

05-1915-CD
Houtzdale Boro vs Dollar General
Case

Houtzdale Borough vs Dollar General
2005-1915-CD

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA
No.

HOUTZDALE BOROUGH,

Plaintiff,

vs.

DOLLAR GENERAL CORPORATION,

Defendants.

PRAECIPE

LAW OFFICES
SPENCE, CUSTER, SAYLOR, WOLFE
& ROSE, L.L.C.

P.O. BOX 280

JOHNSTOWN, PENNSYLVANIA 15907

FILED

DEC 08 2005

William A. Shaw
Prothonotary/Clerk of Courts

HOUTZDALE BOROUGH,
Plaintiff,
vs.

DOLLAR GENERAL CORPORATION,
Defendant.

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: CIVIL ACTION - LAW
: No.

05-1915-CD

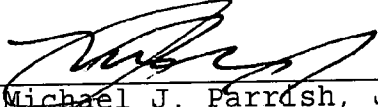
PRAECIPE

To The Prothonotary:

Issue Writ of Summons against the above-named
Defendant.

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By



Michael J. Parrish, Jr., Esquire
Attorneys for Plaintiff,
Houtzdale Borough

DATED: December 7, 2005

FILED *Atty. pd.*
m/3:02pm 85.00
DEC 08 2005 *Writ to*
Shaw

William A. Shaw
Prothonotary/Clerk of Courts

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

 **COPY**

SUMMONS

Houtzdale Borough

Vs.

NO.: 2005-01915-CD

Dollar General Corporation

TO: DOLLAR GENERAL CORPORATION

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 12/08/2005

William A. Shaw
Prothonotary

Issuing Attorney:

Michael J. Parrish Jr.
US National Bank Building
Johnstown, PA 15907

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101070
NO: 05-1915-CD
SERVICE # 1 OF 1
SUMMONS

PLAINTIFF: HOUTZDALE BOROUGH
vs.
DEFENDANT: DOLLAR GENERAL CORPORATION

SHERIFF RETURN

NOW, December 20, 2005 AT 10:35 AM SERVED THE WITHIN SUMMONS ON DOLLAR GENERAL CORPORATION DEFENDANT AT 813 CENTENNIAL ST., HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JUDITH RAINEY, PIC A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS /

FILED
012:5781
MAR 07 2006

William A. Shaw
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	SPENCE	12711	10.00
SHERIFF HAWKINS	SPENCE	12711	35.83

Sworn to Before Me This

_____ Day of _____ 2006

So Answers,

Chester A. Hawkins
by Marilyn Harris

Chester A. Hawkins
Sheriff

HOUTZDALE BOROUGH,
Plaintiff,

vs.

DOLLAR GENERAL COREORATION,
Defendant.

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: CIVIL ACTION - LAW
: No. 05-1915-CD

: **COMPLAINT**

: **COUNSEL OF RECORD FOR PARTY:**
: **MICHAEL J. PARRISH, JR., ESQUIRE**
: I.D. NO.: 74834
: SPENCE, CUSTER, SAYLOR, WOLFE
: & ROSE, LLC
: AMERISERV FINANCIAL BUILDING
: POST OFFICE BOX 280
: JOHNSTOWN, PENNSYLVANIA 15901
: (814) 536-0735

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 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.

**Keystone Legal Services
211 ½ E. Locust Street
Clearfield, Pennsylvania 16830
(800) 692-7375**

FILED

MAY 24 2005
m/12:20/LSM
William A. Shaw
Prothonotary/Clerk of Courts
no C/C

HOUTZDALE BOROUGH, : IN THE COURT OF COMMON PLEAS OF
Plaintiff, : CLEARFIELD COUNTY, PENNSYLVANIA
vs. : CIVIL ACTION - LAW
DOLLAR GENERAL CORPORATION, : No. 05-1915-CD
Defendant. :

COMPLAINT

NOW COMES, the Plaintiff, Houtzdale Borough, by and through its counsel, Spence, Custer, Saylor, Wolfe & Rose, LLC, and files this Complaint as follows:

I. PARTIES

1. Houtzdale Borough, (hereinafter referred to as "Plaintiff"), is a political subdivision of the Commonwealth of Pennsylvania which maintains an office at 706 Brisbin Street, Houtzdale, Pennsylvania.

