

03-1593-CD

SAMUEL J. TONEY, JR. vs. LOWE'S COMPANIES INC.

Date: 09/14/2004

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 09:17 AM

ROA Report

Page 1 of 1

Case: 2003-01593-CD

Current Judge: No Judge

Samuel J. Toney Jr. vs. Lowe's Companies, Inc.

Civil Other

Date		Judge
10/24/2003	Filing: Civil Complaint Paid by: Noble, Theron G. Receipt number: 1868066 Dated: 10/24/2003 Amount: \$85.00 (Check) 3 Cert. to Atty.	No Judge ✓
11/05/2003	Praeipe for Entry of appearance on behalf of Defendant filed by Atty. Stuart H. Sostmann, No CC. Copy to CA	No Judge ✓
12/03/2003	Stipulation, And Now, to-wit, this 1st day of December, 2003. s/Theron Noble, Esquire s/Stuart H. Sostmann, Esquire Certificate of Service. no cc	No Judge ✓
	Answer And New Matter To Plaintiff's Complaint. filed by, s/Stuart H. Sostmann, Esquire Verification s/Glen Morgenweck Certificate of Service no cc	No Judge ✓
12/08/2003	Reply To New Matter. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	No Judge ✓
12/15/2003	Amended New Matter, filed by Atty. Sostmann no cert.	No Judge ✓
12/17/2003	Reply to Amended New Matter filed by Atty. Noble. No cc.	No Judge ✓
	Supplemental Verification To Amended New Matter. filed by, s/Stuart H. Sostmann, Esquire Certificate of Service no cc	No Judge ✓
	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge ✓
01/05/2004	Notice of Service, Defendant Lowe's Home Centers, Inc.'s First Set of Interrogatories and Request for Production of Documents to Plaintiff upon: Theron G. Noble, Esquire filed by, s/Stuart H. Sostmann, Esq. Certificate of Service no cc	No Judge ✓
06/08/2004	Filing: Praeipe/List For Arbitration Paid by: Noble, Theron G. (attorney for Toney, Samuel J. Jr.) Receipt number: 1880608 Dated: 06/08/2004 Amount: \$20.00 (Check) No cc	No Judge ✓
06/09/2004	Praeipe To List For Arbitration. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	No Judge ✓
07/30/2004	ORDER filed. 4 cert. to C/A Scheduling Arbitration on Monday, Sept. 20, 2004	No Judge ✓

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

Samuel J. Toney Jr.
vs.
Lowe's Companies, Inc.

No. 2003-01593-CD

OATH OR AFFIRMATION OF ARBITRATORS

Now, this 20th day of September, 2004, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

Kim Kesner, Esq.

Chairman

Mark A. Falvo, Esq.

Frederick M. Neiswender, Esq.

Sworn to and subscribed before me this
September 20, 2004

Prothonotary

AWARD OF ARBITRATORS

Now, this _____ day of _____, _____, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows:

Chairman

(Continue if needed on reverse.)

ENTRY OF AWARD

Now, this _____ day of _____, _____, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT

Prothonotary

By _____

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

SAMUEL J. TONEY, Jr., an adult individual,

PLAINTIFF,

v.

LOWE'S COMPANIES, INC.,

DEFENDANT.

No. 03- 1593 -CD

Type of Pleading:

CIVIL COMPLAINT

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED 

OCT 24 2003

6/10:20/03
William A. Shaw
Prothonotary

3 CENT TO ATTY

David Meholick, Court Administrator
Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830
(814)-765-2641

3. That Mr. Toney is, and at all material times was, an elderly gentleman, only suffering from normal infirmities associated with his age, but able to walk without assistance and able to enjoy life.
4. That on, or about June 6, 2003, Mr. Toney did proceed to the aforementioned Lowe's store

and proceed to check out a few items of interest.

5. After doing as stated in averment 4, Mr. Toney proceeded to leave the aforementioned store and walk in the designated walk area, so designated by its diamond striping, towards the parking lot.

