



COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

LINCOLN SLOVAK CLUB  
(Plaintiff)

P.O. BOX 201  
(Street Address)

HAWK RUN, PA 16840  
(City, State ZIP)

CIVIL ACTION

2007-175-CO

No. CV-0000557-06

Type of Case: CIVIL

Type of Pleading: \_\_\_\_\_

VS.

Filed on Behalf of:

EMS SPECIALTY EQUIPMENT DEFENDANT  
(Defendant) (Plaintiff/Defendant)

412 LINCOLN HIGHWAY WEST  
(Street Address)

JEANNETTE, PA 15644  
(City, State ZIP)

FILED

FEB 05 2007

M/10:40/w  
William A. Shaw  
Prothonotary/Clerk of Courts  
NOTICE MAILED  
M.D. RUSSO  
PLFF. & DEFT.

EMS SPECIALTY EQUIPMENT  
(Filed by)

412 LINCOLN HWY WEST  
(Address) JEANNETTE, PA 15644

(724) 523-2800  
(Phone)

Nich Nuklosko  
(Signature)

## COMMONWEALTH OF PENNSYLVANIA

## COURT OF COMMON PLEAS

Judicial District, County Of **CLEARFIELD**

## NOTICE OF APPEAL

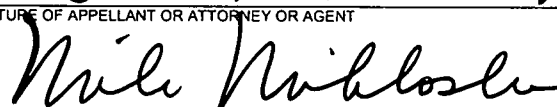
FROM

## DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. **2007-175-CD**

## NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case referenced below.

NAME OF APPELLANT <b>EMS SPECIALTY EQUIPMENT</b>	MAG. DIST. NO. <b>46-3-03</b>	NAME OF D.J. <b>MICHAEL A. RUDELLA</b>
ADDRESS OF APPELLANT <b>412 LINCOLN HWY WEST</b>	CITY <b>JEANNETTE</b>	STATE <b>PA</b> ZIP CODE <b>15644</b>
DATE OF JUDGMENT <b>1/04/07</b>	IN THE CASE OF (Plaintiff) <b>LINCOLN SLOVAK CLUB</b>	(Defendant) <b>EMS SPECIALTY EQUIPMENT</b>
DOCKET No. <b>CV-0000557-06</b>	SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT 	
This block will be signed ONLY when this notation is required under Pa. R.C.P.D.J. No. 1008B. This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.  _____ Signature of Prothonotary or Deputy		If appellant was Claimant (see Pa. R.C.P.D.J. No. 1001(6) in action before a District Justice, A COMPLAINT MUST BE FILED within twenty (20) days after filing the NOTICE of APPEAL.

## PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.D.J. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

PRAECIPE: To Prothonotary

Enter rule upon **LINCOLN SLOVAK CLUB** appellee(s), to file a complaint in this appeal  
 (Common Pleas No. **2007-175-CD** **CV-0000557-06**) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

  
 Signature of appellant or attorney or agent


RULE: To **LINCOLN SLOVAK CLUB** appellee(s)  
 Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of the mailing.

Date: **FEB 5, 2007**

  
 Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

**PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT**

*(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing of the notice of appeal. Check applicable boxes.)*

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF \_\_\_\_\_; ss

**AFFIDAVIT:** I hereby (swear) (affirm) that I served

☐ a copy of the Notice of Appeal, Common Pleas No. \_\_\_\_\_, upon the District Justice designated therein on  
(date of service) \_\_\_\_\_, 20\_\_\_\_, ☐ by personal service ☐ by (certified) (registered) mail,  
sender's receipt attached hereto, and upon the appellee, (name) \_\_\_\_\_, on  
\_\_\_\_\_, 20\_\_\_\_ ☐ by personal service ☐ by (certified) (registered) mail,  
sender's receipt attached hereto.

(SWORN) (AFFIRMED) AND SUBSCRIBED BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
*Signature of affiant*

\_\_\_\_\_  
*Signature of official before whom affidavit was made*

\_\_\_\_\_  
*Title of official*

My commission expires on \_\_\_\_\_, 20\_\_\_\_.

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.: **46-3-03**

MDJ Name: Hon.  
**MICHAEL A. RUDELLA**  
Address: **131 ROLLING STONE ROAD**  
**PO BOX 210**  
**KYLERTOWN, PA**  
Telephone: **(814) 345-6789** **16847-0444**

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

PLAINTIFF: NAME and ADDRESS  
**LINCOLN SLOVAK POLITICAL CLUB**  
**P.O. BOX 201**  
**HAWK RUN, PA 16840-0201**

VS.  
DEFENDANT: NAME and ADDRESS  
**EMS SPECIALTY EQUIPMENT**  
**412 LINCOLN HY. WEST**  
**JEANNETTE, PA 15644**

**EMS SPECIALTY EQUIPMENT**  
**412 LINCOLN HY. WEST**  
**JEANNETTE, PA 15644**

Docket No.: **CV-0000557-06**  
Date Filed: **11/21/06**



**THIS IS TO NOTIFY YOU THAT:**

Judgment: **DEFAULT JUDGMENT PLTF** (Date of Judgment) **1/04/07**

☒ Judgment was entered for: (Name) **LINCOLN SLOVAK POLIT, ICAL CLU**

☒ Judgment was entered against: (Name) **EMS SPECIALTY EQUIPMENT**  
in the amount of \$ **4,085.00**

☐ Defendants are jointly and severally liable.

☐ Damages will be assessed on Date & Time \_\_\_\_\_

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127  
\$ \_\_\_\_\_

☐ Portion of Judgment for physical damages arising out of  
residential lease \$ \_\_\_\_\_

Amount of Judgment	\$ <b>4,000.00</b>
Judgment Costs	\$ <b>85.00</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
<b>Total</b>	<b>\$ 4,085.00</b>
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
<b>Certified Judgment Total</b>	<b>\$ _____</b>

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR MAGISTERIAL DISTRICT JUDGES, IF THE JUDGEMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE MAGISTERIAL DISTRICT JUDGE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

1-4-07 Date *MA Rudella*, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

\_\_\_\_ Date \_\_\_\_\_, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

## COMMONWEALTH OF PENNSYLVANIA

## COURT OF COMMON PLEAS

Judicial District, County Of

CLEANFIELD

## NOTICE OF APPEAL

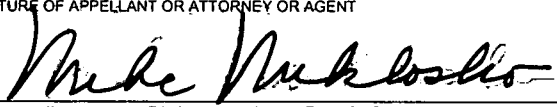
FROM

## DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 2007-175-CD

## NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case referenced below.

NAME OF APPELLANT <b>EMS SPECIALTY EQUIPMENT</b>	MAG. DIST. NO. <b>46-3-03</b>	NAME OF D.J. <b>MICHAEL A IRUDELLA</b>
ADDRESS OF APPELLANT <b>412 LINCOLN HWY WEST</b>	CITY <b>JEANNETTE PA</b>	STATE <b>PA</b>
DATE OF JUDGMENT <b>1/04/07</b>	IN THE CASE OF (Plaintiff) <b>LINCOLN SLOVAK CLUB</b>	(Defendant) <b>EMS SPECIALTY EQUIPMENT</b>
DOCKET No. <b>CV-0000557-06</b>	SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT 	
<p>This block will be signed ONLY when this notation is required under Pa. R.C.P.D.J. No. 1008B.</p> <p>This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.</p> <p>_____ Signature of Prothonotary or Deputy</p>		<p>If appellant was Claimant (see Pa. R.C.P.D.J. No. 1001(6) in action before a District Justice, A COMPLAINT MUST BE FILED within twenty (20) days after filing the NOTICE of APPEAL.</p>

## PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.D.J. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

PRAECIPE: To Prothonotary

Enter rule upon **LINCOLN SLOVAK CLUB** appellee(s), to file a complaint in this appeal  
Name of appellee(s)

(Common Pleas No. **CV-0000557-06** in twenty (20) days after service of rule or suffer entry of judgment of non pros.

  
Signature of appellant or attorney or agent


RULE: To **LINCOLN SLOVAK CLUB** appellee(s)  
Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of the mailing.

Date: **FEB 5, 2007**

  
Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

**PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT**

*(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing of the notice of appeal. Check applicable boxes.)*

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF \_\_\_\_\_; ss

**AFFIDAVIT:** I hereby (swear) (affirm) that I served

☐ a copy of the Notice of Appeal, Common Pleas No. \_\_\_\_\_, upon the District Justice designated therein on  
(date of service) \_\_\_\_\_, 20\_\_\_\_, ☐ by personal service ☐ by (certified) (registered) mail,  
sender's receipt attached hereto, and upon the appellee, (name) \_\_\_\_\_, on  
\_\_\_\_\_, 20\_\_\_\_ ☐ by personal service ☐ by (certified) (registered) mail,  
sender's receipt attached hereto.

(SWORN) (AFFIRMED) AND SUBSCRIBED BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
*Signature of affiant*

\_\_\_\_\_  
*Signature of official before whom affidavit was made*

\_\_\_\_\_  
*Title of official*

My commission expires on \_\_\_\_\_, 20\_\_\_\_.

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.: **46-3-03**  
MDJ Name: Hon.  
**MICHAEL A. RUDELLA**  
Address: **131 ROLLING STONE ROAD**  
**PO BOX 210**  
**KYLERTOWN, PA**  
Telephone: **(814) 345-6789** **16847-0444**

**MICHAEL A. RUDELLA**  
**131 ROLLING STONE ROAD**  
**PO BOX 210**  
**KYLERTOWN, PA 16847-0444**

**NOTICE OF JUDGMENT/TRANSCRIPT**  
**CIVIL CASE**

PLAINTIFF: NAME and ADDRESS  
**LINCOLN SLOVAK POLITICAL CLUB**  
**P.O. BOX 201**  
**HAWK RUN, PA 16840-0201**

VS.  
DEFENDANT: NAME and ADDRESS  
**EMS SPECIALTY EQUIPMENT**  
**412 LINCOLN HY. WEST**  
**JEANNETTE, PA 15644**

Docket No.: **CV-0000557-06**  
Date Filed: **11/21/06**



**THIS IS TO NOTIFY YOU THAT:**

Judgment: **DEFAULT JUDGMENT PLTF** (Date of Judgment) **1/04/07**

☒ Judgment was entered for: (Name) **LINCOLN SLOVAK POLIT, ICAL CLU**

☒ Judgment was entered against: (Name) **EMS SPECIALTY EQUIPMENT**  
in the amount of \$ **4,085.00**

☐ Defendants are jointly and severally liable.

