

04-1075 CD
RANDALL SANTERRE -VS- WAL-MART STORES

Randall Santerre vs Wal-Mart Stores
2004-1075-CD

CB

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

RANDALL SANTERRE,

CIVIL DIVISION

Plaintiff,

vs.

WAL-MART STORES, INC.,

Defendant.

Misc. Civil Action No.: 04-1075-CD

**PETITION FOR ORDER TO ISSUE
SUBPOENA PURSUANT TO 42 PA. C.S.A.
§5326**

Filed on behalf of Wal-Mart Stores, Inc.

Counsel of Record for this Party:

Brad D. Trust, Esquire
Pa. I.D. #83748
Dell, Moser, Lane & Loughney, LLC
525 William Penn Place, Suite 3700
Pittsburgh, PA 15219

Phone: (412) 471-1180
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JURY TRIAL DEMANDED

FILED

JUL 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, COUNTY PENNSYLVANIA

RANDALL SANTERRE)
Plaintiff,) MISC. CIVIL ACTION NO. _____
vs.)
WAL-MART STORES, INC.)
Defendant.)

**PETITION FOR ORDER TO ISSUE SUBPOENA PURSUANT
TO 42 P.A.C.S.A. §5326**

AND NOW, come Defendant Wal-Mart Stores, Inc. by and through its attorneys, Dell, Moser, Lane & Loughney, LLC and Brad D. Trust, Esquire and files the following Petition for Order to Issue Subpoena Pursuant to 42 Pa. C.S.A. §5326, stating as follows:

1. An action is currently pending before the Supreme Court of the State of New York, IAS Part 43-County of Suffolk, involving the above-captioned parties at Civil Action No. 19128/02.
2. The matter involves an alleged slip and fall which Plaintiff alleges occurred at the Wal-Mart store in Middle Island, New York on September 25, 2000.
3. Jean Poutrain, a resident of Clearfield County, Pennsylvania was a witness to the alleged slip and fall accident and has information material to the resolution of the matter presented in the New York litigation.
4. Wal-Mart Stores, Inc. seeks to take the deposition of Mr. Poutrain to determine what information is known to him regarding the incident.
5. The undersigned has attached an Order for Commission entered by the Honorable Arthur G. Pitts, Judge of the Supreme Court of the State of New York, IAS Part 43-County of

Suffolk at Civil Action No. 19128/02, in the case styled, "Randall Santerre v. Wal-Mart Stores, Inc.", authorizing the issuance of a subpoena to take the deposition of Jean Poutrain, who, upon information and belief, resides at 289 Glendale Lake Rd, Clearfield, Pennsylvania 16668.

6. The undersigned respectfully requests that the Court of Common Pleas of Clearfield County, Pennsylvania enter the Order attached hereto issuing, and granting permission and authorization to undersigned counsel to serve, pursuant to 42 Pa. C.S.A. §5326, a subpoena, directed to Jean Poutrain, requiring him to appear for a deposition and to give testimony in the case filed in the Supreme Court of the State of New York, IAS Part 43-County of Suffolk at Civil Action No. 19128/02.

WHEREFORE, Defendant, Wal-Mart Stores, Inc. respectfully requests that this Honorable Court enter the Order attached hereto authorizing Wal-Mart Stores, Inc. to serve a subpoena upon Jean Poutrain requiring Mr. Poutrain to appear for a deposition.

Respectfully submitted,

DELL, MOSER, LANE & LOUGHNEY, LLC



Brad D. Trust, Esquire
Counsel for Wal-Mart Stores, Inc., Defendant

WAL-MART STORES, INC.

SUPREME COURT OF THE STATE OF NEW YORK *at a Term begun*
IAS PART 43 - COUNTY OF SUFFOLK *Court Part 43 in the County of Suffolk in*
P R E S E N T: Arthur G. Pitts, JSC *Aviarkland NY on the 14th day*
-----X *of June, 2004*
RANDALL SANTERRE, *Index No.: 19128/02*

Plaintiff,

-against-

ORDER

WAL-MART STORES, INC.,

Defendant.

