

01-418-CD  
FRED KITKO et al -vs- RONALD D. KITKO et al

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

CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY,

Plaintiff

vs.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY  
OTHER PERSON, PARTY, or ENTITY,

Defendant

\* No. 01-418-CO

\* Type of Case: ACTION  
TO QUIET TITLE

\* Type of Pleading: COMPLAINT

\* Filed on Behalf of: PLAINTIFF

\* Counsel of Record for this Party:

\* David C. Mason, Esquire  
409 North Front Street  
P.O. Box 28  
Philipsburg, PA 16866  
814-342-2240  
Supreme Court ID NO. 39180

**FILED**

MAR 26 2001

William A. Shaw  
Prothonotary

1013

1012

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

CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY,

\*  
\* No.  
\*

Plaintiff

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vs.

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\*  
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RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY  
OTHER PERSON, PARTY, or ENTITY,

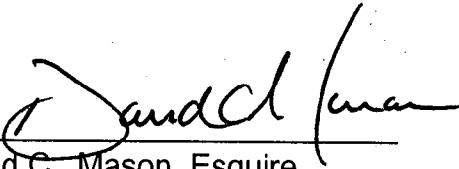
Defendant

**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 an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

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

CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY,

\*  
\*  
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No.

Plaintiff

vs.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY  
OTHER PERSON, PARTY, or ENTITY,

\*  
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Type of Case: ACTION  
TO QUIET TITLE

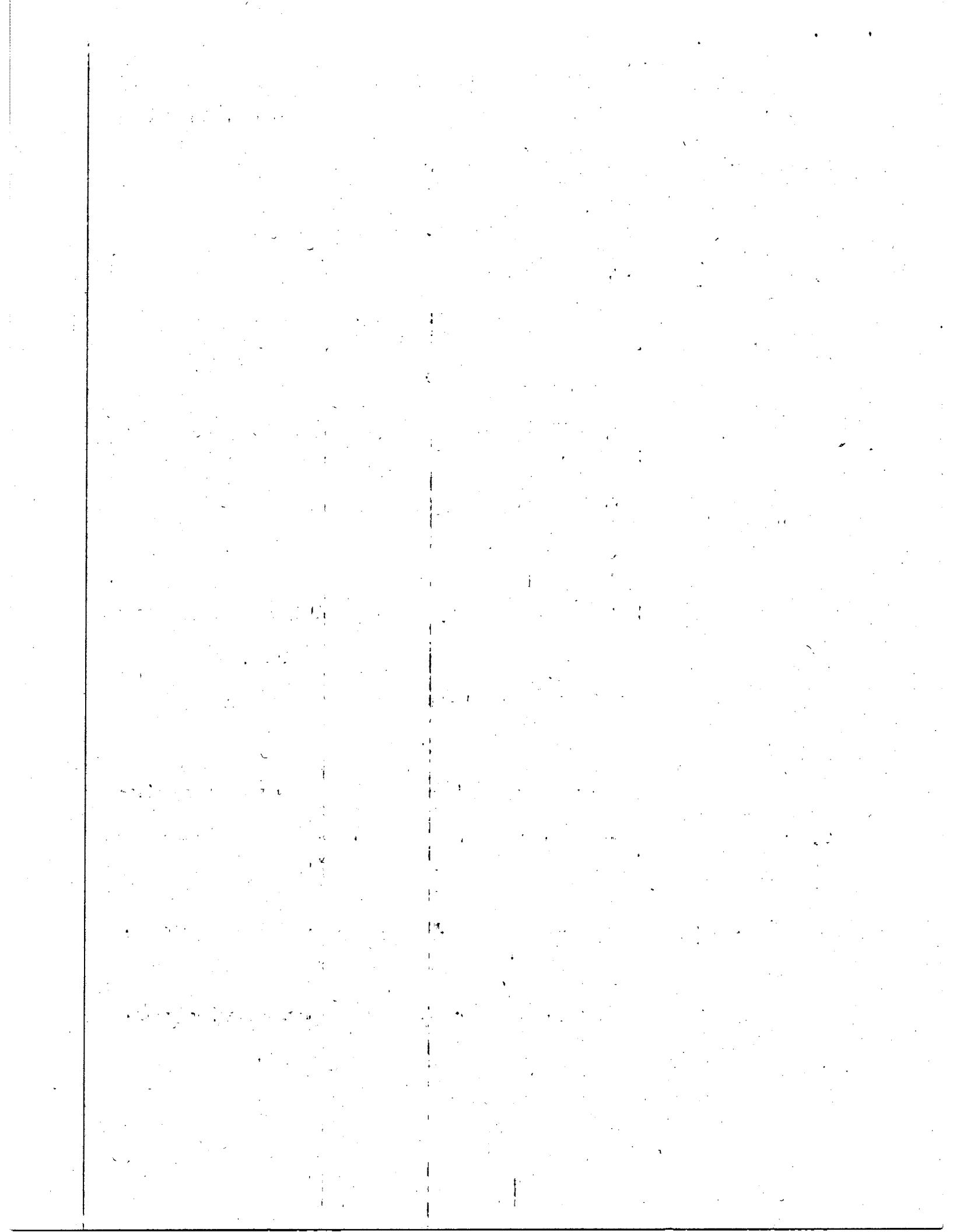
Defendant

**COMPLAINT IN ACTION TO QUIET TITLE**

**PURSUANT TO PA. R.C.P. §1061(b)(2)**

AND NOW, comes the Plaintiff, FRED KITKO i/a/t/d/b/a Kitko Coal Company, by  
and through his attorney, DAVID C. MASON, ESQUIRE, and sets forth a claim against the  
Defendant named herein and represents as follows:

1. Plaintiff Fred Kitko is an individual who is the owner and operator of Kitko Coal Company, an unincorporated business association with an office or business at R. R. #1, Box 626, Coalport, Pennsylvania, 16627.
2. Defendant Ronald D. Kitko is an individual who resides at HCR, Box 61, Madera, Pennsylvania, 16661.
3. This Complaint in Action to Quiet Title is being prosecuted pursuant to Pennsylvania Rules of Civil Procedure §1061(b)(2) in order to determine the validity of a



document affecting the Plaintiff's right, title and interest in land identified as Tax Map Parcel No. 101-J16-7 and more particularly described as follows:

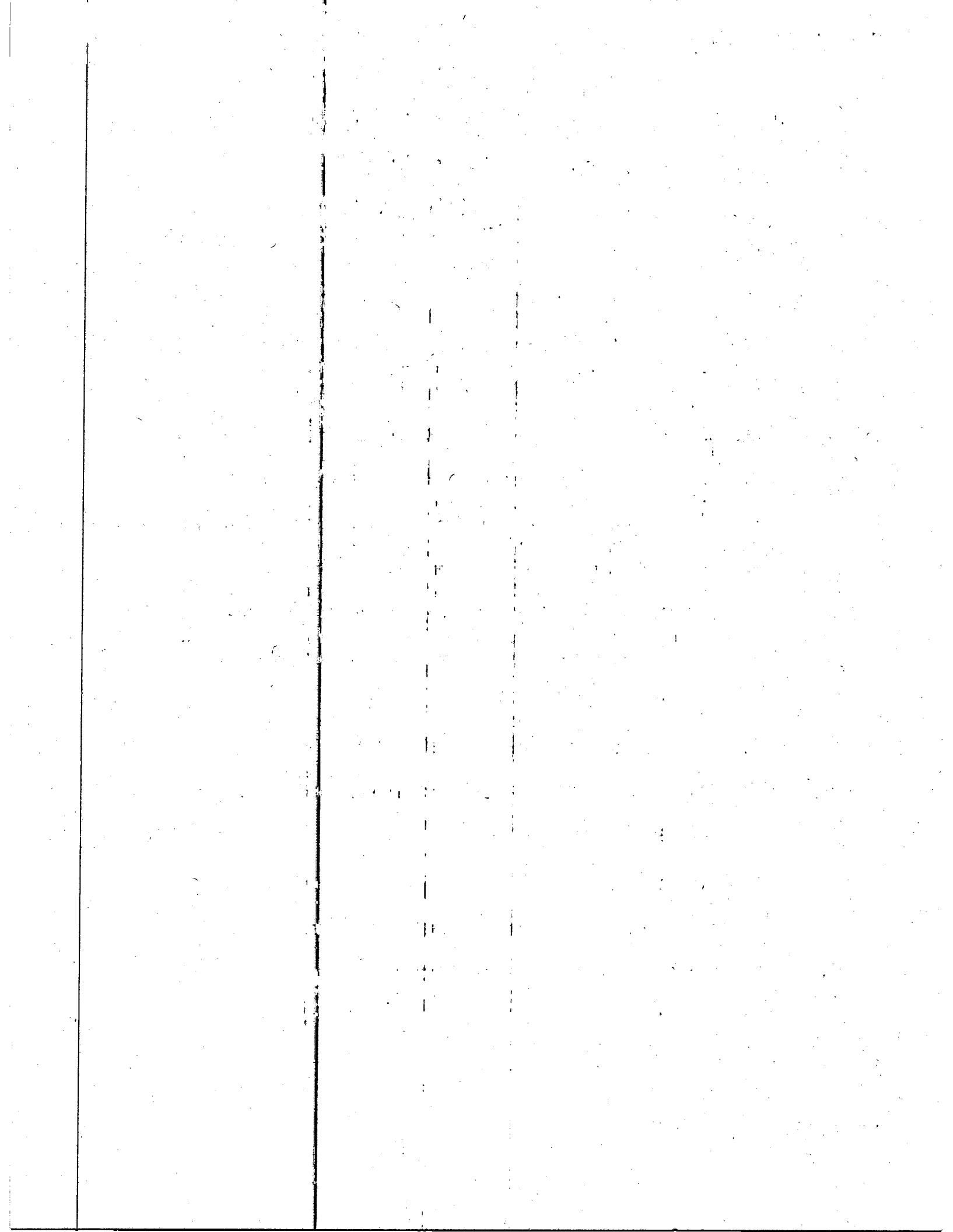
**ALL** that certain tract or piece of land, situate in the Township of Beccaria, County of Clearfield, and State of Pennsylvania, bounded and described as follows:

**BEGINNING** at a post in Stewart Cowens' land; thence by land now or formerly of Stewart Cowen, North 4 degrees 21 minutes East, twenty-eight and nine-tenths (28.9) feet to a hemlock; thence by lands now or formerly of Stewart Cowen, North 84 degrees 30 minutes West, Seven Hundred Sixty-four and five-tenths (764.5) feet along the public road leading to "X-Roads" to a post at land of S. Hegarty's Estate; thence North 6 degrees 20 minutes East, along land of S. Hegarty's Estate, Two Thousand Eight Hundred and Thirty (2830) feet to post at land of Thomas McGlynn; thence South 84 degrees 53 minutes East, along land of Thomas McGlynn, One Thousand Nine Hundred Eighty-seven and six-tenths (1987.6) feet to post and stone at land of Berwind-White coal Mining Company; thence South 6 degrees 6 minutes West, along land of Berwind-White Coal Mining Company, Two Thousand Eight Hundred Sixty-five and nine-tenths (2865.9) feet to post, now or formerly of McCoy; and thence along said land of McCoy North 84 degrees 43 minutes West, Twelve Hundred Thirty Four and two-tenths (1234.2) feet to post, and place of beginning. Containing One Hundred Thirty and eight-tenths (130.8) acres; and having thereon erected a two-story, frame dwelling house, frame barn, and other out-buildings.

**EXCEPTING AND RESERVING, NEVERTHELESS,** all exceptions and reservations as contained in the chain of title.

4. Defendant Ronald D. Kitko is the owner of an undivided interest in the premises described in Paragraph 3 hereof.

5. On or about April , 1989, Defendant Ronald D. Kitko executed a document entitled "Land Owners Consent Form" in the presence of Notary Public, Gerald Randy Albert. The Notary Public acknowledged the execution by Ronald D. Kitko of the Land Owners Consent Form "Supplemental C" on April , 1989. A copy of said "Supplemental C" is attached hereto and noted as Exhibit "A".



6. Thereafter, by letter dated June 26, 2000, directed to the Department of Environmental Protection, Bureau of Mining and Reclamation, the Defendant, Ronald D. Kitko, avers that his signature "had been applied to the Supplemental C without [his] authorization and/or consent." A copy of this letter is attached hereto and noted as Exhibit "B".

7. In that same letter referenced in Paragraph 6 hereof, Defendant, Ronald D. Kitko, states that:

"I will take legal steps if necessary to prove my signature was/is forged."

8. It is believed and therefore averred that the signature of Ronald D. Kitko on the "Supplemental C" was placed on the form by the said Ronald D. Kitko.

9. It is believed and therefore averred that Ronald D. Kitko actually signed the "Supplemental C."

10. It is believed and therefore averred that the "Supplemental C", attached hereto as Exhibit "A" is valid and enforceable for the purposes and upon the conditions as therein stated.

**WHEREFORE**, Plaintiff prays your Honorable Court for the entry of an Order granting the following relief:

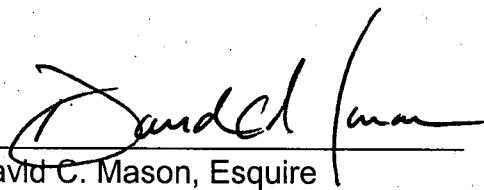
- (a) That the "Supplemental C" dated April , 1989, contains the signature of the Defendant, Ronald D. Kitko.
- (b) That the signature of Ronald D. Kitko on the said "Supplemental C" is genuine, and that the "Supplemental C" was signed by Ronald D. Kitko.

(c) Enjoining the Defendant Ronald D. Kitko from asserting to the Commonwealth of Pennsylvania, Department of Environmental Protection, Bureau of Mining and Reclamation, or to any other private or public person or entity that the signature on the "Supplemental C" is not valid and genuine.

(d) Monetary damages in favor of the Plaintiff and against the Defendant for the losses, injuries, and damages sustained by the Plaintiff as the result of the Defendant's recantation of the "Supplemental C" in the letter to the Department of Environmental Protection dated June 26, 2000.

(e) Such other and further relief as the Court deems just and proper.

MASON LAW OFFICE

By: 

David C. Mason, Esquire  
Attorney for Plaintiff

**VERIFICATION**

I, FRED KITKO, an individual, do verify that the statements made in this Complaint 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 falsification to authorities.

Fred Kitko

Fred Kitko

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL RESOURCES

APPL. NO. (Department Use Only)

CONTRACTUAL CONSENT OF LANDOWNER

(I) (We), the undersigned, being the owner(s) of 129.3 acres of land located in Clearfield County, as described in the deed(s) recorded in the Recorder of Deeds Office Book(s) and page(s) Deed Book 525, Page 617 and shown by crosshatched lines on the map attached hereto which is signed in the original by the landowner upon which Fred Kitko proposes to engage in surface

(Name of Mining Operator)  
mining activities for which application for permit will be made to the Department of Environmental Resources and of which application this consent will be made a part, **DO HEREBY ACKNOWLEDGE THAT THE MINING OPERATOR HAS THE RIGHT TO ENTER UPON AND USE THE LAND FOR THE PURPOSES OF CONDUCTING SURFACE MINING ACTIVITIES.** Furthermore, (I) (We), the undersigned, do hereby irrevocably grant to the Mining Operator and the Commonwealth of Pennsylvania, the right to enter upon the aforesaid land before beginning the mining activity(ies), during the mining activity(ies) and for a period of five (5) years after the completion or abandonment of the mining activity(ies) for the purposes of inspecting, studying, backfilling, planting and reclaiming the land and abating pollution in accordance with the provisions of the Surface Mining Conservation and Reclamation Act, The Clean Streams Law, and The Coal Refuse Disposal Act; as amended, rules and regulations promulgated thereunder, and the provisions of permit(s) issued to the Mining Operator. (I) (We) do hereby grant in addition to the Commonwealth, for the aforesaid period of time, a right of entry across any adjoining or contiguous lands owned by (us) (me) in order to have access to the land described herein. It is specifically agreed and understood that this contractual consent gives the Commonwealth the right to enter, inspect, study, backfill, plant and reclaim the land and abate pollution therefrom as a matter within the police power but does not obligate the Commonwealth to do so, and does not constitute any ownership interest by the Commonwealth in the aforesaid land.

This Consent shall not be construed to impair any contractual agreement between the Mine Operator and the landowner.

(INSERT ADDITIONAL PROVISIONS OR CROSS OUT)

In witness whereof and intending to legally bind (myself) (ourselves), (my) (our) heirs, successors and assigns, (I) (we) have hereunto set (my) (our) hand(s) and seal this \_\_\_\_\_ day of April 19 89.

By: Victoria Kitko  
(Signature) (Seal)

Victoria Kitko  
(Print Name)

Victoria, Fred and Ron Kitko

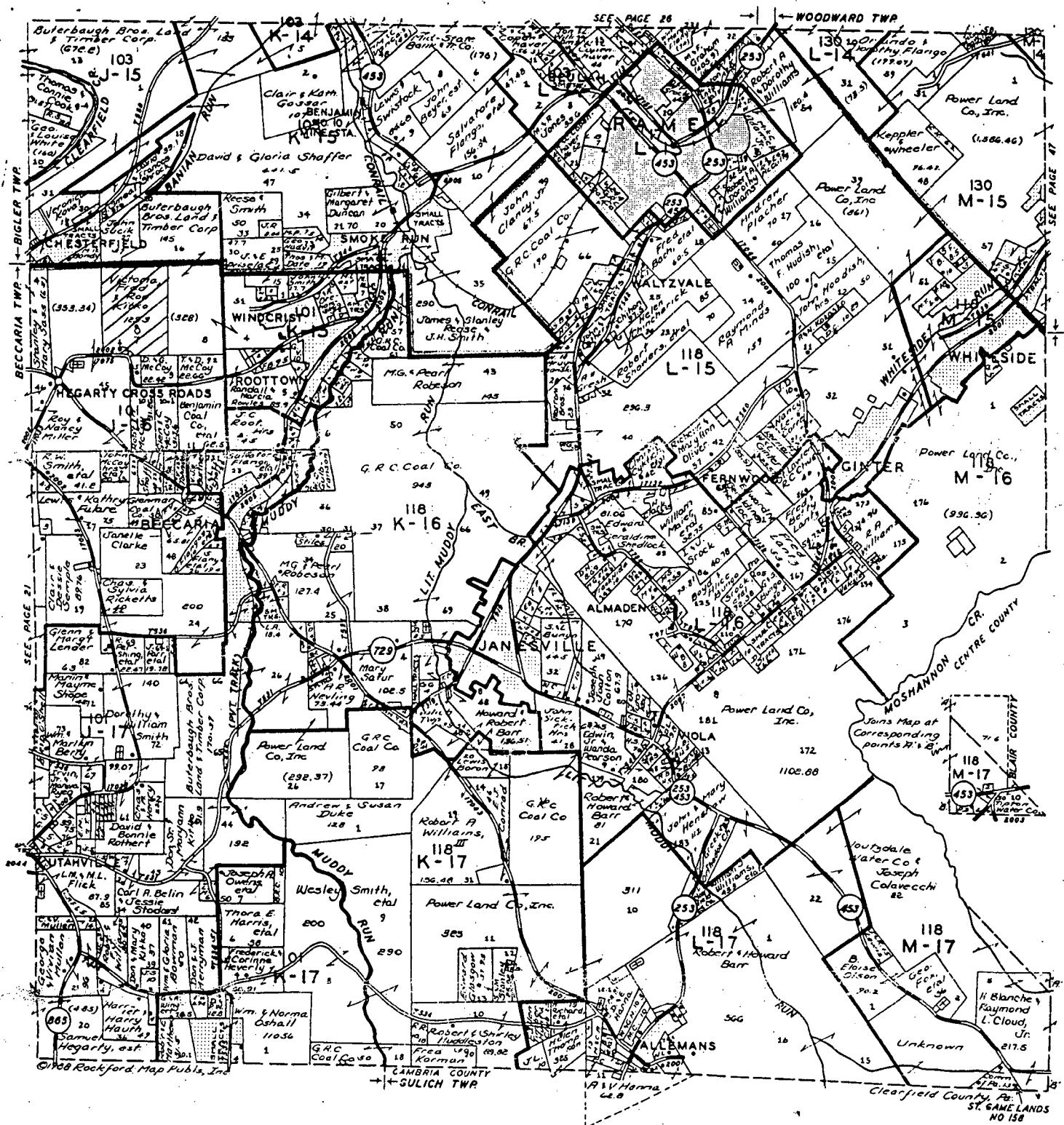
LANDOWNER (Print Name)

