the question, in addition to the time elapsing between the origin of the defect and the accident, are the size and physical condition of the premises, the nature of the business conducted thereon, the number of persons using the premises and the frequency of such use, the nature of the defect and its location on the premises, its probable cause and the opportunity which defendant, as a reasonably prudent person, had to remedy it." Id. "The Restatement of Torts, under the title 'Special Liability of Possessors of Land to Business Visitors' sets up under Section 343 the following standard of care: 'A possessor of land is subject to liability for bodily harm caused to business visitors by a natural or artificial condition thereon if, but only if, he (a) knows, **or by the exercise of reasonable care could discover, the condition which, if known to him, he should realize as involving an unreasonable risk to them . . . .**" Id.

In addition, in the instant case there is a duty upon Wal-Mart of reasonable inspection from time to time. Some factors affecting how often Wal-Mart has a duty to inspect are the origin of the defect and the accident, the size and physical condition of the premises, the number of persons using the premises, and probable cause and opportunity which defendant, as a reasonably prudent establishment, had to remedy it. The aforementioned factors are part of the information that plaintiff's attorney does not have because discovery has not been completed.

Therefore, there is no way to know how often Wal-Mart has a duty to inspect its premises until discovery is finished and whether they will be held to have constructive notice of the debris in the parking lot.

Conclusion

This motion for summary judgment is premature because discovery has not been completed. Plaintiff's attorney does not know how often Wal-Mart is to inspect its premises or where it has a duty to inspect. Based upon the reasoning of the above cases, a genuine issue of material fact does exist for a trial in this case.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court dismiss the Defendant's motion for summary judgment.

Respectfully submitted:

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

MARSHALL E. RUGH	*	
and ANNA M. RUGH,	*	
husband and wife,	*	
Plaintiffs,	*	
	*	No. 02 - 1811 - CD
v.	*	
	*	
WAL-MART STORES, INC.,	*	
a corporation,	*	
and JAMES BAILOR, t/d/b/a	*	
B&D ENTEPRISES,	*	
Defendants.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiff's Brief in Opposition to Motion for Summary Judgement in the above-captioned action was served on the following persons and in the following manner on the 12th day of September, 2003:

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WAL.325

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants.

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

WAL-MART STORES, INC.'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Filed on behalf of Defendant Wal-Mart Stores, Inc.

Counsel of Record for this Party:

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

Vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

Vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants.

CIVIL DIVISION

No. 02-1811-CD

JURY TRIAL DEMANDED

WAL-MART STORES, INC.'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

AND NOW, comes Defendant Wal-Mart Stores, Inc., by and through its counsel, Dell, Moser, Lane & Loughney, LLC, and Patrick J. Loughner, Esquire, and having filed its Motion for Summary Judgment, submits the instant Brief in support thereof, stating as follows:

I. Statement of the Facts

The instant case arises out of an alleged slip and fall accident that occurred on September 10, 2001. On said date, wife-Plaintiff alleges to have fallen on debris in the parking lot area outside of the Clearfield Wal-Mart store.

During her deposition, wife-Plaintiff testified that she assumes that she fell on a small stone which had migrated from a nearby island of ornamental trees because she saw a stone on the ground after she fell. However, Wife-Plaintiff did not see the small stone before she fell and there were no witnesses as to what actually caused her to fall. Therefore, there is no direct evidence as to the cause of wife-Plaintiff's fall.

Moreover, wife-Plaintiff testified during her deposition that she does not know what caused the small stone to be in the parking lot. Further, wife-Plaintiff conceded that she does not know how long the small stone had been in the parking lot or that Wal-Mart Stores, Inc. knew of its existence.

For these reasons, as argued more fully below, no genuine issue of material fact exists that the Plaintiffs cannot establish a prima facie case of negligence against Wal-Mart Stores, Inc. and that Wal-Mart Stores, Inc. is entitled to summary judgment with respect to all claims asserted against it.

II. Statement of the Questions Involved

A. WHETHER WAL-MART STORES, INC. IS ENTITLED TO SUMMARY JUDGMENT AS THE PLAINTIFF IS UNABLE TO OFFER EVIDENCE SUFFICIENT TO RAISE A GENUINE ISSUE OF MATERIAL FACT REGARDING THE CAUSE OF HER FALL?

Suggested Answer: Yes

B. WHETHER WAL-MART STORES, INC. IS ENTITLED TO SUMMARY JUDGMENT BECAUSE NO GENUINE ISSUE OF MATERIAL FACT EXISTS THAT IT DID NOT CREATE A HAZARDOUS CONDITION OR THAT IT HAD NEITHER ACTUAL NOR CONSTRUCTIVE NOTICE OF THE ALLEGED HAZARDOUS CONDITION?

Suggested Answer: Yes.

III. Standard of Review

There are two (2) bases upon which a trial court can take a matter from the factfinder and enter judgment: (1) movant is entitled to judgment as a matter of law, in which case, the court reviews the record and concludes that with all of the factual inferences decided adverse to the movant, the law nevertheless requires a verdict in his favor; and/or (2) the evidence is such that no two reasonable minds could disagree that the outcome should be rendered in favor of movant. Nogowski v. Alemo-Hammad, 456 Pa.Super. 750, 691 A.2d 950 (1997).

With regard to the second basis, the Pennsylvania Supreme Court has held that:

> A non-moving party must adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor. Failure to adduce this evidence establishes that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.

Ertel v. Patriot Newsco, ___ Pa. ___, 674 A.2d 1038 (1996). The Court held that "[a]llowing non-moving parties to avoid summary judgment where they have no evidence to support an issue on which they bear the burden of proof runs contrary to the spirit of Rule 1035. Id., 674 A.2d at 1042.

To successfully oppose a Motion for Summary Judgment, the party bearing the burden of proof at trial must come forward with sufficient evidence to support his claim in response to a Motion for Summary Judgment; Rule 1035.2 does not require that the moving party introduce any evidence on an issue on which it does not have the burden of proof at trial. Id., 674 A.2d at 1041-42 (1996). The evidence offered in opposition to a Motion for Summary Judgment must be sufficient to support a finding in favor of the non-moving party on that issue. Id. Summary judgment is "designated to eliminate the poker game aspect of litigation and compel the players

to put their cards face up on the table before the trial begins." Roland v. Kravco, Inc., 355 Pa.Super. 493, 513 A.2d 1029 (1986).

