

02-912-CD
GENERAL WOODS & -vs- SHELLY K. REED et al
VENEERS, LTD

Date: 3/2/2007
Time: 09:31 AM
Page 1 of 2

Clearfield County Court of Common Pleas

User: LMILLER

ROA Report

Case: 2002-00912-CD

Current Judge: Paul E. Cherry

General Woods & Veneers, LTD. vs. Shelly K. Reed, Wallaceton Hardwoods

Civil Other

Date		Judge
6/6/2002	✓ Filing: Civil Complaint Paid by: Mette, Evans & Woodside (M. Reed, Esq. Receipt number: 1843640 Dated: 06/06/2002 Amount: \$80.00 (Check) One CC Sheriff	No Judge
7/1/2002	✓ ANSWER. filed by s/Joseph Colavecchi, Esq. Verification s/Shelly K. Reed 3 cc Atty Colavecchi	No Judge
8/12/2002	✓ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
2/19/2004	✓ General Woods & Veneers, Ltd's Motion For Summary Judgment. Michael D. Reed, Esquire Certificate of Service 1 cc Atty Reed	No Judge
2/24/2004	✓ ORDER, NOW, this 24th day of February, 2004, re: Rule is issued upon Defendant to Appear and Show Cause why Motion should not be granted. Argument is scheduled the 11th day of March, 2004, at 11:00 a.m., in Courtroom No. 2. by the Court, s/PEC, J. 2 cc & memo of service to Atty Reed	Paul E. Cherry
2/27/2004	✓ Affidavit of Service, Rule to Show Cause dated February 24, 2004 upon Joseph Colavecchi, Esquire filed by, s/Michael D. Reed, Esquire no cc	Paul E. Cherry
3/4/2004	✓ Answer Opposing Motion For Summary Judgment. filed by, s/Joseph Colavecchi, Esquire Certificate of Service 3 cc to Atty	Paul E. Cherry
3/5/2004	Transcript, Deposition of Merwin R. Graham, June 24, 2003	Paul E. Cherry
3/10/2004	Transcript, Deposition of Merwin R. Graham, June 24, 2003	Paul E. Cherry
3/11/2004	Transcript, Deposition of Craig Keeler, June 24, 2003 no cc	Paul E. Cherry
4/21/2004	✓ ORDER, AND NOW, this 21st day of April, 2004, re: Plaintiff's Motion for Summary Judgment is GRANTED. by the Court, s/PEC, J. 1 cc Attuy Reed, J. Colavecchi	Paul E. Cherry
10/26/2004	✓ Filing: Judgment Paid by: Reed, Michael D. (attorney for General Woods & Veneers, LTD.) Receipt number: 1889087 Dated: 10/26/2004 Amount: \$20.00 (Check) Notice to Def. Stmt. to Plff. Judgment entered against Def. in the amount \$93,250.00.	Paul E. Cherry
10/29/2004	✓ Petition to Open Judgment, filed by s/Joseph Colavecchi, Esq. Three CC Attorney Colavecchi	Paul E. Cherry
11/2/2004	✓ Rule, AND NOW, this 2nd day of Nov. 2004, a Rule is hereby issued and directed to General Woods & Veneers, Ltd., to show cause why said Judgment should no be opend and why a trial or hearing should not be scheduled. This Rule is returnable before this Court on the 29th day of Nov. 2004, at 9:30 a.m. All proceedings to stay in the meantime. BY THE COURT: Paul E. Cherry, Judge. 3CC Atty J. Colavecchi	Paul E. Cherry
11/9/2004	✓ Affidavit of Service filed, by Atty. Colavecchi Served copy of of the Petition to Open Judgment and Rule upon Michael D. Reed	Paul E. Cherry
11/30/2004	✓ Order, AND NOW, this 29th day of November, 2004, following argument on Defendant's Petition to Open Judgment, IT IS THE ORDER OF THIS COURT that Attorney Michael D. Reed file a brief within 15 days of this date. Attorney Joseph Colavecchi, shall have 15 days thereafter to file a response. BY THE COURT: /s/ Paul E. Cherry, Judge. 1 CC Atty Colavecchi, 2 CC Atty Reed	Paul E. Cherry

Date: 3/2/2007
Time: 09:31 AM
Page 2 of 2

Clearfield County Court of Common Pleas

User: LMILLER

ROA Report

Case: 2002-00912-CD

Current Judge: Paul E. Cherry

General Woods & Veneers, LTD. vs. Shelly K. Reed, Wallaceton Hardwoods

Civil Other

Date		Judge
2/7/2007	✓ Opinion And Order: Now, this 6th day of Feb., 2007, Ordered that Defendant's Motion to Open Judgment is Granted in part and Denied in part. The Prothonotary of Clearfield County is Ordered to enter judgment in the amount of \$55,668.40 plus pre-judgment interest in the amount of \$8,766.40 and post-judgment interest at the rate of 6% per annum from April 21, 2004 and strike attorney fees from said judgment. By The Court, /s/ Paul E. Cherry, Judge. 1CC D. Mikesell and Law Library w/out memo, 2 CC M. Reed and J. Colavecchi with memo.	Paul E. Cherry

GENERAL WOODS &
VENEERS, LTD.,
Plaintiff

v.

SHELLY K. REED t/d/b/a
WALLACETON HARDWOODS,
Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

No. 02-912-C8

CIVIL ACTION - LAW

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 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(s). 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.

David S. Meholic, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, ext. 5982

FILED

JUN 06 2002

NOTICIA

William A. Shaw
Prothonotary

LE HAN DEMANDADO A USTED EN LA CORTE. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Usted debe presentar una apariciencia escrita o en persona o por abogado y archivar en la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede entrar una orden contra usted sin previo aviso o notificacion y por cualquier queja o alivio que es pedido en la peticion de demanda. Usted puede perder dinero o sus propiedades o otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABODAGO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

David S. Meholic, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, ext. 5982

GENERAL WOODS &	:	IN THE COURT OF COMMON PLEAS
VENEERS, LTD.,	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
v.	:	No.
	:	
SHELLY K. REED t/d/b/a	:	CIVIL ACTION - LAW
WALLACETON HARDWOODS,	:	
Defendant	:	

COMPLAINT

And now comes Plaintiff General Woods & Veneers, Ltd., through their counsel, Mette, Evans & Woodside, P.C. and makes this Complaint, in support of which they aver as follows:

1. General Woods & Veneers, Ltd. (hereinafter "General Woods") is a Canadian Corporation with its principal offices at 1220 Marie Victorin Boulevard, Longueuil, Quebec.

2. Defendant Shelly K. Reed t/d/b/a Wallaceton Hardwoods is a sole proprietorship with its principal place of business at Reed Street, Wallaceton, Clearfield County, Pennsylvania. Shelly K. Reed is an adult individual with a last known address of P. O. Box 36, Wallaceton, Pennsylvania.

3. General Woods & Veneers has a wholly owned subsidiary known as "Spencer Veneer, LLC," (hereinafter "Spencer Veneer") a West Virginia limited

liability corporation with a principal place of business at 270 Industrial Park Road, Spencer, West Virginia.

4. In or around April 2001, the parties were operating pursuant to an oral agreement by which Wallaceton Hardwoods agreed to provide cherry logs to Spencer Veneer at a price of \$6.50 per board foot for the logs supplied, less deductions for defects, with payment to be made by General Woods.

5. On or about April 12, 2001, Wallaceton Hardwoods supplied 50 logs totaling 5,434 board feet to Spencer Veneer.

6. Also on or about April 12, 2001 Spencer Veneer prepared a "Log Scale Report" indicating that the total board feet of logs delivered was 14,416 board feet with a total amount due of \$90,862.00, and forwarded invoices for that amount to Spencer Veneers and General Woods.

7. General Woods made two wire transfer payments dated August 3, 2001 and September 4, 2001 which paid in full invoices which, inter alia, included invoices for the 14,416 board feet of logs which Wallaceton Hardwoods had purported that it had delivered to Spencer Veneer on April 12, 2001.

8. Thereafter, General Woods and Spencer Veneer conducted a detailed review of the invoices forwarded by Wallaceton Hardwoods and payments made on behalf of Spencer Veneer by General Woods for such invoices.

9. During that review, it was determined that Spencer Veneer had received only 5,434 board feet of logs on April 12, 2001 as opposed to the 14,416 board feet for which Wallaceton Hardwoods had invoiced Spencer Veneer and been paid by General Woods on behalf of Spencer Veneer. This constituted an overpayment in the amount of \$55,668.40.

10. By correspondence beginning on February 7, 2002 and concluding on April 10, 2002, General Woods made Wallaceton Hardwoods aware of the overpayment and requested immediate refund of the overpayment amount.

11. Wallaceton Hardwoods has failed and refused to reimburse General Woods for any part of the overpayment.

COUNT I - BREACH OF CONTRACT

12. The averments contained in paragraphs 1 through 11 are incorporated herein by reference as if fully set forth.

13. The actions of Wallaceton Hardwoods in misrepresenting the amount of materials delivered and refusing to reimburse General Woods & Veneers, Ltd. for the overpayment amount constitute a breach of contract which has resulted in damages to General Woods in the amount of \$55,668.40.

WHEREFORE, Plaintiff General Woods & Veneers, Ltd. demands judgment in the amount of \$55,668.40, together with interest, the costs of this action and all other remedies which this Court deems just and appropriate.

COUNT II - NEGLIGENT MISREPRESENTATION

14. The averments of paragraphs 1 through 13 are incorporated herein by reference as if fully set forth.

15. Wallaceton Hardwoods knew or should have known that its invoices showed an incorrect amount of board feet which would reasonably induce General Woods to make an overpayment.

16. General Woods justifiably relied upon the representation contained in the invoices of Wallaceton Hardwoods and suffered damages in the amount of \$55,668.40 as a direct and proximate result of its overpayment based upon the invoices forwarded by Wallaceton Hardwoods.

WHEREFORE, Plaintiff General Woods & Veneers, Ltd. demands judgment in the amount of \$55,668.40, together with interest, the costs of this action, reasonable attorneys' fees and all other remedies which this Court deems just and appropriate.

Respectfully submitted,

METTE, EVANS & WOODSIDE

BY:



Michael D. Reed, Esquire
Sup. Ct. I. D. #35193

3401 North Front Street
P.O. Box 5950
Harrisburg, PA 17110-0950
(717) 232-5000

Attorneys for Plaintiff
General Woods & Veneers, Ltd.

DATED: June 5, 2002


297038

VERIFICATION

I, MICHAEL D. REED, ESQUIRE, verify that I am the attorney for General Woods & Veneers, Ltd. in this action and that General Woods & Veneers, Ltd. is located outside the jurisdiction of this Court, and their original verification cannot be obtained within the time allowed for the filing of this document. Therefore, based on information received from the aforementioned parties, I hereby verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief.

I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATE: 6-5-02


MICHAEL D. REED, ESQUIRE

FILED

JUN 06 2002

William A. Shaw
Prothonotary

1cc Shastis
Atty fee 80.00

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No. 02 - 912 - CD

GENERAL WOODS & VENERERS, LTD.,
Plaintiff

VS.

SHELLY K. REED, t/d/b/a
WALLACETON HARDWOODS,
Defendant

A N S W E R

FILED

013:15
JUL 01 2002

William A. Shaw
Prothonotary

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

Arg Colavecchi
WAS

Lap over margin

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GENERAL WOODS & VENEERS, LTD,
Plaintiff

vs.

SHELLY K. REED, t/d/b/a
WALLACETON HARDWOODS
Defendant

CIVIL DIVISION

No. 02 - 912 - CD

ANSWER

Filed on Behalf of:

Defendant, SHELLY K. REED,
t/d/b/a WALLACETON HARDWOODS

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI, RYAN & COLAVECCHI
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

814/765-1566

FILED

JUL 01 2002

William A. Shaw
Prothonotary

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

GENERAL WOODS & VENEERS, LTD. :
Plaintiff :
:
vs. : No. 02 - 912 - CD
:
SHELLY K. REED, t/d/b/a :
WALLACETON HARDWOODS, :
Defendant :

A N S W E R

NOW COMES, Shelly K. Reed, t/d/b/a Wallaceton Hardwoods, who, through her Attorney, Joseph Colavecchi, Esquire, files their Answer to the Complaint of the Plaintiff and respectfully avers as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Denied. On the contrary, the price varies depending on the different type of logs, difference species of logs, and other factors. There was no set price.

5. Denied. After reasonable investigation, Defendant is unable to understand the averments set forth in Paragraph 5 and for this reason, it is denied.

6. It is admitted that Defendant delivered fourteen thousand four hundred sixteen (14,416) board feet to Plaintiff.

7. Denied. After reasonable investigation, Defendant is unable to ascertain the truth of this averment and for this reason, it is denied. Plaintiff was always months late with their payments.

8. Denied. After reasonable investigation, Defendant is unable to ascertain the truth of this averment and strict proof is demanded at the trial of this case.

9. Denied. On the contrary, Plaintiff has admitted in Paragraph 6 that they received fourteen thousand four hundred sixteen (14,416) board feet from Wallaceton Hardwoods.

10. It is admitted that Plaintiff made demand to Defendant for an alleged overpayment. It is denied, however, that there was an overpayment made to Plaintiff.

11. Denied. On the contrary, there is no amount owed to Plaintiff.

COUNT I - BREACH OF CONTRACT

12. This does not require an Answer.

13. There has been no misrepresentation by the Defendant as to amounts delivered and for which Defendant has been paid.

WHEREFORE, Defendant demands that Judgment be entered in favor of Defendant, that the Complaint be dismissed, and that costs be paid by Plaintiff.


COUNT II - NEGLIGENT MISREPRESENTATION

14. This does not require an Answer.

15. It is denied that Wallaceton Hardwoods invoiced Plaintiff for an incorrect amount. It is further denied that Plaintiff made an overpayment.

16. Denied for the reasons as set forth above.


WHEREFORE, Defendant demands that Judgment be entered in favor of them, together with costs.



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Shelly K. Reed,
t/d/b/a Wallaceton Hardwoods

VERIFICATION

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


SHELLY K. REED, t/d/b/a
WALLACETON HARDWOODS

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12613

GENERAL WOODS & VENEERS, LTD.

02-912-CD

VS.

REED, SHELLY K. T/D/B/A WALLACETON HARDWOODS

COMPLAINT

SHERIFF RETURNS

NOW JUNE 12, 2002 AT 10:25 AM DST SERVED THE WITHIN COMPLAINT ON
SHELLY K. REED T/D/B/A WALLACETON HARDWOODS, DEFENDANT AT
EMPLOYMENT, REED ST., WALLACETON, CLEARFIELD COUNTY, PENNSYLVANIA
BY HANDING TO MERWIN GRAHAM, MGR.A TRUE AND ATTESTED COPY OF THE
ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

Return Costs

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

Sworn to Before Me This

12th Day Of August 2002
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

[Signature]

So Answers,

Chester A. Hawkins
by Marilyn Harris
Chester A. Hawkins
Sheriff

FILED

AUG 12 2002
01:40
William A. Shaw
Prothonotary

GENERAL WOODS & VENEERS, LTD., :
Plaintiff, :

v. :

SHELLY K. REED, t/d/b/a :
WALLACETON HARDWOODS, :
Defendant. :

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

FILED

No. 02-912-CD

FEB 19 2004

CIVIL ACTION – LAW

William A. Shaw
Prothonotary/Clerk of Courts

GENERAL WOODS & VENEERS, LTD.'S MOTION FOR SUMMARY JUDGMENT

AND NOW COMES, Plaintiff General Woods & Veneers, Ltd. (hereinafter "General Woods"), by and through its attorneys, Mette, Evans & Woodside, and hereby files this Motion for Summary Judgment pursuant to Pennsylvania Rules of Civil Procedure 1035, et seq. In support of this Motion, General Woods avers as follows:

A. Procedural Background

1. Plaintiff General Woods commenced this action by filing a Complaint against Defendant Shelly K. Reed t/d/b/a Wallaceton Hardwoods (hereinafter "Wallaceton") on June 5, 2002. The Complaint contained two counts: Breach of Contract and Negligent Misrepresentation.
2. On July 1, 2002, Defendant Wallaceton filed its Answer to General Woods' Complaint.
3. Thereafter discovery ensued between the parties. Discovery has now been completed.
4. Plaintiff General Woods now moves for Summary Judgment on both Count I and II of Plaintiff's Complaint as Defendant Wallaceton failed to provide any evidence, and discovery failed to adduce any evidence that raises a genuine issue of material fact with respect to the allegations contained in Plaintiff's Complaint.

B. Factual Background

5. Plaintiff General Woods is a Canadian Corporation engaged in the business of fabricating and selling wood and veneer products.
6. Defendant Wallaceton is a sole proprietorship which sells logs for production of wood products.
7. Spencer Veneer, LLC (hereinafter "Spencer") is a wholly owned subsidiary of Swords Veneer, which in turn is owned by General Woods. Spencer manufactures and sells veneer products. Keeler deposition at page 25.
8. Wallaceton and Spencer have a history of doing business together. Graham deposition at pages 10-11.
9. The course of dealings between the companies is as follows: when Spencer needs a shipment of logs, a buyer, employed by Spencer, travels to Wallaceton's log yard and inspects the logs available for sale. The buyer inspects the logs that meet the needs of Spencer for a particular type of wood by visually inspecting the condition of each log by turning the log to view each side. If the log is satisfactory, the buyer puts a tag on the end of the log and enters that tag number in a handheld computer that the buyer uses to generate a log inspection report. The buyer also enters into the handheld computer the value or price per thousand board feet that he deems the log to be worth. At the end of the inspection process, the buyer prints out a tally and shows it to a Wallaceton representative. The tally shows the identity of the logs inspected and tagged and the total value the buyer has assigned to those logs. If Wallaceton agrees with the price offered by the buyer, the buyer prints a final copy of the tally. If

Wallaceton does not agree with the price offered, the buyer and Wallaceton representative negotiate until a mutually agreed upon price is reached. Once the negotiation is finished, a final copy is made on the handheld computer showing the inspection, the tag numbers and the value of the parcel. That log inspection report is then sent by the buyer to the corresponding factory it belongs to, whether its Spencer or General Woods. See Keeler deposition at pages 47-49.

10. Delivery of the tagged logs to Spencer is handled by a trucking company owned by Merwin Graham's son. Graham deposition at page 22. Merwin Graham is the Manager of Wallaceton. Id. at page 8. Mr. Graham's son's company has hauled the logs for Spencer since Spencer and Wallaceton began doing business together. Graham deposition at page 22.
11. Typically, Wallaceton personnel prepare routine documentation for every truck when a shipment of logs leaves Wallaceton's yard for delivery. Graham deposition at page 8.
12. Mr. Graham, manager of Wallaceton described the routine paperwork process as follows:

Q. In your experience as manager for Wallaceton Hardwoods when a shipment leave your yard is there documentation routinely prepared to document the fact that that shipment left the yard?

A. For every truck.

Q. Can you explain for me what those documents are?

A. We divide them. We load the trucks. The truck drivers will generally take the tag number off of the logs and then they take the tag number ---now, if I have

somebody like Jody, that fellow that I told you, was in charge of doing that, he will go out and punch them in the handholder as they load them on the truck. After they load them on the truck then the truck driver will come to the office and get his bill of lading or whatever there at the office before he leaves.

Q. What is Jody's last name?

A. Jody Maines.

Q. And he works for you?

A. Uh-huh (yes).

Q. And so part of his job would be to document which logs are being loaded on which truck?

A. Yeah, sure. Well, he comes to the office and checks. And, of course, the secretaries know whose logs is what, you know. They have a tallies.

Q. The secretaries in the office have the tallies listing the logs that are to go on those trucks?

A. Right.

Q. And does the truck driver sign for those at some point to indicate that they received them?

A. Always, always.

Q. And then that document, a copy of that document stays with you at Wallaceton Hardwoods so that you have proof that you delivered the logs to the shipper?

A. Right, sure.

Graham deposition at pages 8-10.

13. Following documentation of the shipment, the logs are then hauled to Spencer's facility in Spencer, West Virginia.
14. Upon arrival at Spencer's facility, a receiver tally is generated. Keeler deposition at page 55. This tally is also generated on a handheld computer. The individual inspecting the logs received records the tag numbers of the logs in the handheld computer and then generates a tally list. This list is then forwarded to the accounting department at Spencer to be checked with the original inspection tally generated at the time the logs were originally tagged. Keeler deposition at page 56.
15. Thereafter, Wallaceton invoices Spencer for payment for the logs and freight charges.
16. Spencer forwards payment for the amounts owed, unless Spencer does not have the money for same, in which case Spencer will request that General Woods pay the invoice and then owe same to General Woods. Keeler deposition at page 45.
17. Spencer began doing business in the year 2000 and during the start up phase at times needed assistance from General Woods for costs. Keeler deposition at page 45.
18. In or around April 2001, Wallaceton and Spencer entered into one such transaction as described above wherein Wallaceton agreed to provide cherry logs to Spencer at a price of \$6.50 per board foot for the logs supplied, less deductions for defects.
19. On or about April 12, 2001, Tom Alexander, a buyer employed by Spencer, arrived at Wallaceton's log yard to inspect and tag cherry logs. Keeler deposition at page 43.
20. Mr. Alexander inspected the cherry logs at Wallaceton's yard and tagged approximately 144 logs to be purchased by Spencer. Mr. Alexander entered these tag numbers into a handheld computer as described in paragraph 9 above. A purchase price for the logs tagged by Mr. Alexander was agreed upon between Spencer and

Wallaceton and a final tally report was generated identifying these logs and the parcel price. The referenced tally report is attached hereto, and incorporated herein by reference, as Exhibit A.

21. The logs tagged and identified in the referenced tally report were to be shipped to Spencer in three separate shipments. Keeler deposition at page 44.

22. On or about April 16, 2001, Mr. Graham's son's trucking company delivered one shipment of 50 of the tagged cherry logs totaling 5,434 board feet to Spencer at its facility in West Virginia. The price for this shipment was \$34,637.50. Keeler deposition at page 57.

23. A receiver tally was generated by Spencer upon receipt of this shipment. Keeler deposition at page 57. The referenced receiver tally is attached hereto, and incorporated herein by reference, as Exhibit B.

24. Spencer forwarded payment for this shipment in the amount of \$34,637.50. Keeler deposition at page 42.

25. Neither Spencer nor General Woods ever received the remaining two shipments of the cherry logs that were tagged by Tom Alexander on April 12, 2001. Keeler deposition at page 44. Following the shipment of 50 logs to Spencer, approximately 94 of the original approximate 144 logs remained at Wallaceton.

26. Tom Alexander was fired by Spencer on May 14, 2001. Keeler Deposition at pages 68-69.

27. Sometime between April 16, 2001 and August 1, 2001, two men driving trucks arrived at Wallaceton's log yard after 5 p.m. when the facility was closed. All of Wallaceton's employees had left work, with the exception of Merwin Graham, the

manager of Wallaceton. The men alleged they were there to pick up the remaining two loads of cherry logs tagged by Spencer. Graham deposition at page 13.

28. Mr. Graham does not know the date this incident occurred. Graham deposition at page 31.

29. Mr. Graham did not recognize the drivers. Graham deposition at page 18.

30. The two drivers were not employed by Mr. Graham's son's trucking company that was the usual hauler for Spencer logs.

31. Mr. Graham did not ask the men's names. Graham deposition at page 18.

32. Mr. Graham did not check their identification or anything to determine whether the men were in fact affiliated with Spencer. Graham deposition at page 18.

33. Nevertheless, Mr. Graham loaded both trucks himself with the remaining logs tagged for Spencer and released them to the men. Graham deposition at page 15.

34. After loading the trucks, Mr. Graham went to the garage to put the loader away. Graham deposition at page 15. He then went to Wallaceton's office and waited for the drivers to come in. Graham deposition at page 15.

35. Mr. Graham alleges he waited for the drivers inside for a few minutes when he heard the trucks begin to drive away and leave the facility. Graham deposition at page 15.

36. Mr. Graham alleges he ran outside but the men were already on the highway. Graham deposition at page 15.

37. No paperwork (i.e. bills of lading, delivery slips or otherwise) was ever generated by Mr. Graham evidencing that the logs were delivered to these two men. Mr. Graham failed to ensure that the men/drivers signed for the loads. Graham deposition at page 15-16. Hereinafter these shipments will be referred to as "the missing shipments".

38. Mr. Graham did not call the police to report that the men took off with the loads.

Deposition at page 19.

39. Mr. Graham did not call Spencer to report the incident. Graham deposition at page 19.

40. Mr. Graham took no action other than to tell Wallaceton's secretary Gail the next day what had happened. Graham deposition at page 19.

41. Mr. Graham neither directed Gail to call Spencer nor did he ever ask her whether she contacted Spencer regarding the incident. Graham deposition at page 19.

42. Despite the highly unusual incident that occurred involving the missing shipments of the logs, and despite the fact that Wallaceton never contacted Spencer to report the incident or confirm that the logs were received by Spencer, Wallaceton assumed the logs were delivered to Spencer and assessed the costs for the logs and the estimated freight for same to Spencer's account.

43. Four months after Tom Alexander tagged the logs referenced above, on or about August 1, 2001, Tim Carver, a buyer employed by Spencer, arrived at Wallaceton's log yard to inspect and tag a new parcel of logs. Keeler deposition at page 60. This new parcel was identified by reference number 30160.

44. This transaction has no relation to the April 12, 2001 transaction involving the logs tagged by Tom Alexander. Keeler deposition at page 60.

45. In the same manner as described previously in paragraph 9, Tim Carver inspected the new logs, tagged same, and generated a final tally for same with the agreed upon price between Wallaceton and Spencer. . Keeler deposition at page 60. A copy of the referenced tally report is attached hereto, and incorporated herein by reference, as Exhibit C.

46. The total for the new parcel tagged by Tim Carver was \$54, 057.40. Keeler deposition at page 61.
47. Estimated freight charges were added to the tally in the amount of \$1,400 for a total amount of \$55,457.40. Keeler deposition at page 61.
48. At the bottom of the referenced tally (also referred to as a "draft"), Tim Carver wrote "please wire transfer into his bank account ASAP". Keeler deposition at page 61.
49. On or about August 3, 2001, General Woods wired payment in the amount of \$54,268.40 for the purchase of the new parcel of logs with reference number 30160. General Woods also wired freight costs for delivery of the referenced logs in the amount of \$1,400.00, for a total payment of \$55,668.40. Keeler deposition at page 61.
50. On or about September 4, 2001, General Woods mistakenly wired a second/double payment for this parcel in the amount of \$54,268.40 to Wallaceton with a combination of other payments being made - \$5,719.30 for invoice number 7447, \$5,890.90 for invoice number 6443. Keeler deposition at page 62.
51. Upon receipt of this double payment for the parcel of logs with reference number 30160 and despite the fact that this parcel was in no way related to the parcel involving Tom Alexander, Wallaceton applied the overpayment to the two missing shipments that had been assessed to Spencer's account. Graham deposition at page 29.
52. General Woods immediately notified Wallaceton of the overpayment once it was discovered by General Woods and demanded that same be returned to General Woods.
53. Wallaceton refused, and continues to refuse in bad faith, to refund the overpayment made by General Woods, in the amount of \$54,268.40, as Wallaceton claims the

missing shipments were delivered to Spencer despite having no evidence that the loads were ever shipped from Wallaceton or received by Spencer.

54. General Woods and Spencer have thoroughly investigated the matter and determined that Spencer only ever received 50 logs from Wallaceton totaling 5,434 Board Feet – not the 144 logs totaling 14,416 board feet as claimed and invoiced by Wallaceton. Keeler deposition at page 57.

55. General Woods is not responsible for the negligence of Wallaceton in failing to verify the identity of the two men who allegedly came to Wallaceton's yard after hours to pick up the two loads before releasing the logs to them. Nor is General Woods responsible for Wallaceton's negligence in failing to document the shipment with proper documentation signed by the drivers and identifying the loads.

56. Neither Spencer nor General Woods have ever received the two shipments allegedly picked up by these unknown men. Keeler deposition at pages 57-62.

57. As such, General Woods is entitled to the return of the overpayment in the amount of \$54,268.40 plus interest.

58. General Woods commenced the present action to recover the amount of overpayment wrongfully held by Wallaceton.

C. Motion for Summary Judgment on Count I

59. Paragraphs 1 through 58 of this Motion are incorporated herein by reference as though fully set forth.

60. The evidence of record is uncontroverted and demonstrates that Spencer only ever received 50 of the original approximate 144 cherry logs tagged by its then employee Tom Alexander.

61. The total cost of the 50 cherry logs that were delivered to Spencer was \$34, 637.50 and was paid in full by Spencer. Keeler deposition at page 57.

62. Wallaceton has failed to produce any evidence that demonstrates that the remaining approximate 94 cherry logs tagged by Spencer were ever shipped or delivered to Spencer or General Woods.

63. To the contrary, Wallaceton admits that it does not know whether Spencer or General Woods ever received the missing shipments and further admits that its understanding is that they did not. Merwin Graham, Manager of Wallaceton, testified on this point as follows:

Q. Does your company have any document or paperwork which would confirm that those two loads were received by either Spencer or General Woods and Veneer?

A. No, we don't.

Q. Do you have any reason to believe that they were received by Spencer or General Woods and Veneer?

A. I'm told that they wasn't received by Spencer. That's as much as I know.

Q. Okay.

A. Where they went I couldn't tell you.

Graham deposition at pages 32-33.

64. Neither Spencer nor General Woods ever authorized the release of the remaining logs to the two unidentified men, nor did they ever receive the two remaining loads of logs. As such, neither Spencer nor General Woods is responsible for the 94 logs that were

negligently released by Wallaceton's manager, Merwin Graham to the two unidentified men.

65. The double payment wired by General Woods on the unrelated later transaction involving separate logs with reference number 30160 cannot be applied to any alleged deficit in Spencer's account due to Wallaceton's assessment of the costs of the missing shipments to Spencer's account as neither Spencer nor General Woods ever authorized the release of those logs to the unidentified men or received same.
66. Wallaceton has wrongfully refused to return the overpayment of \$54,268.40 to General Woods and continues to refuse to do so in bad faith.
67. In accordance with the course of dealings between the parties, payment was due from Spencer (or General Woods in some cases) when tagged logs were received by Spencer and accepted.
68. In addition, the course of dealings between the parties also reveals that bills of lading and other shipment and delivery documents were utilized between the parties to evidence shipment of loads and to identify the logs being shipped in each load. Graham deposition at pages 8-10.
69. The Pennsylvania Commercial Code, 13 Pa.C.S.A. §1205(a) states that "a course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct."
70. The Court should consider the course of dealings between the parties when determining the validity of the arguments made by Wallaceton.

71. Prior dealings between the parties have been consistent. At the time delivery was made to Spencer, bills of lading and other related documents were delivered with the shipment and an agent of Spencer inspected the load upon receipt of same at Spencer's facility in West Virginia and generated a receiver's tally by recording the tag numbers on all logs delivered. Keeler deposition at page 55.
72. This did not occur with respect to the approximate 94 logs Wallaceton claims were delivered to Spencer via the unidentified drivers. See Graham deposition.
73. As set forth in detail above, Wallaceton has not, and cannot, produce any written documentation, or any other evidence whether oral or written, which supports its assertion that the two missing shipments were received and accepted by Spencer or General Woods. Graham deposition at page 32.
74. Wallaceton's assertions that delivery was made to Spencer without a single shipment or delivery document to evidence same are wholly inconsistent with their previous course of dealings with Spencer and/or General Woods.
75. In addition, Wallaceton's assertions violate the usage of trade in the industry.
76. The Pennsylvania Commercial Code, 13 Pa.C.S.A. §1205(a) states that "a usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. . ."
77. In the shipping industry, bills of lading are standard. Product is not delivered without them. In this instance, Wallaceton did not produce a bill of lading for the additional approximate 94 logs it claims were delivered to Spencer – their failure to do so is

inconsistent with both their past performance and with the industry's standard practice.

78. As the evidence of record is uncontroverted that Spencer or General Woods did not received the approximate 94 logs released to the two unidentified drivers, and as Wallaceton's assertions are unsubstantiated and are wholly inconsistent with the requirements of the Uniform Commercial Code, the course of dealings between the parties and the industry practice to generate bills of lading with each shipment – summary judgment should be entered in favor General Woods.

79. No genuine issue of material fact remains at issue, and General Woods is entitled to judgment as a matter of law.

WHEREFORE, Plaintiff General Woods respectfully requests that judgment be entered in its favor and against Defendant Wallaceton as to both counts set forth in Plaintiff's Complaint, and that Plaintiff be awarded the overpayment amount of \$54,268.40, plus prejudgment and post judgment interest at the legal rate until such time as the amount owed Plaintiff is paid in full, together with attorneys fees and costs of this action, and for such other and further relief this Honorable Court deems just and proper.

