

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

CIVIL ACTION - AT LAW

No. 00-1571-CD

Type of pleading:

**COMPLAINT**

Filed on behalf of:

PLAINTIFF

Counsel of record for this  
party:

Robert M. Hanak  
Supreme Court No. 05911  
Hanak, Guido and Taladay  
498 Jeffers St., P. O. Box 487  
DuBois, PA 15801

(814) 371-7768

**FILED**

DEC 19 2000

William A. Shaw  
Prothonotary

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

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

:  
:  
:  
:  
:  
:  
:

No.

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed 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 Floor  
Clearfield, PA 16830

(814) 765-2641 (Ext 50-51)

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

BARK CAMP SERVICES, INC.,	:	
Plaintiff	:	
	:	
vs.	:	No.
	:	
ETR ENTERPRISES, INC.,	:	
Defendant	:	

**COMPLAINT**

AND NOW, comes the Plaintiff, and through its Attorney,  
Robert M. Hanak, avers a cause of action as follows:

1. Plaintiff is Bark Camp Services, Inc., a Pennsylvania business corporation, of Sidman, Cambria County, Pennsylvania.
2. Defendant is ETR Enterprises, Inc., a Pennsylvania business corporation, with its principal offices at %Mountain Extreme, Inc., R. D. 1, Box 4D, Rockton, Clearfield County, Pennsylvania 15856.
3. Plaintiff is the owner of a certain land area and roadway abutting the Pittsburgh and Shawmut Railroad and which is located in Huston Township, Penfield, Clearfield County, Pennsylvania.
4. On February 23, 2000, Plaintiff and Defendant entered a certain lease agreement in which the Plaintiff leased to Defendant the land area incidental to the railroad siding and a roadway which leads from the siding to the former Glen Irvan deep mine. The purpose of the lease area and usage was to allow Defendant the hauling of fly ash and dredge material for disposition in conformity with State law. A copy of the lease is attached hereto, and the terms are incorporated by reference.

5. Defendant has paid to Plaintiff a deposit of monthly rentals at the rate of \$750.00 per month.

6. Per Section 2(b) of the lease, in addition to the monthly rentals, Defendant agreed to pay to Plaintiff six cents per ton for each and every ton of waste material hauled by truck or other carrier from the public road or the railroad siding to the former Glen Irvan mine site.

7. Per Section 3 of the lease, Defendant agreed to make monthly accountings of all shipments of waste material hauled across the leased premises and pay for usage on the 25th day of the month following the prior month of usage.

8. Defendant commenced using the leased premises for the hauling of dredge and/or fly ash material in August, exact date unknown, of the year 2000.

9. Defendant has failed to make accountings of tonnage of waste material hauled pursuant to the terms of the lease.

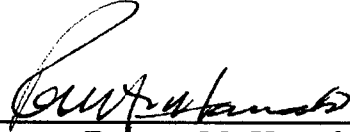
10. Defendant has failed to make payment at the rate of six cents per ton for all tons hauled pursuant to the terms of the lease.

11. Defendant has been given notice of the obligation and deficiency of payment by letter to Defendant of October 10, 2000, a copy of which is attached hereto.

12. Defendant has refused and continues to refuse to make payments per the terms of the lease and to give an accounting of tonnage which would necessitate per ton payments.

WHEREFORE, Plaintiff requests your Honorable Court to enter judgment on behalf of Plaintiff, and against the named Defendant

for all sums due Plaintiff per usage at the per ton rate demanded above  
per the terms of the lease, together with costs of suit and interest at  
the legal rate.

A handwritten signature in dark ink, appearing to read "Robert M. Hanak", is written over a horizontal line.

Robert M. Hanak  
Attorney for Plaintiff

**VERIFICATION**

I, ETHEL STOKER, President of Bark Camp Services, Inc., do hereby verify that I have read the foregoing Complaint. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: December 15, 2010

Ethel Stoker  
Ethel Stoker

THIS AGREEMENT made this 23 day of Feb. 2000,  
2000, by and between BARK CAMP SERVICES, INC., a Pennsylvania  
corporation, of Sidman, Pennsylvania, hereinafter referred to as "BARK CAMP",

And

ETR ENTERPRISES, INC., a Pennsylvania corporation, hereinafter referred to  
as "ETR".

### BACKGROUND

Bark Camp owns or controls a certain railroad siding, usage area, and  
roadway on private land in Penfield, Pennsylvania. The parties hereto have  
entered prior agreements allowing for the usage of such railroad siding, usage  
area and roadway by ETR for certain waste disposal to the former Glen Irvan  
Corporation mine site. Based on subsequent negotiations of the parties, and  
change of circumstances, the parties now desire to affirm a new lease agreement  
for the above facilities subject to the terms and conditions hereafter.

NOW, THEREFORE, in consideration of the mutual promises, the parties  
agree as follows:

1. Lease. Bark Camp does hereby lease to ETR the usage area  
abutting siding on the Pittsburgh and Shawmut Railroad, and  
the roadway which leads from the siding to the Glen Irvan mine  
site for use by ETR in the hauling of fly ash, dredge material, or  
such other substances used for a certain mine reclamation  
project at the former Glen Irvan mine site in Penfield,  
Pennsylvania.

2. **Rentals.** ETR agrees to pay to Bark Camp rentals and usage fees as follows:

- (a) A flat rate of \$750.00 per month for usage of the rail road siding and property leased herein, which amount shall be considered as the only compensation for the said siding and the usage area.
- (b) The sum of six cents for each and every ton of waste material hauled by truck or other carrier from either PA Route 255, or the railroad siding area to the former Glen Irvan mine site.

3. **Payment.** Bark Camp shall invoice ETR at six-month intervals for payment of the monthly amount of \$750.00 in advance. ETR agrees to make such payment for the six-month interval payment within 45 days from receiving the invoice. As material is hauled on the road, ETR will account for all shipments of waste material across such road on a monthly basis, and shall pay for road usage monthly on or before the 25<sup>th</sup> day of the month following the prior month of usage.

4. **Exclusive Use.** ETR shall have exclusive use of the railroad siding, the usage area and the road. Bark Camp shall not allow any other usage without the express written consent of ETR.



5. Indemnity. ETR agrees to save, indemnify, release and hold harmless Bark Camp from any and all claims, causes of action, suits or liabilities which may arise because of ETR's usage of the premises leased herein, or generally because of any acts or omissions of ETR, its servants, agents or employees.
6. Terms of Agreement. This agreement shall be in effect for a minimum of one year, which will obligate ETR for rental payments for such year, and however long thereafter that ETR uses the premises for haulage of fly ash, dredge material, or other materials incident to the mine reclamation project, or any subsequent mine reclamation project at the Glen Ivan mine site.
7. Remedies Upon Default. In the event of default by ETR of any payment obligated pursuant to this agreement, Bark Camp shall have the following remedy:
- If payment is not made within 45 days from the due date, Bark Camp shall have the right to block the railroad siding and the road to impede any further usage.
8. This agreement is meant to be binding upon the parties hereto, their heirs, successors and assigns. Furthermore, this agreement supersedes any and all verbal and written agreements between the parties hereto concerning the premises described in this lease agreement.

IN WITNESS WHEREOF, the parties have hereunto set their  
hands and seals the date first written above.

BARK CAMP SERVICES, INC.

By:   
President

ETR ENTERPRISES, INC.

By:   
President

HANAK, GUIDO and TALADAY  
LAW OFFICES  
498 Jeffers Street, P.O. Box 487  
DuBois, Pennsylvania 15801

DEC 19 2000  
013:0511c  
William A. Shaw  
Prothonotary  
City DuBois  
City DuBois PA 15801

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

BARK CAMP SERVICES, INC.,  
Plaintiff

\*

-vs-

\*

Docket No. 00-1571-CD

ETR ENTERPRISES, INC.,  
Defendant

\*

Type of Pleading:  
PRAECIPE TO ENTER APPEARANCE

Filed on behalf of:  
DEFENDANT:  
E.T.R. Enterprises, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.  
PA I.D. No. 16332

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

FILED

JAN 02 2001

William A. Shaw  
Prothonotary

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

BARK CAMP SERVICES, INC.,       \*  
  Plaintiff

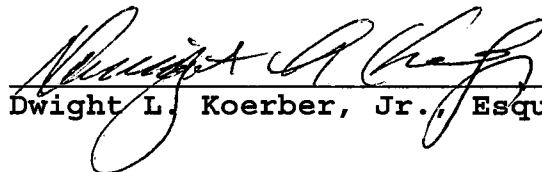
-vs-

\*  
Docket No. 00-1571-CD

ETR ENTERPRISES, INC.,       \*  
  Defendant

PRAECIPE TO ENTER APPEARANCE

Please enter my appearance on behalf of E.T.R.  
Enterprises, Inc., defendant in the above referenced matter.

  
Dwight L. Koerber, Jr., Esquire

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

BARK CAMP SERVICES, INC.,       \*  
  Plaintiff

-vs-

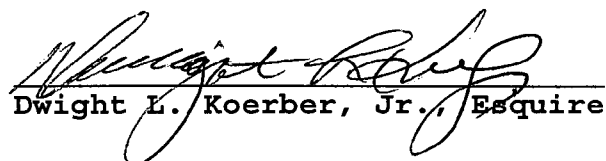
Docket No. 00-1571-CD

ETR ENTERPRISES, INC.,       \*  
  Defendant

CERTIFICATE OF SERVICE

This is to certify that on the 29th day of December, 2000, the undersigned served a true and correct copy of the foregoing Praecipe to Enter Appearance in the above captioned matter upon counsel for plaintiff. Such documents were served via United States First Class Mail upon the following:

Robert M. Hanak, Esquire  
HANAK, GUIDO AND TALADY  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801

  
Dwight L. Koerber, Jr., Esquire

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

BARK CAMP SERVICES, INC.,  
Plaintiff

-VS-

ETR ENTERPRISES, INC.,  
Defendant

PRAECIPE TO ENTER APPEARANCE  
Docket No. 00-1571-CD

FILED

JAN 02 2001  
01241116  
William A. Shaw  
Prothonotary

*W.A. Shaw*  
*for*  
*for*

LAW OFFICE  
DWIGHT KOERBER, JR.  
ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. BOX 1320  
CLEARFIELD, PENNSYLVANIA 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10516

BARK CAMP SERVICES INC

00-1571-CD

VS.

ETR ENTERPRISES INC.

COMPLAINT

SHERIFF RETURNS

NOW DECEMBER 20, 2000 AT 11:20 AM EST SERVED THE WITHIN COMPLAINT  
ON ETR ENTERPRISES, INC., DEFENDANT AT EMPLOYMENT, MOUNTAIN  
EXTREME, INC., RD 2, BOX 4D, ROCKTON, CLEARFIELD COUNTY, PENNSYLVANIA  
BY HANDING EARL FRANTZ, MANAGER, A TRUE AND ATTESTED COPY OF THE  
ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: SNYDER

Return Costs

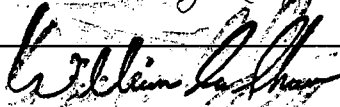
Cost	Description
------	-------------

\$25.09	Shff. Hawkins Paid by: atty.
---------	------------------------------

\$10.00	Surcharge Paid by: atty.
---------	--------------------------

Sworn to Before Me This

10 Day Of January 2001



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

So Answers,



Chester A. Hawkins  
Sheriff

FILED

JAN 10 2001

William A. Shaw  
Prothonotary



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

BARK CAMP SERVICES, INC.,  
Plaintiff

\*

-vs-

\*

Docket No. 00-1571-00

ETR ENTERPRISES, INC.,  
Defendant

\*

Type of Pleading:  
ANSWER AND NEW MATTER

Filed on behalf of:  
DEFENDANT:  
E.T.R. Enterprises, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.  
PA I.D. No. 16332

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

**FILED**

FEB 09 2001

William A. Shaw  
Prothonotary

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

BARK CAMP SERVICES, INC.,       \*  
                                  Plaintiff

-vs-                               \*       Docket No. 00-1571-00

ETR ENTERPRISES, INC.,       \*  
                                  Defendant

ANSWER AND NEW MATTER

COMES NOW, Defendant E.T.R. Enterprises, Inc., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Answer and New Matter to the complaint filed by plaintiff.

1.   Admitted.

2.   Admitted.

3.   Admitted in part and denied in part. It is admitted that plaintiff has originally held itself out as owning certain land abutting the said railroad line in Houston Township, Clearfield County, Pennsylvania, and the roadway connecting to it. Defendant is unwilling to acknowledge and admit for the purposes of this litigation that in fact plaintiff is owner of all such property and requires strict proof of same at trial. See New Matter for further explanation of defendant's position herein.

4.   Admitted in part and denied in part. It is admitted that the document attached to this complaint, bearing a date of February 26, 2000, was signed and that the signature on behalf of E.T.R. Enterprises, Inc., is that of its President, Ernest T.

Rosselli. See New Matter in further support of defendant's position concerning the said lease agreement.

5. The \$750.00 payment per month is admitted, but it is denied that it represents a rental payment, but instead the \$750.00 per month represents a minimum royalty payment, as well as the payment towards hauling from the rail siding that would occur. See New Matter in further support of defendant's position.

6. It is admitted that payment at the rate of \$.06 per ton of waste from or to the rail siding is chargeable, but it is denied that these charges are applicable to tonnage transported on the roadway. Moreover, it is submitted that these charges are subject to the \$750.00 per month credit that is due from the monthly minimum royalty. See New Matter.