6. Defendant had parked near the designated walk area some "heavy equipment", such as lawn tractors.

7. The aforementioned pieces of equipment were secured with logs serving as "wheel chocks".

8. Unknown to Mr. Toney at the time, the logs protruded from underneath the equipment into the designated walk area.

9. As Mr. Toney, left the defendants' store, he proceeded to walk in the designated walk over and tripped over one of the logs serving as a wheel chock.

10. Upon tripping, Mr. Toney struck the paved area. striking the ground in a forcible manner.

11. As a result of his fall, Mr. Toney did suffer various injuries to his left knee and elbow, which included cuts and abrasions, which in turn became infected developed into a cyst.

12. That as a result of the aforementioned injuries, Mr. Toney has treated, and is still treating for his injuries, which includes a visit to the local hospital, numerous visits with his primary care physician and an orthopedic specialist. The costs of his treatments, and medicines prescribed therewith, have amounted to approximately \$1,500, to be more fully determined at time of trial.

Count I: Negligence

13. That averments of paragraph 1 - 12, inclusive, are hereby incorporated as if again fully set forth at length.

14. That Lowe's was negligent in that:

(a) the space designated as the walk way should have been kept free and clear of obstacles and impediments and it was not;

(b) they failed to warn persons, including Mr. Toney, that the walk area was not free and clear of obstacles and impediments;

(c) the end of the protruding log was not painted or marked in any manner which would have

made it more visible such that a person would observe the same and avoid it;

(d) using a log, instead of wheel chocks so designed which would need to protrude out from underneath the equipment; and

(e) failure to detect that they had created an unsafe situation, despite upon information and belief a reasonable opportunity to do so.

15. That as a direct and proximate result of defendant's negligence, Mr. Toney did suffer the aforementioned injuries and should be compensated for his medical bills and medicines incurred there from.

16. That Mr. Toney suffered, and does suffer, pain from his injuries and should be compensated in an amount to be determined at time of trial.

17. That Mr. Toney's knee and elbow have been disfigured for which he should be compensated in an amount to be determined at time of trial.

18. That as a result of his injuries, Mr. Toney was unable, and to some degree, still unable to enjoy life as before his injuries for which he should be compensated in an amount to be determined at time of trial.

Miscellaneous

19. That venue is proper.

20. That jurisdiction is proper.

WHEREFORE, Plaintiff requests that JUDGMENT be entered in his favor, and against defendant, in an amount to be determined at time of trial, less than Twenty-five Thousand Dollars (\$25,000).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Theron G. Noble', is written over a horizontal line.

Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.No.: 55942

Samuel J. Toney, Jr., Plaintiff

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

SAMUEL J. TONEY, JR., an adult
individual

Plaintiff,

vs.

LOWE'S COMPANIES, INC.,

Defendant.

) CIVIL DIVISION
)
) No. 03-1593 CD
)
)
)
) **PRAECIPE FOR ENTRY OF**
) **APPEARANCE**
)
)
)
) Filed on behalf of Defendant
)
)
) Counsel of Record for this Party:
)
) STUART H. SOSTMANN, ESQUIRE
) PA I.D. #84065
)
) Marshall, Dennehey, Warner,
) Coleman & Goggin
) 2900 US Steel Tower
) 600 Grant Street
) Pittsburgh, PA 15219
)
) 412-803-1140

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FILED

NOV 05 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

SAMUEL J. TONEY, JR., an adult	)	CIVIL DIVISION
individual)	
	)	No. 03-1593 CD
Plaintiff,)	
)	
vs.)	
)	
LOWE'S COMPANIES, INC.,)	
)	
Defendant.)	

PRAECIPE FOR ENTRY OF APPEARANCE

KINDLY enter the appearance of Marshall, Dennehey, Warner, Coleman & Goggin and Stuart H. Sostmann, Esquire on behalf of the Defendant, LOWE'S COMPANIES, INC., in the above-captioned matter.

**MARSHALL, DENNEHEY, WARNER
COLEMAN AND GOGGIN**

BY:

A handwritten signature in cursive script that reads "Stuart Sostmann" followed by a diagonal slash and the lowercase letters "hms".