2. At all time relevant hereto, Plaintiff was the owner of an office building located at 706 Brisbin Street, Houtzdale, Pennsylvania.

3. Dollar General Corporation, (hereinafter referred to as "Defendant"), is a corporation maintaining corporate headquarters at Post Office Box 1728, Goodlettsville, Tennessee and at all times relevant hereto operated a retail store at 813 Centennial Street, Houzdale, Pennsylvania.

II. JURISDICTION

4. This action arises under the laws of the Commonwealth of Pennsylvania and is within the subject matter jurisdiction of this Honorable Court.

5. At all times pertinent hereto, the Defendant was conducting business in Clearfield County, Pennsylvania.

6. The occurrences from which this action arises took place in Clearfield County, Pennsylvania.

7. Venue is proper in the Court of Common Pleas of Clearfield County, Pennsylvania.

III. FACTUAL BACKGROUND

8. Prior to December 23, 2003, a former employee of the Plaintiff, Trish Johnson, purchased a 32" fiber optic Christmas tree, serial number 0005 29065, (hereinafter referred to as the "Christmas tree"), from the Defendant.

9. On December 23, 2003, a fire occurred in the Plaintiff's office which damaged and/or destroyed a portion of the building, equipment and other materials maintained therein.

10. Following the subject fire, an investigation determined that the fire resulted from a defect in and/or a malfunction of the Christmas tree and specifically the faulty

thermodynamic design of the light cavity of the Christmas tree including, but not limited to, the failure to install a thermal cut-off that would have prevented overheating and ignition and the lack of proper ventilation.

11. Specifically, it was determined that the faulty design fails to permit heat generated within the unit from properly exiting such that temperatures within the unit rise until the unit itself begins to melt and/or burn.

12. The subject fire and all of Plaintiff's damages and losses were the sole, direct, proximate and legal result of the negligence, carelessness, recklessness, strict liability and breach of warranty of the Defendant generally and as more specifically set forth below.

IV. STRICT LIABILITY

13. Plaintiff hereby incorporates by reference Paragraphs 1 through 12 of its Complaint as if the same were fully set forth herein.

14. At all times relevant hereto, the Defendant was engaged in the business of selling and supplying Christmas decorations including, but not limited to, the Christmas tree in question.

15. Plaintiff believes and therefore avers that the Christmas tree in question was sold, supplied and distributed by the Defendant without any substantial change in the condition in which it was originally sold and/or supplied by the manufacturer.

16. The Christmas tree in question was defective at the time that it was placed in the stream of commerce by the Defendant in that it was designed, manufactured and produced in a manner that made is unreasonably dangerous to the user and/or consumers like the Plaintiff in that it did not function in the manner in which it was designed and intended to function.

17. Despite being new in condition, the Christmas tree malfunctioned in the course of its normal, expected and intended operation under circumstances such that it should not have malfunctioned unless it was defective.

18. Plaintiff believes and therefore avers that the Christmas tree malfunctioned and/or was defective and/or was unreasonably dangerous within the meaning of §402(a) of the Restatement (Second) of Torts from the point it was purchased through and including the time of the fire on December 23, 2003.

19. As a sole, direct and proximate and legal result of the Defendant's selling, supplying and/or distributing the

defective Christmas tree, Plaintiff sustained the damages and losses set forth below:

- a. Loss of the building and foundation;
- b. The cost of debris removal;
- c. The cost of temporary rental for its offices and related expenses; and
- d. The loss of property, equipment and materials housed within the building.

20. In accordance with the provisions of the Restatement (Second) of Torts, §402(a), Defendant is strictly liable for its failure to sell, distribute and/or supply a product that was safe for its intended use.