7. It is admitted in part and denied in part. It is admitted that paragraph 3 provides for monthly payments to be made for material hauled, but such monthly payments are only to be made for the amount of payment that is due in excess of the \$750.00 per month and that which moves from the rail siding but not over the haul road. See New Matter in further support of defendant's position.

8. Admitted.

9. Denied. Defendant has presented an accounting of all of the waste hauling information that he has.

10. Denied. See New Matter.

11. It is acknowledged that the said letter was sent,

but the issue of the legal obligations of defendant is more fully addressed in New Matter.

12. Denied, legal conclusion. It is defendant's position that he has made proper payments under the terms of the agreement and has given an accounting based upon the information that he has.

#### **NEW MATTER**

In further support of his position herein, defendant offers the within New Matter.

13. At the time that the said agreement was signed, there was an express discussion between defendant and Irvin Stoker, the representative of plaintiff, that there would not be a double payment on the tonnage that is hauled, but instead there would be a \$750.00 credit that would apply before additional payments would be paid covering the \$.06 per ton allowance. It is defendant's position that any interpretation of the contract must be read with that express understanding that a double payment would not be made for tonnage that would otherwise be covered by the first \$750.00 payment per month.

14. An affirmative defense that defendant presents relates to one part of the contract and not the entire agreement between the parties. Defendant acknowledges that there is a contract and acknowledges the obligation to pay a \$750.00 minimum monthly payment, which would be applied to royalties at the rate of

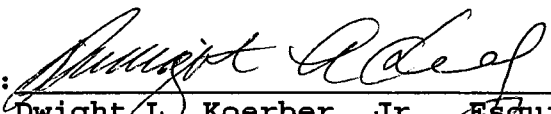
\$.06 per ton. This payment obligation, however, relates only to the rail siding, and not material that is transported over the haul road.

15. When the parties negotiated this agreement, it was done with the express understanding that plaintiff was the owner of the haul road and had the right to determine who would or would not operate over it. Subsequently, the Pennsylvania Department of Environmental Protection/Department of Conversation and Natural Resources has taken the position that it alone is the owner of the haul road. Under the assumption that this is a correct statement, defendant maintains that there is no payment obligation on his part to cover royalty payments pertaining to the haul road.

16. As it relates to an accounting, defendant has no objection to making an accounting and is fully prepared to do so, but has been furnished with no additional documentation or information to show that movement of waste has occurred in excess of that covered by the minimum monthly royalty.

WHEREFORE, plaintiff prays that judgment be entered in his favor and against plaintiff.

Respectfully Submitted,

By:   
Dwight L. Koerber, Jr., Esquire  
Attorney for DEFENDANT:  
E.T.R. Enterprises, Inc.

VERIFICATION


I certify that the statements made in the foregoing Answer and New Matter are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

  
Ernest T. Rosselli

DATE: 2/2/01

**BARK CAMP SERVICES, INC.,               \***  
**Plaintiff**

\* Docket No. 00-1571-00

  
Dwight L. Koerber, Jr., Esquire  
Attorney for DEFENDANT:  
E.T.R. Enterprises, Inc.

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

BARK CAMP SERVICES, INC.,  
Plaintiff

-vs-

ETR ENTERPRISES, INC.,  
Defendant

ANSWER AND NEW MATTER  
Docket No. 00-1571-00

**FILED**  
01341084  
FEB 03 2001  
3 CC  
AMH  
William A. Shaver  
Prothonotary

LAW OFFICE  
DWIGHT KOERBER, JR.  
ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. BOX 1320  
CLEARFIELD, PENNSYLVANIA 16830



IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

CIVIL ACTION - AT LAW

No. 00-1571-CD

Type of pleading:

**REPLY TO NEW MATTER**

Filed on behalf of:

PLAINTIFF

Counsel of record for this  
party:

Robert M. Hanak  
Supreme Court No. 05911  
Hanak, Guido and Taladay  
498 Jeffers St., P. O. Box 487  
DuBois, PA 15801

(814) 371-7768

**FILED**

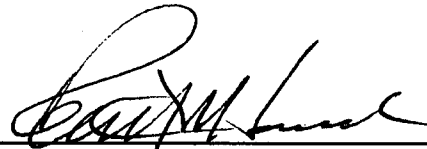
FEB 23 2001

William A. Shaw  
Prothonotary

leased by Plaintiff, and subject to the \$.06 per ton rate. To the contrary, any ownership of the Pa. DEP is limited to any ownership acquired of the former Glen Irvan mine site, but not the access road to such site. It is denied that Pa. DEP has any claim or ownership rights to rentals or royalties as agreed by the parties per the lease attached to Plaintiff's Complaint.

16. It is denied that haulage fees in any way have to be in excess of \$750.00 before an obligation of payment is required by Defendant to Plaintiff. To the contrary, as averred consistently herein, the Defendant's obligation is to pay \$.06 per ton based on tons hauled, and individually and independently \$750.00 per month for lease rights.

WHEREFORE, Plaintiff prays that judgment be entered in its favor per its prayer for relief.

  
Robert M. Hanak  
Attorney for Plaintiff

**VERIFICATION**

I, ETHEL STOKER, President of Bark Camp Services, Inc., do hereby verify that I have read the foregoing REPLY TO NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: Feb 21-001

Ethel Stoker  
Ethel Stoker

FILED

FEB 23 2001

m11:20/rocc

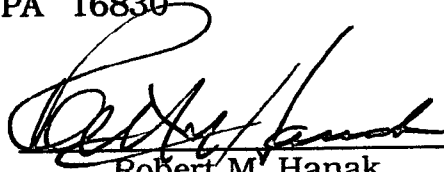
William A. Shaw

Prothonotary *ES*

CERTIFICATE OF SERVICE

I hereby certify that on FEB 22, 2001, I mailed a copy of the foregoing REPLY TO NEW MATTER by first class mail, postage prepaid, to the following:

Dwight L. Koerber, Jr., Esq.  
110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830

  
Robert M. Hanak  
Attorney for Plaintiff

FILED

FEB 23 2001

William A. Shaw  
Prothonotary

FILED

FEB 23 2001

m. (1:23) no cc

William A. Shaw

Prothonotary



IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

CIVIL ACTION - AT LAW

No. 00-1571-CD

Type of pleading:

**MOTION FOR JUDGMENT  
ON THE PLEADINGS**

Filed on behalf of:

PLAINTIFF

Counsel of record for this  
party:

Robert M. Hanak  
Supreme Court No. 05911  
Hanak, Guido and Taladay  
498 Jeffers St., P. O. Box 487  
DuBois, PA 15801

(814) 371-7768

**FILED**

JUL 06 2001

William A. Shaw  
Prothonotary

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

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

No. 00-1571-CD

**MOTION FOR JUDGMENT ON THE PLEADINGS**

Plaintiff, Bark Camp Services, Inc., by its undersigned counsel, respectfully moves this Court, pursuant to Pa. R.C.P. No. 1034 for judgment on the pleadings as follows:

1. Plaintiff, Bark Camp Services, Inc., commenced this action against Defendant by filing a Complaint on December 19, 2000, against the Defendant, ETR Enterprises, Inc., seeking to recover monies due on a written lease agreement as set forth in Plaintiff's Complaint. The written lease agreement is properly attached as an exhibit to Plaintiff's Complaint, and the terms are incorporated therein by reference. Plaintiff's Complaint and the lease agreement are attached hereto as Exhibit A.

2. On February 13, 2001, Defendant filed its Answer with New Matter, a true and correct copy of which is attached as Exhibit B.

3. On or about February 22, 2001, Plaintiff filed a Reply to Defendant's New Matter, a true and correct copy of which is attached as Exhibit C.

4. Defendant's Answer admits Plaintiff's allegation that the parties entered a written lease agreement on February 23, 2000.



Defendant further admits that the written terms of the lease agreement are those that are set forth in the agreement attached to Plaintiff's Complaint.

5. Defendant's denial of the allegation relating to Defendant's breach of the terms of the written lease agreement are set forth in Defendant's New Matter. Specifically, Defendant's New Matter alleges that there was an express discussion between the parties contemporaneous with the execution of the written lease agreement which altered the written terms concerning payments which Defendant would owe to Plaintiff under the terms of the written agreement.

6. Paragraph 13 of Defendant's New Matter states: "It is Defendant's position that any interpretation of the contract must be read with that express understanding that a double payment would not be made for tonnage that would otherwise be covered by the first \$750.00 payment per month." In other words, Defendant's position is that parol evidence must be used when interpreting the written lease agreement.

7. For the reasons set forth in the accompanying Brief in Support of Motion for Judgment on the Pleadings, parol evidence of negotiations surrounding the lease agreement may not be considered to add to or modify the written agreement with respect to the payment terms. Defendant fails to set forth any facts which would allow the Court to consider parol evidence of any negotiations surrounding the execution of the written lease agreement.

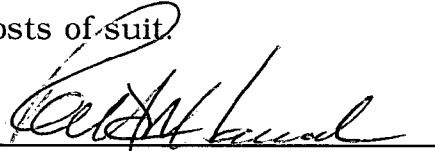
8. The allegations set forth in Defendant's Answer and New Matter do not constitute a proper defense to the cause of action set forth in Plaintiff's Complaint.

9. The pleadings are closed and time exists within which to dispose of this motion so as to not delay trial.

10. There are no genuine issues of material fact to be tried.

11. Plaintiff is entitled to judgment as a matter of law for the reasons set forth in this motion and the accompanying Brief.

WHEREFORE, Plaintiff, Bark Camp Services, Inc., respectfully requests that this Court enter judgment in favor of Plaintiff and against the Defendant for the payments due under the lease agreement, plus interest and costs of suit.

A handwritten signature in black ink, appearing to read "Robert M. Hanak", is written over a horizontal line.

Robert M. Hanak  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

CIVIL ACTION - AT LAW

No. 00-1571-CD

Type of pleading:

**COMPLAINT**

Filed on behalf of:

PLAINTIFF

Counsel of record for this  
party:

Robert M. Hanak  
Supreme Court No. 05911  
Hanak, Guido and Taladay  
498 Jeffers St., P. O. Box 487  
DuBois, PA 15801

(814) 371-7768

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

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

:  
:  
:  
:  
:  
:  
:  
:

No.

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed 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 Floor  
Clearfield, PA 16830

(814) 765-2641 (Ext 50-51)

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

BARK CAMP SERVICES, INC.,	:	
Plaintiff	:	
	:	
vs.	:	No.
	:	
ETR ENTERPRISES, INC.,	:	
Defendant	:	

**COMPLAINT**

AND NOW, comes the Plaintiff, and through its Attorney,  
Robert M. Hanak, avers a cause of action as follows:

1. Plaintiff is Bark Camp Services, Inc., a Pennsylvania business corporation, of Sidman, Cambria County, Pennsylvania.
2. Defendant is ETR Enterprises, Inc., a Pennsylvania business corporation, with its principal offices at %Mountain Extreme, Inc., R. D. 1, Box 4D, Rockton, Clearfield County, Pennsylvania 15856.
3. Plaintiff is the owner of a certain land area and roadway abutting the Pittsburgh and Shawmut Railroad and which is located in Huston Township, Penfield, Clearfield County, Pennsylvania.
4. On February 23, 2000, Plaintiff and Defendant entered a certain lease agreement in which the Plaintiff leased to Defendant the land area incidental to the railroad siding and a roadway which leads from the siding to the former Glen Irvan deep mine. The purpose of the lease area and usage was to allow Defendant the hauling of fly ash and dredge material for disposition in conformity with State law. A copy of the lease is attached hereto, and the terms are incorporated by reference.

5. Defendant has paid to Plaintiff a deposit of monthly rentals at the rate of \$750.00 per month.

6. Per Section 2(b) of the lease, in addition to the monthly rentals, Defendant agreed to pay to Plaintiff six cents per ton for each and every ton of waste material hauled by truck or other carrier from the public road or the railroad siding to the former Glen Irvan mine site.

7. Per Section 3 of the lease, Defendant agreed to make monthly accountings of all shipments of waste material hauled across the leased premises and pay for usage on the 25th day of the month following the prior month of usage.

8. Defendant commenced using the leased premises for the hauling of dredge and/or fly ash material in August, exact date unknown, of the year 2000.

9. Defendant has failed to make accountings of tonnage of waste material hauled pursuant to the terms of the lease.

10. Defendant has failed to make payment at the rate of six cents per ton for all tons hauled pursuant to the terms of the lease.

11. Defendant has been given notice of the obligation and deficiency of payment by letter to Defendant of October 10, 2000, a copy of which is attached hereto.

12. Defendant has refused and continues to refuse to make payments per the terms of the lease and to give an accounting of tonnage which would necessitate per ton payments.

WHEREFORE, Plaintiff requests your Honorable Court to enter judgment on behalf of Plaintiff, and against the named Defendant

for all sums due Plaintiff per usage at the per ton rate demanded above  
per the terms of the lease, together with costs of suit and interest at  
the legal rate.

5  
Robert M. Hanak  
Attorney for Plaintiff

**VERIFICATION**

I, ETHEL STOKER, President of Bark Camp Services, Inc., do hereby verify that I have read the foregoing Complaint. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

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

(s)  
\_\_\_\_\_  
Ethel Stoker



THIS AGREEMENT made this 23 day of Feb. 2000,  
2000, by and between BARK CAMP SERVICES, INC., a Pennsylvania  
corporation, of Sidman, Pennsylvania, hereinafter referred to as "BARK CAMP",

And

ETR ENTERPRISES, INC., a Pennsylvania corporation, hereinafter referred to  
as "ETR".

