

00-513-CD
LEWIS A. LIVERGOOD etux -vs- AL HAMILTON CONTRACTING COMPANY etal

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

(154)
(154) LEWIS A. LIVERGOOD and
LOUISE D. LIVERGOOD, husband
and wife,
Plaintiffs

vs.

(112)
AL HAMILTON CONTRACTING
COMPANY and (112) SKY HAVEN COAL,
INC.
Defendants

CIVIL DIVISION

No. 00 - 513 - CD

COMPLAINT

Filed on behalf of:

Plaintiffs, LEWIS A.
LIVERGOOD and LOUISE D.
LIVERGOOD, Husband and Wife

Counsel of Record for
Said Party:

JOHN R. RYAN, ESQUIRE
PA I.D. 38739

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED

MAY 14 2000

William A. Shaw
Prothonotary

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

LEWIS A. LIVERGOOD and :
LOUISE D. LIVERGOOD, husband :
and wife, :
Plaintiffs :
vs. : No. 00 - - CD
AL HAMILTON CONTRACTING :
COMPANY and SKY HAVEN COAL, :
INC. :
Defendants :

N O T I C E

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.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
Second and Market Streets
Clearfield, PA 16830

Phone 814/765-2641 Ex. 5982

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

LEWIS A. LIVERGOOD and :
LOUISE D. LIVERGOOD, husband :
and wife, :
 Plaintiffs :
 : :
 vs. : No. 00 - - CD
 : :
AL HAMILTON CONTRACTING :
COMPANY and SKY HAVEN COAL, :
INC. :
 Defendants :

C O M P L A I N T

1. Plaintiffs are Lewis A. Livergood and Louise D. Livergood, husband and wife, having a mailing address of P. O. Box 15, Shawville, Clearfield County, Pennsylvania, 16873.

2. Defendants are:

a. Al Hamilton Contracting Company, a Pennsylvania business corporation, having its principal place of business at R.D. 1, Box 87, Woodland, Clearfield County, Pennsylvania, 16881.

b. Sky Haven Coal, Inc., a Pennsylvania business corporation, having its principal place of business at R.D. 1, Penfield, Clearfield County, Pennsylvania, 15849.

3. Plaintiffs are the owners of a certain piece or parcel of land situated in Goshen Township, Clearfield County, Pennsylvania, having acquired title to same by deed of Wava Livergood Pooler and Leroy Pooler, her husband, dated February 21, 1964, recorded at Clearfield County in Deed Book 506, Page 593.

4. On or about November 29, 1990, Plaintiffs entered into an agreement with Defendant, Al Hamilton Contracting Company, Inc., (hereinafter Hamilton), whereby Plaintiffs leased the surface of said property to Hamilton for purposes of the mining and removal of the coal thereunder. A true and correct copy of the Agreement dated November 29, 1990 is attached hereto marked Exhibit "A" and is incorporated herein as if set forth at length.

5. Said Agreement dated November 29, 1990, (hereinafter Agreement), was renewed by Hamilton pursuant to the terms thereof, but in any event will expire in November of 2000.

6. The Agreement at Paragraph "Third" states as follows:

"The Lessee shall not have the full and free right to assign this lease or sublet the leased premises, either in whole or in part".

7. In March of 2000, Plaintiffs were approached by representatives of Hamilton regarding whether or not Plaintiffs would agree to an assignment or sublease to Defendant, Sky Haven Coal, Inc., (hereinafter Sky Haven).

8. Plaintiffs verbally indicated they would not agree to an assignment or sublease to Sky Haven.

9. In addition, Plaintiffs notified Hamilton in writing by letter dated March 30, 2000 that they objected to the assignment or sublease of the premises, a copy of said letter being attached hereto marked Exhibit "B".

10. At Plaintiffs' request, by letter dated April 4, 2000, Counsel for Plaintiffs directed a letter to both Defendants confirming that Plaintiffs objected to the assignment or sublease of the premises. A true and correct copy of the letter dated April 4, 2000 is attached hereto and marked Exhibit "C".

COUNT I

LEWIS A. LIVERGOOD AND LOUISE LIVERGOOD, HUSBAND AND WIFE
VS. AL HAMILTON CONTRACTING COMPANY
BREACH OF CONTRACT

Paragraphs 1 through and including Paragraph 10 are incorporated herein by reference as if set forth at length.

11. Despite the written objections of the Plaintiffs and despite the clear language of the Agreement, Defendant, Sky Haven, has entered onto the premises and commenced mining operations.

12. Defendant, Sky Haven, is conducting said mining operations allegedly as a "sub-contractor" of Defendant, Hamilton.

13. It is believed and therefore averred that in subcontracting the mining operations on the Plaintiffs' property to Defendant, Sky Haven, Defendant Hamilton has breached the expressed terms of the Agreement; thus, Plaintiffs are entitled to cancellation of the Agreement dated November 20, 1990.

14. Defendant Sky Haven has been conducting mining operations on the property on a daily basis since the first week of April, 2000, all without legal right or permission of the Plaintiffs.

15. Defendant Hamilton has taken the position that they did not assign or sublease the property, but subcontracted the work to Defendant Sky Haven. It is believed and therefore averred that regardless of what it is called, it represents a breach of the clear language of the agreement.

16. As a direct and proximate result of the breach of the agreement, Plaintiffs have incurred and will continue to incur damages as well as expenses for Counsel fees and costs of suit.

WHEREFORE, Plaintiffs demand that judgment be entered in their favor and against Defendant Hamilton, together with interest and costs of suit.

COUNT II

LIVERGOOD vs. SKY HAVEN COAL, INC.

Paragraphs 1 through and including Paragraph 16 are incorporated herein by reference as if set forth at length.

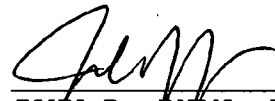
17. None of the facts and circumstances set forth herein above, Defendant, Sky Haven, has entered onto the property of the Plaintiffs unlawfully.

18. Defendant, Sky Haven, had contacted Plaintiffs prior to entering onto the property and requested that Plaintiffs enter into a lease agreement with them which Plaintiffs refused to do.

19. Defendant, Sky Haven, through this conversation and through the letter of Counsel set forth herein above, knew that the Plaintiffs did not consent to Defendant, Sky Haven, entering onto and mining their property; and despite that knowledge, Defendant, Sky Haven, proceeded to do so without the consent of the Plaintiffs.

20. As a result of the actions of Defendant, Sky Haven, Plaintiff has suffered damages and will continue to do so, as well as incur expenses for Counsel fees and costs of suit.

WHEREFORE, Plaintiffs demand that judgment be entered in their favor and against Defendant, Sky Haven, together with interest and costs of suit.



JOHN R. RYAN, ESQUIRE
Attorney for Plaintiffs

VERIFICATION

We verify that the statements made in this Complaint are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. 4904, relating to unsworn falsification to authorities.


LEWIS A. LIVERGOOD


LOUISE D. LIVERGOOD

A G R E E M E N T

THIS AGREEMENT, made and entered into this 29th day of November, 1990, by and between LEWIS A. and LOUISE D. LIVERGOOD, P. O. Box 15, Shawville, Pennsylvania 16873, party of the first part, hereinafter referred to as LESSOR,

A

N

D

AL HAMILTON CONTRACTING COMPANY, a Pennsylvania business corporation, of R. D. #1, Box 87, Woodland, PA 16881, party of the second part, hereinafter referred to as LESSEE,

W I T N E S S E T H :

That for and in consideration of One Hundred and No One-Hundredths (\$100.00) Dollars of the rents and royalties to be paid by the LESSEE to the LESSOR, and in further consideration of the covenants hereinafter set forth which are to be done, kept and performed by the LESSEE, the LESSOR, with the intention of being legally bound, does hereby demise and let unto the LESSEE the surface with the exclusive right and privilege to enter upon, to mine by any mining method and to carry away all of the coal lying in, under and upon a certain piece or parcel of land identified on the Clearfield County Tax Assessment Map as #115-N5-9 (except for the restricted area/areas indicated on the attached Exhibit "A" and colored in yellow - these area/areas

Exhibit

"A"

shall not be disturbed by drilling or mining activities) located in Goshen Township, Clearfield County, Pennsylvania, more particularly bounded and described as follows:

BOUNDED ON THE NORTH BY: Al Hamilton Contracting Company;
BOUNDED ON THE SOUTH BY: Harbison-Walker Refractories Company;
BOUNDED ON THE EAST BY: Al Hamilton Contracting Company; and
BOUNDED ON THE WEST BY: Jesse Taylor; Linglewood Lodge, Inc., and Henrietta Malone.

An Exhibit "A" is attached to this agreement indicating in red the above described parcel consisting of 98.0 acres, more or less.

The LESSOR lets and demises unto the LESSEE, to the extent of his rights and interest in the demised premises, the following rights and privileges with respect to all coal, the strata above or below the same, and in the horizons of said coal, and other coal now owned or hereinafter acquired by LESSEE, its successors and assigns.

✓ The LESSEE shall have the right of ingress, egress and regress into, upon and through, over, along and across the surface of premises herein leased, the strata above or below the seams of coal, and in the horizons of said coal and other coal now owned or hereinafter acquired by Lease or otherwise by the LESSEE, their successors or assigns, at such points and in such a manner as may be necessary or convenient for the purpose of conducting all operations in connection with the mining, and transporting and shipping said coal produced under this Agreement to market.

