

03-1586-CD

Nancy J. Warrender vs Family Dollar, etal.

## Civil Other

Date		Judge
10/22/2003	✓ Filing: Civil Complaint Paid by: Thompson, David R. (attorney for Warrender, Nancy J.) Receipt number: 1868016 Dated: 10/22/2003 Amount: \$85.00 (Check) 2 CC to Atty. Thompson	No Judge
11/10/2003	✓ Praecipe For Entry Of Appearance on Behalf of Defendant, FAMILY DOLLAR and FAMILY DOLLAR, INC. filed by, s/TRACEY G. BENSON, ESQUIRE Certificate of Service no cc	No Judge
11/13/2003	✓ Affidavit of Service, Complaint upon: FAMILY DOLLAR and FAMILY DOLLAR, INC. filed by s/David R. Thompson, Esquire 2 cc Atty Thompson	No Judge
12/12/2003	✓ Amended Complaint. filed by, s/David R. Thompson, Esq. Verification s/David R. Thompson, Esq. 2 cc to Atty Thompson	No Judge
	✓ Certificate of Service, Amended Complaint upon: TRACEY G. BENSON, ESQUIRE. filed by, s/David R. Thompson, Esq. no cc	No Judge
	✓ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
12/15/2003	Amended Complaint filed by Atty. Thompson 2 CC to Atty.	No Judge
2/3/2004	✓ Answer And New Matter To Plaintiff's Amended Complaint. filed by, s/Tracey G. Benson, Esquire Verification s/John G. Clifford Certificate of Service no cc	No Judge
2/5/2004	✓ Acceptance of Service, Amended Complaint. by, s/Tracey G. Benson, Esquire 2 cc Atty Thompson	No Judge
2/11/2004	✓ Certificate of Service, Acceptance of Service upon Tracey G. Benson, Esquire. filed by, s/David R. Thompson, Esq. 2 cc Atty Thompson	No Judge
2/25/2004	✓ Reply to New Matter. filed by, s/David R. Thompson, Esquire Verification s/Nancy J. Warrender 2 cc Atty Thompson	No Judge
2/27/2004	✓ Certificate of Service, Plaintiff's Reply To New Matter upon Tracey G. Benson, Esquire filed by, s/David R. Thompson, Esquire 2 cc Atty Thompson	No Judge
3/2/2004	✓ Notice of Service of Interrogatories upon David R. Thompson, Esquire. filed by, s/Tracey G. Benson, Esquire Certificate of Service no cc	No Judge
5/27/2004	✓ Certificate of Service, Plaintiff's Answer To Defendant's First Set Of Interrogatories, upon: Tracey G. Benson, Esquire. filed by, s/David R. Thompson, Esquire 2 cc Atty Thompson	No Judge
4/21/2005	✓ Notice of Intent to Serve Subpoena To Produce Documents And Things For Discovery Pursuant to Rule 4009.21, filed by s/ Julia R. Cronin, Esquire. No CC	No Judge
6/27/2006	✓ Motion For Summary Judgment, filed by s/ Julia R. Cronin, Esquire. No CC	No Judge
	✓ Original Transcript, Deposition of Nancy J. Warrender, March 29, 2005, filed.	No Judge
8/9/2006	✓ Praecipe, filed by s/ Julia R. Cronin, Esquire. No CC	No Judge
8/11/2006	✓ Order, NOW, this 10th day of August, 2006, Ordered that argument on Defendant's Motion for Summary Judgment is scheduled for October 2, 2006 at 10:00 a.m. in Courtroom No. 1. It is the responsibility of Defendants Counsel to serve certified copies of said scheduling Order on the Plaintiff. By the Court, /s/ Fredric J. Ammerman, Pres. Judge 4CC Atty. Cronin	Fredric Joseph Ammerman

not in file  
as of 9-28-06

Date: 9/28/2006

Clearfield County Court of Common Pleas

User: LMILLER

Time: 12:00 PM

ROA Report

Page 2 of 2

Case: 2003-01586-CD

Current Judge: Fredric Joseph Ammerman

Nancy J. Warrender vs. Family Dollar, Family Dollar, Inc.

Civil Other

Date		Judge
8/18/2006	✓ Affidavit of Service filed. That service of Judge Ammerman's Order of August 10, 2006 was made upon Plaintiff, Nancy J. Warrender, by serving her counsel, David R. Thompson Esq., filed by s/ Julia R. Cronin Esq. No CC.	Fredric Joseph Ammerman
10-2-06	Answer to Defendant's Motion for Summary Judgment	
10-5-06	Order, dated 10-2-06	
10-13-06	Supplement to Motion for Summary Judgment	
10-27-06	Order, dated 10-25-06	

William A. Shaw  
Prothonotary/Clerk of Courts

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

CIVIL ACTION - LAW

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLAR and FAMILY DOLLAR, INC.,

Defendant

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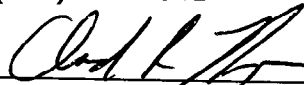
No. 03-

**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 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  
Clearfield, PA 16830  
(814) 765-2641

  
\_\_\_\_\_  
David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,	*	
	*	No. 03-
Plaintiff	*	
	*	
VS.	*	
	*	
FAMILY DOLLAR and FAMILY DOLLAR, INC.,	*	
	*	
Defendant	*	
	*	

***COMPLAINT***

AND NOW, comes the Plaintiff, Nancy J. Warrender, by and through her attorney David R. Thompson, Esquire, and files the following Complaint of which the following is averred:

1. The Plaintiff is Nancy J. Warrender, an individual, residing at RR 1 Box 571, Osceola Mills, Clearfield County, Pennsylvania, 16666.

2. The Defendant is Family Dollar, believed to be a business corporation duly organized under the laws of the State of North Carolina, with a corporate headquarters address of P.O. Box 1017, Charlotte, North Carolina, 28201-1017.

3. Defendant Family Dollar, Inc., is believed to be a business corporation duly organized under the laws of the State of North Carolina, with a corporate headquarter address of P.O. Box 1017, Charlotte, North Carolina, 28201-1017.

4. Defendant Family Dollar, is the owner and operator of a Family Dollar Store located at Ames Plaza, Decatur Township, Philipsburg, Clearfield County, Pennsylvania, 16866.

***COUNT I***

***NANCY J. WARRENDER VS. FAMILY DOLLAR***

Paragraphs 1 through 4 are incorporated as though the same were set forth in full length herein.

5. On or about, December 18, 2001, at approximately 12:00 p.m. E.D.S.T., the Plaintiff, Nancy J. Warrender, entered the Family Dollar store described in Paragraph 4 hereof for the purpose of shopping.

6. On or about the said day and at about the said time, Defendant Family Dollar was experiencing a heavy shopping crowd, and there were shopping carts, boxes and debris scattered throughout the store.

7. On or about the said day and at about the said time, Plaintiff retrieved two (2) boxes of chocolate covered cherries, one (1) box of chocolate mints, and three other minor items, and took them to what she recalls as register 2.

8. At that time, Plaintiff asked the clerk to hold the items while she went back to get additional boxes of chocolate covered cherries and chocolate mints.

9. After retrieving the additional boxes, she returned to the same register (2) and was redirected by store personnel to what Plaintiff recalls as register 1.

10. At the redirected register (1), the clerk began checking out the additional boxes of candy while Plaintiff went back to the previous register to retrieve the other items left there.

11. Carts were left at various places between the two register lanes and in the path of travel between the same.

12. She walked forward to the original register (2) and picked up the original items. By way of further pleading, as Plaintiff turned to go back to Register (1), she tripped over a shopping cart that was between the two registers, causing her to fall forward as her body twisted.

13. The clerk at the previous register (2) took the items from her and over to the register (1) where Plaintiff's checkout was processed. The time on the receipt was 12:06 p.m.

14. Not knowing the seriousness of her injuries, Plaintiff pulled herself up to the register (1) and paid the bill.

15. The Clerk at register (1) completed the sale transaction and put her change in the bag. After completing the sale transaction, the clerk shut her register down and aided Plaintiff.

16. Unable to walk on her own, Plaintiff was assisted from the store and to her car by the said Clerk, Gale Gardner and Gale Gardner's daughter Nicole.

17. Nicole actually drove Plaintiff's car to Plaintiff's house, while Gale Gardner followed in her own vehicle behind them.

18. Upon arrival, Plaintiff waited in the car, and Gale Gardner went into the home and called Plaintiff's brother Roy Thompson and sister Margaret Perrin.

19. During this time, a neighbor Betty Fisher came to the vehicle to assist. By way of further pleading, Betty Fisher is a nurse and diagnosed the problem as being severe. She recommended that she proceed to the hospital immediately.

20. Upon the arrival of Plaintiff's brother and sister, Plaintiff was immediately taken



to the Philipsburg Area Hospital Emergency Room, treated and admitted into the hospital.

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

- a. Defendant inappropriately left shopping carts and other materials in walking areas between check out lines which is a patron area that should be kept free of obstructions;
- b. Defendant failed to warn patrons of the improperly placed shopping carts which were located in the check out area and throughout the walk-ways of the store;
- c. Defendant failed to move or place the shopping cars to an isolated area where they would be out of the walk-ways of the store;
- d. Defendant knew or should have known that the locations of the improperly placed shopping carts and other debris were in areas that were unsafe and could cause injury to it patrons;
- e. Defendant failed to have its store designed in a manner in which patrons would be able to walk safely through clear walk-ways;
- f. Defendant failed to keep its walk-ways and patron areas free from abandoned shopping carts and other debris;
- g. Defendant failed to keep its store safe for its patrons.

22. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant, the Plaintiff, Nancy J. Warrender, suffered serious injuries all of which may and probably will be permanent as follows:

- a. displaced, garden-type, intracapsular fracture of the right hip;

- b. painful bipolar endofemoral hemiarthroplasty of the right hip performed immediately;
- b. contusions, scrapes, bruises and abrasions to various parts of her body
- c. extreme pain and suffering; past, present and future;
- d. inability to ambulate;
- e. permanent difficulties ambulating;
- f. privation and inconvenience; past, present and future;
- g. future medical expenses;
- h. embarrassment, humiliation, and incidental damages;
- i. all other damages allowable by law.

23. As a direct and proximate result of the injuries referred to in Paragraph 22 hereof which is incorporated herein by reference, the Plaintiff, Nancy J. Warrender, has incurred medical expenses and will continue to incur medical expenses in an undetermined amount in the future.

24. The Plaintiff, Nancy J. Warrender, may and probably will be required in the future to spend an indefinite amount to replace household and personal care services that she would otherwise perform but for her injuries.

25. As a direct and proximate result of the injuries referred to in Paragraph 22 hereof which is incorporated herein by reference, Plaintiff has incurred incidental damages.

WHEREFORE, Plaintiff, Nancy J. Warrender, claims damages from the Defendant in an amount in excess of Twenty Five Thousand (\$25,000.00) Dollars, plus interest and costs of suit. A Jury Trial is hereby demanded.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David R. Thompson', written in a cursive style.

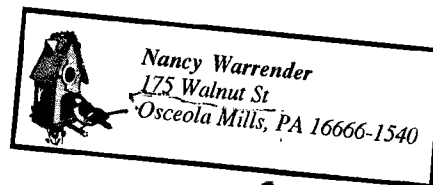
David R. Thompson, Esquire  
Attorney for Plaintiff

**VERIFICATION**

I certify that the facts set forth in the foregoing **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. § 4904, relating to unsworn falsification to authorities.

Dated:

Nancy J. Warrender  
Nancy J. Warrender



*Thank you*

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR AND FAMILY DOLLAR, INC.,

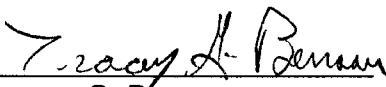
Defendant.

Civil Action No.  
03-1586-CD

**PRAECIPE FOR ENTRY OF APPEARANCE**

To: William Shaw, Prothonotary  
Clearfield County, Court of Common Pleas

Kindly enter my appearance on behalf of defendant Family Dollar and Family Dollar, Inc. in the above-captioned action. All papers may be served on the undersigned for purposes of this action.

  
Tracey G. Benson  
Julia R. Cronin

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
124 North Allegheny Street  
Bellefonte, PA 16823  
Telephone No. (814) 355-5474

Counsel for Defendant  
Family Dollar and Family Dollar, Inc.

Dated: November 6, 2003

FILED

NOV 10 2003

William A. Shaw  
Prothonotary/Clerk of Courts

Dated: November 6, 2003



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

CIVIL ACTION - LAW

NANCY J. WARRENDER, an individual,

\*

\*

No. 03-1586-CD

Plaintiff

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VS.

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FAMILY DOLLAR AND FAMILY DOLLAR, INC.,

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Defendant

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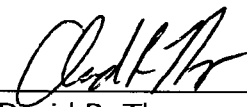
AFFIDAVIT OF SERVICE

I, DAVID R. THOMPSON, Esquire, hereby certify that I have caused to be served upon the Defendant. A certified copy of the **COMPLAINT**, in the above captioned matter. I served the same by depositing in the U.S. Mail, postage prepaid, certified mail, return receipt requested, addressed as follows:

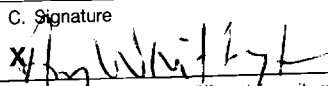
Family Dollar  
P.O. Box 1017  
Charlotte, NC 28201-1017

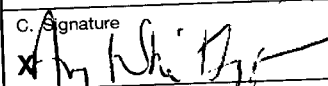
Family Dollar, Inc.  
P.O. Box 1017  
Charlotte, NC 28201-1017

DATED: October 29, 2003

  
\_\_\_\_\_  
David R. Thompson, Esquire  
Attorney for Plaintiff



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Received by (Please Print Clearly) B. Date of Delivery <div style="text-align: right;">OCT 29 2003</div>	
1. Article Addressed to: Family Dollar P.O. Box 1017 Charlotte, NC 28201-1017		C. Signature  <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. 2003 1010 0002 3610 5821			
PS Form 3811, July 1999		Domestic Return Receipt 102595-00-M-0952	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Received by (Please Print Clearly) B. Date of Delivery <div style="text-align: right;">OCT 29 2003</div>	
1. Article Addressed to: Family Dollar, Inc. P.O. Box 1017 Charlotte, NC 28201-1017		C. Signature  <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. 2003 1010 0002 3610 5814			
PS Form 3811, July 1999		Domestic Return Receipt 102595-00-M-0952	



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

CIVIL COURT DIVISION

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLARS STORES OF PENNSYLVANIA,  
INC.

Defendant

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

No. 03-1586-CD

TYPE OF CASE:

Civil Action - Divorce

**ACCEPTANCE OF SERVICE**

I, Tracey G. Benson, Esquire, attorney for Defendant, hereby accept service of the  
Amended Complaint filed by Plaintiff.

DATE:

\_\_\_\_\_  
y G. Benson, Esquire

Not signed ↗

Atty Thompson will  
have another one  
Signed & file it separate.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,	*	
	*	No. 03-1586
Plaintiff	*	
	*	
vs.	*	
	*	
FAMILY DOLLAR STORES OF PENNSYLVANIA,	*	
INC.	*	
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 Petition 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 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.

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Court Administrator  
Clearfield County Courthouse  
Clearfield PA 16830  
(814) 765-2641



David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,	*	
	*	No. 03-1586
Plaintiff	*	
	*	
vs.	*	
	*	
FAMILY DOLLAR STORES OF PENNSYLVANIA,	*	
INC.	*	
Defendant	*	
	*	

***AMENDED COMPLAINT***

AND NOW, comes the Plaintiff, Nancy J. Warrender, by and through her attorney David R. Thompson, Esquire, and files the following Amended Complaint of which the following is averred:

1. The Plaintiff is Nancy J. Warrender, an individual, residing at RR 1 Box 571, Osceola Mills, Clearfield County, Pennsylvania, 16666.

2. The Defendant is Family Dollar Stores of Pennsylvania, Inc., a business corporation duly organized under the laws of the Commonwealth of Pennsylvania, with a corporate headquarters address of P.O. Box 1017, Charlotte, North Carolina, 28201-1017.

3. Defendant Family Dollar Stores of Pennsylvania, Inc., is the owner and operator of a Family Dollar Store located at Ames Plaza, Decatur Township, Philipsburg, Clearfield County, Pennsylvania, 16866.

***COUNT I***

***NANCY J. WARRENDER VS. FAMILY DOLLAR***

Paragraphs 1 through 3 are incorporated as though the same were set forth in full length herein.

4. On or about, December 18, 2001, at approximately 12:00 p.m. E.D.S.T., the Plaintiff, Nancy J. Warrender, entered the Family Dollar store described in Paragraph 3 hereof for the purpose of shopping.

5. On or about the said day and at about the said time, Defendant Family Dollar was experiencing a heavy shopping crowd, and there were shopping carts, boxes and debris scattered throughout the store.

6. On or about the said day and at about the said time, Plaintiff retrieved two (2) boxes of chocolate covered cherries, one (1) box of chocolate mints, and three other minor items, and took them to what she recalls as register 2.

7. At that time, Plaintiff asked the clerk to hold the items while she went back to get additional boxes of chocolate covered cherries and chocolate mints.

8. After retrieving the additional boxes, she returned to the same register (2) and was redirected by store personnel to what Plaintiff recalls as register 1.