V. BREACH OF WARRANTY

21. Plaintiff hereby incorporates by reference Paragraphs 1 through 20 of its Complaint as if the same were fully set forth herein.

22. Defendant is a seller, distributor and/or supplier of items such as the Christmas tree in question and, as such, it is specifically and impliedly warrants to users and consumers such as Plaintiff that its products are of merchantable quality, safe and fit for the purposes intended and

would function properly under the circumstances, generally in accordance with the Uniform Commercial Code.

23. Defendant breached the aforementioned specific and implied warranties by selling, supplying and/or distributing a product that was not of merchantable quality or fit for the purposes intended.

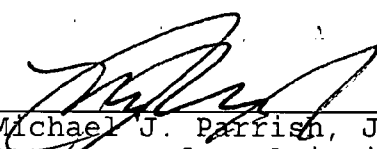
24. As a sole, direct and proximate and legal result of Defendant's selling, distributing and/or supplying the defective Christmas tree, Plaintiff sustained the following damages:

- a. Loss of the building and foundation;
- b. The cost of debris removal;
- c. The cost of temporary rental for its offices and related expenses; and
- d. The loss of property, equipment and materials housed within the building.

WHEREFORE, Plaintiff, Houtzdale Borough, respectfully requests this Honorable Court enter Judgment in its favor and against the Defendant, Dollar General Corporation, in an amount in excess of the mandatory arbitration limits of this Court.

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By


Michael J. Parrish, Jr., Esquire
Attorneys for Plaintiff,
Houtzdale Borough

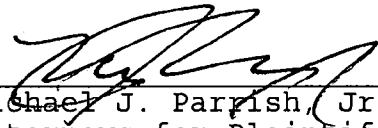
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 23rd day of May, 2006, a true and correct copy of the Plaintiff, Houtzdale Borough's Complaint was forwarded via first-class mail, postage pre-paid, to the following persons:

Dollar General Corporation
813 Centennial Street
Houtzdale, Pennsylvania 16651

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By:


Michael J. Parrish, Jr., Esquire
Attorneys for Plaintiff,
Houtzdale Borough

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA
No.

HOUTZDALE BOROUGH,

Plaintiff,

vs.

DOLLAR GENERAL CORPORATION,

Defendants.

COMPLAINT

LAW OFFICES
SPENCE, CUSTER, SAYLOR, WOLFE
& ROSE, L.L.C.

P.O. BOX 280

JOHNSTOWN, PENNSYLVANIA 15907

FILED
MAY

MAY 24 2006

2006
William A. Shaw
Prothonotary/Clerk of Courts

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

HOUTZDALE BOROUGH,

CIVIL ACTION – LAW

Plaintiff,

No. 05-1915-CD

vs.

Issue No.

DOLLAR GENERAL CORPORATION,

JURY TRIAL DEMANDED

Defendant.

PRAECIPE FOR APPEARANCE

Code:

Filed on behalf of DOLLAR GENERAL
CORPORATION, Defendant

Counsel of Record for this Party:

Sean P. Hannon, Esquire
PA I.D. #58713

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753

525 William Penn Place, Suite 3700
Pittsburgh, PA 15219

Phone: (412) 471-1180
Fax: (412) 471-9012

FILED

JUN 09 2007

M/11:30/4
William A. Shaw
Prothonotary/Clerk of Courts

no LENT CORN (60)
COPY TO C/A

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

HOUTZDALE BOROUGH,

CIVIL ACTION – LAW

Plaintiff,

No. 05-1915-CD

vs.

Issue No.

DOLLAR GENERAL CORPORATION,

JURY TRIAL DEMANDED

Defendant.

PRAECIPE FOR APPEARANCE

TO: William Shaw, Prothonotary

Kindly enter our appearance on behalf of Dollar General Corporation, Defendant in the
above-captioned matter.