☐ Damages will be assessed on Date & Time \_\_\_\_\_

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127  
\$ \_\_\_\_\_

☐ Portion of Judgment for physical damages arising out of  
residential lease \$ \_\_\_\_\_

Amount of Judgment	\$ <b>4,000.00</b>
Judgment Costs	\$ <b>85.00</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
<b>Total</b>	\$ <b>4,085.00</b>
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
<b>Certified Judgment Total</b>	\$ <b>4085.00</b>

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

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**FILED** NO CC  
011:27/07  
FEB 07 2007 (6K)

William A. Shaw  
Prothonotary/Clerk of Courts

1-4-07 Date *MA Rudella*, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.  
2/6/07 Date *MA Rudella*, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

AOPC 315-06

DATE PRINTED: **1/04/07 3:04:00 PM**



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

LINCOLN SLOVAK POLITICAL CLUB,

Plaintiff

vs.

MJEM ENTERPRISES, INC., t/d/b/a  
EMS SPECIALTY EQUIPMENT,

Defendant

No. 2007-175-CD

TYPE OF CASE  
Civil Action - Law

**FILED**

OCT 06 2008

012:45 (Wm)  
William A. Shaw  
Prothonotary/Clerk of Courts

3 cert to Att

(610)

TYPE OF PLEADING:  
Complaint

FILED ON BEHALF OF:  
Plaintiff

COUNSEL OF RECORD FOR  
THIS PARTY:

David R. Thompson, Esq.  
Attorney at Law  
Supreme Court I.D. 73053  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg PA 16866  
(814) 342-4100

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

LINCOLN SLOVAK POLITICAL CLUB,

Plaintiff

VS.

MJEM ENTERPRISES, INC., t/d/b/a  
EMS SPECIALTY EQUIPMENT,

Defendant

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No. 2007-175-CD

**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 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 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.**

Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641



David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

LINCOLN SLOVAK POLITICAL CLUB

Plaintiff

vs.

MJEM ENTERPRISES, INC., t/d/b/a  
EMS SPECIALTY EQUIPMENT,

Defendant

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No. 2007-175-CD

**COMPLAINT**

AND NOW, comes the Plaintiff by and through its attorney, **DAVID R. THOMPSON**, Esquire, and files the following Complaint against the Defendant, and in support thereof avers as follows:

1. The Plaintiff is Lincoln Slovak Political Club, which has an address of P.O. Box 201, Hawk Run, Pennsylvania, 16840-0201.
2. Defendant, MJEM Enterprises, Inc., t/d/b/a EMS Specialty Equipment, is believed to be a Pennsylvania corporation, with a business address of 412 Lincoln Highway West, Jeannette, Pennsylvania, 15644.
3. On or about May of 2005, Defendant submitted a proposal to Plaintiff to supply and install one (1) NoSmokeKing Model 2000 concealed unit with a total of five (5) clean air supplies and four (4) dirty air returns. (A true and correct copy of the proposal is attached hereto and made a part hereof as Exhibit "A").

4. On or about July 11, 2005, Plaintiff obtained the services of Defendant for the delivery and installation of a NoSmokeKing Model 2000 in the Bar Room of Plaintiff. The agreement provided that if the Plaintiff was not satisfied, the Defendant would take the system out and put it back to the way it was.

5. Plaintiff paid Defendant the sum of \$3,690.

6. Shortly after the project was completed, Plaintiff began experiencing problems with the NoSmokeKing unit that was installed by Defendant.

7. On or about October of 2005 Plaintiff contacted Defendant and placed a service call with regard to these problems. By way of further pleading, Defendant responded to the service call on October 19, 2005 and installed a blower housing part at no charge to Plaintiff. (A true and correct copy of the invoice is attached hereto and made a part hereof as Exhibit "B").

8. On or about February 2, 2006 Plaintiff contacted Defendant and placed a service call with regard to additional problems. By way of further pleading, Defendant responded to the service call on February 16, 2006 and installed a ULPA part at a cost \$275.00 for the part, \$150.00 for mileage charge plus tax for a total charge of \$293.09. (A true and correct copy of the invoice is attached hereto and made a part hereof as Exhibit "C").

9. On or about March 10, 2006 Plaintiff placed a service call to Defendant regarding additional problems with said unit. By way of further pleading, Defendant responded to the service call on March 15, 2006 and installed various filters and a belt for a total cost of

\$325.00. (A true and correct copy of the invoice is attached hereto and made a part hereof as Exhibit "D").

10. To date, the NoSmokeKing unit continues to malfunction and does not work properly.

11. After numerous complaints to Defendant about the system's lack of performance, and several visits by a technician, Plaintiff is still not satisfied.

12. To date, Defendant has refused to honor their contract.

13. On January 4, 2007 District Judge Michael A. Rudella entered judgment for the Plaintiff and against Defendant in this case in the amount of \$4,085.00

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***COUNT I***  
***BREACH OF CONTRACT***

---

Paragraphs 1 through 13 are incorporated by reference as though the same were set forth at length herein.

14. The parties entered into a written contract under which Defendant would deliver and install a NoSmokeKing Model 2000 concealed unit in Plaintiff's Bar Room. In return, Plaintiff agreed to pay Defendant the sum of \$3,690.00.

15. Defendant MJEM Enterprises, Inc., t/d/b/a EMS Specialty Equipment has materially breached the agreement between the parties, including but not limited to the implied terms of good faith and fair dealing, by:

- a. Failing to work at Defendant's expense to correct any deficiencies.
- b. Failing to remove the NoSmokeKing Model 2000 unit at Defendant's expense.

16. Plaintiffs have done nothing on their part to cause the damages and problems experienced with the NoSmokeKing unit and have fulfilled all of their obligations under the agreement in paying the sum requested as well as affording the Defendant the opportunity to repair the system.

17. As a direct and proximate result of the aforementioned material breaches of the agreement by MJEM Enterprises, Inc., t/d/b/a EMS Specialty Equipment, Plaintiff has sustained damages in the amount of \$4,000.00

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in their favor and against Defendant in the amount of \$4,000.00, plus costs of suit and interest.

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***COUNT II***  
***REVOCATION OF ACCEPTANCE***

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Paragraphs 1 through 17 are incorporated by reference as though the same were set forth at length herein.

18. Pursuant to 13 Pa. C.S. § 2608(a)(1), Plaintiff has rightfully revoked its acceptance of the Defendant's goods.

19. Following its rightful revocation of acceptance Plaintiff is entitled all remedies set forth in 13 Pa. C.S. § 2711(a)(1) and 13 Pa. C.S. § 2712 (relating to "cover", procurement by buyer of substitute goods).

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in their favor and against Defendant in the amount of \$4,000.00, plus costs of suit and interest.

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***COUNT III***  
***ATTORNEY'S FEES***

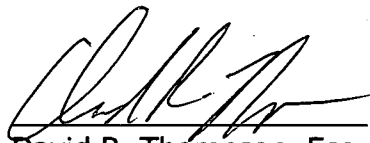
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Paragraphs 1 through 19 are incorporated by reference as though the same were set forth at length herein.

20. The Plaintiff has had to hire legal counsel to assist them in the prosecution of this action and is paying said counsel at a rate of \$125.00 per hour.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in its favor and against the Defendant for the payment of reasonable attorney's fees to be determined by the hearing of the Court.

Respectfully submitted,

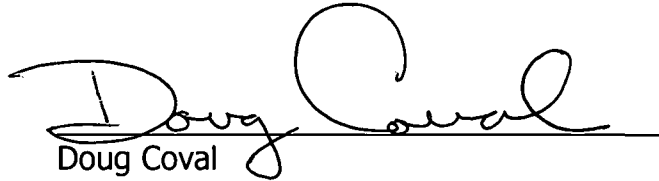


David R. Thompson, Esquire  
Attorney for Plaintiff

**VERIFICATION**

I certify that the facts set forth in the foregoing **COMPLAINT** is true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C. S. § 4904, relating to unsworn falsification to authorities.

Dated:

  
Doug Coval





## EMS SPECIALTY EQUIPMENT

412 LINCOLN HIGHWAY WEST JEANNETTE, PA 15644

PHONE (800) 486-5228 or (724) 523-2800 FAX (724) 523-2703

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

May 18, 2005

Lincoln Slovak Club  
P.O. Box 201  
Hawk Run, PA 16840

Attention : Mr. Doug Coval


Dear Doug,

Thank you for your interest in the NoSmokeKing air purification system. Pursuant to our evaluation of the tobacco smoke issues at your club, we are pleased to provide a proposal to address the problem.

We have significant experience in installing systems to remove smoke and improve the indoor air quality in businesses such as yours. By installing equipment per our recommendations, several benefits will be achieved, most notably :

- ◆ The environment will be significantly enhanced, increasing the likelihood that both new and repeat customers will frequent the establishment.
- ◆ Employees will have a better working environment, which should improve both their attitude and productivity.
- ◆ The floor and wall covering and ceiling will remain cleaner, resulting in a better appearance and reduced maintenance expense.
- ◆ The performance of the heating and cooling systems will be enhanced due to the increased air circulation in the room and elimination of the need to run costly exhaust fans.
- ◆ The recommended system is concealed from view above your ceiling and will have no effect on the appearance of your business.

The proposed NoSmokeKing concealed source capture system is the latest in indoor air quality technology and is the leading solution for the removal of tobacco smoke and particulate.



Key success elements include sufficient airflow / air changes, proper air circulation pattern, high efficiency filtration technology and adequate odor control (to address "eyeburn" and "clothes smell").

The "ceiling sweep" airflow pattern of the proposed system utilizes multiple distributed supply and return grilles located in the ceiling to allow smoke to rise naturally into the air path of the system and be captured at the source.

— EMS SPECIALTY EQUIPMENT —

May 18, 2005  
Lincoln Slovak Club  
Page 2 of 4

The proposed system utilizes disposable ULPA filters, the latest generation of media filtration. By applying the same technology utilized in semi-conductor and pharmaceutical clean room manufacturing, the ULPA filter provides laser-tested filter efficiency of 99.9995 % on particulate as small as 0.12 microns.

This technology requires no soaking, special detergents or washing of components and will not "crack and pop" like older electrostatic air cleaners. By comparison, other filtration technologies perform as shown in the table below :

Technology	Electrostatic	Hospital Grade	True HEPA	ULPA
Efficiency	85.2%	95.0%	99.97%	99.9995%
Pass Through	148,000	50,000	300	5

"Pass Through" is the number of particles per 1,000,000 (ppm) not collected by the filter.


The system will also provide superior odor control performance. The multi-filter "triple blend" (activated carbon, potassium permanganate and zeolite) V-Bank odor control module will effectively absorb the gaseous portion of tobacco smoke and other VOC's (volatile organic compounds) that cause "eye burn" and "clothes smell". The system's anti-microbial after filter will destroy microorganisms, mold and mildew on contact.

The older technology utilized by traditional "Coanda" air cleaners units such as your existing Honeywell unit actually blows smoke back down on to the customers, creating the additional discomfort of cold air drafts and bothersome audible noise in the process. This type of unit is also lacking the odor control filtration required to eliminate the gases that cause eye burn and "clothes smell".