The LESSEE shall have the free right to use the surface of the said land over the said coal for the erection thereon of any convenient improvements or equipment, and shall have the right to deposit on the surface of the leased area refuse, dirt and waste from mining operations on the leased premises and where open cuts cross the property lines of the LESSOR, shall have the right to deposit on the leased premises only to such an extent as may be necessary to continuous mining, refuse, dirt and waste from adjoining premises.

The LESSEE shall have the right to excavate the surface and overburden overlying the said coal and to do and perform such acts as are usually done in the process of mining coal by mining methods accepted in this mining district. And, such activities shall be done without requiring the LESSEE to leave or provide a subjacent or lateral support for the overlying strata or surface or anything therein, thereon or thereunder, including structures and improvements now or hereafter erected thereon. The LESSEE shall have the right and privilege for 120 days after the termination of this lease to remove from the leased premises the improvements thereon which the LESSEE owns.

✓ The LESSEE shall have the right to make roads and haulage ways upon and across the leased premises and to use the same for transporting and taking to market coal mined on the demised premises and, coal mined from other lands which may be now or hereafter controlled by the LESSEE.

The LESSEE shall have the right to construct and maintain ponds and diversion ditches for erosion control and water treatment and to cut drains and drainage ditches over and across the demised premises for the purpose of removing water from the mining operations of the LESSEE or those claiming under the LESSEE.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY THEREOF, the rights herein granted unto the LESSEE are subject to the following limitations and qualifications:

a) That the mining operations upon the leased premises shall be conducted to the best of LESSEE's ability and in substantial conformity with the laws or ordinances of any local government agency having jurisdiction in Pennsylvania, the Commonwealth of Pennsylvania and the United States of America, and to the best of LESSEE's ability and in substantial conformity with all rules and regulations promulgated thereunder which are now, or in the future may be in effect. Without limiting the generality of this provision, the LESSEE agrees to conduct mining operations to the best of their ability and in substantial conformity with the Open Pit Mining Conservation Act of 1945, as amended; the Pure Streams Law of 1937, as amended; the Pennsylvania Workmen's Compensation Act, as amended; and the 1977 Federal Strip Mine Act. The LESSEE agrees to indemnify and save the LESSOR harmless of and from any liabilities of any nature or kind arising out of the LESSEE's failure to comply with said laws, ordinances, rules and regulations.

For the purpose of permitting compliance with this provision and laws and regulations referred to in this provision, the LESSOR hereby leases unto the LESSEE the right of ingress, egress and regress in and to the leased premises at any time after the termination of this lease for the purpose of backfilling and/or planting or otherwise complying with the mining laws of the Commonwealth of Pennsylvania, United States of America, or any authorized local government unit and for the purpose of correcting water drainage conditions where declared to be in violation of laws and rules and regulations of any State, Federal or local regulatory agency, but this right of re-entry is for the purpose of such compliance and shall vest in the LESSEE during the re-entry period mentioned no rights whatsoever in the mining or removal of coal from the property. The LESSOR hereby appoints the LESSEE its attorney-in-fact to execute written consents on forms furnished by the Commonwealth of Pennsylvania, United States of America, or any other local agency having jurisdiction, concerning re-entry for backfilling, planting, reclamation, inspection, study, abatement of pollution or for any other activity authorized by law or regulation.

b) That the LESSOR warrants, covenants and asserts that he is lawfully seized of good and marketable title to the surface of the premises which is the subject of this Agreement as well as the strata above or below the seams of coal; that the same is free and clear of all liens and encumbrances; that he has a good right to lease the same.

The LESSOR will warrant and defend the title to the surface and the overlying strata unto the LESSEE, its successors and assigns, against lawful claims of all persons whomsoever.

c) That the LESSOR for himself, his heirs and assigns, in consideration for the royalties received under this Agreement hereby covenant and waive and release all surface damages and damages of any sort however caused arising from the removal of and the operation in the said coal, the overlying and underlying strata and in the horizons of said coal by the LESSEE, its successors or assigns, or arising from any and all physical conditions now present or which may hereafter develop in, about and/or above the same.

IN CONSIDERATION WHEREOF, THE LESSEE covenants and agrees as follows:

1) That the LESSEE shall pay to the LESSOR tonnage royalty on all merchantable and marketable coal removed from the leased premises in the amount of five (5%) percent of the selling price with a minimum of One and Fifty One-Hundredths (\$1.50) Dollars per net ton, whichever is greater. The selling price of the coal shall be defined as follows:

a) For coal processed through a tipple or preparation plant, the average monthly invoice price, F.O.B. railroad cars, for all coal loaded at the tipple or preparation plant, less the cost of transporting coal from the demised premises to said tipple or preparation plant, where such cost is borne by the LESSEE; or

b) For coal transported directly by truck from the pit to the purchaser, the average monthly selling price at destination for all coal so transported to purchasers, less transportation charges.

Selling prices in all instances shall be to bona fide, arms length purchasers.

The LESSEE shall not be required to mine, remove, ship or pay for coal which is not merchantable, marketable or mineable. Payments for such tonnage royalties shall be made on or before the twenty-fifth (25th) day of the month immediately following the calendar month on which said coal shall be mined, removed and shipped from the subject premises.

That the LESSEE shall pay to the LESSOR advance monthly royalty in the amount of One Hundred and No One-hundredths (\$100.00) Dollars per month. Said advance monthly royalty payments shall cease when all the coal, in the sole judgment of the LESSEE, that is merchantable, marketable and mineable is exhausted. the Lessee agrees to pay the Lessor Five Thousand and No One-hundredths (\$5,000.00) Dollars advance royalty upon the signing of this agreement, also the Lessee agrees to pay the Lessor an additional Five Thousand and No One-hundredths (\$5,000.00) Dollars advance payment when the Lessee receives all necessary permits to mine on the demised premises. The LESSEE shall be entitled to a credit for sums paid as advance royalty against tonnage royalty on coal mined and removed from the premises. Said monthly advance royalty shall be due and payable on the twenty-fifth (25th) day of the month following the month for which payment is being made.

2) That the LESSEE shall furnish to the Lessor on the twenty-fifth (25th) day of each and every month during the term of this lease a true and correct statement of the weight of all coal mined by the LESSEE, or for the LESSEE, from the leased

premises during the immediately preceding calendar month and keep correct records showing the coal mined from the leased premises and permit the LESSOR to examine records of tonnage removed.

3) That the LESSOR shall be permitted at all reasonable times to inspect the leased premises and the strip workings thereon and to have surveys and maps made by the LESSEE, and have the LESSEE furnish to the LESSOR copies of all surveys and maps in which the leased premises are included, made for or by the LESSEE including all drill logs and location of exploratory work. However, costs, if any, for reproducing such copies shall be borne by the LESSOR.

4) That the LESSEE shall pay during the terms of this lease when same shall become due, all taxes or charges whether State, local or federal of whatsoever kind which shall be or may be levied on or collectible out of the product of the demised premises, improvements thereon or used in connection therewith by the LESSEE, except that the LESSOR shall pay any and all Real Estate taxes on the subject premises.

THIS LEASE IS MADE SUBJECT TO the following general covenants and conditions :

FIRST: That this lease shall become effective on the date of execution. The term of this lease shall begin on the first day of the month following the date of execution and shall remain in full force and effect for a period of five (5) years or until such time as this lease is cancelled by the LESSEE under Paragraph "SECOND" which follows, whichever first occurs. LESSEE shall have the further right at any time during the original

five (5) year period to extend and renew this lease for an additional term of five (5) years. This right to extend and renew may be exercised by the LESSEE giving to the LESSOR by registered mail, return receipt requested, placed in the mail at any time prior to thirty (30) days before the expiration of the original five (5) year term notice of intent to renew.

SECOND: The LESSEE shall have the right to terminate this lease at any time, without cause, by giving thirty (30) days written notice to the LESSOR. At the expiration of said thirty (30) days this lease shall be of no further force and effect except as to monies due the LESSOR for coal mined and removed prior to the expiration date which may be unpaid.

THIRD: The LESSEE shall not have the full and free right to assign this lease or sublet the leased premises, either in whole or in part.

FOURTH: That the weight of all coal mined from the demised premises shall be ascertained upon the basis of certified truck scale weights of licensed weighmasters. That weight for payment of tonnage royalty shall be based upon the amount of merchantable and marketable coal taken from the leased premises. Any person, persons or corporations having the records of the weights of coal produced from the leased premises are hereby authorized to have the LESSEE furnish to the LESSOR the weights of the coal mined by the LESSEE from the leased premises, but the expense of compiling and assembling such weights shall be borne by the LESSOR.

FIFTH: That if the LESSEE breaches any of the terms or conditions of this Agreement or fails to make payments due under this Agreement, and said breach or nonpayment continues for a period of thirty (30) days after written notice of said breach or nonpayment from the LESSOR without a bona fide effort by LESSEE to cure said breach or nonpayment, then, at option of LESSOR this Agreement may forthwith be cancelled and terminated without further liability on the part of LESSOR to LESSEE. The right of termination shall not, however, be a bar to any other remedy at law the LESSOR may have.