DELL, MOSER, LANE & LOUGHNEY, LLC



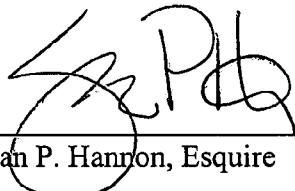
Sean P. Hannon, Esq.
Attorneys for Dollar General Corporation,
Defendant

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PRAECIPE FOR APPEARANCE** has been served upon the following by U.S. Mail, postage prepaid, this 7th day of June, 2006:

Michael J. Parrish, Jr., Esquire
Spence, Custer, Saylor, Wolfe & Rose, LLC
Ameriserv Financial Building
PO Box 280
Johnstown, PA 15901-0280
Counsel for Plaintiff



Sean P. Hannon, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HOUTZDALE BOROUGH) CIVIL DIVISION
)
Plaintiff,) No. 05-1915-CD
v.)
)
DOLLAR GENERAL CORPORATION,)
)
Defendant.)

FILED^{NO}
mtg:21/6/11 cc
DEC 18 2006
William A. Shaw
Prothonotary/Clerk of Courts

PRAECIPE TO WITHDRAW AND ENTER APPEARANCE

TO: Prothonotary

Please withdraw the appearance of Sean P. Hannon, Esquire and enter the appearance of Edward A. Miller, Esquire as counsel of record for Defendant, Dollar General Corporation, in connection with the above captioned matter. All future notices in this case should be sent to Attorney Miller at the addressed set forth below.

Respectfully submitted,

DELL, MOSER, LANE & LOUGHNEY, LLC

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

By:



Sean P. Hannon, Esquire
PA I.D. # 58713

By:



Edward A. Miller, Esquire
PA I.D. #58954

525 William Penn Place, Suite 3700
Pittsburgh, PA 15219-1707

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


Counsel for Defendant, Dollar General
Corporation

CERTIFICATE OF SERVICE

I, Edward A. Miller, Esquire, do hereby certify that a true and correct copy of the foregoing Praecept to Withdraw and Enter Appearance was sent on this 14TH day of December, 2006 by U.S.

Mail postage pre-paid to Plaintiff's counsel addressed as follows:

Michael J. Parrish, Jr., Esquire
Spence, Custer, Saylor, Wolfe & Rose, LLC
P.O. Box 280
Johnstown, PA 15907-0280


Edward A. Miller, Esquire

\\12_ALIAB\EAMILLER\LLPG\440125\ASMECKLING\01173\00125

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

HOUTZDALE BOROUGH)	CIVIL DIVISION
)	
Plaintiff,)	No. 05-1915-CD
v.)	
)	
DOLLAR GENERAL CORPORATION,)	
)	
Defendant.)	

ANSWER TO PLAINTIFF'S COMPLAINT AND NEW MATTER

Defendant, Dollar General Corporation, by and through its undersigned attorneys, hereby submits the following Answer to the Plaintiff's Complaint.

I – PARTIES

1. Admitted.
2. Denied. After reasonably 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 of the Plaintiff's Complaint.
3. It is admitted that Defendant, Dollar General Corporation, is a corporation that maintains corporate offices at 100 Mission Ridge, Goodlettsville, TN 37072. It is further admitted that Answering Defendant has a store located at Houtzdale Plaza, 813 Centennial Street, Houtzdale, PA 16651-1317.

II. – JURISDICTION

4. Denied. These averments of the Plaintiff's Complaint are opinions and conclusions of law to which no further response is required. To the extent a further response is deemed necessary, Answering Defendant states that it currently does not challenge whether this Court has subject matter jurisdiction over this action.

5. Admitted.

FILED
FEB 09 2007 ^{CR}
m/10:15/w
William A. Shaw
Prothonotary/Clerk of Courts
1 CERT TO ATTY

6. It is admitted that the Plaintiff contends that the fire that is the subject of this lawsuit took place in Clearfield County, Pennsylvania.

7. Denied. These averments of the Plaintiff's Complaint contain opinions and conclusions of law to which no further response is required. To the extent a further response is required, Answering Defendant is not, at this time, challenging venue.