9. At the redirected register (1), the clerk began checking out the additional boxes of candy while Plaintiff went back to the previous register to retrieve the other items left there.

10. Carts were left at various places between the two register lanes and in the path of travel between the same.

11. She walked forward to the original register (2) and picked up the original items. By way of further pleading, as Plaintiff turned to go back to Register (1), she tripped over a shopping cart that was between the two registers, causing her to fall forward as her body twisted.

12. The clerk at the previous register (2) took the items from her and over to the register (1) where Plaintiff's checkout was processed. The time on the receipt was 12:06 p.m.

13. Not knowing the seriousness of her injuries, Plaintiff pulled herself up to the register (1) and paid the bill.

14. The Clerk at register (1) completed the sale transaction and put her change in the bag. After completing the sale transaction, the clerk shut her register down and aided Plaintiff.

15. Unable to walk on her own, Plaintiff was assisted from the store and to her car by the said Clerk, Gale Gardner and Gale Gardner's daughter Nicole.

16. Nicole actually drove Plaintiff's car to Plaintiff's house, while Gale Gardner followed in her own vehicle behind them.

17. Upon arrival, Plaintiff waited in the car, and Gale Gardner went into the home and called Plaintiff's brother, Roy Thompson and sister, Margaret Perrin.

18. During this time, a neighbor Betty Fisher came to the vehicle to assist. By way of further pleading, Betty Fisher is a nurse and diagnosed the problem as being severe. She recommended that she proceed to the hospital immediately.

19. Upon the arrival of Plaintiff's brother and sister, Plaintiff was immediately taken

to the Philipsburg Area Hospital Emergency Room, treated and admitted into the hospital.

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

- a. Defendant inappropriately left shopping carts and other materials in walking areas between check out lines which is a patron area that should be kept free of obstructions;
- b. Defendant failed to warn patrons of the improperly placed shopping carts which were located in the check out area and throughout the walk-ways of the store;
- c. Defendant failed to move or place the shopping carts to an isolated area where they would be out of the walk-ways of the store;
- d. Defendant knew or should have known that the locations of the improperly placed shopping carts and other debris were in areas that were unsafe and could cause injury to its patrons;
- e. Defendant failed to keep its walk-ways and patron areas free from abandoned shopping carts and other debris;

21. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant, the Plaintiff, Nancy J. Warrender, suffered serious injuries all of which may and probably will be permanent as follows:

- a. displaced, garden-type, intracapsular fracture of the right hip;
- b. painful bipolar endofemoral hemiarthroplasty of the right hip performed immediately;
- c. contusions, scrapes, bruises and abrasions to various parts of her body
- d. extreme pain and suffering; past, present and future;



- e. inability to ambulate;
- f. permanent difficulties ambulating;
- g. privation and inconvenience; past, present and future;
- h. future medical expenses;
- i. embarrassment, humiliation, and incidental damages;
- j. all other damages allowable by law.

22. As a direct and proximate result of the injuries referred to in Paragraph 21 hereof which is incorporated herein by reference, the Plaintiff, Nancy J. Warrender, has incurred medical expenses and will continue to incur medical expenses in an undetermined amount in the future.

23. The Plaintiff, Nancy J. Warrender, may and probably will be required in the future to spend an indefinite amount to replace household and personal care services that she would otherwise perform but for her injuries.

24. As a direct and proximate result of the injuries referred to in Paragraph 21 hereof which is incorporated herein by reference, Plaintiff has incurred incidental damages.

WHEREFORE, Plaintiff, Nancy J. Warrender, claims damages from the Defendant in an amount in excess of Twenty Five Thousand (\$25,000.00) Dollars, plus interest and costs of suit. A Jury Trial is hereby demanded.

Respectfully submitted,



David R. Thompson, Esquire  
Attorney for Plaintiff

**VERIFICATION**

Plaintiff, by and through their attorney, David R. Thompson, Esquire, verifies that the statements made in this **AMENDED COMPLAINT** are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

DATE: 12-12-03

  
\_\_\_\_\_  
David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.

Defendant

No. 03-1586

TYPE OF CASE:  
Civil Court Division

TYPE OF PLEADING:  
Certificate of Service

FILED ON BEHALF OF:  
Plaintiff

COUNSEL OF RECORD FOR  
THIS PARTY:  
David R. Thompson, Esquire  
Attorney at Law  
Supreme Court 73053  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg PA 16866  
(814) 342-4100

FILED

DEC 12 2003

William A. Shaw  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.

Defendant

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No. 03-1586

**CERTIFICATE OF SERVICE**

TO THE PROTHONOTARY:

I, **DAVID R. THOMPSON, ESQUIRE**, do hereby certify that I served a true and correct, certified copy of the **AMENDED COMPLAINT**, in the above captioned matter has been served upon the persons indicated below, by placing the same in the United States First Class Mail, postage prepaid and addressed as follows:

Tracey G. Benson, Esquire  
MILLER KISTLER CAMPBELL MILLER  
WILLIAMS & BENSON, INC.  
124 North Allegheny Street  
Bellefonte PA 16823

DATE: 12-12-03

BY:   
David R. Thompson, Esquire

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

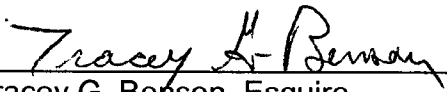
Defendant.

Civil Action No.  
03-1586-CD

**NOTICE TO PLEAD**

TO THE WITHIN NAMED PLAINTIFF:

You are hereby notified to plead to the enclosed New Matter within twenty (20)  
days from service hereof or a default judgment may be entered against you.

  
Tracey G. Benson, Esquire  
Julia R. Cronin, Esquire

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
124 N. Allegheny Street  
Bellefonte, PA 16823  
814-355-5474

Counsel for Defendant Family Dollar  
Stores of Pennsylvania, Inc.

Dated: February 2, 2004

**FILED**

**FEB 03 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

NANCY J. WARRENDER, an individual,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	03-1586-CD
FAMILY DOLLAR STORES OF PENNSYLVANIA,	)	
INC.,	)	
	)	
Defendant.	)	

**ANSWER AND NEW MATTER TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant, Family Dollar Stores of Pennsylvania, Inc. ("Family Dollar Stores"), by its counsel, Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., responds to Plaintiff's Amended Complaint, as follows:

**ANSWER**

1. Defendant Family Dollar Stores admits only that Plaintiff Nancy J. Warrender is an adult individual. Defendant Family Dollar Stores is without knowledge or information sufficient to form a belief as to the truth of the any remaining allegations contained in paragraph 1 of the Amended Complaint. Said allegations are deemed to be denied, and proof thereof is demanded.

2. Defendant Family Dollar Stores admits only that it is a corporation duly organized under the laws of the Commonwealth of Pennsylvania, and that it maintains a principal place of business at 10401 Old Monroe Road, Matthews, North Carolina 28105. Any remaining allegations contained in paragraph 2 of the Amended Complaint are denied, and proof thereof is demanded.

3. Defendant Family Dollar Stores admits only that it operates a retail Family Dollar Store located at Ames Plaza, State Route 322W, Philipsburg, Clearfield County, Pennsylvania 16866. Any remaining allegations contained in paragraph 3 of the Amended Complaint are denied, and proof thereof is demanded.

**COUNT I**  
**NANCY J. WARRENDER V. FAMILY DOLLAR**

Defendant Family Dollar Stores incorporates by reference herein its responses to paragraphs 1 through and including 3 of the Amended Complaint, as though set forth in full.

4. Defendant Family Dollar Stores admits only that plaintiff Nancy J. Warrender was in the Philipsburg Family Dollar Store on December 18, 2001. Defendant Family Dollar Stores is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 4 of the Amended Complaint. Said allegations are deemed to be denied, and proof thereof is demanded.

5. Because Defendant Family Dollar Stores does not know what criteria plaintiff used to formulate the allegation that the store was “experiencing a heavy shopping crowd” at or about the time of the accident alleged in the Amended Complaint, the defendant is without knowledge or information sufficient to form a belief as to the truth of any such allegations. Said allegations are deemed to be denied, and proof thereof is demanded. By way of further response, defendant Family Dollar Stores denies that at the time of the incident alleged in the Amended Complaint, there were

unattended “shopping carts, boxes and debris scattered throughout the store.” Any remaining allegations contained in paragraph 5 of the Amended Complaint are denied pursuant to Pa. R.Civ.P. 1029(e).

6. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 6 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

7. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 7 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

8. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 8 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

9. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 9 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

10. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 10 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

11. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 11 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

12. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 12 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

13. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 13 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

14. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 14 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).



15. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 15 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

16. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 16 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

17. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 17 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

18. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 18 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

19. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 19 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

20. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 20, including (a) through (e) of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

21. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 21 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

22. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 22 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

23. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 23 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

24. Defendant Family Dollar Stores denies each and every allegation contained in paragraph 24 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

**NEW MATTER**

25. Defendant Family Dollar Stores avers that the plaintiff has failed to state any claim against this defendant upon which relief can be granted.

26. Defendant Family Dollar Stores avers that plaintiff's claims are barred, either in whole or in part, by any applicable statute of limitations.

27. Defendant Family Dollar Stores avers that plaintiff has not sustained any injuries or damages alleged in the Amended Complaint due to negligent conduct on the part of defendant Family Dollar Stores of Pennsylvania, Inc. or any of its agents, servants, workmen or employees.

28. Defendant Family Dollar Stores avers that in the event that it is judicially determined that it was negligent, which is specifically denied, then it is averred that the plaintiff did not sustain some or all of the injuries or harm alleged in the Amended Complaint as a direct, proximate or legal result of any such negligent conduct on the part of this defendant.

29. Defendant Family Dollar Stores avers that to the extent the plaintiff sustained any injuries or harm as alleged in the Amended Complaint, which is denied, then said injuries or harm were directly, proximately and/or solely caused by the negligent, intentional and/or other conduct of individuals over whom defendant Family Dollar Stores had neither the opportunity, nor duty, to control.

30. Defendant Family Dollar Stores avers that the plaintiff has not sustained some or all of the injuries and/or damages alleged in the Amended Complaint.

31. To the extent that the plaintiff alleges a right of recovery under any theories set forth in the Amended Complaint, the liability of defendant Family Dollar Stores is denied in that any alleged damages resulted from superseding, intervening and/or subsequent circumstances over which this defendant neither had knowledge nor the duty or opportunity to control.

32. Defendant Family Dollar Stores avers that it did not owe a duty to the plaintiff in that there was no foreseeable risk of harm of the type alleged in the Amended Complaint.

33. Defendant Family Dollar Stores avers that the plaintiff's claims are subject to, and limited by, the provisions of the Pennsylvania Comparative Negligence Act.

34. In order to preserve any defense of comparative negligence pending further investigation and discovery, defendant Family Dollar Stores avers that some or all of the plaintiff's claims are barred, either in whole or in part, by the comparative negligence of plaintiff Nancy J. Warrender.

35. In order to preserve any defense of contributory negligence pending further investigation and discovery, defendant Family Dollar Stores avers that some or all of the plaintiff's claims are barred by the contributory negligence of plaintiff Nancy J. Warrender.

36. Defendant Family Dollar Stores avers that the incident alleged in the Amended Complaint was caused, in whole or in part, by the careless, negligent and reckless conduct of plaintiff Nancy J. Warrender, as follows:

- a. in failing to maintain a proper lookout while on the premises of the Family Dollar Store;
- b. in failing to use the aisles, checkout lanes and walkways within the store in an appropriate manner;
- c. in failing to observe and avoid any shopping carts, materials or debris that plaintiff alleges constituted dangerous or hazardous obstructions to patrons in the store;
- d. in failing to take an alternative route around any obstructions to safe travel within the store, caused by shopping carts, debris or other materials as alleged in the Amended Complaint;
- e. in failing to notify employees at the store of any dangerous conditions alleged to have existed at the date and time of the injuries alleged in the Amended Complaint, and in failing to seek assistance from store employees in order to avoid any injuries alleged caused by coming into contact with any such shopping carts, materials or debris; and
- f. in failing to protect herself or take appropriate actions to avoid the potential for injury caused by any alleged hazardous or dangerous conditions existing in the store at the time and place alleged in the Amended Complaint, which conditions were known to plaintiff or were obvious to plaintiff and other store patrons.

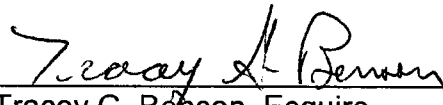
37. Defendant Family Dollar Store avers that any shopping carts, materials, debris or other conditions alleged by Plaintiff to have obstructed patron travel within the

store, or to have otherwise created unsafe or hazardous conditions within the store, were open and obvious to patrons, including plaintiff Nancy J. Warrender.

38. Defendant Family Dollar Stores avers that it had no duty or obligation to anticipate the potential for injury or harm to plaintiff caused by coming into contact with known and/or obvious conditions within the store related to the placement or location of merchandise, store fixtures, shopping carts, individuals or other items customarily encountered in a retail store such as the Philipsburg Family Dollar Store.

WHEREFORE, Defendant Family Dollar Stores of Pennsylvania, Inc. prays for judgment in its favor and against the Plaintiff, Nancy J. Warrender, on all claims asserted in the Amended Complaint.

**A JURY TRIAL IS DEMANDED.**

  
\_\_\_\_\_  
Tracey G. Benson, Esquire  
Julia R. Cronin, Esquire

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
124 N. Allegheny Street  
Bellefonte, PA 16823  
814-355-5474

Counsel for Defendant Family Dollar  
Stores of Pennsylvania, Inc.

Dated: February 2, 2004

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

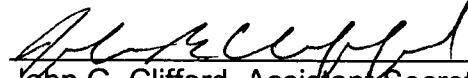
FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

Civil Action No.  
03-1586-CD

VERIFICATION

I, John G. Clifford, Assistant Secretary of Family Dollar Stores of Pennsylvania, Inc., verify that the statements contained in the foregoing Answer and New Matter to Plaintiff's Amended Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

  
John G. Clifford, Assistant Secretary of  
Family Dollar Stores of Pennsylvania,  
Inc.

Dated: *January 23, 2004*

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

NANCY J. WARRENDER, an individual,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	03-1586-CD
FAMILY DOLLAR STORES OF PENNSYLVANIA,	)	
INC.,	)	
	)	
Defendant.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **ANSWER AND NEW MATTER TO PLAINTIFF'S AMENDED COMPLAINT**, was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

David R. Thompson, Esq.  
Thompson Law Office  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg, PA 16866

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON INC.

By: Tracey A. Benson  
Tracey G. Benson

Dated: February 2, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

**CIVIL DIVISION - LAW**

**NANCY J. WARRENDER, an individual,**

Plaintiff

**VS.**

**FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.**

Defendant

\*\*\*\*\*

**No. 03-1586-CD**

TYPE OF CASE:  
Civil Division - Law

**TYPE OF PLEADING:**  
Acceptance of Service

FILED ON BEHALF OF:  
Plaintiff

**COUNSEL OF RECORD  
FOR THIS PARTY:**  
David R. Thompson, Esquire  
Attorney at Law  
Supreme Court I.D. 73053  
308 Walton Street, Suite 4  
P.O. Box 587  
Philipsburg PA 16866  
(814) 342-4100

FILED

FEB 05 2004

William A. Shaw  
Prothonotary/Clerk of Courts



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

CIVIL COURT DIVISION

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLARS STORES OF PENNSYLVANIA,  
INC.

Defendant

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No. 03-1586-CD

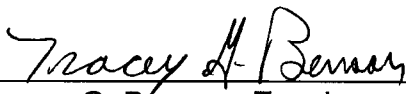
TYPE OF CASE:

Civil Action - Divorce

**ACCEPTANCE OF SERVICE**

I, Tracey G. Benson, Esquire, attorney for Defendant, hereby accept service of the  
Amended Complaint filed by Plaintiff.

DATE: January 8, 2004

  
Tracey G. Benson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant

No. 03-1586-CD

TYPE OF CASE:

Civil Action - Law

TYPE OF PLEADING:

Certificate of Service

FILED ON BEHALF OF:

Plaintiff

COUNSEL OF RECORD FOR  
THIS PARTY:

David R. Thompson, Esquire  
Attorney at Law

Supreme Court 73053

P.O. Box 587

308 Walton Street, Suite 4

Philipsburg PA 16866

(814) 342-4100

**FILED**

**FEB 11 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,	*	No. 03-1586-CD
	*	
	*	
Plaintiff	*	
	*	TYPE OF CASE:
vs.	*	Civil Action - Law
	*	
FAMILY DOLLAR STORES OF PENNSYLVANIA,	*	
INC.	*	
Defendant	*	

**CERTIFICATE OF SERVICE**

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served a true and correct copy of **ACCEPTANCE OF SERVICE**, in the above captioned matter on the following by Prepaid, First Class, United States Mail:

Tracey G. Benson, Esquire  
MILLER, KISTLER, CAMPBELL, MILLER, WILLIAMS & BENSON, INC.  
124 North Allegheny Street  
Bellefonte, PA 16823

DATE: 2-6-09

BY:   
David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant

No. 03-1586-CD

TYPE OF CASE:  
Civil Matter

TYPE OF PLEADING:  
Reply to New Matter

FILED ON BEHALF OF:  
Plaintiff

COUNSEL OF RECORD FOR THIS  
PARTY:

David R. Thompson, Esq.  
P.O. Box 587  
308 Walton Street, St. 4  
Philipsburg PA 16866  
(814) 342-4100 PHONE  
(814) 342-7081 FAX  
Supreme Court ID #73053

**FILED**

**FEB 25 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLAR STORES OR PENNSYLVANIA,  
INC.,

Defendant

\*  
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\*  
\*  
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\*

No. 03-1586-CD

***REPLY TO NEW MATTER***

AND NOW, comes the Plaintiff by and through her attorney, David R. Thompson, Esquire, and files the following Reply to Defendant's New Matter:

Paragraph 1 through 24 of Plaintiff's Amended Complaint are incorporated herein by reference as though the same were set forth at length:

25. Paragraph 25 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary, the same is strictly denied, and strict proof is demanded at the time of trial.