SIXTH: That LESSEE shall not be deemed to have breached this Agreement for failure to perform or observe any of the terms, conditions, provisions, obligations or covenants to be performed or observed under this Agreement when such performance and observation is partially or wholly prevented by any cause reasonably beyond LESSEE's control, including but not limited to fires, flood, windstorms, or any other Act of God or damage from the elements, strikes, work stoppages, slowdowns, lockouts, insurrections, riots, actions of civil or military authorities, litigation regarding the demised premises, acts of the public enemy and acts or delays of municipal bodies or authorities, the Commonwealth of Pennsylvania and the United States of America. The term of this Agreement shall be extended, unless sooner terminated by LESSEE as hereinabove provided, for a period equal to the period for which performance is suspended due to the provisions of this paragraph. The period of suspended perform-

ance shall be deemed to begin at the time LESSEE stops performance under this paragraph and LESSEE shall give written notice of the beginning and ending dates of each such period to the LESSOR.

SEVENTH: The rights given to mine or remove coal in this Agreement includes the right to conduct blasting operations using explosives, but LESSEE shall refrain from blasting within 300' of LESSOR's dwelling and buildings.

EIGHTH: The Lessee agrees to furnish the Lessor twenty (20) tons of coal, of Lessor's choice, per year, for use in Lessor's home. The said coal shall be from the Lessor's property and the Lessee shall furnish the said twenty (20) tons per year as long as the Lessee is actively mining the demised premises.

NINTH: The lease is made subject to an oil and gas lease dated 10/8/81 between the Lessors and Damson-Louden, et al until the said oil and gas lease expires on 10/8/91.

TENTH: That all payments of tonnage and minimum royalties due and owing under this Agreement and all notices by the LESSEE to the LESSOR shall be made to the LESSOR as follows: Lewis A. and Louise D. Livergood, P. O. Box 15, Shawville, PA 16873; whose identifying number is 160-30-9361. That all notices by LESSOR to the LESSEE shall be sent as follows: Al Hamilton Contracting Company, R. D. #1, Box 87, Woodland, PA 16881.

ELEVENTH: That this Agreement is the entire understanding of the parties and that any modification, alternation or change in this Agreement shall only be made in writing signed by all parties.

TWELFTH: That this lease Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns, as if each were named in each and every paragraph herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

ATTEST OR WITNESS:

Karen L. Cuculla

Lewis A. Livergood
Lewis A. Livergood

Karen L. Cuculla

Louise D. Livergood
Louise D. Livergood

ATTEST:

AL HAMILTION CONTRACTING COMPANY

Herbert J. Wilson
Herbert J. Wilson, Sec/Treas.

C. Alan Walker, President
C. Alan Walker, President

March 30, 2000

Al Hamilton Contracting
R.D. 1 Box 87
Woodland, PA 16881

To Whom It May Concern:

We received a telephone call, from Alan Walker, regarding the sub-contract of our lease to Sky Haven Coal Company. We refuse to approve the **transfer, assign, sub-contract, sublet, or sale** of our lease to any other mining company.

Sincerely,

Lewis A. Livergood

Lewis A. Livergood
Louise D. Livergood

Louise D. Livergood

P.O. Box 15

Shawville, PA 16873

Exhibit

"B"

LAW OFFICES
COLAVECCHI RYAN & COLAVECCHI

JOSEPH COLAVECCHI
JOHN R RYAN
PAUL COLAVECCHI

221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P.O. BOX 131
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-1566

FAX
(814) 765-4570

April 4, 2000

Sky Haven Coal, Inc.
R.D. 1
Penfield, PA 15849

Al Hamilton Contracting Company
R.D. 1, Box 87
Woodland, PA 16881

In Re: Livergood, Lewis A. and Louise D.

Gentlemen:

I have been contacted by Lewis A. and Louise D. Livergood with respect to a Lease Agreement dated November 29, 1990 with Al Hamilton Contracting Company.

According to my clients, they were previously approached by Al Hamilton Contracting Company with respect to the assignment or sublet of this lease to Sky Haven Coal, Inc.

The Livergoods have notified Al Hamilton Contracting that they objected and would not consent to the assignment or sublease of the premises.

My clients now have advised me that Sky Haven Coal, Inc. has entered the premises and informed the Livergoods they intend to commence mining operations.

The purpose of this letter is to put you on notice that my clients do not consent to the assignment or sublease of the premises.

The Lease Agreement in question states expressly that Al Hamilton Contracting Company does not have a right to assign or sublet the leased premises in whole or in part.

Exhibit

"C"

Sky Haven Coal, Inc.
Al Hamilton Contracting, Inc.
April 4, 2000
Page 2

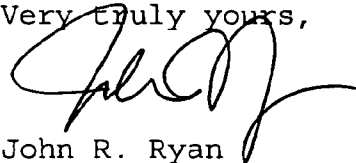
The attempt of Al Hamilton Contracting Company to do so represents a material breach of the terms of the agreement.

This letter should be accepted as written notification of this breach and the termination and cancellation thereof.

Further, this is also notification that all further activity on the part of Sky Haven Coal, Inc. on the premises should cease immediately.

Any response on behalf of either Sky Haven Coal, Inc. or Al Hamilton Contracting, Inc. should be directed to this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "John R. Ryan", is written over the typed name.

John R. Ryan

JRR:lz

cc: Mr. and Mrs. Lewis Livergood

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO.

LEWIS A. LIVERGOOD and LOUISE D.
LIVERGOOD, husband and wife,
Plaintiffs

VS.

AL HAMILTON CONTRACTING COMPANY
and SKY HAVEN COAL, INC.,
Defendants

COMPLAINT

NOTICE TO DEFENDANTS:

YOU are hereby notified that
you are required to file an
Answer to the within Complaint
within twenty (20) days after
service upon you or judgment may
be entered against you.

JOHN R. RYAN, ESQUIRE
ATTORNEY FOR PLAINTIFF

COLAVECCHI & RYAN
ATTORNEYS AT LAW
221 E. MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA. 16830

William A Shaw
Prothonotary

FILED
MAY 10 10:04 AM '80
MAY 14 2000
cc Atty
Atty pd.
8 cc cc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LEWIS A. LIVERGOOD and
LOUISE D. LIVERGOOD, husband
and wife,

Plaintiffs

vs.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL,
INC.

Defendants

CIVIL DIVISION

No. 00 - 513 - CD

PETITION FOR INJUNCTIVE
RELIEF

Filed on behalf of:

Plaintiffs, LEWIS A.
LIVERGOOD and LOUISE D.
LIVERGOOD, Husband and Wife

Counsel of Record for
Said Party:

JOHN R. RYAN, ESQUIRE
PA I.D. 38739

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED

MAY 05 2000

William A. Shaw
Prothonotary

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

LEWIS A. LIVERGOOD and :
LOUISE D. LIVERGOOD, husband :
and wife, :
 Petitioners :
 : :
 vs. : No. 00 - 513 - CD
 : :
AL HAMILTON CONTRACTING :
COMPANY and SKY HAVEN COAL, :
INC. :
 Respondents :

PETITION FOR INJUNCTIVE RELIEF

NOW COMES, Lewis A. Livergood and Louise D. Livergood, husband and wife, Petitioners above named, and by their Attorney, John R. Ryan, Esquire, petitions your Honorable Court as follows:

1. Petitioners are Lewis A. Livergood and Louise A. Livergood and are the owners of property situated in Goshen Township, Clearfield County, Pennsylvania.

2. Respondents are:

a. Al Hamilton Contracting Company, Inc., a Pennsylvania business corporation, having its principal place of business at R.D. 1, Box 87, Woodland, Clearfield County, Pennsylvania, 16881.

b. Sky Haven Coal, Inc., a Pennsylvania business corporation, having its principal place of business at R.D. 1, Penfield, Clearfield County, Pennsylvania, 15849.

3. Petitioners and Respondent, Al Hamilton Contracting Company, Inc., are parties to a Lease Agreement dated November 29, 1990, whereby Petitioners leased the surface of their property situated in Goshen Township, Clearfield County, Pennsylvania, for the purposes of mining and removal of coal thereunder.

4. Said Lease Agreement dated November 29, 1990 was renewed by Al Hamilton Contracting Company, Inc. pursuant to the terms thereof and will expire in November of 2000.

5. The Lease Agreement at Paragraph "Third", states as follows:

"The Lessee shall not have the full and free right to assign this lease or sublet the leased premises either in whole or in part".

6. In direct contradiction of the aforesaid language of the Lease Agreement, Hamilton Contracting Company, Inc. has assigned or subleased the property of the Petitioners to Sky Haven Coal, Inc., who have commenced mining operations on the property.

7. Both Hamilton Contracting Company, Inc. and Sky Haven Coal, Inc. have been notified in writing by both, Petitioners and Counsel for the Petitioners, that they have objected to the assignment or sublease of the premises.

8. Despite this knowledge, Respondent, Sky Haven Coal, Inc., has commenced and continues mining operations on the property; all without a legal basis under the terms of the Lease Agreement.

9. Petitioners have commenced an action at law for damages, but believe and therefore aver that unless the mining operations are enjoined, they will suffer irreparable harm and that their property is being mined and the surface disturbed on a daily basis. In addition, Petitioners have no adequate remedy at law to compel Respondents to cease mining operations if Respondents are allowed to continue such illegal operations.

WHEREFORE, Petitioners request that:

a. A day be set for a Show Cause Hearing on the question of a Temporary Injunction at which time Respondents be Ordered to appear;

b. At the conclusion of said hearing, a Temporary Injunction issued from this Court directing Respondents to cease further mining operations on any part of Petitioners' land until the Complaint of Petitioners can be heard on its merits; and

c. That Respondents be directed to remove all equipment from any part of Petitioners' land until such time as the Complaint of Plaintiffs can be heard on its merits.