To effectively remove tobacco smoke, the room's air volume should be filtered at least eight times per hour. The Bar Room is approximately 50 feet long and 25 feet wide with an 8-foot drop ceiling. This translates into a room area of 936 square feet and volume of 7,488 cubic feet.

The capacity required to effectively clean the air is calculated as follows :

$$\frac{8,752 \text{ cubic feet} \times 8 \text{ air changes per hour}}{60 \text{ minutes per hour}} = 1,167 \text{ cubic feet per minute}$$

 To accomplish this, we propose the supply of one (1) NoSmokeKing Model 2000 concealed unit with a total of five (5) clean air supplies and four (4) dirty air returns.

Please refer to the enclosed drawings that show the proposed layout of the system. Two types of drawings are included - one that shows the supply and return grill locations as they would be visible in the room and one that details the unit location and the flex duct layout.

— EMS SPECIALTY EQUIPMENT —

May 18, 2005  
Lincoln Slovak Club  
Page 4 of 4

The unit's after-filter would also be changed at this time at a cost of \$ 25. The unit's main ULPA filter is guaranteed on a pro-rated basis to last for one year during the warranty period.

We look forward to the opportunity to help provide a clean, healthy environment for your members and employees. Please don't hesitate to call should you have any additional questions.

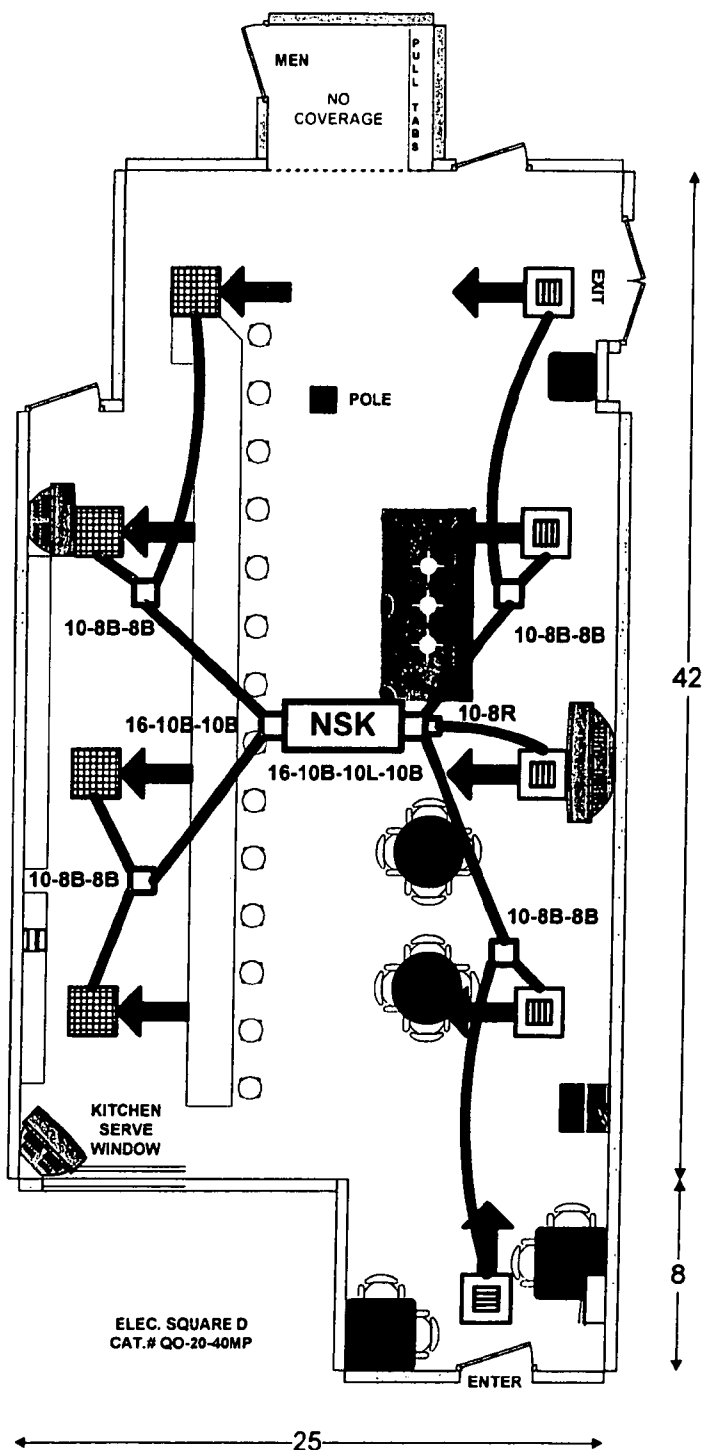
Sincerely,

A handwritten signature in black ink that reads "Steve Veliky / MS". The signature is written in a cursive, flowing style.

Steve Veliky  
Area Sales Manager

Lincoln Slovak Club  
P.O. Box 201  
Hawk Run, PA 16840  
Attention: Mr. Doug Coval

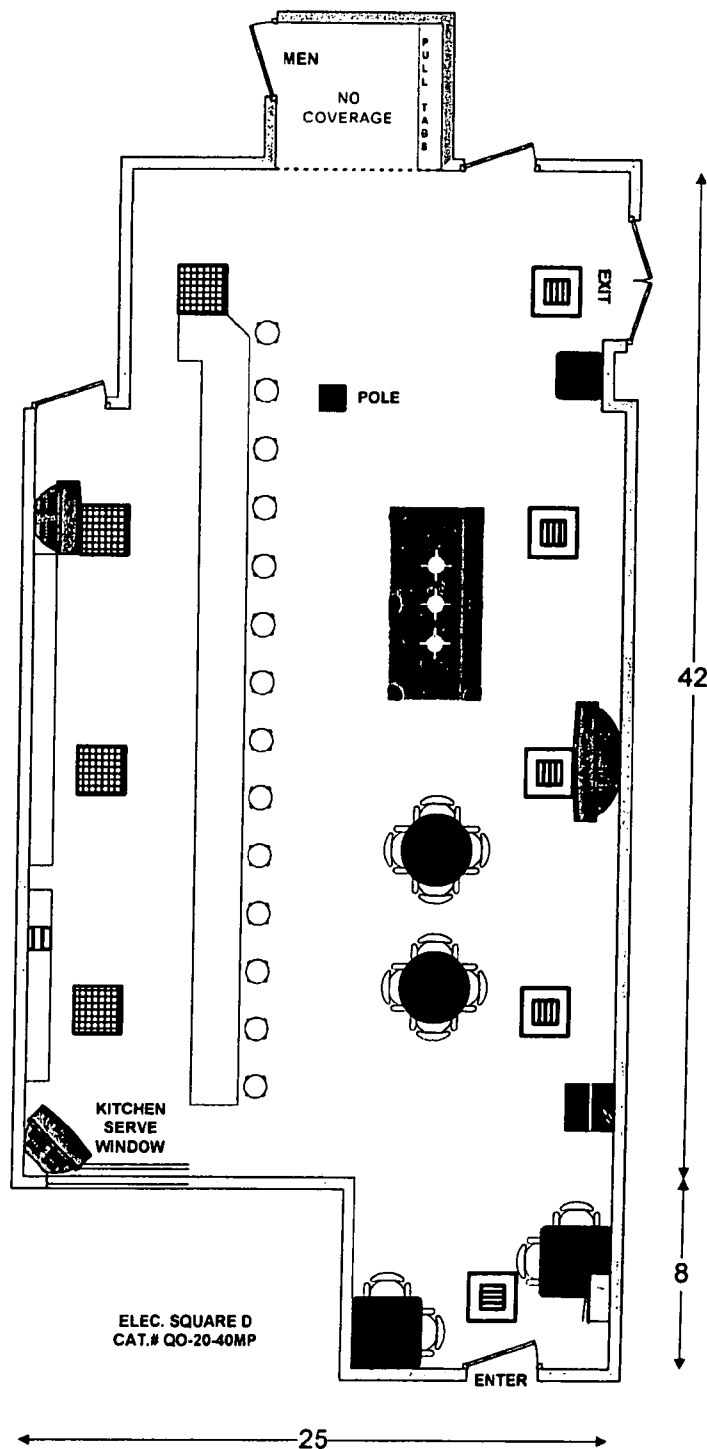
EMS Specialty Equipment  
Jeannette, PA 15644  
(800) 486-5228



1,094 square feet  
8,752 cubic feet  
1,167 CFM @ 8 air changes  
(ceiling height 8' tile 2' x 2')

Lincoln Slovak Club  
P.O. Box 201  
Hawk Run, PA 16840  
Attention: Mr. Doug Coval

EMS Specialty Equipment  
Jeannette, PA 15644  
(800) 486-5228



1,094 square feet  
8,752 cubic feet  
1,167 CFM @ 8 air changes  
(ceiling height 8' tile 2' x 2')

# Performance Guarantee

**EMS SPECIALTY EQUIPMENT** guarantees that your **NoSmokeKing** concealed air-cleaning system will satisfactorily remove airborne tobacco smoke particulate and odor, provided the system is installed, operated and maintained in accordance with the product specifications.

If the system does not operate satisfactorily, the customer is to notify **EMS SPECIALTY EQUIPMENT** in writing within **thirty (30) days** of installation. If **EMS SPECIALTY EQUIPMENT** is unable to correct the performance within a reasonable time period, the purchaser may return the equipment and **EMS SPECIALTY EQUIPMENT** will refund the purchase price.

