

01-461-CD
WAMPUM HARDWARE, INC. -vs- DAVID P. ECKLUND et al

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

CIVIL ACTION - LAW

WAMPUM HARDWARE, INC.

Plaintiff

vs.

DAVID P. ECKLUND, i/at/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

*
* No. 2001-461-CD
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* TYPE OF PLEADING: COMPLAINT
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* FILED ON BEHALF OF:
* Plaintiff
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* COUNSEL OF RECORD FOR
* THIS PARTY:
*

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

FILED

APR 03 2001
10:45 AM
William A. Shaw
Prothonotary
3 Chas to Amy

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

CIVIL ACTION - LAW

WAMPUM HARDWARE, INC.

Plaintiff

vs.

DAVID P. ECKLUND, i/at/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

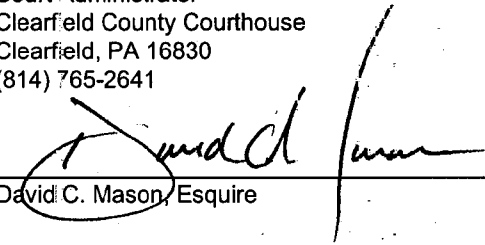
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NOTICE

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, PA.

CIVIL ACTION - LAW

WAMPUM HARDWARE, INC.

Plaintiff

vs.

DAVID P. ECKLUND, i/at/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

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* No.
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COMPLAINT

AND NOW, comes the Plaintiff, **WAMPUM HARDWARE, 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 **WAMPUM HARDWARE, INC.**, is a Pennsylvania business corporation located at Route 322 East, Philipsburg, Centre County, Pennsylvania, 16866.

2. Defendant **DAVID P. ECKLUND**, is President of Ecklund Coal Company, Inc., who resides at R. R. #1, Box 109, Irvona, Pennsylvania, 16656.

3. The Defendant is the proprietor of Ecklund Coal Company, Inc., a Pennsylvania corporation, which has a principal mailing address of R. R. #1, Box 109, Irvona, Pennsylvania, 16656.

4. David P. Ecklund is the owner, President, manager and proprietor of Ecklund Coal Company, Inc., and in such capacity contacted Plaintiff and requested Plaintiff to perform certain services including drilling and blasting on premises located and situate in

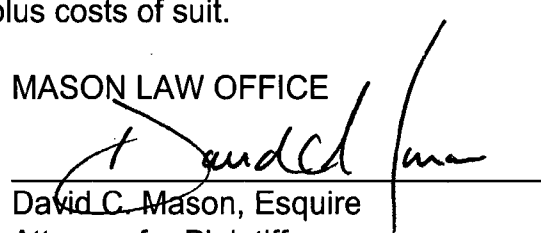
Bigler Township, Clearfield County, Pennsylvania. Plaintiff performed these services for the Defendant.

5. The total amount of said credit account due and owing on March 20, 2001, is \$14,188.22.

6. Despite Plaintiff's repeated requests for payment, Defendant has failed and refused and continues to fail and refuse to make any payment whatsoever on the above referenced services.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against the Defendant, in the amount of \$14,188.22, plus costs of suit.

MASON LAW OFFICE

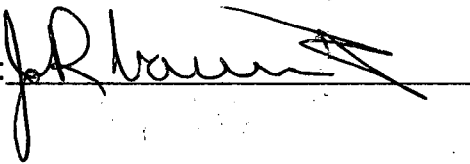


David C. Mason, Esquire
Attorney for Plaintiff

VERIFICATION

I hereby verify that the answers 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.

WAMPUM HARDWARE, INC.

By: _____

DATED:

②

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10848

WAMPUM HARDWARE INC

01-461-CD

VS.

ECKLUND, DAVID P. l/a/t/d/b/a

COMPLAINT

SHERIFF RETURNS

NOW APRIL 5, 2001 AT 10:07 AM DST SERVED THE WITHIN COMPLAINT ON
DAVID P. ECKLUND IND, DEFENDANT AT RESIDENCE, RR # 1, BOX 109,
IRVONA, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DEBBIE
ECKLUND, WIFE, A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT
AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: DAVIS

NOW APRIL 5, 2001 AT 10:07 AM DST SERVED THE WITHIN COMPLAINT ON
DAVID P. ECKLUND T/D/B/A ECKLUND COAL COMPANY INC., DEFENDANT AT
RESIDENCE, RR# 1, BOX 109, IRVONA, CLEARFIELD COUNTY, PENNSYLVANIA,
BY HANDING TO DEBBIE ECKLUND, WIFE, A TRUE AND ATTESTED COPY OF
THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS
THEREOF.
SERVED BY: DAVIS

Return Costs

Cost	Description
52.42	SHFF. HAWKINS PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.

FILED

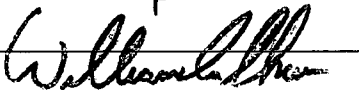
APR 10 2001

01:42 pm.
William A. Shaw
Prothonotary

②

Sworn to Before Me This

10th Day Of April 2001



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

So Answers,


Chester A. Hawkins
Sheriff

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

DAVID P. ECKLUND, i/at/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant

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* **NO. 2001-461-CD**
*
*
* **Type of Case: CIVIL ACTION**
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* **Type of Pleading: ANSWER AND**
* **COUNTERCLAIM**
*
*
* **Filed on behalf of: DEFENDANT**
*
* **ECKLUND COAL COMPANY, INC.**
*
* **Counsel of Record for this Party:**
* **BARBARA J. HUGNEY-SHOPE, ESQUIRE**
*
* Supreme Court I. D. No. 26274
* 23 North Second Street
* Clearfield, PA 16830
* (814) 765-5155

FILED

MAY 07 2001

William A. Shaw
Prothonotary

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

DAVID P. ECKLUND, i/at/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant.

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* **NO. 2001-461-CD**
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*

NOTICE TO DEFEND

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

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

Court Administrator
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

DAVID P. ECKLUND, i/at/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant.

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* **NO. 2001-461-CD**
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ANSWER AND COUNTERCLAIM

AND NOW, comes the Defendant, ECKLUND COAL COMPANY, INC., who by and through its attorney, Barbara J. Hugney-Shope, Esquire, files the following Answer and Counterclaim in this matter and in support thereof avers as follows:

ANSWER

1. Admitted.
2. Admitted.
3. Denied in part. It is denied that David P. Ecklund is the proprietor of Ecklund Coal Company, Inc. On the contrary, Ecklund Coal Company, Inc., is a Pennsylvania corporation not a proprietorship.

4. Denied in part.. It is denied that David Ecklund is the proprietor of Ecklund Coal Company, Inc., or that he contacted Plaintiff to perform certain services including drilling and blasting on premises located and situate in Bigler Township, Clearfield County, Pennsylvania. On the contrary, Ecklund Coal Company, Inc., is a Pennsylvania corporation and it was Plaintiff's representative who repeatedly pursued Ecklund Coal Company, Inc., requesting that it hire Plaintiff to do the drilling and blasting. At the time, Ecklund Coal Company, Inc. was using another blasting company and had used that company for several years without any problem but because of Plaintiff's insistence and representations that it could save Ecklund Coal Company money, it was agreed to hire the Plaintiff to do blasting on the job known as the Ferlitch job. Plaintiff then performed drilling and blasting services; however, Plaintiff failed to perform said drilling and blasting services in a proper and workmanlike manner and as a result, Ecklund Coal Company, Inc., sustained substantial damages which are more fully set forth below.

5. Denied. Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief to the truth of this averment and strict proof thereof is demanded at trial.

6. Denied. Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief to the truth of this averment and strict proof thereof is demanded at trial.

WHEREFORE, Defendant respectfully request that the Plaintiff's Complaint be dismissed with all costs assessed to Plaintiff.

COUNTERCLAIM

COUNT I

FAILURE TO PERFORM DRILLING AND BLASTING IN WORKMANLIKE MANNER

7. Defendant hereby incorporates paragraphs 1 through 6 in its Answer above as though set forth in full.

8. An implied term of the contract between the parties for drilling and blasting work was that Plaintiff would perform the blasting in a workmanlike manner.

9. Plaintiff failed to perform the blasting in a workmanlike manner on March 26, 1999, resulting in Ecklund Coal Company, Inc., being found in violation of Section 87.127(n) of the Rules and Regulations, 25 PA Code ss 87.127(n) for exceeding the maximum peak particle velocity of one inch per second during the firing of two (2) shots.

10. As a result of the failure of Plaintiff to perform this blasting in a workmanlike manner and in violation of the Rules and Regulations of the Pennsylvania

Department of Environmental Protection, Ecklund Coal Company, Inc., was required to cease all blasting on this site until its blasting plan could be revised.

11. At the hearing on the violation, Ecklund Coal Company, Inc. was assessed a fine of \$1700 as a result of Plaintiff's failure to perform the drilling and blasting in a workmanlike manner and according to law.

12. After being required to revise its last plan on a stricter standard that resulted in additional costs to it, Ecklund Coal Company, Inc. received permission from the Pennsylvania Department of Environmental Protection to continue its mining operations at the Ferlitch job.

13. On July 7, 1999, Plaintiff again did drilling and blasting for Ecklund Coal Company, Inc. on the Ferlitch job resulting in an excessive dust violation being filed against Ecklund Coal Company, Inc.

14. Defendant, Ecklund Coal Company, Inc., believes and avers that it was Plaintiff's failure to perform its work in a workmanlike manner that resulted in Defendant, Ecklund Coal Company, Inc., being cited by the PA Department of Environmental Protection for fugitive dust and receiving a fine.

15. In addition to Defendant Ecklund Coal Company, Inc., receiving two (2) citations due to Plaintiff's failure to perform the drilling and blasting in a workmanlike manner, Defendant Ecklund Coal Company, Inc., also incurred considerable expense in attempting to satisfy residents who lived near the mining site due to the fugitive dust caused by Plaintiff's blasting.

16. Because of these two (2) citations, Defendant, Ecklund Coal Company, Inc., found it impossible to continue its operation at the Ferlitch job using normal strip mining methods.

17. Defendant, Ecklund Coal Company, Inc., then attempted to mitigate its damages caused by Plaintiff's failure to perform its drilling and blasting in a workmanlike manner using the auger method to remove coal; however, this method was not economically feasible.

18. As a result of the Plaintiff's failure to perform in a workmanlike manner and its violation of law, Defendant Ecklund Coal Company, Inc., has been required to cease all operations in the area at an estimated loss of Two Million (\$2,000,000) Dollars.

WHEREFORE, Defendant requests that judgment be entered against the Plaintiff in favor of the Defendant, Ecklund Coal Company, Inc., in excess of the jurisdiction of the Board of Arbitrators, together with costs of suit.

COUNT II - BREACH OF IMPLIED WARRANTY OF
FITNESS FOR INTENDED USE

19. Defendant hereby incorporates paragraphs 7 through 15 of the Counterclaim above as though set forth in full.

20. In contracting with the Defendant, Ecklund Coal Company, Inc., for drilling and blasting, Plaintiff held itself out to Ecklund Coal Company, Inc., as competent to undertake and perform the drilling and blasting in accordance with accepted standards of the industry.

21. Defendant, Ecklund Coal Company, Inc., relied upon Plaintiff's representation of its expertise in performing the drilling and blasting.

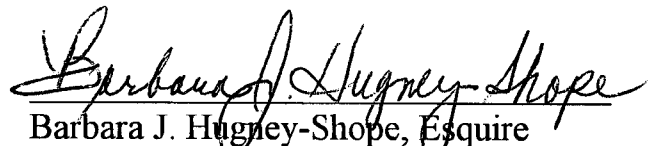
22. Plaintiff in failing to perform in a workmanlike manner did breach an implied warranty that the drilling and blasting it performed would be within accepted standards and according to law.

23. In drilling the second time, Plaintiff failed to consider the contour of the rock plate and failed to drill through the rock so as to properly blast the rock plate which was the reason for the blasting in the first place.

24. As a direct and proximate result of the failure of the Defendant to perform in accordance with the terms of the contract, Defendant Ecklund Coal, suffered damages in excess of \$100,000.00.

WHEREFORE, Defendant requests that judgment be entered against the Plaintiff in favor of the Defendant, Ecklund Coal Company, Inc., in excess of the jurisdiction of the Board of arbitrators, together with costs of suit.

Respectfully submitted,


Barbara J. Hugney-Shope, Esquire
Attorney for Defendant

VERIFICATION

I, David P. Ecklund, President of Ecklund Coal Company, Inc., and being duly authorized as such President verify that the statements made in the foregoing Answer and Counterclaim 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 Pa. C.S. Section 4904 relating to unsworn falsifications to authorities.

ECKLUND COAL COMPANY, INC.

By: 
David P. Ecklund, President

Dated: May 3, 2001

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

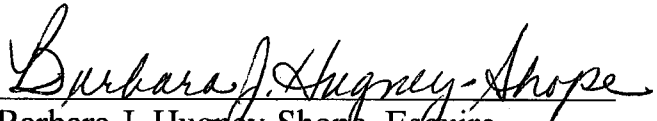
DAVID P. ECKLUND, i/at/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant.

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* **NO. 2001-461-CD**
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CERTIFICATE OF SERVICE

AND NOW, this 7th day of May, 2001, I, Barbara J. Hugney-Shope, Esquire, do hereby certify that I served a certified copy of the **ANSWER AND COUNTERCLAIM** on David C. Mason, Esquire, Attorney for the Plaintiff in the above-captioned matter, by depositing the same with the United States Postal Service, postage prepaid, on the 7th day of May 2001, and addressed as follows:

David C. Mason, Esquire
Attorney for the Plaintiff
409 North Front Street
P. O. Box 28
Philipsburg, PA 16866


Barbara J. Hugney-Shope, Esquire
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
NO. 2001-461-CD

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

DAVID P. ECKLUND, t/ac/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant.

ANSWER AND COUNTERCLAIM

FILED

MAY 07 2001

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William A. Shaw
Prothonotary
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BARBARA J. HUGNEY-SHOPE
Attorney-at-Law
23 N. Second Street
Clearfield, PA 16830
(814) 765-5155
FAX (814) 765-2957

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

DAVID P. ECKLUND, i/at/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant

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* **NO. 2001-461-CD**
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* **Type of Case: CIVIL ACTION**
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* **Type of Pleading: PRELIMINARY**
* **OBJECTION OF DEFENDANT, DAVID P.**
* **ECKLUND, INDIVIDUALLY, TO**
* **COMPLAINT**
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* **Filed on behalf of: DEFENDANT**
* **DAVID P. ECKLUND**
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* **Counsel of Record for this Party:**
* **BARBARA J. HUGNEY-SHOPE, ESQUIRE**
*
* Supreme Court I. D. No. 26274
* 23 North Second Street
* Clearfield, PA 16830
* (814) 765-5155

FILED

MAY 07 2001

William A. Shaw
Prothonotary

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

DAVID P.ECKLUND, i/at/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant

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* NO. 2001-461-CD
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**PRELIMINARY OBJECTION OF DEFENDANT,
DAVID P. ECKLUND, INDIVIDUALLY, TO COMPLAINT**

AND NOW, comes Defendant, DAVID P. ECKLUND, individually, who by and through his attorney, Barbara J. Hugney-Shope, Esquire, files the following Preliminary Objection to Complaint of Wampum Hardware, Inc.

1. In its Complaint, Wampum Hardware, Inc., asserts a claim for an alleged claim due it not only from Ecklund Coal Company, Inc. but also individually from the President of Ecklund Coal Company, Inc., David P. Ecklund.

**I. PRELIMINARY OBJECTION IN THE NATURE OF A
DEMURRER TO THE CLAIM AGAINST DEFENDANT,
DAVID P. ECKLUND, INDIVIDUALLY**

2. Pennsylvania statutory law provides that the holder or owner of shares of a business corporation shall not be under any liability to the corporation or any creditor thereof with respect to the shares.

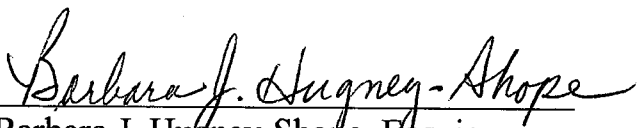
3. The Plaintiff's complaint asserts that the Defendant, David P. Ecklund, was acting on behalf of the Defendant corporation, Ecklund Coal Company, Inc., when hiring the Plaintiff to perform drilling and blasting services.

4. The Plaintiff's complaint fails to state facts constituting a cause of action against Defendant, David P. Ecklund, individually.

5. The claim of Plaintiff against Defendant, David P. Ecklund, individually, should be dismissed because the facts pleaded are clearly insufficient to establish that Defendant, David P. Ecklund, was acting in any capacity other than on behalf of the Defendant corporation.

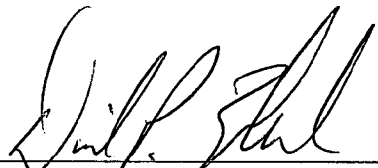
WHEREFORE, Defendant, David P. Ecklund, respectfully requests that this Court grant his Preliminary Objection and issue an order dismissing the Complaint of Wampum Hardware, Inc. as to this Defendant.

Respectfully submitted,


Barbara J. Hugney-Shope, Esquire
Attorney for Defendant

VERIFICATION

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



David P. Ecklund

Dated: May 7, 2001

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

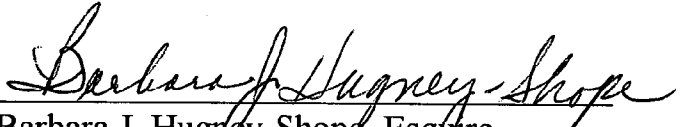
DAVID P. ECKLUND, i/at/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant.

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* NO. 2001-461-CD
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CERTIFICATE OF SERVICE

AND NOW, this 7th day of May, 2001, I, Barbara J. Hugney-Shope, Esquire, do hereby certify that I served a certified copy of the **PRELIMINARY OBJECTIONS** on David C. Mason, Esquire, Attorney for the Plaintiff in the above-captioned matter, by depositing the same with the United States Postal Service, postage prepaid, on the 7th day of May 2001, and addressed as follows:

David C. Mason, Esquire
Attorney for the Plaintiff
409 North Front Street
P. O. Box 28
Philipsburg, PA 16866


Barbara J. Hugney-Shope, Esquire
Attorney for Defendant

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

NO. 2001-461-CD

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

DAVID P. ECKLUND, f/at/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant.

