

61-267-CD
J.J. POWELL, INC. -vs- TYRONE MILLING, INC. t/a/b/a TYCO
TRUCKING, INC., DAVID HERSHEY & BUD BOOM

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

Plaintiff

VS.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING, INC.

Defendant

NO. 01-267-CO

TYPE OF PLEADING: COMPLAINT

FILED ON BEHALF OF: PLAINTIFF

COUNSEL OF RECORD FOR
THIS PARTY:

David C. Mason, Esquire
MASON LAW OFFICE
409 North Front Street
P.O. Box 28
Philipsburg, PA 16866
814-342-2240
I.D. No. 39180

FILED

FEB 26 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* NO.

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING, INC.

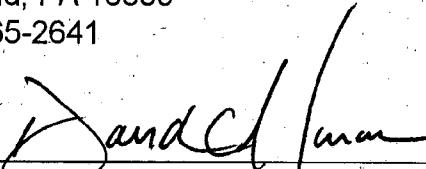
Defendant

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE AN LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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



David C. Mason, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

NO.

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING, INC.

Defendant

COMPLAINT

AND NOW, comes the Plaintiff, **J.J. POWELL, INC.**, by and through its attorney, **DAVID C. MASON, ESQUIRE** and makes the following Complaint against the Defendant, and in support thereof avers as follows:

1. Plaintiff **J.J. POWELL, INC.**, is a Pennsylvania business corporation located at Presqueisle Street, Borough of Chester Hill, Clearfield County, Pennsylvania, 16866.
2. Defendant **TYRONE MILLING, INC.**, is a Pennsylvania business corporation with a mailing address of R. D. #1, Bos 34A, Tyrone, Pennsylvania, 16686.
3. Defendant **TYCO TRUCKING, INC.**, is a Pennsylvania business corporation with a principal mailing address of R. D. #1, Box 34A, Tyrone, Pennsylvania, 16686.
4. At all times material and relevant hereto, Plaintiff was involved in the business of selling and distributing wholesale petroleum products and the retail sale of gasoline, diesel fuel and kerosene.

5. On or about November 4, 1998, David Hershey, an individual, who is an officer, shareholder and principal of Defendant Tyrone Milling, Inc., contacted representatives of Plaintiff and requested that Plaintiff establish a separate fuel management credit account in the name of Tyco Trucking.

6. David Hershey identified Tyco Trucking as another internal company for costing purposes and requested that Plaintiff provide it with diesel fuel and other petroleum products in the course of the operation of their business, with a mailing address the same as that of Tyrone Milling, Inc.

7. At the specific request and insistence of David Hershey, Plaintiff established an account which permitted individuals to purchase gasoline, diesel fuel and other petroleum products on a credit account through the use of fuel management cards.

8. All payments due on the credit account were to be made at the office of Plaintiff in the Borough of Chester Hill, Clearfield County, PA.

9. The purchases on the account requested by David Hershey began in November of 1998, and payments were made on that account commencing in 1998.

10. Charges were incurred for the purchase of fuel and payments were made on the credit account by Defendant, Tyrone Milling, Inc., commencing November of 1998.

11. On or about July 7, 1999, a corporation by the name of Tyco Trucking, Inc., was organized and on that date authorized to conduct business in the Commonwealth of Pennsylvania.

12. No change in the previously created credit account for Tyrone Milling, Inc. was requested nor was any change made.

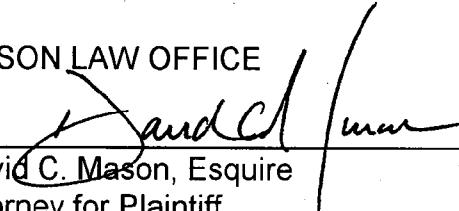
13. The total amount of said credit account due and owing on February 14, 2001, is **\$81,882.32**.

14. Defendant's last charge to this account was November 30, 2000, and Defendant's last payment on this account was on November 21, 2000, in the amount of \$16,000.00.

15. Despite Plaintiff's repeated requests for payment, Defendants have failed and refused and continue to fail and refuse to make any further payment whatsoever on the above referenced account.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against the Defendants, jointly and severally, in the amount of **\$81,882.32**, plus interest and costs of suit.

MASON LAW OFFICE


David C. Mason, Esquire
Attorney for Plaintiff

VERIFICATION

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

J. J. POWELL, INC.

By: 

DATED: 2/21/01

FILED

FEB 26 2001

28/9/01 Gatty Moon
William A. Shaw
Prothonotary

pd \$80.00

3cc Gatty Moon

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

J.J. POWELL, INC. :
Plaintiff :
:
v. : No. 01-267-CD
:
TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING, INC., :
Defendant :
:

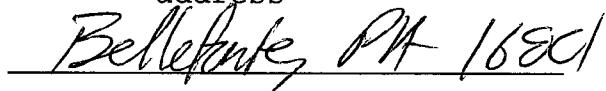
ACCEPTANCE OF SERVICE

I accept service of the Complaint on behalf of Defendant
Tyrone Milling, Inc. and certify that I am authorized to do so.



Jeffrey W. Stover, Esq.

address



700 Box 209
Bellefonte, PA 16821

Date: 3/20/01

FILED

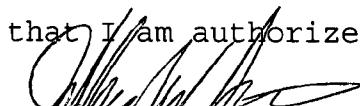
MAR 26 2001 2^{pm}
m 11:07 pm 2001
William A. Shaw
Prothonotary

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

J.J. POWELL, INC., :
Plaintiff :
: :
v. : No. 01-267-CD
: :
TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING, INC., :
Defendant :
:

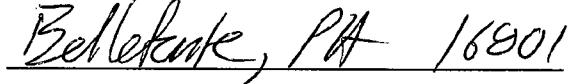
ACCEPTANCE OF SERVICE

I accept service of the Complaint on behalf of Defendant
Tyco Trucking, Inc. and certify that I am authorized to do so.



Jeffrey W. Stover, Esq.

address



P.O. Box 209
Bellefonte, PA 16801

Date: 3/20/01

FILED

MAR 26 2001 gf
m 11:07 pm 1/01
William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10785

J.J. POWELL, INC.

01-267-CD

VS.

TYRONE MILLING, INC. t/d/b/a TYCO TRUCKING, INC.

COMPLAINT

SHERIFF RETURNS

NOW MARCH 13, 2001, LARRY FIELD, SHERIFF OF BLAIR COUNTY WAS DEPUTIZED BY CHESTER A HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON TYRONE MILLING INC. t/d/b/a TYCO TRUCKING INC., DEFENDANTS.

NOW MARCH 27, 2001 SERVED THE WITHIN COMPLAINT ON TYRONE MILLING INC., t/d/b/a TYCO TRUCKING INC., DEFENDANTS BY DEPUTIZING THE SHERIFF OF BLAIR COUNTY. THE RETURN OF SHERIFF FIELD IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED DAVID HERSEY, PRESIDENT.

Return Costs

Cost	Description
34.10	SHFF. HAWKINS PAID BY: ATTY
35.00	SHFF. DEMKO PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.

FILED
APR 04 2001
01168 | nocc
William A. Shaw
Prothonotary *EX*

Sworn to Before Me This

4th Day Of April, 2001
William A. Shaw

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

So Answers,

Chester A. Hawkins
by Marlyn Hause
Chester A. Hawkins
Sheriff

DATE RECEIVED

DATE PROCESSED

P.35
2.14

SHERIFF'S DEPARTMENT

BLAIR COUNTY, PENNSYLVANIA
COURTHOUSE, HOLLIDAYSBURG, PA. 16648

60022

SHERIFF SERVICE
PROCESS RECEIPT, and AFFIDAVIT OF RETURN

INSTRUCTIONS:

Print legibly, insuring readability of all copies.

Do not detach any copies. BCSD ENV. #

1. PLAINTIFF / S /

JJ Burrell Inc

2. COURT NUMBER

01 267 CP

3. DEFENDANT / S /

Tyrone Milling Inc.

4. TYPE OF WRIT OR COMPLAINT

Complaint

SERVE



5. NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVICE OR DESCRIPTION OF PROPERTY TO BE LEVIED, ATTACHED OR SOLD.

Tyrone Milling Inc +/d/b/a Tyco Trucking Co.

AT

R.D. Box 34 A Tyrone PA

6. ADDRESS (Street or RFD, Apartment No., City, Boro, Twp., State and ZIP Code)

7. INDICATE UNUSUAL SERVICE: PERSONAL PERSON IN CHARGE DEPUTIZE CERT. MAIL REGISTERED MAIL POSTED OTHER

NOW, _____, I, SHERIFF OF BLAIR COUNTY, PA., do hereby depose the Sheriff of County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff.

SHERIFF OF BLAIR COUNTY

8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN — Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriffs' sale thereof.

9. SIGNATURE of ATTORNEY or other ORIGINATOR requesting service on behalf of:

David C. Mason Esquire

 PLAINTIFF
 DEFENDANT

10. TELEPHONE NUMBER

11. DATE

814 342-2240

SPACE BELOW FOR USE OF SHERIFF ONLY — DO NOT WRITE BELOW THIS LINE

12. I acknowledge receipt of the writ or complaint as indicated above.

SIGNATURE of Authorized BCSD Deputy or Clerk and Title

13. Date Received

14. Expiration/Hearing date

3-16-01

3-27-01

15. I hereby CERTIFY and RETURN that I have personally served, have served person in charge, have legal evidence of service as shown in "Remarks" (on reverse) have posted the above described property with the writ or complaint described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below by handing/or Posting a TRUE and ATTESTED COPY thereof.16. I hereby certify and return a NOT FOUND because I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

17. Name and title of individual served

David Hershey, President

18. A person of suitable age and discretion then residing in the defendant's usual place of abode. Read Order

19. Address of where served (complete only if different than shown above) (Street or RFD, Apartment No., City, Boro, Twp., State and ZIP Code)

Same

20. Date of Service

3-22-01

21. Time

1342

22. ATTEMPTS Date Miles Dep. Int. Date Miles Dep. Int. Date Miles Dep. Int. Date Miles Dep. Int.

23. Advance Costs 24. 25. 26. 27. Total Costs 28. COST DUE OR REFUND

150.00 Rec #314

5033.00 100

35.00

115.00

30. REMARKS

SO ANSWER.

AFFIRMED and subscribed to before me this

28th

day of

March, 2001

By (Sheriff/Dep. Sheriff) (Please Print or Type)

MW

Date

3-27-01

Signature of Sheriff

SHERIFF OF BLAIR COUNTY

MY COMMISSION EXPIRES

NOTARY PUBLIC Seal
Carol Greco, Notary Public
Freedom Twp., Blair County
My Commission Expires Feb. 3, 2003I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE
MARCH 27, 2001
Carol Greco, Notary Public
Freedom Twp., Blair County
My Commission Expires Feb. 3, 2003
Carol Greco, Notary Public
Freedom Twp., Blair County
My Commission Expires Feb. 3, 2003

39. Date Received

SHERIFF'S RETURN OF SERVICE

(1) The within _____ upon _____, the within named defendant by mailing to _____ by _____ mail, return receipt requested, postage prepaid _____ on the _____, a true and attested copy thereof at _____

The return receipt signed by _____ defendant on the _____ is hereto attached and made part of this return.

(2) Outside the Commonwealth, pursuant to Pa. R.C.P. 405 (c) (1) (2). by mailing a true and attested copy thereof at _____

in the following manner.

(a) To the defendant by () registered () certified mail, return receipt requested, postage prepaid, addressee only on the _____, said receipt being returned NOT signed by defendant, but with a notation by the Postal Authorities that defendant refused to accept the same. The returned receipt and envelope is attached hereto and made part of this return.

And thereafter:

(b) To the defendant by ordinary mail addressed to defendant at same address, with the return address of the Sheriff appearing thereon, on the _____

I further certify that after fifteen (15) days from the mailing date, I have not received said envelope back from the Postal Authorities. A certificate of mailing is hereto attached as a proof of mailing.

(3) By publication in a daily publication of general circulation in the County of Blair, Commonwealth of Pennsylvania, _____ time (s) with publication appearing _____

The affidavit from said publication is hereto attached.

(4) By mailing to _____ by _____ mail, return receipt requested, postage prepaid, on the _____ a true and attested copy thereof at _____

The _____ returned by the Postal Authorities marked _____ is hereto attached.

(5) Other _____



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

SUITE 116
1 NORTH SECOND STREET - COURTHOUSE
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533

CLEARFIELD COUNTY FAX
(814) 765-6089

DARLENE SHULTZ
CHIEF DEPUTY
MARGARET PUTT
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK
PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J.J. POWELL INC.

NO. 01-267-CD

VS

ACTION: COMPLAINT

TYRONE MILLING INC. t/d/b/a
TYCO TRUCKING INC

SERVE BY: 3/27/01

Or

HEARING DATE:

.....
SERVE: TYRONE MILLING INC. AND TYCO TRUCKING, INC.

.....
ADDRESS: RD#1 Box 34A, Tyrone, Pa.

.....
Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF of BLAIR COUNTY Pennsylvania to execute this writ.

This Deputation being made at the request and risk of the Plaintiff this 13th day of MARCH 2001.

Respectfully,

CHESTER A. HAWKINS
SHERIFF OF CLEARFIELD COUNTY

MAKE REFUND PAYABLE TO: MASON LAW OFFICE

WA

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

J.J. POWELL, INC.,
Plaintiff

v.

No. 01-267-CD

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING, INC.,
Defendant

TYPE OF PLEADING:
PRELIMINARY OBJECTIONS

FILED ON BEHALF OF:
DEFENDANT

COUNSEL OF RECORD FOR
THIS PARTY:

Jeffrey W. Stover, Esq.
NOVAK, STOVER & FURST
122 E. High Street
P.O. Box 209
Bellefonte, PA 16823
(814) 355-8235

FILED

APR 23 2001

William A. Shaw
Prothonotary

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

J.J. POWELL, INC., :
Plaintiff :
: :
v. : No. 01-267-CD
: :
TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING, INC., :
Defendant :
:

PRELIMINARY OBJECTIONS

NOW COMES, the Defendant, Tyrone Milling, Inc., by and through its attorneys, Novak, Stover and Furst, and files preliminary objections to the Plaintiff's Complaint upon the following averments of fact:

COUNT I – DEMURRER

1. Plaintiff has filed suit against "Tyrone Milling, Inc., t/d/b/a Tyco Trucking, Inc."
2. Defendant asserts it is not possible for a corporate entity to conduct business by trading and doing business as another corporation. Corporations are created pursuant to statutory law and are strictly construed as individual legal entities with no liability passing from to a parent corporation from a subsidiary.
3. Plaintiff has named Tyrone Milling, Inc. as a Defendant but has not named Tyco Trucking, Inc. as a separate individual Defendant.
4. Plaintiff set up an initial account for Tyco Trucking (See Paragraph 7 of Plaintiff's Complaint) and all billing was done through this account. A true and correct

copy of Plaintiff's invoice is attached as Exhibit "A", attached hereto and incorporated herein as if set forth at length.

5. Plaintiff does not allege David Hershey was acting as a corporate officer of Tyrone Milling, Inc. in contacting the Plaintiff to set up the Tyco Trucking account.

6. No facts have been set forth alleging Tyrone Milling, Inc. made an offer, accepted any offer, or provided any consideration for the Tyco Trucking agreement.

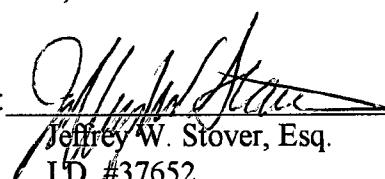
7. Plaintiff does not allege Tyrone Milling, Inc. provided any security arrangement for the debts of Tyco Trucking.

8. Plaintiff merely alleges that David Hershey is a corporate officer of Tyrone Milling, Inc., that Tyrone Milling, Inc. has a separate account with the Plaintiff, and that the mailing addresses of the two corporations are the same. Such facts are insufficient to establish the existence of an agreement between Plaintiff and Tyrone Milling, Inc., the named Defendant.

WHEREFORE, Defendant respectfully requests this Honorable Court dismiss the Plaintiff's Complaint with prejudice.

Respectfully submitted,
NOVAK, STOVER & FURST

BY:


Jeffrey W. Stover, Esq.
I.D. #37652
Attorney for Defendant
122 E. High St.
P.O. Box 209
Bellefonte, PA 16823
(814) 355-8235

J. J. Powell Fuel Management

P.O. BOX 38
PHILIPSBURG, PA 16656

814 342-3198

I-10457 STATEMENT OF ACCOUNT as of 12/31/00

Make Check Payable To:

J. J. Powell Fuel Management

TYCO TRUCKING
RD #1 BOX 344
TYRONE, PA 16686

Net Amount Due 88,722.85

REMITTANCE Amount Enclosed
... Detach Here ...

Balance Forward:

12/31/00	Finance Charge	79,563.38
		1,159.47

88,722.85

REMITTANCE MUST BE POSTMARKED ON OR BEFORE THE DISCOUNT DATE TO RECEIVE THE
DISCOUNT.

Terms: NET 15 DAYS Due on or before: 1/15/01

Please DETACH REMITTANCE PORTION And Return With Your Check Made Payable To: J. J. Powell Fuel Management
 Keep Bottom Portion For Your Records.
 Please List Any Change In Company Name, Address Or Phone Number On Back Of Remittance.

A LATE CHARGE OF 1.5% per month (18% ANNUAL PERCENTAGE RATE) is charged on 30 day
 past due balances. You may be held responsible for legal fees and costs at the
 trial court or in appeal if legal action is required for collection.

Your Customer Number Is I-10457 TYCO TRUCKING					Beginning Balance	Charges	Credits	Ending Balance
Aging: 0-30	31-60	61-90	91 & Over					
1,159.47	21,538.94	23,239.61	32,784.83		79,563.38	1,159.47	.00	88,722.85

An Independent franchisee of



EXHIBIT

Tables

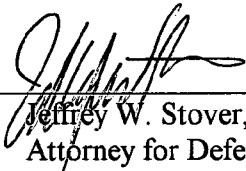
"A"

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Plaintiff's Preliminary Objections have been served this 20 day of April 2001 upon counsel for the Defendant by First Class U.S. Mail, Postage Prepaid, at the following address:

David C. Mason, Esq.
P.O. Box 28
Philipsburg, PA 16866

Respectfully submitted,
NOVAK, STOVER & FURST

BY: 
Jeffrey W. Stover, Esq.
Attorney for Defendant

FILED

10:54
APR 23 2001

William A. Shaw
Prothonotary

cc.
Atty Schoonover
KCg

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

NO. 01-267-C-D

TYPE OF PLEADING: FIRST-AMENDED
COMPLAINT

FILED ON BEHALF OF: PLAINTIFF

COUNSEL OF RECORD FOR
THIS PARTY:

David C. Mason, Esquire
MASON LAW OFFICE
409 North Front Street
P.O. Box 28
Philipsburg, PA 16866
814-342-2240
I.D. No. 39180

FILED

MAY 07 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* NO. 01-267-CO

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

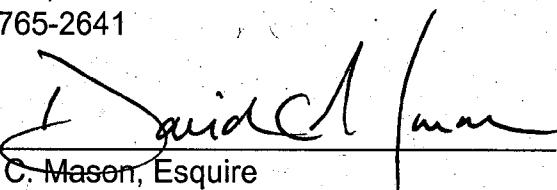
Defendants

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE AN LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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



David C. Mason, Esquire

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

J. J. POWELL, INC.,

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

*
* NO. 01-269-C1
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

FIRST-AMENDED COMPLAINT

AND NOW, comes the Plaintiff, **J.J. POWELL, INC.**, by and through its attorney,
DAVID C. MASON, ESQUIRE, and makes the following Complaint against the Defendants,
and in support thereof avers as follows:

1. Plaintiff **J.J. POWELL, INC.**, is a Pennsylvania business corporation located at
Presqueisle Street, Borough of Chester Hill, Clearfield County, Pennsylvania, 16866.
2. Defendant **TYRONE MILLING, INC.**, is a Pennsylvania business corporation with
a mailing address of R. D. #1, Bos 34A, Tyrone, Pennsylvania, 16686.

3. Defendant **TYCO TRUCKING** is an unincorporated business association with a principal mailing address of R. D. #1, Box 34A, Tyrone, Pennsylvania, 16686.

4. Defendant **David Hershey** is an individual whose resident address is unknown but who has a business address of R. D. #1, Box 34A, Tyrone, Pennsylvania, 16686.

5. Defendant **Robert Boone** is an individual whose resident address is unknown but who has a business address of R. D. #1, Box 34A, Tyrone, Pennsylvania, 16686.

6. Defendant **TYCO TRUCKING, INC.**, is a Pennsylvania business corporation with an address of R. D. #1, Box 34A, Tyrone, Pennsylvania, 16686.

7. At all times material and relevant hereto, Plaintiff was involved in the business of selling and distributing wholesale petroleum products and the retail sale of gasoline, diesel fuel and kerosene.

8. On or about November 4, 1998, **David Hershey**, an individual, who is an officer, shareholder and principal of Defendant **TYRONE MILLING INC.**, contacted representatives of Plaintiff and requested that Plaintiff establish a separate fuel management credit account in the name of **TYCO TRUCKING**.

9. Defendant **David Hershey** did not identify **TYCO TRUCKING** as a separate business or separate corporation. Rather, Defendant **David Hershey** requested Plaintiff to establish a separate account in the name of **TYCO TRUCKING** as an internal company within **TYRONE MILLING, INC.**.

10. At all times material hereto, Defendant **David Hershey** was in control of the operations of defendant **TYRONE MILLING, INC.**, and dominated and controlled the activities and business decisions of **TYRONE MILLING, INC.**.

11. **David Hershey** identified **TYCO TRUCKING** as another internal company for

costing purposes and requested that Plaintiff provide it with diesel fuel and other petroleum products in the course of the operation of their business, with a mailing address the same as that of defendant **TYRONE MILLING, INC.**

12. At the specific request and insistence of David Hershey, Plaintiff established an account for **TYRONE MILLING, INC.** under the name of **TYCO TRUCKING** which permitted individuals to purchase gasoline, diesel fuel and other petroleum products on a credit account through the use of fuel management cards.

13. All payments due on the credit account were to be made at the office of Plaintiff in the Borough of Chester Hill, Clearfield County, PA.

14. The purchases of fuel on the account requested by David Hershey began in November of 1998, and payments were made on that account by Defendant **TYRONE MILLING, INC.**, commencing in 1998.

15. On or about July 7, 1999, a corporation by the name of **TYCO TRUCKING, INC.**, was organized and on that date authorized to conduct business in the Commonwealth of Pennsylvania at the address listed in paragraphs 2 through 6, hereof.

16. No change in the previously created credit account was requested nor was any change made.

17. The total amount of said credit account due and owing on February 14, 2001, is **\$81,882.32**. The charges were fair and reasonable, and were the market prices for the goods at the time of the delivery and receipt by the Defendants.

18. Defendants' last charge to this account was November 30, 2000, and the last payment on this account was on November 21, 2000, in the amount of \$16,000.00. All credits to which the Defendants were entitled have been applied.

19. Despite Plaintiff's repeated requests for payment, Defendants have failed and refused and continue to fail and refuse to make any further payment whatsoever on the above referenced account.

