

04-369-CD  
WILLIAM S. ALBERT vs. LOWE'S COMPANIES, INC.

William Albert vs. Hunter Fan Company et al  
2004-369-CD

10/7

Lynn -

I couldn't find  
any of these in  
Judge Peulley office.

Sorry. 

Date: 8/6/2009  
Time: 04:45 PM  
Page 4 of 4

**Clearfield County Court of Common Pleas**  
**ROA Report**  
**Case: 2004-00369-CD**  
**Current Judge: Fredric Joseph Ammerman**  
**William S. Albert vs. Hunter Fan Company**

User: LMILLER

**Civil Other**

Date	Judge
12/17/2007 ✓ Praeclipe for Substitution of Counsel, on behalf of Plaintiff, withdraw appearance of S. Casey Bowers, Esquire, and enter appearance of Matthew B. Taladay, Esquire. Filed by s/ Matthew B. Taladay, Esquire. No CC	Fredric Joseph Ammerman
5/30/2008 ✓ Verdict slip with Members of the Jury, filed. Now, to wit: May 30, 2008, we the Jurors empanelled in the above entitled case, find A Verdict in Favor William S. Albert, Plaintiff 10 persons to 2 persons. The amount \$106,000 for damage. s/Robert Michaels, Foreperson,	Fredric Joseph Ammerman
6/9/2008 Plaintiff's Post-Trial Motions, Motion For rule 238 - Delay Damages, filed by Fredric Joseph Ammerman s/ Matthew B. Taladay, Esquire. No CC	
6/18/2008 Order, this 18th day of June, 2008, upon consideration of Plaintiff's Post-Trial Motion for Delay Damages, it is Ordered that Argument is scheduled to occur on the 31st day of July, 2008 at 2:00 P.M. in Courtroom 3. By The Court, /s/ John K. Reilly, Jr., Judge. 3CC to Atty.	Fredric Joseph Ammerman
6/23/2008 not in file 8-6-09 ✓ Defendant's Response to Plaintiff's Post Trial Motion for Rule 238 Delay Damages, filed by s/ Thomas J. Lowery, Esquire. no CC	Fredric Joseph Ammerman
7/1/2008 ✓ Certificate of Service, on the 30th day of June, 2008, a Court certified copy of the Order of Court dated June 18, 2008 was sent via first class mail, to Thomas J. Lowery, Esquire. filed by s/ Matthew B. Taladay, Esquire.	Fredric Joseph Ammerman
9/29/2008 ✓ Opinion and Order, this 26th day of Sept., 2008, Plaintiff's Motion for Delay Damages is granted in accordance with the foregoing Opinion and Plaintiff awarded an additional \$27,302.95 as delay damages. By The Court, /s/ John K. Reilly, Jr., Senior Judge. 1CC Attys: Taladay, Lowery; 1CC D. Mikesell & Law Library w/out memo	John K. Reilly Jr.
3/19/2009 ✓ Praeclipe for Discontinuance filed by Atty. Taladay no cert. copies.	Fredric Joseph Ammerman

missing from file as of 8-6-09 (un)

# Doris, Could you please check to see if you may have any of these highlighted documents  
Thanks.  
Lynn

Date: 8/6/2009  
Time: 04:45 PM  
Page 1 of 4

**Clearfield County Court of Common Pleas**  
ROA Report  
Case: 2004-00369-CD

User: LMILLER

Current Judge: Fredric Joseph Ammerman

William S. Albert vs. Hunter Fan Company

Civil Other

Date	Judge
3/17/2004	Filing: Civil Complaint Paid by: Hanak, Guido and Taladay Receipt numbe No Judge 1875655 Dated: 03/17/2004 Amount: \$85.00 (Check) 1 CC to Atty. 2 CC to Shff.
5/10/2004	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm
6/17/2004	✓Amended Complaint, filed by s/S. Casey Bowers, Esq. No CC No Judge
7/1/2004	✓Acceptance of Service, Accept service of the Amended Complaint on behalf of the Defendants, Lowe's Companies, Inc. and Lowe's Home Centers, inc., filed by Edward A Miller, Esq. No CC
7/12/2004	✓Praecipe for Entry of Appearance, on behalf of Lowe's Companies, Inc. and Lowe's Home Centers, Inc., filed by s/Edward A. Miller, Esq. No CC No Judge
7/16/2004	✓Defendants' Answer to Plaintiff's Amended Complaint and New Matter, filed by Atty. Miller. no cert.
	✓Plaintiff's Reply to New Matter, filed by Atty. Bowers 2 Cert. to Atty. No Judge
7/23/2004	✓Praecipe for Stipulated Discontinuance of Action Against Defendant, Lowe's Companies, Inc., s/ Atty. Bowers & Miller. filed by Atty. Miller No Cert. Copies
9/8/2004	✓Notice of Service, on behalf of Plaintiff, 2 copies of Plaintiff's Interrogatories No Judge upon Edward A. Miller, Esq. filed by s/S. Casey Bowers. No CC.
9/23/2004	✓Uncontested Motion for Leave of Court to Join Additional Defendant, filed by s/Edward A. Miller, Esq. One CC Attorney Miller
9/28/2004	✓Order OF COURT: AND NOW, this 27th day of September, 2004, Defendar Fredric Joseph Ammerman Lowe's Home Centers, Inc., is granted leave of court of 30 days from the da of this order to join Litex industries, Inc. as an additional Defendant to this lawsuit. BY THE COURT:/s/ Fredric J. Ammerman, Judge. 1 cc Attys: Bowers, Miller.
11/8/2004	✓Order of Court, filed. Cert. to Atty. Miller & Bowers. Fredric Joseph Ammerman ✓AND NOW, this 8th day of November, 2004, ORDER granted giving Deft. a additional 30 days to join Litex Industries, Inc. as an Additional Defendant.
11/18/2004	✓Praecipe For Issuance of Writ of Summons to Join Additional Defendant, or Fredric Joseph Ammerman behalf of Lowe's Home Centers, Inc. Filed by s/ Edward A. Miller, Esquire. 1 CC & Writ to Atty
12/10/2004	✓Certificate of Service of Writ to Join Additional Defendant, on behalf of Fredric Joseph Ammerman Defendant, Lowe's Home Centers, Inc. via certified mail on Nov. 29, 2004 to Litex Industries, Inc. Return certified mail receipt attached. Filed by s/ Edward A. Miller, Esquire. No Cc
12/13/2004	✓Motion to Compel Discovery, filed by s/S. Casey Bowers, Esq. Two CC Fredric Joseph Ammerman Attorney Bowers
12/14/2004	✓Order, AND NOW, this 14th day of Dec., 2004, upon consideration of Plaintiff's motion to Compel Discovery, It Is ORDERED that the motion is granted. Defendant must supply discovery responses within 30 days of this Order. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC to Atty Bowers
12/22/2004	✓Praecipe For Rule to File Complaint, on behalf of Additional Defendant Litex Fredric Joseph Ammerman Industries, by s/ Bryan B. Campbell, Esquire. No CC, Rule to Atty Campbell ✓Entry of Appearance of Bryan B. Campbell, Esq. on behalf of Def. Fredric Joseph Ammerman

## Civil Other

Date	Judge
1/27/2005	✓ Complaint To Join Additional Defendant, filed by s/ Edward A. Miller, Esquire. No CC Fredric Joseph Ammerman
	✓ Notice of Service of Answers and Objections To Plaintiff's Interrogatories Tc Fredric Joseph Ammerman Defendant, on Jan. 26, 2005 to S. Casey Bowers, Esquire, and Bryan B. Campbell, Esquire. filed by s/ Edward A. Miller, Esquire. No CC
2/14/2005	✓ Answer New Matter, And Cross Claim to Complaint To Join, on behalf of Litex Industries, Inc. filed. By s/ Bryan B. Campbell, Esquire. No CC Fredric Joseph Ammerman
2/22/2005	✓ Plaintiff's Reply to Additional Defendant's New Matter, filed by s/ S. Casey Bowers, Esquire. No CC Fredric Joseph Ammerman
3/23/2005	✓ Notice of Filing of Exhibits to Complaint to Join Additional Defendant, filed by s/ Fredric Joseph Ammerman s/ Edward A. Miller, Esquire. No CC Fredric Joseph Ammerman
	✓ Reply To Litex's New Matter and Cross Claim, filed by s/ Edward A. Miller, Esquire. No CC Fredric Joseph Ammerman
9/8/2005	✓ Stipulated Motion For Leave To Join Additional Defendant, filed by s/ Edwar Fredric Joseph Ammerman A. Miler, Esquire. 3CC to Atty Order, NOW, this 8th day of September, 2005, Ordered that the Court grant Fredric Joseph Ammerman leave to Defendant, Lowe's Home Centers, Inc., to join Hunter Fan Compan as an Additional Defendant to this lawsuit by the filing of a Praecept for a Writ to Join or the filing of a Complaint within 20 days after receiving notice of this Order. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Atty.
9/15/2005	✓ Praecept To Discontinue As To Litex Industries, Inc. By Stipulation of All Parties Pursuant to Pa.R.C.P. 229, filed by s/ Bryan B. Campbell, Esquire. 3CC Atty Campbell, copy to C/A Fredric Joseph Ammerman
9/21/2005	✓ Complaint To Join Additional Defendant, Hunter Fan Company, filed by s/ Edward A. Miller, Esquire. No CC Fredric Joseph Ammerman
9/29/2005	✓ Certificate of Service of Complaint to Join Additinal Defendant, Hunter Fan Company, filed by s/ Edward A. Miller Esq. No CC. Fredric Joseph Ammerman
10/3/2005	✓ Appearance, filed. Kindly enter my appearance for Additional Defendant, Hunter Fan Company, in the above-entitled action, filed by s/ Thomas J. Lowery, Esq. No CC and copy to C/A. Fredric Joseph Ammerman
1/23/2006	✓ Answer and New Matter of Hunter Fan Company to Complaint to Join, filed by s/ Thomas J. Lowery Esq. No CC. Fredric Joseph Ammerman
2/16/2006	✓ Consent Order Allowing the Dismissal of Lowe's Home Center, Inc. from fro Fredric Joseph Ammerman this case and Ameding the Case caption, signed by s/ Thomas J. Lowery Esq., s/ S. Casey Bowers Esq., s/ Edward A. Miller Esq. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Bowers.
3/3/2006	✓ Praecept To Change Caption, Caption to read William S. Albert, plaintiff, v. Hunter Fan Company, Defendant, filed by s/S. Casey Bowers Three CC Attorney Bowers Fredric Joseph Ammerman
3/7/2006	✓ Praecept to Mark Matter Settled, Discontinued and Ended as to Lowe's Home Centers, Inc. ONLY, filed by s/S. Casey Bowers Three CC Attorney Bowers Fredric Joseph Ammerman
4/25/2006	✓ Plaintiff's Reply to Defendant's New Matter, filed by s/ S. Casey Bowers Esq Fredric Joseph Ammerman 1CC Atty Bowers.

Date: 8/6/2009

Time: 04:45 PM

Page 3 of 4

**Clearfield County Court of Common Pleas**

User: LMILLER

ROA Report

Case: 2004-00369-CD

Current Judge: Fredric Joseph Ammerman

William S. Albert vs. Hunter Fan Company

Civil Other

Date	Judge	
4/25/2006	✓ Notice of Service, filed. That on the 24th day of April 2006, I mailed an original and two copies of Plaintiff's Interrogatories Directed to Defendant, Hunter Fan Company to Thomas J. Lowery Esq., filed by S. Casey Bowers Esq. 1CC Atty Bowers.	Fredric Joseph Ammerman
5/10/2006	✓ Motion For Leave of Court to Amend Complaint Pursuant to Pa.R.C.P. Rule 1033, filed by s/ S. Casey Bowers, Esquire. 2CC Atty. Bowers	Fredric Joseph Ammerman
5/12/2006	✓ Order AND NOW, this 11 day of May 2006, upon consideration of the foregoing Motion, it is hereby ordered that: (1) a rule is issued upon the respondent to show cause why the Moving Party is not entitled to the relief requested; (2) the respondent shall file an answer to the Motion within 20 days of this date. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty Bowers.	Fredric Joseph Ammerman
8/22/2006	✓ Motion To Compel Discovery, filed by s/ S. Casey Bowers, Esquire. 2CC Atty. Bowers	Fredric Joseph Ammerman
8/23/2006	✓ Order, NOW, this 23rd day of August, 2006, upon consideration of Plaintiff's Motion to Compel Discovery, it is Ordered that Motion is Granted. By The Court, /s/Fredric J. Ammerman, Esquire. 2CC Atty. Bowers	Fredric Joseph Ammerman
1/5/2007	✓ Praeclipe to Change Address, filed by s/ Thomas J. Lowery Esq. New Address: Thomas J. Lowery Esq., Morgolis Edelstein @ 525 William Penn Place, Suite 3300, Pittsburgh PA 15219	Fredric Joseph Ammerman
3/6/2007	✓ Certificate of Service, filed. That the Subpoenas to Produce Documents or Things for Discovery Pursuant to 4008.22 was forwarded to Mr. Jeffrey B. Miller and Thomas J. Lowery Esq., filed by s/ S. Casey Bowers Esq. 1CC Atty.	Fredric Joseph Ammerman
	✓ Certificate of Service, filed. That the Subpoena to Attend and Testify was forwarded to Michael S. McCracken-PSP and Thomas J. Lowery Esq., filed by s/ S. Casey Bowers Esq. 1CC Atty.	Fredric Joseph Ammerman
4/10/2007	✓ Certificate of Readines, filed by Atty. Casey No cert. copies. For a 3 day Jury Trial.	Fredric Joseph Ammerman
7/27/2007	✓ Order, this 26th day of July, 2007, it is Ordered that the matter is continued until the Winter 2008 Term of Civil Court. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty's; Bowers, Lowery	Fredric Joseph Ammerman
10/12/2007	✓ Order, this 12th day of Oct., 2007, it is Ordered that a pre-trial conference has been scheduled for Nov. 15, 2007 at 10:00 a.m. in Judges Chambers. Jury Selection will be held on Jan. 3, 2008. By The Court, /s/ Fredric J. Ammerman, pres. Judge. CC to Atty's: Bowers, Lowery	Fredric Joseph Ammerman
11/16/2007	✓ Order, NOW, this 15th day of Nov., 2007, following pre-trial conference with Fredric Joseph Ammerman counsel, it is Ordered: Jury Selection will be held on April 3, 2008 at 9:00 a.m. in Courtroom 1. Jury Trial is scheduled for May 27, 28, 29 and 30, 2008 at 9:00 a.m. in Courtroom 1. (see original) by the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty's: Bowers, Lowery	Fredric Joseph Ammerman
12/13/2007	✓ Certificate of Service, filed by Atty. Taladay no cert. copies. Served copy Fire Investigation Report of James Tsikalas mailed to Atty. Lowery.	Fredric Joseph Ammerman

Date: 8/6/2009  
Time: 04:45 PM  
Page 4 of 4

**Clearfield County Court of Common Pleas**

User: LMILLER

ROA Report  
Case: 2004-C0369-CD

Current Judge: Fredric Joseph Ammerman

William S. Albert vs. Hunter Fan Company

Civil Other

Date		Judge
12/17/2007	✓ Praeclipe for Substitution of Counsel, on behalf of Plaintiff, withdraw appearance of S. Casey Bowers, Esquire, and enter appearance of Matthew B. Taladay, Esquire. Filed by s/ Matthew B. Taladay, Esquire. No CC	Fredric Joseph Ammerman
5/30/2008	✓ Verdict slip with Members of the Jury, filed. Now, to wit: May 30, 2008, we the Jurors empanelled in the above entitled case, find A Verdict in Favor William S. Albert, Plaintiff 10 persons to 2 persons. The amount \$106,000 for damage. s/Robert Michaels, Foreperson,	Fredric Joseph Ammerman
6/9/2008	Plaintiff's Post-Trial Motions, Motion For rule 238 - Delay Damages, filed by Fredric Joseph Ammerman s/ Matthew B. Taladay, Esquire. No CC	
6/18/2008 not in file 8-6-09	Order, this 18th day of June, 2008, upon consideration of Plaintiff's Post-Trial Motion for Delay Damages, it is Ordered that Argument is scheduled to occur on the 31st day of July, 2008 at 2:00 P.M. in Courtroom 3. By The Court, /s/ John K. Reilly, Jr., Judge. 3CC to Atty.	Fredric Joseph Ammerman
6/23/2008	Defendant's Response to Plaintiff's Post Trial Motion for Rule 238 Delay Damages, filed by s/ Thomas J. Lowery, Esquire. no CC	Fredric Joseph Ammerman
7/1/2008	✓ Certificate of Service, on the 30th day of June, 2008, a Court certified copy of the Order of Court dated June 18, 2008 was sent via first class mail, to Thomas J. Lowery, Esquire. filed by s/ Matthew B. Taladay, Esquire.	
9/29/2008	✓ Opinion and Order, this 26th day of Sept., 2008. Plaintiff's Motion for Delay Damages is granted in accordance with the foregoing Opinion and Plaintiff awarded an additional \$27,302.95 as delay damages. By The Court, /s/ John K. Reilly, Jr., Senior Judge. 1CC Atty: Taladay, Lowery; 1CC D. Mikesell & Law Library w/out memo	John K. Reilly Jr.
3/19/2009	✓ Praeclipe for Discontinuance filed by Atty. Taladay no cert. copies.	Fredric Joseph Ammerman

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

LOWE'S COMPANIES, INC.,  
Defendant

No. 04-369-cd

Type of Pleading:

**COMPLAINT IN A  
CIVIL ACTION**

Filed on Behalf of:  
PLAINTIFF

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

**FILED**

MAR 17 2004

William A. Shaw  
Prothonotary

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. \_\_\_\_\_

LOWE'S COMPANIES, 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 Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed 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  
Second & Market Streets  
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

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

**WILLIAM S. ALBERT,  
Plaintiff**

VS.

No. \_\_\_\_\_

**LOWE'S COMPANIES, INC.,  
Defendant**

## **COMPLAINT IN A CIVIL ACTION**

AND NOW, comes the Plaintiff, WILLIAM S. ALBERT, by his attorneys, HANAK, GUIDO AND TALADAY, and hereby brings the within Complaint averring as follows:

1. Plaintiff is WILLIAM S. ALBERT, an adult individual, residing at 308 Huckleberry Hill Lane, West Decatur, Clearfield County, Pennsylvania, 16878.
2. Defendant, LOWE'S COMPANIES, INC., is a corporation with executive offices located in North Carolina, and a place of business in Pennsylvania, located at 100 Commons Drive, DuBois, Clearfield County, Pennsylvania, 15801, and engaged in the business of distributing and selling of various home improvement items.
3. On or about December 13, 2001, Plaintiff's sister-in-law purchased a ceiling fan from Defendant's store in Altoona, Pennsylvania.
4. The ceiling fan was transported to the Plaintiff's home and was properly installed.
5. The ceiling fan was not modified or altered in any way.

6. On or about October 20, 2003, a fire occurred in the home of Plaintiff, with a point of origin of the fire being the ceiling fan purchased at Defendant's store.

7. The fire in Plaintiff's home is solely the responsibility of Defendant.

**Count One**  
**Strict Liability**

8. Paragraphs 1 through 7 of this Complaint are incorporated herein by reference as though they were set forth more fully at length.

9. The ceiling fan sold by Defendant and installed in Plaintiff's home was in a defective condition and unreasonably dangerous when it left the control of Defendant as follows:

(a) The product lacked all features necessary for its safe ownership, maintenance and operation;

(b) The product lacked adequate safeguards and warnings of its defect;

(c) The product presented a reasonable risk of causing fire;

(d) The product malfunctioned in such a manner that an absence of defect would not have occurred.

10. Defendant had, or in the exercise of reasonable care, should have had notice of the defective condition of the product.

11. Plaintiff did not have and in the exercise of reasonable care, could not have had notice of the defective condition of the ceiling fan.

12. Defendant is liable to Plaintiff under Section 402(a) of the Restatement of Torts2d as adopted by the Courts of this Commonwealth.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant.

Count Two  
Damages

13. Paragraphs 1 through 12 of this Complaint are incorporated herein by reference as though they were set forth more fully at length.

14. As the sole and proximate result of the acts, omissions and breaches of Defendant as set forth above, Plaintiff has sustained damages as follows:

(a) Real Estate	\$ 88,500.00
(b) Personal property	\$ 32,540.09
(c) Cost of clean-up	\$ 9,942.00
(d) Increased living expenses	\$ <u>7,500.00</u>
Total	\$138,482.09

WHEREFORE, Plaintiff demands in his favor and against Defendant in the amount of One Hundred Thirty-eight Thousand Four Hundred Eight-two and 09/100 (\$138,482.09) Dollars, together with interest, costs and other relief as this Court deems appropriate.

JURY TRIAL DEMANDED

Respectfully submitted,

HANAK, GUIDO AND TALADAY, by:



S. Casey Bowers  
Attorney for Plaintiff

**VERIFICATION**

I, WILLIAM S. ALBERT, hereby verify that the statements contained in the foregoing Complaint in a Civil Action are correct to the best of my personal knowledge or information and belief.

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

DATE: 3-15-2004

William S. Albert  
William S. Albert

FILED

01/10/53 84 PCL 85-00  
Rec'd by 2cc to 4th  
MAR 17 2004

William A. Shaw  
Prothonotary

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

ALBERT, WILLIAM S.

VS.

LOWE'S COMPANIES INC.

COMPLAINT

Sheriff Docket # 15324

04-369-CD

**SHERIFF RETURNS**

NOW MARCH 24, 2004 AT 9:55 AM SERVED THE WITHIN COMPLAINT ON LOWE'S COMPANIES INC., DEFENDANT AT EMPLOYMENT, 100 COMMONS DRIVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO KIMM PEMBROKE, SALES REP. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

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**Return Costs**

Cost	Description
32.62	SHERIFF HAWKINS PAID BY: ATTY CK# 13272
10.00	SURCHARGE PAID BY: ATTY CK# 13273

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Sworn to Before Me This

10<sup>th</sup> Day Of May 2004  
William A. Shaw

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

So Answers,

Chester A. Hawkins  
By: William A. Shaw  
Chester A. Hawkins  
Sheriff

FILED  
01/15/2004  
MAY 10 2004  
KJ

William A. Shaw  
Prothonotary/Clerk of Courts

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

COP

WILLIAM S. ALBERT,  
Plaintiff

vs.

LOWE'S COMPANIES, INC.,  
Defendant

No. 04-369-CD

Type of Pleading:

**COMPLAINT IN A  
CIVIL ACTION**

Filed on Behalf of:  
PLAINTIFF

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

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

MAR 17 2004

Attest.

*William S. Albert*  
Prothonotary/  
Clerk of Courts

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. \_\_\_\_\_

LOWE'S COMPANIES, INC.,  
Defendant

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2. Defendant, LOWE'S COMPANIES, INC., is a corporation with executive offices located in North Carolina, and a place of business in Pennsylvania, located at 100 Commons Drive, DuBois, Clearfield County, Pennsylvania, 15801, and engaged in the business of distributing and selling of various home improvement items.
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7. The fire in Plaintiff's home is solely the responsibility of Defendant.

**Count One**  
**Strict Liability**

8. Paragraphs 1 through 7 of this Complaint are incorporated herein by reference as though they were set forth more fully at length.

9. The ceiling fan sold by Defendant and installed in Plaintiff's home was in a defective condition and unreasonably dangerous when it left the control of Defendant as follows:

(a) The product lacked all features necessary for its safe ownership, maintenance and operation;

(b) The product lacked adequate safeguards and warnings of its defect;

(c) The product presented a reasonable risk of causing fire;

(d) The product malfunctioned in such a manner that an absence of defect would not have occurred.

10. Defendant had, or in the exercise of reasonable care, should have had notice of the defective condition of the product.

11. Plaintiff did not have and in the exercise of reasonable care, could not have had notice of the defective condition of the ceiling fan.

12. Defendant is liable to Plaintiff under Section 402(a) of the Restatement of Torts2d as adopted by the Courts of this Commonwealth.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant.

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JURY TRIAL DEMANDED

Respectfully submitted,

HANAK, GUIDO AND TALADAY, by:



S. Casey Bowers  
Attorney for Plaintiff

**VERIFICATION**

I, WILLIAM S. ALBERT, hereby verify that the statements contained in the foregoing Complaint in a Civil Action are correct to the best of my personal knowledge or information and belief.

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

DATE: 3-15-2004

William S. Albert  
William S. Albert

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

LOWE'S COMPANIES, INC., and  
LOWE'S HOME CENTERS, INC.,  
Defendants

No. 04-369-CD

Type of Pleading:

**AMENDED COMPLAINT**

Filed on Behalf of:  
**PLAINTIFF**

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

**FILED**

JUN 17 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S COMPANIES, INC. and,  
LOWE'S HOME CENTERS, INC.,  
Defendants

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed 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  
Second & Market Streets  
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S COMPANIES, INC. and  
LOWE'S HOME CENTERS, INC.,  
Defendants

**AMENDED COMPLAINT**

AND NOW, comes the Plaintiff, WILLIAM S. ALBERT, by his attorneys, HANAK, GUIDO AND TALADAY, and hereby brings the within Amended Complaint averring as follows:

1. Plaintiff is WILLIAM S. ALBERT, an adult individual, residing at 308 Huckleberry Hill Lane, West Decatur, Clearfield County, Pennsylvania, 16878.
2. Defendant, LOWE'S COMPANIES, INC., is a corporation with executive offices located in North Carolina, and a place of business in Pennsylvania, located at 100 Commons Drive, DuBois, Clearfield County, Pennsylvania, 15801, and is engaged in the business of distributing and selling of various home improvement items.
3. Defendant, LOWE'S HOME CENTERS, INC., is a corporation with executive offices located in North Carolina, and a place of business in Pennsylvania, located at 100 Commons Drive, DuBois, Clearfield County, Pennsylvania, 15801, and is engaged in the business of distributing and selling home improvement items.

4. At all times relevant hereto, Defendants offered goods for sale with the Commonwealth of Pennsylvania.

5. On or about December 13, 2001, Plaintiff's sister-in-law purchased a ceiling fan from Defendants' store in Altoona, Pennsylvania.

6. The ceiling fan was transported to the Plaintiff's home and was properly installed.

7. The ceiling fan was not modified or altered in any way.

8. On or about October 20, 2003, a fire occurred in the home of Plaintiff, with a point of origin of the fire being the ceiling fan purchased at Defendants' store.

9. The fire in Plaintiff's home is solely the responsibility of Defendants.

Count One  
Strict Liability

10. Paragraphs 1 through 9 of this Complaint are incorporated herein by reference as though they were set forth more fully at length.

11. The ceiling fan sold by Defendants and installed in Plaintiff's home was in a defective condition and unreasonably dangerous when it left the control of Defendants as follows:

(a) The product lacked all features necessary for its safe ownership, maintenance and operation;

(b) The product lacked adequate safeguards and warnings of its defect;

(c) The product presented a reasonable risk of causing fire;

(d) The product malfunctioned in such a manner that an absence of defect would not have occurred.

12. Defendants had, or in the exercise of reasonable care, should have had notice of the defective condition of the product.

13. Plaintiff did not have and in the exercise of reasonable care, could not have had notice of the defective condition of the ceiling fan.

14. Defendants are liable to Plaintiff under Section 402(a) of the Restatement of Torts2d as adopted by the Courts of this Commonwealth.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants.

Count Two  
Damages

15. Paragraphs 1 through 14 of this Complaint are incorporated herein by reference as though they were set forth more fully at length.

16. As the sole and proximate result of the acts, omissions and breaches of Defendants as set forth above, Plaintiff has sustained damages as follows:

(a) Real Estate	\$ 88,500.00
(b) Personal property	\$ 32,540.09
(c) Cost of clean-up	\$ 9,942.00
(d) Increased living expenses	\$ <u>7,500.00</u>
Total	\$138,482.09

WHEREFORE, Plaintiff demands in his favor and against Defendants in the amount of One Hundred Thirty-eight Thousand Four Hundred Eight-two and 09/100 (\$138,482.09) Dollars, together with interest, costs and other relief as this Court deems appropriate.

JURY TRIAL DEMANDED

Respectfully submitted,

HANAK, GUIDO AND TALADAY, by:



S. Casey Bowers  
Attorney for Plaintiff

**VERIFICATION**

I, S. CASEY BOWERS, ESQ., hereby verify that the statements contained in the foregoing AMENDED COMPLAINT are true and correct to the best of my personal knowledge or information and belief.

At the time of the signing of this Verification, Plaintiff was out of the jurisdiction and unavailable. The undersigned has sufficient knowledge to sign this Verification as I am counsel for Plaintiff and possess a detailed knowledge of the case.

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



---

S. Casey Bowers  
Attorney for Plaintiff

FILED No cc  
MAY 10 2004  
JUN 17 2004  
BOSTON  
William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S COMPANIES, INC. and  
LOWE'S HOME CENTERS, INC.,  
Defendants

**ACCEPTANCE OF SERVICE**

I do hereby accept service of the Amended Complaint on behalf  
of the Defendants, LOWE'S COMPANIES, INC. and LOWE'S HOME  
CENTERS, INC.

MARSHALL, DENNEHEY, WARNER  
COLEMAN and GOGGIN, by:



Edward A. Miller, Esq.  
Attorney for Defendants

FILED NO  
8/11/2004  
JUL 01 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

NO. 04-369-CD

vs.

**PRAECIPE FOR ENTRY OF  
APPEARANCE**

LOWE'S COMPANIES, INC., and LOWE'S  
HOME CENTERS, INC.

Filed on behalf of **DEFENDANTS:**

**Lowe's Companies, Inc. and  
Lowe's Home Centers, Inc.**

Defendants.

Counsel of Record for this Party:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

**MARSHALL, DENNEHEY,  
WARNER, COLEMAN & GOGGIN**  
2900 US Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219

(412) 803-1140

*b6*  
FILED NO  
3/22/04 cc  
JUL 12 2004  
William A. Shantz  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

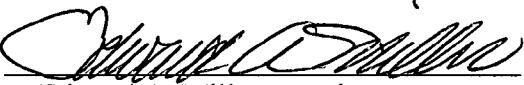
WILLIAM S. ALBERT,	:	CIVIL DIVISION
	:	
Plaintiff,	:	NO. 04-369-CD
	:	
vs.	:	
	:	
LOWE'S COMPANIES, INC., and LOWE'S	:	
HOME CENTERS, INC.	:	
	:	
Defendants.	:	
	:	

**PRAECIPE FOR ENTRY OF APPEARANCE**

TO: PROTHONOTARY

Please enter the Appearance of the undersigned on behalf of defendants, Lowe's Companies, Inc. and Lowe's Home Centers, Inc. Kindly send all notices and other documents to the address set forth below.

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

By:   
Edward A. Miller, Esquire

2900 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
FAX (412) 803-1188  
[emiller@mdwcg.com](mailto:emiller@mdwcg.com)

Counsel for Defendants, Lowe's Companies, Inc.  
and Lowe's Home Centers, Inc.

**CERTIFICATE OF SERVICE**

I, Edward A. Miller, Esquire, do hereby certify that a true and correct copy of the foregoing Praeclipe for Entry of Appearance was sent on this 8<sup>th</sup> day of July, 2004, by U.S. Mail, postage pre-paid to Plaintiff's counsel addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801



Edward A. Miller, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

Plaintiff,

vs.

LOWE'S COMPANIES, INC., and LOWE'S  
HOME CENTERS, INC.

Defendants.

CIVIL DIVISION

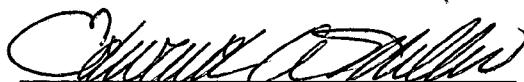
NO. 04-369-CD

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

Filed on behalf of **DEFENDANTS:**  
**Lowe's Companies, Inc. and**  
**Lowe's Home Centers, Inc.**

TO: PLAINTIFF:

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



Edward A. Miller, Esquire  
Counsel for Defendants

Counsel of Record for this Party:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

**MARSHALL, DENNEHEY,  
WARNER, COLEMAN & GOGGIN**  
2900 US Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219

(412) 803-1140

*(Signature)*  
**FILED** *NO CC*  
*7/16/04*  
**JUL 16 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,	:	CIVIL DIVISION
	:	
Plaintiff,	:	NO. 04-369-CD
	:	
vs.	:	
	:	
LOWE'S COMPANIES, INC., and LOWE'S	:	
HOME CENTERS, INC.	:	
	:	
Defendants.	:	
	:	
	:	

**DEFENDANTS' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT  
AND NEW MATTER**

Defendants, Lowe's Companies, Inc., and Lowe's Home Centers, Inc., by and through their undersigned attorneys, hereby submit the following Answer to the Plaintiff's Amended Complaint:

1. Denied. After reasonable inquiry, the information known or readily obtainable by answering Defendants is insufficient to enable them to form a belief as to the truth of these allegations of the Plaintiff's Amended Complaint.

2. Admitted in part and denied in part. It is admitted that Defendant, Lowe's Companies, Inc., is a North Carolina corporation which has a principle place of business located at 1605 Curtis Bridge Road, Wilkesboro, NC 29697. It is specifically denied that Defendant, Lowe's Companies, Inc., has a place of business located anywhere in the Commonwealth of Pennsylvania or that it distributes and sells various home improvement items. Defendant, Lowe's Companies, Inc., is a holding company and the parent of Defendant, Lowe's Home Centers, Inc. Answering Defendants demand at the trial of this case strict proof of the allegations set forth in paragraph 2 of the Plaintiff's Amended Complaint.

3. Admitted in part and denied in part. It is admitted that Defendant, Lowe's Home Centers, Inc., is a North Carolina corporation with a principle place of business located at Highway 268 East, North Wilkesboro, NC 28656. It is further admitted that Defendant, Lowe's Home Centers, Inc., owns and operates a Lowe's store located at 100 Commons Drive, DuBois, Clearfield County, Pennsylvania 15801. It is further admitted that Defendant, Lowe's Home Centers, Inc., engages in the business of selling home improvement items, including ceiling fans. The remaining averments of paragraph 3 of Plaintiff's Amended Complaint are denied.

4. Admitted in part and denied in part. It is admitted that Defendant, Lowe's Home Centers, Inc., offered goods for sale within the Commonwealth of Pennsylvania in December 2001 and in October 2003. It is specifically deny that Defendant, Lowe's Companies, Inc., offers goods for sale within the Commonwealth of Pennsylvania during the referenced time periods or at any time.

5. Denied. After reasonable inquiry, the information known or readily obtainable by answering Defendants is insufficient to enable them to form a belief as to the truth of these allegations of the Plaintiff's Amended Complaint. Further, Defendant, Lowe's Companies, Inc., specifically denies that it owns or operates a store located in Altoona, Pennsylvania. On the contrary, the Lowe's store located at 1707 McMahan Road, Altoona, PA 16602 is owned and operated by Defendant, Lowe's Home Centers, Inc.

6.-7. Denied pursuant to Pa.R.Civ.P. 1029(e).

8. Denied pursuant to Pa.R.Civ.P. 1029(e). It is specifically denied that the ceiling fan allegedly involved in this incident was purchased at a store owned or operated by Defendant, Lowe's Companies, Inc. On the contrary, the Lowe's store located at 1707 McMahon Road, Altoona, PA 16602 is owned and operated by Defendant, Lowe's Home Centers, Inc.

9. Denied pursuant to Pa.R.Civ.P. 1029(e).

**COUNT I – Strict Liability**

10. It is admitted that the Plaintiff has incorporated paragraphs 1-9 of his Amended Complaint. Answering Defendants incorporate by reference their answers to the averments of paragraphs 1-9 of the Plaintiff's Amended Complaint as if set forth herein at length.

11. Denied pursuant to Pa.R.Civ.P. 1029(e). Further it is specifically denied that Defendant, Lowe's Companies, Inc., is in the business of selling ceiling fans.

12.-14.Denied pursuant to Pa.R.Civ.P. 1029(e).

WHEREFORE, Defendants, Lowe's Companies, Inc. and Lowe's Home Centers, Inc., demand that judgment be entered in their favor and against the Plaintiff together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

**COUNT II – Damages**

15. It is admitted that the Plaintiff has incorporated paragraphs 1-14 of his Amended Complaint. Answering Defendants incorporate by reference their Answers to the averments of paragraphs 1-14 of the Plaintiff's Amended Complaint as if set forth herein at length.

16. Denied pursuant to Pa.R.Civ.P. 1029(e).

WHEREFORE, Defendants, Lowe's Companies, Inc. and Lowe's Home Centers, Inc., demand that judgment be entered in their favor and against the Plaintiff together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

**NEW MATTER**

Defendants, Lowe's Companies, Inc. and Lowe's Home Centers, Inc., assert the following New Matter:

17. To the extent discovery may reveal, the Plaintiff assumed the risk of his injuries.
18. To the extent discovery may reveal, the ceiling fan at issue was improperly installed.
19. To the extent discovery may reveal, the Plaintiff cannot adequately eliminate causes other than the ceiling fan at issue as the source of the subject fire.
20. The Plaintiff's damages were caused by an intervening and/or superceding cause.
21. To the extent discovery may reveal, the Plaintiff failed to properly mitigate his damages.
22. The Plaintiff has failed to state a claim upon which relief may be granted.

WHEREFORE, Defendants, Lowe's Companies, Inc. and Lowe's Home Centers, Inc., demand that judgment be entered in their favor and against the Plaintiff together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

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

By:   
Edward A. Miller, Esquire

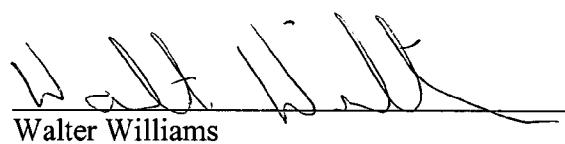
2900 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
FAX (412) 803-1188

Counsel for Defendants, Lowe's Companies, Inc. and  
Lowe's Home Centers, Inc.

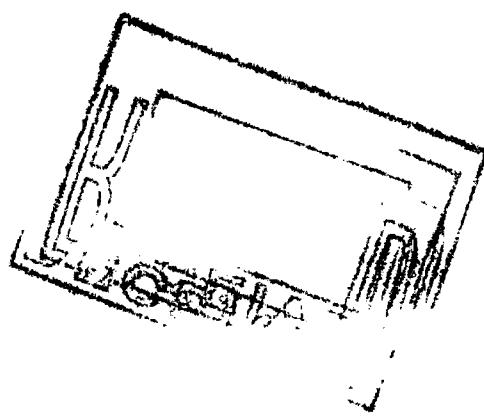
### VERIFICATION

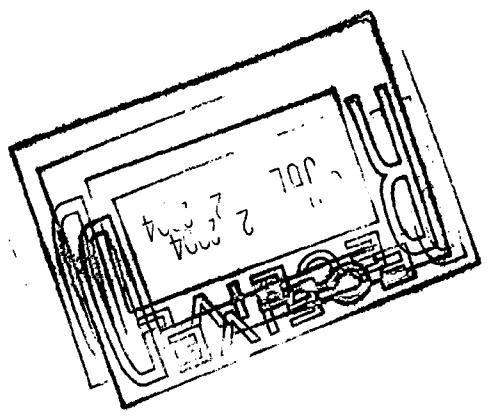
I, Walter Williams, am currently the manager of liability and property claims for Lowe's Companies, Inc. and am an authorized agent for Lowe's Home Centers, Inc.. I hereby verify that the factual statements made in Defendants' Answer to Plaintiff's Amended Complaint and New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

DATE: 6-28-04



Walter Williams





**CERTIFICATE OF SERVICE**

I, Edward A. Miller, Esquire, do hereby certify that a true and correct copy of the foregoing Defendants' Answer to Plaintiff's Amended Complaint and New Matter was sent on this 6<sup>th</sup> day of July, 2004, by U.S. Mail, postage pre-paid to Plaintiff's counsel addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

  
Edward A. Miller, Esquire

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

LOWE'S HOME CENTERS, INC.,  
Defendant

No. 04-369-CD

Type of Pleading:

**PLAINTIFF'S REPLY  
TO NEW MATTER**

Filed on Behalf of:  
PLAINTIFF

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

**FILED**

JUL 16 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S HOME CENTERS, INC.,  
Defendants

**PLAINTIFF'S REPLY TO NEW MATTER**

AND NOW, comes the Plaintiff, WILLIAM S. ALBERT, by and through his attorneys, HANAK, GUIDO AND TALADAY, and hereby presents the following Reply to New Matter as follows:

17. Paragraph 17 of Defendant's New Matter sets forth conclusions of law, therefore, no responsive pleading is required. To the extent a response is required, said allegations are denied.

18. Denied. It is specifically denied that the ceiling fan at issue was improperly installed.

19. Denied. Plaintiff can adequately eliminate causes other than the ceiling fan at issue as the source of the subject fire.

20. Denied. Plaintiff's damages were solely caused by the subject defective fan.

21. Denied. Plaintiff has taken reasonable measures to mitigate his damages.

22. Denied. Paragraph 22 of Defendant's New Matter sets forth conclusions of law, therefore, no responsive pleading is required. To the extent a response is required, said allegations are denied.

WHEREFORE, Plaintiff, WILLIAM S. ALBERT, respectfully  
requests this Honorable Court to enter judgment in his favor and  
against the Defendant.

HANAK, GUIDO AND TALADAY, by:



---

S. Casey Bowers  
Attorney for Plaintiff

**VERIFICATION**

I, S. CASEY BOWERS, ESQ., hereby verify that the statements contained in the foregoing Reply to New Matter are correct to the best of my personal knowledge or information and belief.

At the time of the signing of this Verification, the Plaintiff was unavailable. The undersigned has sufficient knowledge to sign this Verification as I am counsel for Plaintiff and possess a detailed knowledge of the case.

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



---

S. Casey Bowers  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 16 day of July, 2004, I served a copy of the within Reply to New Matter by first class mail, postage prepaid, on the following:

Edward A. Miller, Esq.  
Marshall, Dennehey, Warner  
Coleman and Goggins  
Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219

  
\_\_\_\_\_  
S. Casey Bowers  
Attorney for Plaintiff

FILED  
10-38164  
JUL 16 2004  
cc: *FW*  
*AS*  
*AG*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

Plaintiff,

vs.

LOWE'S COMPANIES, INC., and LOWE'S  
HOME CENTERS, INC.

Defendants.

CIVIL DIVISION

NO. 04-369-CD

**PRAECIPE FOR STIPULATED  
DISCONTINUANCE OF ACTION  
AGAINST DEFENDANT, LOWE'S  
COMPANIES, INC.**

**Filed on behalf of Plaintiff and  
Defendants, Lowe's Companies, Inc.  
and Lowe's Home Centers, Inc.**

Counsel of Record for Plaintiff:

S. Casey Bowers, Esquire  
PA ID # 89032

**Hanak, Guido and Taladay**  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801  
(814) 371-7768

Counsel of Record for the Defendants:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

**MARSHALL, DENNEHEY,  
WARNER, COLEMAN & GOGGIN**  
2900 US Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140

FILED  
7/20/04  
JUL 22 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT, : CIVIL DIVISION  
Plaintiff, : NO. 04-369-CD  
vs. :  
LOWE'S COMPANIES, INC., and LOWE'S :  
HOME CENTERS, INC. :  
Defendants. :  
:

**PRAECIPE FOR STIPULATED DISCONTINUANCE OF ACTION AGAINST**  
**DEFENDANT, LOWE'S COMPANIES, INC.**

TO: PROTHONOTARY

The parties, by and through their undersigned attorneys, hereby stipulate pursuant to Pa.R.Civ.P. 229(b)(1) to the dismissal from this action without prejudice of defendant, Lowe's Companies, Inc., only.

The parties also stipulate that the name of Lowe's Companies, Inc. shall be stricken and not included in the caption of any further documents filed with the Court.

HANAK, GUIDO & TALADY

By: 

S. Casey Bowers, Esquire  
PA I.D. #89032  
498 Jeffers Street  
PO Box 487  
DuBois, PA 15801  
(814)371-7768  
Counsel for plaintiff,  
William S. Albert

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

By: 

Edward A. Miller, Esquire  
PA I.D. 58954  
2900 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219  
(412)803-1140  
Counsel for defendants,  
Lowe's Companies, Inc., and  
Lowe's Home Centers, Inc.