PRELIMINARY OBJECTION OF
DEFENDANT, DAVID P. ECKLUND,
INDIVIDUALLY TO COMPLAINT

FILED

MAY 07 2001
01/11/01
William A. Shaw
Prothonotary



BARBARA J. HUGNEY-SHOPE
Attorney-at-Law
23 N. Second Street
Clearfield, PA 16830
(814) 765-5155
FAX (814) 765-2957

BARBARA J. HUGNEY-SHOPE
Attorney-at-Law
23 N. Second Street
Clearfield, PA 16830

(4)

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

CIVIL ACTION - LAW

WAMPUM HARDWARE, INC.

Plaintiff

vs.

DAVID P. ECKLUND, i/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

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* No. 2001-461-CD
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* TYPE OF PLEADING: **ANSWER TO
COUNTER-CLAIM**
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* FILED ON BEHALF OF:
* Plaintiff
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* 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

JUN 01 2001

William A. Shaw
Prothonotary

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

CIVIL ACTION - LAW

WAMPUM HARDWARE, INC.

Plaintiff

vs.

DAVID P. ECKLUND, i/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

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* No. 2001-461-CD
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PLAINTIFF'S REPLY TO
DEFENDANT'S COUNTER-CLAIM

AND NOW, comes the Plaintiff, **WAMPUM HARDWARE, INC.**, by and through its attorney, **DAVID C. MASON, ESQUIRE** and makes the following Reply to Defendant's Counter-Claim, and in support thereof avers as follows:

7. No response is necessary.

8. **Denied.** It is denied that the contract in question contained an implied covenant that the work would be completed in a workmanlike manner. To the contrary, Plaintiff performed its blasting in the locations and in the manner directed by the Defendant. For the purposes of alternative pleading, if it is determined that the contract did contain an implied covenant of performance of the blasting work in a workmanlike manner, then Plaintiff denies that it violated that covenant or term, and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

9. **Denied.** The allegation that Plaintiff failed to perform the blasting in a workmanlike manner on March 26, 1999, is denied and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial. By way of further answer, Plaintiff incorporates herein as if set forth at length Paragraph 8 of the Plaintiff's Answer, *supra*.

10. **Denied.** It is specifically denied that the Plaintiff violated any of the Rules and Regulations of the Pennsylvania Department of Environmental Protection, and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial. By way of further answer, Plaintiff incorporates herein as if set forth at length Paragraph 8 of the Plaintiff's Answer, *supra*. Defendant's allegation that it was required to cease blasting until Defendant's blasting plan could be revised is denied since, after reasonable investigation, the Plaintiff is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

11. **Denied.** Defendant's allegation that it was fined by the Department of Environmental Protection is denied since, after reasonable investigation, the Plaintiff is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

12. **Denied.** Defendant's allegations contained in Paragraph 12 of Defendant's Counter-claim are denied since, after reasonable investigation, the Plaintiff is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

13. **Admitted in part and denied in part.** It is admitted that on or about July 7, 1999, Plaintiff performed work for the Defendant at the specific request and direction of the

Defendant. Defendant's allegation that it was cited by the Department of Environmental Protection is denied since, after reasonable investigation, the Plaintiff is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

14. **Denied.** Defendant's allegations contained in Paragraph 14 of Defendant's Counter-claim are denied since, after reasonable investigation, the Plaintiff is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial. By way of further answer, Plaintiff incorporates herein as if set forth at length Paragraph 8 of the Plaintiff's Answer, *supra*.

15. **Denied.** Defendant's allegations contained in Paragraph 15 of Defendant's Counter-claim are denied since, after reasonable investigation, the Plaintiff is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

16. **Denied.** Defendant's allegations contained in Paragraph 16 of Defendant's Counter-claim are denied since, after reasonable investigation, the Plaintiff is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

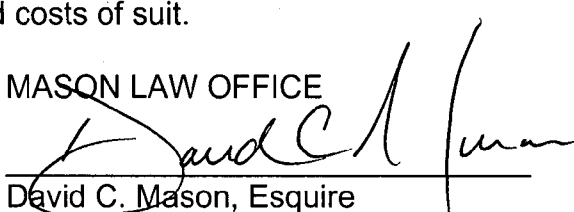
17. **Denied.** Defendant's allegations contained in Paragraph 17 of Defendant's Counter-claim are denied since, after reasonable investigation, the Plaintiff is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial. By way of further answer, Plaintiff incorporates herein as if set forth at length Paragraph 8 of the

Plaintiff's Answer, *supra*.

18. **Denied.** Defendant's allegations contained in Paragraph 18 of Defendant's Counter-claim are denied since, after reasonable investigation, the Plaintiff is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial. By way of further answer, Plaintiff incorporates herein as if set forth at length Paragraph 8 of the Plaintiff's Answer, *supra*.

WHEREFORE, Plaintiff demands that the Counter-claim filed by Defendant be dismissed and judgment be entered in its favor and against the Defendant, in the amount of prayed for in the Complaint, plus interest and costs of suit.

MASON LAW OFFICE


David C. Mason, Esquire
Attorney for Plaintiff

VERIFICATION

I hereby verify that the answers set forth in the foregoing ANSWER TO 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.

WAMPUM HARDWARE, INC.

By: James H. Bock

DATED: 5-30-01

FILED

JUN 01 2001

Of 11:54 AM

William A. Shaw
Prothonotary

WAS

9

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

CIVIL ACTION - LAW

WAMPUM HARDWARE, INC.

Plaintiff

vs.

DAVID P. ECKLUND, i/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

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* No. 2001-461-CD
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CERTIFICATE OF SERVICE

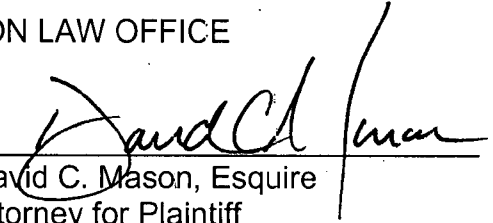
I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of ANSWER TO COUNTER-CLAIM filed to the above captioned action by placing the same in the United States mail, postage prepaid and addressed as follows:

Barbara J. Hugney-Shope, Esquire
Attorney at Law
23 North Second Street
Clearfield, PA 16830

MASON LAW OFFICE

DATED: 6-4-01

By:


David C. Mason, Esquire
Attorney for Plaintiff

FILED

JUN 05 2001

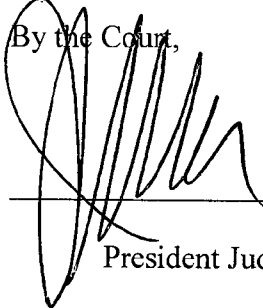
011151 no cc
William A. Shaw
Prothonotary

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

WAMPUM HARDWARE, INC. :
-vs- : No. 01 - 461 - CD
DAVID P. ECKLUND, i/at/d/b/a :
ECKLUND COAL COMPANY, INC. :

ORDER

NOW, this 30th day of July, 2001, this being the day and date set for argument into Preliminary Objections filed on behalf of David P. Ecklund, an individual Defendant, it is the ORDER of this Court that said Objections be and are hereby continued for a period of 60 days to permit Plaintiff the opportunity to develop, through discovery, a cause of action against said David P. Ecklund, individually.

By the Court,


President Judge

FILED
JUL 31 2001
William A. Shaw
Prothonotary

FILED

JUL 31 2001

William A. Shaw
Prothonotary

Shope
AB

1cc Atty

1cc Atty
Mason

9

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

:
: No. 2001-461-CD
:
: Type of Pleading: Withdrawal/Entry of
: Appearance
:
: Filed on behalf of: Wampum
: Hardware, Inc. as Counterclaim
: Defendant
:
: Counsel of Record:
: Robert A. Mix, Esq.
: I.D. #16164
: Lee, Martin, Green & Reiter, Inc.
: 115 E. High Street
: P.O. Box 16164
: Bellefonte, PA 16823
: 814-355-4769

FILED

AUG 23 2001

William A. Shaw
Notary

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

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: No. 2001-461-CD
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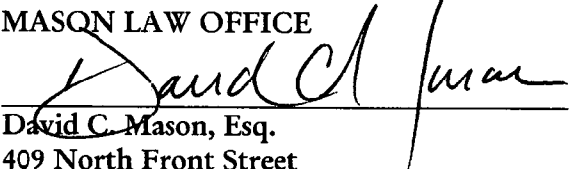
WITHDRAWAL/ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

I hereby withdraw my appearance as attorney for Wampum Hardware, Inc. in its capacity as a defendant in the counterclaim asserted against it by Ecklund Coal Company, Inc. only.

MASON LAW OFFICE

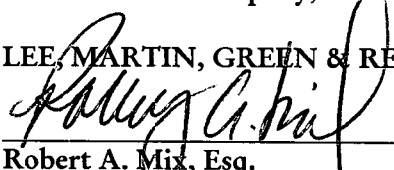
By:


David C. Mason, Esq.
409 North Front Street
P.O. Box 28
Philipsburg, PA 16866
814-342-2240

I hereby enter my appearance as attorney for Wampum Hardware, Inc. in its capacity as a defendant on the counterclaim asserted against it by Ecklund Coal Company, Inc. only.

LEE, MARTIN, GREEN & REITER, INC.

By:


Robert A. Mix, Esq.
Attorney for Wampum Hardware, Inc. as
Counterclaim Defendant
115 E. High Street
P.O. Box 179
Bellefonte, PA 16823
814-355-4769

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

:
:
: No. 2001-461-CD
:
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Withdrawal/Entry of
Appearance was deposited in the United States mail, postage prepaid, in Bellefonte,
Pennsylvania, on the 2nd day of August, 2001 addressed to the following:

Barbara J. Hugney-Shope, Esq.
23 North 2nd Street
Philipsburg, PA 16866

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

Robert A. Mix
Robert A. Mix, Esq.

FILED

SP
AUG 23 2001
SP 11:31 no cc
William A. Shaw
Prothonotary

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

CIVIL ACTION - LAW

WAMPUM HARDWARE, INC.

Plaintiff

vs.

DAVID P. ECKLUND, i/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

*
* No. 2001-461-CD
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*TYPE OF CASE: Civil Action
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*TYPE OF PLEADING: Notice of
* Taking Deposition Upon Oral
* Examination Pursuant to PA.
* R.C.P. §4003.1
* CERTIFICATE OF SERVICE
*
* FILED ON BEHALF OF: Plaintiffs
*
*COUNSEL OF RECORD FOR THIS PARTY:
* David C. Mason, Esquire
* Supreme Court I.D.#39180
* Attorney at Law
* P. O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240
*
*COUNSEL OF RECORD FOR PLAINTIFFS IN
*COUNTERCLAIM:
* Robert A. Mix, Esquire
* Supreme Court I.D.#16164
* Lee, Martin, Green & Reiter, Inc.
* 115 East High Street
* P. O. Box 179
* Bellefonte, PA 16823
* (814) 355-4769
*
*COUNSEL OF RECORD FOR DEFENDANT:
* Barbara J. Hugney-Shope, Esquire
* Supreme Court I.D. #26274
* 23 N. Second Street
* Clearfield, PA 16830
* (814) 765-5155

FILED

SEP 07 2001

William A. Shaw
Notary

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

CIVIL ACTION - LAW

WAMPUM HARDWARE, INC.

Plaintiff

vs.

DAVID P. ECKLUND, i/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

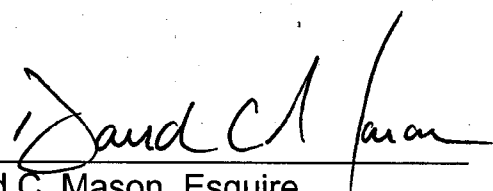
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CERTIFICATE OF SERVICE

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 **DAVID P. ECKLUND, i/a/t/d/b/a, ECKLUND COAL COMPANY, INC.**, through their attorney, **BARBARA J. HUGNEY-SHOPE, Esquire**, by depositing said Notice in the United States Mail, postage prepaid and addressed as follows:

DAVID P. ECKLUND, i/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,
% Barbara J. Hugney-Shope, Esquire
23 N. Second Street
Clearfield, PA 16830

DATED: 9-6-01


David C. Mason, Esquire,
Attorney for Plaintiffs

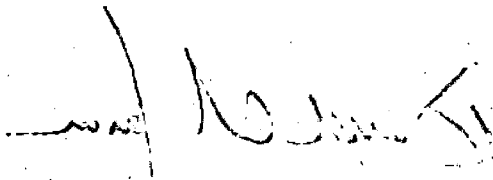
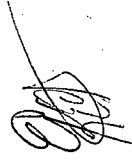
FILED

SEP 07 2001

01/16/20 CC

William A. Shaw

Prothonotary



10-2-2

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

:
: No. 2001-461-CD
:
: Type of Motion: Motion for Admission
: of Counsel Pro Hac Vice
:
: Filed on behalf of: Counterclaim
: Defendant Wampum Hardware, Inc.
:
: Counsel of Record:
: Robert A. Mix, Esq.
: I.D. #16164
: Lee, Martin, Green & Reiter, Inc.
: 115 E. High Street
: P.O. Box 16164
: Bellefonte, PA 16823
: 814-355-4769

FILED

OCT 01 2001

William A. Shaw
Prothonotary

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

WAMPUM HARDWARE, INC.

Plaintiff,

vs.

DAVID P. ECKLUND, i/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

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**WAMPUM HARDWARE, INC.'S MOTION FOR ADMISSION
OF COUNSEL PRO HAC VICE**

NOW COMES Counterclaim Defendant, Wampum Hardware, Inc., by its attorneys, Lee, Martin, Green & Reiter, Inc., and pursuant to PA.B.A.R. 301 files this Motion for Admission of Counsel Bruce Feichtinger and Craig von Sternberg, licensed attorneys in good standing, pro hac vice.

1. Counterclaim Defendant has retained Bruce Feichtinger and Craig von Sternberg of the law firm Whittington ■ von Sternberg, located at 2600 South Gessner, Suite 600, Houston, Texas 77063 to assist in all aspects of the defense of this case including hearings, depositions, trial and until the conclusion of this matter. The applications of Mr. Feichtinger and Mr. von Sternberg for admission pro hac vice are attached hereto.

2. Bruce Feichtinger is licensed to practice law in Texas and has been a member of the Texas Bar in good standing since 1986. Mr. Feichtinger graduated from Baylor Law School in 1986. Mr. Feichtinger has never been denied admission to the court of any state or to any federal court. Mr. Feichtinger has not been subject to disciplinary action by the bar of any court where he is admitted to practice. If admitted, Mr. Feichtinger will abide by and become familiar

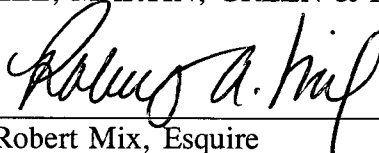
with the state and local rules governing this Court.

3. Craig von Sternberg is licensed to practice law in Texas and has been a member of the Texas Bar in good standing since 1979. Mr. von Sternberg graduated from South Texas College of Law in 1979. Mr. von Sternberg has never been denied admission to the court of any state or to any federal court. Mr. von Sternberg has not been subject to disciplinary action by the bar of any court where he is admitted to practice. If admitted, Mr. von Sternberg will abide by and become familiar with the state and local rules governing this Court.

4. Mr. Feichtinger and Mr. von Sternberg's address is Whittington ■ von Sternberg, located at 2600 South Gessner, Suite 600, Houston, Texas 77063. Their telephone number is 713-789-8850 and facsimile number is 713-789-8850.

WHEREFORE, Counterclaim Defendant, Wampum Hardware, Inc., prays that this motion be granted and that the Court admit Bruce Feichtinger and Craig von Sternberg to appear pro hac vice in this lawsuit.

LEE, MARTIN, GREEN & REITER, INC.



Robert Mix, Esquire
Attorney for Wampum Hardware, Inc
I.D. No. 16164
P.O. Box 179
Bellefonte, PA. 16823
814-355-4769

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

WAMPUM HARDWARE, INC.

Plaintiff,

vs.

DAVID P. ECKLUND, i/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

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APPLICATION TO APPEAR PRO HAC VICE

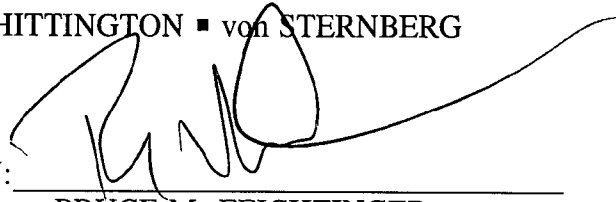
I, Bruce Feichtinger, file this application to appear pro hac vice on behalf of Counter-Defendant, Wampum Hardware, Inc., in the above-captioned cause.

1. My full name is Bruce Martin Feichtinger.
2. I am a member in good standing of the Texas bar.
3. I have never been the subject of any disciplinary proceeding before any court or administrative body.
4. I am familiar with the state and local rules governing this Court.
5. Robert Mix of the law firm, Lee, Martin, Green & Reiter, Inc., 115 East High Street, Bellefonte, PA 16823, licensed by the State of Pennsylvania, will continue to be counsel of record in this case.

The applicant requests that this Court grant permission for Bruce M. Feichtinger to appear pro hac vice on behalf of Counter-Defendant, Wampum Hardware, Inc., in the above-captioned cause and to appear in this Court until the conclusion of the case.

Respectfully submitted,

WHITTINGTON ■ von STERNBERG

BY: 

BRUCE M. FEICHTINGER

State Bar No. 06874800

2600 South Gessner, Suite 600

Houston, Texas 77063

Telephone: (713) 789-8850

Facsimile: (713) 789-0033

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

WAMPUM HARDWARE, INC.

Plaintiff,

vs.

DAVID P. ECKLUND, i/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

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APPLICATION TO APPEAR PRO HAC VICE

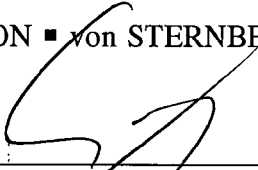
I, Craig von Sternberg, file this application to appear pro hac vice on behalf of Counter-Defendant, Wampum Hardware, Inc., in the above-captioned cause.

1. My full name is Craig von Sternberg.
2. I am a member in good standing of the Texas bar.
3. I have never been the subject of any disciplinary proceeding before any court or administrative body.
4. I am familiar with the state and local rules governing this Court.
5. Robert Mix of the law firm, Lee, Martin, Green & Reiter, Inc., 115 East High Street, Bellefonte, PA 16823, licensed by the State of Pennsylvania, will continue to be counsel of record in this case.