COUNT I

J. J. POWELL, INC. VS. TYRONE MILLING, INC.

t/d/b/a/ TYCO TRUCKING

Paragraphs 1-19 hereof are incorporated by reference herein.

20. At the time Defendant **David Hershey** requested Plaintiff establish a new account for internal costing purposes for the defendant **TYCO TRUCKING, David Hershey** was acting in his capacity as an officer, director and shareholder of Defendant **TYRONE MILLING, INC.**

21. For the purpose of alternative pleading, Plaintiff avers that if the Defendant **David Hershey** was acting outside his actual authority with regard to defendant **TYRONE MILLING, INC.**, then Defendant **David Hershey** was acting with apparent authority for and on behalf of Defendant **TYRONE MILLING, INC.**

22. At the time of the establishment of the credit account in November, 1998, there was no corporate existence for an entity called **TYCO TRUCKING, INC.**

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against the Defendant **TYRONE MILLING, INC.**, in the amount of \$81,882.32, plus interest and costs of suit.

COUNT II

J. J. POWELL, INC. VS. DAVID HERSEY, an individual,

ROBERT BOONE, an individual,

trading and doing business as partners of **TYCO TRUCKING**

Paragraphs 1 through 19, and 22 are incorporated by reference herein.

23. For the purpose of alternative pleading, Plaintiff avers that at the time of the establishment of the credit account in the name of Tyco Trucking, defendant **TYCO TRUCKING** was an unincorporated business association owned and operated by the individual defendants, **David Hershey** and **Robert Boone** with a mailing address as listed in paragraphs 2 through 6.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against the Defendants **David Hershey** and **Robert Boone**, jointly and severally, in the amount of **\$81,882.32**, plus interest and costs of suit.

COUNT III

J. J. POWELL, INC. VS TYCO TRUCKING, INC.

Paragraphs 1 through 19 are incorporated by reference herein.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against the Defendant **TYCO TRUCKING, INC.**, in the amount of **\$81,882.32**, plus interest and costs of suit.

COUNT IV

J. J. POWELL, INC. VS TYRONE MILLING, INC.

**DAVID HERSHY, ROBERT BOONE, TYCO TRUCKING, AND
TYCO TRUCKING, INC.**

Paragraphs 1 through 23 are incorporated by reference herein.

24. Defendants **David Hershey, Robert Boone** and **TYRONE MILLING, INC.** are the alter egos of the defendants **TYCO TRUCKING** and **TYCO TRUCKING, INC.**

25. The request of **David Hershey** to establish a separate fuel management account for **TYRONE MILLING, INC.** in the name of **TYCO TRUCKING** was made with the full knowledge and at the insistence of the board of directors of **TYRONE MILLING, INC.**

26. The defendants operated **TYCO TRUCKING** from the same address that they operated the business known as **TYRONE MILLING, INC.**

27. The defendants operated the business of **TYCO TRUCKING** with the same personnel, financing, assets, management, telephone number, customers, vendors, bankers, insurers, accountants and other professionals as **TYRONE MILLING, INC.**

28. The conduct by the defendants of the business later incorporated as **TYCO TRUCKING, INC.**, was indistinguishable from the conduct by the defendants of the business known as **TYRONE MILLING, INC.**

29. The conduct by the defendants of the operations under the names **TYRONE MILLING, INC.** and **TYCO TRUCKING** and **TYCO TRUCKING, INC.**, are interwoven with common ownership, common management, centralized control of labor, and interrelation

of operations as to make any differences inconsequential and indistinguishable to the public in general and the Plaintiff in particular.

30. The individual defendants **David Hershey** and **Robert Boone** exercised control and authority over **TYRONE MILLING, INC.** and **TYCO TRUCKING** and **TYCO TRUCKING, INC.**, in such a fashion as to blur the distinctions between their individual existence and that of the corporations and/or unincorporated entities they owned and controlled.

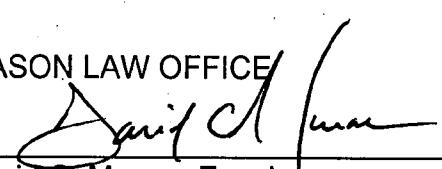
31. The Plaintiff believes and therefore avers that the corporate veil of limited liability of the Defendant corporations should be pierced and the owners of the same be liable for the debts of those corporations for the following reasons:

- (A) The corporations failed to properly observe corporate formalities;
- (B) The insolvency of the debtor corporations at the time;
- (C) The gross undercapitalization of the entity identified as **TYCO TRUCKING**, and the one identified as **TYCO TRUCKING, INC.**
- (D) The siphoning of funds of Defendant **TYCO TRUCKING** by Defendant **TYRONE MILLING, INC.**, and its shareholders;
- (E) The intermingling of funds by the Defendants;
- (F) The failure to pay dividends;
- (G) The absence of proper corporate records;
- (H) The use of a corporation of the name of **TYCO TRUCKING, INC.**, to perpetrate fraud;
- (I) The fact that the entity identified as **TYCO TRUCKING**, or the one

identified as **TYCO TRUCKING, INC.**, is a mere facade for the other defendants, both individual and corporate.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against the Defendants **TYRONE MILLING, INC.**, **DAVID HERSHY**, **ROBERT BOONE**, individually and trading as partners of **TYCO TRUCKING**, and **TYCO TRUCKING, INC.**, jointly and severally, in the amount of **\$81,882.32**, plus interest and costs of suit.

MASON LAW OFFICE



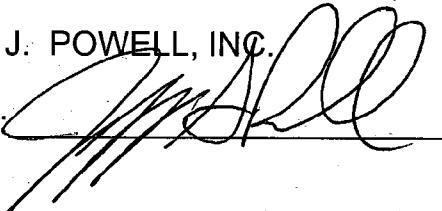
David C. Mason, Esquire
Attorney for Plaintiff

D:\Office\POWELL\TYCO1stAmendedComp.wpd\blb

VERIFICATION

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

J. J. POWELL, INC.

By: 

DATED: 5/7/01

FILED

MAY 07 2001
10:40 AM
Scc. atty. Mason
William A. Shaw
Prothonotary

GD

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

J. J. POWELL, INC.,

* NO. 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSEY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSEY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of FIRST AMENDED COMPLAINT, I deposited in the United States Mail, first class postage prepaid, a certified copy of the Complaint filed in the above captioned matter, addressed as follows:

Jeffrey W. Stover, Esquire
Novak, Stover & Furst
Attorneys at Law
122 East High Street
P.O. Box 209
Bellefonte, PA 16823
(Attorney for Tyrone Milling, Inc. & Tyco Trucking, Inc.)

DAVID C. MASON LAW OFFICE

DATED: 5-7-01

FILED

By: David C. Mason
David C. Mason, Esquire
Attorney for Plaintiff

MAY 08 2001
m18361 nocc
William A. Shaw
Prothonotary *KED*

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10982

J.J. POWELL, INC.

01-267-CD

VS.

TYRONE MILLING INC. T/d/b/a TYCO TRUCKING al

FIRST AMENDED COMPLAINT

SHERIFF RETURNS

NOW MAY 7, 2001, LARRY FIELD, SHERIFF OF BLAIR COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHINFIRST AMENDED COMPLAINT ONDAVID HERSEY I/A/T/D/B/A TYCO TRUCKING and ROBERT BOONE I/A/T/D/B/A TYCO TRUCKING, DEFENANTS.

NOW MAY 16, 2001 SERVED THE WITHIN FIRST AMENDED COMPLAINT ON DAVID HERSEY I/A/T/D/B/A TYCO TRUCKING, DEFENDANT BY DEPUTIZING THE SHERIFF OF BLAIR COUNTY. THE RETURN OF SHERIFF FIELD IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED DAVID HERSEY.

NOW MAY 16, 2001 SERVED THE WITHIN FIRST AMENDED COMPLAINT ON ROBERT BOONE I/A/T/D/B/A TYCO TRUCKING, DEFENDANT BY DEPUTIZING THE SHERIFFOF BLAIR COUNTY. THE RETURN OF SHERIFF FIELD IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED DAVID HERSEY, PARTNER.

Return Costs

Cost	Description
34.31	SHFF. HAWKINS PAID BY: ATTY
40.00	SHFF. FIELD PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.

FILED
01/11/2001
MAY 25 2001
EJD

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10982

J.J. POWELL, INC.

01-267-CD

VS.

TYRONE MILLING INC. T/d/b/a TYCO TRUCKING al

FIRST AMENDED COMPLAINT

SHERIFF RETURNS

Sworn to Before Me This

25th Day Of May 2001
William A. Shaw

So Answers,


Chester A. Hawkins
Sheriff

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

DATE RECEIVED

DATE PROCESSED

P.56
L.B

SHERIFF'S DEPARTMENT

BLAIR COUNTY, PENNSYLVANIA
COURTHOUSE, HOLLIDAYSBURG, PA. 16648

1-2

SHERIFF SERVICE
PROCESS RECEIPT, and AFFIDAVIT OF RETURN

INSTRUCTIONS:

Print legibly, insuring readability of all copies.
Do not detach any copies. BCSD ENV. #

60062

1. PLAINTIFF / S /

JJ Powell Inc.

2. COURT NUMBER

3. DEFENDANT / S /

Tyrene Milling Inc. et al

4. TYPE OF WRIT OR COMPLAINT

Complaint

SERVE



5. NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVICE OR DESCRIPTION OF PROPERTY TO BE LEVIED, ATTACHED OR SOLD.

6. ADDRESS (Street or RFD, Apartment No., City, Boro, Twp., State and ZIP Code)

AT RD 1 Box 34A Tyrene PA 16686

7. INDICATE UNUSUAL SERVICE:

 PERSONAL PERSON IN CHARGE DEPUTIZE CERT. MAIL REGISTERED MAIL POSTED OTHER

NOW, _____, I, SHERIFF OF BLAIR COUNTY, PA., do hereby deputize the Sheriff of County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff.

SHERIFF OF BLAIR COUNTY

8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN — Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

9. SIGNATURE of ATTORNEY or other ORIGINATOR requesting service on behalf of:

Clearfield County Sheriff

 PLAINTIFF DEFENDANT

814 765-2641

10. TELEPHONE NUMBER

11. DATE

SPACE BELOW FOR USE OF SHERIFF ONLY — DO NOT WRITE BELOW THIS LINE

12. I acknowledge receipt of the writ or complaint as indicated above.

SIGNATURE of Authorized BCSD Deputy or Clerk and Title

Bonnie Schleicher

13. Date Received

5-8-01

14. Expiration/Hearing date

6-6-01

15. I hereby CERTIFY and RETURN that I have personally served, have served person in charge, have legal evidence of service as shown in "Remarks" (on reverse) have posted the above described property with the writ or complaint described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below by handing/or Posting a TRUE and ATTESTED COPY thereof.16. I hereby certify and return a NOT FOUND because I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

17. Name and title of individual served

Jame

18. A person of suitable age and discretion then residing in the defendant's usual place of abode. Read Order

19. Address of where served (complete only if different than shown above) (Street or RFD, Apartment No., City, Boro, Twp., State and ZIP Code)

Stone

20. Date of Service

5-16-01

21. Time

1302

22. ATTEMPTS Date Miles Dep. Int. Date Miles Dep. Int. Date Miles Dep. Int. Date Miles Dep. Int.

23. Advance Costs 24. 25. 26. 27. Total Costs 28. CASH OR REFUND

150.00 Rent #723 30.00 104.40 40.00 110.00

30. REMARKS Make Refund to Mason Law Office

SO ANSWER.

AFFIRMED and subscribed to before me this

18th

day of

May, 2001

By (Sheriff/Dep. Sheriff) (Please Print or Type)

Signature of Sheriff

Date

5-16-01

MY COMMISSION EXPIRES

NOTARY PUBLIC Seal
Carol Grieco, Notary Public
Freedom Twp., Blair County

My Commission Expires Feb 3, 2004

I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE
Member, Pennsylvania and Association of Notaries

SHERIFF OF BLAIR COUNTY

39. Date Received

SHERIFF'S RETURN OF SERVICE

(1) The within _____ upon _____, the within named defendant by mailing to _____ by _____ mail, return receipt requested, postage prepaid _____ on the _____, a true and attested copy thereof at _____

The return receipt signed by _____ defendant on the _____ is hereto attached and made part of this return.

(2) Outside the Commonwealth, pursuant to Pa. R.C.P. 405 (c) (1) (2), by mailing a true and attested copy thereof at _____

in the following manner.

(a) To the defendant by () registered () certified mail, return receipt requested, postage prepaid, addressee only on the _____, said receipt being returned NOT signed by defendant, but with a notation by the Postal Authorities that defendant refused to accept the same. The returned receipt and envelope is attached hereto and made part of this return.

And thereafter:

(b) To the defendant by ordinary mail addressed to defendant at same address, with the return address of the Sheriff appearing thereon, on the _____

I further certify that after fifteen (15) days from the mailing date, I have not received said envelope back from the Postal Authorities. A certificate of mailing is hereto attached as a proof of mailing.

(3) By publication in a daily publication of general circulation in the County of Blair, Commonwealth of Pennsylvania, _____ time (s) with publication appearing _____

The affidavit from said publication is hereto attached.

(4) By mailing to _____ by _____ mail, return receipt requested, postage prepaid, on the _____, a true and attested copy thereof at _____

The _____ returned by the Postal Authorities marked _____ is hereto attached.

(5) Other _____

DATE RECEIVED

DATE PROCESSED

9.54
V.B

SHERIFF'S DEPARTMENT

BLAIR COUNTY, PENNSYLVANIA
COURTHOUSE, HOLLIDAYSBURG, PA. 16648

2-2

SHERIFF SERVICE
PROCESS RECEIPT, and AFFIDAVIT OF RETURN

INSTRUCTIONS:

Print legibly, insuring readability of all copies.

Do not detach any copies. BCSD ENV. #

1. PLAINTIFF / S /	JJ Powell, Inc	2. COURT NUMBER
3. DEFENDANT / S /	Tyrene Milling Inc et al	4. TYPE OF WRIT OR COMPLAINT
SERVE { 5. NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVICE OR DESCRIPTION OF PROPERTY TO BE LEVIED, ATTACHED OR SOLD.		
AT	Robert Boone	Complaint
6. ADDRESS (Street or RFD, Apartment No., City, Boro, Twp., State and ZIP Code)		
RDI Box 34A Tyrone PA 16608		
7. INDICATE UNUSUAL SERVICE: <input checked="" type="checkbox"/> PERSONAL <input type="checkbox"/> PERSON IN CHARGE <input type="checkbox"/> DEPUTIZE <input type="checkbox"/> CERT. MAIL <input type="checkbox"/> REGISTERED MAIL <input type="checkbox"/> POSTED <input type="checkbox"/> OTHER		
NOW, _____, I, SHERIFF OF BLAIR COUNTY, PA., do hereby deputize the Sheriff of County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff.		
8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:		
SHERIFF OF BLAIR COUNTY		

NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN — Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriffs' sale thereof.

9. SIGNATURE of ATTORNEY or other ORIGINATOR requesting service on behalf of:	<i>Clearfield County Sheriff</i>	<input checked="" type="checkbox"/> PLAINTIFF	10. TELEPHONE NUMBER	11. DATE								
SPACE BELOW FOR USE OF SHERIFF ONLY — DO NOT WRITE BELOW THIS LINE												
12. I acknowledge receipt of the writ or complaint as indicated above.	SIGNATURE of Authorized BCSD Deputy or Clerk and Title		13. Date Received	14. Expiration/Hearing date								
<i>Bonnie Shirey</i>			5-8-01	6-6-01								
15. I hereby CERTIFY and RETURN that I <input type="checkbox"/> have personally served, <input checked="" type="checkbox"/> have served person in charge, <input type="checkbox"/> have legal evidence of service as shown in "Remarks" (on reverse) <input type="checkbox"/> have posted the above described property with the writ or complaint described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below by hand ing/or Posting a TRUE and ATTESTED COPY thereof.												
16. <input type="checkbox"/> I hereby certify and return a NOT FOUND because I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)												
17. Name and title of individual served	<i>David Hershey, Partner</i>		18. A person of suitable age and discretion then residing in the defendant's usual place of abode.	Read Order								
<i>Stone</i>			<input type="checkbox"/>	<input type="checkbox"/>								
19. Address of where served (complete only if different than shown above) (Street or RFD, Apartment No., City, Boro, Twp., State and ZIP Code)			20. Date of Service	21. Time								
<i>5-16-01</i>			<i>1352</i>									
22. ATTEMPTS	Date	Miles	Dep. Int.	Date	Miles	Dep. Int.	Date	Miles	Dep. Int.	Date	Miles	Dep. Int.
23. Advance Costs	24.		25.		26.		27. Total Costs			28. COST DUE OR REFUND		
30. REMARKS												

AFFIRMED and subscribed to before me this <u>18th</u> day of <u>May, 2001</u>					SO ANSWER.							
					By (Sheriff/Dep. Sheriff) (Please Print or Type)							
					Signature of Sheriff							
					<i>MPW/BJK</i>							
					Date <u>5-16-01</u>							
<p>Notarial Seal NOTARY PUBLIC Freedom Twp., Blair County My Commission Expires Feb. 3, 2003</p>					Signature of Sheriff							
					SHERIFF OF BLAIR COUNTY							
MY COMMISSION EXPIRES <u>Feb. 3, 2003</u>												
I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE OF AUTHORIZED ISSUING AUTHORITY AND TITLE.												
Member Pennsylvania Association of Notaries												
39. Date Received												

SHERIFF'S RETURN OF SERVICE

() (1) The within _____, the within named upon _____, the within named defendant by mailing to _____ by _____ mail, return receipt requested, postage prepaid _____ on the _____, a true and attested copy thereof at _____

The return receipt signed by _____ defendant on the _____ is hereto attached and made part of this return.

() (2) Outside the Commonwealth, pursuant to Pa. R.C.P. 405 (c) (1) (2), by mailing a true and attested copy thereof at _____

in the following manner.

() (a) To the defendant by () registered () certified mail, return receipt requested, postage prepaid, addressee only on the _____ said receipt being returned NOT signed by defendant, but with a notation by the Postal Authorities that defendant refused to accept the same. The returned receipt and envelope is attached hereto and made part of this return.

And thereafter:

() (b) To the defendant by ordinary mail addressed to defendant at same address, with the return address of the Sheriff appearing thereon, on the _____

I further certify that after fifteen (15) days from the mailing date, I have not received said envelope back from the Postal Authorities. A certificate of mailing is hereto attached as a proof of mailing.

() (3) By publication in a daily publication of general circulation in the County of Blair, Commonwealth of Pennsylvania, _____ time (s) with publication appearing _____

The affidavit from said publication is hereto attached.

() (4) By mailing to _____ by _____ mail, return receipt requested, postage prepaid, on the _____ a true and attested copy thereof at _____

The _____ returned by the Postal Authorities marked _____ is hereto attached.

() (5) Other _____

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

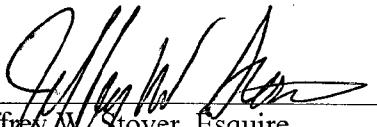
J.J. POWELL, INC., :
Plaintiff :
:
v. : No. 01-267-CD
:
TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING, INC.; DAVID :
HERSHEY, an individual; ROBERT :
BOONE, an individual, and DAVID :
HERSHEY and ROBERT BOONE, :
individually and as partners t/d/b/a TYCO :
TRUCKING, an unincorporated business :
association; and TYCO TRUCKING, INC., :
Defendant :
:

NOTICE TO PLEAD

To the within named parties:

You are hereby notified to plead to the within document within twenty (20) days of service hereof, or judgment may be entered against you.

NOVAK, STOVER & FURST

BY: 

Jeffrey W. Stover, Esquire
122 E. High Street
P.O. Box 209
Bellefonte, PA 16823
(814) 355-8235
Attorney for Defendants

Date: 6/6/01

FILED

JUN 07 2001

William A. Shaw
Prothonotary

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

J.J. POWELL, INC.,	:
Plaintiff	:
	:
v.	:
	No. 01-267-CD
	:
TYRONE MILLING, INC., t/d/b/a	:
TYCO TRUCKING, INC.; DAVID	:
HERSHEY, an individual; ROBERT	:
BOONE, an individual, and DAVID	:
HERSHEY and ROBERT BOONE,	:
individually and as partners t/d/b/a TYCO	:
TRUCKING, an unincorporated business	:
association; and TYCO TRUCKING, INC.,	:
Defendant	:

DEFENDANTS' ANSWER AND NEW MATTER
TO PLAINTIFF'S FIRST-AMENDED COMPLAINT

COMES NOW the Defendants, Tyrone Milling, Inc., David Hershey, and Tyco Trucking, Inc., by and through their attorneys, Novak, Stover & Furst, and answers the Plaintiff's First-Amended Complaint as follows:

ANSWER

1. Admitted.
2. Admitted.
3. Denied. No such entity exists. Tyco Trucking, Inc. is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania.
4. Denied as stated. Mr. Hershey is an adult individual residing on Ridge Road, Warriors Mark Township, Huntingdon County, and having a mailing address of P.O. Box 24, Tyrone, PA 16686.

5. Denied. After reasonable investigation, Defendants Tyrone Milling, Inc., David Hershey and Tyco Trucking, Inc. lack knowledge and information sufficient to form a belief as to the truth of the averments contained in paragraph 5, and strict proof thereof is demanded at trial.

6. Admitted.

7. Admitted.

8. Denied as stated. It is admitted that at a date unknown David Hershey contacted Plaintiff in order to establish a fuel management credit account on behalf of Tyco Trucking, Inc. Mr. Hershey made such contact as an officer of Tyco Trucking, Inc. and not in any capacity on behalf of Defendant Tyrone Milling, Inc. Mr. Hershey submitted a credit application in the name of Tyco Trucking, Inc.

9. Denied as stated. It is admitted that Mr. Hershey identified Tyco Trucking, Inc. as a new and separate business corporation to the Plaintiff during the conversation. It is further admitted that Mr. Hershey requested a separate account in the name of Tyco Trucking, Inc. It is denied that Mr. Hershey identified Tyco Trucking as "an internal company within Tyrone Milling, Inc."

10. Denied. It is specifically denied that "Defendant David Hershey was in control of the operations of defendant Tyrone Milling, Inc. and dominated and controlled the activities and business decisions" of the same. To the contrary, Defendant David Hershey is a 25% shareholder in Tyrone Milling, Inc. and one of several members of its Board of Directors and one of several corporate officers. As such, he does not dominate nor control the corporation, but is one of several individuals who participate in corporate decision-making.

11. Denied as stated. It is admitted that Mr. Hershey identified Tyco Trucking, Inc. as a new and separate business corporation, and requested that Plaintiff provide it with fuel and

products on its own account. It is admitted that Tyco Trucking Inc.'s mailing address is the same as that of Tyrone Milling, Inc. It is denied that Mr. Hershey identified Tyco Trucking as "another internal company."