**CERTIFICATE OF SERVICE**

I, Edward A. Miller, Esquire, do hereby certify that a true and correct copy of the foregoing Praeclipe was sent on this 20<sup>th</sup> day of July, 2004, by U.S. Mail, postage pre-paid to Plaintiff's counsel addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

  
Edward A. Miller, Esquire

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

LOWE'S HOME CENTERS, INC.,  
Defendant

No. 04-369-CD

Type of Pleading:

**NOTICE OF SERVICE**

Filed on Behalf of:  
PLAINTIFF

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

EGK

FILED 10/10/2004  
M 10:39:04  
SEP 08 2004  
cc

William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S HOME CENTERS, INC.,  
Defendant

**NOTICE OF SERVICE OF INTERROGATORIES**  
**DIRECTED TO DEFENDANT**

This is to certify that on the 7th day of September,  
2004, I mailed an original and two copies of Plaintiff's Interrogatories  
Directed to Defendant, Lowe's Home Centers, Inc. by first class mail,  
postage prepaid, to:

Edward A. Miller, Esq.  
Marshall, Dennehey, Warner,  
Coleman and Goggins  
Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219

  
\_\_\_\_\_  
S. Casey Bowers  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

Plaintiff,

vs.

LOWE'S HOME CENTERS, INC.,

Defendant.

CIVIL DIVISION

NO. 04-369-CD

**UNCONTESTED MOTION FOR  
LEAVE OF COURT TO JOIN  
ADDITIONAL DEFENDANT**

**Filed on behalf of Defendant, Lowe's  
Home Centers, Inc.**

Counsel of Record for Plaintiff:

S. Casey Bowers, Esquire  
PA ID # 89032

Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801  
(814) 371-7768

Counsel of Record for the Defendant:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

MARSHALL, DENNEHEY,  
WARNER, COLEMAN & GOGGIN,  
P.C.  
US Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140

FILED <sup>cc</sup>  
M 12:43 PM  
SEP 23 2004  
Atty Miller  
B6  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,	:	CIVIL DIVISION
Plaintiff,	:	NO. 04-369-CD
vs.	:	
LOWE'S HOME CENTERS, INC.,	:	
Defendant.	:	

**UNCONTESTED MOTION FOR LEAVE OF COURT**  
**TO JOIN ADDITIONAL DEFENDANT**

Defendant, Lowe's Home Centers, Inc., by and through it undersigned attorneys, hereby moves this Court for leave to join an Additional Defendant to this lawsuit and, in support thereof, avers as follows:

1. Plaintiff, William S. Albert, initiated this lawsuit by filing a Complaint on or about March 17, 2004 against Defendant, Lowe's Companies, Inc. On June 16, 2004, the Plaintiff filed an Amended Complaint in which he added Lowe's Home Centers, Inc. as a Defendant to this lawsuit. On July 22, 2004, the parties filed a Praecipe for Stipulated Discontinuance of Action against Defendant, Lowe's Companies, Inc. Accordingly, Lowe's Home Centers, Inc. is the sole Defendant to this lawsuit.

2. Plaintiff alleges in his Amended Complaint that his home was destroyed by a fire which occurred on October 20, 2003. He contends that the source of the fire was a ceiling fan that his sister-in-law allegedly purchased from a Lowe's store in Altoona, PA on or about December 13, 2001. Amended Complaint ¶¶ 5 and 8. The Defendant, which is a retailer and not a designer or manufacturer of ceiling fans, was not able to readily identify the manufacturer of the ceiling fan based solely on the allegations of the Plaintiff's pleadings.

3. The Defendant has obtained from Plaintiff's counsel a sales receipt for purchases made at a Lowe's store on December 13, 2001, which is the date of purchase set for in the Plaintiff's Amended Complaint. However, Defendant believes that this receipt is not for the sale of a ceiling fan. The Defendant has also obtained from Plaintiff's counsel a Replacement Statement for a Lowe's credit card held by the Plaintiff's brother. This statement includes a 12-09-01 entry for "fans – ceiling."

4. The Defendant, after carefully reviewing the documents obtained from Plaintiff's counsel and conducting some investigation, including reviewing its own records, has identified Litex Industries, Inc., which is located at 3401 West Trinity Boulevard, Grand Prairie, TX 75050, as the entity that manufactured the ceiling fan that is the subject of this lawsuit.

5. It took some time for the Defendant to identify the manufacturer of the ceiling fan that is the subject of this lawsuit because the information provided by Plaintiff's counsel did not readily identify the manufacturer and also did not match the sales date alleged in the Plaintiff's pleadings. Accordingly, the Defendant was unable to meet the sixty (60) day time period for joinder of Litex Industries, Inc. as set forth in Pa.R.Civ.P. 2253. Accordingly, the Defendant seeks leave of court to join this entity as an Additional Defendant to this lawsuit since pursuant to the laws of the Commonwealth of Pennsylvania a distributor or seller of a product has a claim for contribution or indemnification against the manufacturer of the product.

6. The proposed Additional Defendant will not be prejudiced by the proposed joinder at this time. No discovery other than the service of Interrogatories by the Plaintiff has occurred to date. Further, the statute of limitations has not run on the Plaintiff's claims so that he will have a direct claim against the proposed Additional Defendant.

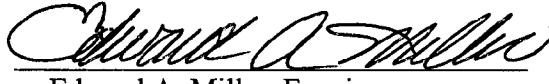
7. The undersigned attorney for the Defendant has spoken with Plaintiff's counsel, S. Casey Bowers, Esquire, about the proposed joinder of Litex Industries, Inc. as an Additional Defendant to this lawsuit. Attorney Bowers has advised the undersigned that he has no objections to the proposed joinder and gave authorization to submit the instant motion as "uncontested."

WHEREFORE, Defendant, Lowe's Home Centers, Inc., respectfully requests that this court enter an order granting it leave of court of thirty (30) days to join Litex Industries, Inc. as an Additional Defendant to this lawsuit.

A proposed order is attached.

Respectfully submitted,

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

By:   
Edward A. Miller, Esquire

U.S. Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
FAX (412) 803-1188  
[emiller@mdwcg.com](mailto:emiller@mdwcg.com)

Counsel for Defendant Lowe's Home Centers, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT, : CIVIL DIVISION  
Plaintiff, : NO. 04-369-CD  
vs. :  
LOWE'S HOME CENTERS, INC., :  
Defendant. :  
:

ORDER OF COURT

AND NOW, on this 27 day of September, 2004, upon consideration of the Defendant's Uncontested Motion for Leave to Join Additional Defendant, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is granted. Defendant, Lowe's Home Centers, Inc., is granted leave of court of thirty (30) days from the date of this order to join Litex Industries, Inc. as an Additional Defendant to this lawsuit.

BY THE COURT:



COPIES TO:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801  
*Counsel for Plaintiff*

Edward A. Miller, Esquire  
Marshall, Dennehey, Warner,  
Coleman & Goggin  
2900 US Steel Building  
600 Grant Street  
Pittsburgh, PA 15219  
*Counsel for Lowe's Home Centers, Inc.*

6612  
**FILED**  
08:59 AM SEP 28 2004 Atty's:  
William A. Shaw  
Prothonotary/Clerk of Courts  
Miller  
cc: Bowers

**CERTIFICATE OF SERVICE**

I, Edward A. Miller, Esquire, do hereby certify that a true and correct copy of the foregoing motion was sent on this 21<sup>ST</sup> day of September, 2004, by U.S. Mail, postage prepaid to Plaintiff's counsel addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

  
Edward A. Miller, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT, : CIVIL DIVISION

Plaintiff, : NO. 04-369-CD

VS. :

LOWE'S HOME CENTERS, INC., :

Defendant. :

**ORDER OF COURT**

AND NOW, on this 8 day of November, 2004, the Court, after being advised by counsel for the Defendant that he did not receive the Court's prior Order concerning the Defendant's Uncontested Motion for Leave to Join Additional Defendant, hereby ORDERS, ADJUDGES and DECREES that Defendant, Lowe's Home Centers, Inc., is granted leave of court of an additional thirty (30) days from the date of this order to join Litex Industries, Inc. as an Additional Defendant to this lawsuit.

BY THE COURT:



COPIES TO:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801  
*Counsel for Plaintiff*

Edward A. Miller, Esquire  
Marshall, Dennehey, Warner,  
Coleman & Goggin, P.C.  
2900 US Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219

FILED  
O 3 34 100-00000000  
100-00000000  
NOV 08 2004

William S. Albert  
Prothonotary

**MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN**

A PROFESSIONAL CORPORATION

[www.marshalldennehey.com](http://www.marshalldennehey.com)

**Suite 2900, 600 Grant Street · Pittsburgh, PA 15219**  
**(412) 803-1140 · Fax (412)803-1188**

**Direct Dial: 412-803-1183**

**Email: emiller@mdwcg.com**

**PENNSYLVANIA**  
Bethlehem  
Doylestown  
Erie  
Harrisburg  
Newtown Square  
Norristown  
Philadelphia  
Pittsburgh  
Scranton  
Williamsport

**NEW JERSEY**  
Cherry Hill  
Roseland

**DELAWARE**  
Wilmington

**OHIO**  
Akron

**FLORIDA**  
Ft. Lauderdale  
Orlando  
Tampa



November 4, 2004

Hon. Frederic J. Ammerman  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

**RE: William Albert v. Lowe's Home Centers, Inc.  
No. 04-369-CD  
Our File No.: 12240.00223**

Dear Judge Ammerman:

Please be advised that I represent Defendant, Lowe's Home Centers, Inc., in connection with the above captioned matter.

On September 23, 2004, I filed with the Court an Uncontested Motion For Leave Of Court To Join Additional Defendant. I learned for the first time on November 4, 2004 when I called the Prothonotary's office to check on the status of this motion that you entered an Order dated September 28, 2004 granting the motion and granting my client leave of court of 30 days to join the proposed additional defendant. However, as of the date of this letter, I have not received a copy of this Order and, as a result, have not taken the necessary steps to join the proposed additional defendant, Litex Industries, Inc.

Per the instructions of your secretary, with whom I spoke on November 4, 2004, I am submitting for your consideration a proposed Order of Court granting Defendant, Lowe's Home Centers, Inc., an additional thirty days to join Litex Industries, Inc. to this lawsuit.

I have discussed this matter with Plaintiff's counsel, S. Casey Bowers, Esquire, and he advised me that he has no objections to the entry of an Order granting my client leave of an additional 30 days to join Litex Industries, Inc. as an additional defendant to this lawsuit.

Hon. Frederic J. Ammerman  
November 4, 2004  
Page 2

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Thank you for your consideration of this matter.

Respectfully yours,



Edward A. Miller

EAM/eam

Enclosure

cc: S. Casey Bowers, Esquire (w/enc.)

\12\_ALIAB\EAM\CORR\341512\EAM\12240\00223

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

Plaintiff,

vs.

LOWE'S HOME CENTERS, INC.,

Defendant,

vs.

LITEX INDUSTRIES, INC.,

Additional Defendant.

CIVIL DIVISION

NO. 04-369-CD

**PRAECIPE FOR ISSUANCE OF WRIT  
OF SUMMONS TO JOIN  
ADDITIONAL DEFENDANT**

**Filed on behalf of Defendant, Lowe's  
Home Centers, Inc.**

Counsel of Record for the Defendant:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN, P.C.  
US Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140

**TO: LITEX INDUSTRIES, INC.**

**You are notified that Defendant, Lowe's  
Home Centers, Inc., has joined you as an  
additional defendant in this action, which you  
are required to defend.**

EGIC  
**FILED** *accord writ*  
*12/04/04* *to Atty*  
*NOV 18 2004*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT, ) CIVIL DIVISION  
Plaintiff, ) NO. 04-369-CD  
vs. )  
LOWE'S HOME CENTERS, INC., )  
Defendant, )  
vs. )  
LITEX INDUSTRIES, INC., )  
Additional Defendant. )

**PRAECIPE FOR ISSUANCE OF WRIT OF SUMMONS**  
**TO JOIN ADDITIONAL DEFENDANT**

TO: PROTHONOTARY

Please issue a Writ of Summons for service upon the Additional Defendant, Litex Industries, Inc., which is a corporate entity located outside the Commonwealth of Pennsylvania at 3401 West Trinity Boulevard, Grand Prairie, TX 75050. By Order dated November 8, 2004, 2004, the Court granted leave to join this entity as an additional defendant to this lawsuit.

Respectfully submitted,

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

By:   
Edward A. Miller, Esquire

U.S. Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
FAX (412) 803-1188  
[emiller@mdwcg.com](mailto:emiller@mdwcg.com)

Counsel for Defendant Lowe's Home Centers, Inc.

**CERTIFICATE OF SERVICE**

I, Edward A. Miller, Esquire, do hereby certify that a true and correct copy of the foregoing Praeclipe was sent on this 16<sup>th</sup> day of November, 2004, by U.S. Mail, postage prepaid to Plaintiff's counsel addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

  
Edward A. Miller, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

**COPY**

**WRIT TO JOIN ADDITIONAL DEFENDANT**

William S. Albert  
Plaintiff(s)

Vs.

Lowe's Home Centers, Inc. 2004-00369-CD  
Defendant(s)

Vs.

Litex Industries, Inc.  
Additional Defendant(s)

To: Litex Industries, Inc.

You are notified that Lowe's Home Centers, Inc. has joined you as an additional defendant in this action, which you are required to defend.

Dated: November 18, 2004

---

Prothonotary

Filing Attorney: Edward A. Miller, Esq.  
US Steel Tower, Ste. 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

NO. 04-369-CD

vs.

**CERTIFICATE OF SERVICE OF  
WRIT TO JOIN ADDITIONAL  
DEFENDANT**

LOWE'S HOME CENTERS, INC.,

Defendant,

**Filed on behalf of Defendant, Lowe's  
Home Centers, Inc.**

vs.

LITEX INDUSTRIES, INC.,

Additional Defendant.

Counsel of Record for the Defendant:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

**MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN, P.C.**  
US Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
(412) 803-1188 - Fax

EGK  
**FILED** NO  
m 11:19 AM CC  
DEC 10 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT, ) CIVIL DIVISION  
                          )  
                          Plaintiff, ) NO. 04-369-CD  
                          )  
                          vs. )  
                          )  
LOWE'S HOME CENTERS, INC., )  
                          )  
                          Defendant, )  
                          )  
                          vs. )  
                          )  
LITEX INDUSTRIES, INC., )  
                          )  
                          Additional Defendant. )

**CERTIFICATE OF SERVICE OF WRIT TO JOIN ADDITIONAL DEFENDANT**

I hereby certify that a true and correct copy of the WRIT TO JOIN ADDITIONAL DEFENDANT issued by the Court in connection with this case was served via certified mail upon Additional Defendant, Litex Industries, Inc., on November 29, 2004. A copy of the executed domestic return receipt for the certified mail sent to Litex Industries, Inc., is attached hereto as Exhibit "A".

Respectfully submitted,

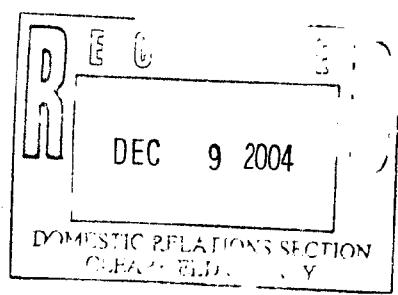
**MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN, P.C.**

By:



Edward A. Miller, Esquire  
U.S. Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
FAX (412) 803-1188  
[emiller@mdwcg.com](mailto:emiller@mdwcg.com)

Counsel for Defendant Lowe's Home Centers, Inc.



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Litex Industries, Inc.  
Attention: President and/or CEO  
3401 West Trinity Blvd.  
Grand Prairie, TX 75050

**COMPLETE THIS SECTION ON DELIVERY****A. Signature**

*Krissey Guess*  Agent  
 Addressee

**B. Received by (Printed Name)**

*Krissey Guess* **C. Date of Delivery**  
11-29-04

**D. Is delivery address different from item 1?  Yes**

If YES, enter delivery address below:  No

**3. Service Type**

Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

**4. Restricted Delivery? (Extra Fee)  Yes****2. Article Number**

(Transfer from service label)

7000115300005 3716 6950

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**EXHIBIT**

tabbed

*A*

**CERTIFICATE OF SERVICE**

I, Edward A. Miller, Esquire, do hereby certify that a true and correct copy of the foregoing was sent on this 6<sup>th</sup> day of December, 2004, by U.S. Mail, postage pre-paid to Plaintiff's counsel addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Litex Industries, Inc.  
Att: President and/or CEO  
3401 West Trinity Blvd.  
Grand Prairie, TX 75050

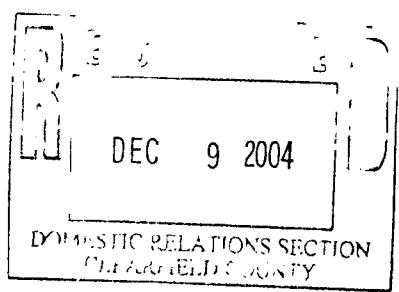
  
Edward A. Miller, Esquire

\12\_A\LIAB\EAM\LLPG\345777\BCB\12240\00223

**FILED**

**DEC 10 2004**

William A. Shaw  
Prothonotary/Clerk of Courts



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

WILLIAM S. ALBERT,  
Plaintiff

VS.

LOWE'S HOME CENTERS, INC.,  
Defendant

No. 04-369-CD

### Type of Pleading:

**MOTION TO COMPEL  
DISCOVERY**

Filed on Behalf of:  
PLAINTIFF

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

FILED 2cc  
m19:4181 Atty. Bowers  
DEC 13 2004

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S HOME CENTERS, INC.,  
Defendants

**MOTION TO COMPEL DISCOVERY**

AND NOW, comes the Plaintiff, WILLIAM S. ALBERT, by and through his attorneys, HANAK, GUIDO AND TALADAY, and hereby requests this Honorable Court to compel discovery averring as follows:

1. On September 7, 2004, Plaintiff's Interrogatories Directed to Defendant were served upon Defendant, LOWE'S HOME CENTERS, INC. A copy of the Notice of Service is attached hereto as Exhibit "A".
2. By letter dated November 5, 2004, the undersigned counsel again requested that Defendant, LOWE'S HOME CENTERS, INC., respond to the subject discovery request, a copy of which is attached hereto as Exhibit "B".
3. To date, no discovery responses have been provided.
4. Plaintiff requests this Honorable Court to issue an Order compelling counsel for Defendant, LOWE'S HOME CENTERS, INC., to full and complete discovery responses within thirty (30) days of the date of said Order, upon failure of which the Court may impose sanctions.

WHEREFORE, it is respectfully requested that this Motion to  
Compel Discovery be granted.

HANAK, GUIDO AND TALADAY, by:



S. Casey Bowers  
S. Casey Bowers  
Attorney for Plaintiff

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

WILLIAM S. ALBERT,  
Plaintiff

VS.

No. 04-369-CD

LOWE'S HOME CENTERS, INC.,  
Defendants

## **ORDER**

AND NOW, this 14<sup>th</sup> day of December, 2004, upon  
consideration of Plaintiff's Motion to Compel Discovery,

IT IS HEREBY ORDERED that the Motion is granted. Defendant, LOWE'S HOME CENTERS, INC., shall forthwith produce and supply full and complete discovery responses within thirty (30) days of the date of this Order. In the event that Defendant fails to abide by this Order, this Court may, upon further petition of Plaintiff, impose appropriate sanctions.

BY THE COURT:

FILED 562  
02-56 68 2cc to Atty Powers  
DEC 14 2004

William A. Shaw  
Prothonotary

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S HOME CENTERS, INC.,  
Defendants

**ORDER OF COURT**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2004, upon  
consideration of the within Motion to Compel, it is hereby ordered  
and decreed that a rule is issued upon the Respondent, LOWE'S HOME  
CENTERS, INC., as to why Plaintiff's Motion to Compel shall not be  
granted.

Rule returnable for answer and hearing on the \_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_, at \_\_\_\_ o'clock \_\_\_\_m., in Courtroom No.  
\_\_\_\_\_, at the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

---

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 10<sup>th</sup> day of December, 2004, I served a copy of the within Motion to Compel Discovery by first class mail, postage prepaid, on the following:

Edward A. Miller, Esq.  
Marshall, Dennehey, Warner  
Coleman and Goggin  
Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219



---

S. Casey Bowers  
Attorney for Plaintiff

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

LOWE'S HOME CENTERS, INC.,  
Defendant

No. 04-369-CD

Type of Pleading:

**NOTICE OF SERVICE**

Filed on Behalf of:  
**PLAINTIFF**

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

FILED  
10/39  
SEP 08 2004  
William A. Shaw  
Prothonotary/Clerk of Courts

EXHIBIT "A"

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S HOME CENTERS, INC.,  
Defendant

**NOTICE OF SERVICE OF INTERROGATORIES**  
**DIRECTED TO DEFENDANT**

This is to certify that on the 17<sup>th</sup> day of September,  
2004, I mailed an original and two copies of Plaintiff's Interrogatories  
Directed to Defendant, Lowe's Home Centers, Inc. by first class mail,  
postage prepaid, to:

Edward A. Miller, Esq.  
Marshall, Dennehey, Warner,  
Coleman and Goggin  
Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219

  
\_\_\_\_\_  
S. Casey Bowers  
Attorney for Plaintiff

**HANAK, GUIDO and TALADAY**  
**Attorneys at Law**

Robert M. Hanak  
Anthony S. Guido  
Matthew B. Taladay

\_\_\_\_\_  
Nicole Hanak Bankovich  
S. Casey Bowers

Telephone: (814) 371-7768  
Fax: (814) 371-1974

498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

November 5, 2004

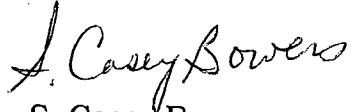
Edward A. Miller, Esq.  
Marshall, Dennehey, Warner  
Coleman and Goggin  
Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219

Re: William S. Albert v. Lowe's Home Centers, Inc.,

Dear Ed:

As you may recall, this office issued Interrogatories directed to Lowe's on or about September 7, 2004. To date, we have received no response. Kindly provide full and complete responses to said discovery within ten (10) days of this letter. Otherwise, I will have no other choice but to file a Motion to Compel Discovery.

Sincerely,



S. Casey Bowers

SCB/bab  
cc: William Albert

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

No. 04-369-CD

vs.

LOWE'S HOME CENTERS, INC.,

**PRAECLPIE FOR RULE  
TO FILE COMPLAINT**

Defendant,

vs.

LITEX INDUSTRIES, INC.,

Filed on Behalf of Additional Defendant,  
LITEX INDUSTRIES, INC.

Additional Defendant.

Counsel of Record for this Party:

BRYAN B. CAMPBELL  
PA I.D. No. 39312

BASHLINE & HUTTON  
Suite 3500 One Oliver Plaza  
210 Sixth Avenue  
Pittsburgh, PA 15222  
(412) 434-0201

**JURY TRIAL DEMANDED**

FILED  
bK M 1.0/ya No 01  
Rulito Atty Campbell  
DEC 22 2004

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

No. 04-369-CD

vs.

LOWE'S HOME CENTERS, INC.,

Defendant,

vs.

LITEX INDUSTRIES, INC.,

Additional Defendant.

**PRAECIPE FOR RULE TO FILE COMPLAINT**

TO: Prothonotary

Pursuant to the provisions of Rule No. 1037(a) of the Pennsylvania Rules of Civil Procedure, enter Rule on the Original Defendant, LOWE'S HOME CENTERS, INC., to file its Complaint, sec. leg., or Judgment of Non Pros may be entered.

Date: 12/20/04

BASHLINE & HUTTON

BY   
BRYAN B. CAMPBELL  
Attorney for Defendant,  
LITEX INDUSTRIES, INC.

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing PRAECIPE FOR RULE TO FILE COMPLAINT was served via U.S. First Class Mail, postage pre-paid, on this 20<sup>th</sup> day of December, 2004, upon the following counsel of record:

Edward A. Miller, Esquire  
U. S. Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219

*(Attorney for Defendant Lowes)*

S. Casey Bowers, Esquire  
HANAK, GUIDO AND TALADAY  
498 Jeffers Street  
Post Office Box 487  
DuBois, PA 15801

*(Attorney for Plaintiff)*

BASHLINE AND HUTTON

BY:

  
BRYAN B. CAMPBELL, ESQUIRE  
Attorney for Additional Defendant,  
LITEX INDUSTRIES, INC.

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

William S. Albert

Vs.  
Lowe's Companies, Inc.  
Lowe's Home Centers, Inc.  
Litex Industries, Inc.

Case No. 2004-00369-CD

RULE TO FILE COMPLAINT

TO: Lowe's Home Centers, Inc.

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

---

William A. Shaw, Prothonotary

Dated: December 22, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

No. 04-369-CD

vs.

LOWE'S HOME CENTERS, INC.,

**PRAECIPE FOR APPEARANCE**

Defendant,

vs.

LITEX INDUSTRIES, INC.,

Filed on Behalf of Additional Defendant,  
LITEX INDUSTRIES, INC.

Additional Defendant.

Counsel of Record for this Party:

BRYAN B. CAMPBELL  
PA I.D. No. 39312

BASHLINE & HUTTON  
Suite 3500 One Oliver Plaza  
210 Sixth Avenue  
Pittsburgh, PA 15222  
(412) 434-0201

**JURY TRIAL DEMANDED**

FILED  
11/01/04 NO AC  
DEC 22 2004

William A. Shaw  
Prothonotary

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

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

No. 04-369-CD

vs.

LOWE'S HOME CENTERS, INC.,

Defendant,

vs.

LITEX INDUSTRIES, INC.,

Additional Defendant.

**PRAECIPE FOR APPEARANCE**

To the Prothonotary:

You are hereby directed to enter my Appearance on behalf of LITEX INDUSTRIES, INC., the  
Additional Defendant in the afore-captioned case.

JURY TRIAL DEMANDED.

BASHLINE & HUTTON

  
\_\_\_\_\_  
BRYAN B. CAMPBELL, ESQUIRE  
Attorney for Defendant  
LITEX INDUSTRIES, INC.

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing PRAECIPE FOR APPEARANCE was served via U.S. First Class Mail, postage pre-paid, on this 20<sup>th</sup> day of December, 2004, upon the following counsel of record:

Edward A. Miller, Esquire  
U. S. Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219

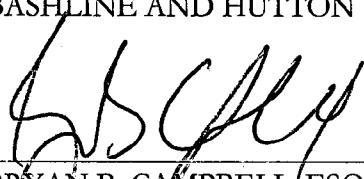
*(Attorney for Defendant Lowes)*

S. Casey Bowers, Esquire  
HANAK, GUIDO AND TALADAY  
498 Jeffers Street  
Post Office Box 487  
DuBois, PA 15801

*(Attorney for Plaintiff)*

BASHLINE AND HUTTON

BY:

  
BRYAN B. CAMPBELL, ESQUIRE  
Attorney for Additional Defendant,  
LIVEX INDUSTRIES, INC.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

Plaintiff,

vs.

LOWE'S HOME CENTERS, INC.,

Defendant,

vs.

LITEX INDUSTRIES, INC.,

Additional Defendant.

CIVIL DIVISION

NO. 04-369-CD

**COMPLAINT TO JOIN ADDITIONAL DEFENDANT**

**Filed on behalf of Defendant, Lowe's Home Centers, Inc.**

Counsel of Record for the Defendant:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN, P.C.  
US Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
(412) 803-1188 - Fax

FILED <sup>6</sup>  
m 10:39 AM  
JAN 27 2005  
NOCC

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,	)	CIVIL DIVISION
	)	
Plaintiff,	)	NO. 04-369-CD
	)	
vs.	)	
	)	
LOWE'S HOME CENTERS, INC.,	)	
	)	
Defendant,	)	
	)	
vs.	)	
	)	
LITEX INDUSTRIES, INC.,	)	
	)	
Additional Defendant.	)	

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any relief requested by the plaintiff and/or Defendant, Lowe's Home Centers, Inc. 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, GOT TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE AT REDUCED FEE OR NO FEE.

Court Administrator  
Clearfield County Courthouse  
Second 7 Market Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. 1300

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,	)	CIVIL DIVISION
	)	
Plaintiff,	)	NO. 04-369-CD
	)	
vs.	)	
	)	
LOWE'S HOME CENTERS, INC.,	)	
	)	
Defendant,	)	
	)	
vs.	)	
	)	
LITEX INDUSTRIES, INC.,	)	
	)	
Additional Defendant.	)	

**COMPLAINT TO JOIN ADDITIONAL DEFENDANT**

Defendant, Lowe's Home Centers, Inc., by and through its undersigned attorneys, hereby asserts the following claims against Additional Defendant, Litex Industries, Inc.:

1. Plaintiff, William S. Albert, allegedly is an adult individual residing at 308 Huckleberry Hill Lane, West Decatur, Clearfield County, Pennsylvania 16878.
2. Defendant, Lowe's Home Centers, Inc., is a North Carolina corporation with a principle place of business located at Highway 268 East, North Wilkesboro, NC 28656.
3. Additional Defendant, Litex Industries, Inc., is a Texas corporation that has a principle place of business located at 3401 West Trinity Boulevard, Grand Prairie, TX 75050.
4. In his Amended Complaint, a true and correct copy of which is attached hereto as Exhibit "A" and is incorporated herein by reference, Plaintiff, William S. Albert, alleges that on or about October 20, 2003, a fire destroyed his home and caused him to sustain damages in the amount of \$138, 482.09.

5. Plaintiff, William S. Albert, alleges that the subject fire was caused by an allegedly defective ceiling fan which was purchased on or about December 13, 2001, by the Plaintiff's sister-in-law at a Lowe's store located in Altoona, PA.

6. Plaintiff, William S. Albert, contends in his Amended Complaint that Defendant, Lowe's Home Centers, Inc., should be strictly liable for the Plaintiff's claimed damages because the ceiling fan that allegedly was purchased by the Plaintiff's sister-in-law and installed in the Plaintiff's home was defective.

7. Defendant, Lowe's Home Centers, Inc., has filed an Answer to the Plaintiff's Amended Complaint and New Matter, a true and correct copy of which is attached hereto as Exhibit "B" and is incorporated herein by reference. Defendant, Lowe's Home Centers, Inc., denies any and all liability to the Plaintiff.

8. Plaintiff, William S. Albert, has filed a Reply to the New Matter asserted by Defendant, Lowe's Home Centers, Inc., a true and correct copy of which is attached hereto as Exhibit "C".

9. Attached hereto as Exhibit "D" is a true and correct copy of a replacement statement produced by Plaintiff's counsel for a Lowe's credit card issued to Fred H. Albert, who is the brother of Plaintiff, William S. Albert. This replacement statement includes an entry for the purchase of a "fans-ceiling" on December 9, 2001. It is believed and averred that this entry relates to the purchase of the subject ceiling fan that was installed in the Plaintiff's home and allegedly is the source of the October 20, 2003 fire that allegedly destroyed the Plaintiff's home and caused him to allegedly incur \$138,482.09 in damages.

10. Defendant, Lowe's Home Centers, Inc., has searched its records and determined that the December 9, 2001 entry for "fans-ceiling" on the replacement statement produced by Plaintiff's counsel is for a 52" Aristocrat ceiling fan, model no. 61412, which was purchased by Eleanor Albert on December 9, 2001 at a Lowe's store located in DuBois, PA. Attached hereto as Exhibit "E" is a true and correct copy of the sales receipt signed by Eleanor Albert for the purchase of the referenced ceiling fan.

11. Additional Defendant, Litex Industries, Inc., which engages in the business of designing, manufacturing and/or supplying ceiling fans, is the manufacturer of the 52" Aristocrat ceiling fan purchased by Eleanor Albert on December 9, 2001, and/or supplied said ceiling fan to Defendant, Lowe's Home Centers, Inc., for sale to the general public.

12. It is believed and averred that Additional Defendant, Litex, Industries, Inc., is the manufacturer and/or supplier of the ceiling fan installed in the home of Plaintiff, William S. Albert, and which the Plaintiff contends is defective and caused a fire that destroyed his home.

#### **COUNT I - STRICT LIABILITY**

13. Defendant, Lowe's Home Centers, Inc., incorporates by reference the allegations of Paragraphs 1 – 12 of its Complaint to Join Additional Defendant as if set forth herein at length.

14. In his Amended Complaint, Plaintiff, William S. Albert, claims that the ceiling fan installed in his home was in a defective condition and unreasonably dangerous when it left the control of Defendant, Lowe's Home Centers, Inc., because:

- a. The product lacked all features necessary for its safe ownership, maintenance and operation;

- b. The product lack adequate safeguards and warnings of its defect;
- c. The product presented a reasonable (sic) risk of causing fire; and
- d. The product malfunctioned in such a manner that an absence of defect would not have occurred.

15. Plaintiff contends in his Amended Complaint that the referenced defective condition of the subject ceiling fan caused him to sustain damages in the amount of \$138,482.09.

16. Defendant, Lowe's Home Centers, Inc., did not alter or modify the subject ceiling fan after its receipt from Additional Defendant, Litex Industries, Inc., and prior to sale to Eleanor Albert.

17. In the event that the Plaintiff, William S. Albert, can sustain the allegations of his Amended Complaint, which is specifically denied, then Defendant, Lowe's Home Centers, Inc., alleges and avers that Additional Defendant, Litex Industries, Inc., as the designer, manufacturer and/or supplier of the subject ceiling fan, is alone liable to the Plaintiff; jointly and/or severally liable to the Plaintiff; and/or liable over to Defendant, Lowe's Home Centers, Inc., for contribution or indemnification.

WHEREFORE, Defendant, Lowe's Home Centers, Inc., demands that judgment be entered in its favor and against the Plaintiff and/or Additional Defendant, Litex Industries, Inc., together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

**COUNT II – INDEMNIFICATION AND BREACH OF CONTRACT**

18. Defendant, Lowe's Home Centers, Inc., incorporates by reference the allegations of Paragraphs 1 – 17 of its Complaint to Join Additional Defendant as if set forth herein at length.

19. Defendant, Lowe's Home Centers, Inc., and Additional Defendant, Litex Industries, Inc., entered a Lowe's Master Standard Buying Agreement dated August 21, 2002. A true and correct copy of this Lowe's Master Standard Buying Agreement is attached hereto as Exhibit "F" and is incorporated herein by reference.

20. Pursuant to Article V, Paragraph (5) of the Lowe's Master Standard Buying Agreement, Additional Defendant, Litex Industries, Inc., which is the "Vendor" referenced in said document, agreed to indemnify and hold harmless Defendant, Lowe's Home Centers, Inc., "from and against any and all liability, losses, damage arising out of . . . any alleged bodily injury or property damage related to the possession or use of [products or merchandise supplied pursuant to the Lowe's Master Standard Buying Agreement] (excepting loss or injury resulting solely from the intentional misconduct or gross negligence of Lowe's). . . ." The same contract provision further provides that Additional Defendant, Litex Industries, Inc., "shall pay all judgments against and assume the defense within a reasonable time for any and all liability of LOWE'S with respect to any such matters, even if any such allegation of liability is groundless, false or fraudulent," and in the event that Additional Defendant, Litex Industries, Inc., fails to assume its obligations under the agreement to diligently pursue and pay for the defense of Defendant, Lowe's Home Centers, Inc., within a reasonable time, Lowe's may proceed "to defend itself by way of engaging its own legal counsel and the services of any and all other experts or professionals it deems necessary to prepare and present a proper defense, and require from [Litex Industries, Inc.] reimbursement and indemnification for all costs and expenses incurred as a result of such claim, as more fully set forth above."

21. The 52" Aristocrat Antique Brass Ceiling Fan purchased by Eleanor Albert on December 9, 2001 was supplied to Defendant, Lowe's Home Centers, Inc., by Additional

Defendant, Litex Industries, Inc., pursuant to the terms of the Lowe's Master Standard Buying Agreement.

22. Plaintiff, William S. Albert, does not allege that his losses or injuries result from any intentional misconduct or gross negligence of Defendant, Lowe's Home Centers, Inc.

23. Further, pursuant to the terms of the Lowe's Master Standard Buying Agreement, Additional Defendant, Litex Industries, Inc., was to procure and maintain Products Liability and Completed Operations Liability Insurance on an occurrence basis for property damage, which shall contain an endorsement by which the insurer extends coverage for the contractual liability of Additional Defendant, Litex Industries, Inc., by reason of the indemnity provisions set forth in the Lowe's Master Standard Buying Agreement, as referenced above. The contract between the parties also requires Additional Defendant, Litex Industries, Inc., to name Defendant, Lowe's Home Centers, Inc., as an additional insured on this policy of insurance.

24. Defendant, Lowe's Home Centers, Inc., has timely and within a reasonable time requested that Additional Defendant, Litex Industries, Inc., assume the defense of and indemnify Defendant, Lowe's Home Centers, Inc., in connection with the claims asserted by Plaintiff, William S. Albert. Additional Defendant, Litex Industries, Inc., has failed to assume its contractual obligations and assume the defense of and indemnify Defendant, Lowe's Home Centers, Inc.

25. As a direct and proximate result of the failure of Additional Defendant, Litex Industries, Inc., to honor its contractual obligations, Defendant, Lowe's Home Centers, Inc., has had to retain counsel to defend it against the claims being asserted by Plaintiff, William S.

Albert, and has incurred and will continue to incur attorney's fees and costs in connection with this lawsuit.

WHEREFORE, Defendant, Lowe's Home Centers, Inc., demands that a judgment be entered in its favor and against Additional Defendant, Litex Industries, Inc., together with all costs incurred in defending this lawsuit including attorney's fees, as well as any other relief deemed appropriate by this Court.

Respectfully submitted,

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

By:   
Edward A. Miller, Esquire

2900 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
FAX (412) 803-1188  
[emiller@mdwcg.com](mailto:emiller@mdwcg.com)

Counsel for Defendant,  
Lowe's Home Centers, Inc.

**VERIFICATION**

I, Walter Williams, am currently the manager of liability and property claims for Lowe's Companies, Inc. and am an authorized agent for Lowe's Home Centers, Inc.. I hereby verify that the factual statements made in the Complaint to Join Additional Defendant are true and correct to the best of the corporation's knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

DATE: 1-5-05



Walter Williams

**Complaint To Join Additional Defendant  
Exhibit A**

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

LOWE'S COMPANIES, INC., and  
LOWE'S HOME CENTERS, INC.,  
Defendants

No. 04-369-CD

Type of Pleading:

**AMENDED COMPLAINT**

Filed on Behalf of:  
**PLAINTIFF**

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S COMPANIES, INC. and,  
LOWE'S HOME CENTERS, INC.,  
Defendants

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed 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  
Second & Market Streets  
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

... : No. 04-369-CD

LOWE'S COMPANIES, INC. and  
LOWE'S HOME CENTERS, INC.,  
Defendants

**AMENDED COMPLAINT**

AND NOW, comes the Plaintiff, WILLIAM S. ALBERT, by his attorneys, HANAK, GUIDO AND TALADAY, and hereby brings the within Amended Complaint averring as follows:

1. Plaintiff is WILLIAM S. ALBERT, an adult individual, residing at 308 Huckleberry Hill Lane, West Decatur, Clearfield County, Pennsylvania, 16878.
2. Defendant, LOWE'S COMPANIES, INC., is a corporation with executive offices located in North Carolina, and a place of business in Pennsylvania, located at 100 Commons Drive, DuBois, Clearfield County, Pennsylvania, 15801, and is engaged in the business of distributing and selling of various home improvement items.
3. Defendant, LOWE'S HOME CENTERS, INC., is a corporation with executive offices located in North Carolina, and a place of business in Pennsylvania, located at 100 Commons Drive, DuBois, Clearfield County, Pennsylvania, 15801, and is engaged in the business of distributing and selling home improvement items.

4. At all times relevant hereto, Defendants offered goods for sale with the Commonwealth of Pennsylvania.

5. On or about December 13, 2001, Plaintiff's sister-in-law purchased a ceiling fan from Defendants' store in Altoona, Pennsylvania.

6. The ceiling fan was transported to the Plaintiff's home and was properly installed.

7. The ceiling fan was not modified or altered in any way.

8. On or about October 20, 2003, a fire occurred in the home of Plaintiff, with a point of origin of the fire being the ceiling fan purchased at Defendants' store.

9. The fire in Plaintiff's home is solely the responsibility of Defendants.

**Count One**  
**Strict Liability**

10. Paragraphs 1 through 9 of this Complaint are incorporated herein by reference as though they were set forth more fully at length.

11. The ceiling fan sold by Defendants and installed in Plaintiff's home was in a defective condition and unreasonably dangerous when it left the control of Defendants as follows:

(a) The product lacked all features necessary for its safe ownership, maintenance and operation;

(b) The product lacked adequate safeguards and warnings of its defect;

(c) The product presented a reasonable risk of causing fire;

(d) The product malfunctioned in such a manner that an absence of defect would not have occurred.

12. Defendants had, or in the exercise of reasonable care, should have had notice of the defective condition of the product.

13. Plaintiff did not have and in the exercise of reasonable care, could not have had notice of the defective condition of the ceiling fan.

14. Defendants are liable to Plaintiff under Section 402(a) of the Restatement of Torts<sup>2d</sup> as adopted by the Courts of this Commonwealth.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants.

Count Two  
Damages

15. Paragraphs 1 through 14 of this Complaint are incorporated herein by reference as though they were set forth more fully at length.

16. As the sole and proximate result of the acts, omissions and breaches of Defendants as set forth above, Plaintiff has sustained damages as follows:

(a) Real Estate	\$ 88,500.00
(b) Personal property	\$ 32,540.09
(c) Cost of clean-up	\$ 9,942.00
(d) Increased living expenses	\$ 7,500.00
Total	\$138,482.09

WHEREFORE, Plaintiff demands in his favor and against Defendants in the amount of One Hundred Thirty-eight Thousand Four Hundred Eight-two and 09/100 (\$138,482.09) Dollars, together with interest, costs and other relief as this Court deems appropriate.

JURY TRIAL DEMANDED

Respectfully submitted,

HANAK, GUIDO AND TALADAY, by:



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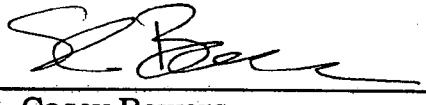
S. Casey Bowers  
Attorney for Plaintiff

**VERIFICATION**

I, S. CASEY BOWERS, ESQ., hereby verify that the statements contained in the foregoing AMENDED COMPLAINT are true and correct to the best of my personal knowledge or information and belief.

At the time of the signing of this Verification, Plaintiff was out of the jurisdiction and unavailable. The undersigned has sufficient knowledge to sign this Verification as I am counsel for Plaintiff and possess a detailed knowledge of the case.

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



S. Casey Bowers  
S. Casey Bowers  
Attorney for Plaintiff

**Complaint To Join Additional Defendant  
Exhibit B**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

Plaintiff,

vs.

LOWE'S COMPANIES, INC., and LOWE'S  
HOME CENTERS, INC.

Defendants.

CIVIL DIVISION

NO. 04-369-CD

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

Filed on behalf of **DEFENDANTS:**  
**Lowe's Companies, Inc. and**  
**Lowe's Home Centers, Inc.**

TO: PLAINTIFF:

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

  
Edward A. Miller, Esquire  
Counsel for Defendants

Counsel of Record for this Party:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

**MARSHALL, DENNEHEY,  
WARNER, COLEMAN & GOGGIN**  
2900 US Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219

(412) 803-1140

  
FILED  
Clerk  
JUL 16 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,	:	CIVIL DIVISION
Plaintiff,	:	NO. 04-369-CD
vs.	:	
LOWE'S COMPANIES, INC., and LOWE'S	:	
HOME CENTERS, INC.	:	
Defendants.	:	

**DEFENDANTS' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT  
AND NEW MATTER**

Defendants, Lowe's Companies, Inc., and Lowe's Home Centers, Inc., by and through their undersigned attorneys, hereby submit the following Answer to the Plaintiff's Amended Complaint:

1. Denied. After reasonable inquiry, the information known or readily obtainable by answering Defendants is insufficient to enable them to form a belief as to the truth of these allegations of the Plaintiff's Amended Complaint.