26. Paragraph 26 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary, the same is strictly denied, and strict proof is demanded at the time of trial.

27. Paragraph 27 is strictly denied as more fully stated in Plaintiff's Amended Complaint.

28. Paragraph 28 is strictly denied as more fully stated in Plaintiff's Amended

Complaint.

29. Paragraph 29 is strictly denied as more fully stated in Plaintiff's Amended Complaint.

30. Paragraph 30 is strictly denied as more fully stated in Plaintiff's Amended Complaint.

31. Paragraph 31 is strictly denied as more fully stated in Plaintiff's Amended Complaint.

32. Paragraph 32 is strictly denied as more fully stated in Plaintiff's Amended Complaint.

33. Paragraph 33 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary, the same is denied, and strict proof is demanded at the time of trial.

34. Paragraph 34 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary, the same is denied, and strict proof is demanded at the time of trial.

35. Paragraph 35 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary, the same is denied, and strict proof is demanded at the time of trial.

36. Paragraph 36 a through f are strictly denied, as more fully stated in Plaintiff's Amended Complaint.

37. Paragraph 37 is strictly denied, as more fully stated in Plaintiff's Amended Complaint.

38. Paragraph 38 is strictly denied, as more fully stated in Plaintiff's Amended Complaint.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgement in his favor and against the Defendant as requested in Plaintiff's Amended Complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. R. Thompson', written in a cursive style.

David R. Thompson, Esquire  
Attorney for Plaintiff

**VERIFICATION**

I certify that the facts set forth in the foregoing **REPLY TO NEW MATTER** 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. § 4904, relating to unsworn falsification to authorities.

Dated: 01/24/04

Nancy J. Warrender  
Nancy J. Warrender

*Thanks David  
my writing has  
improved little.*



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant

No. 03-1586-CD

TYPE OF CASE:  
Civil Action - Law

TYPE OF PLEADING:  
Certificate of Service

FILED ON BEHALF OF:  
Plaintiff

COUNSEL OF RECORD FOR  
THIS PARTY:  
David R. Thompson, Esquire  
Attorney at Law  
Supreme Court 73053  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg PA 16866  
(814) 342-4100

**FILED**

**FEB 27 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WAREENDER, an individual,	*	No. 03-1586-CD
	*	
	*	
Plaintiff	*	
	*	TYPE OF CASE:
vs.	*	Civil Action - Law
	*	
FAMILY DOLLAR STORES OF PENNSYLVANIA,	*	
INC.,	*	
Defendant	*	

**CERTIFICATE OF SERVICE**

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served a true and correct copy of **PLAINTIFF'S REPLY TO NEW MATTER**, in the above captioned matter on the following by Prepaid, First Class, United States Mail:

Tracey G. Benson, Esquire  
MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
124 North Allegheny Street  
Bellefonte, PA 16823

DATE: 2-25-04

BY:   
David R. Thompson, Esquire

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

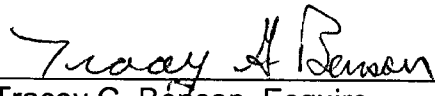
Civil Action No.  
03-1586-CD

**NOTICE OF SERVICE OF INTERROGATORIES**

TO THE PROTHONOTARY:

You are hereby notified that on March 1, 2004, original Defendant's First Set of Interrogatories to Plaintiff were served upon Plaintiff Nancy J. Warrender by mailing the same by first class mail, postage prepaid, to her counsel of record as follows:

David R. Thompson, Esquire  
Thompson Law Office  
308 Walton Street, Suite 4  
P.O. Box 587  
Philipsburg, PA 16866

  
Tracey G. Benson, Esquire  
Julia R. Cronin, Esquire

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
124 N. Allegheny Street  
Bellefonte, PA 16823  
814-355-5474

Counsel for Defendant Family Dollar  
Stores of Pennsylvania, Inc.

**FILED**

MAR 02 2004

Dated: 3/1/04

JOHN A. STAW  
Prothonotary, Clerk of Courts

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

Civil Action No.  
03-1586-CD

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **NOTICE OF SERVICE OF INTERROGATORIES** was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

David R. Thompson, Esq.  
Thompson Law Office  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg, PA 16866

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON INC.

By: Tracey G. Benson  
Tracey G. Benson

Dated: 3/1/04

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant

No. 03-1586-CD

TYPE OF CASE:  
Civil Action - Law

TYPE OF PLEADING:  
Certificate of Service

FILED ON BEHALF OF:  
Plaintiff

COUNSEL OF RECORD FOR  
THIS PARTY:  
David R. Thompson, Esquire  
Attorney at Law  
Supreme Court 73053  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg PA 16866  
(814) 342-4100

**FILED**

**MAY 27 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,	*	No. 03-1586-CD
	*	
	*	
Plaintiff	*	
	*	
vs.	*	
	*	TYPE OF CASE:
FAMILY DOLLAR STORES OF	*	Civil Action - Law
PENNSYLVANIA, INC.,	*	
	*	
	*	
Defendant	*	

**CERTIFICATE OF SERVICE**

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served a true and correct copy of **PLAINTIFF'S ANSWER TO DEFENDANT'S FIRST SET OF INTERROGATORIES**, in the above captioned matter on the following by Prepaid, First Class, United States Mail:

Tracey G. Benson, Esquire  
MILLER, KISTLER, CAMPBELL, MILLER, WILLIAMS & BENSON, INC.  
124 North Allegheny Street  
Bellefonte, PA 16823

DATE: 5-24-04

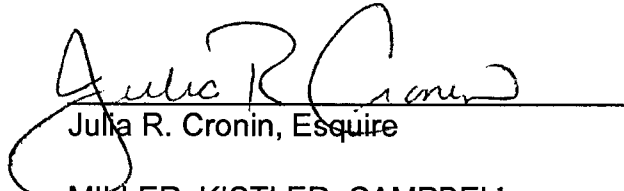
BY:   
David R. Thompson, Esquire

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

NANCY J. WARRENDER, an individual,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	03-1586-CD
FAMILY DOLLAR AND FAMILY DOLLAR, INC.,	)	
	)	
Defendant.	)	

**NOTICE OF INTENT TO SERVE SUBPOENA TO PRODUCE DOCUMENTS  
AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Defendant intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served

  
Julia R. Cronin, Esquire

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
124 N. Allegheny Street  
Bellefonte, PA 16823  
814-355-5474

Counsel for Family Dollar & Family  
Dollar, Inc.

**FILED** <sup>no cc</sup>  
mll:4984  
APR 21 2005  
William A. Shaw  
Prothonotary/Clerk of Courts

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR AND FAMILY DOLLAR, INC.,

Defendant.

Civil Action No.  
03-1586-CD

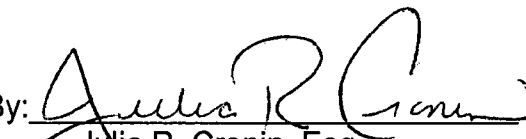
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21**, was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

David R. Thompson, Esq.  
Thompson Law Office  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg, PA 16866

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON INC.

By:

  
Julia R. Cronin, Esq.

Dated: 4/20/05



COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Nancy J. Warrender  
Plaintiff(s)

\*

Vs.

\*

No. 2003-01586-CD

Family Dollar  
Family Dollar, Inc.  
Defendant(s)

\*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO  
RULE 4009.22

TO: Jeanne H. Beyer, M.D., 210 Loch Lomond Road, Philipsburg, PA 16866

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to  
produce the following documents or things:

See attached

Julia Cronin, Esquire, 124 N. Allegheny Street, Bellefonte, PA 16823  
(Address)

You may deliver or mail legible copies of the documents or produce things requested by  
this subpoena, together with the certificate of compliance, to the party making this request at the  
address listed above. You have the right to seek in advance the reasonable cost of preparing the  
copies or producing the things sought.

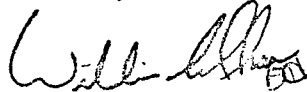
If you fail to produce the documents or things required by this subpoena within twenty  
(20) days after its service, the party serving this subpoena may seek a court order compelling you  
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Julia R. Cronin, Esq.  
ADDRESS: 124 N. Allegheny Street  
Bellefonte, PA 16823  
TELEPHONE: 814-355-5474  
SUPREME COURT ID # 76440  
ATTORNEY FOR: Defendants

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division



Deputy

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

DATE: Tuesday, April 19, 2005  
Seal of the Court

### ATTACHMENT

Copies of all bills and records pertaining to the medical, psychiatric or psychological care of Nancy J. Warrender (Social Security No. 191-28-9674, Date of Birth: 8/13/16), including but not limited to a full and complete copy of any and all records, office notes, admission summaries, discharge summaries, operative reports, lab reports, medication records, reports, notes, correspondence, x-ray reports, test results, consultations, progress notes or other material or information relating to any consultation, examination, medical history, diagnosis or treatment. **We reserve the right to obtain copies of radiology films using this subpoena once we have had an opportunity to review any records or radiology reports that are received in response to this request.**

**STATEMENT OF ASSURANCE:** The information disclosed pursuant to this subpoena will be held confidentially and used or further disclosed only as required or permitted by law and for the purpose of the lawsuit filed to No. 03-156-CD in the Court of Common Pleas of Clearfield County, Pennsylvania.



Julia R. Cronin, Esquire  
I.D. No.: PA87331

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
124 N. Allegheny Street  
Bellefonte, PA 16823  
814-355-5474

Counsel for Family Dollar & Family  
Dollar, Inc.

Dated: 4/20/05

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

)  
) No. 2003-1586-CD  
)  
) Type of Case: Civil  
)  
) Type of Pleading: Motion for  
) Summary Judgment  
)  
) Filed on Behalf of: Defendant  
)  
) Counsel of Record for this  
) Party:  
) Julia R. Cronin, Esquire  
) I.D. No. PA76440  
) Miller, Kistler, Campbell,  
) Miller, Williams & Benson, Inc.  
) 720 S. Atherton Street  
) State College, PA 16801  
) 814-234-1500

FILED <sup>NO CC</sup>  
MIR 3961  
JUN 27 2006 (CR)

William A. Shaw  
Prothonotary/Clerk of Courts

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

NANCY J. WARRENDER, an individual,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	03-1586-CD
FAMILY DOLLAR STORES OF PENNSYLVANIA,	)	
INC.	)	
	)	
Defendant.	)	

**MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Defendant, Family Dollar Stores of Pennsylvania, Inc. ("Family Dollar Stores"), by and through its counsel, Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., and files this Motion for Summary Judgment, averring in support thereof as follows:

**I. FACTUAL BACKGROUND**

1. Plaintiff Nancy J. Warrender commenced this action by filing a Complaint on October 22, 2003. Plaintiff filed an Amended Complaint on December 12, 2003, a copy of which is attached hereto as Exhibit "A."

2. In her Amended Complaint, Plaintiff alleges that she suffered injuries on December 18, 2001, while she was a patron of the Family Dollar Store located in the Ames Plaza in Philipsburg. Amended Complaint, ¶¶4, 11 & 12, attached hereto as Exhibit "A."

3. Specifically, Plaintiff alleges that as she walked from one register to another register to check out, she tripped over a shopping cart that was left between the

two registers, causing her to fall forward as her body twisted. Amended Complaint, ¶11, attached hereto as Exhibit "A."

4. Plaintiff contends that the Family Dollar Stores was negligent in leaving shopping carts in the walking area between the checkout lines, in failing to warn patrons that shopping carts were located in the checkout area and walk-ways, and in failing to keep its walk-ways and patron areas free from shopping carts and other debris. Amended Complaint, ¶20, attached hereto as Exhibit "A."

5. Plaintiff alleges that she suffered a fractured right hip and other related injuries as a result of her fall. Amended Complaint, ¶21, attached hereto as Exhibit "A."

## **II. SUMMARY JUDGMENT STANDARD**

6. Pursuant to Pennsylvania Rule of Civil Procedure 1035.2, "[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay trial, 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 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 has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury." Pa. R.C.P. 1035.2.

7. Summary judgment may be granted when the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact, and that the moving party is entitled to

judgment as a matter of law. Fortney v. Callenberger, 801 A.2d 594, 597 (Pa. Super. 2002).

8. The record is viewed in the light most favorable to the non-moving party. Ertel v. Patriot News Co., 544 Pa. 93, 98-99, 674 A.2d 1038, 1041 (1996), cert. denied, 519 U.S. 1008, 117 S. Ct. 512, 136 L. Ed. 2d 401 (1996).

9. A non-moving party opposing summary judgment must adduce sufficient evidence on an issue essential to his case on which he bears the burden of proof, such that a jury could return a verdict in his favor. Ertel v. Patriot News Co., 544 Pa. 93, 101, 674 A.2d 1038, 1042 (1996), cert. denied, 519 U.S. 1008, 117 S. Ct. 512, 136 L. Ed. 2d 401 (1996).

10. Summary judgment serves to eliminate waste of time and resources of both litigants and courts in cases where a trial could be a useless formality. Liles v. Balmer, 389 Pa. Super. 451, 567 A.2d 691 (1989).

### **III. ARGUMENT**

#### **DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW BECAUSE IT DID NOT BREACH A DUTY OWED TO PLAINTIFF.**

11. In order to establish a prima facie case sounding in negligence, a plaintiff must prove: (1) a duty or obligation recognized by law, requiring the defendant to conform to a certain standard of conduct; (2) a failure on the part of the defendant to conform to that standard of conduct, i.e., a breach of duty; (3) a causal connection between the breach of duty and the resulting injury; and (4) actual loss or damages resulting from the breach. Moreno v. South Hills Health Systems, 501 Pa. 634, 462 A.2d 680, 684 n. 5 (1983).

12. The duty owed by Defendant (a possessor of land) to Plaintiff (Defendant's business invitee) is set forth in Section 343 of the Restatement (Second) of Torts which provides:

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he

- (a) knows, or by the exercise of reasonable care, would discover the condition and should realize that it involves an unreasonable risk of harm to such invitees, and
- (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
- (c) fails to exercise reasonable care to protect them against the danger.

Restatement (Second) of Torts §343 (1965); Gutteridge v. A. P. Green Services, Inc., 804 A.2d 643, 656 (Pa. Super. 2002).

13. Under Pennsylvania law, a possessor of land is under no duty to protect an invitee from physical harm caused to the invitee by a dangerous activity or condition on the land which is known or obvious to the invitee. Carrender v. Fitterer, 503 Pa. 178, 185, 469 A.2d 120, 123 (1983).

14. The shopping cart was not a dangerous instrumentality, yet to the extent it posed any harm to Plaintiff, it was known and obvious to her.

15. After leaving items at a checkout counter identified as counter #1<sup>1</sup>, Plaintiff went back into the shopping aisles to retrieve extra items. After retrieving the items, she proceeded to a checkout counter identified as counter #2 where the clerk directed

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<sup>1</sup> During Plaintiff's deposition, the terms "counter" and "aisle" were used interchangeably to describe the checkout areas. For sake of consistency, counsel has used the term "counter" throughout this Motion.

Plaintiff to take her items to counter #1 where her first set of items remained located. Deposition of Nancy J. Warrender, p. 74, l. 6 -16; p. 78, l. 22 - p. 81, l. 17; and Exhibit 3 to Plaintiff's Deposition, attached hereto as Exhibit "B."<sup>2</sup>

16. Plaintiff traveled from checkout counter #2 to checkout counter #1 by walking between the checkout counters and the front doors of the store. Deposition of Nancy J. Warrender, p. 81, l. 18 - p. 83, l. 19; and Exhibit 3 to Plaintiff's Deposition, attached hereto as Exhibit "B."

17. Plaintiff testified that there were "several," probably about "half a dozen," empty carts located in the area in which she walked between checkout counters #2 and #1, which carts appeared to have been left by customers after they checked out. Deposition of Nancy J. Warrender, 84, l. 5 - p. 85, l. 9, attached hereto as Exhibit "B."

18. Plaintiff saw those carts before she began to walk from checkout counter #2 to #1. After safely passing several carts, Plaintiff's toe caught an empty cart located close to counter #1. Deposition of Nancy J. Warrender, p. 85 - 87; p. 95, l. 20 - p. 96, l. 7, attached hereto as Exhibit "B."