Respectfully submitted:



JOHN R. RYAN, ESQUIRE
Attorney for Petitioners

VERIFICATION

We verify that the statements made in this Petitioner for Injunctive Relief are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. 4904, relating to unsworn falsification to authorities.


LEWIS A. LIVERGOOD


LOUISE D. LIVERGOOD

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 00 - - CD

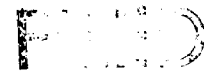
LEWIS A. LIVERGOOD and LOUISE
D. LIVERGOOD, Husband and wife,
Plaintiffs

vs.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL, INC.,
Defendants

PETITION FOR INJUNCTIVE RELIEF

COLAVECCHI & RYAN
ATTORNEYS AT LAW
221 E. MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA. 16830



MAY 05 2000
0/10:10/00
William A. Shaw
Prothonotary

4 CENT To Arty

6/21

Lap over margin

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LEWIS A. LIVERGOOD and
LOUISE D. LIVERGOOD, husband
and wife,

Plaintiffs

vs.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL,
INC.

Defendants

CIVIL DIVISION

No. 00 - 513 - CD

ORDER

Filed on behalf of:

Plaintiffs, LEWIS A.
LIVERGOOD and LOUISE D.
LIVERGOOD, Husband and Wife

Counsel of Record for
Said Party:

JOHN R. RYAN, ESQUIRE
PA I.D. 38739

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

FILED

MAY 08 2000

William A. Shaw
Prothonotary

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

LEWIS A. LIVERGOOD and :
LOUISE D. LIVERGOOD, husband :
and wife, :

Petitioners :

vs. :

No. 00 - 513 - CD

AL HAMILTON CONTRACTING :
COMPANY and SKY HAVEN COAL, :
INC. :

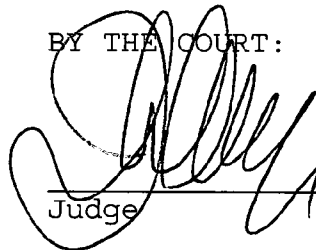
Respondents :

O R D E R

AND NOW, this 8th day of May, 2000, upon
consideration of the foregoing Petition for Injunctive Relief, a
Rule is issued upon the Defendants to appear and show cause why the
relief requested therein should not be granted.

Rule Returnable for hearing on the 11th day of
May, 2000, at 9:30 o'clock
A.M., at the Clearfield County Courthouse, Courtroom Number
1.

BY THE COURT:


Judge

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

No. 00 - - CD

LEWIS A. LIVERGOOD and LOUISE
D. LIVERGOOD, Husband and Wife,
Plaintiffs

vs.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL, INC.,
Defendants

O R D E R

FILED
MAY 18 2000
William A. Shaw
Prothonotary
KSL

COLAVECCHI & RYAN
ATTORNEYS AT LAW
221 E. MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA. 16830

JOHN R. RYAN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LIVERGOOD, LEWIS A. & LOUISE
VS

00-513-CD

AL HAMILTON CONTRACTING

COMPLAINT

SHERIFF RETURNS

NOW MAY 9, 2000 AT 9:17 AM DST SERVED THE WITHIN COMPLAINT
ON AL HAMILTON CONTRACTING COMPANY, DEFENDANT AT EMPLOYMENT
RD 1 BOX 87, WOODLAND, CLEARFIELD COUNTY, PENNSYLVANIA BY
HANDING TO HERBERT WILSON, SEC/TRES. A TRUE AND ATTESTED
COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE
CONTENTS THEREOF.
SERVED BY: NEVLING

NOW MAY 11, 2000 AT 8:20 AM DST SERVED THE WITHIN COMPLAINT
ON SKY HAVEN COAL INC., DEFENDANT AT EMPLOYMENT RD 1,
PENFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO
DAVE HEITSENRETHOR, ACCOUNTANT A TRUE AND ATTESTED COPY OF
THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS
THEREOF.
SERVED BY: MCINTOSH/SNYDER

35.25 SHFF. HAWKINS PAID BY: ATTY
20.00 SURCHARGE PAID BY: ATTY

SWORN TO BEFORE ME THIS

17th DAY OF May 2000
William A. Shaw

SO ANSWERS,

Chester A. Hawkins
by Marilyn Harris
CHESTER A. HAWKINS
SHERIFF

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co., Clearfield, PA.

FILED

MAY 17 2000

011128
William A. Shaw

Prothonotary E

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

LEWIS A. LIVERGOOD and
LOUISE D. LIVERGOOD,
husband and wife,
Plaintiffs

vs.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL,
INC.
Defendants

: No. 00-513-CD
:
:
:
: Type of Pleading: Answer to Petition
: for Injunctive Relief
:
:
: Filed on behalf of: Al Hamilton Contracting
: Company
:
:
: Counsel of Record for this
: Party: William C. Kriner, Esq.
: Supreme Court No.: 15559
: 31 North Third Street
: P.O. Box 1425
: Clearfield, PA 16830
: (814) 768-7893

FILED

MAY 19 2000

William A. Shaw
Prothonotary

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

LEWIS A. LIVERGOOD and
LOUISE D. LIVERGOOD,
husband and wife,
Plaintiffs

vs.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL,
INC.
Defendants

No. 00-513-CD

ANSWER TO PETITION FOR INJUNCTIVE RELIEF

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Denied. On the contrary, Al Hamilton Contracting Company ("AHC"), has not assigned or sublet the leased premises in whole or in part to Sky Haven, Inc. ("SH"). SH has been engaged by AHC as a contract miner to produce coal beginning at the end of March 2000, and as memorialized in an agreement dated April 13, 2000, attached hereto, marked Exhibit "A" and incorporated herein by reference.

7. Admitted in part; denied in part. AHC admits receiving a letter dated April 4, 2000, from Attorney Ryan notifying AHC that Petitioners "do not consent to the assignment of sublease of the premises". It is denied that this letter affected the production arrangements between SH and AHC that began in late March 2000. Finally, AHC has no knowledge or information that the April 4, 2000, letter was delivered to SH.

8. Denied. SH commenced operations as a contract miner of AHC in late March 2000, memorialized by the Production Agreement attached hereto. Since the arrangements involved no assigning or subletting of the lease dated November 29, 1990, the letter from Attorney Ryan had

no effect on the mining operations. The legal conclusion that the operations of SH have no legal basis does not require an answer. However, if an answer is required, the allegations are denied for the reason that AHC and SH are acting within the terms and conditions of the lease dated November 29, 1990.

9. Denied. While the Petitioners have commenced an action at law alleging damages for breach of contract, it is denied that they will suffer irreparable damages by ongoing operations on their property. The operations on the property are fully within the contemplation and agreement of the parties and no term or condition of the agreement has been violated by AHC, therefore, no damage or harm of any nature or kind is being incurred by the Petitioners. Furthermore, since this is a contract dispute, no equitable relief in the form of an injunction is warranted or available.

NEW MATTER

10. Petitioners possess an adequate remedy at law for their complaint as is evidenced by their lawsuit alleging damages for breach of contract and no equitable relief is permissible.

11. That on April 6, 2000, John Ryan was advised that no assignment or subletting had taken place and that AHC continued as sole lessee and was fully responsible for all terms and conditions of the lease dated November 29, 1990.

12. That an action to enjoin a mining operation requires the joining of coal owners and regulatory parties as indispensable parties.

13. That the enjoining of a mining operation involves public safety and environmental matters and concerns that far outweigh a contract dispute.

WHEREFORE, Al Hamilton Contracting Company prays the Honorable Court to deny and dismiss the Petition for Injunctive Relief.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'William C. Kriner', is written over a horizontal line.

William C. Kriner

Attorney for Al Hamilton Contracting Company

Verification

I verify that the statements made in this Answer to Petition for Injunctive Relief are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 PA. C.S.A. Section 4904 relating to unsworn falsification to authorities and is given pursuant to the provisions for verification of pleadings as defined and provided for in Rule 1024 of the Pennsylvania Rules of Civil Procedure.

C. Alan Walker, President
C. Alan Walker, President of
Al Hamilton Contracting Company

Dated: May 17, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer to Petition for Injunctive Relief was served on the following by First Class U. S. Mail on May 19, 2000:

John R. Ryan, Esq.
P. O. Box 131
Clearfield, PA 16830

Ann Bell Wood, Attorney at Law
Bell, Silberblatt & Wood
P. O. Box 670
Clearfield, PA 16830

A handwritten signature in dark ink, appearing to read "William C. Kriner", is written over a horizontal line.

William C. Kriner, Esq.
Attorney for Al Hamilton Contracting
Company

PRODUCTION AGREEMENT

THIS AGREEMENT, made and executed this 12th day of April, 2000, by and between AL HAMILTON CONTRACTING COMPANY, a Pennsylvania business corporation with its principal place of business in R. D. Woodland, Clearfield County, Pennsylvania, party of the first part, hereinafter referred to as "HAMILTON,"

AND

SKY HAVEN COAL, INC., a Pennsylvania business corporation with its principal place of business at R. D. # 1, P. O. Box 180, Penfield, Pennsylvania 15849, party of the second part, hereinafter referred to as ("SKY HAVEN").

WITNESSETH:

WHEREAS, HAMILTON owns, controls, and possesses by Lease a parcel of 98 acres, more or less, in Goshen Township, Clearfield County, Pennsylvania, known as the Livergood Tract; and

WHEREAS, HAMILTON desires to engage SKY HAVEN to extract coal from the Livergood Tract and perform related mining work; and

WHEREAS, SKY HAVEN possesses experience, skill and judgment in performing mining work and possesses the necessary machinery, tools and equipment to perform said work.