III. – FACTUAL BACKGROUND

8. 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 of the Plaintiff's Complaint. Answering Defendant demands strict proof of these allegations at the trial of this case.

9-12. Denied generally pursuant to Pa. R.Civ.P. 1029 (e). Answering Defendant demands strict proof of these allegations at the trial of this case.

IV. – STRICT LIABILITY

13. It is admitted that the Plaintiff has incorporated by reference paragraphs 1-12 of its Complaint. Answering Defendant incorporates by reference its answers to the averments of paragraphs 1-12 of the Plaintiff's Complaint as if set forth herein at length.

14. Admitted in part and denied in part. It is admitted that in December 2003 Answering Defendant was engaged in the business of selling certain merchandise, including, but not limited to, Christmas decorations and fiber optic Christmas trees. As to whether Answering Defendant was the seller or supplier of the fiber optic Christmas tree at issue, Answering Defendant, after reasonable inquiry, does not possess sufficient information to form a belief as to the truth of these averments of the Plaintiff's Complaint.

15. 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 of

the Plaintiff's Complaint. Answering Defendant demands strict proof of these allegations at the trial of this case.

16-20 Denied generally pursuant to Pa.R.Civ.P. 1029 (e). Answering Defendant demands strict proof of these allegations at the trial of this case.

WHEREFORE, Defendant, Dollar General Corporation, demands that a judgment be entered in its favor and against the Plaintiff, Houtzdale Borough, together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

V -- BREACH OF WARRANTY

21. It is admitted that the Plaintiff has incorporated by reference paragraphs 1-20 of its Complaint. Answering Defendant incorporates by reference its answers to the averments of paragraphs 1-20 of the Plaintiff's Complaint as if set forth herein at length.

22. Admitted in part and denied in part. It is admitted that Answering Defendant has sold at its stores fiber optic Christmas trees. The remaining averments of the Plaintiff's Complaint are opinions and conclusions of law to which no further response is required and/or which are denied generally pursuant to Pa.R.Civ.P. 1029 (e).

23-24. Denied generally pursuant to Pa.R.Civ.P. 1029 (e).

WHEREFORE, Defendant, Dollar General Corporation, demands that a judgment be entered in its favor and against the Plaintiff, Houtzdale Borough, together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

NEW MATTER

Defendant, Dollar General Corporation, by and through its undersigned attorneys, hereby asserts the following new matter:

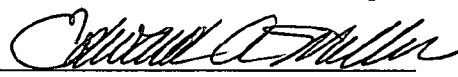
1. Answering Defendant asserts as a defense any limitations or exclusions of liability that may be set forth in the warranty provided with the subject fiber optic Christmas tree and/or in the relevant sales documents.

2. To the extent discovery may reveal, the Plaintiff failed to properly mitigate its damages.
3. To the extent discovery may reveal, the subject fiber optic Christmas tree was misused.
4. To the extent discovery may reveal, the Plaintiff's claimed damages were caused by an intervening, superseding cause.
5. The Plaintiff has failed to state a claim upon which relief may be granted.

WHEREFORE, Defendant, Dollar General Corporation, demands that a judgment be entered in its favor and against the Plaintiff, Houtzdale Borough, together with all costs incurred in defending this lawsuit as well as any other relief deemed appropriate by this Court.

Respectfully submitted,

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

By: 
Edward A. Miller, Esquire
PA I.D. #58954


U.S. Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219
412-803-1140
FAX 412-803-1188
emiller@mdwgc.com

Counsel for Defendant,
Dollar General Corporation

NOTICE TO PLEAD

To: Plaintiff

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


Attorney for Defendant, Dollar General Corporation

VERIFICATION

I, Tina Bentley, am authorized to execute this verification on behalf of Dollar General Corporation. I hereby certify that I have reviewed the foregoing Answer to Plaintiff's Complaint and New Matter. The factual information set forth in this pleading is true and correct to the best of the corporation's current 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.

DOLLAR GENERAL CORPORATION.