### BACKGROUND

Bark Camp owns or controls a certain railroad siding, usage area, and roadway on private land in Penfield, Pennsylvania. The parties hereto have entered prior agreements allowing for the usage of such railroad siding, usage area and roadway by ETR for certain waste disposal to the former Glen Irvan Corporation mine site. Based on subsequent negotiations of the parties, and change of circumstances, the parties now desire to affirm a new lease agreement for the above facilities subject to the terms and conditions hereafter.

NOW, THEREFORE, in consideration of the mutual promises, the parties agree as follows:

1. Lease. Bark Camp does hereby lease to ETR the usage area abutting siding on the Pittsburgh and Shawmut Railroad, and the roadway which leads from the siding to the Glen Irvan mine site for use by ETR in the hauling of fly ash, dredge material, or such other substances used for a certain mine reclamation project at the former Glen Irvan mine site in Penfield, Pennsylvania.

2. **Rentals.** ETR agrees to pay to Bark Camp rentals and usage fees as follows:

- (a) A flat rate of \$750.00 per month for usage of the rail road siding and property leased herein, which amount shall be considered as the only compensation for the said siding and the usage area.
- (b) The sum of six cents for each and every ton of waste material hauled by truck or other carrier from either PA Route 255, or the railroad siding area to the former Glen Irvan mine site.

3. **Payment.** Bark Camp shall invoice ETR at six-month intervals for payment of the monthly amount of \$750.00 in advance. ETR agrees to make such payment for the six-month interval payment within 45 days from receiving the invoice. As material is hauled on the road, ETR will account for all shipments of waste material across such road on a monthly basis, and shall pay for road usage monthly on or before the 25<sup>th</sup> day of the month following the prior month of usage.

4. **Exclusive Use.** ETR shall have exclusive use of the railroad siding, the usage area and the road. Bark Camp shall not allow any other usage without the express written consent of ETR.

5. Indemnity. ETR agrees to save, indemnify, release and hold harmless Bark Camp from any and all claims, causes of action, suits or liabilities which may arise because of ETR's usage of the premises leased herein, or generally because of any acts or omissions of ETR, its servants, agents or employees.
6. Terms of Agreement. This agreement shall be in effect for a minimum of one year, which will obligate ETR for rental payments for such year, and however long thereafter that ETR uses the premises for haulage of fly ash, dredge material, or other materials incident to the mine reclamation project, or any subsequent mine reclamation project at the Glen Ivan mine site.
7. Remedies Upon Default. In the event of default by ETR of any payment obligated pursuant to this agreement, Bark Camp shall have the following remedy:
- If payment is not made within 45 days from the due date, Bark Camp shall have the right to block the railroad siding and the road to impede any further usage.
8. This agreement is meant to be binding upon the parties hereto, their heirs, successors and assigns. Furthermore, this agreement supersedes any and all verbal and written agreements between the parties hereto concerning the premises described in this lease agreement.

IN WITNESS WHEREOF, the parties have hereunto set their  
hands and seals the date first written above.

**BARK CAMP SERVICES, INC.**

By:   
President

**ETR ENTERPRISES, INC.**

By:   
President

# HANAK, GUIDO and TALADAY

## Attorneys at Law

Robert M. Hanak  
Anthony S. Guido  
Matthew B. Taladay

Telephone: (814) 371-7768  
Fax: (814) 371-1974

498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Nicole Hanak Bankovich  
Jeffrey S. DuBois

October 10, 2000

Ernest Rosselli  
ETR Enterprises, Inc.  
%Mountain Extreme, Inc.  
R. D. 1, Box 4D  
Rockton, PA 15856

Re: Bark Camp Services, Inc.  
February 23, 2000, Lease and Usage Agreement

Dear Mr. Rosselli:

It is my understanding based on my meeting with the Stokers that in August of this year the leased area, and the roadway have been used for the hauling of dredge material to the former Glen Irvan Mine Site. It is further my understanding that the lease payments to be paid at six month intervals are paid to date through the complete first year which will expire at the end of February 2001.

It should be noted that the lease with Bark Camp obligates ETR to pay six cents a ton for each ton of waste material, dredge and etc. hauled on the roadway, and this obligation is to be accounted for on a monthly basis. At the present time, we should have received an accounting for the shipments in the month of August, and on October 25th, we should have an accounting for the shipments in the month of September, together with the payment on the tonnage at six cents a ton. We are in hopes that you will keep this matter current. We will expect payment and the accounting for tonnage for August immediately.

Sincerely,

Robert M. Hanak

RMH/eh

cc: Ethel Stoker

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

BARK CAMP SERVICES, INC.,                   \*  
Plaintiff

-vs-

\*     Docket No. 00-1571-00

ETR ENTERPRISES, INC.,                   \*  
Defendant

Type of Pleading:  
ANSWER AND NEW MATTER

Filed on behalf of:  
DEFENDANT:  
E.T.R. Enterprises, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.  
PA I.D. No. 16332

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

I hereby certify this to be a true  
and correct copy of the original  
statement filed in this case.

FEB 03 2001

Attest

*[Signature]*  
Prothonotary

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

BARK CAMP SERVICES, INC.,           \*  
  Plaintiff

-vs-                                   \*       Docket No. 00-1571-00

ETR ENTERPRISES, INC.,           \*  
  Defendant

ANSWER AND NEW MATTER

COMES NOW, Defendant E.T.R. Enterprises, Inc., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Answer and New Matter to the complaint filed by plaintiff.

1.     Admitted.

2.     Admitted.

3.     Admitted in part and denied in part. It is admitted that plaintiff has originally held itself out as owning certain land abutting the said railroad line in Houston Township, Clearfield County, Pennsylvania, and the roadway connecting to it. Defendant is unwilling to acknowledge and admit for the purposes of this litigation that in fact plaintiff is owner of all such property and requires strict proof of same at trial. See New Matter for further explanation of defendant's position herein.

4.     Admitted in part and denied in part. It is admitted that the document attached to this complaint, bearing a date of February 26, 2000, was signed and that the signature on behalf of E.T.R. Enterprises, Inc., is that of its President, Ernest T.

Rosselli. See New Matter in further support of defendant's position concerning the said lease agreement.

5. The \$750.00 payment per month is admitted, but it is denied that it represents a rental payment, but instead the \$750.00 per month represents a minimum royalty payment, as well as the payment towards hauling from the rail siding that would occur. See New Matter in further support of defendant's position.

6. It is admitted that payment at the rate of \$.06 per ton of waste from or to the rail siding is chargeable, but it is denied that these charges are applicable to tonnage transported on the roadway. Moreover, it is submitted that these charges are subject to the \$750.00 per month credit that is due from the monthly minimum royalty. See New Matter.

7. It is admitted in part and denied in part. It is admitted that paragraph 3 provides for monthly payments to be made for material hauled, but such monthly payments are only to be made for the amount of payment that is due in excess of the \$750.00 per month and that which moves from the rail siding but not over the haul road. See New Matter in further support of defendant's position.

8. Admitted.

9. Denied. Defendant has presented an accounting of all of the waste hauling information that he has.

10. Denied. See New Matter.

11. It is acknowledged that the said letter was sent,



but the issue of the legal obligations of defendant is more fully addressed in New Matter.

12. Denied, legal conclusion. It is defendant's position that he has made proper payments under the terms of the agreement and has given an accounting based upon the information that he has.

#### NEW MATTER

In further support of his position herein, defendant offers the within New Matter.

13. At the time that the said agreement was signed, there was an express discussion between defendant and Irvin Stoker, the representative of plaintiff, that there would not be a double payment on the tonnage that is hauled, but instead there would be a \$750.00 credit that would apply before additional payments would be paid covering the \$.06 per ton allowance. It is defendant's position that any interpretation of the contract must be read with that express understanding that a double payment would not be made for tonnage that would otherwise be covered by the first \$750.00 payment per month.

14. An affirmative defense that defendant presents relates to one part of the contract and not the entire agreement between the parties. Defendant acknowledges that there is a contract and acknowledges the obligation to pay a \$750.00 minimum monthly payment, which would be applied to royalties at the rate of

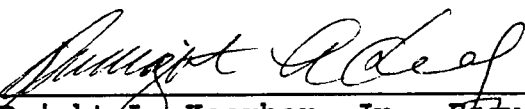
\$.06 per ton. This payment obligation, however, relates only to the rail siding, and not material that is transported over the haul road.

15. When the parties negotiated this agreement, it was done with the express understanding that plaintiff was the owner of the haul road and had the right to determine who would or would not operate over it. Subsequently, the Pennsylvania Department of Environmental Protection/Department of Conversation and Natural Resources has taken the position that it alone is the owner of the haul road. Under the assumption that this is a correct statement, defendant maintains that there is no payment obligation on his part to cover royalty payments pertaining to the haul road.

16. As it relates to an accounting, defendant has no objection to making an accounting and is fully prepared to do so, but has been furnished with no additional documentation or information to show that movement of waste has occurred in excess of that covered by the minimum monthly royalty.

WHEREFORE, plaintiff prays that judgment be entered in his favor and against plaintiff.

Respectfully Submitted,

By:   
Dwight L. Koerber, Jr., Esquire  
Attorney for DEFENDANT:  
E.T.R. Enterprises, Inc.

**VERIFICATION**

I certify that the statements made in the foregoing Answer and New Matter are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

  
Ernest T. Rosselli

DATE: 2/7/01

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

BARK CAMP SERVICES, INC.,       \*  
                                  Plaintiff

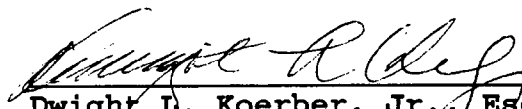
-vs-                               \*     Docket No. 00-1571-00

ETR ENTERPRISES, INC.,       \*  
                                  Defendant

CERTIFICATE OF SERVICE

This is to certify that on the 9th day of February 2001,  
the undersigned served a certified copy of the foregoing Answer and  
New Matter in the above captioned matter upon counsel for  
Plaintiff. Such documents were served via United States First  
Class Mail upon the following:

Robert M. Hanak, Esquire  
HANAK, GUIDO and TALADAY  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801

  
Dwight L. Koerber, Jr., Esquire  
Attorney for DEFENDANT:  
E.T.R. Enterprises, Inc.

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

CIVIL ACTION - AT LAW

No. 00-1571-CD

Type of pleading:

**REPLY TO NEW MATTER**

Filed on behalf of:

PLAINTIFF

Counsel of record for this  
party:

Robert M. Hanak  
Supreme Court No. 05911  
Hanak, Guido and Taladay  
498 Jeffers St., P. O. Box 487  
DuBois, PA 15801

(814) 371-7768

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

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

:  
:  
:  
:  
:  
:  
:  
:

No. 00-1571-CD

**REPLY TO NEW MATTER**

AND NOW, comes the Plaintiff, and through its Attorney,  
Robert M. Hanak, replies to New Matter as follows:

13. It is denied that there was an express discussion concerning a \$750.00 credit that would apply before additional payments were made for the \$.06 per ton haulage fee. To the contrary, it is averred that at all times such payment obligations were separate and distinct as clearly indicated by the terms of the written agreement attached to Plaintiff's Complaint. The \$.06 per ton obligation of payment and the \$750.00 per month obligation of payment are not a credit to each other.


14. It is denied that the \$750.00 payment obligation of Defendant would apply as credit to royalties or haulage fees at the rate of \$.06 per ton. To the contrary, it is averred that the \$750.00 payment is payment for access to the railroad siding which abuts land of the Plaintiff, and the \$.06 per ton haulage fee is for hauling on a road owned by the Plaintiff to the Defendant's disposition site.

15. It is denied that the Pennsylvania Department of Environmental Protection is in any way an owner of the haul road

leased by Plaintiff, and subject to the \$.06 per ton rate. To the contrary, any ownership of the Pa. DEP is limited to any ownership acquired of the former Glen Irvan mine site, but not the access road to such site. It is denied that Pa. DEP has any claim or ownership rights to rentals or royalties as agreed by the parties per the lease attached to Plaintiff's Complaint.

16. It is denied that haulage fees in any way have to be in excess of \$750.00 before an obligation of payment is required by Defendant to Plaintiff. To the contrary, as averred consistently herein, the Defendant's obligation is to pay \$.06 per ton based on tons hauled, and individually and independently \$750.00 per month for lease rights.

WHEREFORE, Plaintiff prays that judgment be entered in its favor per its prayer for relief.

  
\_\_\_\_\_  
Robert M. Hanak  
Attorney for Plaintiff

**VERIFICATION**

I, ETHEL STOKER, President of Bark Camp Services, Inc., do hereby verify that I have read the foregoing REPLY TO NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

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

\_\_\_\_\_  
/s/  
Ethel Stoker



CERTIFICATE OF SERVICE

I hereby certify that on Feb. 22, 2001, I mailed a copy of the foregoing REPLY TO NEW MATTER by first class mail, postage prepaid, to the following:

Dwight L. Koerber, Jr., Esq.  
110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830

/s/  
Robert M. Hanak  
Attorney for Plaintiff

FILED

JUL 06 2001  
OT 9:28/16 cath  
William A. Shaw  
Prothonotary

Hand K  
9/28

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

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

:  
:  
:  
:  
:  
:  
:

No. 00-1571-CD

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2001,  
upon consideration of Plaintiff's Motion for Judgment on the  
Pleadings,

IT IS HEREBY ORDERED that judgment be entered in  
favor of Plaintiff and against the Defendant in the amount  
of \$\_\_\_\_\_, with interest at \_\_\_\_ percent from \_\_\_\_\_,  
2001, and costs.

