

DOCKET NO. 173

NUMBER	TERM	YEAR
<u>513</u>	<u>November</u>	<u>1960</u>

Ray S. Walker t/a

Bradford Coal Company

VERSUS

John Wilson

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RAY S. WALKER t/a : 513
BRADFORD COAL COMPANY, Plaintiff : No. ~~5077~~ Term 1960
vs. :
JOHN WILSON, Defendant : IN ASSUMPSIT

COMPLAINT IN ASSUMPSIT

1. The plaintiff, Ray S. Walker, is a resident of Bigler, Bradford Township, Clearfield County, Pennsylvania, and does business under the registered name of Bradford Coal Company.

2. The defendant, John Wilson, is a resident of Woodland, Bradford Township, Clearfield County, Pennsylvania, and carries on business as a coal operator.

3. On January 2, 1957 the plaintiff and the defendant entered into a written production contract under the terms of which the defendant agreed to produce for the plaintiff, by strip mining methods, the "D" coal from the David A. McGary tract in Pike Township, Clearfield County, Pennsylvania. A true and correct copy of the said contract is hereunto annexed, marked Exhibit A, and by reference incorporated herein.

4. By paragraph number 2 of the said contract of January 2, 1957 it is provided inter alia as follows:

"The general obligation of the contractor is to mine and remove such coal in the areas prescribed...disposing of the water in the pits, by modern and efficient strip mining methods."

The defendant herein is the party designated as the "contractor" in the said agreement.

5. By paragraph 4 of the said agreement it is provided, inter alia, as follows:

"The contractor agrees to conduct his operations in a lawful manner, complying with the laws of the United States of America and the Commonwealth of Pennsylvania, and such rules as may lawfully be promulgated thereunder, relating to the open pit mining of bituminous coal. The contractor agrees to cut and maintain such bleeders and ditches as may be necessary to keep the pits in a reasonably dry condition or to control the flow of water therefrom in accordance with law, when requested to do so by the company."

The defendant herein is the party referred to in the contract as the "contractor".

6. That on or about May 12, 1959 the division of sanitary engineering of the Sanitary Water Board made an investigation of the operations being carried on by the defendant under the aforesaid contract with the plaintiff on the McGary property, and also on operations on the Matilda Bloom property, contiguous to the McGary property, where operations were being carried on by the defendant for Quir Coal Company; and that the defendant, John Wilson, was present at the time the said investigation was made by the mine inspector on the property; and that the defendant, John Wilson, was shown by the inspector for the Sanitary Water Board the correction in drainage and ditching required to be made on the McGary property.

7. That by letter dated July 21, 1959, the defendant, John Wilson, attempted to terminate the said agreement of January 2, 1957 as of August 21, 1959.

8. That on or about September 30, 1959 the employees of the Bradford Coal Company went to the McGary property with the defendant, John Wilson, where the defendant explained to them that the Sanitary Water Board required that a drainage ditch be cut through the spoil pile between the McGary and Matilda Bloom properties so as to drain surface waters into Hogback Run; and the employees of the said company requested the defendant to move in equipment and to do the required ditching and drainage work as a part of his obligation under the aforesaid contract, but that the defendant refused to do the said work or to bear the expense of having it done.

9. That the plaintiff was required, in order to comply with the lawful regulations of the Sanitary Water Board, to have another contractor move into the property and do the necessary ditching and drainage work, and that this was done at the expense of the plaintiff and the plaintiff on November 2, 1959 paid for such ditching and drainage work the sum of Five Hundred (\$500.00) Dollars.

10. That on or about November 2, 1959, and on several subsequent occasions, the plaintiff demanded that the defendant pay him the said sum of \$500.00 but that the defendant has refused to make any such payment.

11. That there is due and owing the plaintiff from the defendant the sum of \$500.00 with interest from November 2, 1959.

James K. Nestor

Attorney for the Plaintiff

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :
:

RAY S. WALKER, being duly sworn according to
law, deposes and says that he is the plaintiff in the fore-
going action and that the facts set forth therein are true
and correct to the best of his information and belief.