BY \_\_\_\_\_

CUSTOMER \_\_\_\_\_

DATE \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_

ZIP \_\_\_\_\_

**EMS SPECIALTY EQUIPMENT**

412 Lincoln Highway West  
Jeannette, PA 15644

## EMS SPECIALTY EQUIPMENT TERMS AND CONDITIONS OF SALE

1. **ENTIRE AGREEMENT.** Except as otherwise agreed in writing by the parties, this agreement and any documents referred to herein or on the reverse side hereof constitute the entire agreement between the parties. Purchaser will be deemed to have assented to all such terms and conditions if any part of the equipment is accepted.
2. **OBLIGATIONS ABSOLUTE.** Upon Purchaser's acceptance of the Equipment, all obligations of Purchaser pursuant to this agreement shall be absolutely irrevocable and unconditional, and shall not be subject to any defense, counterclaim, set-off or other deduction of any kind.
3. **SUITABILITY OF PURPOSE.** Purchaser acknowledges that the supplied item(s) are suitable for the purposes for which Purchaser selected it. All implied warranties of merchantability and fitness for a particular purpose are hereby disclaimed and excluded.
4. **POSSESSION AND USE OF EQUIPMENT.** Purchaser shall itself comply and cause all persons operating the Equipment to comply with all applicable laws and regulations relating to the registration, insurance, maintenance, repair, testing, use and operation of the Equipment, including operator's licensing requirements, if applicable, and with all of the conditions of the policies of insurance on the Equipment. EMS Specialty Equipment shall not be liable for any defect or damage that arises by reason of or is caused by accident, negligence, abnormal use, misuse or abuse.
5. **WARRANTY.** Any warranties provided are given solely to the original purchaser and user of the equipment and are non-transferable unless otherwise stated in writing by EMS. EMS Specialty Equipment's obligation under any warranties is limited to the repair or replacement, at our discretion, of defective parts. Replacement parts (such as filters) that wear out under normal conditions are excluded from any warranty unless stated otherwise in other written documentation.
6. **LIMITATION OF LIABILITY.** EMS Specialty Equipment shall have no liability to Purchaser for any consequential, incidental, indirect or special damages, including but not limited to lost profit or any loss, damage, cost or expense of any kind that results directly or indirectly from the equipment, including but not limited to any use, operation, maintenance, service or repair or failure or interruption of use or failure or delay in maintaining, servicing or repair of the equipment.
7. **TITLE.** Title to the Equipment shall remain in the name of EMS Specialty Equipment until Purchaser has made payment in full. EMS Specialty Equipment may file any financing statements deemed necessary or desirable to perfect or record its interest in the Equipment.
8. **LATE PAYMENT.** Purchaser acknowledges that EMS Specialty Equipment may impose a late charge of up to 10% or \$25.00, whichever is greater, but in any event not more than permitted by applicable law. Payments thereafter received shall be applied first to delinquent installments and then to current installments. EMS Specialty Equipment reserves the right to suspend any further performance under this agreement or otherwise in the event payment is not made when due.
9. **FINANCE CHARGES.** After all sums are declared due and payable, Purchaser shall pay interest at the rate of 1.5% per month or the maximum rate permitted by law, whichever is less, on such accelerated sums from the date of acceleration until paid, whether or not judgment hereon has been entered. If for any reason a check is returned for nonpayment, a \$50.00 bad check charge shall be payable by Purchaser to EMS Specialty Equipment.
10. **REMEDIES.** Upon the occurrence or existence of any Event of Default, EMS Specialty Equipment may, at its sole option, take possession of any of the Equipment wherever located or take any other action permitted under applicable law and collect all damages to which EMS Specialty Equipment may be entitled under applicable law.
11. **EXPENSES.** Purchaser shall pay to EMS Specialty Equipment on demand each cost and expense, including, but not limited to, the fees and disbursements of counsel incurred by EMS Specialty Equipment in collecting any amount owing by Purchaser to EMS Specialty Equipment pursuant to this writing.
12. **BINDING.** This Contract shall be binding upon Purchaser and each legal representative and successor of Purchaser. Purchaser shall not assign or otherwise transfer any right or obligation pursuant to this agreement without first obtaining the written consent of EMS Specialty Equipment; any such assignment or other transfer of any such right without such prior written consent shall be void. No consent by EMS to any such assignment or other transfer shall release Purchaser from any obligation pursuant to this writing.
13. **CANCELLATION / RETURNS.** Cancellations / returns (other than system performance guarantee matters) require the written pre-approval of EMS Specialty Equipment. If approval is obtained from EMS, the Purchaser may be subject to a cancellation / restocking charge of up to 25% for non-standard items plus other expenses incurred such as freight.
14. **GOVERNING LAW.** This agreement shall be governed by, interpreted and enforced in accordance with the internal law of the State of Pennsylvania. In the event of a breach, both parties agree that any suit will be brought in the Common Pleas Courts of the State of Pennsylvania, County of Westmoreland.

**EMS Specialty Equipment**  
Credit Application (Lease / Purchase)

412 Lincoln Highway West  
Jeannette, PA 15644

Phone (800) 486-5228  
Fax (724) 523-2703

**SUPPLIER INFORMATION**

Supplier Business Name <b>EMS Specialty Equipment</b>		Street Address <b>412 Lincoln Highway West</b>	City, State, Zip Code <b>Jeannette, PA 15644</b>
Phone No. <b>(724) 523-2800</b>	Fax No. <b>(724) 523-2703</b>	Supplier Contact Name <b>Mike Miklosko</b>	Lease Company Representative

**EQUIPMENT INFORMATION**

Type of Equipment	Make	Model	Serial No.	<input type="checkbox"/> New <input type="checkbox"/> Used
Type of Equipment	Make	Model	Serial No.	<input type="checkbox"/> New <input type="checkbox"/> Used

**PAYMENT TERMS**

Equipment Cost <b>\$</b>	Months	Payment Factor	Payment Amount <b>\$</b>	Purchase Option <input type="checkbox"/> 10% <input type="checkbox"/> \$1.00 <input type="checkbox"/> 0% PPO
Comments				

**APPLICANT INFORMATION**

Full Name of Business				
Type of Entity <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> LLC		Federal Tax ID No.	Years in Operation	
Business Street Address		City, State, Zip Code		County
Nature of Business		Years Under Present Owner	Business Phone No.	
Principal's Full Name (First, Middle, Last Name)				Title
Principal's Home Address		City, State, Zip Code		Rent / Own How Long ?
Home Phone No.	Social Security No.	U.S. Citizen <input type="checkbox"/> Yes <input type="checkbox"/> No	Birthdate (Month/Day/Year)	
Co-Applicant / Spouse's Full Name (First, Middle, Last Name)				Title
Co-Applicant / Spouse's Home Address		City, State, Zip Code		Rent / Own How Long ?
Home Phone No.	Social Security No.	U.S. Citizen <input type="checkbox"/> Yes <input type="checkbox"/> No	Birthdate (Month/Day/Year)	

**APPLICANT REFERENCES**

Bank Name	Contact Name	Phone No.
Type of Account (Checking, Savings, etc.)	Account No.	How Long ?
Trade Reference #1	Contact Name	Phone No.
Trade Reference #2	Contact Name	Phone No.
Trade Reference #3	Contact Name	Phone No.

**Authorization to Release Bank / Credit Information**

I / we hereby authorize EMS Specialty Equipment or their designated credit source to investigate my / our credit worthiness. The applicant certifies that the statements made in this application and other information provided are true and complete. This is my / our authorization for the herein bank / trade references / credit reporting agencies and my / our accountant, attorney or anyone else deemed necessary to release any information requested by telephone or fax as part of our credit review procedures.

Signature \_\_\_\_\_

Date \_\_\_\_\_



— EMS SPECIALTY EQUIPMENT —

May 18, 2005  
Lincoln Slovak Club  
Page 3 of 4

The proposed scope of supply is as follows :

Take down your existing unit  
Supply and install a NoSmokeKing Model 2000 concealed unit  
Size, supply & install insulated flexible metallized ductwork  
Furnish and install supply and return grilles  
Provide electrical power from customer's existing circuit panel  
Commission and startup system

To minimize cash outlay and allow you to structure payments from the increased revenue that an improved environment will help provide, I suggest that you consider third party lease - purchase financing, subject to credit approval. I have enclosed a lease application should you desire to begin the no-obligation approval process.

Pricing is as follows, including estimated 60-month lease payments with \$1 purchase option :


	<u>Purchase</u>	<u>Lease</u>
Bar Room System	\$ 3,690	\$ 84

**The proposed system includes a written moneyback performance guarantee (see enclosed).**  
If you are not satisfied with the performance of our system, we will work at our expense to correct any deficiencies or remove it and refund your money.

We have successfully installed over 1,200 concealed systems in the last six years. Enclosed please find a confidential list of NoSmokeKing reference installations. We would be pleased to provide additional information if so desired.

Equipment warranty is five years parts and labor excluding the replaceable filter components. Payment is due upon completion of installation. The proposal is based upon the attached EMS Specialty Equipment Terms and Conditions of Sale.

Air cleaner performance and reliability is directly proportional to the care taken to maintain the system. We recommend a maintenance agreement to insure that the system is operating properly.

 The disposable pre-filter in the unit should be replaced monthly at a current cost of \$28. Alternatively, we could supply you with filters at a cost of \$12 each for you to perform your own monthly maintenance.


 The proposed system includes instrumentation to monitor when the main filter elements need to be replaced. The main ULPA and V-Bank Odor Control filters in the Bar Room unit should be replaced annually at a cost of \$300 per filter per unit.

EXHIBIT "B"

**EMS**

--- EMS SPECIALTY EQUIPMENT ---

412 LINCOLN HIGHWAY WEST JEANNETTE, PA 15644

PHONE (800) 486-5228 FAX (724) 523-2703

MasterCard and  
VISA accepted

Business Name	Lincoln Slovic Club
Street Address	104 4th ST Hawk Run
City / State / Zip	PA

Service Request Date	
Desired Service Date	
Service Requestor	

Make / Model	M/S/K
Serial Number	
Under Warranty	YES NO

Telephone	(814) 343-7777
Alternate Phone	(814) 343-7777
Payment Terms	COD

Problem as Reported by Customer	

Field Report by EMS Serviceman	Replaced Blower Housing

Quantity	Part No.	Installed Part Description	Unit Price	Total Price
1		Blower Housing		
Total Parts Cost				

Serviceman	Mull
Service Date	10-19-05

Time Started	
Time Completed	

Travel Time	
Total Mileage	
Service Labor	

Hourly Rate	
Rate Per Mile	
Hourly Rate	

Total Travel Cost	
Mileage Charge	
Total Service Cost	
Sub Total	
6 % Sales Tax	
Total Charges	N/C

Call Customer With Estimate ?	
Approval Required Before Completing Work ?	

Special Instructions	

The Above Service Was Completed Satisfactorily.

X

I Accept the Terms &amp; Conditions on Reverse Side.

Customer Signature

## EXHIBIT "C"

**EMS**

--- EMS SPECIALTY EQUIPMENT ---

412 LINCOLN HIGHWAY WEST JEANNETTE, PA 15644

PHONE (800) 486-5228 FAX (724) 523-2703

MasterCard and  
VISA accepted

Business Name	LAUREA SLOVAK
Street Address	1041 14 <sup>TH</sup> STREET
City/State/Zip	JEANNETTE, PA 15644

Service Request Date	2-11-06
Desired Service Date	2-11-06
Service Requestor	ED

Make / Model	USF 2000
Serial Number	A507001
Under Warranty	YES NO

Telephone	(724) 522-3721
Alternate Phone	(724) 45-6361
Payment Terms	COD

ED (724) 522-3721 0006

Problem as Reported by Customer	UNIT IS NOT WORKING WELL CAN SIT @ BAIL + SMOKE BLOWS IN FACE. - NOT PULLING TOWARD GRILLE. CLUB OPENS @ 2 PM
---------------------------------	---

Field Report by EMS Serviceman	

Quantity	Part No.	Installed Part Description	Unit Price	Total Price
		ULPA	275.00	275.00
			Total Parts Cost	

Serviceman	M. De
Service Date	2-11-06

Time Started	
Time Completed	

Travel Time	
Total Mileage	
Service Labor	

Hourly Rate	
Rate Per Mile	
Hourly Rate	

Total Travel Cost	
Mileage Charge	1.50
Total Service Cost	
Sub Total	276.50
6 % Sales Tax	16.59
Total Charges	293.09

Call Customer With Estimate ?	
Approval Required Before Completing Work ?	