19. Plaintiff stepped into the cart. Her right toe caught underneath the bar located on the bottom of the cart which supports the wheels, causing her to fall. Deposition of Nancy J. Warrender, 90, l. 9 - 94, l. 13; p. 122, l. 25 - p. 123, l. 9, attached hereto as Exhibit "B."

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<sup>2</sup>Copies of the relevant pages of Plaintiff's Deposition Transcript and all deposition exhibits are attached hereto as Exhibit "B." The complete original deposition transcript is being filed contemporaneously with the filing of this Motion.



20. Plaintiff noticed nothing unusual about the empty cart. She did not notice anything to be sticking out of it or any defects in the cart. Deposition of Nancy J. Warrender, p. 122, l. 14 - 24, attached hereto as Exhibit "B."

21. Plaintiff admitted that she did not trip on an object left on the floor or on a display rack. Her fall was not caused by a defect in the flooring or a wet or similar substance on the ground. Other than the carts, the area where Plaintiff fell was clear. Deposition of Nancy J. Warrender, p. 97, l. 19 - p. 98, l. 20, attached hereto as Exhibit "B."

22. Nothing blocked Plaintiff's view as she walked from counter #2 to counter #1. Plaintiff could see the carts. They were in plain sight. Deposition of Nancy J. Warrender, p. 98, l. 21 – p. 99, l. 3, attached hereto as Exhibit "B."

23. There was an open pathway from aisle #2 to aisle #1. Plaintiff walked straight ahead and did not have to maneuver to the right or left to get past the carts. Deposition of Nancy J. Warrender, p. 125, l. 16 - 25; p. 126, l. 6 - 19, attached hereto as Exhibit "B."

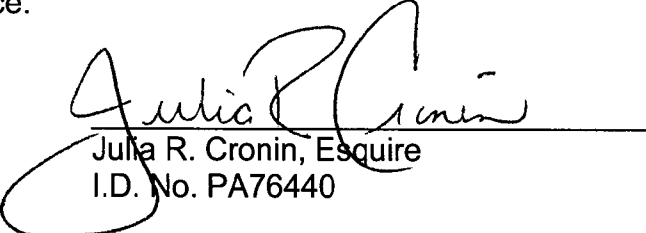
24. The lighting in the store appeared fine to Plaintiff. She imagines it was bright in the store, and does not remember it being dark or dim. Deposition of Nancy J. Warrender, p. 100, attached hereto as Exhibit "B."

25. The evidence in this case does not support that Defendant allowed any dangerous or harmful condition to exist on the store premises.

26. The evidence demonstrates that the shopping cart on which Plaintiff caught her foot was open and obvious to her and that she voluntarily encountered the area in which the shopping cart was located.

27. Based upon the foregoing facts and case law, it is apparent that Defendant owed no duty to Plaintiff to protect her from contacting the shopping cart and that Plaintiff bears responsibility for her unfortunate fall.

WHEREFORE, Defendant, Family Dollar Stores of Pennsylvania, Inc., respectfully requests that this Honorable Court grant summary judgment in its favor and dismiss Plaintiff's Complaint with prejudice.



Julia R. Cronin, Esquire  
I.D. No. PA76440

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Counsel for Defendant Family Dollar  
Stores of Pennsylvania, Inc.

Date: June 26, 2006

# **EXHIBIT A**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,

Plaintiff

VS.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant

No. 03-1586-CD

TYPE OF CASE:  
Civil Division - Law

TYPE OF PLEADING:  
Amended Complaint

FILED ON BEHALF OF:  
Plaintiff

COUNSEL OF RECORD FOR  
THIS PARTY:  
David R. Thompson, Esq.  
Attorney at Law  
Supreme Court I.D. 73053  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg PA 16866  
(814) 342-4100

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

DEC 12 2003

Attest.

*William L. Rouse*  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.

Defendant

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No. 03-1586

**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 Petition 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 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  
Clearfield PA 16830  
(814) 765-2641

  
\_\_\_\_\_  
David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.

Defendant

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No. 03-1586

***AMENDED COMPLAINT***

AND NOW, comes the Plaintiff, Nancy J. Warrender, by and through her attorney David R. Thompson, Esquire, and files the following Amended Complaint of which the following is averred:

1. The Plaintiff is Nancy J. Warrender, an individual, residing at RR 1 Box 571, Osceola Mills, Clearfield County, Pennsylvania, 16666.

2. The Defendant is Family Dollar Stores of Pennsylvania, Inc., a business corporation duly organized under the laws of the Commonwealth of Pennsylvania, with a corporate headquarters address of P.O. Box 1017, Charlotte, North Carolina, 28201-1017.

3. Defendant Family Dollar Stores of Pennsylvania, Inc., is the owner and operator of a Family Dollar Store located at Ames Plaza, Decatur Township, Philipsburg, Clearfield County, Pennsylvania, 16866.

***COUNT I***

***NANCY J. WARRENDER VS. FAMILY DOLLAR***

Paragraphs 1 through 3 are incorporated as though the same were set forth in full length herein.

4. On or about, December 18, 2001, at approximately 12:00 p.m. E.D.S.T., the Plaintiff, Nancy J. Warrender, entered the Family Dollar store described in Paragraph 3 hereof for the purpose of shopping.

5. On or about the said day and at about the said time, Defendant Family Dollar was experiencing a heavy shopping crowd, and there were shopping carts, boxes and debris scattered throughout the store.

6. On or about the said day and at about the said time, Plaintiff retrieved two (2) boxes of chocolate covered cherries, one (1) box of chocolate mints, and three other minor items, and took them to what she recalls as register 2.

7. At that time, Plaintiff asked the clerk to hold the items while she went back to get additional boxes of chocolate covered cherries and chocolate mints.

8. After retrieving the additional boxes, she returned to the same register (2) and was redirected by store personnel to what Plaintiff recalls as register 1.

9. At the redirected register (1), the clerk began checking out the additional boxes of candy while Plaintiff went back to the previous register to retrieve the other items left there.

10. Carts were left at various places between the two register lanes and in the path of travel between the same.

11. She walked forward to the original register (2) and picked up the original items. By way of further pleading, as Plaintiff turned to go back to Register (1), she tripped over a shopping cart that was between the two registers, causing her to fall forward as her body twisted.

12. The clerk at the previous register (2) took the items from her and over to the register (1) where Plaintiff's checkout was processed. The time on the receipt was 12:06 p.m.

13. Not knowing the seriousness of her injuries, Plaintiff pulled herself up to the register (1) and paid the bill.

14. The Clerk at register (1) completed the sale transaction and put her change in the bag. After completing the sale transaction, the clerk shut her register down and aided Plaintiff.

15. Unable to walk on her own, Plaintiff was assisted from the store and to her car by the said Clerk, Gale Gardner and Gale Gardner's daughter Nicole.

16. Nicole actually drove Plaintiff's car to Plaintiff's house, while Gale Gardner followed in her own vehicle behind them.

17. Upon arrival, Plaintiff waited in the car, and Gale Gardner went into the home and called Plaintiff's brother, Roy Thompson and sister, Margaret Perrin.

18. During this time, a neighbor Betty Fisher came to the vehicle to assist. By way of further pleading, Betty Fisher is a nurse and diagnosed the problem as being severe. She recommended that she proceed to the hospital immediately.

19. Upon the arrival of Plaintiff's brother and sister, Plaintiff was immediately taken



to the Philipsburg Area Hospital Emergency Room, treated and admitted into the hospital.

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

- a. Defendant inappropriately left shopping carts and other materials in walking areas between check out lines which is a patron area that should be kept free of obstructions;
- b. Defendant failed to warn patrons of the improperly placed shopping carts which were located in the check out area and throughout the walk-ways of the store;
- c. Defendant failed to move or place the shopping cars to an isolated area where they would be out of the walk-ways of the store;
- d. Defendant knew or should have known that the locations of the improperly placed shopping carts and other debris were in areas that were unsafe and could cause injury to it patrons;
- e. Defendant failed to keep its walk-ways and patron areas free from abandoned shopping carts and other debris;

21. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendant, the Plaintiff, Nancy J. Warrender, suffered serious injuries all of which may and probably will be permanent as follows:

- a. displaced, garden-type, intracapsular fracture of the right hip;
- b. painful bipolar endofemoral hemiarthroplasty of the right hip performed immediately;
- c. contusions, scrapes, bruises and abrasions to various parts of her body
- d. extreme pain and suffering; past, present and future;

- e. inability to ambulate;
- f. permanent difficulties ambulating;
- g. privation and inconvenience; past, present and future;
- h. future medical expenses;
- i. embarrassment, humiliation, and incidental damages;
- j. all other damages allowable by law.

22. As a direct and proximate result of the injuries referred to in Paragraph 21 hereof which is incorporated herein by reference, the Plaintiff, Nancy J. Warrender, has incurred medical expenses and will continue to incur medical expenses in an undetermined amount in the future.

23. The Plaintiff, Nancy J. Warrender, may and probably will be required in the future to spend an indefinite amount to replace household and personal care services that she would otherwise perform but for her injuries.

24. As a direct and proximate result of the injuries referred to in Paragraph 21 hereof which is incorporated herein by reference, Plaintiff has incurred incidental damages.

WHEREFORE, Plaintiff, Nancy J. Warrender, claims damages from the Defendant in an amount in excess of Twenty Five Thousand (\$25,000.00) Dollars, plus interest and costs of suit. A Jury Trial is hereby demanded.

Respectfully submitted,




David R. Thompson, Esquire  
Attorney for Plaintiff

**VERIFICATION**

Plaintiff, by and through their attorney, David R. Thompson, Esquire, verifies that the statements made in this **AMENDED COMPLAINT** are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

DATE: 12-12-03

  
\_\_\_\_\_  
David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.

Defendant

No. 03-1586

TYPE OF CASE:  
Civil Court Division

TYPE OF PLEADING:  
Certificate of Service

FILED ON BEHALF OF:  
Plaintiff

COUNSEL OF RECORD FOR  
THIS PARTY:  
David R. Thompson, Esquire  
Attorney at Law  
Supreme Court 73053  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg PA 16866  
(814) 342-4100

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.

Defendant

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No. 03-1586

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, **DAVID R. THOMPSON, ESQUIRE**, do hereby certify that I served a true and correct, certified copy of the **AMENDED COMPLAINT**, in the above captioned matter has been served upon the persons indicated below, by placing the same in the United States First Class Mail, postage prepaid and addressed as follows:

Tracey G. Benson, Esquire  
MILLER KISTLER CAMPBELL MILLER  
WILLIAMS & BENSON, INC.  
124 North Allegheny Street  
Bellefonte PA 16823

DATE: 12-12-03

BY:

  
David R. Thompson, Esquire

# **EXHIBIT B**

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

\* \* \* \* \*

\*

NANCY J. WARRENDER, \*

Plaintiff \*

Case No.

vs. \*

03-1586-CD

FAMILY DOLLAR and \*

FAMILY DOLLAR, \*

INC., \*

Defendants \*

\*

COPY

\* \* \* \* \*

DEPOSITION OF  
NANCY J. WARRENDER  
March 29, 2005

Any reproduction of this transcript  
is prohibited without authorization  
by the certifying agency.

## DEPOSITION

OF

NANCY J. WARRENDER, taken on behalf of  
the Defendant herein, pursuant to the  
Rules of Civil Procedure, taken before  
me, the undersigned, Rhonda K. Lingle,  
a Court Reporter and Notary Public in  
and for the Commonwealth of  
Pennsylvania, at the law offices of  
David R. Thompson, Thompson Law Office,  
308 Walton Street, Suite 4,  
Philipsburg, Pennsylvania, on Tuesday,  
March 29, 2005 beginning at 1:55 p.m.



## A P P E A R A N C E S

DAVID R. THOMPSON, ESQUIRE

Thompson Law Office

308 Walton Street

Suite 4

P.O. Box 587

Philipsburg, PA 16866

COUNSEL FOR PLAINTIFF

JULIA R. CRONIN, ESQUIRE

Miller, Kistler, Campbell, Miller,

Williams & Benson, Inc.

124 North Allegheny Street

Bellefonte, PA 16823-1695

COUNSEL FOR DEFENDANTS

## I N D E X

WITNESS: NANCY J. WARRENDER

EXAMINATION

by Attorney Cronin 7 - 123

EXAMINATION

by Attorney Thompson 123 - 130

RE-EXAMINATION

by Attorney Cronin 130 - 131

CERTIFICATE 132

EXHIBIT PAGE

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OBJECTION PAGEATTORNEYPAGE

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1                   one?

2       A.           Uh-huh (yes).

3                   ATTORNEY THOMPSON:

4                   So you would have come  
5                   from back in here to check out?

6       A.           Yeah. Okay. And I --- yeah,  
7                   that's it. Then, you know, I laid it  
8                   there and I said, oh, wait, I wanted  
9                   something else and they went on to wait  
10                  on somebody else and now I'm back. So  
11                  they were busy and I went into the  
12                  second one then. And then she said  
13                  we'll get your --- take it over to the  
14                  other one, you know. And so when I  
15                  did, I took them over there and I gave  
16                  her my money. As I went over ---.

17                  BY ATTORNEY CRONIN:

18       Q.           Let me stop you there. Okay?

19                  ATTORNEY THOMPSON:

20                  Yes, because ---.

21                  BY ATTORNEY CRONIN:

22       Q.           Let's put on the diagram number  
23                   one for the first checkout aisle that  
24                   you went to and number two for the  
25                   second checkout aisle. And remember

1 A. No.

2 ATTORNEY THOMPSON:

3 So on the diagram you're  
4 saying that you went to this  
5 ---?

6 A. I'm confused.

7 ATTORNEY THOMPSON:

8 I understand. But you  
9 went to this checkout lane  
10 first?

11 A. Yeah.

12 ATTORNEY THOMPSON:

13 Okay. So on the picture  
14 that would be this one right  
15 here?

16 A. Yeah.

17 ATTORNEY THOMPSON:

18 When you went to the  
19 second aisle --- okay.

20 A. Uh-huh (yes).

21 ATTORNEY THOMPSON:

22 You went to a different  
23 lane because somebody went ahead  
24 of you because you needed a  
25 couple of things, which one did

1           you then get moved to?

2       A.       Then I came out of this one and  
3       my things were already on here so she  
4       said, well, put them all over there and  
5       this is while they took care of me  
6       then.

7       BY ATTORNEY CRONIN:

8       Q.       Okay. So let's put a number one  
9       to the checkout aisle that you went to  
10      first.

11      WITNESS COMPLIES

12      A.       It was that one.

13                      ATTORNEY THOMPSON:

14                      It was this one first?

15      A.       Yes, I think, yes. It's been so  
16      long.

17                      ATTORNEY THOMPSON:

18                      Put a number one on that.

19                      Just make it one. Good.

20      BY ATTORNEY CRONIN:

21      Q.       So you put a number one on  
22      Exhibit Three to show the checkout  
23      aisle that you went to first?

24      A.       Right.

25      Q.       And then on Exhibit Three would

1 you put a number two to show the  
2 checkout aisle that you went to second?

3 WITNESS COMPLIES

4 ATTORNEY THOMPSON:

5 Okay.

6 BY ATTORNEY CRONIN:

7 Q. Okay.

8 A. That's done.

9 Q. So now let's go back so I  
10 understand what you're telling me. You  
11 took your items up to checkout aisle  
12 number one and then you wanted to go  
13 back for something. What did you want  
14 to go back for?

15 A. I --- whether it was another box  
16 of cherries or what, --- but another  
17 one anyhow, something --- whatever I  
18 got. And she said, well, get the ---  
19 those off of there.

20 Q. Okay. Let me stop you there.  
21 After you got your cherries, the extra  
22 cherries ---

23 A. Uh-huh (yes).

24 Q. --- did you walk towards the  
25 front of the store?



1 A. Yeah.

2 Q. And where did you go?

3 A. To the second one because the  
4 first one they were busy, you know.

5 Q. Okay. So then what happened?

6 A. She said --- anyhow then she  
7 took my order anyhow from there. I  
8 took it from there over to here and  
9 when I did, that's how I got my foot  
10 --- as she was checking my, you know,  
11 when I brought this from there to the  
12 other one.

13 Q. So when you went to checkout  
14 aisle two, the woman there said you  
15 have items in aisle one, take this back  
16 over to aisle one?

17 A. Uh-huh (yes).

18 Q. And which way did you walk from  
19 aisle one to aisle two? Can you draw a  
20 line showing me the direction of your  
21 travel?

22 A. Just went right over.

23 ATTORNEY THOMPSON:

24 Okay. Here.

25 A. Yeah.

1 ATTORNEY THOMPSON:

2 Put it right on there.

3 WITNESS COMPLIES.

4 A. All right.

5 BY ATTORNEY CRONIN:

6 Q. So on Exhibit ---.

7 ATTORNEY THOMPSON:

8 That's where you were  
9 headed?

10 A. Yes.

11 BY ATTORNEY CRONIN:

12 Q. So on Exhibit Three you just  
13 drew a line?

14 A. Yeah, there was --- the carts  
15 were there and --- lots of carts. And  
16 then I, you know, just like that and so  
17 quick and I said oh, I'm okay. I  
18 didn't want to get embarrassed.