Ray S. Walker

Sworn and subscribed
before me this 20 day
of January, A.D., 1961.

Elizabeth W. Wilson

NOTARY PUBLIC
My Commission Expires
September 15 1961

EXHIBIT "A"

PRODUCTION CONTRACT

THIS AGREEMENT, made and executed in duplicate this 2nd day of January A.D., 1957, by and between RAY S. WALKER of Bigler, Clearfield County, Pennsylvania, trading as BRADFORD COAL COMPANY, party of the first part (hereinafter sometimes called the Company); and

JOHN WILSON of Woodland, Clearfield County, Pennsylvania, party of the second part (hereinafter sometimes called the Contractor).

W I T N E S S E T H:

That the parties hereto in consideration of the mutual covenants hereinafter contained, and with the intention of being legally bound, have agreed between themselves as follows:

1. GENERAL PURPOSE OF THE AGREEMENT: This agreement sets forth the terms upon which the contractor will produce for the company, by strip mining methods, the "D" coal from the David A. McGary Tract in Pike Township, Clearfield County, Pennsylvania, and/from such other seams of coal or other properties in the same general operating area as may from time to time be designated by the company, and also the terms upon which the company shall pay the contractor for the production of the said coal.

2. EQUIPMENT AND LABOR: The Contractor agrees to hire, employ and pay all labor which may be necessary for the production and preparation of the said coal in the pits, and for the proper loading of the said coal in the pits on trucks to be furnished

by the company; and the contractor agrees to supervise closely the method and manner of mining and loading the coal in the pits by its employees so that the coal shall be produced and prepared and loaded into the company's trucks in a clean and marketable condition. The contractor shall further furnish and supply, at its own expense, such machinery and equipment as may be necessary or convenient for the production and loading of the said coal, producing and loading the same in a clean and marketable condition and supplying and operating for such purposes the contractor's 3500 Manitowoc, its D-8 and D-6 Caterpillar Tractors, and such other drills, compressors, pumps and other equipment as may be necessary or convenient for the proper production and loading of the coal. The general obligation of the contractor is to mine and remove such coal in the areas prescribed as may from time to time be designated by the company, taking and removing the overburden therefrom, and stripping, producing, shooting, cleaning in the pits, and loading the said coal, and disposing of the water in the pits, by modern and efficient strip mining methods. It is also understood and agreed that the contractor shall keep the roads in the pits and the road leading from the pits to the township road in a good and passable condition so that the trucks operated by the company for the transportation of the coal shall not be unduly delayed in making deliveries and in picking up coal from the open pits. The contractor further agrees to conduct his operations in a workmanlike and safe manner having due regard to the safety of persons therein and thereabout and the possibility of injury or damage to property therein and thereabout. The contractor agrees to furnish to the company certificates evidencing the existence of Workmen's Compensation Insurance policies for the protection of the employees

of the contractor and also certificates evidencing the existence of public liability and property damage insurance, protecting both the contractor and the company from liability with limits of \$100,000 and \$300,000. The contractor agrees to indemnify and save the company harmless of and from any and all claims for damages, suits or actions which may arise out of the operations of the contractor upon the premises referred to, or in connection with the services agreed to be rendered under this contract, whether such injuries shall be to persons or property, and whether such actions, claims or suits shall be predicated upon theories of negligence or theories of absolute liability or otherwise. It is understood, however, that the contractor does not indemnify the company against any of the risks which are assumed by the company under the terms of paragraph five hereinafter contained in this agreement.

3. TERMS OF PAYMENT: The contractor shall be paid upon the basis of the number of net tons of coal produced by him and accepted by the company's inspector in the pits and loaded upon the company's trucks in a reasonably clean condition, it being understood that the contractor shall not load any coal which has not been accepted by the company's inspector. The parties agree upon the following rates of payment for each net ton of 2,000 pounds of coal:

- (a) When no shooting is involved in the production of the coal, at the rate of \$3.00 for each net ton of coal; and
- (b) Where it is necessary to shoot the coal in order to produce it, at the rate of \$3.50 for each net ton of coal.

