

**Jean Hutton vs Fezell Enterprises**  
**2004-804-CD**

04-804-CD  
JEAN HUTTON vs. FEZELL ENTERPRISES, INC. etal.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

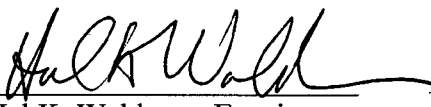
JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.:
	)	
vs.	)	
	)	
FEZELL ENTERPRISES, INC. t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any 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 OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

David S. Meholick, Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641 ext. 5982

By:   
Hal K. Waldman, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.:
	)	
vs.	)	
	)	
FEZELL ENTERPRISES, INC. t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

**COMPLAINT IN CIVIL ACTION**

AND NOW, comes the Plaintiff, Jean Hutton, by and through her attorneys, HAL K. WALDMAN & ASSOCIATES, and Hal K. Waldman, Esquire, and files the within Complaint in Civil Action, whereof the following is a statement:

1. The Plaintiff Jean Hutton is an adult individual residing at 408 Beyer Avenue, Apartment 28, Punxsutawney, Jefferson County, Pennsylvania 15767.

2. The Defendant Fezell Enterprises, Inc. t/d/b/a Dubois Save-A-Lot (hereinafter referred to as Defendant) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, regularly conducting business from 1000 South Brady Street, DuBois, Clearfield County, Pennsylvania.

3. At all times relevant hereto, Defendant owned Dubois Save-A-Lot located at 1000 South Brady Street, DuBois, Pennsylvania, 15801.

4. At all times relevant hereto, Defendant's agents, representatives, servants and/or employees possessed, controlled and operated the Dubois Save-A-Lot.

5. At all times relevant hereto the Dubois Save-A-Lot was operated and maintained under the care, custody, direction and control of Defendant.

6. On September 4, 2003, at approximately 11:30 a.m., Plaintiff was a business invitee of the Defendant, and was shopping at the Defendant's DuBois Save-A-Lot.

7. At that time and place, Plaintiff lawfully, carefully and cautiously walked through the store, selecting items for purchase, for the pecuniary benefit of Defendant.

8. As Plaintiff walked down the aisle containing salad dressings, she stopped to examine and select a product on the shelves. As she turned away from the shelves after selecting a product for purchase and as she attempted to proceed down the aisle to her grocery cart, her foot was caught on a display stand and she was caused to fall to the floor as the result of the display which had been negligently placed in the walkway of the aisle, creating a hazard for business invitees generally and for Plaintiff particularly.

9. At that time and place, the Defendant's walkway was unreasonably dangerous because the display placed in the walkway hindered ingress and egress of store patrons and Plaintiff in particular.

10. At that time and place, the Defendant's walkway was unreasonably dangerous because the display was placed on a stand, the leg of which protruded out from under the display.

11. Defendant knew or should have known that the attention of business invitees including Plaintiff would be diverted to the products placed on shelves for invitees to examine and purchase for the direct pecuniary gain of Defendant.

12. Defendant knew or should have known that placement of the display in the walkway violated industry standards because it blocked ingress and egress.

13. At all times relevant to this incident, Plaintiff was lawfully and legally on

the Defendant's premises as a business invitee.

14. The aforementioned fall and the resulting injuries and damages sustained by the Plaintiff were a direct and proximate result of the negligence of the Defendant, its agents, representatives, servants, and/or employees as follows:

- (a) In failing to exercise reasonable care to protect the Plaintiff and other business invitees from injury when it placed a display in the walkway of the aisle in the DuBois Save-A-Lot, hindering ingress and egress, thereby creating an unreasonably dangerous condition; and/or
- (b) In failing to exercise reasonable care to protect the Plaintiff and other business invitees from injury, when the Defendant knew or should have known that the display placed in the walkway of the aisle created an unreasonable risk of harm; and/or
- (c) In failing to exercise reasonable care to protect the Plaintiff and other business invitees from injury, when the Defendant should have known that the Plaintiff and other business invitees would not discover or realize the danger that existed by the display placed in the walkway of the aisle and/or would fail to protect themselves against it; and/or
- (d) In negligently placing the display on a stand with legs positioned to extend out into the walkway portion of the aisle; and/or
- (e) In allowing the display to remain in the walkway of the aisle; and/or
- (f) In negligently failing to remove the display from the aisle; and/or
- (g) In negligently failing to position or re-position the display and stand so that the legs of the stand did not extend into the walkway portion of the aisle; and/or
- (h) In negligently failing to place barriers and/or warning signs to alert Plaintiff and other business invitees to the danger when this Defendant knew or should have known of the dangerous condition; and/or
- (i) In failing to provide a safe passageway; and/or
- (j) In failing to properly inspect the aisle and make it safe; and/or
- (k) In negligently creating, maintaining and/or consenting to or acquiescing to the creation of an artificial condition on the premises by a third party, which they knew or should have known created an unreasonable risk of

harm to Plaintiff and other business invitees.