19 ATTORNEY THOMPSON:

20 Wait. Can you --- just  
21 so I can --- you drew this line  
22 ---

23 A. Uh-huh (yes).

24 ATTORNEY THOMPSON:

25 --- from what you --- on

1 Exhibit Three from what you  
2 marked as register two?

3 A. Yeah.

4 ATTORNEY THOMPSON:

5 And you drew it from two  
6 over to one?

7 A. Yeah.

8 ATTORNEY THOMPSON:

9 All I'm going to do for  
10 the record is just put an arrow  
11 mark on the direction she was  
12 going.

13 ATTORNEY CRONIN:

14 That's good.

15 ATTORNEY THOMPSON:

16 Okay. Just so we know  
17 that she was heading that  
18 direction.

19 A. Uh-huh (yes). And that way I  
20 could just --- she gave me the change  
21 and I picked --- well, I think Nicole  
22 or one of them picked my package up or  
23 either they --- the girl who waited on  
24 me. Because she said she was a nurse  
25 and she said --- I know she says,

1 you're hurt and then when I said, I'll  
2 be okay just as long as I get in my  
3 car.

4 BY ATTORNEY CRONIN:

5 Q. So where was the cart that you  
6 tripped on?

7 A. Right in the area where they're  
8 all bundled at. There was lots of  
9 carts. I don't know how many, but you  
10 know, some just strewn here and there.  
11 And then my toe evidently was like ---  
12 one was in the back way and my toe  
13 caught on it, on this here.

14 Q. So between aisle two and aisle  
15 one ---

16 A. Uh-huh (yes).

17 Q. --- in the area where you have  
18 the red line drawn on Exhibit Three  
19 there were several carts in that area  
20 between aisle two and aisle one?

21 A. Yeah, there were several. There  
22 were probably about half a dozen maybe.  
23 There were a lot of carts there.

24 Q. Were those carts ---?

25 A. Empty, yeah. Where customers

1 would, you know, take their packages  
2 out and just throw them, you know, on  
3 the ---.

4 Q. Did you notice whether any of  
5 those carts had any items in them?

6 A. No, they were empty there.

7 Q. You know all of those carts were  
8 empty?

9 A. Yeah. Uh-huh (yes).

10 Q. Where was the cart that you  
11 tripped on?

12 A. Right --- it was one of them,  
13 the empty ones, you know, in there.

14 Q. Do you know where it was in  
15 relation to aisle number two?

16 A. No. It would be right in  
17 between. It wasn't too far because,  
18 you know, I fell right almost in front  
19 of the counter, you know, when my toe  
20 --- and I went down.

21 Q. You fell almost in front of  
22 counter number one?

23 A. Yeah.

24 Q. So had you passed some carts  
25 between aisle two and aisle one before

1 the cart you tripped on?

2 A. Yeah.

3 Q. Okay.

4 A. Evidently it was in a way that,  
5 you know, --- it was right there in my  
6 way, but I did not see it, you know,  
7 and down I would go.

8 Q. So did you see the cart that you  
9 tripped on before you tripped on it?

10 A. No.

11 Q. You didn't see it?

12 A. I had seen all the carts there,  
13 you know, and I thought, you know, I  
14 was clear of everything as far as that  
15 and just went, you know, --- I went  
16 down.

17 Q. So as I understand it, you had  
18 just ---.

19 A. There were just too many carts  
20 there, I guess.

21 Q. Okay. So as I understand it,  
22 you had seen a number of carts in that  
23 area between aisle two and aisle one?

24 A. Yeah.

25 Q. And you passed several carts

1 before you tripped?

2 A. Uh-huh (yes).

3 Q. But there was one then towards  
4 aisle one that you tripped on?

5 A. Yeah.

6 Q. The cart that you tripped on,  
7 did it have any items in it?

8 A. No.

9 Q. Okay. What were you carrying in  
10 your hands at the time?

11 A. My two things that I was going  
12 to check out, or one thing. I think I  
13 had two there and I had brought another  
14 one and I was going to check off, you  
15 know, --- three from off of that  
16 counter.

17 Q. What was the item that you had  
18 in your hand?

19 A. Probably a box of cherries,  
20 either that or mints. That was what I  
21 had gotten for gifts --- I didn't have  
22 already gotten.

23 Q. Do you know how you were  
24 carrying that box?

25 A. Oh, you know, it was just real

1 right over there.

2 Q. Okay. Were you looking straight  
3 ahead of you as you walked?

4 A. Yeah. Uh-huh (yes). I'm always  
5 careful looking because a lot of times  
6 they don't keep their place tidy, but  
7 today I think stores are all different.  
8 They keep their things more tidier.

9 Q. Tell me what portion of your  
10 body contacted that cart.

11 A. Just the toe of my --- my toe  
12 caught there probably between the two  
13 wheels like because that's what it went  
14 --- and down I went and I thought oh,  
15 well, better get up now, get going.

16 Q. Let's see if we can find a good  
17 picture of a cart.

18 A. The only good thing about it was  
19 I didn't lose my leg anyhow.

20 Q. Okay. I'm going to show you  
21 what we'll mark as Exhibit Four.

22 (Exhibit Number Four  
23 marked for  
24 identification.)

25 ATTORNEY THOMPSON:



1 It should be Four.

2 BY ATTORNEY CRONIN:

3 Q. On Exhibit Four there are two  
4 carts.

5 A. Uh-huh (yes).

6 Q. Now, this photograph I'm telling  
7 you was taken sometime after the  
8 accident. Okay.

9 A. Yeah.

10 Q. So I'm not using this photo to  
11 tell you that I think the cart was in  
12 this area or anything. But what I want  
13 to ask you is, is this the type of cart  
14 that you tripped on?

15 A. No, they look different than  
16 what they used to have. This is a  
17 newer one like what's up in Houtzdale  
18 one, only they're red.

19 Q. The cart that you tripped on,  
20 what color was it?

21 A. I think more like aluminum.

22 Q. There was not a color at all?

23 A. No. I think they're new ones.

24 ATTORNEY THOMPSON:

25 Let's show her one of the

1           older carts there. I don't know  
2           if that's --- do you see the one  
3           on the left?

4                    ATTORNEY CRONIN:

5                    Yes.

6   BY ATTORNEY CRONIN:

7   Q.           On Exhibit Number One, the cart  
8           on the left, did it look like that?

9   A.           Yeah.

10   Q.           How was the cart positioned when  
11           you tripped on it?

12   A.           Oh, they were, you know, how a  
13           lot of people just throws things and  
14           they were just pushed here and there,  
15           you know.

16   Q.           So as I understand it, you don't  
17           remember its exact positioning?

18   A.           No, you know, they were not like  
19           --- when I get through with a cart, I  
20           like to put it back in the groove of  
21           the carts, but they weren't. People  
22           were in, I guess, in a hurry.

23   Q.           Okay. Looking at the cart on  
24           Exhibit One, the metal one on the left  
25           side, can you tell me what portion of

1 your toe got caught in what portion of  
2 that cart?

3 A. This is the back of the cart  
4 here. There is where I, you know, like  
5 the cart was twisted around and my toe  
6 just caught in the --- in there, in the  
7 back of it and down ---.

8 Q. I'll come around so I can see  
9 that. Okay. Where do you think your  
10 toe got caught?

11 A. Like right in the back here,  
12 down in the back because it was twisted  
13 that way and you know I'm reaching over  
14 there and there my toe ---.

15 ATTORNEY THOMPSON:

16 In the back between the  
17 wheels or the side, the big  
18 side? The narrow side or the  
19 wide side, if you remember?

20 A. I don't remember.

21 ATTORNEY THOMPSON:

22 You pointed to the bar.

23 A. Yeah.

24 ATTORNEY THOMPSON:

25 It's kind of between the

1 bars.

2 A. Because I know it got in the  
3 bar.

4 BY ATTORNEY CRONIN:

5 Q. So you're not sure if it was the  
6 narrow side or the wide side, but it  
7 was underneath the bar?

8 A. Yeah. Uh-huh (yes).

9 Q. Okay. Which toe got caught?

10 A. My right one.

11 Q. Okay. And then what happened  
12 when your toe got caught?

13 A. I fell.

14 Q. Which way did you fall?

15 A. Right down --- right there on my  
16 knee. And I says --- I get up and I  
17 said oh, I'm all right. If I can make  
18 it home, I'm all right. I'll get over  
19 it, you know, get going.

20 Q. And did you get up off the  
21 ground by yourself?

22 A. Yeah, got up, but I couldn't  
23 walk. It hurt.

24 Q. Did you hold on to anything?

25 A. Yeah, on the counter. And

1     that's when the girl said --- the clerk  
2     said, well, she helped me. She turned  
3     her register off and she and Nicole and  
4     Gail helped me down to my car because  
5     I'm still --- I'm determined that I can  
6     go home, you know. I get in my car,  
7     I'm okay. And Gail says, no, Nancy,  
8     she says you're hurt. You won't be  
9     able to go home. So she said if my  
10    daughter drives your car --- takes you  
11    home and I'll follow. And she said  
12    would that be all right. And then I  
13    said yeah and then my sister was there  
14    to help me when I got home. And just  
15    like I said, Betty Fisher and my  
16    neighbors all --- and the other two  
17    Neibricks (phonetic) they came down and  
18    helped put me back in my car to take me  
19    down to the emergency.

20    Q.       Okay. So as I understand it,  
21    the cart that you tripped on was pretty  
22    close to the edge of that counter?

23    A.       Yeah.

24    Q.       And that's counter number one;  
25    is that right?

1 A. Yeah, because there were so many  
2 of them.

3 Q. And you fell close enough that  
4 when you got off the ground, you were  
5 able to use the edge of the counter to  
6 help yourself up; is that right?

7 A. Yeah.

8 Q. Okay. How many people were in  
9 the store that day? Was it crowded?

10 A. There was a lot of them. Lots.

11 Q. And you said you had been in the  
12 store before?

13 A. It was just, what, the week  
14 before Christmas?

15 Q. Yes. And you said you had been  
16 in the store before that day so ---?

17 A. Yeah, I was there all the time,  
18 yes, back and forth.

19 Q. So would you say there were more  
20 people in the store this day than  
21 usual?

22 A. I would say so, yeah. Now,  
23 you'll go into the store on an ordinary  
24 day when there's hardly any, you know,  
25 --- just a few.

1 Q. So as I understand your  
2 testimony, to you it looked like  
3 somebody had just used that cart that  
4 you tripped on?

5 A. Pushed it by me.

6 Q. And pushed it right there  
7 because they had checked out and left  
8 it there?

9 A. Yeah.

10 Q. So let me just finish that  
11 question again now. It looked to you  
12 like somebody had just checked out ---

13 A. Uh-huh (yes).

14 Q. --- and left the cart there at  
15 the end of aisle one and went out the  
16 door with their purchases; is that  
17 right?

18 A. Uh-huh (yes).

19 Q. Okay. Just to be clear then.  
20 You didn't trip on any object that was  
21 on the floor?

22 A. Uh-uh (no). If we get to the  
23 back of the store, they were falling  
24 down from the ceiling --- different  
25 things, you know. But no, at the front

1     there --- other than the carts ---.

2     Q.         Other than the carts, it was  
3     clear in the front?

4     A.         Yeah.    Uh-huh (yes).

5     Q.         In the area where you fell?

6     A.         Yeah.

7     Q.         You didn't trip on a display  
8     rack; did you?

9     A.         No.

10    Q.         And there wasn't a defect in the  
11    flooring that caused you to trip; was  
12    there?

13    A.         That I wouldn't know.    You know,  
14    I didn't notice.

15    Q.         Did you notice, was there any  
16    wet substance or anything like that on  
17    the ground that made you fall?

18    A.         No.    To be truthful I went ---  
19    you know, my sister goes practically  
20    like four times out of the week.

21    Q.         Was there anything blocking your  
22    view as you walked from aisle two over  
23    to aisle one?

24    A.         Huh-huh (no).

25    Q.         So would you say that the carts



1 that were up there between aisle two  
2 and aisle one were in plain sight?

3 A. Oh, yeah, I could see the carts  
4 there but little did you know they were  
5 in the way of getting around. There's  
6 people coming and going that way.

7 Q. Was anybody coming towards you  
8 as you walked between aisle two and  
9 aisle one?

10 A. No, I don't --- probably the  
11 customers, there were lots of customers  
12 that day. Like I said, a week before  
13 Christmas, you know.

14 Q. Even though the carts were there  
15 between aisle two and aisle one, there  
16 was room for you to walk between aisle  
17 two and aisle one?

18 A. Yeah.

19 Q. Was the lighting in the ---?

20 A. Not a whole lot because of all  
21 those cars. There was a lot of carts.

22 Q. Okay. But there was room for  
23 you to walk beside the carts to get to  
24 aisle one?

25 A. Uh-huh (yes).

1 Q. Do you remember the lighting in  
2 the store that day?

3 A. No, I don't really.

4 Q. Do you remember ---?

5 A. That and the clerk.

6 Q. I'm sorry?

7 A. That and the clerks, I didn't  
8 know.

9 Q. No, the lighting. Was it a  
10 bright store that day?

11 A. I imagine, yeah.

12 Q. You didn't notice there to be  
13 ---?

14 A. I didn't notice --- as far as  
15 the lighting goes I can't --- no.

16 Q. You don't remember it being dark  
17 or dim?

18 A. No, I don't.

19 Q. So the lighting in there seemed  
20 fine to you?

21 A. Yeah.

22 Q. Do you know of anybody who might  
23 have seen you fall?

24 A. Really I don't --- all I can say  
25 is Nicole and Gail, but they --- they

1 Q. Do you remember ---?

2 A. It just threw me off.

3 Q. Do you remember if you were  
4 standing up to that cart how high it  
5 might have been or how wide it might  
6 have been?

7 A. No, not really. A cart's a  
8 cart. Some are bigger. Some are  
9 smaller.

10 Q. But the one that you fell on was  
11 the one that you typically saw in the  
12 Dollar Store?

13 A. Yeah.

14 Q. You didn't notice anything  
15 unusual about the cart that you tripped  
16 on?

17 A. No, not really.

18 Q. Well, did you notice anything to  
19 be sticking out of it or any defects in  
20 the cart itself?

21 A. No.

22 Q. And I think you said you thought  
23 the cart was empty?

24 A. Yeah.

25 Q. And what you believe caused you

1 to fall was your toe catching under the  
2 metal bar?

3 A. Yeah, that's what I think, you  
4 know, that probably when I stepped  
5 over, you know, to get that way, it was  
6 right out there that my toe got in it.

7 Q. So that you stepped right into  
8 the cart?

9 A. Uh-huh (yes).

10 Q. Okay.

11 ATTORNEY CRONIN:

12 That's all I have. Thank  
13 you.

14 ATTORNEY THOMPSON:

15 I have a couple  
16 follow-ups. This is not normal,  
17 but in this case I'm just going  
18 to ask some questions.

19 ATTORNEY CRONIN:

20 Go ahead.

21 EXAMINATION

22 BY ATTORNEY THOMPSON:

23 Q. Nancy, I just want to clear a  
24 couple things up regarding what we  
25 testified to. I'm referring to Exhibit

1 A. No.

2 Q. But when you traveled back and  
3 forth between ---

4 A. Yes.

5 Q. --- aisle two and aisle one, you  
6 definitely noticed that there were  
7 numerous carts?

8 A. Uh-huh (yes). Yeah, because  
9 there were a lot of customers had carts  
10 checking out so they just, you know,  
11 would leave them there and go on.

12 Q. Okay. And you don't know in  
13 particular how long any of the carts  
14 were there?

15 A. No.

16 Q. Okay. When you were going from  
17 aisle two to aisle one, I think you  
18 testified that there was a pathway for  
19 which you could walk through?

20 A. Oh, yeah.

21 Q. Was it a wide pathway? Was it a  
22 narrow pathway? Can you describe it?

23 A. Well, yeah, it wasn't too wide  
24 or that, but there was --- possible  
25 that you could go there. So in the

1 meantime whether the cart --- one of  
2 the carts or, you know --- they pull  
3 out and push there --- there was the  
4 one that I would trip on, but evidently  
5 that must be it.

6 Q. Okay. And I think you testified  
7 when you were asked that you were kind  
8 of walking straight ahead and looking  
9 straight ahead of you?

10 A. Uh-huh (yes).

11 Q. Did you have to maneuver to the  
12 right or to the left to get through the  
13 carts that were strewn in the area  
14 between the two aisles?