IV. Argument

A. PLAINTIFF IS UNABLE TO PRESENT A *PRIMA FACIE* CASE THAT THE INJURIES SHE SUSTAINED WERE CAUSED BY WAL-MART'S ALLEGED NEGLIGENCE.

Proving that an accident happened, or the existence of an opportunity for it to happen, in the manner alleged, is entirely insufficient to establish negligence. Houston v. Republic Athletic Association, 343 Pa. 218, 22 A.25 715 (1941); Hillelson v. Renner, 183 Pa. Super. 148, 130 A.2d 212 (1957). Plaintiff must go further and show not only defendants' negligence, but that the injuries complained of were the result of such negligence. Dubois v. City of Wilkes-Barre, 410 Pa. 155, 189 A.2d 166 (1963).

The Pennsylvania Supreme Court has consistently upheld judgments in favor of defendants when plaintiffs cannot establish what actually caused them to fall. For example, in Dubois, plaintiff fell on a sidewalk containing an accumulation of melted ice cream and grease. The trial court entered a compulsory nonsuit as the plaintiff was unable to prove that it was this material which caused her to fall. The Pennsylvania Supreme Court held that the trial court properly entered the compulsory nonsuit in favor of the defendant. In so holding, the Court stated:

> The action of the court below was correct. The plaintiff's testimony failed to establish what caused her to fall. In order to establish liability in an action of this nature, it is necessary for the plaintiff to prove what *actually* caused the accident, not what *might* possibly have caused it. The jury cannot be allowed to *guess* that the fall resulted from the existence of a foreign substance on the sidewalk. See, Sellers v. Cline, 160 Pa.Super. 85, 49 A.2d 873 (1946); Rogers v. S. Phil. Nat'l Bank, 160 Pa.Super. 154, 50 A.2d 697 (1947); Hillelson v. Renner, 183 Pa.Super. 148, 130 A.2d 212 (1957); Burns v. City of Pitts., 320 Pa. 92, 181 A. 487 (1935);

> Rinaldi v. Levine, 406 Pa. 74, 176 A.2d 623 (1962); Gayne v. Philip Carey Co., 385 Pa. 618, 123 A.2d 432 (1956).

Id. at 167 (emphasis original).

In Houston, *supra,* plaintiff brought suit to recover damages for the death of her husband, who fell and was fatally injured descending a stairway from a clubroom occupied by the Republican Athletic Association. Plaintiff alleged that the decedent's fall was caused by a splinter of wood on the third step. The trial court entered a nonsuit on the grounds that even if "the evidence disclosed a defective condition sufficient to constitute a breach of duty...there was no sufficient proof that the deceased's fall was due to any such condition." Id. at 716.

Plaintiff appealed, contending that the evidence disclosed facts and circumstances from which the jury could reasonably infer that the decedent fell due to the splinter. The Pennsylvania Supreme Court affirmed the nonsuit entered by the trial court. In so holding, the Court stated:

> In the absence of any direct proof as to the manner in which the accident occurred, the burden was on appellant to produce evidence of circumstances "so strong as to preclude the possibility of injury in any other way, and provide as the only reasonable inference the conclusion" that her husband's death was caused by the negligence of appellees in the manner alleged. See Pfendler v. Speer, 323 Pa. 443, 448, 185 A. 618, 620; Wenhold v. O'Dea, 338 Pa. 33, 35 12 A.2d 115; Skrutski v. Cochran, 341 Pa. 289, 291, 19 A. 2d 106. "Proving that an accident happened, or the existence of an opportunity for it to happen, in the manner alleged, is entirely insufficient to establish negligence. Stern v. [City of] Reading, 255 Pa. 96, 99 A. 367. Plaintiff must go further, and show not only defendant's negligence, but that the injuries complained of were the result of such negligence. Reddington v. [City of] Philadelphia, 253 Pa. 390, 98 A. 601; Wagner v. Lehigh Traction Co., 212 Pa. 132, 61 A. 814". Erbe v. Philadelphia R. T. Co., 256 Pa. 567, 570, 100 A. 966. While it may be that appellant's hypothesis as to the cause of this regrettable accident is a plausible one, for all that appears from the evidence, the circumstances relied upon are at least equally consistent with theories of the case attributing the accident to a variety of causes, not excluded by the evidence, for none of which any of appellees could conceivably be held liable, as the court below has pointed out, including the possibility that the deceased may simply have tripped or stumbled, without such tripping or stumbling having any connection whatever with the defects in the steps complained of. Under these circumstances, a finding that the fatal injuries of appellant's husband resulted from the negligence alleged would, at most, represent nothing but a mere guess or

> conjecture; hence a verdict for appellant could not be sustained. "Where a defendant is liable for only one of two or more equally probable causes and to say which is a mere guess, there can be no recovery". Anderson v. Reading Co., 306 Pa. 246, 250, 159 A. 450, 452. See also: Gausman v. R.T. Perason Co., 284 Pa. 348, 352, 131 A. 247; Ranck v. Sauder, 327 Pa. 177, 180, 193 A. 269; Dunkerton v. North Braddock Borough, 330 Pa. 89, 91, 198 A. 677.

Id.

Additionally, in Reddington v. City of Philadelphia, 253 Pa. 390, 98 A. 601 (1916), plaintiff brought suit against the City of Philadelphia alleging that she was caused to trip and fall in a depression in the pavement of a sidewalk. At trial, plaintiff testified that her foot got caught as she was walking on the pavement, but that she did not know what she tripped in or fell over. In support of her allegation that she tripped in the hole, plaintiff offered the testimony of a neighbor who saw plaintiff laying on the ground and who merely concluded that plaintiff tripped in the hole because it was located near where plaintiff fell.

In affirming the nonsuit entered by the trial court, the Pennsylvania Supreme Court stated:

> This is the testimony in the case on which the plaintiff relies to show that the depression in the pavement, caused by the sunken water box, was the cause of her falling, which resulted in the injuries she sustained. The plaintiff, as will be observed, does not testify that she tripped in the hole, and it is quite clear that none of the other witnesses saw the plaintiff until after she had fallen, and that they did not know what caused her to fall. The case, therefore, is barren of any testimony to sustain the averment in the statement that the negligence of the defendant was the cause of the injuries of which the plaintiff complains and for which she seeks to recover damages in this case. The evidence does not disclose how far the plaintiff was from the hole when she fell or when she was picked up by those who came to her assistance. It is conflicting as to the place she fell. There are no facts disclosed by the testimony which would warrant the jury in finding what caused the plaintiff to fall. *The jury cannot be permitted to find that because there was a depression in the pavement it caused her to fall. The burden was upon the plaintiff to sustain by proof the averment in her statement that her foot slipped into the depression which caused her to fall, and having failed to show this fact the nonsuit was properly granted, and the learned court below was right in refusing to take it off.*

Id. at 602 (emphasis added).