D. Motion for Summary Judgment on Count II

80. Paragraphs 1 through 79 of this Motion are incorporated herein by reference as though fully set forth.

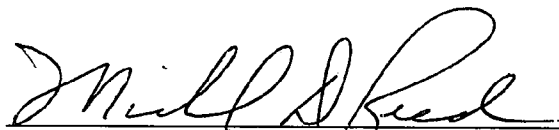
81. No genuine issue of material fact remains at issue, and General Woods is entitled to judgment as a matter of law.

WHEREFORE, Plaintiff General Woods respectfully requests that judgment be entered in its favor and against Defendant Wallaceton as to both counts set forth in Plaintiff's Complaint, and that Plaintiff be awarded the overpayment amount of \$54,268.40, plus prejudgment and post judgment interest at the legal rate until such time as the amount owed Plaintiff is paid in full, together with attorneys fees and costs of this action, and for such other and further relief this Honorable Court deems just and proper.

Respectfully submitted,

METTE, EVANS & WOODSIDE

By:



Michael D. Reed, Esquire

Sup. Ct. I.D. No. 35193

Jennifer A. Yankanich, Esquire

Sup. Ct. I.D. No. 84201

3401 North Front Street

Harrisburg, PA 17110

Phone: (717) 232-5000

Date: February 17, 2004

Attorneys for Plaintiff

General Woods & Veneers, LTD

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SPENCER VENEER LLC

Log Scale Veneer Report

Draft : 3000

Date : 04/12/2001 Time : 16:01:18 Insp : TOM Gate : 1 Yard : 1									
Vendor : WALLACTON Trucker : Logger :									
Tract : Scale Method : DOYLE									
Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reason	
127-002016	CHERRY	C24015	11	15	83	\$5000.00	\$ 415.00		
127-002000	CHERRY	A22836	12	13	91	\$6500.00	\$ 591.50	NEW TAGS	
127-002001	CHERRY	A22862	11	13	55	\$6500.00	\$ 357.50		
127-002002	CHERRY	A22828	9	15	68	\$5000.00	\$ 340.00		
127-002003	CHERRY	A22839	9	18	110	\$6500.00	\$ 715.00		
127-002004	CHERRY	A22859	10	17	106	\$6500.00	\$ 689.00		
127-002005	CHERRY	A22860	11	16	99	\$4500.00	\$ 445.50		
127-002006	CHERRY	A22864	8	17	84	\$6500.00	\$ 546.00		
127-002007	CHERRY	A22865	8	16	72	\$5500.00	\$ 396.00		
127-002008	CHERRY	A22783	9	20	144	\$6000.00	\$ 864.00		
127-002009	CHERRY	A22784	8	19	112	\$6500.00	\$ 728.00		
127-002010	CHERRY	A22999	12	14	75	\$6500.00	\$ 487.50		
127-002011	CHERRY	A24021	13	19	183	\$6500.00	\$ 1189.50		
127-002012	CHERRY	A24007	9	17	95	\$6500.00	\$ 617.50		
127-002013	CHERRY	A24006	9	16	81	\$6500.00	\$ 526.50		
127-002014	CHERRY	A24025	9	15	68	\$6500.00	\$ 442.00		
127-002015	CHERRY	A24010	13	18	159	\$5000.00	\$ 795.00	GUM	
127-002017	CHERRY	A24924	12	16	108	\$6500.00	\$ 702.00		
127-002018	CHERRY	A22948	14	17	148	\$6500.00	\$ 962.00		
127-002019	CHERRY	A22992	11	16	99	\$6500.00	\$ 643.50		
127-002020	CHERRY	A22941	9	13	45	\$6500.00	\$ 292.50		
127-002021	CHERRY	A24003	9	15	68	\$6500.00	\$ 442.00		
127-002022	CHERRY	A22849	8	17	84	\$6000.00	\$ 504.00		
127-002023	CHERRY	A22993	10	14	62	\$5000.00	\$ 310.00		
127-002024	CHERRY	A22758	13	14	81	\$6500.00	\$ 526.50		
127-002025	CHERRY	A22852	12	14	75	\$6500.00	\$ 487.50		
127-002026	CHERRY	A22789	10	17	106	\$5500.00	\$ 583.00		
127-002027	CHERRY	A22733	14	16	126	\$6500.00	\$ 819.00		
127-002028	CHERRY	A22792	10	15	75	\$6500.00	\$ 487.50		
127-002029	CHERRY	A22761	8	14	50	\$6500.00	\$ 325.00		
127-002030	CHERRY	A22015	14	16	126	\$6500.00	\$ 819.00		
127-002031	CHERRY	A22205	12	19	169	\$5500.00	\$ 929.50		
127-002032	CHERRY	A22846	10	16	90	\$6500.00	\$ 585.00		
127-002033	CHERRY	A22282	9	20	144	\$6500.00	\$ 936.00		
127-002034	CHERRY	A22283	8	19	112	\$6500.00	\$ 728.00		
127-002035	CHERRY	A22016	9	18	110	\$6500.00	\$ 715.00		
127-002036	CHERRY	A22017	9	17	95	\$6500.00	\$ 617.50		
127-002037	CHERRY	A22740	9	17	95	\$6000.00	\$ 570.00		

SPENCER VENEER LLC

Log Scale Report

Draft : 3000

Date : 04/12/2001	Time : 16:01:18	Insp : TOM	Gate : 1	Yard : 1				
Vendor : WALLACTON	Trucker :	Logger :						
Tract :		Scale Method : DOYLE						
Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reason
127-002076	CHERRY	MA A1490	10	15	75	\$6000.00	\$ 450.00	
127-002077	CHERRY	A1498	12	15	91	\$6500.00	\$ 591.50	
127-002078	CHERRY	WH A22353	10	16	90	\$6000.00	\$ 540.00	
127-002079	CHERRY	A22335	10	15	75	\$6500.00	\$ 487.50	
127-002080	CHERRY	A22675	10	16	90	\$5000.00	\$ 450.00	
127-002081	CHERRY	A22428	9	15	68	\$6500.00	\$ 442.00	
127-002082	CHERRY	A22672	10	15	75	\$6000.00	\$ 450.00	
127-002083	CHERRY	A20503	10/12	17	106	\$6500.00	\$ 689.00	SHAKE
127-002084	CHERRY	A22645	10	17	106	\$6500.00	\$ 689.00	
127-002085	CHERRY	A22652	10	16	90	\$6500.00	\$ 585.00	
127-002086	CHERRY	A22661	9	15	68	\$6500.00	\$ 442.00	
127-002087	CHERRY	A22647	9	16	81	\$6500.00	\$ 526.50	
127-002088	CHERRY	A22508	14	16	126	\$6500.00	\$ 819.00	
127-002089	CHERRY	A22300	11	16	99	\$6500.00	\$ 643.50	
127-002090	CHERRY	A22510	8	15	60	\$6000.00	\$ 360.00	
127-002091	CHERRY	A20816	9	17	95	\$6500.00	\$ 617.50	
127-002092	CHERRY	A22546	9	14	56	\$6000.00	\$ 336.00	
127-002093	CHERRY	A22287	8	17	84	\$6000.00	\$ 504.00	
127-002094	CHERRY	A22552	12	16	108	\$6500.00	\$ 702.00	
127-002095	CHERRY	A22534	13	18	159	\$6000.00	\$ 954.00	HEART OFF
127-002096	CHERRY	A22482	10	15	75	\$6000.00	\$ 450.00	
127-002101	CHERRY	A24067	9	15	68	\$6500.00	\$ 442.00	TAGS SCREW
127-002102	CHERRY	A24064	9	15	68	\$6500.00	\$ 442.00	
127-002103	CHERRY	A22536	9	15	68	\$6500.00	\$ 442.00	
127-002104	CHERRY	A22281	9	16	81	\$6500.00	\$ 526.50	
127-002105	CHERRY	A20974	10	18	122	\$6500.00	\$ 793.00	
127-002106	CHERRY	A22538	10	20	160	\$6500.00	\$ 1040.00	
127-002107	CHERRY	A22504	10	19	141	\$6500.00	\$ 916.50	
127-002108	CHERRY	A22293	12	16	108	\$6500.00	\$ 702.00	
127-002109	CHERRY	A22555	11	21	199	\$6500.00	\$ 1293.50	
127-002110	CHERRY	A22303	10	18	122	\$6500.00	\$ 793.00	
127-002111	CHERRY	A	10	18	122	\$6500.00	\$ 793.00	
127-002112	CHERRY	A22119	5	20	144	\$6000.00	\$ 864.00	
127-002113	CHERRY	A22505	10	21	181	\$6500.00	\$ 1176.50	
127-002114	CHERRY	A22184	9	14	56	\$6000.00	\$ 336.00	
127-002115	CHERRY	A22541	9	14	56	\$6500.00	\$ 364.00	
127-002116	CHERRY	A22052	9	17	95	\$6500.00	\$ 617.50	
127-002117	CHERRY	A22051	9	16	81	\$6500.00	\$ 526.50	

SPENCER VENEER LLC

Log Scale Report

Draft : 3000

Date : 04/12/2001		Time : 16:01:18		Insp : TOM		Gate : 1		Yard : 1	
Vendor : WALLACTON		Trucker :		Logger :		Scale Method : DOYLE			
Tract :									
Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reason	
127-002038	CHERRY	A22735	13	14	81	\$6500.00	\$ 526.50		
127-002039	CHERRY	A22755	10	15	75	\$6500.00	\$ 407.50		
127-002040	CHERRY	A22742	21	21	181	\$6500.00	\$1176.50		
127-002041	CHERRY	A22845	8	16	72	\$6500.00	\$ 468.00		
127-002042	CHERRY	A22738	13	15	98	\$6500.00	\$ 637.00		
127-002043	CHERRY	A22730	12	13	61	\$6500.00	\$ 396.50		
127-002044	CHERRY	A22019	12	19	169	\$6000.00	\$1014.00		
127-002045	CHERRY	A22010	9	20	144	\$6500.00	\$ 936.00		
127-002046	CHERRY	A22011	8	19	112	\$6500.00	\$ 728.00		
127-002047	CHERRY	A22650	13	17	137	\$6500.00	\$ 890.50		
127-002048	CHERRY	AV4368	12	16	108	\$6000.00	\$ 648.00		
127-002049	CHERRY	A22752	10	14	62	\$6000.00	\$ 372.00		
127-002050	CHERRY	A22285	13	18	159	\$6500.00	\$1033.50		
127-002051	CHERRY	A20446	12	18	147	\$6500.00	\$ 955.50		
127-002052	CHERRY	A19967	8	18	98	\$6000.00	\$ 588.00		
127-002053	CHERRY	A20558	13	19	183	\$6500.00	\$1189.50		
127-002054	CHERRY	A22727	10	14	62	\$6000.00	\$ 372.00		
127-002055	CHERRY	A22059	13	14	81	\$6000.00	\$ 486.00		
127-002056	CHERRY	A22032	8	16	72	\$6000.00	\$ 432.00		
127-002057	CHERRY	A22031	8	15	60	\$6500.00	\$ 390.00		
127-002058	CHERRY	A22444	9	18	110	\$6500.00	\$ 715.00		
127-002059	CHERRY	A22461	10	17	106	\$5000.00	\$ 530.00		
127-002060	CHERRY	A22654	10	15	75	\$6500.00	\$ 487.50		
127-002061	CHERRY	A22256	10	15	75	\$6500.00	\$ 487.50		
127-002062	CHERRY	A22117	9	14	56	\$5500.00	\$ 308.00		
127-002063	CHERRY	AMK149	11	18	135	\$6500.00	\$ 877.50		
127-002064	CHERRY	A 149	10	17	106	\$6500.00	\$ 689.00		
127-002065	CHERRY	A22219	12	19	169	\$6500.00	\$1048.50		
127-002066	CHERRY	A22218	9	18	110	\$6000.00	\$ 660.00		
127-002067	CHERRY	A22003	11	17	116	\$6500.00	\$ 754.00		
127-002068	CHERRY	A22002	11	16	99	\$6500.00	\$ 643.50		
127-002069	CHERRY	A20999	9	18	110	\$6500.00	\$ 715.00		
127-002070	CHERRY	A20998	9	17	95	\$6500.00	\$ 617.50		
127-002071	CHERRY	A20997	8	16	72	\$5000.00	\$ 360.00		
127-002072	CHERRY	A22331	9	15	68	\$6500.00	\$ 442.00		
127-002073	CHERRY	A22360	13	16	117	\$6500.00	\$ 760.50		
127-002074	CHERRY	A22728	10	16	90	\$6500.00	\$ 585.00		
127-002075	CHERRY	A20729	9	19	127	\$6500.00	\$ 825.50		

SPENCER VENEER LLC

Log Scale Report

Draft : 3000

Date : 04/12/2001		Time : 16:01:18		Insp : TOM		Gate : 1		Yard : 1	
Vendor : WALLACTON			Trucker :		Logger :				
Tract :			Scale Method : DOYLE						
Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reason	
127-002118	CHERRY	A22606	13	16	117	\$6500.00	\$ 760.50		
127-002119	CHERRY	A22549	9	15	68	\$6000.00	\$ 408.00		
127-002120	CHERRY	A22540	10	17	106	\$6500.00	\$ 689.00		
127-002121	CHERRY	A22492	10	17	106	\$6000.00	\$ 636.00		
127-002122	CHERRY	A22587	10	15	75	\$6500.00	\$ 487.50		
127-002123	CHERRY	A22553	9	18	110	\$6500.00	\$ 715.00		
127-002124	CHERRY	A22566	9	16	81	\$6500.00	\$ 526.50		
127-002125	CHERRY	A22488	12	18	147	\$6500.00	\$ 955.50		
127-002126	CHERRY	A22050	10	15	75	\$6500.00	\$ 487.50		
127-002127	CHERRY	A22049	10	14	62	\$6500.00	\$ 403.00		
127-002128	CHERRY	A22610	9	17	95	\$6500.00	\$ 617.50		
127-002129	CHERRY	A22609	12	16	108	\$6500.00	\$ 702.00		
127-002130	CHERRY	A22616	10	15	75	\$6500.00	\$ 487.50		
127-002131	CHERRY	A22615	10	14	62	\$6500.00	\$ 403.00		
127-002132	CHERRY	A22161	10	18	122	\$6500.00	\$ 793.00		
127-002133	CHERRY	A22160	11	17	116	\$6500.00	\$ 754.00		
127-002134	CHERRY	A22164	9	19	127	\$6500.00	\$ 825.50		
127-002135	CHERRY	A22163	9	18	110	\$6500.00	\$ 715.00		
127-002136	CHERRY	A22162	9	17	95	\$5000.00	\$ 475.00		
127-002137	CHERRY	A24074	9	18	110	\$6500.00	\$ 715.00		
127-002138	CHERRY	A20952	9	17	95	\$6500.00	\$ 617.50		
127-002139	CHERRY	A24075	8	17	84	\$6500.00	\$ 546.00		
127-002140	CHERRY	A22156	11	15	83	\$6500.00	\$ 539.50		
127-002141	CHERRY	A24076	8	16	72	\$6500.00	\$ 468.00		
127-002142	CHERRY	A20954	8	16	72	\$5500.00	\$ 396.00		
127-002143	CHERRY	A24077	8	18	98	\$6500.00	\$ 637.00		
127-002144	CHERRY	A20956	8	16	72	\$6500.00	\$ 468.00		
127-002145	CHERRY	A22155	9	20	144	\$6500.00	\$ 936.00		
127-002146	CHERRY	A22154	10	19	141	\$6500.00	\$ 916.50		
127-002147	CHERRY	A22524	14	14	88	\$6500.00	\$ 572.00		
Total Number of Logs : 144					Number of Defects : 5		Total Board Feet : 14416		
Comments :					Total Amount Due : \$ 90862.00				

Received

SPENCER VENEER LLC

Receive Logs Report

0210192

Date : 02/16/2001
Producer : MARK BRADYReference # : ~~0210192~~
Origin : WV

Log #	Chain	Diam	Specy	Grade	Left	Right
027002000	0	19	CHERRY	X	112	D
027002000	0	20	CHERRY	X	105	D
027002013	0	16	CHERRY	W	72	D
027002017	10	17	CHERRY	W	106	D
027002007	0	16	CHERRY	W	72	D
027002006	0	17	CHERRY	W	84	D
027002147	0	17	CHERRY	W	84	D
027002018	7	16	CHERRY	W	63	D
027002034	0	19	CHERRY	Y	118	D
027002033	9	20	CHERRY	Y	144	D
29040617	0	14	CHERRY	X	50	D
027002147	0	15	CHERRY	X	50	D
027002011	14	15	CHERRY	W	197	D
027002011	13	16	CHERRY	Y	117	D
027002030	7	16	CHERRY	X	63	D
027002147	0	17	CHERRY	X	64	D
027002030	0	16	CHERRY	X	72	D
027002147	0	17	CHERRY	X	84	D
027002036	0	19	CHERRY	Y	117	D
027002033	0	18	CHERRY	X	110	D
027002033	0	15	CHERRY	X	60	D
027002035	0	16	CHERRY	X	72	D
027002020	10	16	CHERRY	W	90	D
027002004	10	17	CHERRY	W	106	D
027002071	9	16	CHERRY	W	81	D
027002069	5	17	CHERRY	W	54	D
027002070	0	18	CHERRY	W	98	D
027002064	10	17	CHERRY	W	106	D
027002063	11	18	CHERRY	W	135	D
027002143	11	16	CHERRY	Y	99	D
027002130	11	17	CHERRY	Y	116	D
027002060	10	16	CHERRY	X	102	D
027002060	10	19	CHERRY	X	141	D
027002136	0	17	CHERRY	W	84	D
027002134	0	18	CHERRY	W	98	D
027002135	9	19	CHERRY	W	107	D
027002045	0	19	CHERRY	Y	110	D
027002045	10	20	CHERRY	Y	160	D
027002145	9	18	CHERRY	X	110	D
027002145	9	19	CHERRY	X	107	D
027002145	10	16	CHERRY	W	90	D
027002145	11	17	CHERRY	Y	116	D
027002145	0	15	CHERRY	Y	63	D
027002145	0	16	CHERRY	Y	81	D
027002145	11	15	CHERRY	X	83	D

SPENCER VENEER, LLC
LOG YARD RECEIPT

Date: 4-16-01

Nº 10192

Trucker: Mark Graham

Supplier: Wallacetown Pa.

Species	# of Logs	Bd. Ft.
Cherry Veneer,		
Total Bd. Ft:		

Received by: Lenny Lopez

SPENCER VENEER LLC

52406

Log Scale Report

Draft : 30160

Date : 08/01/2001	Time : 11:16:15	Insp : TNC	Gate : 1	Yard : 1				
Vendor : WALLACETN	Trucker :	Logger :						
Tract : WALLACETN	Scale Method : DOYLE							
Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reason
128-017421	CHERRY	A	10	17	106	\$6500.00	\$ 689.00	
128-017422	CHERRY	A	10	16	90	\$6500.00	\$ 585.00	
128-017423	CHERRY	A	13	14	81	\$6500.00	\$ 526.50	
128-017424	CHERRY	A	11	14	69	\$6500.00	\$ 448.50	
128-017425	CHERRY	A	10	14	62	\$6500.00	\$ 403.00	
128-017426	CHERRY	A	10	15	75	\$6500.00	\$ 487.50	
128-017427	CHERRY	A	13	15	98	\$6500.00	\$ 637.00	
128-017428	CHERRY	A	10	16	90	\$6500.00	\$ 585.00	
128-017429	CHERRY	A	12	14	75	\$6500.00	\$ 487.50	
128-017430	CHERRY	A	10	16	90	\$6500.00	\$ 585.00	
128-017431	CHERRY	A	8	15	60	\$6500.00	\$ 390.00	
128-017432	CHERRY	A	12	14	75	\$6500.00	\$ 487.50	
128-017433	CHERRY	A	8	15	60	\$6500.00	\$ 390.00	
128-017434	CHERRY	A	8	14	50	\$6500.00	\$ 325.00	
128-017435	CHERRY	A	9	16	81	\$6500.00	\$ 526.50	
128-017436	CHERRY	A	10	13	50	\$6500.00	\$ 325.00	
128-017437	CHERRY	A	12	15	91	\$6500.00	\$ 591.50	
128-017438	CHERRY	A	10	14	62	\$6500.00	\$ 403.00	
128-017439	CHERRY	A	13	16	117	\$6500.00	\$ 760.50	
128-017440	CHERRY	A	9	17	95	\$6500.00	\$ 617.50	
128-017441	CHERRY	A	9	17	95	\$6500.00	\$ 617.50	
128-017442	CHERRY	A	9	14	56	\$6500.00	\$ 364.00	
128-017443	CHERRY	A	10	17	106	\$6500.00	\$ 689.00	
128-017444	CHERRY	A	9	15	68	\$6500.00	\$ 442.00	
128-017445	CHERRY	A	9	16	81	\$6500.00	\$ 526.50	
128-017462	CHERRY	A	12	20	192	\$7500.00	\$1440.00	
128-017463	CHERRY	A	13	20	208	\$7500.00	\$1560.00	
128-017464	CHERRY	A	9	18	110	\$7500.00	\$ 825.00	
128-017465	CHERRY	A	10	17	106	\$6500.00	\$ 689.00	
128-017466	CHERRY	A	9	20	144	\$7500.00	\$1080.00	
128-017467	CHERRY	A	8	23/21	180	\$7500.00	\$1350.00	
128-017468	CHERRY	A	8	21	144	\$6500.00	\$ 936.00	
128-017469	CHERRY	A	11	21	199	\$7500.00	\$1492.50	
128-017470	CHERRY	A	11	20	176	\$7500.00	\$1320.00	
128-017471	CHERRY	A	10	17	106	\$6500.00	\$ 689.00	
128-017472	CHERRY	A	13	21	235	\$7500.00	\$1762.50	
128-017473	CHERRY	A	8	28	288	\$7500.00	\$2160.00	
128-017474	CHERRY	A	11	24	275	\$7500.00	\$2062.50	

81 AOUT 2001

SPENDER VENEER LLC

Log Scale Report

Draft : 30160

Date : 08/01/2001 Time : 11:16:15 Insp : TNC Gate : 1 Yard : 1								
Vendor : WALLACETN Trucker : Logger :								
Tract : WALLACETN Scale Method : DOYLE								
Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reason
128-017475	CHERRY	A	10	16	90	\$6500.00	\$ 585.00	
128-017476	CHERRY	A	8	18	98	\$7500.00	\$ 735.00	
128-017477	CHERRY	A	12	16	108	\$6500.00	\$ 702.00	
128-017478	CHERRY	A	10	14	62	\$6500.00	\$ 403.00	
128-017479	CHERRY	A	12	15	91	\$7500.00	\$ 682.50	
128-017480	CHERRY	A	10	14	62	\$ 0.00	\$ 0.00	
128-017481	CHERRY	A	10	15	75	\$6500.00	\$ 487.50	
128-017482	CHERRY	A	11	16	99	\$7500.00	\$ 742.50	
128-017483	CHERRY	A	10	16	90	\$7500.00	\$ 675.00	
128-017484	CHERRY	A	9	17	95	\$7500.00	\$ 712.50	
128-017485	CHERRY	A	14	17	148	\$7500.00	\$1110.00	
128-017486	CHERRY	A	8	18	98	\$6500.00	\$ 637.00	
128-017487	CHERRY	A	12	17	127	\$6500.00	\$ 825.50	
128-017488	CHERRY	A	14	14	88	\$6500.00	\$ 572.00	
128-017489	CHERRY	A	11	15	83	\$6500.00	\$ 539.50	
128-017490	CHERRY	A	11	16	99	\$7500.00	\$ 742.50	
128-017491	CHERRY	A	12	23	271	\$7500.00	\$2032.50	
128-017492	CHERRY	A	9	18	110	\$6500.00	\$ 715.00	
128-017493	CHERRY	A	9	19	127	\$6500.00	\$ 825.50	
128-017494	CHERRY	A	10	21	181	\$6500.00	\$1176.50	
128-017495	CHERRY	A	9	22	182	\$7500.00	\$1365.00	
128-017496	CHERRY	A	12/13	19	169	\$7500.00	\$1267.50	
128-017497	CHERRY	A	13	23	293	\$7500.00	\$2197.50	
128-017446	HARD MAPL	A	10	13	50	\$3200.00	\$ 160.00	
128-017447	HARD MAPL	A	10	16	90	\$3200.00	\$ 288.00	
128-017448	HARD MAPL	A	10	14	62	\$3200.00	\$ 198.40	
128-017449	HARD MAPL	A	10	20	160	\$3200.00	\$ 512.00	
128-017450	HARD MAPL	A	11	14	69	\$3200.00	\$ 220.80	
128-017451	HARD MAPL	A	8	15	60	\$3200.00	\$ 192.00	
128-017452	HARD MAPL	A	10	13	50	\$3200.00	\$ 160.00	
128-017453	HARD MAPL	A	9	18	110	\$3200.00	\$ 352.00	
128-017454	HARD MAPL	A	9	14	56	\$3200.00	\$ 179.20	
128-017455	HARD MAPL	A	9	15/14	68	\$3200.00	\$ 217.60	
128-017456	HARD MAPL	A	10	14	62	\$3200.00	\$ 198.40	
128-017457	HARD MAPL	A	10	18/17	122	\$3200.00	\$ 390.40	
128-017458	HARD MAPL	A	9	17	95	\$3200.00	\$ 304.00	
128-017459	HARD MAPL	A	9	13	45	\$3200.00	\$ 144.00	
128-017460	HARD MAPL	A	10	15	75	\$3200.00	\$ 240.00	

Log Scale Report

Date : 08/01/2001	Time : 11:16:15	Insp : TNC	Gate : 1	Yard : 1				
Vendor : WALLACETN	Trucker :	Logger :						
Tract : WALLACETN	Scale Method : DOYLE							
Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reason
28-017461	HARD MAPL A	B	18	98	\$3200.00	\$	313.60	
Total Number of Logs :					77	Number of Defects :		0
Total Board Feet :					8464			
Comments :					Total Amount Due : \$ 54057.40			

SPENCER VENEER LLC

Load Summary Report

Draft : 30160

Date : 08/01/2001		Time : 11:16:15		Insp : TNC		Gate : 1		Yard : 1		
Vendor : WALLACETN		Trucker :		Logger :						
Tract : WALLACETN				Scale Method : DOYLE						
Species	Grade	Number of Logs	Total Footage	Total Amount Paid	Sub-Footage					
CHERRY	A	61	7192	49987.00	7192					
Spc Total		61	7192	\$ 49987.00	7192					
HARD MAPL	A	16	1272	4070.40	1272					
Spc Total		16	1272	\$ 4070.40	1272					
Total Number of Logs :		77		Number of Defects :		0		Total Board Feet :		8464
Comments :				Total Amount Due :		\$ 54057.40				

Freight 1400.00 1250.00
\$ 55457.40

Please Wire Transfer into
his Bank ASAP!!

Wallaceton Hardwoods
NBOC - Attention: Paul Oris
ACCT# 103949914175
~~ABA# 44854719~~

ABA# 043306826

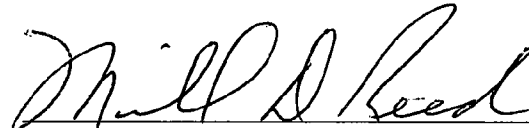
CERTIFICATE OF SERVICE

I certify that I am this day serving a copy of the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure, by depositing a copy of same in the United States Mail, Harrisburg, Pennsylvania, with first-class postage, prepaid, as follows:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

METTE, EVANS & WOODSIDE

By:



Michael D. Reed, Esquire
Sup. Ct. I.D. No. 35193
Jennifer A. Yankanich, Esquire
Sup. Ct. I.D. No. 84201

3401 North Front Street
Harrisburg, PA 17110
Phone: (717) 232-5000

Attorneys for Plaintiff
General Woods & Veneers, LTD

Date: February 17, 2004

CA

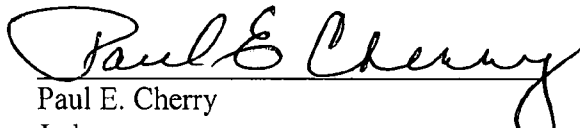
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

GENERAL WOODS & VENEERS, LTD :
vs. : No. 02-912-CD
SHELLY K. REED, t/d/b/a :
WALLACETON HARDWOODS :

ORDER

NOW, this 24th day of February, 2004, upon consideration of General Woods & Veneers, LTD's Motion for Summary Judgement, a Rule is hereby issued upon the Defendant to Appear and Show Cause why the Motion should not be granted. Argument is scheduled the 11 day of March, 2004, at 11:00 A.M. in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


Paul E. Cherry
Judge

FILED

FEB 24 2004

William A. Shaw
Prothonotary

FILED

02:05:13 PM RC & memo of service
FEB 24 2004 to Atty Hood

WEP

William A. Shaw
Prothonotary

GENERAL WOODS & VENEERS, LTD., :
Plaintiff :

v. :

SHELLY K. REED, t/d/b/a :
WALLACETON HARDWOODS, :
Defendant :

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

No. 02-912-CD

CIVIL ACTION – LAW

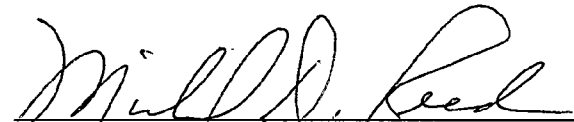
AFFIDAVIT OF SERVICE

I, Michael D. Reed, attorney for Plaintiff, do hereby certify and affirm that I have served a copy of the Rule to Show Cause dated February 24, 2004 upon Defendant by regular mail on February 25, 2004 at the address shown below:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

METTE, EVANS & WOODSIDE

By:



Michael D. Reed, Esquire
Sup. Ct. I.D. No. 35193

3401 North Front Street
P. O. Box 5950
Harrisburg, PA 17110-0950
Phone: (717) 232-5000

Date: February 25, 2004

Attorneys for Plaintiff
General Woods & Veneers, LTD

FILED

FEB 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No. 02-912-CD

GENERAL WOODS & VENEERS, LTD.
Plaintiff

vs.

SHELLY K. REED, t/d/b/a
WALLACETON HARDWOODS
Defendant

ANSWER OPPOSING
MOTION FOR SUMMARY JUDGMENT

FILED

MAR 04 2004

o/ z:sa
William A. Shaw
Prothonotary

3 - a to *ashy*

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
ACROSS FROM COURTHOUSE
P.O. BOX 131
CLEARFIELD, PA 16830

Lap over margin

CR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GENERAL WOODS & VENEERS, LTD.

Plaintiff

vs.

SHELLY K. REED, t/d/b/a
WALLACETON HARDWOODS,

Defendant

CIVIL DIVISION

No. 02 - 912 - CD

ANSWER OPPOSING
MOTION FOR SUMMARY
JUDGMENT

Filed on behalf of:

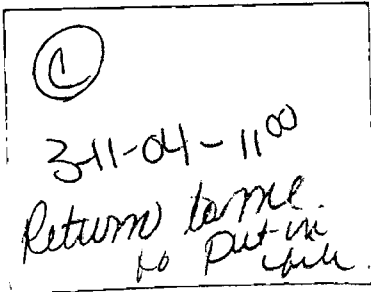
Defendant, SHELLY K.
REED, t/d/b/a WALLACETON
HARDWOODS

Counsel of Record for this
Party:

JOSEPH COLAVECCHI, ESQUIRE
PA I.D. 06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/756-5166



LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P.O. BOX 131
CLEARFIELD, PA

FILED

MAR 04 2004

William A. Shaw
Prothonotary

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

GENERAL WOODS & VENEERS, LTD. :
Plaintiff :
vs. : No. 02 - 912 - CD
SHELLY K. REED, t/d/b/a :
WALLACETON HARDWOODS, :
Defendant :

**ANSWER OPPOSING
MOTION FOR SUMMARY JUDGMENT**

NOW COMES, Shelly K. Reed, t/d/b/a Wallaceton Hardwoods, who, through her Attorney, Joseph Colavecchi, Esquire, files this Answer opposing Plaintiff's Motion for Summary Judgment and respectfully avers as follows:

1. Merwin R. Graham is Manager of Wallaceton Hardwoods, and his deposition was taken by Attorney for Plaintiff on June 24, 2003, a copy of the deposition has been filed of record.