"Shooting" as referred to in the foregoing paragraphs shall not include the shooting of the key way but shall include the drilling of the high wall and the shooting of the high wall otherwise.

Payment and settlement shall be based upon the truck scale weights of the coal, or upon the railroad scale weights of the coal where coal is loaded, without mixing with any other coal, and without passing over any truck scales. The contractor shall be paid for coal dumped in the bins at the company's preparation plants or dumped in the railroad car in the period beginning on the first day and ending on the 15th day of each month, on the last day of the same month; and for coal dumped in the bins at the company's preparation plants or dumped in the railroad car in the period beginning on the 16th and ending on the last day of each month, on the 15th ~~day~~ of the succeeding month. The company shall keep complete records of the truck scale weights and railroad scale weights of the coal and the contractor shall have the right to inspect the company's weight records at any time and to take such copies of these records as it may require. The contractor shall also have the right to verify railroad scale weights against the records of the railroad over which the coal may pass, provided, however, that the assemblage and verification of these weights shall be at the contractor's own expense.

4. MANNER OF OPERATING AND REFILLING: The contractor agrees to conduct his operations in a lawful manner, complying with the laws of the United State of America and the Commonwealth of Pennsylvania, and such rules as may lawfully be promulgated thereunder, relating to the open pit mining of bituminous coal.

The contractor agrees to cut and maintain such bleeders and ditches as may be necessary to keep the pits in a reasonably dry condition or to control the flow of water therefrom in accordance with law, when requested to do so by the company. The contractor further agrees that without additional compensation than that stipulated for, it will, from time to time, as operations are ended on portions of the premises which are the subject of this contract, do such leveling and partial refilling as is required under the terms of the Bituminous Coal Open Pit Mining Conservation Act of 1945, as the same may now or hereafter be amended, and shall do such leveling and partial refilling to the satisfaction of the Secretary of Mines of the Commonwealth of Pennsylvania, or his representatives, and in such manner as will meet approval upon inspection so that the company may obtain the release of any bonds posted by it; it being understood, however, that any planting required to be done upon the premises shall be done by the company and at its expense.

It is further understood and agreed that for the purpose of securing compliance by the contractor with the terms and provisions of this paragraph relating to leveling and partial refilling, the company shall withhold from payments falling due hereunder the sum of ten cents per net ton. As the "area affected" within the meaning of the Act on any given property reaches ten acres then the contractor can level such ten acre area and do such partial refilling as required by the Act, and when the area so leveled and partially refilled shall be approved for planting by the inspector, the contractor shall receive five cents per net ton on the approximate tonnage removed from that area as determined

by the estimates of the company's engineer. When any such ten acre area has been planted and the planting has been approved, the remaining five cents per net ton on coal estimated to have been removed from such area by the company's engineers shall be paid to the contractor.

5. INDEMNITY: The company shall be responsible for the titles and leasehold estates, and the establishment of the boundaries of the lands, upon which the contractor may be required to enter and strip mine under the terms of this contract, and for securing and providing for the contractor the right to spoil upon or damage adjacent lands, if that be directed by the company; and the company shall indemnify the contractor and hold him, his employees and agents, wholly harmless from any damages, claims, demands or suits by any person or persons arising out of the failure or encumbrance of any titles or leasehold estates, or the failure to establish correct boundaries of lands, upon which the contractor is required to strip mine under the terms of this contract, or arising out of any failure of the company to obtain and secure the right to spoil upon or to damage adjacent lands, where that may have been directed by the company.

6. TRUCK SUPPLY: The company agrees to furnish sufficient trucking to handle at least 2,000 net tons of coal in each calendar month from the stripping operations of the contractor hereunder, unless limited in its ability to ship coal by inadequate railroad car supply or limited in its ability to transport coal by township road conditions or township road limits, or unless limited in its production, transportation and shipment of coal by other factors and circumstances beyond the company's control.