By: Fred Kitko  
(Signature) (Seal)

Fred Kitko  
(Print Name)

By: Ron Kitko  
(Signature)

Ron Kitko  
(Print Name)



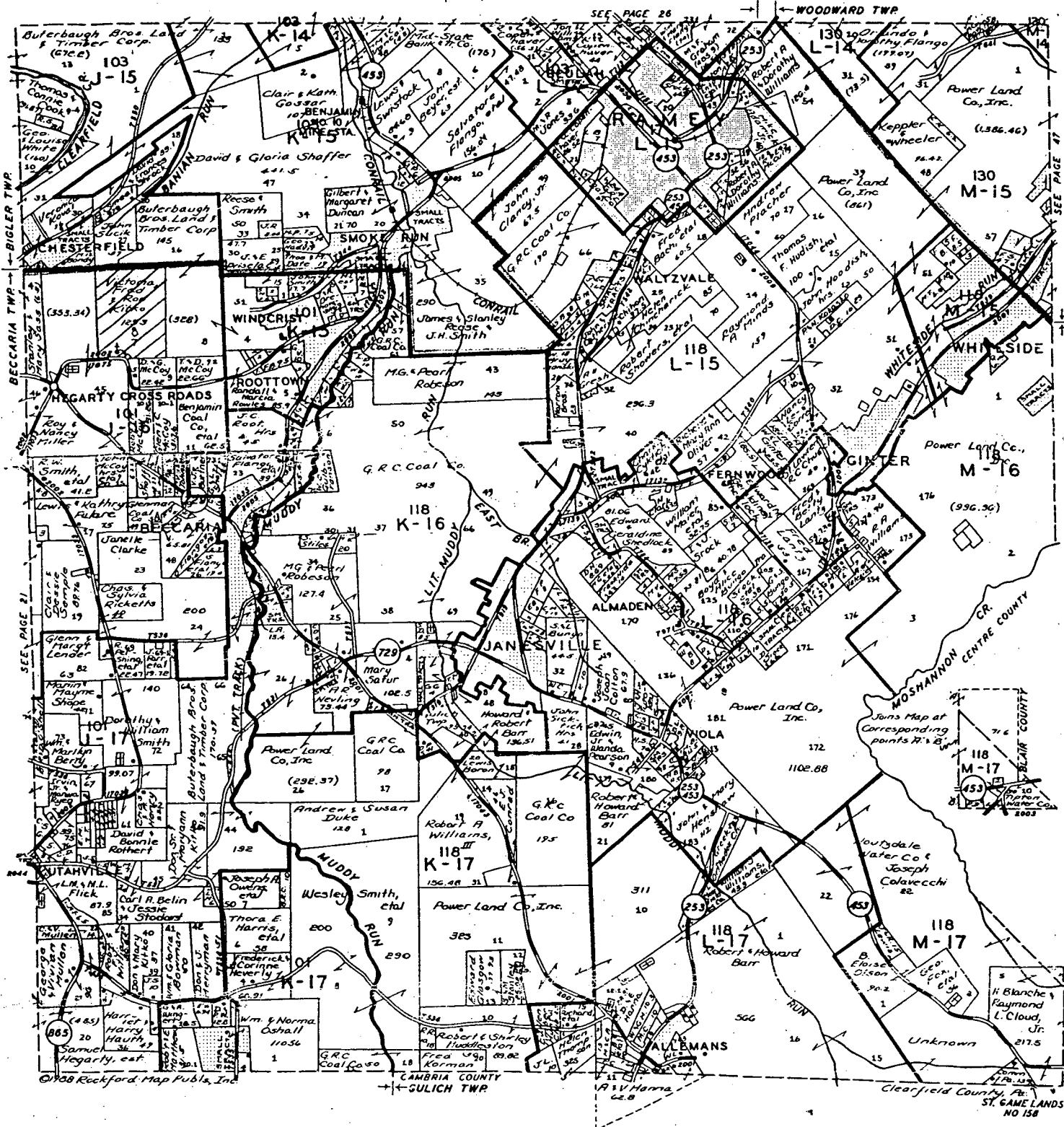
Victoria F. Pinto

Victoria Kitko

Fred Kitko

Ren

Entered of Record APRIL 13, 1989, 9:00 A.M. Michael R. Lytle, Recorder



Victoria Kitko  
Victoria Kitko

Yed Kito

Fred KILKO  
Ron Kilko

John  
Ron Kitko

378- 7804

June 26, 2000

Department of Environmental Protection  
Bureau of Mining and Reclamation  
P.O. Box 209  
Hawk Run, PA 16840

RE: Fred Kitko  
Kitko Coal Company  
Beccaria Township, Clearfield County  
SMP# 17910127 - Kitko#1 Operation  
Issued Date: October 14, 1993  
Expiration Date: October 14, 1998

Dear Mr. Doug Syler;

I am writing in reference to the enclosed "PUBLIC NOTICE" statement that appeared in the Progress newspaper regarding the above referenced permit/property. I am requesting/demanding that you not only "deny/reject" the renewal of the above referenced permit, but also that you cease any/all coal removal activities on the above referenced property for the following reasons:

First, that the original "Supplemental C" Contractual Consent of Landowners is not a valid permit due to the fact that my name/signature had been applied to the supplemental C without my authorization and/or consent. Further, that "Kitko Coal Company," which is owned by Fred Kitko, has been mining coal under this permit without any written agreement, authorization, and/or consent by myself. It is understood that this is a civil matter and I will take legal steps if necessary to prove my signature was/is in fact forged.

Second, that the "Renewal Application" was not filed in accordance with the format required by the Department of Environmental Protection, Pennsylvania Code Title 25, Chapter 86.55 Permit renewals: General requirements for surface and underground coal mining. The code states that "Complete applications for renewal of a permit shall be filed with the Department at least 180 days before the expiration date of the particular permit in question." If the permittee has failed to do so before the permit expires, which is the case of the above referenced permit, the permittee must cease all coal removal activities and may only be permitted for activities which consist solely of reclamation, including topsoil replacement and revegetation.

In conclusion, I am requesting/demanding that you cease any coal mining activity immediately due to the forgery of the "Supplemental C," the lack of an agreement, authorization, and consent to mine coal on my property, and failure to comply when filling a renewal application within the conditions spelled out in the Pennsylvania Code for Permit renewals.

I would like to thank you in advance for your help and cooperation in getting this serious matter addressed and resolved.

Very Sincerely Yours !!!!

*Ronald D. Kitko - JUNE 26, 2000*  
Mr. Ronald D. Kitko  
HCR Box 61  
Madera, PA 16661-9711

Cc: MINETECH ENGINEERS, INC.  
Altoona, PA 16603

EXHIBIT "B"

**FILED**

~~REC'D MAR 26 2001~~  
10-251 City Mason  
William A. Shaw  
Prothonotary

pd. \$80.00  
3c a/c, 1 moan

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10835

KITKO, FRED II/a/t/d/b/a KITKO COAL COMPANY

01-418-CD

VS.