12. Admitted in part and denied in part. It is admitted that Mr. Hershey, on behalf of Tyco Trucking, Inc., requested that a credit account be established for that new corporation. It is further admitted that the understood purpose of that account was to allow Tyco Trucking, Inc., through its employees, to purchase fuel and other products on that account. It is denied that Mr. Hershey requested or insisted that the account be established "for Tyrone Milling, Inc. under the name of Tyco Trucking." To the contrary, Mr. Hershey requested the account to be established for Tyco Trucking, Inc. All invoices received from Plaintiff were in the name of Tyco Trucking, not Tyrone Milling. The remaining averment contained in paragraph 12, as to what Plaintiff established, is denied in that, after a reasonable investigation, the Defendants lack sufficient knowledge and information to form a belief as to the truth of the averments, and strict proof is demanded at trial.

13. Admitted.

14. Admitted in part and denied in part. It is admitted that purchases were made on account beginning in November of 1998. It is denied Tyrone Milling, Inc made the payments. To the contrary, all payments made to the account were made by Tyco Trucking, Inc.

15. Admitted in part and denied in part. It is admitted that the corporation in the name of Tyco Trucking, Inc. was organized. It is further admitted that Articles of Incorporation for Tyco Trucking, Inc. were filed with the Commonwealth of Pennsylvania, Department of State. It is denied that the corporation was organized "on or about July 7, 1999." It is admitted that the articles of incorporation were filed on July 7, 1999. By way of further response, the corporation

was organized in the later part of 1998, and articles of incorporation prepared at that time. Due to a delay caused by the corporate attorney for Tyco Trucking, Inc., the articles were not filed with the Department of State until July 7, 1999. Plaintiff's assertion that the corporation was "on that date authorized to conduct business..." is a conclusion of law to which no response is required. To the extent a response is deemed to be required, the assertion is denied.

16. Admitted. By way of further response, Defendants at all times understood that the account was established in the name of Tyco Trucking, Inc.

17. Denied. After a reasonable investigation, the Defendants are without sufficient information to form a belief as to the truth of the Plaintiff's assertion. Strict proof of the same is hereby demanded at the time of trial. Plaintiff's assertion that the charges were fair and reasonable is a conclusion of law to which no response is required. To the extent a response is deemed to be required, the assertion is denied.

18. Admitted in part and denied in part. It is admitted that the last charge was on November 30, 2000, and that the last payment was on November 21, 2000 in the amount of \$16,000.00. Plaintiff's assertion that Defendants have received all credits to which they are entitled is a conclusion of law to which no response is required. To the extent a response is deemed to be required, the assertion is denied.

19. Denied as stated. While it is admitted that Plaintiff has demanded payment on the account, it is denied that Defendants are legally obligated to make payment.

COUNT I

19a. Paragraphs 1-19, above, are incorporated herein.

20. Denied. It is denied that Mr. Hershey requested Plaintiff to establish a new account "for internal costing purposes." It is denied that Mr. Hershey requested the establishment

of an account for "Tyco Trucking," but rather for the newly formed corporation "Tyco Trucking, Inc." It is denied that Mr. Hershey, when opening the new Tyco Trucking, Inc. account, acted as an officer, director and shareholder of Defendant Tyrone Milling, Inc., but rather as an officer of Tyco Trucking, Inc.

21. Denied. The averments contained in paragraph 21 call for conclusions of law to which no response is required. To the extent a response is deemed to be required, the averments are denied. By way of further response, Mr. Hershey acted as an officer of Tyco Trucking, Inc. with respect to the establishment of the new account, and advised Plaintiff accordingly.

22. Denied. The averments contained in paragraph 22 call for conclusions of law to which no response is required. To the extent a response is deemed to be required, the averments are denied.

WHEREFORE, Defendants pray that Plaintiff's Complaint be dismissed.

COUNT II

22a. Paragraphs 1-22, above, are incorporated herein.

23. Denied. The averments contained in paragraph 23 call for conclusions of law to which no response is required. To the extent a response is deemed to be required, the averments are denied. To the contrary, Tyco Trucking was at all times operated as a corporation, and Defendant David Hershey established the account as a corporate account. It is denied that Defendant Robert Boone owned or was in any way involved with the Tyco Trucking, Inc. business, and Defendants deny knowing or being in any way involved with a Robert Boone.

WHEREFORE, Defendants pray that Plaintiff's complaint be dismissed.

COUNT III

23a. Paragraphs 1-23, above, are incorporated herein.

WHEREFORE, Defendants pray that Plaintiff's complaint be dismissed.

COUNT IV

24a. Paragraphs 1-23, above, are incorporated herein.

24. Denied. It is denied that "Defendants David Hershey, Robert Boone and Tyrone Milling, Inc. are the alter egos of Defendants Tyco Trucking and Tyco Trucking, Inc." To the contrary, Tyco Trucking, Inc. has its own corporate identity separate and apart from the other defendants. By way of further response, the existence of a separate unincorporated association known as "Tyco Trucking" is denied, as more fully set forth in paragraphs 3 and 23, above, which are incorporated herein by reference. The existence of a person known as Robert Boone is denied, as more fully set forth in paragraphs 5 and 23, above, which are incorporated herein by reference.

25. Denied. It is denied that Mr. Hershey established "a separate fuel management account for Tyrone Milling, Inc. in the name of Tyco Trucking." To the contrary, Mr. Hershey requested the establishment of an account for the newly formed corporation "Tyco Trucking, Inc." It is denied that the establishment of the account was made with the "full knowledge and at the insistence of the board of directors of Tyrone Milling, Inc."

26. Admitted in part and denied in part. It is admitted that Tyco Trucking, Inc. and Tyrone Milling, Inc. operated from the same address. It is denied that "the defendants" operated both corporations. To the contrary, each corporate defendant operated as an independent entity.

27. Admitted in part and denied in part. It is admitted that "the defendants operated" the corporate defendants. It is further denied that Tyco Trucking, Inc. and Tyrone Milling, Inc.

shared the same personnel, financing, assets, telephone number, customers, vendors, bankers, insurers and other professionals. It is admitted that the same persons served as officers and directors of each corporation. It is admitted that both corporations used the same corporate attorney and corporate accountant. It is admitted that one of Tyco's Trucking two telephone numbers was also used by Tyrone Milling, Inc.

28. Denied. The averments contained in paragraph 28 call for conclusions of law which require no response. To the extent a response is deemed to be required, the averments are denied.

29. Denied. The averments contained in paragraph 29 call for conclusions of law which require no response. To the extent a response is deemed to be required, the averments are denied.

30. Denied. The averments contained in paragraph 30 call for conclusions of law which require no response. To the extent a response is deemed to be required, the averments are denied. It is specifically denied that Defendant David Hershey exercised "control and authority" over either corporate defendant for the reasons set forth in paragraph 10, above, which is incorporated herein by reference. The existence of a separate unincorporated association known as "Tyco Trucking" is denied, as more fully set forth in paragraphs 2 and 23, above, which are incorporated herein by reference. The existence of a person known as Robert Boone is denied, as more fully set forth in paragraphs 5 and 23, above, which are incorporated herein by reference.

31. Denied. The averments contained in paragraph 31 call for conclusions of law which require no response. To the extent a response is deemed to be required, the averments are denied. By way of further response, it is denied that either corporation failed to observe corporate formalities; it is denied that either corporation was insolvent "at the time"; it is denied that there

existed an entity known as Tyco Trucking; it is denied that any funds were siphoned from Defendant Tyco Trucking, Inc. by Defendant Tyrone Milling, Inc. and its shareholders; it is denied that the Defendants intermingled funds; it is denied that there exists an absence of corporate records; and it is denied that Tyco Trucking, Inc. was used to perpetrate fraud.

WHEREFORE, Defendants pray that Plaintiff's Complaint be dismissed.

NEW MATTER

32. Paragraphs 1-31, above, are incorporated herein.

33. The credit account in question was established by David Hershey, an officer of Tyco Trucking, Inc., and on behalf of that corporation.

34. Plaintiff established the account in the name of Tyco Trucking.

35. All fuel purchased on the account was purchased by employees of Tyco Trucking, Inc., and solely for the use and benefit of Tyco Trucking, Inc.

36. All payments on account were made from the accounts and monies of Tyco Trucking, Inc.

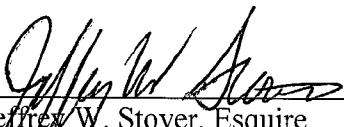
37. Defendant Tyrone Milling, Inc. is the sole shareholder of Tyco Trucking, Inc., a wholly owned subsidiary.

38. Defendant David Hershey is a director and officer of Tyco Trucking, Inc.

39. Neither Defendant Tyrone Milling, Inc. nor Defendant David Hershey have any legal liability for the just debts of Tyco Trucking, Inc. under the legal principal of corporate limited liability.

WHEREFORE, Defendants pray that Plaintiff's Complaint be dismissed.

NOVAK, STOVER & FURST

BY: 

Jeffrey W. Stover, Esquire
122 E. High Street
P.O. Box 209
Bellefonte, PA 16823
(814) 355-8235
Attorney for Defendants

Dated: 6/6/01

060401/w/answer.tm

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

J.J. POWELL, INC., :
Plaintiff :
: v. : No. 01-267-CD
TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING, INC., :
Defendant :
:

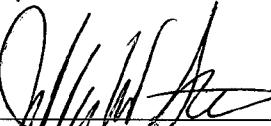
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendants' Answer and New Matter to Plaintiff's First-Amended Complaint have been served this 6 day of June, 2001, upon counsel for the Plaintiff by First Class U.S. Mail, Postage Prepaid, at the following address:

David C. Mason, Esq.
P.O. Box 28
Philipsburg, PA 16866

Respectfully submitted,

NOVAK, STOVER & FURST

BY: 

Jeffrey W. Stover, Esq.
Attorney for Defendants

FILED

JUN 07 2001

7/3/01
William A. Shaw
Prothonotary
KES

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No: 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

* Type of Case: Civil Action

Defendants

* TYPE OF PLEADING: Plaintiff's Reply
to Defendants' New Matter

* FILED ON BEHALF OF:
Plaintiff

* COUNSEL OF RECORD FOR THIS
PARTY:
David C. Mason, Esquire
MASON LAW OFFICE
Supreme Court No. 39180
Attorney at Law
P. O. Box 28
Philipsburg, PA 16866
(814) 342-2240

* COUNSEL OF RECORD FOR
DEFENDANT:
Jeffrey W. Stover, Esquire
Novak, Stover & Furst
P.O. Box 209
122 E. High Street
Bellefonte, PA 16823
(814) 355-8279

FILED

JUN 15 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No. 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

*

PLAINTIFF'S REPLY

TO DEFENDANTS' NEW MATTER

AND NOW, comes the Plaintiff by and through its Attorney, David C. Mason,
Esquire, and replies as follows:

32. No reply is necessary.

33. **ADMITTED IN PART AND DENIED IN PART.** It is admitted that the credit
account in question was requested by David Hershey. The averment that David Hershey
is an officer of Tyco Trucking, Inc., is denied, for after reasonable investigation, Plaintiff is
without knowledge or information sufficient to form a belief as to the truth of that averment,

and strict proof thereof to the extent deemed relevant is demanded at the time of trial. It is specifically denied that David Hershey created the credit account on behalf of Tyco Trucking, Inc. To the contrary, Defendant David Hershey created this account for and on behalf of Tyrone Milling, Inc. By way of further answer, Plaintiff incorporates herein Paragraphs 8 through 12 and 20 through 22 of Plaintiff's Complaint.

34. ADMITTED. By way of further answer Plaintiff incorporates herein its reply to Paragraph 33 of Defendants' New Matter.

35. DENIED. The averments contained in Paragraph 35 of Defendants' New Matter are denied, for after reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of that averment, and strict proof thereof to the extent deemed relevant is demanded at the time of trial.

36. DENIED. The averments contained in Paragraph 35 of Defendants' New Matter are denied, for after reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of that averment, and strict proof thereof to the extent deemed relevant is demanded at the time of trial.

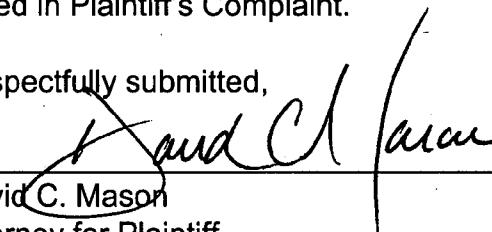
37. DENIED. The averments contained in Paragraph 35 of Defendants' New Matter are denied, for after reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of that averment, and strict proof thereof to the extent deemed relevant is demanded at the time of trial.

38. DENIED. The averments contained in Paragraph 35 of Defendants' New Matter are denied, for after reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of that averment, and strict proof thereof to the extent deemed relevant is demanded at the time of trial.

39. **DENIED.** The statement contained in Paragraph 39 of Defendants' New Matter is a Conclusion of Law and not an averment of fact, therefore no reply is necessary. To the extent a reply may be deemed necessary, Plaintiff incorporates herein all of the averments of its Complaint (paragraphs 1 through 31) as if set forth at length herein.

WHEREFORE, Plaintiff prays your Honorable Court for the entry of a Judgment in accordance with the prayer for relief contained in Plaintiff's Complaint.

Respectfully submitted,

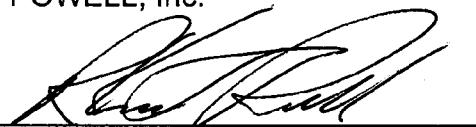


David C. Mason
Attorney for Plaintiff
Supreme Court No. 39180

VERIFICATION

I, R. Keith Powell, do hereby verify that the facts set forth in the foregoing **PLAINTIFF'S REPLY TO DEFENDANTS' NEW MATTER** are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

J. J. POWELL, Inc.

By: 

DATED: 6/14/01

FILED

JUN 15 2001

100-4112CC atty moon
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No: 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

* Type of Case: Civil Action

* TYPE OF PLEADING: Certificate of
Service

Defendants

* FILED ON BEHALF OF:
Plaintiff

* COUNSEL OF RECORD FOR THIS
PARTY:
* David C. Mason, Esquire
* MASON LAW OFFICE
* Supreme Court No. 39180
* Attorney at Law
* P. O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

* COUNSEL OF RECORD FOR
DEFENDANT:
* Jeffrey W. Stover, Esquire
* Novak, Stover & Furst
* P.O. Box 209
* 122 E. High Street
* Bellefonte, PA 16823
* (814) 355-8279

FILED

JUN 15 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* NO. 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

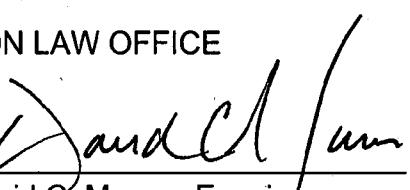
CERTIFICATE OF SERVICE

I, DAVID C. MASON, do hereby certify that I served a true and correct copy of Plaintiff's Reply to Defendants' New Matter filed to the above captioned action by placing a copy of the same in the United States mail, addressed as follows:

JEFFREY W. STOVER, ESQUIRE
122 E. HIGH STREET
P.O. BOX 209
BELLEFONTE, PA 16823

MASON LAW OFFICE

DATED: 6-14-01

By: 
David C. Mason, Esquire
Attorney for Plaintiff

FILED

JUN 15 2001

John C. Shaw
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

* No. 01-267-CD

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*</

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No. 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, hereby certify that I have served a true and correct copy
of the attached and foregoing Notice of Taking Deposition Upon Oral Examination Pursuant to
Pa. R.C.P. §4003.1 upon **TYRONE MILLING, INC., t/d/b/a TYCO TRUCKING; DAVID**
HERSHY through their attorney, **JEFFREY W. STOVER, Esquire**, by depositing said Notice
in the United States Mail, postage prepaid and addressed as follows:

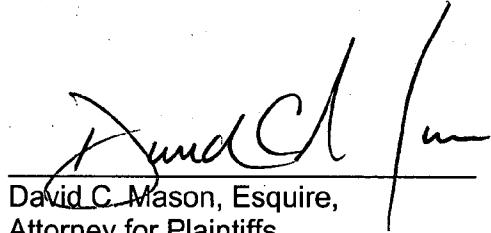
Tyrone Milling, Inc.
c/o Jeffrey W. Stover, Esquire
Novak, Stover & Furst
Attorneys at Law
122 East High Street
P.O. Box 209
Bellefonte, PA 16823

David Hershey
c/o Jeffrey W. Stover, Esquire
Novak, Stover & Furst
Attorneys at Law
122 East High Street
P.O. Box 209
Bellefonte, PA 16823

Tyco Trucking, Inc.
c/o Jeffrey W. Stover, Esquire
Novak, Stover & Furst
Attorneys at Law
122 East High Street
P.O. Box 209
Bellefonte, PA 16823

DATED:

10/14/02



David C. Mason, Esquire,
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No. 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

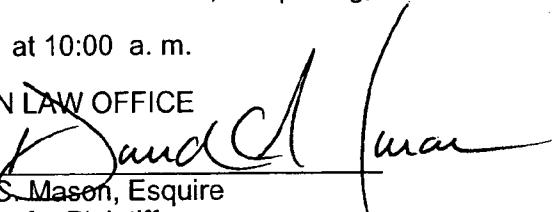
Defendants

NOTICE OF TAKING DEPOSITION
UPON ORAL EXAMINATION
PURSUANT TO PA. R.C.P. §4003.1

TO: TYRONE MILLING, INC.
% Jeffrey W. Stover, Esquire
Novak, Stover & Furst
Attorneys at Law
122 East High Street
P. O. Box 209
Bellefonte, PA 16823

You are hereby notified that the Plaintiff intends to take the Deposition Upon Oral Examination Pursuant to Pa.R.C.P. §4003.1 of a designated corporate representative of Tyrone Milling, Inc., at the Office of David C. Mason, Esquire, at 409 N. Front Street, Philipsburg, Centre County, Pennsylvania, on the 7th day of November, 2002, at 10:00 a. m.

DATED: 10/14/02

MASON LAW OFFICE
By: 
David C. Mason, Esquire
Attorney for Plaintiffs

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

J. J. POWELL, INC.,

* No. 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

NOTICE OF TAKING DEPOSITION
UPON ORAL EXAMINATION
PURSUANT TO PA. R.C.P. §4003.1

TO: TYCO TRUCKING, INC.
% Jeffrey W. Stover, Esquire
Novak, Stover & Furst
Attorneys at Law
122 East High Street
P. O. Box 209
Bellefonte, PA 16823

You are hereby notified that the Plaintiff intends to take the Deposition Upon Oral
Examination Pursuant to Pa.R.C.P. §4003.1 of a designated corporate representative of Tyco
Trucking, Inc., at the Office of David C. Mason, Esquire, at 409 N. Front Street, Philipsburg, Centre
County, Pennsylvania, on the 7th day of November, 2002, at 10:00 a. m.

DATED: 10/14/02

MASON LAW OFFICE
By: David C. Mason
David C. Mason, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No. 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

NOTICE OF TAKING DEPOSITION
UPON ORAL EXAMINATION
PURSUANT TO PA. R.C.P. §4003.1

TO: DAVID HERSHY
% Jeffrey W. Stover, Esquire
Novak, Stover & Furst
Attorneys at Law
122 East High Street
P. O. Box 209
Bellefonte, PA 16823

You are hereby notified that the Plaintiff intends to take your Deposition Upon Oral Examination Pursuant to Pa.R.C.P. §4003.1 at the Office of David C. Mason, Esquire, at 409 N. Front Street, Philipsburg, Centre County, Pennsylvania, on the 7th day of November, 2002, at 10:00 a.m.

DATED: 10/14/02

MASON LAW OFFICE
By: David C. Mason
David C. Mason, Esquire
Attorney for Plaintiffs

FILED

01/9/53-61
Oct 15 2002

cc
ECS

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No: 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

* Type of Case: Civil Action

Defendants

* TYPE OF PLEADING: Certificate
of Service

* FILED ON BEHALF OF
Plaintiff

* COUNSEL OF RECORD FOR THIS
PARTY:

* David C. Mason, Esquire
MASON LAW OFFICE
Supreme Court No. 39180
Attorney at Law
P. O. Box 28
Philipsburg, PA 16866
(814) 342-2240

* COUNSEL OF RECORD FOR
DEFENDANT:

* Jeffrey W. Stover, Esquire
Novak, Stover & Furst
P.O. Box 209
122 E. High Street
Bellefonte, PA 16823
(814) 355-8279

FILED

DEC 18 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC., * No. 01-267-CD

Plaintiff *

vs. *

TYRONE MILLING, INC., t/d/b/a *
TYCO TRUCKING; DAVID HERSHY, *
an individual; ROBERT BOONE, an *
individual, and DAVID HERSHY and *
ROBERT BOONE, individually and *
as partners t/d/b/a TYCO TRUCKING, *
an unincorporated business *
association; and TYCO TRUCKING, *
INC. *

Defendants *

CERTIFICATE OF SERVICE

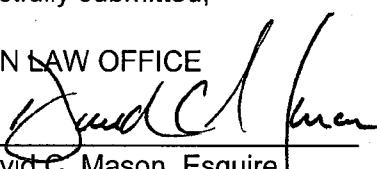
I, DAVID C. MASON, Esquire, hereby certify that a true and correct copy of Plaintiff's Request For Production of Documents (First Set) was served upon Tyrone Milling, Inc., and Tyco Trucking, Inc., by First Class U.S. Mail, postage prepaid, this 16 day of December 2002, and addressed as follows:

Jeffrey W. Stover, Esquire
Novak, Stover & Furst
Attorneys at Law
122 East High Street
P.O. Box 209
Bellefonte, PA 16823

Respectfully submitted,

MASON LAW OFFICE

By:


David C. Mason, Esquire
Attorney for Plaintiff

FILED

M 110 398TH
DEC 18 2002

(w)
NO
cc

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No: 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSEY,
an individual; BUD BOOM, an
individual, and DAVID HERSEY and
BUD BOOM, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

* Type of Case: Civil Action

Defendants

* TYPE OF PLEADING: Stipulation &
Praecipe for Correction of Caption

* FILED ON BEHALF OF:
Plaintiff

* COUNSEL OF RECORD FOR THIS
PARTY:
David C. Mason, Esquire
MASON LAW OFFICE
Supreme Court No. 39180
Attorney at Law
P. O. Box 28
Philipsburg, PA 16866
(814) 342-2240

* COUNSEL OF RECORD FOR
DEFENDANT:
Jeffrey W. Stover, Esquire
Novak, Stover & Furst
P.O. Box 209
122 E. High Street
Bellefonte, PA 16823
(814) 355-8279

FILED

APR 24 2003

William A. Shaw
Prothonotary

WILSON, J. G. (SPRINGFIELD,
MASS.)

