

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

Page 1 of 1

**ROA Report**

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	Praecipe 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 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. Supplemental Verification To Amended New Matter. filed by, s/Stuart H. Sostmann, Esquire Certificate of Service no cc 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: Praecipe/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	Praecipe 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,**

: No. 03-1593-CD

v.

LOWE'S COMPANIES, INC.,

**DEFENDANT.**

: 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 1405  
**William A. Shaw**  
**Prothonotary**

3 CENT TO ATTY

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

SAMUEL J. TONEY, JR., )  
an adult individual; )  
PLAINTIFF, )  
v. ) No. 03-\_\_\_\_\_ -CD  
LOWE'S COMPANIES, INC., )  
DEFENDANT. )

**NOTICE TO DEFEND**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIM SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY CLAIM IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF(S). 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 AN ATTORNEY, OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

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

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

SAMUEL J. TONEY, JR., )  
an adult individual; )  
PLAINTIFF, )  
v. ) No. 03- \_\_\_\_\_ -CD  
LOWE'S COMPANIES, INC., )  
DEFENDANT. )

**CIVIL COMPLAINT**

**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 CIVIL COMPLAINT:**

**The Parties**

1. Plaintiff is Samuel J. Toney, Jr., who does, and at all material times did, reside at RD #8, Box 86, Sandy Township, Clearfield County, Pennsylvania.
2. That Defendant is Lowe's Companies, Inc., hereinafter "Lowe's", who upon information and belief is a duly formed and existing corporation, with its stock trading on the New York stock exchange, properly entitled to do business in Pennsylvania with a store located at "The Commons" shopping plaza in Sandy Township, Clearfield County, Pennsylvania.

**Background Information**

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 chalks".

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 chalk.

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 chalks 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,



---

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

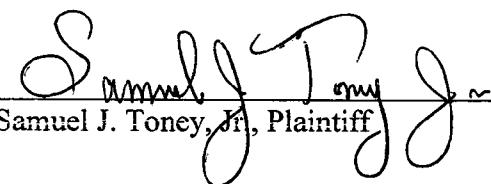
**IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)**

SAMUEL J. TONEY, JR., )  
an adult individual; )  
PLAINTIFF, )  
v. ) No. 03-\_\_\_\_\_ -CD  
LOWE'S COMPANIES, INC., )  
DEFENDANT. )

**VERIFICATION**

I, Samuel J. Toney, Jr., Plaintiff, do hereby swear and affirm that I have read the foregoing and attached CIVIL COMPLAINT in the above captioned matter, and that to the best of my information, knowledge and belief, the facts as set forth therein are true and correct. Furthermore, that I make this statement subject to the penalties of 18 Pa.C.S.A. 4101, relating to unsworn falsification to authorities.

So made this 21st day of October, 2003.

  
\_\_\_\_\_  
Samuel J. Toney, Jr., Plaintiff

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

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

  
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 3<sup>rd</sup> day of November, 2003.

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

By:   
STUART H. SOSTMANN, ESQUIRE  
Attorney for Defendant

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**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 COMPANIES, INC.,

) **STIPULATION**

Defendant.

) 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  
Plaintiff, ) ) NO. 03-1593-CD  
vs. ) )  
LOWE'S COMPANIES, INC., ) )  
Defendant. ) )

**STIPULATION**

AND NOW, to-wit, this 15<sup>th</sup> 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,**

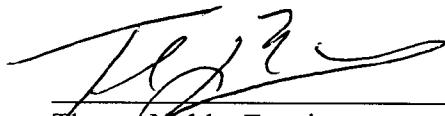
**vs.**

**Lowe's Home Centers, Inc., Defendant.**

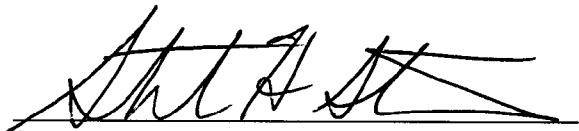
4. Additionally, the body of the Complaint should be amended so that any reference to Lowe's Companies, Inc. should be substituted and interpreted as a reference to Lowe's Home Centers, Inc.

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

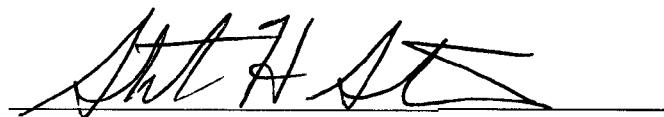
**CERTIFICATE OF SERVICE**

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 1<sup>st</sup> 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

SAMUEL J. TONEY, JR.,

) CIVIL DIVISION – ARBITRATION

Plaintiff,

) NO. 03-1593-CD

) vs.

LOWE'S HOME CENTERS, INC.,

) ANSWER AND NEW MATTER TO  
Defendant. ) PLAINTIFF'S COMPLAINT

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.

) 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

JURY TRIAL DEMANDED

) 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
	)
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:



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  
\12\_ALIAB\SYS\LLPG\295212\AYF\12240\00222

**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 1/5/03 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,

: No. 03-1593-CD

v.

LOWE'S HOMES CENTERS, INC.,

DEFENDANT.

: 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

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

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

**PLAINTIFF'S REPLY TO NEW MATTER**

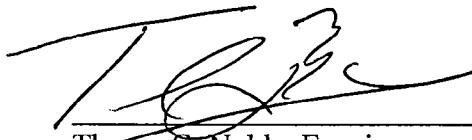
**NOW COMES the Plaintiff, Mr. Samuel J. Toney, Jr., by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of his REPLY TO NEW MATTER :**

21 - 25. The same state legal conclusions for which no responses are deemed necessary.