The applicant requests that this Court grant permission for Craig von Sternberg to appear pro hac vice on behalf of Counter-Defendant, Wampum Hardware, Inc., in the above-captioned cause and to appear in this Court until the conclusion of the case.

Respectfully submitted,

WHITTINGTON ■ von STERNBERG

BY: 

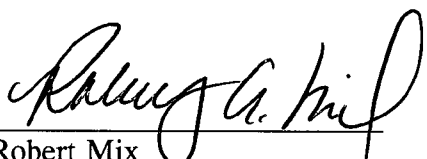
CRAIG von STERNBERG
State Bar No. 19175800
2600 South Gessner, Suite 600
Houston, Texas 77063
Telephone: (713) 789-8850
Facsimile: (713) 789-0033

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served upon the following counsel of record by United States certified mail, return receipt requested, on this the 28th day of September, 2001:

Barbara Hugney-Shope
23 North 2nd Street
Clearfield, Pennsylvania 16830

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


Robert Mix

FILED

OCT 01 2001

01/01/00/nd cc
William A. Shaw
Prothonotary

~~ES~~
~~for~~

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

CIVIL ACTION - LAW

WAMPUM HARDWARE, INC.

Plaintiff

vs.

ECKLUND COAL COMPANY, INC.,
and DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,

Defendants

FILED

OCT 01 2001

William A. Shaw
Prothonotary

COUNSEL OF RECORD FOR
DEFENDANT:

Barbara J. Hugney-Shope, Esquire
23 North Second Street
Clearfield, PA 16830
(814) 765-5155
I.D. No. 26274

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* No. 2001-461-CD
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* TYPE OF PLEADING: FIRST AMENDED
* COMPLAINT
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* FILED ON BEHALF OF:
* Plaintiff
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* COUNSEL OF RECORD FOR
* THIS PARTY:
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* COUNSEL OF RECORD FOR PLAINTIFF-
* COUNTERCLAIM:
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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

Robert A. Mix, Esquire
Lee, Martin, Green & Reiter, Inc.
115 East High Street
P.O. Box 179
Bellefonte, PA 16823
814-355-4769
I.D. No. 16164

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

CIVIL ACTION - LAW

WAMPUM HARDWARE, INC.

Plaintiff

vs.

ECKLUND COAL COMPANY, INC.,
and DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,

Defendants

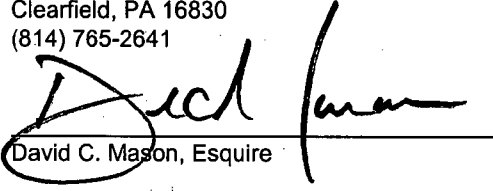
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* No. 2001-461-CD
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NOTICE

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 First Amended 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, PA.

CIVIL ACTION - LAW

WAMPUM HARDWARE, INC.

Plaintiff

vs.

ECKLUND COAL COMPANY, INC.,
and DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,

Defendants

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* No. 2001-461-CD
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FIRST AMENDED COMPLAINT

AND NOW, comes the Plaintiff, **WAMPUM HARDWARE, 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 **WAMPUM HARDWARE, INC.**, is a Pennsylvania business corporation located at Route 322 East, Philipsburg, Centre County, Pennsylvania, 16866.

2. The Defendants are:

A. **DAVID P. ECKLUND** and **DEBORAH M. ECKLUND**, his wife, individuals, who reside at R. R. #1, Box 109, Irvona, Pennsylvania, 16656.

B. **ECKLUND COAL COMPANY, INC.**, a Pennsylvania business corporation with an office or principal place of business at R. R. #1, Box 109, Irvona, Pennsylvania 16656.

3. At all times material and relevant hereto, Defendant Ecklund Coal Company, Inc.,

was engaged in the business of mining and extracting bituminous coal owned by others and sold by Ecklund Coal Company, Inc., to distributors and brokers of bituminous coal.

4. At all times material and relevant hereto, Plaintiff Wampum Hardware, Inc., was engaged in the business of drilling and blasting on a contract basis for operators of bituminous coal mines.

5. Plaintiff, at the specific request and insistence of David P. Ecklund, performed drilling and blasting services for Ecklund Coal Company, Inc., on premises located in Bigler Township, Clearfield County, Pennsylvania.

6. Plaintiff's usual and customary charges for these services were billed to the Defendant on a credit account.

7. The total amount of said credit account due and owing on March 20, 2001, is \$14,188.22.

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

COUNT I

WAMPUM HARDWARE CO., INC.

v.

ECKLUND COAL COMPANY, INC.

Paragraphs 1 through 8 are incorporated herein as though fully set forth at length.

9. These services were performed for the Defendant Ecklund Coal Company, Inc., to assist it in the mining and extraction of bituminous coal.

WHEREFORE, Plaintiff demands that judgment be entered in favor of the Plaintiff and against Defendant in the amount of \$14,188.22.

COUNT II

WAMPUM HARDWARE CO., INC.

v.

DAVID P. ECKLUND and DEBORAH M. ECKLUND

Paragraphs 1 through 9 are incorporated herein as though fully set forth at length.

10. David P. Ecklund is the sole shareholder of Ecklund Coal Company, Inc.

11. The officers of Ecklund Coal Company, Inc., are David P. Ecklund and Deborah M. Ecklund.

12. David P. Ecklund is the sole member of the Board of Directors of Ecklund Coal Company, Inc.

13. The office of Ecklund Coal Company, Inc., is in the home of David P. Ecklund and Deborah M. Ecklund.

14. Ecklund Coal Company, Inc., did not have a separate office, did not have a

separate address, did not have a separate phone number. In all of these issues Defendant Ecklund Coal Company, Inc., shares those facilities with David P. Ecklund and Deborah M. Ecklund.

15. The Defendants David P. Ecklund and Deborah M. Ecklund commingled their funds, income and assets with Ecklund Coal Company, Inc., such that Ecklund Coal Company, Inc., did not maintain a separate existence from David P. Ecklund and Deborah M. Ecklund.

16. Ecklund Coal Company, Inc., did not own any equipment for the mining extraction and removal of coal.

17. Ecklund Coal Company used equipment such as dozers, loaders, etc., owned by David P. Ecklund and Deborah M. Ecklund.

18. Ecklund Coal Company did not pay David P. Ecklund or Deborah M. Ecklund for the use of these pieces of equipment.

19. David P. Ecklund paid with his personal funds coal royalties due landowners arising from leases with Ecklund Coal Company, inc.

20. Maintenance, inspections, repairs and parts bills incurred for the equipment owned by David P. Ecklund and Deborah M. Ecklund, but used by Ecklund Coal Company, Inc., were paid sometimes by Ecklund Coal Company, Inc., and sometimes paid by the individual defendants, David P. Ecklund and Deborah M. Ecklund.

21. Permit fees which were required to be paid by Ecklund Coal Company, Inc., as the holders of a mining license were sometimes paid by David P. Ecklund and Deborah M. Ecklund.

22. David P. Ecklund and Deborah M. Ecklund, his wife, worked for Ecklund Coal Company, Inc., but did not draw a salary, wage, or other remuneration.

23. David P. Ecklund and Deborah M. Ecklund borrowed money for purposes of equipment financing, working capital and other expenditures for the benefit of Ecklund Coal Company, inc., and pledged, as collateral, for capital loans and reclamation bonding, their personal assets rather than assets of Ecklund Coal Company, Inc.

24. David P. Ecklund and Deborah M. Ecklund advanced money to the corporation for which they were never repaid and for which no written Memoranda, or Note exists.

25. David P. Ecklund and Deborah M. Ecklund delivered personal guarantees as collateral for reclamation bonds of Ecklund Coal Company, Inc.

26. Ecklund Coal Company, Inc., ceased operations effective May 4, 2000, and David P. Ecklund and Deborah M. Ecklund have been paying certain debts, bills and obligations of Ecklund Coal Company, Inc., since that time.

27. The assets used by Ecklund Coal Company, Inc., in the conduct of its mining operations have been converted to personal assets owned by David P. Ecklund and Deborah M. Ecklund.

28. Ecklund Coal Company, Inc., was never capitalized properly to engage in the surface mining and extraction of bituminous coal. Rather, equipment, capital and other assets were used by Ecklund Coal Company, Inc., but owned by David P. Ecklund and Deborah M. Ecklund.

29. Ecklund Coal Company, Inc., has failed to observe corporate formalities in that there were no Board of Director or Shareholder meetings conducted, no minutes written

corporate action, discussion or decisions.

30. Defendants David P. Ecklund and Deborah M. Ecklund are presently operating an unincorporated business association named "Ecklund Construction Company" using the same office, same telephone number, same equipment, employees and operators as Ecklund Coal Company, Inc.

31. Plaintiff believes and therefore avers that David P. Ecklund's decision to cease operations of Ecklund Coal Company, Inc., and use the same office, telephone number and equipment as utilized by Ecklund Coal Company, Inc., was done for the purpose of obtaining possession and control of the assets of Ecklund Coal Company, Inc., and to keep unpaid creditors unpaid.

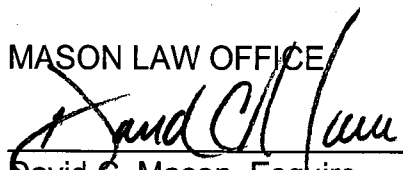
32. Following the cessation of operations of Ecklund Coal Company, Inc., David P. Ecklund and Deborah M. Ecklund paid from their personal funds debts and obligations incurred by Ecklund Coal Company, Inc., but have neglected and refused to pay Plaintiff.

33. While engaged in the series of acts described herein and engaged in business transactions involving both Ecklund Coal Company, Inc., and David P. Ecklund and Deborah M. Ecklund, individually, David P. Ecklund acted in such a fashion that what he did as the representative of Ecklund Coal Company, Inc., and what he did on behalf of himself and his wife, were indistinguishable.

34. Ecklund Coal Company, Inc., was an under capitalized sham used by David P. Ecklund and Deborah M. Ecklund as their alter ego.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against the Additional Defendants, David P. Ecklund and Deborah M. Ecklund, individually, jointly and severally in the sum of \$14,188.22, together with interest from March 20, 2001.

MASON LAW OFFICE



David C. Mason, Esquire
Attorney for Plaintiff

VERIFICATION

I hereby verify that the answers 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.

This Verification is made by David C. Mason, Attorney for the Plaintiff. This Verification is based upon information provided in the answers to a Deposition conducted on September 26, 2001, of David P. Ecklund.

This pleading is verified by the attorney for Wampum Hardware, Inc., as none of the Plaintiffs attended the Deposition and do not have knowledge obtained at the Deposition. Further, all representatives of Wampum Hardware, Inc., are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing of this pleading.

MASON LAW OFFICE

By: 

David C. Mason, Esquire
Attorney for Plaintiff

DATED:

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

CIVIL ACTION - LAW

WAMPUM HARDWARE, INC.

Plaintiff

vs.

ECKLUND COAL COMPANY, INC.,
and DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,

Defendants

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* No. 2001-461-CD
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CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy
of the FIRST AMENDED COMPLAINT filed to the above captioned action, by placing the
same in the United States mail, postage prepaid and addressed as follows:

Barbara J. Hugney-Shope, Esquire
Attorney at Law
23 North Second Street
Clearfield, PA 16830

Robert A. Mix, Esquire
Lee, Martin, Green & Reiter, Inc.
115 East High Street
P.O. Box 179
Bellefonte, PA 16823

MASON LAW OFFICE

DATED: 10/2/01

By:


David C. Mason, Esquire
Attorney for Plaintiff

FILED

OCT 01 2001

01/11/36
William A. Shaw
Prothonotary

W. A. Shaw

12 A

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

WAMPUM HARDWARE, INC.

Plaintiff,

vs.

DAVID P. ECKLUND, i/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

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01-461-CO

ORDER GRANTING COUNTERCLAIM DEFENDANTS' MOTION
FOR COUNSEL TO APPEAR PRO HAC VICE

The Court having determined that Wampum Hardware, Inc.'s Motion for Counsel Bruce Feichtinger and Craig von Sternberg to Appear Pro Hac Vice is meritorious and should be granted.

It is therefore ORDERED that Bruce Feichtinger and Craig von Sternberg of the law firm of Whittington ■ von Sternberg are admitted pro hac vice as counsel to represent Counterclaim Defendant, Wampum Hardware, Inc., in this lawsuit.

Signed this 2nd day of October, 2001

JUDGE PRESIDING

FILED

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William A. Shaw
Prothonotary
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32

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

:
: No. 2001-461-CD
:
: Type of Motion: Notice of Service of
: Interrogatories
:
: Filed on behalf of: Counterclaim
: Defendant Wampum Hardware, Inc.
:
: Counsel of Record:
: Robert A. Mix, Esq.
: I.D. #16164
: Lee, Martin, Green & Reiter, Inc.
: 115 E. High Street
: P.O. Box 16164
: Bellefonte, PA 16823
: 814-355-4769

FILED

OCT 11 2001

William A. Shaw
Prothonotary

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

:
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: No. 2001-461-CD
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NOTICE OF SERVICE OF INTERROGATORIES

TO THE PROTHONOTARY:

You are hereby notified that on August 9, 2007, original

Interrogatories were mailed by First Class Mail, Postage Prepaid, upon the following counsel of record.

Barbara J. Hugney-Shope, Esq.
23 North 2nd Street
Philipsburg, PA 16866

LEE, MARTIN, GREEN & REITER, INC.

By:

Robert A. Mix, Esq.

I.D. #16164

Attorney for Wampum Hardware, Inc. as
Counterclaim Defendant

115 E. High Street

P.O. Box 179

Bellefonte, PA 16823

814-355-4769

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

WAMPUM HARDWARE, INC.,
Plaintiff,

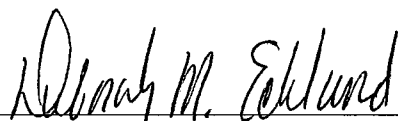
vs.

ECKLUND COAL COMPANY, INC.,
and DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,
Defendants.

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* NO. 2001-461-CD
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ACCEPTANCE OF SERVICE

I, **DEBORAH M. ECKLUND**, Defendant, hereby accept service of the First
Amended Complaint with regard to the above-captioned matter.

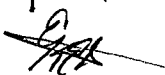

Deborah M. Ecklund, Defendant

Dated: 10/22, 2001

FILED

OCT 23 2001

011014712cc atty Shope
William A. Shaw
Prothonotary



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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

ECKLUND COAL COMPANY, INC.,
and DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,
Defendants.

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* NO. 2001-461-CD
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* Type of Case: CIVIL ACTION
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* Type of Pleading: ANSWER TO
* FIRST AMENDED COMPLAINT
* AND COUNTERCLAIM
*
*
*
* Filed on behalf of: DEFENDANT
* DAVID P. ECKLUND
*
*
* Counsel of Record for this Party:
* BARBARA J. HUGNEY-SHOPE, ESQUIRE
*
* Supreme Court I. D. No. 26274
* 23 North Second Street
* Clearfield, PA 16830
* (814) 765-5155

FILED

OCT 24 2001
01114514ccatty Shga
William A. Shaw
Prothonotary *WAS*

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

ECKLUND COAL COMPANY, INC.,
and **DAVID P. ECKLUND** and
DEBORAH M. ECKLUND, his wife,
Defendants.

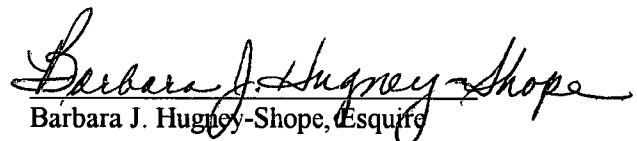
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* **NO. 2001-461-CD**
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NOTICE TO DEFEND

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

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

Court Administrator
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830
(814) 765-2641, Ext. 5982


Barbara J. Hugney-Shope, Esquire
Attorney for Defendants

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

ECKLUND COAL COMPANY, INC.,
and DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,
Defendants.

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* **NO. 2001-461-CD**
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**ANSWER TO FIRST AMENDED COMPLAINT
AND COUNTERCLAIM**

AND NOW, come the Defendants, Ecklund Coal Company, Inc., and David P. Ecklund, who by and through their attorney, Barbara J. Hugney-Shope, Esquire, file the following Answer to Plaintiff's First Amended Complaint and a Counterclaim in this matter and in support thereof aver as follows:

ANSWER TO FIRST AMENDED COMPLAINT

1. Admitted.
2. (A)Admitted. It is admitted that David P. Ecklund resides at R.R. #1, Box 109, Irvona, Pennsylvania 16656.

(B) Admitted.

3. Admitted.

4. Admitted.

5. Denied in part. It is denied that Defendant, David P. Ecklund, contacted Plaintiff to perform certain services including drilling and blasting on premises located and situate in Bigler Township, Clearfield County, Pennsylvania. On the contrary, it was Plaintiff's representative who repeatedly, pursued Defendant David P. Ecklund requesting that Defendant Ecklund Coal Company, Inc., hire Plaintiff to do the drilling and blasting. At the time, Defendant Ecklund Coal Company, Inc., was using another company and had used that company for several years without any problems but because of Plaintiff's insistence and representations that it could save Defendant, Ecklund Coal Company, Inc., money, Defendant David P. Ecklund finally agreed that Defendant, Ecklund Coal Company, Inc., would use Plaintiff's services for its drilling and blasting. Plaintiff then performed drilling and blasting services; however, Plaintiff failed to perform said drilling and blasting services in a proper and workmanlike manner and as a result, Defendant Ecklund Coal Company, Inc. sustained substantial damages.

6. Denied. Defendants, Ecklund Coal Company, Inc., and David P. Ecklund, after reasonable investigation, are without sufficient knowledge or information to form a belief as to the truth of this averment and strict proof thereof is demanded at trial.

coal; however, due to the Plaintiff's poor and unworkmanlike performance of these services, Defendant Ecklund Coal Company, Inc., incurred substantial damages and was forced to cease its operations.

COUNT II

WAMPUM HARDWARE CO., INC.

V.

DAVID P. ECKLUND and DEBORAH M. ECKLUND

Paragraphs 1 through 9 of Defendants' Answer are incorporated herein as though fully set forth at length.

10. Admitted.

11. Admitted. In further Answer, all management decisions for Defendant, Ecklund Coal Company, Inc., are made by Defendant, David P. Ecklund.