KITKO, RONALD D. et al

**COMPLAINT ACTION TO QUIET TITLE**

**SHERIFF RETURNS**

NOW APRIL 3, 2001 AT 2:24 PM DST SERVED THE WITHIN COMPLAINT ACTION TO QUIET TITLE ON RONALD D. KITKO, HIS HEIRS, SUCCESSORS, ADMINISTRATORS ET AL AT RESIDENCE, HCR BOX 61, MADERA, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO RONALD D. KITKO, A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT ACTION TO QUIET TITLE AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: DAVIS/MORGILLO

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Return Costs

Cost	Description
29.26	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

16<sup>th</sup> 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 Marilyn Harris  
Chester A. Hawkins

Sheriff

**FILED**  
02:24  
APR 06 2001  


William A. Shaw  
Prothonotary

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

FRED KITKO, t/d/b/a KITKO  
COAL COMPANY, : No. 01-418-CD  
Plaintiff :  
v. : Type of Pleading: Praecipe for Entry  
: of Appearance  
RONALD D. KITKO, and his heirs, :  
successors, administrators, executors, :  
and assigns, as well as ANY OTHER :  
PERSON, PARTY, or ENTITY, : Filed on Behalf of: Defendant  
Defendant : Counsel of Record for this Party:  
: ALAN F. KIRK, ESQUIRE  
: Supreme Court # 36893  
: 1375 Martin Street, Suite 204  
: State College, PA 16803  
: (814) 234.2048

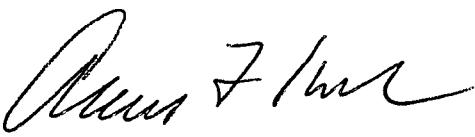
**PRAECIPE FOR ENTRY OF APPEARANCE**

TO: PROTHONOTARY OF CLEARFIELD COUNTY:

Please enter my appearance on behalf of Ronald D. Kitko, Defendant in the above captioned matter. Kindly file all correspondence to Alan F. Kirk, Esquire, 1375 Martin Street, Suite 204, State College, PA 16803.

Date:

Respectfully submitted,

  
\_\_\_\_\_  
Alan F. Kirk, Esquire

**FILED**

APR 26 2001

William A. Shaw  
Prothonotary

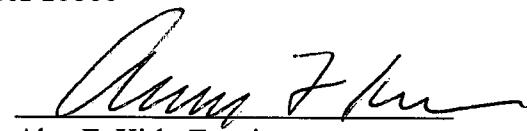
IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

FRED KITKO, t/d/b/a KITKO  
COAL COMPANY, : No. 01-418-CD  
Plaintiff :  
v. :  
RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY, or ENTITY, : Type of Pleading: Praecipe for Entry  
Defendant : of Appearance  
: Filed on Behalf of: Defendant  
: Counsel of Record for this Party:  
: ALAN F. KIRK, ESQUIRE  
: Supreme Court # 36893  
: 1375 Martin Street, Suite 204  
: State College, PA 16803  
: (814) 234.2048

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Praecipe for Entry of  
Appearance was served by U.S. Mail, First Class, this 80<sup>th</sup> day of April 2001,  
upon the following:

**David C. Mason, Esquire**  
409 North Front Street  
P.O. Box 28  
Philipsburg, PA 16866

  
\_\_\_\_\_  
Alan F. Kirk, Esquire

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

FRED KITKO, t/d/b/a KITKO  
COAL COMPANY, : No. 01-418-CD  
Plaintiff :  
v. :  
Type of Pleading: Praeclipe for Entry  
of Appearance  
RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY, or ENTITY, : Filed on Behalf of: Defendant  
Defendant : Counsel of Record for this Party:  
ALAN F. KIRK, ESQUIRE  
Supreme Court # 36893  
1375 Martin Street, Suite 204  
State College, PA 16803  
(814) 234.2048

FILED

APR 26 2001

114/1 NO CC  
William A. Shaw  
Prothonotary  
*cc*

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

FRED KITKO, t/d/b/a KITKO  
COAL COMPANY,

Plaintiff

v.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY, or ENTITY,

Defendant

: No. 01-418-CD

: Type of Pleading: ANSWER, NEW  
MATTER AND COUNTERCLAIM  
OF DEFENDANT, RONALD D.  
KITKO

: Filed on Behalf of: Defendant

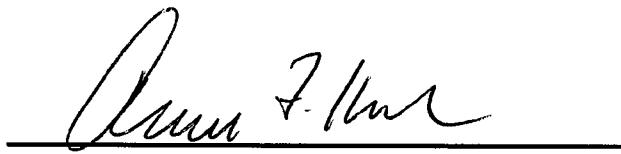
: Counsel of Record for this Party:  
ALAN F. KIRK, ESQUIRE  
Supreme Court # 36893

: 1375 Martin Street, Suite 204  
State College, PA 16803  
(814) 234.2048

NOTICE

**TO: DAVID C. MASON, ATTORNEY FOR PLAINTIFF**

You are hereby notified to plead to the enclosed Answer, New Matter, and Counterclaim  
within twenty (20) days from service hereof or default judgment may be entered against you.

  
\_\_\_\_\_  
Alan F. Kirk, Esquire  
Attorney for Defendant

**FILED**

MAY 04 2001

11:05 AM  
William A. Shaw  
Prothonotary

1 COUN TO ATTY

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

FRED KITKO, t/d/b/a KITKO  
COAL COMPANY,

Plaintiff

v.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY, or ENTITY,

Defendant

: No. 01-418-CD

:  
: Type of Pleading: ANSWER, NEW  
MATTER AND COUNTERCLAIM  
OF DEFENDANT, RONALD D.  
KITKO

: Filed on Behalf of: Defendant

: Counsel of Record for this Party:  
ALAN F. KIRK, ESQUIRE  
Supreme Court # 36893

:  
: 1375 Martin Street, Suite 204  
State College, PA 16803  
(814) 234.2048

**ANSWER, NEW MATTER AND COUNTERCLAIM  
OF DEFENDANT, RONALD D. KITKO**

NOW COMES the Defendant, RONALD D. KITKO, by and through their counsel, Alan F. Kirk, and files the following Answer, New Matter and Counterclaim whereof the following is the statement:

1. Admitted.
2. Admitted.
3. Denied. The averments contained in Paragraph 3 are legal conclusions to which no response is necessary.
4. Denied. It is believed and therefore averred that the property ownership is divided

between Victoria Kitko, Ronald D. Kitko, and the Plaintiff.

5. Denied. On the contrary, Ronald D. Kitko did not execute any such document.

By way of further Answer, a true and correct copy of Exhibit "A" was not attached to the Complaint which was served on the Defendant. Strict proof of same is demanded at trial.

6. Admitted.

7. Admitted.

8. Denied. On the contrary, Ronald D. Kitko did not sign any such document and Ronald D. Kitko denies that his signature is upon the said document. Strict proof of same is demanded at time of trial.

9. Denied. On the contrary, Ronald D. Kitko did not sign any such document and Ronald D. Kitko denies that his signature is upon the said document. Strict proof of same is demanded at time of trial.

10. Denied. The averments contained in Paragraph 10 are legal conclusions to which no response is necessary.

WHEREFORE, the Defendant, RONALD D. KITKO, requests this Honorable Court to dismiss the Complaint of Plaintiff and enter judgment in his favor and grant any other relief deemed appropriate.

#### NEW MATTER

##### I. Collateral Estoppel.

11. The Defendant incorporates by reference the responses to Paragraphs 1-10 as if set forth at length.

12. The Plaintiff as Permittee under Surface Mine Permit #17910127 ("SMP"), failed to properly renew the said SMP on or before to October 14, 1998, with the Pennsylvania Department of Environmental Protection ("PA. DEP")as required.
13. That the Plaintiff neglected to submit the SMP Renewal Application until approximately two (2) years following the expiration date and that the PA DEP did not and will not renew the said SMP in accordance with 25 PA Code § 86.55 (g).
14. That because of the failure of the Plaintiff to properly proceed with the SMP Renewal Application process and/or to avail itself of any appropriate legal appeal of the SMP Renewal denial, the Plaintiff has failed to exhaust administrative remedies which were available and as such precludes further civil action as contained in the Complaint.
15. That the existence or nonexistence of the Landowner's Consent Form (Supplemental C) of the Defendant is irrelevant to the SMP Renewal process since the time limit for making such renewal application has long ago expired. A new SMP Application is required before another or additional SMP is issued by PA DEP and as such the issue before the Court is moot.
16. That for the foregoing reasons, the Plaintiff is collaterally estopped from bringing the cause of action as contained in the Complaint.

WHEREFORE, the Defendant, requests this Honorable Court to dismiss the Complaint of Plaintiff and enter judgment in his favor.

**NEW MATTER**

**II. Illegality - Fraud.**

17. The Defendant incorporates by reference the responses to Paragraphs 1-10 as if set forth at length.
18. That the Defendant believes that either the Plaintiff, his representatives, or agents, caused the execution of the said document by persons other than the Defendant without his knowledge, consent, or approval or that the Plaintiff, his representatives, or agents misrepresented to a Notary Public the identity of an individual other than the Defendant to be the Defendant in order to obtain an acknowledged execution of the said Defendant on the document in question.
19. That the Defendant believes therefore that any action to attempt to establish the validity of the said document as contained in the Complaint is barred because the same is believed to be the product of an illegal or fraudulent transaction or occurrence.

WHEREFORE, the Defendant, requests this Honorable Court to dismiss the Complaint of Plaintiff and enter judgment in his favor.

**COUNTERCLAIM**

Defendant further responds to Plaintiff's claims by way of Counterclaim and states as follows:

20. Defendants incorporate by reference all foregoing averments as if set forth herein at length.

21. It is believed and therefore averred that the Plaintiff conducted mining operations on property of the Defendant without a written Lease Agreement and without permission or consent in any way of the Defendant.
22. It is believed and therefore averred that despite removal of coal tonnage from the property of the Defendant, the Plaintiff paid no royalty, rental, commission or payment of any kind to the Defendant for the coal removed.
23. It is believed and therefore averred that the Plaintiff is indebted to the Defendant in an unliquidated amount together with interest thereon.

WHEREFORE, the Defendant, RONALD D. KITKO, respectfully requests this Honorable Court to enter judgment in favor of Defendant and against the Plaintiff for unliquidated amount of monetary damages together with interests and costs of suit.