Special Instructions	(ULPA) CHANGED 7-11-05 (INS/ACU) (427500)

The Above Service Was Completed Satisfactorily.

I Accept the Terms &amp; Conditions on Reverse Side.

X

Customer Signature

# EMS

EXHIBIT "D"

--- EMS SPECIALTY EQUIPMENT ---

412 LINCOLN HIGHWAY WEST JEANNETTE, PA 15644

PHONE (800) 486-5228 FAX (724) 523-2703

MasterCard and  
VISA accepted

Business Name	INCLAR SOLAR CELL
Street Address	174 14 <sup>TH</sup> ST.
City / State / Zip	JEANNETTE PA 15644

Service Request Date	3/10/06
Desired Service Date	ASAP
Service Requestor	DOUG GARDNER

Make / Model	H15K-2000
Serial Number	A 307001
Under Warranty	YES NO

Telephone	(724) 345-1111
Alternate Phone	(724) 345-1111
Payment Terms	COD

Problem as Reported by Customer	SMOKE IS HANGING - UNIT IS NOT WORKING PROPERLY.
---------------------------------	--

Field Report by EMS Serviceman	Replaced Belt, Replaced odor control filter & After filter
--------------------------------	--

Quantity	Part No.	Installed Part Description	Unit Price	Total Price
1		ODOR control filter		300.00
1		After filter		25.00
1		40 Belt		N/C
Total Parts Cost				

Serviceman	M. De
Service Date	3-15-06

Time Started	
Time Completed	

Travel Time	
Total Mileage	
Service Labor	

Hourly Rate	
Rate Per Mile	
Hourly Rate	

Total Travel Cost	
Mileage Charge	
Total Service Cost	
Sub Total	325.00
6 % Sales Tax	N/A
Total Charges	325.00

Call Customer With Estimate ?	
Approval Required Before Completing Work ?	

Special Instructions	

The Above Service Was Completed Satisfactorily.

I Accept the Terms &amp; Conditions on Reverse Side.

X

Customer Signature

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

LINCOLN SLOVAK POLITICAL CLUB,  
Plaintiff

v.

MJEM ENTERPRISES, INC., t/d/b/a  
EMS SPECIALTY EQUIPMENT,  
Defendant

No. 2007-175-CD

TYPE OF PLEADING:

**Answer and New Matter-  
Defenses/Counterclaim**

To: **PLAINTIFF**

You are hereby notified to file a written response  
to the enclosed **New Matter-Defenses/  
Counterclaim** within twenty (20) days from  
service hereof or a judgment may be entered  
against you.

  
\_\_\_\_\_  
Kim Ross Houser, Esquire  
Attorney for Defendant

FILED ON BEHALF OF:

**MJEM Enterprises, Inc., t/d/b/a EMS  
Specialty Equipment, Defendant**

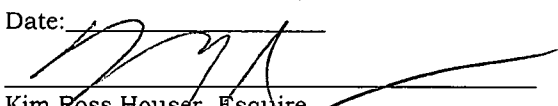
COUNSEL OF RECORD  
FOR THIS PARTY:

Mears, Smith, Houser & Boyle, P.C.  
**KIM ROSS HOUSER**  
Pa. I. D. No. 36946

**PA. R.C.P. 1305 NOTICE:**

You are hereby notified that the documents and  
listing of damages attached to this document shall  
be offered as evidence as may be permitted by  
Pennsylvania Rule of Civil Procedure 1305. Any  
and all responses required by Rule 1305 must be  
made pursuant to said Rule prior to hearing.

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Kim Ross Houser, Esquire  
Attorney for Defendant

127 North Main Street  
Greensburg, PA 15601-2403

(724) 832-8700 -- Telephone  
(724) 832-2245 -- Facsimile

[khouser@mears-smith-hb.com](mailto:khouser@mears-smith-hb.com)  
[www.mears-smith-hb.com](http://www.mears-smith-hb.com)

**FILED** NO CC  
m12:4784  
DEC 05 2008 (610)

S  
William A. Shaw  
Prothonotary/Clerk of Courts

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

LINCOLN SLOVAK POLITICAL CLUB,  
Plaintiff

v.

No. 2007-175-CD

MJEM ENTERPRISES, INC., t/d/b/a  
EMS SPECIALTY EQUIPMENT,  
Defendant

**ANSWER AND NEW MATTER-DEFENSES/COUNTERCLAIM**

**AND NOW**, comes the Defendant, MJEM Enterprises, Inc., t/d/b/a EMS Specialty Equipment, by and through its attorney, **Kim Ross Houser**, of Mears, Smith, Houser & Boyle, P.C., and files the following Answer and New Matter-Defenses/Counterclaim, stating:

**Answer**

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted in part and denied in part. It is admitted that the Plaintiff did contractually agree to have a NoSmokeKing Model 2000 placed in their barroom. However, the performance guarantee of complete “revocation” with refund was only for thirty (30) days as per the warranties and terms and conditions of installation. The further terms and conditions are also

outlined by the proposal document attached. (Said document on Plaintiff's Complaint was missing or is not the complete document.) See Defendant's New Matter, which is incorporated herein by reference as if the same were set forth herein at length.

5. Paragraph 5 is admitted.

6. Paragraph 6 is denied. After a reasonable investigation, Defendant is without knowledge and/or information sufficient to form a belief as to the truth of the averments of Paragraph 6. Therefore, these allegations are denied and strict proof at the time of Trial is demanded. Defendant is only aware of several service calls that were spread out over time and were not consistently unique to the type of claim that Plaintiff alleges other than the problem observed by the Defendant's technician which was created by failure to replace the filters timely as was required. As a more complete response, Defendant incorporates herein by reference its Defenses as if the same were set forth herein at length.

7. Paragraph 7 is admitted. It is admitted that a service call was made on the month and year as stated wherein certain parts were placed. Furthermore, Defendant incorporates herein by reference Paragraph 6 hereinabove and its defenses as if the same were set forth herein at length.

8. Paragraph 8 is admitted in part and denied in part. It is admitted that in February of 2006, Defendant made a service call and installed a part. Defendant did act as was required under the Agreement. The item in place was

not an item that was covered under warranty as the filter requires periodic replacement based on the amount of smoke in the establishment. The filter part is not a warranty covered item for this reason. Had the other parts of the NoSmokeKing Model 2000 unit been covered under the warranty, it would have been at no cost to the Plaintiff and the work would have been done as per warranty. Furthermore, the amount that Defendant was charged was only for the cost of the work. The service charge should have included travel costs and perhaps pro-rata expense for the part. Therefore, the referencing of the costs of the service call is not correct and is denied. Strict proof at the time of Trial is demanded.

9. Paragraph 9 is admitted in part and denied in part. The V-Bank odor control and after filter are not considered parts that would be covered under warranty as the filter is an item that has to be maintained and replaced by the owner. This information was provided to Plaintiff. This is a self-maintenance part and action required by Plaintiff. The specific item that requires maintenance was not covered under warranty. However, the unit's belt that was adversely impacted as a result of Plaintiff not changing the filters and maintaining the unit as was required of them, Defendant did, at no cost, replace the belt, despite the fact that the problem with the belt would not have occurred except for Plaintiff's own failure to properly maintain the unit.

10. Paragraph 10 is denied. The unit has operated appropriately as was required. Plaintiff, by its own action and its failure to properly perform



monthly and annual maintenance as was required and as was explained to Plaintiff. Plaintiff did not replace filters timely as was required. Any continuing problem (if any) is purely a product of Plaintiff's own failure to act. Furthermore, there have not been a number of complaints as alleged. Therefore, the allegations are denied and strict proof at the time of Trial is demanded.

11. Paragraph 11 is denied. There has not been a significant number of visits or notice of problems provided to Defendant. On the contrary, there has been no direct communication with Plaintiff since March 15, 2006. Replacement filters were provided to Plaintiff by Defendant as agreed between the parties. Plaintiff further failed to pay for the filters, and, thereafter, there has been a credit hold on the account. (See Defenses) However, there have been no requests for service or complaints relating to the system. Therefore, the allegations are denied and strict proof at the time of Trial is demanded.

12. Paragraph 12 is denied. On the contrary, Defendant has acted as required under the contract and acted as required at Law. As a matter of fact, it has been Plaintiff who failed to act with respect to the timely and self-maintenance that was to have occurred. This information was provided to Plaintiff. It is Plaintiff who has failed to act appropriately in the use of the unit. Therefore, the allegations are denied and strict proof at the time of Trial is demanded.

13. Paragraph 13 sets forth legal conclusions to which no responses are required. Therefore, the allegations are denied and strict proof at the time of Trial is demanded. As a more complete response, the Pennsylvania Rules of Civil Procedure clearly indicate that a Magistrate Judgment once appealed is a nullity. The allegation contained in the Complaint is made contrary to the Rules of Civil Procedure and not appropriate, and, further, is irrelevant. For the record, the Magistrate's Decision was appealed, upon which this action now goes forward.

14. Paragraph 14 is admitted.

15. Paragraph 15 is denied. Defendant has acted as required under the terms and conditions of the Agreement between the parties. As a more complete response, Defendant incorporates herein by reference its Defenses as if the same were set forth herein at length. Therefore, the allegations are denied and strict proof at the time of Trial is demanded.

- A. Paragraph 15A is denied. On the contrary, the Defendant did act as required under the written terms and conditions. The Defendant is not obligated to perform the self-maintenance requirements with respect to the care and operation of the unit. It is Plaintiff who has failed to do so causing its own problems and adverse affect on the unit itself. Furthermore, when Defendant did make a service call(s), the unit did work and continued to work thereafter. Therefore, the allegations are denied and strict proof at the time of Trial is demanded.
- B. Paragraph 15B is denied. On the contrary, there was no revocation of acceptance as was provided by the terms and conditions of the Agreement between the parties. As a matter of fact, revocation of acceptance demand had never been made up until the time of this civil action. This is not as was agreed to

between the parties, and, further, is not appropriate for the reasons set forth hereinafter. Therefore, the allegations are denied and strict proof at the time of Trial is demanded.

16. Paragraph 16 is denied. On the contrary, Plaintiff has failed to provide the necessary maintenance and care on the unit as was required for its proper use and function. This information had been provided to Plaintiff and the problems outlined by Plaintiff were self-imposed for these same reasons. Therefore, the allegations are denied and strict proof at the time of Trial is demanded. Defendant incorporates herein by reference its Defenses as if the same were set forth herein at length.

17. Paragraph 17 is denied. It is denied that Defendant breached its contractual obligations. On the contrary, the Defendant did act as was agreed to between the parties. The Defendant has lived up to the Agreement as was agreed to between the parties. Therefore, the allegations are denied and strict proof at the time of Trial is demanded.