15 A. No, not really, no.

16 Q. So you think you could actually  
17 go ---?

18 A. Yeah.

19 Q. Okay. When you got home from  
20 therapy, when you got home from the  
21 Presbyterian Home ---

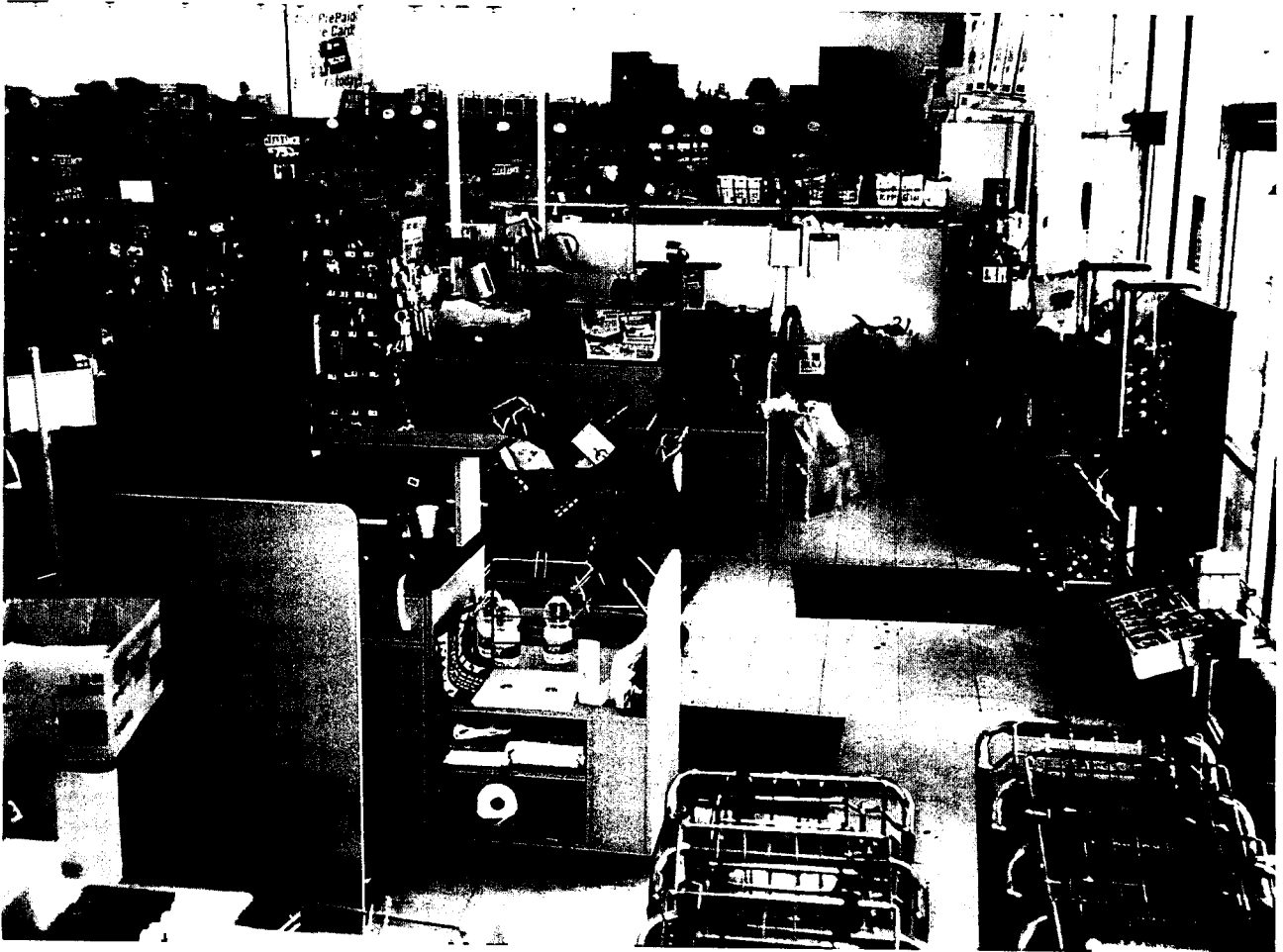
22 A. Uh-huh (yes).

23 Q. --- you began to testify earlier  
24 that you had to make sure your home was  
25 ready for you to come home.

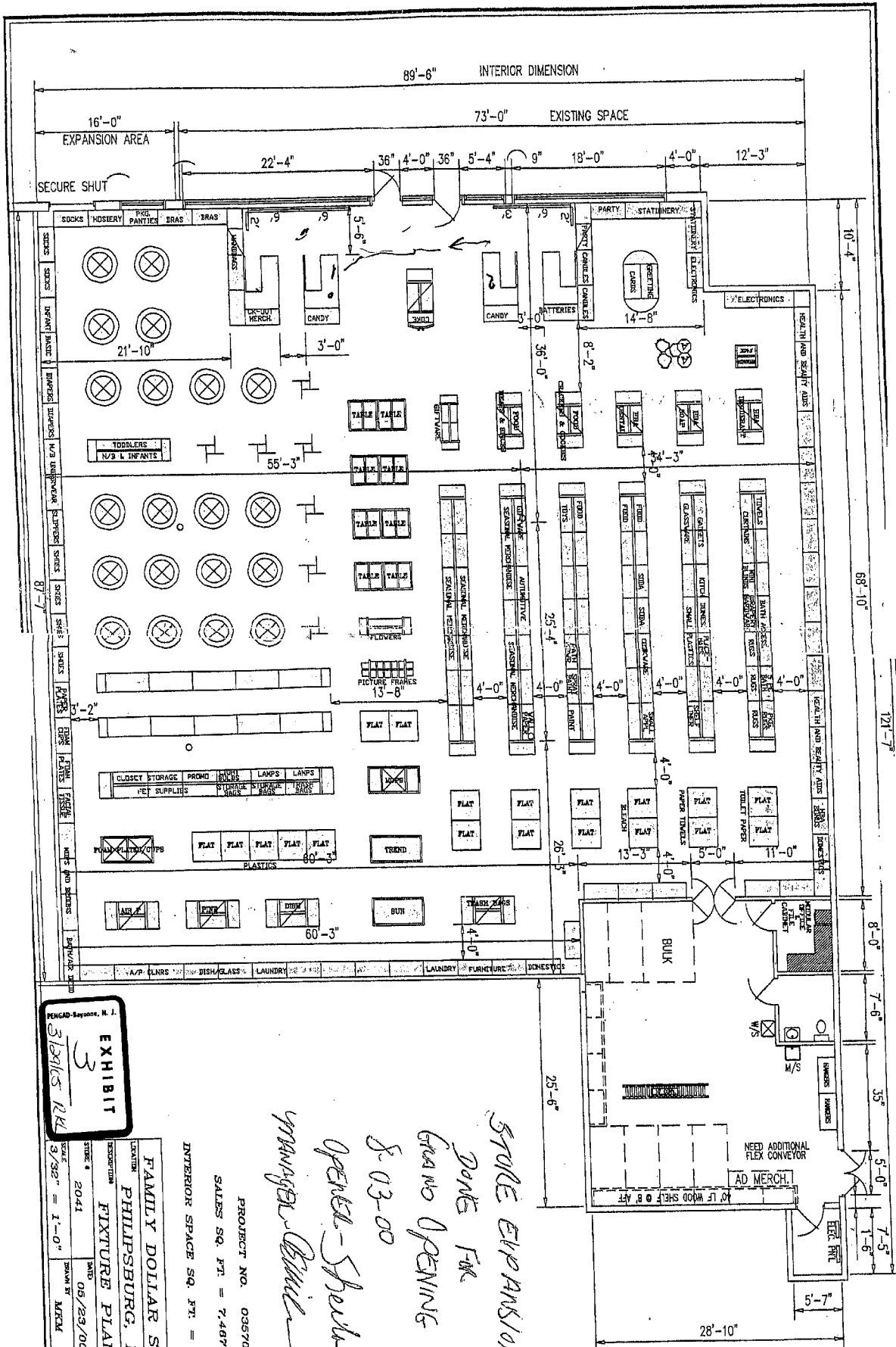


EXHIBIT  
1  
3/29/05 RKL









PENGAD-Bayonne, N. J.  
 3/27/85 12:44  
**EXHIBIT**  
 3

**FAMILY DOLLAR STORE**  
 PHILIPSBURG, PA  
 PROJECT NO. 036700  
 SALES SQ. FT. = 7,467 S.F.  
 INTERIOR SPACE SQ. FT. = 8,469  
 DATE: 2041  
 DATE: 08/23/00  
 DRAWN BY: MKM

*STORE EXPANSION*  
*Done for*  
*Grand Opening*  
*8-03-00*  
*opened - Spoke to*  
*Manager - Bill*



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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

Civil Action No.  
03-1586-CD

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Summary Judgment was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

David R. Thompson, Esq.  
Thompson Law Office  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg, PA 16866

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON INC.

By

  
Julia R. Cronin, Esq.

Dated: 6/26/06

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

)  
) No. 2003-1586-CD  
)  
) Type of Case: Civil  
)  
) Type of Pleading: Praecipe  
)  
) Filed on Behalf of: Defendant  
)  
) Counsel of Record for this  
) Party:  
) Julia R. Cronin, Esquire  
) I.D. No. PA76440  
) Miller, Kistler, Campbell,  
) Miller, Williams & Benson, Inc.  
) 720 S. Atherton Street  
) State College, PA 16801  
) 814-234-1500

**FILED** *10 cc*  
*m/11/14/06*  
**AUG 09 2006** *ev*

William A. Shaw  
Prothonotary/Clerk of Courts

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

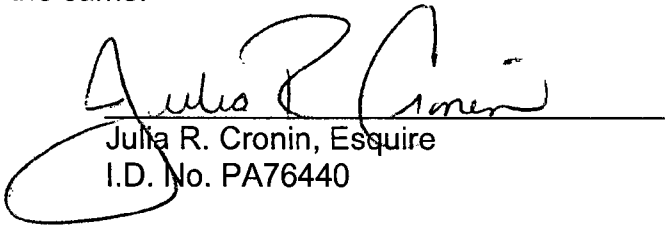
Defendant.

Civil Action No.  
03-1586-CD

**PRAECIPE**

TO THE PROTHONOTARY:

In accordance with Clearfield County Local Rule 1035.2(a)(2), kindly direct the Court Administrator to assign this matter to a Judge to establish a briefing schedule and argument on the Motion for Summary Judgment filed by Defendant on June 27, 2006. Thirty (30) days have elapsed since the Motion for Summary Judgment was served on Plaintiff, who has not filed a response to the same.

  
Julia R. Cronin, Esquire  
I.D. No. PA76440

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Counsel for Family Dollar Stores of  
Pennsylvania, Inc.

Date: 8/8/06

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

Civil Action No.  
03-1586-CD

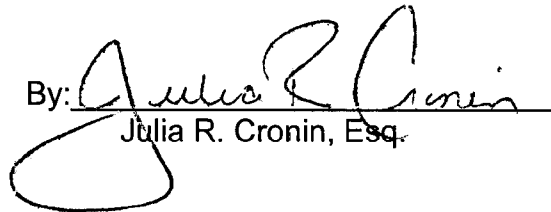
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **Praeipce** was hereby served by  
depositing the same within the custody of the United States Postal Service, First Class,  
postage prepaid, addressed as follows:

David R. Thompson, Esq.  
Thompson Law Office  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg, PA 16866

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON INC.

By:

  
Julia R. Cronin, Esq.

Dated: 8/8/06

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

NANCY J. WARRENDER, an individual:

vs.

FAMILY DOLLAR STORES OF  
PENNSYLVANIA

:  
: No. 03-1586-CD  
:  
:  
:

FILED 4cc  
0110:52/34 Amy Cronin  
AUG 11 2006


William A. Shaw  
Prothonotary/Clerk of Courts

**ORDER**

AND NOW, this 10 day of August, 2006, it is the ORDER of the Court that argument on Defendant's Motion for Summary Judgment in the above matter is hereby scheduled for **Monday, October 2, 2006 at 10:00 A.M.**, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

It is the responsibility of Defendants Counsel to serve certified copies of said scheduling Order on the Plaintiff.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

)  
) No. 2003-1586-CD  
)  
) Type of Case: Civil  
)  
) Type of Pleading: Affidavit of  
) Service  
)  
) Filed on Behalf of: Defendant  
)  
) Counsel of Record for this  
) Party:  
) Julia R. Cronin, Esquire  
) I.D. No. PA76440  
) Miller, Kistler, Campbell,  
) Miller, Williams & Benson, Inc.  
) 720 S. Atherton Street  
) State College, PA 16801  
) 814-234-1500

FILED NO CC  
AUG 18 2006  
William A. Shaw  
Prothonotary/Clerk of Courts



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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

Civil Action No.  
03-1586-CD

**AFFIDAVIT OF SERVICE**

I, Julia R. Cronin, Esquire, counsel for Defendant Family Dollar Stores of Pennsylvania, Inc., hereby certify that service of Judge Ammerman's Order of August 10, 2006 was made upon Plaintiff Nancy J. Warrender, by serving her counsel, David R. Thompson, Esquire, by depositing the same in the United States mail on August 17, 2006.

  
Julia R. Cronin, Esquire  
I.D. No. PA76440

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Counsel for Family Dollar Stores of  
Pennsylvania, Inc.

Sworn to and subscribed  
before me this 17<sup>th</sup>  
day of August,  
2006.

  
Notary Public

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Shirley J. Gaines, Notary Public  
State College Boro, Centre County  
My Commission Expires Jan. 16, 2008

Member, Pennsylvania Association Of Notaries

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

Civil Action No.  
03-1586-CD

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **Affidavit of Service** was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

David R. Thompson, Esq.  
Thompson Law Office  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg, PA 16866

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON INC.

By

  
Julia R. Cronin, Esq.

Dated: 8/17/06

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual,

Plaintiff

vs.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendants

*1586*  
No. 2003-1568-CD

TYPE OF CASE:  
Civil Matter

TYPE OF PLEADING:  
Answer to Defendants'  
Motion for Summary Judgment

FILED ON BEHALF OF:  
Plaintiff

COUNSEL OF RECORD FOR  
THIS PARTY:  
David R. Thompson, Esq.  
Attorney at Law  
Supreme Court I.D. 73053  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg PA 16866  
(814) 342-4100

**FILED**  
*019-39761/2cc*  
**OCT 02 2006** *Any*  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual

Plaintiff

vs.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendants

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

No. 2003-1568-CD

***ANSWER TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT***

AND NOW, comes the Plaintiff, Nancy J. Warrender by and through her attorney,  
David R. Thompson, Esquire and files the following Answer to Defendants' Motion for  
Summary Judgment:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted in part. Denied in part. It is admitted Under Pennsylvania law, a possessor of land is under no duty to protect an invitee from physical harm caused to the invitee by dangerous activity or condition on the land which is known and obvious to the invitee. It is denied in part because, the law also states, that a Defendant is liable if and in the event the possessor should anticipate the harm despite such knowledge or obviousness.

14. Denied. Plaintiff testified that she did not see the cart that she tripped on. (Deposition Transcript-Nancy Warrender, p. 84).

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted in part. Denied in part. It is admitted Plaintiff saw carts before she began to walk from checkout counter #2 to checkout counter #1. After passing several carts, Plaintiff's toe caught on an empty cart located close to counter #1. It is denied that Plaintiff saw the cart upon which she tripped.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted in part. Denied in part. It is admitted that Plaintiff walked straight

ahead and did not maneuver left or right to get past the carts. It is denied that pathway was clearly open.

24. Admitted in part. Denied in part. It is admitted that the Plaintiff imagines that the light was bright in the store, and does not remember it being dark or dim. It is denied that the lighting appeared fine to the Plaintiff, she testified that she does not remember how the lighting was. (Deposition of Nancy Warrender; p. 100).

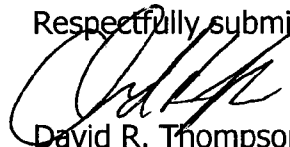
25. Denied. It is denied that the evidence in this case does not support that the Defendant allowed any dangerous or harmful condition to exist on the premises. There was a designated place for the carts, if the carts had been correctly put away Plaintiff would not have tripped on the cart. Clearly, Defendant allowed this obvious harmful condition to exist on the store premises.

26. Denied. It is denied that the evidence demonstrates that the shopping cart on which Plaintiff caught her foot was open and obvious to her and that she voluntarily encountered the area in which the shopping cart was located. Plaintiff did not see shopping cart that she tripped on. Plaintiff did not voluntarily encounter the area in which the shopping cart was located, she was directed to do so by the employee of the store. (Deposition of Nancy Warrender; p. 81).

27. Based on the forgoing facts and case law, it is apparent that the Defendant owed a duty to Plaintiff to protect her from contacting the shopping cart and that the Defendant bears responsibility for the Plaintiff's unfortunate fall.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to dismiss Defendants' Motion for Summary Judgment with prejudice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Thompson', written over the text 'Respectfully submitted,'.

David R. Thompson, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

NANCY J. WARRENDER

:

VS.

: NO. 03-1586-CD

FAMILY DOLLAR STORES OF

:

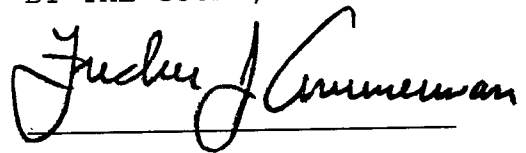
PENNSYLVANIA

:

O R D E R

AND NOW, this 2nd day of October, 2006, following argument on the Defendant's Motion for Summary Judgment, it is the ORDER of this Court that counsel supply the Court with appropriate letter brief within no more than ten (10) days from this date. Service on the Court can be by fax.