15. As the direct and proximate result of the above-described negligence, Plaintiff sustained serious and permanent injuries, including, but not limited to the following:

- (a) Left proximal humeral fracture requiring open reduction, internal fixation surgery;
- (b) Left nondisplaced fracture of the patella;
- (c) Laceration to the right knee;
- (d) Anemia requiring a transfusion of two units of blood;
- (e) Left shoulder pain;
- (f) A second surgery necessitated by the loosening of the proximal screw protruding into the glenohumeral joint;
- (g) Left arm pain;
- (h) Left lower extremity pain;
- (i) Left arm fracture at the superior-posterior rim of the glenoid;
- (j) Shock to the nerves and nervous system; and
- (k) Other severe and disabling injuries.

16. As a direct and proximate result of the aforesaid injuries, Plaintiff has suffered and continues to suffer severe physical pain, mental anguish, inconvenience, humiliation and loss of life's pleasures, and she may continue to suffer the same for such a period as she shall continue to live.


17. As a direct and proximate result of the aforesaid injuries, Plaintiff has and will continue to be obliged to receive and undergo medical attention and care, and to expend various sums of money and to incur various expenses in an effort to restore her

health.

18. As a direct and proximate result of the aforesaid injuries, Plaintiff's general health, strength and vitality have been impaired, and this impairment may be permanent.

WHEREFORE, Plaintiff, Jean Hutton, demands judgment against Defendant Fezell Enterprises, Inc. t/d/b/a DuBois Save-A-Lot in an amount in excess of the jurisdictional limits of the Arbitration Division of this Court, exclusive of interest and costs.

Respectfully submitted,

By:   
Hal K. Waldman, Esquire  
Attorney for Plaintiff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JEAN HUTTON,

Plaintiff,

vs.

FEZELL ENTERPRISES, INC. t/d/b/a  
DUBOIS SAVE-A-LOT,

Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

CIVIL DIVISION

No.:

**VERIFICATION**

I, Jean Hutton, aver that the statements of fact contained in the attached  
**COMPLAINT IN CIVIL ACTION** are true and correct to the best of my information,  
knowledge and belief and are made subject to the penalties of 18 PA. CON. STAT. ANN.  
§ 4904 relating to unsworn falsification to authorities.

DATE:

~~Jean Hutton~~  
4/26/04

~~4/26/04~~  
JEAN HUTTON  
Jean E. Hutton

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

HUTTON, JEAN

VS.

FEZELL ENTERPRISES, INC. t/d/b/a DUBOIS SAVE-A-LOT

COMPLAINT

Sheriff Docket # 15715  
04-804-CD

**SHERIFF RETURNS**

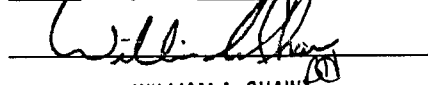
NOW JUNE 15, 2004 AT 11:00 AM SERVED THE WITHIN COMPLAINT ON FEZELL ENTERPRISES INC. t/d/b/a DUBOIS SAVE-A-LOT, DEFENDANT AT EMPLOYMENT, 1000 S. BRADY ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO MARY LEE FEZELL, OWNER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.  
SERVED BY: COUDRIET

**Return Costs**

Cost	Description
32.62	SHERIFF HAWKINS PAID BY: ATTY CK# 11400
10.00	SURCHARGE PAID BY: ATTY CK# 11401

Sworn to Before Me This

13 Day Of July 2004



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

So Answers,



Chester A. Hawkins  
Sheriff

**FILED**

018:55am  
JUL 13 2004  
625

William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

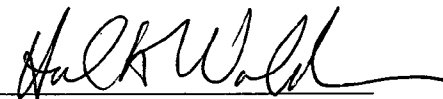
JEAN HUTTON,	)	CIVIL DIVISION
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Plaintiff,	)	No.:
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vs.	)	
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	)	
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David S. Meholick, Court Administrator  
Clearfield County Courthouse  
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(814) 765-2641 ext. 5982

By:   
Hal K. Waldman, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JEAN HUTTON,	)	CIVIL DIVISION
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Plaintiff,	)	No.:
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vs.	)	
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DUBOIS SAVE-A-LOT,	)	
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Defendants.	)	

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6. On September 4, 2003, at approximately 11:30 a.m., Plaintiff was a business invitee of the Defendant, and was shopping at the Defendant's DuBois Save-A-Lot.

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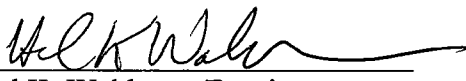


health.

18. As a direct and proximate result of the aforesaid injuries, Plaintiff's general health, strength and vitality have been impaired, and this impairment may be permanent.

WHEREFORE, Plaintiff, Jean Hutton, demands judgment against Defendant Fezell Enterprises, Inc. t/d/b/a DuBois Save-A-Lot in an amount in excess of the jurisdictional limits of the Arbitration Division of this Court, exclusive of interest and costs.