12. Admitted.

13. Denied in part. Before ceasing operations, Defendant, Ecklund Coal Company, Inc., had offices at each job site; however, since ceasing operations, the records of Defendant, Ecklund Coal Company, Inc., have been retained and stored at the home of Defendant, David P. Ecklund.

14. Denied. It is denied that Defendant, Ecklund Coal Company, Inc., did not have separate offices, or separate phone numbers. On the contrary, Defendant,

Ecklund Coal Company, Inc. was required by law to maintain an office at each active mining operation and had several telephone numbers used exclusively by Defendant, Ecklund Coal Company, Inc., its management and employees in addition to the telephone located at the residence of Defendant, David P. Ecklund.

15. Denied. It is denied that David P. Ecklund and Deborah M. Ecklund commingled their funds, income and assets with Defendant, Ecklund Coal Company, Inc., or that Defendant, Ecklund Coal Company, Inc., did not maintain a separate existence from Defendant, David P. Ecklund and Deborah M. Ecklund. On the contrary, Defendant, Ecklund Coal Company, Inc., maintained a bank account used solely for the business of Defendant, Ecklund Coal Company, Inc., which included deposits of all payments due Defendant, Ecklund Coal Company, Inc., and for the payment of all bills owed by Defendant, Ecklund Coal Company, Inc. Further, Defendant, Ecklund Coal Company, Inc., had assets separate and apart from David P. Ecklund and Deborah M. Ecklund and these were never commingled with the assets of David P. Ecklund and Deborah M. Ecklund.

16. Denied. It is denied that Defendant, Ecklund Coal Company, Inc., did not own any equipment for the mining and extraction and removal of coal. On the contrary, Defendant, Ecklund Coal Company, Inc., owned certain equipment and other items used in its mining operations.

17. Denied as stated. Defendant, Ecklund Coal Company, Inc., leased equipment to further its mining operations including equipment from Ecklund Construction Company, the Plaintiff and others.

18. Denied. It is denied that Defendant, Ecklund Coal Company, Inc., did not pay to lease the equipment of Ecklund Construction Company. On the contrary, Defendant, Ecklund Coal Company, Inc., did contract to pay a reasonable rental for the equipment leased, however, it still owes Ecklund Construction Company a considerable sum in back rental payments.

19. Denied. It is denied that Defendant, David P. Ecklund paid with his personal funds coal royalties due landowners arising from leases with Defendant, Ecklund Coal Company, Inc. On the contrary, Defendant, David P. Ecklund loaned substantial sums of money to Defendant, Ecklund Coal Company, Inc., and Defendant, Ecklund Coal Company, Inc., currently owes to Defendant, David P. Ecklund an amount in excess of \$40,000.00 which it has been unable to pay due to being forced to cease operations.

20. Denied as stated. Defendant, Ecklund Coal Company, Inc., on occasion paid for the maintenance, inspections, repairs and parts bill for the equipment that it

21. Denied. It is denied that permit fees were paid by Defendant, David P. Ecklund and Deborah M. Ecklund. On the contrary, Defendant, Ecklund Coal Company, Inc., paid all permit fees.

22. Admitted. In further Answer, Defendant, David P. Ecklund, made all management decisions for Defendant, Ecklund Coal Company, Inc., as the President and sole shareholder, while any work performed by Deborah M. Ecklund was clerical such as answering the telephone at times when Defendant, David P. Ecklund, was not available and doing some bookkeeping.

23. Denied as stated. It is denied that David P. Ecklund and Deborah M. Ecklund borrowed money for purposes of equipment financing, working capital and other expenditures for the benefit of Defendant, Ecklund Coal Company, Inc. On the contrary, Defendant, David P. Ecklund, was the sole owner of the equipment purchased for Ecklund Construction Company which was then leased to Defendant, Ecklund Coal Company, Inc. On rare occasions, Deborah M. Ecklund may have been required to join in said loans for Ecklund Construction Company solely because of their marital status.

24. Denied. It is denied that Deborah M. Ecklund advanced any money to Defendant, Ecklund Coal Company, Inc. On the contrary, Defendant, David P. Ecklund, loaned money to Defendant, Ecklund Coal Company, Inc., for which he has

not been repaid due to Defendant, Ecklund Coal Company, Inc., being forced to untimely cease its operations.

25. Admitted. In further answer, the joinder of Deborah M. Ecklund was required when property used for collateral was in joint names.

26. Denied in part. It is denied that Deborah M. Ecklund has been paying certain debts, bills and obligations of Defendant, Ecklund Coal Company, Inc., since Defendant, Ecklund Coal Company, Inc., ceased operations. On the contrary, Defendant, David P. Ecklund, has paid some bills for Defendant, Ecklund Coal Company, Inc., since it ceased operations.

27. Denied. It is denied that the assets used by Defendant, Ecklund Coal Company, Inc., in the conduct of its mining operations have been converted to personal assets owned by David P. Ecklund and Deborah M. Ecklund. On the contrary, the assets of Defendant, Ecklund Coal Company, Inc., have either been used to pay the bills of Defendant, Ecklund Coal Company, Inc., or still exist.

28. Denied as stated. It is denied that the equipment, capital and other assets used by Defendant, Ecklund Coal Company, Inc., were owned by David P. Ecklund and Deborah M. Ecklund. On the contrary, the equipment leased by Defendant, Ecklund Coal Company, Inc., was owned by Ecklund Construction Company, which was operated as a sole proprietorship owned by Defendant, David P. Ecklund.

29. Denied. It is denied that Defendant, Ecklund Coal Company, Inc., failed to observe corporate formalities. On the contrary, all corporate formalities required to be observed are believed to have been observed by Defendant, Ecklund Coal Company, Inc.

30. Denied as stated. It is denied that Deborah M. Ecklund is operating Ecklund Construction Company. On the contrary, Ecklund Construction Company is a sole proprietorship owned and operated by Defendant, David P. Ecklund, who is the sole employee and owns all of the equipment of Ecklund Construction Company which he owned and operated long before the creation of Defendant, Ecklund Coal Company, Inc.

31. Denied. It is denied that Defendant, David P. Ecklund's decision to cease operations of Defendant, Ecklund Coal Company, Inc., was done for the purpose of obtaining possession and control of the assets of Defendant, Ecklund Coal Company, Inc., and to keep unpaid creditors unpaid. On the contrary, Defendant, David P. Ecklund, was forced to cease operations of Defendant Ecklund Coal Company, Inc., because of the actions of Plaintiff. Furthermore, Defendant, David P. Ecklund, and his Ecklund Construction Company, are the major unpaid creditors of Defendant, Ecklund Coal Company, Inc., and with the cessation of operations, repayment of the debt owed to them by Defendant, Ecklund Coal Company, Inc., is currently an impossibility.

32. Admitted. In further answer, upon Defendant, Ecklund Coal Company, Inc., ceasing to do business, Defendant, David P. Ecklund, has paid creditors of Defendant, Ecklund Coal Company, Inc., for whom there was no dispute as to the amount owed.

33. Denied. It is denied that the actions of Defendant, David P. Ecklund, individually, were indistinguishable from his actions as a representative of Defendant Ecklund Coal Company, Inc., or that of his wife, Deborah M. Ecklund. On the contrary, Defendant David P. Ecklund never acted on behalf of his wife in any business transactions involving either Defendant, Ecklund Coal Company, Inc., or his sole proprietorship, Ecklund Construction Company. The only involvement of the said Deborah M. Ecklund is as guarantor on some loans for Ecklund Construction Company when joint property was used as collateral and to answer the telephone and do minor bookkeeping chores for both Ecklund Construction Company and Defendant Ecklund Coal Company, Inc.

34. Denied. It is denied that Defendant, Ecklund Coal Company, Inc., was an under-capitalized sham used by the Defendants or was used as their alter ego. On the contrary, Defendant Ecklund Coal Company, Inc., was created by Defendant David P. Ecklund who owns all shares and was the sole director of said corporation. The said Deborah M. Ecklund owns no interest in Defendant Ecklund Coal Company, Inc., made no management decisions and her only involvement was the performance of

minimal clerical work for said corporation and designation as the secretary of the corporation. Furthermore, had it not been for Plaintiff's failure to perform the drilling and blasting services properly that gave rise to the unpaid debt complained of by the Plaintiff, it is believed and averred that Defendant Ecklund Coal Company, Inc., would be a viable business and able to pay all its creditors.

WHEREFORE, Defendants respectfully request that the Plaintiff's First Amended Complaint be dismissed with all costs and attorney's fees assessed to Plaintiff.

COUNTERCLAIM

COUNT I

FAILURE TO PERFORM DRILLING AND BLASTING IN WORKMANLIKE MANNER

35. Defendants hereby incorporate paragraphs 1 through 34 in their Answer above as though set forth in full.

36. An implied term of the contract between the parties for drilling and blasting work was that Plaintiff would perform the blasting in a workmanlike manner.

37. Plaintiff failed to perform the blasting in a workmanlike manner on March 26, 1999, resulting in Defendant, Ecklund Coal Company, Inc., being found in violation of Section 87.127(n) of the Rules and Regulations, 25 PA Code ss 87.127(n) for

exceeding the maximum peak particle velocity of one inch per second during the firing of two (2) shots.

38. As a result of the failure of Plaintiff to perform this blasting in a workmanlike manner and in violation of the Rules and Regulations of the Pennsylvania Department of Environmental Protection, Ecklund Coal Company, Inc., was required to cease all blasting on this site until its blasting plan could be revised.

39. At the hearing on the violation, Ecklund Coal Company, Inc. was assessed a fine of \$1700 as a result of Plaintiff's failure to perform the drilling and blasting in a workmanlike manner and according to law.

40. Permission was received from the Pennsylvania Department of Environmental Protection for Defendant, Ecklund Coal Company, Inc. to continue its mining operations at the Ferlitch job after Plaintiff revised its blast plan on a stricter standard which resulted in additional costs to Defendant, Ecklund Coal Company, Inc.

41. At no time after revising its blasting plan for Ecklund Coal Company, Inc., however, did Plaintiff advise either Ecklund Coal Company, Inc., or David P. Ecklund as to the specific costs which it intended to charge for these revisions which were necessary solely because of Plaintiff's failure to properly perform its drilling and blasting for Ecklund Coal Company, Inc. initially.

42. Defendants believe and therefore aver that if Plaintiff had reviewed and followed the same procedures contained in the blast reports provided by the previous

blasting company used by Ecklund Coal Company, Inc., which were available to Plaintiff at the job site office and as recommended by the representative from the Pennsylvania Department of Environmental Protection charged with overview of blasting operations, Ecklund Coal Company, Inc., would not have received any violations as a result of the blasting on March 26, 1999, nor have been required to revise its blasting plan, nor would there have been any damage to adjacent properties for which Ecklund Coal Company, Inc., was required to cover the costs of repairs.

43. On July 7, 1999, Plaintiff again did drilling and blasting for Ecklund Coal Company, Inc. on the Ferlitch job which resulted in an excessive dust violation being filed against Ecklund Coal Company, Inc.

44. Defendant, Ecklund Coal Company, Inc., believes and avers that it was Plaintiff's failure to perform its work in a workmanlike manner that resulted in Defendant, Ecklund Coal Company, Inc., again being cited by the PA Department of Environmental Protection this time for fugitive dust and receiving a fine.

45. In addition to Defendant, Ecklund Coal Company, Inc., receiving two (2) citations due to Plaintiff's failure to perform the drilling and blasting in a workmanlike manner, Defendant Ecklund Coal Company, Inc., also incurred considerable expense in attempting to satisfy residents who lived near the mining site due to the fugitive dust caused by Plaintiff's blasting.

46. Because of these citations, Defendant, Ecklund Coal Company, Inc., found it impossible to continue its operation at the Ferlitch job using normal strip mining methods and was subject to losing its mining permit if any further violations occurred.

47. Defendant, Ecklund Coal Company, Inc., then attempted to mitigate its damages caused by Plaintiff's failure to perform its drilling and blasting in a workmanlike manner by using the augering method to remove coal; however, this method was not economically feasible.

48. As a result of the Plaintiff's failure to perform its services in a workmanlike manner resulting in citations being filed against Ecklund Coal Company, Inc., has been required to cease all operations in the area at an estimated future loss of Two Million (\$2,000,000.00) Dollars.

WHEREFORE, Defendant requests that judgment be entered against the Plaintiff in favor of the Defendant, Ecklund Coal Company, Inc., in excess of the jurisdiction of the Board of Arbitrators, together with costs of suit.

**COUNT II - BREACH OF IMPLIED WARRANTY OF
FITNESS FOR INTENDED USE**

49. Defendant hereby incorporates paragraphs 1 through 48 of its Answer and Counterclaim above as though set forth in full.

50. In contracting with Ecklund Coal Company, Inc., for drilling and blasting, Plaintiff held itself out to Ecklund Coal Company, Inc., as competent to undertake and

perform the drilling and blasting in accordance with accepted standards of the industry.

51. Defendant, Ecklund Coal Company, Inc., relied upon Plaintiff's representation of its expertise in performing drilling and blasting.

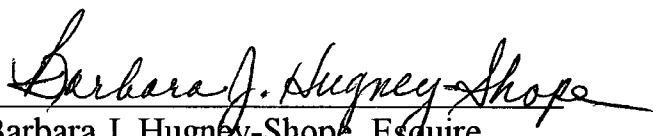
52. Plaintiff in failing to perform in a workmanlike manner did breach an implied warranty that the drilling and blasting it performed would be within accepted industry standards and according to law.

53. In drilling the second time, Plaintiff failed to consider the contour of the rock plate and failed to drill through the rock so as to properly blast the rock plate which was the reason for the blasting in the first place.

54. As a direct and proximate result of the failure of the Plaintiff to perform in accordance with the terms of the contract and within accepted industry standards and according to law, Defendant Ecklund Coal Company, Inc., suffered damages in excess of \$100,000.00.

WHEREFORE, Defendant requests that judgment be entered against the Plaintiff and in favor of the Defendant, Ecklund Coal Company, Inc., in excess of the jurisdiction of the Board of arbitrators, together with costs of suit.

Respectfully submitted,



Barbara J. Hugney-Shope, Esquire
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA)

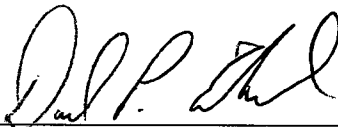
SS.:

COUNTY OF CLEARFIELD)

On this, the 22nd day of October, 2001, before me, the undersigned officer, personally appeared David P. Ecklund, who, being duly sworn, deposes and states that he is President of Ecklund Coal Company, Inc., and that as such does depose and state that the facts set forth in the foregoing Answer and Counterclaim are true and correct to the best of his knowledge, information and belief.

ECKLUND COAL COMPANY, INC.

By:



David P. Ecklund, President

SWORN TO AND SUBSCRIBED

before me this 22nd day

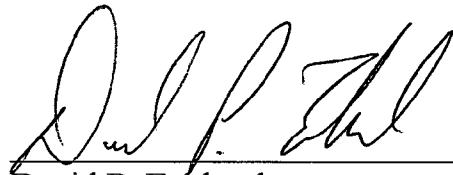
of October, 2001.


Notary Public

NOTARIAL SEAL
KRISTEN L. ZURAT, NOTARY PUBLIC
CLEARFIELD BORO, CLEARFIELD CO., PA
MY COMMISSION EXPIRES, MAY 7, 2005

VERIFICATION

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



David P. Ecklund

Dated: 10-22-, 2001

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

ECKLUND COAL COMPANY, INC.,
and DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,
Defendants.

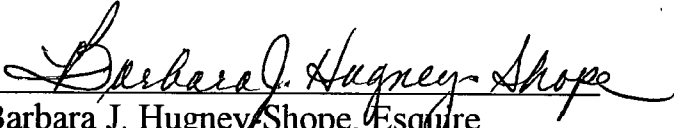
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* NO. 2001-461-CD
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CERTIFICATE OF SERVICE

AND NOW, this 24th day of October, 2001, I, Barbara J. Hugney-Shope, Esquire, do hereby certify that I served a true and correct copy of the **ANSWER TO FIRST AMENDED COMPLAINT AND COUNTERCLAIM** on David C. Mason, Esquire, Attorney of record for the Plaintiff, and Robert A. Mix, Esquire, Attorney of record for Plaintiff - Counterclaim, Wampum Hardware, Inc., Plaintiff in the above-captioned matter, by depositing the same with the United States Postal Service, by first-class mail, postage prepaid on the 24th day of October, 2001, and addressed as follows:

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

Robert A. Mix, Esquire
LEE, MARTIN, GREEN &
REITER, INC.
115 East High Street
P. O. Box 179
Bellefonte, PA 16823


Barbara J. Hugney-Shope, Esquire
Attorney for the Defendant

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

NO. 2001-461-CD

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

ECKLUND COAL COMPANY, INC.,
DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,
Defendants.

ANSWER TO FIRST AMENDED
COMPLAINT AND COUNTERCLAIM

BARBARA J. HUGNEY-SHOPE
Attorney-at-Law
23 N. Second Street
Clearfield, PA 16830
(814) 765-5155
FAX (814) 765-2957

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

ECKLUND COAL COMPANY, INC.,
DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,
Defendants.

FILED

OCT 25 2001

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William A. Shaw
Notary

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* NO. 2001-461-CD

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* Type of Case: CIVIL ACTION

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* Type of Pleading: PRELIMINARY

* OBJECTION OF DEFENDANT,

* DEBORAH M. ECKLUND, TO

* FIRST AMENDED COMPLAINT

*

*

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*

*

* Filed on behalf of: DEFENDANT

*

DEBORAH M. ECKLUND

*

*

*

* Counsel of Record for this Party:

* BARBARA J. HUGNEY-SHOPE, ESQUIRE

*

* Supreme Court I. D. No. 26274

* 23 North Second Street

* Clearfield, PA 16830

* (814) 765-5155

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

ECKLUND COAL COMPANY, INC.,
DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,
Defendants.

*
*
*
* **NO. 2001-461-CD**
*

PRELIMINARY OBJECTION OF DEFENDANT,
DEBORAH M. ECKLUND, TO FIRST AMENDED COMPLAINT

AND NOW, comes Defendant, DEBORAH M. ECKLUND, individually, who by and through her attorney, Barbara J. Hugney-Shope, Esquire, files the following Preliminary Objection to the First Amended Complaint of Wampum Hardware, Inc.

1. In its First Amended Complaint, Wampum Hardware, Inc., asserts an alleged claim due it not only from Ecklund Coal Company, Inc. and from the sole shareholder and President of Ecklund Coal Company, Inc., David P. Ecklund, but also from Deborah M. Ecklund, individually.