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

↑ listed is what should be
change caption
& add parties

1870-1871
1870-1871

1870-1871

1870-1871

1870-1871

1870-1871

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

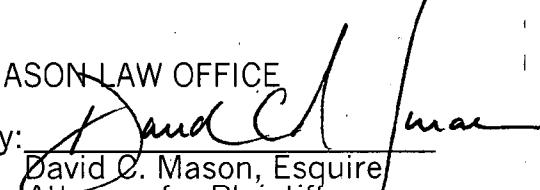
CIVIL ACTION - LAW

J. J. POWELL, INC.,	* No. 01-267-CD
	*
Plaintiff	*
	*
vs.	*
	*
TYRONE MILLING, INC., t/d/b/a	*
TYCO TRUCKING; DAVID HERSHY,	*
an individual; BUD BOOM, an	*
individual, and DAVID HERSHY and	*
BUD BOOM, individually and	*
as partners t/d/b/a TYCO TRUCKING,	*
an unincorporated business	*
association; and TYCO TRUCKING,	*
INC.	*
Defendants	*

STIPULATION AND PRAECIPE FOR
CORRECTION OF CAPTION

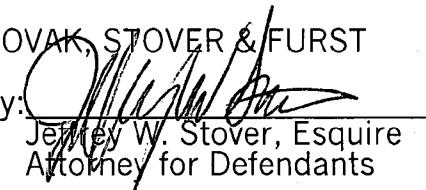
TO: PROTHONOTARY OF SAID COURT:

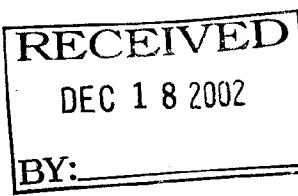
Kindly correct the caption in the above captioned matter as indicated on this
Praecipe.

MASON LAW OFFICE
By: 
David C. Mason, Esquire
Attorney for Plaintiff

STIPULATION AND CONSENT
DEFENSE COUNSEL

I do hereby agree with and consent to the correction of the caption in the
above captioned matter as provided herein.

NOVAK, STOVER & FURST
By: 
Jeffrey W. Stover, Esquire
Attorney for Defendants



FILED
M 12 30 2003
APR 24 2003
RECEIVED

William A. Shaw
Prothonotary

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

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No: 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSEY,
an individual; BUD BOOM, an
individual, and DAVID HERSEY and
BUD BOOM, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

* Type of Case: Civil Action

Defendants

* TYPE OF PLEADING:
* Certificate of Readiness and Praecepse
* To Place on Jury Trial List

* FILED ON BEHALF OF:

* Plaintiff

* COUNSEL OF RECORD FOR THIS
* PARTY:

* David C. Mason, Esquire
* MASON LAW OFFICE
* Supreme Court No. 39180
* Attorney at Law
* P. O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

* COUNSEL OF RECORD FOR
* DEFENDANT:

* Jeffrey W. Stover, Esquire
* Novak, Stover & Furst
* P.O. Box 209
* 122 E. High Street
* Bellefonte, PA 16823
* (814) 355-8279

FILED

JUL 09 2003

William A. Shaw
Prothonotary

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

CIVIL ACTION - LAW

J. J. POWELL, INC., * No. 01-267-CD

Plaintiff *

vs. *

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; BUD BOOM, an
individual, and DAVID HERSHY and
BUD BOOM, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants *

CERTIFICATE OF READINESS and PRAECIPE

TO PLACE ON JURY TRIAL LIST

AND NOW, comes David C. Mason, Attorney for Plaintiff, who files this
Certificate of Readiness and Praecipe to Place on Jury Trial List in accordance with
Local Rules of Court 212.2 and in support thereof states as follows:

1. There are no motions outstanding and discovery has been completed and
the case is ready for trial.
2. The case is to be heard by a jury.

3. Notice of the Praecepit has been given to Jeffrey W. Stover, Esquire, Attorney for the Defendants.

Kindly place this matter on the Jury Trial List for the next term of Court.

MASON LAW OFFICE

By:


David C. Mason, Esquire
Attorney for Plaintiff

FILED No
10/07/2003 cc
JUL 09 2003
Copy to CJA
William A. Shaw
Prothonotary
CJA

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

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No: 01-267-CD

Plaintiff

*

vs.

*

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; BUD BOOM, an
individual, and DAVID HERSHY and
BUD BOOM, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Type of Case: Civil Action

Defendants

*

FILED ON BEHALF OF:

Plaintiff

*

COUNSEL OF RECORD FOR THIS
PARTY:

David C. Mason, Esquire
MASON LAW OFFICE
Supreme Court No. 39180
Attorney at Law
P. O. Box 28
Philipsburg, PA 16866
(814) 342-2240

COUNSEL OF RECORD FOR
DEFENDANT:

Jeffrey W. Stover, Esquire
Novak, Stover & Furst
P.O. Box 209
122 E. High Street
Bellefonte, PA 16823
(814) 355-8279

FILED

JUL 09 2003

William A. Shaw
Prothonotary

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

J. J. POWELL, INC.,	* No. 01-267-CD
	*
Plaintiff	*
	*
vs.	*
	*
TYRONE MILLING, INC., t/d/b/a	*
TYCO TRUCKING; DAVID HERSEY,	*
an individual; BUD BOOM, an	*
individual, and DAVID HERSEY and	*
BUD BOOM, individually and	*
as partners t/d/b/a TYCO TRUCKING,	*
an unincorporated business	*
association; and TYCO TRUCKING,	*
INC.	*
	*
Defendants	*

CERTIFICATE OF SERVICE

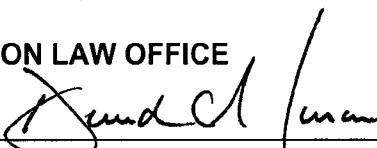
I, DAVID C. MASON, Esquire, hereby certify that a true and correct copy of a Certificate of Readiness and Praecipe to Place on Jury Trial List was served upon Tyrone Milling, Inc., and Tyco Trucking, Inc., by First Class U.S. Mail, postage prepaid, this 9 day of July 2003, and addressed as follows:

**Jeffrey W. Stover, Esquire
Novak, Stover & Furst
Attorneys at Law
122 East High Street
P.O. Box 209
Bellefonte, PA 16823**

Respectfully submitted,

MASON LAW OFFICE

By:


David C. Mason, Esquire
Attorney for Plaintiff

FILED

Mo Ce

01 1:07 607
JUL 09 2003

8/2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

J.J. POWELL, INC. :

-vs-

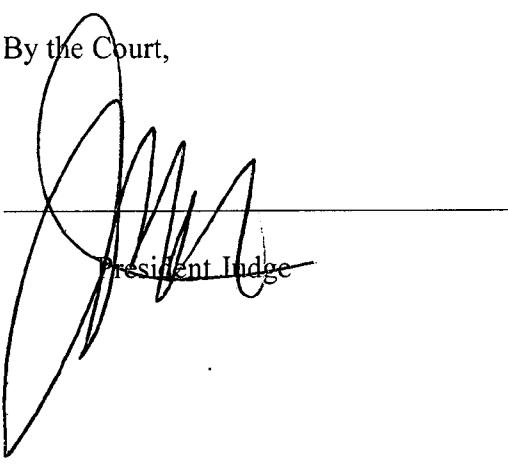
No. 01 - 267 - CD

TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING, INC.; DAVID :
HERSHEY, an individual; ROBERT :
BOONE, an individual, and DAVID :
HERSHEY and ROBERT BOONE, :
individually and as partners t/d/b/a TYCO :
TRUCKING, an unincorporated business :
association; and TYCO TRUCKING, INC. :

PRE-TRIAL ORDER

NOW, this 15th day of August, 2003, following pre-trial conference in the above-captioned matter, it is the ORDER of this Court that jury selection shall be had on Friday, August 22, 2003, at 10:00 a.m. with trial by jury commencing Monday, December 22, 2003, at 9:00 a.m. and concluding Tuesday, December 23, 2003.

By the Court,



President Judge

FILED

AUG 18 2003

William A. Shaw
Prothonotary/Clerk of Courts

FILED
1cc Atty Mason
Aff'd 5/18/03 1cc Atty Stover
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

*

J. J. POWELL, INC.,

* No. 01-267-CD

*

Plaintiff

*

*

vs.

* TYPE OF PLEADING: Praeclipe to File

* Deposition

*

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

*

* FILED ON BEHALF OF:

* Plaintiff

*

*

*

* ATTORNEY FOR THIS PARTY:

* David C. Mason, Esquire

* Supreme Court ID #39180

* MASON LAW OFFICE

* P.O. Box 28

* Philipsburg, PA 16866

* (814) 342-2240

*

FILED

NOV 21 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC., *
Plaintiff * No. 01-267-CD
*
*
* vs. *
*
*
* TYRONE MILLING, INC., t/d/b/a *
TYCO TRUCKING; DAVID HERSHY, *
an individual; ROBERT BOONE, an *
individual, and DAVID HERSHY and *
ROBERT BOONE, individually and *
as partners t/d/b/a TYCO TRUCKING, *
an unincorporated business *
association; and TYCO TRUCKING, *
INC.
*
*
* Defendants *

PRAECLPICE TO FILE DEPOSITION

TO THE PROTHONOTARY OF SAID COURT:

Kindly file the Deposition of David John Hershey dated the 7th day of November, 2002.

MASON LAW OFFICE

DATED: *Nov 21, 2003*

By: *David C. Mason* _____
David C. Mason, Esquire

FILED NOcc

9/29/03
Nov 2 2003
WES

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No. 01-267-CD

Plaintiff

*

*

*

*

* TYPE OF CASE:

*

*

*

* TYPE OF PLEADING: Motion for Partial
* Summary Judgment

*

*

* FILED ON BEHALF OF: Plaintiff

*

*

*

* COUNSEL OF RECORD FOR PLAINTIFF:

*

* David C. Mason, Esq.
* Supreme Court No. 39180
* Attorney at Law
* P.O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

*

* COUNSEL OF RECORD FOR
* DEFENDANTS:

*

* Jeffrey W. Stover, Esquire
* 122 E. High Street
* P.O. Box 209
* Bellefonte, PA 16823
* (814) 355-8235

FILED

NOV 21 2003

William A. Shaw
Prothonotary/Clerk of Courts

COUNT II
J. J. POWELL, INC.
v.
TYRONE MILLING, INC.

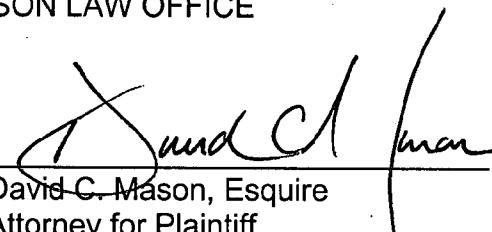
Paragraphs 1 through 6 are incorporated herein by reference as though fully set forth at length.

7. Plaintiff seeks summary judgment in the amount of \$81,882.32 plus interest from February, 2001, against Tyrone Milling, Inc., for the reasons set forth in the Memorandum of Law submitted herewith.

WHEREFORE, Plaintiff seeks judgment in favor of the Plaintiff and against the Defendant Tyrone Milling, Inc., in the amount of \$81,882.32 plus interest from February, 2001.

Respectfully submitted,

MASON LAW OFFICE

By: 
David C. Mason, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

J. J. POWELL, INC., * No. 01-267-CD

Plaintiff *

vs. *

TYRONE MILLING, INC., t/d/b/a *
TYCO TRUCKING; DAVID HERSHY, *
an individual; BUD BOOM, an *
individual, and DAVID HERSHY and *
BUD BOOM, individually and *
as partners t/d/b/a TYCO TRUCKING, *
an unincorporated business *
association; and TYCO TRUCKING, *
INC. *

Defendants *

MOTION FOR PARTIAL SUMMARY JUDGMENT

AND NOW, comes the Plaintiff, J. J. Powell, Inc., by and through its attorney, David

C. Mason, and seeks partial summary judgment and in support thereof avers as follows:

1. Plaintiff instituted an action against all of the Defendants seeking a judgment against all of the Defendants arising from a trade account for the purchase of gasoline, diesel fuels and other petroleum products.
2. This matter is scheduled for jury trial on December 22 and December 23, 2003.
3. Any party is entitled to file a Motion for Partial Summary Judgment at any time after the relevant pleadings are closed whenever the depositions and answers to interrogatories reveal that there is no genuine issue of material fact.

COUNT I
J. J. POWELL, INC.
v.
TYRONE TRUCKING, INC.
AMOUNT OF THE DEBT

Paragraphs 1 through 3 are incorporated herein by reference as though fully set forth at length.

4. The deposition of David John Hershey, who identified himself as the President of corporate defendants Tyrone Milling, Inc., and Tyco Trucking, Inc. was conducted on November 7, 2002. The original transcript of the notes of testimony of this deposition have been filed and are part of the record.

5. Defendant David John Hershey, by counsel, indicated that he was appearing at the deposition as a representative of two corporate defendants (Tyco Trucking, Inc., and Tyrone Milling, Inc.) and in his individual capacity. (N.T.p. 4, lines 7 through 12)

6. Mr. Hershey's deposition revealed that he does not dispute the amount of the debt claimed in the complaint, to wit, \$81,882.32. (N.T. 33, lines 15 through 23)

WHEREFORE, Plaintiff prays your Honorable Court for the entry of judgment in favor of the Plaintiff and against the Defendant Tyrone Milling, Inc., in the amount of \$81,882.32.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No. 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; BUD BOOM, an
individual, and DAVID HERSHY and
BUD BOOM, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

*

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of Plaintiff's Motion for Partial Summary Judgment filed in the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

Jeffrey W. Stover, Esquire
122 E. High Street
P.O. Box 209
Bellefonte, PA 16823

MASON LAW OFFICE

DATED: *Nov 21, 2003*

BY:

David C. Mason
David C. Mason, Esquire

FILED

3cc

01/20/04
NOV
21 2003
Attn: Mason

William A. Shaw
Prothonotary/Clerk of Courts

CKW

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

J.J. POWELL, INC., :
Plaintiff :
: :
v. : No. 01-267-CD
: :
TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING, INC.; DAVID :
HERSHEY, an individual; BUD :
BOOM, an individual, and DAVID :
HERSHEY and BUD BOOM, :
individually and as partners t/d/b/a TYCO :
TRUCKING, an unincorporated business :
association; and TYCO TRUCKING, INC., :
Defendant :
: :
: :

MOTION OF DEFENDANT DAVID HERSHEY
FOR SUMMARY JUDGMENT

COMES NOW, the Defendant, David Hershey, by and through his attorneys, Stover, McGlaughlin, Gerace, Weyandt & McCormick. P.C., and moves this Honorable Court for summary judgment against the Plaintiff, as follows:

1. On or about May 7, 2001, Plaintiff filed its First-Amended Complaint against Defendants seeking judgment in the amount of \$81,882.32 for the cost of fuel products sold on account under the account name of "Tyco Trucking."
2. Discovery in this case reveals that there is no viable cause of action against the Defendant David Hershey. No material issues of fact are present with respect to Plaintiffs' claim against Defendant David Hershey.
3. The record developed to date reveals the following:

FILED
12/04
DEC 02 2003

William A. Shaw
Prothonotary

- a. In November of 1998, the Board of Directors of Tyrone Milling, Inc. determined to start a new corporation to be called "Tyco Trucking, Inc." Hershey N.T., page 16.
- b. In November of 1998, David Hershey made a telephone request to establish a credit account in the name of "Tyco Trucking." Rougeux N.T., page 14; Exhibit D-1.
- c. At the time of the request, Mr. Powell knew that Mr. Hershey was a shareholder and on the board of Tyrone Milling, Inc. K. Powell N.T., pages 57-58.
- d. At the time, Tyrone Milling was an ongoing customer of Plaintiff, and maintained a credit account with Plaintiff for the purchase of petroleum products that were used in connection with Tyrone's business. Rougeux N.T., page 12.
- e. In response to the Hershey telephone call, Mr. Fred Rougeux, a sales representative of Plaintiff, made a personal call on Mr. Hershey at the Tyrone Milling place of business. Rougeux N.T., page 15. Based upon that call, Mr. Rougeux understood that Mr. Hershey wanted a new account established in the name of "Tyco Trucking", but that it would be an "internal company" for accounting purposes only. Rougeux N.T., pages 16-18.
- f. At the time of that conversation, Mr. Rougeux understood that Mr. Hershey was making the request on behalf of Tyrone Milling, and that Tyco Trucking was not a personal venture. Rougeux N.T., pages 27-28.

- g. Keith Powell, Plaintiff's vice president, was responsible for the Pacific Pride credit card program during all relevant times. K. Powell N.T., pages 8-9.
- h. As of November, 1998, Mr. Powell knew of Mr. Hershey through Mr. Hershey's work on behalf of Tyrone Milling, Inc. K. Powell N.T., page 12.
- i. Mr. Powell has no knowledge of Mr. Hershey's ownership interest, if any, in Tyco Trucking, Inc. or Tyrone Milling, Inc. K. Powell N.T., page 55.
- j. The Articles of Incorporation for Tyco Trucking, Inc. were filed with the Commonwealth, Department of State, on July 7, 1999. Hershey N.T., page 45.
- k. Tyrone Milling, Inc. is the sole shareholder of Tyco Trucking, Inc. Hershey N.T., page 42.

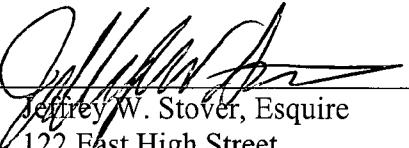
4. The record developed to date reveals the following:

- a. The Tyco Trucking account was established by David Hershey in his official capacity as an officer of either Tyrone Milling, Inc. or Tyco Trucking, Inc., but not as a personal venture.
- b. The Tyco Trucking account was established after a conversation between Mr. Hershey and Mr. Rougeux, at which time Mr. Rougeux understood that Mr. Hershey was working in his capacity as an officer of Tyrone Milling, Inc..
- c. No writing exists wherein Mr. Hershey personally assumed any responsibility for the Tyco Trucking account nor personally assured the payment of the account balance.
- d. Mr. Hershey bears no personal responsibility for the debt allegedly owed to Plaintiff on the Tyco Trucking account.

WHEREFORE, Defendant David Hershey demands summary judgment to be entered in his favor and against the Plaintiff.

Respectfully submitted,

STOVER, MCGLAUGHLIN, GERACE,
WEYANDT & MCCORMICK, P.C.

BY: 

Jeffrey W. Stover, Esquire
122 East High Street
P.O. Box 209
Bellefonte, PA 16823
(814) 355-8235
Attorney for Defendants

Dated: 12/1/03

1 Scott Wagner approach us. He had some tractors and
2 trailers and wanted to not be on the road all the time,
3 wanted to change his way of life, I guess we'll say, and he
4 offered us the opportunity of taking these tractors and
5 trailers over and operating them.

6 And it appeared as though it was a business
7 opportunity. We didn't have to invest money in capital
8 equipment because he simply wanted us to take them over and
9 pay him a monthly lease for these trucks and trailers and,
10 of course, then maintain the maintenance and all the costs
11 associated with running these trucks and I guess after some
12 thought, we decided that maybe we should form a separate
13 corporation and take advantage of what we thought was a
14 good situation.

15 And so the board of directors of Tyrone
16 Milling, Inc. met and decided to form a separate
17 corporation called Tyco Trucking, Inc. and I guess that was
18 the beginning. \

19 And that was in, oh, Scott had probably
20 contacted us in October or so of '98, but we didn't act on
21 it right away. We thought about it for a while and it was
22 in November when we decided to do something about it.

23 Q When you say we were approached by Scott
24 Wagner, who was we?

25 A Bud Boom and myself.

1 frame of this message, did you have
2 any contact with David Hershey about
3 a new business they were getting
4 into?

5 A. Nothing about a new business
6 they were getting into.

7 Q. Contact ---?

8 A. Pardon?

9 Q. Did you have any kind of
10 contact with them at about that time?

11 A. At about this time, I received
12 this note and was asked to contact,
13 follow up with them for additional
14 fuel cards.

15 Q. All right. And when you're
16 referring to those note, again,
17 you're referring to the second page
18 of Exhibit D-1; correct?

19 A. Yes.

20 Q. And this is a phone message
21 that is to Angie. Her name is at the
22 top; correct?

23 A. Yes.

24 Q. And would that be Angie
25 Cuthbert at the store?

Angine - All costing information same as
Tyrone Milling - This is another internal
company for costing purposes.

PACIFIC PRIDE

COMMERCIAL FUELING SYSTEM

10457

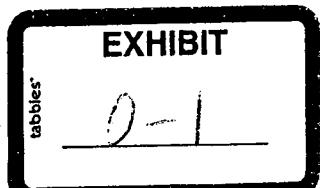
NAME OF BUSINESS <i>TYCO Trucking</i>	ADDRESS RD #1 Box 34-A Tyrone PA 16686
CONTACT NAME <i>Dave Hershey</i>	PHONE

CARD REQUEST FORM

*** PLEASE LIST CARDS NEEDED BY UNIT # - VEHICLE - ID NUMBER - DRIVER NAME ***

ESTIMATED USAGE PER MONTH

GALLONS PER MONTH	PRODUCT OR PRODUCTS	# OF CARDS NEEDED
	All	2



IMPORTANT MESSAGE

FOR Angie
DATE 11/14 TIME 12:24 A.M.
M Dave Hershey P.M.
OF

PHONE

<input type="checkbox"/> FAX	AREA CODE	NUMBER	EXTENSION
<input type="checkbox"/> MOBILE	AREA CODE	NUMBER	TIME TO CALL
TELEPHONED		PLEASE CALL	
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE Want you to set up
another Auto fueling account.
The name will be Tyco Trucking
and the address is the same
as Tyrone Milling, Mail
him the card and you can
pick the pin 11

SIGNED

 **TOPS** FORM 3002C

1 Tyco Trucking or Tyrone Milling, or
2 --- but it was apparent that he was
3 involved.

4 Q. This was the meeting after you
5 revoked the credit when they got so
6 far out of line?

7 A. Right.

8 Q. And during that meeting,
9 neither one of them said, I own Tyco
10 Trucking?

11 A. Not that I recall, no.

12 Q. Moving on to paragraph 25, you
13 make the allegation there that the
14 request of David Hershey to establish
15 a separate fuel management account
16 for Tyrone Milling, Inc., in the name
17 of Tyco Trucking was made with the
18 full knowledge and insistence of the
19 board of directors of Tyrone Milling,
20 Inc. What's your basis for that
21 statement that it was made with full
22 knowledge and the insistence of the
23 board?

24 A. Because David Hershey is one
25 of the shareholders of Tyrone Milling

1 and on the board of directors of /
2 Tyrone Milling. /

3 Q. So you're basing the knowledge
4 on the fact that he's one the board
5 members, and he was obviously making
6 a request to establish his account?

7 A. Right.

8 Q. What's your basis for the
9 allegation that his doing this was at
10 the insistence of the board of
11 directors?

12 A. The same way.

13 Q. That's an assumption on your
14 part?

15 A. Yes.

16 Q. Paragraph 27, read that for me
17 for a moment to yourself.

18 WITNESS COMPLIES

19 A. Okay.

20 BY ATTORNEY STOVER:

21 Q. With respect to that
22 allegation, let me ask you several
23 questions.

24 A. Sure.

25 Q. You have an allegation there

1 A. I had probably made two or
2 three visits, sales calls, to them,
3 nothing specific, just general sales
4 calls.

5 Q. And was Tyrone Milling an
6 ongoing customer of J.J. Powell
7 before 1998?

8 A. I cannot give you a definite
9 answer. However, I know that Tyrone
10 Milling did have fuel cards prior to
11 this request.