2. Admitted in part and denied in part. It is admitted that Defendant, Lowe's Companies, Inc., is a North Carolina corporation which has a principle place of business located at 1605 Curtis Bridge Road, Wilkesboro, NC 29697. It is specifically denied that Defendant, Lowe's Companies, Inc., has a place of business located anywhere in the Commonwealth of Pennsylvania or that it distributes and sells various home improvement items. Defendant, Lowe's Companies, Inc., is a holding company and the parent of Defendant, Lowe's Home Centers, Inc. Answering Defendants demand at the trial of this case strict proof of the allegations set forth in paragraph 2 of the Plaintiff's Amended Complaint.

3. Admitted in part and denied in part. It is admitted that Defendant, Lowe's Home Centers, Inc., is a North Carolina corporation with a principle place of business located at Highway 268 East, North Wilkesboro, NC 28656. It is further admitted that Defendant, Lowe's Home Centers, Inc., owns and operates a Lowe's store located at 100 Commons Drive, DuBois, Clearfield County, Pennsylvania 15801. It is further admitted that Defendant, Lowe's Home Centers, Inc., engages in the business of selling home improvement items, including ceiling fans. The remaining averments of paragraph 3 of Plaintiff's Amended Complaint are denied.

4. Admitted in part and denied in part. It is admitted that Defendant, Lowe's Home Centers, Inc., offered goods for sale within the Commonwealth of Pennsylvania in December 2001 and in October 2003. It is specifically deny that Defendant, Lowe's Companies, Inc., offers goods for sale within the Commonwealth of Pennsylvania during the referenced time periods or at any time.

5. Denied. After reasonable inquiry, the information known or readily obtainable by answering Defendants is insufficient to enable them to form a belief as to the truth of these allegations of the Plaintiff's Amended Complaint. Further, Defendant, Lowe's Companies, Inc., specifically denies that it owns or operates a store located in Altoona, Pennsylvania. On the contrary, the Lowe's store located at 1707 McMahan Road, Altoona, PA 16602 is owned and operated by Defendant, Lowe's Home Centers, Inc.

6.-7. Denied pursuant to Pa.R.Civ.P. 1029(e).

8. Denied pursuant to Pa.R.Civ.P. 1029(e). It is specifically denied that the ceiling fan allegedly involved in this incident was purchased at a store owned or operated by Defendant, Lowe's Companies, Inc. On the contrary, the Lowe's store located at 1707 McMahon Road, Altoona, PA 16602 is owned and operated by Defendant, Lowe's Home Centers, Inc.

9. Denied pursuant to Pa.R.Civ.P. 1029(e).

**COUNT I – Strict Liability**

10. It is admitted that the Plaintiff has incorporated paragraphs 1-9 of his Amended Complaint. Answering Defendants incorporate by reference their answers to the averments of paragraphs 1-9 of the Plaintiff's Amended Complaint as if set forth herein at length.

11. Denied pursuant to Pa.R.Civ.P. 1029(e). Further it is specifically denied that Defendant, Lowe's Companies, Inc., is in the business of selling ceiling fans.

12.-14.Denied pursuant to Pa.R.Civ.P. 1029(e).

WHEREFORE, Defendants, Lowe's Companies, Inc. and Lowe's Home Centers, Inc., demand that judgment be entered in their favor and against the Plaintiff together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

**COUNT II – Damages**

15. It is admitted that the Plaintiff has incorporated paragraphs 1-14 of his Amended Complaint. Answering Defendants incorporate by reference their Answers to the averments of paragraphs 1-14 of the Plaintiff's Amended Complaint as if set forth herein at length.

16. Denied pursuant to Pa.R.Civ.P. 1029(e).

WHEREFORE, Defendants, Lowe's Companies, Inc. and Lowe's Home Centers, Inc., demand that judgment be entered in their favor and against the Plaintiff together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

**NEW MATTER**

Defendants, Lowe's Companies, Inc. and Lowe's Home Centers, Inc., assert the following New Matter:

17. To the extent discovery may reveal, the Plaintiff assumed the risk of his injuries.
18. To the extent discovery may reveal, the ceiling fan at issue was improperly installed.
19. To the extent discovery may reveal, the Plaintiff cannot adequately eliminate causes other than the ceiling fan at issue as the source of the subject fire.
20. The Plaintiff's damages were caused by an intervening and/or superceding cause.
21. To the extent discovery may reveal, the Plaintiff failed to properly mitigate his damages.
22. The Plaintiff has failed to state a claim upon which relief may be granted.

WHEREFORE, Defendants, Lowe's Companies, Inc. and Lowe's Home Centers, Inc., demand that judgment be entered in their favor and against the Plaintiff together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

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

By:   
Edward A. Miller, Esquire

2900 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
FAX (412) 803-1188

Counsel for Defendants, Lowe's Companies, Inc. and  
Lowe's Home Centers, Inc.

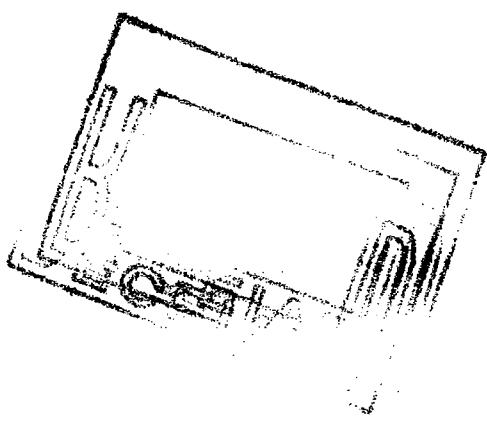
**VERIFICATION**

I, Walter Williams, am currently the manager of liability and property claims for Lowe's Companies, Inc. and am an authorized agent for Lowe's Home Centers, Inc.. I hereby verify that the factual statements made in Defendants' Answer to Plaintiff's Amended Complaint and New Matter 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 of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

DATE: 6-28-04



Walter Williams



**CERTIFICATE OF SERVICE**

I, Edward A. Miller, Esquire, do hereby certify that a true and correct copy of the foregoing Defendants' Answer to Plaintiff's Amended Complaint and New Matter was sent on this 6<sup>th</sup> day of July, 2004, by U.S. Mail, postage pre-paid to Plaintiff's counsel addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801



Edward A. Miller, Esquire

**Complaint To Join Additional Defendant  
Exhibit C**

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

LOWE'S HOME CENTERS, INC.,  
Defendant

No. 04-369-CD

Type of Pleading:

**PLAINTIFF'S REPLY  
TO NEW MATTER**

Filed on Behalf of:  
PLAINTIFF

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

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

JUL 16 2004

Attest.

*William S. Albert*  
Prothonotary/  
Clerk of Courts

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S HOME CENTERS, INC.,  
Defendants

**PLAINTIFF'S REPLY TO NEW MATTER**

AND NOW, comes the Plaintiff, WILLIAM S. ALBERT, by and through his attorneys, HANAK, GUIDO AND TALADAY, and hereby presents the following Reply to New Matter as follows:

17. Paragraph 17 of Defendant's New Matter sets forth conclusions of law, therefore, no responsive pleading is required. To the extent a response is required, said allegations are denied.

18. Denied. It is specifically denied that the ceiling fan at issue was improperly installed.

19. Denied. Plaintiff can adequately eliminate causes other than the ceiling fan at issue as the source of the subject fire.

20. Denied. Plaintiff's damages were solely caused by the subject defective fan.

21. Denied. Plaintiff has taken reasonable measures to mitigate his damages.

22. Denied. Paragraph 22 of Defendant's New Matter sets forth conclusions of law, therefore, no responsive pleading is required. To the extent a response is required, said allegations are denied.

WHEREFORE, Plaintiff, WILLIAM S. ALBERT, respectfully  
requests this Honorable Court to enter judgment in his favor and  
against the Defendant.

HANAK, GUIDO AND TALADAY, by:



---

S. Casey Bowers  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 16 day of July, 2004, I served a copy of the within Reply to New Matter by first class mail, postage prepaid, on the following:

Edward A. Miller, Esq.  
Marshall, Dennehey, Warner  
Coleman and Goggin  
Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219

  
\_\_\_\_\_  
S. Casey Bowers  
Attorney for Plaintiff

Complaint To Join Additional Defendant  
Exhibit D

Thank you for your recent inquiry regarding your account.  
Your 12/11/01 billing is detailed below.

ACCOUNT NUMBER: C81923390595496

NUMBER OF PAYMENTS DUE NOW 01

CUSTOMER NAME: FRED H ALBERT  
ADDRESS: 259 HUCKLEBERRY HILL LANE  
16878-0000

PREVIOUS MONTH'S BALANCE	FINANCE CHARGES	PAYMENTS/ CHARGES	YOUR NEW CREDITS	MONTHLY BALANCE	AMOUNT DUE
	.00	10,982.90	.00	.00	15.00
				10,982.90	15.00

DATE	REF#-BUNDLE INV#	SOS	DESCRIPTION	CHARGES	PAYMENTS
				CHARGES	CREDITS
11/11/01	73160558	12	0001010 PAINT WATERPROOF 12002 PLUMBING-WATER FILTERS & ACSES PAINT-ROLLER COVERS-WOOSTER PAINT-ROLLERS FRAMES & PADS PAINT-ROLLERS FRAMES & PADS PAINT-ROLLERS FRAMES & PADS ELECTRICAL-WALL PLATES		51.84
11/19/01	73240593	20	0001010 SPECIAL PROMOTION - NO PAYMENT 96918 SOS CROSS CREEK CABINETS SOS CROSS CREEK CABINETS		8,512.36
11/28/01	73330590	29	0001010 SOS KRAFTMAID CABINETS 97488 SOS KRAFTMAID CABINETS SOS KRAFTMAID CABINETS SOS KRAFTMAID CABINETS SOS KRAFTMAID CABINETS SOS KRAFTMAID CABINETS ADMINISTRATIVE ITEMS		2,147.34
12/09/01	73440563	10	0001010 PLUMBING:TUB ENCLOSURES 06344 FANS - CEILING		271.36

**Fred H. Albert Lowe's Account 79 2339 0595496**

**Previous Balance \$10,982.90**

<b>Date</b>	<b>Charges</b>	<b>Payments</b>	<b>Credits</b>	<b>Late Fees</b>	<b>Fin. Chgs</b>	<b>Balance</b>
<b>Jan-02</b>						
23-Dec		\$15.00				
13-Dec	\$109.13					
1-Jan	\$198.64					
2-Jan	\$69.82					
5-Jan	\$563.63					
7-Jan		\$87.20				
12-Jan				\$135.97		\$11,957.49

Complaint To Join Additional Defendant  
Exhibit E

**LOWE'S**  
(814)372-8640

-SALE-

SALES #: S10108R1 116352 12-09-01

61412 CFAN 32" AB ARIST 89.00  
72916 59" TUB DR PBRS E 167.00

SUBTOTAL: 256.00  
TAX 38550 : 15.36  
INVOICE 06344 TOTAL: 271.36

BALANCE DUE: 271.36

LCC : 271.36

LCC 6902523290595496 1204 001163

AMOUNT: 271.36

THIS PURCHASE IS MADE IN ACCORDANCE  
WITH THE TERMS OF MY REVOLVING CREDIT  
ACCOUNT AGREEMENT, INCLUDING RETENTION  
OF A PURCHASE MONEY SECURITY INTEREST  
IN THE MERCHANDISE PURCHASED.  
I ACKNOWLEDGE RECEIPT OF A COPY OF THE  
SALES SLIP.

Eleanor Albert

CUSTOMER SIGNATURE  
CUSTOMER: ELEANOR ALBERT

TRANSACTION ID: 0000000000000000

1010 TERMINAL: 06 12/09/01 15:14:41

**Complaint To Join Additional Defendant  
Exhibit F**

*Liter*

**LOWE'S MASTER STANDARD BUYING AGREEMENT**

This Master Standard Buying Agreement is entered into this 21<sup>st</sup> day of August, 2008 by and between LOWE'S COMPANIES INC., a North Carolina corporation with its principal place of business at 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697, its wholly owned subsidiaries LOWE'S HOME CENTERS, INC., THE CONTRACTOR YARD, INC., LOWE'S HIW, INC., EAGLE HOME AND GARDEN, INC., and such other wholly-owned subsidiaries of Lowe's Companies, Inc., hereinafter separately and collectively referred to as "LOWE'S" and the undersigned corporation and/or partnership, hereinafter known as "Vendor" by and through its authorized agent.

**WITNESSETH:**

WHEREAS, Lowe's is in the business of operating stores for the sale of goods and/or services; and

WHEREAS, the undersigned Vendor is a vendor of products and desires to sell products to Lowe's; and

WHEREAS, every Lowe's Purchase Order, whether written, verbal or electronically communicated by Lowe's to said Vendor is subject to all terms and conditions contained herein, and shall apply to all purchases made by LOWE'S.

NOW, THEREFORE, in consideration of the foregoing the parties agree to the following:

**ARTICLE I. ACCEPTANCE**

- (1) Each Lowe's Purchase Order shall be deemed accepted by the Vendor according to the terms and conditions herein. No changes or alterations in this

Agreement or the Lowe's Purchase Order will be effective unless agreed to in writing by an authorized agent of Lowe's.

(2) In case of conflict, this agreement and the Lowe's Purchase Order supersedes any Vendor Agreement.

## ARTICLE II. EDI & BARCODING

(1) Electronic Data Interchange "EDI" is a requirement for all vendors with more than 100 P.O.'s or invoices per year.

(2) LOWE'S requires all vendors to have a scannable Universal Product Code "UPC" label affixed to products sold to Lowe's according to the Uniform Code Council's specifications.

(3) All standard shipping containers (master cartons, bundles, pallets, inner packs, etc.) containing fixed multiples of the same item must have an Interleaved 2 of 5 (UPC Shipping Container Code) placed on the packaging according to the Uniform Code Council's specifications. The model number and unit count contained within each level of packaging must be printed in human readable form.

(4) In the event that Vendor: either (1) fails to apply Vendor's scannable UPC label or scannable Interleaved 2 of 5 codes, (2) labels product with incorrect UPC bar codes or Interleaved 2 of 5 codes, (3) provides Lowe's with inaccurate UPC or Interleaved 2 of 5 information, (4) applies poor quality, nonscannable UPC label or Interleaved 2 of 5 codes, or (5) substitutes merchandise without prior written notification of the new UPC codes or Interleaved 2 of 5 codes, Vendor shall pay Lowe's a penalty for such violation in the amount of One Thousand Dollars (\$1,000.00). The payment of said penalty is in addition to any other damages that may be incurred as defined under Article VIII, Paragraph 1 of this Agreement.

### ARTICLE III. DELIVERY

(1) All sales are FOB Destination, Freight Collect, net of Vendor logistics costs unless otherwise agreed to in writing. Vendor agrees to make available to Lowe's other pricing options as requested by Lowe's Vendor Logistic Department.

During the term of this Agreement, LOWE'S shall have the right, in its sole discretion, to change, from time to time, the delivery terms hereunder as requested by Lowe's Vendor Logistic Department.

(2) For FOB Destination orders, no liability shall be incurred by LOWE'S and the risk of loss shall not pass to LOWE'S until legal title passes upon delivery of the merchandise to LOWE'S final destination(s), in good condition and accepted by LOWE'S.

(3) For all shipments, Lowe's Vendor's carriers are required to schedule a delivery appointment with LOWE'S receiving location at least 24 hours in advance of shipment. LOWE'S will incur no additional charges resulting from extended unloading time for unscheduled deliveries.

(4) All freight charges must be shown as a separate item on the invoice. The Vendor shall provide, upon request, a copy of the applicable freight bill for each invoice.

(5) Vendor must advise LOWE'S immediately if any merchandise cannot be shipped to be received by the date(s) specified on the individual LOWE'S Purchase Order. Merchandise must not be shipped to arrive prior to the specified date unless consented to in writing by an authorized agent of LOWE'S Merchandising Department. All shipments must have ship date. Freight prepaid shipments must have an arrival date. Vendor agrees to ship all Purchase Orders timely and complete. If merchandise is shipped or arrives on days other than those specified Vendor may be subject to a penalty.

(6) A detailed packing slip, including item number, the Lowe's Purchase Order number, store number, model number, quantity and shipper's name must accompany each shipment of merchandise

(7) All cartoning must be capable of withstanding the normal rigors of the transportation and physical distribution process. All master cartons must protect inner packs and individual sales units which will be displayed on LOWE'S sales floors. Any shipments having concealed damage will upon discovery be returned to the Vendor freight collect.

(8) LOWE'S requires unitization on all merchandise. The preferred method of unitization is through the use of pallets. All pallets must be 48"x40" hardwood with 4-way forklift entry. All units must be stretch-wrapped prior to shipment. Any exception to LOWE'S unitization requirements must be approved in advance by LOWE'S Logistics Department.

(9) Multiple orders on the same truck must be segregated. Identical items on each Lowe's Purchase Order must be unitized.

(10) All transportation costs or expenses incurred by LOWE'S because of Vendor's noncompliance with the terms of an order, and any additional transportation or administrative charges due to split shipments, failure to follow LOWE'S routing instructions, errors in classification of merchandise, or for any other reason, will be charged back to Vendor.

(11) Vendor is responsible, at its cost, for insuring the merchandise to the F.O.B. point for full replacement value, including freight, and Vendor shall file all claims for loss or damage in reference to all prepaid shipments. All uncollectible portions of concealed damage claims will be charged back to Vendor.

(12) No backorders will be accepted.

(13) Accumulation of Less-than Truck Load "LTL" shipments is not allowed. Vendors/Carriers must adhere to the specified ship dates and arrival date per the designated routings.

#### ARTICLE IV. INVOICING/BILLING REQUIREMENTS

(1) All invoice and/or credit memoranda must be mailed or electronically transmitted promptly and accurately to an address specified by Lowe's. All billing transactions that cannot be processed due to their failure to comply with LOWE'S billing requirements may be returned for re-billing or held for correction without the loss of applicable discounts. LOWE'S will not be responsible for lost discount, interest and/or service charges related to the late payment of invoices which are delayed due to reasons beyond LOWE'S control. Vendors will be subject to a reasonable administrative processing charge for non-compliance.

(2) All invoices, credit memoranda, bills of lading, related documents and other correspondence must reference LOWE'S Purchase Order Number or Assigned Control Number (Example: RMR #) and the specific LOWE'S store number(s) to which the transactions apply. In addition, Vendor must provide LOWE'S item numbers on invoices and packing slips as well as list line items in the same sequence as ordered. In lieu of requiring proof of shipment on all invoices, LOWE'S reserves the right to request proof of shipment or proof of delivery for selected transactions at a later date.

(3) LOWE'S pays from invoice only. Vendor shall submit one invoice per Order (shipment) and one Order per invoice with no backorders being allowed by LOWE'S. Invoicing should be initiated on the day of shipment (not before) and reference the correct F.O.B. terms as well as the freight payment responsibility (collect or prepaid).

LOWE'S reserves the right to charge back to the Vendor any shortages between merchandise received and merchandise invoiced.

(4) Payment will be made in accordance with the terms mutually agreed upon in writing between the parties. Any deviation from the negotiated payment terms must be communicated and agreed to in writing by LOWE'S prior to invoicing. Payment terms begin on the date of satisfactory receipt of all merchandise being invoiced, or receipt of a correctly completed invoice, whichever is later, without loss of discount. LOWE'S will calculate an average transit time for each Vendor. The average transit days for a specific Vendor will be added to invoice/shipment date to determine the day on which dating begins. On all Prox. (proximate) and E.O.M. (end of the month) dating, merchandise received after the 24th of any month shall be payable as if received on the 1st day of the following month. The parties agree that the payment due date on the Vendor invoice will be the day the remittance is to be postmarked.

(5) LOWE'S will include unit pricing on all outgoing EDI Lowe's Purchase Orders. Vendor agrees to notify LOWE'S of any price discrepancies prior to shipment/invoicing. Failure to communicate irregularities will result in a LOWE'S deduction from the invoice. Vendor agrees that if prior to shipment there is any reduction in Vendor's regular selling price for the merchandise, the price specified on the Purchase Order will be reduced to the lower price. LOWE'S requires a minimum 60 days written notice for all price increases. A price increase cannot take effect until 30 days after LOWE'S authorized agent agrees in writing to the price increase requested by the Vendor.

(6) At Lowe's Option, if Vendor has a debit balance with LOWE'S, the amount owed will be deducted from the next remittance or a check from the Vendor to clear this amount will be paid within thirty (30) days. It is also agreed that LOWE'S has the option to perform post audits and file claims for billing/payment errors.

## ARTICLE V. WARRANTIES & GUARANTEES

(1) Vendor agrees that LOWE'S shall not be liable for the inspection of merchandise before resale and that all warranties expressed or implied, shall survive inspection, acceptance and payment by LOWE'S and LOWE'S customers.

(2) Approval by LOWE'S of Vendor's design or materials shall not relieve Vendor from any obligations under any warranties, representations or guarantees. Merchandise delivered (whether paid for or not) is subject to inspection, testing and approval by LOWE'S before acceptance. Vendor represents and warrants that the merchandise will be of good quality, material and workmanship, merchantable, fit for the purpose intended and free from any and all defects.

(3) Vendor represents and warrants that the merchandise sold hereunder, the price, other terms and conditions of its sale, all promotional and advertising matter furnished by Vendor to LOWE'S with respect thereto, and all guarantees, warranties, labels and instructions furnished in connection therewith comply with all federal, state and local laws, and regulations.

(4) Before payment is required under the terms of the Order, without loss of discount, Vendor agrees to provide LOWE'S with a signed guaranty, as required, that: (1) the weights, measures, signs, legends, words, particulars or descriptions (if any) stamped, printed or otherwise attached to the merchandise or containers or referring to the merchandise delivered hereunder are true and correct and comply with all applicable laws, and regulations; (2) the merchandise delivered pursuant to the Order conforms and complies with the applicable provisions of the Consumer Product Safety Act, Magnuson - Moss Warranty - Federal Trade Commission Improvement Act, Wool Products Labeling Act, Federal Food, Drug and Cosmetics Act, Federal Hazardous Substances Act, all other applicable laws, ordinances, codes, rules and regulations of any governmental agencies having jurisdiction and the standards of the Underwriters

Laboratories, Inc.; the National Fire Protection Association (NFPA); American National Standards Institute (ANSI); and other similar standards by comparable organizations.

(5) Vendor agrees to and will indemnify and hold harmless LOWE'S from and against any and all liability, losses, damage, arising out of any allegation of or actual misrepresentation or breach of warranty, expressed or implied, with respect to said merchandise; any alleged bodily injury or property damage related to the possession or use of said merchandise (excepting loss or injury resulting solely from the intentional misconduct or gross negligence of Lowe's); any alleged infringement of any patent, design, trade name, trademark, trade dress, copyright or trade secret; any alleged violation by Vendor of any law, ordinance, code, rule or regulation; any alleged or threatened discharge, release or escape of pollutants or other environmental impairment; or any breach or violation by Vendor of any terms or conditions of the Order. Vendor shall pay all judgments against and assume the defense within a reasonable time for any and all liability of LOWE'S with respect to any such matters, even if any such allegation of liability is groundless, false or fraudulent. Notwithstanding the above, LOWE'S shall have the right but not the obligation to participate as it deems necessary in the handling, adjustment or defense of any such matter.

Should Vendor fail to assume its obligations hereunder, to diligently pursue and pay for the defense of LOWE'S within a reasonable time, Vendor agrees that LOWE'S shall have the right, but not the obligation, to proceed on LOWE'S own behalf to defend itself by way of engaging its own legal counsel and the services of any and all other experts or professionals it deems necessary to prepare and present a proper defense, and require from Vendor reimbursement and indemnification for all costs and expenses incurred as a result of such claim, as more fully set forth above.

(6) During the term of this Agreement and for a period of five (5) years after the date of termination, Vendor shall procure and maintain Products Liability and completed Operations Liability Insurance on an occurrence basis with limits of not less

than \$2,000,000 per occurrence and an annual aggregate of not less than \$10,000,000 for property damage, bodily injury or death to any number of persons, which shall contain an endorsement by which the insurer extends the coverage thereunder to the extent necessary to include the contractual liability of Vendor arising by reason of the indemnity provisions set forth herein. A broad form Vendor's endorsement shall be maintained in said insurance policy with LOWE'S as an additional insured, requiring coverage for all other underlying and collectible insurance. Vendor further agrees to forward a copy of this Vendor Buying Agreement to its insurer, and as a condition precedent to LOWE'S obligation hereunder, to have delivered to LOWE'S by the Vendor's insurer a current certificate of insurance showing the coverage required by this paragraph. The insurance must be written by an insurance company with a minimum rating of Best's A-, VIII or its equivalent, satisfactory to LOWE'S, and duly authorized to do business in the United States of America. Additionally Vendor and its insurer shall provide LOWE'S thirty (30) days prior written notice of non-renewal, cancellation or other change in Vendor's coverage which may impair or otherwise effect LOWE'S rights thereunder.

(7) Vendor represents, warrants, and covenants not to sue Lowe's during the term of this Agreement and for a period of two (2) years after its termination in respect to Lowe's purchase, use, sale, distribution, and promotion of products and packaging that incorporate in whole or in part the trademark, trade dress, copyright, patent, and/or trade secrets of the Vendor.

(8) Vendor acknowledges that Vendor and its officers, directors, employees and agents have received a copy of Lowe's Code of Ethics and Statement of Business Ethics. Vendor along with its officers, directors, employees and agents agree to comply with the Lowe's Code of Ethics and Lowe's Statement of Business Ethics.

## ARTICLE VI. MERCHANDISE RETURNS

(1) Notice of defects in the merchandise or any other breach by Vendor under the terms of this Agreement and the individual Lowe's Purchase Order will be considered made within reasonable time, if made within a reasonable time after being discovered by LOWE'S or after notification is given to LOWE'S by its customers or the users of the merchandise. The return of such merchandise by Lowe's shall not relieve Vendor from breach of any representation or warranty made herein. Failure of LOWE'S to state a particular defect upon rejection shall not preclude LOWE'S from relying on unstated defects to justify rejection or establish breach. Resale, repackaging, repacking or cutting up for the purpose of resale or for use shall not be considered as acceptance of the merchandise so as to bar LOWE'S right to reject such merchandise or to revoke acceptance.

(2) Vendor and Lowe's agree to the following merchandise return policy: Defective merchandise (item) with a value of under seventy-five dollars (\$75) will be destroyed by LOWE'S. Merchandise (items) having a value over seventy-five dollars (\$75) will be returned to Vendor FOB origin freight collect without obtaining additional Vendor return authorization. Vendor further agrees to reimburse LOWE'S for the merchandise (item) at delivered cost. If Lowe's elects to return the merchandise freight prepaid, Vendor will reimburse LOWE'S for the actual freight expense or fifteen percent (15%) of merchandise value, if the merchandise is returned via United Parcel Service, or similar service.

(3) Vendor agrees that in the event any defective merchandise sold hereunder is installed by LOWE'S and/or its subcontractors pursuant to a contract for installation services, Vendor agrees to indemnify and hold harmless Lowe's and its agents or independent contractors for all damages, costs, lost profits and expenses incurred due to such defect, including, but not limited to, costs to replace, reinstall and/or repair.

## ARTICLE VII. CANCELLATIONS & RETURNS

(1) LOWE'S Merchandising Department reserves the right to refuse or return any Orders not shipped complete, as ordered and in accordance with the terms in this Agreement and the Lowe's Purchase Order.

(2) LOWE'S Merchandising Department reserves the right to cancel in whole or in part any Purchase Order at any time prior to the shipment of merchandise without liability.

#### **ARTICLE VIII. MISCELLANEOUS**

(1) All costs, loss profits and expenses incurred by LOWE'S due to Vendor's violations of or failure to follow any or all of the terms of this Agreement will be charged back to Vendor and Vendor expressly agrees to reimburse LOWE'S. Vendor further agrees that LOWE'S may deduct such costs, loss profits and expenses from any sum thereafter owing to Vendor by LOWE'S.

(2) Any and all taxes, fees, and charges required by State, Federal or Municipal Governments in the selling, transferring or transmitting of merchandise to LOWE'S shall be paid and assumed by Vendor.

(3) No provisions of this Agreement shall be waived or shall be construed to be waived by LOWE'S unless such waiver is in writing and signed by an officer of LOWE'S. The failure on the part of LOWE'S to exercise any of the rights and remedies granted hereunder or to insist upon strict compliance by Vendor shall not constitute a waiver of LOWE'S right to demand exact compliance with the terms hereof.

(4) The rights, remedies and options provided herein are in addition to and not to the exclusion of any and all other rights and remedies provided by law.

(5) LOWE'S shall not be bound by any assignment of the Order by Vendor, unless LOWE'S has consented prior thereto in writing. LOWE'S may assign this Order to a present or future subsidiary or affiliate.

(6) Should LOWE'S use the services of an attorney to enforce any of its rights hereunder, or to collect any amounts due, Vendor shall pay LOWE'S for all costs and expenses incurred, including reasonable attorney's fees.

(7) This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina. The parties agree that the courts within the State of North Carolina will have exclusive jurisdiction with venue being in Wilkes County, State of North Carolina.

(8) If requested by Lowe's, Vendor agrees to furnish, when returning this completed Agreement, a complete set of current financial statements. Publicly held companies should include the Annual Report to Shareholders and 10K Report.

(9) The Vendor shall provide LOWE'S written notice of an assignment, factoring or other transfer of its right to receive payments arising under this Agreement 30 days prior to such assignment, factoring or other transfer taking legal effect. Such written notice shall include the name and address of assignee/transferee, date assignment is to begin, and terms of the assignment and shall be considered delivered upon receipt of such written notice by the Trade Payables Department. Vendor shall be allowed to have only one assignment, factoring or transfer legally effective at any one point in time. No multiple assignments, factoring or transfers by the Vendor shall be permitted. LOWE'S reserves the right to require any and all documentation necessary to determine the legal effect of the assignment, factoring or other transfer prior to acceptance.

(10) Vendor represents and warrants that all labor used by the Vendor and/or its Vendors or Suppliers is furnished by employees with a minimum age of no less than

16 years. Vendor acknowledges and complies with LOWE'S policy of purchasing products from Vendors who do not use child labor in the production of goods.

(11) Vendor represents and warrants that all labor in producing the goods by the Vendor and/or its Vendors or Suppliers is not supplied wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution.

(12) Vendor, by and through its representative, further covenants and agrees not to communicate during the continuance of this agreement, or at any time subsequently, any information relating to the secrets, business methods, business secrets, including trade secrets, business information, and the corporation manner in which Lowe's conducts its business to any person, corporation or entity. Vendor acknowledges and agrees that Vendor has and will receive confidential information including, but not limited to: proprietary packaging, proprietary product(s) and/or product design(s), Lowe's business and confidential data which includes quotations, sales volume, pricing, etc. and that money damages will not adequately compensate Lowe's for any disclosure of any information in violation of this agreement. Any right of equitable enforcement granted to Lowe's shall not be deemed to preclude Lowe's from seeking actual money damages or any other remedy from Vendor and/or its agents in the event of a breach of such covenant.

Confidential information is not meant to include any information which, at the time of disclosure, is generally known by the public.

(13) At any time during the term of this Agreement and for a period of five (5) years after the final payment of any invoice under this Agreement, Lowe's, or its designated agent, shall have the right to examine and audit up to five (5) years of the Vendor's records in respect to any and all matters occurring within the five (5) year period prior to the request and relating to Lowe's payments under this Agreement,

including, but not limited to, payments for any orders, invoices, and Vendor's compliance with Lowe's business ethics policies and Lowe's Code of Ethics. Vendor shall maintain complete and accurate records to substantiate Vendor's charges pursuant to this Agreement. By execution of this Agreement by Vendor, Lowe's shall have access to such records for the purpose of audit during normal business hours upon reasonable notice to Vendor.

(14) If the total purchase order amount or contract amount exceeds \$10,000.00, which in whole or in part, is necessary to the performance by Lowe's of any one or more contracts with the government, then the Equal Employment Opportunity clause as detailed in Section 202 of the Executive Order 11246: Nondiscrimination Under Federal Contracts is incorporated into this Agreement.

(15) Vendor represents and warrants that Vendor's products sold to LOWE'S for resale are Year 2000 compliant prior to, during and after the calendar Year 2000 and that such products include design and performance features so that neither LOWE'S nor its customers shall experience abnormal performance and/or invalid and/or incorrect results from the use of the products by reason of such product's Year 2000 noncompliance or noncompatibility. Vendor agrees that any products sold previously, presently, and in the future through LOWE'S retail home centers are and will be Year 2000 compliant and will not result in product returns or monetary loss to LOWE'S by reason of such product's Year 2000 noncompliance or noncompatibility. Furthermore, the Vendor's internal computer systems are also Year 2000 compliant to the extent necessary to ensure that LOWE'S shall not experience difficulties or changes in service levels, delivery schedules, and/or LOWE'S business operations by reason of the Year 2000 noncompliance or noncompatibility of any such internal computer systems.

(16) The term of this Agreement shall commence on the date above and shall continue until the date of termination stated by either party in a written notice to the

other party, such notice to be given no less than sixty calendar days before the expiration date of the termination.

(17) This Agreement has been duly executed and delivered by Vendor, and constitutes the legal, valid, and binding obligation of the Vendor and enforceable against the Vendor in accordance with its terms.

IN WITNESS WHEREOF, LOWE'S COMPANIES, INC. and the undersigned Vendor have hereunto set their hands as of the date of this Agreement.

ATTEST:

LOWE'S COMPANIES, INC.

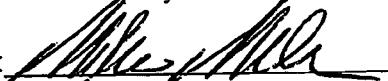
BY: 

TITLE: merchandise

Received and accepted:

ATTEST:

LITEX INDUSTRIES  
Name of Company

BY: 

TITLE: PRESIDENT

SAH Revised 10/4/99

## ACORD™ CERTIFICATE OF LIABILITY INSURANCE

PRODUCER  
COMPANIES AGENCY INC  
P O BOX 152800  
IRVING, TX 75015-2800  
Phone: 800-634-1955, Ext. 22

INSURED  
LITEX INDUSTRIES INC  
3401 W TRINITY BLVD  
GRAND PRAIRIE, TX 75050

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: WAUSAU UNDERWRITERS INSURANCE CO.	
INSURER B: LIBERTY COUNTY MUTUAL INS	
INSURER C: CHUBB GROUP OF INS COS	
INSURER D:	
INSURER E:	

## COVERS

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X GENERAL LIABILITY	YYJY91429758023	03/01/03	03/01/04	EACH OCCURRENCE \$1,000,000
A	X COMMERCIAL GENERAL LIABILITY	TBJY91429758033	03/01/03	03/01/04	DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000
	CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$10,000
	*Bkt AIP/WOS/30				PERSONAL & ADV INJURY \$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	*As required by written contract			GENERAL AGGREGATE \$2,000,000
					PRODUCTS - COMP/OP AGG \$2,000,000
B	X AUTOMOBILE LIABILITY	ASTY91429758043	03/01/03	03/01/04	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000
	X ANY AUTO				BODILY INJURY (Per person) \$
	ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	X HIRED AUTOS				AUTO ONLY - EA ACCIDENT \$
	X NON-OWNED AUTOS				OTHER THAN EA ACC AUTO ONLY: AGG \$
	*Bkt 30				
	GARAGE LIABILITY				
	ANY AUTO				
C	X EXCESS/UMBRELLA LIABILITY	79826883	03/01/03	03/01/04	EACH OCCURRENCE \$13,000,000
	X OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$13,000,000
	DEDUCTIBLE				\$
	X RETENTION \$10,000				\$
					\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WCJY91429758013	03/01/03	03/01/04	X WC STATU- TORY LIMITS OTHER E.L. EACH ACCIDENT \$1,000,000
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. DISEASE - EA EMPLOYEE \$1,000,000
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - POLICY LIMIT \$1,000,000
	OTHER				

## RISK MANAGEMENT

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
Vendor Endorsement with Lowe's Companies, Inc. & Its Wholly Owned Subsidiaries is shown  
as Additional Insured on the Commercial General Liability policy shown. The insurance  
coverage represented by this Certificate provides coverage with respect to all Products  
manufactured or distributed by the Insured.

MAR 03 2003

INSURANCE &amp; FINANCE

## CERTIFICATE HOLDER

LOWE'S COMPANIES INC &  
ITS WHOLLY OWNED SUBSIDIARIES  
ATTN FAYE WYATT  
P O BOX 1111  
NORTH WILKESBORO, NC 28656

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION  
DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN  
NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL  
IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR  
REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Carolyn J. Scott*

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

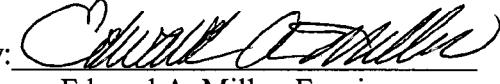
**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Complaint to Join Additional Defendant have been sent on this 26th day of January, 2005, by U.S. Mail, postage prepaid to all counsel of record addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Bryan B. Campbell, Esquire  
Bashline & Hutton  
One Oliver Plaza, Suite 3500  
210 Sixth Avenue  
Pittsburgh, PA 15222

**MARSHALL, DENNEHEY, WARNER  
COLEMAN AND GOGGIN, P.C.**

By:   
Edward A. Miller, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

Plaintiff,

vs.

LOWE'S HOME CENTERS, INC.,

Defendant,

vs.

LITEX INDUSTRIES, INC.,

Additional Defendant.

CIVIL DIVISION

NO. 04-369-CD

**NOTICE OF SERVICE OF ANSWERS  
AND OBJECTIONS TO PLAINTIFF'S  
INTERROGATORIES TO  
DEFENDANT**

**Filed on behalf of Defendant, Lowe's  
Home Centers, Inc.**

Counsel of Record for the Defendant:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

**MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN, P.C.**  
US Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
(412) 803-1188 - Fax

*FILED 6/10/2005  
JAN 27 2005*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,	)	CIVIL DIVISION
	)	
Plaintiff,	)	NO. 04-369-CD
	)	
vs.	)	
	)	
LOWE'S HOME CENTERS, INC.,	)	
	)	
Defendant,	)	
	)	
vs.	)	
	)	
LITEX INDUSTRIES, INC.,	)	
	)	
Additional Defendant.	)	

**NOTICE OF SERVICE OF ANSWERS AND OBJECTIONS TO PLAINTIFF'S  
INTERROGATORIES TO DEFENDANT**

Defendant, Lowe's Home Centers, Inc., by and through its undersigned attorneys, hereby certifies that true and correct copies of its Answers And Objections To Plaintiff's Interrogatories To Defendant as well as a copy of this Notice of Service were sent on January 26, 2005, by U.S. Mail, postage pre-paid to all counsel of record addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Counsel for Plaintiff

Bryan B. Campbell, Esquire  
Bashline & Hutton  
Suite 3500 One Oliver Plaza  
210 Sixth Avenue  
Pittsburgh, PA 15222

Counsel for Additional Defendant,  
Litex Industries, Inc.

Respectfully submitted,

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

By:



Edward A. Miller, Esquire

2900 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
FAX (412) 803-1188  
[emiller@mdwcg.com](mailto:emiller@mdwcg.com)

Counsel for Defendant,  
Lowe's Home Centers, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

No. 04-369-CD

vs.

ISSUE NO.:

LOWE'S HOME CENTERS, INC.,

**ANSWER, NEW MATTER AND  
CROSS CLAIM TO COMPLAINT TO  
JOIN**

Defendant,

vs.

LITEX INDUSTRIES, INC.,

Filed on Behalf of Additional Defendant:  
LITEX INDUSTRIES, INC.

Additional Defendant.

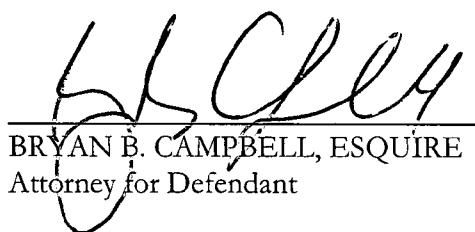
Counsel of Record for this Party:

BRYAN B. CAMPBELL  
PA I.D. No. 39312

BASHLINE & HUTTON  
Suit 3500 One Oliver Plaza  
210 Sixth Avenue  
Pittsburgh, PA 15222  
(412) 434.0201

Firm I.D. No.: 150

**JURY TRIAL DEMANDED**

  
BRYAN B. CAMPBELL, ESQUIRE  
Attorney for Defendant

FILED  
m 11:15 AM NO CC  
FEB 14 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

No. 04-369-CD

vs.

ISSUE NO.:

LOWE'S HOME CENTERS, INC.,

Defendant,

vs.

LITEX INDUSTRIES, INC.,

Additional Defendant.

**ANSWER, NEW MATTER AND CROSS CLAIM TO COMPLAINT TO JOIN**

**ANSWER**

NOW, comes Additional Defendant, Litex Industries, by its attorneys, BASHLINE & HUTTON, and BRYAN B. CAMPBELL, ESQUIRE, and states that it has a full, just, complete and legal defense to the averments contained in the Defendant's Complaint to Join, and in support thereof sets forth the following:

1. After reasonable investigation, Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 1 of Defendant's Complaint to Join and therefore denies same.
2. After reasonable investigation, Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 2 of Defendant's Complaint to Join and therefore denies same.
3. Admitted.

4. After reasonable investigation, Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 4 of Defendant's Complaint to Join and therefore denies same. By way of further answer, Plaintiff's Amended Complaint is a written document of record, the averments of which speak for itself.

5. After reasonable investigation, Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 5 of Defendant's Complaint to Join and therefore denies same. By way of further answer, Plaintiff's Amended Complaint is a written document of record, the averments of which speak for itself.

6. After reasonable investigation, Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 6 of Defendant's Complaint to Join and therefore denies same. By way of further answer, Plaintiff's Amended Complaint is a written document of record, the averments of which speak for itself.

7. After reasonable investigation, Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 7 of Defendant's Complaint to Join and therefore denies same. By way of further answer, Defendant, Lowe's Home Centers, Inc.'s Answer to Plaintiff's Amended Complaint and New Matter is a written document of record, the averments of which speak for itself.

8. After reasonable investigation, Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 8 of Defendant's Complaint to Join and therefore denies same. By way of further answer, Plaintiff William S. Albert's, Reply to New Matter is a written document of record, the averments of which speak for itself.

9. After reasonable investigation, Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 9 of

Defendant's Complaint to Join and therefore denies same. By way of further answer, the "replacement statement", while not attached to Additional Defendant's copy of the Complaint to Join, is a written document of record, the terms of which speak for itself. Further it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff.

10. After reasonable investigation, Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 10 of Defendant's Complaint to Join and therefore denies same. By way of further answer, the "sales receipt", while not attached to Additional Defendant's copy of the Complaint to Join, is a written document of record, the terms of which speak for itself. It is admitted that Additional Defendant designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, however, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff.

11. It is admitted that Additional Defendant designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, however, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff.

12. It is admitted that Additional Defendant designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, however, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and

damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff.

#### **COUNT I – STRICT LIABILITY**

13. Additional Defendant hereby incorporates its responses to Paragraphs 1 through 12 of the Complaint to Join as though said responses were set forth fully herein.

14. After reasonable investigation, Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 14 of Defendant's Complaint to Join and those averments set forth in Plaintiff's Amended Complaint, and therefore denies same. By way of further answer, Plaintiff's Amended Complaint is a written document of record, the averments of which speak for itself. Further, while Additional Defendant, designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff.

15. After reasonable investigation, Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 15 of Defendant's Complaint to Join and those averments set forth in Plaintiff's Amended Complaint, and therefore denies same. By way of further answer, Plaintiff's Amended Complaint is a written document of record, the averments of which speak for itself. Further, while Additional Defendant, designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff.

16. After reasonable investigation, Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 16 of Defendant's Complaint to Join, and therefore denies same. By way of further answer, while Additional Defendant, designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff.