Respectfully submitted,

By:   
Hal K. Waldman, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.:
	)	
vs.	)	
	)	
FEZELL ENTERPRISES, INC. t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

**VERIFICATION**

I, Jean Hutton, aver that the statements of fact contained in the attached  
**COMPLAINT IN CIVIL ACTION** are true and correct to the best of my information,  
knowledge and belief and are made subject to the penalties of 18 PA. CON. STAT. ANN.  
§ 4904 relating to unsworn falsification to authorities.

DATE:

~~Jean Hutton~~ ~~04/26/04~~  
4/26/04 JEAN HUTTON  
Jean E. Hutton

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,

Plaintiff,

v.

FEZELL ENTERPRISES, INC., t/d/b/a  
DUBOIS SAVE-A-LOT,

Defendants.

CIVIL DIVISION

No.: 04-804-CD

Type of Pleading:

**PRAECIPE FOR APPEARANCE**

Filed on behalf of:

**Defendant**

Counsel of record for this party:

Stephen M. Elek, Esquire  
Pa. I.D. #47205

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

DDI Plaza One, Suite 300  
1225 Washington Pike  
Bridgeville, PA 15017  
(412) 914-1058

**JURY TRIAL DEMANDED**

Praecipe for Appearance.doc

FILED  
m/12/52/04 No CC  
JUL 16 2004  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

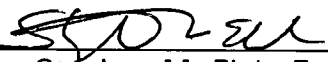
JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.: 04-804-CD
	)	
v.	)	
	)	
FEZELL ENTERPRISES, INC., t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

**PRAECIPE FOR APPEARANCE**

TO: PROTHONOTARY OF CLEARFIELD COUNTY:

Kindly enter my appearance on behalf of the Defendant, Fezell Enterprises, Inc., t/d/b/a Dubois Save-A-Lot, with respect to the above captioned case.

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**


By   
Stephen M. Elek, Esquire  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **DEFENDANT'S PRAECIPE FOR APPEARANCE** has been sent to the following by first class U.S. mail, postage prepaid, this 13<sup>th</sup> day of July, 2004.

Hal K. Waldman & Associates, Esquire  
Suite 300, Dominion Tower  
625 Liberty Avenue  
Pittsburgh, PA 15222  
(Counsel for Plaintiff)

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

By   
Stephen M. Elek, Esquire  
Attorney for Defendant, Fezell  
Enterprises, Inc., t/d/b/a Dubois  
Save-A-Lot

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,

Plaintiff,

v.

FEZELL ENTERPRISES, INC., t/d/b/a  
DUBOIS SAVE-A-LOT,

Defendants.

CIVIL DIVISION

No.: 04-804-CD

Type of Pleading:

**NOTICE OF SERVICE OF  
DEFENDANT'S FIRST SET  
OF INTERROGATORIES DIRECTED  
TO THE PLAINTIFF**

Filed on behalf of:

**Defendant**

Counsel of record for this party:

Stephen M. Elek, Esquire  
Pa. I.D. #47205

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

DDI Plaza One, Suite 300  
1225 Washington Pike  
Bridgeville, PA 15017  
(412) 914-1058

**JURY TRIAL DEMANDED**

Notice of Svc of Interr.doc

**FILED**

**JUL 16 2004**

Christina A. Hahn  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.: 04-804-CD
	)	
v.	)	
	)	
FEZELL ENTERPRISES, INC., t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

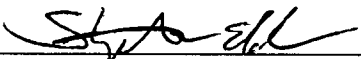
**NOTICE/CERTIFICATE OF SERVICE OF INTERROGATORIES**

TO: PROTHONOTARY OF CLEARFIELD COUNTY, PA

Kindly take notice that the Defendant, Fezell Enterprises, Inc., t/d/b/a Dubois Save-A-Lot, has served Defendant's First Set of Interrogatories Directed to the Plaintiff, Jean Hutton, by mailing to the following by first class U.S. Mail, this 13<sup>th</sup> day of July, 2004.

Hal K. Waldman, Esquire  
Suite 300, Dominion Tower  
625 Liberty Avenue  
Pittsburgh, PA 15222  
(Counsel for Plaintiff)

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

By   
Stephen M. Elek, Esquire  
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,

Plaintiff,

v.

FEZELL ENTERPRISES, INC., t/d/b/a  
DUBOIS SAVE-A-LOT,

Defendants.

CIVIL DIVISION

No.: 04-804-CD

Type of Pleading:

**ANSWER AND NEW MATTER**

Filed on behalf of:

**Defendant**

Counsel of record for this party:

Stephen M. Elek, Esquire  
Pa. I.D. #47205

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

DDI Plaza One, Suite 300  
1225 Washington Pike  
Bridgeville, PA 15017  
(412) 914-1058

**JURY TRIAL DEMANDED**

Answer and New Matter.doc

**FILED** *REC*  
*m/j:4284*  
**AUG 02 2004**

*WAS*  
William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.: 04-804-CD
	)	
v.	)	
	)	
FEZELL ENTERPRISES, INC., t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

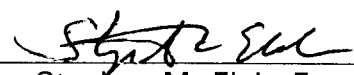
**NOTICE TO PLEAD**

TO: ALL COUNSEL/PARTIES:

You are hereby notified to file a written response to the enclosed Answer and New Matter to Plaintiff's Complaint within twenty (20) days from service hereof or a judgment may be entered against you.