Similar to Dubois, Houston and Reddington, Plaintiff in the instant case cannot offer any direct proof as to what actually caused her to fall. Although Plaintiff alleges that she fell on debris (stones) which had migrated from a nearby island containing ornamental trees, Plaintiff must offer sufficient evidence to establish that it was this condition which *actually* caused her fall. Dubois at 167. Wal-Mart Stores, Inc. is entitled to summary judgment as Plaintiff cannot offer sufficient evidence regarding what caused her to fall. Plaintiff testified during her deposition as follows:

Q: You said that you, I think, fell on the pebble. Is that the word you used?

A: Well, you call – I call it pebbles. I call them little stones.

Q: How do you know that what you fell on was the pebble, the little stone, and we'll use stones.

How do you know what caused you to fall?

A: Well, I know I slipped on them.

Q: How do you know that?

A: There was some on the ground. They were off the island. They were on the ground.

* * *

Q: What I am trying to understand is, did you conclude later because these stones were there that's what you fell on?

A: Yes.

Q: Did you see the stones before you fell?

A: No.

(Depo. Tr. of Anna Rugh, p. 12).

In addition to not being able to offer any evidence herself as to what caused her to fall, there were no witnesses to the Plaintiff's fall. In light of the fact that Plaintiff cannot offer any

direct evidence of the cause of her fall, it would be error to allow the jury to speculate that the small stones located in the parking lot caused Plaintiff to fall. In short, plaintiff is unable to establish a *prima facie* case of negligence against Wal-Mart, and Wal-Mart is entitled to summary judgment as a matter of law.

B. PLAINTIFFS ARE UNABLE TO RAISE A GENUINE ISSUE OF MATERIAL FACT THAT WAL-MART EITHER CREATED THE CONDITION OF WHICH THEY COMPLAIN OR THAT WAL-MART HAD ACTUAL OR CONSTRUCTIVE NOTICE OF THE ALLEGED CONDITION.

Assuming, *arguendo*, that there is sufficient direct evidence that the Plaintiff fell on a small stone in the parking lot, which there is not, Wal-Mart Stores, Inc. is nevertheless entitled to summary judgment as there is no evidence that Wal-Mart Stores, Inc. caused the stone to be in the parking lot or that it had actual or constructive knowledge of the presence of the stone.

It is axiomatic that the mere happening of an accident is insufficient to establish liability. Martino v. Great Atlantic & Pacific Tea Co., 419 Pa. 229, 213, A.2d 608, 610 (1965); Swift v. Northeastern Hospitals of Philadelphia, 456 Pa. Super. 330, 690 A.2d 719, 722 (1997), *alloc. den.*, 701 A.2d 577 (Pa. 1997). To establish liability, the Plaintiffs must prove that the Defendant created the condition of which they complain or that Defendant knew or in the exercise of reasonable care should have known of the existence of the condition. Hess v. Sunray Drug Co., 387 Pa. 199, 127 A.2d 699 (1956); Moultrey v. Great Atlantic & Pacific Tea Co., 281 Pa. Super. 525, 422 A.2d 593, 596 (1980); Rodgers v. Horn & Hard Hat Baking Co., 183 Pa. Super. 83, 127 A.2d 762, 764 (1956). As in the present case, when the Plaintiffs are unable to prove actual notice of an alleged dangerous condition, the Plaintiffs must at least show constructive notice. Rodgers, 127 A.2d at 764. One of the most important factors to be taken into consideration in proving constructive notice is the time elapsing between the origin of the defective or hazardous condition and the accident. Id.

In Martino v. Great Atlantic & Pacific Tea Co., 419 Pa. 229, 213 A.2 608 (1965) the plaintiff slipped and fell on a grape in the defendant's grocery store. There was no evidence as to how any grapes got onto the floor or as to how long any grapes might have been there prior to the fall. The Supreme Court stated:

> There is no evidence from which the jury might reach a conclusion as to the cause of the presence of the grape in the aisle, and jurors may not be permitted to reach conclusions based upon guess or conjecture.

Id. 213 A.2d at 610. Accordingly, the Supreme Court affirmed the trial court's grant of a compulsory non-suit in favor of the defendant.

The same result in Martino followed in Moultrey, *supra*, where the plaintiff allegedly slipped and fell on a cherry on the floor of the defendant's grocery store. The plaintiff, Mrs. Moultrey, and her children testified that they did not know how long the cherry had been on the floor or how it got there. Id., 422 A.2d at 595. As a result of plaintiff's inability to present a *prima facie*, case, the Superior Court, relying upon Marino, affirmed the trial court's grant of a compulsory non-suit.

Recently, in Swift, *supra*, the Superior Court applied the reasoning of Moultrey in affirming a trial court's grant of summary judgment in a slip and fall case. In Swift, the plaintiff's decedent was a patient at the defendant's hospital. When the plaintiff's decedent went to use the defendant hospital's restroom, she allegedly slipped on water and fell. The trial court granted summary judgment in favor of the defendant hospital noting that the plaintiff was unable to prove that the defendant hospital had constructive notice of the presence of the water on the floor. In affirming the trial court, the Superior Court stated:

> ...Appellants have failed to show in the record that Appellee had notice of the condition. Appellants presented no evidence as to how the water arrived on the floor. Nor is there evidence as to

> how long the condition existed. Instead, Appellants cite Appellee's janitorial maintenance records which indicate that the person charged with maintaining the area where decedent fell had left the hospital property four hours prior to the accident.

Id., 690 A.2d at 722.

In this case, there is no evidence in the record that Wal-Mart Stores, Inc. either created the alleged dangerous condition or had actual notice of it. In fact, wife-Plaintiff's own testimony establishes that Plaintiffs are unable to demonstrate that Wal-Mart Stores, Inc. created the allegedly dangerous condition or that defendant was aware of the alleged condition. Wife-Plaintiff testified during her deposition as follows:

Q: Do you know how the stones got on the ground where you fell?

A: No, I don't.

* * *

Q: Did anyone from Wal-Mart tell you how the stones—they knew how the stones got there?

A: No, they didn't.