12 Q. And this would be the Pacific
13 Pride fuel cards?

14 A. Yes.

15 Q. And you're not sure how long
16 before that?

17 A. No.

18 Q. And you had had some sales
19 calls with them prior to this?

20 A. Yes.

21 Q. And who did you deal with when
22 you had those sales calls?

23 A. I think it was Dave Hershey.
24 Looking back, Dave is the thin,
25 baldhead. I think it was Dave.

1 A. Yes, it would.

2 Q. And is she the one who gave
3 you this message to follow up?

4 A. Yes.

5 Q. What did you do after she gave
6 you that message?

7 A. I went to visit Tyrone Milling
8 to see about the fuel cards that they
9 were requesting.

10 Q. Okay.

11 A. At that time, I got the
12 information, what cards they wanted,
13 the name of the company, and this was
14 the basic information that I was told
15 by them.

16 Q. Now, you're referring --- you
17 have flipped back to the first page
18 of Exhibit D-1; correct?

19 A. Yes.

20 Q. And you're referring to the
21 Pacific Pride commercial fueling
22 system form that is that document?

23 A. Yes.

24 Q. And there is some writing on
25 this form, and let me take you

1 through it. At the top, there is
2 some handwritten information?

3 A. Yes.

4 Q. Do you know who wrote that?

5 A. Yes, I did.

6 Q. And would you read it for the
7 record?

8 A. All billing information same
9 as Tyrone ---.

10 Q. Now, it starts with another
11 word besides all; doesn't it?

12 A. Angie.

13 Q. Okay.

14 A. All billing information same
15 as Tyrone Milling. This is another
16 internal company for costing
17 purposes.

18 Q. All right. Now, when did you
19 write that?

20 A. I cannot give you an exact
21 date. I wrote that when I made the
22 call to them to set up for the
23 Pacific Pride cards that they were
24 requesting.

25 Q. So this would have been after

1 you made that call, after you talked
2 to them?

17

3 A. This would have been when I
4 talked to them.

5 Q. And you then wrote that note
6 at the top which was a note back to
7 Angie; is that right?

8 A. Yes.

9 Q. And what were you trying to
10 convey to Angie when you wrote that
11 note?

12 A. That basically they were
13 requesting cards for their company,
14 but in the name of Tyco Trucking, in
15 order to keep operations separated
16 for bookkeeping purposes.

17 Q. So that what was going to be
18 done for Tyco Trucking was going to
19 be a separate operation, at least for
20 the accounting of this account?

21 A. My understanding was that it
22 was part of Tyrone Milling. However,
23 they wanted a different name on this
24 for accounting purposes.

25 Q. And that name was to be Tyco

1 Trucking, Inc.?

2 A. Yes, sir.

3 Q. And you used the term internal
4 company?

5 A. Yes.

6 Q. So you understood it to be a
7 company of some sort?

8 A. That was a general statement.

9 I cannot tell you the exact
10 understanding on that.

11 Q. Where did the words internal
12 company come from? Was that your
13 word or was that something ---?

14 A. That was the way they
15 basically conveyed to me their
16 handling of this.

17 Q. That it was going to be an
18 internal company?

19 A. Yes.

20 Q. Did Mr. Hershey use those
21 words to you?

22 A. I can't tell you the exact
23 words, but that is the way that it
24 was understood, the way that they
25 were telling me they were going to be

1 what does that mean?

2 A. All billing information? The
3 bills are sent to the same exact
4 address as Tyrone Milling for
5 payment.

6 Q. So that means what address to
7 use for sending the bills out?

8 A. Where the billing is to go,
9 yes, sir.

10 Q. And do I understand that at
11 last at that time, the credit
12 arrangements were the same for every
13 customer?

14 A. What are you implying?

15 Q. The terms of payment for
16 credit purchases?

17 A. The terms of payment for
18 credit purchases for the Pacific
19 Pride is the same for all customers.
20 There are specific payment terms.

21 Q. At the time you met with Mr.
22 Hershey to set up this account, was
23 it your understanding that Tyco
24 Trucking was in some way connected
25 with Tyrone Milling, Inc.?

1 A. It was my understanding it was
2 100 percent connected with Tyrone
3 Milling, Inc.

4 Q. And that this was not a
5 personal venture by David Hershey; is
6 that correct?

7 A. Yes, it was not a personal
8 venture of David Hershey.

9 Q. And would the same be true of
10 Bud Boom? You don't know any
11 personal involvement by a Mr. Bud
12 Boom in this?

13 A. I don't recognize the name,
14 Mr. Bud Boom.

15 ATTORNEY STOVER:

16 That's all the
17 questions I have.

18 ATTORNEY MASON:

19 We'll waive signature
20 also. Fred, thank you.

21 * * * * *

22 DEPOSITION CONCLUDED AT 12:05 P.M.

23 * * * * *

24

25

1 Q. How old are you now?
2 A. Thirty-six (36).
3 Q. Do you have any post-high
4 school degrees?
5 A. Yes.
6 Q. And tell us what that would
7 be?
8 A. I've got a B.S. in Finance
9 from Clarion University.
10 Q. Anything else?
11 A. No.
12 Q. When did you graduate?
13 A. 1990.
14 Q. And have you been employed by
15 J.J. Powell ever since?
16 A. Yes.
17 Q. Tell me what your
18 responsibilities are for the
19 operation of J.J. Powell.
20 A. I'm responsible for the
21 financial and accounting. I'm
22 responsible for our Bellefonte
23 operations and some of the commercial
24 sales.
25 Q. And when you say some of the

1 commercial sales, explain that.

2 A. Some of the card lock sales
3 that we do with Pacific Pride.

4 Q. You don't have a primary
5 responsibility for the Pacific Pride
6 program?

7 A. Yes.

8 Q. And describe for the record
9 what is Pacific Pride.

10 A. Pacific Pride is an automated
11 fueling process that employs cards
12 for the end users to access fuel
13 pumps, and from there, they get
14 monthly statements detailing the
15 transactions.

16 Q. They stick a card in the
17 machine, then they can dispense, and
18 they don't need to talk to an
19 operator or serviceman?

20 A. You put that a lot better than
21 I did, yes.

22 Q. And is Pacific Pride a
23 nationwide company?

24 A. Yes, it is. It's a franchise
25 nationwide.

1 with Bud Boom?

2 A. Yes.

3 Q. How about David Hershey? What
4 dealings have you had with Mr.
5 Hershey besides that same meeting?

6 A. I dealt with Dave Hershey for
7 quite a while. Tyrone Milling,
8 before they started Tyco Trucking,
9 they had a Pacific Pride card at
10 Tyrone Milling, and they had just
11 left it at the Bald Eagle store. He
12 had had some questions at times about
13 the system, and I had spoken with him
14 a number of times around the mid-
15 '90s. Also talked to Dave Hershey at
16 our office and also on the phone a
17 number of times over the last five
18 years, I guess, the Tyco thing's been
19 ongoing.

20 Q. When did Tyrone Milling, to
21 your knowledge, become a customer of
22 J.J. Powell?

23 A. Tyrone Milling would have been
24 a customer probably since the late
25 '80s.

1 individuals as opposed to by Tyrone
2 Milling or anybody else?

3 A. I guess we don't have anything
4 in writing that says they were the
5 owners, but obviously they were ---
6 well, they were part owners.

7 Q. So you don't have anything
8 that would say David Hershey owned
9 Tyco Trucking?

10 A. No.,

11 Q. And you don't have anything
12 that says he even owned a part of
13 Tyco Trucking; do you?

14 A. No.,

15 Q. And the same for Bud Boom?

16 A. That's right.

17 Q. And as far as operated, you
18 did know that you were dealing with
19 David Hershey to get this up and
20 running so that he had some hand in
21 operating it?

22 A. Right.

23 Q. Beyond that knowledge, do you
24 have any other knowledge as to how
25 this was going to be operated and who

1 conducted on the phone.

2 Q Do you recognize this as the articles of
3 incorporation of Tyco Trucking, Inc.?

4 A Yes.

5 Q And would you agree with me that they were
6 filed with the Department of State on July 7th, 1999?

7 A Yes.

8 Q And would you agree with me that you signed
9 these articles of incorporation June 25th, 1999?

10 A Yes.

11 Q And Bud Boom also signed them on or about
12 that same date?

13 A Yes.

14 Q I want to show you a paper called corporate
15 minutes for Tyco Trucking, Inc., 1998. Do you see that?

16 A Yes.

17 Q When was that paper typed and who typed it?

18 A That was typed -- those were handwritten
19 notes that Mr. Stover's secretaries typed up.

20 Q When did Mr. Stover's secretary type this
21 up? On or about the time these responses were prepared?

22 A Yes, I think so.

23 Q And did you deliver to Mr. Stover
24 handwritten notes?

25 A Yes.

1 A I guess not necessarily, I guess you could
2 say I -- if you're in your own business, when are you
3 working and when are you not? I don't know quite how to
4 answer your question. Can you rephrase that again?

5 Q Could you read it back?

6 (Question read.)

7 A Yes, technically I was on the payroll, but
8 also was serving as a consultant as an officer to Tyco
9 Trucking, Inc. at the same time, too.

10 BY MR. MASON:

11 Q -But Tyco Trucking, Inc. was owned by the
12 same shareholders as Tyrone Milling, Inc., correct?

13 A No, Tyco Trucking, Inc. was owned by Tyrone
14 Milling, Inc., that was the only shareholder of Tyco
15 Trucking, Inc.

16 Q Okay. And did the board of directors of
17 Tyrone Milling, Inc. authorize its employee, you, to act on
18 behalf of Tyco Trucking, Inc.?

19 A Yes.

20 Q And you weren't --

21 A What was that question again?

22 Q Could you read it back?

23 (Question read.)

24 A No, the board of directors of Tyco Trucking,
25 Inc. authorized me to help make decisions for Tyco

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

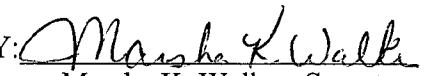
J.J. POWELL, INC., :
Plaintiff :
: :
v. : No. 01-267-CD
: :
TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING; DAVID HERSEY, :
An individual; BUD BOOM, an :
Individual, and DAVID HERSEY and :
BUD BOOM, individually and :
as partners t/d/b/a TYCO TRUCKING, :
An unincorporated business association; and :
TYCO TRUCKING, INC., :
Defendants :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served
this 15 day of December, 2003 upon counsel for the Plaintiff by First Class Mail, postage
prepaid, at the following address:

David C. Mason, Esq.
P.O. Box 28
Philipsburg, PA 16866

STOVER, McGLAUGHLIN, GERACE,
WEYANDT & McCORMICK, P.C.

BY: 
Marsha K. Walker, Secretary
To Jeffrey W. Stover, Esq.

FILED

*m
11:04 AM 11/04/03*

DEC 02 2003

William A. Shaw
Prothonotary

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

J.J. POWELL, INC., :
Plaintiff :
:
v. : No. 01-267-CD
:
TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING, INC.; DAVID :
HERSHEY, an individual; BUD :
BOOM, an individual, and DAVID :
HERSHEY and BUD BOOM, :
individually and as partners t/d/b/a TYCO :
TRUCKING, an unincorporated business :
association; and TYCO TRUCKING, INC., :
Defendant :
:

MOTION OF DEFENDANT BUD BOOM
FOR SUMMARY JUDGMENT

COMES NOW, the Defendant, Bud Boom, by and through his attorneys, Stover, McGlaughlin, Gerace, Weyandt & McCormick. P.C., and moves this Honorable Court for summary judgment against the Plaintiff, as follows:

1. On or about May 7, 2001, Plaintiff filed its First-Amended Complaint against Defendants seeking judgment in the amount of \$81,882.32 for the cost of fuel products sold on account under the account name of "Tyco Trucking."

2. Discovery in this case reveals that there is no viable cause of action against the Defendant Bud Boom. No material issues of fact are present with respect to Plaintiffs' claim against Defendant Bud Boom.

3. The record developed to date reveals the following:

DEC 3 2003

FILED

- a. In November of 1998, the Board of Directors of Tyrone Milling, Inc. determined to start a new corporation to be called "Tyco Trucking, Inc." Hershey N.T., page 16.
- b. In November of 1998, David Hershey made a telephone request to establish a credit account in the name of "Tyco Trucking." Rougeux N.T., page 14; Exhibit D-1.
- c. At the time of the request, Mr. Powell knew that Mr. Hershey was a shareholder and on the board of Tyrone Milling, Inc. K. Powell N.T., pages 57-58.
- d. At the time, Tyrone Milling was an ongoing customer of Plaintiff, and maintained a credit account with Plaintiff for the purchase of petroleum products that were used in connection with Tyrone's business. Rougeux N.T., page 12.
- e. In response to the Hershey telephone call, Mr. Fred Rougeux, a sales representative of Plaintiff, made a personal call on Mr. Hershey at the Tyrone Milling place of business. Rougeux N.T., page 15. Based upon that call, Mr. Rougeux understood that Mr. Hershey wanted a new account established in the name of "Tyco Trucking", but that it would be an "internal company" for accounting purposes only. Rougeux N.T., pages 16-18.
- f. At the time of that conversation, Mr. Rougeux understood that Mr. Hershey was making the request on behalf of Tyrone Milling, and that Tyco Trucking was not a personal venture. Rougeux N.T., pages 27-28.

- g. Mr. Rougeux never dealt with Defendant Bud Boom. Rougeux N.T., pages 24-25.
- h. Keith Powell, Plaintiff's vice president, was responsible for the Pacific Pride credit card program during all relevant times. K. Powell N.T., pages 8-9.
- i. As of November, 1998, Mr. Powell did not know of Mr. Bud Boom. K. Powell N.T., pages 11-12.
- j. Mr. Powell's only dealing with Mr. Boom was in early 2001, when Mr. Boom accompanied Mr. Hershey to a meeting with Mr. Powell to discuss the status of the Tyco account "by Tyrone Milling." K. Powell N.T., pages 11-12, 78.
- k. Mr. Powell has no knowledge of Mr. Boom's ownership interest, if any, in Tyco Trucking, Inc. or Tyrone Milling, Inc. K. Powell N.T., page 55.
- l. The Articles of Incorporation for Tyco Trucking, Inc. were filed with the Commonwealth, Department of State, on July 7, 1999. Hershey N.T., page 45.
- m. Tyrone Milling, Inc. is the sole shareholder of Tyco Trucking, Inc. Hershey N.T., page 42.

4. The record developed to date reveals the following:

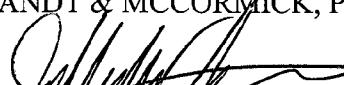
- a. The Tyco Trucking account was established by David Hershey in his official capacity as an officer of either Tyrone Milling, Inc. or Tyco Trucking, Inc., but not as a personal venture.
- b. The Tyco Trucking account was established after a conversation between Mr. Hershey and Mr. Rougeux, and without any involvement of Mr. Boom.

- c. No writing exists wherein Mr. Boom personally assumed any responsibility for the Tyco Trucking account nor personally assured the payment of the account balance.
- d. Mr. Boom bears no personal responsibility for the debt allegedly owed to Plaintiff on the Tyco Trucking account.

WHEREFORE, Defendant Bud Boom demands summary judgment to be entered in his favor and against the Plaintiff.

Respectfully submitted,

STOVER, MCGLAUGHLIN, GERACE,
WEYANDT & MCCORMICK, P.C.

BY: 

Jeffrey W. Stover, Esquire
122 East High Street
P.O. Box 209
Bellefonte, PA 16823
(814) 355-8235
Attorney for Defendants

Dated: 12/11/03

1 Scott Wagner approach us. He had some tractors and
2 trailers and wanted to not be on the road all the time,
3 wanted to change his way of life, I guess we'll say, and he
4 offered us the opportunity of taking these tractors and
5 trailers over and operating them.

6 And it appeared as though it was a business
7 opportunity. We didn't have to invest money in capital
8 equipment because he simply wanted us to take them over and
9 pay him a monthly lease for these trucks and trailers and,
10 of course, then maintain the maintenance and all the costs
11 associated with running these trucks and I guess after some
12 thought, we decided that maybe we should form a separate
13 corporation and take advantage of what we thought was a
14 good situation.

15 And so the board of directors of Tyrone
16 Milling, Inc. met and decided to form a separate
17 corporation called Tyco Trucking, Inc. and I guess that was
18 the beginning.

19 And that was in, oh, Scott had probably,
20 contacted us in October or so of '98, but we didn't act on
21 it right away. We thought about it for a while and it was
22 in November when we decided to do something about it.

23 Q When you say we were approached by Scott
24 Wagner, who was we?

25 A Bud Boom and myself.

1 frame of this message, did you have
2 any contact with David Hershey about
3 a new business they were getting
4 into?

5 A. Nothing about a new business
6 they were getting into.

7 Q. Contact ---?

8 A. Pardon?

9 Q. Did you have any kind of
10 contact with them at about that time?

11 A. At about this time, I received
12 this note and was asked to contact,
13 follow up with them for additional
14 fuel cards.

15 Q. All right. And when you're
16 referring to those note, again,
17 you're referring to the second page
18 of Exhibit D-1; correct?

19 A. Yes.

20 Q. And this is a phone message
21 that is to Angie. Her name is at the
22 top; correct?

23 A. Yes.

24 Q. And would that be Angie
25 Cuthbert at the store?

Angine - All casting information same as
Tyrone Milling - This is another internal
company for casting purposes

PACIFIC PRIDE

COMMERCIAL FUELING SYSTEM

10457

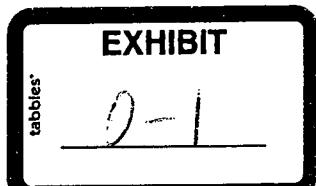
NAME OF BUSINESS <i>FCO Tack Inc</i>	ADDRESS RD #1 Box 34-A Tyrone PA 16686
CONTACT NAME <i>Dave Hershey</i>	PHONE

CARD REQUEST FORM

*** PLEASE LIST CARDS NEEDED BY UNIT # - VEHICLE - ID NUMBER - DRIVER NAME ***

ESTIMATED USAGE PER MONTH

GALLONS PER MONTH	PRODUCT OR PRODUCTS	# OF CARDS NEEDED
	All	2



IMPORTANT MESSAGE

FOR Angie
DATE 11/4 TIME 12:24 AM
M Dave Hershey P.M.
OF
PHONE
 FAX AREA CODE NUMBER EXTENSION
 MOBILE AREA CODE NUMBER TIME TO CALL

TELEPHONED	PLEASE CALL
CAAME TO SEE YOU	WILL CALL AGAIN
WANTS TO SEE YOU	RSCH
RETURNED YOUR CALL	SPECIAL ATTENTION

MESSAGE What's your to set up
another Auto fueling account.
The name will be Tyco Trucking
and the address is the same
as Tyrone Milling, Mill
him the card and you can
SIGNED PICK the pin

 TOPS FORM 3002C

1 Tyco Trucking or Tyrone Milling, or
2 --- but it was apparent that he was
3 involved.

4 Q. This was the meeting after you
5 revoked the credit when they got so
6 far out of line?

7 A. Right.

8 Q. And during that meeting,
9 neither one of them said, I own Tyco
10 Trucking?

11 A. Not that I recall, no.

12 Q. Moving on to paragraph 25, you
13 make the allegation there that the
14 request of David Hershey to establish
15 a separate fuel management account
16 for Tyrone Milling, Inc., in the name
17 of Tyco Trucking was made with the
18 full knowledge and insistence of the
19 board of directors of Tyrone Milling,
20 Inc. What's your basis for that
21 statement that it was made with full
22 knowledge and the insistence of the
23 board?

24 A. Because David Hershey is one
25 of the shareholders of Tyrone Milling

1 and on the board of directors of
2 Tyrone Milling.

3 Q. So you're basing the knowledge
4 on the fact that he's one the board
5 members, and he was obviously making
6 a request to establish his account?

7 A. Right.

8 Q. What's your basis for the
9 allegation that his doing this was at
10 the insistence of the board of
11 directors?

12 A. The same way.

13 Q. That's an assumption on your
14 part?

15 A. Yes.

16 Q. Paragraph 27, read that for me
17 for a moment to yourself.

18 WITNESS COMPLIES

19 A. Okay.

20 BY ATTORNEY STOVER:

21 Q. With respect to that
22 allegation, let me ask you several
23 questions.

24 A. Sure.

25 Q. You have an allegation there

1 A. I had probably made two or
2 three visits, sales calls, to them,
3 nothing specific, just general sales
4 calls.

5 Q. And was Tyrone Milling an
6 ongoing customer of J.J. Powell
7 before 1998?

8 A. I cannot give you a definite
9 answer. However, I know that Tyrone
10 Milling did have fuel cards prior to,
11 this request.

12 Q. And this would be the Pacific,
13 Pride fuel cards?

14 A. Yes.

15 Q. And you're not sure how long
16 before that?

17 A. No.

18 Q. And you had had some sales
19 calls with them prior to this?

20 A. Yes.

21 Q. And who did you deal with when
22 you had those sales calls?

23 A. I think it was Dave Hershey.
24 Looking back, Dave is the thin,
25 baldhead. I think it was Dave.

1 A. Yes, it would.

2 Q. And is she the one who gave
3 you this message to follow up?

4 A. Yes.

5 Q. What did you do after she gave
6 you that message?

7 A. I went to visit Tyrone Millings
8 to see about the fuel cards that they
9 were requesting.

10 Q. Okay.

11 A. At that time, I got the
12 information, what cards they wanted,
13 the name of the company, and this was
14 the basic information that I was told
15 by them.

16 Q. Now, you're referring --- you
17 have flipped back to the first page
18 of Exhibit D-1; correct?

19 A. Yes.

20 Q. And you're referring to the
21 Pacific Pride commercial fueling
22 system form that is that document?

23 A. Yes.

24 Q. And there is some writing on
25 this form, and let me take you

1 through it. At the top, there is
2 some handwritten information?

3 A. Yes.

4 Q. Do you know who wrote that?

5 A. Yes, I did.

6 Q. And would you read it for the
7 record?

8 A. All billing information same
9 as Tyrone ---.

10 Q. Now, it starts with another
11 word besides all; doesn't it?

12 A. Angie.

13 Q. Okay.

14 A. All billing information same
15 as Tyrone Milling. This is another
16 internal company for costing
17 purposes.

18 Q. All right. Now, when did you
19 write that?

20 A. I cannot give you an exact
21 date. I wrote that when I made the
22 call to them to set up for the
23 Pacific Pride cards that they were
24 requesting.

25 Q. So this would have been after

1 you made that call, after you talked
2 to them?

3 A. This would have been when I
4 talked to them.

5 Q. And you then wrote that note,
6 at the top which was a note back to
7 Angie; is that right?

8 A. Yes!

9 Q. And what were you trying to
10 convey to Angie when you wrote that
11 note?

12 A. That basically they were
13 requesting cards for their company,
14 but in the name of Tyco Trucking, in
15 order to keep operations separated
16 for bookkeeping purposes.

17 Q. So that what was going to be
18 done for Tyco Trucking was going to
19 be a separate operation, at least for
20 the accounting of this account?

21 A. My understanding was that it
22 was part of Tyrone Milling. However,
23 they wanted a different name on this
24 for accounting purposes.