7. TERM OF THE CONTRACT: This agreement shall continue in full force and effect at the will of both parties and either party hereto may terminate it at any time and without cause by giving to the opposite party thirty (30) days' written notice of his desire and intention to terminate the same. Such notice shall be regarded as effective and in compliance with this agreement if placed in due course of mail by registered mail, return receipt requested, addressed to the respective party, at the addresses herein set forth. It is also agreed that the parties may, from time to time, by executing signed memoranda in writing, change the areas to be stripped and operated hereunder, the schedule of prices herein set forth, and other terms of this contract, without formal re-execution of a further agreement.

8. ARBITRATION: In case any disagreement or difference shall arise between the parties hereto or any person claiming under them in relation to this agreement or arising thereout, whether as to the construction or operation thereof or the respective rights and liabilities thereunder, such disagreement or difference shall be referred to three arbitrators, one to be appointed by each party and the third to be appointed by the two so by the parties appointed; and the award in writing signed by any two of them shall be final: Provided, that such award shall be made within ninety days after the reference to the said arbitrators. And, if either party shall refuse or neglect to appoint an arbitrator within fifteen days after the other shall have appointed an arbitrator and served written notice thereof upon the other requiring him to appoint an arbitrator, then the arbitrator so appointed by the first party

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as if such a
in each and ever
understood, however
personal supervision of t
ferred, mortgaged or
by the contractor, no
his work hereunder unless the written consent of the company be
first had and obtained, and no judicial or other sale or any
proceeding in insolvency or bankruptcy shall have the effect of
transferring the interest or right of the contractor in or under
this agreement, except to the company, without the written con-
sent of the company being first had and obtained.

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

Witness:

John S. Walker
As to Ray S. Walker

Ray S. Walker (SEAL)
Ray S. Walker, trading as
Bradford Coal Company

John Wilson
As to John Wilson

John Wilson (SEAL)
John Wilson.

11 have power to proceed to arbitrate and determine the
ters of disagreement or difference as if he were an arbitrator
pointed by both the parties hereto for that purpose, and his
award in writing signed by him shall be final: Provided, that
such award shall be made within ninety days after such refusal
neglect of the other party to appoint an arbitrator.

8. ADDITIONAL PARTIES: All the provisions of this
agreement are intended to bind and to benefit the parties hereto
and their heirs, executors, administrators, successors and assigns.
Additional parties had been specifically mentioned
in any provision of this agreement. It is clearly understood, however,
that this agreement contemplates that the
contractor and may not be
encumbered with liens.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. ~~55~~ Term, 1960

~~55~~ IN ASSUMPSIT

RAY S. WALKER t/a
BRADFORD COAL COMPANY, Plaintiff

vs.

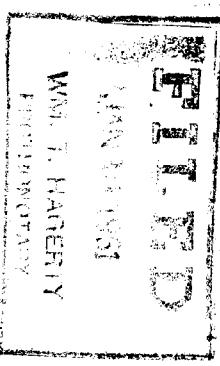
JOHN WILSON,
Defendant

COMPLAINT IN ASSUMPSIT

To the within Defendant:

You are required to plead
to the within complaint within
in twenty days from the date
of service thereof.

JOHN S. Wilson
Attorney for Plaintiff



NEVLING & DAVIS
ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PA.

Recd May 14, 1961 - Service accepted
G. M. T. HAGERTY
att for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RAY S. WALKER t/a
BRADFORD COAL COMPANY : No 513 November Term, 1960
vs :
: IN ASSUMPSIT
:
JOHN WILSON :

PRELIMINARY OBJECTIONS

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE OF SAID COURT:

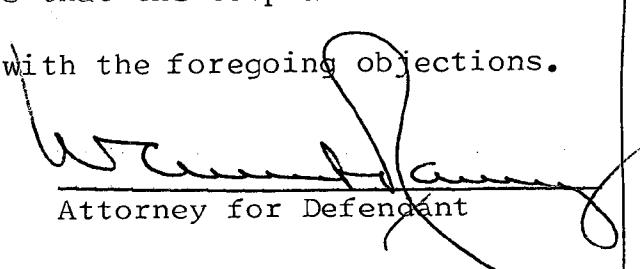
JOHN WILSON, by his attorney, W. Albert Ramey, files these Preliminary Objections to the Complaint in the above entitled matter, moves the Court for Judgment, and hereby assigns the following reasons therefor:

FOR MORE SPECIFIC COMPLAINT

1. The Complaint fails to set forth
 - (a) The extent of ditching and drainage made necessary to comply with the requirements of the Sanitary Water Board.
 - (b) The number of hours expended in creating the necessary ditching and drainage.
 - (c) The rate paid per hour, or otherwise showing how the amount of the claim is calculated.
 - (d) By whom or by what company said alleged ditching and drainage was performed.