2. As Manager of Wallaceton Hardwoods, Merwin R. Graham runs the business and when necessary, will load trucks. (Graham Deposition Page 8)

3. Wallaceton Hardwoods has been doing business with Spencer Veneer for the last few years and has sold Spencer a number of logs. (Graham Deposition, Page 10 and Page 11)

4. Merwin R. Graham testified that he was working late one evening when two trucks came to the yard and said they were to pick up the two loads of Spencer's logs. (Graham Deposition, Page 13)

5. Merwin R. Graham stated that he could tell whose logs is whose just from the log yard and he knew there were logs still left there from Spencer. The logs remained from three loads and there were two loads left. (Graham Deposition, Page 14)

6. Merwin R. Graham stated that he would load them rather than have the drivers sit all night and did so by utilizing the loader of Wallaceton Hardwoods. (Graham Deposition, Page 15)

7. After loading the trucks, the drivers left without the paperwork that is normally given to them.

8. Merwin R. Graham related this incident the next day to Gail Wilson, his secretary. (Graham Deposition, Page 19)

9. Merwin R. Graham assumed that Spencer got the logs. (Graham Deposition, Page 20)

10. Merwin R. Graham said that he usually had dealings with Tom Alexander from Spencer. Tom Alexander formerly worked for Wallaceton Hardwoods in Norfolk, Virginia.

11. Normally Spencer had been having the logs hauled by the trucking business run by the son of Merwin Graham. (Graham Deposition, Page 22)

12. Tom Alexander had told Merwin Graham to hold up on two shipments since Tom Alexander was not sure where they were going. The logs then sat in the yard for a long time. (Graham Deposition, Page 23)

13. Merwin R. Graham tried to talk to Tom Alexander and to someone else from Spencer about the situation, but neither of them could talk to him about it. (Graham Deposition, Page 24)

14. Tom Alexander further told Merwin Graham that he, Tom Alexander, was told not to talk about the situation at all. (Graham Deposition, Page 24)

15. Later, Merwin R. Graham found out that Tom Alexander had been fired by Spencer. (Graham Deposition, Page 24 and Page 25)

16. It was months before Spencer indicated they had not received the logs. (Graham Deposition, Page 25)

17. Merwin R. Graham said that Spencer claimed they paid the same invoice twice by mistake. Merwin Graham said Spencer may have made a mistake in their office but when they wired the money, they should have been wiring the money for the parcel of logs about which he was discussing. (Graham Deposition, Page 26)

18. Wallaceton Hardwoods gave Spencer credit on the second billing because Spencer owed Wallaceton Hardwoods for the logs for

which they had not paid and the paperwork was balanced out for this reason. (Graham Deposition, Page 27)

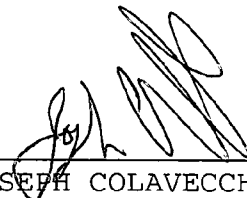
19. The so-called double payment was applied to the two loads of logs for which Wallaceton Hardwoods had not been paid. (Graham Deposition, Page 29)

20. Further, the two loads of logs that went out were at a cost of Sixty-four Thousand (\$64,000) Dollars and not Fifty-five Thousand (\$55,000) Dollars, so that the net result was that Spencer would have owed a balance to Wallaceton Hardwoods of approximately Nine Thousand (\$9,000) Dollars. (Graham Deposition, Page 29)

21. For all of the reasons as set forth above, there is obviously a genuine issue of material facts that remain at issue which must be resolved at the trial of this case.

WHEREFORE, Defendant asks that the Motion for Summary Judgment be dismissed.

Respectfully submitted:



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Shelly K. Reed,
t/d/b/a Wallaceton Hardwoods

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

GENERAL WOODS & VENEERS, LTD. :
Plaintiff :
vs. : No. 02 - 912 - CD
SHELLY K. REED, t/d/b/a :
WALLACETON HARDWOODS, :
Defendant :

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 5, 2004, a true and correct copy of Defendant's Answer Opposing Motion for Summary Judgment in the above matter was served on the following by depositing said copy in the United States Mail, first class, postage prepaid and addressed as follows:

Michael D. Reed, Esquire
Mette, Evans & Woodside
3401 North Front Street
P.O. Box 5950
Harrisburg, PA 17110-0950

DATE: 3/5/04

BY: 

JOSEPH COLAVECCHI, ESQUIRE
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
814/765-1566

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

GENERAL WOODS & VENEERS, LTD. :
:
V. : NO. 02-912-CD
:
SHELLY K. REED t/d/b/a :
WALLACETON HARDWOODS :

ORDER

AND NOW, this 21st day of April, 2004, following Argument on Plaintiff's Motion for Summary Judgment, and upon review of brief filed by Plaintiff in support of said motion, it is the ORDER of this Court that said motion be and is hereby GRANTED.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

APR 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED
013:51
APR 21 2004
100
Mays Reed, J. Colaneri
William A. Shaw
Prothonotary/Clerk of Courts
C
LTC

GENERAL WOODS & VENEERS, LTD., :
Plaintiff :

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

v. :

No. 02-912-CD

SHELLY K. REED, t/d/b/a
WALLACETON HARDWOODS, :
Defendant. :

CIVIL ACTION – LAW

PRAECIPE TO ENTER JUDGMENT

TO THE PROTHONOTARY:

Kindly enter judgment in favor of Plaintiff General Woods & Veneers, Ltd. and against Defendant Shelly K. Reed t/d/b/a Wallaceton Hardwoods in accordance with the Order of Court dated April 21, 2004 a copy of which is attached hereto as Exhibit "A", in the following amount:

Principal	\$55,668.40
Pre-Judgment Interest	\$ 8,766.40
Post-Judgment Interest	\$ 2,001.51
Costs	\$ 100.00
Attorneys Fees	<u>\$26,713.69</u>

TOTAL: \$93,250.00

FILED

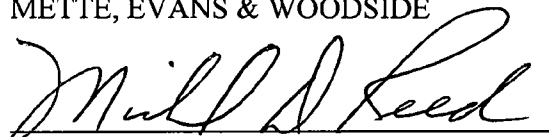
M 10:40 BA ^{22 30-00}
Notice to atty Colangelo
start to atty Reed
OCT 26 2004

Respectfully submitted,

William A. Shaw
Prothonotary

METTE, EVANS & WOODSIDE

By:



Michael D. Reed, Esquire
Sup. Ct. I.D. No. 35193

3401 North Front Street
P. O. Box 5950
Harrisburg, PA 17110-0950
(717) 232-5000

Attorneys for Plaintiff
General Woods & Veneers, Ltd.

Date: October 25, 2004

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

GENERAL WOODS & VENEERS, LTD. :

V. :

NO. 02-912-CD

SHELLY K. REED t/d/b/a
WALLACETON HARDWOODS :

ORDER

AND NOW, this 21st day of April, 2004, following Argument on Plaintiff's Motion for Summary Judgment, and upon review of brief filed by Plaintiff in support of said motion, it is the ORDER of this Court that said motion be and is hereby GRANTED.

BY THE COURT,

/s/ Paul E. Cherry

PAUL E. CHERRY,
JUDGE

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

APR 21 2004

Attest.

William L. Cherry
Prothonotary/
Clerk of Courts

CERTIFICATE OF SERVICE

I certify that I am this day serving a copy of the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure, by depositing a copy of same in the United States Mail, Harrisburg, Pennsylvania, with first-class postage, prepaid, as follows:

Joseph Colavecchi, Esquire
Colavecchi & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

METTE, EVANS & WOODSIDE

BY:



Michael D. Reed, Esquire
Supreme Court I.D. #35193

3401 North Front Street
P.O. Box 5950
Harrisburg, PA 17110-0950

Attorneys for Plaintiff
General Woods & Veneers, Ltd.

DATED: October 25, 2004

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

General Woods & Veneers, LTD.

Vs.

No. 2002-00912-CD

Shelly K. Reed t/d/b/a
Wallaceton Hardwoods

To: DEFENDANT(S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$93,250.00 on the October 26, 2004.

William A. Shaw
Prothonotary

William A. Shaw

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,
PENNSYLVANIA
STATEMENT OF JUDGMENT

General Woods & Veneers, LTD.
Plaintiff(s)

No.: 2002-00912-CD

Real Debt: \$93,250.00

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Shelly K. Reed
Wallaceton Hardwoods
Defendant(s)

Entry: \$20.00

Instrument: Default Judgment

Date of Entry: October 26, 2004

Expires: October 26, 2009

Certified from the record this 26th day of October, 2004

William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment, Debt,
Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

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

CIVIL DIVISION

No. 02 - 912 - CD

GENERAL WOODS & VENEERS, LTD.,
Plaintiff

vs.

SHELLY K. REED, t/d/b/a
WALLACETON HARDWOODS,
Defendant

PETITION TO OPEN JUDGMENT

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
ACROSS FROM COURTHOUSE
P. O. BOX 131
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GENERAL WOODS & VENEERS, LTD.,
Plaintiff/Respondent

Vs.

SHELLY K. REED, t/d/b/a
WALLACETON HARDWOODS,
Defendant/Petitioner

CIVIL DIVISION

No. 02 - 912 - CD

PETITION TO OPEN JUDGMENT

Filed on Behalf of:

Defendant/Petitioner, SHELLY
K. REED, t/d/b/a WALLACETON
HARDWOODS

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED 3cc
013:29601
OCT 29 2004
William A. Shaw
Prothonotary/Clerk of Courts
Atty Colavecchi

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

GENERAL WOODS & VENEERS, LTD., :
Plaintiff/Respondent: No. 02 - 912 - CD :
Vs. :
SHELLY K. REED, t/d/b/a :
WALLACETON HARDWOODS, :
Defendant/Petitioner: :

PETITION TO OPEN JUDGMENT

Defendant, Shelly K. Reed, t/d/b/a Wallaceton Hardwoods, files her Petition to open the Judgment entered in the above-captioned matter and respectfully avers as follows:

1. Petitioner is Defendant in the above-captioned legal action. Respondent is General Woods & Veneers, Ltd.
2. By Order dated April 21, 2004, a copy of which is attached to this Petition marked Exhibit "A", the Court entered Summary Judgment in favor of Plaintiff and against Defendant.
3. On or about October 25, 2004, a Praecipe was filed on behalf of Plaintiff to enter judgment against Defendant in the total amount of Ninety-three Thousand Two Hundred Fifty Dollars (\$93,250.00). A copy of said Praecipe is attached hereto and marked Exhibit "B."
4. Notice was then given to Defendant from the office of the Clearfield County Prothonotary that Judgment had been entered against Defendant in the amount of Ninety-three Thousand Two

Hundred Fifty Dollars (\$93,250.00). A copy of said notice is attached to this Petition and marked Exhibit "C."

5. Petitioner is asking that a Rule be issued and served upon Respondent to show cause why said Judgment should not be opened for the following reasons:

a. There is no authorization from the Court to award attorney's fees in the amount of Twenty-six Thousand Seven Hundred Thirteen Dollars and Sixty-nine Cents (\$26,713.69) as set forth in the Praecipe by Respondent. There was no hearing or evidence given to approve the amount of attorney's fees, nor was there any reason given why attorney's fees should be awarded in this case. Attorney's fees are limited by statute.

b. Respondent has moved for prejudgment interest of Eight Thousand Seven Hundred Sixty-six Dollars and Forty Cents (\$8,766.40). The authorization for this prejudgment interest has not been shown in the record and would not be part of the granting of the Motion for Summary Judgment.

c. Respondent has instructed the Prothonotary to enter post-judgment interest in the amount of Two Thousand One Dollar and Fifty-one Cents (\$2,001.51). There is no authorization from the Court to authorize the post-judgment interest and further there is no record to show how this amount was calculated.

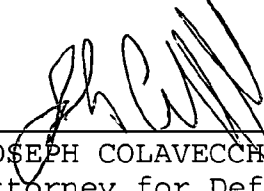
d. The Complaint filed in this case demanded judgment in the amount of Fifty-five Thousand Six Hundred Sixty-eight Dollars

and Forty Cents (\$55,668.40), together with interest and costs and all other remedies which this Court deems just and appropriate. The Court has not ruled that Respondent is entitled to any remedy other than the judgment in the amount of Fifty-five Thousand Six Hundred Sixty-eight Dollars and Forty Cents (\$55,668.40).

e. In Count II of the Complaint, Plaintiff requested the amount of Fifty-five Thousand Six Hundred Sixty-eight dollars and Forty Cents (\$55,668.48), together with interest and costs and reasonable attorney's fees and all other remedies which this Court deems just and appropriate. No ruling has been made by the Court as to prejudgment interest or attorney's fees.

WHEREFORE, Petitioner asks that a Rule be issued and directed to Respondent to show cause why said Judgment should not be opened and a hearing or trial be held on the issue of the damages to be determined as a result of the Summary Judgment granted by the Court.

Respectfully submitted,



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Defendant

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

GENERAL WOODS & VENEERS, LTD. :

V. :

NO. 02-912-CD

SHELLY K. REED t/d/b/a
WALLACETON HARDWOODS :

ORDER

AND NOW, this 21st day of April, 2004, following Argument on Plaintiff's Motion for Summary Judgment, and upon review of brief filed by Plaintiff in support of said motion, it is the ORDER of this Court that said motion be and is hereby GRANTED.

BY THE COURT,

/s/ Paul E. Cherry

PAUL E. CHERRY,
JUDGE

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

APR 21 2004

Attest.

[Signature]
Prothonotary/
Clerk of Courts

EXHIBIT
"A"

GENERAL WOODS & VENEERS, LTD., :
Plaintiff :

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

v. :

No. 02-912-CD

SHELLY K. REED, t/d/b/a :
WALLACETON HARDWOODS, :
Defendant. :

CIVIL ACTION – LAW

PRAECIPE TO ENTER JUDGMENT

TO THE PROTHONOTARY:

Kindly enter judgment in favor of Plaintiff General Woods & Veneers, Ltd. and against Defendant Shelly K. Reed t/d/b/a Wallaceton Hardwoods in accordance with the Order of Court dated April 21, 2004 a copy of which is attached hereto as Exhibit "A", in the following amount:

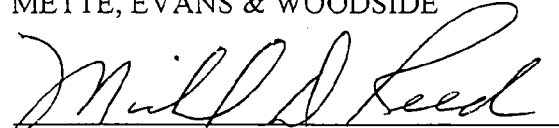
Principal	\$55,668.40
Pre-Judgment Interest	\$ 8,766.40
Post-Judgment Interest	\$ 2,001.51
Costs	\$ 100.00
Attorneys Fees	<u>\$26,713.69</u>

TOTAL: \$93,250.00

Respectfully submitted,

METTE, EVANS & WOODSIDE

By:



Michael D. Reed, Esquire
Sup. Ct. I.D. No. 35193

3401 North Front Street
P. O. Box 5950
Harrisburg, PA 17110-0950
(717) 232-5000

Attorneys for Plaintiff
General Woods & Veneers, Ltd.

Date: October 25, 2004

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

General Woods & Veneers, LTD.

Vs.

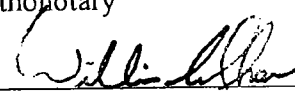
No. 2002-00912-CD

Shelly K. Reed t/d/b/a
Wallaceton Hardwoods

To: DEFENDANT(S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$93,250.00 on the October 26, 2004.

William A. Shaw
Prothonotary


William A. Shaw

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
CIVIL DIVISION
No. 02 - 912 - CD

GENERAL WOODS & VENEERS, LTD.,
Plaintiff

vs.

SHELLY K. REED, t/d/b/a
WALLACETON HARDWOODS,
Defendant

RULE

FILED

NOV 02 2004

William A. Shaw
Prothonotary/Clerk of Courts

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
ACROSS FROM COURTHOUSE
P. O. BOX 131
CLEARFIELD, PA 16830

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GENERAL WOODS & VENEERS, LTD.,
Plaintiff/Respondent

Vs.

SHELLY K. REED, t/d/b/a
WALLACETON HARDWOODS,
Defendant/Petitioner

CIVIL DIVISION

No. 02 - 912 - CD

RULE

Filed on Behalf of:

Defendant/Petitioner, SHELLY
K. REED, t/d/b/a WALLACETON
HARDWOODS

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED 3cc

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NOV 02 2004

Atty J. Colavecchi

William A. Shaw
Prothonotary/Clerk of Courts

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

GENERAL WOODS & VENEERS, LTD., :
Plaintiff : No. 02 - 912 - CD
:
Vs. :
:
SHELLY K. REED, t/d/b/a :
WALLACETON HARDWOODS, :
Defendant :

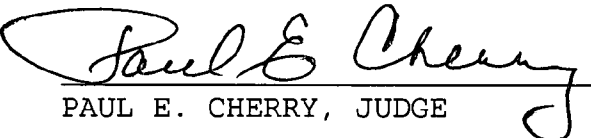
RULE

AND NOW, this 2nd day of November,
2004, upon consideration of the Petition to Open Judgment in the
above-captioned matter, a Rule is hereby issued and directed by
this Court to General Woods & Veneers, Ltd., through their attorney
Michael D. Reed to show cause why said Judgment should not be
opened and why a trial or hearing should not be scheduled to
determine the amount of damages represented by the Summary Judgment
issued by this Court by its Order dated April 21, 2004.

This Rule is returnable before this Court on the 29
day of November, 2004, at 9:30 A.M.

All proceedings to stay in the meantime.

BY THE COURT:


PAUL E. CHERRY, JUDGE

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

CIVIL DIVISION
No. 02 - 912 - CD

GENERAL WOODS & VENERERS, LTD.,
Plaintiff

vs.

SHELLY K. REED, t/d/b/a
WALLACETON HARDWOODS,
Defendant

AFFIDAVIT OF SERVICE

FILED

NOV 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

**COLAVECCHI
RYAN & COLAVECCHI**

ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

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

GENERAL WOODS & VENEERS, LTD., :
Plaintiff : No. 02 - 912 - cD
Vs. :
SHELLY K. REED, t/d/b/a :
WALLACETON HARDWOODS, :
Defendant :

AFFIDAVIT OF SERVICE

Joseph Colavecchi, Esquire, being duly sworn according to law deposes and says that on the 5th day of November 2004, he served a certified copy of the Petition to Open Judgment and Rule issued in the above-captioned matter by First Class Mail, postage pre-paid, on the following:

Michael D. Reed, Esquire
Mette, Evans & Woodside
3401 North Front Street
P.O. Box 5950
Harrisburg, PA 17110-0950



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Defendant

11/5/04

Ca

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

GENERAL WOODS & VENEERS, LTD.,
Plaintiff,

vs.

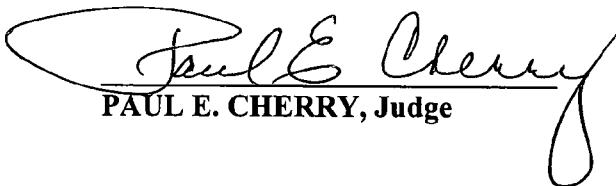
No. 02 - 912 - CD

SHELLY K. REED, t/d/b/a
WALLACETON HARDWOODS,
Defendant.

ORDER OF COURT

AND NOW, this 29th day of November, 2004, following argument on Defendant's Petition to Open Judgment, **IT IS THE ORDER OF THIS COURT** that Attorney Michael D. Reed, counsel for Plaintiff, General Woods & Veneers, LTD, file a brief within fifteen (15) days of this date. Attorney Joseph Colavecchi, counsel for Defendant Shelly K. Reed, t/d/b/a/ Wallaceton Hardwoods, shall have fifteen (15) days thereafter to file a responsive brief.

BY THE COURT:


PAUL E. CHERRY, Judge

EGK **FILED**
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200 atty Reed
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William A. Shaw
Prothonotary

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

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William A. Shaw
Prothonotary/Clerk of Courts
ICC - D.M. Kesell
ICC-Law Library
2cc-M. Reed
2cc-J. Colavecchi

GENERAL WOODS & VENEERS, LTD. :
V. : NO. 02-912-CD
SHELLY K. REED t/d/b/a :
WALLACETON HARDWOODS :

OPINION

Plaintiff, General Woods & Veneers, LTD. initiated this action by the filing of a Complaint on June 5, 2002. On July 1, 2002, Defendant, Shelly K. Reed t/d/b/a Wallaceton Hardwoods filed an Answer to said Complaint. Plaintiff, General Woods & Veneers, LTD. filed a Motion for Summary Judgment. Wallaceton Hardwoods filed an Answer opposing the Motion for Summary Judgment. Following Oral Argument, this Court entered an Order granting General Woods & Veneers, LTD.'s Motion for Summary Judgment.

General Woods & Veneers, LTD. filed a Praecipe to Enter Judgment on the Docket for purposes of execution which listed the principal amount of the Judgment together with pre-judgment and post-judgment interest, attorney fees and costs. The Prothonotary of Clearfield County entered Judgment on October 26, 2004. Defendant, Shelly K. Reed t/d/b/a Wallaceton Hardwoods, filed a Petition to Open Judgment and the Court heard Argument on said Petition. The Court thereafter entered an Order setting a Briefing Schedule. The Court thereafter received Briefs from both parties as well as a responsive Brief filed by Shelly K. Reed t/d/b/a Wallaceton Hardwoods.

This matter arises as a result of an overpayment by General Woods and Veneers, LTD. in the amount of Fifty Five Thousand Six Hundred Sixty Eight Dollars and Forty Cents (\$55,668.40).

Two issues have been raised for the Court's decision:

1. Is General Woods & Veneers, LTD. entitled to pre-judgment interest on the amount of the judgment due to Shelly K. Reed t/d/b/a Wallaceton Hardwoods.
2. Is General Woods & Veneers, LTD. entitled to an award of attorney fees it incurred to obtain judgment against Shelly K. Reed t/d/b/a Wallaceton Hardwoods.

1. Pre-Judgment Interest.

The right to interest on money only on a contract is a legal right, recoverable as damages, regardless of when payment is demanded and such interest begins at the time payment is withheld after the duty arises to make payment. Fernandez v. Levin, 548 A.2d 1191 (Pa. 1988); see also, Kaiser v. Old Republic Ins. Co., 741 A.2d 748 (Pa. Super 1999). Thus, pre-judgment interest is awardable as of right. Id.

In this matter, the Court is satisfied that the award of pre-judgment interest is a matter of right under clearly established Pennsylvania Law. Therefore, the Defendant's request to strike pre-judgment interest from the judgment shall be and is hereby DENIED. Plaintiff, General Woods & Veneers LTD., shall be and is hereby awarded pre-judgment interest in the amount of Eight Thousand Seven Hundred Sixty Six Dollars and Forty

Cents (\$8,766.40).

2. Attorney Fees.

Plaintiff, General Woods & Veneers LTD. is also seeking attorney fees in the amount of Twenty Six Thousand Seven Hundred Thirteen Dollars and Sixty Nine Cents (\$21,713.69). In Pennsylvania, a litigant can not recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties or some other established exception. Lavelle v. Koch, 532 Pa. 631, 617 A.2d 319, 323 (Pa. 1992).

Under 42 Pa. C.S. §1726(a)(1) attorney fees are not an item of taxable costs except as permitted by 42 Pa. C.S. §2503 relating to the right of participants to receive counsel fees.

42 Pa. C.S. §2503 provides: The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter.

- (9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.

Plaintiff alleges that what Wallaceton Hardwoods did was to conduct a frivolous defense all of which caused General Woods to incur the attorney fees requested. This Court can not agree. This Court is satisfied that Wallaceton Hardwoods only defended itself as a result of the

Complaint filed by Plaintiff. This Court is satisfied that there is no legal or practical justification for the award of attorney fees to Plaintiff. Thus, that portion of the judgment entered by Plaintiff shall be stricken.

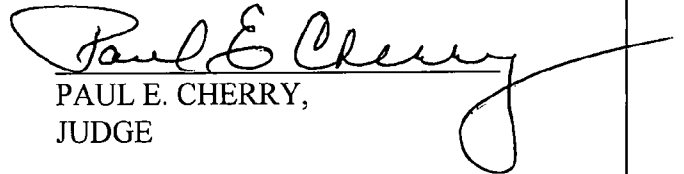
Lastly, Plaintiff, General Woods & Veneers, LTD, is entitled to the award of post-judgment interest from April 21, 2004 at the rate of 6% per annum.

Based upon the foregoing, the Court enters the following:

ORDER

AND NOW, this 6th day of February, 2007, it is the ORDER of this Court that Defendant's Motion to Open Judgment is GRANTED in part and DENIED in part. The Prothonotary of Clearfield County is hereby ORDERED to enter judgment in the amount of Fifty Five Thousand Six Hundred Sixty Eight Dollars and Forty Cents (\$55,668.40) plus pre-judgment interest in the amount of Eight Thousand Seven Hundred Sixty Six Dollars and Forty Cents (\$8,766.40) and post-judgment interest at the rate of 6% per annum from April 21, 2004 and strike attorney fees from said judgment.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

[illegible]

COUNSEL OF RECORD FOR

THIS PARTY:

Michael D. Reed, Esquire

METTE EVANS & WOODSIDE
PO Box 5050

PO Box 5950
Harrisburg PA 17110

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APR 10 2008 Sat. to Appr

William A. Shaw
Prothonotary/Clerk of Courts

Atty pd. 7-00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL DIVISION - LAW

GENERAL WOODS & VENEERS, LTD. *

NO. 02-912-CD

Plaintiff *

vs. *

SHELLY REED, ET AL *

Defendant *

SATISFACTION OF JUDGMENT

TO THE PROTHONOTARY:

AND NOW, this 28th day of February, 2008, Plaintiff hereby acknowledges payment in the amount of TWENTY FIVE THOUSAND AND NO/100 (\$25,000.00) for satisfaction in full of debt, interest and costs on the within stated Judgment, and authorize and direct the Prothonotary to mark the same satisfied on the record upon payment of his fee.

M. D. Reed
Counsel for Plaintiff

DATED: 2/26/08

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CERTIFICATE OF SATISFACTION OF JUDGMENT

General Woods & Veneers, LTD.

No.: 2002-00912-CD

Debt: \$55,668.40 plus pre-judgment interest in
the amount of \$8,766.40 and post-judgment
interest at the rate of 6% per annum from April
21, 2004

Vs.

Shelly K. Reed t/d/b/a
Wallaceton Hardwoods

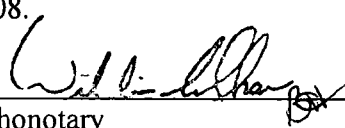
Atty's Comm.:

Interest From:

Cost: \$7.00

NOW, Thursday, April 10, 2008, directions for satisfaction having been received, and all
costs having been paid, SATISFACTION was entered of record.

Certified from the record this 10th day of April, A.D. 2008.


Prothonotary

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

GENERAL WOODS & VENEERS, LTD., :
Plaintiff/Respondent, :
vs. : No. 02-912-CD
SHELLY K. REED, t/d/b/a :
WALLACETON HARDWOODS, :
Defendant/Petitioner :

DEFENDANT/PETITIONER'S BRIEF CONCERNING

PETITION TO OPEN JUDGMENT

Wallaceton Hardwoods, through their attorney, Joseph Colavecchi, Esquire, files their brief to the Petition to Open Judgment and respectfully sets forth the following:

SUMMARY OF FACTS AND ISSUES

General Woods & Veneers, Ltd. filed a Complaint against Shelly K. Reed, t/d/b/a Wallaceton Hardwoods; after the pleadings were filed and depositions taken of both Plaintiff and Defendant, Plaintiff moved for summary judgment which was granted by the Court by Order dated April 21, 2004. There was no discussion by the Court in it's Order concerning attorney's fees, post-judgment interest and pre-judgment interest. The principal amount demanded in the Complaint was \$55,668.40.

Plaintiff then filed a Praecipe with the Office of the Clearfield County Prothonotary for judgment against Defendant based on the Court Order, asking for attorney's fees, post-judgment interest and pre-judgment interest. The Prothonotary entered

judgment based on the Praecipe filed by Plaintiff.

Defendant then filed a Petition to Open the Judgment.

ISSUES

1. Did the Order granting summary judgment include attorney's fees of \$26,713.69?
2. Did the Order for the summary judgment include pre-judgment interest in the amount of \$8,766.40?
3. Did the Order granting summary judgment include post-judgment interest in the amount of \$2,001.51?

LAW AND ARGUMENT CONCERNING ATTORNEY'S FEES

The American Rule states that a Litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties or some other established exception. *Levelle vs. Koch*, 532 Pa. 631, 617 A.2d 319, 323 (Pa.1992).

In Pennsylvania, the American Rule is embodied in 42 Pa.C.S. Section 1726(a)(1), which provides that attorney's fees are not an item of taxable cost except as permitted by 42 Pa.C.S. Section 2503 relating to right of participants to receive counsel fees.

42 Pa.C.S. Section 1726(a)(1) reads as follows:

"(a) **Standards for costs.**-The governing authority shall prescribe by general rule the standards governing the imposition and

taxation of costs, including the items which constitute taxable costs, the litigants who shall bear such costs, and the discretion vested in the courts to modify the amount and responsibility for costs in specific matters. All system and related personnel shall be bound by such general rules. In prescribing such general rules, the governing authority shall be guided by the following consideration, among others:

(1) Attorney's fees are not an item of taxable costs except to the extent authorized by section 2503 (relating to right of participants to receive counsel fees)."

Following the above, we then go to 42 Pa.C.S.A. Section 2503 which provides as follows:

"Right of participants to receive counsel fees. The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:

(1) The holder of bonds of a private corporation who successfully recovers due and unpaid interest, the liability for the payment of which was denied by the corporation.

(2) A garnishee who enters an appearance in a matter which is discontinued prior to answer filed.

(3) A garnishee who is found to have in his possession or control as indebtedness due to or other property of the debtor except such, if any, as has been admitted by answer filed.

(4) A possessor of property claimed by two or more other persons, if the possessor interpleads the rival claimants, disclaims all interest in the property and disposes of the property as the court may direct.

(5) The prevailing party in an interpleader proceeding in connection with execution upon a judgment.

(6) Any participant who is awarded counsel fees as a sanction against another participant for violation of any general rule which expressly prescribes the award of counsel fees as a sanction for dilatory, obdurate or vexatious conduct during the pendency of any matter.

(7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter.

(8) Any participant who is awarded counsel fees out of a fund within the jurisdiction of the court pursuant to any general rule relating to an award of counsel fees from a fund within the jurisdiction of the court.

(9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.

(10) Any other participant in such circumstances as may be specified by statute heretofore or hereafter enacted."

Presumably, counsel for General Woods & Veneers, Ltd. is proceeding under 2503 (7) which provides that counsel fees would be paid to any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter.

Wallaceton Hardwoods is the Defendant in this case and is not the moving party and only defended itself as a result of the Complaint filed by Plaintiff.

It is the burden of the Plaintiff in seeking counsel fees under 42 Pa.C.S.A. 2503 to prove the existence of one of the statutory conditions. IN re Estate of Roos, 305 Pa.Super. 86, 451 A2d 255 (Pa.Super. 1982).

Pennsylvania's Judicial Code authorizes trial courts to award counsel fees in an attempt to curb the filing of frivolous and otherwise improperly brought law suits. In this case, Wallaceton Hardwoods was defending itself from a claim for money.

The entire actions of Wallaceton Hardwoods in this case amount to the following:

(a) They filed responsive pleadings to the Complaint.

(b) They participated in the depositions taken of Plaintiff and Defendant.

(c) They answered the Motion for Summary Judgment.

No appeal has been filed from the summary judgment entered by Judge Cherry.

From all of the above, it is apparent that there is no legal or practical justification to award attorney's fees to Plaintiff.

LAW AND ARGUMENT CONCERNING PRE-JUDGMENT INTEREST

In non-contract cases, pre-verdict interest may be awarded in order to prevent unjust enrichment or to avoid injustice. Sack vs. Feinman (1981) 495 Pa 100, 432 A2d 971.

The decision whether to avoid pre-judgment interest, and the amount of such interest, is vested in the discretion of the trial court. Park vs. Grater Delaware Valley Savings & Loan Association (1987) 362 Super Ct 54, 523 A2d 771.

The fairest way for a court to decide questions pertaining to interest is according to a plain and simple consideration of justice and fair dealing. Rizzo vs. Haines (1989) 520 Pa 484, 555 A2d 58; In re: Estate of Braun (1994) 437 Super Ct 372, 650 A2d 73.

General Woods filed a Complaint with the Court of Common Pleas of Clearfield County, Pennsylvania on or about June 6, 2002. General Woods averred that Wallacetown, on or about April 12, 2001, supplied logs totaling 5,434 board feet to Spencer Veneer. They

allege that Wallaceton prepared a report indicating that the total board feet of logs delivered was 14,416 board feet with a total amount due of \$90,862.00 and forwarded invoices for that amount to Spencer Veneer.

Plaintiff alleged that General Woods made two (2) wire transfer payments dated August 3, 2001 and September 4, 2001, which paid in full invoices which included invoices for the 14,415 board feet of logs which Wallaceton had reported that it had delivered to Spencer on April 12, 2001.

Plaintiff averred that General Woods & Spencer Veneer (Spencer Veneer being owned by General Woods) conducted a detailed review of the invoices forwarded by Wallaceton and payments made on behalf of Spencer by General Woods for such invoices.