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth and with the intention of being legally bound, the parties hereto agree as follows:

1. That HAMILTON shall grant unto SKY HAVEN the exclusive right and privilege to mine and remove coal as a contract miner for HAMILTON by the surface mining method from the Livergood Tract as described in the Lease from Lewis and Louise Livergood to HAMILTON dated November 20, 1990.

2. That it is understood and agreed by the parties that SKY HAVEN shall be engaged and operate as an independent

contractor for the purpose of rendering all services necessary to mine and remove coal under this agreement.

3. That SKY HAVEN covenants and agrees as follows with respect to its operations on the properties covered by this Agreement:

(a) That SKY HAVEN shall cause the coal properties covered by this Agreement to be developed and operated and to be reclaimed in substantial compliance with and in substantial conformity to all applicable laws, ordinances, rules, orders, regulations and all of the legal requirements of Federal, State or local agencies or authorities having jurisdiction over surface mining, the violation of which would have a material and adverse effect on the development, operation and management of the properties; and within five (5) days of receiving the same, furnish HAMILTON a copy of any order or notice of any violation or claim of violation of any statute or regulation affecting or relating to the development, operation or management of the properties;

(b) That SKY HAVEN shall mine in a safe and workmanlike manner consistent with good mining practices;

(c) That SKY HAVEN shall rehabilitate and restore the surface mined areas mined and substantially comply with all applicable mine safety laws and regulations, all applicable laws and regulations relating to pollution, water improvements and reclamation and all other laws and regulations applicable to the mining and removal of coal from the properties covered by this Agreement and the operations of SKY HAVEN hereunder whether they be Federal, State or local in nature or whether now or hereinafter enacted or promulgated. In no event shall rehabilitation or restoration of surface mined areas lag by more than ninety (90) days after surface mining is completed. SKY HAVEN'S obligation to rehabilitate the mined out areas shall survive the termination of the Agreement and shall apply to any future governmental or legal requirements which may be imposed

with respect to the areas mined by SKY HAVEN;
(d) That SKY HAVEN shall indemnify and hold HAMILTON harmless from all claims, actions, (both governmental and private), losses and liability resulting from or related to the use, disposal, release or clean up of hazardous wastes, hazardous substances or contaminants on the property from which the coal purchased by HAMILTON is mined and removed. This indemnification and saving harmless includes claims and liabilities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Hazardous Sites Cleanup Act (HSCA) and the rules and regulations duly promulgated thereunder. The parties specifically agree that this provision shall survive the expiration and termination of this Agreement.

4. That all merchantable and marketable coal produced under this Agreement shall be delivered to HAMILTON and that HAMILTON shall be responsible for all costs to market and sell said coal as well as all royalties owed to surface and coal owners of the Livergood Tract.

5. That SKY HAVEN shall be responsible to pay all black lung and reclamation fees for coal mined as well as all costs incident to bonding of state or township roads for the hauling of excess weight loads over said roads. These costs are to include but not be limited to engineering fees, permit application and procural fees, attorneys fees, bond premium fees, collateral bond amounts, cost of litigation with respect to any disputes over bonded road and maintenance costs to rehabilitate roads damaged by excess weight hauling.

6. That HAMILTON shall pay SKY HAVEN a mining fee for mining and removal of coal under this Agreement equal to 80% of the gross sales price of said coal less trucking costs to tipple said coal, if applicable. In no event shall SKY HAVEN receive less than \$18.00 per gross ton. Payment shall be made to SKY HAVEN on or before the 25th day of the month following the month coal was mined, removed and sold.

In the event HAMILTON has no market for coal in any given month, SKY HAVEN has the right of first refusal to purchase said coal at a price to be determined by the parties. It being understood, however, that if SKY HAVEN does market coal produced under this agreement, HAMILTON shall receive not less than \$3.00 per ton or 10% of the gross selling price for said coal, whatever is greater.

7. That in addition to all other covenants of SKY HAVEN herein, SKY HAVEN hereby agrees to indemnify, protect and hold HAMILTON harmless from and against all liabilities, claims, debts, demands, expenses and causes of action relating to injuries to or death of any person or damage to or destruction of any property arising directly or indirectly from SKY HAVEN'S operations and activities under this Agreement, including, without limitation, the use of part of the property, the equipment in connection with the mining and removal of coal by SKY HAVEN and the exercise of SKY HAVEN'S rights hereunder. Furthermore, HAMILTON shall not be liable or responsible for any violation of any laws or regulations or interference with or damage to the right or title of any third party or claims for damages, injuries, death or loss to persons or property which may arise, directly or indirectly, whole or in part, from the exercise by SKY HAVEN of the rights hereunder. SKY HAVEN assumes all such liability and responsibility and shall indemnify, defend, protect and hold HAMILTON harmless from and against same. SKY HAVEN agrees that it will not, in accordance with performing its obligations hereunder, cause or suffer any damage to be done to adjoining lands or streams or any nuisance, public or private, to exist on said lands, and SKY HAVEN agrees to indemnify, defend, protect and hold HAMILTON harmless from and against all loss or damage caused or resulting from any such damage or nuisance caused by SKY HAVEN. This indemnification to protect and hold HAMILTON harmless from and against all damages, of any nature or kind, including consequential damages. This obligation shall survive the termination of this agreement and apply to any future governmental or legal requirements which may be imposed.

8. That in the event of the default in the performance of any of the terms of conditions of this Agreement by either party, the other party shall have the right to terminate this Agreement at any time by giving to the other party thirty (30) days' written notice of intention to cancel, specifying the default

complained of and, at the expiration of said thirty (30) days, unless the defaulting party shall have cured such default, the notifying party shall have the right to cancel this Agreement forthwith, treat the Agreement as terminated and null and void and of no effect whatsoever. It is expressly understood and agreed to by the parties, however, that the cancellation hereunder shall not in any manner preclude either party, or limit in any respect the rights of either party with respect to a proceeding by appropriate judicial proceedings, either in law or in equity, to enforce the observance or performance by either party of the provisions of this Agreement or to recover damages for the breach thereof.

9. That this Agreement is effective as of the day SKY HAVEN moves equipment on the subject premises and shall terminate as of the termination date of the leasehold interest of HAMILTON, or upon the exhaustion of the merchantable and mineable coal on the Livergood Tract, whichever first occurs.

10. That SKY HAVEN may not assign, transfer, mortgage, encumber, sublet or subcontract any of this Agreement in whole or in part, or associate itself with any other party in performing its obligations hereunder, without first obtaining the express written consent of HAMILTON to do so. That no judicial or any proceeding in insolvency or bankruptcy shall have the effect of transferring the interest of SKY HAVEN in or under this Agreement except as to HAMILTON, unless the written consent of HAMILTON is first obtained.

11. That this Agreement represents the entire understanding of the parties and there shall be no modifications of this Agreement unless such modification is in writing and executed by HAMILTON and SKY HAVEN.

12. That notices and statements of payment hereunder shall be deemed to have been correctly sent if sent by regular mail, postage pre-paid at the following addresses:

(a) Al Hamilton Contracting Company
R. D. # 1, Box 87
Woodland, PA 16881

(b) Sky Haven Coal, Inc.
R.D. # 1
P. O. Box 180
Penfield, PA 15849

13. That this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, as if they were named in each and every provision herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

AL HAMILTON CONTRACTING COMPANY

By:

Herbert J. Wilson
Secretary

C. Alan Walker, President
C. Alan Walker, President

ATTEST:

SKY HAVEN COAL, INC.

By:

Joseph Owens
Secretary

Joseph Owens
Joseph Owens, President
President

William C. Kriner

Law Office
31 North Third Street
P. O. Box 1425
Clearfield, PA 16830

FILE COPY

Telephone 814-768-7893

Fax 814-768-7895

April 6, 2000

John Ryan, Esq.
Colavecchi & Ryan
P. O. Box 131
Clearfield, PA 16830

Dear John:

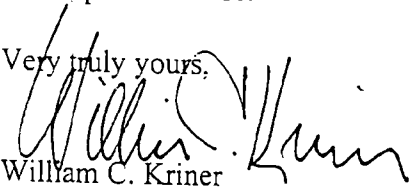
I represent Al Hamilton Coal Company. My client is the lessee of a bituminous coal surface mining lease with Lewis and Louise Livergood dated November 20, 1990. I am responding on behalf of the Hamilton Company to a letter of yours dated April 4, 2000, to my client as well as Sky Haven Coal, Inc.

In your letter you allege that Hamilton has breached the lease agreement by subletting or assigning the lease to Sky Haven Coal, Inc. Please be advised that no sublease or assignment has been made to Sky Haven in contravention of paragraph THIRD of the agreement. Sky Haven has been engaged by Hamilton as a contractor at the site. No rights or liabilities of Hamilton under the lease have in any way been sublet or assigned to Sky Haven. Hamilton remains the only responsible party to Livergoods under the lease agreement.

It is true that Hamilton hoped to have the lease assigned or sublet to Sky Haven. However, the Livergoods were not of a mind to consent to such an arrangement. As a result, Hamilton continues to be the lessee, fully and completely responsible to Livergoods under the terms and conditions of the lease. Having Sky Haven as a mining contractor is not a violation of the duties and responsibilities of Hamilton under the lease.