I. PRELIMINARY OBJECTION IN THE NATURE OF A
DEMURRER TO THE CLAIM AGAINST DEFENDANT,
DEBORAH M. ECKLUND, INDIVIDUALLY

1. The Plaintiff's Complaint asserts that the Defendant, David P. Ecklund, is the sole shareholder and sole member of the Board of Directors and acted on behalf of the

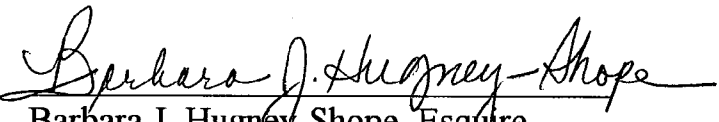
Defendant corporation, Ecklund Coal Company, Inc., when hiring the Plaintiff to perform drilling and blasting services.

2. The Plaintiff's complaint fails to state facts constituting a cause of action against Defendant, Deborah M. Ecklund, individually.

3. The claim of Plaintiff against Defendant, Deborah M. Ecklund, individually, should be dismissed because the facts pleaded fail to establish that Defendant, Deborah M. Ecklund, had any ownership interest in Ecklund Coal Company, Inc. or ever engaged the services of Plaintiff or authorized Defendant, David P. Ecklund, to act on her behalf with regard to any dealings with regard to Ecklund Coal Company, Inc..

WHEREFORE, Defendant, Deborah M. Ecklund, respectfully requests that this Court grant her Preliminary Objection and issue an order dismissing the First Amended Complaint of Wampum Hardware, Inc. as her.

Respectfully submitted,


Barbara J. Hugney-Shope, Esquire
Attorney for Defendant

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

WAMPUM HARDWARE, INC.,
Plaintiff,

VS.

ECKLUND COAL COMPANY, INC.,
DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,
Defendants.

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* NO. 2001-461-CD
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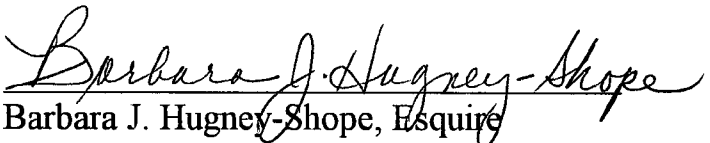
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CERTIFICATE OF SERVICE

AND NOW, this 25th day of October, 2001, I, Barbara J. Hugney-Shope, Esquire, do hereby certify that I served a certified copy of the **PRELIMINARY OBJECTIONS OF DEFENDANT, DEBORAH M. ECKLUND, TO FIRST AMENDED COMPLAINT** on David C. Mason, Esquire, Attorney for the Plaintiff, and Robert A. Mix, Esquire, Attorney for the Plaintiff - Counterclaim, in the above-captioned matter, by depositing the same with the United States Postal Service, postage prepaid, on the 25th day of October 2001, and addressed as follows:

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

Robert A. Mix, Esquire
Attorney for Plaintiff
Lee, Martin, Green, & Reiter, Inc.
115 East High Street
P. O. Box 179
Bellefonte, PA 16823


Barbara J. Hugney-Shope, Esquire
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
NO. 2001-461-CD

MANPUM HARDWARE, INC.,
Plaintiff,

vs.

ECKLUND COAL COMPANY, INC.,
DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,
Defendants.

PRELIMINARY OBJECTION OF
DEFENDANT, DEBORAH M. ECKLUND,
TO COMPLAINT

BARBARA J. HUGNEY-SHOPE
Attorney-at-Law
23 N. Second Street
Clearfield, PA 16830
(814) 765-5155
FAX (814) 765-2957

BARBARA J. HUGNEY-SHOPE
Attorney-at-Law
23 N. Second Street
Clearfield, PA 16830



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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

:
: No. 2001-461-CD
:
: Type of Motion: Reply to Counterclaim
:
: Filed on behalf of: Counterclaim
: Defendant Wampum Hardware, Inc.
:
: Counsel of Record:
: Robert A. Mix, Esq.
: I.D. #16164
: Lee, Martin, Green & Reiter, Inc.
: 115 E. High Street
: P.O. Box 16164
: Bellefonte, PA 16823
: 814-355-4769

FILED

NOV 19 2001

William A. Shaw
Prothonotary

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

WAMPUM HARDWARE, INC.,	:
Plaintiff	:
	: No. 2001-461-CD
vs.	:
	:
DAVID P. ECKLUND, f/a/t/d/b/a	:
ECKLUND COAL COMPANY, INC.,	:
Defendant	:

WAMPUM HARDWARE, INC.'S REPLY
TO COUNTERCLAIM OF ECKLUND COAL
COMPANY AND DAVID ECKLUND

Counterclaim Defendant, Wampum Hardware, Inc. ("Wampum"), by its attorneys, Lee, Martin, Green & Reiter, Inc., files the following Reply to Counterclaim of Ecklund Coal Company and David Ecklund ("Ecklund").

Count 1
Failure to Perform Drilling and Blasting in a Workmanlike Manner

35. No reply is necessary to Paragraph 35. To the extent a reply is necessary, Paragraph 35 is denied.

36. Paragraph 36 is neither admitted nor denied inasmuch as it states a conclusion of law to which no answer is required. By way of further reply, pursuant to the contract, Wampum was to perform its drilling and blasting work in the locations and in the manner directed by Ecklund. In the alternative, if it is judicially determined that the contract contained an implied covenant that the drilling and blasting work would be performed in a workmanlike manner, then Wampum complied with that covenant.

37. Paragraph 37 is denied. To the contrary, Wampum performed its drilling and blasting work in a workmanlike manner on March 26, 1999, and its conduct did not cause or contribute to the cause of Ecklund's being found in violation of the described Rules and Regulations. By way of further reply, the averments of paragraph 36 of this Reply are incorporated herein by reference.

38. Paragraph 38 is denied. To the contrary, Wampum performed its drilling and blasting work in a workmanlike manner and in accord with the described Rules and Regulations, and its conduct did not cause or contribute to the cause of Ecklund being found in violation of the described Rules and Regulations. By way of further reply, the averments of paragraph 36 of this Reply are incorporated herein by reference. The averment that Ecklund was required to cease blasting until its blasting plan could be revised is denied since, after reasonable investigation, Wampum is without knowledge or information sufficient to form a belief as to the truth of this allegation and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

39. Paragraph 39 is denied. After reasonable investigation, Wampum is without knowledge or information sufficient to form a belief as to the truth of this averment and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial. By way of further reply, the averments of paragraphs 37 and 38 of this Reply are incorporated herein by reference.

40. Paragraph 40 is denied. After reasonable investigation, Wampum is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

41. Paragraph 41 is denied. To the contrary, Wampum performed its drilling and blasting work in a workmanlike manner, and its conduct did not cause or contribute to the cause of any requirement that Ecklund revise its blasting plan to a stricter standard. By way of further reply, Ecklund understood that the additional drilling and blasting work required by the revised plan would result in additional charges.

42. Paragraph 42 is denied. To the contrary, Wampum performed its drilling and blasting work in a workmanlike manner and in the locations and in the manner directed by Ecklund, and its conduct did not cause or contribute to the cause of the violations of the described Rules and Regulations or any requirement that Ecklund revise its blasting plan or any damage to adjacent properties. After reasonable investigation, Wampum is without knowledge or information sufficient to form a belief as to the truth of the remaining averments and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

43. Paragraph 43 is admitted in part and denied in part. It is admitted that on or about July 7, 1999, Wampum performed drilling and blasting work for Ecklund in the locations and in the manner directed by Ecklund. After reasonable investigation, Wampum is without knowledge or information sufficient to form a belief as to the truth of the remaining averments and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

44. Paragraph 44 is denied. To the contrary, Wampum performed its drilling and blasting work in a workmanlike manner and in the locations and in the manner directed by Ecklund. After reasonable investigation, Wampum is without knowledge or information sufficient to form a belief as to the truth of the remaining averments and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial. By way of further answer, the averments of paragraph 36 of this Reply are incorporated herein by reference.

45. Paragraph 45 is denied. To the contrary, Wampum performed its drilling and blasting work in a workmanlike manner and in the locations and in the manner directed by Ecklund, and its conduct did not cause or contribute to the cause of Ecklund being found in violation of the described Rules and Regulations. After reasonable investigation, Wampum is without knowledge or information sufficient to form a belief as to the truth of the remaining averments and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

46. Paragraph 46 is denied. After reasonable investigation, Wampum is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

47. Paragraph 47 is denied. After reasonable investigation, Wampum is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof, to the extent deemed relevant is demanded at the time of trial. By way of further reply, the averments of paragraph 36 through 46 of this Reply are incorporated herein by reference.

48. Paragraph 48 is denied. After reasonable investigation, Wampum is without knowledge or information sufficient to form a belief as to the truth of the averments and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial. By way of further reply, the averments of paragraphs 36 through 46 of this Reply are incorporated herein by reference.

WHEREFORE, Counterclaim Defendant, Wampum Hardware, Inc., prays that the counterclaim filed by Counterclaim Plaintiffs, Ecklund Coal Company and David Ecklund, be dismissed and judgment be entered in its favor.

Count II
Breach of Implied Warranty

49. No reply is necessary to Paragraph 49. To the extent a reply is necessary, Paragraph 49 is denied.

50. Paragraph 50 is denied. To the contrary, Wampum did not hold itself out to Ecklund as competent to perform the drilling and blasting work in accordance with accepted industry standards in order to induce it to enter into the contract.

51. Paragraph 51 is denied. To the contrary, Wampum performed its drilling and blasting work in accordance with accepted industry standards and in the locations and in the manner directed by Ecklund.

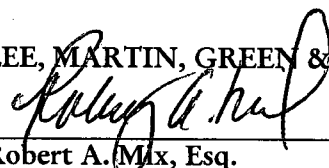
52. Paragraph 52 is denied. To the contrary, Wampum performed its drilling and blasting work in a workmanlike manner and in the locations and in the manner directed by Ecklund. In the alternative, if it is judicially determined that there was an implied warranty that the drilling and blasting work performed by Wampum would be within accepted industry standards and according to law, then Wampum complied with that implied warranty.

53. Paragraph 53 is denied. To the contrary, Wampum performed its drilling and blasting work in a workmanlike manner and in the locations and in the manner directed by Ecklund.

54. Paragraph 54 is denied. To the contrary, Wampum performed its drilling and blasting work in a workmanlike manner, in accord with the contract, accepted industry standards and law

and in the locations and in the manner directed by Ecklund, and its conduct did not cause or contribute to the cause of Ecklund's damages and losses, if any. After reasonable investigation, Wampum is without knowledge or information sufficient to form a belief as to the truth of the remaining averments and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

WHEREFORE, Counterclaim Defendant, Wampum Hardware, Inc., prays that the counterclaim filed by Counterclaim Plaintiffs, Ecklund Coal Company and David Ecklund, be dismissed and judgment be entered in its favor.

LEE, MARTIN, GREEN & REITER, INC.
By: 
Robert A. Mix, Esq.
I.D. #16164
Attorney for Wampum Hardware, Inc. as
Counterclaim Defendant
115 E. High Street
P.O. Box 179
Bellefonte, PA 16823
814-355-4769

11-15-01 10:55

FROM-LEE MARTIN GREEN & REITER

814-355-5024

T-566 P.02/08 F-068

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a

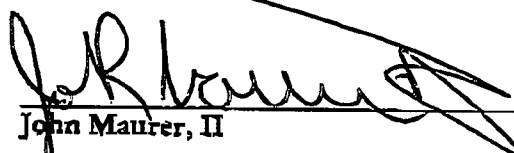
ECKLUND COAL COMPANY, INC.,

Defendant

:
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: No. 2001-461-CD
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VERIFICATION

John Maurer, II states that he is a representative of Wampum Hardware, Inc., that he is acquainted with the facts set forth in the foregoing Reply to Counterclaim; that the same are true and correct to the best of his knowledge, information and belief; and that this statement is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.


John Maurer, II

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

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: No. 2001-461-CD
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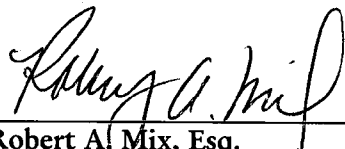
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply to Counterclaim was deposited in the United States mail, postage prepaid, in Bellefonte, Pennsylvania, on the 16th day of November, 2001 addressed to the following:

Barbara J. Hugney-Shope, Esq.
23 North 2nd Street
Philipsburg, PA 16866

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

Bruce M. Feichtinger, Esq.
Whittington * von Sternberg
2600 South Gessner, Suite 600
Houston, TX 77063


Robert A. Mix, Esq.

FILED

NOV 19 2001

W/F-301 WAG
William A. Shaw
Prothonotary

(KMS)

NO CHAT COMES

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

WAMPUM HARDWARE, INC.

-vs-

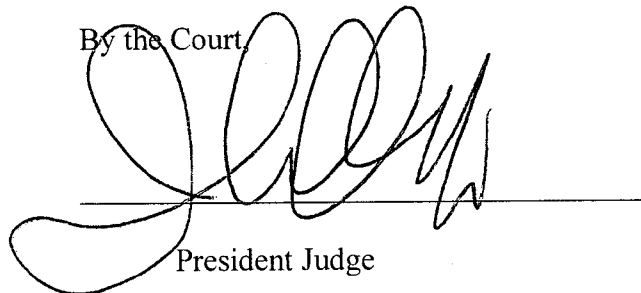
ECKLUND COAL COMPANY, INC.,
and DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife

No. 2001 - 461 - CD

ORDER

NOW, this 12th day of March, 2002, upon consideration of Preliminary Objections to Plaintiff's First Amended Complaint filed on behalf of Defendant Deborah M. Ecklund, and argument and briefs thereon, it is the ORDER of this Court that said Objections be and are hereby dismissed without prejudice to permit said Defendant to again raise them following completion of discovery or at the end of Plaintiff's case in chief.

By the Court



President Judge

FILED

MAR 12 2002

William A. Shaw
Prothonotary

FILED

8/11/15
MAR 12 2002

William A. Shaw
Prothonotary
Prothonotary

1cc Atty Shope
1cc Atty Nason
1cc Atty Mix
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

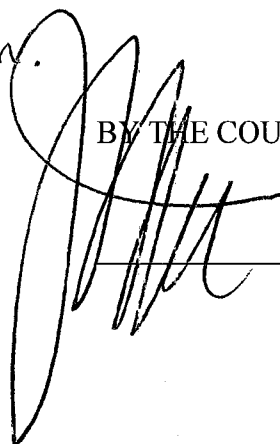
WAMPUM HARDWARE, INC.,
Plaintiff
vs.
DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant

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: No. 2001-461-CD
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ORDER

AND NOW, this 21st day of March, 2002, after consideration of Counterclaim Defendant Wampum Hardware, Inc.'s Motion to Compel Discovery, argument is set for the 8 day of May, 2002, in Court Room # 1, Clearfield County Courthouse, Clearfield, Pennsylvania. at 9:30 A.M.

BY THE COURT:



FILED

MAR 21 2002

0/2:34 p.m.
William A. Shaw
Prothonotary

2 CC to Atty mix
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AET

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

WAMPUM HARDWARE, INC.,
Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant

:
:
: No. 2001-461-CD
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:
:

FILED

MAR 20 2002

17/10:27/10cc

William A. Shaw
Prothonotary

MOTION TO COMPEL DISCOVERY

NOW COMES Counterclaim Defendant Wampum Hardware, Inc., by its attorneys, Lee, Martin, Green & Reiter, Inc., and respectfully represents:

1. On October 9, 2001, Counterclaim Defendant Wampum Hardware, Inc. served Interrogatories and a Request for Production of Documents on Counterclaim Plaintiff Ecklund Coal Company, Inc. by way of service on their counsel of record. True and correct copies of said Interrogatories and Request for Production of Documents are attached hereto, incorporated herein and Marked Exhibits "A" and "B".

2. To the date of filing of this Motion to Compel Discovery, Counterclaim Plaintiff has not filed and served Answers to said Interrogatories or a Response to said Request for Production of Documents, nor has it filed objections thereto.

3. In November, 2001, Counterclaim Plaintiff requested and Counterclaim Defendant granted a reasonable extension of time for service of Answers to said Interrogatories and a Response to said Request for Production of Documents.

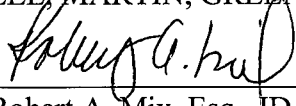
4. Counterclaim Defendant avers that a reasonable extension of time for service of Answers to said Interrogatories and a Response to said Request for Production of Documents has expired.

5. Despite a request that it do so, Counterclaim Plaintiff has not served Answers to said Interrogatories or a Response to said Request for Production of Documents

6. Counterclaim Defendant will be prejudiced in its defense of the counterclaim if Counterclaim Plaintiff is not required to provide the requested information and documents.

WHEREFORE, Counterclaim Defendant Wampum Hardware, Inc. respectfully requests Your Honorable Court to issue an Order compelling Counterclaim Plaintiff Ecklund Coal Company, Inc. to file and serve Answers to Interrogatories and Response to said Request for Production of Documents within twenty (20) days or such other period of time as the Court may deem appropriate.

LEE MARTIN, GREEN & REITER, INC.

By: 

Robert A. Mix, Esq., ID #16164
Attorney for Wampum Hardware, Inc. as
Counterclaim Defendant
115 E. High Street
P.O. Box 179
Bellefonte, PA 16823
814-355-4769

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

:
: No. 2001-461-CD
:
: Type of Motion: Interrogatories
:
: Filed on behalf of: Counterclaim
: Defendant Wampum Hardware, Inc.
:
: Counsel of Record:
: Robert A. Mix, Esq.
: I.D. #16164
: Lee, Martin, Green & Reiter, Inc.
: 115 E. High Street
: P.O. Box 16164
: Bellefonte, PA 16823
: 814-355-4769

EXHIBIT

tabbles

A

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

:
:
: No. 2001-461-CD
:
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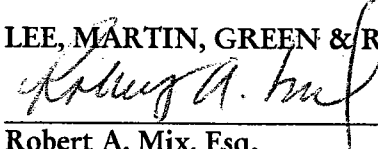
WAMPUM HARDWARE, INC.'S INTERROGATORIES TO
COUNTERCLAIM-PLAINTIFF ECKLUND COAL COMPANY, INC.