Stuart H. Sostmann, Esquire
Attorneys for Defendant

2900 US Steel Tower
600 Grant Street
Pittsburgh, PA 15219

(412) 803-1140

CERTIFICATE OF SERVICE

I hereby certify that I have served upon all persons listed below a true and correct copy of the **PRAECIPE FOR ENTRY OF APPEARANCE** in the above-captioned matter by United States first-class mail, postage prepaid, this 3rd day of November, 2003.

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830

By: Stuart Sostmann /hms/
STUART H. SOSTMANN, ESQUIRE
Attorney for Defendant

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

SAMUEL J. TONEY, JR.,

Plaintiff,

vs.

LOWE'S COMPANIES, INC.,

Defendant.

) CIVIL DIVISION – ARBITRATION

)

) NO. 03-1593-CD

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STIPULATION

Filed on behalf of Defendant.

Counsel of Record for This Party:

STUART H. SOSTMANN, ESQUIRE

PA. I.D. #84065

Marshall, Dennehey, Warner,

Coleman & Goggin

2900 US Steel Tower

600 Grant Street

Pittsburgh, PA 15219

412-803-1140

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FILED

DEC 03 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

SAMUEL J. TONEY, JR.,	)	CIVIL DIVISION – ARBITRATION
)	
	)	NO. 03-1593-CD
Plaintiff,)	
)	
)	
vs.)	
)	
)	
LOWE’S COMPANIES, INC.,)	
)	
)	
Defendant.)	

STIPULATION

AND NOW, to-wit, this 15th day of December, 2003, Theron Noble, Esquire, counsel for Plaintiff and Stuart H. Sostmann, Esquire, counsel for Defendant hereby agree and stipulate to the following:

1. Plaintiff, in the Civil Complaint filed at 03-1593-CD, filed on October 24, 2003, identified the Defendant as Lowe’s Companies, Inc.
2. The Defendant was improperly named in the caption of the Complaint and as such, the parties stipulate the appropriate designation of the named Defendant should be “Lowe’s Home Centers, Inc.”
3. Accordingly, the caption of the above action should read as follows:

Samuel J. Toney, Jr., an adult individual, Plaintiff,

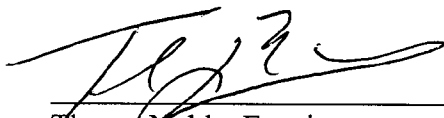
vs.

Lowe’s Home Centers, Inc., Defendant.

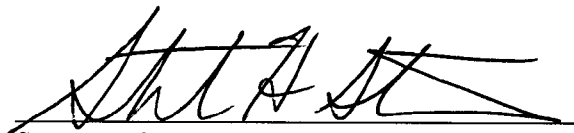
4. Additionally, the body of the Complaint should be amended so that any reference to Lowe's Companies, Inc. should be substituted and interpreted as a reference to Lowe's Home Centers, Inc.

5. Additionally, the parties have agreed to permit Defendant an additional twenty (20) days from the date of this Stipulation to respond to Plaintiff's Complaint in Civil Action.

Respectfully submitted,



Theron Noble, Esquire
Attorney for Plaintiff, Samuel J. Toney, Jr.



Stuart H. Sostmann, Esquire
Attorney for Defendant, Lowe's Home
Centers, Inc., which will be substituted for
Lowe's Companies, Inc.

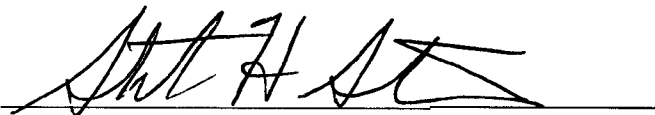
Date: 12/1/03

CERTIFICATE OF SERVICE

I hereby certify that I have served upon all persons listed below a true and correct copy of the **STIPULATION** in the above-captioned matter by United States first-class mail, postage prepaid, this 1st day of December, 2003.

**Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830**

**MARSHALL, DENNEHEY, WARNER
COLEMAN AND GOGGIN**

BY: 
STUART H. SOSTMANN, ESQUIRE
Attorneys for Defendant

2900 US Steel Tower
600 Grant Street
Pittsburgh, PA 15219

(412) 803-1140

William A. Shaw
Prothonotary Clerk of Courts

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

SAMUEL J. TONEY, JR.,	)	CIVIL DIVISION – ARBITRATION
)	
Plaintiff,	)	NO. 03-1593-CD
)	
vs.)	
)	
LOWE’S HOME CENTERS, INC.,)	
)	
Defendant.)	

ANSWER AND NEW MATTER TO PLAINTIFF’S COMPLAINT

AND NOW, comes Defendant LOWE’S HOME CENTERS, INC., by and through its attorneys, Marshall, Dennehey, Warner, Coleman & Goggin and Stuart H. Sostmann, Esquire, and files the following Answer and New Matter to Plaintiff’s Complaint and in support thereof avers as follows:

1. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

2. Denied. The proper Defendant is Lowe’s Home Centers, Inc., which is a duly formed and existing corporation that is entitled to do business in Pennsylvania. Lowe’s Home Centers, Inc. does maintain a store at “The Commons” shopping plaza in Sandy Township, Clearfield County, Pennsylvania.

3. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

4. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

5. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

6. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

7. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

8. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

9. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

10. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

11. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

12. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

13. Defendant hereby incorporates by reference paragraphs 1 through 12 of its Answer and New Matter as though fully set forth at length herein.

14. These averments, including subparagraphs (a) through (e) constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is required, said averments are denied and strict proof thereof is demanded at the time of trial.

15. As to the averments regarding this Defendant's negligence, these averments constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is required, said averments are denied and strict proof thereof is demanded at the time of trial. As to the remaining averments regarding Plaintiff's injuries and damages, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

16. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

17. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

18. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

19. Assuming that such an incident did take place at the Lowe's store located in Sandy Township, Clearfield County, Pennsylvania, it is admitted that venue is proper.

20. Assuming that such an incident did take place at the Lowe's store located in Sandy Township, Clearfield County, Pennsylvania, it is admitted that jurisdiction is proper.

WHEREFORE, Defendant LOWE'S HOME CENTERS, INC., respectfully requests that this Honorable Court dismiss Plaintiff's Complaint with prejudice.

NEW MATTER

For further and more specific response, this Defendant files the following New Matter.

21. Plaintiff's Complaint fails to state a claim upon which relief may be granted pursuant to applicable law.

22. Any and all claims of the Plaintiff are barred by the applicable statute of limitations, laches, estoppel and/or waiver.

23. The rights of the Plaintiff in this action are governed, diminished or barred by the contributory and/or comparative negligence of the Plaintiff and this Defendant claims all the benefits of the provisions of the Pennsylvania Comparative Negligence Act as set forth at 42 Pa.C.S.A. § 7102 et. seq. and place the same as an affirmative defense in this action.

24. In the event it is established that Plaintiff has sustained injuries and damages as alleged in this Complaint, which are denied for the reasons set forth in the preceding paragraphs

of this Answer, then in that event, said injuries and damages are due to the acts of persons and/or such individuals other than this Defendant, which acts were independent, intervening, and superseding and for which this Defendant is not liable or responsible.

25. There is no causal relationship between any damages claimed by the Plaintiffs and any wrongful act or omission on the part of this Defendant, which act or omission is expressly denied.

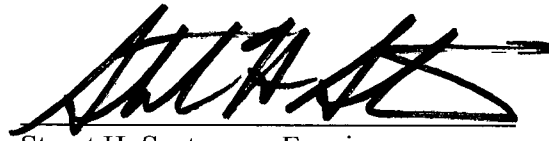
26. This Defendant is guilty of negligent, wrongful, tortious or unlawful act or omission which proximately contributed to the damages claimed by the Plaintiff.