BY THE COURT:

\_\_\_\_\_  
P. J.

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

CIVIL ACTION - AT LAW

No. 00-1571-CD

Type of pleading:

**CERTIFICATE OF SERVICE**

Filed on behalf of:

PLAINTIFF

Counsel of record for this  
party:

Robert M. Hanak  
Supreme Court No. 05911  
Hanak, Guido and Taladay  
498 Jeffers St., P. O. Box 487  
DuBois, PA 15801

(814) 371-7768

**FILED**

JUL 09 2001

William A. Shaw  
Prothonotary

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

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

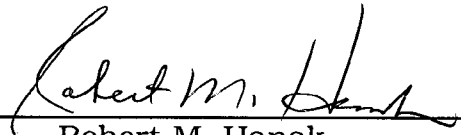
ETR ENTERPRISES, INC.,  
Defendant

No. 00-1571-CD

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2001, I mailed a copy of the foregoing MOTION FOR JUDGMENT ON THE PLEADINGS and BRIEF IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS by first class mail, postage prepaid, to the following:

Dwight L. Koerber, Jr., Esq.  
110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830



Robert M. Hanak  
Attorney for Plaintiff

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

BARK CAMP SERVICES, INC.,  
Plaintiff

-vs-

ETR ENTERPRISES, INC.,  
Defendant

\*  
\*  
\*  
\*  
\*

Docket No. 00-1571-CD

Type of pleading:  
REPLY TO MOTION FOR  
JUDGMENT ON THE PLEADINGS

Filed on behalf of:  
DEFENDANT, ETR  
Enterprises, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

**FILED**

JUL 3 0 2001

**William A. Shaw**  
Prothonotary

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

BARK CAMP SERVICES, INC.,  
Plaintiff

-vs-

ETR ENTERPRISES, INC.,  
Defendant

\*

\*

\*

Docket No. 00-1571-CD

\*

\*

REPLY TO MOTION FOR JUDGMENT ON THE PLEADINGS

COMES NOW, ETR Enterprises, Inc., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Reply to the Motion for Judgment on the Pleadings filed by the plaintiff.

1. Admitted.

2. Admitted.

3. Admitted.

4. Denied. To the contrary, defendant has set forth an affirmative defense stating that the contract does not directly set forth the full intention of the parties, as the intention of the parties was that the monthly payment obligation of defendant was in the amount of a \$750.00 monthly payment in the form of a minimum monthly royalty, which was to be credited to the pay-per-ton allowance that would be paid to plaintiff. It is therefore quite clear that defendant has not admitted that the terms of the lease represent the full and complete understanding of the parties.

5. Admitted in part and denied in part. The understanding between the parties is not necessarily inconsistent with the written language itself, as the written language itself does not clearly state whether there would be a minimum royalty or a double payment of the \$750.00.

6. Admitted in part and denied in part. Defendant does seek to present oral testimony to describe the intentions of the parties, but such oral testimony does not necessarily contradict the terms of the agreement, but instead merely clarifies and sets forth what the parties intended.

7. Denied. Legal conclusion. As defendant will set forth in its Brief, the parole evidence rule does not preclude presentation of oral testimony when the document being addressed is susceptible to more than one reasonable interpretation. The interpretation advanced by defendant is entirely reasonable and consistent with customary practices involving contracts where there is a minimum royalty payment, and as such, is not precluded by the parole evidence rule.

8. Denied. Legal conclusion.

9. It is admitted that the pleadings are closed, but it is denied that it is now appropriate to consider a Motion for Summary Judgment, as the fundamental facts to establish a recovery have not been established.

10. Denied. There is a material fact in question, which is

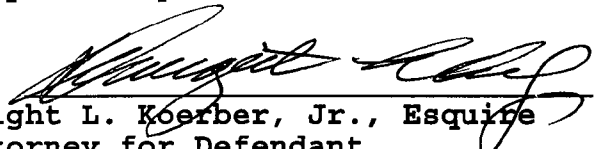


whether the \$750.00 payment per month is a minimum monthly royalty, as an overall reading of the language in question makes it clear that that is the intention of the parties. Moreover, any uncertainty should be construed against the plaintiff, as the plaintiff drafted the document in question, and presented it to defendant to execute without the benefit of counsel.

11. Denied. It is denied that the Motion should be granted, as there is conflicting testimony on a material issue, and as such, a trial is required on the merits of this case.

WHEREFORE, Defendant ETR Enterprises, Inc. requests that plaintiff's Motion for Judgment on the Pleadings be denied.


Respectfully submitted,

By:   
Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant,  
ETR ENTERPRISES, INC.

CERTIFICATE OF SERVICE

I certify that on this 30th day of July, 2001, a copy of the foregoing pleading was served by United States First Class Mail upon counsel for plaintiff at the following name and address:

Robert M. Hanak, Esquire  
HANAK, GUIDO AND TALADAY  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801

  
Dwight L. Koerber, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
Docket No. 00-1571-CD

BARK CAMP SERVICES, INC.,  
Plaintiff

-vs-

ETR ENTERPRISES, INC.,  
Defendant

REPLY TO MOTION FOR  
JUDGMENT ON THE PLEADINGS

01/31/2011 3:44 PM  
JAMES A. SHAW  
COURT CLERK

*Law Office*

DWIGHT L. KOERBER, JR.  
ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. BOX 1320  
CLEARFIELD, PENNSYLVANIA 16830

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

BARK CAMP SERVICES, INC.

-vs-

ETR ENTERPRISES, INC.

No. 00 - 1571 - CD

**OPINION AND ORDER**

In the above-captioned action, Plaintiff seeks to recover money damages for an alleged breach of contract. From the pleadings it appears that Plaintiff and Defendant entered into an agreement on February 23, 2000, under the terms of which, Plaintiff leased to Defendant certain land areas abutting the Pittsburgh and Shawmut Railroad located in Huston Township, Clearfield County, Pennsylvania. The purpose of the agreement was to permit the Defendant to haul fly ash and dredge material for disposition in conformity with state law. Under paragraph 2 of the agreement, Defendant agreed to pay to Plaintiff rental and usage fees. The provision states as follows:

“2. Rentals. ETR agrees to pay to Bark Camp rentals and usage fees as follows:

- (a) A flat rate of \$750.00 per month for usage of the rail road siding and property leased herein, which amount shall be considered as the only compensation for the said siding and the usage area.
- (b) The sum of six cents for each and every ton of waste material hauled by truck or other carrier from either PA Route 255, or the railroad siding area to the former Glen Irvan mine site.”

Paragraph 3 of the agreement directed that Plaintiff shall invoice Defendant at 6-month intervals for payment of the monthly rental amount of \$750.00. The usage fees were to be accounted for by the Defendant and payment made on a monthly basis.

**FILED**

SEP 25 2001

William A. Shaw  
Prothonotary

The agreement further provides in paragraph 8 that "this agreement supersedes any and all verbal and written agreements between the parties hereto concerning the premises described in this lease agreement."

Defendant commenced using the subject premises for the purposes stated above in August of 2000 and paid to Plaintiff the monthly rentals at the rate of \$750.00 a month. However, Defendant has made no payments under paragraph 2(b) of the agreement for the tonnage hauled as provided therein, resulting in the instant complaint.

In Defendant's Answer and New Matter, Defendant acknowledges the lease agreement and its obligation to pay the \$750.00 monthly rental fee. However, Defendant asserts the affirmative defense alleging that the \$750.00 monthly payment was, in fact, a minimum payment for the 6¢ per ton payment required under paragraph 2(b) and not a separate and distinct amount required to be paid by Defendant.

In its New Matter, Defendant further alleges that at the time the agreement was signed there was an express discussion between Defendant and a representative of the Plaintiff that there would not be a double payment on the tonnage hauled but instead, there would be a \$750.00 credit that would apply before additional payments would be made covering the 6¢ per ton required.

Plaintiff's Reply to New Matter denies any express discussion as set forth above and Plaintiff argues that the monthly rental and usage fee (\$750.00) was separate and distinct from the requirement to pay 6¢ per ton hauled by Defendant. Plaintiff argues that the \$750.00 rental is payment for access to the railroad siding and the 6¢ per ton haulage fee is for hauling on a road owned by Plaintiff to Defendant's disposition site.

The pleadings are closed and Plaintiff has now moved for Judgment on the Pleadings.

Entry of judgment on the pleadings is permitted under Pa.R.C.P. Rule 1034, which provides for such judgment after the pleadings are closed, but within such time as not to delay trial. 42 Pa.C.S.A. 1034. A motion for judgment on the pleadings may be entered where there are no disputed issues of fact, and the moving party is entitled to judgment as a matter of law. In determining if there is a dispute as to facts, the court must confine its consideration to the pleadings and relevant documents. Kelaco v. Davis & McKean General Partnership, 743 A.2d 525 (Pa. Super. 1999). The Court must accept as true all well-pleaded facts of the party against whom the motion is made, while considering against him only those facts which he specifically admits. Insurance Co. of Evanston v. Bowers, 758 A.2d 213 (Pa. Super. 2000). The Court may not consider inadmissible evidence in determining a motion for judgment on the pleadings. Id.; Hammerstein v. Lindsay, 655 A.2d 597 (Pa. Super. 1995).

A grant of judgment on the pleadings may be appropriate in cases that turn upon the construction of a written agreement. Patton v. Mack Trucks, Inc., 519 A.2d 959 (Pa. Super. 1986); Vogel v. Berkley, 511 A.2d 878 (Pa. Super. 1986); Gallo v. J.C. Penney, 746 A.2d 1322 (Pa. Super. 1984). It is the role of the Court to consider the pleadings and written contract terms to determine whether, as a matter of law, the written contract is clear or ambiguous. Vogel v. Berkley, 511 A.2d at 880 – 881. A contract is not ambiguous if the Court can determine its meaning with a knowledge of the facts on which its meaning depends. The fact that the parties do not agree upon the proper interpretation does not necessarily render the contract ambiguous. Id.

This Court is of the opinion that the language in paragraphs 2 and 3 of the subject agreement clearly provides that Defendant must pay both a \$750.00 monthly rental fee for usage of the railroad siding, etc. and usage fees in the amount of 6¢ per ton for each ton of

waste material hauled over the subject premises. Nowhere in the agreement is it stated that the \$750.00 monthly payment is to be a minimum amount to be credited to the 6¢ per ton requirement. Clearly, the agreement provides that the payments are separate and distinct.

In asserting its position, Defendant relies upon an “express discussion” between the parties requiring parol evidence to substantiate it. As stated above, this Court finds the terms of the agreement to be clear and unambiguous, and in addition, it clearly contains an integration clause in which the parties agreed that the written agreement would supersede any and all verbal or written agreement between the parties concerning the lease.

Where the parties to an agreement have adopted a writing as the final complete expression of their agreement, evidence of negotiations leading to the formation of the agreement is inadmissible to prove an intent at variance with the language of the agreement. See McGuire v. Schneider, Inc., 534 A.2d 115 (Pa. Super. 1987), wherein the Court held that the effect of the integration clause is to make the Parol Evidence Rule particularly applicable. When the terms of the written contract are clear, the Court may not rewrite it to give it a construction in conflict with the accepted and plain meaning of the language used. Kelaco v. Davis & McKean General Partnership, 743A.2d 525. A written contract unambiguous in its terms, must be held to express all of the negotiations, conversations, and agreements made prior to its execution, and neither oral testimony nor prior written agreements are admissible to explain or vary the terms of the contract. See Gemini Equipment Co. v. Pennsy Supply, Inc., 595 A.2d 1211 (Pa. super. 1991) and Brinich v. Jencka, 757 A.2d 388 (Pa. Super. 2000). Moreover, in the absence of fraud, accident or a mistake, parol evidence as to preliminary negotiations or oral agreements is not admissible in evidence if it adds to, modifies, contradicts or conflicts with a written agreement between the parties. Daset Min. Corp. v. Industrial Fuels

Corp., 473 A.2d 584 (Pa. Super. 1984); Resolution Trust Corp. v. Urban Redevelopment Authority of Pittsburgh, 638 A.2d 972 (Pa. 1994).

As stated by the Commonwealth Court in Delaware River Port Authority v. Thornburg, 585 A.2d 1123 (Pa. Cmwlth. 1989):

“What [the plaintiff] is attempting to do is create an ambiguity in this otherwise unambiguous contract using parol evidence, which is barred by the parol evidence rule . . . If plaintiffs relied on any understanding, promises, representations or agreements made prior to the execution of the written contract . . ., they should have protected themselves by incorporating in the written agreement the promises or representations upon which they now rely, and they should have omitted the provisions that they now desire to repudiate and nullify.”

In the instant case, Defendant has not alleged fraud or a mistake and therefore, parol evidence as to contemporaneous agreements is only admissible if the Court determines that the contract is ambiguous, which as set forth above, this Court has declined to do.

In both paragraphs 2 and 3 of the agreement, it is clearly stated that rental and usage fees are separate and distinct and there is no mention of minimum royalty payments or the application of the \$750.00 as credit toward the usage fee. In fact, paragraph 2 states that Defendant shall pay rental and usage fees. Moreover, the rentals are defined as \$750.00 a month for the use of the leased premises, “which amount shall be considered as the only compensation for the said siding and usage area.” In a separate paragraph Defendant agreed to pay 6¢ for each and every ton of waste material hauled from the subject premises.

Further, paragraph 3 separately provides for invoicing of the monthly rental payment of \$750.00 at 6 month intervals and monthly invoicing of the usage fee based on Defendant’s accounting of monthly shipments. This Court finds no ambiguity in the agreement as it is clear that the two payments are separate and distinct and therefore, must



grant Plaintiff's Motion for Judgment on the Pleadings with regards to this issue and preclude Defendant from presenting any parol evidence.