DATE: 01/31/07

By: Tina Bentley

CERTIFICATE OF SERVICE

I, Edward A. Miller, Esquire, do hereby certify that a true and correct copy of the foregoing Answer and New Matter was sent on this 7TH day of February, 2007 by U.S. Mail postage pre-paid to Plaintiff's counsel addressed as follows:

Michael J. Parrish, Jr., Esquire
Spence, Custer, Saylor, Wolfe & Rose, LLC
P.O. Box 280
Johnstown, PA 15907-0280


Edward A. Miller, Esquire

HOUTZDALE BOROUGH,

Plaintiff,

vs.

DOLLAR GENERAL CORPORATION,

Defendant.

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: CIVIL ACTION - LAW
: No. 05-1915-CD

: **REPLY TO NEW MATTER**

: **COUNSEL OF RECORD FOR PARTY:**
: **MICHAEL J. PARRISH, JR., ESQUIRE**
: I.D. NO.: 74834
: SPENCE, CUSTER, SAYLOR, WOLFE
: & ROSE, LLC
: AMERISERV FINANCIAL BUILDING
: POST OFFICE BOX 280
: JOHNSTOWN, PENNSYLVANIA 15901
: (814) 536-0735

FILED

FEB 15 2007

W. A. Shaw
William A. Shaw
Prothonotary/Clerk of Courts

no c/c @

HOUTZDALE BOROUGH,

Plaintiff,

vs.

DOLLAR GENERAL CORPORATION,

Defendant.

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: CIVIL ACTION - LAW
: No. 05-1915-CD

REPLY TO NEW MATTER

NOW COMES, the Plaintiff, Houtzdale Borough, by and through its counsel, Spence, Custer, Saylor, Wolfe & Rose, LLC, and files this Reply to New Matter as follows:

1. Denied. The averments of Paragraph 1 constitute conclusions of law to which no response is required. To the extent a response is required, said averments are denied.

2. Denied. The averments of Paragraph 2 constitute conclusions of law to which no response is required. To the extent a response is required, said averments are denied.

3. Denied. The averments of Paragraph 3 constitute conclusions of law to which no response is required. To the extent a response is required, said averments are denied.


4. Denied. The averments of Paragraph 4 constitute conclusions of law to which no response is required. To the extent a response is required, said averments are denied.

5. Denied. The averments of Paragraph 5 constitute conclusions of law to which no response is required. To the extent a response is required, said averments are denied.

WHEREFORE, Plaintiff, Houtzdale Borough, respectfully requests this Honorable Court enter Judgment in its favor and against the Defendant, Dollar General Corporation.

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By



Michael J. Parrish, Jr., Esquire
Attorneys for Plaintiff,
Houtzdale Borough

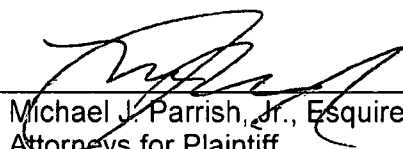
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 13th day of February, 2007, a true and correct copy of the Plaintiff, Houtzdale Borough's Reply to New Matter was forwarded via first-class mail, postage pre-paid, to the following persons:

Edward A. Miller, Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
600 Grant Street, Suite 2900
Pittsburgh, Pennsylvania 15219

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By: _____


Michael J. Parrish, Jr., Esquire
Attorneys for Plaintiff,
Houtzdale Borough


**VERIFICATION PURSUANT TO 42 PA.C.S.A.
SECTION 102 AND PA.R.C.P. 76**

I, the undersigned, as counsel for Plaintiff, Houtzdale Borough, verify that the statements contained in the Reply to New Matter are true and correct to the best of my information, knowledge and belief as relayed to me through my client.

This Verification is not made by Plaintiff, Houtzdale Borough, in that verification cannot be obtained prior to the time for the filing of this pleading. Plaintiff, Houtzdale Borough's original Verification page will be forwarded for attachment upon receipt.

I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A., Section 4904, relating to unsworn falsification to authorities.