WHEREFORE, defendant requests that the Complaint be amended and/or dismissed in compliance with the foregoing objections.

W. ALBERT RAMEY
ATTORNEY AT LAW
CLEARFIELD, PA.



Attorney for Defendant

James Wilson, Clearfield, Pa.

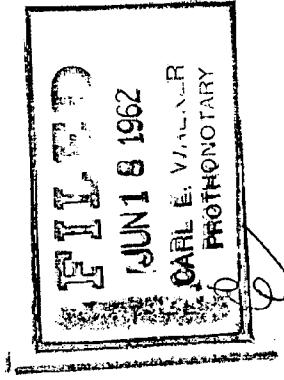
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 513 November Term, 1960

RAY S. WALKER t/a
BRADFORD COAL COMPANY

VS

JOHN WILSON

PRELIMINARY OBJECTIONS



W. ALBERT RAMEY
ATTORNEY AT LAW
CLEARFIELD, PENNA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RAY S. WALKER t/a :
BRADFORD COAL COMPANY :
VS. : No. 513 November Term, 1960
JOHN WILSON : IN ASSUMPSIT

MOTION FOR RULE TO SHOW CAUSE WHY AMENDMENT OF
THE PLAINTIFF'S COMPLAINT SHOULD NOT BE ALLOWED

AND NOW, to wit, this 31st day of July, 1962, the Plaintiff, Ray S. Walker, by James K. Nevling, his attorney, moves the Court to grant a rule on John Wilson, the Defendant above named, to show cause why the complaint heretofore filed in the above cause should not be amended for the purpose of meeting preliminary objections filed by the Defendant, as follows:

1. That the extent of the ditching and drainage made necessary to comply with the requirements of the Sanitary Water Board was the construction of a ditch approximately ten (10) feet wide from the open cut on the McGary property through the spoil piles on the same property and down the hill toward Hogback run, a distance of approximately one hundred fifty (150) feet.

2. That the number of hours expended in creating the necessary ditching and drainage is not known to the Plaintiff, because the work was done for a flat contract price.

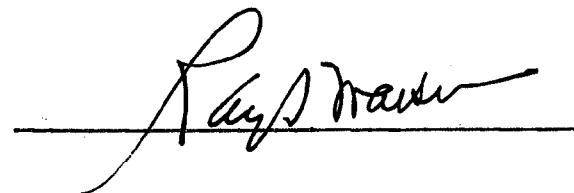
3. That there was no rate paid per hour for this ditching and drainage, because the work was done on a flat contract basis, for a price of \$500.00.

4. That the company which did the alleged ditching and drainage was Orlando Brothers of Philipsburg, Pennsylvania.

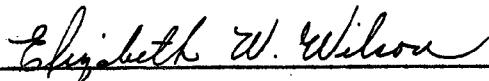
James K. Nevling
Attorney for the Plaintiff

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CLEARFIELD : SS:
:

RAY S. WALKER, being duly sworn according to law,
deposes and says that he is the Plaintiff in the foregoing
action and that the facts set forth in the foregoing motion
are true and correct to the best of his information and belief.



Sworn and subscribed before
me this 11th day of July, A.D.,
1962.