For the Defendant:



---

Alan F. Kirk, Esquire

1375 Martin Street, Suite 204  
State College, PA 16801  
Supreme Court I.D. #36893  
Phone: (814) 234.2048

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

FRED KITKO, t/d/b/a KITKO  
COAL COMPANY, : No. 01-418-CD  
Plaintiff :  
v. :  
: Type of Pleading: ANSWER, NEW  
RONALD D. KITKO, and his heirs, : MATTER AND COUNTERCLAIM  
successors, administrators, executors, : OF DEFENDANT, RONALD D.  
and assigns, as well as ANY OTHER : KITKO  
PERSON, PARTY, or ENTITY, :  
Defendant : Filed on Behalf of: Defendant  
: Counsel of Record for this Party:  
: ALAN F. KIRK, ESQUIRE  
: Supreme Court # 36893  
: 1375 Martin Street, Suite 204  
: State College, PA 16803  
: (814) 234.2048

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer, New  
Matter and Counterclaim was served by U.S. Mail, First Class, this 3<sup>rd</sup> day of May  
\_\_\_\_\_, 2001 upon the following:

**David C. Mason, Esquire  
409 North Front Street  
P.O. Box 28  
Philipsburg, PA 16866**

  
\_\_\_\_\_  
Alan F. Kirk, Esquire  
Counsel for Defendant  
1375 Martin Street, Suite 204  
State College, PA 16801  
(814) 234.2048

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

FRED KITKO, t/d/b/a KITKO  
COAL COMPANY,

Plaintiff

v.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY, or ENTITY,

Defendant

: No. 01-418-CD

:  
: Type of Pleading: ANSWER, NEW MATTER  
: AND COUNTERCLAIM OF DEFENDANT, RONALD D. KITKO

: Filed on Behalf of: Defendant

: Counsel of Record for this Party:  
: ALAN F. KIRK, ESQUIRE  
: Supreme Court # 36893

: 1375 Martin Street, Suite 204  
: State College, PA 16803  
: (814) 234.2048

**VERIFICATION**

I verify that the statements made in the foregoing pleading are true and correct. I  
understand that false statements herein are made subject to the penalties of 18  
PA. C.S.A. §4904 relating to unsworn falsification to authorities.

  
Ronald D. Kitko, Defendant

00000000000000000000000000000000

**FILED**

MAY 04 2001

William A. Shaw  
Prothonotary

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

**CIVIL ACTION - LAW**

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY,

\*  
\* No. 01-418-CD  
\*

Plaintiff

\*  
\*  
\* Type of Case: ACTION  
\* TO QUIET TITLE  
\*

vs.  
RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY  
OTHER PERSON, PARTY, or ENTITY,

\*  
\* Type of Pleading: PLAINTIFF'S REPLY  
\* TO NEW MATTER & COUNTERCLAIM  
\*

Defendant

\* Filed on Behalf of: PLAINTIFF

\* Counsel of Record for this Party:

\*  
\* David C. Mason, Esquire  
\* 409 North Front Street  
\* P.O. Box 28  
\* Philipsburg, PA 16866  
\* 814-342-2240  
\* Supreme Court ID NO. 39180

**FILED**

**MAY 22 2001**

**William A. Shaw  
Prothonotary**

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

## CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY,

\*  
\* No.

**Plaintiff**

\* \* \*

vs.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY  
OTHER PERSON, PARTY, or ENTITY,

\* \* \* \* \*

**Defendant**

**PLAINTIFF'S REPLY TO NEW MATTER  
AND ANSWER TO COUNTERCLAIM**

11. No response is necessary.

12. Admitted in part and denied in part. It is admitted that the Plaintiff is Permittee under SMP #17910127. It is further admitted that the Plaintiff did not renew the SMP on or before October 14, 1978. It is specifically denied that the Plaintiff "failed to properly renew the permit as required" because he was prevented from doing so by the Defendant. Plaintiff was engaged in the renewal process when Defendant Ronald D. Kitko wrote to DEP the letter attached to Plaintiff's Complaint as Exhibit "B."

13. Denied. The factual averments in paragraph 13 of Defendant's responsive pleading are denied and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

14. Paragraph 14 of Defendant's responsive pleading contains Conclusions of Law, not averments of fact, therefore, no answer is necessary or required. To the extent an answer is deemed necessary, the factual averments of Paragraph 14 are denied and strict proof thereof is demanded at the time of trial.

15. Paragraph 15 of Defendant's responsive pleading contains Conclusions of Law, not averments of fact, therefore, no answer is necessary or required. To the extent an answer is deemed necessary, the factual averments of Paragraph 15 are denied and strict proof thereof is demanded at the time of trial.

16. Paragraph 16 of Defendant's responsive pleading contains Conclusions of Law, not averments of fact, therefore, no answer is necessary or required. To the extent an answer is deemed necessary, the factual averments of Paragraph 16 are denied and strict proof thereof is demanded at the time of trial.

17. No response is necessary.

18. Denied. It is specifically denied that the Plaintiff, his representatives or agents, executed the Supplemental "C." Strict proof of this averment will be demanded at the time of trial. By way of further answer, Plaintiff incorporates herein by reference Paragraphs 5, 8 and 9 of Plaintiff's Complaint.

19. Paragraph 19 of Defendant's responsive pleading contains Conclusions of Law, not averments of fact, therefore, no answer is necessary or required. To the extent an answer is deemed necessary, the factual averments of Paragraph 19 are denied and strict proof thereof is demanded at the time of trial.

PLAINTIFF'S ANSWER TO

COUNTERCLAIM

20. No answer is required.

21. Admitted in part and denied in part. It is admitted that the Plaintiff conducted mining operations on property in which the Defendant owns a fractional, minority interest. It is denied that these operations were conducted in the absence of a Lease Agreement or without the consent of the Defendant, and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

22. Admitted in part and denied in part. It is admitted that the Plaintiff mined and removed coal from premises in which the Defendant held a fractional, minority interest. It is admitted that the Plaintiff paid no royalty. By way of further answer, it is averred that pursuant to the Agreement between Plaintiff and his brother, the Defendant, the royalty for the coal mined and removed would be deferred until the operation first produced enough coal to recover certain fixed costs, and this was in accord with the oral agreement between Plaintiff and Defendant.

23. Denied. It is denied that the Plaintiff is indebted to the Defendant. For the reasons set forth in the foregoing paragraphs, it was Defendant who first interfered with Plaintiff's attempt to renew the SMP, and Plaintiff does not owe Defendant any royalty, damages, or interest of any kind.

**WHEREFORE**, Plaintiff, Fred Kitko, prays your Honorable Court for the entry of an Order dismissing Defendant's Counterclaim and entering judgment in favor of Plaintiff and against Defendant.

MASON LAW OFFICE

By: David C. Mason

David C. Mason, Attorney for Plaintiff

VERIFICATION

I hereby verify that the statements set forth in the foregoing PLAINTIFF'S REPLY TO NEW MATTER AND COUNTER-CLAIM 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.

DATED: 5-21-01

Fred Kitko  
Fred Kitko

Adm't Court

12-10-02

**FILED**

MAY 22 2001  
6/2/01 (u)  
William A. Shaw  
Prothonotary

2 Client to Army

*[Signature]*

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

CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY,

Plaintiff

vs.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY  
OTHER PERSON, PARTY, or ENTITY,

Defendant

\*  
\* No. 01-418-CD  
\*

\*  
\* Type of Case: ACTION  
\* TO QUIET TITLE  
\*

\*  
\* Type of Pleading: CERTIFICATE  
\* OF SERVICE  
\*

\*  
\* Filed on Behalf of: PLAINTIFF  
\*

\*  
\* Counsel of Record for this Party:  
\*

\*  
\* David C. Mason, Esquire  
\* 409 North Front Street  
\* P.O. Box 28  
\* Philipsburg, PA 16866  
\* 814-342-2240  
\* Supreme Court ID NO. 39180  
\*

\*  
\* Counsel of Record for Defendant:  
\*

\*  
\* Alan F. Kirk, Esquire  
\* 1375 Martin St., Suite 204  
\* State College, PA 16803  
\* (814) 234-2048  
\*

FILED  
MAY 22 2001

William A. Shaw  
Prothonotary

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

CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY, \*  
\* No. 01-418-CD

Plaintiff \*

vs. \*

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY  
OTHER PERSON, PARTY, or ENTITY, \*

Defendant \*

CERTIFICATE OF SERVICE

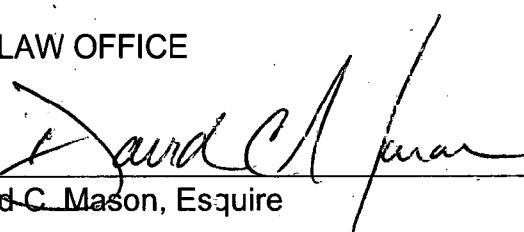
I, DAVID C. MASON, Esquire, do hereby certify that I served a true, certified copy  
of PLAINTIFF'S REPLY TO NEW MATTER AND ANSWER TO COUNTERCLAIM  
filed to the above captioned action, by placing the same in the United States mail, postage  
prepaid and addressed as follows:

Alan F. Kirk, Esquire  
1375 Martin Street, Suite 204  
State College, PA 16803

MASON LAW OFFICE

DATED: May 22, 2001

BY:

  
David C. Mason, Esquire

**FILED**

MAY 22 2001

O/2:301m

William A. Shaw  
Prothonotary

No C/C

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

CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY,

Plaintiffs

vs.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY or ENTITY,

Defendant

\*  
\*  
\* No. 01-418-CD  
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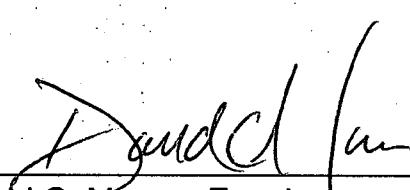
CERTIFICATE OF SERVICE

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 **RONALD D. KITKO**, through his attorney, **ALAN F. KIRK**, Esquire, by depositing said Notice in the United States Mail, postage prepaid and addressed as follows:

Ronald D. Kitko  
% Alan F. Kirk, Esquire  
1375 Martin Street, Suite 204  
State College, PA 16803

DATED:

8/10/01

  
\_\_\_\_\_  
David C. Mason, Esquire,  
Attorney for Plaintiffs

**FILED**

AUG 13 2001

William A. Shaw  
Prothonotary

FILED

14  
cc

10261  
AUG 13 2001

William A. Shaw  
Prothonotary

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

## CIVIL ACTION - LAW

**FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY.**

No. 01-418-CD

**Plaintiff**

vs.

**RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY  
OTHER PERSON, PARTY, or ENTITY,**

Type of Pleading: PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

**Defendant**

Filed on Behalf of: PLAINTIFF

**Counsel of Record for this Party:**

David C. Mason, Esquire  
409 North Front Street  
P.O. Box 28  
Philipsburg, PA 16866  
814-342-2240  
Supreme Court ID NO. 33

Counsel for Defendant:

Alan F. Kirk, Esquire  
Attorney at Law  
1375 Martin Street, Suite 204  
State College, PA 16803  
814-234-2048  
Supreme Court ID NO. 36893

**FILED**

APR 05 2002

William A. Shaw  
Prothonotary

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

CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY, \*  
\* No. 01-418-CD

Plaintiff \*

vs. \*

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY  
OTHER PERSON, PARTY, or ENTITY, \*

Defendant \*

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

AND NOW, comes the Plaintiff, FRED KITKO, by and through his counsel, DAVID C. MASON, Esquire, and files the following MOTION FOR PARTIAL SUMMARY JUDGMENT, and in support thereof avers as follows:

1. Plaintiff filed a Complaint against the Defendant pursuant to Pa. R. C. P. No. 1061(b)(2) to determine the validity of a document affecting the Plaintiff's interest in certain lands, identified and described in Paragraph 3 of Plaintiff's Complaint.
2. Plaintiff's Complaint alleges that the Defendant executed and delivered a Land Owner's Consent Form (Supplemental "C") in conjunction with an application for a mining permit, a copy of which is attached to the Plaintiff's Complaint as Exhibit "A".
3. The Land Owner's Consent Form (Supplemental "C") attached to Plaintiff's Complaint contains an acknowledgment by a Notary Public, Gerald Randy Albert, that the

signatories to the document, including the Defendant, personally appeared before him on April 12, 1989, executed the document and desired that it be recorded.

4. The Land Owner's Consent Form (Supplemental "C") was entered of record on April 13, 1989, in the Office of the Recorder of Deeds, Clearfield County, PA, on April 13, 1989, in DBV 1276 at page 515.

5. The Plaintiff Fred Kitko signed a verification to the Complaint stating that the Defendant signed the Land Owner's Consent Form (Supplemental "C").

6. The other signatory to the Land Owner's Consent Form (Supplemental "C") is Victoria Kitko, mother of the parties, who is now deceased. Pursuant to the deposition testimony of the Defendant, the one-third undivided interest of the mother, Victoria Kitko, was willed to the Plaintiff, Fred Kitko.

7. The notary public, Gerald Randy Albert, who acknowledged the parties' signatures, has executed an Affidavit in support of this Motion for Summary Judgment, a copy of which is attached hereto as Exhibit "A".

8. The Defendant, Ron Kitko, was deposed by the Plaintiff's counsel, and offered the following information:

a. He became aware of the Plaintiff's mining of property owned by him as early as the summer of 1992, 1993, or 1994. N. T. pp19-20. He saw the mining, the signs, and spoke to an operator of equipment. *Ibid.*

b. The Defendant spoke to the Plaintiff in 1993, or 1994, about the mining, and knew that the Plaintiff was the contractor. N. T. pp.22-24. The mining continued for years, off and on. N. T. p. 25.

c. The Defendant spoke with the Plaintiff several times about the mining of the coal on the property. N. T. p.34, lines 9-21.

d. From the time the Defendant first became aware of the mining of the property, he discussed with the Plaintiff monetary compensation for the mining. N. T. p. 36, line 12, to p41, line 25.

e. The Defendant took coal from this land after the cut was opened and the coal exposed. N. T. p. 42, line 14 to p. 44, line 12.

f. The Defendant does not contend that the Plaintiff forged his name to the Land Owner's Consent Form (Supplemental "C"). In fact, he does not identify any party who signed the document. N. T. p. 46, lines 6-24.

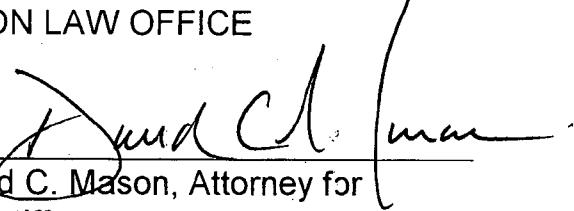
g. The Defendant admitted to signing a paper presented by his brother and another gentleman, for the purpose of entering onto his property for the purpose of prospecting the land, to see if it could be permitted. N. T. p 52, to p. 54 line 10. Also, p.68 line 11, to p. 70, line 3.

h. The Defendant admitted to signing a paper authorizing his brother and his engineers to enter upon the property for the purpose of seeing if this property could be permitted. N.T. p 71, line 25 to p. 72 line 18.

9. There are no genuine issues of material fact which remain that would warrant the scheduling of a trial in the matter, and the Plaintiff is entitled to a judgment, as a matter of law, in his favor that the signatures on the Land Owner's Consent Form (Supplemental "C"), attached as Exhibit "A" to Plaintiff's Complaint are genuine, properly acknowledged, and that the authority granted under the Land Owner's Consent Form (Supplemental "C") to the Department of Environmental Protection is valid.

WHEREFORE, Plaintiff prays Your Honorable Court for the entry of an Order granting to the Plaintiff partial summary judgment in the form attached hereto.

MASON LAW OFFICE

By: 

David C. Mason, Attorney for  
Plaintiff



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

CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY,

\*  
\* No. 01-418-CD  
\*

Plaintiff

\*  
\*  
\*  
\*

vs.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY  
OTHER PERSON, PARTY, or ENTITY,

\* Type of Pleading: Affidavit in Support of  
\* Plaintiff's Motion for Summary  
\* Judgment

Defendant

\*

Filed on Behalf of: PLAINTIFF

\*

Counsel of Record for this Party:

\*

David C. Mason, Esquire

\*

409 North Front Street

\*

P.O. Box 28

\*

Philipsburg, PA 16866

\*

814-342-2240

\*

Supreme Court ID NO. 39180

\*

Counsel for Defendant:

\*

Alan F. Kirk, Esquire

\*

Attorney at Law

\*

1375 Martin Street, Suite 204

\*

State College, PA 16803

\*

814-234-2048

\*

Supreme Court ID NO. 36893

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

CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY,

\*  
\* No. 01-418-CD  
\*  
\*

Plaintiff

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RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY  
OTHER PERSON, PARTY, or ENTITY,

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Defendant

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AFFIDAVIT IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

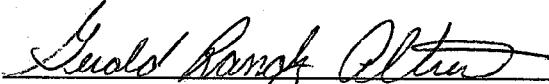
Before me, personally appeared **GERALD RANDY ALBERT**, currently of RD 1 Morrisdale, Pennsylvania, 16858, who being duly sworn according to law deposes and states as follows:

1. Deponent is **GERALD RANDY ALBERT**, an adult individual who resides in Clearfield County, and who, by virtue of a commission granted by the Commonwealth of Pennsylvania, was a notary public in and for County of Clearfield, Township of Lawrence.
2. That as such notary public **GERALD RANDY ALBERT** was called upon to take the acknowledgment of certain parties to a Landowner's Consent Form (Supplemental C) dated April 1989. A true and correct copy of the Supplemental C dated April 1989 is attached hereto as Exhibit "A".
3. That the Deponent, **GERALD RANDY ALBERT** did witness the signing of the Supplemental C by the parties named thereon, to wit: **VICTORIA KITKO**, **FRED KITKO**, and **RON KITKO**. That each of the aforesigned individuals personally signed the Contractual Consent of Landowner in the presence of the Deponent, **GERALD RANDY ALBERT**.
4. That the Deponent, **GERALD RANDY ALBERT** did acknowledge the signatures of **VICTORIA KITKO**, **FRED KITKO**, and **RON KITKO**, and in accordance with the

execution of his duties, did affix his notarial seal and stamp to the Contractual Consent of Landowner. This Contractual Consent of Landowner was subsequently entered of record in the Office of the Recorder of Deeds of Clearfield County in Records Book Volume 1276 at Page 515.