**JURY TRIAL DEMANDED**

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

By   
Stephen M. Elek, Esquire  
Attorney for Defendant

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

JEAN HUTTON,	)	CIVIL DIVISION
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Plaintiff,	)	No.: 04-804-CD
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v.	)	
	)	
FEZELL ENTERPRISES, INC., t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

**ANSWER AND NEW MATTER**

AND NOW, comes the Defendant, Fezell Enterprises, Inc., t/d/b/a Dubois Save-A-Lot, by and through it's counsel, O'Brien, Rulis, Bochicchio & Sosso, LLC, and Stephen M. Elek, Esquire, and files the following Answer and New Matter to Plaintiff's Complaint, in support whereof it is averred as follows:

1. After reasonable investigation Defendant is presently without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in Paragraph 1 of Plaintiff's Complaint. The same are therefore denied and strict proof thereof is demanded at time of trial.
2. Paragraph 2 of Plaintiff's Complaint is admitted.
3. Paragraph 3 of Plaintiff's Complaint is admitted.

4. Paragraph 4 of Plaintiff's Complaint contains conclusions of law to which no response is necessary.

5. Paragraph 5 of Plaintiff's Complaint is admitted.

6. Paragraph 6 of Plaintiff's Complaint is contains conclusions of law to which no response is necessary. To the extent a response is subsequently deemed necessary, said Paragraph is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

7. Paragraph 7 of Plaintiff's Complaint contains conclusions of law to which no response is necessary. To the extent a response is subsequently deemed necessary, said Paragraph is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

8. Paragraph 8 of Plaintiff's Complaint is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

9. Paragraph 9 of Plaintiff's Complaint is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

10. Paragraph 10 of Plaintiff's Complaint is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

11. Paragraph 11 of Plaintiff's Complaint is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

12. Paragraph 12 of Plaintiff's Complaint is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

13. Paragraph 13 of Plaintiff's Complaint is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

14. Paragraph 14 of Plaintiff's Complaint, including its respective subparagraphs, is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

15. Paragraph 10 of Plaintiff's Complaint, including its subparagraphs, is generally denied pursuant to Pennsylvania Rule of Civil Procedure

16. Paragraph 10 of Plaintiff's Complaint is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029

17. Paragraph 10 of Plaintiff's Complaint is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

18. Paragraph 10 of Plaintiff's Complaint is generally denied pursuant to Pennsylvania Rule of Civil Procedure No. 1029.

WHEREFORE, Defendant, Fezell Enterprises, Inc., t/d/b/a Dubois Save-A-Lot, denies that it is indebted to the Plaintiff in the sums demanded or in any sum whatsoever.

**NEW MATTER**

By way of further defense, Defendant, Fezell Enterprises, Inc., t/d/b/a Dubois Save-A-Lot, avers:

19. Defendant avers and therefore preserves the defense of comparative negligence.

20. Defendant avers and therefore preserves the defense of assumption of a known risk.

21. To the extent that Plaintiff alleges that she tripped over a display item at Defendant's store, said item was open and obvious and easily avoidable by the

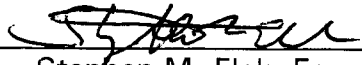
Plaintiff had she been acting in a reasonable and prudent manner at all times material.

22. The nature and extent of Plaintiff's alleged injuries are or may have been caused by conditions and actions of entities other than Defendant and for which the Defendant cannot be held responsible.

WHEREFORE, Defendant, Fezell Enterprises, Inc., t/d/b/a Dubois Save-A-Lot, denies that it is indebted to the Plaintiff in the sum demanded or in any sum whatsoever.

Respectfully submitted,

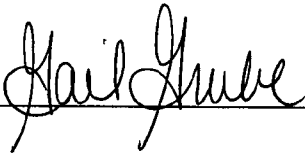
**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

By   
Stephen M. Elek, Esquire  
Attorney for Defendant

**VERIFICATION**

I hereby certify that the foregoing averments of fact in the foregoing **DEFENDANT'S ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT** are true and correct and based upon my personal knowledge, information or belief. I understand that these averments of fact are made subject to the penalties of 18 Purdons Consolidated Statutes §4904, relating to unsworn falsification to authorities.

Date: 7/18/04

By: 

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **DEFENDANT'S ANSWER AND NEW MATTER** has been sent to the following by first class U.S. mail, postage prepaid, this 30<sup>th</sup> day of July, 2004.