-----X

Defendant having moved this Court for an Order pursuant to CPLR 3108 directing the issuance of an Open Commission to enable defendant to take the deposition of Jean Poutraine as a non-party witness, and to request the Court of Common Pleas of Clearfield County of the State of Pennsylvania to issue a subpoena to Jean Poutraine to appear for and submit to his deposition at a time, date, and place to be set by the Court of Common Pleas of Clearfield County of the State of Pennsylvania;

NOW, upon reading and filing defendant's Notice of Motion, dated December 29, 2003, and the affirmation of Patricia A. O'Connor, Esq., duly affirmed the 29th day of December, 2003, and with no opposition from plaintiff and with due deliberation having been had thereon and upon reading and filing the Short Form Order of this Court dated March 23, 2004, directing defendant to "submit order,"

NOW, upon motion of BRODY, O'CONNOR & O'CONNOR, ESQS., attorneys for defendant herein, it is

ORDERED, that defendant's motion for an Open Commission to enable defendant to take the deposition of Jean Poutraine as a non-party witness in the State of Pennsylvania is GRANTED without opposition in all respects; and it is further

ORDERED, that a Commission issue to a Judge of the Court of Common Pleas of Clearfield County of the State of Pennsylvania to take the deposition on oral questions under oath of Jean Poutrain as a non-party witness.

Dated: 6/14/04

E N T E R:


ARTHUR G. PITTS, J.S.C.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RANDALL SANTERRE)
Plaintiff,) MISC. CIVIL ACTION NO. _____
vs.) 04-1075-QD
WAL-MART STORES, INC.)
Defendant.)

ORDER OF COURT

AND NOW, this 19 day of July, 2004, it is hereby
ORDERED, ADJUDGED and DECREED that Defendants Wal-Mart Stores, Inc.'s, Petition for
Order to Issue Subpoena Pursuant to 42 Pa. C.S.A. §5326 is GRANTED and counsel for
Defendant Wal-Mart Stores, Inc. is permitted and authorized to serve a subpoena upon Jean
Poutrain for Mr. Poutrain's deposition to be used in the case filed in the Supreme Court of the
State of New York, IAS Part 43-County of Suffolk at Civil Action No. 19128/02. The
deposition taken pursuant to this Order shall occur in Clearfield County, Pennsylvania.

BY THE COURT:



FILED

JUL 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within Petition for Order to Issue Subpoena Pursuant to 42 Pa. C.S.A. §5326 has been served on this 13 day of July, 2004 upon all parties, either individually or through counsel by:

x First Class, Mail, Postage Pre-Paid Hand Delivery
 Certified Mail-Return Receipt Requested Facsimile Transmission

at the following address(es):

Nils Hunter Berlin, Esquire
Law Offices of Nils Hunter Berlin, P.C.
130 West Main Street
East Islip, NY 11730
Attorneys for Plaintiff

Dell Moser, Lane & Loughney, LLC

By:


Brad D. Trust, Esquire

COMMONWEALTH OF PENNSYLVANIA
CLEARFIELD COUNTY

Randall Santerre

Plaintiff(s)

Vs.

Wal-Mart Stores, Inc.

Defendant(s)

No. 2004-01075-CD

COPY

SUBPOENA TO ATTEND AND TESTIFY

TO: _____

1. You are ordered by the Court to come to _____

(Specify Courtroom or other place)

at _____ County, Pennsylvania, on _____ at _____
o'clock, __ M., to testify on behalf of _____
in the
above case, and to remain until excused.

2. And bring with you the following: _____

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

ISSUED BY A PARTY/COUNSEL IN COMPLIANCE WITH PA.R.C.P. No. 234.2(a).

NAME: _____

ADDRESS: _____

TELEPHONE: _____

SUPREME COURT ID # _____

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

Deputy

DATE: Tuesday, July 20, 2004

Seal of the Court

OFFICIAL NOTE: This form of subpoena shall be used whenever a subpoena is issuable, including hearings in connection with depositions and before arbitrators, masters, commissioners, etc. in compliance with PA.R.C.P. No. 234.1. If a subpoena for production of documents, records or things is desired, complete Paragraph 2.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

RANDALL SANTERRE,

Plaintiff,

vs.

WAL-MART STORES, INC.,

Defendant.

CIVIL DIVISION

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