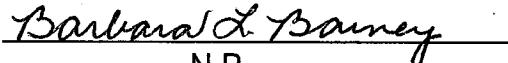
5. That the Deponent, **GERALD RANDY ALBERT**, has a specific recollection of the location of the place where the signatures of **VICTORIA KITKO**, **FRED KITKO**, and **RON KITKO** were obtained. **GERALD RANDY ALBERT** visited **VICTORIA KITKO** at her residence, at which time she affixed her signature to the Contractual Consent of Landowner as well as the map attached thereto. The Deponent, **GERALD RANDY ALBERT** visited with **FRED KITKO** and **RON KITKO** at a barn on premises owned by **RON KITKO**, at which time **RON KITKO**, personally known to the Deponent, did execute the Contractual Consent of Landowner and map attached thereto.

6. Further Deponent saith not.



Gerald Randy Albert

SWORN to and subscribed before me  
this 19th day of July 2001.



Barbara L. Bainey  
N.P.

NOTARIAL SEAL
BARBARA L. BAINY, NOTARY PUBLIC
PHILIPSBURG BORO., CENTRE CO., PA.
MY COMMISSION EXPIRES APRIL 28, 2002

**FILED**

3 CC

01944785

APR 05 2002

4475 Mason

William A. Shaw  
Prothonotary



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

## CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY,

No. 01-418-CD

**Plaintiff**

vs.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY  
OTHER PERSON, PARTY, or ENTITY.

**Defendant**

## NOTICE OF FILING DEPOSITION

## OF RONALD KITKO

Take notice that the transcript of the notes of testimony of a deposition of Ronald Kitko, held on September 21, 2001, have been filed of record.

MASON LAW OFFICE

DATED: 4-5-02

By:

David C. Mason, Esquire

**FILED**

APR 05 2002

William A. Shaw  
Prothonotary

FILED

3cc

01947 Amy Mason

APR 05 2002

6  
RE

William A. Shaw  
Prothonotary

4-2-59

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

FRED KITKO, t/d/b/a KITKO  
COAL COMPANY, : No. 01-418-CD  
Plaintiff :  
v. :  
RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY, or ENTITY, : Type of Pleading: RESPONSE OF  
DEFENDANT TO PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT  
Defendant : Filed on behalf of: Defendant  
: Counsel of Record for this Party:  
ALAN F. KIRK, ESQUIRE  
Supreme Court # 36893  
: 1375 Martin Street, Suite 204  
State College, PA 16803  
(814) 234.2048

**RESPONSE OF DEFENDANT, RONALD D. KITKO TO PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

AND NOW, comes the Defendant, RONALD D. KITKO, by and through his  
counsel, Alan F. Kirk, Esquire, and files the following response to Plaintiff's Motion for  
Partial Summary Judgment:

1. Admitted.
2. Admitted.
3. Denied as stated. The document speaks for itself.
4. Admitted.
5. Admitted.

**FILED**

**MAY 08 2002**

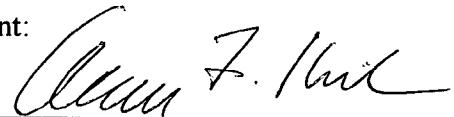
**William A. Shaw  
Prothonotary**

6. Admitted.
7. Admitted.
8. While it is admitted that the Defendant was deposed by Plaintiff's counsel, the Defendant also offered the following testimony:
  - A. Ronald Kitko denied signing the document in question (N.T. p. 46)
  - B. Ronald Kitko spoke with Gerald Albert who told him that he did not remember Ronald Kitko signing the document in question and further stated that Gerald Albert had lost his notary records (N.T. pp. 46-47).
  - C. Ronald Kitko denies ever personally appearing before Gerald Albert to sign anything (N.T. p. 51).
  - D. Ronald Kitko only recalls signing a paper to allow engineers to enter on to the property to determine whether the property could be permitted for mining (N.T. p.52).
  - E. Ronald Kitko believes that what he signed was merely a single piece of paper (N.T. p. 53).
  - F. The record is clear that the document that is offered contained two signatures by the Defendant, while the Defendant maintains he merely signed a single piece of paper and that it was not the piece of paper which is offered as the contract or consent of land owner.
9. Denied. Clearly there are genuine issues of material fact which would

warrant trial in this matter and the Plaintiff therefore is not entitled to  
Judgment as a matter of law.

**WHEREFORE**, the Defendant requests that this Honorable Court deny Plaintiff's  
Motion for Partial Summary Judgment and grant any other relief deemed appropriate.

For the Defendant:

  
\_\_\_\_\_  
Alan F. Kirk, Esquire

1375 Martin Street, Suite 204  
State College, PA 16801  
Supreme Court I.D. #36893  
Phone: (814) 234.2048

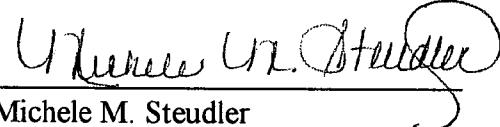
IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

FRED KITKO, t/d/b/a KITKO  
COAL COMPANY, : No. 01-418-CD  
Plaintiff :  
v.  
RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY, or ENTITY, : Type of Pleading: RESPONSE OF  
Defendant : DEFENDANT TO PLAINTIFF'S  
: MOTION FOR PARTIAL SUMMARY  
: JUDGMENT  
: Filed on behalf of: Defendant  
Defendant : Counsel of Record for this Party:  
: ALAN F. KIRK, ESQUIRE  
: Supreme Court # 36893  
: 1375 Martin Street, Suite 204  
: State College, PA 16803  
: (814) 234.2048

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Response of Defendant,  
Ronald D. Kitko to Plaintiff's Motion for Partial Summary Judgment was served by U.S. Mail,  
First Class, this 1<sup>st</sup> day of July, 2002 upon the following:

**David C. Mason, Esquire**  
**409 North Front Street**  
**P.O. Box 28**  
**Philipsburg, PA 16866**



Michele M. Steudler  
Assistant to Alan F. Kirk  
Counsel for Defendant  
1375 Martin Street, Suite 204  
State College, PA 16801  
(814) 234.2048

**FILED**

MAY 08 2002

111541-2ccatty kirk  
William A. Shaw  
Prothonotary  
C  
Clerk

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY

-vs-

No. 01 - 418 - CD

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY, OR ENTITY

O R D E R

NOW, this 20<sup>th</sup> day of June, 2002, this being the day and date set for argument into Plaintiff's Motion for Partial Summary Judgment, the issue being the validity of Defendant Ronald D. Kitko's signature on the Supplemental C attachment to Plaintiff's Application for Mining Permit, upon agreement of the parties, it is the ORDER of this Court that a hand writing analyst acceptable to both parties shall be hired to examine the signature on the Supplemental C and such other materials as he or she may require to provide an opinion as to whether the signature on said Supplemental C is that of Defendant Ronald D. Kitko. Upon receipt of the report and opinion, further proceedings shall be scheduled. If it is determined that the signature is that of Ronald D. Kitko, the analyst's costs and expenses shall be paid by said Defendant. If it is determined that the signature is not that of Ronald D. Kitko, the costs and expenses shall be borne by Plaintiff.

By the Court,  
President Judge

**FILED**

JUN 21 2002

Office of the Clerk  
William A. Shaw  
Prothonotary

Keathy Kuk

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

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY,

Plaintiff

vs.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY, or ENTITY

Defendant

No. 01-418-CD

\*  
\* Type of Pleading: MOTION FOR FINAL  
\* ORDER REGARDING PLAINTIFF'S  
\* MOTION FOR PARTIAL SUMMARY  
\* JUDGMENT

\* Filed on Behalf of: PLAINTIFF

\* Counsel of Record for this Party:

\* David C. Mason, Esquire  
\* 409 North Front Street  
\* P.O. Box 28  
\* Philipsburg, PA 16866  
\* 814-342-2240  
\* Supreme Court ID NO. 39180

\* Counsel for Defendant:

\* Alan F. Kirk, Esquire  
\* Attorney at Law  
\* 1375 Martin Street, Suite 204  
\* State College, PA 16803  
\* 814-234-2048  
\* Supreme Court ID NO. 36893

FILED

NOV 05 2002

William A. Shaw  
Prothonotary

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

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY,

Plaintiff

\*  
\*  
\*  
\*  
No. 01-418-CD

vs.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY or ENTITY,

Defendant

\*

**MOTION FOR FINAL ORDER REGARDING  
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

AND NOW, comes the Plaintiff Fred Kitko, by and through his Attorney, David C. Mason, who files the following Motion for Final Order with regard to the Plaintiff's Motion for Partial Summary Judgment, and in support thereof avers as follows:

1. Plaintiff filed a Motion for Partial Summary Judgment on April 5, 2002, alleging that the signature on a certain document attached to Plaintiff's Complaint was the valid, genuine signature of Defendant, Ronald D. Kitko.
2. On the day and date set for argument into Plaintiff's Motion for Partial Summary Judgment, the Court issued an Order, dated June 20, 2002, upon agreement of the parties that they would select a handwriting analyst to perform the document examination. A copy of said Order is attached hereto as Exhibit A.
3. Plaintiff's counsel wrote to defense counsel on July 10, 2002, providing a curriculum vitae from John S. Gencavage which was received by Plaintiff's counsel on July 9, 2002. This letter also requests payment of one-half (1/2) of the advance costs, in accordance with the Court's June 20, 2002, Order. A copy of said letter is attached hereto

as Exhibit B.

4. On August 23, 2002, Plaintiff's counsel wrote again to defense counsel requesting compliance with the Court's Order. A copy of said letter is attached hereto as Exhibit C.

5. Defense counsel's reply of August 26, 2002, promised action on the part of the Defendant, but as of yet, no additional information is forthcoming. A copy of said letter is attached hereto as Exhibit D.