* * *

Q: Do you know whether anyone from Wal-Mart caused those stones to be on the ground where you fell?

A: No, I don't.

* * *

Q: Did anyone from Wal-Mart tell you that they knew those stones were there?

A: No, they didn't.

(Depo. Tr. of A. Rugh, p. 14).

Nor can plaintiffs offer any evidence that Wal-Mart had constructive notice of the small stone in the parking lot. Wife-Plaintiff testified during her deposition as follows:

Q: Do you know how long they [the stones] were there prior to your fall?

A: No, I don't.

* * *

Q: Did anyone from Wal-Mart or anyplace else tell you how long they were there?

A: No.

(Depo. Tr. of A. Rugh, p. 14).

Based upon the reasoning of the above cases, no genuine issues of material fact exist for a trial in this case. Wife-Plaintiff, by her own admission, is unable to state who caused the small stone to be in the parking lot where she allegedly fell. Wife-Plaintiff is also unable to testify as to how long the small stone was in the parking lot. Based on wife-Plaintiff's own admissions, no genuine issue of material fact exists for trial that Wal-Mart Stores, Inc. either caused the small stone to be in the parking lot or that Wal-Mart Stores, Inc. had actual or constructive notice of its alleged presence. Accordingly, Wal-Mart Stores, Inc. is entitled to summary judgment on all claims against it.

Respectfully submitted,

Dell, Moser, Lane & Loughney, LLC

By: _____
Patrick Loughney, Esquire
Attorneys for Wal-Mart Stores, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **WAL-MART STORES, INC.'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** has been served by U.S. Mail, postage prepaid, this 14 day of July, 2003, upon all counsel of record as follows:

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July 14, 2003
File No. Wal. 325

David S. Meholick
Court Administrator
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Re: Rugh vs. Wal-Mart Stores, Inc.
Clearfield County; No.: 02-1811-CD

Dear Mr. Meholick:

Enclosed please find the original and one extra cover sheet for Wal-Mart Stores, Inc.'s Brief in Support of Motion for Summary Judgment regarding the above-referenced matter. Kindly list the Motion for argument, notify me of the argument date, file the original, date stamp the extra cover sheet and return same to my attention in the enclosed stamped, self-addressed envelope. The original Motion for Summary Judgment has been sent to the Prothonotary this date.

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

Very truly yours,

Brad D. Trust

BDT/mak

Enclosure: Original Brief in Support of Motion for Summary Judgment
Extra Cover Sheet
Return envelope

cc w/encl.: James A. Naddeo, Esquire
Ann B. Wood, Esquire
Paul Walsh, Esquire
Bryan K. Shreckengost, Esquire

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COURT ADMINISTRATOR'S OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants,

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES
Additional Defendant,

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,
Additional Defendants.

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JURY TRIAL DEMANDED

No. 02-1811-CD

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO COMPLAINT TO JOIN ADDITIONAL DEFENDANTS UNDER Pa. R.C.P. 2252(a)

Filed on Behalf of:

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COURT ADMINISTRATOR'S OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	)	
Plaintiffs,	)	No. 02-1811-CD
vs.	)	
WAL-MART STORES, INC., a corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	)	JURY TRIAL DEMANDED
Defendants,	)	
vs.	)	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES	)	
Additional Defendant,	)	
vs.	)	
ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	)	
Additional Defendants.	)	

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO COMPLAINT TO JOIN ADDITIONAL DEFENDANT UNDER Pa. R.C.P. 2252(a)

AND NOW, comes the Additional Defendant, Boyles Insurance, Inc., (hereinafter referred to as "Boyles"), by and through its attorneys, Pietragallo, Bosick & Gordon, and files this Brief.

INTRODUCTION

On or about December 17, 2002, Plaintiffs, Marshall E. Rugh and Anna M. Rugh, husband and wife, filed their Amended Complaint setting forth various causes of action purportedly arising out of an alleged slip and fall incident involving Mrs. Rugh in the parking lot of the Wal-Mart Super Center located on Route 879, Clearfield, Pennsylvania. As set forth in their Amended Complaint, the Rughs allege various theories of negligence and premises liability as against Wal-Mart Stores,

Inc. ("Wal-Mart"), the owner of the property, and James Bailor, t/d/b/a B&D Enterprises ("Bailor") a grounds maintenance contractor hired by Wal-Mart.

Bailor subsequently filed a Complaint to Join Additional Defendant under Pa. R.C.P. 2252(a), seeking to join Boyles and others. *See* Complaint to Join Additional Defendant Under Pa. R.C.P. 2252(a) filed on behalf of James Bailor, t/d/b/a B&D Enterprises. Bailor joined Boyles on the theory that Boyles, an insurance agency, failed to provide or recommend to Bailor an appropriate policy or policies of insurance which might provide coverage to Bailor for the claims asserted by the Rughs.

The attempted joinder of Boyles as an Additional Defendant in this personal injury, slip and fall action is improper and contrary to law and Boyles has filed preliminary objections seeking to have Bailor's claim dismissed.

ARGUMENT

Rule 2252(a) of the Pennsylvania Rules of Civil Procedure permits Bailor to join as additional defendants in the present action only those persons who may be 1) solely liable on Rughs' causes of action; 2) liable over to Bailor on the Rughs' causes of action; 3) jointly or severally liable with Bailor on the Rughs' causes of action; or 4) liable to Bailor on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the Rughs' causes of action (negligence and premises liability) are based. None of those circumstances exist with respect to Boyles.

Rather, Bailor's allegations of alleged liability against Boyles are based upon a separate and distinct transaction other than the alleged slip and fall incident which forms the basis of Rughs' claims in this action. Bailor's claim against Boyles is based upon the circumstances under which Bailor purchased insurance through the Boyles agency. The transactions and events upon which Bailor relies to assert a claim against Boyles have no legal or factual connection to Ms. Rugh's fall

in the Wal-Mart parking lot. Boyles has no connection with and can have no liability for the Rughs' claims.

As a matter of law, Bailor's claim alleging wrongful failure to provide or recommend insurance coverage cannot be joined in this liability action. See Stokes v. Loyal Order of Moose Lodge No. 696, 502 Pa. 460, 466 A.2d 1341 (1983). In Stokes, the plaintiffs, husband and wide, filed a complaint alleging that plaintiff-wife was injured when a folding chair she was sitting on at the defendant Moose Lodge collapsed. Stokes, 466 A.2d at 1342. The Moose Lodge then filed a complaint to join as additional defendants the Lodge's liability insurer for failing to defend or indemnify the Lodge and the Lodge's insurance agent for failing to obtain or renew an insurance policy. Id. Both the insurer and the insurance agency filed preliminary objections to the joinder, which the trial court sustained. Id.