If you have any questions about this matter, please advise.

Very truly yours,


William C. Kriner

cc: Mr. C. Alan Walker

Exhibit "B"

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

LEWIS A. LIVERGOOD and
LOUISE D. LIVERGOOD, husband
and wife,

Plaintiffs

VS.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL,
INC.

Defendants

:
: NO. 00-513-CD
:
:
: Type of Case: Civil Action
:
:
: Type of Pleading:
:
: Answer To Petition For
: Injunctive Relief
:
:
:
: Filed on Behalf of:
: Defendant, Sky Haven Coal,
: Inc.
:
: Counsel of Record for this
: Party:
:
: Ann B. Wood, Esquire
:
: Supreme Court No. 23364
:
: Bell, Silberblatt & Wood
: 318 East Locust Street
: P.O. Box 670
: Clearfield, PA 16830
:
: (814) 765-5537
:
:
: Counsel of Record for
: Defendant, Al Hamilton
: Contracting Company:
: William C. Kriner, Esquire
: Supreme Court No. 15559
: 31 North Third Street
: P.O. Box 1425
: Clearfield, PA 16830
: (814) 768-7893
:
: Counsel of Record for Plaintiff:
: John R. Ryan, Esquire
: Supreme Court No. 38739
: Colavecchi, Ryan & Colavecchi
: 221 East Market Street
: P.O. Box 131
: Clearfield, PA 16830
: (814) 765-1566
:
:

MAY 22 2000

William A. Sner
Prothonotary

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

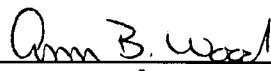
LEWIS A. LIVERGOOD and	:	Civil Action
LOUISE D. LIVERGOOD, husband	:	
and wife,	:	No.00-513-CD
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
AL HAMILTON CONTRACTING	:	
COMPANY and SKY HAVEN COAL,	:	
INC.,	:	
	:	
Defendants	:	

NOTICE TO PLEAD

TO: THE WITHIN NAMED PLAINTIFFS,

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

BELL, SILBERBLATT & WOOD
BY



Ann B. Wood, Attorney for
Defendant, Sky Haven Coal,
Inc.

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

LEWIS A. LIVERGOOD and	:	Civil Action
LOUISE D. LIVERGOOD, husband	:	
and wife,	:	No.00-513-CD
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
AL HAMILTON CONTRACTING	:	
COMPANY and SKY HAVEN COAL,	:	
INC.,	:	
	:	
Defendants	:	

ANSWER TO PETITION FOR INJUNCTIVE RELIEF

NOW COMES the Defendant, Sky Haven Coal, Inc., by its attorneys, Bell, Silberblatt & Wood, and sets forth its Answer To Petition For Injunctive Relief as follows:

1. Paragraph 1 of the Petition is admitted.
2. Paragraph 2 of the Petition is admitted.
3. Paragraph 3 of the Petition is admitted.
4. Paragraph 4 of the Petition is admitted.
5. Paragraph 5 of the Petition is admitted.

6. Paragraph 6 of the Petition is denied as stated and on the contrary it is averred that Al Hamilton Contracting Company

("Hamilton") has not assigned nor sublet Petitioners' property to Sky Haven Coal, Inc. ("Sky Haven"), but rather that Sky Haven has been mining on Petitioners' property as a contract stripper under specific agreement with Hamilton.

7. Paragraph 7 of the Petition is admitted insofar as Sky Haven admits receiving a letter objecting to assignment or subletting of the premises, but it is denied that this has any relationship to the contract stripping arrangements between Hamilton and Sky Haven. It is further denied that Sky Haven had any knowledge of any communication from Petitioners to Hamilton.

8. Paragraph 8 of the Petition is denied as stated and on the contrary it is averred that Sky Haven has commenced and continues mining operations on the property as a contract stripper since late March, 2000. The averments as to legal basis being a legal conclusion, no answer is required thereto. If an answer is required, the Petition as stated is denied and it is averred that Sky Haven operating as a contract stripper for Hamilton is within the terms and conditions of the lease of November 29, 1990 between Hamilton and Petitioners.

9. Paragraph 9 of the Petition is denied as stated and on the contrary it is averred that the mining being performed is within the scope of Petitioners' original lease. It is further averred that any dispute between Petitioners and Hamilton is a contract action which does not warrant injunctive relief.

NEW MATTER

10. Petitioners possess an adequate remedy at law for breach of contract and damages thereunder.

11. The mining by Sky Haven as a contract stripper for Hamilton is being performed in accordance with the provisions of Petitioners' lease with Hamilton of November 29, 1990.

12. Sky Haven has no direct relationship with Petitioners in this matter, but is contracted for mining under specific agreement with Hamilton.

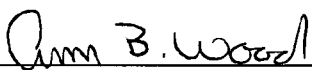
13. That injunctive relief of an ongoing mining operation would cause significant monetary loss to Sky Haven both under its agreement with Hamilton and the added expense of shutting down an ongoing operation.

14. That injunctive relief stopping an ongoing mining operation would create safety and environmental issues with attendant expenses.

WHEREFORE, Sky Haven Coal, Inc. prays the Honorable Court to deny and dismiss the Petition For Injunctive Relief.

Respectfully submitted,

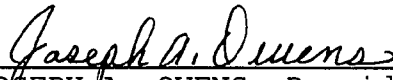
BELL, SILBERBLATT & WOOD
By:



Ann B. Wood, Attorney for
Defendant, Sky Haven Coal, Inc.

VERIFICATION

I, JOSEPH A. OWENS, President of SKY HAVEN COAL, INC., state that the within statements in the foregoing Answer To Petition For Injunctive Relief are 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.A., Section 4904, relating to unsworn falsifications to authorities.



JOSEPH A. OWENS, President
SKY HAVEN COAL, INC.

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

LEWIS A. LIVERGOOD and	:	Civil Action
LOUISE D. LIVERGOOD, husband	:	No.00-513-CD
and wife,	:	
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
AL HAMILTON CONTRACTING	:	
COMPANY and SKY HAVEN COAL,	:	
INC.,	:	
	:	
Defendants	:	

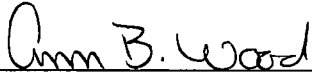
CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of the Answer To
Petition For Injunctive Relief with reference to the above matter
has been served upon the Attorney for the Plaintiffs and Attorney
for Defendant, Al Hamilton Contracting Company, by mailing a true
and correct copy of same to them by United States First Class Mail,
postage prepaid, addressed as follows on May 22, 2000 :

John R. Ryan, Esquire
COLAVECCHI, RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
Attorney For Plaintiffs

William C. Kriner, Esquire
31 North Third Street
P.O. Box 1425
Clearfield, PA 16830
Attorney For Al Hamilton Contracting
Company

BELL, SILBERBLATT & WOOD
By:


Ann B. Wood, Esquire
Attorney for Defendant,
Sky Haven Coal, Inc.

In The Court Of Common Pleas
Of Clearfield County,
Pennsylvania, Civil Action
No.00-513-CD

Lewis A. Livergood and
Louise D. Livergood,
husband and wife, Plaintiffs
vs.
Al Hamilton Contracting
Company and Sky Haven Coal,
Inc.,
Defendants

Answer To Petition For
Injunctive Relief

FILED

0/2:55 PM
MAY 22 2000

(initials)

William A. Shaw
Prothonotary
J ecto Qct. 13000

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

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

LEWIS A. LIVERGOOD and
LOUISE D. LIVERGOOD,
husband and wife,

vs.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL,
INC.

Defendants

No. 00-513-CD

Type of Pleading: Answer and New
Matter

Filed on behalf of: Al Hamilton Contracting
Company

Counsel of Record for this
Party: William C. Kriner, Esq.
Supreme Court No.: 15559
31 North Third Street
P.O. Box 1425
Clearfield, PA 16830
(814) 768-7893

FILED

AUG 30 2000

William A. Shaw
Prothonotary

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

LEWIS A. LIVERGOOD and
LOUISE D. LIVERGOOD,
husband and wife,

Plaintiffs

vs.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL,
INC.

Defendants

No. 00-513-CD

ANSWER AND NEW MATTER

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted in part and denied in part. It is admitted that the letter attached to the Plaintiff's Complaint as Exhibit "B" was sent to Defendant Al Hamilton Contracting Company ("AHC"). It is denied, however, that the letter properly characterizes the oral communication of C. Alan Walker to the Plaintiffs. On the contrary, it is alleged that C. Alan Walker contacted the Livergoods by phone on March 21, 2000, requesting that they consent to the assignment of the lease dated November 29, 1990, to Sky Haven, Inc.

10. Admitted in part and denied in part. It is admitted that the letter dated April 4, 2000, was sent by Attorney Ryan to AHC. However, it is denied that the letter was sent at the request

of the Plaintiffs. On the contrary, Defendant AHC, after reasonable investigation is without knowledge or information sufficient to form a belief as to the circumstances behind the April 4, 2000, letter.

Count I

11. Denied. On the contrary, Sky Haven, Inc., entered the premises covered by the lease of November 29, 1990, as a contract miner of AHC. The mining by Sky Haven, Inc., is fully within the terms and conditions of the lease agreement between AHC and the Plaintiffs and no term or condition of the agreement has been violated by AHC. AHC is the sole lessee of the Plaintiffs and is fully responsible for all terms and conditions of the lease between AHC and the Plaintiffs dated November 29, 1990.