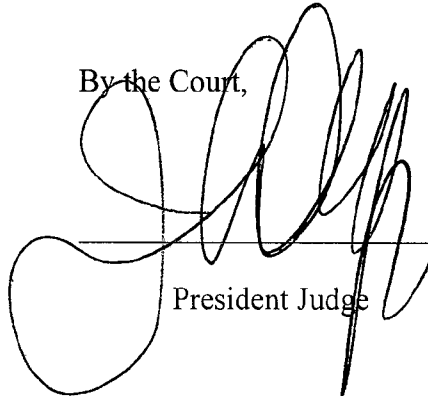
In paragraph 15 of its Answer and New Matter, Defendant alleges that it owes no obligation or obligation to pay the haulage fees as it questions Plaintiff's ownership of the haul road. With regards to this allegation, this Court can make no determination as the record is unclear and therefore, as to this issue, will deny Plaintiff's Motion for Judgment on the Pleadings.

WHEREFORE, the Court enters the following:

**ORDER**

NOW, this 25<sup>th</sup> day of September, 2001, following argument and briefs into Plaintiff's Motion for Judgment on the Pleadings, it is the ORDER of this Court that said Motion be and is hereby granted in part and denied in part in accordance with the foregoing Opinion.

By the Court,



President Judge

**FILED**

**SEP 25 2001**

**01/11/28/16  
William A. Shaw  
Prothonotary**

*cc atty Keenbar  
cc atty Haral  
EJS*

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

February 1, 2002

CASE NUMBER TYPE TRIAL REQUESTED DATE PRESENTED  
No. 00-1571-CD ESTIMATED TRIAL TIME  
Date Complaint ( ) Jury (x) Non-Jury  
Filed: ( ) Arbitration 1 Days  
December 19, 2000

PLAINTIFF(S)

BARK CAMP SERVICES, INC.

DEFENDANT(S)

ETR ENTERPRISES, INC.

ADDITIONAL DEFENDANT(S)

Check Block if  
a Minor is a  
Party to the  
Case

JURY DEMAND FILED BY:

DATE JURY DEMAND FILED:

AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED

more than  
\$ 25,000.00 ( ) yes ( ) no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed;  
all necessary parties and witnesses are available; serious  
settlement negotiations have been conducted; the case is ready in  
all respects for trial, and a copy of this Certificate has been  
served upon all counsel of record and upon all parties of record who  
are not represented by counsel.

FILED

FEB 01 2002

FOR THE PLAINTIFF

Robert M. Hanak

FOR THE DEFENDANT

Dwight L. Koerber, Jr.

FOR ADDITIONAL DEFENDANT

William A. Shaw  
TELEPHONE NUMBER

371-7768

TELEPHONE NUMBER

765-9611

TELEPHONE NUMBER

**FILED**

FEB 01 2002

0133014th, Hnack

William A. Shaw  
Prothonotary

*Copy A*  
*(Key)*

FILED

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL TRIAL LISTING

EBK m110:37  
JAN 10 2003

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

William A. Shaw  
Prothonotary  
copied to c/a

January 9, 2003

CASE NUMBER TYPE TRIAL REQUESTED DATE PRESENTED  
ESTIMATED TRIAL TIME

00-1571-CD

( ) Jury (x) Non-Jury  
Date Complaint ( ) Arbitration

1 Days

Filed: December 19, 2000

PLAINTIFF(S)

BARK CAMP SERVICES, INC.

( )

DEFENDANT(S)

ETR ENTERPRISES, INC.

( )

ADDITIONAL DEFENDANT(S)

Check Block if  
a Minor is a  
Party to the  
Case

( )

JURY DEMAND FILED BY:

DATE JURY DEMAND FILED:

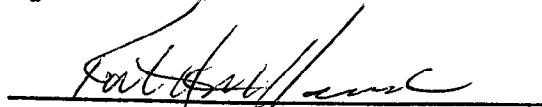
AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED

more than  
\$ 25,000.00

( ) yes ( ) no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed;  
all necessary parties and witnesses are available; serious  
settlement negotiations have been conducted; the case is ready in  
all respects for trial, and a copy of this Certificate has been  
served upon all counsel of record and upon all parties of record who  
are not represented by counsel.



FOR THE PLAINTIFF

TELEPHONE NUMBER

Robert M. Hanak

371-7768

FOR THE DEFENDANT

TELEPHONE NUMBER

Dwight L. Koerber, Jr.

765-9611

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

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

BARK CAMP SERVICES, INC.,  
Plaintiff

\*

\*

VS.

Docket No. 00-1571-CD

\*

E.T.R. ENTERPRISES, INC.,  
Defendant

\*

\*

Type of Pleading:  
NOTICE OF DEPOSITION

Filed on Behalf of:  
Plaintiff:  
E.T.R. ENTERPRISES, INC.

Counsel of Record for  
This Party:

LAW OFFICES OF  
DWIGHT L. KOERBER, JR.

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

**FILED**

**FEB 18 2003**

**William A. Shaw  
Prothonotary**

110 North Second Street  
P.O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

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

BARK CAMP SERVICES, INC.,  
Plaintiff

\*

\*

vs.

Docket No. 00-1571-CD

\*

E.T.R. ENTERPRISES, INC.,  
Defendant

\*

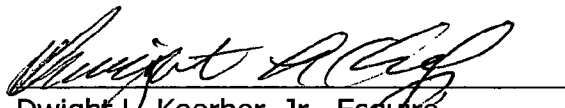
\*

**NOTICE OF DEPOSITION**

TO: Robb S. Davis  
2230 DeKalb Street  
Norristown, PA 19401

Notice is hereby given that the deposition of Robb S. Davis will be held, pursuant to Pa R.C.P. 4007.1, at the Offices of Dwight L. Koerber, Jr., Attorney at Law, 110 North Second Street, Clearfield, PA 16830 on March 7, 2003, beginning at 10:00 a.m. The deposition shall be upon oral examination of Robb S. Davis and shall cover all matters pertinent to the subject litigation. The deponent is hereby directed to bring with him his entire file on this matter.

Respectfully submitted,

  
Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant:  
ETR Enterprises, Inc.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET NO. 00-1571-CD

Bark Camp Services, Inc.

vs.

E.T.R. Enterprises, Inc.

NOTICE OF DEPOSITION

**FILED**

*212:5864*  
FEB 18 2003

William A. Shaw  
Prairie Secretary

*Law Office*

DWIGHT L. KOERBER, JR.

ATTORNEY-AT-LAW

110 NORTH SECOND STREET

P. O. Box 1320

CLEARFIELD, PENNSYLVANIA 16830

*1cc*

*Atty Koerber*

*6/23/03*



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

BARK CAMP SERVICES, INC.,  
Plaintiff

-vs-

ETR ENTERPRISES, INC.,  
Defendant

\*  
\*  
\*  
\*  
\*

Docket No. 00-1571-CD

Type of pleading:  
MOTION OF DEFENDANT TO  
AMEND ANSWER TO COMPLAINT

Filed on behalf of:  
DEFENDANT, ETR  
Enterprises, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

**FILED**

MAR 25 2003

William A. Shaw  
Prothonotary

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

BARK CAMP SERVICES, INC.,  
Plaintiff

-vs-

ETR ENTERPRISES, INC.,  
Defendant

\*

\*

\*

Docket No. 00-1571-CD

\*

\*

MOTION OF DEFENDANT TO AMEND ANSWER TO COMPLAINT

COMES NOW, Defendant ETR Enterprises, Inc., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Motion to Amend the Answer that it filed in this matter in response to the Complaint of Plaintiff Bark Camp Services, Inc.

1. A Complaint was filed by the plaintiff on or about December 19, 2000, alleging, as pertinent, that it was entitled to receive a monthly rental payment of \$750.00 and 6 cents per ton royalty for operation over a certain haul road.

2. Defendant answered that Complaint, and asserted that the monthly payment was at all times intended to be credited against any future wheelage that would be paid, with the understanding that there would not be a double payment being made.

3. This Honorable Court entered an Order on September 25, 2001, ruling, in essence, that under the parole evidence rule that the contract was not ambiguous and that the defendant was

obligated to pay both a \$750.00 monthly rental charge and six cents per ton on top of that.

4. Discovery has ensued from the time of the September 25, 2001 Order of this Honorable Court, and on March 7, 2003 the deposition of Robb Davis, Vice President of Clean Earth, Inc., parent company of Consolidated Technologies, Inc., was taken. On that same date, the deposition of Ernest T. Rosselli, President of ETR Enterprises, Inc., defendant herein, was taken.

5. Through evidence developed at the aforesaid depositions, defendant has determined that it wishes to amend its Answer and New Matter, so as to have the pleading correspond to the evidence it has developed.

I.  
**ADDITIONAL AFFIRMATIVE DEFENSE**

Paragraphs 1 through 5 are incorporated herewith as though set forth in full.

6. Defendant seeks permission of Court to plead an additional affirmative defense, as the position of defendant is that plaintiff is in breach of the subject contract, and for that reason should not be entitled to seek recovery against defendant under that contract.

7. Under part 4 of the February 23, 2000 contract, the following language is set forth:

4. Exclusive Use. ETR shall have exclusive use of the railroad siding, the usage area, and the road. Bark Camp shall not allow any other usage without express written consent of ETR.

8. Plaintiff has violated paragraph 4 of the February 23, 2000 contract, as it has permitted other parties, including the Pennsylvania Department of Environmental Protection, and its transporters, to operate over that road.

9. In failing to exclude other parties from using the road in question, without the written consent of defendant (which consent has not been given), plaintiff is in material breach of the contract in question, and for that reason should not be permitted to enforce the terms of it.

10. Defendant is prepared to call as witnesses representatives from the Pennsylvania Department of Environmental Protection who will confirm that other usage of the roadway in question has occurred during the time that the February 23, 2000 contract has been in place.

11. Attached hereto as Appendix A is a copy of the pertinent transcript page from the deposition of Ernest T. Rosselli, confirming that the plaintiff has failed to fulfill its obligation of giving exclusive usage of the haul road to defendant.

12. As an additional affirmative defense, defendant would also state that the intention of the parties was that plaintiff

would be paid a royalty only if defendant received a royalty payment from Consolidated Technologies. Attached hereto as Appendix B is a copy of the documentation developed in the deposition of Robb Davis, showing that Consolidated Technologies has not paid a royalty to defendant for operating over the haul road.

II.  
COUNTERCLAIM - REQUEST TO REFORM CONTRACT

Paragraphs 1 through 12 are incorporated herewith, as though set forth in full.

13. Through the deposition of Robb Davis, an objective third party who was present and represented Consolidated Technologies, Inc. during the negotiations between plaintiff and defendant leading up to the February 23, 2000 contract, it has been established that the parties specifically discussed the fact that there would be no double dipping in the payment arrangement, as plaintiff would receive a monthly rental charge of \$750.00, but would not receive any double payment on top of that without first having the monthly payment credited against the subsequent six cents per ton wheelage charge that would be paid.

14. Attached hereto as Appendix C is a copy of the transcript page of Robb Davis, the neutral third party who was present during the negotiations, then Vice President of

Operations of Consolidated Technologies, Inc., confirming what the intended purpose of the contract was, so as to justify a basis for reforming it.

15. In addition to having a third party who can testify as to the intentions of the parties as the contract was negotiated, evidence developed during the depositions of Robb Davis and Ernest T. Rosselli on March 7, 2003 demonstrates that there had been a long term arrangement in place between the owner of Bark Camp Services, Irvin Stoker, and Ernest T. Rosselli, whereby there had been a six cents per ton payment for wheelage that had moved over the roadway.

16. The intention of the parties in entering into a written contract, as opposed to the prior verbal contracts between the parties, was to arrange for a prepayment of \$750.00, so as to provide a more stable flow of money for Irvin Stoker as he reached his older ages, rather than to create a double payment entitlement.

17. Indeed, the parties themselves used the term "double dipping" during their negotiations, so as to make it clear that the payment arrangement that would occur did not have a double payment.

18. Defendant now seeks to have this Honorable Court reform the February 23, 2000 contract, so as to revise paragraph 2 where rentals are addressed, so as to have a specific provision

inserted specifying that double dipping would not occur. In addition, defendant seeks to have language inserted into the agreement stating that plaintiff would receive payment of the tonnage royalty only when and if defendant received payment on such from Consolidated Technologies.

19. Defendant asserts as an equitable basis for the insertion of this provision the fact that this represents the true and proper intended purpose of the negotiations and on top of that, is consistent with the past practices that the parties had followed for several years.

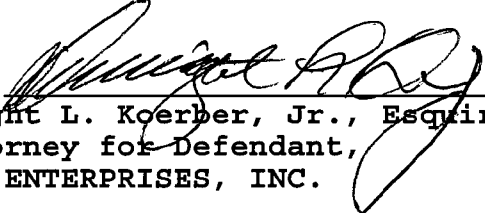
20. As further equitable grounds for its position herein, defendant would point out that it has received no wheelage payments whatsoever from Consolidated Technologies, from operations over the rail siding or roadway in question, as the clear intentions between those parties, whose contract was intended to be directly tied into the contract between plaintiff and defendant, has resulted in no wheelage payments to the defendant.