DATED: 2/13/07

BY: 
Michael J. Parrish, Jr., Esquire

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

HOUTZDALE BOROUGH

CIVIL DIVISION

Plaintiff,

No. 05-1915-CD

v.

DOLLAR GENERAL CORPORATION,

**NOTICE OF SERVICE OF RESPONSES TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS**

Defendant.

Filed on behalf of Defendant:
Dollar General Corporation

Counsel of Record for this Party:

Edward A. Miller, Esquire
Pa. I.D. No. 58954

Bernard J. Kelly, Esquire
Pa. I.D. No. 55670

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
Suite 2900, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-803-1140

FILED *no cc*
m/10:25:30
MAY 16 2007
SM

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HOUTZDALE BOROUGH)	CIVIL DIVISION
)	
Plaintiff,)	No. 05-1915-CD
v.)	
)	
DOLLAR GENERAL CORPORATION,)	
)	
Defendant.)	


NOTICE OF SERVICE OF RESPONSES TO PLAINTIFFS'
FIRST SET OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS

I hereby certify that I have served upon counsel listed on the attached Certificate of Service a true and correct copy of Responses to Plaintiff's First Set of Interrogatories and Request for Production of Documents in the above-captioned matter this 14th day of May, 2007, by First Class Mail, postage prepaid.

Respectfully submitted,

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

By:


Edward A. Miller, Esquire
PA I.D. #58954
Bernard J. Kelly, Esquire
PA ID #55670

U.S. Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219
412-803-1140
FAX 412-803-1188
emiller@mdwccg.com

Counsel for Defendant,
Dollar General Corporation

CERTIFICATE OF SERVICE

I, Bernard J. Kelly, Esquire, do hereby certify that a true and correct copy of the foregoing Notice of Service of Responses to Plaintiffs' First Set of Interrogatories and Request for Production of Documents were sent on this 14th day of May, 2007 by U.S. Mail postage pre-paid to Plaintiff's counsel addressed as follows:

Michael J. Parrish, Jr., Esquire
Spence, Custer, Saylor, Wolfe & Rose, LLC
P.O. Box 280
Johnstown, PA 15907-0280

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

By: 

Bernard J. Kelly, Esquire

HOUTZDALE BOROUGH,
HOUTZDALE BOROUGH,
Plaintiff,

vs. Plaintiff,

^{vs.}
DOLLAR GENERAL CORPORATION,
DOLLAR GENERAL CORPORATION,
Defendant.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
No. 05-1915-CD

PRAECIPE TO SETTLE AND DISCONTINUE

PRAECIPE TO

COUNSEL OF RECORD FOR PARTY:
MICHAEL J. PARRISH, JR., ESQUIRE

I.D. NO.: 74834

SPENCE, CUSTER, SAYLOR, WOLFE
& ROSE, LLC

AMERISERV FINANCIAL BUILDING

POST OFFICE BOX 280

JOHNSTOWN, PENNSYLVANIA 15901

(814) 536-0735

TO THE PROTHONOTARY

Please mark the docket

forever discontinued with prejudice

SPENCE, CUSTER, SAYLOR WOLFE & ROSE, LLC

By

Michael J. Parrish, Jr., Esquire
Attorneys for Plaintiff
Houtzdale Borough

FILED

10:35 AM
JAN 12 2009

William A. Shaw
Prothonotary/Clerk of Courts

No CC
1 Cert of disc
issued to AAA
Parrish

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Houtzdale Borough

Vs.

No. 2005-01915-CD

Dollar General Corporation

CERTIFICATE OF DISCONTINUATION

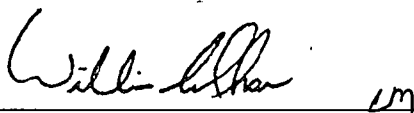
Commonwealth of PA
County of Clearfield

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 12, 2009, marked:

Settled and Discontinued with prejudice

Record costs in the sum of \$85.00 have been paid in full by Michael J. Parrish Jr Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 12th day of January A.D. 2009.



William A. Shaw, Prothonotary