12. Denied. On the contrary, Sky Haven is conducting mining operations as a contract miner. The operations began in late March 2000 and are memorialized in a Production Agreement attached hereto, marked Exhibit "A", and incorporated herein by reference.

13. Denied. Although the allegations in Paragraph 13 of the Plaintiffs' Complaint are conclusions of law, they are denied. In further answer thereto, AHC alleges that no term or condition of the November 29, 1990, lease agreement has been breached by AHC. On the contrary, no assignment or subleasing of the agreement has been made and Sky Haven, Inc., is acting as a contract miner on the Livergood property under the terms of the Production Agreement attached hereto as Exhibit "A" and incorporated herein by reference.

14. Denied. On the contrary, it is alleged that Sky Haven, Inc., has been conducting mining operations on the Livergood property as a contract miner for AHC. The activities of Sky Haven, Inc., are in no way a violation of the lease agreement dated November 29, 1990, and no term or condition of said agreement has been breached.

15. Denied. The allegations of Paragraph 15 of the Plaintiff's Complaint are conclusions of law which require no answer. However, in answer thereto, AHC alleges that Sky Haven, Inc., is acting as a contract miner under a Production Agreement attached hereto, marked Exhibit "A" and incorporated herein by reference. Such activity is not a breach of the lease dated November 29, 1990, in that AHC is still the responsible party to the Plaintiffs under the lease; no term of the lease has been violated and all rights and responsibilities under the lease belong to AHC alone.

16. Denied. On the contrary, there is no breach of the November 29, 1990, agreement so no damages can result. Furthermore, the mining operations on the property are fully in accord with the agreement, in compliance with all terms and conditions of the lease dated November 29, 1990, and the result bargained for and contemplated in said lease.

Count II

17. - 20. These are allegations concerning Defendant Sky Haven, Inc., and not Defendant AHC. As a result, no answer is required. If, however, an answer is required, the allegations in Paragraphs 17 through 20 of the Plaintiff's Complaint are denied.

New Matter

21. That the lease dated November 29, 1990, does not prohibit AHC from mining and removing coal using a contract miner.

22. That the lease dated November 29, 1990, does not prohibit AHC from associating with any other party to mine and remove coal for AHC under said lease.

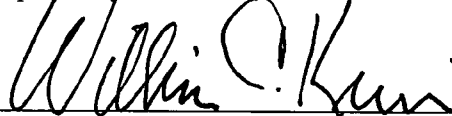
23. That AHC continues to be solely responsible and liable to the Plaintiffs for all the terms and conditions of the lease dated November 29, 1990.

24. That the Production Agreement between AHC and Sky Haven, Inc., attached hereto, marked Exhibit "A" and incorporated herein by reference, is not an assignment or subletting of the lease dated November 29, 1990.

25. That the Production Agreement between AHC and Sky Haven, Inc., merely engages Sky Haven, Inc., as a contract miner to mine and remove coal for AHC under the lease dated November 29, 1990, and in no way assigns or subleases to Sky Haven, Inc., any rights or responsibilities of AHC under said lease.

WHEREFORE, Defendant Al Hamilton Contracting Company prays the Court to dismiss the Plaintiffs' Complaint and enter judgment against the Plaintiffs and on behalf of Defendant Al Hamilton Contracting Company.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'William C. Kriner', is written over a horizontal line.

William C. Kriner

Attorney for Defendant

Al Hamilton Contracting Company

Verification

I verify that the statements made in this Answer and New Matter are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 PA. C.S.A. Section 4904 relating to unsworn falsification to authorities and is given pursuant to the provisions for verification of pleadings as defined and provided for in Rule 1024 of the Pennsylvania Rules of Civil Procedure.

C. Alan Walker, President

C. Alan Walker, President of
Al Hamilton Contracting Company

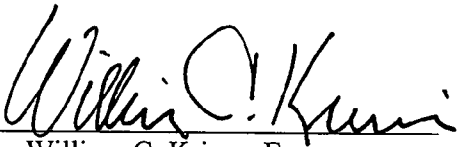
Dated: August 30, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer and New Matter was served on the following by First Class U. S. Mail on August 30, 2000:

John R. Ryan, Esq.
P. O. Box 131
Clearfield, PA 16830

Ann Bell Wood, Attorney at Law
Bell, Silberblatt & Wood
P. O. Box 670
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Al Hamilton Contracting
Company

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LEWIS A. LIVERGOOD and
LOUISE D. LIVERGOOD, husband
and wife,

Plaintiffs

CIVIL DIVISION

NO. 00 - 513 - CD

vs.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL,
INC.,

Defendants

REPLY TO NEW MATTER

Filed on Behalf of: Plaintiffs

Counsel of Record For This Party:

JOHN R. RYAN, ESQUIRE
Pa. I. D. #38739

Colavecchi, Ryan & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED

SEP 06 2000

William A. Shaw
Prothonotary

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

LEWIS A. LIVERGOOD and :
LOUISE D. LIVERGOOD, husband :
and wife, :
Plaintiffs :
vs. : NO. 00 - 513 - CD
AL HAMILTON CONTRACTING COMPANY :
and SKY HAVEN COAL, INC., :
Defendants :

REPLY TO NEW MATTER

AND NOW, comes Lewis A. Livergood and Louise D. Livergood, husband and wife, Plaintiffs above named, and by their attorney, John R. Ryan, Esquire, make a reply to the New Matter of Defendant, Al Hamilton Contracting Company as follows:

21. The averments of Paragraph 21 represent a conclusion of law and require no response. To the extent that the said averments represent allegations of fact, it is denied that Defendant Hamilton was permitted under the terms of the Lease Agreement from using a contract miner to operate coal mining operations on the premises of the Plaintiffs.


22. Denied for the reasons set forth in Paragraph 21 above.

23. The allegations of Paragraph 23 represent a conclusion of law and no response is required.

24. The allegations of Paragraph 24 represent a conclusion of law and no response is required.

25. The allegations of Paragraph 25 represent a conclusion of law and no response is required.

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Al Hamilton Contracting Company as set forth in Plaintiffs' Complaint.



JOHN R. RYAN, ESQUIRE
Attorney for Plaintiffs

VERIFICATION

We, Lewis A. Livergood and Louise D. Livergood, Plaintiffs, verify that the statements made in this Reply to New Matter are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.


Lewis A. Livergood


Louise D. Livergood

9-5-2000
Date

Lab over margin

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO. 00-513-CD

LEWIS A. LIVERGOOD and LOUISE D.
LIVERGOOD, husband and wife,
Plaintiffs

vs.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL, INC.,
Defendants

REPLY TO NEW MATTER

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P.O. BOX 131
CLEARFIELD, PA 16830

FILED

SEP 06 2000
01:21:05/ly
William A. Shaw
Prothonotary

3 sent to ATTN

ERS

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

LEWIS A. LIVERGOOD and
LOUISE D. LIVERGOOD, husband
and wife,

Plaintiffs

VS.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL,
INC.

Defendants

:
: NO. 00-513-CD
:
: Type of Case: Civil Action
:
: Type of Pleading:
:
: Answer To Complaint
:
:
:
: Filed on Behalf of:
: Defendant, Sky Haven Coal,
: Inc.
:
: Counsel of Record for this
: Party:
:
: Ann B. Wood, Esquire
:
: Supreme Court No. 23364
:
: Bell, Silberblatt & Wood
: 318 East Locust Street
: P.O. Box 670
: Clearfield, PA 16830
:
: (814) 765-5537
:
:
: Counsel of Record for
: Defendant, Al Hamilton
: Contracting Company:
: William C. Kriner, Esquire
: Supreme Court No. 15559
: 31 North Third Street
: P.O. Box 1425
: Clearfield, PA 16830
: (814) 768-7893
:
: Counsel of Record for Plaintiff:
: John R. Ryan, Esquire
: Supreme Court No. 38739
: Colavecchi, Ryan & Colavecchi
: 221 East Market Street
: P.O. Box 131
: Clearfield, PA 16830
: (814) 765-1566
:
:
:

FILED

SEP 22 2000

William A. Shaw
Prothonotary

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

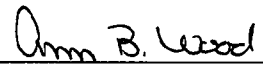
LEWIS A. LIVERGOOD and	:	Civil Action
LOUISE D. LIVERGOOD, husband	:	
and wife,	:	No.00-513-CD
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
AL HAMILTON CONTRACTING	:	
COMPANY and SKY HAVEN COAL,	:	
INC.,	:	
	:	
Defendants	:	

NOTICE TO PLEAD

TO: THE WITHIN NAMED PLAINTIFFS,

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

BELL, SILBERBLATT & WOOD
BY



Ann B. Wood, Attorney for
Defendant, Sky Haven Coal,
Inc.

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

	:	Civil Action
LEWIS A. LIVERGOOD and	:	
LOUISE D. LIVERGOOD, husband	:	No.00-513-CD
and wife,	:	
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
AL HAMILTON CONTRACTING	:	
COMPANY and SKY HAVEN COAL,	:	
INC.,	:	
	:	
Defendants	:	

ANSWER TO COMPLAINT

NOW COMES Defendant, Sky Haven Coal, Inc., by and through its attorneys, Bell, Silberblatt & Wood and sets forth its Answer to the Complaint as follows:

1. Paragraph 1 of the Complaint is admitted.
2. Paragraph 2 of the Complaint is admitted.
3. Paragraph 3 of the Complaint is admitted.
4. Paragraph 4 of the Complaint is admitted.
5. Paragraph 5 of the Complaint is admitted.
6. Paragraph 6 of the Complaint is admitted.