On appeal, the Pennsylvania Supreme Court held that the trial court properly sustained the preliminary objections. Specifically, the Supreme Court held that the events giving rise to the plaintiff-wife's injuries (the collapsed chair and fall) were separate and distinct from the events giving rise to the Moose Lodge's claims against its insurer and insurance agent for failure to procure insurance and to defend or indemnify. Id. at 1345. Particularly relevant to Boyles' present preliminary objections, the Supreme Court in Stokes held that the events giving rise to the plaintiff-wife's claims against the Moose Lodge were separate and distinct from the events giving rise to the Moose Lodge's claims against its insurer and insurance agent, that the two claims should not be joined because they did not involve a common factual background or common factual and legal issues and that the claims against the insurer and agency could not properly be joined with the plaintiffs' liability action. Id. According to Pa.R.C.P. 2252(a) and applicable case law, then, Bailor is precluded from joining in this liability action claims that Bailor might wish to assert

against Boyles. Stokes; Garrett Electronics Corporation v. Kampel Enterprises, Inc., 382 Pa. Super. 352, 555 A.2d 216 (1989).

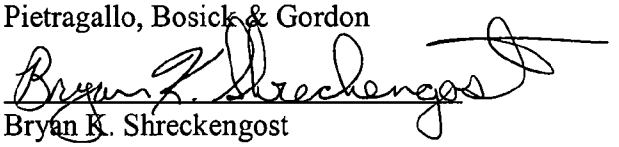
CONCLUSION

The Preliminary Objections of Boyles Insurance, Inc., should be sustained and Count II of the Complaint to Join Additional Defendant under Pa. R.C.P. 2252(a) filed by James Bailor, t/d/b/a B&D Enterprises should be dismissed.

Dated: March 19, 2003

Respectfully submitted,

Pietragallo, Bosick & Gordon

By: 

Bryan K. Shreckengost
Pa. I.D. # 69098

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Firm #834
One Oxford Centre-38th Floor
Pittsburgh, Pennsylvania 15219
(412) 263-2000

Attorneys for BOYLES INSURANCE, INC., Additional Defendant

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the within **BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO COMPLAINT TO JOIN ADDITIONAL DEFENDANTS UNDER Pa. R.C.P. 2252(a)** was forwarded via United States First Class mail, postage pre-paid, this 19th day of March, 2003, to counsel of record as follows:

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JAMES A. NADDEO & ASSOCIATES
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Clearfield, Pennsylvania 16830
Attorney for Plaintiff

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DELL, MOSER, LANE & LOUGHNEY, LLC
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437 Grant Street
Pittsburgh, Pennsylvania 15219
Attorney for Defendant, Wal-Mart Stores, Inc.

Ann B. Wood, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
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Clearfield, Pennsylvania 16830
Attorney for James Bailor, t/d/b/a B&D Enterprises

Paul J. Walsh, III, Esquire
SUMMERS, McDONNELL, WALSH & SKEEL, L.L.P.
Gulf Tower, Suite 2400
707 Grant Street
Pittsburgh, PA 15219
Attorney for Roger R. Hull, t/d/b/a HSJ Lawncare

Bryan K. Shreckengost

BRYAN K. SHRECKENGOST

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,

Plaintiffs

vs.

WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Defendants

vs.

JAMES BAILOR, t/d/b/a B&D ENTERPRISES,

Additional Defendant

vs.

WAL-MART STORES, INC.,

Additional Defendant

vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,

Additional Defendants

NO. 02-1811-CD

JURY TRIAL DEMANDED

Type of Pleading:

DEFENDANT BAILOR'S BRIEF IN OPPOSITION TO PRELIMINARY OBJECTIONS OF DEFENDANT BOYLES TO COMPLAINT TO JOIN ADDITIONAL DEFENDANTS UNDER Pa.R.C.P. 2252(a)

Filed on Behalf of:
James Bailor, t/d/b/a B&D Enterprises, Defendant/ Additional Defendant

Counsel of Record for this Party:

Ann B. Wood, Esquire
Supreme Court No.23364

Bell, Silberblatt & Wood
318 East Locust Street
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Clearfield, PA 16830
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COURT ADMINISTRATOR'S OFFICE

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
WAL-MART STORES, INC.	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

DEFENDANT BAILOR'S BRIEF IN OPPOSITION TO PRELIMINARY OBJECTIONS OF DEFENDANT BOYLES TO COMPLAINT TO JOIN ADDITIONAL DEFENDANTS UNDER DEFENDANTS UNDER Pa.R.C.P. 2252(a)

NOW COMES Defendant, JAMES BAILOR, t/d/b/a B&D Enterprises, by his Attorney, Ann B. Wood, Esquire, and sets forth his Brief in opposition to the granting of Additional Defendant Boyles' Preliminary Objections.

Statement of Facts

On or about November 19, 2002, Plaintiffs, Marshall E. Rugh and Anna M. Rugh, filed an original Complaint against Wal-Mart Stores, Inc., (hereinafter Wal-Mart), raising claims arising out of the alleged slip and fall of Mrs. Rugh in the Clearfield Wal-Mart Supercenter parking lot. The Rughs subsequently filed an Amended Complaint on December 17, 2002, naming not only Wal-Mart Stores, Inc., but also James Bailor, t/d/b/a B&D Enterprises, (hereinafter Bailor), setting forth claims against both Defendants.

Wal-Mart joined Bailor as an Additional Defendant on or about December 20, 2002 alleging certain contractual obligations of Bailor to maintain the Wal-Mart parking lot and to insure, defend and indemnify Wal-Mart pursuant to an Agreement between them which is included on Exhibit 1 to their pleading.

Bailor joined Wal-Mart as an Additional Defendant raising issues of control and negligence in relation to the parking lot maintenance. Bailor also filed a Complaint to Join Additional Defendants joining Roger R. Hull, t/d/b/a HSJ Lawncare, a landscape contractor hired by Wal-Mart and Boyles Insurance, Inc., (hereinafter Boyles), Bailor's insurance agency. The joinder of Boyles was a result of the negligence and contractual issues raised by Wal-Mart based on the underlying contract between those parties which required Bailor to have general liability insurance in

specified amounts and to include Wal-Mart as a named insured. The specific claim centers around the failure of Boyles to provide or recommend to Bailor the appropriate policy or policies to cover Bailor as required in the operation of his business.