21. Defendant did not file its counterclaim seeking reformation of the subject contract at an earlier date, because there had been ongoing discussions between the parties where it was believed that they would amicably resolve this matter. In addition, defendant's counsel was materially distracted from his customary time table by virtue of open heart surgery that he was

subjected to on June 4, 2002, as this occurred during the time that the parties were negotiating for a resolution of this matter, thereby causing a delay to occur in the filing of this motion that was beyond the literal control of defendant itself.

WHEREFORE, defendant prays that its motion be granted and that it be permitted to make the requested amendments to its Answer herein, so as to set forth the additional affirmative defense of breach of contract by the plaintiff and the further request to reform the underlying contract to correspond with the evidence and intentions of the parties.

Respectfully submitted,

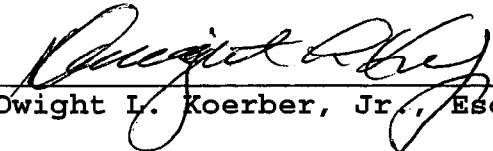
By:   
Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant,  
ETR ENTERPRISES, INC.



CERTIFICATE OF SERVICE

I certify that on this 25<sup>th</sup> day of MARCH, 2003, a copy of the foregoing pleading was served by United States First Class Mail upon counsel for plaintiff at the following name and address:

Robert N. Hanak, Esquire  
Casey Bowers, Esquire  
HANAK, GUIDO AND TALADAY  
487 Jeffers Street  
DuBois, PA 15801

  
\_\_\_\_\_  
Dwight L. Koerber, Jr., Esquire

**APPENDIX A**

Attached hereto is a copy of pages 36-37 of the transcript of the deposition of Ernest T. Rosselli, where he stated that he has not been given exclusive use of the haul road.

1 for any truckage that comes in?

2 A. No.

3 Q. And has he ever invoiced you  
4 or said that you're not treating him  
5 the way you should?

6 A. No.

7 Q. In terms of the exclusive use  
8 of the rail siding, see paragraph  
9 number four. We see that you  
10 exclusively, would be using  
11 exclusively ---. Do you know that  
12 DEP or DCNR does, in fact, use that  
13 rail --- the rail siding and the road  
14 that comes into it?

15 A. They've been using the road.  
16 I don't know if they used the rail  
17 siding.

18 Q. And you know that they do use  
19 the road?

20 A. Yes.

21 Q. And in terms of you having the  
22 exclusive use, to the exclusion of  
23 DEP, have they been excluded?

24 A. No.

25 Q. Are you sure of that?

1 A. Yeah, I know they use it. I  
2 also know that other people use it.  
3 There's a blasting company that uses  
4 the road.

5 Q. And did you ever give your  
6 written consent? Or did DEP come to  
7 you and say, may we use this?

8 A. No.

9 Q. Have you ever given a consent  
10 to anyone else to use it?

11 A. No.

12 Q. Look at paragraph number  
13 seven. It says, remedy upon default.  
14 Has Mr. Stover ever blocked the rail  
15 siding or the road?

16 A. No.

17 Q. And did you and he ever talk  
18 about that, him possibly blocking it?

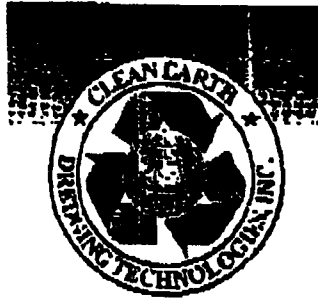
19 A. No. He was happy for a year  
20 after this agreement, or you know,  
21 close to that. And then all of a  
22 sudden ---.

23 Q. You said this agreement, is  
24 that the February 23 agreement?

25 A. Yes. And all of a sudden,

**APPENDIX B**

Attached hereto is a copy of Exhibit 2 from the deposition of Robb Davis.



**VIA FACSIMILE**  
(814) 768-7491

February 3, 2003

Ernest Rossoli  
President  
ETR Enterprises, Inc.  
850 Leonard Street  
Clearfield, Pennsylvania 16830

Re: Statement of Tonnage in Support of Rail Siding Agreement

Dear Ernie:

Pursuant to conversations with representatives of your office, Clean Earth Dredging Technologies, Inc. ("CEDTI") encloses herewith for your review and files a statement of all tonnage received by rail for use in the Bark Camp Mine Reclamation Project in Penfield, Pennsylvania.

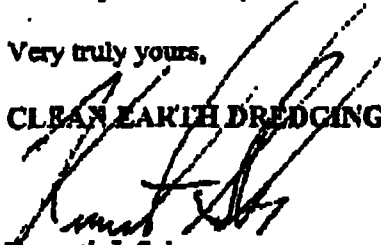
Pursuant to the Rail Siding Agreement (the "Agreement") between CTI and ETR Enterprises, Inc. ("ETR") dated February 8, 2000, and further clarified in Amendment No. 1 dated April 10, 2000 (the "Amendment"), CEDTI has paid a monthly fee of \$2,150.00 per month, paid in advance pursuant to the Agreement. The latest payment was made on 2/3/03 for six months ending 7/31/03.

Enclosed hereto is a statement of all tonnage received by rail at the Bark Camp site to date since the signing of the Agreement. As you can see, after applying the total monthly prepay amount, CEDTI has a balance of \$28,699.00 in its favor per the Amendment, this credit is to be applied at a rate of \$0.06 per ton pursuant to the Agreement and the Amendment thereto.

Should you have any additional questions, please contact this office.

Very truly yours,

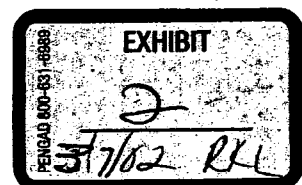
**CLEAN EARTH DREDGING TECHNOLOGIES, INC.**

  
Kenneth J. Sykes  
Operations Manager

cc: S. Newman, CEDTI

A Clean Earth, Inc. Company  
(Formerly Consolidated Technologies, Inc.)

2337 N. Penn Rd. • Suite 100 • Hatfield, Pennsylvania 19440  
Phone: 215/996-4172 • Fax: 215/996-3652



Consolidated Technologies Inc.  
Road Usage Fee at Fairfield Pa

Jan-00	-	in Tons
Feb-00	-	in Tons
Mar-00	-	in Tons
Apr-00	-	in Tons
May-00	-	in Tons
Jun-00	-	in Tons
Jul-00	0.400	in Tons
Aug-00	24.432	in Tons
Sep-00	25.788	in Tons
Oct-00	33.962	in Tons
Nov-00	15.862	in Tons
Dec-00	30.282	in Tons
Jan-01	-	in Tons
Feb-01	-	in Tons
Mar-01	-	in Tons
Apr-01	22.887	in Tons
May-01	40.983	in Tons
Jun-01	38.424	in Tons
Jul-01	63.738	in Tons
Aug-01	68.277	in Tons
Sep-01	48.273	in Tons
Oct-01	43.791	in Tons
Nov-01	28.938	in Tons
Dec-01	48.283	in Tons
Jan-02	11.467	in Tons
Feb-02	10.818	in Tons
Mar-02	8.888	in Tons
Apr-02	13.048.08	in Tons
May-02	14.933.47	in Tons
Jun-02	12,738.73	in Tons
Jul-02	16,131.33	in Tons
Aug-02	17,860.48	in Tons
Sep-02	11,886.88	in Tons
Oct-02	-	in Tons
Nov-02	-	in Tons
Dec-02	-	in Tons
Jan-03	-	in Tons

Total Actual Tonnage 657.888Total Due on Actual Tonnage 2,238,827.84Total Prepayment for 12 Month 1,124,000Tonnage/08 Per Ton 25.258 Positive Balance Left as of January 31, 2003

CONSOLIDATED TECHNOLOGIES, INC.  
ROAD USAGE FEE AT PENFIELD, PA

JAN-00	0	IN TONS
FEB-00	0	IN TONS
MAR-00	0	IN TONS
APR-00	0	IN TONS
MAY-00	0	IN TONS
JUN-00	0	IN TONS
JUL-00	8,000	IN TONS
AUG-00	24,432	IN TONS
SEP-00	26,758	IN TONS
OCT-00	39,952	IN TONS
NOV-00	15,963	IN TONS
DEC-00	30,292	IN TONS
JAN-01	0	IN TONS
FEB-01	0	IN TONS
MAR-01	0	IN TONS
APR-01	33,937	IN TONS
MAY-01	40,963	IN TONS
JUN-01	39,484	IN TONS
JUL-01	53,706	IN TONS
AUG-01	59,377	IN TONS
SEP-01	49,273	IN TONS
OCT-01	43,731	IN TONS
NOV-01	25,626	IN TONS
DEC-01	49,263	IN TONS
JAN-02	11,947	IN TONS
FEB-02	10,816	IN TONS
MAR-02	8,689	IN TONS
APR-02	13,942	IN TONS
MAY-02	14,933	IN TONS
JUN-02	12,640	IN TONS
JUL-02	18,131	IN TONS
AUG-02	17,995	IN TONS
SEP-02	11,856	IN TONS
OCT-02	0	IN TONS
NOV-02	0	IN TONS
DEC-02	0	IN TONS
JAN-03	0	IN TONS

TOTAL ACTUAL TONS

661,686

TOTAL DUE ON ACTUAL TONS

$$\begin{array}{r} 661,686 \\ \times .06 \\ \hline 39,701 \end{array}$$

TOTAL PREPAYMENT FOR 32 MONTHS

\$ 68,400

TONNAGE / .06 PER TON

\$ 28,699 POSITIVE BALANCE LEFT  
AS OF JANUARY 31, 2003



**APPENDIX C**

Attached hereto are copies of pages 25-27 of the transcript of the deposition of Robb Davis.

1 and we got him down to, I think,  
2 \$1,000 or \$1,100. And we ended up at  
3 a flat fee of \$750 a month, knowing  
4 that the future volume --- he would  
5 still be paid when dredge came in.  
6 He would be paid that \$750 a month  
7 whether or not dredge came in. And  
8 for several months, no dredge did  
9 come in.

10 Q. Was there any discussion  
11 directly with him as to whether the  
12 \$750 a month would be credited  
13 against the dredge coming in? When  
14 the dredge did come in and there was  
15 actually a six cents per ton payment,  
16 was there any discussion as to  
17 whether his monthly payments would be  
18 credited against --- would be  
19 credited so as to apply to the future  
20 tonnage?

21 A. Yes. And the reason that that  
22 was ---. There were some prior  
23 agreements in effect with Mr.  
24 Rossolli and CTI, that I previously  
25 indicated, that we would pay six

1     cents a ton wheelage for every ton  
2     that came across, that was a flat  
3     fee. The only thing I tried to do  
4     different was to structure something  
5     for Irving, whereby he would get a  
6     monthly stipend, because he was  
7     promised money that, you know, he had  
8     nothing to show for it. But not  
9     knowing how much dredge would come  
10    through, the intent was not to pay  
11    twice for that, but that monthly fee,  
12    he would be paid regardless of  
13    whether or not dredge material came  
14    in. But when the dredge material did  
15    come in, it would be credited against  
16    the six cents a ton, the wheelage  
17    fee, there would be no double  
18    payment.

19    Q.       Did you have any direct  
20    discussions about no double payment,  
21    when you were involved in the  
22    negotiations?

23    A.       Oh, absolutely. We covered  
24    that. Mr. Rossolli and I indicated  
25    prior that our existing agreement was

1 that it's a flat fee. And we were  
2 just basically trying to set  
3 something up for Irving, whereby, you  
4 know, if 100,000 tons came through at  
5 six cents a ton, he would be entitled  
6 to that money. Well, we were just  
7 pre-paying him a monthly rental in  
8 advance, so he would have money on a  
9 monthly basis.

10 Q. You said, oh, yes, there was  
11 that discussion. Was that a clear  
12 point of discussion, Robb?

13 A. Absolutely.

14 Q. As developments have occurred,  
15 we see, in Exhibit Number Two, the  
16 actual tonnage that is moved. We  
17 also have a letter, at the very  
18 front, from Mr. Sykes, who handles  
19 the accounting. And he's indicated  
20 that, you know, as a fact whether or  
21 not ETR has been paid any tonnage  
22 besides the monthly allowance that  
23 has come into them, if they received  
24 any wheelage payment on top of that?

25 A. No, they have not.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
Docket No. 00-1571-CD

BARK CAMP SERVICES, INC.,  
Plaintiff

-vs-

ETR ENTERPRISES, INC.,  
Defendant

MOTION OF DEFENDANT TO AMEND  
ANSWER TO COMPLAINT

FILED 300

018:49 PM  
MAR 25 2003

Ant Koerber

William A. Shaw  
Prothonotary

Law Office

DWIGHT L. KOERBER, JR.

ATTORNEY - AT - LAW

110 NORTH SECOND STREET

P. O. Box 1320

CLEARFIELD, PENNSYLVANIA 16830

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

BARK CAMP SERVICES, INC.  
Plaintiff

\*

\*

-VS-

\*

Docket No. 00-1571-CD

\*

ETR ENTERPRISES, INC.,  
Defendant

\*

Type of Pleading:  
CERTIFICATE OF SERVICE

Filed on behalf of:  
DEFENDANT:  
ETR Enterprises, Inc.

Counsel of record for this party:

Dwight L. Koerber, Jr., Esquire  
PA I.D. No. 16332

110 North Second Street  
P.O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

FILED

MAR 26 2003

012506  
William A. Shaw  
Prothonotary

3 CENTS TO ATTORNEY

CR  
[Signature]

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
DOCKET NO. 00-1571-CD

Bark Camp Services, Inc.

vs.

ETR Enterprises, Inc.

CERTIFICATE OF SERVICE

*Law Office*

DWIGHT L. KOERBER, JR.