17. The averments of Paragraph 17 are denied. While Additional Defendant, designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff. Further, Additional Defendant denies that it is alone liable to the Plaintiff; jointly and/or severally liable to the Plaintiff; and/or liable over to Defendant Lowe's Home Centers, Inc. for contribution and/or indemnity under any theory of law.

## **COUNT II – INDEMNIFICATION AND BREACH OF CONTRACT**

18. Additional Defendant hereby incorporates its responses to Paragraphs 1 through 17 of the Complaint to Join as though said responses were set forth fully herein.

19. It is admitted that on some date, Additional Defendant entered into a Lowe's Master Standard Buying Agreement with Defendant. At this time, and after reasonable investigation, Defendant is without knowledge or information sufficient to determine if the document attached as Exhibit F to the Complaint to Join is a true and correct copy of the Master Standard Agreement Additional Defendant entered into with Defendant. By way of further answer, the Master Standard

Agreement Additional Defendant entered into with Defendant, is a written document, the terms and conditions of which speak for itself. Further, while Additional Defendant, designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff. Further, Additional Defendant denies that it is alone liable to the Plaintiff; jointly and/or severally liable to the Plaintiff; and/or liable over to Defendant Lowe's Home Centers, Inc. for contribution and/or indemnity under any theory of law.

20. The averments of Paragraph 20 are generally denied. After reasonable investigation, Defendant is without knowledge or information sufficient to determine if the document attached as Exhibit F to the Complaint to Join is a true and correct copy of the Master Standard Agreement Additional Defendant entered into with Defendant. By way of further answer, the Master Standard Agreement Additional Defendant entered into with Defendant, is a written document, the terms and conditions of which speak for itself. Further, while Additional Defendant, designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff. Further, Additional Defendant denies that it is alone liable to the Plaintiff; jointly and/or severally liable to the Plaintiff; and/or liable over to Defendant Lowe's Home Centers, Inc. for contribution and/or indemnity under any theory of law.

21. The averments of Paragraph 21 are generally denied. After reasonable investigation, Defendant is without knowledge or information sufficient to determine if the document attached as

Exhibit F to the Complaint to Join is a true and correct copy of the Master Standard Agreement Additional Defendant entered into with Defendant. By way of further answer, the Master Standard Agreement Additional Defendant entered into with Defendant, is a written document, the terms and conditions of which speak for itself. Further, while Additional Defendant, designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff. Further, Additional Defendant denies that it is alone liable to the Plaintiff; jointly and/or severally liable to the Plaintiff; and/or liable over to Defendant Lowe's Home Centers, Inc. for contribution and/or indemnity under any theory of law.

22. The averments of Paragraph 22 are generally denied. After reasonable investigation, Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 22 of Defendant's Complaint to Join and those averments set forth in Plaintiff's Amended Complaint, and therefore denies same. By way of further answer, Plaintiff's Amended Complaint is a written document of record, the averments of which speak for itself. Further, while Additional Defendant, designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff.

23. The averments of Paragraph 23 are generally denied. After reasonable investigation, Defendant is without knowledge or information sufficient to determine if the document attached as Exhibit F to the Complaint to Join is a true and correct copy of the Master Standard Agreement

Additional Defendant entered into with Defendant. By way of further answer, the Master Standard Agreement Additional Defendant entered into with Defendant, is a written document, the terms and conditions of which speak for itself. Further, while Additional Defendant, designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff. Further, Additional Defendant denies that it is alone liable to the Plaintiff; jointly and/or severally liable to the Plaintiff; and/or liable over to Defendant Lowe's Home Centers, Inc. for contribution and/or indemnity under any theory of law.

24. The averments of Paragraph 24 are generally denied. After reasonable investigation, Defendant is without knowledge or information sufficient to determine if the document attached as Exhibit F to the Complaint to Join is a true and correct copy of the Master Standard Agreement Additional Defendant entered into with Defendant. By way of further answer, the Master Standard Agreement Additional Defendant entered into with Defendant, is a written document, the terms and conditions of which speak for itself. Further, while Additional Defendant, designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff. Further, Additional Defendant denies that it is alone liable to the Plaintiff; jointly and/or severally liable to the Plaintiff; and/or liable over to Defendant Lowe's Home Centers, Inc. for contribution and/or indemnity under any theory of law.

25. The averments of Paragraph 25 contain conclusions of law to which no response is required. In the event it is determined that a response is required, the averments of Paragraph 25 are generally denied. After reasonable investigation, Defendant is without knowledge or information sufficient to determine if the document attached as Exhibit F to the Complaint to Join is a true and correct copy of the Master Standard Agreement Additional Defendant entered into with Defendant. By way of further answer, the Master Standard Agreement Additional Defendant entered into with Defendant, is a written document, the terms and conditions of which speak for itself. Further, while Additional Defendant, designs, manufactures and/or supplies ceiling fans, including an Aristocrat ceiling fan, it is denied that Additional Defendant designed, manufactured and/or supplied the ceiling fan alleged to be responsible for the fire and damages alleged by the Plaintiff. Additional Defendant further denies that any act or omission on its part was the cause of any damages alleged by the Plaintiff. Further, Additional Defendant denies that it is alone liable to the Plaintiff; jointly and/or severally liable to the Plaintiff; and/or liable over to Defendant Lowe's Home Centers, Inc. for contribution and/or indemnity under any theory of law.

WHEREFORE, Additional Defendant, Litex Industries, Inc. requests that judgment be entered in its favor with costs in its behalf sustained.

#### **NEW MATTER**

26. Plaintiff's Complaint and Defendant's Complaint to Join, fail to state any claim against Additional Defendant upon which relief might be granted by the Court.

27. No act or conduct of Additional Defendant or any agent, servant or employee caused any alleged injury, damage or loss to Plaintiff.

28. No ceiling fan designed, manufactured or supplied by Additional Defendant caused any alleged damage or loss to Plaintiff.

29. Some or all of the damages alleged by the Plaintiff may not recoverable under the applicable law.

30. Any claim against Additional Defendant is or may be barred by the applicable statute of limitations or other limiting statutes, codes or laws.

31. Any claim against Additional Defendant is or may be barred by the applicable statute of repose or other limiting statutes, codes or laws.

32. Any claim against Additional Defendant is or may be barred by the doctrine of laches.

33. Any claim against Additional Defendant is or may be barred by estoppel.

34. Any claim against Additional Defendant is or may be barred by waiver, payment or release.

35. The sole, proximate cause of any alleged damage allegedly sustained by the Plaintiff may have been the act and/or conduct and/or negligence, carelessness, breach of contract, warranties, duties or obligations by persons or parties other than Additional Defendant or its agents, servants, workmen or employees.

36. Plaintiff may have knowingly and voluntarily assumed the risk of sustaining any alleged damage referenced to in Plaintiff's Complaint and, therefore, any recovery by the Plaintiff is barred by the doctrine of assumption of the risk.

37. Any damage allegedly sustained by Plaintiff may have been caused by or substantially contributed to by the negligence of Plaintiff and, therefore, any recovery by Plaintiff is barred by comparative negligence, or may be diminished in accordance with the Plaintiff's comparative negligence.

38. Additional Defendant did not make or breach any alleged warranties.

39. Any claim against Additional Defendant for alleged breach of warranty is barred by failure to give proper and adequate notice thereof, as required under the applicable laws, including the Uniform Commercial Code, the existence and issuance of any warranties by Additional Defendant, or any breach of any alleged warranties by Additional Defendant in the instant case, being expressly herein denied.

40. If any ceiling fan designed, manufactured or supplied by Additional Defendant was in place on the date of the alleged incident, then the sole, proximate cause of any alleged damage allegedly sustained by Plaintiff may have been the modification or substantial change of that ceiling fan after the ceiling fan left the possession and control of Additional Defendant by a person or party other than Additional Defendant or its agents, servants, workmen or employees, and over whom Additional Defendant had no control or right to control.

41. If any ceiling fan designed, manufactured or sold by Additional Defendant was in place on the date of the alleged accident, then the sole, proximate cause of any damage allegedly sustained by Plaintiff was due to the abnormal and unforeseeable, use, misuse or abuse of the ceiling fan by a person or party other than Additional Defendant, its agents, servants, workmen or employees, over whom Additional Defendant had no control or right of control.

42. Plaintiff's and/or original Defendant's claims may be barred by virtue of their failure to join necessary and indispensable parties.

43. Additional Defendant reserves unto itself the affirmative defense that the claims of the Plaintiff are or may be barred on the grounds that the Plaintiff, or others acting for or on its behalf, intentionally , recklessly, negligently and/or carelessly caused or contributed to the destruction, spoliation, loss or alteration of the product which is the subject of this action.

44. Additional Defendant reserves unto itself the affirmative defense that any product allegedly designed, manufactured and/or distributed by Anderson Company, Inc., were and are

regulated by various acts, laws, standards, rules and regulations enacted, adopted or promulgated by the United States Government, such that the claims of the Plaintiff are or may be preempted by federal law.

45. Additional Defendant denies any and all allegations contained in the several paragraphs and counts of the Complaint that allege or imply any negligence, strict liability in tort, carelessness, or other fault on the part of Additional Defendant; that allege or imply any breach of express or implied warranties which may apply to the product which is the subject of this action; that allege or imply any breach of express or implied warranties which may apply to the product which is the subject of this action; that allege or imply any fraudulent misrepresentations regarding the product which is the subject of this action; that allege or imply any willful wanton, reckless or other misconduct on the part of Additional Defendant with respect to the product which is the subject of this action; that allege or imply any responsibility, failure to meet a responsibility, or a violation of duty with respect to Additional Defendant; or that allege or imply that Additional Defendant violated any applicable statutes, rules, regulations or industry standards whatsoever with respect to the product which is the subject of this action or with respect to any claim asserted by Plaintiffs herein, as the same may prove applicable as discovery proceeds and the evidence is developed in this case.

#### **CROSS CLAIM AGAINST LOWE'S HOME CENTERS, INC.**

46. Additional Defendant denies any and all liability to the Plaintiff and asserts that Defendant Lowe's Home Centers, Inc., is alone liable and/or jointly and/or severally liable to the Plaintiff or is liable over to Additional Defendant for contribution or indemnification, or is jointly and/or severally liable with Additional Defendant on the Plaintiff's claims, which claims are hereby specifically denied.

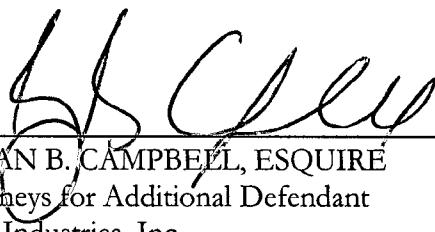
47. In the event that Plaintiff is entitled to recover damages, which right is specifically denied, then Additional Defendant avers that Defendant Lowe's Home Centers, Inc., is alone liable and/or jointly and/or severally liable to the Plaintiff for damages, for the reasons set forth in Plaintiff's Complaint, which are hereby incorporated by reference solely for the purpose of this cross-claim.

48. In the event that Plaintiff is entitled to recover damages, which right is specifically denied, then Additional Defendant avers that Defendant Lowe's Home Centers, Inc., is liable over to Additional Defendant for contribution and/or indemnity, or is jointly and/or severally liable with Additional Defendant on the Plaintiff's claims for damages and injuries, which claims are hereby specifically denied.

49. In the event that Plaintiff is entitled to recover damages, which right is specifically denied, then Additional Defendant avers that any and all injuries/damages alleged to have been sustained by the Plaintiff are the result of individuals/entities who are not parties to this law suit.

WHEREFORE, Additional Defendant, Litex Industries, Inc., requests that judgment be entered in its favor with costs in its behalf sustained.

BASHLINE & HUTTON

BY:   
BRYAN B. CAMPBELL, ESQUIRE  
Attorneys for Additional Defendant  
Litex Industries, Inc.

Albert v. Lowe's v. Litex  
04-369-CD

**VERIFICATION**

I, John Mans, state that I am the authorized representative of  
(Print Name)

Litex Industries, Inc., a Defendant herein. I aver that the statements of fact contained in the attached ANSWER, NEW MATTER AND CROSS CLAIM TO COMPLAINT TO JOIN are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

Dated: 02/07/05

John Mans, CFO  
Signature

1/31/05

RECEIVED  
FEB 10 2005

LOGGED IN LEGAL FILES  
SEND TO CLAIMS-EE

INDIVIDUAL INVESTIGATION  
MAIL LOGGED IN

PLAINTIFF DISCOVERY CORRESPONDENCE OTHER

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing RULE ANSWER, NEW MATTER AND CROSS CLAIM TO COMPLAINT TO JOIN was served via U.S. First Class Mail, postage pre-paid, on this 10<sup>th</sup> day of February, 2005, upon the following counsel of record:

S. Casey Bowers, Esquire  
HANAK, GUIDO AND TALADAY  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

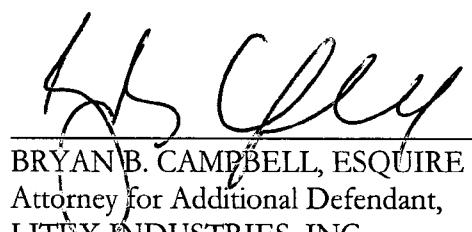
*(Attorney for Plaintiff)*

Edward A. Miller, Esquire.  
U.S. Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219-2702

*(Attorney for Defendant Lowes)*

BASHLINE AND HUTTON

BY:

  
BRYAN B. CAMPBELL, ESQUIRE  
Attorney for Additional Defendant,  
LITEX INDUSTRIES, INC.

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

WILLIAM S. ALBERT,  
Plaintiff

:  
: No. 04-369-CD

vs.

:  
: Type of Pleading:

LOWE'S HOME CENTERS, INC.,  
Defendant

:  
: **PLAINTIFF'S REPLY TO  
ADDITIONAL DEFENDANT'S  
NEW MATTER**

vs.

:  
: Filed on Behalf of:  
: PLAINTIFF

LITEX INDUSTRIES, INC.,  
Additional Defendant

:  
: Counsel of Record for  
: This Party:

:  
: S. Casey Bowers, Esq.  
: Supreme Court No. 89032  
: Hanak, Guido and Taladay  
: 498 Jeffers Street  
: P.O. Box 487  
: DuBois, PA 15801

:  
: 814-371-7768

FILED *m/19/02/05*  
*cc*  
FEB 22 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT,	:	
Plaintiff	:	
vs.	:	No. 04-369-CD
LOWE'S HOME CENTERS, INC.,	:	
Defendants	:	
vs.	:	
LITEX INDUSTRIES, INC.,	:	
Additional Defendant	:	

**PLAINTIFF'S REPLY TO ADDITIONAL  
DEFENDANT'S NEW MATTER**

AND NOW, comes the Plaintiff, WILLIAM S. ALBERT, by and through his attorneys, HANAK, GUIDO AND TALADAY, and hereby presents the following Reply to New Matter as follows:

26. Denied. The averments set forth in Paragraph 26 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

27. Denied. The averments set forth in Paragraph 27 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

28. Denied. The averments set forth in Paragraph 28 of Additional Defendant's New Matter sets forth legal conclusions. As

such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

29. Denied. The averments set forth in Paragraph 29 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

30. Denied. The averments set forth in Paragraph 30 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

31. Denied. The averments set forth in Paragraph 31 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

32. Denied. The averments set forth in Paragraph 32 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

33. Denied. The averments set forth in Paragraph 33 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

34. Denied. The averments set forth in Paragraph 34 of Additional Defendant's New Matter sets forth legal conclusions. As

such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

35. Denied. The averments set forth in Paragraph 35 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

36. Denied. The averments set forth in Paragraph 36 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

37. Denied. The averments set forth in Paragraph 37 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

38. Denied. The averments set forth in Paragraph 38 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

39. Denied. The averments set forth in Paragraph 39 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

40. Denied. The averments set forth in Paragraph 40 of Additional Defendant's New Matter sets forth legal conclusions. As

such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

41. Denied. The averments set forth in Paragraph 41 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

42. Denied. The averments set forth in Paragraph 42 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

43. Denied. The averments set forth in Paragraph 43 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

44. Denied. The averments set forth in Paragraph 44 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

45. Denied. The averments set forth in Paragraph 45 of Additional Defendant's New Matter sets forth legal conclusions. As such, no response is necessary. To the extent a response is necessary, said averments are denied and strict proof is demanded at trial.

WHEREFORE, Plaintiff demands judgment in his favor, together with the additional relief this Court deems just and equitable.

HANAK, GUIDO AND TALADAY, by:

S. Bowers

S. Casey Bowers  
Attorney for Plaintiff

**VERIFICATION**

I, S. CASEY BOWERS, hereby verify that the statements contained in the foregoing Reply to Additional Defendant's New Matter are correct to the best of my personal knowledge or information and belief.

At the time of the signing of this Verification, the Plaintiff was unavailable. The undersigned has sufficient knowledge to sign this Verification as I am counsel for Plaintiff and possess a detailed knowledge of the case.

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



---

S. Casey Bowers  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 18 day of February, 2005, I served a copy of the within Plaintiff's Reply to Additional Defendant's New Matter by first class mail, postage prepaid, on the following:

Edward A. Miller, Esq.  
Marshall, Dennehey, Warner  
Coleman and Goggin  
Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219

Bryan B. Campbell, Esq.  
Bashline & Hutton  
Suite 3500 One Oliver Plaza  
210 Sixth Avenue  
Pittsburgh, PA 15222

  
\_\_\_\_\_  
S. Casey Bowers  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

NO. 04-369-CD

vs.

**NOTICE OF FILING OF EXHIBITS  
TO COMPLAINT TO JOIN  
ADDITIONAL DEFENDANT**

LOWE'S HOME CENTERS, INC.,

Defendant,

**Filed on behalf of Defendant, Lowe's  
Home Centers, Inc.**

vs.

LITEX INDUSTRIES, INC.,

Additional Defendant.

Counsel of Record for the Defendant:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN, P.C.  
US Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
(412) 803-1188 - Fax

**FILED**  
m 11/34/04 NO  
MAR 23 2005  
cc  
b/w

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,	)	CIVIL DIVISION
	)	
Plaintiff,	)	NO. 04-369-CD
	)	
vs.	)	
	)	
LOWE'S HOME CENTERS, INC.,	)	
	)	
Defendant,	)	
	)	
vs.	)	
	)	
LITEX INDUSTRIES, INC.,	)	
	)	
Additional Defendant.	)	

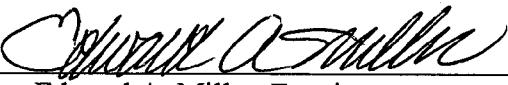
**NOTICE OF FILING OF EXHIBITS TO**  
**COMPLAINT TO JOIN ADDITIONAL DEFENDANT**

Please take notice that attached hereto are true and correct copies of Exhibit "D" and Exhibit "E" to Complaint to Join Additional Defendant. These exhibits were inadvertently omitted from the referenced pleading, which was served upon all counsel of record.

As referenced in Paragraph 9 of the Complaint to Join Additional Defendant, Exhibit "D" is a true and correct copy of a replacement statement produced by Plaintiff's counsel for a Lowe's credit card issued to Fred H. Albert, who is the brother of Plaintiff, William S. Albert. As referenced in Paragraph 10 of the Complaint to Join Additional Defendant, Exhibit "E" is a true and correct copy of a sales receipt signed by Eleanor Albert for the purchase on December 9, 2001, of a 52 inch Aristocrat ceiling fan, model no. 61412. Defendant, Lowe's Home Centers, Inc., incorporate by reference these and all other allegations of the Complaint to Join Additional Defendant as if set forth herein at length.

Respectfully submitted,

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

By:   
Edward A. Miller, Esquire

2900 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
FAX (412) 803-1188  
[emiller@mdwcg.com](mailto:emiller@mdwcg.com)

Counsel for Defendant,  
Lowe's Home Centers, Inc.

**Complaint To Join Additional Defendant  
Exhibit D**

Thank you for your recent inquiry regarding your account.  
Your 12/11/01 billing is detailed below.

ACCOUNT NUMBER: C81923390595496

NUMBER OF PAYMENTS DUE NOW 01

CUSTOMER NAME: FRED H ALBERT  
ADDRESS: 259 HUCKLEBERRY HILL LANE  
16878-0000

PREVIOUS MONTH'S BALANCE	CHARGES	FINANCE CHARGES	PAYMENTS/ CREDITS	YOUR NEW BALANCE	MONTHLY PAYMENT DUE	AMOUNT NOW DUE
.00	10,982.90	.00	.00	10,982.90	15.00	15.00

DATE	REF#-BUNDLE INV#	SOS	DESCRIPTION	CHARGES	PAYMENTS
				CHARGES	CREDITS
11/11/01	73160558	12	0001010 PAINT WATERPROOF 12002 PLUMBING-WATER FILTERS & ACSES PAINT-ROLLER COVERS-WOOSTER PAINT-ROLLERS FRAMES & PADS PAINT-ROLLERS FRAMES & PADS PAINT-ROLLERS FRAMES & PADS ELECTRICAL-WALL PLATES	51.84	
11/19/01	73240593	20	0001010 SPECIAL PROMOTION - NO PAYMENT 96918 SOS CROSS CREEK CABINETS SOS CROSS CREEK CABINETS	8,512.36	
11/28/01	73330590	29	0001010 SOS KRAFTMAID CABINETS 97488 SOS KRAFTMAID CABINETS SOS KRAFTMAID CABINETS SOS KRAFTMAID CABINETS SOS KRAFTMAID CABINETS SOS KRAFTMAID CABINETS ADMINISTRATIVE ITEMS	2,147.34	
12/09/01	73440563	10	0001010 PLUMBING:TUB ENCLOSURES 06344 FANS - CEILING	271.36	

Fred H. Albert Lowe's Account 79 2339 0595496

Previous Balance \$10,982.90

Date	Charges	Payments	Credits	Late Fees	Fin. Chgs	Balance
Jan-02						
23-Dec		\$15.00				
13-Dec	\$109.13					
1-Jan	\$198.64					
2-Jan	\$69.82					
5-Jan	\$563.63					
7-Jan		\$87.20				
12-Jan					\$135.97	\$11,957.49

**Complaint To Join Additional Defendant  
Exhibit E**

**LOWE'S**  
(814)372-8640

-SALE-

SALES #: S1010881 116352 12-09-01

61412 CFAN 52" AB ABIST 89.00  
72916 59" TUB DR PARS E 187.00

SUBTOTAL: 258.00  
TAX 38350 : 15.36  
INVOICE 00344 TOTAL: 271.36

BALANCE DUE: 271.36

CCC : 271.36

CCC 6902523390595496 1204 001163

AMOUNT: 271.36

THIS PURCHASE IS MADE IN ACCORDANCE  
WITH THE TERMS OF MY REVOLVING CREDIT  
ACCOUNT AGREEMENT, INCLUDING RETENTION  
OF A PURCHASE MONEY SECURITY INTEREST  
IN THE MERCHANDISE PURCHASED.  
I ACKNOWLEDGE RECEIPT OF A COPY OF THE  
SALES SLIP.

Eleanor Albert

CUSTOMER SIGNATURE  
CUSTOMER: ELEANOR ALBERT

TRANSACTION ID: 0000000000000000

1010 TERMINAL: 06 12/09/01 15:14:41

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Notice of Filing of Exhibits to Complaint to Join Additional Defendant have been sent on this 21<sup>ST</sup> day of March 2005, by U.S. Mail, postage prepaid to all counsel of record addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Bryan B. Campbell, Esquire  
Bashline & Hutton  
One Oliver Plaza, Suite 3500  
210 Sixth Avenue  
Pittsburgh, PA 15222

**MARSHALL, DENNEHEY, WARNER  
COLEMAN AND GOGGIN, P.C.**

By   
Edward A. Miller, Esquire

\12\_ALIAB\EAM\LLPG\355704\HXS\12240\00223

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

Plaintiff,

vs.

LOWE'S HOME CENTERS, INC.,

Defendant,

vs.

LITEX INDUSTRIES, INC.,

Additional Defendant.

CIVIL DIVISION

NO. 04-369-CD

**REPLY TO LITEX'S NEW MATTER  
AND CROSS CLAIM**

**Filed on behalf of Defendant, Lowe's  
Home Centers, Inc.**

Counsel of Record for the Defendant:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN, P.C.  
US Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
(412) 803-1188 - Fax

FILED  
M 11 34 84  
MAR 23 2005  
NO CC  
6K

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,	)	CIVIL DIVISION
	)	
Plaintiff,	)	NO. 04-369-CD
	)	
vs.	)	
	)	
LOWE'S HOME CENTERS, INC.,	)	
	)	
Defendant,	)	
	)	
vs.	)	
	)	
LITEX INDUSTRIES, INC.,	)	
	)	
Additional Defendant.	)	

**REPLY TO LITEX'S NEW MATTER AND CROSS CLAIM**

Defendant, Lowe's Home Centers, Inc., by and through its undersigned attorneys, hereby asserts the following Reply to the New Matter and Cross Claim asserted by Additional Defendant, Litex Industries, Inc., and in support thereof, avers as follows:

26. Denied generally pursuant to Pa.R.Civ.P. 1029(e).
27. Denied generally pursuant to Pa.R.Civ.P. 1029(e).
28. Denied generally pursuant to Pa.R.Civ.P. 1029(e)
29. Answering Defendant does not dispute the fact that some or all of the damages alleged by the Plaintiff may not be recoverable under applicable law and reserves the right to maintain such arguments that may be supported by the laws of the Commonwealth of Pennsylvania.

30. Denied generally pursuant to Pa.R.Civ.P. 1029(e).
31. Denied generally pursuant to Pa.R.Civ.P. 1029(e).
32. Denied generally pursuant to Pa.R.Civ.P. 1029(e).
33. Denied generally pursuant to Pa.R.Civ.P. 1029(e).
34. Denied generally pursuant to Pa.R.Civ.P. 1029(e).
35. Denied generally pursuant to Pa.R.Civ.P. 1029(e).
36. Answering Defendant does not deny that the Plaintiff may have knowingly and voluntarily assumed the risk of sustaining any alleged damage referenced in the Plaintiff's Complaint and that any recovery by the Plaintiff may be barred by the doctrine of assumption of the risk. Answering Defendant reserves the right to make such an argument as may be warranted by the evidence developed during discovery in this case.
37. Answering Defendant does not deny that any damages allegedly sustained by the Plaintiff may have been caused by, or substantially contributed to by the negligence of the Plaintiff, and that the Plaintiff's recovery may be barred by comparative negligence, or may be diminished in accordance with the Plaintiff's comparative negligence. Answering Defendant reserves the right to make such an argument as may be supported by the evidence developed during discovery in this case.
38. Denied generally pursuant to Pa.R.Civ.P. 1029(e)
39. Denied generally pursuant to Pa.R.Civ.P. 1029(e).

40. Denied. After reasonable inquiry, the information known or readily obtainable by answering Defendant is insufficient to enable it to form a belief as to the truth of these averments. Answering Defendant specifically denies to the extent that it may be averred that it modified or made any substantial changes to the ceiling fan purchased by Eleanor Albert and allegedly given to the Plaintiff, William Albert. However, answering Defendant reserves the right to argue as the evidence may be developed during discovery in this case that individuals or entities other than answering Defendant may have modified or substantially changed that ceiling fan.

41. Denied. After reasonable inquiry, the information known or readily obtainable by answering Defendant is insufficient to enable it to form a belief as to the truth of these averments. To the extent that it may be averred, answering Defendant denies that it abused or misused the subject ceiling fan. However, answering Defendant reserves the right to make any arguments that may be supported by the evidence developed during discovery in this case that the Plaintiff's alleged damages are attributable to abnormal and unforeseeable use, misuse or abuse of the subject ceiling fan.

42. Denied generally pursuant to Pa.R.Civ.P. 1029(e).

43. Denied. After reasonable inquiry, the information known or readily obtainable by answering Defendant is insufficient to enable it to form a belief as to the truth of these averments. However, answering Defendant reserves the right to make such arguments if supported by the evidence developed during discovery of this case.

44. Denied generally pursuant to Pa.R.Civ.P. 1029(e). Further, there are no averments that any product involved in this lawsuit was allegedly designed, manufactured and/or distributed by Anderson Company, Inc.

45. Answering Defendant denies that Additional Defendant, Litex Industries, Inc., may not be alone liable to the Plaintiff; jointly and/or severally liable to the Plaintiff; and/or liable over to Defendant, Lowe's Home Centers, Inc., for contribution or indemnification. Answering Defendant incorporates by reference all allegations of its Complaint to Join Additional Defendant plus the Exhibits attached to the Notice of Filing of Exhibits as if set forth herein at length.

WHEREFORE, Defendant, Lowe's Home Centers, Inc., demands that a judgment be entered in its favor and against the Plaintiff and Additional Defendant, Litex Industries, Inc., together with all costs incurred in defending this lawsuit, including attorney's fees, as well as any other relief deemed appropriate by this Court.

**REPLY TO CROSS CLAIM AGAINST LOWE'S HOME CENTERS, INC.**

Defendant, Lowe's Home Centers, Inc., asserts the following reply to the cross claim asserted by Additional Defendant, Litex Industries, Inc.:

46. Denied generally pursuant to Pa.R.Civ.P. 1029(e). Further, answering Defendant incorporates by reference all averments set forth in its Answer to Plaintiff's Amended Complaint and New Matter, Complaint to Join Additional Defendant, and the Exhibits attached to its Notice of Filing of Exhibits as if set forth herein at length.

47. Denied generally pursuant to Pa.R.Civ.P. 1029(e). Further, answering Defendant incorporates by reference all averments set forth in its Answer to Plaintiff's Amended Complaint and New Matter, Complaint to Join Additional Defendant, and the Exhibits attached to its Notice of Filing of Exhibits as if set forth herein at length.

48. Denied generally pursuant to Pa.R.Civ.P. 1029(e). Further, answering Defendant incorporates by reference all averments set forth in its Answer to Plaintiff's Amended Complaint and New Matter, Complaint to Join Additional Defendant, and the Exhibits attached to its Notice of Filing of Exhibits as if set forth herein at length.

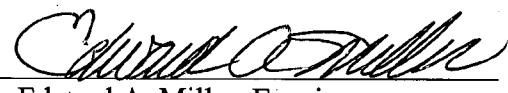
49. Denied generally pursuant to Pa.R.Civ.P. 1029(e). Further, answering Defendant incorporates by reference all averments set forth in its Answer to Plaintiff's Amended Complaint and New Matter, Complaint to Join Additional Defendant, and the Exhibits attached to its Notice of Filing of Exhibits as if set forth herein at length.

WHEREFORE, Defendant, Lowe's Home Centers, Inc., demands that a judgment be entered in its favor and against the Plaintiff and Additional Defendant, Litex Industries, Inc.,

together with all costs incurred in defending this lawsuit, including attorney's fees, as well as any other relief deemed appropriate by this Court.

Respectfully submitted,

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

By:   
Edward A. Miller, Esquire

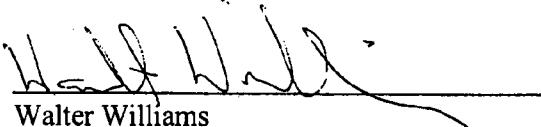
2900 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
FAX (412) 803-1188  
[emiller@mdwcg.com](mailto:emiller@mdwcg.com)

Counsel for Defendant,  
Lowe's Home Centers, Inc.

**VERIFICATION**

I, Walter Williams, am currently the manager of liability and property claims for Lowe's Companies, Inc. and am an authorized agent for Lowe's Home Centers, Inc. I hereby verify that the factual statements made in the Complaint to Join Additional Defendant and the Reply to Litex's New Matter and Cross Claim of Defendant, Lowe's Home Centers, Inc. are true and correct to the best of the corporation's knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

DATE: 3-1-05



Walter Williams

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing **REPLY TO LITEX'S NEW MATTER AND CROSS CLAIM** have been sent on this 21<sup>ST</sup> day of March, 2005, by U.S. Mail, postage prepaid to all counsel of record addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Bryan B. Campbell, Esquire  
Bashline & Hutton  
One Oliver Plaza, Suite 3500  
210 Sixth Avenue  
Pittsburgh, PA 15222

**MARSHALL, DENNEHEY, WARNER  
COLEMAN AND GOGGIN, P.C.**

By:   
Edward A. Miller, Esquire

\12\_A\LIAB\EAM\LLPG355705\HXS\12240\00223

**FILED**

SEP 08 2005

07/11/05 (mm)  
William A. Shaw

Prothonotary/Clerk of Courts

3 cent to file (6)

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

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

NO. 04-369-CD

vs.

**STIPULATED MOTION FOR LEAVE  
TO JOIN ADDITIONAL DEFENDANT**

LOWE'S HOME CENTERS, INC.,

**Filed on behalf of Defendant, Lowe's  
Home Centers, Inc.**

vs.

LITEX INDUSTRIES, INC.,

Counsel of Record for the Defendant:

Additional Defendant.

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN, P.C.  
US Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
(412) 803-1188 - Fax

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

WILLIAM S. ALBERT,	)	CIVIL DIVISION
	)	
Plaintiff,	)	NO. 04-369-CD
	)	
vs.	)	
	)	
LOWE'S HOME CENTERS, INC.,	)	
	)	
Defendant,	)	
	)	
vs.	)	
	)	
LITEX INDUSTRIES, INC.,	)	
	)	
Additional Defendant.	)	

**STIPULATED MOTION FOR LEAVE TO JOIN ADDITIONAL DEFENDANT**

Defendant, Lowe's Home Centers, Inc., by and through its undersigned counsel, with the consent of counsel for Plaintiff, William Albert, hereby moves this Court for leave to join Hunter Fan Company as an Additional Defendant to this lawsuit, and in support thereof avers as follows:

1. In this lawsuit, Plaintiff, William Albert, contends that his home located in West Decatur, PA was destroyed by a fire on October 20, 2003. In his Amended Complaint, the Plaintiff alleges that the source or origin of the fire was a ceiling fan allegedly purchased on or about December 13, 2001 by the Plaintiff's sister-in-law from a Lowe's store located in Altoona, PA.

2. Plaintiff's counsel produced various credit card statements which the Plaintiff claimed were for the purchase of the subject ceiling fan. Based upon a review of these credit card statements, Defendant, Lowe's Home Centers, Inc., believed that the subject ceiling fan was manufactured by Litex Industries, Inc. Accordingly, after being granted leave of court, Defendant,

Lowe's Home Centers, Inc., filed on January 27, 2005 a Complaint to Join Additional Defendant whereby Litex Industries, Inc. was joined as an Additional Defendant to this lawsuit.

3. On April 5, 2005, the deposition of the Plaintiff's sister-in-law, Eleanor Albert, was taken. During the course of this deposition, Mrs. Albert was shown a December 9, 2001 sales receipt that she signed, which Defendant, Lowe's Home Centers, Inc., used to identify Litex Industries, Inc. as the manufacturer of what was believed to be the subject ceiling fan. Mrs. Albert was also shown a page from a Lowe's catalogue, which had a picture of the Litex fan that Mrs. Albert purchased on December 9, 2001 per the referenced sales receipt. Mrs. Albert confirmed that she purchased the Litex fan, but said that it was not the one she gave to the Plaintiff and which allegedly is the source of the subject fire. Rather, Mrs. Albert testified that she likely purchased the subject ceiling fan that she gave to the Plaintiff in late October or November 2001 and used her Lowe's credit card or a Cabela's Visa for the purchase.

4. Thereafter, Plaintiff's counsel produced a Cabela's Visa statement and also an A & T credit card statement, which had Lowe's purchases on them during the October-November 2001 period. Defendant, Lowe's Home Centers, Inc., reviewed these credit card statements and determined that none of the purchases identified on these statements were for a ceiling fan.

5. Thereafter, counsel for the parties agreed to thoroughly inspect the remnants of the subject ceiling fan, which was charred as a result of the subject fire, in order to determine whether there may be any identifying markings remaining on the fan, which would identify the manufacturer. This inspection took place on August 24, 2005. During the course of this inspection, a Hunter logo was found on the motor housing of the subject ceiling fan.

6. Defendant, Lowe's Home Center, Inc., checked its records and verified that it sold in 2001 a ceiling fan manufactured by the Hunter Fan Company matching the general description provided by the Plaintiff and his sister-in-law.

7. Accordingly, Plaintiff, William Albert, and Defendant, Lowe's Home Centers, Inc., jointly seek leave of court to join Hunter Fan Company to this lawsuit as an additional Defendant since it is believed that this entity is the manufacturer of the ceiling fan that allegedly is the source of the fire that destroyed the Plaintiff's home on or about October 20, 2003.

8. Pursuant to recently amended Pa. R.Civ.P. 2253, an additional defendant may be joined to a lawsuit later than sixty days after service upon the original defendant of the initial pleading of the Plaintiff or any amended thereof if the joinder is allowed by order of the Court or by written consent of all parties approved by and filed with the Court. The praecipe for writ to join an additional defendant or the complaint join the additional defendant shall be filed within twenty (20) days after notice of the Court's Order or the Court's approval of the written consent or within such other time as the Court shall fix.

9. Plaintiff, William Albert, and Defendant, Lowe's Home Centers, Inc., have agreed to dismiss Additional Defendant, Litex Industries, Inc., without prejudice from this lawsuit. The appropriate Praecipe to Discontinue is currently being circulated by counsel and shall be filed with the Court. Accordingly, the consent of Additional Defendant, Litex Industries, Inc., to the joinder of Hunter Fan Company to this lawsuit is not necessary. However, it is believed that Additional Defendant, Litex Industries, Inc., does not have any objection to the proposed joinder.

WHEREFORE, Defendant, Lowe's Home Center, Inc., with the consent of Plaintiff, William Albert, respectfully requests that this Court enter an order approving and granting leave to

Defendant, Lowe's Home Centers, Inc., to join Hunter Fan Company as an Additional Defendant to this lawsuit within twenty (20) days. A proposed order is attached.

MARSHALL DENNEHEY WARNER  
COLEMAN AND GOGGIN, P.C.

By: 

Edward A. Miller, Esquire  
PA ID #58954

US Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
412-803-1140

Counsel for Defendant,  
Lowe's Home Centers, Inc.

CONSENTED TO:  
HANAK, GUIDO & TALADAY

By: 

S. Casey Bowers, Esquire  
PA ID # 89032

498 Jeffers Street  
P.O Box 487  
Dubois, PA 15801  
814-371-7768

Counsel for Plaintiff, William S. Albert

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT, ) CIVIL DIVISION  
)  
Plaintiff, ) NO. 04-369-CD  
)  
vs. )  
)  
LOWE'S HOME CENTERS, INC., )  
)  
Defendant, )  
)  
vs. )  
)  
LITEX INDUSTRIES, INC., )  
)  
Additional Defendant. )

FILED

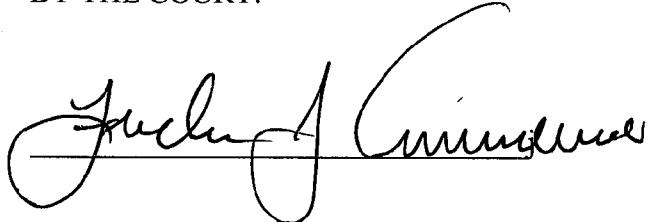
SEP 08 2005  
William A. Shaw  
Prothonotary/Clerk of Courts

3 cens to Attn

ORDER OF COURT

AND NOW, on this 8<sup>th</sup> day of September, 2005, upon consideration of the Stipulated Motion for Leave of Court to Join Additional Defendant of Defendant, Lowe's Home Centers, Inc., which was consented to by the Plaintiff, William S. Albert, it is hereby ORDERED, ADJUDGED AND DECREED that the Court hereby grants leave to Defendant, Lowe's Home Centers, Inc., to join Hunter Fan Company as an Additional Defendant to this lawsuit by the filing of a Praecept for a Writ to Join or the filing of a Complaint within twenty (20) days after receiving notice of this Order.

BY THE COURT:



COPIES TO:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801  
*Counsel for Plaintiff*

Edward A. Miller, Esquire  
Marshall, Dennehey, Warner, Coleman & Goggin, P.C.  
U.S. Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
*Counsel for Lowe's Home Centers, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Stipulated Motion for Leave to  
Join Additional Defendant have been sent on this 6<sup>th</sup> day of September, 2005, by U.S. Mail,  
postage prepaid to all counsel of record addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Bryan B. Campbell, Esquire  
Bashline & Hutton  
One Oliver Plaza, Suite 3500  
210 Sixth Avenue  
Pittsburgh, PA 15222

**MARSHALL, DENNEHEY, WARNER  
COLEMAN AND GOGGIN, P.C.**

By:   
Edward A. Miller, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

WILLIAM S. ALBERT,  Plaintiff,  vs.  LOWE'S HOME CENTERS, INC.,  Defendant,  vs.  LITEX INDUSTRIES, INC.,  Additional Defendant.	CIVIL DIVISION  No. 04-369-CD  ISSUE NO.:  <b>PRAECIPE TO DISCONTINUE AS TO LITEX INDUSTRIES, INC. BY STIPULATION OF ALL PARTIES PURSUANT TO Pa.R.C.P. 229</b>  Filed on Behalf of Additional Defendant: LITEX INDUSTRIES, INC.  Counsel of Record for this Party:  BRYAN B. CAMPBELL PA I.D. No. 39312  BASHLINE & HUTTON Suit 3500 One Oliver Plaza 210 Sixth Avenue Pittsburgh, PA 15222 (412) 434.0201  Firm I.D. No.: 150
--	--

3cc  
m11:2761 Atty Campbell  
SEP 15 2005 Copy to CLA  
William A. Shaw  
Prothonotary/Clerk of Courts  
6K

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

WILLIAM S. ALBERT,  Plaintiff,  vs.  LOWE'S HOME CENTERS, INC.,  Defendant,  vs.  LITEX INDUSTRIES, INC.,  Additional Defendant.	CIVIL DIVISION  No. 04-369-CD  ISSUE NO.:
--	---

**PRAECIPE TO DISCONTINUE AS TO LITEX INDUSTRIES, INC. BY  
STIPULATION OF ALL PARTIES PURSUANT TO Pa.R.C.P. 229**

To The Prothonotary:

By consent of all parties, you are hereby directed to enter a Discontinuance, without prejudice, as to Additional Defendant Litex Industries, Inc. pursuant to Pa.R.C.P. 229.

Prepared by:



Bryan B. Campbell, Esquire  
Baseline & Hutton  
Suite 3500 One Oliver Plaza  
Pittsburgh, PA 15222  
(412) 434-0201  
*Counsel for Additional Defendant Litex Industries, Inc.*

Consented to by:



Edward A. Miller, Esquire  
Marshall, Dennehey, Warner, Coleman and Goggin  
U.S. Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
*Counsel for Defendant Lowe's Home Centers, Inc.*



\_\_\_\_\_  
S. Casey Bowers  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
Dubois, PA 15801  
(814) 371-7768  
*Counsel for Plaintiff William S. Albert*

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

WILLIAM S. ALBERT,

Plaintiff,

vs.

LOWE'S HOME CENTERS, INC.,

Defendant,

vs.

HUNTER FAN COMPANY,

Additional Defendant.

CIVIL DIVISION

NO. 04-369-CD

**COMPLAINT TO JOIN ADDITIONAL  
DEFENDANT, HUNTER FAN  
COMPANY**

Counsel of Record for the Defendant:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN, P.C.  
US Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
(412) 803-1188 - Fax

FILED *no cc*  
M 11:35 AM  
SEP 20 2005  
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William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT,	)	CIVIL DIVISION
	)	
Plaintiff,	)	NO. 04-369-CD
	)	
vs.	)	
	)	
LOWE'S HOME CENTERS, INC.,	)	
	)	
Defendant,	)	
	)	
vs.	)	
	)	
HUNTER FAN COMPANY,	)	
	)	
Additional Defendant.	)	

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any relief requested by the Plaintiff and/or Defendant, Lowe's Home Centers, Inc. 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, GOT TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE AT REDUCED FEE OR NO FEE.