The joinder of Boyles as an Additional Defendant is proper in this particular case as the contractual issues between Wal-Mart and Bailor are raised as they apply to defense and indemnification between these parties as to responsibility to Rughs' in the slip and fall action for personal injury which places the matter within the liable over portion of Pa.R.C.P. 2252(a)

Issue

Whether Bailor is permitted, pursuant to Pa.R.C.P. 2251(a), to join Boyles as an additional defendant?

Argument

Pursuant to Pa.R.C.P. 2252(a):

> "Except as provided by Rule 1706.1, any defendant may join as an additional defendant any person, whether or not a party to the action, who may be
>
> (1) solely liable on the Plaintiff's cause of action, or
> (2) liable over to the joining party on the plaintiff's cause of action, or

> (3) jointly or severally liable with the joining party on the plaintiff's cause of action, or
>
> (4) liable to the joining party on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the plaintiff's cause of action is based."

Our circumstances before the Court begin with an alleged slip and fall incident resulting in injuries on a parking lot belonging to Wal-Mart, as original defendant, rising issues of contracted liability and identification. This frames the issue as to whether Bailor might be liable over to Wal-Mart on Rughs' causes of action. Raising the express indemnification issues under the contract leads directly into the contract requirements for maintaining general liability insurance to provide for said indemnification. This leads straight into the issue of the proper provision of insurance from Additional Defendant Boyles as it applies to indemnification in this case.

Additional Defendant Boyles relies on the case of Stokes v. Loyal Order of Moose Lodge No.696, 502 Pa. 460, 466 A.2d 1341 (1983) as being dispositive of the present situation discussing the relation of the claims factual background and/or common factual and legal issues in holding that claims against an insurer could not be properly joined with Plaintiffs' liability action. The Stokes, supra, case was one interpreting the then recent amendment of

Pa.R.C.P. 2252(a) as it had been expanded to allow joinder of causes of specifically those arising out of the joinder of an indemnitor or insurer. The Supreme Court's specific ruling in Stokes, supra, at page 1345 was:

> "We therefore conclude that the amendment to Rule 2252(a) does not allow a complaint alleging wrongful denial of coverage under a general policy of insurance to be joined in a liability action."

The Stokes, supra, decision was extensively reviewed and discussed in the case of DiLauro v. Bola Avenue Associates, 515 A.2d 939, 942+, 357 Super. 209, 213+ (1986) which was a case involving whether the issue of an additional defendant being found to be liable over to the defendant on an express indemnification clause could be properly joined under Rule 2252. The Superior Court there concluded, quoting the language set forth above, that the Supreme Court's holding in Stokes, supra was limited to the wrongful denial of coverage under a general policy of insurance and did not apply to other fact situations. (DiLauro, supra, at page 947.)

Our present case is not an issue of denial of coverage under a general policy of insurance, but rather a lack of coverage and indemnification required under a contract which is factually in issue in the present matter as raised by the Wal-Mart joinder of

Bailor as an additional defendant. The Court is going to have to deal with the application of that contract as it relates to liability and indemnification of the Plaintiffs' claims. There is a clear connection in the current case where Bailor was contractually obligated to the Original Defendant, Wal-Mart, to carry certain insurance and relied upon the advise and expertise of Boyles in meeting that contractual obligation which is before the Court. This places the present parties squarely with Rule 2252(a) as to the liable over portion provision and the purpose of the Rule to allow connected issues to be handled together.

Conclusion

The Preliminary Objections of Boyles Insurance, Inc., should be denied and joinder of Boyles as an additional defendant pursuant to Pa.R.C.P. 2252(a) by Bailor should be found to be proper.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

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

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,	:	
Plaintiffs	:	No.08-1811-CD
vs.	:	
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	JURY TRIAL DEMANDED
Defendants	:	
vs.	:	
JAMES BAILOR, t/d/b/a B&D ENTERPRISES,	:	
Additional Defendant	:	
vs.	:	
WAL-MART STORES, INC.,	:	
Additional Defendant	:	
vs.	:	
ROGER R. HULL,t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of Defendant Bailor's Brief In Opposition To Preliminary Objections Of Defendant Boyles To Complaint To Join Additional Defendants Under Pa.R.C.P. 2252(a) with reference to the above captioned matter has been served upon the attorneys of record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on April 30, 2003 :

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Attorney For Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare:
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Attorney for Additional Defendant, Boyles Insurance, Inc.
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BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney For Defendant/
Additional Defendant,
James Bailor, t/d/b/a
B&D Enterprises

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION _JURY TRIAL DEMANDED
No.02-1811-CD

MARSHALL E. RUGH and ANNA M. RUGH, husband and wife,
vs. Plaintiffs
WAL-MART STORES, INC., a Corporation, and JAMES BAILOR, t/d/b/a B&D ENTERPRISES,
vs.
JAMES BAILOR, t/d/b/a B&D ENTERPRISES, Additional Defendant
vs.

ROGER R. HULL, t/d/b/a HSJ LAWNCARE and BOYLES INSURANCE, INC.,
Additional Defendants

DEFENDANT BAILOR'S BRIEF IN OPPOSITION TO PRELIMINARY OBJECTIONS OF DEFENDANT BOYLES TO COMPLAINT TO JOIN ADDITIONAL DEFENDANTS UNDER Pa.R.C.P. 2252(a)

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

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Marshall E. Rugh, Anna M. Rugh vs. Wal-Mart Stores, Inc., James Bailor, B && D Enterprises, Roger R. Hull, HSJ Lawncare, Boyles Insurance, Inc.

3 outstanding Motions for summary judgment 1 WalMart, 1 Lawncare, 1 Sweeney.