25 Q. And that name was to be Tyco

1 Trucking, Inc.?

2 A. Yes, sir.

3 Q. And you used the term internal
4 company?

5 A. Yes.,

6 Q. So you understood it to be a
7 company of some sort?/

8 A. That was a general statement.
9 I cannot tell you the exact
10 understanding on that.

11 Q. Where did the words internal,
12 company come from? Was that your,
13 word or was that something ---?

14 A. That was the way they
15 basically conveyed to me their
16 handling of this.

17 Q. That it was going to be an
18 internal company?

19 A. Yes. '

20 Q. Did Mr. Hershey use those
21 words to you?

22 A. I can't tell you the exact
23 words, but that is the way that it
24 was understood, the way that they
25 were telling me they were going to be

1 what does that mean?

2 A. All billing information? The
3 bills are sent to the same exact
4 address as Tyrone Milling for
5 payment.

6 Q. So that means what address to
7 use for sending the bills out?

8 A. Where the billing is to go,
9 yes, sir.

10 Q. And do I understand that at
11 last at that time, the credit
12 arrangements were the same for every
13 customer?

14 A. What are you implying?

15 Q. The terms of payment for
16 credit purchases?

17 A. The terms of payment for
18 credit purchases for the Pacific
19 Pride is the same for all customers.
20 There are specific payment terms.

21 Q. At the time you met with Mr.
22 Hershey to set up this account, was
23 it your understanding that Tyco
24 Trucking was in some way connected
25 with Tyrone Milling, Inc.?

1 A. It was my understanding it was
2 100 percent connected with Tyrone
3 Milling, Inc.

4 Q. And that this was not a
5 personal venture by David Hershey; is
6 that correct?

7 A. Yes, it was not a personal
8 venture of David Hershey.

9 Q. And would the same be true of
10 Bud Boom? You don't know any
11 personal involvement by a Mr. Bud
12 Boom in this?

13 A. I don't recognize the name,
14 Mr. Bud Boom.

15 ATTORNEY STOVER:

16 That's all the
17 questions I have.

18 ATTORNEY MASON:

19 We'll waive signature
20 also. Fred, thank you.

21 * * * * *

22 DEPOSITION CONCLUDED AT 12:05 P.M.

23 * * * * *

24

25

1 A. There would have been a
2 discussion, yes.

3 Q. And who would that have been
4 with, do you know that?

5 A. Most likely, it would have
6 been with Angie because at that time,
7 she was handling that end.

8 Q. After you met with Mr. Hershey
9 on this occasion, did you have any
10 other meetings with him concerning
11 the Tyco Trucking account?

12 A. Just maybe two or three
13 general sales calls. Not
14 specifically to Tyco Trucking.

15 Q. Did you have any conversations
16 with Mr. Hershey concerning problems
17 with the Tyco Trucking account that
18 they were behind any of these things?

19 A. I did not.

20 Q. That wasn't your
21 responsibility?

22 A. No.

23 Q. During your work on either
24 Tyrone Milling or Tyco Trucking
25 accounts, did you have any ;

1 conversations with a gentleman by the
2 name of Bud Boom?

3 A. Not to the best of my
4 knowledge.

5 Q. How about a gentleman by the
6 name of Scott Wagner?

7 A. I don't recognize that name.

8 Q. And as far as setting up the
9 account, you only had that one
10 conversation with Mr. Hershey?

11 A. As far as setting up the
12 account, yes.

13 Q. Your note says, this is
14 another internal company for costing
15 purposes. Was there any significance
16 to using the word another internal
17 company?

18 A. No.

19 Q. You hadn't gone through this
20 process with Tyrone Milling before
21 where they sought a different ---?

22 A. No.

23 Q. And how long had you been a
24 sales representative for J.J. Powell?

25 A. I worked for J.J. Powell for

1 Q. How old are you now?
2 A. Thirty-six (36).
3 Q. Do you have any post-high
4 school degrees?
5 A. Yes.
6 Q. And tell us what that would
7 be?
8 A. I've got a B.S. in Finance
9 from Clarion University.
10 Q. Anything else?
11 A. No.
12 Q. When did you graduate?
13 A. 1990.
14 Q. And have you been employed by
15 J.J. Powell ever since?
16 A. Yes.
17 Q. Tell me what your
18 responsibilities are for the
19 operation of J.J. Powell.
20 A. I'm responsible for the
21 financial and accounting. I'm
22 responsible for our Bellefonte
23 operations and some of the commercial
24 sales.
25 Q. And when you say some of the

1 commercial sales, explain that?

2 A. Some of the card lock sales
3 that we do with Pacific Pride.

4 Q. You don't have a primary
5 responsibility for the Pacific Pride
6 program?

7 A. Yes.

8 Q. And describe for the record
9 what is Pacific Pride.

10 A. Pacific Pride is an automated
11 fueling process that employs cards
12 for the end users to access fuel
13 pumps, and from there, they get
14 monthly statements detailing the
15 transactions.

16 Q. They stick a card in the
17 machine, then they can dispense, and
18 they don't need to talk to an
19 operator or serviceman?

20 A. You put that a lot better than
21 I did, yes.

22 Q. And is Pacific Pride a
23 nationwide company?

24 A. Yes, it is. It's a franchise
25 nationwide.

1 Q. Where did you meet him?

2 A. At our office.

3 Q. And what was the purpose for
4 that meeting?

5 A. After they had said they
6 wouldn't be able to pay the bills,
7 Bud Boom, Robert Boom, and Dave
8 Hershey came up to our office to
9 discuss a settlement.

10 Q. When would that have been?

11 A. Probably early 2001.

12 Q. And obviously nothing came of
13 those settlement talks; is that fair
14 to say?

15 A. That's fair to say.

16 Q. What happened during that
17 discussion?

18 A. David Hershey told us his
19 story as to what had happened, and he
20 offered us about half of what the
21 bill was.

22 Q. Of course, that was not
23 acceptable?

24 A. No.

25 Q. That was your only dealings

1 with Bud Boom?

2 A. Yes.

3 Q. How about David Hershey? What
4 dealings have you had with Mr.
5 Hershey besides that same meeting?

6 A. I dealt with Dave Hershey for
7 quite a while. Tyrone Milling,
8 before they started Tyco Trucking,
9 they had a Pacific Pride card at
10 Tyrone Milling, and they had just
11 left it at the Bald Eagle store. He
12 had had some questions at times about
13 the system, and I had spoken with him
14 a number of times around the mid-
15 '90s. Also talked to Dave Hershey at
16 our office and also on the phone a
17 number of times over the last five
18 years, I guess, the Tyco thing's been
19 ongoing.

20 Q. When did Tyrone Milling, to
21 your knowledge, become a customer of
22 J.J. Powell?

23 A. Tyrone Milling would have been
24 a customer probably since the late
25 '80s.

1 deposition, you referred to the fact
2 that following the letter you
3 received from Novak, Stovern, First
4 and signed by Donald Hahn, that Tyco
5 Trucking was insolvent and unable to
6 pay its account. You then had a
7 meeting with two individuals, David
8 Hershey and Bud Boom; is that
9 correct?

10 A. That's correct.

11 Q. And during the course of that
12 meeting, what was discussed with
13 regard to a settlement?

14 A. David Hershey at that point
15 offered us \$40,000 cash.

16 Q. Did Mr. Hershey or Mr. Boom
17 indicate to you who was going to pay
18 that \$40,000?

19 ATTORNEY STOVER:

20 I'm going to object,
21 but go ahead and answer it.

22 A. Tyrone Milling.

23 ATTORNEY MASON:

24 That's all the
25 questions I have. Thank you.

1 individuals as opposed to by Tyrone
2 Milling or anybody else?

3 A. I guess we don't have anything
4 in writing that says they were the
5 owners, but obviously they were ---
6 well, they were part owners.

7 Q. So you don't have anything
8 that would say David Hershey owned
9 Tyco Trucking?

10 A. No.

11 Q. And you don't have anything
12 that says he even owned a part of
13 Tyco Trucking; do you?

14 A. No.

15 Q. And the same for Bud Boom?

16 A. That's right.

17 Q. And as far as operated, you
18 did know that you were dealing with
19 David Hershey to get this up and
20 running so that he had some hand in
21 operating it?

22 A. Right.

23 Q. Beyond that knowledge, do you
24 have any other knowledge as to how
25 this was going to be operated and who

1 conducted on the phone.

2 Q Do you recognize this as the articles of
3 incorporation of Tyco Trucking, Inc.?

4 A Yes.

5 Q And would you agree with me that they were
6 filed with the Department of State on July 7th, 1999?

7 A Yes.

8 Q And would you agree with me that you signed
9 these articles of incorporation June 25th, 1999?

10 A Yes.

11 Q And Bud Boom also signed them on or about
12 that same date?

13 A Yes.

14 Q I want to show you a paper called corporate
15 minutes for Tyco Trucking, Inc., 1998. Do you see that?

16 A Yes.

17 Q When was that paper typed and who typed it?

18 A That was typed -- those were handwritten
19 notes that Mr. Stover's secretaries typed up.

20 Q When did Mr. Stover's secretary type this
21 up? On or about the time these responses were prepared?

22 A Yes, I think so.

23 Q And did you deliver to Mr. Stover
24 handwritten notes?

25 A Yes.

1 A I guess not necessarily, I guess you could
2 say I -- if you're in your own business, when are you
3 working and when are you not? I don't know quite how to
4 answer your question. Can you rephrase that again?

5 Q Could you read it back?

6 (Question read.)

7 A Yes, technically I was on the payroll, but
8 also was serving as a consultant as an officer to Tyco
9 Trucking, Inc. at the same time, too.

10 BY MR. MASON:

11 Q But Tyco Trucking, Inc. was owned by the
12 same shareholders as Tyrone Milling, Inc., correct?

13 A No, Tyco Trucking, Inc. was owned by Tyrone
14 Milling, Inc., that was the only shareholder of Tyco
15 Trucking, Inc.

16 Q Okay. And did the board of directors of
17 Tyrone Milling, Inc. authorize its employee, you, to act on
18 behalf of Tyco Trucking, Inc.?

19 A Yes.

20 Q And you weren't --

21 A What was that question again?

22 Q Could you read it back?

23 (Question read.)

24 A No, the board of directors of Tyco Trucking,
25 Inc. authorized me to help make decisions for Tyco

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

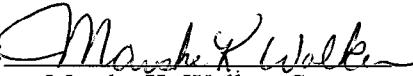
J.J. POWELL, INC., :
Plaintiff :
: v. : No. 01-267-CD
TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING; DAVID HERSEY, :
An individual; BUD BOOM, an :
Individual, and DAVID HERSEY and :
BUD BOOM, individually and :
as partners t/d/b/a TYCO TRUCKING, :
An unincorporated business association; and :
TYCO TRUCKING, INC., :
Defendants :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served this 15 day of December, 2003 upon counsel for the Plaintiff by First Class Mail, postage prepaid, at the following address:

David C. Mason, Esq.
P.O. Box 28
Philipsburg, PA 16866

STOVER, McGLAUGHLIN, GERACE,
WEYANDT & McCORMICK, P.C.

BY: 
Marsha K. Walker, Secretary
To Jeffrey W. Stover, Esq.

FILED

in 11-04-019 100-04-04

DEC 02 2003

William A. Shaw
Prothonotary

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

J.J. POWELL, INC., :
Plaintiff :
:
v. : No. 01-267-CD
:
TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING, INC.; DAVID :
HERSHEY, an individual; BUD :
BOOM, an individual, and DAVID :
HERSHEY and BUD BOOM, :
individually and as partners t/d/b/a TYCO :
TRUCKING, an unincorporated business :
association; and TYCO TRUCKING, INC., :
Defendant :

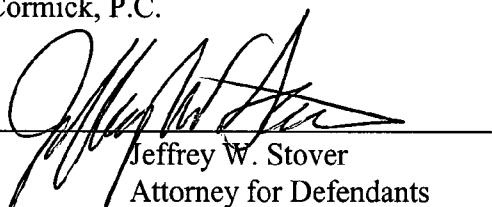
PRAECIPE TO FILE DEPOSITION TRANSCRIPTS

TO THE PROTHONOTARY OF THE SAID COURT:

Kindly file of record in the above-captioned matter the notarized transcripts of the depositions of Keith Powell, dated September 30, 2003, and Fred Rougeux, dated September 30, 2003.

Stover, McGlaughlin, Gerace, Weyandt & McCormick, P.C.

BY:



Jeffrey W. Stover
Attorney for Defendants

FILED

Dated December 12, 2003

DEC 12 2003
019:50
William A. Shaw
Prothonotary/Clerk of Courts

Last Saved - 0/0/0000 0:00 AM

1

3 cent to Atts


IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No. 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; BUD BOOM, an
individual, and DAVID HERSHY and
BUD BOOM, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

* TYPE OF PLEADING: PLAINTIFF'S
REPLY TO DEFENDANT DAVID
HERSHY'S MOTION FOR SUMMARY
JUDGMENT

* FILED ON BEHALF OF: PLAINTIFF

* COUNSEL OF RECORD FOR
THIS PARTY:

* David C. Mason, Esquire
* MASON LAW OFFICE
* 409 North Front Street
* P.O. Box 28
* Philipsburg, PA 16866
* 814-342-2240
* I.D. No. 39180

FILED

DEC 12 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No. 01-267-CD

Plaintiff

vs.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; BUD BOOM, an
individual, and DAVID HERSHY and
BUD BOOM, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

*

PLAINTIFF'S REPLY TO DEFENDANT DAVID HERSHY'S MOTION
FOR SUMMARY JUDGMENT

AND NOW, comes the Plaintiff, **J. J. POWELL, INC.**, by and through its attorney,
DAVID C. MASON, ESQUIRE, and files the following Reply to the Defendant David
Hershey's Motion for Summary Judgment:

1. Plaintiff's First Amended Complaint alleges that Defendants **DAVID HERSHY** and **BUD BOOM** operated **TYCO TRUCKING** as an unincorporated business association.
2. Defendant **DAVID HERSHY** has failed to establish that he is entitled to summary judgment in his favor with regard to his liability for the debt of **TYCO TRUCKING**, an unincorporated business association, in that:

a. At a deposition **DAVID HERSHY** testified that **TYCO TRUCKING** was started after he and **BUD BOOM** were approached by Scott Wagner, in November, 1998. Deposition of David Hershey, NT page 16 line 23 through page 17 line 12).

b. A corporation by the name of **TYCO TRUCKING, INC.**, was not created until the filing of the Articles of Incorporation on or about July 7, 1999, some eight (8) months after the establishment of the credit account.

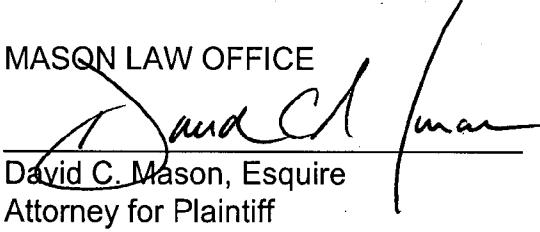
c. The deposition of **DAVID HERSHY** clearly establishes that he and **BUD BOOM** operated **TYCO TRUCKING** from the premises of Tyrone Milling, Inc. and a genuine issue of material fact exists as to the ownership of this unincorporated business association known as **TYCO TRUCKING**.

d. The checking account used by **DAVID HERSHY** for the payment to J. J. Powell, Inc. on the fuel card system account identified **TYCO TRUCKING** as the drawer of the checks, and no corporate designation or other identifier was used to indicate that **TYCO TRUCKING** was a corporation.

e. After the creation of the credit account with Plaintiff in November 1998 for **TYCO TRUCKING**, an unincorporated business association, and following the filing of the articles of incorporation of **TYCO TRUCKING, INC.**, in July, 1999, no one on behalf of the new corporation, or on behalf of Messrs. Hershey and Boom, or on behalf of **TYRONE MILLING, INC.** notified the Plaintiff of a change in the credit account.

WHEREFORE, Plaintiff prays your Honorable Court for the entry of an Order
dismissing Defendant David Hershey's Motion for Summary Judgment.

MASQN LAW OFFICE


David C. Mason, Esquire
Attorney for Plaintiff

FILED *no cc*

0/2:35 AM
DEC 12 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No. 01-267-CD

Plaintiff

*

vs.

*

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHHEY,
an individual; BUD BOOM, an
individual, and DAVID HERSHHEY and
BUD BOOM, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

* TYPE OF PLEADING: PLAINTIFF'S
REPLY TO DEFENDANT BUD BOOM'S
MOTION FOR SUMMERY JUDGMENT

* FILED ON BEHALF OF: PLAINTIFF

* COUNSEL OF RECORD FOR
THIS PARTY:

* David C. Mason, Esquire
MASON LAW OFFICE
409 North Front Street
* P.O. Box 28
* Philipsburg, PA 16866
* 814-342-2240
* I.D. No. 39180

FILED

DEC 12 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

J. J. POWELL, INC.,

* No. 01-267-CD

Plaintiff

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

Defendants

*

*

*

*

*

*

*

*

PLAINTIFF'S REPLY TO DEFENDANT BUD BOOM'S MOTION
FOR SUMMARY JUDGMENT

AND NOW, comes the Plaintiff, **J. J. POWELL, INC.**, by and through its attorney, **DAVID C. MASON, ESQUIRE**, and files the following Reply to the Defendant Bud Boom's Motion for Summary Judgment:

1. Plaintiff's First Amended Complaint alleges that Defendants **DAVID HERSHEY** and **BUD BOOM** operated **TYCO TRUCKING** as an unincorporated business association.
2. A genuine issue of material fact exists with regard to the ownership of **TYCO TRUCKING**, an unincorporated business association, in that:
 - a. **DAVID HERSHEY** testified that **TYCO TRUCKING** was started after he and **BUD BOOM** were approached by Scott Wagner. NT page 16 line 23 through page 17 line 12.

b. **TYCO TRUCKING, INC.**, was not created until the filing of the Articles of Incorporation, on or about July 7, 1999, some eight (8) months after the establishment of the credit account.

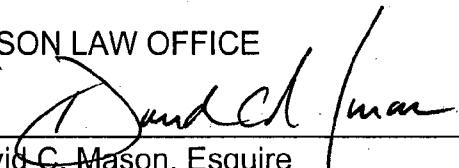
c. The deposition of **DAVID HERSHY** clearly establishes that he and **BUD BOOM** operated **TYCO TRUCKING** from the premises of Tyrone Milling, Inc. and a genuine issue of material fact exists as to the ownership of this unincorporated business association known as **TYCO TRUCKING**.

d. The checking account used by **DAVID HERSHY** for the payment to J. J. Powell, Inc. on the fuel card system account identified **TYCO TRUCKING** as the drawer of the checks, and no corporate designation or other identifier was used to indicate that **TYCO TRUCKING** was a corporation.

e. After the creation of the credit account with Plaintiff in November 1998 for **TYCO TRUCKING**, an unincorporated business association, and following the filing of the articles of incorporation of **TYCO TRUCKING, INC.**, in July, 1999, no one on behalf of the new corporation, or on behalf of Messrs. Hershey and Boom, or on behalf of **TYRONE MILLING, INC.** notified the Plaintiff of a change in the credit account.

WHEREFORE, Plaintiff prays your Honorable Court for the entry of an Order dismissing Defendant's Motion for Summary Judgment.

MASON LAW OFFICE



David C. Mason, Esquire
Attorney for Plaintiff

FILED No cc

0/2/3567
DEC 12 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

J. J. POWELL, INC., * No. 01-267-CD

Plaintiff *

vs. *

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; BUD BOOM, an
individual, and DAVID HERSHY and
BUD BOOM, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants *

FILED

DEC 12 2003

William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF MICHAEL A. CZAP IN
OPPOSITION TO DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT

COMMONWEALTH OF PENNSYLVANIA

:ss:

COUNTY OF CENTRE

Before me, a Notary Public, personally appeared, MICHAEL A. CZAP, who being
duly sworn according to law deposes and states as follows based upon his own
knowledge:

1. That he was the Auto Fueling Administrator for J. J. Powell, Inc., plaintiff in the
above-captioned action at the relevant time of the transaction which serves as the basis
for the plaintiff's Complaint and he makes this Affidavit in Opposition to Motion for
Summary Judgment filed by and on behalf of individual defendants David Hershey and
Bud Boom.

2. The facts with regard to the transaction that is the basis of this action are as follows:

A. that David Hershey requested a credit account with plaintiff in the name of "Tyco Trucking";

B. that payment for said credit account has not been made since November 21, 2000, and that the remaining principal balance on said account is \$81,882.32;

C. attached as Exhibits to this affidavit are documents produced by defendants during Discovery. These documents are true and correct photocopies of the originals and this information is based upon the verifications attached to defendants' responses to the Discovery requests.

D. Exhibit "A" contains representative copies of the cancelled checks of Tyco Trucking. Attached are check numbers 101, 102, and 103; 107, 108, and 109; 1256, 1257, 1258; 1274, 1275 and 1276; 1289 and 1291. Affiant swears and affirms that the account number, title of the account, and address of the account is unchanged from the date of the first check, December 10, 1998, #101 through the date of the last check, March 20, 2001, #1291.

E. Exhibit "B" contains representative copies of the bank statements for an account titled "Tyrone Milling, Inc. - Tyco Trucking". Attached are copies of account statements dated December 31, 1998; July 31, 1999; December 31, 1999; July 31, 2000, and December 31, 2000. Affiant swears and affirms that the account number, title of the account, and address of the account is unchanged from the date of the first statement through the date of the last statement.

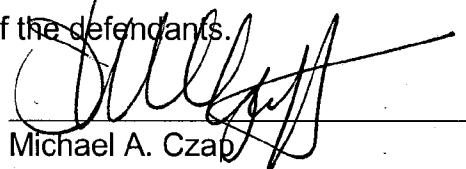
F. Exhibit "C" contains representative copies of invoices to Tyco Trucking:

- (1) C & M Auto Parts dated June 30, 1999;
- (2) Tom Shomo Fabricating dated August 25, 1999;
- (3) Hegarty's Garage dated April 10, 1999;
- (4) Fox & James, Inc., dated June 1, 1999;
- (5) Hegarty's Garage dated November 9, 1999;
- (6) Allegheny Trucks, Inc., dated September 20, 1999;
- (7) C & Am Auto Parts dated September 30, 2000;
- (8) Fox & James, Inc., dated April 15, 2000.

3. There is a genuine issue of material fact between the parties to be determined at trial, among them the following:

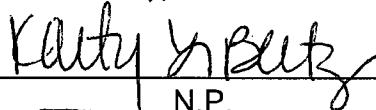
(1) The ownership of an unincorporated business association known as Tyco Trucking;

(2) The defendants are officers and shareholders of Tyrone Milling, Inc. Plaintiff's complaint contends that it extended credit to Tyco Trucking, an unincorporated business association owned by David Hershey and Bud Boom. The deposition of David Hershey, the documents attached to this Affidavit, the pleadings and the requests for Admissions of Fact are evidence of the existence of facts which will prevent the granting of Summary Judgment in favor of the defendants.

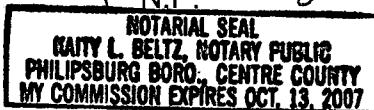


Michael A. Czap

SWORN to and subscribed
before me this 12th day
of December, 2003.



Kathy L. Beltz
N.P.







TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

60-119/313

101

PAY
TO THE
ORDER OF

Tyrene Milling

Dec 10 19 83

\$ 20,000.00
DOLLARS

Security features
Visible on back

Mid-State Bank



A Keystone Community Bank

TYRONE OFFICE

David J. Hershey

MP

MEMO

10000 10 11 10313011921 37405 46019 1000000000

60-119/313

102



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

Dec 10 19 83

PAY
TO THE
ORDER OF

Tyrene Milling

\$ 278.00
DOLLARS

Security features
Visible on back

Mid-State Bank



A Keystone Community Bank

TYRONE OFFICE

David J. Hershey

MP

MEMO

10000 10 21 10313011921 37405 46019 1000000998000

60-119/313

103



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

Dec 10 19 83

PAY
TO THE
ORDER OF

Henry Ditts, Inc.

\$ 443.90
DOLLARS

Security features
Visible on back

Mid-State Bank



A Keystone Community Bank

TYRONE OFFICE

David J. Hershey

MP

MEMO

65414, 65618, 65647
10000 10 31 10313011921 37405 46019 100000044394



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

PAY
TO THE
ORDER OF

Dec 14 19 98

J. D. Russell Fuel Management \$ 152.00
One Thousand fifty-two and 00 DOLLARS A

Mid-State Bank 
A Keystone Community Bank

TYRONE OFFICE

MEMO

110000107110313011921 37405 46019 100000015210

60-119/313

108



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

PAY
TO THE
ORDER OF

Dec 17 19 98

Sherry Trucking \$ 37.00

Thirty - seven and 00 DOLLARS A

Mid-State Bank 
A Keystone Community Bank

TYRONE OFFICE

MEMO

12502

11000108110313011921 37405 46019 10000003710

60-119/313

109



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

PAY
TO THE
ORDER OF

Dec 28 19 98

Ville Inc \$ 285.00
Two hundred eighty-five and 00 DOLLARS A

Mid-State Bank 
A Keystone Community Bank

TYRONE OFFICE

MEMO

11000109110313011921 37405 46019 10000028500

MP

1256



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

60-119/313

04 012 011116428 DATE Nov 10, 2000

PAY
TO THE
ORDER OF

Robert Neffers \$ 624.59
six hundred twenty - four dollars 59 DOLLARS 00

Mid-State Bank 

A Keystone Community Bank

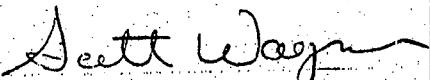
TYRONE OFFICE

FOR

11001256110313011920

37405 4601911

1000006245911



MP

1257



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

60-119/313

DATE Nov 10, 2000

PAY
TO THE
ORDER OF

Da Scau \$ 356.00

three hundred fifty - six dollars 00 DOLLARS 00

Mid-State Bank 

A Keystone Community Bank

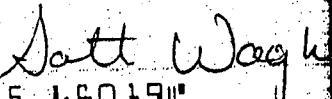
TYRONE OFFICE

FOR

11001257110313011920

37405 4601911

1000003560011



MP

1258



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

60-119/313

DATE Nov 11, 2000

PAY
TO THE
ORDER OF

Cash \$ 600.00

six hundred dollars 00 DOLLARS 00

Mid-State Bank 

A Keystone Community Bank

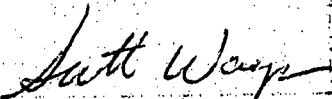
TYRONE OFFICE

FOR

11001258110313011920

37405 4601911

1000006000011



MP

1274



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

60-119/313

PAY
TO THE
ORDER OF

David Morrissey

DATE Nov 24, 2000

six hundred eighteen dollars

\$ 618.17

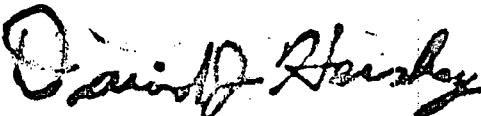
DOLLARS



Mid-State Bank 

A Keystone Community Bank

TYRONE OFFICE



FOR

1001274 10313011920 37405 46019

100000618271

MP

1275



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

60-119/313

PAY
TO THE
ORDER OF

Jason Zender

DATE Nov 24, 2000

one hundred sixty-six dollars

\$ 166.56

DOLLARS



Mid-State Bank 

A Keystone Community Bank

TYRONE OFFICE

140224105 400 18 4100 4848

100000166561

MP

FOR

1001275 10313011920 37405 46019

100000166561

1276



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

60-119/313

PAY
TO THE
ORDER OF

Jon Williams

DATE Nov 24, 2000

seven hundred fifty six dollars

\$ 756.50

DOLLARS



Mid-State Bank 

A Keystone Community Bank

TYRONE OFFICE

1402240087 220030007 09 11 2000

100000756901

MP

FOR

1001276 10313011920 37405 46019

100000756901

MP

1289



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

60-119/313

05 004 011125082 DATE Dec 16 2000

PAY
TO THE
ORDER OF Robert Jeffers

\$ 1478.86

Four Hundred Seventy-eight and 86 DOLLARS A

080189515 400 18 4280 4280

Mid-State Bank 

TYRONE OFFICE

David Hershey MP

FOR

#0012891 10313011921 37405 4601911

#00000478961

1291



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

60-119/313

PAY
TO THE
ORDER OF M. J. Bask

\$ 4793.42

Four Thousand Nine Hundred Thirty-four and 23 DOLLARS A

Mid-State Bank 

TYRONE OFFICE

FOR 251839523-211612 Form 8109

#001291 10313011921 37405 4601911

#00004964231

David Hershey MP



Deposit Statement

November 30, 1998 to December 31, 1998

TYRONE MILLING INC
TYCO TRUCKING
RR 1 BOX 34A
TYRONE PA 16686-9502

Number of Statement Enclosures: 8
For information regarding this
statement, call: 814-684-1010

Personal Billboard

Business Checking

Account Title Tyrone Milling Inc
Account Number 3740546019

Beginning Balance	Deposits		Withdrawals		Fees	Interest Paid	Ending Balance
	Number	Amount	Number	Amount			
\$27,900.00	0	\$0.00	8	\$23,685.95	\$0.00	\$0.00	\$4,214.05

Checks

Date	Amount	Number	Date	Amount	Number	Date	Amount	Number
12-15	20,000.00	101	12-17	124.47	104	12-21	152.10	107
12-15	978.00	102	12-15	422.19	105	12-23	37.10	108
12-18	443.94	103	12-15	1,528.15	106			

In Asterisk (*) indicates a break in check number sequence.

Daily Balances

Date	Amount	Date	Amount	Date	Amount
11-30	27,900.00	12-17	4,847.19	12-21	4,251.15
12-15	4,971.66	12-18	4,403.25	12-23	4,214.05

Deposit Statement

June 30, 1999 to July 31, 1999



TYRONE MILLING INC
 TYCO TRUCKING
 RR 1 BOX 34A
 TYRONE PA 16686-9502

Number of Statement Enclosures: 49
 For information regarding this
 statement, call: 814-684-1010

Personal Billboard

Business Checking

Account Title Tyrone Milling Inc
 Account Number 3740546019

Beginning Balance	Deposits		Withdrawals		Fees	Interest Paid	Ending Balance
	Number	Amount	Number	Amount			
\$3,063.08	11	\$57,321.12	49	\$49,677.83	\$0.00	\$0.00	\$10,706.37

Deposit Transactions

Date	Amount	Description
07-09	5,038.11	DEPOSIT
07-09	1,523.03	DEPOSIT
07-09	919.98	DEPOSIT
07-12	2,885.63	DEPOSIT
07-13	18,000.00	DEPOSIT
07-19	10,102.79	DEPOSIT
07-20	5,040.25	DEPOSIT
07-20	1,964.01	DEPOSIT
07-22	4,261.29	DEPOSIT
07-26	2,200.39	DEPOSIT
07-29	5,385.64	DEPOSIT

Checks

Date	Amount	Number	Date	Amount	Number	Date	Amount	Number
07-06	1,500.00	334	07-08	32.00	343	07-07	700.00	350
07-06	400.00	336*	07-21	25.00	344	07-06	3,000.00	351
07-06	489.00	337	07-07	659.70	345	07-07	2,241.00	352
07-06	982.62	338	07-02	640.00	346	07-12	2,000.00	353
07-13	1,589.78	339	07-06	604.83	347	07-13	5,252.60	354
07-06	35.00	340	07-07	558.69	348	07-21	25.00	355
07-02	1,461.00	342*	07-06	139.81	349	07-12	469.24	356

An asterisk (*) indicates a break in the check number sequence.



Customer: Tyrone Milling Inc
Primary Account Number: 3740546019

Checks

Date	Amount	Number	Date	Amount	Number	Date	Amount	Number
07-14	651.80	357	07-19	1,461.00	367	07-23	652.09	378
07-14	622.77	358	07-23	1,060.82	368	07-26	437.11	379
07-12	619.28	359	07-23	25.00	369	07-28	620.70	380
07-14	530.85	360	07-20	2,000.00	370	07-27	511.23	381
07-12	1,200.00	361	07-19	3,200.00	371	07-27	2,000.00	382
07-19	597.83	362	07-20	1,875.56	372	07-26	2,500.00	383
07-19	429.48	363	07-30	7.50	373	07-27	1,649.90	384
07-19	552.75	364	07-28	932.44	374	07-29	688.67	386*
07-20	562.83	365	07-27	285.00	376*			
07-20	564.22	366	07-27	633.73	377			

An Asterisk (*) indicates a break in check number sequence.

Daily Balances

Date	Amount	Date	Amount	Date	Amount
06-30	3,063.08	07-13	6,855.28	07-26	12,649.90
07-02	962.08	07-14	5,049.86	07-27	7,570.04
07-06	-6,189.18	07-19	8,911.59	07-28	6,016.90
07-07	-10,348.57	07-20	10,913.24	07-29	10,713.87
07-08	-10,380.57	07-21	10,863.24	07-30	10,706.37
07-09	-2,899.45	07-22	15,124.53		
07-12	-4,302.34	07-23	13,386.62		

1386
2490.57
2490.57

2490.57
2490.57
2490.57



Deposit Statement

ember 30, 1999 to December 31, 1999

TYRONE MILLING INC
TYCO TRUCKING
RR 1 BOX 34A
TYRONE PA 16686-9502

Number of Statement Enclosures: 59
For information regarding this
statement, call: 814-684-1010

Personal Billboard

Business Checking

Account Title Tyrone Milling Inc
Account Number 3740546019

Beginning Balance	Deposits		Withdrawals		Fees	Interest Paid	Ending Balance
	Number	Amount	Number	Amount			
\$6,628.04	17	\$58,168.77	59	\$56,912.10	\$0.00	\$0.00	\$7,884.71

Deposit Transactions

Date	Amount	Description
02	7,935.04	DEPOSIT
06	6,120.65	DEPOSIT
13	4,091.93	DEPOSIT
13	2,347.51	DEPOSIT
13	1,005.90	DEPOSIT
14	7,804.64	DEPOSIT
17	4,112.50	DEPOSIT
17	650.57	DEPOSIT
20	721.62	DEPOSIT
21	3,649.53	DEPOSIT
21	1,978.83	DEPOSIT
21	990.57	DEPOSIT
24	2,821.85	DEPOSIT
27	4,766.98	DEPOSIT
30	3,697.06	DEPOSIT
30	3,407.13	DEPOSIT
30	2,066.46	DEPOSIT

Checks

Date	Amount	Number	Date	Amount	Number	Date	Amount	Number
06	350.00	589	12-07	777.41	594*	12-07	145.44	595

FOR INQUIRIES CALL: TYRONE
(814) 684-1010

00 9 04434M M 021

ACCOUNT TYPE
BUSINESS CHECKING I

ACCOUNT NUMBER
3740546019
STATEMENT PERIOD
12/01/00 - 12/31/00

TYRONE MILLING INC
TYCO TRUCKING
RR 1 BOX 34A
TYRONE PA 16686-9502

BEGINNING BALANCE	\$1,669.91
DEPOSITS & CREDITS	9,877.62
LESS CHECKS & DEBITS	4,877.43
LESS SERVICE CHARGES	780.00
ENDING BALANCE	\$5,890.10

ACCOUNT ACTIVITY

DATE	TRANSACTION DESCRIPTION	DEPOSITS & CREDITS	CHECKS & DEBITS	BALANCE
12/01	BEGINNING BALANCE			\$1,669.91
12/01	CHECK NUMBER 1247		\$25.00	1,644.91
12/04	CHECK NUMBER 1283		187.11	1,457.80
12/05	CHECK NUMBER 1287		1,461.00	
12/05	CHECK NUMBER 1284		651.40	
12/05	CHECK NUMBER 1286		601.74	(1,256.34)
12/06	CHECK NUMBER 1285		253.77	(1,510.11)
12/07	CHECK NUMBER 1282		627.29	(2,137.40)
12/08	SERVICE CHARGE		780.00	(2,917.40)
12/11	DEPOSIT	\$3,882.40		
12/11	DEPOSIT	2,479.53		3,444.53
12/18	DEPOSIT	1,553.54		
12/18	DEPOSIT	1,067.23		6,065.30
12/19	CHECK NUMBER 1289		478.96	5,586.34
12/21	CHECK NUMBER 1288		591.16	4,995.18
12/26	DEPOSIT	894.92		5,890.10
NUMBER OF DEPOSITS/CHECKS PAID		5	9	

CHECKS PAID

CHECK NO.	DATE	AMOUNT	CHECK NO.	DATE	AMOUNT	CHECK NO.	DATE	AMOUNT
1247	12/01	25.00	1284	12/05	651.40	1287	12/05	1,461.00
1282*	12/07	627.29	1285	12/06	253.77	1288	12/21	591.16
1283	12/04	187.11	1286	12/05	601.74	1289	12/19	478.96
* - GAP IN CHECK SEQUENCE								
R - CHECK RETURNED								



STATEMENT
C & M AUTO PARTS, INC.
Route 220, R.D. 4, Box 139
Tyrone, PA 16686
(814) 684-3416

ACCT #	3401
SM #	0

BILL TO
TYCO TRUCKING
R. D. 1 BOX 34A
TYRONE, PA

PAGE
1

16648-

NAPA HAS THE PARTS SUMMER HEAT DESTROYS, BATTERY AND EXCT.

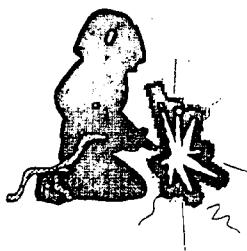
DATE	TYPE	REFERENCE	AMOUNT
05/28/99	PREV	Balance	0.00
06/18/99	Inv	45123	115.47
06/19/99	Inv	45209	88.93
06/21/99	Inv	45251	42.79
06/21/99	Inv	45273	17.00
06/21/99	Inv	45278	14.28
06/26/99	Inv	45676	125.62
06/26/99	Inv	45689	21.99
06/29/99	Inv	45806	21.55

CURRENT	PAST DUE 30 DAYS	PAST DUE 60 DAYS	PAST DUE 90 DAYS
447.63	0.00	0.00	0.00
DATE 06/30/1999		Total Owed	447.63
TERMS FINANCE CHG			
STORE 200006340		Total Due -->	447.63

C & M AUTO PARTS, INC.
Route 220, R.D. 4, Box 139
Tyrone, PA 16686
(814) 684-3416

ACCT #	BILL TO	TOTAL NOW DUE
3401	TYCO TRUCKING	447.63

CLOSING DATE 06/30/1999 SHOW AMOUNT PAID → \$



TOM SHOMO FABRICATING

No. 9966

114 Ridge Road
Fallentimber, PA 16639

Shop (814) 687-4560
Res. (814) 687-3360

To: Tyco Trucking
RDI Box 34A
Tyrone, PA 16686

August 25, 1999
Date

Date

Terms: 1.5% Service Charge
for unpaid invoices after 30 days

Paid 8-25-99

ck# 0447 3396.00

Thank you!

We appreciate your business


HEGARTY'S GARAGE
Name
TKO TRUCK INC
R.R. #7 Box 611B Route 220
Address
RD 1 Box 34A
16696
Altoona, PA 16601 742-8162
City
Altoona
PA
16696
Phone
Invoice # 100 - 339 - Custom Exhaust Systems -
Date
4-10-99 Work Phone

Name of Part	Amount	Year &	Description of Work	Amount
Make of Car		1999	Replaced 4 Headers	
License #		XU-95049	On Truck	
Mileage			Master Short Mandrel	
Mechanic			Eric	
When Promised				
Order #		5794		
Motor #				
Serial #				

ESTIMATES ARE FOR LABOR ONLY
**1.5% INTEREST CHARGE AFTER 5TH
OF EACH MONTH**

I HEREBY AUTHORIZE THE ABOVE REPAIR WORK TO BE DONE ALONG WITH
NECESSARY MATERIALS. YOU AND YOUR EMPLOYEES MAY OPERATE ABOVE
VEHICLE FOR PURPOSES OF TESTING, INSPECTION OR DELIVERY AT MY RISK.
AN EXPRESS MECHANIC'S LIEN IS ACKNOWLEDGED ON ABOVE VEHICLE TO
SECURE THE AMOUNT OF REPAIRS THERETO.

Accessories - Tires & Tubes

It is understood that this company assumes no responsibility for loss or damage
by theft or fire.

483.32

Customer Endorsement

483.32

Labor	245.00
Parts	238.52
Access.	4.83
Tax	2.91

483.32

TYRONE MILLING
TYCO TRUCKING
RD 1 BOX 34A
TYRONE, PA 16686

SERVICE ADVISOR RON SHEPPARD

DUPLICATE 1 PAGE 1

Fox & James Inc.

337 Old Rt. 22
Duncansville, PA 16633
814-695-9175 Fax 814-695-9475

REPAIR ORDER WRITTEN	DATE READY	STOCK NO.	VEHICLE IDENTIFICATION	CUST. NO.	TAG NO.	P.O. NO.	INVOICE PRINTED	INVOICE NO.
03MAY99	01JUN99	NF5163	1FUYSYB8VL795985	5170			01JUN99	4334
TIME IN	TIME READY	YEAR	MAKE & MODEL	TELEPHONE NO.	CUST. PAY LABOR RATE	DELIVERY DATE	PREPARED BY	S/A
		1997	FREIGHTLINER MCONV	814-684-3400	48.00	28JUL97	31	32
MILEAGE IN	MILEAGE OUT	LICENSE NO.						
271545	271545	AB79484						

ITEM	TYPE	HOURLY	LIST/HOUR	NET/HOUR	TOTAL	MAIN OFFICE
A REPAIR FOR HARD STARTING						
888 GENERAL						
201 CPD			360.00	360.00		
1 PHM/1-2145 END		0.16	0.11	0.11		
1 FG/LF3000 514C3		63.05	25.30	25.30		
1 DN/P535717 ELEMENT		135.62	70.28	70.28		
1 GE/H9421 LAMP		16.13	13.42	13.42		
1 GRO/09681 LENS, GLASS		6.04	2.80	2.80		
LUBE 44 QTS OIL	CP		65.56	65.56		
CHANGED OIL AND FILTERS, REPLACED AIR FILTER, REP AIRED LIGHTS, TIGHTENED COOLANT LINES, CLEANED BATTERY CONNECTIONS						
B REPAIR LEFT SIDE POWER WINDOW CONTROL						
CAUSE: WIRING CORRODED OFF INSIDE KICK PANEL						
654-0025B DOOR WINDOW REGULATOR, ELEC OR						
MANUAL, R/R						
208 WFRT						
2 PHM/1-2324 END						
1 KOS/05079040 MODULE						
656-0000T REPAIR DOOR WIRING						
206 WFRT						
FC: B						
PART#: KOS/05079040						

Onan

JAKE BRAKE
Saves a Truckload



Rockwell
International

Eaton
Drive Axle Parts

Fuller
Transmission Parts

Main Office
P.O. Box 607 Latrobe, PA 15650
800-922-2309
Fax 724-539-2980



MERCEDES-BENZ TRUCKS



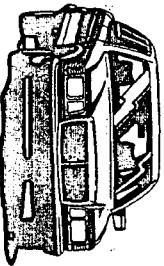
STATEMENT OF DISCLAIMER

The factory warranty constitutes all of the warranties with respect to the sale of this item/items. Fox & James Inc. hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Fox & James Inc. neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

CUSTOMER SIGNATURE

X

CREDIT TERMS
NET DUE 30 DAYS DATE OF INVOICE

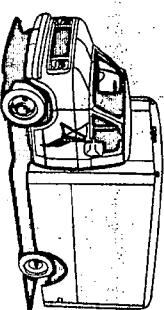
**MEGA MY'S GARAGE**

R.R. #7 • Box 611B • Route 220

Altoona, PA 16601

742-8162

Name Tom Trunk Inc
 Address RD 1 Box 344
 City THOMAS State PA Zip 16836
 Phone 412-234-5678

**Wholesale Batteries - Truck Repairs - Custom Exhaust Systems -**Date 11-2-92

Name of Part	Amount
Radio	136.71
RED BOX	57.00
ANTIFREEZE	56.00

Year & Make of Car	Name of Part
1991 AD-16100	Rock Chisel
Mileage 339,456	Rock Chisel
Mechanic	Rock Chisel

When Promised	Order #
	0123

ESTIMATES ARE FOR LABOR ONLY
 1.5% INTEREST CHARGE AFTER 5TH
 OF EACH MONTH

Left or Right Front Brakes	Name of Part	Amount
Left or Right Rear Brakes	Rock Chisel	100.00
Tires	Rock Chisel	57.00
Sticker	Rock Chisel	100.00

Sub Total	Tax	Tax ID #
192.00	14.34	1241515
TOTAL	192.00	

I HEREBY AUTHORIZE THE ABOVE REPAIR WORK TO BE DONE ALONG WITH NECESSARY MATERIALS. YOU AND YOUR EMPLOYEES MAY OPERATE ABOVE VEHICLE FOR PURPOSES OF TESTING, INSPECTION OR DELIVERY AT MY RISK. AN EXPRESS MECHANIC'S LIEN IS ACKNOWLEDGED ON ABOVE VEHICLE TO SECURE THE AMOUNT OF REPAIRS THERETO.

It is understood that this company assumes no responsibility for loss or damage by theft or fire.

Customer Endorsement _____

ALLEGHENY TRUCKS, INC.

49A GREENWOOD ROAD • P.O. BOX 2026 • ALTOONA, PA 16603

(814) 944-3505 • 1-800-252-3884 • FAX (814) 946-3257

* * REPRINT * *	
INVOICE DATE	09/21/1999 01:51PM
INVOICE NO.	PAGE
1192630037	1
CUSTOMER NO.	BRANCH
81625	*1*

SOLD
TO
TYCO TRUCKING
RR1 BOX 304A
TYRONE PA 16686

SHIP
TO
TYCO TRUCKING
RR1 BOX 304A
TYRONE PA 16686

CUSTOMER P.O.	R/S ORDER NO.				
	972598	(814) 684-3400	TA	000/00	000
			PRICE/PER		EXTENSION

TERMS: (00) NET 10TH OF THE MONTH

ALT:02/Y/I/<Inv No>

2 GY 254090027	11R24.5 G159 RECAP	\$161.66	95.00EA*	190.00
2 GY C11R245	CASING 11R24.5	\$150.00	90.00EA*	180.00
2 GY 756816314	285/75R24.5 G357 (G)		342.00EA*	684.00
	(2)PTA TAX AT \$1.00 EA.			2.00
	(2)SCRAP TIRE DISPOSAL FEE			4.00
	REFER TO DELIVERY SLIP			
	#49464 DATED 09/18/99.			