Court Administrator  
Clearfield County Courthouse  
Second 7 Market Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. 1300

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

WILLIAM S. ALBERT,	)	CIVIL DIVISION
	)	
Plaintiff,	)	NO. 04-369-CD
	)	
vs.	)	
	)	
LOWE'S HOME CENTERS, INC.,	)	
	)	
Defendant,	)	
	)	
vs.	)	
	)	
HUNTER FAN COMPANY,	)	
	)	
Additional Defendant.	)	

**COMPLAINT TO JOIN ADDITIONAL DEFENDANT, HUNTER FAN COMPANY**

Defendant, Lowe's Home Centers, Inc., by and through its undersigned attorneys, hereby asserts the following claims against Additional Defendant, Hunter Fan Company:

1. Plaintiff, William S. Albert, allegedly is an adult individual residing at 308 Huckleberry Hill Lane, West Decatur, Clearfield County, PA 16878.
2. Defendant, Lowe's Home Centers, Inc., is a North Carolina corporation with a principle place of business located at Highway 268 East, North Wilkesboro, NC 28656.
3. Additional Defendant, Hunter Fan Company, is a Delaware corporation that has a principle place of business or headquarters located 2500 Frisco Avenue, Memphis, TN 38114.
4. In his Amended Complaint, a true and correct copy of which is attached hereto as Exhibit "A" and is incorporated herein by reference, Plaintiff, William S. Albert, alleges that on or

about October 20, 2003 a fire destroyed his home and caused him to sustain damages in the amount of \$138,482.09.

5. Plaintiff, William S. Albert, alleges that the subject fire was caused by an allegedly defective ceiling fan which was purchased on or about December 13, 2001, by the Plaintiff's sister-in-law, Eleanor Albert, at a Lowe's store located in Altoona, PA.

6. Plaintiff, William S. Albert, contends in his Amended Complaint that Defendant, Lowe's Home Centers, Inc., should be strictly liable for the Plaintiff's claimed damages because the ceiling fan that allegedly was purchased by the Plaintiff's sister-in-law and installed in the Plaintiff's home was defective.

7. Defendant, Lowe's Home Centers, Inc., has filed an Answer to the Plaintiff's Amended Complaint and New Matter, a true and correct copy of which is attached hereto as Exhibit "B" and is incorporated herein by reference. Defendant, Lowe's Home Centers, Inc., denies any and all liability to the Plaintiff.

8. Plaintiff, William S. Albert, has filed a Reply to the New Matter asserted by Defendant, Lowe's Home Centers, Inc., a true and correct copy of which is attached hereto as Exhibit "C".

9. The depositions of Plaintiff, William S. Albert, and Eleanor Albert, were taken on April 5, 2005. The Plaintiff and his sister-in-law testified during these depositions that the ceiling fan which allegedly is the source of the subject fire was purchased by Mrs. Albert in November 2001 at a Lowe's store located in DuBois, PA and was given to the Plaintiff, William Albert, and installed in Mr. Albert's home shortly before Thanksgiving 2001. See excerpts of from transcripts

of deposition testimony attached hereto as Exhibit "D." By referencing this deposition testimony, Defendant, Lowe's Home Centers, Inc., is neither admitting or denying its veracity.

10. Defendant, Lowe's Home Centers, Inc., was unable to identify the manufacturer of the subject ceiling fan until the fan was produced for inspection by the Plaintiff on August 24, 2005. Visual inspection performed on that date revealed the presence of a Hunter logo embossed into the metal surface of the housing of the fan motor.

11. Based upon the presence of the Hunter logo on the subject ceiling fan, Defendant, Lowe's Home Centers, Inc., believes and avers that Additional Defendant, Hunter Fan Company, is the manufacturer or supplier of the ceiling fan allegedly purchased by Eleanor Albert at the Lowe's Dubois, PA store in approximately November 2001; was given to Plaintiff, William S. Albert, and installed in his home; and which the Plaintiff contends is defective and the cause of a fire that destroyed his home.

12. Additional Defendant, Hunter Fan Company, as part of its normal course of business engages in the design, manufacture and/or sale or supply of ceiling fans and supplies ceiling fans to Defendant, Lowe's Home Centers, Inc., for sale to the general public.

#### **COUNT I – STRICT LIABILITY**

13. Defendant, Lowe's Home Centers, Inc., incorporates by reference the allegations of paragraphs 1-12 of its Complaint to Join Additional Defendant as if set forth herein at length.

14. In his Amended Complaint, Plaintiff, William S. Albert, claims that the ceiling fan installed in his home was in a defective condition and unreasonably dangerous when it left the control of Defendant, Lowe's Home Centers, Inc., because:

- a. The product lacked all features necessary for its safe ownership, maintenance and operation;
- b. The product lack adequate safeguards and warnings of its defect;
- c. The product presented a reasonable (sic) risk of causing fire; and
- d. The product malfunctioned in such a manner that an absence of defect would not have occurred.

15. The Plaintiff contends in his Amended Complaint that the referenced defective condition of the subject ceiling fan caused him to sustain damages in the amount of \$138,482.09.

16. Defendant, Lowe's Home Centers, Inc., did not alter or modify the subject ceiling fan after its receipt from Additional Defendant, Hunter Fan Company, and prior to sale to Eleanor Albert.

17. In the event that the Plaintiff, William S. Albert, can sustain the allegations of his Amended Complaint, which is specifically denied, then Defendant, Lowe's Home Centers, Inc., alleges and avers that Additional Defendant, Hunter Fan Company, as the designer, manufacturer and/or supplier of the subject ceiling fan, is alone liable to the Plaintiff; jointly and/or severally liable to the Plaintiff; and/or liable over to Defendant, Lowe's Home Centers, Inc., for contribution or indemnification.

WHEREFORE, Defendant, Lowe's Home Centers, Inc., demands that judgment be entered in its favor and against the Plaintiff and/or additional Defendant, Hunter Fan Company, together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

## **COUNT II – INDEMNIFICATION AND BREACH OF CONTRACT**

18. Defendant, Lowe's Home Centers, Inc., incorporates by reference the allegations of Paragraphs 1-17 of its Complaint to Join Additional Defendant as if set forth herein at length.

19. Defendant, Lowe's Home Centers, Inc., and Additional Defendant, Hunter Fan Company, entered a Lowe's Master Standard Buying Agreement dated January 5, 1999. A true and correct copy of this Lowe's Master Standard Buying Agreement is attached hereto as Exhibit "E" and is incorporated herein by reference.

20. Additional Defendant, Hunter Fan Company, entered into a LGS Master Standard Buying Agreement with LG Sourcing, Inc. dated May 31, 2001. A true and correct copy of this LGS Master Standard Buying Agreement is attached hereto as Exhibit "F" and is incorporated herein by reference.

21. Pursuant to Article V, paragraph (5) of the Lowe's Master Standard Buying Agreement, Additional Defendant, Hunter Fan Company, which is the "Vendor" referenced in said agreement, agreed to indemnify and hold harmless Defendant, Lowe's Home Centers, Inc., "from and against any and all liability and/or losses and/or damages, whether compensatory or punitive, which may be assessed against [Lowe's Home Centers, Inc.] as is further set forth below. Vendor's obligation to indemnify and hold harmless [Lowe's Home Centers, Inc.] shall include, but not be limited to, any and all claims, lawsuits, appeals, actions, assessments, product recalls, decrees, judgments, orders, investigations, civil penalties or demands of any kind, including court costs, expenses and attorney's fees, which may be made or brought against [Lowe's Home Centers, Inc.] or third-parties of said merchandise; any allegation of or actual misrepresentation or breach of warranty, express or implied, in fact or by law, with respect to the possession, purchase or use of said merchandise; any alleged bodily injury or property damage related to the possession or use of

said merchandise; ... or any breach or violation by Vendor of any terms or conditions of the Order. Vendor shall pay all judgments against and assuming the defense within a reasonable time for any and all liability of [Lowe's Home Centers, Inc.] with respect to any such matters, even if any such allegation of liability is groundless, false or fraudulent. Notwithstanding the above, [Lowe's Home Centers, Inc.] shall have the right but not the obligation to participate as it deems necessary in the handling, adjustment or defense of any such matter. ... Should Vendor fail to assume its obligations hereunder, to diligently pursue and pay for the defense of [Lowe's Home Centers, Inc.] within a reasonable time, Vendor hereby agrees that [Lowe's Home Centers, Inc.] shall have the right, but not the obligation to proceed on [Lowe's Home Centers, Inc.'s] own behalf to defend itself by way of engaging its own legal counsel and the services of any and all other experts or professionals it deems necessary to prepare and present a proper defense, and thereafter require from Vendor reimbursement and indemnification for all costs and expenses incurred in such defense and for any and all penalties, judgments, fines, interest or other expenses to incurred as a result of such claim, lawsuit, appeal, action, assessment, civil penalty, product recall, decree judgments, orders, or demands as more fully set forth above."

22. Pursuant to Article V, paragraph (7) of the LGS Master Standard Buying Agreement, Additional Defendant, Hunter Fan Company, which is the "Vendor" referenced in said agreement, "agrees to defend and shall indemnify LGS, its employees, its officers, its directors, its agents, its parent, its subsidiaries, its affiliates, its customers and the successors and assigns of the any of the foregoing (herein after "Indemnitees") and shall hold them harmless from and against any and all liability and/or losses and/or damages, whether compensatory or putative, which may be assessed against any of them. Vendor's obligation to indemnify and hold harmless Indemnitees shall include, but not be limited to, any and all claims, lawsuits, appeals, actions, assessments, product recalls,

decrees, judgments, orders, investigations, civil penalties or demands of any kind, including court costs, expenses and attorney's fees, which may be made or brought against Indemnitees arising out of: (1) any allegation of or actual misrepresentation or breach of warranty; (2) any alleged bodily injury or property damage related to the possession or use of any product; ... (6) any breach or violation by Vendor of any terms or conditions of this Agreement or LGS Purchase Order; or (7) any other allegation arising directly or indirectly from any product originating from Vendor.

Vendor shall pay all judgments against and assume the defense of Indemnitees upon Indemnitees' demand with respect to any such matters, even if any such allegation of liability is groundless, false or fraudulent. Notwithstanding the above, Indemnitees shall have the right but not the obligation to participate as they deem necessary in the handling, adjustment, defense or settlement of any such matters. ... Should Vendor fail to assume its obligation hereunder, to diligently pursue and pay for the defense of Indemnitees within ten (10) days from the written demand Indemnitees, Vendor hereby agrees that Indemnitees shall have the right, but not the obligation, to proceed on their own behalf to defend themselves by way of engaging their own legal counsel and the services of any and all other experts or professionals they deem necessary to prepare and present a proper defense, and to thereafter require from Vendor reimbursement and indemnification for all costs and expenses incurred in such defense and for any and all penalties, judgments, fines, interest or other expenses incurred as a result of such claim, lawsuit, appeal, action, assessment, civil penalty, product recall, decree judgments, orders or demands as more fully set forth above. Vendor warrants, represents and agrees that an Indemnitees shall have the exclusive right, at the their sole option, to settle or otherwise proceed to resolution of any dispute at their discretion. Vendor warrants, represents and agrees that it will reimburse Indemnitees for all payments, costs and expenses paid by or for Indemnitees in respect to said settlement. Indemnitees, at their sole option, may charge back or set

off any monies due by Vendor to LGS in respect to the settlement of any claims under this Agreement."

23. Defendant, Lowe's Home Centers, Inc., is an affiliated company with LG Sourcing, Inc., referred to as "LGS" in the LGS Master Standard Buying Agreement. Accordingly, Defendant, Lowe's Home Centers, Inc., is one of the "Indemnitees" identified in the LGS Master Standard Buying Agreement and is entitled to indemnification from Hunter Fan Company pursuant to the terms of the LGS Master Standard Buying Agreement.

24. The ceiling fan purchased by Eleanor Albert in November 2001 at the Lowe's store in DuBois, PA, which allegedly is the source of the fire that destroyed the Plaintiff's home on or about October 20, 2003, was supplied to Defendant, Lowe's Home Centers, Inc., by additional Defendant, Hunter Fan Company, pursuant to the terms of the Lowe's Master Standard Buying Agreement and/or the LGS Master Standard Buying Agreement.

25. Plaintiff, William S. Albert, does not allege that his losses or injuries result from any intentional misconduct or gross negligence of Defendant, Lowe's Home Centers, Inc.

26. Defendant, Lowe's Home Centers, Inc., has timely and within a reasonable time requested that Additional Defendant, Hunter Fan Company, assume the defense of and indemnify Defendant, Lowe's Home Centers, Inc., in connection with the claims asserted by Plaintiff, William S. Albert. Additional Defendant, Hunter Fan Company, has failed to assume its contractual obligations and assume the defense of and indemnify Defendant, Lowe's Home Centers, Inc.

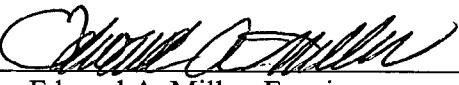
27. As a direct and proximate result of the failure of Additional Defendant, Hunter Fan Company, to honor its contractual obligations, Defendant, Lowe's Home Centers, Inc., has had to continue to retain counsel to defend against the claims being asserted by Plaintiff, William S.

Albert, and has incurred and will continue to incur attorney's fees and costs in connection with the defense of this lawsuit.

WHEREFORE, Defendant, Lowe's Home Centers, Inc., demands that a judgment be entered in its favor and against Additional Defendant, Hunter Fan Company, together with all costs incurred in defending this lawsuit, including attorney's fees, as well as any other relief deemed appropriate by this Court.

Respectfully submitted,

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

By: 

Edward A. Miller, Esquire

U.S. Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
FAX (412) 803-1188  
[emiller@mdwcg.com](mailto:emiller@mdwcg.com)

Counsel for Defendant,  
Lowe's Home Centers, Inc.

### VERIFICATION

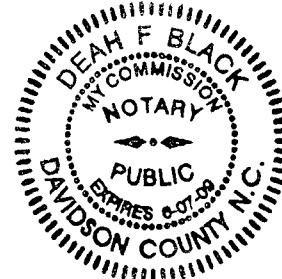
I, Walter Williams, am currently the Manager of Liability and Property Claims for Lowe's Companies, Inc. and am an authorized agent for Lowe's Home Centers, Inc. I hereby verify that the factual statements made in the Complaint to Join Additional Defendant, Hunter Fan Company, are true and correct to the best of the corporation's knowledge, information and belief. I understand that false statements herein are made subject to the penalties of PA. Cons. Stat §4904 relating to unsworn falsifications to authorities.

LOWE'S HOME CENTERS, INC.

DATE: 09/09/05

By:

Walter Williams



Deah F. Black  
Notary Public

**Exhibit A To Complaint To Join  
Additional Defendant, Hunter Fan Company**

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

LOWE'S COMPANIES, INC., and  
LOWE'S HOME CENTERS, INC.,  
Defendants

No. 04-369-CD

Type of Pleading:

**AMENDED COMPLAINT**

Filed on Behalf of:  
PLAINTIFF

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S COMPANIES, INC. and,  
LOWE'S HOME CENTERS, INC.,  
Defendants

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed 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  
Second & Market Streets  
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S COMPANIES, INC. and  
LOWE'S HOME CENTERS, INC.,  
Defendants

**AMENDED COMPLAINT**

AND NOW, comes the Plaintiff, WILLIAM S. ALBERT, by his attorneys, HANAK, GUIDO AND TALADAY, and hereby brings the within Amended Complaint averring as follows:

1. Plaintiff is WILLIAM S. ALBERT, an adult individual, residing at 308 Huckleberry Hill Lane, West Decatur, Clearfield County, Pennsylvania, 16878.
2. Defendant, LOWE'S COMPANIES, INC., is a corporation with executive offices located in North Carolina, and a place of business in Pennsylvania, located at 100 Commons Drive, DuBois, Clearfield County, Pennsylvania, 15801, and is engaged in the business of distributing and selling of various home improvement items.
3. Defendant, LOWE'S HOME CENTERS, INC., is a corporation with executive offices located in North Carolina, and a place of business in Pennsylvania, located at 100 Commons Drive, DuBois, Clearfield County, Pennsylvania, 15801, and is engaged in the business of distributing and selling home improvement items.

4. At all times relevant hereto, Defendants offered goods for sale with the Commonwealth of Pennsylvania.

5. On or about December 13, 2001, Plaintiff's sister-in-law purchased a ceiling fan from Defendants' store in Altoona, Pennsylvania.

6. The ceiling fan was transported to the Plaintiff's home and was properly installed.

7. The ceiling fan was not modified or altered in any way.

8. On or about October 20, 2003, a fire occurred in the home of Plaintiff, with a point of origin of the fire being the ceiling fan purchased at Defendants' store.

9. The fire in Plaintiff's home is solely the responsibility of Defendants.

**Count One**  
**Strict Liability**

10. Paragraphs 1 through 9 of this Complaint are incorporated herein by reference as though they were set forth more fully at length.

11. The ceiling fan sold by Defendants and installed in Plaintiff's home was in a defective condition and unreasonably dangerous when it left the control of Defendants as follows:

(a) The product lacked all features necessary for its safe ownership, maintenance and operation;

(b) The product lacked adequate safeguards and warnings of its defect;

(c) The product presented a reasonable risk of causing fire;

(d) The product malfunctioned in such a manner that an absence of defect would not have occurred.

12. Defendants had, or in the exercise of reasonable care, should have had notice of the defective condition of the product.

13. Plaintiff did not have and in the exercise of reasonable care, could not have had notice of the defective condition of the ceiling fan.

14. Defendants are liable to Plaintiff under Section 402(a) of the Restatement of Torts2d as adopted by the Courts of this Commonwealth.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants.

Count Two  
Damages

15. Paragraphs 1 through 14 of this Complaint are incorporated herein by reference as though they were set forth more fully at length.

16. As the sole and proximate result of the acts, omissions and breaches of Defendants as set forth above, Plaintiff has sustained damages as follows:

(a) Real Estate	\$ 88,500.00
(b) Personal property	\$ 32,540.09
(c) Cost of clean-up	\$ 9,942.00
(d) Increased living expenses	\$ 7,500.00
Total	\$138,482.09

WHEREFORE, Plaintiff demands in his favor and against Defendants in the amount of One Hundred Thirty-eight Thousand Four Hundred Eight-two and 09/100 (\$138,482.09) Dollars, together with interest, costs and other relief as this Court deems appropriate.

JURY TRIAL DEMANDED

Respectfully submitted,

HANAK, GUIDO AND TALADAY, by:



S. Casey Bowers  
S. Casey Bowers  
Attorney for Plaintiff

**VERIFICATION**

I, S. CASEY BOWERS, ESQ., hereby verify that the statements contained in the foregoing AMENDED COMPLAINT are true and correct to the best of my personal knowledge or information and belief.

At the time of the signing of this Verification, Plaintiff was out of the jurisdiction and unavailable. The undersigned has sufficient knowledge to sign this Verification as I am counsel for Plaintiff and possess a detailed knowledge of the case.

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



S. Casey Bowers  
Attorney for Plaintiff

**Exhibit B To Complaint To Join  
Additional Defendant, Hunter Fan Company**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

Plaintiff,

vs.

LOWE'S COMPANIES, INC., and LOWE'S  
HOME CENTERS, INC.

Defendants.

CIVIL DIVISION

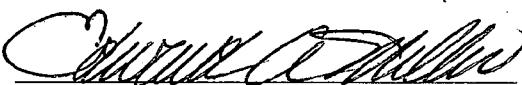
NO. 04-369-CD

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

Filed on behalf of **DEFENDANTS:**  
**Lowe's Companies, Inc. and**  
**Lowe's Home Centers, Inc.**

TO: PLAINTIFF:

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

  
Edward A. Miller, Esquire  
Counsel for Defendants

Counsel of Record for this Party:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

**MARSHALL, DENNEHEY,  
WARNER, COLEMAN & GOGGIN**  
2900 US Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219

(412) 803-1140

  
JUL 16 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

NO. 04-369-CD

vs.

LOWE'S COMPANIES, INC., and LOWE'S  
HOME CENTERS, INC.

Defendants.

**DEFENDANTS' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT  
AND NEW MATTER**

Defendants, Lowe's Companies, Inc., and Lowe's Home Centers, Inc., by and through their undersigned attorneys, hereby submit the following Answer to the Plaintiff's Amended Complaint:

1. Denied. After reasonable inquiry, the information known or readily obtainable by answering Defendants is insufficient to enable them to form a belief as to the truth of these allegations of the Plaintiff's Amended Complaint.

2. Admitted in part and denied in part. It is admitted that Defendant, Lowe's Companies, Inc., is a North Carolina corporation which has a principle place of business located at 1605 Curtis Bridge Road, Wilkesboro, NC 29697. It is specifically denied that Defendant, Lowe's Companies, Inc., has a place of business located anywhere in the Commonwealth of Pennsylvania or that it distributes and sells various home improvement items. Defendant, Lowe's Companies, Inc., is a holding company and the parent of Defendant, Lowe's Home Centers, Inc. Answering Defendants demand at the trial of this case strict proof of the allegations set forth in paragraph 2 of the Plaintiff's Amended Complaint.

3. Admitted in part and denied in part. It is admitted that Defendant, Lowe's Home Centers, Inc., is a North Carolina corporation with a principle place of business located at Highway 268 East, North Wilkesboro, NC 28656. It is further admitted that Defendant, Lowe's Home Centers, Inc., owns and operates a Lowe's store located at 100 Commons Drive, DuBois, Clearfield County, Pennsylvania 15801. It is further admitted that Defendant, Lowe's Home Centers, Inc., engages in the business of selling home improvement items, including ceiling fans. The remaining averments of paragraph 3 of Plaintiff's Amended Complaint are denied.

4. Admitted in part and denied in part. It is admitted that Defendant, Lowe's Home Centers, Inc., offered goods for sale within the Commonwealth of Pennsylvania in December 2001 and in October 2003. It is specifically deny that Defendant, Lowe's Companies, Inc., offers goods for sale within the Commonwealth of Pennsylvania during the referenced time periods or at any time.

5. Denied. After reasonable inquiry, the information known or readily obtainable by answering Defendants is insufficient to enable them to form a belief as to the truth of these allegations of the Plaintiff's Amended Complaint. Further, Defendant, Lowe's Companies, Inc., specifically denies that it owns or operates a store located in Altoona, Pennsylvania. On the contrary, the Lowe's store located at 1707 McMahon Road, Altoona, PA 16602 is owned and operated by Defendant, Lowe's Home Centers, Inc.

6.-7. Denied pursuant to Pa.R.Civ.P. 1029(e).

8. Denied pursuant to Pa.R.Civ.P. 1029(e). It is specifically denied that the ceiling fan allegedly involved in this incident was purchased at a store owned or operated by Defendant, Lowe's Companies, Inc. On the contrary, the Lowe's store located at 1707 McMahon Road, Altoona, PA 16602 is owned and operated by Defendant, Lowe's Home Centers, Inc.

9. Denied pursuant to Pa.R.Civ.P. 1029(e).

**COUNT I – Strict Liability**

10. It is admitted that the Plaintiff has incorporated paragraphs 1-9 of his Amended Complaint. Answering Defendants incorporate by reference their answers to the averments of paragraphs 1-9 of the Plaintiff's Amended Complaint as if set forth herein at length.

11. Denied pursuant to Pa.R.Civ.P. 1029(e). Further it is specifically denied that Defendant, Lowe's Companies, Inc., is in the business of selling ceiling fans.

12.-14.Denied pursuant to Pa.R.Civ.P. 1029(e).

WHEREFORE, Defendants, Lowe's Companies, Inc. and Lowe's Home Centers, Inc., demand that judgment be entered in their favor and against the Plaintiff together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

**COUNT II – Damages**

15. It is admitted that the Plaintiff has incorporated paragraphs 1-14 of his Amended Complaint. Answering Defendants incorporate by reference their Answers to the averments of paragraphs 1-14 of the Plaintiff's Amended Complaint as if set forth herein at length.

16. Denied pursuant to Pa.R.Civ.P. 1029(e).

WHEREFORE, Defendants, Lowe's Companies, Inc. and Lowe's Home Centers, Inc., demand that judgment be entered in their favor and against the Plaintiff together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

**NEW MATTER**

Defendants, Lowe's Companies, Inc. and Lowe's Home Centers, Inc., assert the following New Matter:

17. To the extent discovery may reveal, the Plaintiff assumed the risk of his injuries.
18. To the extent discovery may reveal, the ceiling fan at issue was improperly installed.
19. To the extent discovery may reveal, the Plaintiff cannot adequately eliminate causes other than the ceiling fan at issue as the source of the subject fire.
20. The Plaintiff's damages were caused by an intervening and/or superceding cause.
21. To the extent discovery may reveal, the Plaintiff failed to properly mitigate his damages.
22. The Plaintiff has failed to state a claim upon which relief may be granted.

WHEREFORE, Defendants, Lowe's Companies, Inc. and Lowe's Home Centers, Inc., demand that judgment be entered in their favor and against the Plaintiff together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

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

By:   
Edward A. Miller, Esquire

2900 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
FAX (412) 803-1188

Counsel for Defendants, Lowe's Companies, Inc. and  
Lowe's Home Centers, Inc.

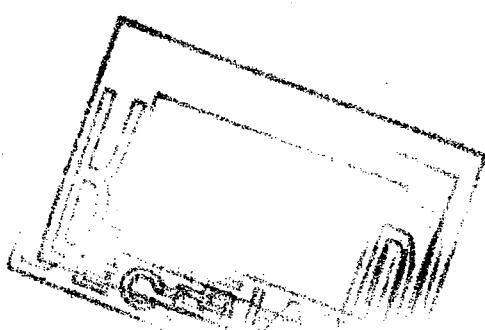
**VERIFICATION**

I, Walter Williams, am currently the manager of liability and property claims for Lowe's Companies, Inc. and am an authorized agent for Lowe's Home Centers, Inc.. I hereby verify that the factual statements made in Defendants' Answer to Plaintiff's Amended Complaint and New Matter 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 of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

DATE: 6-28-04



Walter Williams



**CERTIFICATE OF SERVICE**

I, Edward A. Miller, Esquire, do hereby certify that a true and correct copy of the foregoing Defendants' Answer to Plaintiff's Amended Complaint and New Matter was sent on this 6<sup>th</sup> day of July, 2004, by U.S. Mail, postage pre-paid to Plaintiff's counsel addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

  
Edward A. Miller, Esquire

**Exhibit C To Complaint To Join  
Additional Defendant, Hunter Fan Company**

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

LOWE'S HOME CENTERS, INC.,  
Defendant

No. 04-369-CD

Type of Pleading:

**PLAINTIFF'S REPLY  
TO NEW MATTER**

Filed on Behalf of:  
PLAINTIFF

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

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

JUL 16 2004

Attest.

*William S. Albert*  
Prothonotary/  
Clerk of Courts

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S HOME CENTERS, INC.,  
Defendants

**PLAINTIFF'S REPLY TO NEW MATTER**

AND NOW, comes the Plaintiff, WILLIAM S. ALBERT, by and through his attorneys, HANAK, GUIDO AND TALADAY, and hereby presents the following Reply to New Matter as follows:

17. Paragraph 17 of Defendant's New Matter sets forth conclusions of law, therefore, no responsive pleading is required. To the extent a response is required, said allegations are denied.

18. Denied. It is specifically denied that the ceiling fan at issue was improperly installed.

19. Denied. Plaintiff can adequately eliminate causes other than the ceiling fan at issue as the source of the subject fire.

20. Denied. Plaintiff's damages were solely caused by the subject defective fan.

21. Denied. Plaintiff has taken reasonable measures to mitigate his damages.

22. Denied. Paragraph 22 of Defendant's New Matter sets forth conclusions of law, therefore, no responsive pleading is required. To the extent a response is required, said allegations are denied.

WHEREFORE, Plaintiff, WILLIAM S. ALBERT, respectfully requests this Honorable Court to enter judgment in his favor and against the Defendant.

HANAK, GUIDO AND TALADAY, by:



---

S. Casey Bowers  
Attorney for Plaintiff

**VERIFICATION**

I, S. CASEY BOWERS, ESQ., hereby verify that the statements contained in the foregoing Reply to New Matter are correct to the best of my personal knowledge or information and belief.

At the time of the signing of this Verification, the Plaintiff was unavailable. The undersigned has sufficient knowledge to sign this Verification as I am counsel for Plaintiff and possess a detailed knowledge of the case.

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



---

S. Casey Bowers  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 16 day of July, 2004, I served a copy of the within Reply to New Matter by first class mail, postage prepaid, on the following:

Edward A. Miller, Esq.  
Marshall, Dennehey, Warner  
Coleman and Goggin  
Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219

  
\_\_\_\_\_  
S. Casey Bowers  
Attorney for Plaintiff

Exhibit D To Complaint To Join  
Additional Defendant, Hunter Fan Company

1  
IN THE COURT OF COMMON PLEAS  
2  
OF CLEARFIELD COUNTY, PENNSYLVANIA

3  
\*\*\*\*\*  
4 WILLIAM S. ALBERT,

5 Plaintiff, Civil Division

6 - vs - No. 04-369-CD

7 LOWE'S HOME CENTERS, INC.,

8 Defendant,

9 - vs -

10 LITEX INDUSTRIES, INC.,

11 Additional Defendant.

12 \*\*\*\*\*

13

14 DEPOSITION OF WILLIAM S. ALBERT

15 12:46 p.m. - 1:19 p.m.

16 April 5, 2005

17 DuBois, Pennsylvania

18

19

20

21

22

23

24

25 REPORTED BY: Susan K. Morris

1 Q. Let's just jump right into this since  
2 we're going to talk about other issues at a later  
3 date.

4 The ceiling fan that you allege is the  
5 source of the cause of the fire that destroyed your  
6 home, do you know the manufacturer of that ceiling  
7 fan?

8 A. No, I don't.

9 Q. When did you obtain or acquire that  
10 ceiling fan?

11 A. It was a gift from my sister-in-law and my  
12 brother.

13 Q. And that would be Eleanor and Fred Albert?

14 A. Eleanor Albert and Fred Albert.

15 Q. First off, do you remember the specific  
16 date that they gave you the fan?

17 A. It was before Christmas and before  
18 Thanksgiving.

19 Q. So it was actually before Thanksgiving?

20 A. Yes.

21 Q. What year?

22 A. I think that was the year of 2001.

23 Q. Was there any particular reason that they  
24 were giving you a gift?

25 A. They were staying with me while I helped

1 them build a new home.

2 Q. So it was kind of a thank you for letting  
3 them stay with you?

4 A. Yes, sir.

5 Q. When did they move in and start staying  
6 with you?

7 A. It was around February of the year 2002.

8 Q. I'm not talking about into their home.  
9 I'm talking about when did they start living with you  
10 in your home.

11 A. About the last of September. They came  
12 and went during that period of time.

13 Q. So maybe the end of September of 2001 is  
14 when they started living with you?

15 A. Yes.

16 Q. Do you know where they purchased the  
17 ceiling fan that they gave to you?

18 A. Just from what they told me, they  
19 purchased it from Lowe's.

20 Q. Do you know which Lowe's store they  
21 purchased it from?

22 A. DuBois.

23 Q. Did they tell you that or do you just know  
24 that from sitting here earlier today?

25 A. No. They told me that a long time ago.

1 Q. Is that the only thing that you remember  
2 from the outside of the box?

3 A. Well, the plastic on it, I had to get a  
4 knife to cut the plastic off of it.

5 Q. Did the plastic totally encompass the box?

6 A. Yes.

7 Q. So it was a shrink wrap over the box?

8 A. Yeah.

9 Q. Other than the shrink wrap around the box  
10 and the picture of the fan that was on the box, do  
11 you recall anything else about the outside of the  
12 box?

13 A. No.

14 Q. Was the picture just on one side of the  
15 box or more than one side?

16 A. I think it was on the top and two sides.  
17 It might have been on the other two sides, but there  
18 was nothing on the bottom of the box.

19 Q. Without getting into how you installed  
20 this fan, did you install it on the same day that you  
21 got it from your brother and sister-in-law?

22 A. It was the following day.

23 Q. You testified that this fan was given to  
24 you before Thanksgiving of 2001, right?

25 A. Yes.

1           Q.     And we know from your testimony that your  
2 brother and sister-in-law moved in with you, in and  
3 out, sometime in September of 2001?

4           A.     Yes.

5           Q.     I'm trying to narrow down the time frame  
6 of when the fan was given to you. Do you know  
7 whether it was after Halloween that the fan was given  
8 to you?

9           A.     I know that I was getting everything ready  
10 for Thanksgiving, which was two weeks off. How I  
11 remember that is because certain canned goods and  
12 things come on sale at particular times. And really,  
13 I didn't want to be bothered with it, but Eleanor got  
14 me the gift. I didn't like the color, but it was a  
15 gift, so I had to put it up.

16          Q.     Based on what you just told me, your  
17 recollection is pretty sure that this fan was given  
18 to you approximately two weeks before Thanksgiving  
19 then?

20          A.     Yes. In around that area.

21          Q.     Certainly in the month of November?

22          A.     Yes.

23                 Just remember, that Thanksgiving, we ate  
24 out on the porches because it was so beautiful out.  
25 And that's very, very unusual for that time of the

1 year.

2 Q. And you didn't want to be inside with that  
3 ugly ceiling fan?

4 A. Yeah, right.

5 With all of the heat and the turkey,  
6 everybody had a better time outside.

7 Q. You had described where you kept the fan  
8 instructions and the warning information. Was that  
9 documentation all lost in the fire?

10 A. Yes.

11 Q. Do you know of the existence of any  
12 photographs taken in your house where the fan was  
13 located that would depict the fan that may still  
14 exist today?

15 A. No.

16 Q. With respect to the two chains that hung  
17 from the fan, and I apologize for being dense here,  
18 you're indicating that both chains went into the  
19 light component, the light fixture component of the  
20 fan?

21 A. Yes.

22 Q. And did one hang lower than the other?

23 A. Yes.

24 Q. Was it the one that operated the fan --  
25 was that the one that was lower?



1 A. Yes.

2 Q. Now, after you finished construction of  
3 your home, how often would you go and visit William  
4 at his home?

5 A. I don't really remember.

6 Q. Was it daily, once a week, once a month?

7 A. Maybe once -- maybe a couple of times a  
8 month.

9 Q. Let's jump now to talking about the  
10 ceiling fan that's the subject of this lawsuit. It's  
11 my understanding, based upon the complaint that  
12 William filed, that you purchased the fan for him; is  
13 that correct?

14 A. Yes.

15 Q. Where did you purchase the fan?

16 A. Lowe's.

17 Q. Which Lowe's store?

18 A. DuBois.

19 Q. Do you recall which date that you  
20 purchased the fan?

21 A. No.

22 Q. Do you know what month you purchased the  
23 fan?

24 A. I think November.

25 Q. Was there any particular event -- I assume

1 you purchased it as a gift for William?

2 A. Yes.

3 Q. Was it a Christmas gift?

4 A. Not really.

5 Q. When did you give it to him?

6 A. The day I bought it, we bought it, my  
7 husband and I.

8 Q. Do you know if you gave it to him before  
9 or after Thanksgiving?

10 A. I'm not 100 percent sure, but I think it  
11 was before Thanksgiving.

12 Q. But you're fairly certain that you bought  
13 the fan in November?

14 A. Yes.

15 Q. Are you certain that you bought the fan at  
16 the Dubois store?

17 A. Yes.

18 Q. Do you recall the manufacturer of the fan  
19 that you purchased?

20 A. No.

21 Q. Do you recall the trade name?

22 A. No.

23 Q. Do you recall what color the fan was?

24 A. White, to the best of my recollection.

25 Q. Now, when you say white -- I probably

Exhibit E To Complaint To Join  
Additional Defendant, Hunter Fan Company

**LOWE'S MASTER STANDARD BUYING AGREEMENT**

This Master Standard Buying Agreement by and between Lowe's Companies Inc. ("LOWE'S") a North Carolina corporation with its principal place of business at Highway 268 East, North Wilkesboro, North Carolina 28659, LOWE'S HOME CENTERS, INC., a North Carolina corporation and a wholly-owned subsidiary of LOWE'S COMPANIES, INC. and THE CONTRACTOR YARD, INC., a wholly-owned subsidiary of LOWE'S HOME CENTERS, INC. and such other wholly-owned subsidiaries will separately and collectively be referred to as "LOWE'S" and the undersigned corporation and/or partnership, hereinafter known as "Vendor" by and through its authorized agent is hereby entered into this 5 day of

January, 1999.

**WITNESSETH:**

WHEREAS, Lowe's is in the business of operating stores for the sale of goods and/or services; and

WHEREAS, the undersigned Vendor is a vendor of products and desires to sell products to Lowe's; and

WHEREAS, every Lowe's Purchase Order, whether written, verbal or electronically communicated by Lowe's to said Vendor is subject to all terms and conditions contained herein, and shall apply to all purchases made by LOWE'S.

NOW, THEREFORE, in consideration of the terms and conditions stated herein and for good and valuable consideration receipt of which is hereby acknowledged by said Vendor, the parties agree to the following:

## **ARTICLE I. ACCEPTANCE**

(1) Each Lowe's Purchase Order shall be deemed accepted by the Vendor according to the terms and conditions herein, if any shipment of merchandise is made. There can be no changes or alterations to the Lowe's Purchase Order unless consented to by an authorized agent of Lowe's Merchandising Department.

(2) In case of conflict, this agreement supersedes any signed dealers Agreement.

(3) This document establishes the minimum standards between Lowe's and the Vendor. The Lowe's Purchase Order is void unless given by an authorized agent of Lowe's.

## **ARTICLE II. EDI & BARCODING**

(1) Electronic Data Interchange "EDI" is a requirement for all vendors with more than 100 P.O.'s or invoices per year.

(2) LOWE'S requires all vendors to have a scannable Universal Product Code "UPC" label affixed to products sold to Lowe's according to the Uniform Code Council's specifications.

(3) All standard shipping containers (master cartons, bundles, pallets, inner packs, etc.) containing fixed multiples of the same item must have an Interleaved 2 of 5 (UPC Shipping Container Code) placed on the packaging according to the Uniform Code Council's specifications. The model number and unit count contained within each level of packaging must be printed in human readable form.

(4) In the event Vendor fails to apply Vendor's scannable UPC label or scannable Interleaved 2 of 5 codes; labeling product with incorrect UPC bar codes or Interleaved 2 of 5 codes; provides Lowe's with inaccurate UPC or Interleaved 2 of 5 information; applies poor quality, nonscannable UPC label or Interleaved 2 of 5 codes; and/or substitutes merchandise without prior written notification of the new UPC codes or Interleaved 2 of 5 codes; then in that event, Vendor agrees and shall pay Lowe's a penalty for such violation in the amount of One Thousand Dollars (\$1,000.00) per each violation. The payment of said penalty is in addition to any other damages that may be incurred as defined under Article VIII, Paragraph 2 of this Agreement.

### **ARTICLE III. DELIVERY**

(1) LOWE'S preferred terms of sale are FOB Origin Freight Collect with all Vendor logistics costs netted out of the cost of goods unless otherwise agreed to in writing. LOWE'S further requires Vendor to provide three (3) additional pricing levels as follows:

F.O.B. Origin, Freight Collect to LOWE'S Distribution Centers  
F.O.B. Destination, Freight Prepaid to LOWE'S Distribution Centers  
F.O.B. Destination, Freight Prepaid to LOWE'S Stores

Vendor is required to provide pricing that adequately reflects and passes on to LOWE'S the savings Vendor incurs due to reduced administrative, labor, transportation, packaging costs and any other cost savings Vendor incurs due to the economies of scale provided by LOWE'S purchase orders. LOWE'S shall have the right to select any of the pricing option(s) described above as its terms of sale during the term of this Agreement, and LOWE'S reserves the right, at its option, to change from one pricing option to another, without limitation, if the Lowe's business so requires.

(2) Regarding FOB Destination orders, no liability is incurred by LOWE'S and the risk of loss shall not pass to LOWE'S until legal title passes upon delivery of the merchandise to LOWE'S final destination(s), in good condition and accepted by LOWE'S.

(3) On all prepaid shipments to Lowe's Distribution Centers, Lowe's Vendor's carriers are required to schedule a delivery appointment with LOWE'S receiving location at least 24 hours in advance of shipment. All shipments to Lowe's stores require 24-hour notification to the Lowe's Receiving Department. LOWE'S will incur no additional charges resulting from extended unloading time for unscheduled deliveries.

(4) If merchandise is purchased prepaid and add, all freight charges must be shown as a separate item on the invoice. The Vendor shall provide, upon request, a copy of the applicable freight bill for each invoice.

(5) Vendor must advise LOWE'S immediately if any merchandise cannot be shipped or picked up in time to be received by the date(s) specified on the individual LOWE'S Purchase Order. Merchandise must not be shipped to arrive prior to the specified date unless consented to by an authorized agent of LOWE'S Merchandising Department. FOB origin shipments must have ship date. Freight prepaid shipments must have an arrival date. If merchandise is shipped or arrives on days other than those specified they are subject to penalty. Vendor warrants, covenants and agrees to ship all Purchase Orders timely and complete.

(6) A detailed packing slip, including item number, the Lowe's Purchase Order number, store number, model number, quantity and shipper's name must accompany each shipment of merchandise.

(7) All cartoning must be capable of withstanding the normal rigors of the transportation and physical distribution process. All master cartons must protect inner packs and individual sales units which will be displayed on LOWE'S sales floors. Any such concealed damage discovered upon receipt will be returned to the Vendor freight collect.

(8) LOWE'S requires unitization on all merchandise. The preferred method of unitization is through the use of pallets. All pallets must be 48"x40" hardwood with 4-way forklift entry. All units must be stretch-wrapped prior to shipment. Any exception to LOWE'S unitization requirements must be approved in advance by LOWE'S Logistics Department.

(9) Multiple orders on the same truck must be segregated. Identical items on each Lowe's Purchase Order must be unitized.

(10) All transportation costs or expenses incurred by LOWE'S because of Vendor's noncompliance with the terms of an order, and any additional transportation or administrative charges due to split shipments, failure to follow LOWE'S routing instructions, errors in classification of merchandise, or for any other reason, shall be charged back to Vendor.

(11) Vendor is responsible, at its cost, for insuring the merchandise to the F.O.B. point for full replacement value, including freight, and Vendor shall file all claims for loss or damage. All uncollectible portions of concealed damage claims will be charged back to Vendor.

(12) No backorders will be accepted.

(13) Accumulation of Less-than Truck Load "LTL" shipments is not allowed. Vendors/Carriers must adhere to the specified ship dates and arrival date per the designated routings.

#### **ARTICLE IV. INVOICING/BILLING REQUIREMENTS**

(1) All invoice and/or credit memorandum transactions regarding merchandise purchased for resale should be mailed or electronically transmitted promptly and accurately to the specified address or Third Party Value Added Network mailbox. All billing related transactions that cannot be processed due to their failure to comply with LOWE'S billing requirements may be returned for re-billing or held for correction without the loss of applicable discounts. LOWE'S shall not be held liable for lost discount, interest and/or service charges related to the late payment of invoices which were delayed due to reasons beyond LOWE'S control. Vendors may be subject to an administrative processing charge for non-compliance.

(2) All invoices, credit memorandums, bills of lading, related documents and other correspondence must reference LOWE'S Purchase Order Number or Assigned Control Number (Example: RMR #) and the specific LOWE'S store number(s) to which the transactions apply. In addition, Vendor must provide LOWE'S item numbers on invoices and packing slips as well as list line items in the same sequence as ordered. In lieu of requiring proof of shipment on all invoices, LOWE'S reserves the right to request proof of shipment or proof of delivery for selected transactions at a later date.

(3) LOWE'S pays from invoice only. Vendor shall submit one invoice per Order (shipment) and one Order per invoice with no backorders being allowed by LOWE'S. Invoicing should be initiated on the day of shipment (not before) and reference the correct F.O.B. terms as well as the freight payment responsibility (collect or prepaid). LOWE'S reserves the right to charge back to the Vendor any shortages between merchandise received and merchandise invoiced .