WHEREFORE, Defendant LOWE'S HOME CENTERS, INC., denies liability to the Plaintiff and requests judgment in its favor.

Respectfully submitted,

Marshall, Dennehey, Warner, Coleman & Goggin

By:

A handwritten signature in black ink, appearing to read 'Stuart H. Sostmann', written over a horizontal line.

Stuart H. Sostmann, Esquire
Attorneys for Defendant

VERIFICATION

I, GLEN MORGENWECK, being duly sworn according to law deposes and says that I am STONE MANAGER of Lowe's Home Centers, Inc. and that as such, I am authorized to make this verification on behalf of Defendant LOWE'S HOME CENTERS, INC. and that the facts set forth in the foregoing **ANSWER AND NEW MATTER OF PLAINTIFF'S COMPLAINT** are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties 18 Pa.C.S. 4904 relating to unsworn falsification to authorities.



GLEN MORGENWECK

Date: 11-25-03
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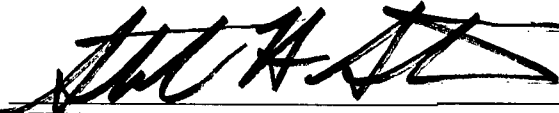
CERTIFICATE OF SERVICE

I hereby certify that I have served upon all persons listed below a true and correct copy of the **ANSWER AND NEW MATTER OF PLAINTIFF'S COMPLAINT** in the above-captioned matter by United States first-class mail, postage prepaid, this 1st day of December, 2003.

**Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830**

**MARSHALL, DENNEHEY, WARNER
COLEMAN AND GOGGIN**

BY:



STUART H. SOSTMANN, ESQUIRE
Attorneys for Defendant

2900 US Steel Tower
600 Grant Street
Pittsburgh, PA 15219

(412) 803-1140

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

SAMUEL J. TONEY, Jr., an adult individual,

PLAINTIFF,

v.

LOWE'S HOMES CENTERS, INC.,

DEFENDANT.

No. 03- 1593 -CD

Type of Pleading:

REPLY TO NEW MATTER

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

DEC 08 2003

William A. Shaw
Prothonotary/Clerk of Courts

SAMUEL J. TONEY, JR.,
an adult individual;

PLAINTIFF,

v.
LOWE'S HOME CENTERS, INC.,

DEFENDANT.

NOW COMES the Plaintiff, Mr. Samuel J. Toney, Jr., by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of his REPLY TO NEW MATTER :

26. Admitted.

Respectfully Submitted,

Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.No.: 55942

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

SAMUEL J. TONEY, JR.,

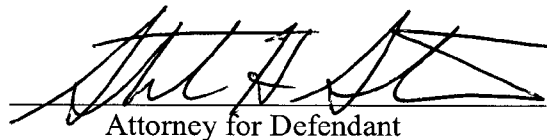
Plaintiff,

vs.

LOWE'S HOME CENTERS, INC.,

Defendant.

You are hereby notified to file a written
response to the within NEW MATTER
within twenty (20) days of service hereof
or a default judgment may be entered
against you.


Attorney for Defendant

) CIVIL DIVISION – ARBITRATION

) NO. 03-1593-CD

) **AMENDED NEW MATTER**

) Filed on behalf of Defendant.

) Counsel of Record for This Party:

) STUART H. SOSTMANN, ESQUIRE
) PA. I.D. #84065

) Marshall, Dennehey, Warner,
) Coleman & Goggin
) 2900 US Steel Tower
) 600 Grant Street
) Pittsburgh, PA 15219

) 412-803-1140

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FILED

DEC 15 2003

William A. Shaw
Prothonotary Clerk of Courts

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

SAMUEL J. TONEY, JR.,	)	CIVIL DIVISION – ARBITRATION
)	
Plaintiff,	)	NO. 03-1593-CD
)	
vs.)	
)	
LOWE’S HOME CENTERS, INC.,)	
)	
Defendant.)	