Plaintiff averred that it was determined by General Woods that Spencer had received only 5,434 board feet of logs on April 12, 2001 as opposed to 14,416 board feet for which Wallaceton invoiced. Spencer had been paid by General Woods on behalf of Spencer. Plaintiff alleged this constituted an overpayment in the amount of \$55,668.40.

Plaintiff alleged that by correspondence beginning on February 7, 2002 and concluding on April 10, 2002, General Woods made Wallaceton aware of the overpayment and requested an immediate refund of the alleged overpayment.

In the Complaint, General Woods demanded judgment in the amount of \$55,668.40 together with interest, the cost of the action and

reasonable attorney's fees.

After filing the Complaint on June 6, 2002, an Answer was filed to said Complaint on July 1, 2002 by Defendant.

Depositions of Plaintiff and Defendant were taken on June 24, 2003.

Plaintiff then moved for summary judgment on February 19, 2004.

There is nothing in the dockets to show any delay having been caused by Wallaceton. A copy of the docket records is attached to this brief and marked Exhibit "A".

The Court granted summary judgment by Order dated April 21, 2004.

No appeal was filed to the Order of the Court on the Motion for Summary Judgment.

Plaintiff filed a Praecipe for Judgment on October 26, 2004 for the amount of \$93,250.00.

A Petition to open the judgment was filed promptly on October 29, 2004 by Defendant.

The answer of Defendant denied that there was an overpayment and that any monies were owed from Defendant to Plaintiff. Defendant further averred that Plaintiff received 14,416 board feet from Wallaceton.

The form of action would appear to be a tort for a wrongful withholding of funds by Wallaceton Hardwoods.

There was correspondence between Wallaceton and General Woods and Wallaceton concluded that the alleged overpayment was applied to the logs that were picked up by representatives of General Woods.

The legal action amounted to a dispute over the funds claimed by Plaintiff to be owed to them and which Defendant alleged had been applied to the additional logs received by General Woods from Defendant.

It is important to note that if Plaintiff felt that there was money owed to them, they could have taken legal steps anytime to try to collect the funds which they allege was erroneously paid to Wallaceton.

General Woods did indeed file a Complaint on June 6, 2002. This was after they had allegedly made two (2) payments on August 3, 2001 and September 4, 2001.

General Woods said they conducted a review of the invoices and the payments made on behalf of Spencer by General Woods. General Woods alleges they started correspondence on February 7, 2002 and concluded on April 10, 2002, at which time, General Woods alleges they made Wallaceton aware of the overpayment.

After filing the Complaint, General Woods did not promptly move the case forward and did not even take depositions until June, 2003.

In no way did Defendant procrastinate or cause delay in their defense of this case.

General Woods should not be able to profit by their delay in bringing the action and prosecuting the case to the Motion for

Summary Judgment and the ultimate ruling of the Court in their favor.

Interest should not be charged on the \$55,668.40 until the Order issued by the Court on April 21, 2004.

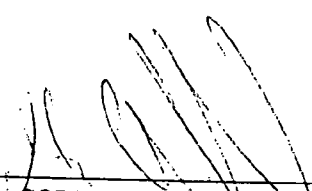
Commencing April 21, 2004, interest could be charged by General Woods at the rate of 6% per annum which would amount to \$278.34 per month.

This would make the total interest payable for the period from April 21, 2004 to October 26, 2004, when the Praecipe for Judgment was filed, which would be approximately 6 months interest, for a total of \$1,670.04. There would be an adjustment for some additional days.

Using the standard as set out above, the amount of the judgment to be entered in favor of General Woods against Wallaceton should be \$55,668.40 plus interest of approximately \$1,670.04, plus costs.

WHEREFORE, Defendant respectfully asks that the Court direct that judgment be entered in favor of Plaintiff and against Defendant as set out above.

Respectfully Submitted,



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Wallaceton Hardwoods

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

Date: 11/19/2004

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:17 AM

ROA Report

Page 1 of 1

Case: 2002-00912-CD

Current Judge: Paul E. Cherry

General Woods & Veneers, LTD. vs. Shelly K. Reed, Wallaceton Hardwoods

Civil Other

Date		Judge
06/06/2002	Filing: Civil Complaint Paid by: Mette, Evans & Woodside (M. Reed, Esq. Receipt number: 1843640 Dated: 06/06/2002 Amount: \$80.00 (Check) One CC Sheriff	No Judge
07/01/2002	ANSWER. filed by s/Joseph Colavecchi, Esq. Verification s/Shelly K. Reed 3 cc Atty Colavecchi	No Judge
08/12/2002	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
02/19/2004	General Woods & Veneers, Ltd's Motion For Summary Judgment. Michael D. Reed, Esquire Certificate of Service 1 cc Atty Reed	No Judge
02/24/2004	ORDER, NOW, this 24th day of February, 2004, re: Rule is issued upon Defendant to Appear and Show Cause why Motion should not be granted. Argument is scheduled the 11th day of March, 2004, at 11:00 a.m., in Courtroom No. 2. by the Court, s/PEC, J. 2 cc & memo of service to Atty Reed	Paul E. Cherry
02/27/2004	Affidavit of Service, Rule to Show Cause dated February 24, 2004 upon Joseph Colavecchi, Esquire filed by, s/Michael D. Reed, Esquire no cc	Paul E. Cherry
03/05/2004	Answer Opposing Motion For Summary Judgment. filed by, s/Joseph Colavecchi, Esquire Certificate of Service 3 cc to Atty	Paul E. Cherry
	Transcript, Deposition of Merwin R. Graham, June 24, 2003	Paul E. Cherry
03/10/2004	Transcript, Deposition of Merwin R. Graham, June 24, 2003	Paul E. Cherry
03/11/2004	Transcript, Deposition of Craig Keeler, June 24, 2003 no cc	Paul E. Cherry
04/21/2004	ORDER, AND NOW, this 21st day of April, 2004, re: Plaintiff's Motion for Summary Judgment is GRANTED. by the Court, s/PEC, J. 1 cc Attuy Reed, J. Colavecchi	Paul E. Cherry
10/26/2004	Filing: Judgment Paid by: Reed, Michael D. (attorney for General Woods & Veneers, LTD.) Receipt number: 1889087 Dated: 10/26/2004 Amount: \$20.00 (Check) Notice to Def. Stmt. to Plff. Judgment entered against Def. in the amount \$93,250.00.	Paul E. Cherry
10/29/2004	Petition to Open Judgment, filed by s/Joseph Colavecchi, Esq. Three CC Attorney Colavecchi	Paul E. Cherry
11/02/2004	Rule, AND NOW, this 2nd day of Nov. 2004, a Rule is hereby issued and directed to General Woods & Veneers, Ltd., to show cause why said Judgment should no be opend and why a trial or hearing should not be scheduled. This Rule is returnable before this Court on the 29th day of Nov. 2004, at 9:30 a.m. All proceedings to stay in the meantime. BY THE COURT: Paul E. Cherry, Judge. 3CC Atty J. Colavecchi	Paul E. Cherry
11/10/2004	Affidavit of Service filed, by Atty. Colavecchi Served copy of of the Petition to Open Judgment and Rule upon Michael D. Reed	Paul E. Cherry

Exhibit

"A"

GENERAL WOODS & VENEERS, LTD., :

Plaintiff, :

v. :

SHELLY K. REED, t/d/b/a
WALLACETON HARDWOODS, :

Defendant. :

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

No. 02-912-CD

CIVIL ACTION – LAW

RECEIVED

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COURT ADMINISTRATOR'S
OFFICE

**GENERAL WOODS & VENEERS, LTD.'S BRIEF IN
SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

AND NOW COMES, Plaintiff General Woods & Veneers, Ltd. (hereinafter "General Woods"), by and through its attorneys, Mette, Evans & Woodside, and hereby files this Brief in support of its Motion for Summary Judgment.

I. STATEMENT OF THE CASE

A. Procedural Background

Plaintiff General Woods commenced this action by filing a Complaint against Defendant Shelly K. Reed t/d/b/a Wallaceton Hardwoods (hereinafter "Wallaceton") on June 5, 2002. The Complaint contained two counts: Breach of Contract and Negligent Misrepresentation. On July 1, 2002, Defendant Wallaceton filed its Answer to General Woods' Complaint. Thereafter discovery ensued between the parties. Discovery has now been completed. On February 19, 2004, General Woods moved for Summary Judgment on both Counts I and II of Plaintiff General Woods' Complaint as Defendant Wallaceton failed to provide any evidence, and discovery failed to adduce any evidence that raises a genuine issue of material fact with respect to the allegations contained in Plaintiff's Complaint. This Brief is submitted in support of that Motion.

B. Factual Background

This case centers on a commercial transaction between Wallaceton and Spencer Veneer, LLC (hereinafter “Spencer”) a subsidiary of General Woods and Veneers, LTD (hereinafter “General Woods”) for the purchase and delivery of cherry logs. General Woods seeks summary judgment as the undisputed evidence shows that Wallaceton failed to tender delivery of two out of three loads of the cherry logs that were the subject of the contract at issue.

The evidence of record and Defendant Wallaceton’s own admissions clearly demonstrate that Wallaceton failed to tender delivery of two of the three loads. Pursuant to the Uniform Commercial Code, without tender of delivery, General Woods is not obligated to pay for same. The Uniform Commercial Code provides several remedies to General Woods for Wallaceton’s breach of the contract, including, *inter alia*, the right to sue for the damages General Woods incurred due to Wallaceton’s failure to tender the goods and to recovery of any payments that have been made. General Woods is entitled to summary judgment as Wallaceton cannot prove that it tendered delivery of the two loads at issue.

A more detailed summary of the factual background of this matter is contained in Plaintiff General Woods’ Motion for Summary Judgment. To avoid repetition and in an attempt to keep this Brief from becoming overly lengthy, Plaintiff General Woods incorporates by reference, the factual background set forth in Plaintiff’s Motion for Summary Judgment as though same were fully set forth herein.

II. QUESTIONS PRESENTED

I. **SHOULD GENERAL WOODS’ MOTION FOR SUMMARY JUDGMENT BE GRANTED WHEN THE EVIDENCE OF RECORD AND DEFENDANT’S OWN ADMISSIONS ESTABLISH THAT DEFENDANT FAILED TO TENDER DELIVERY OF THE TWO LOADS OF LOGS AT ISSUE?**

Suggested Answer: Yes

II. SHOULD GENERAL WOOD'S MOTION FOR SUMMARY JUDGMENT BE GRANTED WHEN THE EVIDENCE OF RECORD AND DEFENDANT'S OWN ADMISSIONS ESTABLISH:

- (1) THAT DEFENDANT WAS NEGLIGENT IN ITS HANDLING OF THE SHIPMENT OF TWO LOADS OF LOGS, AND**
- (2) THAT DEFENDANT SIMPLY ASSUMED THAT SPENCER RECEIVED THE SHIPMENTS DESPITE DEFENDANT'S ADMISSIONS THAT THERE WERE SUSPICIOUS CIRCUMSTANCES THAT AMOUNTED TO THEFT OF THE SHIPMENTS, AND**
- (3) THAT BASED ON AN UNREASONABLE ASSUMPTION THAT THE LOGS WERE DELIVERED TO SPENCER DESPITE THE THEFT, DEFENDANT CHARGED SPENCER'S ACCOUNT FOR THE PURCHASE AND DELIVERY OF SAME, AND**
- (4) THAT DEFENDANT REFUSED TO RETURN AN OVERPAYMENT MADE TO DEFENDANT BY GENERAL WOODS DESPITE THE FACT THAT THE UNCONTROVERTED EVIDENCE OF RECORD DEMONSTRATES THAT SPENCER NEVER RECEIVED THE TWO LOADS THAT WERE APPARENTLY STOLEN BY A THIRD PARTY?**

Suggested Answer: Yes.

III. SHOULD GENERAL WOOD'S MOTION FOR SUMMARY JUDGMENT BE GRANTED WHEN THE EVIDENCE OF RECORD DEMONSTRATES THAT THE DEFENDANT'S ASSERTIONS AND UNSUBSTANTIATED ASSUMPTIONS ARE CONTRARY TO THE COURSE OF DEALINGS BETWEEN THE PARTIES AND TO THE USAGE OF TRADE IN THE INDUSTRY?

Suggested Answer: Yes.

III. ARGUMENT

A. Standard of Review

In accordance with Pennsylvania Rule of Civil Procedure 1035.2, a party may move for summary judgment in whole or in part under two circumstances: (1) "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report," or (2) "if, after the completion of discovery relevant to the Motion, including the production of the expert reports, an adverse party who will bear

the burden of proof at trial has failed to produce evidence of fact essential to the cause of action or defense which, in a jury trial, would require the issues to be submitted to a jury." Pa. R.C.P. No. 1035.2. Under Pennsylvania Rule of Civil Procedure 1035.2, "a tribunal may grant a Motion for summary judgment only when the pleadings, depositions, answers to interrogatories, and admissions of record, if any, show that there is no genuine issue of material fact in dispute and the moving party is, therefore, entitled to judgment as a matter of law." County of Adams v. Pennsylvania Department of Environmental Protection, 687 A.2d 1222, 1225 n.4 (Pa. Commw. 1997).

B. Analysis

1. The Evidence of Record and Defendant Wallaceton's Admissions Demonstrate that Wallaceton Failed to Tender Delivery of the Two Missing Loads of Logs at Issue in Accordance with the Uniform Commercial Code and Thus Pursuant to the UCC Plaintiff General Woods is Not Obligated to Make Payment for Same and may Recover Any Amounts that Have Been Paid Thereon.

a. Defendant Wallaceton failed to tender delivery of the two missing loads of logs to Spencer pursuant to 13 Pa.C.S.A. §2503 and §2504 and therefore General Woods is not obligated to pay for same pursuant to 13 Pa.C.S.A. §2507.

As this matter involves a commercial contract between two merchants for the sale of goods it falls squarely within, and is governed by, the Uniform Commercial Code (hereinafter "UCC"). One of the most basic tenets of the UCC is that tender of delivery of the goods at issue is a condition to the duty of the buyer to pay for them. Section 2507(a), in pertinent part, addresses this issue:

§ 2507. Effect of tender by seller; delivery on condition

- (a) **Effect of tender by seller.** - Tender of delivery is a condition to the duty of the buyer to accept the goods, and unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract. (Emphasis added)

In accordance with Section 2507, General Woods is not obligated to pay for the two missing loads of logs unless Wallaceton tenders delivery of same. The UCC defines "tender of delivery" in Section 2503 as follows: (in pertinent part)

§ 2503. Manner of tender of delivery by seller

- (a) **General rule.** - Tender of delivery requires that the seller put and hold conforming goods at the disposition of the buyer and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this division, and in particular:

 - (1) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but
 - (2) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.
- (b) **Delivery at particular destination not required.** - Where the case is within section 2504 (relating to shipment by seller) tender requires that the seller comply with its provisions.
- (c) **Delivery at particular destination required.** - Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (a) and also in any appropriate case tender documents as described in subsections (d) and (e).
- (d) ...
- (e) **Form and manner of delivering documents.** - Where the contract requires the seller to deliver documents:

 - (1) he must tender all such documents in correct form, except as provided in this division with respect to bills of lading in a set (section 2323(b)); and
 - (2) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

The contract between Spencer and Wallace-ton required that Wallace-ton deliver the goods to Spencer's facility in West Virginia. The contract also required that bills of lading and other delivery documents accompany any shipments and that same be presented to Spencer at the time delivery was made to its facility in West Virginia. Section 2503, Subsections (a), (c), and (e) apply to the contract at issue between Wallace-ton and Spencer. Pursuant to subsection (a), Wallace-ton was required to notify Spencer that it was tendering delivery of the two loads of cherry logs at issue and was required to tender that delivery at a reasonable hour. Pursuant to subsection (c), Wallace-ton was required to deliver the goods to the particular destination agreed upon by the parties, in this case Spencer's facility in West Virginia, and to comply with subsections (d) and (e) where applicable. As the contract and course of dealings between the parties required that Wallace-ton also deliver bills of lading and other delivery documents to Spencer at the time delivery was made, Wallace-ton was obligated to comply with subsection (e) and had to tender all such documents in correct form at the time and place delivery was made. Wallace-ton failed to comply with these requirements.

The uncontroverted evidence of record, and defendant's own admissions, show that Defendant Wallace-ton failed to tender delivery of the two missing loads of logs as required by Section 2503. Regarding Wallace-ton's alleged delivery of the logs at issue, Merwin Graham, the Manager of Wallace-ton, testified as follows: Sometime between April 16, 2001 and August 1, 2001, two men driving trucks arrived at Wallace-ton's log yard after 5 p.m. when the facility was closed. Graham deposition at page 13; the deposition transcript of Mr. Graham is attached hereto as Exhibit A. All of Wallace-ton's employees had left work, with the exception of Merwin Graham, the manager of Wallace-ton. Graham deposition at page 13. The men alleged they were there to pick up the remaining two loads of cherry logs tagged by Spencer. Graham deposition at page 13. Mr. Graham does not now the date this incident occurred. Graham deposition at page 31. Mr. Graham did not

recognize the drivers. Graham deposition at page 18. The two drivers were not employed by Mr. Graham's son's trucking company that was the usual hauler for Spencer logs. Mr. Graham did not ask the men's names. Graham deposition at page 18. Mr. Graham did not check their identification or anything to determine whether the men were in fact affiliated with Spencer. Graham deposition at page 18. Nevertheless, Mr. Graham loaded both trucks himself with the remaining logs tagged for Spencer and released them to the men. Graham deposition at page 15. After loading the trucks, Mr. Graham described that he went to the garage to put the loader away. Graham deposition at page 15. He then went to Wallaceton's office and waited for the drivers to come in. Graham deposition at page 15. Mr. Graham alleges he waited for the drivers inside for a few minutes when he heard the trucks begin to drive away and leave the facility. Graham deposition at page 15. Mr. Graham alleges he ran outside but the men were already on the highway. Graham deposition at page 15. No paperwork (i.e. bills of lading, delivery slips or otherwise) was ever generated by Mr. Graham evidencing that the logs were delivered to these two men. Mr. Graham failed to ensure that the men/drivers signed for the loads. Graham deposition at page 15-16. These shipments are referred to herein as "the missing shipments". Mr. Graham did not call the police to report that the men took off with the loads. Deposition at page 19. Mr. Graham did not call Spencer to report the incident. Graham deposition at page 19. Mr. Graham took no action other than to tell Wallaceton's secretary Gail the next day what had happened. Graham deposition at page 19. Mr. Graham neither directed Gail to call Spencer nor did he ever ask her whether she contacted Spencer regarding the incident. Graham deposition at page 19. Despite the highly unusual incident that occurred involving the missing shipments of the logs, and despite the fact that Wallaceton never contacted Spencer to report the incident or confirm that the logs were received by Spencer, Wallaceton assumed the logs were

delivered to Spencer and assessed the costs for the logs and the estimated freight for same to Spencer's account. Graham deposition at pages 19-20.

Mr. Craig Keeler, General Manager of Spencer, testified that neither Spencer nor General Woods have ever received the two missing shipments allegedly picked up by these unknown men. Keeler deposition at pages 57-62; Mr. Keeler's deposition transcript is attached hereto as Exhibit B. Mr. Keeler further testified that General Woods and Spencer have thoroughly investigated the matter and determined that Spencer only ever received the first shipment of 50 logs from Wallaceton totaling 5,434 Board Feet, and for which General Woods made payment in full – and not the remaining two loads of approximately 94 logs that are missing and at issue in this lawsuit. Keeler deposition at page 57.

At no time has Defendant Wallaceton ever produced evidence which identifies the names of the drivers, the company for which the drivers were employed, the date that the alleged incident/shipments occurred, or the final destination of the two missing shipments. Wallaceton is wholly unable to determine the whereabouts of the two shipments that were negligently handled by it and to date does not know who received the shipments. Graham Deposition at pages 32-33. In addition, at no time has Defendant Wallaceton ever been able to produce any evidence –documentary or otherwise - that demonstrates the shipments were either picked up by General Woods' or Spencer's employees or that the logs were delivered to General Woods or Spencer. Despite its complete inability to account for the loads, Wallaceton has chosen to assume that the loads were received by Spencer and alleges it is entitled to payment for same.

Section 2503 of the UCC required Wallaceton to notify Spencer of its tender of delivery, to tender delivery at a reasonable hour, to deliver the goods to Spencer's facility in West Virginia and to deliver bills of lading and other delivery documents in their correct form at the time and place of

delivery. As evidenced by the testimony of its own employee, Mr. Graham, Wallaceton failed to follow any of the requirements of Section 2503. As tender of delivery is a condition to General Woods' obligation to pay, and the evidence clearly shows that Wallaceton failed to tender delivery as required, General Woods is not obligated to pay for the two missing loads.

Even if this court should determine that the contract between Spencer and Wallaceton did not require delivery of the logs to a particular destination, Wallaceton would still have to follow Sections 2503 (set forth above) and 2504 of the UCC. Section 2504 states:

§ 2504. Shipment by seller

Where the seller is required or authorized to send the goods to the buyer and the contract does not required him to deliver them at a particular destination then unless otherwise agreed he must:

- (1) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case;
- (2) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and
- (3) promptly notify the buyer of the shipment.

Failure to notify the buyer under paragraph (3) or to make a proper contract under paragraph (1) is a ground for rejection only if material delay or loss ensues.

Assuming arguendo that this Court finds that the contract between Wallaceton and Spencer did not require the delivery of the goods to Spencer's facility in West Virginia, Wallaceton would still have to comply with the provisions of Section 2503, which it failed to do as discussed at length above, but would also have to comply with Section 2504 which states that Wallaceton was required to put the logs in the possession of a carrier and make a contract for their transportation as may be reasonable, obtain and promptly deliver in due form any document necessary to enable Spencer to

obtain possession, and promptly notify Spencer of the shipment. Again, even in this circumstance, Wallaceton failed to comply with the requirements of the UCC.

Mr. Graham's actions in loading two trucks with logs tagged for Spencer under the unusual and highly suspicious circumstances as described by Mr. Graham wherein he acknowledged that it was after hours, he did not recognize the men, did not ask for identification, did not verify in any way their affiliation, yet loaded them anyway and then allowed them to drive off without any evidence of receipt of the loads or any indication of where they were taking the logs is not a reasonable contract for their transportation. Mr. Graham further admitted he did not draft or obtain any documents from the drivers to evidence receipt or deliver and did not notify Spencer of the incident to report the logs had been shipped.

Regardless of whether this Court finds that the contract between Wallaceton and Spencer required delivery of the logs to Spencer's facility in West Virginia, Wallaceton clearly failed to comply with the requirements of the UCC governing this transaction and as such has failed to tender delivery of the two missing loads to Spencer. Without tender of delivery, Spencer, by and through its parent company General Woods, is not required to pay for the loads.

- b. The UCC §2711 sets forth the remedies available to Spencer for Wallaceton's failure to tender delivery.

Section 2711 of the UCC sets forth, in pertinent part, the remedies available to Spencer:

§ 2711. Remedies of buyer in general; security interest of buyer in rejected goods

- (a) **Cancellation and additional remedies.** - Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (section 2612 (relating to "installment contract"; breach)), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid:

- (1) "cover" and have damages under section 2712 (relating to "cover"; procurement by buyer of substitute goods) as to all the goods affected whether or not they have been identified to the contract; or
- (2) recover damages for nondelivery as provided in this division (section 2713 (relating to damages of buyer for nondelivery or repudiation)). . . .

Subsection (a) states that where a seller fails to make delivery, a buyer, among other things, may cancel the contract and recover so much of the price as it has paid. In this case Wallaceton retained an overpayment made by General Woods on a separate unrelated invoice and applied it to the payment Wallaceton alleges was owed by General Woods for the two missing shipments. Mr. Keeler, the General Manager of Spencer, described the circumstances of the overpayment as follows: four months after Tom Alexander tagged the logs that have been discussed in detail above, and part of which were the subject of the two missing shipments, on or about August 1, 2001, Tim Carver, a buyer employed by Spencer, arrived at Wallaceton's log yard to inspect and tag a new parcel of logs. Keeler deposition at page 60. This new parcel was identified by reference number 30160. A Copy of the tally generated is attached hereto as Exhibit C. This transaction has no relation to the April 12, 2001 transaction involving the logs tagged by Tom Alexander. Keeler deposition at page 60. The total for the new parcel tagged by Tim Carver was \$54, 057.40. Keeler deposition at page 61. Estimated freight charges were added to the tally in the amount of \$1,400 for a total amount of \$55,457.40. Keeler deposition at page 61. At the bottom of the referenced tally (also referred to as a "draft"), Tim Carver wrote "please wire transfer into his bank account ASAP". Keeler deposition at page 61. On or about August 3, 2001, General Woods wired payment to Wallaceton in the amount of \$54,268.40 for the purchase of the new parcel of logs with reference number 30160. General Woods

also wired freight costs for delivery of the referenced logs in the amount of \$1,400.00, for a total payment of \$55,668.40. Keeler deposition at page 61.

On or about September 4, 2001, General Woods mistakenly wired a second/double payment for this parcel in the amount of \$54,268.40 to Wallaceton with a combination of other payments being made - \$5,719.30 for invoice number 7447, \$5,890.90 for invoice number 6443. Keeler deposition at page 62. Upon receipt of this double payment for the parcel of logs with reference number 30160 and despite the fact that this parcel was in no way related to the parcel involving Tom Alexander, Wallaceton applied the overpayment to the two missing shipments that had been assessed to Spencer's account. Graham deposition at page 29. General Woods immediately notified Wallaceton of the overpayment once it was discovered by General Woods and demanded that same be returned to General Woods. Wallaceton refused, and continues to refuse in bad faith, to refund the overpayment made by General Woods, in the amount of \$54,268.40, as Wallaceton claims the missing shipments were delivered to Spencer despite its complete failure to comply with the requirement of the UCC for tendering delivery of the logs and despite having no evidence that the loads were ever received by Spencer or General Woods.

As Wallaceton failed to tender delivery in accordance with Section 2503, pursuant to Sections 2507 and 2711 General Woods is not required to pay for the missing shipments and is entitled to the return of the overpayment made in the amount \$54,268.40.

2. The Uncontradicted Evidence of Record Demonstrates that Neither General Woods nor Spencer Received the Two Missing Shipments of Logs that were Negligently Handled by Defendant and are thus not Responsible for the Payment for Same.

- a. The evidence of record demonstrates that Defendant was negligent in its handling of the shipment of the remaining two loads of logs that were originally tagged by Spencer.

In or around April 2001, Wallaceton and Spencer entered into a transaction for the tagging, purchase, and delivery of logs. This transaction was typical of the transactions that Wallaceton and Spencer had entered into in the past which is described more particularly herein. Pursuant to the April 2001 transaction, Wallaceton agreed to provide cherry logs to Spencer at a price of \$6.50 per board foot for the logs supplied, less deductions for defects. On or about April 12, 2001, Tom Alexander, a buyer employed by Spencer, arrived at Wallaceton's log yard to inspect and tag cherry logs. Keeler deposition at page 43. Mr. Alexander inspected the cherry logs at Wallaceton's yard and tagged approximately 144 logs to be purchased by Spencer. Mr. Alexander entered these tag numbers into a handheld computer as described in paragraph 9 above. A purchase price for the logs tagged by Mr. Alexander was agreed upon between Spencer and Wallaceton and a final tally report was generated identifying these logs and the parcel price. The referenced tally report is attached hereto, and incorporated herein by reference, as Exhibit D.

The logs tagged and identified in the referenced tally report were to be shipped to Spencer in three separate shipments. Keeler deposition at page 44 (emphasis added). On or about April 16, 2001, Mr. Graham's son's trucking company delivered one shipment of 50 of the tagged cherry logs totaling 5,434 board feet to Spencer at its facility in West Virginia. The price for this shipment was \$34,637.50. Keeler deposition at page 57. A receiver tally was generated by Spencer upon receipt of this shipment. Keeler deposition at page 57. The referenced receiver tally is attached hereto, and incorporated herein by reference, as Exhibit E. Spencer/General Woods forwarded payment for this shipment in the amount of \$34,637.50. Keeler deposition at page 42.

Neither Spencer nor General Woods ever received the remaining two shipments of the cherry logs that were tagged by Tom Alexander on April 12, 2001. Keeler deposition at page 44. Following

the shipment of 50 logs to Spencer, approximately 94 of the original approximate 144 logs remained at Wallaceton.

Sometime between April 16, 2001 and August 1, 2001, two men driving trucks arrived at Wallaceton's log yard after 5 p.m. when the facility was closed. All of Wallaceton's employees had left work, with the exception of Merwin Graham, the manager of Wallaceton. The men alleged they were there to pick up the remaining two loads of cherry logs tagged by Spencer. Graham deposition at page 13. Mr. Graham does not know the date this incident occurred. Graham deposition at page 31. Mr. Graham did not recognize the drivers. Graham deposition at page 18. The two drivers were not employed by Mr. Graham's son's trucking company that was the usual hauler for Spencer logs. Mr. Graham did not ask the men's names. Graham deposition at page 18. Mr. Graham did not check their identification or anything to determine whether the men were in fact affiliated with Spencer. Graham deposition at page 18. Nevertheless, Mr. Graham loaded both trucks himself with the remaining logs tagged for Spencer and released them to the men. Graham deposition at page 15.

After loading the trucks, Mr. Graham went to the garage to put the loader away. Graham deposition at page 15. He then went to Wallaceton's office and waited for the drivers to come in. Graham deposition at page 15. Mr. Graham alleges he waited for the drivers inside for a few minutes when he heard the trucks begin to drive away and leave the facility. Graham deposition at page 15. Mr. Graham alleges he ran outside but the men were already on the highway. Graham deposition at page 15. No paperwork (i.e. bills of lading, delivery slips or otherwise) was ever generated by Mr. Graham evidencing that the logs were delivered to these two men. Mr. Graham failed to ensure that the men/drivers signed for the loads. Graham deposition at page 15-16. Hereinafter these shipments will be referred to as "the missing shipments". Mr. Graham did not call the police to report that the men took off with the loads. Deposition at page 19. Mr. Graham did not call Spencer to report the

incident. Graham deposition at page 19. Mr. Graham took no action other than to tell Wallaceton's secretary Gail the next day what had happened. Graham deposition at page 19. Mr. Graham neither directed Gail to call Spencer nor did he ever ask her whether she contacted Spencer regarding the incident. Graham deposition at page 19. Despite the highly unusual incident that occurred involving the missing shipments of the logs, and despite the fact that Wallaceton never contacted Spencer to report the incident or confirm that the logs were received by Spencer, Wallaceton assumed the logs were delivered to Spencer and assessed the costs for the logs and the estimated freight for same to Spencer's account.

The above admissions by Wallaceton's employee, Merwin Graham, the manager of Wallaceton clearly demonstrate Wallaceton's negligence with regard to the two remaining shipments of the logs tagged by Spencer for several reasons. First, Mr. Graham previously testified that Wallaceton always prepares paperwork evidencing the shipment of a load of logs and requires the signature of the truck drivers picking up the loads to evidence that the drivers received the logs. Mr. Graham, described the routine paperwork process as follows:

Q. In your experience as manager for Wallaceton Hardwoods when a shipment leave your yard is there documentation routinely prepared to document the fact that that shipment left the yard?

A. For every truck.

Q. Can you explain for me what those documents are?

A. We divide them. We load the trucks. The truck drivers will generally take the tag number off of the logs and then they take the tag number ---now, if I have somebody like Jody, that fellow that I told you, was in charge of doing that, he will go out and punch them in the handheld as they load them on the truck.

After they load them on the truck then the truck driver will come to the office and get his bill of lading or whatever there at the office before he leaves.

Q. What is Jody's last name?

A. Jody Maines.

Q. And he works for you?

A. Uh-huh (yes).

Q. And so part of his job would be to document which logs are being loaded on which truck?

A. Yeah, sure. Well, he comes to the office and checks. And, of course, the secretaries know whose logs is what, you know. They have a tallies.

Q. The secretaries in the office have the tallies listing the logs that are to go on those trucks?

A. Right.

Q. And does the truck driver sign for those at some point to indicate that they received them?

A. Always, always.

Q. And then that document, a copy of that document stays with you at Wallaceton Hardwoods so that you have proof that you delivered the logs to the shipper?

A. Right, sure.

Graham deposition at pages 8-10. Mr. Graham's own testimony demonstrates that on the day the two missing shipments were taken he failed to follow the procedure that - in his own words - the company always uses to evidence that the logs have been picked up by the delivery drivers. Without this

paperwork, Defendant Wallaceton is unable to prove that it tendered delivery of the two loads to either General Woods or Spencer.