18. Paragraph 18 is denied. The conditions of the Statute cited do not apply. On the contrary, the Plaintiff had a 30-day money-back guarantee to revoke acceptance as was agreed between the parties. Furthermore, the rightful terms and conditions as required for revocation of acceptance have not been met. This includes Plaintiff's own failure to properly replace the filters due to heavy smoking conditions of the premises is a self-imposed failure and has nothing to do with the proper operation of the unit in question. On the

contrary, the unit was acting very efficiently and did correct the condition for which the unit had been acquired. Unfortunately, it was Plaintiff's own failure to properly care for the unit as was required and as was explained to the Plaintiff. Legal notice as required at Law was not provided. Therefore, the allegations are denied and strict proof at the time of Trial is demanded.

19. Paragraph 19 sets forth legal conclusions to which no responses are required. Therefore, the allegations are denied and strict proof at the time of Trial is demanded. As a more complete response, Plaintiff is not entitled to the remedy as requested. On the contrary, legal notice as required at Law was not provided. Furthermore, Plaintiff's own actions created the problems referred to with the unit. Plaintiff was required to perform certain operational maintenance relating to the unit. The unit did work properly. Therefore, the remedy requested is not appropriate under these circumstances. Therefore, the allegations are denied and strict proof at the time of Trial is demanded.

20. Paragraph 20 is denied. It is denied that there has been a breach of any Agreement between the parties. On the contrary, Defendant has lived up to the terms and conditions of the Agreement. It has been Plaintiff who failed to act reasonably and as required under the circumstances and as was agreed to. Furthermore, the request for legal fees is improper and not permitted at Law. Furthermore, Defendant incorporates herein by reference its Defenses as if the same were set forth herein at length. Therefore, the allegations are denied and strict proof at the time of Trial is demanded.

### **New Matter-Defenses**

The Defendant sets forth the following defenses:

1. The parties had set forth terms and conditions of an Agreement which are outlined completely and attached hereto, made a part hereof, and marked as Exhibit "A." The Agreement in Plaintiff's Complaint is not complete as it is missing pages.

2. The NoSmokeKing Model 2000 unit operated appropriately and was not substantially impaired with non-conformity.

3. Plaintiff has failed to give reasonable notice to Defendant as to non-conformities and notice of revocation.

4. The remedies requested under UCC are neither applicable nor appropriate under the circumstances and at Law.

5. The terms and conditions of the Agreement included notice of acts of maintenance and attending to certain filter parts of the unit. The Plaintiff has failed to act as was specifically outlined, and, as described to Plaintiff. The basic attendance to filters requiring replacement from time-to-time was required. The fact that the Plaintiff failed to do required maintenance caused the specific problems Plaintiff now refers to. This does not create a claim of substantial non-conformity under the circumstances or at Law.

6. Plaintiff also failed to perform monthly and annual maintenance as required by the manufacturer or as explained in the documents provided to Plaintiff by Defendant.

7. Plaintiff failed to provide notice of problems as is required under the terms and conditions of the Agreement and/or at Law. Defendant cannot have knowledge of specific problems if the problems are not identified and such problems were not offered to allow Defendant to appropriately evaluate and respond as required by Agreement and/or at Law.

8. The Agreement clearly indicates that there is a requirement of filters being replaced (ULPA and V-Bank do control filters) and should be replaced annually, and with costs per filter per unit. Additional filters were provided for the unit. The Agreement further outlines the disposable pre-filters should be replaced monthly at a current cost of \$28.00 and that a supply of filters would be provided at a certain cost for the monthly maintenance. Clearly, the terms and conditions of maintenance and attention to the equipment had not occurred.

### **Counterclaim**

1. As was agreed between the parties and as requested by Plaintiff, Defendant did provide on Defendant's account the cost of filters and shipping them to Plaintiff the filter items as outlined on Plaintiff's Exhibit "C." The specific dates and amounts for the filters from 4/30/06 through 11/1/08 are set forth therein. In addition, said invoice shows additional costs that were not covered by warranty as shown on 2/20/06 and 3/17/06.

2. The amounts shown for the filters that were necessary for monthly maintenance were duly shipped and received by Plaintiff.

3. The conduct of shipment was a course of business conduct that was agreed to by Plaintiff to which Defendant complied.

4. The items were not rejected and returned to Defendant.

5. The filters were also supplied timely to also remind Plaintiff of its need to replace these specific filters for the unit in question.

6. The Defendant, despite having agreed to the shipment of filters on account as was requested by Plaintiff, despite demand, the amount due totals Nine Hundred Twenty-Seven and 19/100 (\$927.19) Dollars as shown on Exhibit "B" attached hereto and made a part hereof.

**WHEREFORE**, the Defendant, MJEM Enterprises, Inc., t/d/b/a EMS Specialty Equipment requests and demands payment of the monies owed and listed herein.

Respectfully submitted,

MEARS, SMITH, HOUSER  
& BOYLE, P.C.

By: 

Kim Ross Houser, Esquire  
Attorney for Defendant



AIR CLEANING SYSTEMS

## EMS SPECIALTY EQUIPMENT

412 LINCOLN HIGHWAY WEST JEANNETTE, PA 15644

PHONE (800) 486-5228 or (724) 523-2800 FAX (724) 523-2703

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

May 18, 2005

Lincoln Slovak Club  
P.O. Box 201  
Hawk Run, PA 16840

Attention : Mr. Doug Coval

Dear Doug,

Thank you for your interest in the NoSmokeKing air purification system. Pursuant to our evaluation of the tobacco smoke issues at your club, we are pleased to provide a proposal to address the problem.

We have significant experience in installing systems to remove smoke and improve the indoor air quality in businesses such as yours. By installing equipment per our recommendations, several benefits will be achieved, most notably :

- ◆ The environment will be significantly enhanced, increasing the likelihood that both new and repeat customers will frequent the establishment.
- ◆ Employees will have a better working environment, which should improve both their attitude and productivity.
- ◆ The floor and wall covering and ceiling will remain cleaner, resulting in a better appearance and reduced maintenance expense.
- ◆ The performance of the heating and cooling systems will be enhanced due to the increased air circulation in the room and elimination of the need to run costly exhaust fans.
- ◆ The recommended system is concealed from view above your ceiling and will have no effect on the appearance of your business.

The proposed NoSmokeKing concealed source capture system is the latest in indoor air quality technology and is the leading solution for the removal of tobacco smoke and particulate.

Key success elements include sufficient airflow / air changes, proper air circulation pattern, high efficiency filtration technology and adequate odor control (to address "eyeburn" and "clothes smell").

The "ceiling sweep" airflow pattern of the proposed system utilizes multiple distributed supply and return grilles located in the ceiling to allow smoke to rise naturally into the air path of the system and be captured at the source.

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— EMS SPECIALTY EQUIPMENT —

May 18, 2005  
Lincoln Slovak Club  
Page 2 of 4

The proposed system utilizes disposable ULPA filters, the latest generation of media filtration. By applying the same technology utilized in semi-conductor and pharmaceutical clean room manufacturing, the ULPA filter provides laser-tested filter efficiency of 99.9995 % on particulate as small as 0.12 microns.

This technology requires no soaking, special detergents or washing of components and will not "crack and pop" like older electrostatic air cleaners. By comparison, other filtration technologies perform as shown in the table below :

Technology	Electrostatic	Hospital Grade	True HEPA	ULPA
Efficiency	85.2%	95.0%	99.97%	99.9995%
Pass Through	148,000	50,000	300	5

"Pass Through" is the number of particles per 1,000,000 (ppm) not collected by the filter.

The system will also provide superior odor control performance. The multi-filter "triple blend" (activated carbon, potassium permanganate and zeolite) V-Bank odor control module will effectively absorb the gaseous portion of tobacco smoke and other VOC's (volatile organic compounds) that cause "eye burn" and "clothes smell". The system's anti-microbial after filter will destroy microorganisms, mold and mildew on contact.

The older technology utilized by traditional "Coanda" air cleaners units such as your existing Honeywell unit actually blows smoke back down on to the customers, creating the additional discomfort of cold air drafts and bothersome audible noise in the process. This type of unit is also lacking the odor control filtration required to eliminate the gases that cause eye burn and "clothes smell".

To effectively remove tobacco smoke, the room's air volume should be filtered at least eight times per hour. The Bar Room is approximately 50 feet long and 25 feet wide with an 8-foot drop ceiling. This translates into a room area of 936 square feet and volume of 7,488 cubic feet.

The capacity required to effectively clean the air is calculated as follows :

$$\frac{8,752 \text{ cubic feet} \times 8 \text{ air changes per hour}}{60 \text{ minutes per hour}} = 1,167 \text{ cubic feet per minute}$$

To accomplish this, we propose the supply of one (1) NoSmokeKing Model 2000 concealed unit with a total of five (5) clean air supplies and four (4) dirty air returns.

Please refer to the enclosed drawings that show the proposed layout of the system. Two types of drawings are included - one that shows the supply and return grill locations as they would be visible in the room and one that details the unit location and the flex duct layout.

— EMS SPECIALTY EQUIPMENT —

May 18, 2005  
Lincoln Slovak Club  
Page 3 of 4

The proposed scope of supply is as follows :

Take down your existing unit  
Supply and install a NoSmokeKing Model 2000 concealed unit  
Size, supply & install insulated flexible metallized ductwork  
Furnish and install supply and return grilles  
Provide electrical power from customer's existing circuit panel  
Commission and startup system

To minimize cash outlay and allow you to structure payments from the increased revenue that an improved environment will help provide, I suggest that you consider third party lease - purchase financing, subject to credit approval. I have enclosed a lease application should you desire to begin the no-obligation approval process.

Pricing is as follows, including estimated 60-month lease payments with \$1 purchase option :

	<u>Purchase</u>	<u>Lease</u>
Bar Room System	\$ 3,690	\$ 84

The proposed system includes a written moneyback performance guarantee (see enclosed).  
If you are not satisfied with the performance of our system, we will work at our expense to correct any deficiencies or remove it and refund your money.

We have successfully installed over 1,200 concealed systems in the last six years. Enclosed please find a confidential list of NoSmokeKing reference installations. We would be pleased to provide additional information if so desired.

Equipment warranty is five years parts and labor excluding the replaceable filter components. Payment is due upon completion of installation. The proposal is based upon the attached EMS Specialty Equipment Terms and Conditions of Sale.

Air cleaner performance and reliability is directly proportional to the care taken to maintain the system. We recommend a maintenance agreement to insure that the system is operating properly.

The disposable pre-filter in the unit should be replaced monthly at a current cost of \$28. Alternatively, we could supply you with filters at a cost of \$12 each for you to perform your own monthly maintenance.