BY THE COURT,



President Judge

**FILED**

9/10:25um

**OCT 05 2006**

acc Attys:  
Thompson  
T. Benson  
(EP)

William A. Shaw  
Prothonotary/Clerk of Courts



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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant

)  
) No. 2003-1586-CD  
)  
) Type of Case: Civil  
)  
) Type of Pleading: Supplement  
) to Motion for Summary  
) Judgment  
)  
) Filed on Behalf of: Defendant  
)  
) Counsel of Record for this  
) Party:  
) Julia R. Cronin, Esquire  
) I.D. No. PA76440  
) Miller, Kistler, Campbell,  
) Miller, Williams & Benson, Inc.  
) 720 S. Atherton Street  
) State College, PA 16801  
) 814-234-1500

FILED  
OCT 13 2006  
M 11:08 AM  
no cc  
cc  
@

William A. Shaw  
Prothonotary/Clerk of Courts

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

NANCY J. WARRENDER, an individual,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	03-1586-CD
FAMILY DOLLAR STORES OF	)	
PENNSYLVANIA, INC.,	)	
	)	
Defendant.	)	

**SUPPLEMENT TO MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Defendant, Family Dollar Stores of Pennsylvania, Inc., by and through its counsel, Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., and files this Supplement to Motion for Summary Judgment of which the following is a statement:

1. On or about June 26, 2006, Defendant filed a Motion for Summary Judgment on the basis that Defendant did not owe a duty to Plaintiff to protect her from the shopping cart on which she tripped in Defendant's store because the danger posed by the shopping cart was known or obvious to the Plaintiff.

2. Plaintiff provided deposition testimony regarding the subject shopping cart, and photographs of the shopping carts at use in the Family Dollar Store were attached as Exhibits 1, 2 and 3 to Plaintiff's deposition transcript. The original deposition transcript was filed of record in connection with Defendant's Motion for Summary Judgment.

3. Defendant files this supplement to its Motion for Summary Judgment to provide the Affidavit of Charles E. Miller, who has been the manager of the Family

Dollar store in Philipsburg, PA since September 1995. The original of said Affidavit is attached hereto as Exhibit "A."

4. As described by Mr. Miller in his Affidavit, the carts available for patron use in the store on the day of the subject accident were a sufficient size that their location and position would be known and obvious to a reasonable patron.

5. The carts were, however, significantly smaller than the standard shopping carts used in most grocery stores.

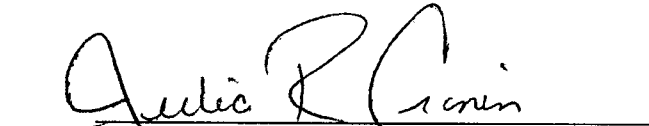
6. The carts were small enough that the Plaintiff should have been able to walk safely around them even if they were positioned between the counters and the front doors of the store as she alleges.

7. There is no way that reasonable minds could differ as to the conclusion that the location and position of the shopping carts, as alleged by Plaintiff, was known or obvious.

8. Accordingly, Defendant owed no duty to Plaintiff to protect her from contacting, stepping into and/or catching her foot under the cart.

9. Since Plaintiff is unable to establish the element of duty which is essential to a prima facie case of negligence, Defendant is entitled to summary judgment as a matter of law.

WHEREFORE, Defendant, Family Dollars Stores of Pennsylvania, Inc., prays that this Honorable Court grant summary judgment in its favor and dismiss Plaintiff's Amended Complaint with prejudice.



Julia R. Cronin, Esquire  
I.D. No. PA76440

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Counsel for Family Dollar Stores of  
Pennsylvania, Inc.

Date: 10/12/06

# **EXHIBIT A**

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

NANCY J. WARRENDER, an individual,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
		) 03-1586-CD
FAMILY DOLLAR STORES OF PENNSYLVANIA, INC.,	) )	
	)	
Defendant.	)	

**AFFIDAVIT**

NOW COMES Charles E. Miller and after administration of oath testifies as follows:

1. Since September 1995, I have worked as the manager of the Family Dollar store located in Peebles Plaza (formerly Ames Plaza) at 1075 N. Front Street, Philipsburg, Clearfield County, Pennsylvania 16866. (All references to the "Family Dollar store" hereafter will be to that store).

2. I did not work on December 18, 2001, which I understand is the date of the fall down accident alleged by Nancy J. Warrender.

3. Since I was not at the Family Dollar store at any time on December 18, 2001, I do not have any first-hand knowledge of the details of Nancy J. Warrender's fall.

4. I can verify that on December 18, 2001, the Family Dollar store had two styles of shopping carts available for customer use.

5. Those two styles of shopping carts are reflected in the photograph attached hereto as Exhibit "A."

6. I will refer to the shopping carts hereafter as "the red cart" and "the blue cart."

7. The dimensions of the red cart are as follows:

- 16 ½" - length of back wheel base (meaning, the distance from wheel to wheel on the side where the handle is located)
- 18" - length of handle
- 12 ½" - length of basket at front of cart
- 11" - length of front wheel base (meaning, the distance from wheel to wheel at front of cart)
- 30 ¼" - length of cart (meaning, the distance from the handle to the front of the basket)
- 33" - height of cart at back (meaning, where the handle is located)

31" - height of cart at front

8. The dimensions of the blue cart are as follows:

20 1/2" - length of back wheel base (meaning, the distance from wheel to wheel on the side where the handle is located)

18" - length of handle

13 1/2" - length of basket at front of cart

12" - length of front wheel base (meaning, the distance from wheel to wheel at front of cart)

31 1/4" - length of cart (meaning, the distance from the handle to the front of the basket)

37" - height of cart at back (meaning, where the handle is located)

31 1/2" - height of cart at front


9. Additional photographs of the blue cart are attached hereto as Exhibits "B" and "C."

10. The store's records reflect that the photographs marked Exhibit 1 to Nancy J. Warrender's deposition and the photographs attached hereto as Exhibits "A," "D" and "E" were taken by the former assistant store manager, Thomas Martin, on or about January 15, 2002.

11. The photographs marked Exhibit 1 to Nancy J. Warrender's deposition and the photographs attached hereto as Exhibits "A," "D" and "E" accurately depict the layout of the Family Dollar store as it existed on December 18, 2001.

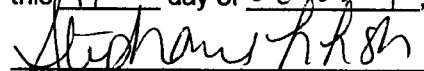
12. The fixture plan marked Exhibit 3 to Nancy J. Warrender's deposition was being followed in the store and accurately depicts the location of fixtures and size of walkways within the store on December 18, 2001.

I swear that the above statements are true and correct to the best of my knowledge, information and belief.

  
Charles E. Miller

Sworn to and subscribed before me

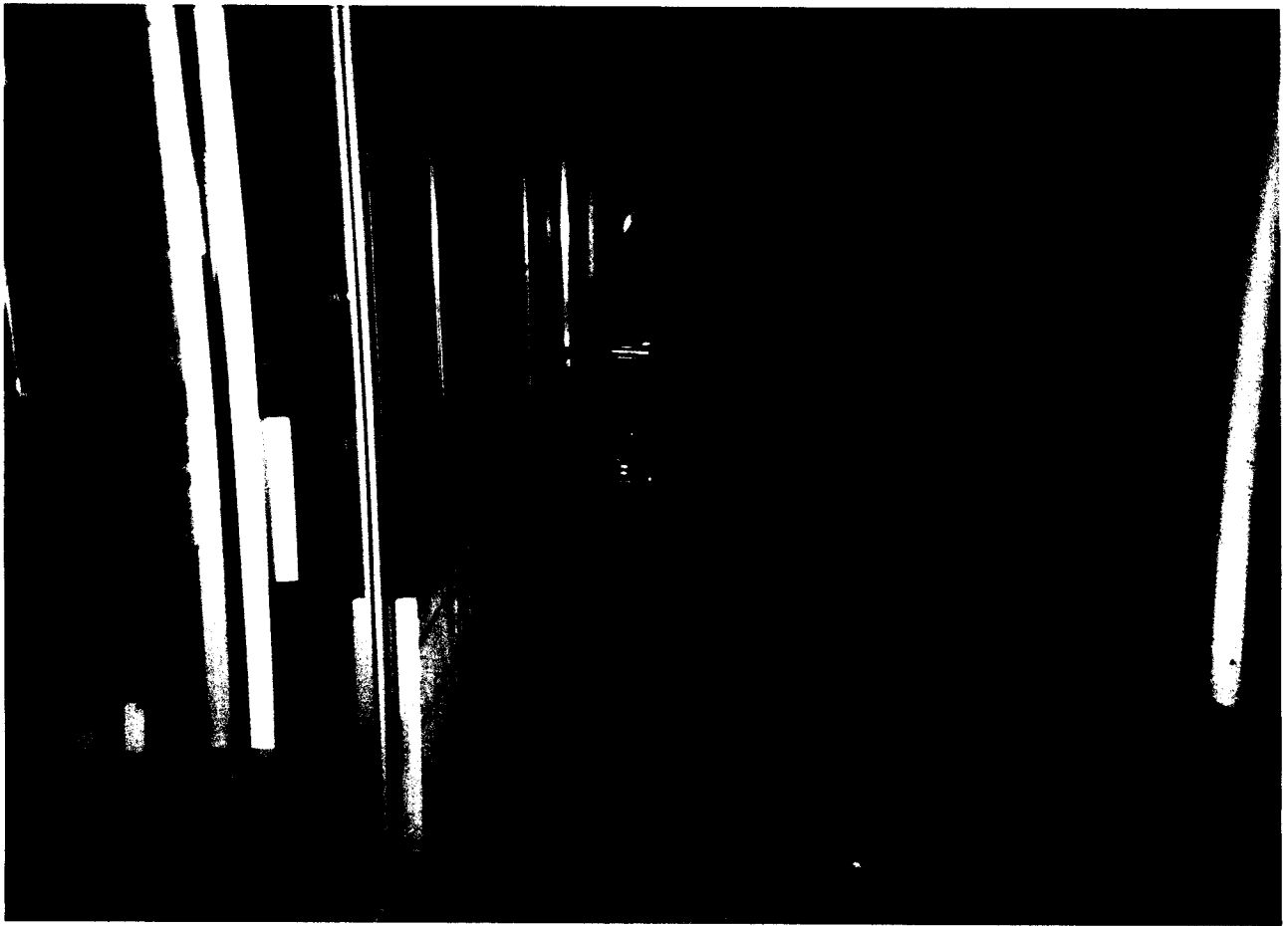
this 11<sup>th</sup> day of October, 2006.

  
Notary Public

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal  
Stephanie L. Lash, Notary Public  
State College Boro, Centre County  
My Commission Expires Mar. 28, 2009

Member, Pennsylvania Association of Notaries



EXHIBIT

A





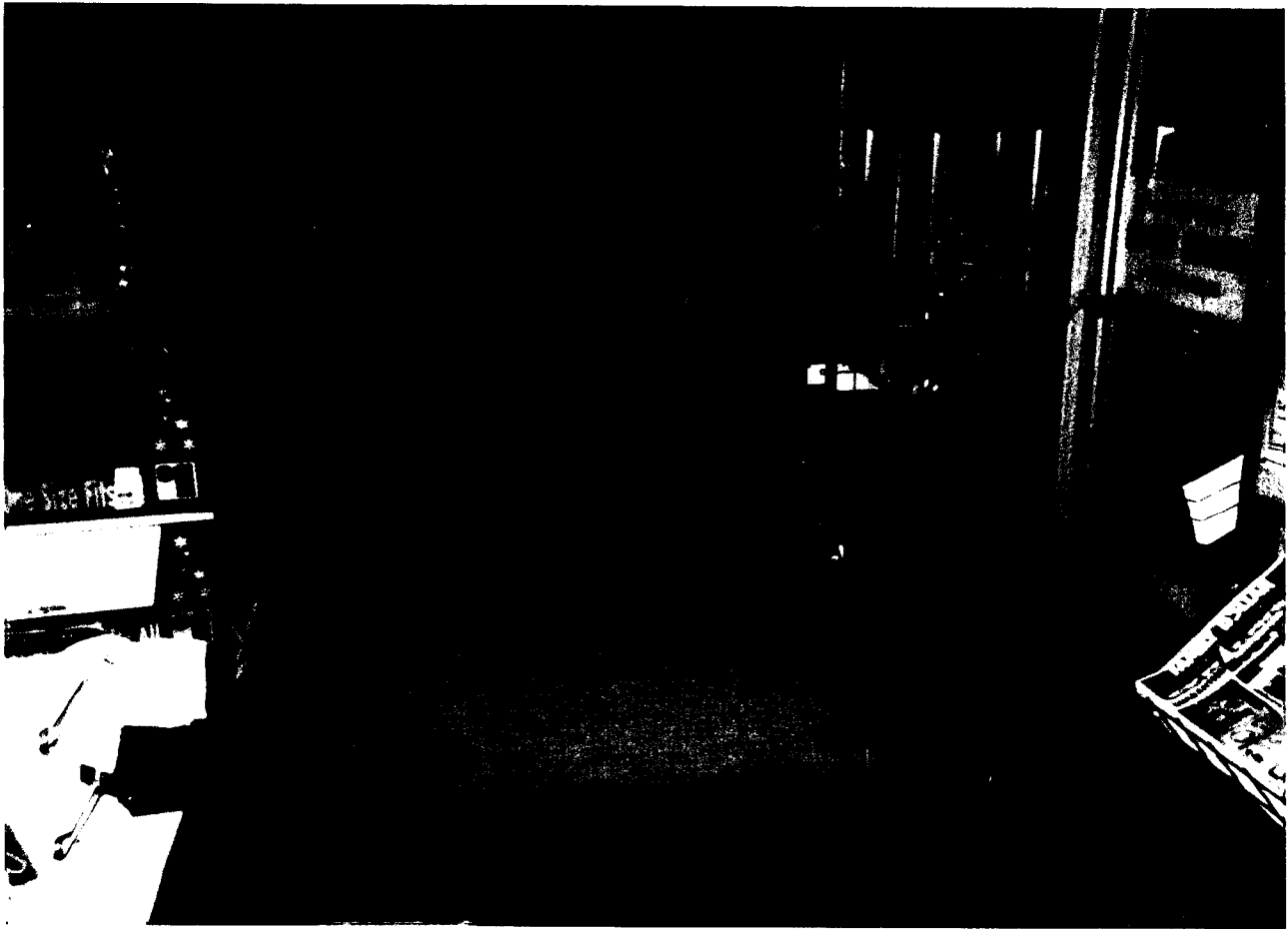
EXHIBIT

B



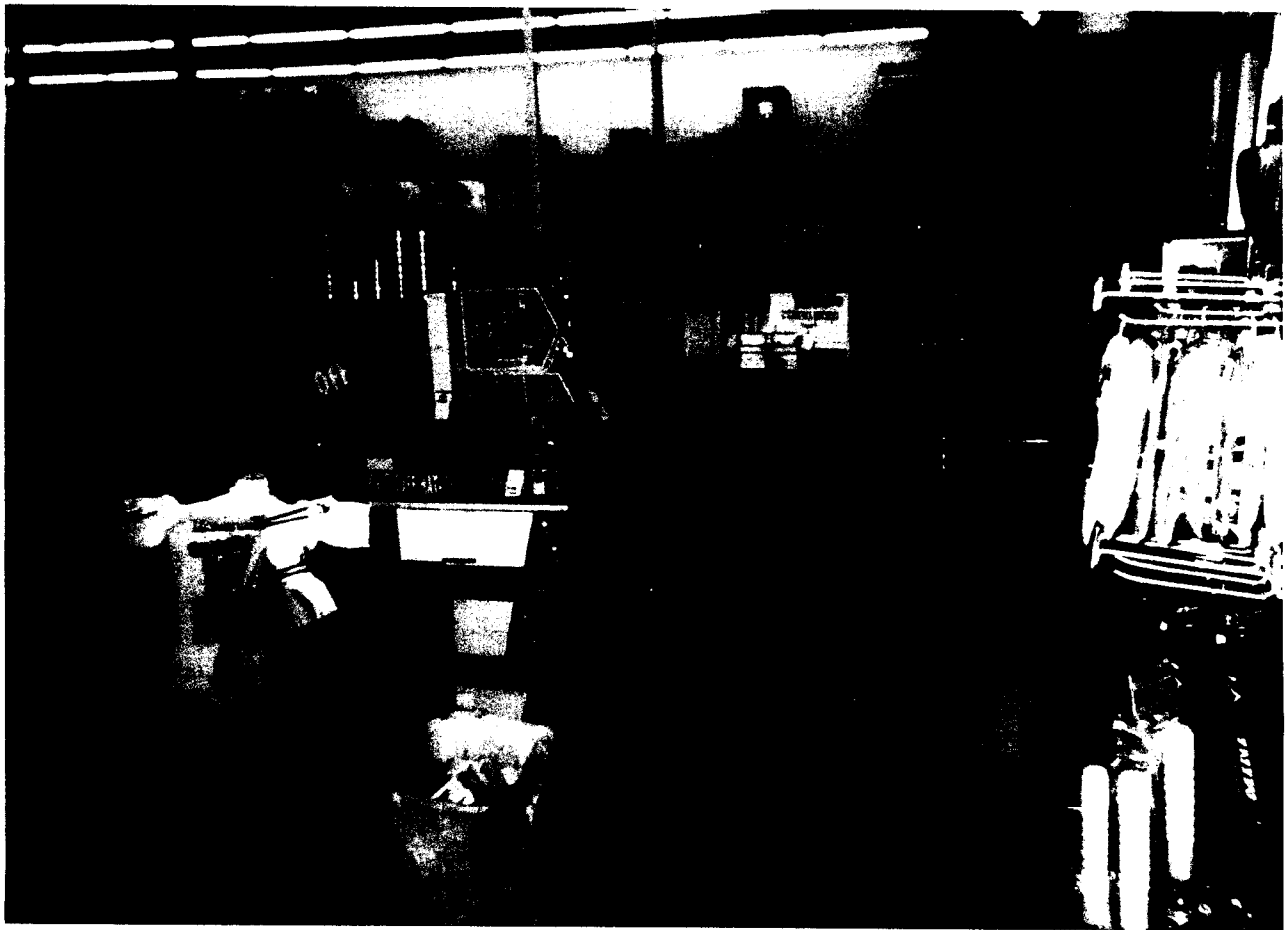
EXHIBIT

C



**EXHIBIT**

D



EXHIBIT

E

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

Civil Action No.  
03-1586-CD

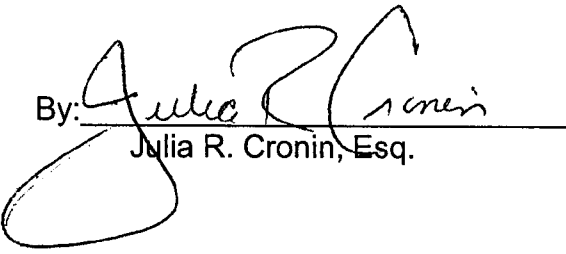
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **Supplement to Motion for Summary Judgment** was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

David R. Thompson, Esq.  
Thompson Law Office  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg, PA 16866

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON INC.