(4) Payment will be made in accordance with the terms mutually agreed upon in writing between the parties. Any deviation from the negotiated payment terms must be communicated and agreed to in writing by LOWE'S prior to invoicing.

Payment terms begin on the date of satisfactory receipt of all merchandise being invoiced, or receipt of a correctly completed invoice, whichever is later without loss of discount. It will be LOWE'S policy to calculate an average transit time for each Vendor. The average transit days for a specific Vendor will be added to invoice/shipment date to determine the day on which dating is to begin. On all Prox. and E.O.M. (end of the month) dating, merchandise received after the 24th of any month shall be payable as if received on the 1st day of the following month. LOWE'S interprets payment due date as the day the remittance is to be mailed.

(5) LOWE'S policy will be to include unit pricing on all outgoing EDI Lowe's Purchase Orders. Vendor agrees to notify LOWE'S of any price discrepancies prior to shipment/invoicing. Failure to communicate irregularities will result in a LOWE'S deduction which will not be refunded. Vendor further agrees that if prior to shipment there is any reduction in Vendor's regular selling price for the merchandise, the price specified on the Purchase Order will be reduced to the lower price. LOWE'S requires a minimum 60 days written notice for all price increases. A price increase cannot take effect until 30 days after LOWE'S authorized agent agrees (by letter) to accept. In addition, it is agreed that for price increases LOWE'S Purchase Order date determines applicable price and on price decrease invoice/shipment date determines applicable price.

(6) If Vendor has a debit balance with LOWE'S, the amount owed will be deducted from the next remittance or a check from the Vendor to clear this amount will be paid within thirty (30) days at the option of LOWE'S. It is also agreed that LOWE'S has the option to perform post audits and file claims for billing/payment errors on prior years business transactions. These audits will normally be completed within 24 months of the end of a calendar year.

## ARTICLE V. WARRANTIES & GUARANTEES

(1) Vendor agrees that LOWE'S shall not be liable for the inspection of merchandise before resale and that all warranties expressed or implied, shall survive inspection, acceptance and payment by LOWE'S and LOWE'S customers.

(2) Approval by LOWE'S of Vendor's design or materials shall not relieve Vendor from any obligations under any warranties, representations or guarantees. Merchandise delivered (whether paid for or not) are subject to inspection, testing and approval by LOWE'S before acceptance. Vendor warrants that the merchandise will be of good quality, material and workmanship, merchantable and free from any and all defects.

(3) Vendor, by accepting the order, warrants, represents and guarantees that all applicable provisions of federal, state and local laws, ordinances, codes, rules and regulations have been fully complied with and that the price and other terms and conditions of sale, the terms on which all promotional and advertising matter are furnished by Vendor to LOWE'S and all guarantees, warranties, labels and instruction furnished in connection therewith comply with all such laws, ordinances, codes, rules and regulations.

(4) Vendor, by accepting the Order, warrants, represents and guarantees their merchandise. Vendor agrees to provide LOWE'S with a signed guaranty form, if prescribed by the respective laws, ordinances, codes, rules or regulations as part of Vendor's invoice, before payment is required to be made under the terms of the Order, without loss of discount: that the weights, measures, signs, legends, words, particulars or descriptions (if any) stamped, printed or otherwise attached to the merchandise or containers or referring to the merchandise delivered hereunder are true and correct and comply with all applicable laws, ordinances, codes, rules and regulations; and that the merchandise delivered pursuant to the Order conforms and complies with the applicable

provisions of the Consumer Product Safety Act, Magnuson - Moss Warranty - Federal Trade Commission Improvement Act, Wool Products Labeling Act, Federal Food, Drug and Cosmetics Act, Federal Hazardous Substances Act, all other applicable laws, ordinances, codes, rules and regulations of any governmental agencies having jurisdiction and the standards of the Underwriters Laboratories, Inc.

(5) With acknowledgment that the terms and conditions of this paragraph have been expressly bargained for and are an essential part of the Order, and in consideration of any and all purchases heretofore, herein and hereafter, made by LOWE'S from Vendor or from affiliates or subsidiaries of Vendor, and by accepting the Order, Vendor agrees to and shall indemnify LOWE'S, "LOWE'S" means collectively LOWE'S COMPANIES, INC., its subsidiaries and affiliates, including but not limited to LOWE'S COMPANIES, INC., LOWE'S HOME CENTERS, INC., THE CONTRACTOR YARD, INC. and all employees, officers, directors and agents of LOWE'S COMPANIES, INC., LOWE'S HOME CENTERS, INC., THE CONTRACTOR YARD, INC. and their subsidiaries and affiliates and hold harmless LOWE'S from and against any and all liability and/or losses and/or damages, whether compensatory or punitive, which may be assessed against LOWE'S as is further set forth below. Vendor's obligation to indemnify and hold harmless LOWE'S shall include, but not be limited to, any and all claims, lawsuits, appeals, actions, assessments, product recalls, decrees, judgments, orders, investigations, civil penalties or demands of any kind, including court costs, expenses and attorney's fees, which may be made or brought against LOWE'S or third parties of said merchandise; any allegation of or actual misrepresentation or breach of warranty, expressed or implied, in fact or by law, with respect to the possession, purchase or use of said merchandise; any alleged bodily injury or property damage related to the possession or use of said merchandise; any alleged infringement claims of any patent, design, trade name, trademark, copyright or trade secret; any alleged violation by Vendor or any law ordinance code rule or regulation; any alleged or threatened discharge, release or escape of pollutants or other environmental impairment; or any breach or violation by Vendor of any terms or

conditions of the Order. Vendor shall pay all judgments against and assume the defense within a reasonable time for any and all liability of LOWE'S with respect to any such matters, even if any such allegation of liability is groundless, false or fraudulent. Notwithstanding the above, LOWE'S shall have the right but not the obligation to participate as it deems necessary in the handling, adjustment or defense of any such matter. Further, for the term of this Agreement and hereafter, Vendor releases Lowe's (and any of its subsidiaries or associated companies), from any claim based on Vendor's patent, copyright, trademark, trade dress or other intellectual property rights. Lowe's, at its sole discretion, shall have the right to purchase from other sources those products manufactured or offered by Vendor free of any patent, copyright, trademark, trade dress or other intellectual property rights of Vendor.

Should Vendor fail to assume its obligations hereunder, to diligently pursue and pay for the defense of LOWE'S within a reasonable time, Vendor hereby agrees that LOWE'S shall have the right, but not the obligation, to proceed on LOWE'S own behalf to defend itself by way of engaging its own legal counsel and the services of any and all other experts or professionals it deems necessary to prepare and present a proper defense, and to thereafter require from Vendor reimbursement and indemnification for all costs and expenses incurred in such defense and for any and all penalties, judgments, fines, interest or other expenses incurred as a result of such claim, lawsuit, appeal, action, assessment, civil penalty, product recall, decree judgments, orders or demands as more fully set forth above.

(6) During the term of this Agreement and for a period of five (5) years after the date of termination, Vendor shall procure and maintain Products Liability and completed Operations Liability Insurance on an occurrence basis with limits of not less than \$2,000,000 per occurrence and an annual aggregate of not less than \$10,000,000 for property damage, bodily injury or death to any number of persons, and other adequate insurance, which shall contain an endorsement by which the insurer extends the coverage thereunder to the extent necessary to include the contractual liability of

Vendor arising by reason of the indemnity provisions set forth herein. A broad form Vendor's endorsement shall be maintained in said insurance policy with LOWE'S and its wholly owned subsidiaries as an additional insured, requiring coverage for all other underlying and collectible insurance. Vendor further agrees to forward a copy of this Vendor Buying Agreement to its insurer, and as a condition precedent to LOWE'S obligation hereunder, to have delivered to LOWE'S by the Vendor's insurer a current certificate of insurance showing the coverage required by this provision. The insurance must be written by an insurance company with a minimum rating of Best's A-, VIII or its equivalent, satisfactory to LOWE'S, and duly incorporated in the United States of America. Additionally Vendor and its insurer shall provide LOWE'S thirty (30) days prior written notice of non-renewal, cancellation or other change in Vendor's coverage which may impair or otherwise effect LOWE'S rights thereunder.

(7) Vendor is a corporation and/or partnership duly organized, validly existing, and in good standing under the laws of the State in which it is either incorporated or filed; said Vendor has the requisite corporate power and/or authority and the legal right to enter into this Agreement, and to conduct its business as now conducted and hereafter contemplated to be conducted; and is in compliance with its Articles of Incorporation and Bylaws or its Partnership Agreement. The execution, delivery and performance of this Agreement and all instruments and documents to be delivered by Vendor are within the Vendor's corporate power and/or partnership agreement have been duly authorized by all necessary or proper action, including the consent of shareholders if required; do not and will not contravene any provisions of the Vendor's Articles of Incorporation or Bylaws and/or Partnership Agreement. This Agreement has been duly executed and delivered by Vendor, and constitutes the legal, valid, and binding obligation of the Vendor and enforceable against the Vendor in accordance with its terms.

(8) Vendor acknowledges that Vendor and its officers, directors, employees and agents have received a copy of Lowe's Code of Ethics and Statement of Business

Ethics. Vendor along with its officers, directors, employees and agents hereby warrant, covenant and agree to perform in strict compliance with the Lowe's Code of Ethics, Lowe's Statement of Business Ethics, and all applicable laws.

#### **ARTICLE VI. MERCHANDISE RETURNS**

(1) Notice of defects in the merchandise or any other breach by Vendor under the terms of this Agreement and the individual Lowe's Purchase Order will be considered made within reasonable time, if made within a reasonable time after being discovered by LOWE'S or after notification is given to LOWE'S by its customers or the users of the merchandise. The return of such merchandise shall not relieve Vendor from liability for failure to ship conforming merchandise under the Lowe's Purchase Order or for liability with respect to warranties, expressed or implied. Failure of LOWE'S to state a particular defect upon rejection shall not preclude LOWE'S from relying on unstated defects to justify rejection or establish breach. Resale, repackaging, repacking or cutting up for the purpose of resale or for use shall not be considered as acceptance of the merchandise so as to bar LOWE'S right to reject such merchandise or to revoke acceptance.

(2) Vendor agrees that in the absence of a negotiated and signed Defective Merchandise Return Policy, LOWE'S will adhere to the following general guidelines. Specifically, defective merchandise (item) with a value of under seventy-five dollars (\$75) will be destroyed by LOWE'S and if the value is over seventy-five dollars (\$75), the merchandise (item) will be shipped back by LOWE'S freight collect without obtaining Vendor return authorization. Vendor further agrees to reimburse LOWE'S for the merchandise (item) at P.O. delivered cost. In addition, if the merchandise is shipped back on a prepaid freight basis, Vendor agrees to reimburse LOWE'S for the actual freight expense or fifteen percent (15%) of merchandise value, if the merchandise is returned via United Parcel Service.

## ARTICLE VII. CANCELLATIONS & RETURNS

(1) LOWE'S Merchandising Department reserves the right to refuse or return any Orders not shipped complete, as ordered and in accordance with the terms in this Agreement and the specifics as outlined in the Lowe's Purchase Order which includes the requested ship and arrival dates.

(2) LOWE'S Merchandising Department reserves the right to cancel in whole or in part any Purchase Order at any time prior to the shipment of merchandise on the Purchase Order without incurring any liability.

## ARTICLE VIII. MISCELLANEOUS

(1) Both parties acknowledge that this Standard Master Buying Agreement forms the Agreement. Performance of any Lowe's Purchase Order must be in accordance with all of the terms and conditions stated herein. There can be no changes or modifications to the Standard Master Buying Agreement, unless in writing and signed by a Vice President of LOWE'S Merchandising Department. In absence of any agreements signed by Vendor, this Agreement represents the entire agreement of the parties.

(2) All costs, loss profits and expenses incurred by LOWE'S due to Vendor's violations of or failure to follow any or all of the terms of this Agreement will be charged back to Vendor and Vendor expressly agrees to reimburse LOWE'S for all such costs, loss profits and expenses. Vendor further agrees that LOWE'S may deduct such costs, loss profits and expenses from any sum thereafter owing to Vendor by LOWE'S under any Orders between LOWE'S and Vendor.

(3) Any and all taxes, fees, imposts or stamps required by State, Federal or Municipal Governments in the selling, transferring or transmitting of merchandise to LOWE'S shall be paid and assumed by Vendor.

(4) No provisions of this Agreement shall be waived or shall be construed to be waived by LOWE'S unless such waiver is in writing and signed by an authorized agent of LOWE'S. No failure on the part of LOWE'S to exercise any of the rights and remedies granted hereunder or to insist upon strict compliance by Vendor shall constitute a waiver of LOWE'S right to demand exact compliance with the terms hereof. The Vendor hereby waives use of the statute of frauds as a defense to any Order accepted pursuant to this Agreement.

(5) The rights, remedies and options provided herein are in addition to and not to the exclusion of any and all other rights and remedies provided by law.

(6) LOWE'S shall not be bound by any assignment of the Order by Vendor, unless LOWE'S has consented prior thereto in writing. LOWE'S may assign this Order to a present or future subsidiary or affiliate.

(7) Should LOWE'S use the services of an attorney to enforce any of its rights hereunder, or to collect any amounts due, Vendor shall pay LOWE'S for all costs and expenses incurred, including reasonable attorney's fees.

(8) This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina. The parties agree that the courts within the State of North Carolina will have exclusive jurisdiction with venue being in Wilkes County, State of North Carolina.

(9) Vendor agrees to furnish, when returning this completed Agreement, a complete set of current financial statements. Publicly held companies should include the

Annual Report to Shareholders and 10K Report. If financial statements are not available, a Dun & Bradstreet should be furnished.

(10) The Vendor shall provide LOWE'S written notice of an assignment, factoring or other transfer of its right to receive payments arising under this Agreement 30 days prior to such assignment, factoring or other transfer taking legal effect. Such written notice shall include the name and address of assignee/transferee, date assignment is to begin, and terms of the assignment and shall be considered delivered upon receipt of such written notice by the Trade Payables Department. Vendor shall be allowed to have only one assignment, factoring or transfer legally effective at any one point in time. No multiple assignments, factoring or transfers by the Vendor shall be permitted. LOWE'S reserves the right to require any and all documentation in reference to the legal effect of the assignment, factoring or other transfer as determined needed by Lowe's Corporate Counsel prior to accepting the assignment, factoring or other transfer by LOWE'S.

(11) Vendor shall indemnify LOWE'S against and hold LOWE'S harmless from any and all lawsuits, claims, actions, damages (including reasonable attorney fees, obligations, liabilities and liens) arising or imposed in connection with LOWE'S for amounts due and owing under this Agreement where Vendor has not complied with the notice requirements of this section.

(12) Vendor, by accepting the order, warrants, represents and guarantees that all labor used by the Vendor and/or its Vendors or Suppliers is furnished by employees with a minimum age of no less than 16 years. Vendor acknowledges LOWE'S policy of purchasing products from Vendors who do not use child labor in the production of goods.

(13) Vendor, by accepting the order, warrants, represents and guarantees that all labor in producing the goods by the Vendor and/or its Vendors or Suppliers is not

furnished, manufactured, produced, or distributed, wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution.

(14) Vendor, by and through its representative, further covenants and agrees not to communicate during the continuance of this agreement, or at any time subsequently, any information relating to the secrets, business methods, business secrets, including trade secrets, business information, and the corporation manner in which Lowe's conducts its business to any person, corporation or entity. Vendor acknowledges and agrees that Vendor has and will receive confidential information including, but not limited to: Proprietary packaging, proprietary product(s) and/or product design(s), Lowe's business and confidential data which includes quotations, sales volume, pricing, etc. and that money damages will not adequately compensate Lowe's for any disclosure of any information in violation of this agreement. Any right of equitable enforcement granted to Lowe's shall not be deemed to preclude Lowe's from seeking actual money damages or any other remedy from Vendor and/or its agents in the event of a breach of such covenant.

Confidential information is not meant to include any information which, at the time of disclosure, is generally known by the public.

(15) At any time during the term of this Agreement and for a period of five (5) years after the final payment of any invoice under this Agreement, Lowe's, or its designated agent, shall have the right to examine and audit up to five (5) years of the Vendor's records in respect to any and all matters occurring within the five (5) year period prior to the request and relating to Lowe's payments under this Agreement, including, but not limited to, payments for any orders, invoices, and Vendor's compliance with Lowe's business ethics policies and Lowe's Code of Ethics. Vendor shall maintain complete and accurate records to substantiate Vendor's charges, pursuant to this Agreement. By execution of this Agreement by Vendor, Lowe's shall have

access to such records for the purpose of audit during normal business hours upon reasonable notice to Vendor.

(16) The initial term of this Agreement is for one (1) year commencing on the date first written above and shall automatically renew on a year-to-year basis thereafter, unless terminated by written notice by either party not later than sixty (60) days prior to the end of the then current term.

(17) If the total purchase order amount or contract amount exceeds \$10,000.00, which in whole or in part, is necessary to the performance by Lowe's of any one or more contracts with the government, then the Equal Employment Opportunity clause as detailed in Section 202 of the Executive Order 11246: Nondiscrimination Under Federal Contracts is incorporated into this Agreement.

IN WITNESS WHEREOF, LOWE'S COMPANIES, INC. and the undersigned  
Vendor have hereunto set their hands as of the date of this Agreement.

ATTEST:

LOWE'S COMPANIES, INC.

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

TITLE: \_\_\_\_\_

Received and accepted:

ATTEST:

Hunter Fan Co.  
Name of Company

BY: Ronald Byn

TITLE: VP Sales

GMK Revised 2/01/98

Exhibit F To Complaint To Join  
Additional Defendant, Hunter Fan Company

Vendor Name: Hunter Fan

file

### LGS MASTER STANDARD BUYING AGREEMENT

This Master Standard Buying Agreement by and between L G Sourcing, Inc. (hereinafter referred to as "LGS") a North Carolina corporation with its principal place of business at North Wilkesboro, North Carolina 28659, having a mailing address of P. O. Box 1535, a wholly-owned subsidiary of LOWE'S COMPANIES, INC. and the undersigned corporation and/or partnership, including such other wholly-owned subsidiaries, its parent, all associated trading companies and manufacturer's associates (hereinafter referred to as "Vendor"), by and through its authorized agent is hereby entered into this 31 day of MAY, 2001.

#### WITNESSETH:

WHEREAS, LGS is in the business of procuring products on behalf of certain other entities who sell the products at retail; and

WHEREAS, the undersigned Vendor is a manufacturer of products and desires to sell products to LGS for eventual sale to LGS' customers, who will sell the goods at retail in the United States and Canada; and

WHEREAS, every LGS Purchase Order, whether written, verbal or electronically communicated by LGS to said Vendor is subject to all terms and conditions contained herein, and shall apply to all purchases made by LGS.

NOW, THEREFORE, in consideration of the terms and conditions stated herein and for good and valuable consideration receipt of which is hereby acknowledged by said Vendor, the parties agree to the following:

*Vendor Name:* \_\_\_\_\_

**ARTICLE I.      ACCEPTANCE**

- (1) Every LGS Purchase Order, whether written, verbal or electronically communicated to Vendor is subject to all of the terms and conditions contained in this Agreement, the terms and conditions contained herein shall apply to all purchases by LGS from Vendor. There can be no changes or alterations to the LGS Purchase Order unless consented to in writing by an authorized representative of LGS.
- (2) In case of any conflict, this Agreement supersedes all previous or simultaneous agreements between the parties. Further, this Agreement supersedes any future agreements between the parties unless said future agreements are executed by an officer of LGS.

- (3) This Agreement establishes the minimum standards between LGS and the Vendor.
- (4) Any LGS Purchase Order is void unless given by an authorized representative of LGS.

**ARTICLE II.      EDI & BARCODING**

- (1) Electronic Data Interchange "EDI" may be a requirement for all vendors with more than 100 LGS Purchase Orders or invoices per year. LGS, at its sole option, may require Vendor to receive LGS Purchase Orders, submit its requests for payment, and other documents via EDI.
- (2) LGS requires all vendors to have a scannable Universal Product Code "UPC" label affixed to products sold to LGS according to the Uniform Code Council's specifications. A scannable UPC label shall be affixed to each unit of each product sold by Vendor to LGS.
- (3) All standard shipping containers (master cartons, bundles, pallets, inner packs, etc.) containing fixed multiples of the same item must have an Interleaved 2 of 5 (UPC Shipping Container Code) code placed on the packaging according to the Uniform Code Council's

*Vendor Name:* \_\_\_\_\_

specifications. LGS, at its sole option, may require Vendor to provide to LGS samples of the Interleaved 2 of 5 code and UPC labels for approval prior to their application to the containers and products. The model number of the products and unit count contained within each level of packaging must be printed on each level of packaging in human readable form.

(4) In the event Vendor: (1.) fails to apply an acceptable scannable UPC label or acceptable, scannable Interleaved 2 of 5 codes, (2.) labels products with incorrect UPC bar codes or Interleaved 2 of 5 codes, (3.) provides LGS with inaccurate UPC or Interleaved 2 of 5 information, (4.) applies poor quality, nonscannable UPC label or Interleaved 2 of 5 codes, (5.) substitutes products without prior written notification of the new UPC Codes or Interleaved 2 of 5 codes and/or (6.) otherwise fails to meet Lowe's requirements for coding and labelling, Vendor shall pay LGS a penalty for each such Violation in the amount of One Thousand U.S. Dollars (US\$1,000.00) per each Violation. The payment of said penalty is in addition to any other damages or remedies that may be incurred as defined herein or otherwise allowable by law. For the purpose of this Article II, a "Violation" shall be defined as each shipping container which is not properly coded as required herein and each, individual unit of product that is not labeled as required herein.

### **ARTICLE III. DELIVERY AND PRICING**

(1) LGS preferred terms of sale are FOB Port with the Vendor providing all the ex-port license, ex-port taxes and all fees. The Vendor shall deliver the products "On Board" the ship and provide a Clean Bill of Lading without any stipulations. LGS further requires Vendor to provide three (3) additional pricing levels, in which said pricing levels must be submitted on an LGS International Vendor Offer Sheet, which is attached hereto and incorporated herein by reference as if fully set forth herein as Exhibit 1, as follows:

FOB Consolidation Center  
Ex Works  
CIF-Indicate Port of Call

*Vendor Name:* \_\_\_\_\_

Vendor is required to provide pricing that adequately reflects and passes on to LGS the savings Vendor incurs due to reduced administrative, labor, transportation, packaging costs and any other cost savings Vendor incurs due to the economies of scale provided by LGS Purchase Orders. LGS shall have the right to select any of the pricing option(s) described above as its terms of sale during the term of this Agreement, and LGS reserves the right, at its option, to change from one pricing option to another, without limitation, if the LGS business so requires.

(2) Regarding CIF orders, no liability is incurred by LGS and the risk of loss shall not pass to LGS until legal title passes upon delivery of the products to LGS final destination(s), in good condition and accepted by LGS.

(3) Vendor must advise LGS immediately if any products cannot be shipped or picked up in time to be received by the date(s) specified on the individual LGS Purchase Order. Products must not be shipped to arrive prior to the specified date unless consented to by an authorized representative of LGS. FOB Consolidation Center shipments must have ship date. CIF shipments must have an arrival date. If products are shipped or arrive on days other than those specified they are subject to penalty. Vendor warrants, covenants and agrees to ship all Purchase Orders timely and complete.

(4) A detailed packing slip, including item number, the LGS Purchase Order number, LGS' customers store number, model number, quantity and shipper's name must accompany each shipment of products.

(5) All cartoning must be capable of withstanding the normal rigors of international transportation and physical distribution process as outlined in LGS Loading, Shipping Cargo Requirement Program, which is attached hereto and incorporated herein by reference as fully set forth herein as Exhibit 2. Vendor shall adhere to all requirements as set forth in the LGS Loading, Shipping Cargo Requirement Program. All master cartons must protect inner packs and individual sales units which will be displayed on US/Canadian retailer sales floors. Products that have concealed damage that originated with the Vendor or while Vendor had the risk of loss which is

*Vendor Name:* \_\_\_\_\_

discovered upon receipt of the products by LGS or LGS' customer will be destroyed by LGS or LGS' customer without prior approval from Vendor. Vendor shall reimburse LGS for the cost of the damaged products, the pro rata cost of the transportation charges for said products and any other amounts lost by LGS or LGS' customer (including lost profits) occasioned by the concealed damage.

(6) Multiple orders on the same ocean container must be segregated. Identical items on each LGS Purchase Order must be grouped together.

(7) All transportation costs or expenses incurred by LGS because of Vendor's noncompliance with the terms of an order, and any additional transportation or administrative charges due to split shipments, failure to follow LGS routing instructions, errors in classification of products, or for any other reason, shall be charged back to Vendor.

(8) Vendor is responsible, at its cost, for insuring the products to the FOB point for full replacement value, including freight, and Vendor shall file all claims for loss or damage. All uncollectible portions of concealed damage claims will be charged back to Vendor. Risk of loss shall not shift from the Vendor to LGS until the Vendor and/or its agent has delivered the products to the appropriate LGS and/or LGS' customers location.

(9) No backorders will be accepted.

(10) Accumulation of orders to fill a container unless specified by LGS is not allowed. Vendors/Carriers must adhere to the specified ship dates and arrival date per the designated routings.

(11) Each unit of each product as well as all product packaging must be marked with the Country of Origin either stamped, printed or forged in a size and location which complies with the

*Vendor Name:* \_\_\_\_\_

United States Custom Regulations, Canadian Custom Regulations and any applicable United States or Canadian law, rule, regulation or administrative requirement. Products which have been determined to be out of compliance either by LGS or any appropriate governmental authority will be either: (1) returned to Vendor, at Vendor's expense, in which case Vendor shall reimburse LGS for all costs associated with said products, a pro rata share of transportation charges, lost profits and any additional damages which may be applicable or (2) LGS or its customers may choose to properly mark any product out of compliance; in such case, Vendor shall reimburse LGS for all costs associated with said marking, any costs of any applicable transportation charges, lost profits and any additional damages which may be applicable.

(12) Vendor shall place specific markings on the product(s) in order to identify the manufacturing month and year, as described in LGS' Product Identification and Traceability Program, which is attached hereto and incorporated herein by reference as fully set forth herein as Exhibit 3.

#### **ARTICLE IV. INVOICING/BILLING REQUIREMENTS**

(1) All invoice and/or credit memorandum transactions regarding products purchased for resale should be mailed or electronically transmitted promptly and accurately to the specified address or Third Party Value Added Network mailbox, to which the Vendor acknowledges LGS has provided vendor information and specifics. All billing related transactions that cannot be processed due to their failure to comply with LGS billing requirements may be returned for re-billing or held for correction without the loss of applicable discounts. LGS shall not pay interest,

*Vendor Name:* \_\_\_\_\_

service charges or any similar penalty, nor shall LGS lose any applicable discount caused by the late payment of invoices in which payment was delayed due to reasons beyond LGS' control.

Vendors may be subject to an administrative processing charge for non-compliance.

(2) All invoices, credit memoranda, bills of lading, related documents and other correspondence must reference the applicable LGS Purchase Order Number or Assigned Control Number (Example: RMR #) and the specific LGS' customer store number(s) to which the transactions apply. In addition, Vendor must provide LGS item numbers on invoices and packing slips as well as list line items in the same sequence as ordered. In lieu of requiring proof of shipment on all invoices, LGS reserves the right to request proof of shipment or proof of delivery for selected transactions at a later date.

(3) In respect to products purchased through the LGS open account order process, LGS pays from invoice only pursuant to LGS Import Procedures For Open Account, which is attached hereto and incorporated herein by reference as set forth herein as Exhibit 4. Vendor acknowledges that LGS is not obligated to pay any invoice until the full LGS Purchase Order of the products ordered are received pursuant to the delivery terms agreed upon between the parties. Vendor shall submit one invoice per LGS Purchase Order (shipment) and one LGS Purchase Order per invoice with no backorders being allowed by LGS. Invoicing should be initiated on the day of shipment (not before) and reference the correct F.O.B. terms as well as the freight payment responsibility (collect or prepaid). LGS reserves the right to charge back to the Vendor any shortages between products received and products invoiced. Vendor acknowledges that vendor must comply with all

*Vendor Name:* \_\_\_\_\_

of the requirements as set forth in the LGS Import Procedures For Open Account to receive payments for products purchased by LGS.

(4) In respect to products purchased by LGS from Vendor which are to be paid by a Letter of Credit, Vendor shall follow all requirements as set forth in the LGS Letter of Credit and any other LGS documents associated with said purchase. Vendor acknowledges that LGS is not obligated to pay any invoice until the full order of the products ordered are received pursuant to the delivery terms agreed upon between the parties.

(5) Payment will be made in accordance with the terms mutually agreed upon in writing between the parties. Any deviation from the negotiated payment terms must be communicated and agreed to in writing by LGS prior to accepting an order. Payment terms begin on the date of satisfactory receipt of all required documents which comply with the stipulations set forth in the open account policies of LGS. The average transit time for a specific Vendor will be added to invoice/shipment date to determine the day on which dating is to begin. On all Prox. (approximate date) and E.O.M. (end of the month) dating, products received after the 24th of any month shall be payable as if received on the 1st day of the following month. LGS interprets payment due date as the day the remittance is to be mailed.

(6) LGS policy will be to include unit pricing on all outgoing EDI LGS Purchase Orders. Vendor agrees to notify LGS of any price discrepancies prior to shipment/invoicing. Failure to communicate irregularities will result in a LGS deduction which will not be refunded. Vendor further agrees that if prior to shipment there is any reduction in Vendor's regular selling price for

*Vendor Name:* \_\_\_\_\_

the products, Vendor shall notify LGS of the reduced selling price and the price specified on the LGS Purchase Order will be reduced to the lower price. LGS requires a minimum 60 days written notice for all price increases. A price increase cannot take effect until 30 days after LGS authorized representative agrees (by letter) to accept the proposed price increase. In addition, it is agreed that for price increases LGS Purchase Order date determines applicable price and on price decrease invoice/shipment date determines applicable price.

(7) If Vendor has a debit balance with LGS, the amount owed will be deducted from the next remittance or a check from the Vendor to clear this amount will be paid within thirty (30) days at the option of LGS. It is also agreed that LGS has the option to perform post audits and file claims for billing/payment errors on prior years business transactions. These audits will normally be completed within 24 months of the end of a calendar year.

(8) Vendor acknowledges that Vendor has provided LGS its best pricing and delivery terms in respect to the sale of its products to LGS. Vendor acknowledges that should the terms become more favorable after execution of this Agreement or any purchase order(s) made pursuant to this Agreement, then in that event, the terms of this Agreement or any purchase order(s) automatically shall change to the more favorable terms. LGS shall have the exclusive discretion in determining if the terms become more favorable after the execution of this Agreement or any purchase order(s) made pursuant to this Agreement.

(9) Vendor acknowledges that at LGS' sole discretion, LGS and its agents, have the authority to enter upon Vendor's premises for the purpose of inspecting its manufacturing facilities,

*Vendor Name:* \_\_\_\_\_

the procedures used by Vendor in manufacturing applicable products, its work place, etc. to assure compliance with Vendor's obligations under this Agreement or any pertinent laws, orders or decrees applicable to LGS and LGS' customers.

ARTICLE V.

WARRANTIES & GUARANTEES

- (1) Vendor agrees that LGS shall not be liable for the inspection of products before resale and that all warranties set out herein or otherwise (whether expressed or implied) shall survive inspection, acceptance and payment by LGS and LGS customers.
  
- (2) Approval by LGS of Vendor's product design or materials used in products shall not relieve Vendor from any obligations under any warranties, representations or guarantees. Products delivered (whether paid for or not) are subject to inspection, testing and approval by LGS before acceptance. Vendor acknowledges its obligations under the warranties, guarantees and representations of this Agreement are not relieved even if LGS or LGS' customer approves or accepts the products or if the designs or the specifications of the products purchased by LGS originated with LGS. Vendor warrants that all products will be of good quality, material and workmanship, merchantable and free from any and all defects. Vendor shall comply and adhere to the procedures as set forth under the LGS Quality Acceptance Program, which is attached hereto as Exhibit 5 and incorporated herein by reference as fully as set forth.

*Vendor Name:* \_\_\_\_\_

(3) Vendor, by entering into this Agreement and accepting any LGS Purchase Order, warrants, represents and guarantees that all applicable laws, ordinances, codes, rules, regulations and provisions of the Country of Origin of any product, any country in which a component part of any product is manufactured, Canada, the United States of America, each U.S. state and each locality where products are sold has been fully complied with as it relates in any way to the manufacture, packaging, shipment, sale and use of all products. Further, Vendor warrants, represents and guarantees that all applicable industry, trade, safety and other regulations have been fully met with respect to the manufacture, packaging, shipment, sale and use of all products. Vendor also warrants, represents and guarantees that the price and other terms and conditions of sale, the terms on which all promotional and advertising matter are furnished by Vendor to LGS and all guarantees, warranties, labels and instructions furnished in connection with any product comply with all applicable laws, ordinances, codes, rules and regulations.

(4) Vendor, by entering into this Agreement and accepting any LGS Purchase Order, warrants, represents and guarantees its products and that all products comply with any and all applicable LGS specifications.

(5) Vendor represents, warrants and guarantees that the weights, measures, signs, legends, words, particulars or descriptions (if any) stamped, printed or otherwise attached to the products or containers are true and correct and comply with all applicable laws, ordinances, codes, rules and regulations; and that the products delivered pursuant to this Agreement or any LGS Purchase Order, as well as all activities by or on behalf of Vendor in designing, manufacturing, packing, shipping and otherwise handling any product under this Agreement, fully conform and

*Vendor Name:* \_\_\_\_\_

comply with all laws and regulations of the United States, Canada and the country of origin of all products (and components thereof) pertaining to the environment, public safety and health and the transportation of hazardous materials, including, without limitation, all applicable provisions of the United States Consumer Product Safety Act; the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act; the Consumer Products Safety Act; the Wool Products Labeling Act; the Food, Drug and Cosmetics Act; the Hazardous Materials Transportation Act; the Solid Waste Disposal Act, including the Resource Conservation and Recovery Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Federal Insecticide Fungicide, and Rodenticide Act (FIFRA); the Toxic Substances Control Act (TSCA); the Marine Mammal Protection Act; the Endangered Species Act; the Forest and Rangeland Renewable Resources Planning Act of 1974; the Federal Water Pollution Control Act; the Clean Air Act; the Noise Control Act; the National Environmental Policy Act; the Safe Drinking Water Act; the Emergency Planning and Community Right-to-Know Act; the Pollution Prevention Act of 1990; the Atomic Energy Act; and all other similar international, federal, regional, state, or local statutes, rules, regulations, guidance, memoranda, decisions, and other interpretations by any agency implementing those requirements; and all applicable standards of the Underwriters Laboratories, Inc.; the American Society for Testing Materials (ASTM); the National Fire Protection Association (NFPA); American National Standards Institute (ANSI); the International Standards Organization (ISO); and other similar standards organizations; and any and all amendments, modifications and updates of all of the foregoing (collectively, the statutes, rules, regulations, guidance, memoranda, decisions, interpretations, and standards referred to in this sentence are hereafter referred to as "Standards"). Vendor further agrees that the weights, measures, signs, legends, words, particulars or descriptions (if any) stamped, printed or otherwise attached to the products or containers or

*Vendor Name:* \_\_\_\_\_

referring to the products delivered pursuant to this Agreement are complete, true and correct and comply with all Standards. Vendor shall provide LGS with a guaranty form executed by an officer of Vendor, if prescribed by Standards, along with Vendor's invoice (before payment is required to be made and without loss of discount). Upon request Vendor shall provide Lowe's with any information necessary to facilitate Lowe's disposal or return to Vendor of any merchandise which is defective, off-specification, mislabeled or which otherwise fails to conform to any LGS Purchase Order.

(6) Vendor warrants and represents that if the importation of products into the United States or Canada or the sale of the products in the United States or Canada is enjoined or otherwise stopped for any reason, then in that event, Vendor shall, at LGS' option and at Vendor's expense, either remove the reason for said injunction or stoppage, or alternatively, substitute other products approved in writing by LGS that are not subject to the injunction or stoppage. If such event occurs (injunction or stoppage of the products), then Vendor shall pay LGS all damages and expenses incurred by LGS and/or LGS' customers due to said injunction or stoppage, which shall include, but is not limited to the following: lost profits, attorney fees and expenses incurred along with any associated expenses (such as testing fees, engineering consultant fees, etc.) that LGS and/or LGS' customers may expend or incur to insure compliance. LGS at its exclusive option, may back charge or set off any funds due to Vendor in respect to its damages or expenses to overcome any injunction or stoppage of importation of the products.

(7) With acknowledgment that the terms and conditions of this paragraph have been expressly bargained for and are an essential part of this Agreement and all LGS Purchase Orders,

*Vendor Name:* \_\_\_\_\_

and in consideration of: and all purchases heretofore, herein and hereafter made by LGS from Vendor or from affiliate subsidiaries of Vendor, and by accepting this Agreement or any LGS Purchase Order, Vendor agrees to defend and shall indemnify LGS, its employees, its officers, its directors, its agents, its parent, its subsidiaries, its affiliates, its customers and the successors and assigns of any of the foregoing (hereinafter "Indemnitees") and shall hold them harmless from and against any and all liability and/or losses and/or damages, whether compensatory or punitive, which may be assessed against any of them. Vendor's obligation to indemnify and hold harmless Indemnitees shall include, but not be limited to, any and all claims, lawsuits, appeals, actions, assessments, product recalls, decrees, judgments, orders, investigations, civil penalties or demands of any kind, including court costs, expenses and attorney's fees, which may be made or brought against Indemnitees arising out of: (1) any allegation of or actual misrepresentation or breach of warranty; (2) any alleged bodily injury or property damage related to the possession or use of any product; (3) any alleged infringement of any patent, design, trade name, trademark, copyright or trade secret; (4) any alleged violation by Vendor or any law, ordinance, code, rule, or regulation; (5) any alleged or threatened discharge, release or escape of pollutants or other environmental impairment; (6) any breach or violation by Vendor of any terms or conditions of this Agreement or any LGS Purchase Order; or (7) any other allegation arising directly or indirectly from any product originating from Vendor. Vendor shall pay all judgments against and assume the defense of Indemnitees upon Indemnitees' demand with respect to any such matters, even if any such allegation of liability is groundless, false or fraudulent. Notwithstanding the above, Indemnitees shall have the right but not the obligation to participate as the team necessary in the handling, adjustment, defense or settlement of any such matters. Further, for the term of this Agreement and hereafter, Vendor releases Indemnitees from any claim based on Vendor's patent, copyright,

*Vendor Name:* \_\_\_\_\_

trademark, trade dress or other intellectual property rights. LGS, at its sole discretion, shall have the right to purchase from other sources those products manufactured or offered by Vendor free of any patent, copyright, trademark, trade dress or other intellectual property rights of Vendor.

Should Vendor fail to assume its obligations hereunder, to diligently pursue and pay for the defense of Indemnitees within ten (10) days from the written demand by Indemnitees, Vendor hereby agrees that Indemnitees shall have the right, but not the obligation, to proceed on their own behalf to defend themselves by way of engaging their own legal counsel and the services of any and all other experts or professionals they deem necessary to prepare and present a proper defense, and to thereafter require from Vendor reimbursement and indemnification for all costs and expenses incurred in such defense and for any and all penalties, judgments, fines, interest or other expenses incurred as a result of such claim, lawsuit, appeal, action, assessment, civil penalty, product recall, decree judgments, orders or demands as more fully set forth above. Vendor warrants, represents and agrees that Indemnitees shall have the exclusive right, at their sole option, to settle or otherwise proceed to resolution of any dispute at their discretion. Vendor warrants, represents and agrees that it will reimburse Indemnitees for all payments, costs and expenses paid by or for Indemnitees in respect to said settlement. Indemnitees, at their sole option, may charge back or set off any monies due by Vendor to LGS in respect to the settlement of any claims under this Agreement.

(8) Vendor warrants Vendor is a corporation and/or partnership duly organized, validly existing, and in good standing under the laws of the country of origin of the products; said Vendor has the requisite corporate power and/or authority and the legal right to enter into this Agreement, and to conduct its business as now conducted and hereafter contemplated to be conducted; and is in

*Vendor Name:* \_\_\_\_\_

compliance with its Articles of Incorporation and Bylaws or its Partnership Agreement. Vendor warrants the execution, delivery and performance of this Agreement and all instruments and documents to be delivered by Vendor are within the Vendor's corporate power and/or partnership agreement have been duly authorized by all necessary or proper action, including the consent of shareholders if required; do not and will not contravene any provisions of the Vendor's Articles of Incorporation or Bylaws and/or Partnership Agreement. Vendor warrants this Agreement has been duly executed and delivered by Vendor, and constitutes the legal, valid, and binding obligation of the Vendor and enforceable against the Vendor in accordance with its terms.

(9) Vendor warrants and acknowledges that Vendor and its officers, directors, employees and agents have received a copy of LGS and/or its parent corporation's Code of Ethics and Statement of Business Ethics. Vendor warrants along with its officers, directors, employees and agents hereby warrant, covenant and agree to perform in strict compliance with the LGS and/or its parent corporation's Code of Ethics, Statement of Business Ethics, and all applicable laws, rules, regulations, orders, codes, and governmental orders.

(10) Vendor warrants that the performance of this Agreement along with any addenda to said Agreement and LGS purchase order(s), is personal to Vendor. Vendor warrants, represents and guarantees that no other entity will manufacture the products or otherwise perform any obligations under this Agreement without the express written approval of a representative of LGS. Vendor further warrants, represents and guarantees that Vendor has not and shall not prior to, during the term of, and/or any time subsequent to the execution of this Agreement or any LGS

*Vendor Name:* \_\_\_\_\_

purchase order(s) has made or will make any payment to any outside parties, representatives, agents, without prior written approval and notification from LGS.

(11) Vendor warrants, represents and guarantees that all communications between the parties concerning this Agreement, any LGS purchase order(s) or the products manufactured pursuant thereto shall be made in English. Vendor acknowledges and warrants that it has completely read this Agreement prior to execution of the Agreement and that Vendor understands and accepts each of the terms contained herein.

(12) Vendor shall indemnify LGS against and hold LGS harmless from any and all lawsuits, claims, actions, damages (including reasonable attorney fees, obligations, liabilities and liens) arising or imposed in connection with LGS for amounts due and owing under this Agreement where Vendor has not complied with the notice requirements of this section.

(13) Vendor, by entering into this Agreement and by accepting any LGS Purchase Order, warrants, represents and guarantees that all labor used by the Vendor and/or its vendors or suppliers is furnished by employees with a minimum age of no less than 16 years. Vendor acknowledges LGS policy of purchasing products from vendors who do not use child labor in the production of goods.

(14) Vendor, by entering into this Agreement and by accepting any LGS Purchase Order, warrants, represents and guarantees that all labor in producing the goods by the Vendor and/or its vendors or suppliers is not furnished, manufactured, produced, or distributed, wholly or in part by

*Vendor Name:* \_\_\_\_\_

convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution.

(15) Vendor warrants, covenants and agrees to ship each item on each LGS Purchase Order complete and on the shipment date as set out in the LGS Purchase Order.

(16) Vendor warrants, covenants, acknowledges and agrees that LGS is in the business of procuring products on behalf of certain other entities who sell the products at retail in the United States and Canada, and in the event Vendor fails to comply with any of the terms and conditions of this Agreement, or the LGS Purchase Orders, then in that event, such failure to perform will result in damage not only to LGS but to LGS' customers. Vendor acknowledges that LGS will be liable to LGS' customers for its failure to perform, and therefore, Vendor warrants, represents and guarantees that Vendor shall indemnify LGS and LGS' customers and hold LGS and LGS' customers harmless for any damages arising or imposed in connection with LGS and/or LGS' customers where Vendor has not complied or failed to perform under the LGS Master Standard Buying Agreement, the LGS Purchase Order and any associated documents provided to Vendor by LGS.