Civil Other

Date		Judge
11/19/2002	Filing: Civil Complaint Paid by: Naddeo, James Receipt number: 1851643 Dated: 11/19/2002 Amount: $85.00 (Check) 1 cert. to Atty.	No Judge
12/02/2002	Praecipe For Appearance on Behalf of Defendant, WAL-MART STORES, INC. filed by s/Patrick J. Loughney, Esquire Certificate of Service no cc	No Judge
12/17/2002	Amended Complaint. filed by s/James A. Naddeo, Esquire Verification s/Marshall E. Rugh 1` cc to Sheriff, Atty.	No Judge
12/23/2002	Filing: Answer, New Matter and New Matter Pursuant to PA R.C.P. 22252. No CC.	No Judge
	Filling: Acceptance of Service of Amended Complaint filed by Atty. Naddeo on behalf of the Defendant. No cc.	No Judge
01/09/2003	Defendant, Bailor's Answer to Defendant, Wal-Mart's New Matter Pursuant to PA.R.C.P. 2252(d), filed by s/Ann B. Wood, Esq. Four CC Attorney Wood	No Judge
	Answer, New Matter and New Matter Pursuant to PA.R.C.P. 2252(d) to Plaintiff's Amended Complaint, filed by s/Ann B. Wood, Esq. Four CC Attorney Wood	No Judge
	Complaint to Join Additional Defendant under PA.R.C.P. 2252(a), filed by s/Ann B. Wood, Esq. Four CC Attorney Wood	No Judge
01/10/2003	Verification to Answer, New Matter and New Matter Pursuant to PA. R. C. P. 22252 (2) No cc. Filed by Atty. Loughney for Wal-Mart.	No Judge
01/16/2003	Notice of Service, Defendant Wal-Mart Stores, Inc.'s Notice of Deposition upon counsel for Defendant James Bailor, t/d/b/a B&D Enterprises. s/Patrick J. Loughney, Esq. Certificate of Service no cc	No Judge
	Notice of Service, Defendant Wal-Mart Stores, Inc.'s Notice of Deposition upon Additional Defendants Roger R. Hull, t/d/b/a HSJ Lawncare and Boyles Insurance, Inc. s/Patrick J. Loughney, Esq. Certificate of Service no cc	No Judge
01/17/2003	Praecipe to Issue Writ to Join Additional Defendant Roger R. Hull, t/d/b/a HSJ Lawncare, filed by Atty. Vugrinovich Writ issued to Atty.	No Judge
01/23/2003	Certificate of Service Filed by Atty. Naddeo Served copy of Answers to Deft. Wal-Mart's First Set of Interrogatories Directed to Plaintiff and Response to Deft. Wal-Mart First Request for Production of Documents. upon Atty's Loughney & Wood.	No Judge
01/27/2003	Praecipe For Appearance on Behalf of Addional Defendant, ROGER R. HULL, t/d/b/a HSJ LAWNCARE. s/Paul J. Walsh, III, Esq. Certificate of Service no cc	No Judge
	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
02/05/2003	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
02/10/2003	Preliminary Objection to Complaint to Join Additional Defendants Under Pa.R.C.P. 2252 (a), filed on behalf of Boyles Insurance, Inc., additional defendant, filed by s/Bryan K. Shreckengost No CC	No Judge
	Praecipe For Rule To File Complaint To Join Additional Defendant. filed by s/Paul J. Walsh, III, Esq. Certificate of Service no cc 1 Rule to Atty	No Judge

Marshall E. Rugh, Anna M. Rugh vs. Wal-Mart Stores, Inc., James Bailor, B && D Enterprises, Roger R. Hull, HSJ Lawncare, Boyles Insurance, Inc.

Civil Other

Date		Judge
02/11/2003	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
02/18/2003	Acceptance of Service of Writ to Join Additional Defendant Roger R. Hull t/d/b/aHSJ Lawncare. s/RogerR. Hull t/d/b/a HSJ Lawncare Certificate of Service no cc	No Judge
02/24/2003	Defendant Wal-Mart Stores, Inc's Reply To James Bailor t/d/b/a B&D Enterprises' New Matter Pursuant To Pa. R.C.P.2252(d). filed by s/Danielle M. Vugrinocich, Esquire Verification s/Roger Gates Certificate of Service no cc	No Judge
03/06/2003	Certificate of Service, Defendant Bailor's Answers To Defendant Hull's Request For Production of Documents upon JAMES A. NADDEO, ESQ., PATRICK J. LOUGHNEY,ESQ., PAUL J. WALSH, III, ESQ., and BRYAN K. SHRECKENGOST, ESQ. filed by s/Ann B. Wood, Esq. no cc	No Judge
03/14/2003	Wal-Mart Stores, Inc's Complaint To Join Additional Defendant Roger R. Hull t/d/b/a HSJ Lawncare Under PA. R.C.P. 2252(a) filed by s/Daniel M. Vugrinovich, Esquire Verification s/Roger Gates Certificate of Service no cc	No Judge
03/20/2003	Answer, New Matter & New Martter Pursuant To Rule 2252(d) To Defendant, James Bailor's, t/d/b/a B&D Enterprises, Complaint To Join Additional Defendant. filed by s/Paul J. Walsh, III, Esquire Verification s/Roger R. Hull Certificate of Service no cc	No Judge
04/29/2003	Certificate of Service, Answers to Interrogatories and Requests For Production of Documents Directed to Defendant James Bailor t/d/b/a B&D Enterprises upon: JAMES A. NADDEO, ESQUIRE, PATRICK J. LOUGHNEY, ESQUIRE, PAUL J. WALSH, III, ESQUIRE, and BRYAN K. SHRECKENGOST, ESQUIRE filed by s/Ann B. Wood, Esquire no cc	John K. Reilly Jr.
04/30/2003	Certificate of Service, Defendant Bailor's Brief In Opposition To Join Additional Defendants Under Pa.R.C.P. 2252(a) upon: JAMES A. NADDEO, ESQ., PATRICK J. LOUGHNEY, ESQ., PAUL J. WALSH, III, ESQ., and BRYAN K. SHRECKENGOST, ESQ. filed by s/Ann B. Wood, Esq. no cc	John K. Reilly Jr.
	Answer, New Matter, and New Matter 2252(d) To Defendant, Wal-Mart Stores, Inc.'s Complaint To Join Additional Defendant. filed by s/Paul J. Walsh, III, Esquire Verification s/Roger R. Hull Certificate of Service 1 cc Atty Walsh	John K. Reilly Jr.
05/14/2003	Filing: Wal-Mart Stores, Inc.'s Reply to Roger R. Hull's New Matter and New Matter Pursuant to PA R.C.P. 2252(d). No cc.	John K. Reilly Jr.
05/19/2003	Preliminary Objections To Additional Defendant Roger R. Hull t/d/b/a HSJ Lawncare's Answer, New Matter and New Matter 2252(d) to Defendant Wal-Mart Stores, Inc's Complaint To Join Additional Defendants. filed by s/Bryan K. Shreckengost, Esq. Certificate of Service 2 cc to Atty	John K. Reilly Jr.
05/22/2003	OPINON AND ORDER, NOW, this 22nd day of May, 2003, re: Preliminary Objections to Complaint to Join Additional Defendant as set forth above, it is the ORDER of this Court that said Objections be and are hereby SUSTAINED and Complaint DISMISSED. by the Court, s/JKR,JR.,P.J. 1 cc Atty Naddeo, Loughrey, Wood, P. Walsh, Shreckengrost, and Mikesell	John K. Reilly Jr.
07/17/2003	Motion for Summary Judgment filed on behalf of Defendant Wal-Mart Stores, Inc. filed by Att. Loughney	John K. Reilly Jr.