7. Paragraph 7 of the Complaint is denied as stated and on the contrary it is averred that the matters contained therein being within the particular knowledge of Plaintiffs and Defendant, Al Hamilton Contracting Company ("Hamilton"), after reasonable investigation, the Defendant, Sky Haven Coal, Inc., ("Sky Haven"), is without sufficient knowledge or information to form a belief as to the truth of the averment and strict proof thereof is demanded at trial.

8. Paragraph 8 of the Complaint is denied as stated and on the contrary it is averred that the matters contained therein being within the particular knowledge of Plaintiffs and Defendant, Al Hamilton Contracting Company ("Hamilton"), after reasonable investigation, the Defendant, Sky Haven Coal, Inc., ("Sky Haven"), is without sufficient knowledge or information to form a belief as to the truth of the averment and strict proof thereof is demanded at trial.

9. Paragraph 9 of the Complaint denied as stated and on the contrary it is averred that the matters contained therein being within the particular knowledge of Plaintiffs and Defendant, Al Hamilton Contracting Company ("Hamilton"), after reasonable investigation, the Defendant, Sky Haven Coal, Inc., ("Sky Haven"), is without sufficient knowledge or information, other than Exhibit "B" attached to the Complaint, to form a belief as to the truth of the averment and strict proof thereof is demanded at trial.

10. Paragraph 10 of the Complaint is admitted.

COUNT I

11.-16. Paragraphs 11 through 16 being directed to Defendant Hamilton, no answer is required by Defendant Sky Haven.

COUNT II

Defendant Sky Haven would incorporate herein by reference its answers to Paragraph 1 through 10 as though set forth. Paragraphs 11 through 16 did not require answer by Defendant Sky Haven.

17. Paragraph 17 of the Complaint is denied as stated and on the contrary it is averred that Sky Haven entered the property of the Plaintiffs as a contract stripper under agreement with Hamilton, Plaintiffs' Lessee.

18. Paragraph 18 of the Complaint is admitted.

19. Paragraph 19 of the Complaint is denied as stated and on the contrary it is averred that Sky Haven did know Plaintiffs did not want to lease directly to Sky Haven. It is further averred that Sky Haven entered the property and has conducted mining pursuant to a contract stripping agreement with Hamilton.

20. Paragraph 20 of the Complaint is denied as stated and on the contrary it is averred that all mining is being

performed in accordance with the lease between Hamilton and Plaintiffs.

NEW MATTER

NOW COMES the Defendant Sky Haven and sets forth its new matter as follows:

21. Sky Haven has an agreement with Hamilton to contract strip Plaintiffs' property.

22. Hamilton is still fully obligated to Plaintiffs pursuant to their lease of November 29, 1990.

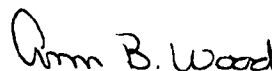
23. Sky Haven has no contractual relationship with Plaintiffs.

24. Plaintiffs have suffered no damages as their lease with Hamilton is being fully performed by Hamilton and all payments due thereunder are being paid.

WHEREFORE, Defendant Sky Haven would request the Honorable Court to dismiss the above matter against Sky Haven with prejudice and/or to enter judgment in favor of Sky Haven and against the Plaintiffs.

Respectfully submitted,

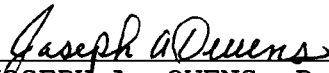
BELL, SILBERBLATT & WOOD
By:



Ann B. Wood, Attorney for
Defendant, Sky Haven Coal, Inc.

VERIFICATION

I, JOSEPH A. OWENS, President of SKY HAVEN COAL, INC., state that the within statements in the foregoing Complaint are 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.A., Section 4904, relating to unsworn falsifications to authorities.



JOSEPH A. OWENS, President
SKY HAVEN COAL, INC.

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

LEWIS A. LIVERGOOD and : Civil Action
LOUISE D. LIVERGOOD, husband :
and wife, : No.00-513-CD
Plaintiffs :
vs. :
AL HAMILTON CONTRACTING :
COMPANY and SKY HAVEN COAL, :
INC., :
Defendants :

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of the Answer To Complaint with reference to the above matter has been served upon the Attorney for the Plaintiffs and Attorney for Defendant, Al Hamilton Contracting Company, by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on September 22, 2000 :

John R. Ryan, Esquire
COLAVECCHI, RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
Attorney For Plaintiffs

William C. Kriner, Esquire
31 North Third Street
P.O. Box 1425
Clearfield, PA 16830
Attorney For Al Hamilton Contracting
Company

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood
Ann B. Wood, Esquire
Attorney for Defendant,
Sky Haven Coal, Inc.

In The Court Of common Pleas
Of Clearfield County,
Pennsylvania Civil Action
No.00-513-CD

Lewis A. Livergood and
Louise D. Livergood,
Plaintiffs

VS.

Al Hamilton Contracting
Company and Sky Haven Coal,
Inc.,
Defendant

ANSWER TO COMPLAINT

FILED

SEP 22 2009
01/10/2010
William A. Shaw
Prothonotary
for

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LEWIS A. LIVERGOOD and
LOUISE D. LIVERGOOD, husband
and wife,

Plaintiffs

vs.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL,
INC.

Defendants

CIVIL DIVISION

No. 00 - 513 - CD

REPLY TO NEW MATTER

Filed on behalf of:

Plaintiffs, LEWIS A.
LIVERGOOD and LOUISE D.
LIVERGOOD, Husband and Wife

Counsel of Record for
Said Party:

JOHN R. RYAN, ESQUIRE
PA I.D. 38739

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED

SEP 28 2000

William A. Shaw
Prothonotary

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

LEWIS A. LIVERGOOD and	:	
LOUISE D. LIVERGOOD, husband	:	
and wife,	:	
Plaintiffs	:	
	:	
vs.	:	No. 00 - 513 - CD
	:	
AL HAMILTON CONTRACTING	:	
COMPANY and SKY HAVEN COAL,	:	
INC.	:	
Defendants	:	

REPLY TO NEW MATTER

NOW COMES, Lewis A. Livergood and Louise D. Livergood, his wife, Plaintiffs above named, and make their Reply to the New Matter of Defendant, Sky Haven Coal, Inc., as follows:

21. It is admitted that Defendant, Sky Haven Coal, Inc., has entered into an agreement with Hamilton to mine the property of the Plaintiffs.


22. The allegations of Paragraph 22 of Defendant's New Matter represent a conclusion of law to which no response is required.

23. Admitted.

24. The allegations of Paragraph 24 represent a conclusion of law to which no response is required. In the event that the allegations of Paragraph 24 represent averments of fact, they are

denied. On the contrary, Plaintiffs believe and therefore aver that Defendant, Hamilton, has breached the Lease Agreement with the Plaintiffs by wrongfully assigning the mining operations to be performed on Plaintiffs' property to Defendant, Sky Haven. Accordingly, Plaintiffs believe and further aver that Defendant, Sky Haven, is wrongfully on the property of the Plaintiffs.

WHEREFORE, Plaintiffs request that the Answer and New Matter of Defendant, Sky Haven, be dismissed and that the Plaintiffs be awarded the relief requested in their Complaint.



JOHN R. RYAN, ESQUIRE
Attorney for Plaintiffs

VERIFICATION

We verify that the statements made in this Reply to New Matter are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. 4904, relating to unsworn falsification to authorities.


LEWIS A. LIVERGOOD


LOUISE D. LIVERGOOD

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No. 00 - 513 - CD

LEWIS A. LIVERGOOD and LOUISE D.
LIVERGOOD, Husband and Wife,
Plaintiffs

vs.

AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL,
INC.,
Defendant

REPLY TO NEW MATTER

FILED
SEP 28 2000
William A. Shaw
Prothonotary

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

Lap over margin

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

64
LEWIS A. LIVERGOOD and
LOUISE D. LIVERGOOD, husband
and wife,

Plaintiffs

vs.

112
AL HAMILTON CONTRACTING
COMPANY and SKY HAVEN COAL,
INC.

116
Defendants

CIVIL DIVISION

No. 00 - 513 - CD

PRAECIPE TO DISCONTINUE

Filed on behalf of:

Plaintiffs, LEWIS A.
LIVERGOOD and LOUISE D.
LIVERGOOD, Husband and Wife

Counsel of Record for
Said Party:

JOHN R. RYAN, ESQUIRE
PA I.D. 38739

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED

FEB 01 2001

William A. Shaw
Prothonotary

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

LEWIS A. LIVERGOOD and :
LOUISE D. LIVERGOOD, husband :
and wife, :

Plaintiffs :

vs. :

No. 00 - 513 - CD

AL HAMILTON CONTRACTING :
COMPANY and SKY HAVEN COAL, :
INC. :

Defendants :

PRAECIPE TO DISCONTINUE

TO: WILLIAM SHAW, PROTHONOTARY

Please mark the record in the above-captioned action
discontinued, settled and ended.



JOHN R. RYAN, ESQUIRE
Attorney for Plaintiffs

DATE: 1/31/01

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No. 00-513-CD

LEWIS A. LIVERGOOD and
LOUISE D. LIVERGOOD, Husband and
Wife,
Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY
and SKY HAVEN COAL, INC.,
Defendants

PRAECIPE TO DISCONTINUE

FILED
01/10/12
FEB 01 2001

William A. Shaw
Prothonotary

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
ACROSS FROM COURTHOUSE
P. O. BOX 131
CLEARFIELD, PA 16830