The proposed system includes instrumentation to monitor when the main filter elements need to be replaced. The main ULPA and V-Bank Odor Control filters in the Bar Room unit should be replaced annually at a cost of \$300 per filter per unit.

**— EMS SPECIALTY EQUIPMENT —**

**May 18, 2005**  
**Lincoln Slovak Club**  
**Page 4 of 4**

The unit's after-filter would also be changed at this time at a cost of \$ 25. The unit's main ULPA filter is guaranteed on a pro-rated basis to last for one year during the warranty period.

We look forward to the opportunity to help provide a clean, healthy environment for your members and employees. Please don't hesitate to call should you have any additional questions.

Sincerely,

Steve Veliky  
Area Sales Manager

**EMS Specialty Equipment****Customer Ledgers****For the Period From Jan 1, 2006 to Dec 31, 2008**

Filter Criteria includes: 1) IDs from Lincoln Slovak Club to Lincoln Slovak Club. Report order is by ID. Report is printed in Detail Format.

Customer ID Customer	Date	Trans No	Type	Debit Amt	Credit Amt	Balance
Lincoln Slovak Club	2/20/06	52914	SJ	187.09		187.09
Lincoln Slovak Club	3/17/06	53394	SJ	344.50		531.59
	4/30/06	FC4U[00039	SJ	11.22		542.81
	5/31/06	FC5V[00041	SJ	8.30		551.11
	6/30/06	FC6U[00029	SJ	8.15		559.26
	7/31/06	FC7V[00035	SJ	8.55		567.81
	8/31/06	FC8V[00033	SJ	8.68		576.49
	10/31/06	FCAV[00046	SJ	17.34		593.83
	11/30/06	FCBU[00045	SJ	8.79		602.62
	12/31/06	FCCV[00047	SJ	9.21		611.83
	1/31/07	FC1V\00051	SJ	9.35		621.18
	2/28/07	FC2S\00041	SJ	8.45		629.63
	3/31/07	FC3V\00051	SJ	9.63		639.26
	4/30/07	FC4U\00056	SJ	9.46		648.72
	5/31/07	FC5V\00053	SJ	9.92		658.64
	7/31/07	FC7V\00061	SJ	19.81		678.45
	8/31/07	FC8V\00062	SJ	10.37		688.82
	9/30/07	FC9U\00058	SJ	10.19		699.01
	10/31/07	FCAV\00059	SJ	10.69		709.70
	11/30/07	FCBU\00056	SJ	10.50		720.20
	12/31/07	FCCV\00060	SJ	11.01		731.21
	2/29/08	FC2TJ00065	SJ	21.64		752.85
	3/31/08	FC3VJ00066	SJ	11.51		764.36
	5/31/08	FC5VJ00070	SJ	22.99		787.35
	6/30/08	FC6UJ00073	SJ	11.65		799.00
	7/31/08	FC7VJ00065	SJ	12.21		811.21
	10/28/08	65774	SJ	78.78		889.99
	11/1/08	FCB1J00078	SJ	37.20		927.19
<b>Report Total</b>				<b>927.19</b>		<b>927.19</b>

**EXHIBIT**

tabbles

"B"

EMS Specialty Equipment  
412 Lincoln Highway West  
Jeannette, PA 15644  
USA

Voice: (800) 486-5228  
Fax: (724) 523-2703

# Invoice

Invoice Number:  
52914

Invoice Date:  
Feb 20, 2006

Page:  
1

*REVISED*  
*3-10-06 J-L*

Duplicate

Sold To:  
Lincoln Slovak Club  
P.O. Box 201  
Hawk Run, PA 16840

Ship to:  
Lincoln Slovak Club  
104 Fourth Street  
Hawk Run, PA 16840

Customer ID		Customer PO		Payment Terms	
Lincoln Slovak Club				Net 10 Days	
Sales Rep ID		Shipping Method		Ship Date	Due Date
MS		Hand Deliver		2/16/06	3/2/06
Quantity	Item	Description	Unit Price	Extension	
1.00	AG-H1819B42	NSK2000 ULPA Filter Model	300.00	300.00	
		H1819B42-0BB0000EG			
1.00	ULPA Proration	ULPA Filter Proration	125.00	-125.00	
1.00	SVC Fuel	Fuel Surcharge	1.50	1.50	

Check/Credit Memo No:

Subtotal	176.50
Sales Tax	10.59
Total Invoice Amount	187.09
Payment/Credit Applied	
<b>TOTAL</b>	<b>187.09</b>

All services provided are based on EMS Standard Terms and Conditions.

EMS Specialty Equipment  
412 Lincoln Highway West  
Jeannette, PA 15644  
USA

# Invoice

Invoice Number:  
50442

Invoice Date:  
Sep 13, 2005

Voice: (800) 486-5228  
Fax: (724) 523-2703

Page:  
1

Sold To:  
Lincoln Slovak Club  
P.O. Box 201  
Hawk Run, PA 16840

Ship to:  
Lincoln Slovak Club  
104 Fourth Street  
Hawk Run, PA 16840

Customer ID		Customer PO	Payment Terms	
Lincoln Slovak Club			Net 10 Days	
Sales Rep ID		Shipping Method	Ship Date	Due Date
MM		Hand Deliver	9/7/05	9/23/05
Quantity	Item	Description	Unit Price	Extension
15.00	AG-0483300137	Power Guard Pleated Filters #0483300137, 18 1/2 x 19 1/4 x 1 (white) NSK2000 Prefilter	12.00	180.00

<b>LINCOLN SLOVAK POLITICAL CLUB</b> PH 814-342-3770 PO BOX 201 HAWK RUN, PA 16840-0201		<b>2481</b> 60-627/313
PAY TO THE ORDER OF <u>EMS Specialty Equipment</u>		<u>10/10/05</u> DATE
<u>One hundred ninety</u>		\$ <u>190.80</u>
<b>CNB</b> COUNTY NATIONAL BANK PRESQUEBIE STREET OFFICE, PHILIPSBURG, PA		DOLLARS
FOR _____		Signature: <u>George S. Adenick</u>
MICR: ⑆031306278⑆ 1⑆43440⑆6⑆		2481

Subtotal	192.00
Sales Tax	11.52
Total Invoice Amount	203.52
Payment/Credit Applied	
<b>TOTAL</b>	203.52

Check/Credit Memo No:

All services provided are based on EMS Standard Terms and Conditions.

EMS Specialty Equipment  
412 Lincoln Highway West  
Jeannette, PA 15644  
USA

Voice: (800) 486-5228  
Fax: (724) 523-2703

# Invoice

Invoice Number:

52914

Invoice Date:

Feb 20, 2006

Page:

1

**Sold To:**

Lincoln Slovak Club  
P.O. Box 201  
Hawk Run, PA 16840

**Ship to:**

Lincoln Slovak Club  
104 Fourth Street  
Hawk Run, PA 16840

Customer ID		Customer PO		Payment Terms	
Lincoln Slovak Club				Net 10 Days	
Sales Rep ID		Shipping Method		Ship Date	Due Date
MS		Hand Deliver		2/16/06	3/2/06
Quantity	Item	Description	Unit Price	Extension	
1.00	AG-H1819B42	NSK2000 ULPA Filter Model	300.00	300.00	
		H1819B42-0BB0000EG			
1.00	ULPA Proration	ULPA Filter Proration	25.00	-25.00	
1.00	SVC Fuel	Fuel Surcharge	1.50	1.50	

Check/Credit Memo No:

Subtotal	276.50
Sales Tax	16.59
Total Invoice Amount	293.09
Payment/Credit Applied	
<b>TOTAL</b>	<b>293.09</b>

All services provided are based on EMS Standard Terms and Conditions.

# EMS

--- EMS SPECIALTY EQUIPMENT ---

412 LINCOLN HIGHWAY WEST JEANNETTE, PA 15644

PHONE (800) 486-5228 FAX (724) 523-2703



MasterCard and  
VISA accepted

Business Name	LINCOLN SQUAD
Street Address	104 4TH STREET
City / State / Zip	HAWK RUN, PA 16840

Service Request Date	2-2-06
Desired Service Date	ASAP
Service Requestor	ED

Make / Model	NSR 2000
Serial Number	A507001
Under Warranty	YES NO

Telephone	(814) 342-3770
Alternate Phone	(814) 345-6361
Payment Terms	COD <del>CARD</del>

ED CELL: 814-592-9917 DOUG

Problem as Reported by Customer	UNIT IS NOT WORKING WELL. CAN SIT @ BAR & SMOKE BLOWS IN FACE. -NOT PULLING TOWARD GRILLE. CLUB SEANS @ 2 PM
---------------------------------	--

Field Report by EMS Serviceman	

Quantity	Part No.	Installed Part Description	Unit Price	Total Price
		ULIPA	275.00	275.00
			Total Parts Cost	

Serviceman	M. De
Service Date	2-16-06

Time Started	1:30
Time Completed	2:30

Travel Time	
Total Mileage	
Service Labor	

Hourly Rate	
Rate Per Mile	
Hourly Rate	

Total Travel Cost	
Mileage Charge	1.50
Total Service Cost	
Sub Total	276.50
6 % Sales Tax	16.59
Total Charges	293.09

Call Customer With Estimate ?	
Approval Required Before Completing Work ?	

Special Instructions	ULIPA CHANGED (7-11-05 (INSTALL)) (4275.00)

The Above Service Was Completed Satisfactorily.

I Accept the Terms & Conditions on Reverse Side.