Hal K. Waldman & Associates, Esquire  
Suite 300, Dominion Tower  
625 Liberty Avenue  
Pittsburgh, PA 15222  
(Counsel for Plaintiff)

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

By 

Stephen M. Elek, Esquire  
Attorney for Defendant, Fezell  
Enterprises, Inc., t/d/b/a Dubois  
Save-A-Lot

**FILED**  
m/11:2567  
AUG 09 2004  
William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.:
	)	
vs.	)	
	)	
FEZELL ENTERPRISES, INC. t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

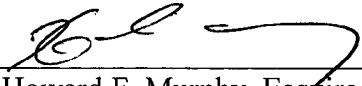
**REPLY TO NEW MATTER**

AND NOW, comes the Plaintiff, Jean Hutton, by and through her attorneys, HAL K. WALDMAN & ASSOCIATES, Howard F. Murphy, Esquire and Hal K. Waldman, Esquire, and files the within Reply to New Matter, and in support whereof avers as follows:

19-22. The averments contained in Paragraph 19 – 22 of the Defendant's New Matter contain conclusions of law to which no response is required.

WHEREFORE, Plaintiff, Jean Hutton, demands judgment against Defendant Fezell Enterprises, Inc. t/d/b/a DuBois Save-A-Lot in an amount in excess of the jurisdictional limits of the Arbitration Division of this Court, exclusive of interest and costs.

Respectfully submitted,


By:   
Howard F. Murphy, Esquire  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a true and correct copy of the foregoing **REPLY TO NEW MATTER** has been served upon the following counsel of record by mailing the same First Class Mail, postage prepaid, this 5<sup>th</sup> day of August, 2004, to the following address:

Stephen M. Elek, Esquire  
O'Brian, Rulis, Bochicchio & Sosso, LLC  
DDI Plaza One, St. 300  
1225 Washington Pike  
Bridgeville, PA 15017

Hal K. Waldman & Associates  
Attorneys at Law

  
Howard F. Murphy, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,

Plaintiff,

v.

FEZELL ENTERPRISES, INC., t/d/b/a  
DUBOIS SAVE-A-LOT,

Defendants.

CIVIL DIVISION

No.: 04-804-CD

Type of Pleading:

**NOTICE OF DEPOSITION OF  
PLAINTIFF, JEAN HUTTON**

Filed on behalf of:

**Defendant**

Counsel of record for this party:

Stephen M. Elek, Esquire  
Pa. I.D. #47205

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

DDI Plaza One, Suite 300  
1225 Washington Pike  
Bridgeville, PA 15017  
(412) 914-1058

**JURY TRIAL DEMANDED**

Notice of Deposition

FILED 10  
m/12:48 PM  
FEB 24 2005

William A. Shaw  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.: 04-804-CD
	)	
v.	)	
	)	
FEZELL ENTERPRISES, INC., t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

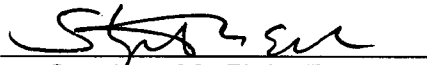
**NOTICE OF DEPOSITION OF PLAINTIFF, JEAN HUTTON**

TO: Jean Hutton  
c/o Hal K. Waldman, Esquire  
Suite 300, Dominion Tower  
625 Liberty Avenue  
Pittsburgh, PA 15222

TAKE NOTICE that your deposition will be taken pursuant to Rule 4007.1 of the Pennsylvania Rules of Civil Procedure, as amended, before a Notary Public, authorized by law to administer oaths on **Monday, March 7, 2005 at 11:00 a.m., at Sargents Court Reporting, 106 N. Second Street, First Floor, Clearfield, PA 16830 (814) 765-8711**, at which time and place you are asked to appear and take part as such shall be fitting and proper.

This deposition will be recorded by a stenographer for a written statement.

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

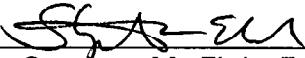
By   
Stephen M. Elek, Esquire  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **DEFENDANT'S NOTICE OF DEPOSITION OF PLAINTIFF, JEAN HUTTON** has been sent to the following by first class U.S. mail, postage prepaid, this 22<sup>d</sup> day of Feb., 2005.

Hal K. Waldman & Associates, Esquire  
Suite 300, Dominion Tower  
625 Liberty Avenue  
Pittsburgh, PA 15222  
(Counsel for Plaintiff)

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

By   
Stephen M. Elek, Esquire  
Attorney for Defendant, Fezell  
Enterprises, Inc., t/d/b/a Dubois  
Save-A-Lot

FILED 10  
m/12:3781  
MAR 07 2005 (GK)

William A. Stow  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,

Plaintiff,

v.

FEZELL ENTERPRISES, INC., t/d/b/a  
DUBOIS SAVE-A-LOT,

Defendants.