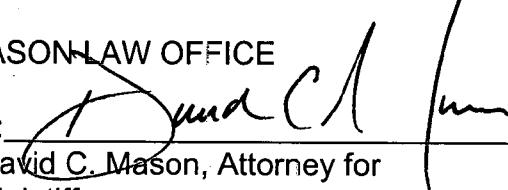
6. Defense counsel has neglected, failed and/or refused to abide by the terms of the June 20, 2002, Order of Court.

7. Plaintiff's Complaint was filed March 26, 2001. Plaintiff's Motion for Partial Summary Judgment with attached Affidavit and Deposition was filed on April 5, 2002. A period of six (6) months has passed since the Motion for Partial Summary Judgment has been pending before the Court. The next trial list closes December 13, 2002.

8. Plaintiff believes and therefore avers that Defendant is intentionally delaying the prosecution of this action by refusing to adhere to the Court's suggested means of resolving the signature issue.

**WHEREFORE**, Plaintiff prays your Honorable Court for the entry of an Order granting Plaintiff Partial Summary Judgment in accordance with the prayer for relief contained in Plaintiff's Motion for Partial Summary Judgment.

MASON LAW OFFICE

By: 

David C. Mason, Attorney for Plaintiff



Recorder No. 5105  
JULIUS BLUMBERG, INC.  
NYC 10013  
© 10% P.C.W.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD

COUNTY, PENNSYLVANIA

CIVIL ACTION

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY

-vs-

No. 01-418-CD

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY, OR ENTITY

LAW OFFICES OF  
DAVID C. MASON

JUN 24 2002

O R D E R

NOW, this 20<sup>th</sup> day of June, 2002, this being the day and date set for argument into Plaintiff's Motion for Partial Summary Judgment, the issue being the validity of Defendant Ronald D. Kitko's signature on the Supplemental C attachment to Plaintiff's Application for Mining Permit, upon agreement of the parties, it is the ORDER of this Court that a handwriting analyst acceptable to both parties shall be hired to examine the signature on the Supplemental C and such other materials as he or she may require to provide an opinion as to whether the signature on said Supplemental C is that of Defendant Ronald D. Kitko. Upon receipt of the report and opinion, further proceedings shall be scheduled. If it is determined that the signature is that of Ronald D. Kitko, the analyst's costs and expenses shall be paid by said Defendant. If it is determined that the signature is not that of Ronald D. Kitko, the costs and expenses shall be borne by Plaintiff.

By the Court.

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

/s/ JOHN K. REILLY, JR.

JUN 21 2002

President Judge

Attest.

*John K. Reilly*  
Prothonotary/  
Clerk of Courts



DAVID C. MASON

Attorney at Law

409 NORTH FRONT STREET  
P.O. Box 28  
PHILIPSBURG, PENNSYLVANIA 16866  
(814) 342-2240  
FAX (814) 342-5318

July 10, 2002

Alan F. Kirk, Esquire  
1375 Martin Street  
Suite 204  
State College, PA 16803

In RE: Fred Kitko i/t/d/b/a Kitko Coal Company

v.

Ronald D. Kitko  
No. 01-418-CD

Dear Mr. Kirk:

I am pleased to enclose herewith a letter and curriculum vitae from John S. Gencavage which I received on July 9, 2002. If the fax copy is difficult to read, perhaps the hard copy which (hopefully) will follow will be easier.

It looks like we will need to front \$500.00 for the examination. I would propose that your client pay half and my client pay half, and we settle up once Mr. Gencavage has issued a report.

Would you please consider this and let me know.

Very truly yours,

MASON LAW OFFICE

  
David C. Mason

DCM/kb

cc: Kitko Coal Company



DAVID C. MASON

*Attorney at Law*

409 NORTH FRONT STREET  
P.O. Box 28  
PHILIPSBURG, PENNSYLVANIA 16866  
(814) 342-2240  
FAX (814) 342-5318

August 23, 2002

Alan F. Kirk, Esquire  
1375 Martin Street  
Suite 204  
State College, PA 16803

In RE: Fred Kitko i/t/d/b/a Kitko Coal Company

v.

Ronald D. Kitko  
No. 01-418-CD

Dear Alan:

I previously provided to you a curriculum vitae from John S. Gencavage. Since I haven't heard anything from you with regard to this case since July 10, 2002, I guess that means that you are willing to agree to use Mr. Gencavage as the Court ordered expert, in accordance with the June 20, 2002, Order. I am prepared to forward to Mr. Gencavage my check in the amount of \$250.00, representing one-half (½) of his up front fee. Would you please do the same.

Thank you.

Very truly yours,

MASON LAW OFFICE



David C. Mason

DCM/kb

cc: Kitko Coal Company

P.S. Any truth to the rumor that your client is conceding the validity of the signature?



**ALAN F. KIRK**  
**Attorney-At-Law**  
**1375 Martin Street, Suite 204**  
**State College, PA 16803**

---

**(814) 234-2048**  
**Fax (814) 234-4166**

**August 26, 2002**

**VIA FAX #814.342.5318**

**David C. Mason, Esquire**  
**409 North Front Street**  
**P.O. Box 28**  
**Phillipsburg, PA 16866**

**Re: Fred Kitko t/d/b/a Kitko Coal Company v. Ronald D. Kitko, his heirs,  
successors, administrators, executors, and assigns, as well as any other person,  
party or entity**

**Dear Dave:**

I am in receipt of your letter dated August 23, 2002. Upon receipt of your July 10, 2002 letter, I sent the curriculum vitae of John S. Gencavage to my client for his review along with another expert that was recommended to our office by the Pennsylvania State Police Department. I will contact you once we have made our decision.

**If you have any questions, please contact me.**

**Sincerely,**

*Alan F. Kirk /MMS*

**Alan F. Kirk**

**AFK/mms**  
**xc: Ronald Kitko**

FILED

3cc

Oct 3 2002

Atty Mason

CA

William A. Shaw  
Prothonotary

*WAS*

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

## CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY Plaintiff

No. 01-418-CD

VS

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY or ENTITY

Defendant

## TYPE OF PLEADING: Praeclipe to Settle and Discontinue

FILED ON BEHALF OF:  
Plaintiff

COUNSEL OF RECORD FOR  
THIS PARTY:  
David C. Mason, Esquire  
I.D. No. 39180  
MASON LAW OFFICE  
P.O. Box 28  
Philipsburg, PA 16866  
814 342-2240

COUNSEL FOR DEFENDANT:  
Alan F. Kirk, Esquire  
Attorney at Law  
1375 Martin Street, Suite 204  
State College, PA 16803  
(814) 234-2048  
Supreme Court ID No. 36893

FILED

FEB 12 2007

100-100

William A. Shaw  
Prothonotary/Clerk of Courts

2 CENTS TO ADD.

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

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY Plaintiff \*

No. 01-418-CD

vs. \*

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY or ENTITY \*

Defendant \*

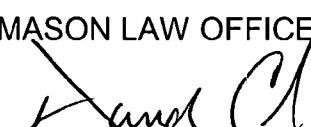
**PRAECIPE TO SETTLE AND DISCONTINUE**

TO THE PROTHONOTARY OF SAID COURT:

Kindly mark the above captioned action settled and discontinued. Thanks very  
much.

DATED: 2/8/07

MASON LAW OFFICE

  
David C. Mason  
Attorney for Plaintiff

William A Shaw  
Photographic Clerk of Courts

FEB 12 2007

FILED

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

## CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY Plaintiff

No. 01-418-CD

vs.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY or ENTITY

**Defendant**

## TYPE OF PLEADING: Certificate of Service

FILED ON BEHALF OF:  
Plaintiff

COUNSEL OF RECORD FOR  
THIS PARTY:  
David C. Mason, Esquire  
I.D. No. 39180  
MASON LAW OFFICE  
P.O. Box 28  
Philipsburg, PA 16866  
814 342-2240

COUNSEL FOR DEFENDANT:  
Alan F. Kirk, Esquire  
Attorney at Law  
1375 Martin Street, Suite 204  
State College, PA 16803  
(814) 234-2048  
Supreme Court ID No. 36893

FILED  
M 3:00 am 1cc AIA, Mason  
FEB 14 2007  
CLERK

William A. Shaw  
Prothonotary/Clerk of Courts

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

CIVIL ACTION - LAW

FRED KITKO, i/a/t/d/b/a KITKO  
COAL COMPANY

Plaintiff

\*  
\* No. 01-418-CD  
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\*  
\*

vs.

RONALD D. KITKO, and his heirs,  
successors, administrators, executors,  
and assigns, as well as ANY OTHER  
PERSON, PARTY or ENTITY

Defendant

\*

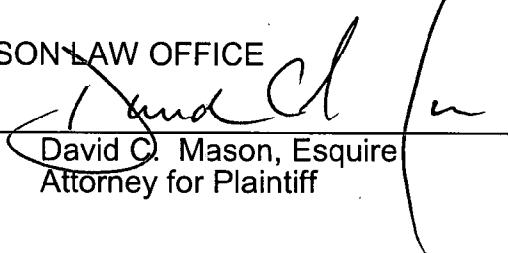
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Praeclipe to Settle and Discontinue was served upon the following by depositing the same in the U.S. Mail, postage prepaid, and addressed as follows:

Alan F. Kirk, Esquire  
1375 Martin Street, Suite 204  
State College, PA 16803

DATED: 2/13/07

MASON LAW OFFICE

By:   
David C. Mason, Esquire  
Attorney for Plaintiff

**FILED**

**FEB 14 2007**

William A. Shaw  
Prothonotary/Clerk of Courts