By:

  
Julia R. Cronin, Esq.

Dated: 10/12/06

UP

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

NANCY J. WARRENDER,  
an individual,  
Plaintiff,

v.


FAMILY DOLLAR STORES OF  
PENNSYLVANIA, INC.,  
a corporation,  
Defendant.

:  
: No. 2003-1586-C.D.  
:  
:  
:  
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**ORDER**

NOW, this 25 day of October 2006, after consideration of Defendant's Motion for Summary Judgment and the Parties' briefs, it is the ORDER of this Court that the Defendant's requested Motion for Summary Judgment be and is hereby DENIED.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED

0/9:40am

OCT 27 2006

2cc Attys:  
D. Thompson  
T. Benson

LM

William A. Shaw  
Prothonotary/Clerk of Courts

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant

)  
) No. 2003-1586-CD  
)  
) Type of Case: Civil  
)  
) Type of Pleading:  
) Notice of Intent to Serve  
) Subpoena to Produce  
) Document and Things  
) Pursuant to Rule 4009.21  
)  
) Filed on Behalf of: Defendant  
)  
) Counsel of Record for this  
) Party:  
) Julia R. Cronin, Esquire  
) I.D. No. PA76440  
) Miller, Kistler, Campbell,  
) Miller, Williams & Benson, Inc.  
) 720 S. Atherton Street  
) State College, PA 16801  
) 814-234-1500

**FILED**

JUL 02 2004

11:30 AM

William A. Shaw

Prothonotary/Clerk of Courts

no C/C

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

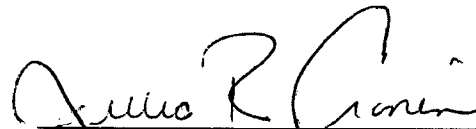
FAMILY DOLLAR AND FAMILY DOLLAR, INC.,

Defendant.

Civil Action No.  
03-1586-CD

**NOTICE OF INTENT TO SERVE SUBPOENA TO PRODUCE DOCUMENTS  
AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Defendant intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served



Julia R. Cronin, Esquire

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Counsel for Family Dollar & Family  
Dollar, Inc.



COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Nancy J. Warrender  
Plaintiff(s)

\*

Vs.

\*

No. 2003-01586-CD

Family Dollar  
Family Dollar, Inc.  
Defendant(s)

\*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO  
RULE 4009.22

TO: Blair Surgical Associates, 800 Howard Avenue, Altoona, PA 16601  
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to  
produce the following documents or things:  
See attached sheet.

Julia R. Cronin, Esq., Miller, Kistler & Campbell, 720 S. Atherton Street,  
State College, PA 16801 (Address)

You may deliver or mail legible copies of the documents or produce things requested by  
this subpoena, together with the certificate of compliance, to the party making this request at the  
address listed above. You have the right to seek in advance the reasonable cost of preparing the  
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty  
(20) days after its service, the party serving this subpoena may seek a court order compelling you  
to comply with it.

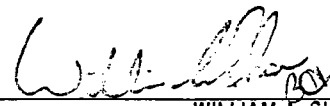
THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Julia R. Cronin, Esq.  
ADDRESS: 720 S. Atherton Street  
State College, PA 16801  
TELEPHONE: 814-234-1500  
SUPREME COURT ID # PA76440  
ATTORNEY FOR: Defendants

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

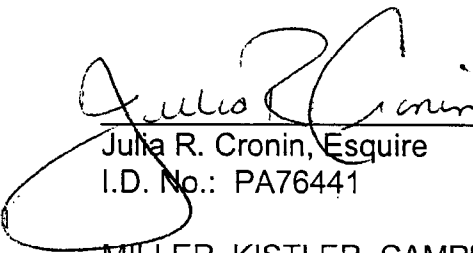
DATE: Tuesday, April 19, 2005  
Seal of the Court

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

**ATTACHMENT**

Copies of all bills and records pertaining to the medical, psychiatric or psychological care of Nancy J. Warrender (Social Security No. 191-28-9674, Date of Birth: 8/13/16), including but not limited to a full and complete copy of any and all records, office notes, admission summaries, discharge summaries, operative reports, lab reports, medication records, reports, notes, correspondence, x-ray reports, test results, consultations, progress notes or other material or information relating to any consultation, examination, medical history, diagnosis or treatment. **We reserve the right to obtain copies of radiology films using this subpoena once we have had an opportunity to review any records or radiology reports that are received in response to this request.**

**STATEMENT OF ASSURANCE:** The information disclosed pursuant to this subpoena will be held confidentially and used or further disclosed only as required or permitted by law and for the purpose of the lawsuit filed to No. 03-156-CD in the Court of Common Pleas of Clearfield County, Pennsylvania.



Julia R. Cronin, Esquire  
I.D. No.: PA76441

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Counsel for Family Dollar & Family  
Dollar, Inc.

Dated: 6/28/07

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

Civil Action No.  
03-1586-CD

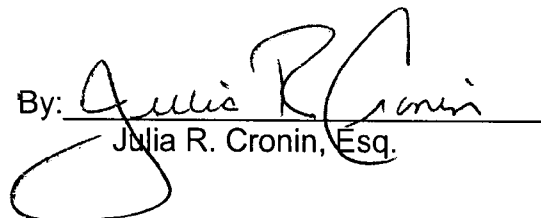
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Intent to Serve Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

David R. Thompson, Esq.  
Thompson Law Office  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg, PA 16866

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON INC.

By:

  
Julia R. Cronin, Esq.

Dated: 6/28/07

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant

)  
) No. 2003-1586-CD  
)  
) Type of Case: Civil  
)  
) Type of Pleading:  
) Notice of Intent to Serve  
) Subpoena to Produce  
) Document and Things  
) Pursuant to Rule 4009.21  
)  
) Filed on Behalf of: Defendant  
)  
) Counsel of Record for this  
) Party:  
) Julia R. Cronin, Esquire  
) I.D. No. PA76440  
) Miller, Kistler, Campbell,  
) Miller, Williams & Benson, Inc.  
) 720 S. Atherton Street  
) State College, PA 16801  
) 814-234-1500

FILED

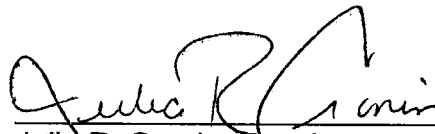
REC'D  
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m/11:30/um  
William A. Shaw  
Prothonotary/Clerk of Courts  
no 4/1

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

NANCY J. WARRENDER, an individual,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	03-1586-CD
FAMILY DOLLAR AND FAMILY DOLLAR, INC.,	)	
	)	
Defendant.	)	

**NOTICE OF INTENT TO SERVE SUBPOENA TO PRODUCE DOCUMENTS  
AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Defendant intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served



\_\_\_\_\_  
Julia R. Cronin, Esquire

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Counsel for Family Dollar & Family  
Dollar, Inc.

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Nancy J. Warrender  
Plaintiff(s)

Vs.

Family Dollar  
Family Dollar, Inc.  
Defendant(s)

\*

\*

\*

No. 2003-01586-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO  
RULE 4009.22

TO: Geisinger Clinic - Moshannon Valley, 3 Medical Center Dr., Philipsburg, PA 16866  
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to  
produce the following documents or things:

See attached sheet

Julia R. Cronin, Esq., Miller, Kistler & Campbell, 720 S. Atherton Street,  
State College, PA 16801 (Address)

You may deliver or mail legible copies of the documents or produce things requested by  
this subpoena, together with the certificate of compliance, to the party making this request at the  
address listed above. You have the right to seek in advance the reasonable cost of preparing the  
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty  
(20) days after its service, the party serving this subpoena may seek a court order compelling you  
to comply with it.

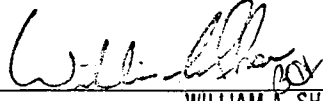
THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Julia R. Cronin, Esq.  
ADDRESS: 720 S. Atherton Street  
State College, PA 16801  
TELEPHONE: 814-234-1500  
SUPREME COURT ID # PA76440  
ATTORNEY FOR: Defendants

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

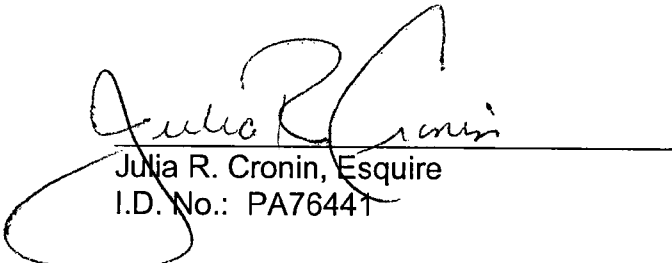
DATE: Tuesday, April 19, 2005  
Seal of the Court

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

### ATTACHMENT

Copies of all bills and records pertaining to the medical, psychiatric or psychological care of Nancy J. Warrender (Social Security No. 191-28-9674, Date of Birth: 8/13/16), including but not limited to a full and complete copy of any and all records, office notes, admission summaries, discharge summaries, operative reports, lab reports, medication records, reports, notes, correspondence, x-ray reports, test results, consultations, progress notes or other material or information relating to any consultation, examination, medical history, diagnosis or treatment from **January 1, 2005 to the present. We reserve the right to obtain copies of radiology films using this subpoena once we have had an opportunity to review any records or radiology reports that are received in response to this request.**

**STATEMENT OF ASSURANCE:** The information disclosed pursuant to this subpoena will be held confidentially and used or further disclosed only as required or permitted by law and for the purpose of the lawsuit filed to No. 03-156-CD in the Court of Common Pleas of Clearfield County, Pennsylvania.



Julia R. Cronin, Esquire  
I.D. No.: PA76441

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Counsel for Family Dollar & Family  
Dollar, Inc.

Dated: 6/28/07

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

Civil Action No.  
03-1586-CD

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Intent to Serve Subpcena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

David R. Thompson, Esq.  
Thompson Law Office  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg, PA 16866

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON INC.

By:

  
Julia R. Cronin, Esq.

Dated: 6/28/07



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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant

)  
) No. 2003-1586-CD  
)  
) Type of Case: Civil  
)  
) Type of Pleading:  
) Notice of Intent to Serve  
) Subpoena to Produce  
) Document and Things  
) Pursuant to Rule 4009.21  
)  
) Filed on Behalf of: Defendant  
)  
) Counsel of Record for this  
) Party:  
) Julia R. Cronin, Esquire  
) I.D. No. PA76440  
) Miller, Kistler, Campbell,  
) Miller, Williams & Benson, Inc.  
) 720 S. Atherton Street  
) State College, PA 16801  
) 814-234-1500

FILED

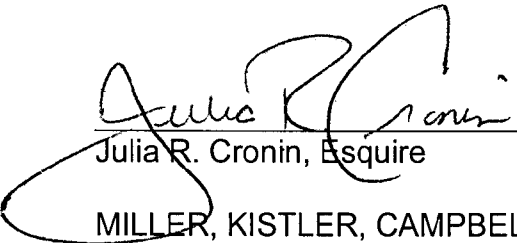
JUL 02 2007  
11/11/07  
William A. Shaw  
Prothonotary/Clerk of Courts  
NO 211

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

NANCY J. WARRENDER, an individual,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	03-1586-CD
FAMILY DOLLAR AND FAMILY DOLLAR, INC.,	)	
	)	
Defendant.	)	

**NOTICE OF INTENT TO SERVE SUBPOENA TO PRODUCE DOCUMENTS  
AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Defendant intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served

  
\_\_\_\_\_  
Julia R. Cronin, Esquire

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Counsel for Family Dollar & Family  
Dollar, Inc.

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Nancy J. Warrender  
Plaintiff(s)

\*

Vs.

\*

No. 2003-01586-CD

\*

Family Dollar  
Family Dollar, Inc.  
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO  
RULE 4009.22

TO: Philipsburg Area Hospital, 210 Loch Lomond Road, Philipsburg, PA 16866  
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to  
produce the following documents or things:  
See attached sheet.

Julia R. Cronin, Esquire, Miller, Kistler, Campbell, Miller, Williams &  
Benson, Inc., 720 S. Atherton S(Address) State College, PA 16801

You may deliver or mail legible copies of the documents or produce things requested by  
this subpoena, together with the certificate of compliance, to the party making this request at the  
address listed above. You have the right to seek in advance the reasonable cost of preparing the  
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty  
(20) days after its service, the party serving this subpoena may seek a court order compelling you  
to comply with it.

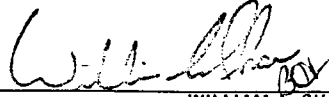
THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Julia R. Cronin, Esq.  
ADDRESS: 720 S. Atherton Street  
State College, PA 16801  
TELEPHONE: 814-234-1500  
SUPREME COURT ID # PA76440  
ATTORNEY FOR: Defendants

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

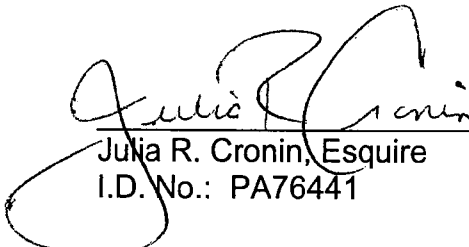
DATE: Tuesday, April 19, 2005  
Seal of the Court

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

### ATTACHMENT

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Julia R. Cronin, Esquire  
I.D. No.: PA76441

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Counsel for Family Dollar & Family  
Dollar, Inc.

Dated: 6/28/07

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

NANCY J. WARRENDER, an individual,

Plaintiff,

v.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendant.

Civil Action No.  
03-1586-CD

**CERTIFICATE OF SERVICE**

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David R. Thompson, Esq.  
Thompson Law Office  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg, PA 16866

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON INC.

By:

  
Julia R. Cronin, Esq.

Dated: 6/28/07

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

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual

Plaintiff

VS.

FAMILY DOLLAR STORES OF PENNSYLVANIA,  
INC.,

Defendants

No. 03-1586-CD

TYPE OF CASE:  
Civil Division

TYPE OF PLEADING:  
Praecipe to Settle and Discontinue

FILED ON BEHALF OF:  
Plaintiffs

COUNSEL OF RECORD FOR  
THIS PARTY:  
David R. Thompson, Esquire  
Supreme Court I.D. No. 73053  
Attorney at Law  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg PA 16866  
(814) 342-4100

FILED  
01/14/06  
JAN 28 2006

2cc @ 2 Cert. of Disc.  
to Atty

William A. Shaw  
Prothonotary/Clerk of Courts

CP

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

CIVIL DIVISION - LAW

NANCY J. WARRENDER, an individual \*

Plaintiff \*

vs. \*

No. 03-1586-CD \*

FAMILY DOLLAR STORES OF \*

PENNSYLVANIA, INC. \*

Defendants \*

\*

**PRAECIPE TO SETTLE AND DISCONTINUE**

TO THE PROTHONOTARY:

Kindly mark the above captioned matter as settled and discontinue.

DATE:

Respectfully submitted,

  
\_\_\_\_\_  
David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Nancy J. Warrender

Vs.

No. 2003-01586-CD

Family Dollar Stores of Pennsylvania, Inc.

CERTIFICATE OF DISCONTINUATION

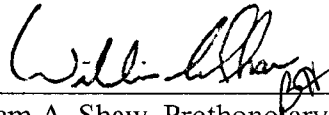
Commonwealth of PA  
County of Clearfield

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 January 28, 2008, marked:

Settled and Discontinued

Record costs in the sum of \$85.00 have been paid in full by David R. Thompson, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 28th day of January A.D. 2008.



William A. Shaw, Prothonotary