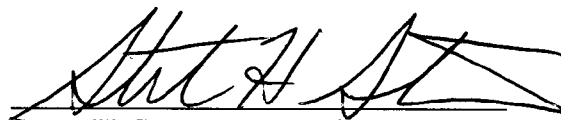
AMENDED NEW MATTER

AND NOW, comes Defendant LOWE’S HOME CENTERS, INC., by and through its attorneys, Marshall, Dennehey, Warner, Coleman & Goggin, and Stuart H. Sostmann, Esquire and files the following Amended New Matter and in support thereof avers as follows:

1. In Paragraph 26 of this Defendant’s Answer and New Matter it was averred that “this Defendant is guilty of negligent, wrongful, tortious or unlawful act or omission which proximately contributed to the damages claimed by the Plaintiff.” Said averment was incorrect as it contained a typographical error. The correct averment should read as follows: “This Defendant is guilty of no negligent, wrongful, tortious or unlawful act or omission which proximately contributed to the damages claimed by the Plaintiff.”

Respectfully submitted,

Marshall, Dennehey, Warner, Coleman & Goggin

By: 
Stuart H. Sostmann, Esquire
Attorneys for Defendant

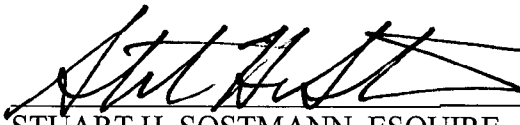
CERTIFICATE OF SERVICE

I hereby certify that I have served upon all persons listed below a true and correct copy of the **AMENDED NEW MATTER** in the above-captioned matter by United States first-class mail, postage prepaid, this 12th day of December, 2003.

**Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830**

**MARSHALL, DENNEHEY, WARNER
COLEMAN AND GOGGIN**

BY:


STUART H. SOSTMANN, ESQUIRE
Attorneys for Defendant

2900 US Steel Tower
600 Grant Street
Pittsburgh, PA 15219

(412) 803-1140

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

SAMUEL J. TONEY, Jr., an adult individual,

PLAINTIFF,

v.

LOWE'S HOMES CENTERS, INC.,

DEFENDANT.

No. 03- 1593 -CD

Type of Pleading:

**REPLY TO AMENDED
NEW MATTER**

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

DEC 17 2003

William A. Shaw
Prothonotary

~~Theron G. Noble, Esquire~~
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.No.: 55942

Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.No.: 55942

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

SAMUEL J. TONEY, JR.,

Plaintiff,

vs.

LOWE'S HOME CENTERS, INC.,

Defendant.

) CIVIL DIVISION – ARBITRATION
)
) NO. 03-1593-CD
)
)
) **SUPPLEMENTAL VERIFICATION TO**
) **AMENDED NEW MATTER**
)
)
) Filed on behalf of Defendant.
)
)
) Counsel of Record for This Party:
)
) STUART H. SOSTMANN, ESQUIRE
) PA. I.D. #84065
)
)
) Marshall, Dennehey, Warner,
) Coleman & Goggin
) 2900 US Steel Tower
) 600 Grant Street
) Pittsburgh, PA 15219
)
) 412-803-1140

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FILED
DEC 17 2003
William A. Shaw
Prothonotary, Clerk of Courts

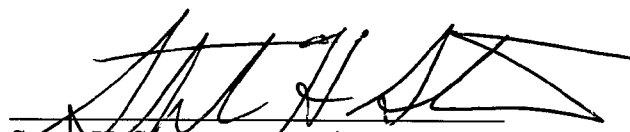
SUPPLEMENTAL VERIFICATION TO AMENDED NEW MATTER

I, STUART H. SOSTMANN, attorney for Defendant, LOWE'S HOME CENTERS, INC., verify that the facts set forth in **DEFENDANT'S AMENDED NEW MATTER** are true to the best of my knowledge, information and belief. If the above statements are not true, the deponent is subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Respectfully submitted,

Marshall, Dennehey, Warner, Coleman & Goggin

By:


Stuart H. Sostmann, Esquire
Attorneys for Defendant

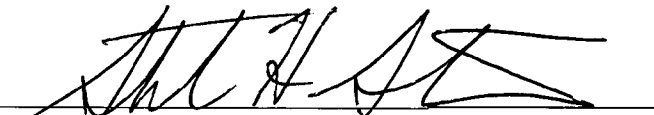
CERTIFICATE OF SERVICE

I hereby certify that I have served upon all persons listed below a true and correct copy of the **SUPPLEMENTAL VERIFICATION TO AMENDED NEW MATTER** in the above-captioned matter by United States first-class mail, postage prepaid, this 15th day of December, 2003.

**Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830**

**MARSHALL, DENNEHEY, WARNER
COLEMAN AND GOGGIN**

BY:


STUART H. SOSTMANN, ESQUIRE
Attorneys for Defendant

2900 US Steel Tower
600 Grant Street
Pittsburgh, PA 15219

(412) 803-1140

In The Court of Common Pleas of Clearfield County, Pennsylvania

TONY, SAMUEL J. JR.

VS.

LOWE'S COMPANIES, INC.

COMPLAINT

Sheriff Docket # 14714

03-1593-CD

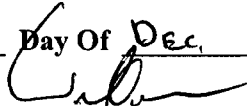
SHERIFF RETURNS

NOW OCTOBER 27, 2003 AT 9:51 AM SERVED THE WITHIN COMPLAINT ON LOWE'S COMPANIES, INC., DEFENDANT AT EMPLOYMENT, THE COMMONS, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO MATT POWELL, STORE OPERATOINS MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: COUDRIET

Return Costs


Cost	Description
32.05	SHERIFF HAWKINS PAID BY: ATTY CK# 1137
10.00	SURCHARGE PAID BY: ATTY CK# 1138

Sworn to Before Me This

17 Day Of Dec. 2003


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

So Answers,


Chester A. Hawkins
Sheriff

FILED
01/17/04
DEC 17 2003

William A.
Prothonotary

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

SAMUEL J. TONEY, JR.,

Plaintiff,

vs.

LOWE'S HOME CENTERS, INC.,

Defendant.

) CIVIL DIVISION – ARBITRATION
)
) NO. 03-1593-CD
)
)
)
) **NOTICE OF SERVICE**
)
)
) Filed on behalf of Defendant.
)
)
) Counsel of Record for This Party:
)
) STUART H. SOSTMANN, ESQUIRE
) PA. I.D. #84065
)
)
) Marshall, Dennehey, Warner,
) Coleman & Goggin
) 2900 US Steel Tower
) 600 Grant Street
) Pittsburgh, PA 15219
)
) 412/803-1140

FILED

JAN 05 2004

FILED IN COURT OF COMMON PLEAS

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

SAMUEL J. TONEY, JR.,	)	CIVIL DIVISION – ARBITRATION
)	
Plaintiff,	)	NO. 03-1593-CD
)	
vs.)	
)	
LOWE'S HOME CENTERS, INC.,)	
)	
Defendant.)	

NOTICE OF SERVICE

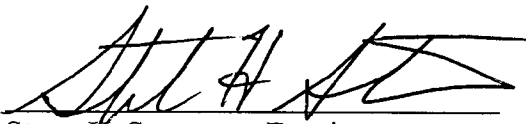
TO: Prothonotary of Allegheny County, PA

Notice is hereby given that a true and correct copy of **Defendant Lowe's Home Centers, Inc.'s First Set of Interrogatories and Request for Production of Documents to Plaintiff** was served upon counsel of record, this 2nd day of January, 2004, at the below address:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN, P.C.

By: 
Stuart H. Sostmann, Esquire
Attorneys for Defendant

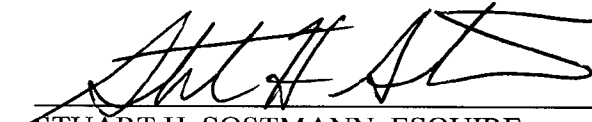
CERTIFICATE OF SERVICE

I hereby certify that I have served upon all persons listed below a true and correct copy of the **NOTICE OF SERVICE** in the above-captioned matter by United States first-class mail, postage prepaid, this 2nd day of January, 2004.

**Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830**

MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN, P.C.

BY:


STUART H. SOSTMANN, ESQUIRE
Attorneys for Defendant

2900 US Steel Tower
600 Grant Street
Pittsburgh, PA 15219

412/803-1140

CA

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PRAECIPE TO LIST FOR ARBITRATION

To: William A. Shaw, Prothonotary

Date: June 7, 2004

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that in the above captioned matter, (i) pleadings are closed, (ii) there is no outstanding discovery requests; and (iii) attempts to amicably resolve this matter have failed or would be non-productive. Therefore, request is hereby made that the same be placed on the arbitration list and listed for a 1/2 hearing.

Respectfully Submitted,

Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

FILED

JUN 08 2004

William A. Shaw
Prothonotary

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

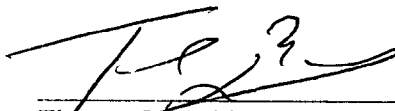
SAMUEL J. TONEY, JR.,)	
an adult individual;)	
)	
PLAINTIFF,)	
	)	No. 03- <u>1593</u> -CD
v.)	
LOWE'S HOME CENTERS. INC.,)	
)	
DEFENDANT.)	

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, attorney for Plaintiff, does hereby certify that I did mail, to the below indicated person at the below listed address, this 7th day of June, 2004, a true and correct copy of Plaintiff's PRAECIPE TO LIST FOR ARBITRATION, via United States Mail, first class, postage prepaid, as follows:

Stuart H. Sostmann, Esquire
Marshall, Dennehey, Warner, Coleman & Coggin
USX Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.No.: 55942

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

SAMUEL J. TONEY, JR.

vs.

LOWE'S HOME CENTERS, INC.

:
:
: No. 03-1593-CD
:
:

FILED

JUL 30 2004

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

NOW, this 30th day of July, 2004, it is the ORDER of the
Court that the above-captioned matter is scheduled for Arbitration on **Monday,**
September 20, 2004 at 8:30 A.M. The following have been appointed as
Arbitrators:

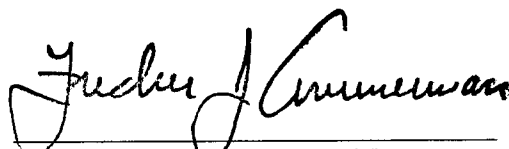
Kim C. Kesner, Esquire, Chairman

Mark A. Falvo, Esquire

Frederick M. Neiswender, Esquire

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

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

SAMUEL J. TONEY, JR.,
an adult individual;

PLAINTIFF,

v.
LOWE'S HOME CENTERS, INC.,

DEFENDANT.

William A. Shaw
Prothonotary

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

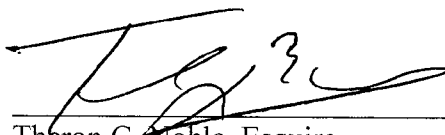
SAMUEL J. TONEY, JR.,)	
an adult individual;)	
)	
PLAINTIFF,)	
)	No. 03- <u>1593</u> -CD
v.)	
LOWE'S HOME CENTERS, INC.,)	
)	
DEFENDANT.)	

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, attorney for Plaintiff, does hereby certify that I did mail, to the below indicated person at the below listed address, this 7th day of June, 2004, a true and correct copy of Plaintiff's PRAECIPE TO DISCONTINUE via United States Mail, first class, postage prepaid, as follows:

Stuart H. Sostmann, Esquire
Marshall, Dennehey, Warner, Coleman & Coggin
USX Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.No.: 55942

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

CIVIL DIVISION

Samuel J. Toney Jr.

Vs.

No. 2003-01593-CD

Lowe's Home Centers, 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 September 15, 2004, marked:

Settled, Discontinued and Ended.

Record costs in the sum of \$147.05 have been paid in full by Attorney.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 15th day of September A.D. 2004.

William A. Shaw, Prothonotary