NOTARY PUBLIC
My Commission Expires
September 15, 1965

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

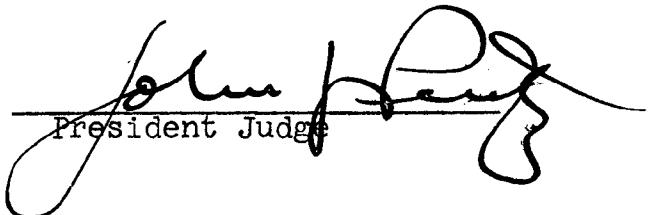
RAY S. WALKER t/a
BRADFORD COAL COMPANY :
VS. : No. 513 November Term, 1960
JOHN WILSON : IN ASSUMPSIT

RULE TO SHOW CAUSE

AND NOW, to wit, this 20 ~~on Aug.~~ day of ~~July~~, 1962, on motion of James K. Nevling, attorney for the Plaintiff, rule is entered on the Defendant, John Wilson, to show cause why the amendments to the complaint in the above case, set forth in the attached motion, should not be allowed and made.

Returnable ~~Aug 27~~ Sept 27, 1962 at 10 o'clock A.M.

BY THE COURT,



President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 513 November Term, 1960

IN ASSUMPTI

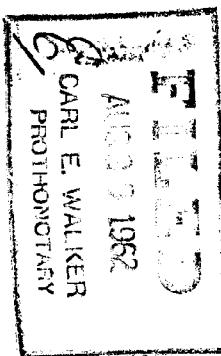
RAY S. WALKER, t/a
BRADFORD COAL COMPANY

VS.

JOHN WILSON

MOTION FOR RULE TO SHOW
CAUSE WHY AMENDMENT OF THE
PLAINTIFF'S COMPLAINT
SHOULD NOT BE ALLOWED

RULE TO SHOW CAUSE



NEVLING & DAVIS
ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PA.

Now Sept 27, 1962 - issuance of rule denied
and amendment agreed to
Court of Common Pleas
for the
Signature

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RAY S. WALKER t/a :
BRADFORD COAL COMPANY :
:
vs : No. 513 November Term, 1960
: IN ASSUMPSIT
JOHN WILSON :
:

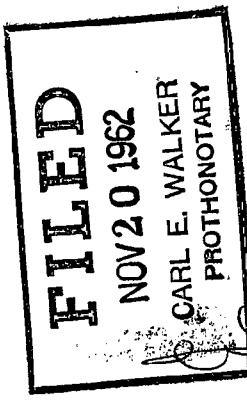
TO: Carl E. Walker, Prothonotary

Please enter my appearance for Ray S. Walker, t/a
Bradford Coal Company, Plaintiff.

John S. Galt
Atty for Plaintiff

11/20/62

No. 573 Nov. 1/1960



Ray S. Walker, t/a
Bradford Coal Company

versus

John Wilson

In the Court of Common Pleas
Clearfield County, Pennsylvania

No. 513 Nov Term, 19 60

CERTIFICATE OF DISCONTINUANCE

Commonwealth of Pennsylvania
County of Clearfield

} SS

I, Carl E. Walker, Prothonotary of the Court of Common Pleas, in and for the County and Commonwealth aforesaid, do hereby certify that the above stated case was this day, the 10th day of January A. D. 19 63 marked settled, and discontinued

Record costs in the sum of \$ 12.00 have been paid in full by

W. Albert Ramey

In Witness Whereof, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania, this 10th day of January A. D. 19 63.

Prothonotary

A. D. No. 513 November Term, 1960

CERTIFICATE of DISCONTINUANCE

Neveling & Davis

Attorney

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RAY S. WALKER, t/a :
BRADFORD COAL COMPANY :
: :
-vs- : No. 513 November Term, 1960 :
: :
JOHN WILSON : IN ASSUMPSIT

P R A E C I P E

TO CARL E. WALKER, PROTHONOTARY:

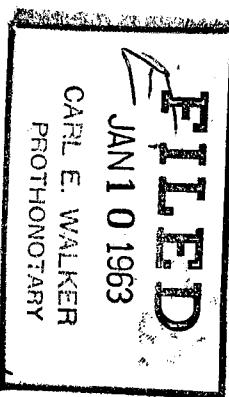
Please mark the above captioned case settled, discontinued
and paid on payment of record costs by the Defendant.

J. B. Gates
Attorney for Plaintiff

Dated: January 9, 1963

512 Nov 1968

512 Nov 1968



12.00 my atty