ATTORNEY - AT - LAW

110 NORTH SECOND STREET

P. O. BOX 1320

CLEARFIELD, PENNSYLVANIA 16830

FILED

MAR 26 2003

William A. Shaw  
Prothonotary

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

BARK CAMP SERVICES, INC.,  
Plaintiff

-vs-

ETR ENTERPRISES, INC.,  
Defendant

\*  
\*  
\*  
\*  
\*

Docket No. 00-1571-CD

Type of pleading:  
RULE RETURNABLE ORDER

Filed on behalf of:  
DEFENDANT, ETR  
Enterprises, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

FILED

MAR 25 2003

William A. Shaw  
Prothonotary



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

BARK CAMP SERVICES, INC.,  
Plaintiff

-vs-

ETR ENTERPRISES, INC.,  
Defendant

\*

\*

\*

\*

\*

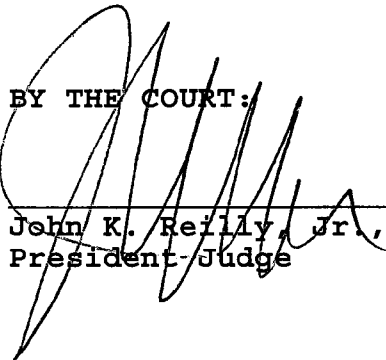
Docket No. 00-1571-CD

RULE RETURNABLE ORDER

AND NOW, this 25<sup>th</sup> day of March, 2003, upon  
consideration of the MOTION OF DEFENDANT TO AMEND ANSWER TO  
COMPLAINT, it is the ORDER AND DECREE of this Court that  
plaintiff show cause why the motion should not be granted.

Written response shall be due on the 14 day of April,  
2003.

BY THE COURT:

  
\_\_\_\_\_  
John K. Reilly, Jr.,  
President Judge

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
Docket No. 00-1571-CD

BARK CAMP SERVICES, INC.,  
Plaintiff

-vs-

ETR ENTERPRISES, INC.,  
Defendant

RULE RETURNABLE ORDER

FILED

6/2:48:26L  
MAR 25 2003

William A. Shaw  
Proprietary

*Law Office*

DWIGHT L. KOERBER, JR.  
ATTORNEY - AT - LAW  
110 NORTH SECOND STREET  
P. O. Box 1320  
CLEARFIELD, PENNSYLVANIA 16830

300  
Attg Koerber

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

BARK CAMP SERVICES, INC.,  
Plaintiff

-vs-

ETR ENTERPRISES, INC.,  
Defendant

\*  
\*  
\*  
\*  
\*

Docket No. 00-1571-CD

Type of pleading:  
CERTIFICATE OF SERVICE

Filed on behalf of:  
DEFENDANT, ETR  
Enterprises, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

FILED

APR 02 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
Docket No. 00-1571-CD

BARK CAMP SERVICES, INC.,  
Plaintiff

-vs-

ETR ENTERPRISES, INC.,  
Defendant

CERTIFICATE OF SERVICE

**FILED**

APR 02 2003

0/2:45 P.M.

William A. Shaw

Prothonotary

3 cc to Atty

*Law Office*

DWIGHT L. KOERBER, JR.

ATTORNEY - AT - LAW

110 NORTH SECOND STREET

P. O. Box 1820

CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

CIVIL ACTION - AT LAW

No. 00-1571-CD

Type of Pleading:

**MOTION IN OPPOSITION  
TO DEFENDANT'S MOTION  
TO AMEND ANSWER**

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This  
Party:

Robert M. Hanak  
Supreme Court No. 05911  
Hanak, Guido and Taladay  
498 Jeffers St., P. O. Box 487  
DuBois, PA 15801

(814) 371-7768

FILED

APR 07 2003

m / 9:00 / m  
William A. Shaw  
Prothonotary

no c/c

(Em)

1721

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

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

:  
:  
:  
:  
:  
:  
:

No. 00-1571-CD

**PLAINTIFF'S MOTION IN OPPOSITION TO  
DEFENDANT'S MOTION TO AMEND ANSWER**

AND NOW, comes the Plaintiff, Bark Camp Services, Inc.,  
by and through its attorneys, Hanak, Guido and Taladay, hereby  
opposes Defendant's Motion to Amend its Answer for the following  
reasons:

1. Plaintiff entered into a contract with Defendant on  
February 23, 2000, which contract had been admitted in the  
pleadings.

2. The contract was a lease-type agreement under the  
terms of which Plaintiff leased to Defendant a land area and roadway  
abutting the Pittsburgh & Shawmut Railroad in Huston Township,  
Clearfield County, Pennsylvania.

3. The purpose of the lease was to allow usage by  
Defendant to haul and dispose of fly ash and dredge material. The  
parties contemplated that the railroad siding and roadway under lease  
would be used in hauling of fly ash and dredge material to a remote  
mine site for deposition.

4. Paragraph 2 of the agreement provided that Defendant would pay to Plaintiff rental and usage fees as follows:

2. Rentals. ETR agrees to pay to Bark Camp rentals and usage fees as follows:

(a) A flat rate of \$750.00 per month for usage of the railroad siding and property leased herein, which amount shall be considered as the only compensation for the said rail siding and usage area.

(b) The sum of six cents for each and every ton of waste material hauled by truck or other carrier from either PA Route 255, or the railroad siding area to the former Glenn Irvin Mine Site.

5. In its Opinion and Order dated September 25, 2001, this Honorable Court has already ruled that:

(a) The subject contract is not ambiguous.

(b) "The language in paragraphs 2 and 3 of the subject agreement clearly provides that the Defendant must pay both a \$750.00 monthly rental fee for usage of the railroad siding, etc. and usage fees in the amount of six cents per ton for each ton of waste material hauled over the subject premises." (Emphasis in original.)

(c) Defendant is precluded from presenting parole evidence.

#### **COUNT I ADDITIONAL AFFIRMATIVE DEFENSES**

6. Previous paragraphs are incorporated herewith as though set forth in full.

7. Defendant seeks to allege that Plaintiff breached the subject contract by failing to exclude other parties from using the subject road.

8. Defendant contends Plaintiff's alleged breach precludes Plaintiff from recovering on the contract.

9. Assuming for the sake of argument, that Plaintiff did fail to exclude other users from the subject premises, Plaintiff remains entitled to the benefit of the contract over and above any damage caused by its alleged breach. *Lancellottii vs. Thomas*, 341 Pa.Super. 1, 10, 491 A.2d 117, 122 (1985).

10. Defendant has failed to allege that it has suffered any damages from Plaintiff's alleged breach. Therefore, Plaintiff is entitled to the full benefit of the contract.

11. Defendant also seeks to allege that the parties intended the royalty payment to Plaintiff to be contingent on Defendant receiving a royalty payment from its subcontractor.

12. The subject agreement does not provide for such contingency.

13. As such, Defendant's claim that its obligations to pay the royalty payment to Plaintiff was somehow contingent on Defendant receiving payment from its subcontractor would require a consideration of parole evidence.

14. Consideration of such parole evidence would contravene this Honorable Court's ruling that precludes the Defendant from presenting parole evidence.

WHEREFORE, Plaintiff respectfully requests this Court to deny Defendant's Motion to allege additional defenses.

**COUNT II**  
**COUNTERCLAIM - REQUEST TO PERFORM CONTRACT**

15. Previous paragraphs are incorporated herewith as if set forth in full.



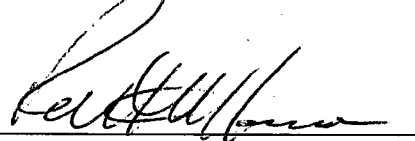
16. Defendant also seeks to reform the subject agreement to provide that no "double dipping" will occur.

17. Such a revision would call for the consideration of parole evidence, specifically the testimony of Ernest Roselli and Robb Davis as to previous agreements and negotiations between the parties.

18. This Court has already ruled that Defendant is precluded from presenting such parole evidence. In addition, this Court has already ruled that the contract required Defendant to pay both a monthly rental fee and a six cents per ton royalty.

WHEREFORE, Plaintiff respectfully requests this Court to deny Defendant's motion to reform the subject contract.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert M. Hanak", is written over a horizontal line.

Robert M. Hanak  
Attorney for Plaintiff

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

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

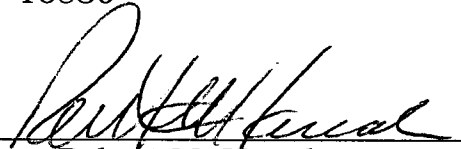
:  
:  
:  
:  
:  
:  
:  
:

No. 00-1571-CD

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2003, I mailed a copy of  
the foregoing MOTION IN OPPOSITION TO MOTION TO AMEND  
DEFENDANT'S ANSWER by first class mail, postage prepaid, to the  
following:

Dwight L. Koerber, Jr., Esq.  
110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830



Robert M. Hanak  
Attorney for Plaintiff

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

BARK CAMP SERVICES, INC. :

-vs- :

No. 00 – 1571 – CD

ETR ENTERPRISES, INC. :

**PRE-TRIAL ORDER**

NOW, this 10<sup>th</sup> day of April, 2003, following pre-trial conference in the above-captioned non-jury proceeding, it is the ORDER of this Court that Defendant shall brief all issues raised in its Motion in Opposition to Defendant's Motion to Amend Answer within 20 days. Following receipt of said brief, Plaintiff may file a reply brief following which oral argument will be scheduled.

By the Court,

  
\_\_\_\_\_  
President Judge

**FILED**

APR 11 2003

William A. Shaw  
Prothonotary

FILED

cc Atty Hanak

019:28-871

cc Atty Kerber

APR 11 2003



William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

ETR ENTERPRISES, INC.,  
Defendant

CIVIL ACTION - AT LAW

No. 00-1571-CD

Type of pleading:

**CERTIFICATE OF SERVICE**

Filed on behalf of:

PLAINTIFF

Counsel of record for this  
party:

Robert M. Hanak  
Supreme Court No. 05911  
Hanak, Guido and Taladay  
498 Jeffers St., P. O. Box 487  
DuBois, PA 15801

(814) 371-7768

**FILED**

MAY 12 2003

William A. Shaw  
Prothonotary

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

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

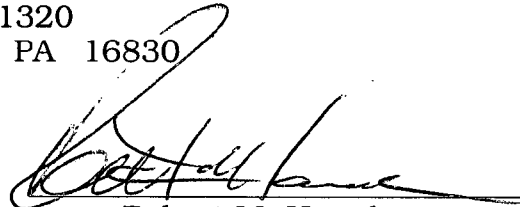
ETR ENTERPRISES, INC.,  
Defendant

No. 00-1571-CD

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2003, I mailed a copy of the foregoing BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO AMEND ANSWER by first class mail, postage prepaid, to the following:

Dwight L. Koerber, Jr., Esq.  
110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830

A handwritten signature in black ink, appearing to read 'Robert M. Hanak', is written over a horizontal line.

Robert M. Hanak  
Attorney for Plaintiff

FILED NO cc

MAY 18:44 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

BARK CAMP SERVICES, INC.

:

-vs-

:

No. 00 – 1571 – CD

ETR ENTERPRISES, INC.

:

**ORDER**

NOW, this 20<sup>th</sup> day of June, 2003, upon consideration of Defendant's Motion to Amend Answer to Complaint, and argument and briefs thereon, it is the ORDER of this Court that said Motion shall be and is hereby granted to the extent that Defendant shall be permitted to amend its Answer to Complaint to add the additional defense of alleged breach of contract. Defendant's request to amend its Answer to Complaint to request a reformation of the contract shall be and is hereby dismissed.

By the Court

\_\_\_\_\_  
President Judge

**FILED**

JUN 23 2003

William A. Shaw  
Prothonotary



**FILED**

1cc Atty Hanak  
06/11/06 ~~24~~ 1cc Atty Koerber  
JUN 23 2003  
Keb

William A. Shaw  
Prothonotary

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

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

E.T.R. ENTERPRISES, INC.,  
Defendant

\*

\*

\*

\*

\*

Docket No. 00-1571-CD

Type of Pleading:  
CERTIFICATION

Filed on Behalf of:  
Plaintiff:  
E.T.R. ENTERPRISES, INC.

Counsel of Record for  
This Party:

LAW OFFICES OF  
DWIGHT L. KOERBER, JR.

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

110 North Second Street  
P.O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

**FILED**

JUN 24 2003

William A. Shaw  
Prothonotary

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

BARK CAMP SERVICES, INC.,  
Plaintiff

\*

\*

vs.

Docket No. 00-1571-CD

\*

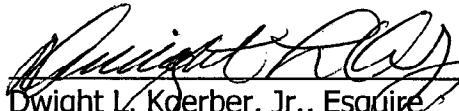
E.T.R. ENTERPRISES, INC.,  
Defendant

\*

\*

**CERTIFICATION**

I certify that the attached Notice of Deposition was served to Robert M.  
Hanak, Esquire, S. Casey Bowers, Esquire and Mr. J. Paul Linnan on the 5<sup>th</sup> day of June,  
2003 as shown on the attached Certificate of Service.

  
Dwight L. Koerber, Jr., Esquire  
Attorney for DEFENDANT:  
E.T.R. Enterprises, Inc.

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

BARK CAMP SERVICES, INC.,  
Plaintiff

\*

\*

vs.

Docket No. 00-1571-CD

\*

E.T.R. ENTERPRISES, INC.,  
Defendant

\*

\*

Type of Pleading:  
NOTICE OF DEPOSITION

Filed on Behalf of:  
Plaintiff:  
E.T.R. ENTERPRISES, INC.