X   
Customer Signature



## TERMS AND CONDITIONS OF SALE

1. **ENTIRE AGREEMENT.** Except as otherwise agreed in writing by the parties, this agreement and any documents referred to herein or on the reverse side hereof constitute the entire agreement between the parties. Purchaser will be deemed to have assented to all such terms and conditions if any part of the equipment is accepted.
2. **OBLIGATIONS ABSOLUTE.** Upon Purchaser's acceptance of the Equipment, all obligations of Purchaser pursuant to this agreement shall be absolutely irrevocable and unconditional, and shall not be subject to any defense, counterclaim, set-off or other deduction of any kind.
3. **SUITABILITY OF PURPOSE.** Purchaser acknowledges that EMS Specialty Equipment is not a manufacturer of any of the equipment provided and that the supplied item(s) are suitable for the purposes for which Purchaser selected it. All implied warranties of merchantability and fitness for a particular purpose are hereby disclaimed and excluded.
4. **POSSESSION AND USE OF EQUIPMENT.** Purchaser shall itself comply and cause all persons operating the Equipment to comply with all applicable laws and regulations relating to the registration, insurance, maintenance, repair, testing, use and operation of the Equipment, including operator's licensing requirements, if applicable, and with all of the conditions of the policies of insurance on the Equipment. EMS Specialty Equipment shall not be liable for any defect or damage that arises by reason of or is caused by accident, negligence, abnormal use, misuse or abuse.
5. **WARRANTY.** Any warranties provided are given solely to the original purchaser and user of the equipment and is non-transferable. EMS Specialty Equipments obligation under any warranties is limited to the repair or replacement, at our discretion, of defective parts. Replacement parts that wear out under normal conditions are excluded from any warranty.
6. **LIMITATION OF LIABILITY.** EMS Specialty Equipment shall have no liability to Purchaser for any consequential, incidental, indirect or special damages, including but not limited to any lost profit or any loss, damage, cost or expense of any kind that results directly or indirectly from the equipment, including, but not limited to, any use, operation, maintenance, service or repair of, any failure or interruption of use or any failure or delay in maintaining, servicing or repairing any of the equipment.
7. **TITLE.** Title to the Equipment shall remain in the name of EMS Specialty Equipment until Purchaser has made payment in full. EMS Specialty Equipment may file any financing statements that EMS deems necessary or desirable to perfect or record its interest in the Equipment.
8. **LATE PAYMENT.** Purchaser acknowledges that EMS Specialty Equipment may impose a late charge of up to 10% or \$25.00, whichever is greater, but in any event not more than permitted by applicable law. Payments thereafter received shall be applied first to delinquent installments and then to current installments.
9. **FINANCE CHARGES.** After all sums are declared due and payable, Purchaser shall pay interest at the rate of 1.5% per month or the maximum rate permitted by law, whichever is less, on such accelerated sums from the date of acceleration until paid, whether or not judgment hereon has been entered. If for any reason a check is returned for nonpayment, a \$50.00 bad check charge shall be payable by Purchaser to EMS Specialty Equipment.
10. **REMEDIES.** Upon the occurrence or existence of any Event of Default, EMS Specialty Equipment may, at its sole option, take possession of any of the Equipment wherever located or take any other action permitted under applicable law and collect all damages to which EMS Specialty Equipment may be entitled under applicable law.
11. **EXPENSES.** Purchaser shall pay to EMS Specialty Equipment on demand each cost and expense, including, but not limited to, the fees and disbursements of counsel to EMS Specialty Equipment, incurred by EMS Specialty Equipment in collecting any amount owing by Purchaser to EMS Specialty Equipment pursuant to this writing.
12. **BINDING.** This Contract shall be binding upon Purchaser and each legal representative and successor of Purchaser. Purchaser shall not assign or otherwise transfer any right or obligation pursuant to this agreement without first obtaining the written consent of EMS Specialty Equipment; any such assignment or other transfer of any such right without such prior written consent shall be void. No consent by EMS to any such assignment or other transfer shall release Purchaser from any obligation pursuant to this writing.
13. **CANCELLATION / RETURNS.** Order cancellations / equipment returns can be made only with the pre-approval of EMS Specialty Equipment. If approval is obtained from EMS Specialty Equipment, Purchaser may be subject to a cancellation / restocking charge of up to 25% plus other expenses incurred such as freight, engineering services and other similar charges.
14. **GOVERNING LAW.** This Agreement shall be governed by, and interpreted and enforced in accordance with, the internal law of the State of Pennsylvania. In the event of a breach, both parties agree that any suit will be bought in the Common Pleas Courts of the State of Pennsylvania, County of Westmoreland.

**VERIFICATION**

I, Michael A. Miklosko, verify that I am the <sup>Agent for</sup> ~~Defendant~~ <sup>Plaintiff</sup> in this action, and that the statements made in Answer, New Matter - Defenses/  
Counterclaim

---

are true and correct to the best of my knowledge, information, and belief.

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

Michael A. Miklosko

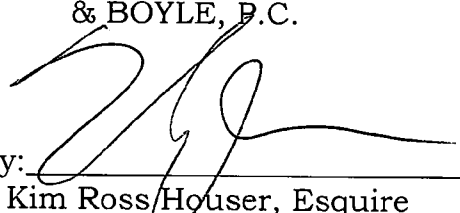
DATE: 12/3/08

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within **ANSWER AND  
NEW MATTER-DEFENSES/COUNTERCLAIM** was sent by first-class mail,  
postage pre-paid, on the 3<sup>rd</sup> day of December, 2008, to the following:

**DAVID R. THOMPSON, ESQUIRE**  
P.O. Box 587  
308 Walton Street Suite 4  
Phillipsburg, PA 16866

MEARS, SMITH, HOUSER  
& BOYLE, P.C.

By:   
Kim Ross/Houser, Esquire  
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION - EQUITY

LINCOLN SLOVAK POLITICAL CLUB,

Plaintiff

VS

MJEM ENTERPRISES, INC., t/d/b/a  
EMS SPECIALTY EQUIPMENT,

Defendant

No. 07-175-CD

TYPE OF CASE  
Civil Division

S  
**FILED** 3 CC Att  
m/11:15 am Thompson  
DEC 24 2008  
William A. Shaw  
Prothonotary/Clerk of Courts

TYPE OF PLEADING:  
Answer to New Matter and  
Counterclaim

FILED ON BEHALF OF:  
Plaintiff

COUNSEL OF RECORD FOR  
THIS PARTY:

David R. Thompson, Esq.  
Attorney at Law  
Supreme Court I.D. 73053  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg PA 16866  
(814) 342-4100

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

LINCOLN SLOVAK POLITICAL CLUB

Plaintiff

vs.

MJEM ENTERPRISES, INC., t/d/b/a  
EMS SPECIALTY EQUIPMENT,

Defendant

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No.07-175-CD

**ANSWER TO NEW MATTER AND COUNTERCLAIM**

**AND NOW**, comes the Defendant, Lincoln Slovak Political Club, by and through its attorney, David R. Thompson, Esq., and files the following Answer to New Matter and Counterclaim:

As to Defendant's New Matter - Defenses the Plaintiff responds:

1. At this time, and after reasonable investigation, Plaintiffs are without sufficient information to provide an answer to this charge. To the extent a response is deemed necessary the same is denied and strict proof is demanded at the time of trial.

2. Paragraph 2 is denied as more fully stated in the Complaint and strict proof is demanded at the time of trial.

3. Paragraph 3 is a conclusion of law to which no response is necessary. To the extent that a response is necessary, the same is denied and strict proof is demanded at the time of trial. By of further pleading, Defendant's attachments to its pleading acknowledge notice of a problem.

4. Paragraph 4 is a conclusion of law to which no response is necessary. To the

extent that a response is necessary, the same is denied and strict proof is demanded at the time of trial.

5. Paragraph 5 is admitted in part, denied in part, and is a conclusion of law in part. It is admitted that the terms and conditions of the Agreement included notice of acts of maintenance and attending to certain filter parts of the unit. It is specifically denied that Plaintiff has failed to act as outlined in the terms and conditions of the Agreement, or that Plaintiff caused the problems alleged in Plaintiff's Complaint, and strict proof is demanded at the time of trial. That this does not create a claim of substantial non-conformity under the circumstances or at Law is a conclusion of law to which no response is necessary. To the extent that a response is necessary, the same is denied and strict proof is demanded at the time of trial.

6. Paragraph 6 is denied and strict proof is demanded at time of trial.

7. Paragraph 7 is a conclusion of law to which no response is necessary. To the extent that a response is necessary, the same is denied and strict proof is demanded at the time of trial.

8. Paragraph 8 is admitted in part and denied in part. It is admitted that the terms of the agreement provide for the things alleged in Paragraph 8. However, to the extent that Plaintiff is responsible for the terms and conditions of maintenance and attention to the equipment being unfulfilled, the same is denied and strict proof is demanded at the time of trial.

As to Defendant's Counterclaim the Plaintiff responds:

1. Admitted in part and denied in part. It is admitted that Defendant did provide filters to Plaintiff. It is denied that the specific dates and amounts for the filters are set

forth in Plaintiff's exhibit "C", which, by way of further pleading, is a service receipt from February 16, 2005. Further, that Plaintiff's exhibit "C" provides any of the additional alleged information is also denied and strict proof is demanded at the time of trial.

2. Paragraph 2 is denied and strict proof is demanded at time of trial.

3. Paragraph 3 is a conclusion of law to which no response is necessary. To the extent that a response is necessary, the same is denied and strict proof is demanded at the time of trial.

4. Paragraph 4 is admitted in part. It is admitted that the items were not returned to the Defendant. To the extent that rejection is a term of art under the UCC this constitutes a conclusion of law to which no response is necessary.

5. After reasonable investigation, the Plaintiff is without sufficient information to provide an answer to this charge. To the extent that a response is required the same is denied and strict proof is demanded at the time of trial.

6. Paragraph 6 is denied and strict proof is demanded at time of trial.

Respectfully Submitted,

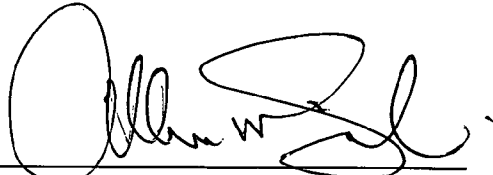
A handwritten signature in black ink, appearing to read "D.R. Thompson", is written over the printed name.

David R. Thompson, Esquire  
Attorney for Defendant

**VERIFICATION**

I certify that the facts set forth in the foregoing **ANSWER TO NEW MATTER AND COUNTERCLAIM** is true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C. S. § 4904, relating to unsworn falsification to authorities.

Dated:

  
\_\_\_\_\_  
Representative, Lincoln Slovak Club  
Allen W. Simlair



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION LAW

LINCOLN SLOVAK POLITICAL CLUB,

Plaintiff

VS.

MJEM ENTERPRISES, INC., t/d/b/a  
EMS SPECIALTY EQUIPMENT,

Defendant

No. 07-175-CD

FILED ON BEHALF OF:  
Plaintiff

COUNSEL OF RECORD FOR  
THIS PARTY:  
David R. Thompson, Esq.  
Attorney at Law  
Supreme Court I.D. 73053  
P.O. Box 587  
308 Walton Street, Suite 4  
Philipsburg PA 16866  
(814) 342-4100

**FILED**  
DEC 30 2008  
William A. Shaw  
Prothonotary/Clerk of Courts  
2 CC AHF  
(610)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION LAW

LINCOLN SLOVAK POLITICAL CLUB,

Plaintiff

vs.

MJEM ENTERPRISES, INC., t/d/b/a  
EMS SPECIALTY EQUIPMENT,

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No. 07-175-CD

**CERTIFICATE OF SERVICE**

TO THE PROTHONOTARY:

I, **DAVID R. THOMPSON, ESQUIRE**, do hereby certify that I served a true and correct copy of the Answer to New Matter and Counterclaim in the above captioned matter by depositing the same in the U.S. First Class Mail, postage prepaid, addressed as follows:

Kim Ross Houser, Esquire  
MEARS, SMITH, HOUSER & BOYLE, P.C.  
127 North Main Street  
Greensburg, PA 15601-2403

DATE:

BY:

  
David R. Thompson, Esquire  
Attorney for Plaintiff