26. Admitted.

**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), as stated in his CIVIL COMPLAINT.**

Respectfully Submitted,



\_\_\_\_\_  
T. 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, CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)**

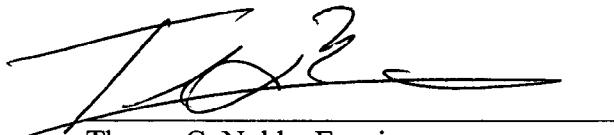
)  
SAMUEL J. TONEY, JR., )  
an adult individual; )  
 )  
PLAINTIFF, ) ) No. 03- 1593 -CD  
 )  
v. )  
LOWE'S HOME CENTERS, INC., )  
 )  
DEFENDANT. )

**CERTIFICATE OF SERVICE**

I, Theron G. Noble, Esquire, of ferraraccio & Noble, attorney for Plaintiff, does hereby certify that I did mail, to the beloew indicated person at the below listed address, this 5th day of December, 2003, a true and correct copy of Plaintiff's REPLY TO NEW MATTER, via United States Mail, first class, postage prepaid, as foillows:

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**

SAMUEL J. TONEY, JR.,

) CIVIL DIVISION – ARBITRATION

Plaintiff,

) NO. 03-1593-CD

vs.

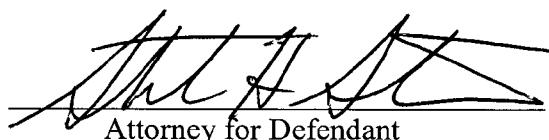
LOWE'S HOME CENTERS, INC.,

) **AMENDED NEW MATTER**

Defendant.

) Filed on behalf of 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

) 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

\12\_A\LIAB\SYS\LLPG\297662\AYF\12240\00222

**FILED**

**DEC 15 2003**

William A. Straw  
Prothonotary Clerk of Courts

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

**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 12<sup>th</sup> 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,

: No. 03- 1593 -CD

v.

LOWE'S HOMES CENTERS, INC.,

DEFENDANT.

: 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

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

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

**PLAINTIFF'S REPLY TO AMENDED NEW MATTER**

**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 AMENDED NEW MATTER :**

1. The same state legal conclusions for which no responses are deemed necessary.

**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), as stated in his CIVIL COMPLAINT.**

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, CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)**

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

**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 16th day of December, 2003, a true and correct copy of Plaintiff's REPLY TO AMENDED NEW MATTER, 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

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

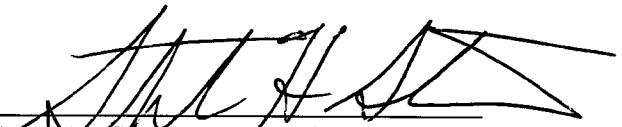
William A. Shaw  
Prothonotary, Clerk of Courts

**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 15<sup>th</sup> 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

TONEY, 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  
Chester A. Hawkins

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

So Answers,

*Chester A. Hawkins*  
by *Marylyn Harris*  
Chester A. Hawkins

Sheriff

**F I L E D**

*W. A. Shaw*  
DEC 17 2003

William A.  
Prothonotary

*W. A. Shaw*

**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., ) ) **NOTICE OF SERVICE**  
Defendant. ) )  
 ) 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

**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**

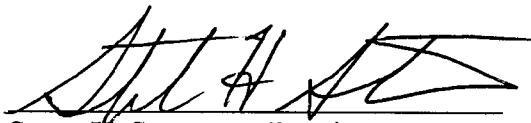
Notice is hereby given that a true and correct copy of **Defendant Lowe's Home Centers, Inc.'s First Set of Interrogatories and Request for Production of Documents to Plaintiff** was served upon counsel of record, this 2<sup>nd</sup> day of January, 2004, at the below address:

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

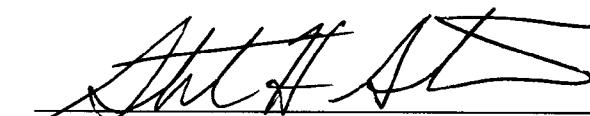
**CERTIFICATE OF SERVICE**

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

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

)

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

**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, )  
v. )  
LOWE'S HOME CENTERS, INC., )  
DEFENDANT. )  
No. 03-1593-CD

**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 & Coggins  
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. 03-1593-CD  
LOWE'S HOME CENTERS, INC. :  
:

FILED

JUL 30 2004

William A. Shaw  
Prothonotary/Clerk of Courts

O R D E R

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 in enclosed as well as a copy of said Local Rule of Court.

BY THE COURT:



FREDRIC J. AMMERMAN  
President Judge

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

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

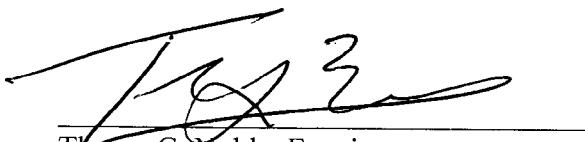
**PRAECIPE TO DISCONTINUE**

To: William A. Shaw, Prothonotary

Date: September 14, 2004

Please mark the above captioned case, SETTLED, ENDED and forever DISCONTINUED, with prejudice.

Respectfully Submitted,



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

**FILED**

M 1:45 PM 2. Cert. to Atty  
Copy to CJA  
SEP 15 2004

William A. Shaw  
Prothonotary

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

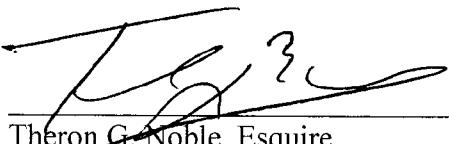
)  
SAMUEL J. TONEY, JR.,  
an adult individual;  
)  
PLAINTIFF,  
)  
v.  
LOWE'S HOME CENTERS, INC.,  
)  
DEFENDANT.  
)  
No. 03- 1593 -CD

**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