Counsel of Record for  
This Party:

LAW OFFICES OF  
DWIGHT L. KOERBER, JR.

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

110 North Second Street  
P.O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

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

BARK CAMP SERVICES, INC.,  
Plaintiff

\*

\*

vs.

Docket No. 00-1571-CD

\*

E.T.R. ENTERPRISES, INC.,  
Defendant

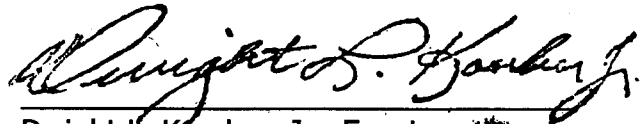
\*

**NOTICE OF DEPOSITION**

TO: J. Paul Linnan, Chief of Operations  
BUREAU OF ABANDONED MINE RECLAMATION  
DEPT. OF ENVIRONMENTAL PROTECTION  
White Memorial Building, P.O. Box 669  
Knox, PA 16232-0669

Notice is hereby given that the deposition of J. Paul Linnan originally scheduled for June 25, 2003 at 9:30 a.m. has been cancelled and has been rescheduled for June 26, 2003 at 10:00 a.m. The deposition will be held, pursuant to Pa R.C.P. 4007.1, at the Offices of Dwight L. Koerber, Jr., Attorney at Law, 110 North Second Street, Clearfield, PA 16830. The deposition shall be upon oral examination of J. Paul Linnan and shall cover all matters pertinent to the subject litigation. The deponent is hereby directed to bring with him his entire file on this matter.

Respectfully submitted,



Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant:  
ETR Enterprises, Inc.

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

BARK CAMP SERVICES, INC.,  
Plaintiff

\*

\*

vs.

Docket No. 00-1571-CD

\*

E.T.R. ENTERPRISES, INC.,  
Defendant

\*

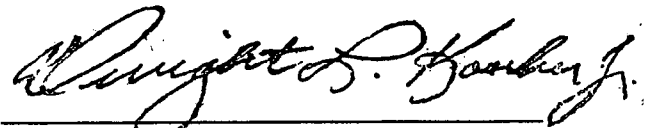
\*

**CERTIFICATE OF SERVICE**

This is to certify that on the 5<sup>th</sup> day of June, 2003, the undersigned served a true and correct copy of the NOTICE OF DEPOSITION in the above captioned matter upon counsel for Plaintiff and on Mr. J. Paul Linnan. Such documents were served via United States First Class Mail upon the following:

Robert M. Hanak, Esquire  
S. Casey Bowers, Esquire  
HANAK, GUIDO and TALADAY  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801

J. Paul Linnan, Chief of Operations  
BUREAU OF ABANDONED MINE RECLAMATION  
DEPT. OF ENVIRONMENTAL PROTECTION  
White Memorial Building; P.O. Box 669  
Knox, PA 16232-0669



Dwight L. Koerber, Jr., Esquire  
Attorney for DEFENDANT:  
E.T.R. Enterprises, Inc.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
DOCKET NO. 00-1571-CD

Bark Camp Services, Inc.

-vs.-

E.T.R. Enterprises, Inc.

CERTIFICATION

William A. Shaw  
Präthonotary

*Law Office*

DWIGHT L. KOERBER, JR.  
ATTORNEY - AT - LAW  
110 NORTH SECOND STREET  
P. O. BOX 1320  
CLEARFIELD, PENNSYLVANIA 16830

FILED  
JUN 27 2001

Att. Koerber

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

BARK CAMP SERVICES, INC.,  
Plaintiff

\*

\*

vs.

Docket No. 00-1571-CD

\*

E.T.R. ENTERPRISES, INC.,  
Defendant

\*

\*

Type of Pleading:  
NOTICE OF DEPOSITION

Filed on Behalf of:  
Plaintiff:  
E.T.R. ENTERPRISES, INC.

Counsel of Record for  
This Party:

LAW OFFICES OF  
DWIGHT L. KOERBER, JR.

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

110 North Second Street  
P.O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

**FILED**

**AUG 18 2003**

William A. Shaw  
Prothonotary/Clerk of Courts



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

BARK CAMP SERVICES, INC.,  
Plaintiff

\*

\*

vs.

Docket No. 00-1571-CD

\*

E.T.R. ENTERPRISES, INC.,  
Defendant

\*

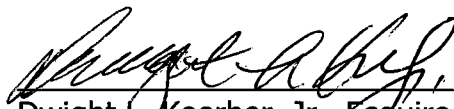
\*

**NOTICE OF DEPOSITION**

TO: Ethel Stoker  
c/o Robert M. Hanak, Esquire  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Notice is hereby given that the deposition of Ethel Stoker will be held, pursuant to Pa R.C.P. 4007.1, at the Offices of Robert M. Hanak, Esquire, HANAK, GUIDO, and TALADAY, 498 Jeffers Street, DuBois, PA 15801 on August 26, 2003, beginning at 10:45 a.m. The deposition shall be upon oral examination of Ethel Stoker and shall be conducted by telephone. It shall cover all matters pertinent to the subject litigation. The deponent is hereby directed to have available to her her entire file on this matter.

Respectfully submitted,

  
Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant:  
ETR Enterprises, Inc.

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

BARK CAMP SERVICES, INC.,  
Plaintiff

\*

\*

vs.

Docket No. 00-1571-CD

\*

E.T.R. ENTERPRISES, INC.,  
Defendant

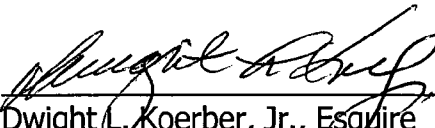
\*

\*

**CERTIFICATE OF SERVICE**

This is to certify that on the 18<sup>th</sup> day of August, 2003, the undersigned served a true and correct copy of the NOTICE OF DEPOSITION in the above captioned matter upon counsel for Plaintiff. Such documents were served via United States First Class Mail upon the following:

Robert M. Hanak, Esquire  
HANAK, GUIDO and TALADAY  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801



Dwight L. Koerber, Jr., Esquire  
Attorney for DEFENDANT:  
E.T.R. Enterprises, Inc.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
DOCKET NO: 00-1571-CD

Bark Camp Services, Inc.

-vs-

E.T.R. Enterprises, Inc.

NOTICE OF DEPOSITION

FILED 400

8/3/03  
AUG 18 2003

William A. Shaw  
Prothonotary, Clerk of Courts

LAW OFFICE

DWIGHT KOERBER, JR.

ATTORNEY-AT-LAW

110 NORTH SECOND STREET

P. O. BOX 1320

CLEARFIELD, PENNSYLVANIA 16830

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

BARK CAMP SERVICES, INC.,  
Plaintiff

vs.

E.T.R. ENTERPRISES, INC.,  
Defendant

\*

\*

\*

\*

\*

Docket No. 00-1571-CD

Type of Pleading:  
NOTICE OF DEPOSITION

Filed on Behalf of:  
Plaintiff:  
E.T.R. ENTERPRISES, INC.

Counsel of Record for  
This Party:

LAW OFFICES OF  
DWIGHT L. KOERBER, JR.

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

110 North Second Street  
P.O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

**FILED**

**AUG 18 2003**

William A. Shaw  
Prothonotary/Clerk of Courts

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

BARK CAMP SERVICES, INC.,  
Plaintiff

\*

\*

vs.

Docket No. 00-1571-CD

\*

E.T.R. ENTERPRISES, INC.,  
Defendant

\*

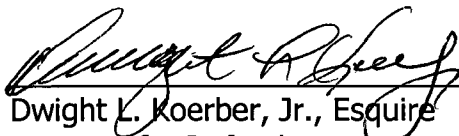
\*

**NOTICE OF DEPOSITION**

TO: Gary Stoker  
c/o Robert M. Hanak, Esquire  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Notice is hereby given that the deposition of Gary Stoker will be held, pursuant to Pa R.C.P. 4007.1, at the Offices of Robert M. Hanak, Esquire, HANAK, GUIDO, and TALADAY, 498 Jeffers Street, DuBois, PA 15801 on August 26, 2003, beginning at 10:00 a.m. The deposition shall be upon oral examination of Gary Stoker and shall cover all matters pertinent to the subject litigation. The deponent is hereby directed to bring with him his entire file on this matter.

Respectfully submitted,

  
Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant:  
ETR Enterprises, Inc.

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

BARK CAMP SERVICES, INC.,  
Plaintiff

\*

\*

vs.

Docket No. 00-1571-CD

\*

E.T.R. ENTERPRISES, INC.,  
Defendant

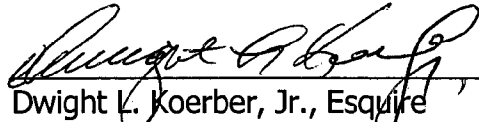
\*

\*

**CERTIFICATE OF SERVICE**

This is to certify that on the 18<sup>th</sup> day of August, 2003, the undersigned served a true and correct copy of the NOTICE OF DEPOSITION in the above captioned matter upon counsel for Plaintiff. Such documents were served via United States First Class Mail upon the following:

Robert M. Hanak, Esquire  
HANAK, GUIDO and TALADAY  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801

  
Dwight L. Koerber, Jr., Esquire  
Attorney for DEFENDANT:  
E.T.R. Enterprises, Inc.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
DOCKET NO: 00-1571-CD

Bark Camp Services, Inc.

-VS-

E.T.R. Enterprises, Inc.

NOTICE OF DEPOSITION

William A. Shaw  
Prothonotary/Clerk of Courts

FILED  
JUL 31 2003  
JUL 18 2003

W. A. Shaw  
JUL 18 2003  
JUL 18 2003

LAW OFFICE  
DWIGHT KOERBER, JR.  
ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. BOX 1320  
CLEARFIELD, PENNSYLVANIA 16830

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


CA  
FILED  
SEP 03 2004  
William A. Shaw  
Prothonotary/Clerk of Courts  
icc Atty's  
Hanak  
Koeber  
(CA envelopes)

BARK CAMP SERVICES, INC. :  
: vs. : No. 00-1571-CD  
: ETR ENTERPRISES, INC. :

**ORDER**

AND NOW, this 3 day of September, 2004, it is the Order of the Court that a status conference in the above-captioned matter has been scheduled for **Wednesday, September 22, 2004 at 3:00 P.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge



**HANAK, GUIDO and TALADAY**  
**Attorneys at Law**

Robert M. Hanak  
Anthony S. Guido  
Matthew B. Taladay

Telephone: (814) 371-7768  
Fax: (814) 371-1974

498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Nicole Hanak Bankovich  
S. Casey Bowers

September 9, 2004

**FILED**

SEP 20 2004

0/107.00/1  
William A. Shaw  
Prothonotary

FILED PER FJA.

The Honorable Fredric J. Ammerman  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830

Re: Bark Camp Services, Inc.  
vs. ETR Enterprises, Inc.  
No. 00-1571-CD

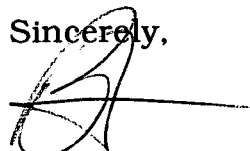
Dear Judge Ammerman:

Thank you for your continuing interest in the status of this case. We received a Court Order showing that a status conference is scheduled for September 22, 2004 at 3:00 p.m. Attached to this letter is Dwight Koerber's letter who represents the Defendant party. This office represents Plaintiff.

This case has been settled, and there is no further activity anticipated. I believe the docket was left open because, as part of the settlement, there is an executory contract in effect for obligated payments and activities. The settlement contract is ongoing and is in compliance at the present time. Dwight and I both agree that there is no further need for court involvement.

If you still feel that a status conference is necessary, kindly advise.

Sincerely,



Robert M. Hanak

RMH/eh

Encl.

cc: Dwight L. Koerber, Jr., Esq.

**LAW OFFICES  
OF  
DWIGHT L. KOERBER, JR.**

*Attorney at Law*  
110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
September 10, 2004

Dwight L. Koerber, Jr.

Telephone (814) 765-9611

Facsimile (814) 765-9503

*File*  
**FILED**

The Honorable Fredric J. Ammerman  
CLEARFIELD COUNTY COURTHOUSE  
230 East Market Street  
Clearfield, PA 16830

SEP 20 2004

0/10:00/0

William A. Shaw  
Prothonotary

**Re: Bark Camp Services, Inc. vs. ETR Enterprises, Inc.**  
**Docket No. 00-1571-CD**

FILED PER

F.S.A.

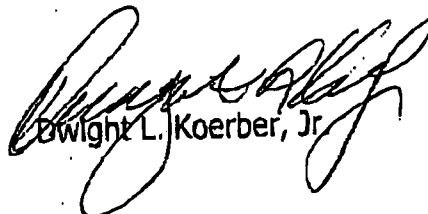
Dear Judge Ammerman:

I represent ETR Enterprises, Inc., Defendant in the above referenced case.

I have received a copy of the September 9, 2004 letter which Robert M. Hanak, Esquire indicated that he will be forwarding to you. I fully concur in Mr. Hanak's letter and do not believe that there is a need for further Court involvement, but if you believe that a status conference is necessary, I would certainly comply. I would note that currently at the time of the status conference I am scheduled for a mediation session before Dr. Ryen, but could interrupt the meeting for a short period in order to address this case if you believe that a status conference is necessary.

To avoid duplicate correspondence to you, I have asked Robert Hanak if he would kindly attach this letter to the letter that he presents to you.

Very truly yours,

  
Dwight L. Koerber, Jr.

DLK/bdt

Cc: Robert M. Hanak, Esquire  
Mr. Ernest T. Rosselli