Second, Mr. Graham testified that since Spencer and Wallaceton began doing business together, his son's trucking company had routinely been used for the delivery of logs to Spencer. On the day the two missing shipments were taken Mr. Graham testified that he did not recognize the drivers. Graham deposition at page 18. The two drivers were not employed by Mr. Graham's son's trucking company that was the usual hauler for Spencer logs. Mr. Graham did not ask the men's names. Graham deposition at page 18. Mr. Graham did not check their identification or anything to determine whether the men were in fact affiliated with Spencer or his son's company. Graham deposition at page 18. Given Mr. Graham's familiarity with both Spencer and his son's trucking company, a reasonable person in Mr. Graham's shoes would not have acted as carelessly as Mr. Graham did and would have at the very least, asked for identification and/or paperwork to determine the identity of these men. Mr. Graham's inaction again demonstrates Defendant's negligence with regard to these shipments and defendant's inability to prove that it tendered delivery of the loads to Spencer or General Woods, or that same ever received the logs.

Third, Mr. Graham testified that after loading the trucks, he went to the garage to put the loader away. Graham deposition at page 15. He then went to Wallaceton's office and waited for the drivers to come in. Graham deposition at page 15. Mr. Graham alleges he waited for the drivers inside for a few minutes when he heard the trucks begin to drive away and leave the facility. Graham deposition at page 15. Mr. Graham alleges he ran outside but the men were already on the highway. Graham deposition at page 15. No paperwork (i.e. bills of lading, delivery slips or otherwise) was ever generated by Mr. Graham evidencing that the logs were delivered to these two men. Mr. Graham failed to ensure that the men/drivers signed for the loads. Graham deposition at page 15-16. Despite

the men's intentional acts of leaving without accounting for the loads they has allegedly received, Mr. Graham did not call the police to report that the men took off with the loads. Deposition at page 19. Mr. Graham did not call Spencer to report the incident. Graham deposition at page 19. Mr. Graham took no action other than to tell Wallaceton's secretary Gail the next day what had happened. Graham deposition at page 19. Mr. Graham neither directed Gail to call Spencer nor did he ever ask her whether she contacted Spencer regarding the incident. Graham deposition at page 19.

Again Mr. Graham's and Wallaceton's secretary Gail's actions demonstrate the negligence of Wallaceton in the handling of these two shipments. Given the highly unusual circumstances surrounding the missing shipments that arguably amount to theft, Mr. Graham and Gail did nothing. A reasonable person in either Mr. Graham's shoes or Gail's shoes would have reported the incident to the police, or at the very least would have called Spencer to ensure that they had received delivery. Mr. Graham's own testimony again demonstrates that Wallaceton is unable to prove that either General Woods or Spencer ever received the logs at issue. In fact, Mr. Graham admits that he did not know the drivers, or inquire as to their employment, and therefore, Wallaceton cannot determine who picked up the loads or what became of them.

- b. The evidence of record demonstrates by Defendant's own admissions that despite the highly unusual circumstances involving the shipments of the two loads of logs at issue, and apparent theft of same, the Defendant simply assumed that Spencer received the logs and charged Spencer's account for the purchase and delivery of same.

Despite the highly unusual incident that occurred involving the missing shipments of the logs as discussed above, and despite the fact that Wallaceton never contacted Spencer to report the incident or confirm that the logs were received by Spencer, Wallaceton assumed the logs were delivered to Spencer and assessed the costs for the logs and the estimated freight for same to

Spencer's account. Graham deposition at pages 19-20 and Defendant's Answer to Plaintiff's Motion for Summary Judgment at paragraph 9.

At no time has Defendant Wallaceton ever produced evidence which identifies the names of the drivers, the company for which the drivers were employed, the date that the incident occurred, or the final destination of the two missing shipments. Wallaceton is wholly unable to determine the whereabouts of the two shipments that were negligently handled by it and to date does not know who received the shipments. In addition, at no time has Defendant Wallaceton ever been able to produce any evidence that demonstrates the shipments were either picked up by General Woods or Spencer employees or that the logs were delivered to General Woods or Spencer. Despite its complete inability to account for the loads, Wallaceton has chosen to assume that the loads were received by Spencer and have continually refused to return money owed to General Woods that was mistakenly paid by General Woods on a separate invoice involving an wholly unrelated matter as Wallaceton asserts it is entitled to keep the overpayment and apply same to the two missing shipments of logs.

- c. The uncontroverted evidence of record demonstrates that neither General Woods or Spencer ever received the two missing shipments of logs.

Craig Keeler, General Manager of Spencer, testified at his deposition that Neither Spencer nor General Woods ever received the remaining two shipments of the cherry logs that were tagged by Tom Alexander on April 12, 2001. Keeler deposition at page 44.

Mr. Keeler described the circumstances of the overpayment made by General Woods that has been wrongfully retained by Wallaceton, the investigation made by both General Woods and Spencer regarding Wallaceton's unsubstantiated assumption and assertion that Spencer received the two missing shipments of logs, and the amount owed to General Woods from Wallaceton. Mr. Keeler described the circumstances of the overpayment as follows: four months after Tom Alexander tagged the logs that have been discussed in detail above, and part of which were the subject of the two

missing shipments, on or about August 1, 2001, Tim Carver, a buyer employed by Spencer, arrived at Wallaceton's log yard to inspect and tag a new parcel of logs. Keeler deposition at page 60. This new parcel was identified by reference number 30160. This transaction has no relation to the April 12, 2001 transaction involving the logs tagged by Tom Alexander. Keeler deposition at page 60. In the same manner as described previously herein, Tim Carver inspected the new logs, tagged same, and generated a final tally report for same with the agreed upon price between Wallaceton and Spencer. Keeler deposition at page 60. A copy of the referenced tally report is attached hereto, and incorporated herein by reference, as Exhibit D. The total for the new parcel tagged by Tim Carver was \$54,057.40. Keeler deposition at page 61. Estimated freight charges were added to the tally in the amount of \$1,400 for a total amount of \$55,457.40. Keeler deposition at page 61. At the bottom of the referenced tally (also referred to as a "draft"), Tim Carver wrote "please wire transfer into his bank account ASAP". Keeler deposition at page 61. On or about August 3, 2001, General Woods wired payment to Wallaceton in the amount of \$54,268.40 for the purchase of the new parcel of logs with reference number 30160. General Woods also wired freight costs for delivery of the referenced logs in the amount of \$1,400.00, for a total payment of \$55,668.40. Keeler deposition at page 61.

On or about September 4, 2001, General Woods mistakenly wired a second/double payment for this parcel in the amount of \$54,268.40 to Wallaceton with a combination of other payments being made - \$5,719.30 for invoice number 7447, \$5,890.90 for invoice number 6443. Keeler deposition at page 62. Upon receipt of this double payment for the parcel of logs with reference number 30160 and despite the fact that this parcel was in no way related to the parcel involving Tom Alexander, Wallaceton applied the overpayment to the two missing shipments that had been assessed to Spencer's account. Graham deposition at page 29. General Woods immediately notified Wallaceton of the overpayment once it was discovered by General Woods and demanded that same

be returned to General Woods. Wallaceton refused, and continues to refuse in bad faith, to refund the overpayment made by General Woods, in the amount of \$54,268.40, as Wallaceton claims the missing shipments were delivered to Spencer despite having no evidence that the loads were ever shipped from Wallaceton or received by Spencer.

Mr. Keeler testified that both General Woods and Spencer investigated Wallaceton's assumption that Spencer received the missing shipments of logs and determined that it did not receive the remaining two shipments of 94 logs that are the subject of this action. General Woods and Spencer have thoroughly investigated the matter and determined that Spencer only ever received 50 logs from Wallaceton totaling 5,434 Board Feet – not the 144 logs totaling 14,416 board feet as claimed and invoiced by Wallaceton. Keeler deposition at page 57.

At no time has Defendant Wallaceton ever been able to produce any evidence that demonstrates it tendered delivery of the shipments to Spencer or General Woods, that the shipments were either picked up by General Woods' or Spencer's employees; or that the logs were delivered to General Woods or Spencer. Despite its complete inability to account for the loads, Wallaceton has chosen to assume that the loads were received by Spencer and have continually to refused to return the overpayment to General Woods.

Wallaceton's refusal to return the overpayment to General Woods and insistence that Spencer is responsible for payment of the two missing shipments flies in the face of its own employee's admissions that Wallaceton does not know who received the shipments and understands that Spencer did not. Merwin Graham, Manager of Wallaceton, testified on this point as follows:

Q. Does your company have any document or paperwork which would confirm that those two loads were received by either Spencer or General Woods and Veneer?

A. No, we don't.

Q. Do you have any reason to believe that they were received by Spencer or General Woods and Veneer?

A. I'm told that they wasn't received by Spencer. That's as much as I know.

Q. Okay.

A. Where they went I couldn't tell you.

Graham deposition at pages 32-33.

Wallaceton's assumption of delivery to Spencer is absurd in light of the overwhelming evidence to the contrary.

General Woods is not responsible for the negligence of Wallaceton in failing to verify the identity of the two men who allegedly came to Wallaceton's yard after hours to pick up the two loads before releasing the logs to them. Nor is General Woods responsible for Wallaceton's negligence in failing to document the shipment with proper documentation signed by the drivers and identifying the loads. Neither Spencer nor General Woods have ever received the two shipments allegedly picked up by these unknown men. Keeler deposition at pages 57-62. As such, General Woods is entitled to the return of the overpayment in the amount of \$54,268.40 plus interest. As Defendant has failed to raise any genuine issue of material fact with respect to the allegations set forth in Plaintiff's Complaint, Plaintiff General Wood's Motion for Summary Judgment should be granted in its entirety.

3. The Defendant's Assertions and Unsubstantiated Assumptions that Spencer Received the Two Missing Shipments of Logs are Contrary to the Course of Dealing Between the Parties and the Usage of Trade in the Industry.

The course of dealings between the parties also reveals that bills of lading and other shipment and delivery documents were utilized between the parties to evidence shipment of loads and to identify the logs being shipped in each load. Graham deposition at pages 8-10. The Pennsylvania

Commercial Code, 13 Pa.C.S.A. §1205(a) states that “a course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.” A copy of 13 Pa.C.S.A. §1205(a) is attached hereto as Exhibit F. The Court should consider the course of dealings between the parties when determining the validity of the arguments made by Wallaceton. Prior dealings between the parties have been consistent. At the time delivery was made to Spencer, bills of lading and other related documents were delivered with the shipment and an agent of Spencer inspected the load upon receipt of same at Spencer’s facility in West Virginia and generated a receiver’s tally by recording the tag numbers on all logs delivered. Keeler deposition at page 55. This did not occur with respect to the approximate 94 logs Wallaceton claims were delivered to Spencer via the unidentified drivers. See Graham deposition.

As set forth in detail above, Wallaceton has not, and cannot, produce any written documentation, or any other evidence whether oral or written, which supports its assertion that the two missing shipments were received and accepted by Spencer or General Woods. Graham deposition at page 32. Wallaceton’s assertions that delivery was made to Spencer without a single shipment or delivery document to evidence same are wholly inconsistent with their previous course of dealings with Spencer and/or General Woods.

In addition, Wallaceton’s assertions violate the usage of trade in the industry. The Pennsylvania Commercial Code, 13 Pa.C.S.A. §1205(a) states that “a usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. . .” In the shipping industry, bills of lading are standard. Product is not delivered without them. In this instance, Wallaceton did not produce a bill of lading for the additional approximate 94 logs it claims were

① 3-11-04-1100

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March 10, 2004

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VIA HAND DELIVERY

William Shaw, Prothonotary
Clearfield County Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

COURT ADMINISTRATOR'S
OFFICE

**Re: General Woods & Veneers, LTD. v. Shelly K. Reed, t/d/b/a Wallaceton
Hardwoods
No.: 02-912-CD**

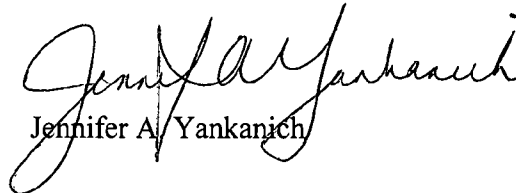
Dear Prothonotary:

Enclosed please find one original and 4 copies of Plaintiff's Brief In Support of Plaintiff's Motion for Summary Judgment to be filed in the above matter. Kindly file the original, time stamp the extra copies, and return the copies to our courier.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

METTE, EVANS & WOODSIDE


Jennifer A. Yankanich

JAY/sec
Enclosure

cc: David S. Meholick, Court Administrator (w/enclosure via hand delivery)
Joseph Colavecchi, Esquire (w/enclosure via first class mail)

delivered to Spencer – their failure to do so is inconsistent with both their past performance and with the industry's standard practice. As the evidence of record is uncontroverted that Spencer or General Woods did not received the approximate 94 logs released to the two unidentified drivers, and as Wallaceton's assertions are unsubstantiated and are wholly inconsistent with the requirements of the Uniform Commercial Code, the course of dealings between the parties and the industry practice to generate bills of lading with each shipment – summary judgment should be entered in favor General Woods.

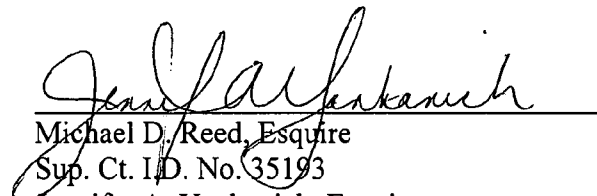
IV. CONCLUSION

For the reasons set forth in the foregoing Brief, Plaintiff General Woods respectfully requests that this honorable Court grant Plaintiff's Motion for Summary Judgment as to both Counts I and II of Plaintiff's Complaint, and that Plaintiff be awarded the overpayment amount of \$54,268.40, plus prejudgment and post judgment interest at the legal rate until such time as the amount owed Plaintiff is paid in full, together with attorneys fees and costs of this action, and for such other and further relief this Honorable Court deems just and proper.

Respectfully submitted,

METTE, EVANS & WOODSIDE

By:


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Sup. Ct. I.D. No. 35193
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Harrisburg, PA 17110

Dated: March 10, 2004

Attorneys for Plaintiff General Woods
and Veneers, LTD

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

* * * * *

GENERAL WOODS &,
VENEERS, LTD.,

Plaintiff

vs.

SHELLY K. REED,
t/d/b/a WALLACETON
HARDWOODS,

Defendant

Case No.

02-912-CD

* * * * *

DEPOSITION OF
MERWIN R. GRAHAM
June 24, 2003

COPY

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by the certifying agency.

DEPOSITION

OF

MERWIN R. GRAHAM, taken on behalf of
the Plaintiff herein, pursuant to the
Rules of Civil Procedure, taken before
me, the undersigned, Heather E. Diemer,
a Court Reporter and Notary Public in
and for the Commonwealth of
Pennsylvania, at the law offices of
Colavecchi & Colavecchi, 221 E. Market
Street, Clearfield, Pennsylvania, on
Tuesday, June 24, 2003, beginning at
1:20 p.m.

A P P E A R A N C E S

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COUNSEL FOR DEFENDANT

I N D E X

WITNESS: MERWIN R. GRAHAM

EXAMINATION

by Attorney Reed

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CERTIFICATE

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NONE MADE

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P R O C E E D I N G S

MERWIN R. GRAHAM, HAVING FIRST BEEN
DULY SWORN, TESTIFIED AS FOLLOWS:

ATTORNEY REED:

Mr. Colavecchi, the usual
stipulations?

ATTORNEY COLAVECCHI:

Yes.

DIRECT EXAMINATION

BY ATTORNEY REED:

Q. Mr. Graham, would you state your
full name for the record, please?

A. Merwin Roy Graham.

Q. And where do you live, sir?

A. P.O. Box 36, Wallaceton,
Pennsylvania.

Q. And by whom are you employed?

A. By Wallaceton Hardwoods.

Q. And how long have you been
employed with Wallaceton Hardwoods?

A. Wallaceton Hardwoods, it's been
about 18 years.

Q. What's your current position job

1 title?

2 A. Manager.

3 Q. And how long have you held that
4 position?

5 A. Since I've been there, for 18
6 years.

7 Q. Can you tell me generally what
8 your duties and responsibilities are as
9 manager, and particularly with respect
10 to the shipment of logs to customers?

11 A. Well, my job really don't
12 consist of loading trucks. It don't
13 consist of --- if there's trucks there
14 and nobody to load, I'll absolutely
15 load them, but I just see that trucks
16 get loaded or --- you know, running the
17 whole business. That's what I do.

18 Q. In your experience as manager
19 for Wallaceton Hardwoods when a
20 shipment leaves your yard is there
21 documentation routinely prepared to
22 document the fact that that shipment
23 left the yard?

24 A. For every truck.

25 Q. Can you explain for me what

1 those documents are?

2 A. We divide them. We load the
3 trucks. The truck drivers will
4 generally take the tag number off of
5 the logs and then they take the tag
6 number --- now, if I have somebody like
7 Jody, that fellow that I told you, was
8 in charge of doing that, he will go out
9 and punch them in the handheld as
10 they load them on the truck. After
11 they load them on the truck then the
12 truck driver will come to the office
13 and get his bill of lading or whatever
14 there at the office before he leaves.

15 Q. What is Jody's last name?

16 A. Jody Maines.

17 Q. And he works for you?

18 A. Uh-huh (yes).

19 Q. And so part of his job would be
20 to document which logs are being loaded
21 on which truck?

22 A. Yeah, sure. Well, he comes to
23 the office and checks. And, of course,
24 the secretaries know whose logs is
25 what, you know. They have a tallies.

1 Q. The secretaries in the office
2 have the tallies listing the logs that
3 are to go on those trucks?

4 A. Right.

5 Q. And does the truck driver sign
6 for those at some point to indicate
7 that they received them?

8 A. Always, always.

9 Q. And then that document, a copy
10 of that document stays with you at
11 Wallaceton Hardwoods so that you have
12 proof that you delivered the logs to
13 the shipper?

14 A. Right, sure.

15 Q. Okay. Does your company have
16 experience selling logs to a company
17 known as Spencer Veneers?

18 A. Uh-huh, yes, we do.

19 Q. And when did you first start
20 selling logs to Spencer Veneers, if you
21 recall?

22 A. That I can't --- it's been a
23 couple years ago, I'm sure. And then I
24 don't know if maybe even back before
25 that we might have sold logs to

1 Spencer. It's been a couple years ago.

2 Q. We're here, of course, about a
3 piece of litigation that's been filed
4 by General Woods and Veneers on behalf
5 of its subsidiary, Spencer Veneers,
6 against Wallaceton Hardwoods regarding
7 a disputed shipment that we'll get into
8 in a minute. Before the date of that
9 shipment, do you have any idea how long
10 before then you'd been dealing with
11 Spencer?

12 A. We had been dealing with Spencer
13 off and on, I think, --- it would have
14 been two years ago, I think, we sold
15 Spencer quite a few logs.

16 Q. Okay.

17 A. Beyond that ---.

18 Q. Well, I think the records in
19 this case, I'm going to get to them in
20 a minute, will show that this
21 particular shipment was in 2001. And
22 you're saying a couple years ago you
23 sold Spencer a lot of logs. And what
24 I'm asking is ---.

25 A. It's probably in the year 2000

1 we did, too.

2 Q. So you think that would have
3 started more or less a year or so
4 before this transaction took place?

5 A. Yeah, I would say, a year to two
6 years before this transaction.

7 Q. All right. Now, before we got
8 started today we had a conversation
9 about this dispute and how the dispute
10 occurred and I just want to ask you
11 some questions to try to get that same
12 information that you've already given
13 me off the record.

14 A. Sure.

15 Q. With respect to this particular
16 shipment that's in dispute those
17 documents that you said are always
18 prepared, they weren't prepared in this
19 case; is that right?

20 A. Not that evening, no, they
21 weren't. The secretaries had left and
22 went home.

23 Q. Can you explain for me the
24 circumstances under which this shipment
25 took place and why those documents were

1 not prepared?

2 A. I went to the, which I do every
3 night, --- at five o'clock we close.
4 The secretaries go home. I went to the
5 welding shop and was at the welding
6 shop for a little while and then I came
7 back to my house. Sometimes I'll come
8 to the house to grab a sandwich or
9 something. And whenever I came back to
10 the log yard there was two trucks
11 setting at the log yard. And, well, at
12 the time I didn't know what they was
13 for or what they was doing there. And
14 so then I stopped and talked to them
15 and they said they were there for two
16 loads of Spencers' logs. And so ---
17 and they wanted to know if they could
18 get loaded. Well, everybody went home.
19 So, ---.

20 Q. You mean everybody from
21 Wallaceton had gone home?

22 A. Everybody, all the employees had
23 left and went home. They leave at five
24 o'clock.

25 Q. Okay.

1 A. So, well, I didn't want to load
2 them because I was busy doing other
3 things but I didn't want them to set
4 there all night either. So I told
5 them, well, I said I'll load you. And
6 so, and of course, if you see how we at
7 our log yard --- I mean we know, we can
8 tell whose logs is whose just from the
9 log yard. And, of course, I knew that
10 there was logs still left there from
11 Spencers. And so, ---.

12 Q. This was actually a purchase of
13 three truck loads that had been
14 arranged --- or that had been picked by
15 Spencers' log buyer ---

16 A. Right.

17 Q. --- and then one load had
18 already been shipped and these were the
19 remaining two loads?

20 A. This was the remaining of the
21 three loads. There was two loads left
22 and they were two big loads because I
23 remember I had a rough time getting
24 them all in the truck but we did get
25 them on and they wasn't overloaded.

1 But then I loaded the two trucks. I
2 went and got ---. I said, well, I
3 said, I can load you. I said, I don't
4 want to, but I can load you rather than
5 to have you setting here all night.
6 And so I did. I loaded both trucks and
7 then after I got the trucks loaded I
8 went to the --- I took the loader, I
9 went to the garage, put the loader
10 away. And then I come back to the
11 office and I was just setting in the
12 office there waiting for the drivers to
13 come in, never thinking that they
14 wouldn't, of course. So, but then here
15 after a bit I heard the trucks going
16 out the road. I heard them coming down
17 the driveway and going out the road.
18 So I ran out onto the porch but they
19 had already made the turn in our
20 driveway and, I mean, they were on the
21 highway then. And so, well, I thought
22 they never got no paperwork, no
23 paperwork at all.
24 Q. Let me stop you there for a
25 second. When you went to the office

1 and were waiting for them to come in,
2 were you preparing paperwork?

3 A. I was getting --- yeah, I was
4 going to prepare it. I was going to
5 get their names. I was going to ---
6 because I didn't --- you know, I didn't
7 have the --- I wouldn't have had all
8 the paperwork. Mainly what I would
9 have done was fill out a delivery slip
10 and, you know, they would have had to
11 sign it for one load of logs. That's
12 what I had in mind doing.

13 Q. Wouldn't it have been two loads
14 of logs?

15 A. No, each driver ---

16 Q. Oh, each driver.

17 A. --- on a delivery slip. They
18 would have had two delivery slips.

19 Q. Right. And what about a bill of
20 lading. Would you have prepared a bill
21 of lading or not?

22 A. No, I didn't. I probably
23 wouldn't' prepare a bill of lading.

24 Q. Is a bill of lading
25 normally ---?

1 A. Now, they --- normally a truck
2 driver will have bill of lading with
3 him, so nine chances out of ten, I
4 mean, they would have --- we would have
5 filled it out.

6 Q. Okay. So ---.

7 A. How many logs and everything.

8 Q. Normally that's what happens.
9 You're produced a blank bill of lading
10 or ---

11 A. Uh-huh (yes).

12 Q. --- by the trucker and you
13 prepare, you fill it out to show what
14 was loaded ---

15 A. Absolutely.

16 Q. --- and then you sign that? And
17 do you normally keep a copy of the bill
18 of lading at your office?

19 A. Oh, yeah, uh-huh (yes).

20 Q. And that's to show that you have
21 a record of ---

22 A. Sure ---

23 Q. --- giving them ---?

24 A. --- of them picking up the load.

25 Q. Right. In this particular case,

1 did you know either of these two
2 drivers, ever seen them before?

3 A. You know, they could have been
4 in our yard before but I --- I mean, we
5 just have thousands of drivers coming
6 in our yard. We don't --- you
7 know ---.

8 Q. You didn't know them by name?

9 A. I didn't recognize them, if
10 that's what you mean.

11 Q. Right. Did they produce to you
12 any identification or anything to show
13 you that they were affiliated with
14 Spencer?

15 A. No, they didn't, which none of
16 them ever do ---

17 Q. Okay.

18 A. --- you know, until after the
19 paperwork is done in the office, they
20 have the bill of lading and everything.

21 Q. So normally what happens is you
22 load them up and then you go to the
23 office to prepare the paperwork and you
24 followed your normal procedure ---

25 A. Absolutely.

1 Q. --- but they just didn't show up
2 in the office?

3 A. They took off down the road.

4 Q. What did you do when that
5 happened? Did you make any phone calls
6 the following day to Spencer to check?

7 A. The following day I told Gail,
8 the secretary in the office, what had
9 happened and ---.

10 Q. Can you tell me Gail's last
11 name?

12 A. Wilson.

13 Q. Okay.

14 A. And, you know, well, she was
15 supposed to take care of it. So, you
16 know, we never had this to ever happen
17 before, so I don't know if she
18 contacted Spencers or not.

19 Q. You don't know?

20 A. No, I don't know.

21 Q. Did you ever ask her whether she
22 had contacted them?

23 A. Well, she --- you know, she
24 hasn't been working for us now for ---
25 I think the lawsuit was filed after she

1 had quit.

2 Q. Okay.

3 A. After she was --- well, actually
4 she was fired, so ---.

5 Q. When was she terminated, about a
6 year ago or more than that?

7 A. That would have been, yeah, more
8 than a year ago. It would be a year
9 and a half now.

10 Q. And I take it her termination
11 wasn't because of this particular
12 incident, was it?

13 A. No, no.

14 Q. So you don't recall whether you
15 ever asked her that she made those
16 calls to inquire whether the logs ever
17 reached Spencer?

18 A. We just took it --- because we
19 didn't hear from Spencers for some time
20 after that, a long time after that. We
21 took it that Spencers got the logs.

22 Q. Okay.

23 A. We didn't have no idea that they
24 didn't receive the logs.

25 Q. Who could have been the log

1 buyer for Spencer with respect to those
2 particular logs?

3 A. Tom Alexander.

4 Q. And did you have experience
5 dealing with Tom Alexander before this
6 particular purchase?

7 A. Yes, I've had a lot of
8 experience in dealing with Tom.

9 Q. Okay. In fact, you told me
10 before we went on the record here that
11 Tom used to work for your company at
12 one time?

13 A. Absolutely, he did in Norfork,
14 Virginia.

15 Q. And your company fired him; is
16 that correct?

17 A. For stealing, for stealing. We
18 fired him for stealing, yes.

19 Q. Given the fact that you had been
20 dealing with --- well, let me back up
21 for a second. Did Tom say anything to
22 you, Tom Alexander, at the time these
23 logs were purchased or any time between
24 then and when they were taken off by
25 these two truckers that you've

1 described, did Tom Alexander ever say
2 anything to you about where these logs
3 were going or anything of that kind?

4 A. No, he never said.

5 Q. Did he tell you that they might
6 be going to Canada? Did you have a
7 conversation ---?

8 A. He did tell me that --- my son
9 was hauling Spencers logs, had hauled
10 them for, well, I think ever since
11 Spencer has been dealing with --- my
12 son has been hauling the logs.

13 Q. Okay. So that was the normal
14 practice before this ---

15 A. Yes.

16 Q. --- shipment?

17 A. Yes.

18 Q. Your company was actually, your
19 son was driving a truck to Spencers
20 with the logs?

21 A. Yes. Not my son, he has
22 drivers, but he has a trucking
23 business.

24 Q. All right. So that practice was
25 changed for these two shipments ---

1 A. It was.
2 Q. --- for ---?
3 A. Tom Alexander.
4 Q. Okay. And how did that happen?
5 A. He just said to hold up on them.
6 He didn't know for sure where they was
7 going yet and so ---.
8 Q. And he said they might go to
9 Canada?
10 A. He said they might.
11 Q. When he told you that, do you
12 have any written confirmation of that?
13 A. No.
14 Q. It was just over the phone?
15 A. Just over the phone, a telephone
16 conversation.
17 Q. And do you recall how long
18 before this event that you've described
19 where you loaded the logs, do you
20 recall how long before that your
21 conversation with Tom was about holding
22 up on the shipment of those two logs --
23 -
24 A. I know they sat there for a long
25 ---.

1 Q. --- I'm sorry, those two loads
2 of logs.

3 A. I'm saying a week. You know, I
4 don't know for sure. Maybe a week to
5 two weeks.

6 Q. Okay. But it was sometime
7 shortly before this occurred?

8 A. Yeah.

9 Q. Did you have any conversations
10 with anybody else at Spencer regarding
11 this transaction either before the logs
12 were loaded that night that you've
13 described or after that? Before this
14 lawsuit was filed did you have any
15 conversations with anybody about this?

16 A. No. I tried to talk to Tom
17 Alexander and I also tried to talk to
18 Trey (phonetic) and neither one of them
19 could talk to me about the situation.

20 Q. Okay.

21 A. I take it whether or not ---
22 well, Tom told me he was told to not
23 talk about the situation at all.

24 Q. Did you find out at some point
25 that Tom Alexander had been fired by

1 Spencer?

2 A. Yes.

3 Q. Do you recall when you found
4 that out, I mean before or after
5 this ---?

6 A. It was after, after this
7 situation, yes.

8 Q. You don't know the exact date
9 that you found that out?

10 A. I wouldn't know.

11 Q. Okay. Now, after that shipment
12 went out and --- did you ultimately
13 hear from somebody affiliated with
14 either Spencer or General Woods and
15 Veneers that they did not receive those
16 shipments?

17 A. It was quite a long time after
18 that. I would say months had went by,
19 but they --- I'm not positive about
20 that. I don't --- I know it was a
21 long, quite a long spell after that
22 that they had not received those logs.

23 Q. And when they contacted you did
24 they speak to you directly about this?

25 A. Yes.

1 Q. Who spoke to you?
2 A. Satish --- what is it?
3 Q. Chawla?
4 A. Yeah. Satish in Canada.
5 Q. Okay. His last name is spelled
6 C-H-A-W-L-A and Satish is S-A-T-I-S-H.
7 When Satish spoke to you and said that
8 they had not received these logs what
9 did you tell him?
10 A. Well, he had --- no, he hadn't
11 told me that at first.
12 Q. Oh, okay.
13 A. He had claimed that they had
14 paid the invoice twice, the same
15 invoice twice by mistake, that they had
16 the same invoice twice. Well, you
17 know, they did pay the same invoice
18 twice but that was a mistake in their
19 office. But when they wired the money
20 they should have been wiring the money
21 for this parcel of logs that we're now
22 talking about but instead they wired
23 the money for a parcel of logs that
24 they had already paid for.
25 Q. Okay.

1 A. So what we had done in our
2 office, you know, we had just given
3 them credit because they owed for the
4 parcel they didn't pay for so we had
5 given them credit against that parcel.
6 And so, you know, as far as the
7 paperwork, I didn't physically do the
8 paperwork. The gal does that and, you
9 know, all the details and that, I don't
10 know but I do know she gave them
11 credit.

12 Q. When you say she gave them
13 credit she was giving Spencer credit?

14 A. Yes, she was giving Spencer the
15 credit.

16 Q. But the double payment that you
17 acknowledge that did come in that came
18 in not from Spencer but from General
19 Woods and Veneers in Canada; correct?

20 A. Yes, it come from General Woods.

21 Q. When these two loads left that
22 night on these unusual circumstances
23 I'll say, were you at all concerned
24 about getting payment for those two
25 shipments?

1 A. We had already received payment
2 for the logs.

3 Q. You had already received them
4 because ---?

5 A. Yeah, because we had given them
6 credit. They wired \$55,000 and we'd
7 already given you credit, all but a
8 little bit. There would have been some
9 left over.

10 Q. Okay. Let me clarify that.
11 You're saying that the first shipment
12 that was --- there were three shipments
13 that were to take place with respect to
14 this particular purchase of logs;
15 correct, three loads?

16 A. Three loads, yes.

17 Q. The first load had already been
18 taken by your son's company down to
19 Spencer in West Virginia; correct?

20 A. Correct.

21 Q. And is that the load for which
22 you had received the wired payment from
23 Canada?

24 A. That was part of the tally, yes.

25 Q. And then you received another

1 wired payment from Canada, a double
2 payment; is that correct?

3 A. A double payment, yes.

4 Q. And when you received the double
5 payment are you saying that you then
6 applied that to these two loads that
7 went out without the paperwork?

8 A. Absolutely.

9 Q. That's what you said that the
10 people in your office did but you
11 weren't quite familiar with how they
12 did it as far as the paperwork?