To: Ecklund Coal Company, Inc. by and through its attorney of record, Barbara Hugney-Shope,
23 North 2nd Street, Clearfield, PA 16830

Pursuant to Pennsylvania Rule of Civil Procedure 4005 of the Pennsylvania Rules of
Civil Procedure, Wampum Hardware, Inc., Counterclaim-Defendant in the above-entitled and
numbered cause, hereby serves you with the attached Interrogatories, answers to which shall be
made under oath separately and fully in writing within thirty (30) days after service of such
Interrogatories.

LEE, MARTIN, GREEN & REITER, INC.

By:


Robert A. Mix, Esq.

I.D. #16164

Attorney for Wampum Hardware, Inc. as
Counterclaim Defendant

115 E. High Street

P.O. Box 179

Bellefonte, PA 16823

814-355-4769

INSTRUCTIONS FOR ANSWERING INTERROGATORIES

A. In accordance with Pa. R.C.P. No. 4005, original written Interrogatories have been served upon you to be answered by the party served or, if the party served is a public or private corporation or similar entity or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party.

B. In accordance with Pa. R.C.P. No. 4006, written answers shall be inserted in the spaces provided in the Interrogatories. If there is insufficient space to answer an Interrogatory, the remainder of the answer shall follow on a supplemental sheet.

C. In accordance with Pa. R.C.P. No. 4006(b), a sufficient answer to such an Interrogatory shall be to specify the records from which the answer may be derived or ascertained.

D. Please return these original Interrogatories to our office with inserted answers.

E. For purposes of these Interrogatories, the following definitions shall apply:

1. "Document" means any written, recorded or graphic matter, however produced or reproduced.
2. "Identify" or "identification" when used in reference to an individual person means to state his name, present or last known address, present or last known position and business affiliation and his position and business affiliations at all times during the period covered by the Complaint.
3. "Describe" or "identify" when used in reference to a document means to state the type of document (for example, letter, memorandum, telegram, chart, etc.), the date, author, addresses, title file and identifying number and symbol, and the name and address of its custodian. If any such documents are no longer in your possession or subject to your control, state what disposition was made of it and the date thereof.

INTERROGATORIES

1. State the full name and addresses of all persons who contributed to answering these Interrogatories.
2. State and describe in detail how Wampum Hardware, Inc. failed to perform drilling and blasting in a workmanlike manner.
3. Identify all facts supporting the allegation that the activities of Wampum Hardware, Inc. resulted in an excessive dust violation being filed against Ecklund Coal Company, Inc.

4. Identify all regulations and laws that were violated by Wampum Hardware, Inc. in performing drilling and blasting for Ecklund Coal Company, Inc.

5. Did any of Wampum Hardware, Inc.'s agents, employees or representatives make any statements regarding the drilling and blasting which it performed? If so, identify each person by name and state when, where and what was said by each of Wampum Hardware, Inc.'s agents, employees and representatives.

6. State the name, address and telephone number of any person who is expected to be called to testify at trial by Ecklund Coal Company, Inc. and state the subject of each witness' testimony.

7. State the name, address and telephone number of persons having knowledge of relevant facts, and provide a brief statement of each identified person's connection with the case.

8. With regard to any person who Ecklund Coal Company, Inc. expects to call as an expert witness at trial, please provide: a) the expert's name, address and telephone number; b) the subject matter on which the expert will testify; and c) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them.

9. State all expenses and/or losses Ecklund Coal Company, Inc. claims it has incurred as a result of the actions of Wampum Hardware, Inc. As to each expense and/or loss, state the date or dates it was incurred, the name of the person, firm and/or company to whom such amounts are owed, whether the expense and/or loss in question has been paid and, if so, by whom it was paid, and describe the reason and/or purpose for each expense and/or loss.

10. Describe in detail all other damages Ecklund Coal Company, Inc. claims it suffered as a result of the actions of Wampum Hardware, Inc. including, but not limited to, lost revenues and profits and provide the amount and method of calculating damages.

11. State in detail how the actions of Wampum Hardware, Inc. have caused Ecklund Coal Company, Inc. to cease all of its operations at the Ferlitch job.

12. State in detail how the actions of Wampum Hardware, Inc. have made it impossible for Ecklund Coal Company, Inc. to continue its operations at the Ferlitch job using normal strip mining methods.
13. Have you filed a claim with or received any payment and/or other consideration from any source in compensation for damages alleged in your counterclaim? If your answer is in the affirmative, state:
- (a) the amount of such payment and/or consideration received;
 - (b) the name of the person, firm, insurance company and/or corporation making such payment or providing other consideration and the reason for the payment and/or other consideration; and
 - (c) whether there are any documents evidencing such payment and/or other consideration received.
-

14. Identify by name, telephone number and address any individual or company Ecklund Coal Company, Inc. hired as a result of Wampum Hardware, Inc.'s failure to perform drilling and blasting in a workmanlike manner.
15. State whether the blasting site at issue in this lawsuit was inspected by you or anyone on your behalf with regard to Wampum Hardware, Inc.'s alleged failure to perform drilling and blasting in a workmanlike manner. If so, state when and by whom each such inspection was made.

16. Identify all actions or claims in which Ecklund Coal Company, Inc. was, or is, involved as a result of Wampum Hardware, Inc.'s alleged failure to perform drilling and blasting in a workmanlike manner in any legal or administration forum other than the court before which this lawsuit is pending. For each such action or claim state:

- (a) the complete style of the proceeding;
- (b) the claims made in each such proceeding;
- (c) the location where such proceeding was filed; and
- (d) the ultimate resolution of such action or claim.

17. Have any photographs, movies and/or videotapes been taken of the scene of the occurrence? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, and the name, address, occupation and employer of the person taking them.

18. Has any person or entity asserted a right of subrogation, contractual right of reimbursement or other right to receive all or part of the proceeds of any judgment or settlement you receive in this case? If so, state:

- (a) the name, address and identity of such person or entity;
- (b) the total amount of the interest being asserted by each such person or entity;
- (c) attach to your answers or provide for inspection and copying all documents supporting the right to subrogation, contractual right to reimbursement or interest in the proceeds of this settlement.

19. Have you or any person or entity on your behalf entered into any settlement agreement including, but not limited to, a "Mary Carter Agreement" or a "high/low agreement," settling on a current or contingent basis any claims arising from the incident(s) which are the basis of this lawsuit? If so, state:

(a) the identity of the persons or entities with whom you have entered into the agreement;

(b) all terms of the agreement; and

(c) attach to your response copies of all documents, including letter agreements, settlement agreements, and settlement drafts constituting either the terms of the settlement agreements or demonstrating the performance of the agreement.

20. State whether Ecklund Coal Company, Inc. has been involved in any litigation, civil or criminal, in any capacity from 1990 to present and, if so, identify the following:

- (a) Name of the court and the city, county and state in which it is located;
- (b) date that such litigation was filed and its docket number
- (c) Parties to the litigation and your specific involvement; and
- (d) Name of the litigation and its disposition

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

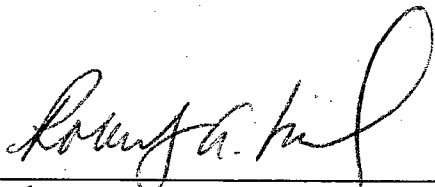
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: No. 2001-461-CD
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Interrogatories was
deposited in the United States mail, postage prepaid, in Bellefonte, Pennsylvania, on the 9th
day of August, 2001 addressed to the following:

Barbara J. Hugney-Shope, Esq.
23 North 2nd Street
Philipsburg, PA 16866

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


Robert A. Mix, Esq.

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

WAMPUM HARDWARE, INC.,

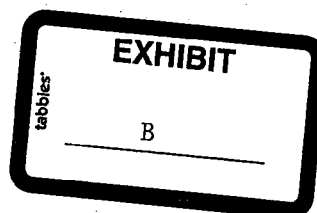
Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

:
: No. 2001-461-CD
:
: Type of Motion: Request for Production
: of Documents
:
: Filed on behalf of: Counterclaim
: Defendant Wampum Hardware, Inc.
:
: Counsel of Record:
: Robert A. Mix, Esq.
: I.D. #16164
: Lee, Martin, Green & Reiter, Inc.
: 115 E. High Street
: P.O. Box 16164
: Bellefonte, PA 16823
: 814-355-4769



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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

:
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: No. 2001-461-CD
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REQUEST FOR PRODUCTION OF DOCUMENTS

To: Ecklund Coal Company, Inc. by and through its attorney of record, Barbara Hugney-Shope,
23 North 2nd Street, Clearfield, PA 16830

Pursuant to Pennsylvania Rules of Civil Procedure No. 4009.1 and 4009.11, the above-named party or parties are directed to produce those documents listed hereinafter for the purposes of inspection and/or copying or reproduction.

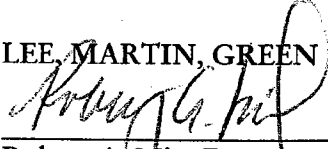
The party upon whom the request is served shall serve a written response within thirty (30) days after service of the Request. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

The documents and tangible things shall be produced at the offices of Lee, Martin, Green & Reiter, Inc. at 115 East High Street, Bellefonte, Pennsylvania on or before

November 16, 2001, or at such other time and place that the parties may mutually agree. Alternatively, copies of said documents or tangible things may be delivered to the undersigned.

In responding to this request, you (as hereinafter defined) shall utilize the definitions and follow the instructions hereinafter set forth, each of which shall be deemed to be a material part of each request.

LEE, MARTIN, GREEN & REITER, INC.

By: 

Robert A. Mix, Esq.

I.D. #16164

Attorney for Wampum Hardware, Inc. as
Counterclaim Defendant

115 E. High Street

P.O. Box 179

Bellefonte, PA 16823

814-355-4769

INSTRUCTIONS

1. As to each of the following requests, you (as hereinafter defined) shall identify and/or produce all documents which are known to you or which can be located by you, your agents or employees, representatives, attorneys, accountants and any other persons acting on your behalf, including, but not limited to, all documents which are in business or personal files of your employees, in the possession of your representatives, attorneys, accountants or accessible to you, your employees or your representatives, attorneys or accountants.

2. If any documents are stored or maintained in files in the normal course of any business, the documents shall be produced in such files, or in a manner which preserves and indicates the kind of file from which the documents were taken.

3. If more than one copy of a document exists, the original document shall be produced, as well as every copy which contains any notation or marking of any sort which does not appear on the original.

4. If any documents requested herein have been lost or destroyed, you shall produce or provide a list of each document which was lost or destroyed, together with the following information:

- a. A brief description of the document
- b. The date that the document was generated
- c. The author of the document
- d. The date upon which the document was lost or destroyed, if known
- e. A brief statement of the manner in which the document was lost or destroyed, if known

5. In the event that production of any document herein is objected to, on the grounds of privilege from discovery, you will state each ground for the privileged claim and describe the document withheld by giving the date, author and a general description of the subject matter contained in the document.

6. These requests for documents shall be deemed continuing and require further and supplemental production of documents by you in accordance with Pennsylvania Rule of Civil Procedure 4007.4.

Definitions

The following definitions shall be used in responding to this Request:

1. "You" and "Your" shall mean the party to whom this Request is addressed as well as their agents, attorneys, employees, accountants, consultants, independent contractors, and any other individual or entity associated with or affiliated with the said party, or purporting to act on the said party's behalf with respect to the matter in question.
2. "Document" shall mean all written or printed matter of any kind in your possession, custody or control, which is either known to you, or can be located or discovered by you, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, including the correspondence, memoranda, notes, speeches, press releases, diaries, calendars, agenda, statistics, letters, telegrams, minutes, contracts, purchase orders, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, inter-office and intra-office communications, offers, bulletins, printed matter, computer print-outs, teletypes, telefax, invoices, worksheets, work papers, records of telephone calls or other communications or conversations, and drafts, alterations, modifications, changes, or amendments of any kind of the foregoing graphic or aural records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, recordings, and motion pictures) and electronic or mechanical records of representations of any kind (including, without limitation, tapes, cassettes, disks and recordings).
3. "Person" shall mean any individual, firm, partnership, corporation, association, business or governmental entity or subdivision, agency, department and any "person" acting by, through, directly or indirectly, any other "person" as well as any "person" by whom such "person" was controlled with respect to the matter in question.

The documents to be produced are the following:

1. All documents evidencing that Wampum Hardware, Inc. "repeatedly pursued Ecklund Coal Company, Inc., requesting that it hire [Wampum Hardware, Inc.] to do the drilling and blasting.
2. All documents evidencing that Wampum Hardware, Inc. represented that, "it could save Ecklund Coal Company, Inc. money."
3. All documents evidencing that Wampum Hardware, Inc. failed to perform drilling and blasting services for Ecklund Coal Company, Inc. in a proper and workmanlike fashion.
4. All documents evidencing that Ecklund Coal Company, Inc. sustained "substantial damages" because Wampum Hardware, Inc. failed to perform drilling and blasting services for Ecklund Coal Company, Inc. in a proper and workmanlike manner.
5. All documents evidencing that Ecklund Coal Company, Inc. was forced to cease all blasting operations until its blasting plan could be revised as a result of Wampum Hardware, Inc.'s failure to perform blasting in a workmanlike manner.
6. All documents relating to the assessment of a \$1,700.00 fine against Ecklund Coal Company, Inc. as a result of Wampum Hardware, Inc.'s failure to perform blasting in a workmanlike manner.
7. All documents received by Ecklund Coal Company, Inc. from the Pennsylvania Department of Environmental Protection relating to the "Ferlitch job" from 1990 to present.
8. All documents sent and/or submitted by Ecklund Coal Company, Inc. to the Pennsylvania Department of Environmental Protection relating to the "Ferlitch job" from 1990 to present.
9. All blasting plans prepared by or for Ecklund Coal Company, Inc. relating to the "Ferlitch job" from 1990 to present.
10. All notes, revisions or other documents generated during the preparation of any blasting plans prepared by or for Ecklund Coal Company relating to the "Ferlitch job."
11. All documents relating to all excessive dust violations filed against Ecklund Coal Company, Inc. from 1990 to present.
12. All documents evidencing that Wampum Hardware, Inc.'s failure to perform its work in a workmanlike manner resulted in Ecklund Coal Company being cited by the Pennsylvania Department of Environmental Protection for fugitive dust and receiving a fine.

13. All documents relating to Ecklund Coal Company, Inc.'s receipt of two citations as a result of Wampum Hardware, Inc.'s failure to perform the drilling and blasting in a workmanlike manner.
14. All documents relating to expenses incurred by Ecklund Coal Company, Inc. in attempting to satisfy residences near the mining site due to the fugitive dust caused by Wampum Hardware, Inc.'s blasting.
15. All documents evidencing that it was impossible for Ecklund Coal Company, Inc. to continue its operation at the "Ferlitch job" as a result of the two citations it received due to Wampum Hardware, Inc.'s failure to drill and blast in a workmanlike manner.
16. All documents relating to Ecklund Coal Company, Inc.'s effort to mitigate its damages by using the auger method to remove coal.
17. All documents evidencing that Ecklund Coal Company, Inc.'s effort to mitigate its damages by using the auger method were not economically feasible.
18. All documents supporting Ecklund Coal Company's claim that it has suffered an estimated loss of \$2,000,000.00 as a result of Wampum Hardware, Inc.'s failure to perform in a workmanlike manner and its violation of law.
19. All documents supporting Ecklund Coal Company, Inc.'s claim that Wampum Hardware, Inc. violated any laws or regulations.
20. All documents evidencing any representations made by Wampum Hardware, Inc. to Ecklund Coal Company, Inc. prior to performing any drilling and/or blasting.
21. All documents supporting Ecklund Coal Company, Inc.'s claim that Wampum Hardware Inc. failed to consider the contour of the rock plate and failed to drill through the rock so as to properly blast the rock plate.
22. All documents evidencing payments to any persons or entities to mitigate, correct or remedy damages allegedly caused by Wampum Hardware, Inc.
23. All documents evidencing any claims made or insurance benefits received by Ecklund Coal Company, Inc. or on its behalf in connection with the damage allegedly caused by Wampum Hardware, Inc.
24. All written or otherwise recorded statements given by any persons relating to the subject matter of this lawsuit.
25. All documents, including, but not limited to, written reports, photographs and videotapes, generated as a result of any inspections regarding Wampum Hardware, Inc.'s failure to perform drilling and blasting in a workmanlike manner.

26. A curriculum vitae for each and every expert identified by you in your answer to Interrogatory No. 8.
27. All documents provided by you to each and every expert identified by you in your answer to Interrogatory No. 8.
28. All documents generated by each and every expert identified by you in your answer to Interrogatory No. 8.
29. All documents relating to any and all litigation identified by you in your answer to Interrogatory No. 20.
30. All notes, diaries, calendars, recordings or documents of any kind that pertain to or refer to the subject matter of this litigation and that are not privileged.
31. All records, reports, notes or other documents referred to, consulted, reviewed or prepared in responding to Wampum Hardware, Inc.'s Interrogatories and Request for Production.
32. Every exhibit that you anticipate introducing into evidence on your behalf at the trial of this matter.
33. All documents relating to any settlement agreements including, but not limited to, any "Mary Carter Agreements" or "high/low agreements."
34. All documents relating to any and all proceedings identified by you in your answer to Interrogatory No. 16.
35. All documents evidencing payments to any person or entity involved in an investigation or inspection of the "Ferlitch job" from 1990 to present.
36. All reports, notes, letters or any other documents generated by any person or entity involve din any investigation or inspection of the "Ferlitch job" from 1990 to present.
37. All permits, licenses, authorizations, waivers and any other documents evidencing inspection, authorization, licensing, certification and/or approval by drilling, blasting and/or mining at the "Ferlitch job" from 1990 to present.
38. All geographical surveys conducted at the "Ferlitch job" from 1990 to present.

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

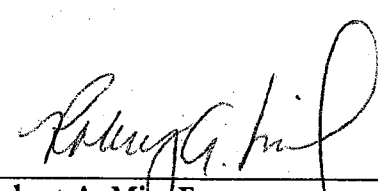
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: No. 2001-461-CD
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for Production of Documents was deposited in the United States mail, postage prepaid, in Bellefonte, Pennsylvania, on the 9th day of October, 2001 addressed to the following:

Barbara J. Hugney-Shope, Esq.
23 North 2nd Street
Philipsburg, PA 16866

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


Robert A. Mix, Esq.