#### **ARTICLE VI. PRODUCTS RETURNS**

(1) Notice of defects in the products or any other breach by Vendor under the terms of this Agreement and the individual LGS Purchase Order will be considered made within reasonable time, if made within a reasonable time after being discovered by LGS or after notification is given to LGS by LGS' customers or the users of the products. The return of such products shall not

*Vendor Name:* \_\_\_\_\_

relieve Vendor from liability from any failure to ship conforming products under the LGS Purchase Order or for liability with respect to warranties, expressed or implied. Failure of LGS to state a particular defect upon rejection shall not preclude LGS from relying on unstated defects to justify rejection or establish breach. Resale, repackaging, repacking or cutting up for the purpose of resale or for use shall not be considered as acceptance of the products so as to bar LGS right to reject such products or to revoke acceptance.

(2) Vendor agrees that in the absence of a negotiated and signed Defective Products Return Policy, LGS will adhere to the following general guidelines. Specifically, defective products (item) will be destroyed by the retailer, LGS, and/or LGS's parent without obtaining Vendor return authorization. Vendor further agrees to reimburse LGS and its parent for the products (item) at Purchased Ordered delivered cost, including all freight charges.

#### **ARTICLE VII. CANCELLATIONS & RETURNS**

(1) LGS reserves the right to refuse or return any products comprising a portion of LGS Purchase Order that is not shipped complete, as ordered and in accordance with the terms in this Agreement and in compliance with all details, including requested ship and arrival dates, as outlined in the LGS Purchase Order.

(2) LGS reserves the right to cancel in whole or in part any Purchase Order up to thirty (30) days prior to the shipment of products on the Purchase Order without incurring any liability.

*Vendor Name:* \_\_\_\_\_

## ARTICLE VIII. MISCELLANEOUS

(1) Both parties acknowledge that this LGS' Master Standard Buying Agreement forms the agreement between the parties and controls the manufacture, sale and delivery of products. Performance of any LGS Purchase Order must be in accordance with all of the terms and conditions stated herein. There can be no changes or modifications to the Standard Master Buying Agreement, unless in writing and signed by an officer of LGS. In absence of any agreements signed by Vendor, this Agreement represents the entire agreement of the parties.

(2) All costs, lost profits and expenses incurred by LGS or LGS' customers due to Vendor's violations of or failure to follow any or all of the terms of this Agreement will be charged back to Vendor and Vendor expressly agrees to reimburse LGS or LGS' customers for all such costs, loss profits and expenses. Vendor further agrees that LGS or LGS' customers may deduct such costs, loss profits and expenses from any sum thereafter owing to Vendor by LGS or LGS' customers under any Orders between LGS or LGS' customers and Vendor.

(3) Any and all taxes, fees, imports or stamps required by State, Federal or Municipal Governments in the exporting of products/products to LGS shall be paid and assumed by Vendor.

(4) No provisions of this Agreement shall be waived or shall be construed to be waived by LGS unless such waiver is in writing and signed by an authorized agent of LGS. No failure on the part of LGS to exercise any of the rights and remedies granted hereunder or to insist upon strict

*Vendor Name:* \_\_\_\_\_

compliance by Vendor shall constitute a waiver of LGS right to demand exact compliance with the terms hereof. The Vendor hereby waives use of the statute of frauds as a defense to any Order accepted pursuant to this Agreement.

(5) The rights, remedies and options provided herein are in addition to and not to the exclusion of any and all other rights and remedies provided by law.

(6) LGS shall not be bound by any assignment of any LGS Purchase Order by Vendor, unless LGS has consented prior thereto in writing. LGS may assign any LGS Purchase Order to a present or future subsidiary, affiliate, or parent.

(7) Should LGS use the services of an attorney to enforce any of its rights hereunder, or to collect any amounts due, Vendor shall pay LGS for all costs and expenses incurred, including reasonable attorney's fees.

(8) This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina, USA. The parties agree that the courts within the State of North Carolina will have exclusive jurisdiction with venue being in Wilkes County, State of North Carolina, USA. Vendor in executing this Agreement, hereby submits itself to the jurisdiction of the federal and state courts of the State of North Carolina, USA.

(9) Vendor agrees to furnish, when returning this completed Agreement, a complete set of current financial statements. Publicly held companies should include the Annual Report to

*Vendor Name:* \_\_\_\_\_

Shareholders and 10K Report (or any international equivalent document). If financial statements are not available, a Dun & Bradstreet report should be furnished.

(10) The Vendor shall provide LGS written notice of an assignment, factoring or other transfer of its right to receive payments arising under this Agreement 30 days prior to such assignment, factoring or other transfer taking legal effect. Such written notice shall include the name and address of assignee/transferee, date assignment is to begin, and terms of the assignment and shall be considered delivered upon receipt of such written notice by LGS' Trade Payable Department. Vendor shall be allowed to have only one assignment, factoring or transfer legally effective at any one point in time. No multiple assignments, factoring or transfers by the Vendor shall be permitted. LGS reserves the right to require any and all documentation in reference to the legal effect of the assignment, factoring or other transfer as determined needed by LGS Corporate Counsel prior to accepting the assignment, factoring or other transfer by LGS.

(11) Vendor, by and through its representative, further covenants and agrees not to communicate during the term of this Agreement, or at any time subsequently, any such information relating to the secrets, business methods, business secrets, including trade secrets, business information, or the manner in which LGS conducts its business to any person, corporation or entity. Vendor acknowledges and agrees that Vendor has and will receive confidential information including, but not limited to: Proprietary packaging, proprietary product(s) and/or product design(s), LGS business and confidential data which includes quotations, sales volume, pricing, etc. and that money damages will not adequately compensate LGS for any disclosure of any information in violation of this agreement. Any right of equitable enforcement granted to LGS

*Vendor Name:* \_\_\_\_\_

shall not be deemed to preclude LGS from seeking actual money damages or any other remedy from Vendor and/or its agents in the event of a breach of such covenant.

Confidential information does not include information that is generally known by the public or, which becomes known to Vendor through no breach of the Agreement or other unauthorized use of LGS' confidential information.

(12) At any time during the term of this Agreement and for a period of five (5) years after the final payment of any invoice under this Agreement, LGS, or its designated agent, shall have the right to examine and audit up to five (5) years of the Vendor's records in respect to any and all matters occurring within the five (5) year period prior to the request and relating to LGS payments to Vendor under this Agreement, including, but not limited to, payments for any orders, invoices, and Vendor's compliance with LGS business ethics policies and LGS Code of Ethics. Vendor shall maintain complete and accurate records to substantiate Vendor's charges, pursuant to this Agreement. By execution of this Agreement by Vendor, LGS shall have access to such records for the purpose of audit during normal business hours upon reasonable notice to Vendor.

(13) The initial term of this Agreement is for one (1) year commencing on the date first written above and shall automatically renew on a year-to-year basis thereafter, unless terminated by written notice by either party not later than sixty (60) days prior to the end of the then current term.

(14) Any dispute, controversy or claim arising out of or relating to this Agreement, any Purchase Orders between the parties, or the breach, termination or invalidity thereof may at the sole

*Vendor Name:* \_\_\_\_\_

discretion of LGS be finally settled under the Rules of the American Arbitration Association by one or more arbitrators appointed in accordance with said Rules. The place of arbitration shall be Charlotte, North Carolina, USA and the law applicable to arbitration procedures shall be laws of the state of North Carolina, USA. The English Language shall be used throughout the arbitral proceedings. The parties agree that the award of the arbitrator(s) shall be the sole and exclusive remedy between them regarding any claims, counterclaims, issues or accountings presented or pled to the arbitrator(s); that it shall be made and shall promptly be payable in U.S. dollars free of any tax, deduction or offset; that any costs and attorneys fees incurred by the prevailing party as determined by the arbitrator(s) incident to the arbitration, shall be included as part of the arbitration award; and that any costs, fees or taxes incident to enforcing the award shall, to the maximum extent permitted by law, be charged against the party resisting such enforcement. The award shall include interest from the date of any damages incurred for breach or other violation of the contract, and from the date of the award until paid in full, at a rate to be fixed by the arbitrator(s), but in no event less than the prime interest rate for First Union National Bank in Charlotte, North Carolina, U.S.A.

(15) The representations, warranties, indemnification, obligations and guarantees contained in this Agreement shall survive for the maximum period permitted by the applicable statutes of limitations, if any, except that the warranties and guarantees in Article V of this Agreement shall survive twenty (20) years from the last date of any purchase pursuant to this Agreement by LGS from the Vendor.

Vendor Name: \_\_\_\_\_

IN WITNESS WHEREOF, LGS and the undersigned Vendor have hereunto set their hands as of the date of this Agreement.

ATTEST:

L G SOURCING, INC.

BY: Mark Vaughan

\_\_\_\_\_  
Company Chop/Seal

TITLE: President

Received and accepted:

ATTEST: (VENDOR)

Hunter Fan Co.

Name of Company

\_\_\_\_\_  
Company Chop/Seal

BY: Brandon Byrne  
(Signature Line)

Brandon Byrne  
(Print Signature in English)

VP, Sales  
(Full Title of Executing Officer)

Revised 6/27/97 (7th Edition)  
273384

*Vendor Name:* \_\_\_\_\_

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*Vendor Name:* \_\_\_\_\_

EXHIBIT 1: LGS International Vendor Offer Sheet

EXHIBIT 2: LGS Loading, Shipping Cargo Requirement Program

EXHIBIT 3: LGS Product Identification and Traceability Program

EXHIBIT 4: LGS Import Procedures for Open Account

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Complaint To Join Additional Defendant, Hunter Fan Company have been sent on this 19<sup>th</sup> day of September, 2005, to the individuals identified below in the manner identified below:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

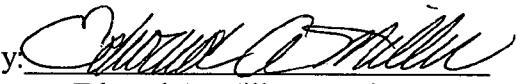
VIA REGULAR US MAIL

Mr. Robert Besley  
Chief Executive Officer  
Hunter Fan Company  
2500 Frisco Avenue  
Memphis, TN 38114

VIA CERTIFIED MAIL

**MARSHALL, DENNEHEY, WARNER  
COLEMAN AND GOGGIN, P.C.**

By:

  
Edward A. Miller, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

NO. 04-369-CD

vs.

**CERTIFICATE OF SERVICE OF  
COMPLAINT TO JOIN ADDITIONAL  
DEFENDANT, HUNTER FAN  
COMPANY**

LOWE'S HOME CENTERS, INC.,

Defendant,

vs.

HUNTER FAN COMPANY,

Additional Defendant.

**Filed on behalf of Defendant, Lowe's  
Home Centers, Inc.**

Counsel of Record for the Defendant:

EDWARD A. MILLER, ESQUIRE  
Pa. I.D. #58954

**MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN, P.C.**  
US Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
(412) 803-1188 - Fax

*FILED NO CC  
MID:03/01  
SEP 29 2005 LN*

William A. Shaw  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM S. ALBERT, ) CIVIL DIVISION  
                          )  
                          Plaintiff, ) NO. 04-369-CD  
                          )  
                          vs. )  
                          )  
LOWE'S HOME CENTERS, INC., )  
                          )  
                          Defendant, )  
                          )  
                          vs. )  
                          )  
HUNTER FAN COMPANY, )  
                          )  
                          Additional Defendant. )

**CERTIFICATE OF SERVICE OF COMPLAINT TO JOIN ADDITIONAL  
DEFENDANT, HUNTER FAN COMPANY**

I hereby certify that a true and correct copy of the Complaint To Join Additional Defendant, Hunter Fan Company was served via certified mail upon Additional Defendant, Hunter Fan Company, on September 21, 2005. A copy of the executed Domestic Return Receipt for the certified mail sent to Hunter Fan Company is attached hereto as Exhibit "A".

Respectfully submitted,

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

By:



Edward A. Miller, Esquire  
U.S. Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219  
(412) 803-1140  
FAX (412) 803-1188  
[emiller@mdwcg.com](mailto:emiller@mdwcg.com)

Counsel for Defendant Lowe's Home Centers, Inc.

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Mr. Robert Besley  
Chief Executive Officer  
Hunter Fan Company  
2500 Frisco Avenue  
Memphis, TN 38114

**2. Article Number***(Transfer from service label)*

7004 0750 0003 2283 4737

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY****A. Signature**

*X Henry C. Bush*

 Agent  
 Addressee**B. Received by (Printed Name)***John Bushman***C. Date of Delivery***9/1/04*

**D. Is delivery address different from item 1?**  Yes  
If YES, enter delivery address below:  No

**3. Service Type**

- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.

**4. Restricted Delivery? (Extra Fee)** Yes**EXHIBIT**

tables®

A

**CERTIFICATE OF SERVICE**

I, Edward A. Miller, Esquire, do hereby certify that a true and correct copy of the foregoing was sent on this 27<sup>th</sup> day of September, 2005, by U.S. Mail, postage pre-paid to Plaintiff's counsel and the currently unrepresented Additional Defendant addressed as follows:

S. Casey Bowers, Esquire  
Hanak, Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Mr. Robert Besley  
Chief Executive Officer  
Hunter Fan Company  
2500 Frisco Avenue  
Memphis, TN 38114

  
Edward A. Miller, Esquire

\12\_A\LIAB\EAM\LLPG\345777\BCB\12240\00223

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

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

No. 04-369-CD

v.

LOWE'S HOME CENTER, INC.,

Defendant,

v.

HUNTER FAN COMPANY,

**APPEARANCE**

Additional Defendant.

Filed on Behalf of:  
Additional Defendant

Counsel of Record for this Party:

THOMAS J. LOWERY, ESQUIRE  
Pa. I.D. No. 32204

MARGOLIS EDELSTEIN  
Firm No. 244  
310 Grant Street, Suite 1500  
Pittsburgh, PA 15219  
Telephone: (412) 281-4256  
Facsimile: (412) 642-2380

**JURY TRIAL DEMANDED**

FILED NO CC  
M 11:44 AM  
OCT 03 2005 copy to CLA  
William A. Shaffer  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT, : CIVIL DIVISION  
Plaintiff, : No. 04-369-CD  
v. :  
LOWE'S HOME CENTER, INC., :  
Defendant, :  
v. :  
HUNTER FAN COMPANY, :  
Additional Defendant. :  
:

**APPEARANCE**

TO: Prothonotary

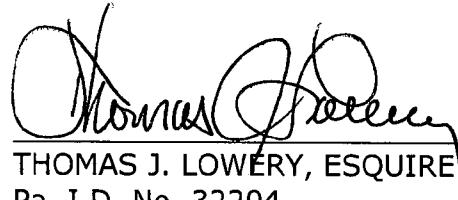
KINDLY enter my appearance for Additional Defendant, Hunter Fan Company,  
in the above-entitled action.

**JURY TRIAL DEMANDED.**

Respectfully submitted,

MARGOLIS EDELSTEIN

By

  
THOMAS J. LOWERY, ESQUIRE  
Pa. I.D. No. 32204  
310 Grant Street, Suite 1500  
Pittsburgh, PA 15219  
(412) 281-4256

*Counsel for Additional Defendant,  
Hunter Fan Company*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **APPEARANCE** was served upon all counsel of record by First Class Mail, postage prepaid, this 30<sup>th</sup> day of September, 2005, as follows:

S. Casey Bowers, Esquire  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Edward A. Miller, Esquire  
Marshall, Dennehey, Warner,  
Coleman & Goggin, P.C.  
US Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219



THOMAS J. LOWERY, ESQUIRE  
Counsel for Additional Defendant

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

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

No. 04-369-CD

v.

LOWE'S HOME CENTER, INC.,

Defendant,

v.

HUNTER FAN COMPANY,

Additional Defendant.

**ANSWER AND NEW MATTER  
OF HUNTER FAN COMPANY  
TO COMPLAINT TO JOIN**

Filed on Behalf of:  
Additional Defendant

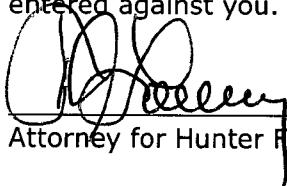
Counsel of Record for this Party:

THOMAS J. LOWERY, ESQUIRE  
Pa. I.D. No. 32204

MARGOLIS EDELSTEIN  
Firm No. 244  
310 Grant Street, Suite 1500  
Pittsburgh, PA 15219  
Telephone: (412) 281-4256  
Facsimile: (412) 642-2380  
**JURY TRIAL DEMANDED**

TO: All Parties

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

  
\_\_\_\_\_  
Attorney for Hunter Fan Company

FILED NO  
3114361 CC  
JAN 23 2006

William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT,	:	CIVIL DIVISION
Plaintiff,	:	No. 04-369-CD
v.	:	
LOWE'S HOME CENTER, INC.,	:	
Defendant,	:	
v.	:	
HUNTER FAN COMPANY,	:	
Additional Defendant.	:	

**ANSWER AND NEW MATTER OF HUNTER FAN TO COMPLAINT TO JOIN**

AND NOW, comes the Additional Defendant, Hunter Fan Company, by and through their attorneys, Margolis Edelstein and Thomas J. Lowery, Esquire, and files the within response to Plaintiff's Complaint and the Complaint to Join of which the following is a statement:

**ANSWER**

1. Following a reasonable investigation, this Additional Defendant is without sufficient information to form a belief as to the truth or falsity of these averments and they are accordingly denied pursuant to the relevant Rules of Civil Procedure and strict proof thereof is demanded.

2. Admitted.

3. Admitted.

4. It is admitted that Plaintiff filed an Amended Complaint, and that Plaintiff alleges in that Amended Complaint that a fire destroyed his home on or about October 20, 2003 causing him to sustain damages in the amount of \$138,482.09. It is denied that Hunter Fan Company is liable for the fire or the damages claimed, and strict proof of the damages are demanded as more fully set forth hereafter in this pleading.

5. It is admitted that Plaintiff, William S. Albert, alleges that the fire was caused by a defective ceiling fan purchased on or about December 13, 2001 by Plaintiff's sister-in-law. It is denied that the subject fire was caused by a defective fan as more fully set forth hereinafter. To the contrary, the fan in question is not believed to have been defective in any manner, and strict proof to the contrary is demanded. Strict proof that a fan manufactured or sold by this Additional Defendant was defective or caused the fire complained of is demanded.

6. It is admitted that Plaintiff alleges in his Amended Complaint that Lowe's Home Centers, Inc. should be strictly liable for the damages claimed by Plaintiff. It is denied that Lowe's Home Centers, Inc. should be strictly liable. Lowe's should not be strictly liable insofar as it is denied that the fire in question was caused by the fan in question, and additionally by virtue of the contractual arrangements between Lowe's and Hunter Fan Company, Lowe's would not be liable for the fire complained of, and to the contrary, Hunter Fan Company will indemnify and defend Lowe's, with the result that Lowe's would not be liable.

7. Admitted.

8. Admitted.

9. It is believed that the depositions of William S. Albert and/or Eleanor Albert were taken for the limited purpose of attempting to identify the source of the fan in question, and ultimately the manufacturer and/or seller of the fan in question. It is admitted that Plaintiff and his sister-in-law testified that the ceiling fan in question was purchased by Mrs. Albert in November 2001 at a Lowe's store in DuBois, Pennsylvania. Whether or not those assertions are true and accurate are unknown to this Additional Defendant following a reasonable investigation. In any case, it is asserted that by virtue of the above-described contractual arrangements between Hunter Fan Company and Lowe's that the only importance that the purchase of the fan would have has to do with establishing a statute of limitations and strict proof to the contrary is demanded.

10. Admitted.

11. Now that Hunter Fan Company representatives have had an opportunity to view the fan that is in the exclusive possession of the Plaintiffs, it is admitted that it is a Hunter Fan. The exact particulars as to how the Plaintiff came into possession of the fan and how it was installed are unknown to this Additional Defendant, and strict proof thereof is demanded.

12. Admitted.

COUNT I - STRICT LIABILITY

13. This Additional Defendant incorporates herein by reference its responses to Paragraphs 1 through 12 inclusive as if more fully set forth herein at length.

14. It is admitted that Plaintiff claims that the ceiling fan installed in his home was in a defective condition when purchased, however it is denied that those allegations are true. Strict proof thereof is demanded.

15. It is admitted that Plaintiff asserts in his Amended Complaint that he suffered damages totaling \$138,482.09 as a result of the fire which he claims was caused by a defective ceiling fan. It is denied that Plaintiff's assertions in this regard are true, and to the contrary, the fan was not defective, the fan did not cause the fire, and following a reasonable investigation this Additional Defendant is without sufficient information to know the extent and details relative to what damages, if any, were suffered by Plaintiff and strict proof of all damages are demanded.

16. Admitted.

17. It is denied that Plaintiff can sustain the burden of proof of the allegations made in his Amended Complaint because the assertions are untrue and accordingly denied. It is admitted that Lowe's would be nothing more than the seller of the fan in question, and accordingly would have no direct liability for the claims asserted by Plaintiff, and additionally, by virtue of the Vendor's Agreement and the Master Buying Agreement, Additional Defendant Hunter Fan Company would stand in the shoes of Lowe's. It is again reasserted that neither Lowe's nor Hunter are liable to Plaintiff in any sum or sums whatsoever and strict proof to the contrary is demanded.

WHEREFORE, Additional Defendant Hunter Fan Company denies that it is liable to Plaintiff in any sum or sums whatsoever and demands judgment in its favor and agrees that Lowe's is entitled to indemnification and a defense from Additional Defendant Hunter Fan.

COUNT II - INDEMNIFICATION AND BREACH OF CONTRACT

18. This Additional Defendant incorporates herein by reference its responses to Paragraphs 1 through 17 inclusive as if more fully set forth herein at length.

19-22. It is admitted that Lowe's and Additional Defendant Hunter Fan are signatories to a Master Standard Buying Agreement dated January 5, 1999 and a Master Standard Buying Agreement dated May 31, 2001. Those contractual arrangements provide that in certain circumstances Hunter Fan Company will indemnify and defend Lowe's if they are brought into a lawsuit. It has now been verified that the fan that Plaintiff is alleging was defective was purchased from Lowe's in a sealed container and was indeed a Hunter Fan. As a result, Hunter Fan Company agrees to indemnify and defend Lowe's in this case, or in the alternative to secure their dismissal from the case. While it is specifically denied that any of Plaintiff's claims about the defective condition of the fan or that the fan was the cause of the fire complained of are accurate, it is not being asserted by Hunter Fan that Lowe's is in any manner culpable or liable in this matter and strict proof to the contrary is demanded.

23. Admitted.

24. Additional Defendant Hunter Fan Company has satisfied itself that the fan

in the possession of the Plaintiff and alleged to be the fan involved in the fire is indeed a Hunter Fan, and Hunter Fan has no evidence to refute Plaintiff's assertions as to how he came into possession of the fan.

25. Admitted.

26. It is admitted that Lowe's made a timely request that Hunter Fan assume the defense of and indemnify Lowe's, however until such time that Hunter Fan could have access to the fan and certain related facts, Hunter Fan was not in a possession to assume the defense and indemnity of Lowe's. Hunter Fan has now satisfied itself that this case is appropriate for Hunter Fan to indemnify and defend Lowe's, or in the alternative to have Lowe's dismissed from the suit entirely.

27. Denied.

WHEREFORE, Additional Defendant Hunter Fan Company denies that it is liable to any of the parties in this action and demands judgment in its favor and agrees that it will indemnify and defend Lowe's or seek their dismissal from the case entirely.

#### NEW MATTER

In response to Plaintiff's assertions that bear on Additional Defendant Hunter Fan Company, Hunter Fan asserts the following:

1. It is believed and accordingly averred that Plaintiff, or someone on his behalf, installed the fan in question in Plaintiff's home.
2. It is believed and accordingly averred that the cause of the fire complained of was caused in whole or in part by the faulty installation of the fan which

would act as an intervening and/or superseding cause.

3. It is believed and accordingly averred that there is no adequate evidence that the sole proximate cause of the fire complained of was the Hunter fan and strict proof to the contrary is demanded.

4. It is believed and accordingly averred that the sole and proximate cause of the fire complained of was an instrumentality over which this Additional Defendant had no control and for which this Additional Defendant had no responsibility, and accordingly this Additional Defendant cannot be liable for the fire complained of or its resultant damages.

5. Strict proof of all damages are demanded.

6. To the extent that Plaintiff may have failed to mitigate any of his damages, this Defendant is advised and accordingly avers that Plaintiff's claims would be barred and/or limited.

7. The fan in question had all features necessary for safe ownership, maintenance and operation.

8. The fan in question may not have been used in the manner in which it was intended, which may bar or limit Plaintiff's claims. It is believed and accordingly averred that as part of the installation of the fan in question, Plaintiff or someone on his behalf, did the electrical wiring required to connect the fan to the electrical source.

9. It is believed and accordingly averred that the wiring described above and the electrical work described above was not done in an appropriate manner, and it is additionally believed and accordingly averred that the source of the fire may have been

the electrical and/or wiring work performed by Plaintiff or someone on his behalf.

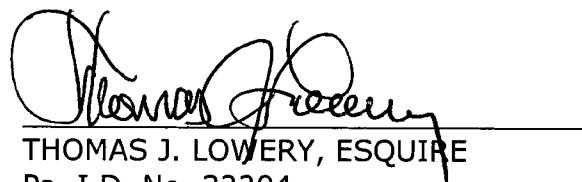
10. In view of the foregoing, Hunter Fan cannot be liable to the Plaintiff.

WHEREFORE, Hunter Fan denies that they are liable in any manner to any of the parties in this action and demand judgment in their favor.

Respectfully submitted,

MARGOLIS EDELSTEIN

By



THOMAS J. LOWERY, ESQUIRE  
Pa. I.D. No. 32204  
310 Grant Street, Suite 1500  
Pittsburgh, PA 15219  
(412) 281-4256

*Counsel for Additional Defendant,  
Hunter Fan Company*

**VERIFICATION**

I, Allan H. Magee, representative of Hunter Fan Company, verify that the statements of fact contained in the foregoing **ANSWER AND NEW MATTER OF HUNTER FAN COMPANY TO COMPLAINT TO JOIN** are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.



Dated: January 19, 2006

Fax to Tom Lowery

412-642-2380

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing  
**ANSWER AND NEW MATTER OF HUNTER FAN COMPANY TO COMPLAINT TO**  
**JOIN** was served upon all counsel of record by First Class Mail, postage prepaid, this  
\_\_\_\_ 20th \_\_\_\_ day of January, 2006, as follows:

S. Casey Bowers, Esquire  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Edward A. Miller, Esquire  
Marshall, Dennehey, Warner,  
Coleman & Goggin, P.C.  
US Steel Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219

  
THOMAS J. LOWERY, ESQUIRE  
Counsel for Additional Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

WILLIAM S. ALBERT, : CIVIL DIVISION  
Plaintiff, : No. 04-369-CD  
v. :  
LOWE'S HOME CENTER, INC., :  
Defendant, :  
v. :  
HUNTER FAN COMPANY, :  
Additional Defendant. :  
:

FILED  
O/11/38 CM Jr 3cc AAA, Bowers  
FEB 16 2006

William A. Shaw  
Prothonotary

**CONSENT ORDER ALLOWING THE DISMISSAL OF LOWE'S HOME CENTER,  
INC. FROM THIS CASE AND AMENDING THE CASE CAPTION**

AND NOW, come the parties, by and through their respective counsel, and consent to the dismissal of Lowe's Home Center, Inc. with prejudice from this case, and the amendment of the case caption and further consent to the entry of a Consent Order accomplishing the dismissal and the amendment, and in support thereof set forth the following:

Inasmuch as the pleadings and two depositions taken in this case indicate that Plaintiff came into the possession of a Hunter fan in an unopened box, which had been purchased at Lowe's Home Center in Dubois, Pennsylvania, and in view of the fact that there is a Master Standard Buying Agreement in existence between Lowe's Home Centers, Inc. and Hunter Fan Company, which Agreement provides for the defense and indemnification of Lowe's in such a situation, it is hereby stipulated between the parties that all of the assertions, denials and affirmative defenses set forth in the pleadings filed in this action to date are incorporated herein by reference, it is

further stipulated that Defendant Lowe's Home Center, Inc. is dismissed from the case with prejudice and the case will proceed against Additional Defendant Hunter Fan Company only. The parties will proceed as though Plaintiff's claims against Lowe's Home Center, Inc. were made against Hunter Fan directly. The parties further stipulate to amend the case caption to read as follows:

WILLIAM S. ALBERT,	:	CIVIL DIVISION
Plaintiff,	:	No. 04-369-CD
v.	:	
HUNTER FAN COMPANY,	:	
Defendant.	:	

Consented to:

  
THOMAS J. LOWERY, ESQUIRE  
Counsel for Hunter Fan Company

2/13/06  
Date

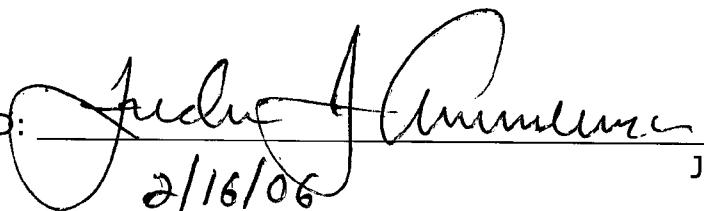
  
S. CASEY BOWERS, ESQUIRE  
Counsel for Plaintiff

2/16/06  
Date

  
EDWARD A. MILLER, ESQUIRE  
Counsel for Lowe's Home Centers, Inc.

2/13/06  
Date

SO ORDERED:

  
2/16/06 J.

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

WILLIAM S. ALBERT,  
Plaintiff

: No. 04-369-CD

vs.

: Type of Pleading:

LOWE'S HOME CENTERS, INC.,  
Defendant

: **PRAECIPE TO CHANGE  
CAPTION**

vs.

: Filed on Behalf of:  
PLAINTIFF

HUNTER FAN COMPANY,  
Additional Defendant

: Counsel of Record for  
This Party:

: S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

: 814-371-7768

March 2, 2006

FILED 3cc  
018-38-001 Atty Bowers  
MAR 03 2006  
SAC  
William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT, :  
Plaintiff :  
vs. : No. 04-369-CD  
LOWE'S HOME CENTERS, INC., :  
Defendant :  
vs. :  
HUNTER FAN COMPANY, :  
Additional Defendant :

**PRAECIPE TO CHANGE CAPTION**

TO THE PROTHONOTARY:

In accordance with Consent Order dated February 16, 2006,  
kindly amend the caption in this matter to read as follows:

William S. Albert,  
Plaintiff  
v.

Hunter Fan Company,  
Defendant

  
\_\_\_\_\_  
S. Casey Bowers  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 3<sup>rd</sup> day of March, 2006,  
I served a copy of the within Praecipe to Change Caption by first class  
mail, postage prepaid, on the following:

Edward A. Miller, Esq.  
Marshall, Dennehey, Warner  
Coleman and Goggin  
Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219

Thomas J. Lowery, Esq.  
Margolis Eldelstein  
310 Grant Street  
The Grant Bldg., Suite 1500  
Pittsburgh, PA 15219



---

S. Casey Bowers  
Attorney for Plaintiff

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

WILLIAM S. ALBERT,  
Plaintiff

: No. 04-369-CD

vs.

: Type of Pleading:

LOWE'S HOME CENTERS, INC.,  
Defendant

: **PRAECIPE TO MARK  
MATTER SETTLED**

vs.

: Filed on Behalf of:  
PLAINTIFF

HUNTER FAN COMPANY,  
Additional Defendant

: Counsel of Record for  
This Party:

: S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

: 814-371-7768

March 2, 2006

FILED 3<sup>CC</sup>  
01/8/2006 Atty Bowers  
MAR 03 2006

WAS  
William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

LOWE'S HOME CENTERS, INC.,  
Defendant

vs.

HUNTER FAN COMPANY,  
Additional Defendant

**PRAECIPE TO MARK MATTER SETTLED**

TO THE PROTHONOTARY:

Please mark this matter settled, discontinued and ended as to  
Lowe's Home Centers, Inc., only.

  
\_\_\_\_\_  
S. Casey Bowers  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 3<sup>rd</sup> day of March, 2006,  
I served a copy of the within Praecipe to Mark Matter Settled by first  
class mail, postage prepaid, on the following:

Edward A. Miller, Esq.  
Marshall, Dennehey, Warner  
Coleman and Goggin  
Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219

Thomas J. Lowery, Esq.  
Margolis Eldelstein  
310 Grant Street  
The Grant Bldg., Suite 1500  
Pittsburgh, PA 15219



---

S. Casey Bowers  
Attorney for Plaintiff

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

WILLIAM S. ALBERT,  
Plaintiff

No. 04-369-CD

vs.

Type of Pleading:

HUNTER FAN COMPANY,  
Defendant

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

Filed on Behalf of:  
PLAINTIFF

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

FILED  
04/25/2006  
APR 25 2006  
cc: Atty Bowers  
J

William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

HUNTER FAN COMPANY,  
Defendant

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

AND NOW, comes the Plaintiff, WILLIAM S. ALBERT, by and through his attorneys, HANAK, GUIDO AND TALADAY, and hereby responds to Defendant's New Matter averring as follows:

1. Admitted.
2. Denied. Paragraph 2 of Defendant's New Matter sets forth a legal conclusion. Therefore, no response is required. To the extent a response is required, said allegations are denied and strict proof is demanded at trial.
3. Denied. Paragraph 3 of Defendant's New Matter sets forth a legal conclusion. Therefore, no response is required. To the extent a response is required, said allegations are denied and strict proof is demanded at trial.
4. Denied. Paragraph 4 of Defendant's New Matter sets forth a legal conclusion. Therefore, no response is required. To the extent a

response is required, said allegations are denied and strict proof is demanded at trial.

5. No response to this Paragraph is required.
6. Denied. Paragraph 6 of Defendant's New Matter sets forth a legal conclusion. Therefore, no response is required. To the extent a response is required, said allegations are denied and strict proof is demanded at trial.
7. Denied. It is denied that the fan in question had all features necessary for safe ownership, maintenance and operation.
8. Denied. At all times pertinent hereto, Plaintiff used the fan in question in the manner in which it was intended. The second sentence of Paragraph 8 of Defendant's New Matter is denied as stated. The Defendant installed the fan in accordance with the instruction provided to him by Defendant.
9. Denied. Plaintiff denies that any pertinent wiring or electrical work performed by Plaintiff or on his behalf was done in an improper manner and strict proof otherwise is demanded at trial.
10. Denied. Paragraph 10 of Defendant's New Matter sets forth a legal conclusion. Therefore no response is required. To the extent a response is required, said allegations are denied and strict proof is demanded at trial.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendant in an amount in excess of Twenty-five Thousand and 00/100 (\$25,000.00) Dollars together with interest and cost of suit, and any other relief this Court deems just and equitable.



---

S. Casey Bowers  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 25<sup>th</sup> day of April, 2006,  
I served a copy of the within Plaintiff's Reply to Defendant's New Matter  
by first class mail, postage prepaid, on the following:

Thomas J. Lowery, Esq.  
Margolis Eldelstein  
310 Grant Street  
The Grant Bldg., Suite 1500  
Pittsburgh, PA 15219

  
\_\_\_\_\_  
S. Casey Bowers  
Attorney for Plaintiff

**VERIFICATION**

I, WILLIAM S. ALBERT, verify that the statements in the foregoing REPLY TO DEFENDANT'S NEW MATTER are true and correct to the best of my knowledge, information and belief.

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

DATE: 4-20-2006

William S Albert  
William S. Albert

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

WILLIAM S. ALBERT,  
Plaintiff

No. 04-369-CD

vs.

Type of Pleading:

HUNTER FAN COMPANY,  
Defendant

**NOTICE OF SERVICE**

Filed on Behalf of:  
PLAINTIFF

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

FILED  
04/25/2006  
APR 25 2006  
Atty Bowers  
cc

William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

HUNTER FAN COMPANY,  
Defendant

**NOTICE OF SERVICE OF INTERROGATORIES**  
**DIRECTED TO DEFENDANT**

This is to certify that on the 24<sup>th</sup> day of April, 2006, I  
mailed an original and two copies of Plaintiff's Interrogatories Directed to  
Defendant, Hunter Fan Company, by first class mail, postage prepaid, to:

Thomas J. Lowery, Esq.  
Margolis Eldelstein  
310 Grant Street  
The Grant Bldg., Suite 1500  
Pittsburgh, PA 15219



S. Casey Bowers  
Attorney for Plaintiff

CA

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

WILLIAM S. ALBERT,  
Plaintiff

No. 04-369-CD

vs.

Type of Pleading:

HUNTER FAN COMPANY,  
Defendant

**MOTION FOR LEAVE OF  
COURT TO AMEND  
COMPLAINT PURSUANT  
TO Pa.R.C.P. RULE 1033**

Filed on Behalf of:  
PLAINTIFF

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

Date May 9, 2006

FILED  
MAY 10 2006  
2006  
1330  
Att Bowers  
William A. Shaw  
Prothonotary/Clerk of Courts  
(CR)

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

WILLIAM S. ALBERT, :  
Plaintiff :  
: vs. : No. 04-369-CD  
: :  
HUNTER FAN COMPANY, :  
Defendant :  
:

**MOTION FOR LEAVE OF COURT**  
**TO AMEND COMPLAINT PURSUANT**  
**TO P.A.R.C.P. RULE 1033**

AND NOW, comes the Plaintiff, WILLIAM S. ALBERT, by and through his attorneys, HANAK, GUIDO AND TALADAY, and hereby requests leave of this Court to amend his Complaint representing as follows:

1. Plaintiff filed his Amended Complaint against Defendant, Lowe's Companies, Inc., and Lowe's Home Centers, Inc., on or about June 17, 2004.
2. In his Complaint, the Plaintiff alleges that a ceiling fan distributed by Lowe's Home Centers, Inc., was defective and unreasonably dangerous in that the fan caused a fire that destroyed Plaintiff's home in Boggs Township, Clearfield County, Pennsylvania.

3. At the time of filing the Amended Complaint, Plaintiff was unaware of the manufacturer of the subject fan.

4. Subsequently, Defendant has learned that the subject fan was manufactured by Hunter Fan Company.

5. By Stipulation of the parties, said Hunter Fan Company has been substituted as Defendant for Lowe's Home Centers, Inc.

6. As set forth in Plaintiff's Amended Complaint, Plaintiff is claiming damages for damages to real and personal property together with increased cost of living totaling One Hundred Thirty-eight Thousand Four Hundred Eighty-two and 09/100 (\$138,482.09) Dollars.

7. Since the filing of his Complaint, the Plaintiff has acquired additional information regarding the damages he has sustained as a result of the defective fan.

8. Pa.R.C.P. Rule 1033 provides in pertinent part:

A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, correct the name of a party or amend his pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted.

9. The Plaintiff seeks leave to amend his Complaint to reflect the substitution of Defendant, Hunter Fan Company, and to reflect

Plaintiff's updated information as to damages. A true and correct of Plaintiff's proposed Second Amended Complaint is attached hereto and marked as Exhibit "A".

10. The relief requested herein will not delay any proceeding before this Court nor will it prejudice the defense.

WHEREFORE, the Plaintiff, WILLIAM S. ALBERT, respectfully requests leave of this Court to amend his Complaint as substantially set forth in the attached Exhibit "A".

HANAK, GUIDO AND TALADAY, by:



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S. Casey Bowers  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF C  
PENNSYLVANIA  
CIVIL ACTION-LAW

WILLIAM S. ALBERT,  
Plaintiff

vs.

HUNTER FAN COMPANY,  
Defendant

William A. Shaw  
Prothonotary  
No. 04-369-CD

FILED

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MAY 12 2006 ✓

cc. A. H.  
Bowers

## ORDER

AND NOW, this 11 day of May, 2006,

upon consideration of the foregoing Motion, it is hereby ordered that:

(1) a rule is issued upon the respondent to show cause why the Moving party is not entitled to the relief requested;

(2) the respondent shall file an answer to the Motion within 20 days of this date;

(3) the Motion shall be decided under Pa.R.C.P. 206.7;

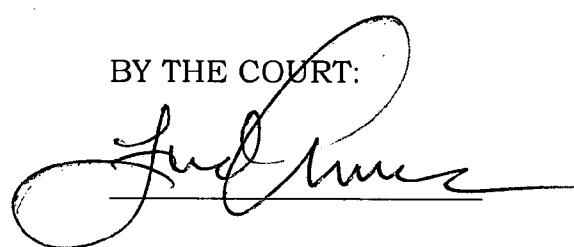
(4) depositions and all other discovery shall be completed within \_\_\_\_ days of this date;

(5) an evidentiary hearing on disputed issues of material fact shall be held on \_\_\_\_\_, 2006, at \_\_\_\_\_ o'clock \_\_\_\_ m. in the Clearfield County Courthouse, Clearfield, Pennsylvania, in Courtroom No. \_\_\_\_;

(6) argument shall be held on \_\_\_\_\_,  
2006, at \_\_\_\_ o'clock \_\_\_\_ m., in Courtroom No. \_\_\_\_\_ of the  
Clearfield County Courthouse; and

(7) notice of the entry of this order shall be provided to all  
parties by the moving party.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Judge James". The signature is fluid and cursive, with a large, stylized 'J' at the beginning.

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 10<sup>th</sup> day of May, 2006, I served a copy of the within Motion for Leave of Court to Amend Complaint Pursuant to Pa.R.C.P. Rule 1033 by first class mail, postage prepaid, on the following:

Thomas J. Lowery, Esq.  
Margolis Edelstein  
310 Grant Street  
The Grant Bldg. Suite 1500  
Pittsburgh, PA 15219



---

S. Casey Bowers  
Attorney for Plaintiff

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

WILLIAM S. ALBERT,  
Plaintiff

: No. 04-369-CD

vs.

: Type of Pleading:

HUNTER FAN COMPANY,  
Defendant

: **SECOND AMENDED  
COMPLAINT**

: Filed on Behalf of:  
PLAINTIFF

: Counsel of Record for  
This Party:

: S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

: 814-371-7768

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

WILLIAM S. ALBERT, :  
Plaintiff :  
: vs. : No. 04-369-CD  
:

HUNTER FAN COMPANY, :  
Defendant :  
:

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed 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  
Second & Market Streets  
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

HUNTER FAN COMPANY,  
Defendant

**SECOND AMENDED COMPLAINT**

AND NOW, comes the Plaintiff, WILLIAM S. ALBERT, by his attorneys, HANAK, GUIDO AND TALADAY, and hereby brings the within Amended Complaint averring as follows:

1. Plaintiff is WILLIAM S. ALBERT, an adult individual, residing at 308 Huckleberry Hill Lane, West Decatur, Clearfield County, Pennsylvania, 16878.
2. Defendant, HUNTER FAN COMPANY, is a Delaware corporation, and has a principal place of business or headquarters located at 2500 Frisco Avenue, Memphis, Tennessee, 38114.
3. At all times relevant hereto, Defendant, through its agents and assigns, offered goods for sale within the Commonwealth of Pennsylvania.
4. On or about December 13, 2001, Plaintiff's sister-in-law purchased a ceiling fan manufactured by Defendant at Lowe's Home Center located in Sandy Township, Clearfield County, Pennsylvania.

5. The ceiling fan was transported to the Plaintiff's home and was properly installed.

6. The ceiling fan was transported to the Plaintiff's residence in the sealed box and unaltered since its manufacture by Defendant.

7. On or about October 20, 2003, a fire occurred at Plaintiff's home, with the point of origin of the fire being the ceiling fan manufactured by Defendant.

8. The fire in Plaintiff's home is solely the responsibility of Defendant.

**Count One**  
**Strict Liability**

9. Paragraphs 1 through 8 of this Complaint are incorporated herein by reference as though they were set forth more fully at length.

10. The ceiling fan sold by Defendant and installed in Plaintiff's home was in a defective condition and unreasonably dangerous when it left the control of Defendant as follows:

- (a) The product lacked all features necessary for its safe ownership, maintenance and operation;
- (b) The product lacked adequate safeguards and warnings of its defect;
- (c) The product presented a reasonable risk of causing fire; and
- (d) The product malfunctioned in such a manner that an absence of defect would not have occurred.

11. Defendant had, or in the exercise of reasonable care, should have had notice of the defective condition of the product.