13 A. Yeah. The two loads that went
14 out actually cost --- you know, the
15 payment there should have been \$64,000
16 and not \$55,000. So Spencer should
17 have really owed us --- I mean, they
18 owe us another \$9,000, see. And, well
19 then after that, all this. And then
20 they owed us some for trucking, too. I
21 think it was \$1,900 they owed us for
22 trucking, owed my son, okay. But, of
23 course, what was happening was we was
24 billing Spencers for the trucking and
25 then we pay our son --- we pay my son

1 for trucking. We get it that way. So
2 this is what I'm talking about. You
3 know, they're saying \$55,000 but the
4 logs that they actually --- well, they
5 say they didn't get, but the logs that
6 went came to \$64,000.

7 Q. Now, getting back to when you
8 received payment, I guess my original
9 question was were you concerned when
10 the trucks went out without paperwork
11 that you might have a problem receiving
12 payment for them. And you said no
13 because you'd already received payment;
14 correct?

15 A. Yeah.

16 Q. Are you saying you'd already
17 received two payments of \$55,000 at
18 that time?

19 A. I think so, yes.

20 Q. Okay.

21 A. Otherwise I would have been
22 told, you know, that they hadn't paid
23 by Gail or something. But we do ship,
24 we have shipped to Spencers without
25 payments. I mean, that's --- they

1 wasn't on a pay first ---.

2 Q. So is it possible that you had
3 not yet received payment, the second
4 \$55,000 payment, it's possible you
5 hadn't received that yet when those two
6 loads went out?

7 A. It could be possible. I don't
8 know.

9 Q. You're not sure?

10 A. Unless I, you know, have the
11 paperwork in front of me I couldn't
12 tell you, no.

13 Q. Okay. Well, there is no
14 paperwork that would confirm the exact
15 date that those two loads left your
16 yard without paperwork, is there?

17 A. No.

18 Q. Do you know, as you sit here
19 today, what the date of that was? Can
20 you tell me even what month it was?

21 A. I can't even tell you what month
22 it was. You know, I can't --- you go
23 back a year and a half ago you can't
24 remember what ---. I can tell you, if
25 I thought we was going to be sued, why

1 I would have certainly marked it down.

2 Q. I understand that. You said in
3 our conversation that we had before we
4 got on the record here that you are
5 aware that if loads were going to
6 Canada they would need a bill of lading
7 to cross the border into Canada;
8 correct?

9 A. That's correct.

10 Q. And you knew that at least from
11 what you had seen there was no bill of
12 lading that went with those two loads;
13 correct?

14 A. No, none whatsoever.

15 Q. Does ---?

16 A. There was none done at our
17 office, I know that.

18 Q. Does your company have any
19 document or paperwork which would
20 confirm that those two loads were
21 received by either Spencer or General
22 Woods and Veneer?

23 A. No, we don't.

24 Q. Do you have any reason to
25 believe that they were received by

1 Spencer or General Woods and Veneer?

2 A. I'm told that they wasn't
3 received by Spencer. That's as much as
4 I know.

5 Q. Okay.

6 A. Where they went I couldn't tell
7 you.

8 ATTORNEY REED:

9 Mark that Exhibit One.

10 BY ATTORNEY REED:

11 Q. Mr. Graham, I'm showing you a
12 document that we've had marked as
13 Exhibit One for purposes of your
14 deposition and I would ask you if you
15 have seen this document before?

16 A. Uh-huh (yes). I think this is
17 the same document that I got from
18 General Woods in Canada.

19 Q. And is Betsy Howser, is she an
20 employee of Wallaceton Hardwoods?

21 A. Yes, she is.

22 Q. What is her job title?

23 A. She is the secretary for
24 Wallaceton Hardwoods.

25 Q. And did you review this

1 correspondence and the attachments with
2 Betsy Howser?

3 A. Betsy, she kind of --- she took
4 over Gail's position but at this time
5 Betsy didn't know anything about this
6 deal so far as, so far as anything at
7 this time. And I've never really got
8 her involved in it other than she has
9 helped me dig up paperwork and stuff
10 like that.

11 Q. So Betsy Howser essentially took
12 the position that Gail Wilson had ---

13 A. Yes.

14 Q. --- had before she was
15 terminated?

16 A. Uh-huh (yes).

17 Q. Okay. Now, with respect to this
18 correspondence as the duplicate payment
19 did you then have any conversation with
20 Nick Totera, the controller at General
21 Woods and Veneers who sent this?

22 A. Yes, I definitely have, yeah.

23 Q. What was your conversation with
24 him?

25 A. Well, he said we made --- that

1 they made --- paid for the same logs
2 twice, but I tried to explain to him at
3 that time that he hadn't paid for the
4 same logs twice. I mean, he paid the
5 same invoice twice but he owed us for
6 other logs at the same time which we
7 just applied his wire to the other logs
8 that he owed for.

9 Q. And the other logs that he owed
10 for were the two shipments that had
11 gone ---

12 A. That's right.

13 Q. --- for the two loads that had
14 gone out that night without paperwork?

15 A. That's correct.

16 Q. So you don't really dispute that
17 they paid the same invoice twice, ---

18 A. No, I don't.

19 Q. --- it's just a matter of
20 whether it was credited for these two
21 loads that went out without ---

22 A. Yes.

23 Q. --- the paperwork?

24 A. I was notified at the time when
25 we received that payment twice. Okay,

1 well I said they still owe us money so
2 just give them credit for it. That's
3 what I told Gail to do.

4 ATTORNEY REED:

5 I apologize. I don't
6 have any extra copies of this
7 particular document so I'm going to
8 have to show you the original.

9 ATTORNEY COLAVECCHI:

10 Why don't I just make a
11 couple copies.

12 ATTORNEY REED:

13 That would be fine.

14 ATTORNEY COLAVECCHI:

15 How many copies do you
16 want?

17 ATTORNEY REED:

18 Two.

19 BY ATTORNEY REED:

20 Q. Mr. Graham, I'm showing you a
21 document that we've marked as Exhibit
22 Two for purposes of this deposition and
23 it's a letter from Wallaceton
24 Hardwoods, apparently signed by, or at
25 least a signature line, for Joe

1 Parsons. Can you tell me who Mr.

2 Parsons is?

3 A. Joe Parsons is from Highpoint,
4 North Carolina, and he is actually
5 friends of Alan, who is a manager at
6 Spencer --- no, Swords. No, Joe
7 Parsons never had anything to do with
8 Spencers, but he does have --- he knows
9 people at General Woods very well.

10 Q. I see.

11 A. Okay. So he called trying to
12 get this matter straightened out
13 because it was affecting Swords, who
14 has been buying logs at our yard and
15 has never had no problems in the past
16 at all.

17 Q. Who is Swords? Are they ---
18 they're part of General Woods and
19 Veneer?

20 A. They're part of General Woods,
21 yes.

22 Q. Okay. How is that spelled,
23 S-W-O-R-D-S?

24 A. Yes. And so we have never had
25 any problem with Swords. And so Joe

1 Parsons, well he knows actually the
2 owner of General Woods. He called him
3 from my office and talked to him
4 personally about this matter. But
5 still he left it up to Satish in
6 Canada. So, you know, I don't ---
7 that's Joe Parsons. I know him. He
8 actually sells our veneer and he also
9 brings buyers into our yard from
10 overseas.

11 Q. Is he employed by Wallaceton?

12 A. No.

13 Q. He's just a friend?

14 A. Yeah. He's a friend. He gets
15 commission.

16 Q. Okay. So he's sort of an
17 independent ---

18 A. Yeah, independent.

19 Q. --- that you work with?

20 A. Yes.

21 Q. Did you go over this letter with
22 him at all before it was sent?

23 A. Oh, yeah.

24 Q. And so you knew that it was
25 going out on Wallaceton Hardwoods

1 stationary and he had the authority to
2 write this letter on behalf of
3 Wallaceton Hardwoods?

4 A. Uh-huh (yes).

5 Q. And actually when you answer me,
6 you need to say yes or no because
7 sometimes it doesn't come off well in
8 the transcript.

9 So that was a yes, that he did
10 have ---

11 A. Yes.

12 Q. --- authority to do that?

13 Okay. In going over this with him,
14 first of all the handwritten date at
15 the top of the letter is May 14, 2001.
16 Do you know whose handwriting that is?

17 A. I didn't put it on there.

18 Q. Does it refresh your
19 recollection at all that that was right
20 around the date when this was sent
21 though? Does that seem accurate to
22 you?

23 A. I haven't reading this letter
24 here yet.

25 Q. Okay. Feel free to finish

1 reading it.

2 A. I think this letter was wrote
3 only maybe a month ago, about a month
4 ago.

5 Q. A month ago from now?

6 A. Yeah.

7 Q. Oh, okay. With respect to the
8 information in this letter, it says
9 that it's attaching tallies from Tom
10 Alexander's purchase on 4/12/2001. Do
11 you see that, the first line?

12 A. Uh-huh (yes).

13 Q. Does that mean that that was the
14 date when Mr. Alexander tagged the logs
15 for purchase in your yard?

16 A. Yes, that's from the loads when
17 he came in to our yard to mark the
18 logs.

19 Q. Would that mean that the first
20 load that went out with your son's
21 company down to Spencer in West
22 Virginia went out sometime after
23 4/12/2001 obviously?

24 A. Oh, yeah, sure.

25 Q. Do you have any idea how long

1 after 4/12/2001?

2 A. I do have the deliver slips on
3 that load at my office.

4 Q. So you'd be able to tell me that
5 through your attorney later?

6 A. I can tell you which logs went
7 on the load. These logs that's checked
8 off are the logs that went on the load.

9 Q. When you say logs that are
10 checked off, you're talking about on
11 the tally sheet which begins with the
12 third page of this exhibit?

13 A. Uh-huh (yes).

14 Q. And the check marks on that list
15 are the ones that went on that first
16 load; correct?

17 A. Those are the ones my son hauled
18 to Spencer Veneer.

19 Q. And those numbers then should
20 match the Wallaceton Hardwoods
21 documents which the heading "Logs
22 purchased by Tom Alexander" and the
23 date on that document is April 16,
24 2001, order number 4771. That's the
25 last page of the document.

1 A. Yes.

2 Q. So those checked off logs should
3 match this list on ---

4 A. That's right.

5 Q. --- the last page?

6 A. They should.

7 Q. In the second paragraph of the
8 --- well, let me go back to the first
9 paragraph. The first paragraph of this
10 letter, it says the other two loads
11 were picked up after hours by your
12 trucks under the direction of Tom
13 Alexander. When you say --- when Mr.
14 Parsons says in that sentence your
15 trucks, do you know whether the trucks
16 that picked the logs up that night were
17 actually owned by or operated by
18 Spencer or General Woods?

19 A. No, I don't know that.

20 Q. Okay.

21 A. No. I don't think Spencer owns
22 their own trucks.

23 Q. And when you say under the
24 direction of Tom Alexander, how did Mr.
25 Parsons know that that was under the

1 direction of Tom Alexander that they
2 were picked up that night?

3 A. We was told by Tom to hold those
4 logs. And as far as the trucks being
5 sent in there by Tom Alexander, I don't
6 know.

7 Q. Okay. And then the second
8 paragraph deals with this matter about
9 the overpayment or the double payment.
10 And this is where you're saying --- the
11 second sentence in Mr. Parsons' second
12 paragraph says this was credited as
13 reimbursement for your double payment
14 of draft 30160 on August 3, 2001 of
15 \$55,668.40. Do you see that?

16 A. Yeah, I see that.

17 Q. And it goes on to say Greg
18 Keeler was made aware of the
19 overpayment by Gail, Wallaceton's
20 office manager. Do you know see that?

21 A. I mean, I can't tell you if Gail
22 called.

23 Q. That's what I was going to ask
24 you.. You don't know for sure whether
25 Gail ---?

1 A. I don't know. I don't know for
2 sure, no.

3 Q. Okay. So you don't know. And
4 it says Greg, in turn, had Merwin to
5 apply the money to his invoice of
6 number 6186 leaving a balance of
7 \$556.10. You don't know for sure
8 whether that conversation actually
9 occurred?

10 A. No. I was explaining to Joe
11 what happened, okay, and I told him
12 what we did.

13 Q. Okay.

14 A. He's added that on his own. I
15 didn't tell him that.

16 Q. Mr. Graham, I'm showing you what
17 we've marked as Exhibit Three for
18 purposes of this deposition. And I'd
19 ask you if you've seen this document
20 before?

21 A. Yes, I've sent this, I think.

22 Q. And this is essentially a memo
23 to you from Satish Chawla stating that
24 General Woods nor Spencer ever received
25 the 14,416 board feet that they were

1 invoiced for and that they only
2 received 5,434 board feet. And he's
3 also requesting you provide him with
4 copies of any bills of lading or other
5 documentation so that they could check
6 that against their records; correct?

7 A. Yeah, that's correct.

8 Q. And you never supplied them with
9 any bills of lading ---

10 A. No.

11 Q. --- because none existed;
12 correct?

13 A. I called Satish and told him
14 what had happened.

15 Q. Okay.

16 A. And, you know, we didn't have
17 them.

18 Q. Mr. Graham, I'm showing you what
19 we've had marked now as Exhibit Four.
20 And this appears to be a letter from
21 you to Satish Chawla dated February 28,
22 2002, correct, with an attachment?

23 A. Yes.

24 Q. And the letter is very short,
25 only two sentences. It says, Dear Sir,

1 This concludes our investigation on the
2 overpayment of U.S. \$55,668.40. If you
3 have any questions let us know. And
4 this attachment, I take it, is meant to
5 reconcile the various drafts, and in
6 this case drafts being lists of logs
7 that were purchased vis a vie invoice
8 amount and amount paid and then showing
9 what the total still owed by General
10 Woods and Veneers was on all these
11 transactions. And this shows a balance
12 due at that time of \$1,956.10; correct?

13 A. Yeah, that was for trucking.

14 Q. Okay. That was the trucking
15 amount that you had referred to
16 earlier?

17 A. Uh-huh (yes).

18 Q. Okay. You have to say yes or
19 no.

20 A. Yes. I'm sorry.

21 Q. And that, as far as you were
22 concerned, that took care of the issue
23 and you felt that it should have gone
24 away at that point?

25 A. That's correct.

1 Q. And then this lawsuit followed?

2 A. Yes, that's correct.

3 Q. As far as the credit that was
4 supposedly given to Spencer with regard
5 to another invoice, is there any
6 document or record of that credit, any
7 credit memo that your company has?

8 A. We have shown where the logs had
9 been --- the credit had been taken off
10 of the invoice for the logs, yeah.

11 Q. But there's no doubt at this
12 point that given all the amounts that
13 have been billed by your company to
14 Spencer and General Woods and Veneers
15 and all the amounts that have been paid
16 by General Woods and Veneers that your
17 company had still billed Spencer and
18 General Woods and Veneers for those two
19 loads that left the yard that night
20 without the documentation?

21 A. That's correct, we did.

22 Q. Does your company have any
23 written agreement as to the course of
24 dealing with either Spencer or General
25 Woods and Veneers or has this all been

1 done by oral agreement?

2 A. Oral, yes. No written
3 agreement.

4 ATTORNEY REED:

5 Thank you. Those are all
6 the questions I have.

7 * * * * *

8 DEPOSITION CONCLUDED AT 2:15 P.M.

9 * * * * *

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1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF ERIE)

3 C E R T I F I C A T E

4 I, Heather E. Diemer, a Notary Public in and for
5 the Commonwealth of Pennsylvania, do hereby certify:

6 That the witness was first duly sworn to testify
7 to the truth, the whole truth, and nothing but the
8 truth; that the foregoing deposition was taken at the
9 time and place stated herein; and that the said
10 deposition was taken stenographically by me and
11 reduced to typewriting, and constitutes a true and
12 correct record of the testimony given by the witness.

13 I further certify that the reading and signing
14 of said depositions were (~~not~~) waived by counsel for
15 the respective parties and by the witness.

16 I further certify that I am not a relative,
17 employee or attorney of any of the parties, nor a
18 relative or employee of counsel, and that I am in no
19 way interested directly or indirectly in this action.

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 and stamp this 29th day of Dec. 2003.

22 Heather E. Diemer
23

24 NOTARIAL SEAL
HEATHER E. DIEMER, Notary Public
Waterford Twp., Erie County, PA
25 My Commission Expires Sept. 18, 2004

• PITTSBURGH, PA

• CLEARFIELD, PA

• STATE COLLEGE, PA

• ERIE, PA

• OIL CITY, PA

• HARRISBURG, PA

SARGENT'S
COURT REPORTING
SERVICE, INC.

210 Main Street
Johnstown, PA 15901

• INDIANA, PA

• GREENSBURG, PA

• PHILADELPHIA, PA

• SOMERSET, PA

• WILKES-BARRE, PA

• CHARLESTON, WV

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

* * * * *

GENERAL WOODS &
VENEERS, LTD.,

Plaintiff

vs.

SHELLY K. REED,
t/d/b/a WALLACETON
HARDWOODS,

Defendant

Case No.

02-912-CD

* * * * *

DEPOSITION OF
CRAIG L. KEELER
June 24, 2003

COPY

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by the certifying agency.

DEPOSITION

OF

CRAIG L. KEELER, taken on behalf of the
Defendant herein, pursuant to the Rules
of Civil Procedure, taken before me,
the undersigned, Heather E. Diemer, a
Court Reporter and Notary Public in and
for the Commonwealth of Pennsylvania,
at the law offices of Colavecchi &
Colavecchi, 221 E. Market Street,
Clearfield, Pennsylvania, on Tuesday,
June 24, 2003, beginning at 2:20 p.m.

A P P E A R A N C E S

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I N D E X

WITNESS: CRAIG L. KEELER

EXAMINATION

by Attorney Colavecchi

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CERTIFICATE

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EXHIBIT PAGEPAGENUMBERDESCRIPTIONIDENTIFIED

NONE OFFERED

OBJECTION PAGEATTORNEYPAGE

Reed

34 , 35 , 63

P R O C E E D I N G S

CRAIG L. KEELER, HAVING FIRST BEEN DULY
SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY ATTORNEY COLAVECCHI:

Q. Would you state your full name
and address, please, sir?

A. Yes. It's Craig Lee Keeler, 716
Downalong Drive, Ravenswood, West
Virginia.

Q. You had given a card to me that
shows that your --- it's a Spencer,
West Virginia address.

A. Well, I gave you my home
address.

Q. You mean that the card that you
gave me is your home address?

A. No, the address I just gave her
was my home address.

Q. Okay. What is your business
address?

A. It's Spencer, West Virginia. I
don't remember the ---.

1 Q. Well, this is your card?
2 A. Yeah. It's 270 Industrial Park
3 Road.
4 Q. Mr. Keeler, what is your
5 occupation?
6 A. I'm general manager of Spencer
7 Veneer.
8 Q. And what is your age?
9 A. I'm 58.
10 Q. Where did you go to school?
11 What, did you graduate from high
12 school?
13 A. Yes, Dallas, Oregon.
14 Q. Dallas, Oregon?
15 A. Yes.
16 Q. What did you do after you
17 finished high school?
18 A. I worked plus I attended a
19 technical school and then University of
20 Oregon in Eugene.
21 Q. A technical school and
22 University of Oregon?
23 A. Yes, both.
24 Q. What's the technical school?
25 A. Salem Tech. It is in Salem,

1 Oregon. And for two years I attended
2 Salem Tech and I have an Associate of
3 Science degree there. And then I
4 turned around and attended the
5 University of Oregon for four years.

6 Q. Did you graduate from the
7 University of Oregon?

8 A. No.

9 Q. And did you get a degree from
10 --- what is it, Salem Tech?

11 A. Salem Tech, yes.

12 Q. And what was that?

13 A. They call it an Associate of
14 Science degree. It was in electronics.

15 Q. And then what did you take at
16 the University of Oregon?

17 A. I took business classes at the
18 University of Oregon.

19 Q. So it would have taken six
20 years, you would have been 24 years of
21 age. What did you do after that?

22 A. I went to work for Warehowser
23 Canada Limited.

24 Q. That's a paper pulp company?

25 A. No, that's a hardwood division

1 of the Warehowser Company at that time.

2 Q. Where was it located?

3 A. In Richmond Hill, Ontario,
4 Canada.

5 Q. And what did you do for them,
6 sir?

7 A. I was put through a fairly quick
8 training program and went into
9 marketing.

10 Q. And how long did you work for
11 them in marketing?

12 A. Two years.

13 Q. What did you do after that two
14 years?

15 A. Well, in the meantime I had
16 moved with Warehowser. I returned to
17 Oregon and went in partnership with a
18 gentleman called Ralph Fronville.

19 Q. How old were you at that time?
20 I've got 26 years of age according to -
21 --.

22 A. That's approximately what I was,
23 yes.

24 Q. You went into partnership with a
25 fellow called --- what's his name?

- 1 A. With a gentleman called Ralph
2 Fronville.
- 3 Q. How do you spell his last name?
- 4 A. F-R-O-N-V-I-L-L-E.
- 5 Q. And that was, you said, in
6 Oregon?
- 7 A. Yes.
- 8 Q. What city in Oregon?
- 9 A. Lake Oswego.
- 10 Q. Lake Oswego. Would you spell
11 that?
- 12 A. L-A-K-E O-S-W-E-G-O.
- 13 Q. And what was the business or
14 partnership?
- 15 A. We were commission sales office
16 originally for Commonwealth Plywood in
17 Quebec, Canada.
- 18 Q. Doing what?
- 19 A. Selling hardwood veneer.
- 20 Q. Out of Lake Oswego?
- 21 A. Oregon, yes.
- 22 Q. And how did you form that
23 affiliation?
- 24 A. I had met Mr. Fronville while I
25 was working for Jones Veneer and

1 Plywood at the same time I was
2 attending classes at the University of
3 Oregon.

4 Q. And were you exclusively --- is
5 that your only job then, your company,
6 just working for one company as an
7 agent?

8 A. When I joined that's what we
9 were originally doing but we expanded.

10 Q. The partnership did expand?

11 A. Yes.

12 Q. After a couple years or ---?

13 A. Within the first year.

14 Q. Then what did you do?

15 A. We were wholesaling products
16 used in plywood, hardwood plywood
17 manufacture. Then we started importing
18 rotary cut veneers from Asia two years
19 after I joined Ralph.

20 Q. Rotary what?

21 A. Rotary cut veneer.

22 Q. Rotary cut veneer, okay.

23 A. From Asia.

24 Q. What was the name of your
25 partnership or this company?

- 1 A. When we first started it was
2 Fronville Commercial Company.
- 3 Q. Fronville spelled ---?
- 4 A. F-R-O-N-V-I-L-L-E.
- 5 Q. Commercial Company?
- 6 A. Yes.
- 7 Q. All right. And you expanded
8 your business?
- 9 A. Yes.
- 10 Q. For how long were you in that
11 business then, Fronville?
- 12 A. Fronville's name was changed
13 approximately 1972.
- 14 Q. How old were you then?
- 15 A. Well, you'd have to do the math.
16 I don't remember.
- 17 Q. Well, I can get your year of
18 birth. What was your year of birth?
- 19 A. Well, I was born in 1945. And
20 Fronville Commercial Company became
21 American Hardwoods, Inc.
- 22 Q. You're still pretty young.
- 23 A. Yes.
- 24 Q. American ---?
- 25 A. Hardwoods, Inc.

1 Q. You were incorporated then?

2 A. We incorporated then.

3 Q. You and the same fellow that you
4 went into ---?

5 A. He retired.

6 Q. And then you ran it by yourself?

7 A. Yes.

8 Q. And what business were you in
9 then at that time? What did the
10 corporation do?

11 A. We were still a commission agent
12 for Commonwealth Plywood. We were
13 importing wood products for hardwood
14 plywood production from Southeast Asia
15 and we were also starting to
16 manufacture hardwood veneers ourselves.

17 Q. You set up a factory?

18 A. Yes.

19 Q. And how long did the business
20 continue then?

21 A. Until I sold it in 1994.

22 Q. So you've spent the better part
23 of your life as a self-employed person
24 in effect? You had your own
25 corporation but you owned the

1 corporation, I gather?

2 A. Yes.

3 Q. You were the only shareholder?

4 A. Yes.

5 Q. And what was the name of that
6 corporation again?

7 A. American Hardwoods, Inc.

8 Q. And did you describe all the
9 businesses it was in during that time?

10 A. Actually it evolved. We
11 eventually --- not only did we
12 manufacture veneer but we manufactured
13 hardwood plywood products, quite a
14 range.

15 Q. All out of Oregon?

16 A. Yes.

17 Q. And you said you sold it in
18 1994?

19 A. Yes.

20 Q. To whom?

21 A. Brand-S Corporation, Jack
22 Brands.

23 Q. How do you spell that?

24 A. B-R-A-N-D-S. You just put
25 capital S, Brand, hyphen s.

1 Q. Did you continue to work as a
2 consultant with the company?

3 A. I had a five year agreement with
4 them, yes.

5 Q. So after 1994 did you continue
6 to work for the company you sold to
7 Jack Brands?

8 A. Yes.

9 Q. During that five year period was
10 that exclusively your job?

11 A. I had a no compete clause that
12 did not allow me to do anything other
13 than work for them within the hardwood
14 business for five years.

15 Q. And you continued to reside in
16 Oregon?

17 A. Yes.

18 Q. What happened in --- well, when
19 did you quit working for American
20 Hardwood?

21 A. Approximately 1997 I stopped
22 working. Well, actually, I was still
23 under my five year contract but I no
24 longer worked on a daily basis with the
25 Brand-S Corporation.

1 Q. What did you do in 1997?

2 A. Because we had no competes we
3 started doing residential construction.
4 I was building custom homes.

5 Q. Who is we?

6 A. Well, actually it was myself.
7 We is my family.

8 Q. And you still lived in Oregon?

9 A. Yes.

10 Q. And how long did you continue
11 building custom homes?

12 A. Until 2000, the year 2000.

13 Q. What happened in the year 2000
14 then?

15 A. During 1999 a gentleman called
16 Marcel Elefant.

17 Q. Marcel?

18 A. Marcel.

19 Q. How do you spell that?

20 A. M-A-R-C-E-L.

21 Q. And Elefant?

22 A. E-L-E-F-A-N-T.

23 Q. Okay.

24 A. Marcel Elefant had stayed in
25 contact with me for most of the period

1 of time that I had been in business on
2 my own. I actually met him in 1972.
3 And he had asked me to help do some
4 work for them.

5 Q. For whom?

6 A. For General Woods. They were
7 considering building a new factory and
8 they just needed some information from
9 me about products that they had not
10 manufactured at that point in time.

11 Q. What was his position with
12 General Woods?

13 A. He was the chairman.

14 Q. Chairman of the board?

15 A. Yes.

16 Q. What's the full name of the
17 company?

18 A. General Woods and Veneers
19 Limited.

20 Q. And where are they located or
21 where were they located in the year
22 2000 when you talked to this fellow?

23 A. Montreal, Quebec, Canada.

24 Q. And you were still living in
25 Oregon?

1 A. Yes.

2 Q. That's a long way between
3 Montreal and Oregon, isn't it?

4 A. I guess.

5 Q. And did you become an employee
6 or a consultant or what with General
7 Woods?

8 A. I actually had known them for
9 this period of time. I used to be a
10 supplier to American Hardwoods. We had
11 developed a friendship over a long
12 period of time. And actually at the
13 beginning I just freely gave him
14 information and --- manning tables and
15 so forth with sophisticated hardwood
16 companies, manufacturing veneer,
17 hardwood plywood, membrane presses,
18 further manufacturing than the General
19 Woods group had done to that date.

20 Q. You mean you weren't getting
21 paid for this?

22 A. No.

23 Q. You were just showing them how
24 to do things?

25 A. He asked me questions and I

1 answered because we had been friends
2 for a long period of time.

3 Q. And how long did that last, sir?
4 You said the year 2000 you were talking
5 to him?

6 A. I believe he contacted me in the
7 later part of 1999, but I had been in
8 contact with him off and on throughout
9 the years.

10 Q. Okay. So what happened ---?

11 A. I was asked to come back to
12 Montreal and have a quick meeting with
13 them to discuss their new operations.

14 Q. Come back to Montreal?

15 A. To go to Montreal.

16 Q. Oh, go to Montreal. And did you
17 go to Montreal then?

18 A. Yes, I did.

19 Q. And you met with whom?

20 A. I met with Marcel Elefant and a
21 group of people from West Virginia
22 Economic Development.

23 Q. What do you mean economic
24 development?

25 A. The Economic Development Office

1 for West Virginia.

2 Q. Owned by --- or is that just the
3 economic ---?

4 A. The state, the State of West
5 Virginia.

6 Q. Okay. You met with people from
7 General Woods and Veneers Limited and
8 the economic development company out of
9 West Virginia?

10 A. Yes.

11 Q. At Montreal?

12 A. Yes.

13 Q. And what happened, what came out
14 of that?

15 A. They were having a meeting about
16 their operations and setting up a
17 factory in West Virginia then I was
18 requested by Marcel after the meeting,
19 it happened to be the next day, if I
20 would go to West Virginia and look at
21 sites.

22 Q. To set up what?

23 A. A hardwood veneer plant.

24 Q. What business was General Woods
25 and Veneers in?

- 1 A. Slicing hardwood veneers.
- 2 Q. So they're going to set up a
3 branch or what?
- 4 A. No, they were going to establish
5 a new factory.
- 6 Q. And then did you go to West
7 Virginia?
- 8 A. Yes, I did.
- 9 Q. Where in West Virginia?
- 10 A. I went to --- mainly I went to
11 Franklin, West Virginia and then on to
12 Spencer, West Virginia.
- 13 Q. And what came out of all this?
- 14 A. The first trip then I returned
15 to Oregon and I sent them a report on
16 my trip.
- 17 Q. And then what happened?
- 18 A. Then they contacted me again and
19 wanted to know if I would consider
20 coming to West Virginia and helping
21 them to establish the factory.
- 22 Q. Who contacted you, the Economic
23 Council of West Virginia or ---?
- 24 A. No, Marcel Elefant.
- 25 Q. From General Woods?

- 1 A. Yes.
- 2 Q. And what did you tell him?
- 3 A. I would think about it
- 4 initially. But later on, which would
- 5 have been March of 2000, I told him
- 6 that I would accept the job offer that
- 7 he was giving me.
- 8 Q. And that was do --- what was the
- 9 title?
- 10 A. I was to be the general manager
- 11 of Spencer Veneer and to help them
- 12 establish the factory in Spencer and
- 13 set up its operations.
- 14 Q. Was that the name of the new
- 15 company, Spencer Veneer?
- 16 A. Yes.
- 17 Q. This is the one that got
- 18 established in Spencer, West Virginia?
- 19 A. Yes.
- 20 Q. With your help?
- 21 A. Initially I was not involved in
- 22 helping establish Spencer.
- 23 Q. Were they already running when
- 24 you started to work for them?
- 25 A. No. But the concept of

1 establishing Spencer Veneer and the
2 actual picking of the location was done
3 by the Montreal office not by me.

4 Q. Was the building put up and were
5 they in business when you went down
6 there to work?

7 A. They acquired a building and
8 then the building had to be basically
9 renovated and machinery installed.

10 Q. Did you help with all of that?

11 A. Yes.

12 Q. So you start from scratch with
13 the building?

14 A. Yes.

15 Q. And has that job continued from
16 that time to the present date or have
17 there been other changes in your life?

18 A. It's been the same.

19 Q. Did you move your whole family
20 then to Spencer, West Virginia?

21 A. I moved my wife out there.

22 Q. And is that where you reside
23 now?

24 A. I reside in Ravenswood, West
25 Virginia, yes.

- 1 Q. And is that right near Spencer?
- 2 A. It's about an hour away.
- 3 Q. And so your life in the last
- 4 three years has been an employee of
- 5 Spencer Veneer?
- 6 A. Exclusively, yes.
- 7 Q. And that is owned by a company
- 8 known as General Woods and Veneers
- 9 Limited?
- 10 A. Spencer Veneer is owned by
- 11 Swords Veneer in Rock Island.
- 12 Q. How do you spell that?
- 13 A. S-W-O-R-D-S.
- 14 Q. Just the way it sounds. Swords
- 15 Veneer.
- 16 A. And Lumbar in Rock Island,
- 17 Illinois.
- 18 Q. Owns Spencer Veneer?
- 19 A. Yes.
- 20 Q. Where does General Woods and
- 21 Veneer Limited come into this picture?
- 22 A. They own Swords Veneer.
- 23 Q. Okay. All right. So it's a
- 24 ladder. Spencer Veneer is owned by
- 25 Swords Veneer which is owned by General

1 Woods?

2 A. Yes.

3 Q. All right. I'm sorry. I
4 interrupted you. What were you going
5 to say then?

6 A. (No response).

7 Q. Are there any other companies
8 involved with General Woods and Veneers
9 Limited?

10 A. There's Genwove, another cutting
11 facility, in Indian Trail, North
12 Carolina, called Genwove,
13 G-E-N-W-O-V-E. We have other
14 operations.