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

WAMPUM HARDWARE, INC.,
Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant

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: No. 2001-461-CD
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CERTIFICATE OF SERVICE

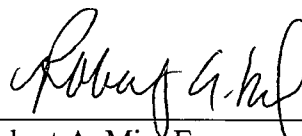
I hereby certify that a true and correct copy of the foregoing Motion to Compel Discovery
was deposited in the United States mail, postage prepaid, in Bellefonte, Pennsylvania, on the

19th day of March, 2002 addressed to the following:

Barbara J. Hugney-Shope, Esq.
23 North 2nd Street
Clearfield, PA 16830

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

Bruce M. Feichtinger, Esq.
Whittington * von Sternberg
2600 South Gessner, Suite 600
Houston, TX 77063



Robert A. Mix, Esq.

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

:
: No. 2001-461-CD
:
: Type of Motion: Answers To Interrogatories
:
: Filed on behalf of: Counterclaim
: Defendant Wampum Hardware, Inc.
:
: Counsel of Record:
: Robert A. Mix, Esq.
: I.D. #16164
: Lee, Martin, Green & Reiter, Inc.
: 115 E. High Street
: P.O. Box 16164
: Bellefonte, PA 16823
: 814-355-4769

FILED

APR 01 2002 *Ems*
01/21/09/1ccatty
William A. Shaw
Prothonotary *Shope*

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

:
:
: No. 2001-461-CD
:

ANSWERS TO

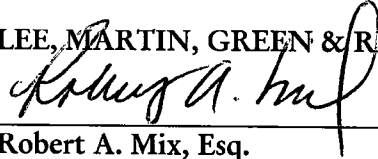
WAMPUM HARDWARE, INC.'S INTERROGATORIES TO
COUNTERCLAIM-PLAINTIFF ECKLUND COAL COMPANY, INC.

To: Ecklund Coal Company, Inc. by and through its attorney of record, Barbara Hugney-Shope,
23 North 2nd Street, Clearfield, PA 16830

Pursuant to Pennsylvania Rule of Civil Procedure 4005 of the Pennsylvania Rules of
Civil Procedure, Wampum Hardware, Inc., Counterclaim-Defendant in the above-entitled and
numbered cause, hereby serves you with the attached Interrogatories, answers to which shall be
made under oath separately and fully in writing within thirty (30) days after service of such
Interrogatories.

LEE, MARTIN, GREEN & REITER, INC.

By:


Robert A. Mix, Esq.

I.D. #16164

Attorney for Wampum Hardware, Inc. as
Counterclaim Defendant

115 E. High Street

P.O. Box 179

Bellefonte, PA 16823

814-355-4769

INSTRUCTIONS FOR ANSWERING INTERROGATORIES

A. In accordance with Pa. R.C.P. No. 4005, original written Interrogatories have been served upon you to be answered by the party served or, if the party served is a public or private corporation or similar entity or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party.

B. In accordance with Pa. R.C.P. No. 4006, written answers shall be inserted in the spaces provided in the Interrogatories. If there is insufficient space to answer an Interrogatory, the remainder of the answer shall follow on a supplemental sheet.

C. In accordance with Pa. R.C.P. No. 4006(b), a sufficient answer to such an Interrogatory shall be to specify the records from which the answer may be derived or ascertained.

D. Please return these original Interrogatories to our office with inserted answers.

E. For purposes of these Interrogatories, the following definitions shall apply:

1. "Document" means any written, recorded or graphic matter, however produced or reproduced.
2. "Identify" or "identification" when used in reference to an individual person means to state his name, present or last known address, present or last known position and business affiliation and his position and business affiliations at all times during the period covered by the Complaint.
3. "Describe" or "identify" when used in reference to a document means to state the type of document (for example, letter, memorandum, telegram, chart, etc.), the date, author, addresses, title file and identifying number and symbol, and the name and address of its custodian. If any such documents are no longer in your possession or subject to your control, state what disposition was made of it and the date thereof.

INTERROGATORIES

1. State the full name and addresses of all persons who contributed to answering these Interrogatories.

David P. Ecklund
R.D. #1, Box 109
Irvona, PA 16656

2. State and describe in detail how Wampum Hardware, Inc. failed to perform drilling and blasting in a workmanlike manner.

Failed to comply with state regulations on four (4) different shots and failed to drill holes deep enough on final shot pattern.

3. Identify all facts supporting the allegation that the activities of Wampum Hardware, Inc. resulted in an excessive dust violation being filed against Ecklund Coal Company, Inc.

Dust violation issued by D.E.P. inspector, George Loomis. Mr. Loomis reported to David Ecklund that a complaint was called in to D.E.P. that "There was a giant yellow cloud after the shot went off. It looked like Pittsburg in the 1930s."

After investigating, Loomis reported finding a heavy concentration of yellow dust on Dick Washic's house.

4. Identify all regulations and laws that were violated by Wampum Hardware, Inc. in performing drilling and blasting for Ecklund Coal Company, Inc.
1. Peak velocity - "excessive ground vibration" on 2 separate shots in the same day
 2. Shot on bottom B seam threw rocks and debris unto public highway. Ecklund Coal Company employees cleared debris before it was seen by D.E.P.
 3. Fugitive dust
5. Did any of Wampum Hardware, Inc.'s agents, employees or representatives make any statements regarding the drilling and blasting which it performed? If so, identify each person by name and state when, where and what was said by each of Wampum Hardware, Inc.'s agents, employees and representatives.

Summer of 1998: John Maurer and Don Maurer from Wampum Hardware.

The Maurer Brothers continuously entered onto job sites passing by "NO TRESPASSING" signs to convince Dave Ecklund that they (Wampum Hardware, Inc.) would do a better job than Ecklund's then blaster, Austin Powder.

When bottom B shot threw rocks all over public roadway, Wampum's blaster, Dave Dunlap, said "Hurry up and clean that road off before Jerry Knepp (D.E.P. rep.) sees it or we are all done!"

6. State the name, address and telephone number of any person who is expected to be called to testify at trial by Ecklund Coal Company, Inc. and state the subject of each witness' testimony.

Please refer to response to NO. 7.

7. State the name, address and telephone number of persons having knowledge of relevant facts, and provide a brief statement of each identified person's connection with the case.

Paul Ferlitch, Altoona, PA (814)941-2124 - Land owner; contractor
Frank Hipps, Olanta, PA (814)236-0038 - Ecklund Coal employee; loader operator
Scott Graham, Clearfield, PA(814)765-6600 - Ecklund Coal employee; loader operator
Mark Ecklund, Irvona, PA (814)672-5530 - Ecklund Coal employee; contractor
Richard Downs, current whereabouts unknown - Ecklund Coal employee; dozer operator

Jerry Knepp, PA Dept. of Environmental Protection (814)342-8200 - Blasting Inspector
George Loomis, PA Dept. of Environmental Protection (814) 342-8200 - Site Inspector
Steve Starnier, PA Dept. of Environmental Protection (814) 342-8200 - Supervisor
All out of the Hawk Run Office, Clearfield County, PA

8. With regard to any person who Ecklund Coal Company, Inc. expects to call as an expert witness at trial, please provide: a) the expert's name, address and telephone number; b) the subject matter on which the expert will testify; and c) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them.

None at this time. This information will be provided when available

9. State all expenses and/or losses Ecklund Coal Company, Inc. claims it has incurred as a result of the actions of Wampum Hardware, Inc. As to each expense and/or loss, state the date or dates it was incurred, the name of the person, firm and/or company to whom such amounts are owed, whether the expense and/or loss in question has been paid and, if so, by whom it was paid, and describe the reason and/or purpose for each expense and/or loss.

Paid to neighboring landowners who sustained either structural damage due to 3/26/99 excessive ground vibrations or due to excessive fugitive dust - both of which resulted in Ecklund Coal Company receiving a violation from D.E.P.

5-1-99 - pressure washing Dick Washic's home - \$325 (date of invoice)

7-21-99 - cleaning for Lisa Ream - \$158.84

7-28-99 - repairs to Ron Bezilla's house - \$1,073.

9-13-99 - pressure washing Dick Washic's house - \$350

10-22-99 - repairs to Anna Travis' house - \$3,344.

10-24-99 - pressure washing Dick Washic's house - \$360

10-4-99 - cleaning for Lisa Reams - \$300.

Unpaid - repairs and washing Lisa Reams' house - \$3,550.

Excessive backfilling costs due to inability to complete mining cycle: \$200,000.00

Loss of revenue:

Ferlitch job - 108,000 tons @ \$24./ton

Bakaysa job - 72,000 tons @ \$24./ton

The coal from the Ferlitch job was need for blending with the Bakaysa coal and with the inability to strip mine the Ferlitch coal, both jobs had to be shut down.

10. Describe in detail all other damages Ecklund Coal Company, Inc. claims it suffered as a result of the actions of Wampum Hardware, Inc. including, but not limited to, lost revenues and profits and provide the amount and method of calculating damages.

Loss has been based on annual gross sales of coal for 1998 of \$1.6 million prior to the use of Wampum Hardware, Inc. to perform its blasting work. Ecklund also had gross sales of coal for 1999 of approximately the same amount; however, because of the citations for blasting violations caused by Wampum and subsequent citations for fugitive dust because of neighbors complaints, Dave Ecklund, President of Ecklund Coal, was concerned that he would have his mining permits cancelled so he closed the operation which was anticipated to have lasted an extended period of time. This, in addition, to the costs of the citations and repair of damages to neighboring properties as previously referred to in these answers were the damages sustained by Ecklund Coal Company, Inc.

Calculation was based upon conservative 100 tons per inch per acre when industry standard is 150 tons. (See Paragraph 9 for estimated lost tonnage of coal.)

11. State in detail how the actions of Wampum Hardware, Inc. have caused Ecklund Coal Company, Inc. to cease all of its operations at the Ferlitch job.

Because of the citations issued against Ecklund Coal by the PA Dept. of Environmental Protection as a result of the improper blasting done by Wampum Hardware, Ecklund Coal was threatened to have its mining permit cancelled. Since the coal from the Ferlitch job was required for blending with coal from another mining operation (the Bakaysa job), the inability to obtain coal from the Ferlitch job also meant that Ecklund Coal was unable to market the coal from the Bakaysa job and as a result was required to cease operations at both jobs.

12. State in detail how the actions of Wampum Hardware, Inc. have made it impossible for Ecklund Coal Company, Inc. to continue its operations at the Ferlitch job using normal strip mining methods.

With the violations caused by Wampum's improper blasting, Dave Ecklund was advised by Steve Starner, D.E.P. inspector supervisor, that after 3 violations within 12 months that the Department would consider Ecklund Coal a "bad actor" and could revoke its permit. Ecklund coal had 3 violations within 5 months due to Wampum's actions, plus the 4th violation which was not detected by D.E.P.. Rather than risk another violation by attempting further blasting and loose its permit which would have prevented it from using the auger method to remove coal, Ecklund Coal had no alternative but to shut down its strip mining operation since it could not remove the coal without blasting due to the rock formation.

13. Have you filed a claim with or received any payment and/or other consideration from any source in compensation for damages alleged in your counterclaim? If your answer is in the affirmative, state: None, other than in this Counterclaim

(a) the amount of such payment and/or consideration received;

(b) the name of the person, firm, insurance company and/or corporation making such payment or providing other consideration and the reason for the payment and/or other consideration; and

(c) whether there are any documents evidencing such payment and/or other consideration received.

14. Identify by name, telephone number and address any individual or company Ecklund Coal Company, Inc. hired as a result of Wampum Hardware, Inc.'s failure to perform drilling and blasting in a workmanlike manner.

Will-Fit Welding - P.O. Box 73, Brisbin, PA 16620 (814)378-6637

Jet Pressure Wash - 7683 Admiral Perry Hwy., Cresson, PA 16630

Ferlitch Construction - R.D., Houtzdale, PA

Ron Bezilla (homeowner - submitted bill) Houtzdale, PA (814) 378-8213

15. State whether the blasting site at issue in this lawsuit was inspected by you or anyone on your behalf with regard to Wampum Hardware, Inc.'s alleged failure to perform drilling and blasting in a workmanlike manner. If so, state when and by whom each such inspection was made.

David Ecklund inspected every complaint on the day the complaint was received with the exception of Wampum's failure to blast through the solid rock plate which was not discovered until several weeks after the blasting by Wampum had been done. John Maurer of Wampum was advised personally of this by David Ecklund when he stopped at the Ferlitch job site. Mr. Maurer was advised that the driller, hired or employed by Wampum, had failed to drill holes deep enough on 90% of the last blasting shot.

Mark Ecklund

Frank Hipps

D.E.P. Inspectors- George Loomis and Jerry Knepp

16. Identify all actions or claims in which Ecklund Coal Company, Inc. was, or is, involved as a result of Wampum Hardware, Inc.'s alleged failure to perform drilling and blasting in a workmanlike manner in any legal or administration forum other than the court before which this lawsuit is pending. For each such action or claim state:

- (a) the complete style of the proceeding;
- (b) the claims made in each such proceeding;
- (c) the location where such proceeding was filed; and
- (d) the ultimate resolution of such action or claim.

- 1. Violation citations from PA Department of Environmental Protection previously reported.
- 2. Disputed claim from landowner for cleaning and repainting - not paid by Ecklund Coal; landowner has not taken any further action

The following actions resulted when Ecklund Coal Company, Inc., was forced to discontinue coal operations stemming from the actions of Wampum Hardware, Inc.

The Internal Revenue Service filed a lien for over \$8,000; Office of Surface Mining's reclamation fees of over \$7,000 were turned over to the U.S. Treasury Department for collection; M.S.H.A. fines of over \$1,300 were turned over to Treasury; and Ecklund Coal Company's mining license renewal was blocked by O.S.M.

17. Have any photographs, movies and/or videotapes been taken of the scene of the occurrence? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, and the name, address, occupation and employer of the person taking them.

None as of this date have been taken on behalf of Ecklund Coal Co.

PA. Department of Environmental Resources may have taken some photographs but there is no direct knowledge of who took them or who has custody of them.

18. Has any person or entity asserted a right of subrogation, contractual right of reimbursement or other right to receive all or part of the proceeds of any judgment or settlement you receive in this case? If so, state:
- (a) the name, address and identity of such person or entity;
 - (b) the total amount of the interest being asserted by each such person or entity;
 - (c) attach to your answers or provide for inspection and copying all documents supporting the right to subrogation, contractual right to reimbursement or interest in the proceeds of this settlement.

NO

19. Have you or any person or entity on your behalf entered into any settlement agreement including, but not limited to, a "Mary Carter Agreement" or a "high/low agreement," settling on a current or contingent basis any claims arising from the incident(s) which are the basis of this lawsuit? If so, state:
- (a) the identity of the persons or entities with whom you have entered into the agreement;
 - (b) all terms of the agreement; and
 - (c) attach to your response copies of all documents, including letter agreements, settlement agreements, and settlement drafts constituting either the terms of the settlement agreements or demonstrating the performance of the agreement.

NO

20. State whether Ecklund Coal Company, Inc. has been involved in any litigation, civil or criminal, in any capacity from 1990 to present and, if so, identify the following:

- (a) Name of the court and the city, county and state in which it is located;
 - (b) date that such litigation was filed and its docket number
 - (c) Parties to the litigation and your specific involvement; and
 - (d) Name of the litigation and its disposition
-
- (a) Court of Common Pleas of Clearfield County, Pennsylvania, Clearfield, Pennsylvania as Garnishee
 - (b) Garnishment filed 6-21-93; No. 93-62-EX
 - (c) Juanita D. Holenick, Plaintiff vs. Donald J. McDowell, t/d/b/a M & M Construction Company, Defendants and David P. Ecklund and Ecklund Coal Company, Garnishee
 - (d) Same as (c); settled

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

WAMPUM HARDWARE, INC.,

Plaintiff

vs.

DAVID P. ECKLUND, f/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,

Defendant

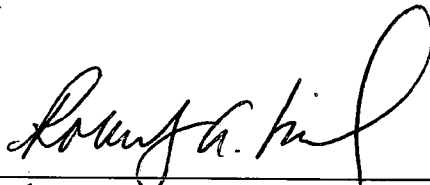
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: No. 2001-461-CD
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Interrogatories was
deposited in the United States mail, postage prepaid, in Bellefonte, Pennsylvania, on the 9th
day of October, 2001 addressed to the following:

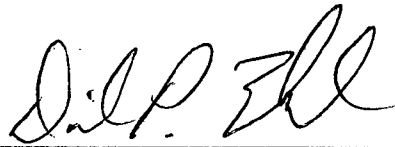
Barbara J. Hugney-Shope, Esq.
23 North 2nd Street
Philipsburg, PA 16866

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


Robert A. Mix, Esq.

VERIFICATION

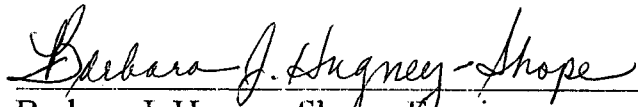
The undersigned verifies that the information provided herein pursuant to Wampum Hardware, Inc.'s Interrogatories is true and correct. The undersigned understands that false statements herein are made subject to the penalties of 18 Pa. C. S. §4904 relating to unsworn falsifications to authorities.



David P. Ecklund

Dated: March 29, 2002

A true and correct copy of the response to Wampum Hardware, Inc.'s Interrogatories was served on Wampum Hardware, Inc.'s attorney on April 1, 2002.



Barbara J. Hugney-Shope, Esquire

Attorney for Defendant /Plaintiff in Counterclaim

Dated: March 29, 2002

VERIFICATION

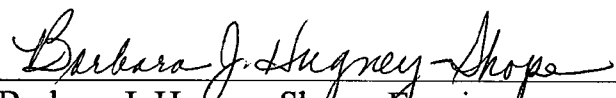
The undersigned verifies that the information provided herein pursuant to Wampum Hardware, Inc.'s Interrogatories is true and correct. The undersigned understands that false statements herein are made subject to the penalties of 18 Pa. C. S. §4904 relating to unsworn falsifications to authorities.

ECKLUND COAL COMPANY, INC.

By: 
David P. Ecklund, President

Dated: March 29, 2002

A true and correct copy of the response to Wampum Hardware, Inc.'s Interrogatories was served on Wampum Hardware, Inc.'s attorney on April 1, 2002.


Barbara J. Hugney-Shope, Esquire
Attorney for Defendant/Plaintiff in Counterclaim
Ecklund Coal Company, Inc.

Dated: March 29, 2002

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

WAMPUM^G HARDWARE, INC.,
Plaintiff,

vs.