12. Plaintiff did not have and in the exercise of reasonable care, could not have had notice of the defective condition of the ceiling fan.

13. Defendant is liable to Plaintiff under Section 402(a) of the Restatement of Torts2d as adopted by the Courts of this Commonwealth.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant.

**Count Two**  
**Damages**

14. Paragraphs 1 through 13 of this Complaint are incorporated herein by reference as though they were set forth more fully at length.

15. As the sole and proximate result of the acts, omissions and breaches of Defendant as set forth above, Plaintiff has sustained damages as follows:

(a) Real Estate	\$195,999.00
(b) Personal property	\$154,234.09
(c) Cost of clean-up	\$ 9,942.00
(d) Increased living expenses	<u>\$ 7,500.00</u>
Total	\$367,675.09

WHEREFORE, Plaintiff demands in his favor and against Defendant in excess of Twenty-five Thousand and 00/100 (\$25,000.00)

Dollars, together with interest, costs and other relief as this Court deems appropriate.

JURY TRIAL DEMANDED

Respectfully submitted,

HANAK, GUIDO AND TALADAY, by:

---

S. Casey Bowers  
Attorney for Plaintiff

**VERIFICATION**

I, WILLIAM S. ALBERT, verify that the statements in the foregoing SECOND AMENDED COMPLAINT are true and correct to the best of my knowledge, information and belief.

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

DATE: \_\_\_\_\_

\_\_\_\_\_  
William S. Albert

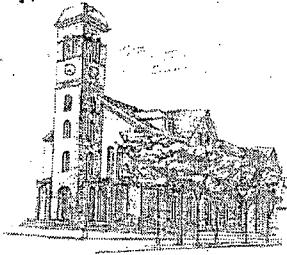
**CERTIFICATE OF SERVICE**

I do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2006,  
I served a copy of the within Second Amended Complaint by first class  
mail, postage prepaid, on the following:

Thomas J. Lowery, Esq.  
Margolis Edelstein  
310 Grant Street  
The Grant Bldg. Suite 1500  
Pittsburgh, PA 15219

---

S. Casey Bowers  
Attorney for Plaintiff



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,



William A. Shaw  
Prothonotary

DATE: 5-12-06

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

WILLIAM S. ALBERT,  
Plaintiff

No. 04-369-CD

vs.

Type of Pleading:

HUNTER FAN COMPANY,  
Defendant

**MOTION TO COMPEL  
DISCOVERY**

Filed on Behalf of:  
PLAINTIFF

Counsel of Record for  
This Party:

S. Casey Bowers, Esq.  
Supreme Court No. 89032  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

814-371-7768

Date: 8/22/06

FILED <sup>acc</sup>  
08/22/06  
AUG 22 2006  
GK

William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

HUNTER FAN COMPANY,  
Defendants

**MOTION TO COMPEL DISCOVERY**

AND NOW, comes the Plaintiff, WILLIAM S. ALBERT, by and through his attorneys, HANAK, GUIDO AND TALADAY, and hereby requests this Court to compel discovery representing as follows:

1. On April 24, 2006, Plaintiff's Interrogatories directed to Defendant, HUNTER FAN COMPANY, were served upon the Defendant, HUNTER FAN COMPANY. A copy of said Interrogatories is attached hereto and marked as Exhibit "A". A copy of Notice of Service of said Interrogatories is attached hereto and marked as Exhibit "B".
2. By letter dated June 8, 2006, the undersigned again requested that the Defendant, HUNTER FAN COMPANY, respond to the subject discovery request. A copy of the said correspondence is attached hereto and marked as Exhibit "C".
3. Plaintiff requests this Honorable Court to issue an Order compelling counsel for Defendant, HUNTER FAN COMPANY, to submit full and complete discovery responses within 30 days of the date of said Order, upon failure of which the Court may impose sanctions.

WHEREFORE, it is respectfully that this Motion to Compel  
Discovery be granted.

HANAK, GUIDO AND  
TALADAY, by:



---

S. Casey Bowers  
Attorney for Plaintiff

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

HUNTER FAN COMPANY,  
Defendant

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2006, upon  
consideration of the foregoing Motion, it is hereby ordered that:

- (1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;
- (2) the respondent shall file an answer to the Motion within \_\_\_\_\_ days of this date;
- (3) the Motion shall be decided under Pa.R.C.P. 206.7;
- (4) depositions and all other discovery shall be completed within \_\_\_\_\_ days of this date;
- (5) an evidentiary hearing on disputed issues of material fact shall be held on \_\_\_\_\_, 2006, at \_\_\_\_\_ o'clock \_\_\_\_\_ m.  
in the Clearfield County Courthouse, Clearfield, Pennsylvania, in  
Courtroom No. \_\_\_\_\_;

(6) argument shall be held on \_\_\_\_\_, 2006, at  
\_\_\_\_ o'clock \_\_\_\_ m., in Courtroom No. \_\_\_\_\_ of the Clearfield County  
Courthouse; and

(7) notice of the entry of this order shall be provided to all parties  
by the moving party.

BY THE COURT:

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1A

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

WILLIAM S. ALBERT,  
Plaintiff

vs.

No. 04-369-CD

HUNTER FAN COMPANY,  
Defendant

**ORDER**

AND NOW, this 23<sup>rd</sup> day of August, 2006, upon  
consideration of Plaintiff's Motion to Compel Discovery,

IT IS HEREBY ORDERED that said Motion is granted. Defendant,  
HUNTER FAN COMPANY, shall forthwith produce and supply full and  
discovery responses within thirty (30) days of the date of said Order. In  
the event that the Defendant fails to abide by this Order, this Court may,  
upon further petition of Plaintiff, impose appropriate sanctions.

BY THE COURT:



FILED  
013-38764-2cc  
AUG 23 2006 Atty Bowers

William A. Shaw  
Prothonotary/Clerk of Courts

FILED

AUG 23 2006

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 8/23/06

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

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

WILLIAM S. ALBERT, :  
Plaintiff :  
: No. 04-369-CD  
vs. : Type of Pleading:  
: **PLAINTIFF'S  
INTERROGATORIES TO  
DEFENDANT, HUNTER FAN  
COMPANY**  
: Filed on Behalf of:  
: PLAINTIFF  
: Counsel of Record for  
This Party:  
: S. Casey Bowers, Esq.  
: Supreme Court No. 89032  
: Hanak, Guido and Taladay  
: 498 Jeffers Street  
: P.O. Box 487  
: DuBois, PA 15801  
: 814-371-7768

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

WILLIAM S. ALBERT, :  
Plaintiff :  
: :  
vs. : No. 04-369-CD  
: :  
HUNTER FAN COMPANY, :  
Defendant :  
:

**PLAINTIFF, WILLIAM S. ALBERT'S INTERROGATORIES**  
**DIRECTED TO DEFENDANT, HUNTER FAN COMPANY**

**TO:** Hunter Fan Company  
c/o Thomas J. Lowery, Esq.  
Margolis Eldelstein  
310 Grant Street  
The Grant Bldg., Suite 1500  
Pittsburgh, PA 15219

Plaintiff, William S. Albert, through his attorney, hereby propounds the following Interrogatories to Defendant, pursuant to Pennsylvania Rule of Civil Procedure 4006, to be answered within thirty (30) days from the date of service. These Interrogatories shall be deemed to be continuing and must be supplemented should additional information become available to you or anyone acting on your behalf.

### **Definitions**

Please note the following definitions and instructions are an integral part of these Interrogatories:

- A. "Defendant", "you", and "yours" shall mean you or any agent, employee, representative, attorney or any other person acting on behalf of Defendant.
- B. "Person(s)" include the singular and plural of natural persons, partnerships, associations, incorporations, organizations, governments, including all officers, agents and subdivisions thereof.
- C. "Document" shall mean all written, printed or graphic matter of every kind or description, however produced or reproduced, whether drafted or final, signed or unsigned, and including, but not limited to, written communications, letters, correspondence, memoranda, minutes, notes, photographs, slides, diagrams, sketches, telegrams, sound or tape recordings or materials similar to any of the foregoing, however denominated and by whomever prepared which are in your possession, custody or control, or to which you have, have had or can obtain access.
- D. Production in lieu of identification. In lieu of identifying documents, you may supply the documents, or true and correct copies thereof, with your answers to these Interrogatories.
- E. In answering these Interrogatories, you must furnish all information which is available to you including that which has been obtained by and which is now in possession of your attorneys, employees, insurers, agents and other representatives, and not merely

information known by the individual or individuals preparing the response.

F. "Identify" or "identity", when used in reference to a natural person, means to state: (a) his or her full name, address and phone number (whether present or last known and (b) the full name, address and telephone numbers of each of his employers (whether present or last known).

G. "Identify" or "identity", when used in reference to a person other than a natural person, means to state: (a) the full name of the entity, the type of the entity, its jurisdiction and date of incorporation or organization, the address and telephone number of its principal place of business, its principal business activity, and all jurisdictions in which it transacts or is licensed to transact business; (b) the identity of the natural person(s) who were involved in making the decision, act or transaction in question.

H. "Identify" or "identity", when used in reference to a document, means to state: (a) the identity of the person who prepared it; (b) the identity of the person who signed it and/or over whose name it was issued; (c) the identity of the person to whom it was addressed or distributed and/or who received it; (d) its nature and substance; (e) its date and the date on which it was prepared; (f) each of identifying numbers, titles, subject matter or reference designation; (g) its present location(s) and the identity of its custodian(s). (2) If any document which you are requested to identify is no longer in your possession, custody or control or is no longer in existence, in addition to providing all

of the information requested in the previous sentence, state also: (a) whether such document is missing, lost, destroyed, transferred to other persons, or the manner in which it was otherwise discarded or disposed; (b) the authorization for such disposition; (c) the date of such disposition; and (d) the present location and custodian of such document.

I. "Identify" or "identity" when used in reference to a communication, means to state: (a) the date on which the communication occurred; (b) the type of communication; (c) the identity of the person or persons who made and who received the communication; (d) the places where the communication was made and where it was received; (e) the identity of the persons who were present when the communication was made or received; (f) the identity of all documents that refer or relate to the communication; and (g) the nature and substance of the communication.

## **INTERROGATORIES**

1. Identify each person(s) answering these Interrogatories. If more than one person is answering these Interrogatories, state the respective number of each Interrogatory(s) answered by each person.

ANSWER:

2. After inspecting the burnt remnants of the fan in question and providing Plaintiff with an exemplar thereof, does Defendant believe the fan in question is manufactured by Hunter Fan Company and is described as the Brighton Model #20446?

ANSWER:

3. Has the Defendant received notice of any other fires resulting from the operation of any other Hunter Fan Model No. 20446 within 5 years prior to the fire through the date of answering these Interrogatories?

ANSWER:

4. If the answer to the preceding Interrogatory was in the affirmative, as to each said notice, state:

- (a) Name and address of the person who sent said notice;
- (b) Date of said notice;
- (c) Nature of the matter complained of;
- (d) Description of the damage that occurred.

ANSWER:

5. Within the last 5 years prior to the fire through the date of answering these interrogatories, has Defendant received notice of any other fires resulting from the operation of ceiling fans manufactured by Defendant?

ANSWER:

6. If the answer to the preceding Interrogatory is in the affirmative, as to each such notice, state:

- (a) The name and address of the person who sent it;
- (b) The date of said notice;
- (c) The nature of the matter complained of;
- (d) The description of the damage that occurred; and
- (e) The make, model number, serial number and other description of the particular ceiling fan that was involved.

ANSWER:

7. Has any other person whose use of ceiling fans manufactured by Defendant caused a fire, commenced a lawsuit against Defendant within 5 years prior to the fire through the date of answering these interrogatories?

ANSWER:

8. If the answer to the preceding Interrogatory is in the affirmative, for each such person and lawsuit filed within the last 5 years, state:

- (a) His or her name and address;
- (b) The date the lawsuit was commenced;
- (c) The city, state and court in which the lawsuit was filed;
- (d) The docket number of the lawsuit;
- (e) The name and address of each person, or other entity, who was co-defendant with Defendant;
- (f) The results of said lawsuit, if concluded.

ANSWER:

9. Within 5 years prior to the fire through the date of answering these Interrogatories, has Defendant settled any claim that resulted from any damage caused by the operation of ceiling fans sold by Defendant?

ANSWER:

10. If the answer to the preceding Interrogatory is in the affirmative, for each claim that was settled, state:

- (a) The name and address of the person with whom the settlement was made;
- (b) The description of the damage that was claimed;
- (c) The amount of the settlement; and
- (d) The name, address and job title of the person who authorized the settlement.

ANSWER:

11. Were any investigation reports made, or prepared by Defendant or on Defendant's behalf as a result of the fire that is subject to this suit?

ANSWER:

12. If the answer to the preceding Interrogatory is in the affirmative, for each investigation and report, state:

- (a) The name, address and job title of each person involved in making or submitting such investigation or report; and
- (b) The name and address of the person who has present custody and control of such investigation or report.

ANSWER:

13. Attach a copy of all investigation reports to your answers to these Interrogatories.

ANSWER:

14. State the names and addresses of all persons known by the Defendant who:

- (a) Were witnesses to event subject to this suit;
- (b) Examined the scene of the fire subsequent to the fire;
- (c) Examined the remnants of the subject fan;
- (d) Have knowledge of prior similar accidents involving ceiling fans sold by Defendant;
- (e) Have knowledge of the facts alleged in the Complaint or Answers to the Complaint.

ANSWER:

15. Was any person interviewed or questioned in the course of the investigation of the subject fire or ceiling fan by Defendant or on Defendant's behalf?

ANSWER:

16. If the answer to the preceding Interrogatory is in the affirmation, for each such person, state:

- (a) His or her name, address and telephone number;
- (b) The name and address of his or her employer;
- (c) The time, date and place he or she was interviewed or questioned;
- (d) The name of each person who interviewed or questioned him or her; and
- (e) For what reason and concerning what facts he or she was interviewed or questioned.

ANSWER:

17. In making the investigation, were any statements obtained concerning any matter relevant to this action?

ANSWER:

18. If so, for each statement state:

- (a) The name, address and telephone number of the person who made it;
- (b) The name of the person who obtained it;
- (c) The name, date and place it was obtained;
- (d) Whether it was written, sound recorded or oral;
- (e) If written or sound recorded, the name and address of the person who has custody and/or control of it;
- (f) If oral, the substance of it.

ANSWER:

19. Identify each and every person who will testify as a fact witness on Plaintiff's behalf at trial.

ANSWER:

20. State the facts to which each said lay witness is expected to testify at trial.

ANSWER:

21. State the name, address and occupation of any person whom Defendant expect to call as an expert witness at the trial, and with regard thereto, state:

- (a) Subject matter on which the expert is to testify;
- (b) The facts and opinions to which the expert is to testify;
- (c) Summary of the grounds of each opinion;
- (d) The name of any report, memorandum or transcript used to substantiate each opinion;
- (e) Any code, regulation or standard, governmental or otherwise, alleged by the expert to have been violated in whole or in part;
- (f) Any standard, scientific principle alleged by the expert to have been violated; and
- (g) The date, name and author of any text book, document or other source relied upon by the expert in rendering his opinion and testimony.

ANSWER:

22. Is Defendant or anyone acting on behalf of Defendant in possession of, or know of, the existence of any photographs, blueprints, sketches, drawings, diagrams or plans of the instrumentalities, locality or any other matter involved in fire and/or fan in question? If so, state:

- (a) The nature of the document and the names and addresses of the person or persons preparing such document, and the date of its preparation;
- (b) The name and address of the person presenting having possession or custody of each such document;
- (c) Specific subject matter of the document;
- (d) Date it was made or taken;
- (e) What the document purports to show, illustrate or represent; and
- (f) Please attach a copy of each document referred to in response to the preceding Interrogatory.

ANSWER:

23. Identify each exhibit that Defendant expects to present at trial.

ANSWER:

24. Identify all facts relied upon by Defendant in making its assertion as set forth in Defendant's Answer and New Matter that "the fire complained of was caused in whole or in part by the faulty instillation of the fan" by Plaintiff or someone acting on Plaintiff's behalf.

ANSWER:

25. Identify all persons with knowledge to support Defendant's allegation that the Plaintiff or someone acting on Plaintiff's behalf improperly installed the fan or otherwise improperly connected to an electrical source.

ANSWER:

26. Identify all facts relied upon by the Defendant in making its allegation that Plaintiff used the fan in a manner other than it was intended.

ANSWER:

27. Identify all persons with knowledge that would support Defendant's allegation that Plaintiff misused the subject fan.

ANSWER:

28. Identify all documents relied upon by the Defendant in answering these Interrogatories.

ANSWER:

Respectfully submitted,

  
\_\_\_\_\_  
S. Casey Bowers  
Attorney for Plaintiff

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

WILLIAM S. ALBERT,  
Plaintiff

: No. 04-369-CD

vs.

: Type of Pleading:

HUNTER FAN COMPANY,  
Defendant

**NOTICE OF SERVICE**

: Filed on Behalf of:  
PLAINTIFF

: Counsel of Record for  
This Party:

: S. Casey Bowers, Esq.  
: Supreme Court No. 89032  
: Hanak, Guido and Taladay  
: 498 Jeffers Street  
: P.O. Box 487  
: DuBois, PA 15801

: 814-371-7768

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

APR 25 2006

Attest.

*William S. Albert*  
Prothonotary/  
Clerk of Courts

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

WILLIAM S. ALBERT,  
Plaintiff

vs. : No. 04-369-CD

HUNTER FAN COMPANY,  
Defendant

**NOTICE OF SERVICE OF INTERROGATORIES**  
**DIRECTED TO DEFENDANT**

This is to certify that on the 24<sup>th</sup> day of April, 2006, I  
mailed an original and two copies of Plaintiff's Interrogatories Directed to  
Defendant, Hunter Fan Company, by first class mail, postage prepaid, to:

Thomas J. Lowery, Esq.  
Margolis Eldelstein  
310 Grant Street  
The Grant Bldg., Suite 1500  
Pittsburgh, PA 15219



\_\_\_\_\_  
S. Casey Bowers  
Attorney for Plaintiff

**HANAK, GUIDO and TALADAY**  
**Attorneys at Law**

Robert M. Hanak  
Anthony S. Guido  
Matthew B. Taladay

Nicole Hanak Bankovich  
S. Casey Bowers

Telephone: (814) 371-7768  
Fax: (814) 371-1974

498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801  
scbowers@verizon.net

June 8, 2006

Thomas J. Lowery, Esq.  
Margolis Edelstein  
310 Grant Street  
The Grant Bldg. Suite 1500  
Pittsburgh, PA 15219

Re: William S. Albert v. Hunter Fan Company  
Your File No. 49800.2-00001

Dear Tom:

Enclosed please find the documents you requested in connection with Mr. Albert's deposition. Also enclosed is a true and correct copy of Plaintiff's Motion to Amend Complaint together with scheduling Order. Your colleague, Bob, was not aware that said Motion had been filed. My records indicate that the Motion Order was forwarded to your office on May 18, 2006. As we discussed previously, the amendments primarily address the amount of damages claimed.

I also note that Defendant's responses to Plaintiff's discovery requests are past due. If I do not receive same within 20 days of the date of this letter, I will have no other choice but to file a Motion to Compel Discovery.

Finally, given the vast differences in our respective electrical engineer's opinions, now may be a good time to exchange expert reports.

Please give me a call so that we may discuss these matters.

Sincerely,

  
S. Casey Bowers

SCB/bab  
Enc.  
cc: William Albert

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 22<sup>nd</sup> day of August, 2006, I served a copy of the within Motion to Compel Discovery by first class mail, postage prepaid, to:

Thomas J. Lowery, Esq.  
Margolis Edelstein  
310 Grant Street  
The Grant Bldg., Suite 1500  
Pittsburgh, PA 15219



---

S. Casey Bowers

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

WILLIAM S. ALBERT,

CIVIL DIVISION

Plaintiff,

No. 04-369-CD

v.

LOWE'S HOME CENTER, INC.,

Defendant,

v.

HUNTER FAN COMPANY,

**PRAECIPE TO CHANGE  
ADDRESS**

Additional Defendant.

Filed on Behalf of:  
Additional Defendant

Counsel of Record for this Party:

THOMAS J. LOWERY, ESQUIRE  
Pa. I.D. No. 32204

MARGOLIS EDELSTEIN  
Firm No. 244  
310 Grant Street, Suite 1500  
Pittsburgh, PA 15219  
Telephone: (412) 281-4256  
Facsimile: (412) 642-2380

FILED NO  
MTO:02/01  
JAN 05 2004  
S

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

WILLIAM S. ALBERT,	CIVIL DIVISION
Plaintiff,	No. 04-369-CD
v.	
LOWE'S HOME CENTER, INC.,	
Defendant,	
v.	
HUNTER FAN COMPANY,	
Additional Defendant.	

**PRAECIPE TO CHANGE ADDRESS**

TO: Prothonotary

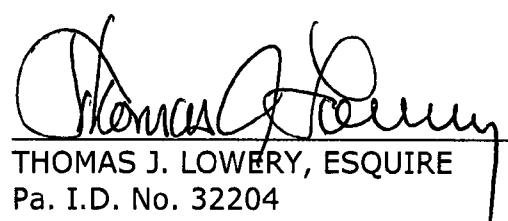
Kindly note that the address of Thomas J. Lowery, Esquire and Margolis Edelstein has changed to:

Thomas J. Lowery, Esquire  
Margolis Edelstein  
525 William Penn Place, Suite 3300  
Pittsburgh, PA 15219

Respectfully submitted,

MARGOLIS EDELSTEIN

By

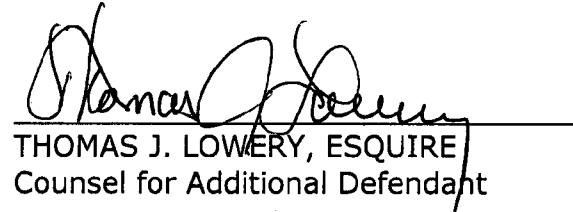
  
THOMAS J. LOWERY, ESQUIRE  
Pa. I.D. No. 32204

*Counsel for Additional Defendant,  
Hunter Fan Company*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing  
**PRAECIPE TO CHANGE ADDRESS** was served upon all counsel of record by First  
Class Mail, postage prepaid, this 3<sup>rd</sup> day of January, 2007, as follows:

S. Casey Bowers, Esquire  
Hanak, Guido and Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801



THOMAS J. LOWERY, ESQUIRE  
Counsel for Additional Defendant

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

FILED  
03/08/2007 MAR 06 2007 302  
Atty  
JUN  
William A. Shaw  
Notary/Clerk of Courts

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

WILLIAM S. ALBERT, :  
Plaintiff :  
: No. 04-369-CD  
vs. :  
: :  
HUNTER FAN COMPANY, :  
Defendant :  
:

**CERTIFICATE OF SERVICE**

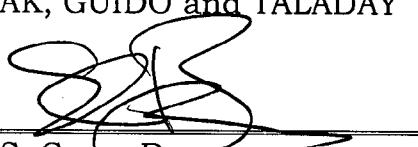
I, the undersigned, verify that the Subpoenas To Produce Documents or Things for Discovery Pursuant to Rule 4008.22 was forwarded Certified Mail, Return Receipt Requested addressed as follows:

Mr. Jeffrey B. Miller  
Custodian of Records  
Pennsylvania State Police  
1800 Elmerton Avenue  
Harrisburg, PA 17110-9758

Thomas J. Lowery, Esq.  
Margolis Edelstein  
525 William Penn Place  
Suite 3300  
Pittsburgh, PA 15219

Respectfully submitted by,  
HANAK, GUIDO and TALADAY

By:

  
S. Casey Bowers  
Attorney for Plaintiff

**SENDER: COMPLETE THIS SECTION****COMPLETE THIS SECTION ON DELIVERY**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Mr. Jeffrey B. Miller  
Justodian of Records  
PA State Police  
1800 Elmerton Ave.  
Harrisburg, Pa 17108

A. Signature 	<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee
B. Received by (Printed Name) <b>FFB 27 2007</b>	C. Date of Delivery <b>FFB 27 2007</b>
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"/> Registered <input type="checkbox"/> Insured Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> C.O.D.
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

2. Article Number  
(Transfer from service label)  
**7002 2030 0006 3807 9494**

Domestic Return Receipt

102595-02-M-1540

PS Form 3811, February 2004

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

- Sender: Please print your name, address, and ZIP+4 in this box •

S. Casey Bowens, Esq.  
PO Box 487  
DuBois PA 15801

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

WILLIAM S. ALBERT,  
Plaintiff : No. 04-369-CD  
vs. : Type of Pleading:  
HUNTER FAN COMPANY, : CERTIFICATE OF SERVICE  
Defendant :  
: Filed on Behalf of:  
: PLAINTIFF  
: Counsel of Record for This  
: Party:  
: S. Casey Bowers,  
: Attorney at Law  
: Supreme Court No. 89032  
: Hanak, Guido and Taladay  
: P. O. Box 487  
: DuBois, PA 15801  
: (814) 371-7768

**FILED**

MAR 06 2007

078:5074  
William A. Shaw (m)  
the County Clerk of Courts

1 cent to the

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

~~MAR 06 2007~~

Attest,

William L. Brown  
Prothonotary/  
Clerk of Courts

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

WILLIAM S. ALBERT, :  
Plaintiff :  
: No. 04-369-CD  
vs. :  
: :  
HUNTER FAN COMPANY, :  
Defendant :  
:

**CERTIFICATE OF SERVICE**

I, the undersigned, verify that the Subpoena To Attend and Testify  
was forwarded Certified Mail, Return Receipt Requested addressed as  
follows:

Michael S. McCracken  
Pennsylvania State Police  
147 Doe Hill Road  
Woodland, PA 16881

Thomas J. Lowery, Esq.  
Margolis Edelstein  
525 William Penn Place  
Suite 3300  
Pittsburgh, PA 15219

Respectfully submitted by,  
HANAK, GUIDO and TALADAY

By:   
S. Casey Bowers  
Attorney for Plaintiff

**SENDER: COMPLETE THIS SECTION****COMPLETE THIS SECTION ON DELIVERY**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Michael McCracken  
PA State Police  
147 Doe Hill Road  
Woodland, PA 16881

A. Signature <i>Michael McCracken</i>	<input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee
B. Received by (Printed Name) <i>Michael McCracken</i>	C. Date of Delivery <i>2/23/01</i>
D. Is delivery address different from item 1? If YES, enter delivery address below:  <i>Michael McCracken</i>	
3. Service Type <input checked="" 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. Article Number  
(Transfer from service label)  
7002 2030 0006 3807 9500

PS Form 3811, February 2004  
Domestic Return Receipt  
102595-02-M-1540

UNITED STATES POSTAL SERVICE™ FEB 15



- Sender: Please print your name, address, and ZIP+4 in this box •

S. Casey Bowers, Esq.  
P.O. Box 487  
Dubois, Pa 15801

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL TRIAL LISTING

FILED

APR 10 2007  
m 10:10/

William A. Shaw  
Prothonotary/Clerk of Courts

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

04-369-CD

CASE NUMBER	TYPE	TRIAL REQUESTED	DATE PRESENTED	4/5/07	ESTIMATED TRIAL TIME
Date Complaint Filed: 3/16/2004	( <input checked="" type="checkbox"/> ) Jury ( <input type="checkbox"/> ) Arbitration		3	Days	

PLAINTIFF(S)

William S. Albert

DEFENDANT(S)

Hunter Fan Company

ADDITIONAL DEFENDANT(S)

Check Block if  
a Minor is a  
Party to the  
Case

( )

JURY DEMAND FILED BY:

Plaintiff

DATE JURY DEMAND FILED:

3/16/2004

AMOUNT AT ISSUE	CONSOLIDATION	DATE CONSOLIDATION ORDERED
more than \$ 25,000.00	( <input type="checkbox"/> ) yes ( <input checked="" type="checkbox"/> ) no	

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.

S. Casey Bowers, Esquire

(814) 371-7768

FOR THE PLAINTIFF

TELEPHONE NUMBER

Thomas J. Lowery, Esquire

(412) 355-4958

FOR THE DEFENDANT

TELEPHONE NUMBER

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

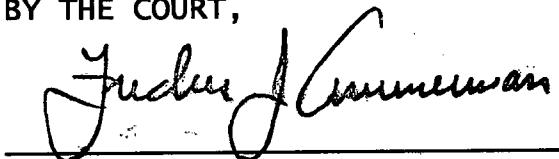
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

WILLIAM S. ALBERT :  
-vs- : No. 04-369-CD  
HUNTER FAN COMPANY :

O R D E R

AND NOW, this 26th day of July, 2007, this being  
the date set for Civil Call; upon the request of counsel,  
it is the ORDER of this Court that the matter be and is  
hereby continued until the Winter 2008 Term of Civil Court.

BY THE COURT,



President Judge

FILED  
07/27/07 BPL Atty: Bowers  
JUL 27 2007 Lowery  
(GW)

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

JUL 27 2007

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 7/27/07

You are responsible for serving all appropriate parties.  
 The Prothonotary's office has provided service to the following parties:  
 Plaintiff(s)  Plaintiff(s) Attorney  Other  
 Defendant(s)  Defendant(s) Attorney  
 Special Instructions:

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

WILLIAM S. ALBERT :  
vs. : No. 04-369-CD  
HUNTER FAN COMPANY :

FILED

OCT 12 2007

0111:55/

(GK)

William A. Shaw  
Prothonotary/Clerk of Courts

CEATE TO AMM  
BOWERS  
↓  
LOWERY

O R D E R

AND NOW, this 12<sup>th</sup> day of October, 2007, it is the Order of  
the Court that a pre-trial conference in the above-captioned matter has been  
scheduled for Thursday, November 15, 2007 at 10:00 A.M. in Judges Chambers,  
Clearfield County Courthouse, Clearfield, PA. Additionally, Jury Selection in this  
matter will be held on January 3, 2008.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

DATE: 10-12-01

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

Prothonotary/Clerk of Courts  
William A. Sherry

OCT 12 2001

FILED

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

WILLIAM S. ALBERT,  
Plaintiff

vs.  
HUNTER FAN COMPANY,  
Defendant

\*  
\*  
\*  
\*

NO. 04-369-CD

FILED  
cc Atts:  
Ohio 51601 Bowes  
NOV 16 2007 Lower  
6K

William A. Shaw  
Prothonotary/Clerk of Courts

ORDER

NOW, this 15<sup>th</sup> day of November, 2007, following pre-trial conference with  
counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on April 3, 2008 commencing at 9:00 a.m. in Courtroom  
No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Jury Trial is hereby scheduled for May 27, 28, 29 and 30, 2008 commencing at 9:00  
a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield,  
Pennsylvania.
3. The report of Plaintiff's expert James Tsikalas shall be provided to Defense counsel  
by no later than December 14, 2007. The Defense shall provide reports of all experts  
who will testify at time of trial to Plaintiff's counsel by no later than January 15, 2008.
4. Any party making objections relative the testimony to be provided by any witness in  
the form of a deposition at the time of trial shall submit said objections to the Court,  
in writing, no later than thirty (30) days prior to the commencement of trial. All  
objections shall reference specific page and line numbers within the deposition(s) in  
question along with that party's brief relative same. The opposing party shall submit  
its brief in opposition to said objections no later than fifteen (15) days prior to the  
commencement of trial.

5. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than thirty (30) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than fifteen (15) days prior to trial.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

**FILED**

NOV 16 2007

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 11/16/07

       You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

       Plaintiff(s) X Plaintiff(s) Attorney        Other

       Defendant(s) X Defendant(s) Attorney

       Special Instructions:

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

FILED

DEC 13 2007

M 10:50 AM

William A. Shaw  
Prothonotary/Clerk of Courts

WILLIAM S. ALBERT, : No. 04-369-CD  
Plaintiff :  
vs. : Type of Pleading:  
HUNTER FAN COMPANY, : CERTIFICATE OF  
Defendant : SERVICE  
: Filed on Behalf of:  
: PLAINTIFF  
: Counsel of Record for This  
: Party:  
: Matthew B. Taladay, Esq.  
: Supreme Court No. 49663  
: Hanak, Guido and Taladay  
: 528 Liberty Boulevard  
: P. O. Box 487  
: DuBois, PA 15801  
: (814) 371-7768

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

WILLIAM S. ALBERT, :  
Plaintiff :  
vs. : No. 04-369-CD  
HUNTER FAN COMPANY, :  
Defendant :  
:

**CERTIFICATE OF SERVICE**

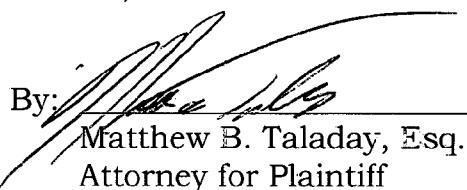
I certify that on the 12th day of December, 2007, a true and correct copy of Fire Investigation Report of James Tsikalas was sent via first class mail, postage prepaid, to the following:

Thomas J. Lowery, Esq.  
Attorney for Defendant  
Margolis Edelstein  
Suite 3300  
525 William Penn Place  
Pittsburgh, PA 15219

Respectfully submitted,

HANAK, GUIDO and TALADAY

By:

  
Matthew B. Taladay, Esq.  
Attorney for Plaintiff

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

WILLIAM S. ALBERT, : No. 04-369-CD  
Plaintiff :  
vs. : Type of Pleading:  
HUNTER FAN COMPANY, : Praecepice for  
Defendant : Substitution of  
: Counsel  
: Filed on Behalf of:  
: Plaintiff  
: Counsel of Record for This  
: Party:  
: Matthew B. Taladay, Esq.  
: Supreme Court No. 49663  
: Hanak, Guido and Taladay  
: 528 Liberty Boulevard  
: P. O. Box 487  
: DuBois, PA 15801  
: (814) 371-7768

FILED NOCC  
m/8/5/07  
DEC 17 2007 Copy to C/A  
GR  
William A. Shaw  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT,  
Plaintiff

vs. : No. 04-369-CD

HUNTER FAN COMPANY,  
Defendant

**PRAECIPE FOR SUBSTITUTION OF COUNSEL**

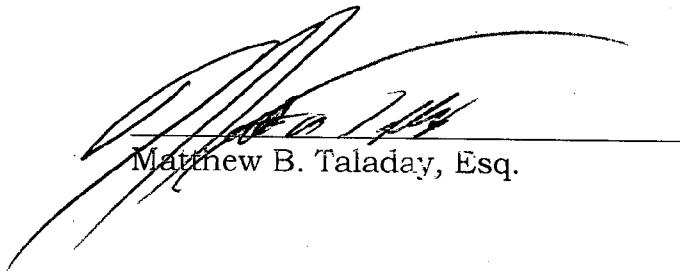
TO THE PROTHONOTARY:

Kindly withdraw my appearance on behalf of the Plaintiff in  
the above referenced matter.



S. Casey Bowers, Esq.

Please enter my appearance on behalf of the Plaintiff in the  
above captioned matter.



Matthew B. Taladay, Esq.

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

WILLIAM S. ALBERT,  
Plaintiff

vs. : No. 04-369-CD

HUNTER FAN COMPANY,  
Defendant

**CERTIFICATE OF SERVICE**

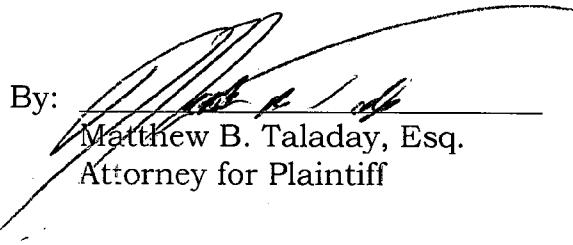
I certify that on the 14<sup>th</sup> day of December, 2007, a true and correct copy of foregoing Praeclipe for Substitution of Counsel was sent via first class mail, postage prepaid, to the following:

Thomas J. Lowery, Esq.  
Attorney for Defendant  
Margolis Edelstein  
Suite 3300  
525 William Penn Place  
Pittsburgh, PA 15219

Respectfully submitted,

HANAK, GUIDO and TALADAY

By:

  
Matthew B. Taladay, Esq.  
Attorney for Plaintiff

WILLIAM S. ALBERT

VERSUS

HUNTER FAN COMPANY

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

No. 2004-369-C0

FILED

MAY 30 2008

05/30/08  
William A. Shaw  
Prothonotary/Clerk of Courts

VERDICT

And now to wit: MAY 30, 2008, we, the Jurors  
empanelled in the above entitled case, find A Verdict in Favor William S. Albert  
10 persons to 2 persons.  
The amount \$106,000 for damage

Robert Michaels

FOREPERSON

4. James L. Kiskis
5. Fred Albert
6. Richard T. Prouast

3. Matthew B. Taladay

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

PLAINTIFF'S ATTY: Matthew B. Taladay Esq

ADDRESS TO JURY: 3:00 PM.

5/30/08

JUDGE'S ADDRESS TO JURY: 9:01 AM

DEFENDANT'S ATTY: Thomas J. Lowery Esq

ADDRESS TO JURY: 1:35 PM.

JURY OUT: 9:25 AM JURY IN: 1:59 PM

VERDICT: Plaintiff

Damages \$106,000.00

FOREPERSON: Rob Michaels

William S. ALBERT

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

VERSUS

HUNTER FAN COMPANY

No. 2004-369-cd

FILED  
MAY 30 2008  
Clerk  
William A. Shaw  
Prothonotary/Clerk of Courts

VERDICT

And now to wit: May 30,

2008

, we, the Jurors

empanelled in the above entitled case, find A Verdict in Favor William S. Albert

10 persons to 7 persons.

The amount \$16,000 for damage

*Robert Mycicki* Foreperson

No. .... *Pretermatry/Clerk of Court*  
William A Shaw  
May 30 2008  
**FILED**

## VERSUS

## VERDICT

Filed..... 19.....

## Prothonotary

COURT OF COMMON PLEAS, CLEARFIELD COUNTY  
PENNSYLVANIA

CASE NO. 04-369-CD

Date of Jury Selection: April 3, 2008

Presiding Judge: John K. Reilly Jr., SJSP

William S. Albert

VS

Hunter Fan Company

Court Reporter: Thomas Snyder

Date of Trial: May 27 to 30, 2008

Date Trial Ended: May 30, 2008

FILED

MAY 30 2008

MEMBERS OF THE JURY

1. Mark Bloom
2. Barbara Hubler
3. Nancy Guiher
4. Deborah Gillung
5. Scott Territo
6. Robert Michaels

#12 ALT #1 Jeanne Harris-Knouse

7. Elizabeth Hoskavich William A. Shaw  
Prothonotary/Clerk of Courts
8. Cynthia Bell
9. Lisa Hallman
10. Carol Mihalko
11. Wilbur Buck
12. Bonnie Fleming Excused

ALT #2 Rodney Walters

PLAINTIFF'S WITNESSES:

1. William S. Albert
2. Frank Warholic
3. Mike M. Cracker
4. James Siskales
5. Fred Albert
6. Richard Provoast

DEFENDANT'S WITNESSES:

1. Allen M. Yel
2. Brian Gray
3. Matthew Balmer
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

PLAINTIFF'S ATTY: Matthew B. Taladay Esq

DEFENDANT'S ATTY: Thomas J. Lowery Esq

ADDRESS TO JURY: 3:00 PM.

ADDRESS TO JURY: 1:35 PM.

JUDGE'S ADDRESS TO JURY: 5/30/08 9:01 AM

JURY OUT: 9:25 AM JURY IN: 1:59 PM

VERDICT: Plaintiff

Damages \$106,000.00

FOREPERSON: Rob Michaels

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

FILED

JUL 01 2008

7-10-2008  
William A. Shaw  
Prothonotary/Clerk of Courts

WILLIAM S. ALBERT, : No. 04-369-CD  
Plaintiff :  
vs. : Type of Pleading:  
HUNTER FAN COMPANY, : CERTIFICATE OF  
Defendant : SERVICE  
: Filed on Behalf of:  
: PLAINTIFF  
: Counsel of Record for This  
: Party:  
: Matthew B. Taladay, Esq.  
: Supreme Court No. 49663  
: Hanak, Guido and Taladay  
: 528 Liberty Boulevard  
: P. O. Box 487  
: DuBois, PA 15801  
: (814) 371-7768

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

WILLIAM S. ALBERT, :  
Plaintiff :  
: :  
vs. : No. 04-369-CD  
: :  
HUNTER FAN COMPANY, :  
Defendant :  
:

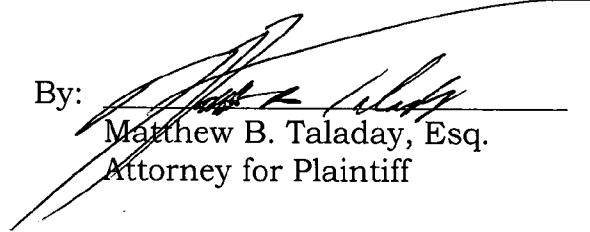
**CERTIFICATE OF SERVICE**

I certify that on the 30th day of June, 2008, a Court certified copy of the Order of Court dated June 18, 2008 was sent via first class mail, postage prepaid, to the following:

Thomas J. Lowery, Esq.  
Attorney for Defendant  
Margolis Edelstein  
Suite 3300  
525 William Penn Place  
Pittsburgh, PA 15219

Respectfully submitted,

HANAK, GUIDO and TALADAY

By: 

Matthew B. Taladay, Esq.  
Attorney for Plaintiff

**FILED**  
JUL 01 2008  
William A. Shaver  
Prothonotary/Clerk of Courts

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

WILLIAM S. ALBERT :  
VS. : NO. 04-369-CD  
HUNTER FAN COMPANY :

O P I N I O N

This matter comes before the court on Plaintiff's Post Trial Motion for delay damages following a verdict in his favor in the amount of \$106,000. Based on Pennsylvania Rule of Civil Procedure 238 and this Court's reading of Rosen v. Rucker, 905 F.2d 702 (1990), Rapp v. Behm, 21 Pa. D & C. 3d 747 (1981), this Court does award to Plaintiff the sum of \$27,302.95 as delay damages commencing March 17, 2005, until May 31, 2008, at the annual prime rate plus 1 percent. Therefore, the Court enters the following

O R D E R

NOW this 26th day of September, 2008, following argument and briefs into Plaintiff's Motion for Delay Damages, it is the ORDER of this Court that said Motion be and is hereby granted in accordance with the foregoing Opinion and Plaintiff awarded an additional \$27,302.95 as delay damages.

BY THE COURT,

John K. Reilly, Jr.  
Senior Judge  
Specially Presiding

FILED 1cc Attn: *ala*  
10:55 AM  
SEP 29 2008 Low

William A. Shaw ICC D. McKersell  
Prothonotary/Clerk of Courts Law Library about memo

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**FILED**

SEP 29 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 9/29/08

       You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

       Plaintiff(s)  Plaintiff(s) Attorney        Other  
       Defendant(s)  Defendant(s) Attorney  
       Special Instructions:

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

FILED

MAR 19 2009

S m / 10/15/09  
William A. Shaw  
Prothonotary/Clerk of Courts

WILLIAM S. ALBERT, : No. 04-369-CD  
Plaintiff

vs.

HUNTER FAN COMPANY, :  
Defendant

Type of Pleading:

PRAECIPE FOR  
DISCONTINUANCE

Filed on Behalf of:  
PLAINTIFF

Counsel of Record for This  
Party:

Matthew B. Taladay, Esq.  
Supreme Court No. 49663  
Hanak, Guido and Taladay  
528 Liberty Boulevard  
P. O. Box 487  
DuBois, PA 15801

(814) 371-7768

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

WILLIAM S. ALBERT, :  
Plaintiff :  
: :  
vs. : No. 04-369-CD

HUNTER FAN COMPANY, :  
Defendant :  
: :

**PRAECIPE FOR DISCONTINUANCE**

TO THE PROTHONOTARY:

Kindly mark the above referenced matter settled,  
discontinued and ended.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By: /s/ Matthew B. Taladay  
Matthew B. Taladay, Esq.  
Attorney for Plaintiff

FILED  
MAR 19 2009  
William A Shaw  
Prothonotary/Clerk of Courts