CIVIL DIVISION

No.: 04-804-CD

Type of Pleading:

**NOTICE OF DEPOSITION OF  
KELLY REED**

Filed on behalf of:

**Defendant**

Counsel of record for this party:

Stephen M. Elek, Esquire  
Pa. I.D. #47205

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

DDI Plaza One, Suite 300  
1225 Washington Pike  
Bridgeville, PA 15017  
(412) 914-1058

**JURY TRIAL DEMANDED**

Notice of Deposition

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.: 04-804-CD
	)	
v.	)	
	)	
FEZELL ENTERPRISES, INC., t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

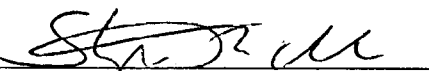
**NOTICE OF DEPOSITION OF PLAINTIFF, JEAN HUTTON**

TO: Kelly Reed  
c/o Hal K. Waldman, Esquire  
Suite 300, Dominion Tower  
625 Liberty Avenue  
Pittsburgh, PA 15222

TAKE NOTICE that your deposition will be taken pursuant to Rule 4007.1 of the Pennsylvania Rules of Civil Procedure, as amended, before a Notary Public, authorized by law to administer oaths on **Monday, March 7, 2005 at 12:30 p.m., at Sargents Court Reporting, 106 N. Second Street, First Floor, Clearfield, PA 16830 (814) 765-8711**, at which time and place you are asked to appear and take part as such shall be fitting and proper.

This deposition will be recorded by a stenographer for a written statement.

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

By   
Stephen M. Elek, Esquire  
Attorney for Defendant


**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **DEFENDANT'S NOTICE OF DEPOSITION OF KELLY REED** has been sent to the following by first class U.S. mail, postage prepaid, this 2<sup>nd</sup> day of March, 2005.

Howard Murphy, Esquire  
Hal K. Waldman & Associates  
Suite 300, Dominion Tower  
625 Liberty Avenue  
Pittsburgh, PA 15222  
(Counsel for Plaintiff)

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

By

  
\_\_\_\_\_  
Stephen M. Elek, Esquire  
Attorney for Defendant, Fezell  
Enterprises, Inc., t/d/b/a Dubois  
Save-A-Lot



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,

Plaintiff,

v.

FEZELL ENTERPRISES, INC., t/d/b/a  
DUBOIS SAVE-A-LOT,

Defendants.

CIVIL DIVISION

No.: 04-804-CD

Type of Pleading:

**NOTICE OF DEPOSITION  
OF KELLY REED**

Filed on behalf of:

**Defendant**

Counsel of record for this party:

Stephen M. Elek, Esquire  
Pa. I.D. #47205

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

DDI Plaza One, Suite 300  
1225 Washington Pike  
Bridgeville, PA 15017  
(412) 914-1058

**JURY TRIAL DEMANDED**

Notice of Deposition 2

**FILED** *nd*  
*m/11:17/04*  
**MAR 24 2005** *cc*  
*GR*  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.: 04-804-CD
	)	
v.	)	
	)	
FEZELL ENTERPRISES, INC., t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

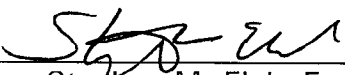
**NOTICE OF DEPOSITION OF KELLY REED**

TO: Kelly Reed  
c/o Hal K. Waldman, Esquire  
Suite 300, Dominion Tower  
625 Liberty Avenue  
Pittsburgh, PA 15222

TAKE NOTICE that your deposition will be taken pursuant to Rule 4007.1 of the Pennsylvania Rules of Civil Procedure, as amended, before a Notary Public, authorized by law to administer oaths on **Tuesday, April 12, 2005 at 1200 p.m., at Jefferson County Courthouse Annex, 155 Main Street, Brookville, PA 15825** at which time and place you are asked to appear and take part as such shall be fitting and proper.

This deposition will be recorded by a stenographer for a written statement.

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

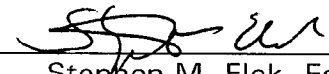
By   
Stephen M. Elek, Esquire  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **DEFENDANT'S NOTICE OF DEPOSITION OF PLAINTIFF, JEAN HUTTON** has been sent to the following by first class U.S. mail, postage prepaid, this 22<sup>nd</sup> day of March, 2005.

Howard Murphy, Esquire  
Hal K. Waldman & Associates  
Suite 300, Dominion Tower  
625 Liberty Avenue  
Pittsburgh, PA 15222  
(Counsel for Plaintiff)

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

By   
Stephen M. Elek, Esquire  
Attorney for Defendant, Fezell  
Enterprises, Inc., t/d/b/a Dubois  
Save-A-Lot

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,

Plaintiff,

v.

FEZELL ENTERPRISES, INC., t/d/b/a  
DUBOIS SAVE-A-LOT,

Defendants.