15 Q. Various plants all over the
16 country?

17 A. The main cutting plants are
18 Spencer, Swords, General and Montreal.
19 Those are the main cutting plants.
20 They also have warehouses.

21 Q. And you described them as
22 cutting plants?

23 A. Yes. They make hardwood
24 veneers.

25 Q. And what's necessary, briefly,

1 to make hardwood veneers?

2 A. You take logs, round logs, you
3 have to have a sawmill where you debark
4 them and open them up. You have to
5 have vats where you cook them, slicers
6 where they're cut into thin hardwood
7 veneers, dryers where they're dried.
8 You also have residual equipment like
9 clipping lines and other manufacturing
10 things.

11 Q. So you start with timber?

12 A. You start with logs.

13 Q. Logs. Is that how you describe
14 logs?

15 A. Yes.

16 Q. And so you buy, the company
17 known as Spencer Veneer, would have to
18 buy logs ---

19 A. Yes, we do.

20 Q. --- or cut them? Do you cut
21 them?

22 A. No, we do not.

23 Q. You buy them from other
24 companies?

25 A. We only buy logs from producers.

1 Q. Such as Wallacetown Hardwoods?
2 A. Yes.
3 Q. And how long have you known
4 Merwin Graham?
5 A. It would have been either late
6 in the year 2000 or the early part of
7 2001 when we first started to purchase
8 logs from this firm.
9 Q. And I know Merwin has said he
10 only spoke with you on the telephone.
11 You have not met him personally until
12 today; am I correct?
13 A. That's correct.
14 Q. Face to face?
15 A. That's correct.
16 Q. And your initial meeting with
17 Merwin Graham was on the telephone?
18 A. Yes.
19 Q. And did you initiate the call or
20 did Merwin or don't you remember?
21 A. I would not have initiated the
22 call because I didn't know the
23 gentleman or his company.
24 Q. All right. And were you in
25 charge of buying logs for your company?

1 A. I'm in charge of the facility.
2 We had --- we have people in charge of
3 log procurement. In this particular
4 case it started out with Tom Alexander.
5 Q. Tom Alexander works for your
6 company?
7 A. He did at the time, yes.
8 Q. And how long has he worked --- I
9 mean he worked for Spencer Veneer;
10 right?
11 A. Yes.
12 Q. Was he working there when you
13 started?
14 A. Yes.
15 Q. Even before you started?
16 A. He came --- I don't know his
17 exact hire date. It would have been
18 very close to mine. And he was brought
19 in to help assemble machinery.
20 Q. What's his title, if any, or
21 what was his title?
22 A. Production manager.
23 Q. What does that entail?
24 A. He would be involved in the log
25 yard, the saw mill, the cooking of the

1 logs and the actual production of the
2 logs.

3 Q. Did he have anything to do with
4 the purchase of the logs?

5 A. At the very beginning he did,
6 yes.

7 Q. And that's part of your overall
8 job, purchasing the logs, in addition
9 to everything else, I assume?

10 A. I manage everyone that works for
11 Spencer Veneer.

12 Q. Who do you ---?

13 A. We do have a log procurement
14 department.

15 Q. Who do you report to, Mr.
16 Keeler?

17 A. I report direct to Steven or
18 Marcel Elefant.

19 Q. The people that are the ones tat
20 the chairman of the board of General
21 Woods and Veneers Limited?

22 A. Yes.

23 Q. Nothing to do with swords then
24 in between?

25 A. No.

- 1 Q. Okay. And does Tom Alexander
2 still work for Spencer Veneer?
- 3 A. No, he does not.
- 4 Q. When did he leave?
- 5 A. May 14th of 2001.
- 6 Q. Where is he working now?
- 7 A. I do not know.
- 8 Q. Did he quit or was he fired?
- 9 A. He was released.
- 10 Q. Is that a nice way of saying
11 fired? May 14th, 2001. So he wasn't
12 employed very long by the company; is
13 that right?
- 14 A. No, he was not.
- 15 Q. Because I was making notes here.
16 The company didn't start until, I
17 gather, the later part of the year 2000
18 or the early part of 2001?
- 19 A. That's correct. He spent a
20 short period of time at Genwove prior
21 to Spencer assembling equipment but I
22 can't tell you the exact period of
23 time.
- 24 Q. He did work for General Woods
25 and Veneers Limited?

1 A. I don't know the answer to that.

2 Q. I thought you said he was ---

3 maybe I misunderstood what you said.

4 He spent a short time, I thought you

5 said, with ---.

6 A. Before Spencer started under

7 construction he was employed by the

8 group ---.

9 Q. General Woods?

10 A. I don't know which division.

11 Q. Define group, though.

12 A. He was working at Genwove ---

13 Q. Genwove?

14 A. --- one of the facilities.

15 Q. How do you spell that?

16 A. G-E-N-W-O-V-E.

17 Q. What's Genwove?

18 A. It's a cutting facility in

19 Indian Trail, North Carolina.

20 Q. Okay. Go ahead. I interrupted

21 you there. How long had he worked for

22 them, do you know?

23 A. I do not know.

24 Q. Tom Alexander would have worked

25 under you, though; is that right?

1 A. Yes.

2 Q. And you're saying you did not
3 initiate a call with Merwin Graham.
4 Would it have been initiated by any of
5 the people working for you that
6 purchased lumber for your company?

7 A. I would assume, yes.

8 Q. You don't remember though?

9 A. No.

10 Q. The reason I'm asking all this,
11 I guess, is I'd asked your counsel to
12 give me someone to talk to, to take his
13 deposition, in relation to this case
14 who would be in the know or who would
15 be responsible and I assume that's you
16 since you sound like the number one
17 man; is that right?

18 A. That's correct.

19 Q. So you know everything that went
20 on here that's alleged in the
21 complaint; am I correct? I mean we're
22 a defendant so I'm asking ---.

23 A. I'm aware of the operations of
24 Spencer Veneer, yes.

25 Q. The complaint is actually signed

1 by your lawyer but I assume that he
2 went over this complaint with you prior
3 to having it served on Wallaceton
4 Hardwoods?

5 ATTORNEY REED:

6 I'm going to object and
7 direct him not to answer. I think
8 that's privileged, whether I went over
9 it with him or not.

10 ATTORNEY COLAVECCHI:

11 I don't think that's
12 privileged at all, sir. I'm asking
13 whether it's true and correct.

14 ATTORNEY REED:

15 Well, no you're not
16 asking him whether it's true and
17 correct. You asked him whether I
18 reviewed it with him. Conversations
19 that he and I may have had are
20 privileged. You can ask him whether
21 the complaint's true and correct.
22 That's a different question.

23 ATTORNEY COLAVECCHI:

24 I don't think it is.

25 ATTORNEY REED:

1 Well, that's what I think
2 and I'm objecting.

3 ATTORNEY COLAVECCHI:

4 All right. You're
5 instructing him not to answer that
6 question.

7 ATTORNEY REED:

8 I'm instructing him not
9 to answer the question of whether he
10 and I reviewed the complaint before it
11 was filed, yes. I'm instructing him
12 not to answer that. I'll let him
13 answer anything you want about the
14 truth and accuracy of the complaint.

15 BY ATTORNEY COLAVECCHI:

16 Q. Sir, did you direct Mr. Reed to
17 sign this complaint?

18 A. No.

19 Q. Did he go over this paragraph by
20 paragraph with you?

21 ATTORNEY REED:

22 I'm going to object again
23 and direct him not to answer.

24 ATTORNEY COLAVECCHI:

25 Mr. Reed, I don't want to

1 get into a semantics argument but as
2 you know you can't sign this without
3 express authority from your client.

4 ATTORNEY REED:

5 Of course I can't and my
6 client here is General Woods and
7 Veneers, as you see the plaintiff is
8 named. And Mr. Keeler has testified
9 that he is the general manager for
10 Spencer Veneers. We brought him here
11 today because he is the person most
12 familiar with the transaction in
13 question. But General Woods and
14 Veneers obviously had an accounting
15 problem with your client because they
16 were paying for logs that they had not
17 received and that was their complaint.
18 And I dealt with Satish Chawla and
19 Satish Chawla provided me the
20 information. Satish Chawla is in
21 Canada and, as you're aware, the
22 Pennsylvania Rules of Civil Procedure
23 allow me to sign and verify the
24 complaint if my client is not present
25 in the jurisdiction at the time and he

1 was not. He was in Canada. Mr. Chawla
2 went over the complaint with me in
3 detail and approved it before it was
4 filed. That's what you want to know.

5 ATTORNEY COLAVECCHI:

6 Yes, sir, I do.

7 BY ATTORNEY COLAVECCHI:

8 Q. Which brings up the next
9 question. Sir, your company in West
10 Virginia then is acting under the
11 direction of General Woods and Veneers
12 Limited, you're not operating as an
13 independent unit? I don't mean that
14 you wouldn't be responsible to them but
15 do they do all your bookkeeping?

16 That's General Woods. Do they do the
17 bookkeeping for Spencer Veneer?

18 A. They oversee the bookkeeping.
19 The bookkeeping is done at Spencer
20 Veneer.

21 Q. Oversee it. But you must turn
22 over the money to them, I assume; is
23 that it?

24 A. No.

25 Q. Well, would you explain to me

1 why this complaint is filed by General
2 Woods rather than Spencer Veneer? I
3 just want to find out who we're dealing
4 with.

5 ATTORNEY REED:

6 I think you're really
7 asking a legal question and I'll be
8 glad to answer it just to get through
9 this ---.

10 ATTORNEY COLAVECCHI:

11 Go ahead. And I'm not
12 playing games with you.

13 ATTORNEY REED:

14 I'm not accusing anybody
15 of playing games. I just don't think
16 this is the appropriate place to ask
17 these questions. If you want to send
18 us a set of interrogatories, I would be
19 glad to answer them. But I'll answer
20 it here just to try to save time.

21 ATTORNEY COLAVECCHI:

22 Sure.

23 ATTORNEY REED:

24 General Woods and Veneers
25 is the party who paid for these logs.

1 General Woods and Veneers is the party
2 who did not receive these logs,
3 therefore, General Woods and Veneers is
4 the appropriate plaintiff. That's why
5 the complaint was filed in their name.

6 ATTORNEY COLAVECCHI:

7 Then you're saying, sir,
8 that the logs that were sold from
9 Wallaceton Hardwoods wasn't sold to
10 Spencer Veneer?

11 ATTORNEY REED:

12 They were sold to Spencer
13 Veneer. They were to be shipped to
14 Spencer Veneer but General Woods,
15 because it is the owner indirectly of
16 Spencer Veneer, was making the payments
17 on these particular shipments. And my
18 understanding is they made two payments
19 for one shipment and they never
20 received the two other shipments. And
21 that's why we're here.

22 ATTORNEY COLAVECCHI:

23 Are you saying, Mr. Reed,
24 then the logs were delivered to Spencer
25 to get to a ---?

1 ATTORNEY REED:

2 The logs were never
3 delivered. That's why we're here. The
4 two shipments of logs that left your
5 client's facility never arrived at
6 either Spencer or General Woods and,
7 therefore, they overpaid and that's
8 what they're seeking reimbursement for.

9 ATTORNEY COLAVECCHI:

10 You did receive some logs
11 I gather?

12 ATTORNEY REED:

13 There were three
14 shipments as your client testified and
15 you were here. And now I think you are
16 playing games with me.

17 ATTORNEY COLAVECCHI:

18 No, I'm not.

19 ATTORNEY REED:

20 I'm testifying basically
21 in a case and it's ridiculous, but I'll
22 go ahead and say this because I think
23 it's obvious from your client's
24 testimony. What happened here is your
25 client released one load of logs to his

1 son's company that was then taken to
2 Spencer in West Virginia and that
3 invoice was paid by General Woods on
4 behalf of its subsidiary, Spencer. And
5 then a second --- two more shipments,
6 or two more loads, of logs remained at
7 your client's facility and your client
8 then released those to two truckers
9 with no identification, no indication
10 of where they were from. They left
11 without any paperwork and the logs
12 never arrived at either Spencer or
13 General Woods. Your client sent an
14 invoice, nevertheless, to General Woods
15 and General Woods paid the first
16 invoice that had gone for the first
17 shipment, paid it twice. And your
18 client, instead of agreeing to refund
19 the double payment, credited it to the
20 invoice for the wood that had never
21 arrived at either General or Spencer.
22 I think that's the best summary of this
23 case I can give you. I'm really done
24 explaining anything. I'm not going to
25 say another word.

1 ATTORNEY COLAVECCHI:

2 Okay. I appreciate your
3 courtesy. And I wasn't trying to give
4 you a hard time.

5 BY ATTORNEY COLAVECCHI:

6 Q. Mr. Keeler, then the one load of
7 logs, I gather, you're admitting was
8 received by Spencer Veneer?

9 A. Yes.

10 Q. Then, and I'm trying to keep
11 this straight, when you get the logs
12 the payment isn't made by Spencer
13 Veneer, it's made by General Woods and
14 Veneer; right?

15 A. It actually could be paid by
16 either party. In the case of the one
17 truckload of logs received the payment
18 was made, I believe, by Spencer Veneer
19 for \$34,637.50.

20 Q. It was made by Spencer Veneer
21 not ---

22 A. Yes.

23 Q. --- by General?

24 A. Yes.

25 Q. All right. And I think you're

1 alleging --- the complaint alleges that
2 General Woods and Veneer is paid on an
3 invoice or invoices for logs that were
4 not received; is that right? I mean,
5 you have ---.

6 A. No.

7 Q. All right. Explain it, please,
8 sir.

9 A. I'll chronologically run through
10 this. On 4/12 of '01 it appears that
11 Tom Alexander went to Wallaceton and a
12 tally of our draft purchase of logs. A
13 document of inspection was produced
14 covering approximately \$90,862 worth of
15 cherry logs. We received one truckload
16 of that on 4/16 and that truckload was
17 paid for in the amount of around
18 \$34,367.50 to Wallaceton Hardwoods.

19 Q. We being Spencer Veneer?

20 A. Spencer, yes.

21 Q. All right.

22 A. Now, later in life, August 1st a
23 new inspection was made at Wallaceton.

24 Q. Is that 2001?

25 A. 2001.

1 Q. Okay.

2 A. Which is approximately four
3 months later. A draft number 30160 was
4 created. The inspector appears --- the
5 inspection appears to be done by Tim
6 Carver and it generated an amount due
7 of \$54,057.40 plus freight. Montreal
8 paid August 3rd \$55,668.40 to the
9 account.

10 Q. We're just talking paper now;
11 right? I mean, there wasn't anything
12 delivered you're saying?

13 A. I have not looked on deliveries
14 of the August 4th order.

15 Q. Okay. Go ahead.

16 A. Montreal paid approximately two
17 days later by wire \$55,668.40 to
18 Wallaceton. They also wired again
19 September 4th, duplicating a payment,
20 for the same logs at \$54,268.40. So
21 the two transactions are four months
22 apart and really separate from each
23 other. The first transaction consists
24 of three truckloads of logs, one
25 received and paid for, two we do not

1 show receivers on.

2 The second transaction four
3 months later is for a different
4 inspection. That amount was double
5 paid by Montreal by mistake and what we
6 understand from the previous testimony
7 is the second payment on the inspection
8 four months later was then credited
9 back or applied back to the two
10 truckloads of logs that Spencer never
11 received.

12 Q. How is it determined what
13 General Woods pays and what Spencer
14 pays?

15 A. This was during the start up
16 phase of Spencer Veneer, during the
17 start up phase of Spencer. If Spencer
18 was not capable in cash flow to pay for
19 all the logs, then Montreal would step
20 in and pay for logs and then charge
21 Spencer back for them.

22 Q. Would there be some paperwork
23 generated between Spencer and General
24 Woods?

25 A. If the logs were for Spencer,

1 yeah. If the logs were for Montreal,
2 no.

3 Q. But these two payments that were
4 made by General Woods to which I think
5 you were just talking about ---

6 A. Yeah.

7 Q. --- there would be some
8 paperwork from Spencer to General Woods
9 instructing them to pay Wallaceton
10 Hardwoods; is that right?

11 A. There was an original log
12 inspection draft, or tally, number
13 30160 that was apparently sent to
14 Montreal.

15 Q. From Spencer?

16 A. From the Spencer log buyer, yes.

17 Q. And the Spencer log buyer was?

18 A. Tim Carver. And at the bottom
19 of the draft it says please --- I
20 forget what it says, please pay right
21 away or please wire the funds.
22 Something to that ---.

23 Q. Tim Carver is whom?

24 A. He's another log buyer for
25 Spencer Veneer.

- 1 Q. He's an employee ---
- 2 A. Yes, he is.
- 3 Q. --- of Spencer Veneer?
- 4 A. He was, yes.
- 5 Q. And he authorized the payment to
- 6 Wallaceton Hardwoods?
- 7 A. The log buyers don't authorize
- 8 payments. They send in the drafts
- 9 showing log inspections ---.
- 10 Q. What does that mean, log
- 11 inspections?
- 12 A. The log buyer is to go to any
- 13 log producer and he is to look at the
- 14 product he has available. In that
- 15 process normally he turns the logs over
- 16 manually ---.
- 17 Q. That's the seller?
- 18 A. Our buyer.
- 19 Q. Okay.
- 20 A. Occasionally with the help of
- 21 the producer and he visually inspects
- 22 the log, four sides, turns it over and
- 23 then he puts a tag on the end of the
- 24 log and he enters in a handheld
- 25 computer the tag number and what he

1 believes the value or price per
2 thousand board feet that log should be.
3 At the end of an inspection he prints
4 out a tally and shows it to the
5 producer. I've inspected these logs,
6 I'm deem them worth \$54,000. It
7 doesn't always agree with the producer.
8 The producer may say I want \$58,000 for
9 them or the buyer may say I don't want
10 three of these logs, you've got to take
11 them out of the parcel. And so it's a
12 negotiation process.

13 When they're done a final copy
14 is generally made on a handheld
15 computer showing the inspection, the
16 tag numbers and the value of the
17 parcel.

18 Q. This is all on paper now?

19 A. This is all on paper. And then
20 that log inspection is sent to the
21 factory; the corresponding factory it
22 belongs to, whether it's Spencer or
23 Montreal. Then that inspection is sent
24 in. I've viewed these logs, here are
25 the tag numbers, here's the value of

1 the logs.

2 Q. Tim Carver would have done that?

3 A. Tim Carver would have done that.

4 Q. And then he would have got that
5 piece of paper. Would it have been
6 signed by a representative of
7 Wallaceton Hardwoods?

8 A. No.

9 Q. Why not?

10 A. I've rarely seen one signed.

11 Q. Wouldn't there have to be
12 evidence of the agreement on behalf of
13 the seller?

14 A. I have rarely seen a legal
15 contract between a buyer and a seller
16 in logs. The most common place thing
17 is a simple log tally produced by the
18 log inspector himself. On a rare
19 occasion you may have a written
20 confirmation like a normal order would
21 be from the producer but that's very
22 rare when you see that.

23 Q. So in this case Tim Carver would
24 have produced what you describe as
25 a --- I'm sorry ---?

1 A. They call them the log tally or
2 a draft.

3 Q. I thought you said tally and
4 draft. You did use both words.

5 A. Yes. Because on the paperwork
6 sometimes it will say draft on it.

7 Q. And then he would take that to
8 your Spencer Veneer, right, plant in
9 Spencer, West Virginia?

10 A. If the logs were to come to
11 Spencer Veneer, the draft would be sent
12 to Spencer Veneer. If the logs were to
13 be sent to Montreal, for example, the
14 draft would be sent to Montreal.

15 Q. In this case Mr. Carver did
16 generate a tally?

17 A. Yes, he did.

18 Q. And did he deliver it to Spencer
19 Veneer or to Montreal?

20 A. I at this point don't know the
21 answer to that. We both have copies of
22 it, I know that.

23 Q. Have copies of the tally?

24 A. Yes.

25 ATTORNEY COLAVECCHI:

1 That wasn't one of the
2 exhibits you gave me this morning or
3 gave us today?

4 ATTORNEY REED:

5 No.

6 ATTORNEY COLAVECCHI:

7 I'd like to ask for that,
8 if I may, sir. I mean, if you could
9 send it to me.

10 ATTORNEY REED:

11 I'll give it to you right
12 now.

13 ATTORNEY COLAVECCHI:

14 Oh, good.

15 BY ATTORNEY COLAVECCHI:

16 Q. Are there two of them?

17 A. Well, there's the original one,
18 3000 and then 30160.

19 ATTORNEY COLAVECCHI:

20 They were not one of the
21 exhibits this morning ---

22 ATTORNEY REED:

23 No.

24 ATTORNEY COLAVECCHI:

25 --- or this afternoon?

1 ATTORNEY REED:

2 No, they were not.

3 ATTORNEY COLAVECCHI:

4 Just show me what's
5 marked as draft 3000 and it has a
6 number of 6180? Yes, I see the 3000.

7 ATTORNEY REED:

8 I don't know what that
9 means. It might have been attached to
10 one of the other exhibits.

11 ATTORNEY COLAVECCHI:

12 That's what I was
13 wondering, if it was. That looks
14 familiar.

15 ATTORNEY REED:

16 Somewhere here is a
17 corrected one also. You can have a
18 copy of that if you'd like.

19 ATTORNEY COLAVECCHI:

20 So you're showing me a
21 draft 3000 and then there's a corrected
22 draft of the 3000 which has written at
23 the top, it says Christel,
24 C-H-R-I-S-T-E-L. This is corrected
25 purchase?

1 ATTORNEY REED:

2 Correct.

3 A. The corrected one.

4 BY ATTORNEY COLAVECCHI:

5 Q. What about it?

6 A. You'll also see it's dated 5/09.

7 Q. 2001?

8 A. 2001.

9 Q. The original one you were
10 showing me is dated?

11 A. 4/12.

12 Q. 2001?

13 A. 4/12 is for the original parcel
14 and the \$90,000.

15 Q. Yes.

16 A. The corrected one is just for
17 the single truckload that was received
18 and it was shown corrected on 5/9.

19 Q. By whom, who corrected it?

20 A. I don't know the answer to that.
21 It was produced at Spencer, I can tell
22 you that.

23 Q. This one that's draft 3000, that
24 was prepared by this Tim Carver?

25 A. No, Tom Alexander.

1 Q. Tom Alexander. This means that
2 he checked all this wood, is that what
3 that means?

4 A. That's what he was supposed to
5 have done, yes.

6 Q. Or logs, I guess you call them
7 logs. And then he gave this draft
8 3000, which also has a number of 6180
9 on the top, he gave this to what,
10 Spencer Veneer?

11 A. Yes.

12 Q. And he was employed by Spencer
13 Veneer at the time; right?

14 A. Yes.

15 Q. And this shows a total of
16 \$90,862 at the end; is that right?

17 A. That's correct.

18 Q. And this would represent?

19 A. Approximately three truckloads.

20 Q. That Tim Carver --- excuse me,
21 Tom ---

22 A. Tom Alexander.

23 Q. --- Tom Alexander checked at the
24 log yard of Wallaceton Hardwoods; would
25 that be correct?

1 A. That's correct.

2 Q. And he delivered this or mailed
3 it back to Spencer Veneer?

4 A. They're generally either faxed
5 or they're delivered in the handheld
6 and we print them out.

7 Q. Okay. And this would have meant
8 what? What would happen after he gave
9 this back to your company?

10 A. Well, we hold it in a file until
11 the logs are received in the log yard.
12 When the logs are received in the log
13 yard there's a receiver tally. It's
14 also generated on a handheld just like
15 those. And it says we received these
16 logs. When we receive the logs then we
17 turn them into the office and the
18 office ---.

19 Q. What office?

20 A. Our office, Spencer Veneer, in
21 the accounting department. And they
22 correspond these --- the ticket numbers
23 here with the original invoice. If
24 it's a multiple shipment, they would
25 have to have three receivers for that

1 original draft. We only have one
2 receiver.

3 Q. So you're saying your records
4 only show that what you call a receiver
5 ---

6 A. Yes.

7 Q. --- you only have one receiver
8 sheet?

9 A. Yes.

10 Q. And that means that only load
11 was received?

12 A. That's correct.

13 Q. At Spencer Veneer?

14 A. That's correct.

15 Q. And then is that a separate
16 document? May I see that?

17 A. Yes. You'll see the receiver
18 was dated, I believe, 4/16. The
19 original purchase was 4/12. The
20 receiver is dated 4/16. And then later
21 on, on 5 --- excuse me, let me look at
22 the date --- on 5/09 of 2001 the
23 purchase, or the draft, is what you've
24 really got to call it was changed and
25 it corresponds with the only truckload

1 received at that point.

2 Q. This says page two. Is there a
3 page one to this? Up here it says page
4 two. This is page one over here. This
5 isn't page three, I guess. It looks
6 like page three. It says at the top.
7 Is that just a fax number?

8 A. That's just a fax.

9 Q. So it doesn't mean anything?

10 A. It doesn't mean anything.

11 Q. And this one with Chrystal
12 represents again what?

13 A. It represents the original
14 single truckload received at Spencer
15 Veneer.

16 Q. The actual logs that you're
17 alleging were received at your
18 facility?

19 A. Yes.

20 Q. And it shows a price of
21 \$34,637.50.

22 A. Yes.

23 Q. Would that be the price placed
24 on it by you?

25 A. That would have been the

1 negotiated price between the supplier
2 and the log buyer. In this case I
3 assume it was Merwin and Tom Alexander.

4 Q. That's the only record you have
5 on this transaction; right?

6 A. Of that particular one, yes.

7 Q. Okay. So who sent the check out
8 on this one load again?

9 A. I would have to verify but I
10 would assume it's sent by Spencer
11 Veneer.

12 Q. All right. Now I'm sorry if I'm
13 repeating but how did General Woods get
14 involved in this? None of this ---.

15 A. Okay. At that point --- let's
16 just say that's the end of transaction
17 3000. We paid for one load of logs
18 received.

19 Q. All right.

20 A. And the paperwork corresponds.
21 There's the receivers on one load of
22 logs, there's payment on one load of
23 logs and there's a revised purchase for
24 one load of logs. Four months later,
25 August 1st ---

1 Q. Of 2001?

2 A. 2001.

3 Q. Okay.

4 A. That's what I'm trying to find

5 here. There should have been a new

6 draft, a new inspection, by Tim Carver

7 at Wallacetown.

8 Q. And when now, August ---?

9 A. I believe it's August 1st.

10 Q. Of 2001?

11 A. Yeah.

12 Q. A new inspection by Tim Carver,

13 who made this original one?

14 A. No, he did not.

15 Q. I thought you said ---.

16 A. Tom Alexander.

17 Q. Tom Alexander. I apologize.

18 Okay. Go ahead, sir. You were

19 explaining to me and I interrupted you.

20 You were saying a new inspection was

21 made by Tim Carver.

22 A. A new inspection appeared to

23 have been made around August 1st by Tim

24 Carver. There should be a draft 30160,

25 I believe, is the correct number.

1 Q. Is that one of the exhibits that
2 we have here?

3 A. That's the one we're looking
4 for. Yes, it's there.

5 Q. You have this attached as part
6 of your Exhibit Number One.

7 A. Okay.

8 Q. And was this prepared then by
9 Tim Carver?

10 A. Yes, it was.

11 Q. What does that represent?

12 A. That's a new inspection at the
13 Wallaceton facility for a new parcel of
14 logs.

15 Q. It has no relation to the
16 original ---

17 A. Nothing.

18 Q. --- transaction, the original
19 draft 3000?

20 A. Nothing. There's no
21 relationship at all.

22 Q. So Tim Carver went out to
23 Wallaceton Hardwoods, prepared this log
24 scale report or log tally, what you've
25 said is called a number of things,

1 30160?

2 A. Correct.

3 Q. I'm looking at it and it shows a
4 total of \$54,057.40?

5 A. That's what it says there, yes.

6 Q. Then they have freight of \$1,400
7 added on?

8 A. I believe that's an estimate,
9 yes.

10 Q. Okay. For a total of
11 \$55,457.40.

12 A. Uh-huh (yes).

13 Q. Okay. And what came of this,
14 what happened then after ---?

15 A. Well, apparently two days later,
16 approximately August 3rd, Montreal wired
17 Wallaceton \$55,668.40.

18 Q. And why would they do that?

19 A. Because at the bottom of the
20 draft --- and in this particular case I
21 would imagine they wanted payment
22 before the logs moved.

23 Q. It says please wire transfer
24 into his bank account ASAP.

25 A. That's correct.

1 Q. Is that in the handwriting of
2 Tim?

3 A. I believe that's Tim Carver's
4 handwriting. So at that point Montreal
5 paid Wallaceton for that particular
6 draft. Approximately September 4th they
7 inadvertently paid them again for the
8 same draft and it was part of a
9 combination of payments.

10 Q. I mean, was it the same amount
11 \$54,000 ---?

12 A. They're slightly different. One
13 was --- I show, and you'll have to look
14 at the reconciliation, I show the first
15 amount wired was \$55,668.40 on
16 September 4th and a combination with
17 other payments they paid \$54,268.40.

18 Q. And were the logs ---?

19 A. Slightly off on the numbers.

20 Q. Were the logs received on this
21 30160?

22 A. I believe they have been, yes.

23 Q. And you're saying on this 30160
24 it got paid again?

25 A. It was paid twice by Montreal

1 approximately one month apart.

2 Q. And is that the basis of your
3 lawsuit?

4 ATTORNEY REED:

5 I'm going to object, that
6 calls for a legal conclusion. You can
7 answer.

8 A. Well, because they paid twice on
9 30160 we got two issues. We've got
10 30160 that was paid twice and the
11 original draft 3000 we paid for the
12 logs that were received which was
13 leaving an outstanding balance of the
14 two mystery loads that we don't know
15 what happened to. What I understand is
16 when he received the payment, the
17 second payment, on 30160 they back
18 applied that to the two loads of logs
19 four months earlier that are in
20 question where they ever went. And
21 that's why the client said he doesn't
22 owe the money. He's applying it to the
23 two mystery loads.

24 We have two different
25 transactions and it's interesting, I'll

1 point out they're four months apart,
2 logs don't sit for four months. They
3 can't. They become damaged.

4 BY ATTORNEY COLAVECCHI:

5 Q. What do you mean that logs don't
6 sit for four months?

7 A. Well, your first transaction is
8 4/12 and the first load was moved on
9 4/16, leaving two loads in Wallaceton's
10 yard, approximately. What happened
11 between 4/16 and 8/1 I do not know. On
12 8/1 a new inspection was made. On 8/3
13 the first wire transfer was moved by
14 Montreal. On 9/3, or September 4th I
15 should say, they inadvertently added it
16 again in another payment to Wallaceton
17 thus doubling up on that second
18 transaction four months later.

19 Q. And why did Montreal pay it?

20 A. I don't know the answer to that
21 right now.

22 Q. Would you have instructed them
23 to pay it, I assume, tell them we don't
24 have the money, we want you to take
25 care of this?

1 A. One of two things happened. If
2 Spencer at the time didn't have the
3 money to wire transfer, we request
4 Montreal if they will do it. If they
5 agree, they do it in our behalf.
6 Sometimes though Montreal will buy logs
7 for themselves and Spencer will custom
8 cut and I don't know which way this one
9 is without researching it. But if
10 Montreal procured these logs for
11 themselves, they still can come to
12 Spencer but at that point we don't own
13 the logs. We custom cut them, we cut
14 them into veneer for Montreal and we
15 ship the product back to Montreal. We
16 never keep it.

17 Q. To your knowledge did General
18 deal directly with Wallaceton Hardwoods
19 for any logs?

20 A. I actually don't know.

21 ATTORNEY COLAVECCHI:

22 May I make copies of
23 these, I assume? It will just take me
24 a few minutes?

25 SHORT BREAK TAKEN

1 BY ATTORNEY COLAVECCHI:

2 Q. I'm gathering, Mr. Keeler, that
3 you really don't have all the
4 information concerning this case. We
5 really need to talk to a representative
6 of General Woods and Veneers; wouldn't
7 you agree with that?

8 A. I think that's your discretion.
9 I know what Spencer Veneer has done.

10 Q. Well, understand I don't know
11 who does what for your companies and I
12 just asked for a person to testify that
13 would have full knowledge. And you
14 have quite a bit of knowledge but you
15 don't have all the knowledge about why
16 General Woods and Veneers would have
17 sent those checks; am I correct?

18 A. I don't think that's a true
19 statement, no.

20 Q. Oh, you do have all the
21 knowledge about it?

22 A. I don't have all the knowledge
23 but I do know that Montreal made the
24 payment based on the draft of 30160 and
25 there appears to be records that they

1 double paid that draft. I don't think
2 there's any question in that.

3 Q. Who would be the party at
4 General Woods with whom you would deal
5 concerning items where you have
6 purchased logs from a place like
7 Wallaceton Hardwoods and then it's paid
8 by General Woods?