Marshall E. Rugh, Anna M. Rugh vs. Wal-Mart Stores, Inc., James Bailor, B && D Enterprises, Roger R. Hull, HSJ Lawncare, Boyles Insurance, Inc.

Civil Other

Date		Judge
07/28/2003	Stipulation of Counsel. The below signed counsel, on behalf of their respective clients, hereby stipulate to the dismissal, with prejudice, of all claims of Additional Defendant, Roger R. Hull t/d/b/a HSJ Lawncare, for contribution and/or indemnity that were or could have been asserted against Boyles Insurance, Inc. in Hull's Answer, New Matter, and New Matter Pursuant to Rule 2252(d) to Defendant Wal-Mart Stores, Inc.'s Complaint to Join Additional Defendant. s/Paul J. Walsh, III, Esq. s/Bryan K. Shreckengost, Esq. Certificate of Service no cc	John K. Reilly Jr.
09/04/2003	Praecipe For Argument Of Defendant Wal-Mart Stores, Inc.'s Motion For Summary Judgment. s/Danielle M. Vugrinovich, Esquire Certificate of Service no cc Copy to CA	John K. Reilly Jr.
09/05/2003	James Bailor's t/d/b/a B&D Enterprises, Reply to Roger R. Hull, t/d/b/a HSJ Lawncare's New Matter Pursuant To PA. R.C.P. 2252(d). filed by s/Ann B. Wood Verification s/James Bailor Certificate of Service no cc	John K. Reilly Jr.
11/19/2003	Certificate Of Service, Plaintiffs' First Request for Production of Documents Directed to Defendant Wal-Mart Stores, Inc. and Notice of Taking Deposition of Roger Gates upon; Patrick J. Loughney, Esq,, Ann B. Wood, Esquire, and Paul J. Walsh, Esquire. filed by, s/James A. Naddeo, Esquire no cc	John K. Reilly Jr.
01/26/2004	Certificate of Service, Notice of Taking Deposition of Roger Gates upon Attys Loughney, Wood, Walsh, and Shreckengost. filed by, s/James A. Naddeo, Esq. no cc	John K. Reilly Jr.
03/10/2004	CONSENT ORDER, AND NOW, this 10th day of March, 2004, re: Inspection of those portions of any safety manual at the Wal-Mart Clearfield reference to parking lot maintenance. by the Court, s/FJA, P.J. 2 cc Atty Naddeo	Fredric Joseph Ammerman
04/01/2004	Praecipe For Argument Of Defendant Wal-Mart Stores, Inc's Motion For Summary Judgment. filed by, s/ DanielleM.Vagrinovich, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
04/05/2004	ORDER filed. NOW, this 5th day of April, 2004 a Rule is hereby issued upon the parties to Appear and Show Cause why the Motion should not be granted. S/FJA 6 CC and Service Memo to Atty. Loughney.	Fredric Joseph Ammerman
04/12/2004	Affidavit Of Service, April 5, 2004 Order of Court, Motion for Summary Judgmet and Affidavit of Service upon James A. Naddeo, Esq., Trisha A. Zaken, Esq., Ann B. Wood, esq. and Bryan K. Shreckengost, Esq. filed by, s/Patrick J. Loughney, Esq. Certificate of Service no cc	Fredric Joseph Ammerman
04/14/2004	Motion For Summary Judgment. filed by, s/Paul J. Walsh, III, Esquire Certificate of Service no cc Judge Ammerman to Sweeper	Fredric Joseph Ammerman
04/15/2004	Praecipe To Place Case On Argument List. filed by, s/Paul J. Walsh, III, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
04/16/2004	ORDER, NOW, this 16th day of April, 2004, re: A Rule is issued upon the parties to Appear and Show Cause why the Motion should not be granted. Argument is scheduled the 7th day of May, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 5 cc to Atty Walsh, w/service memo	Fredric Joseph Ammerman
04/27/2004	Motion For Summary Judgment. filed by, s/Ann B. Wood, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
	Praecipe To Place Case On Argument List. filed by, s/Ann B. Wood, Esquire Certificate of Service 4 cc Atty Wood to Sweeper	Fredric Joseph Ammerman

Marshall E. Rugh, Anna M. Rugh vs. Wal-Mart Stores, Inc., James Bailor, B && D Enterprises, Roger R. Hull, HSJ Lawncare, Boyles Insurance, Inc.

Civil Other

Date		Judge
04/27/2004	ORDER, NOW, this 27th day of April, 2004, re: Rule issued upon parties. Argument scheduled the 7th day of May, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA, P.J. Certificate of Service 4 cc to Atty	Fredric Joseph Ammerman
04/30/2004	Praecipe For Address Change For Dell, Moser, Lane & Loughney, LLC. filed by, s/Danielle M. Vugrinovich, Esq. Certificate of Service no cc Copy to C/A	Fredric Joseph Ammerman
	Wal-Mart Stores, Inc's Response to roger Hull t/d/b/a HSJ Lawncare's Motion For Summary Judgment. filed by, s/Danielle M. Vugrinovich, Esq. Certificate of Service no cc	Fredric Joseph Ammerman
05/04/2004	Certificate of Service, James Bailoar, t/d/b/a B&D Enterprises' Brief In Support Of Motion For Summary Judgment upon James A. Naddeo, Esq., Patrick J. Loughney, Esq., Paul J. Walsh, III, Esq., and Bryan K. Shreckengost, Esq. filed by, s/ Ann B. Wood, Esquire no cc	Fredric Joseph Ammerman
05/06/2004	Wal-Mart Stores, Inc.'s Response To James Bailor t/d/b/a B&D Enterprise's Motion For Summary Judgment. s/Danielle M. Vugrinovich, Esquire Cert. of Serv. no cc	Fredric Joseph Ammerman