CIVIL DIVISION

No.: 04-804-CD

Type of Pleading:

**NOTICE OF DEPOSITION OF  
PLAINTIFF, JEAN HUTTON**

Filed on behalf of:

**Defendant**

Counsel of record for this party:

Stephen M. Elek, Esquire  
Pa. I.D. #47205

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

DDI Plaza One, Suite 300  
1225 Washington Pike  
Bridgeville, PA 15017  
(412) 914-1058

**JURY TRIAL DEMANDED**

Notice of Depo pltf 2

**FILED** *no*  
*mt 1:17d* *ec*  
**MAR 24 2005** *ck*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.: 04-804-CD
	)	
v.	)	
	)	
FEZELL ENTERPRISES, INC., t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

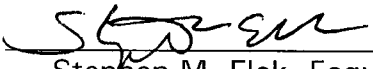
**NOTICE OF DEPOSITION OF PLAINTIFF, JEAN HUTTON**

TO: Jean Hutton  
c/o Hal K. Waldman, Esquire  
Suite 300, Dominion Tower  
625 Liberty Avenue  
Pittsburgh, PA 15222

TAKE NOTICE that your deposition will be taken pursuant to Rule 4007.1 of the Pennsylvania Rules of Civil Procedure, as amended, before a Notary Public, authorized by law to administer oaths on **Tuesday, April 12, 2005 at 11:00 a.m., Jefferson County Courthouse Annex, 155 Main Street, Brookville, PA 15825**, at which time and place you are asked to appear and take part as such shall be fitting and proper.

This deposition will be recorded by a stenographer for a written statement.

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

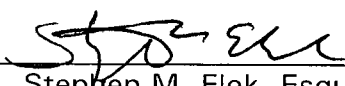
By   
Stephen M. Elek, Esquire  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **DEFENDANT'S NOTICE OF DEPOSITION OF KELLY REED** has been sent to the following by first class U.S. mail, postage prepaid, this 22<sup>d</sup> day of March, 2005.

Howard Murphy, Esquire  
Hal K. Waldman & Associates  
Suite 300, Dominion Tower  
625 Liberty Avenue  
Pittsburgh, PA 15222  
(Counsel for Plaintiff)

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

By   
Stephen M. Elek, Esquire  
Attorney for Defendant, Fezell  
Enterprises, Inc., t/d/b/a Dubois  
Save-A-Lot

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,

Plaintiff,

v.

FEZELL ENTERPRISES, INC., t/d/b/a  
DUBOIS SAVE-A-LOT,

Defendants.

CIVIL DIVISION

No.: 04-804-CD

Type of Pleading:

**NOTICE/CERTIFICATE OF SERVICE  
OF DEFENDANT'S ANSWERS TO  
PLAINTIFF'S SECOND SET OF  
INTERROGATORIES**

Filed on behalf of:

**Defendant**

Counsel of record for this party:

Stephen M. Elek, Esquire  
Pa. I.D. #47205

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

DDI Plaza One, Suite 300  
1225 Washington Pike  
Bridgeville, PA 15017  
(412) 914-1058

**JURY TRIAL DEMANDED**

Notice of Svc of ATIs

FILED NO CC  
MAY 12 4:38 PM  
MAY 13 2005

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.: 04-804-CD
	)	
v.	)	
	)	
FEZELL ENTERPRISES, INC., t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

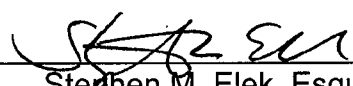
**NOTICE/CERTIFICATE OF SERVICE OF DEFENDANT'S ANSWERS TO  
PLAINTIFF'S SECOND SET OF INTERROGATORIES**

TO: PROTHONOTARY OF CLEARFIELD COUNTY, PA

Kindly take notice that the Defendant, Fezell Enterprises, Inc., t/d/b/a Dubois Save-A-Lot, has served Defendant's Answers to Plaintiff's Second Set of Interrogatories, by mailing to the following by first class U.S. Mail, this 10<sup>th</sup> day of May, 2005.

Hal K. Waldman, Esquire  
Suite 300, Dominion Tower  
625 Liberty Avenue  
Pittsburgh, PA 15222  
(Attorney for Plaintiff)

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

By   
Stephen M. Elek, Esquire  
Attorney for Defendant



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,

Plaintiff,

v.

FEZELL ENTERPRISES, INC., t/d/b/a  
DUBOIS SAVE-A-LOT,

Defendants.

CIVIL DIVISION

No.: 04-804-CD

Type of Pleading:

**NOTICE/CERTIFICATE OF SERVICE  
OF DEFENDANT'S ANSWERS TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES**

Filed on behalf of:

**Defendant**

Counsel of record for this party:

Stephen M. Elek, Esquire  
Pa. I.D. #47205

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

DDI Plaza One, Suite 300  
1225 Washington Pike  
Bridgeville, PA 15017  
(412) 914-1058

**JURY TRIAL DEMANDED**

Notice of Svc of ATIs 2

FILED NO CC  
7/1/05  
JUN 08 2005 @  
Walter A. Shaw  
Prothonotary, Clerk of Courts

By Stephen M. Elek  
Stephen M. Elek, Esquire  
Attorney for Defendant

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

JEAN HUTTON,

Plaintiff,

v.

FEZELL ENTERPRISES, INC., t/d/b/a  
DUBOIS SAVE-A-LOT,

Defendants.