DAVID P. ECKLUND, i/at/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant

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* NO. 2001-461-CD
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* Type of Case: CIVIL ACTION
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* Type of Pleading: RESPONSE OF PLAINTIFF
* IN COUNTERCLAIM TO REQUEST FOR
* PRODUCTION OF DOCUMENTS FILED BY
* DEFENDANT IN COUNTERCLAIM
*
*
*
*
*
* Filed on behalf of: DEFENDANT
* DAVID P. ECKLUND
*
*
*
* Counsel of Record for this Party:
* BARBARA J. HUGNEY-SHOPE, ESQUIRE
*
* Supreme Court I. D. No. 26274
* 23 North Second Street
* Clearfield, PA 16830
* (814) 765-5155

FILED

APR 01 2002
012508/1cc atty
William A. Shaw
Prothonotary
Shope
9/11/02

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

**WAMPUM HARDWARE, INC.,
Plaintiff,**

vs.

**DAVID P. ECKLUND, i/a/t/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant.**

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* NO.
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**RESPONSE OF PLAINTIFF IN COUNTERCLAIM
TO REQUEST FOR PRODUCTION OF DOCUMENTS
FILED BY DEFENDANT IN COUNTERCLAIM**

1. There are no documents since the contact was all in person by representative of Wampum Hardware, specifically John Maurer and Donald Maurer, at the site of Ecklund Coal Company's strip mining operations.

2. This representation was verbal made personally to David Ecklund by the one or both of the above-named representatives of Wampum Hardware and no documents exist.

3. Copy of Explosive Report filed by Gerald L. Knepp, Investigator for the Department of Environmental Protection, following blasting on March 26, 1999;

4. Copies of fines assessed to Ecklund Coal Company as a result of the improper blasting together with in copies of invoices for repairs and cleaning of property owners in the area.

5. See attached Explosive Report and Compliance Order from Bureau of Mining and Reclamation of the Department of Environmental Protection, Commonwealth of Pennsylvania. Ecklund Coal Company, Inc., was banned from blasting following the violations of March 26, 1999, until April 5, 1999, when a revised blast plan was approved by the Department of Environmental Protection.

6. See attached Notice of Civil Penalty Meeting; Letter from Mario Carrello, Compliance Specialist, District Mining Operations, of the Pennsylvania Department of Environmental Protection, fully executed Consent Assessment of Civil Penalty and receipt for payment of \$1,700 fine.

7. Copies of documents received from Pennsylvania Department of Environmental Protection relating to the "Ferlitch job" from 1990 to present. Also, see copies supplied in response to Paragraphs 4 through 6 and 11.

8. Copies revising blasting plan were submitted by Wampum Hardware, Inc., and Ecklund Coal Company was not provided a copy of same, except for that submitted in Paragraph 3.

9. All blasting plans were prepared by the blasting company, Austin Powder who performed blasting prior to Wampum Hardware and then Wampum Hardware for their blasting. Copies were not provided to Ecklund Coal Company except as provided in Paragraph 3.

10. Same response as in Paragraph 9.

11. Copies of excessive dust violation filed against Ecklund Coal Company available in Company records and as provided previously in these responses.

12. Provided in response to Paragraph 12.

13. Provided in response to Paragraphs 3 through 6.

14. Provided in response to Paragraphs 3 through 6.

15. This was a decision made by the President and Owner of Ecklund Coal Company after being verbally advised by the inspector for the Department of Environmental Resources that his mining permits could be pulled if he had another violation. Since he wanted to pursue the auger method of mining, he was concerned about the Department canceling his permits.

16. The attempts to use the auger method continued to meet resistance by the neighboring property owners by constantly calling the Department of Environmental Resources to report that there was excessive dust at the mining site. This even occurred when there was no equipment operated at the site. As a result of the events

that preceded Ecklund Coal Company's attempt to auger, i.e., the blasting that resulted in the earlier violations, the attempts to continue to meet the demands of the Department were found to be impossible.

17. Same answer as Paragraph 16.

18. Prior to finding it necessary to cease operations as a result of the improper blasting by Wampum Hardware, Inc., Ecklund Coal Company was grossing in excess of \$1 million per year from its coal operations as indicated on corporate tax returns submitted in response to Wampum Hardware, Inc.'s request as Plaintiff in the Complaint. It was fully anticipated that this mining operation would continue for two to three years at a minimum.

19. This has already been provided as part of Paragraphs 5 through 7.

20. There are no documents that Ecklund Coal Company has knowledge of. On the contrary, the representations were all verbal made by John Maurer or Don Maurer to David Ecklund, President and Owner of Ecklund Coal Company, Inc.

21. There are no documents with regard to this. Personal observations by employees of Ecklund Coal Company as to the method of Wampum Hardware's drilling and its result when they tried to remove the coal and could not because the blasting by Wampum Hardware failed to shatter the rock plate.

22. Provided in the response to Paragraph 4 above.

23. Ecklund Coal Company, Inc., did not receive any insurance benefits nor did its President and Owner.

24. A copy of the Deposition of David P. Ecklund on September 26, 2001 taken at the request of Wampum Hardware, Inc.

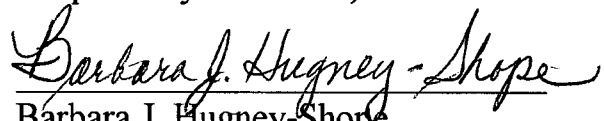
25. There are no additional documents from those that have been provided herein that the Plaintiff in the Counterclaim is aware of at this time.

26. This has not been decided. This will be provided when available.

27. This has not been decided. This will be provided when available.

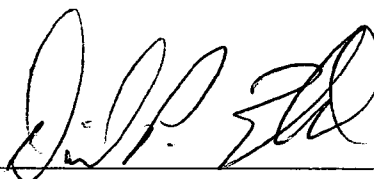
28. This has not been decided. This will be provided when available.
29. Copies of the proceedings involving David Ecklund and Ecklund Coal Company as a garnishee filed in Clearfield County, Pennsylvania.
30. None at this time.
31. All copies have been provided in prior responses to this Request for Production of Documents.
32. These has not been determined. Copies will be provided at a later date and prior to trial.
33. None
34. Previously provided in response to Paragraphs 5 and 6.
35. None available.
36. Inspectors for the Pennsylvania Department of Environmental Protection which have been provided in prior responses.
37. Some time after closing down Ecklund Coal Company's operations, most of the requested documents were turned over to another coal operator to review and see if he had any interest in renewing leases and completing the removal coal. This was done without any compensation to Ecklund Coal Company. The only records remaining in Ecklund Coal Company's possession are provided represented by Permit No. 102770-17979103-03. The original of the map is available for copying if the photocopy provided is unreadable.
38. This information has been turned over to the coal operator referred to above.

Respectfully submitted,


Barbara J. Hugney-Shope
Attorney for Plaintiff in Counterclaim

VERIFICATION

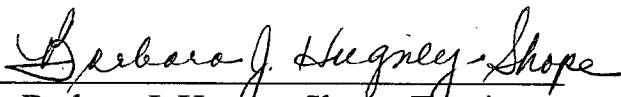
The undersigned verifies that the information provided herein pursuant to Wampum Hardware, Inc.'s Request for Production of Documents is true and correct. The undersigned understands that false statements herein are made subject to the penalties of 18 Pa. C. S. §4904 relating to unsworn falsifications to authorities.



David P. Ecklund

Dated: March 29, 2002

A true and correct copy of the response to Wampum Hardware, Inc.'s Request for Production of Documents was served on Wampum Hardware, Inc.'s attorney on April 1, 2002.



Barbara J. Hugney-Shope, Esquire

Attorney for Defendant /Plaintiff in Counterclaim

Dated: March 29, 2002

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

DAVID P. ECKLUND, i/at/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant

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* NO. 2001-461-CD
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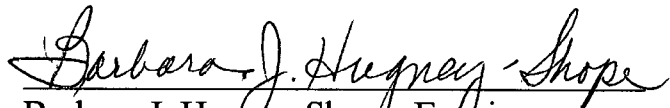
NOTICE OF SERVICE OF INTERROGATORIES

TO: WILLIAM A. SHAW, PROTHONOTARY

You are hereby notified that on April 1, 2002, the Answers to Interrogatories and Response of Plaintiff in Counterclaim to Request for Production of Documents filed by Defendant in Counterclaim were mailed by First Class Mail, postage prepaid, addressed as follows:

Robert A. Mix, Esquire
Attorney for Defendant/Counterclaim
LEE, MARTIN, GREEN & REITER, INC.
115 East High Street
P. O. Box 179
Bellefonte, PA 16823

David C. Mason, Esquire
Attorney for Plaintiff/Complaint
409 North Front Street
P. O. Box 28
Philipsburg, PA 16866


Barbara J. Hugney-Shope, Esquire
Attorney for Defendant/Plaintiff

in Counterclaim
23 North Second Street
Clearfield, PA 16830
(814) 765-5155
I. D. No. 26274

FILED

APR 01 2002

01210813cc atty
William A. Shaw
Prothonotary



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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

DAVID P. ECKLUND, i/at/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant

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* **NO. 2001-461-CD**
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* **Type of Case: CIVIL ACTION**
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* **Type of Pleading: ANSWER TO FIRST**
* **AMENDED COMPLAINT**
*
*
*
* **Filed on behalf of: DEFENDANT**
*
* **DEBORAH M. ECKLUND**
*
* **Counsel of Record for this Party:**
* **BARBARA J. HUGNEY-SHOPE, ESQUIRE**
*
* Supreme Court I. D. No. 26274
* 23 North Second Street
* Clearfield, PA 16830
* (814) 765-5155

FILED

APR 05 2002

William A. Shaw
Prothonotary

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

ECKLUND COAL COMPANY, INC.,
and DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife
Defendants.

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* **NO. 2001-461-CD**
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ANSWER TO
FIRST AMENDED COMPLAINT

AND NOW, comes the Defendant, DEBORAH M. ECKLUND, who by and through her attorney, Barbara J. Hugney-Shope, Esquire, files the following Answer to the First Amended Complaint in this matter and in support thereof avers as follows:

1. Admitted.
2. A. Admitted.
B. Admitted.
3. Admitted.
4. Admitted.

5. Denied. Plaintiff's allegations contained in Paragraph 5 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

6. Denied. Plaintiff's allegations contained in Paragraph 6 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

7. Denied. Plaintiff's allegations contained in Paragraph 7 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial. Denied.

8. Denied. Plaintiff's allegations contained in Paragraph 8 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is

without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

COUNT I

9. Denied. Plaintiff's allegations contained in Paragraph 9 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

COUNT II

10. Admitted.

11. Admitted.

12. Admitted.

13. Denied in part. It is denied that the office of Ecklund Coal Company, Inc. was always in the home of David P. Ecklund and Deborah M. Ecklund. On the contrary, the office for Ecklund Coal Company, Inc., when the company was an operating company, Ecklund Coal Company, Inc. had offices at it various mining operations.

14. Denied. It is denied that Ecklund Coal Company, Inc., did not have a separate office, did not have a separate address, did not have a separate phone number. On the contrary, Ecklund Coal Company, Inc., did have separate offices at the various mining sites and did have separate telephone numbers when it was an operating company.

15. Denied. It is denied that Defendant Deborah M. Ecklund commingled her funds, income and assets with Ecklund Coal Company, Inc., such that Ecklund Coal did not have a separate existence. On the contrary, Ecklund Coal Company, Inc., had a separate bank account where its income was deposited and from which its bills were paid.

16. Admitted. In further answer, Ecklund Coal Company, Inc., leased all its equipment from Ecklund Construction and others.

17. Admitted. In further answer, Ecklund Coal Company, Inc., leased equipment from Ecklund Construction along with from others.

18. Denied. It is denied that Ecklund Coal Company did not pay Defendant for the use of these pieces of equipment. On the contrary, Ecklund Coal Company paid the rate established in the industry for rental of this equipment.

19. Denied. Plaintiff's allegations contained in Paragraph 19 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is

without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

20. Denied. Plaintiff's allegations contained in Paragraph 20 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

21. Denied. Plaintiff's allegations contained in Paragraph 21 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

22. Admitted. In further answer, Defendant Deborah M. Ecklund did some clerical work at the request of her husband but did not consider this as her primary employment.

23. Denied. It is denied that Deborah M. Ecklund borrowed money for the benefit of Ecklund Coal. In the contrary, any borrowed money was for the purchase

of equipment for Ecklund Construction which was a pattern established long before prior to the Ecklund Coal existed.

24. Denied. It is denied that no written Memoranda exists with regard to the money loaned by Defendant Deborah M. Ecklund to Ecklund Coal Company. On the contrary, a record of the money loaned to Ecklund Coal Company was maintained.

25. Denied. Plaintiff's allegations contained in Paragraph 25 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

26. Admitted.

27. Denied. It is denied that the assets used by Ecklund Coal Company, in the conduct of its mining operations have been converted to personal assets owned by David P. Ecklund and Deborah M. Ecklund. On the contrary, the assets used in the conduct of its mining operations were leased from Ecklund Construction and continue to be owned by Ecklund Construction having never become the assets of Ecklund Coal Company.

28. Denied. Plaintiff's allegations contained in Paragraph 28 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

29. Denied. Plaintiff's allegations contained in Paragraph 29 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

30. Denied. Plaintiff's allegations contained in Paragraph 30 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

31. Plaintiff's allegations contained in Paragraph 31 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is

without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

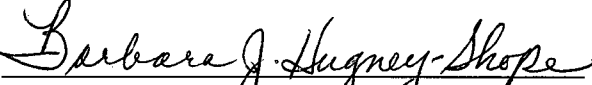
32. Denied. Plaintiff's allegations contained in Paragraph 32 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

33. Denied. Plaintiff's allegations contained in Paragraph 33 of Plaintiff's First Amended Company are denied since, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

34. Denied. It is denied that Ecklund Coal Company, Inc., was an under capitalized sham used by David P. Ecklund and Deborah M. Ecklund as their alter ego. On the contrary, this Defendant Deborah M. Ecklund had no ownership interest in Ecklund Coal Company, Inc., was not a member of the board of directors, and had no say in the management of said business.

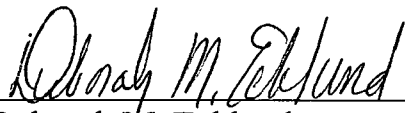
WHEREFORE, Defendant Deborah M. Ecklund requests that First Amended Complaint filed against her by the Plaintiff be dismissed with prejudice.

Respectfully submitted,


Barbara J. Hugney-Shope, Esquire
Attorney for Defendant Deborah M.
Ecklund

VERIFICATION

I verify that the statements made in the foregoing Answer to First Amended Complaint are true and correct. I understand that false statements herein made are subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



Deborah M. Ecklund

Dated: 4-2, 2002

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

NO. 2001-461-CD

WAMPUM HARDWARE, INC., Plaintiff,

vs.

DAVID P. ECKLUND, f/at/d/b/a
ECKLUND COAL COMPANY, INC.,
Defendant.

ANSWER TO FIRST
AMENDED COMPLAINT

FILED

012:17
APR 05 2002

William A. Shaw
Prothonotary

BARBARA J. HUGNEY-SHOPE
Attorney-at-Law
23 N. Second Street
Clearfield, PA 16830
(814) 765-5155
FAX (814) 765-2957

BARBARA J. HUGNEY-SHOPE
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23 N. Second Street
Clearfield, PA 16830

4cc
Amy Shope
Shope

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

ECKLUND COAL COMPANY, INC.,
DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,
Defendants.

FILED

JUN 10 2002

William A. Shaw
Prothonotary

Counsel of Record for PLAINTIFF IN
COMPLAINT
DAVID C. MASON, ESQUIRE

Supreme Court I.D. No. 39180
409 North Front Street
Philipsburg, PA 16866
(814) 342-2240

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* NO. 2001-461-CD
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* Type of Case: CIVIL ACTION
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*
* Type of Pleading: PRAECIPE TO
* SETTLE, DISCONTINUE AND END
* WITH PREJUDICE
*
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*
*
* Filed on behalf of:
* PLAINTIFF, WAMPUM HARDWARE, INC.
* AND PLAINTIFF IN COUNTERCLAIM
* ECKLUND COAL COMPANY, INC.
* DAVID P. ECKLUND and
* DEBORAH M. ECKLUND
*
* Counsel of Record for PLAINTIFF IN
* COUNTERCLAIM
* BARBARA J. HUGNEY-SHOPE, ESQUIRE
*
* Supreme Court I. D. No. 26274
* 23 North Second Street
* Clearfield, PA 16830
* (814) 765-5155

1 a

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

WAMPUM HARDWARE, INC.,
Plaintiff,

vs.

ECKLUND COAL COMPANY, INC.,
DAVID P. ECKLUND and
DEBORAH M. ECKLUND, his wife,
Defendants.

*

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* NO. 2001-461-CD

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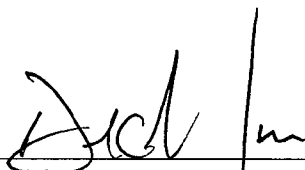
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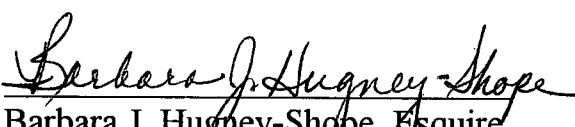
PRAECIPE TO SETTLE, DISCONTINUE AND
END WITH PREJUDICE

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly mark the above-captioned case, which includes the Complaint, First
Amended Complaint and Counterclaim, settled, discontinued and ended with prejudice.



David C. Mason, Esquire
Attorney for Plaintiff in Complaint
and First Amended Complaint



Barbara J. Hugney-Shope, Esquire
Attorney for Plaintiff-Counterclaim

Dated: June 10, 2002

E. A

[Handwritten signature]

FILED

013243 ~~41~~

JUN 10 2002

3 cc. 2 Cc's to Atty Shupe
Copy to C/A

[Handwritten initials]

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

Wampum Hardware, Inc.

Vs.

No. 2001-00461-CD

**David P. Ecklund
Ecklund Coal Company, Inc.
Wampum Hardware, Inc.**

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on June 10, 2002 marked:

Settled, Discontinued and Ended with Prejudice.

Record costs in the sum of \$152.42 have been paid in full by Barbara J. Hugney-Shope, Esq..

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 10th day of June A.D. 2002.

William A. Shaw, Prothonotary