1070.00 EXEMPT PA 0.00 1070.00

FREIGHT	TAXABLE SUB TOTAL	TAX STATUS/STATE	SALES TAX	FARE PAY ▼
---------	-------------------	------------------	-----------	------------



STATEMENT
C & M AUTO PARTS, INC.
Route 220, R.D. 4, Box 139
Tyrone, PA 16686
(814)684-3416

ACCT #
3401
SM #
0

BILL TO
TYCO TRUCKING
R.D. 1 BOX 34A
TYRONE, PA

PAGE
2

16648

Fall items at NAPA: Starting Fluid, Dry Gas, Antifreez, ect

DATE	TYPE	REFERENCE	AMOUNT
09/11/00	Inv	71179	4.72
09/12/00	Inv	71251	32.31
09/12/00	Inv	71278	28.28
09/12/00	Inv	71311	7.56
09/13/00	Inv	71326	11.12
09/14/00	Inv	71449	0.94
09/14/00	Inv	71458	4.60
09/15/00	Inv	71492	7.31
09/15/00	Inv	71494	11.57
09/15/00	Inv	71496	8.70
09/15/00	Inv	71511	2.30
09/15/00	Inv	71516	0.38 Cr
09/16/00	Inv	71552	52.95
09/16/00	Inv	71559	28.83
09/16/00	Inv	71567	8.61
09/16/00	Inv	71568	55.98
09/18/00	Inv	71600	45.59 Cr
09/18/00	Inv	71624	47.68
09/19/00	Inv	71678	30.84
09/19/00	Inv	71682	23.98
09/23/00	Inv	71890	11.65
09/23/00	Inv	71893	26.67
09/23/00	Inv	71897	6.31
09/25/00	Inv	71946	12.47
09/25/00	Inv	71947	8.47
09/26/00	Inv	71981	104.11
09/26/00	Inv	71984	10.80
09/26/00	Inv	72021	26.15
09/30/00	Inv	72256	17.41
09/30/00	Inv	72267	2.54 Cr

CURRENT	PAST DUE 30 DAYS	PAST DUE 60 DAYS	PAST DUE 90 DAYS
978.32	0.00	0.00	0.00

DATE	09/30/2000	Total Owed	978.32
TERMS	FINANCE CHG		
STORE	200006340	Total Due --)	978.32

C & M AUTO PARTS, INC.
 Route 220, R.D. 4, Box 139
 Tyrone, PA 16686
 (814)684-3416

ACCT #	BILL TO	TOTAL NOW DUE
3401	TYCO TRUCKING	978.32
CLOSING DATE	09/30/2000	SHOW AMOUNT PAID → \$

TYRONE MILLING
TYCO TRUCKING
RD 1 BOX 34A
TYRONE, PA 16686

SERVICE ADVISOR RON SHEPPARD

Fox & James Inc.

337 Old Rt. 22
Duncansville, PA 16635
814-695-9175 Fax 314-695-9175

REPAIR ORDER WRITTEN	DATE READY	STOCK NO.	VEHICLE IDENTIFICATION	CUST. NO.	TAG NO.	P.O. NO.	INVOICE PRINTED	INVOICE NO.
14APR00	15APR00	NF5163	1FUYSDYB8VL795985	5170			15APR00	7045
TIME IN	TIME READY	YEAR	MAKE & MODEL	TELEPHONE NO.	CUST. PAY LABOR RATE	DELIVERY DATE	PREPARED BY	S.A.
		97	FREIGHTLINER MCONV C	814-684-3400	52.00	28JUL97	32	32
MILEAGE IN	MILEAGE OUT	LICENSE NO.						
387341	387341	AB79484						

ITEM	TYPE	HOURS	UNIT	UNIT	TOTAL	Main Office
A ACCESORY DRIVE	SEAL LEAKING					P.O. Box 607 Latrobe, PA 15650
999 GENERAL						800-922-2309
208 CP						Fax 724-539-2980
1 3006736 SAL,OIL 0829		16.94		780.00	780.00	
1 3076203 SEAL		10.28		8.76	8.76	
1 3078307-RX DRIVE ACC		547.50		497.75	497.75	
1 3411458 COV GEAR		216.47		184.54	184.54	
1 3069102 GSK,CPR 0419		2.55		2.17	2.17	
1 3069101 GSK,SPT 0559		4.64		3.96	3.96	
1 3067618 GSK,COV 0819		12.68		10.81	10.81	
1 215705 SAL,RNG 0829		1.30		1.11	1.11	
1 3803487 KIT,SEAL		41.20		35.13	35.13	
1 01-11424-007 BOLT,ALT		40.85		32.80	32.80	
2 RSS/M7-20 CLEANER		2.44		1.76	3.52	
DISASSEMBLED TO REPLACE SEAL FOUND FRONT GEAR PLATE WAS JUNK REPLACED PLATE AND ACCESSORY DRIVE AND FRONT COVER RAN TRUCK FOUND NO LEAKS EVER YTHING IS OK						
Check # 0848						

** PRE-INVOICE **	DESCRIPTION	TOTALS	STATEMENT OF DISCLAIMER
Onan	LABOR AMOUNT	780.00	The factory warranty constitutes all of the warranties with respect to the sale of this item/items. Fox & James Inc. hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Fox & James Inc. neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.
JAKE BRAKE Saves a Truckload	PARTS AMOUNT	795.00	
	GAS,OIL, LUBE	0.00	
	SUBLET AMOUNT	0.00	
	MISC. CHARGES	0.00	
	TOTAL CHARGES	1575.00	
	SALES TAX	0.00	
	PLEASE PAY THIS AMOUNT	1575.00	CUSTOMER SIGNATURE X

 Rockwell International

 Eaton
Drive Axle Parts

 Fuller
Transmission Parts

CREDIT TERMS
NET DUE 30 DAYS DATE OF INVOICE

FILED NO. 01-35841

DEC 12 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION - LAW

FILED

J. J. POWELL, INC.,

* No. 01-267-CD

DEC 15 2003

Plaintiff

William A. Shaw
Prothonotary/Clerk of Courts

VS.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING; DAVID HERSHY,
an individual; ROBERT BOONE, an
individual, and DAVID HERSHY and
ROBERT BOONE, individually and
as partners t/d/b/a TYCO TRUCKING,
an unincorporated business
association; and TYCO TRUCKING,
INC.

Defendants

*

REQUEST FOR ADMISSIONS
OF FACT AND
ACCOMPANYING INTERROGATORY
DIRECTED BY PLAINTIFF TO
DEFENDANT TYRONE MILLING, INC.

Pursuant to Pa. R.C.P. No. 4014, Plaintiff, J. J. POWELL, INC., by its undersigned attorney, hereby requests that Defendants make the following admissions within thirty (30) days after service, for the purposes of this action only and subject to all pertinent objections as to relevancy which may be interposed at the trial of this case. In addition, pursuant to Pa. R. C. P. No. 4005, Plaintiff hereby requests that Defendants answer under

oath the following interrogatory. Responses to these requests and interrogatory are to be served within thirty (30) days after service upon Plaintiff's attorney.

INSTRUCTIONS

1. These requests for admissions and accompanying interrogatory are directed to the Defendant, **TYRONE MILLING, INC.** its officers, employees, agents, servants, assigns, representatives, past and present, and unless privilege is claimed, each and every attorney, past and present, of each and every such individual or entity. As used herein, "defendant," "you" and "your" means the Defendant to which these requests for admissions and accompanying interrogatory are addressed, **TYRONE MILLING, INC.**, its officers, employees, agents servants, assigns, representatives, past and present, and each and every attorney, past and present, of each and every such individual or entity.

2. These requests for admissions and accompanying interrogatory encompass all information, documents and records that are in the possession, control, or custody of Defendant or any of its officers, employees, agents, servants, attorneys, and assigns.

3. If any objections are made to any request for admission or to any accompanying interrogatory, the reasons therefor shall be stated.

4. If there is any claim of privilege relating to any request to admit, or interrogatory, you shall set forth fully the basis for the claim of privilege, including the facts upon which you rely to support the claim of privilege in sufficient detail to permit the court to rule on the propriety of the privilege.

5. If your response to any request is not an unqualified admission, your answer shall specifically deny the matter or set forth in detail the reasons why you cannot truthfully admit or deny the matter.

6. A denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify your answer or deny only a part of the matter of which an admission is requested, you should specify so much of it as is true and qualify or deny the remainder.

7. You may not give lack of information or knowledge as a reason for failure to admit or deny, unless you state that you have made reasonable inquiry and that the information known to you or readily obtainable by you is insufficient to enable you to admit or deny.

8. These requests for admission and interrogatory are continuous in nature and must be supplemented promptly if Defendant obtains or learns further or different information between the date of the response and the time of trial by which Defendant knows that a previous response was incorrect when made, or though correct when made, is then no longer true.

9. Unless otherwise indicated, the time period to which these requests for admission and interrogatory are directed is from on or about **NOVEMBER 4, 1998**, through the present.

10. This request seeks the admission of the genuineness of various documents. In some cases, there are printed number and letter codes that run along the bottom of particular documents. In other cases, the word "evidence" and other identification marks may be affixed to the document. Such number, letters and identifying words were affixed during the accumulation and copying of the documents for this case and are not be considered part of the document itself, except for purposes of referencing the document.

The request does not seek defendant's admission regarding the accuracy and genuineness of those numbers and letters, but only of the document on which those

○ numbers and letters have been placed.

DEFINITIONS

1. All verbs are intended to include all tenses.
2. References to the singular are intended to include the plural and vice versa.
3. "Any" as well as "all" shall be construed to mean "each and every."
4. "And" as well as "or" shall be construed disjunctively as well as conjunctively, as necessary, in order to bring within the scope of these requests all information that might otherwise be construed to be outside their scope.
5. "Refer to" or "relate to" means constituting, defining, describing, discussing, involving, concerning, containing, embodying, reflecting, identifying, stating, analyzing, mentioning, responding to, referring to, dealing with, commenting upon, or in any way pertaining to.

REQUEST FOR ADMISSIONS OF FACT

1. That Tyrone Milling, Inc. is a business corporation with its mailing address at R.D. #1, Box 34A, Tyrone, PA 16686.
2. That Tyco Trucking, Inc. is a business corporation with its mailing address at R.D. #1, Box 34A, Tyrone, PA 16686.
3. That Tyco Trucking, Inc. was incorporated after the establishment by David Hershey of the credit account with the Plaintiff, and after charges to said credit account were incurred.

4. That the only customer of Tyco Trucking, Inc. during the relevant time period was Tyrone Milling, Inc.
5. That the customer for whom Tyco Trucking, performed more than one-half of its services was Tyrone Milling, Inc.
6. That Tyrone Milling, Inc. did not pay Tyco Trucking, Inc. for services Tyco Trucking, Inc. performed for Tyrone Milling, Inc.
7. That Tyrone Milling, Inc. paid the expenses of operating Tyco Trucking, Inc.
8. That the fees and costs of incorporating Tyco Trucking, Inc. were paid by Tyrone Milling, Inc.
9. That David Hershey used an office and telephone of Tyrone Milling, Inc. to contact Plaintiff on or about November 4, 1998, to request the establishment of an account in the name of Tyco Trucking.
10. That David Hershey conducted the affairs of Tyco Trucking, Inc. from the same offices that he used to conduct the affairs of Tyrone Milling, Inc.
11. That no employee or officer on behalf Tyco Trucking, Inc. advised Plaintiff that Plaintiff's invoices addressed to Tyco Trucking should be addressed to Tyco Trucking, Inc.
12. That Tyco Trucking, Inc. assets were purchased with loans on which Tyrone Trucking, Inc. was a surety or guarantor.
13. That Tyco Trucking, Inc. assets were stored on lands owned by Tyrone Milling, Inc.
14. That Tyco Trucking, Inc. assets were maintained and serviced by employees of Tyrone Milling, Inc.

INTERROGATORY

1. Plaintiff hereby requests that for each request for admission set forth above which you deny, in whole or part, state:
 - a. all facts, information and matters, including relevant dates, times and places, upon which your denial is based;
 - b. any statutory, regulatory provision(s) or other legal basis upon which your denial is based;
 - c. the identity by name, address, phone number, and employment title of all persons with information or matters upon which your denial is based;
 - d. a summary of the information or knowledge possessed by each such person; and
 - e. the identity and description of all documents that refer or relate to the facts, information and matters upon which your denial is based.

DATED:

January 18, 2002

David C. Mason

Please accept for filing
David C. Mason
10/15/03

FILED ^{No CC}
01/20/2004
DEC 15 2003

BS
William A. Shaw
Prothonotary/Clerk of Courts

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

FILED

J.J. POWELL, INC.,
Plaintiff

v.

TYRONE MILLING, INC., t/d/b/a
TYCO TRUCKING, INC.,
Defendant

: No. 01-267-CD

DEC 15 2003

William A. Shaw
Prothonotary/Clerk of Courts

ANSWERS TO REQUESTS FOR ADMISSION

1. Admitted.

2. Admitted.

3. Admitted in part and denied in part. It is admitted that the Articles of

Incorporation were filed after the establishment of the credit account. It is denied that the corporation was in fact established after the establishment of that account. To the contrary, the initial meeting of shareholders and the initial meeting of the Board of Directors occurred prior to the establishment of the account, and the corporation began operating as such prior to the establishment of the account.

4. Denied. To the contrary, Tyco Trucking, Inc. had numerous customers, including without limitation Arthur Daniels Midland, Venture Coal Sales, Nimco Shredding, Davidson Brothers Trucking, New Enterprise, Inc., Lansberry Trucking, GNR Excavating, Inc., Tyrone Milling, Inc., and Lafarge Corporation.

5. Denied. To the contrary, the work performed for Tyrone Milling, Inc.

represented only approximately 4% of Tyco Trucking, Inc.'s business.

6. Denied. To the contrary, Defendant Tyco Trucking, Inc. and Defendant Tyrone Milling, Inc. did account for services performed by Tyco Trucking, Inc., and payments were actually made between the two corporations.

7. Denied. Other than the initial capitalization, Defendant Tyco Trucking, Inc. paid its own expenses of operation.

8. Denied. The fees and costs of incorporation were paid by Tyco Trucking, Inc. per check to Attorney Newlin, a copy of which is attached.

9. Admitted.

10. Denied as stated. It is admitted that Tyco Trucking, Inc. and Tyrone Milling, Inc. shared the same geographic location. It is further admitted that David Hershey, when conducting affairs on behalf of Tyco Trucking, Inc., often did so from his offices at R.D. #1, Box 34A, Tyrone, PA, and that David Hershey, when acting on behalf of Tyrone Milling, Inc., often did so from the same address.

11. Denied. David Hershey, when he initially established the credit account, instructed Plaintiff to establish the account for "Tyco Trucking, Inc." It is admitted that thereafter, no employee or officer of Tyco Trucking, Inc. advised Plaintiff to change the name on the account, as Plaintiff initially established it.

12. Denied.

13. Admitted.

14. Denied. Tyco Trucking, Inc. assets were maintained and serviced by employees
of Tyco Trucking, Inc. and by independent contractors hired by Defendant Tyco Trucking, Inc.

NOVAK, STOVER & FURST

BY: 

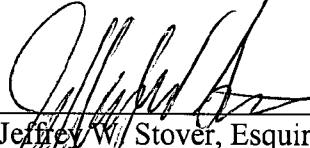
Jeffrey W. Stover, Esquire
122 East High Street
P.O. Box 209
Bellefonte, PA 16823
Attorney for Defendant

Dated: 2/19/02

Answer to Interrogatory

Defendant hereby incorporates its answer to each respective request for admission, above. By way of further response, Defendant incorporates the information in the pleadings, and the information set forth in the answers to interrogatories served on Plaintiff on even date herewith.

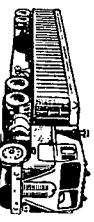
NOVAK, STOVER & FURST

BY: 

Jeffrey W. Stover, Esquire
122 East High Street
P.O. Box 209
Bellefonte, PA 16823
Attorney for Defendant

Dated: 2/19/02

K476690



TYCO TRUCKING
RD 1, BOX 34A PH: (814) 684-3400
TYRONE, PA 16686

60-119313

0531

DATE Oct 18, 1993

\$ 2.88 10

DOLLARS Security Number
Indicates check or bank.

PAY
TO THE
ORDER OF
Edward J. Persell
Two Hundred eighty - eight and 28/10

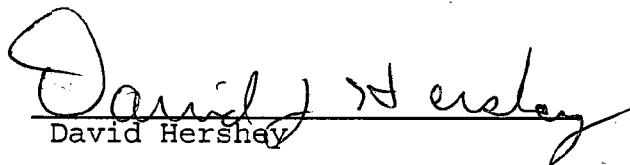
Mid-State Bank
A KeyCorp Community Bank
TYRONE OFFICE

MEMO

Edward J. Persell MP
10000531010310119210 37405 4601910 1000002881510

VERIFICATION

I, David Hershey, verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsifications to authorities.


David Hershey

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

J.J. POWELL, INC.

Plaintiff

v.

: No. 01-267-CD

TYRONE MILLING, INC., t/d/b/a

TYCO TRUCKING, INC.,

Defendant

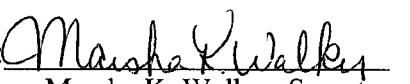
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant's Answers to Requests for Admissions have been served this 14th day of February, 2002 upon counsel for the Plaintiff by First Class U.S. Mail, Postage Prepaid, at the following address:

David C. Mason, Esq.
P.O. Box 28
Philipsburg, PA 16866

NOVAK, STOVER & FURST

BY:


Marsha K. Walker, Secretary
To Jeffrey W. Stover, Esq.

FILED
02:05 PM
DEC 15 2003
No CC

BSR

William A. Shaw

Prothonotary/Clerk of Courts

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

J.J. POWELL, INC.

-vs-

No. 01-267-CD

TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING, INC.; DAVID :
HERSHEY, an individual; BUD BOOM, an :
individual, and DAVID HERSHEY and :
BUD BOOM, individually and as partners :
t/d/b/a TYCO TRUCKING, an :
unincorporated business association; and :
TYCO TRUCKING, INC. :

ORDER

NOW, this 16th day of December, 2003, this matter coming before the Court on Motions for Summary Judgment filed on behalf of Defendant David Hershey and Defendant Bud Boom, it is the ORDER of this Court that said Motions be and are hereby dismissed without prejudice to Defendants raising the issues at the conclusion of Plaintiff's case in chief.

By the Court,

President Judge

FILED

DEC 16 2003

William A. Shaw
Prothonotary

FILED

O 3-43 MA 1cc atty Mason
1cc atty Johnson
DEC 16 2003

Q
JES

William A. Shaw
Prothonotary

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

J.J. POWELL, INC. :
: No. 01 - 267 - CD
-vs- :
TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING, INC.; DAVID :
HERSHEY, an individual; BUD BOOM, an :
individual, and DAVID HERSHEY and :
BUD BOOM, individually and as partners :
t/d/b/a TYCO TRUCKING, an :
unincorporated business association; and :
TYCO TRUCKING, INC. :
:

ORDER

NOW, this 16th day of December, 2003, this matter coming before the Court on Plaintiff's Motion for Partial Summary Judgment, it is the ORDER of this Court that said Motion be and is hereby dismissed without prejudice to Plaintiff raising the issues again at the conclusion of its case in chief.

By the Court,

President Judge

FILED

DEC 16 2003

William A. Shaw
Prothonotary

FILED

o 3:47 1cc atty Stacey
1cc Hugh Mason

DEC 16 2003

Q
Leeds

William A. Shaw
Fulton County

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

J.J. POWELL, INC. :
VS. : NO. 01-267-CD
TYRONE MILLING, INC., t/d/b/a :
TYCO TRUCKING, DAVID HERSHEY, an :
individual, BUD BLOOM, an indi- :
vidual, and DAVID HERSHEY and :
BUD BLOOM, individually as part- :
ners t/d/b/a TYCO TRUCKING, an :
unincorporated business associ- :
ation; and TYCO TRUCKING, INC. :

FILED

DEC 23 2003

William A. Shaw
Prothonotary/Clerk of Courts

O R D E R

NOW, this 22nd day of December, 2003, this being the day and date set for trial in the above-captioned matter; upon agreement of the parties, it is the ORDER of this Court that judgment shall be entered in favor of the Plaintiff and against the Corporate Defendants Tyrone Milling, Incorporated, and Tyco Trucking, Incorporated, in the total amount of Sixty-five Thousand (\$65,000.00) Dollars, to be paid as follows: Twenty Thousand (\$20,000.00) Dollars to be paid to Plaintiff on or before 4:00 p.m. this date; and the balance of Forty-five Thousand (\$45,000.00) Dollars to be paid by said Defendants on or before 4:00 p.m. February 29, 2004.

Should any of the above payments fail to be made, judgment shall be entered in favor of the Plaintiff and against

the Corporate Defendants in the full amount due then and owing,
together with interest and court costs.

BY THE COURT,

President Judge

FILED 20cc Attns Mason, Stover

01/11/07
DEC 23 2003

6
S&S

William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS, CLEARFIELD COUNTY
PENNSYLVANIA
CASE NO. 01-267-CD

Date of Jury Selection: August 22, 2003

J. J. Powell, Inc.

VS

Tyrone Milling Inc., t/d/b/a Tyco
Trucking, David Hershey, and individual,
Bud Bloom, an individual, and David
Hershey and Bud Bloom, individually and
as partners t/d/b/a Tyco Trucking, an
unincorporated business association; and
Tyco Trucking, Inc.

Presiding Judge: Honorable John K. Reilly, Jr.
President Judge

Court Reporter: *Patty Powell*

Date of Trial: December 22 & 23, 2003

Date Trial Ended: 22 Dec 03

MEMBERS OF THE JURY

1. KENNETH FLICK
2. STEPHEN LUCHUCK
3. MELISSA BAUMAN
4. JACKIE YEBERNETSKY
5. RICHARD WRIGHT
6. HARRY HILL
ALT #1 THOMAS JORDAN

7. DEBRA FOSTER
8. KAY DELLANTONIO
9. RUTH ERRIGO
10. JANICE SHAFFER *-excuse* *21 ac*
11. RITA SEDOR
12. JOANN KALGREN
ALT #2 MAUREEN JOHNSTON *-m o s how*

PLAINTIFF'S WITNESSES:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

DEFENDANT'S WITNESSES:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

PLAINTIFF'S ATTY: David C. Mason, Esquire

DEFENDANT'S ATTY: Jeffrey W. Stover,
Esquire

ADDRESS TO JURY: _____

ADDRESS TO JURY: _____

JUDGE'S ADDRESS TO JURY: _____

JURY OUT: _____ JURY IN: _____

VERDICT: *Party Reached Agreement on Settlement.*

FILED

DEC 22 2003

FOREPERSON: _____

William A. Shaw
Prothonotary

FILED

DEC 22 2003

9/10 AM
William A. Shaw
Prothonotary

cc

6/2

DEC 22 2003

William A. Shaw
Prothonotary