CIVIL DIVISION

No.: 04-804-CD

Type of Pleading:

**PRAECIPE TO LIST  
CASE FOR TRIAL**

Filed on behalf of:

**Defendant**

Counsel of record for this party:

Stephen M. Elek, Esquire  
Pa. I.D. #47205**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**DDI Plaza One, Suite 300  
1225 Washington Pike  
Bridgeville, PA 15017  
(412) 914-1058**JURY TRIAL DEMANDED**

Praecipe to List Case

m/12:34  
SEP 27 2005  
cc  
GP

Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.: 04-804-CD
	)	
v.	)	
	)	
FEZELL ENTERPRISES, INC., t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

**PRAECIPE TO LIST CASE FOR TRIAL**

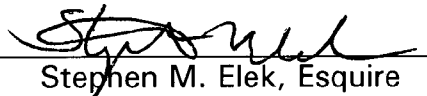
TO: Clearfield County Prothonotary  
One North 2nd Street  
Clearfield, PA 16830

I hereby certify pursuant to Clearfield County Rule of Civil Procedure 212.2 that the above-captioned case is Ready For Trial. All pleadings are closed; no Motions are outstanding; all witnesses are presently available to appear at trial; and discovery is complete, except for those depositions to be taken solely for the purpose of being presented at trial, such as the depositions of expert witnesses.

This case is to be heard by a jury.

Counsel for Plaintiff, the only other party, has been sent a copy of this Praecipe.

**O'BRIEN, RULIS, BOCHICCHIO  
& SOSSO, LLC**

By   
Stephen M. Elek, Esquire  
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.:04 - 804 - CD
	)	
vs.	)	<b>Praecipe To Settle and</b>
	)	<b>Discontinue</b>
	)	
FEZELL ENTERPRISES, INC. t/d/b/a	)	Filed on Behalf of Plaintiff
DUBOIS SAVE-A-LOT,	)	
	)	Counsel of Record for this Party:
Defendants.	)	
	)	HOWARD F. MURPHY, Esquire
	)	Pa. I.D. #: 82271
	)	
	)	
	)	
	)	Howard F. Murphy
	)	Attorney At Law
	)	331 Regis Avenue
	)	Pittsburgh, PA 15236
	)	(412) 653-6000
	)	
	)	<b>JURY TRIAL DEMANDED</b>

**FILED**

m/11:47 am

JAN 26 2006

Noc

Rec of case issued to

Atty murphy &

Copy to C/A

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

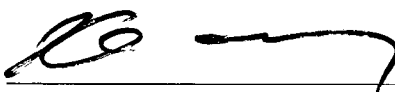
JEAN HUTTON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.:04 - 804 - CD
	)	
vs.	)	
	)	
FEZELL ENTERPRISES, INC. t/d/b/a	)	
DUBOIS SAVE-A-LOT,	)	
	)	
Defendants.	)	

**Praecepte To Settle and Discontinue**

TO THE PROTHONOTARY:

Kindly mark the docket in the above captioned matter as "settled and discontinued".

Respectfully submitted,

By:   
Howard F. Murphy, Esquire  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a true and correct copy of the foregoing **Praecipe To Settle and Discontinue** has been served upon the following counsel of record by mailing the same First Class Mail, postage prepaid, this 24<sup>th</sup> day of January, 2006, to the following address:

Stephen M. Elek, Esquire  
O'Brian, Rulis, Bochicchio & Sosso, LLC  
DDI Plaza One, St. 300  
1225 Washington Pike  
Bridgeville, PA 15017

Howard F. Murphy  
Attorney at Law

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

Howard F. Murphy, Esquire

**HOWARD F. MURPHY**  
**ATTORNEY AT LAW**

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Pittsburgh, PA 15236  
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January 24, 2004

Court of Common Pleas of Clearfield County  
William W. Shaw,  
Office of the Prothonotary  
230 East Market Street  
Clearfield, PA 16830


In Re: No. 04 - 804 - CD - *Hutton v. Fezell Enterprises, Inc., t/d/b/a Dubois Save-A-Lot*

Dear Mr. Shaw:

Enclosed please find the Plaintiff's Praecipe to Settle and Discontinue for filing. I have also enclosed an extra cover sheet which I request you time stamp and return to me in the enclosed envelope.

Should you have any questions or are in need of any additional information, please do not hesitate to contact me. Thank you for your anticipated cooperation.

Very truly yours,



Howard F. Murphy

/hm

Cc: Stephen Elek, Esquire  
Jean Hutton



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

**CIVIL DIVISION**

**COPY**

**Jean Hutton**

**Vs.**

**No. 2004-00804-CD**

**Fezell Enterprises, Inc. t/d/b/a  
DuBois Save-A-Lot**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on January 26, 2006, marked:

Settled and Discontinued

Record costs in the sum of \$85.00 have been paid in full by Hal K. Waldman Esq..

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 26th day of January A.D. 2006.

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William A. Shaw, Prothonotary