9 A. We only deal generally with two
10 people. Satish would be the first
11 person.

12 Q. Satish Chawla?

13 A. Yes.

14 Q. Okay.

15 A. And Nick.

16 Q. Nick Toteria?

17 A. Yes.

18 Q. T-O-T-E-R-A?

19 A. Yes. And they're the only two
20 we would ever deal with.

21 Q. So they would have knowledge of
22 the dealings between Spencer Veneer and
23 General Woods and Veneer and as related
24 to Wallaceton Hardwoods; is that right?

25 A. Yes.

1 Q. It wasn't meant as a charge,
2 sir, I'm just asking an inquiry.

3 A. Yeah.

4 Q. You gave an exhibit, being
5 Exhibit Two, to my client to look at.
6 It's this letter on Wallacetown
7 Hardwoods stationary on which is
8 written a date of May 14th, 2001. What
9 do you know about this letter?

10 A. The May 14th, 2001, I would like
11 to clarify that. That is a date that I
12 wrote on there that has nothing to do
13 with the letter. It's a handwritten
14 note. I have the original here. It
15 happens to be the date that Tom
16 Alexander was released from Spencer
17 Veneer. That's all that relates to.

18 Q. That was going to be my
19 question. I was going to say I heard
20 my client say this is only about a
21 month old, this letter.

22 A. That is a copy of the copy that
23 I had in my folder this morning. And
24 one thing I did research was what date
25 was Tom Alexander released and he was

1 released on May 14th, 2001. And that
2 could have been written on any piece of
3 paper. It happened to have been
4 written on that one that you've copied.
5 It has nothing to do with the date of
6 the original letter.

7 Q. Do you know when it was received
8 by Satish Chawla?

9 A. No.

10 Q. Do I gather then that you have
11 no knowledge of these two truckloads of
12 logs that were picked up at Wallaceton
13 Hardwoods as testified to by Merwin
14 Graham?

15 A. That's correct.

16 Q. Do you have any knowledge
17 through anyone else of the two loads
18 that were picked at Wallaceton
19 Hardwoods as testified to by Merwin
20 Graham?

21 ATTORNEY REED:

22 What do you mean by ---?

23 I don't understand what you mean by
24 knowledge of ---.

25 ATTORNEY COLAVECCHI:

1 If someone in his company
2 would have told him about it.

3 ATTORNEY REED:

4 Okay.

5 A. No.

6 ATTORNEY COLAVECCHI:

7 I'd like to take a brief
8 break and talk to my client before
9 finishing up.

10 ATTORNEY REED:

11 Sure.

12 SHORT BREAK TAKEN

13 BY ATTORNEY COLAVECCHI:

14 Q. Mr. Keeler, when did you become
15 aware of the problem that is set out in
16 this complaint directed to Wallaceton
17 Hardwoods?

18 A. The exact date I don't know. It
19 would have been definitely after
20 September of 2001.

21 Q. What did you do to resolve the
22 problem?

23 A. The original problem was
24 Montreal because of the double payment
25 and it wasn't my job to resolve that

1 because their accounting staff were the
2 ones to do that.

3 Q. So the loss was not your
4 company, it was General Woods; is that
5 right? That's not a very important
6 question to me but I'm asking.

7 A. That's an accounting function.

8 Q. Okay. Did you talk to Mr.
9 Graham about this at all?

10 A. I don't believe so.

11 Q. Did he attempt to communicate
12 with you about the problem?

13 A. I don't recall. Like in the
14 year 2001, no. But later on when there
15 was a conflict between Wallaceton and
16 Montreal I'm sure he did call, yes.

17 Q. He asked me why --- he attempted
18 to deal with you and you refused to
19 talk to him about it. Is that because
20 Montreal --- you figured it was
21 Montreal's problems not yours?

22 A. Montreal wouldn't perceive it
23 it would be my business to settle a
24 financial dispute that was created by
25 their own accounting department. If

1 that problem had been created by
2 Spencer, absolutely I would have had to
3 step in and try to resolve it.

4 Q. And General Woods is the one
5 that went ahead and filed the legal
6 action not Spencer Veneer; is that
7 right?

8 A. That's correct.

9 Q. So Mr. Graham was expected to
10 deal with Montreal as far as this
11 problem was concerned?

12 A. I believe in trying to reconcile
13 their double payment on this invoice,
14 their draft, yes.

15 Q. Montreal is the headquarters of
16 General Woods and Veneers Limited, I
17 guess; is that right?

18 A. Yes, that's correct.

19 ATTORNEY COLAVECCHI:

20 I have no further
21 questions.

22 ATTORNEY REED:

23 No questions.

24 ATTORNEY COLAVECCHI:

25 Thank you. Thank you

1 very much.

2

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* * * * *

4

DEPOSITION CONCLUDED AT 3:15 P.M.

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1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF ERIE)

3 C E R T I F I C A T E

4 I, Heather E. Diemer, a Notary Public in and for
5 the Commonwealth of Pennsylvania, do hereby certify:

6 That the witness was first duly sworn to testify
7 to the truth, the whole truth, and nothing but the
8 truth; that the foregoing deposition was taken at the
9 time and place stated herein; and that the said
10 deposition was taken stenographically by me and
11 reduced to typewriting, and constitutes a true and
12 correct record of the testimony given by the witness.

13 I further certify that the reading and signing
14 of said depositions were (~~not~~) waived by counsel for
15 the respective parties and by the witness.

16 I further certify that I am not a relative,
17 employee or attorney of any of the parties, nor a
18 relative or employee of counsel, and that I am in no
19 way interested directly or indirectly in this action.

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 and stamp this 29th day of Dec. 2003.

22 Heather E. Diemer

23
24
25
NOTARIAL SEAL
HEATHER E. DIEMER, Notary Public
Waterford Twp., Erie County, PA
My Commission Expires Sept. 18, 2004

•PITTSBURGH, PA

•CLEARFIELD, PA

•STATE COLLEGE, PA

•HARRISBURG, PA

•ERIE, PA

•OIL CITY, PA

•HARRISBURG, PA

SARGENT'S
COURT REPORTING
SERVICE, INC.

210 Main Street
Johnstown, PA 15901

•INDIANA, PA

•GREENSBURG, PA

•PHILADELPHIA, PA

•SOMERSET, PA

•WILKES-BARRE, PA

•CHARLESTON WV

Exhibit C

SPENCER VENEER LLC

52406

Log Scale Report

Draft : 30160

Date : 08/01/2001	Time : 11:16:15	Insp : TNC	Gate : 1	Yard : 1				
Vendor : WALLACETN	Trucker :	Logger :						
Tract : WALLACETN	Scale Method : DOYLE							
Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reason
128-017421	CHERRY	A	10	17	106	\$6500.00	\$ 689.00	
128-017422	CHERRY	A	10	16	90	\$6500.00	\$ 585.00	
128-017423	CHERRY	A	13	14	81	\$6500.00	\$ 526.50	
128-017424	CHERRY	A	11	14	69	\$6500.00	\$ 448.50	
128-017425	CHERRY	A	10	14	62	\$6500.00	\$ 403.00	
128-017426	CHERRY	A	10	15	75	\$6500.00	\$ 487.50	
128-017427	CHERRY	A	13	15	98	\$6500.00	\$ 637.00	
128-017428	CHERRY	A	10	16	90	\$6500.00	\$ 585.00	
128-017429	CHERRY	A	12	14	75	\$6500.00	\$ 487.50	
128-017430	CHERRY	A	10	16	90	\$6500.00	\$ 585.00	
128-017431	CHERRY	A	8	15	60	\$6500.00	\$ 390.00	
128-017432	CHERRY	A	12	14	75	\$6500.00	\$ 487.50	
128-017433	CHERRY	A	8	15	60	\$6500.00	\$ 390.00	
128-017434	CHERRY	A	8	14	50	\$6500.00	\$ 325.00	
128-017435	CHERRY	A	9	16	81	\$6500.00	\$ 526.50	
128-017436	CHERRY	A	10	13	50	\$6500.00	\$ 325.00	
128-017437	CHERRY	A	12	15	91	\$6500.00	\$ 591.50	
128-017438	CHERRY	A	10	14	62	\$6500.00	\$ 403.00	
128-017439	CHERRY	A	13	16	117	\$6500.00	\$ 760.50	
128-017440	CHERRY	A	9	17	95	\$6500.00	\$ 617.50	
128-017441	CHERRY	A	9	17	95	\$6500.00	\$ 617.50	
128-017442	CHERRY	A	9	14	56	\$6500.00	\$ 364.00	
128-017443	CHERRY	A	10	17	106	\$6500.00	\$ 689.00	
128-017444	CHERRY	A	9	15	68	\$6500.00	\$ 442.00	
128-017445	CHERRY	A	9	16	81	\$6500.00	\$ 526.50	
128-017462	CHERRY	A	12	20	192	\$7500.00	\$1440.00	
128-017463	CHERRY	A	13	20	208	\$7500.00	\$1560.00	
128-017464	CHERRY	A	9	18	110	\$7500.00	\$ 825.00	
128-017465	CHERRY	A	10	17	106	\$6500.00	\$ 689.00	
128-017466	CHERRY	A	9	20	144	\$7500.00	\$1080.00	
128-017467	CHERRY	A	8	23/21	180	\$7500.00	\$1350.00	
128-017468	CHERRY	A	8	21	144	\$6500.00	\$ 936.00	
128-017469	CHERRY	A	11	21	199	\$7500.00	\$1492.50	
128-017470	CHERRY	A	11	20	176	\$7500.00	\$1320.00	
128-017471	CHERRY	A	10	17	106	\$6500.00	\$ 689.00	
128-017472	CHERRY	A	13	21	235	\$7500.00	\$1762.50	
128-017473	CHERRY	A	8	28	288	\$7500.00	\$2160.00	
128-017474	CHERRY	A	11	24	275	\$7500.00	\$2062.50	

01 AOUT 2001

SPENCER VENEER LLC

Log Scale Report

Draft : 30160

Date : 08/01/2001 Time : 11:16:15 Insp : TNC Gate : 1 Yard : 1								
Vendor : WALLACETN Trucker : Logger :								
Tract : WALLACETN Scale Method : DOYLE								
Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reason
128-017475	CHERRY	A	10	16	90	\$6500.00	\$ 585.00	
128-017476	CHERRY	A	8	18	98	\$7500.00	\$ 735.00	
128-017477	CHERRY	A	12	16	108	\$6500.00	\$ 702.00	
128-017478	CHERRY	A	10	14	62	\$6500.00	\$ 403.00	
128-017479	CHERRY	A	12	15	91	\$7500.00	\$ 682.50	
128-017480	CHERRY	A	10	14	62	\$ 0.00	\$ 0.00	
128-017481	CHERRY	A	10	15	75	\$6500.00	\$ 487.50	
128-017482	CHERRY	A	11	16	99	\$7500.00	\$ 742.50	
128-017483	CHERRY	A	10	16	90	\$7500.00	\$ 675.00	
128-017484	CHERRY	A	9	17	95	\$7500.00	\$ 712.50	
128-017485	CHERRY	A	14	17	148	\$7500.00	\$1110.00	
128-017486	CHERRY	A	8	18	98	\$6500.00	\$ 637.00	
128-017487	CHERRY	A	12	17	127	\$6500.00	\$ 825.50	
128-017488	CHERRY	A	14	14	88	\$6500.00	\$ 572.00	
128-017489	CHERRY	A	11	15	83	\$6500.00	\$ 539.50	
128-017490	CHERRY	A	11	16	99	\$7500.00	\$ 742.50	
128-017491	CHERRY	A	12	23	271	\$7500.00	\$2032.50	
128-017492	CHERRY	A	9	18	110	\$6500.00	\$ 715.00	
128-017493	CHERRY	A	9	19	127	\$6500.00	\$ 825.50	
128-017494	CHERRY	A	10	21	181	\$6500.00	\$1176.50	
128-017495	CHERRY	A	9	22	182	\$7500.00	\$1365.00	
128-017496	CHERRY	A	12/13	19	169	\$7500.00	\$1267.50	
128-017497	CHERRY	A	13	23	293	\$7500.00	\$2197.50	
128-017446	HARD MAPL	A	10	13	50	\$3200.00	\$ 160.00	
128-017447	HARD MAPL	A	10	16	90	\$3200.00	\$ 288.00	
128-017448	HARD MAPL	A	10	14	62	\$3200.00	\$ 198.40	
128-017449	HARD MAPL	A	10	20	160	\$3200.00	\$ 512.00	
128-017450	HARD MAPL	A	11	14	69	\$3200.00	\$ 220.80	
128-017451	HARD MAPL	A	8	15	60	\$3200.00	\$ 192.00	
128-017452	HARD MAPL	A	10	13	50	\$3200.00	\$ 160.00	
128-017453	HARD MAPL	A	9	18	110	\$3200.00	\$ 352.00	
128-017454	HARD MAPL	A	9	14	56	\$3200.00	\$ 179.20	
128-017455	HARD MAPL	A	9	15/14	68	\$3200.00	\$ 217.60	
128-017456	HARD MAPL	A	10	14	62	\$3200.00	\$ 198.40	
128-017457	HARD MAPL	A	10	18/17	122	\$3200.00	\$ 390.40	
128-017458	HARD MAPL	A	9	17	95	\$3200.00	\$ 304.00	
128-017459	HARD MAPL	A	9	13	45	\$3200.00	\$ 144.00	
128-017460	HARD MAPL	A	10	15	75	\$3200.00	\$ 240.00	

Log Scale Report

Date : 08/01/2001	Time : 11:16:15	Insp : TNC	Gate : 1	Yard : 1				
Vendor : WALLACETN	Trucker :	Logger :						
Tract : WALLACETN		Scale Method : DOYLE						
Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reason
28-017461	HARD MAPL A		8	18	98	\$3200.00	\$ 313.60	
Total Number of Logs :					77	Number of Defects :		0
Total Board Feet :					8464			
Comments :					Total Amount Due : \$ 54057.40			

SPENCER VENEER LLC

Load Summary Report

Draft : 30160

Date : 08/01/2001	Time : 11:16:15	Insp : TNC	Gate : 1	Yard : 1	
Vendor : WALLACETN	Trucker :	Logger :			
Tract : WALLACETN		Scale Method : DOYLE			
Species	Grade	Number of Logs	Total Footage	Total Amount Paid	Sub-Footage
CHERRY	A	61	7192	49987.00	7192
Spc Total		61	7192	\$ 49987.00	7192
HARD MAPL	A	16	1272	4070.40	1272
Spc Total		16	1272	\$ 4070.40	1272
Total Number of Logs : 77			Number of Defects : 0		Total Board Feet : 8464
Comments :			Total Amount Due : \$ 54057.40		

Freight \$ 1400.00 / dtd
\$ 55457.40

Please Wire Transfer into
his Bank ASAP!!

Wallaceton Hardwoods
NBOC - Attention: Paul Oris
ACCT# 103949914175
ABA# 44854719

ABA# 043306826

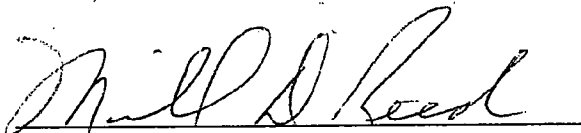
CERTIFICATE OF SERVICE

I certify that I am this day serving a copy of the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure, by depositing a copy of same in the United States Mail, Harrisburg, Pennsylvania, with first-class postage, prepaid, as follows:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

METTE, EVANS & WOODSIDE

By:



Michael D. Reed, Esquire

Sup. Ct. I.D. No. 35193

Jennifer A. Yankanich, Esquire

Sup. Ct. I.D. No. 84201

3401 North Front Street

Harrisburg, PA 17110

Phone: (717) 232-5000

Attorneys for Plaintiff

General Woods & Veneers, LTD

Date: February 17, 2004



6186

3819

SPENCER VENEER LLC

Log Scale Veneer Report

Draft : 3000

Date : 04/12/2001		Time : 16:01:18		Insp : TOM		Gate : 1		Yard : 1	
Vendor : WALLACTON		Trucker :		Logger :					
Tract :		Scale Method : DOYLE							
Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reasc	
127-002016	CHERRY	C24015	11	15	83	\$5000.00	\$ 415.00		
127-002000	CHERRY	A22856	12	15	91	\$6500.00	\$ 591.50	NEW TAGS	
127-002001	CHERRY	A22862	11	13	55	\$6500.00	\$ 357.50		
127-002002	CHERRY	A22828	9	15	68	\$5000.00	\$ 340.00		
127-002003	CHERRY	A22839	9	18	110	\$6500.00	\$ 715.00		
127-002004	CHERRY	A22859	10	17	106	\$6500.00	\$ 689.00		
127-002005	CHERRY	A22860	11	16	99	\$4500.00	\$ 445.50		
127-002006	CHERRY	A22864	8	17	84	\$6500.00	\$ 546.00		
127-002007	CHERRY	A22865	8	16	72	\$5500.00	\$ 396.00		
127-002008	CHERRY	A22783	9	20	144	\$6000.00	\$ 864.00		
127-002009	CHERRY	A22784	8	19	112	\$6500.00	\$ 728.00		
127-002010	CHERRY	A22999	12	14	75	\$6500.00	\$ 487.50		
127-002011	CHERRY	A24021	13	19	183	\$6500.00	\$ 1189.50		
127-002012	CHERRY	A24007	9	17	95	\$6500.00	\$ 617.50		
127-002013	CHERRY	A24006	9	16	81	\$6500.00	\$ 526.50		
127-002014	CHERRY	A24025	9	15	68	\$6500.00	\$ 442.00		
127-002015	CHERRY	A24010	13	18	159	\$5000.00	\$ 795.00	GUM	
127-002017	CHERRY	A24924	12	16	108	\$6500.00	\$ 702.00		
127-002018	CHERRY	A22948	14	17	148	\$6500.00	\$ 962.00		
127-002019	CHERRY	A22992	11	16	99	\$6500.00	\$ 643.50		
127-002020	CHERRY	A22941	9	13	45	\$6500.00	\$ 292.50		
127-002021	CHERRY	A24003	9	15	68	\$6500.00	\$ 442.00		
127-002022	CHERRY	A22849	8	17	84	\$6000.00	\$ 504.00		
127-002023	CHERRY	A22993	10	14	62	\$5000.00	\$ 310.00		
127-002024	CHERRY	A22758	13	14	81	\$6500.00	\$ 526.50		
127-002025	CHERRY	A22852	12	14	75	\$6500.00	\$ 487.50		
127-002026	CHERRY	A22789	10	17	106	\$5500.00	\$ 583.00		
127-002027	CHERRY	A22733	14	16	126	\$6500.00	\$ 819.00		
127-002028	CHERRY	A22792	10	15	75	\$6500.00	\$ 487.50		
127-002029	CHERRY	A22761	8	14	50	\$6500.00	\$ 325.00		
127-002030	CHERRY	A22015	14	16	126	\$6500.00	\$ 819.00		
127-002031	CHERRY	A22205	12	19	169	\$5500.00	\$ 929.50		
127-002032	CHERRY	A22846	10	16	90	\$6500.00	\$ 585.00		
127-002033	CHERRY	A22282	9	20	144	\$6500.00	\$ 936.00		
127-002034	CHERRY	A22283	8	19	112	\$6500.00	\$ 728.00		
127-002035	CHERRY	A22016	9	18	110	\$6500.00	\$ 715.00		
127-002036	CHERRY	A22017	9	17	95	\$6500.00	\$ 617.50		
127-002037	CHERRY	A22740	9	17	95	\$6000.00	\$ 570.00		

SPENCER VENEER LLC

Log Scale Report

Draft : 3000

Date : 04/12/2001		Time : 16:01:18		Insp : TOM		Gate : 1		Yard : 1	
Vendor : WALLACTON		Trucker :		Logger :					
Tract :		Scale Method : DOYLE							
Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reason	
127-002076	CHERRY	mk A1490	10	15	75	\$6000.00	\$ 450.00		
127-002077	CHERRY	A1498	12	15	91	\$6500.00	\$ 591.50		
127-002078	CHERRY	WH A22353	10	16	90	\$6000.00	\$ 540.00		
127-002079	CHERRY	A22335	10	15	75	\$6500.00	\$ 487.50		
127-002080	CHERRY	A22675	10	16	90	\$5000.00	\$ 450.00		
127-002081	CHERRY	A22428	9	15	68	\$6500.00	\$ 442.00		
127-002082	CHERRY	A22672	10	15	75	\$6000.00	\$ 450.00		
127-002083	CHERRY	A20503	10/12	17	106	\$6500.00	\$ 689.00	SHAKE	
127-002084	CHERRY	A22645	10	17	106	\$6500.00	\$ 689.00		
127-002085	CHERRY	A22652	10	16	90	\$6500.00	\$ 585.00		
127-002086	CHERRY	A22661	9	15	68	\$6500.00	\$ 442.00		
127-002087	CHERRY	A22647	9	16	81	\$6500.00	\$ 526.50		
127-002088	CHERRY	A22508	14	16	126	\$6500.00	\$ 819.00		
127-002089	CHERRY	A22300	11	16	99	\$6500.00	\$ 643.50		
127-002090	CHERRY	A22510	8	15	60	\$6000.00	\$ 360.00		
127-002091	CHERRY	A20816	9	17	95	\$6500.00	\$ 617.50		
127-002092	CHERRY	A22546	9	14	56	\$6000.00	\$ 336.00		
127-002093	CHERRY	A22287	8	17	84	\$6000.00	\$ 504.00		
127-002094	CHERRY	A22552	12	16	108	\$6500.00	\$ 702.00		
127-002095	CHERRY	A22534	13	18	159	\$6000.00	\$ 954.00	HEART OFF	
127-002096	CHERRY	A22482	10	15	75	\$6000.00	\$ 450.00		
127-002101	CHERRY	A24067	9	15	68	\$6500.00	\$ 442.00	TAGS SCREW	
127-002102	CHERRY	A24064	9	15	68	\$6500.00	\$ 442.00		
127-002103	CHERRY	A22536	9	15	68	\$6500.00	\$ 442.00		
127-002104	CHERRY	A22281	9	16	81	\$6500.00	\$ 526.50		
127-002105	CHERRY	A20974	10	18	122	\$6500.00	\$ 793.00		
127-002106	CHERRY	A22538	10	20	160	\$6500.00	\$ 1040.00		
127-002107	CHERRY	A22504	10	19	141	\$6500.00	\$ 916.50		
127-002108	CHERRY	A22293	12	16	108	\$6500.00	\$ 702.00		
127-002109	CHERRY	A22555	11	21	199	\$6500.00	\$ 1293.50		
127-002110	CHERRY	A22303	10	18	122	\$6500.00	\$ 793.00		
127-002111	CHERRY	A	10	18	122	\$6500.00	\$ 793.00		
127-002112	CHERRY	A22119	9	20	144	\$6000.00	\$ 864.00		
127-002113	CHERRY	A22505	10	21	181	\$6500.00	\$ 1176.50		
127-002114	CHERRY	A22184	9	14	56	\$6000.00	\$ 336.00		
127-002115	CHERRY	A22541	9	14	56	\$6500.00	\$ 364.00		
127-002116	CHERRY	A22052	9	17	95	\$6500.00	\$ 617.50		
127-002117	CHERRY	A22051	9	16	81	\$6500.00	\$ 526.50		

SPENCER VENEER LLC

Log Scale Report

Draft : 3000

Date : 04/12/2001 Time : 16:01:18 Insp : TOM Gate : 1 Yard : 1
 Vendor : WALLACTON Trucker : I Logger :
 Tract : I Scale Method : DOYLE

Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reason
127-002038	CHERRY	A22735	13	14	81	\$6500.00	\$ 526.50	
127-002039	CHERRY	A22755	10	15	75	\$6500.00	\$ 407.50	
127-002040	CHERRY	A22742	10	21	181	\$6500.00	\$1176.50	
127-002041	CHERRY	A22845	8	16	72	\$6500.00	\$ 468.00	
127-002042	CHERRY	A22738	13	15	98	\$6500.00	\$ 637.00	
127-002043	CHERRY	A22730	12	13	61	\$6500.00	\$ 396.50	
127-002044	CHERRY	A22019	12	19	169	\$6000.00	\$1014.00	
127-002045	CHERRY	A22010	9	20	144	\$6500.00	\$ 936.00	
127-002046	CHERRY	A22011	8	19	112	\$6500.00	\$ 728.00	
127-002047	CHERRY	A22650	13	17	137	\$6500.00	\$ 890.50	
127-002048	CHERRY	AV4368	12	16	108	\$6000.00	\$ 648.00	
127-002049	CHERRY	A22752	10	14	62	\$6000.00	\$ 372.00	
127-002050	CHERRY	A22285	13	18	159	\$6500.00	\$1033.50	
127-002051	CHERRY	A20446	12	18	147	\$6500.00	\$ 955.50	
127-002052	CHERRY	A19967	8	18	98	\$6000.00	\$ 588.00	
127-002053	CHERRY	A20558	13	19	183	\$6500.00	\$1189.50	
127-002054	CHERRY	A22727	10	14	62	\$6000.00	\$ 372.00	
127-002055	CHERRY	A22059	13	14	81	\$6000.00	\$ 486.00	
127-002056	CHERRY	A22032	8	16	72	\$6000.00	\$ 432.00	
127-002057	CHERRY	A22031	8	15	60	\$6500.00	\$ 390.00	
127-002058	CHERRY	A22444	9	18	110	\$6500.00	\$ 715.00	
127-002059	CHERRY	A2246	110	17	106	\$5000.00	\$ 530.00	
127-002060	CHERRY	A22654	10	15	75	\$6500.00	\$ 487.50	
127-002061	CHERRY	A22256	10	15	75	\$6500.00	\$ 487.50	
127-002062	CHERRY	A22117	9	14	56	\$5500.00	\$ 308.00	
127-002063	CHERRY	AMK149	11	18	135	\$6500.00	\$ 877.50	
127-002064	CHERRY	A 149	110	17	106	\$6500.00	\$ 689.00	
127-002065	CHERRY	A22219	12	19	169	\$6500.00	\$1048.50	
127-002066	CHERRY	A22218	9	18	110	\$6000.00	\$ 660.00	
127-002067	CHERRY	A22003	11	17	116	\$6500.00	\$ 754.00	
127-002068	CHERRY	A22002	11	16	99	\$6500.00	\$ 643.50	
127-002069	CHERRY	A20999	9	18	110	\$6500.00	\$ 715.00	
127-002070	CHERRY	A20998	9	17	95	\$6500.00	\$ 617.50	
127-002071	CHERRY	A20997	8	16	72	\$5000.00	\$ 360.00	
127-002072	CHERRY	A22331	9	15	68	\$6500.00	\$ 442.00	
127-002073	CHERRY	A22360	13	16	117	\$6500.00	\$ 760.50	
127-002074	CHERRY	A22728	10	16	90	\$6500.00	\$ 585.00	
127-002075	CHERRY	A20729	9	19	127	\$6500.00	\$ 825.50	

Log Scale Report

Date : 04/12/2001		Time : 16:01:18		Insp : TOM		Gate : 1		Yard : 1	
Vendor : WALLACTON		Trucker :		Logger :					
Tract :		Scale Method : DOYLE							
Log#	Species	Grade	Length	Diam.	Bft	\$/MBft	Amount	Defect&Reason	
127-002118	CHERRY	A22606	13	16	117	\$6500.00	\$ 760.50		
127-002119	CHERRY	A22549	9	15	68	\$6200.00	\$ 408.00		
127-002120	CHERRY	A22540	10	17	106	\$6500.00	\$ 689.00		
127-002121	CHERRY	A22492	10	17	106	\$6200.00	\$ 636.00		
127-002122	CHERRY	A22587	10	15	75	\$6500.00	\$ 487.50		
127-002123	CHERRY	A22553	9	18	110	\$6500.00	\$ 715.00		
127-002124	CHERRY	A22546	9	16	81	\$6500.00	\$ 526.50		
127-002125	CHERRY	A22488	12	18	147	\$6500.00	\$ 955.50		
127-002126	CHERRY	A22050	10	15	75	\$6500.00	\$ 487.50		
127-002127	CHERRY	A22049	10	14	62	\$6500.00	\$ 403.00		
127-002128	CHERRY	A22610	9	17	95	\$6500.00	\$ 617.50		
127-002129	CHERRY	A22609	12	16	108	\$6500.00	\$ 702.00		
127-002130	CHERRY	A22616	10	15	75	\$6500.00	\$ 487.50		
127-002131	CHERRY	A22615	10	14	62	\$6500.00	\$ 403.00		
127-002132	CHERRY	A22161	10	18	122	\$6500.00	\$ 793.00		
127-002133	CHERRY	A22160	11	17	116	\$6500.00	\$ 754.00		
127-002134	CHERRY	A22164	9	19	127	\$6500.00	\$ 825.50		
127-002135	CHERRY	A22163	9	18	110	\$6500.00	\$ 715.00		
127-002136	CHERRY	A22162	9	17	95	\$5000.00	\$ 475.00		
127-002137	CHERRY	A24074	9	18	110	\$6500.00	\$ 715.00		
127-002138	CHERRY	A20952	9	17	95	\$6500.00	\$ 617.50		
127-002139	CHERRY	A24075	8	17	84	\$6500.00	\$ 546.00		
127-002140	CHERRY	A22156	11	15	83	\$6500.00	\$ 539.50		
127-002141	CHERRY	A24076	8	16	72	\$6500.00	\$ 468.00		
127-002142	CHERRY	A20954	8	16	72	\$5500.00	\$ 396.00		
127-002143	CHERRY	A24077	8	18	98	\$6500.00	\$ 637.00		
127-002144	CHERRY	A20956	8	16	72	\$6500.00	\$ 468.00		
127-002145	CHERRY	A22155	9	20	144	\$6500.00	\$ 936.00		
127-002146	CHERRY	A22154	10	19	141	\$6500.00	\$ 916.50		
127-002147	CHERRY	A22624	14	14	88	\$6500.00	\$ 572.00		

Total Number of Logs : 144

Number of Defects : 5

Total Board Feet : 144

Comments :

Total Amount Due : \$ 90862.00

Received

SPENCER VENEER LLC

Receive Logs Report

Date : 04/16/2001
Broker : MARK BRADYReference # : ~~0000000000~~
Origin : WV

Log #	Lot#	Diam	Specy	Grade	HT	Rls
027000000	0	19	CHERRY	X	112	D
027000000	0	20	CHERRY	X	108	D
027000013	0	16	CHERRY	W	72	D
027000017	10	17	CHERRY	W	106	D
027000007	0	16	CHERRY	W	72	D
027000006	0	17	CHERRY	W	84	D
027000017	0	17	CHERRY	W	84	D
027000018	7	10	CHERRY	W	63	D
027000034	0	14	CHERRY	Y	118	D
027000034	0	20	CHERRY	Y	144	D
027000017	0	14	CHERRY	X	30	D
027000017	0	14	CHERRY	X	30	D
027000011	14	15	CHERRY	W	197	D
027000011	13	16	CHERRY	X	117	D
027000011	7	16	CHERRY	X	63	D
027000011	0	17	CHERRY	X	64	D
027000011	0	16	CHERRY	X	72	D
027000011	0	17	CHERRY	Y	84	D
027000011	0	17	CHERRY	Y	112	D
027000011	0	19	CHERRY	Y	110	D
027000011	0	14	CHERRY	X	60	D
027000011	0	15	CHERRY	X	72	D
027000011	0	16	CHERRY	X	80	D
027000011	10	16	CHERRY	W	106	D
027000011	10	17	CHERRY	W	106	D
027000011	9	16	CHERRY	W	81	D
027000011	6	17	CHERRY	W	84	D
027000011	0	18	CHERRY	W	98	D
027000011	10	17	CHERRY	W	106	D
027000011	11	18	CHERRY	W	135	D
027000011	11	16	CHERRY	Y	93	D
027000011	11	17	CHERRY	Y	116	D
027000011	10	18	CHERRY	X	122	D
027000011	10	19	CHERRY	X	141	D
027000011	0	17	CHERRY	W	84	D
027000011	0	18	CHERRY	W	88	D
027000011	0	19	CHERRY	W	107	D
027000011	7	19	CHERRY	Y	110	D
027000011	0	19	CHERRY	Y	160	D
027000011	10	20	CHERRY	X	110	D
027000011	0	18	CHERRY	X	107	D
027000011	10	19	CHERRY	W	90	D
027000011	11	17	CHERRY	Y	116	D
027000011	0	15	CHERRY	Y	83	D
027000011	0	16	CHERRY	Y	81	D
027000011	0	15	CHERRY	X	83	D

SPENCER VENEER, LLC
LOG YARD RECEIPT

Date: 4-16-01

Nº 10192

Trucker: Mark Graham

Supplier: Wallacetown Pa.

Species	# of Logs	Bd. Ft.
Cherry VENEER		
Total Bd. Ft:		

Received by: Lobby 1.4.14

13 Pa.C.S.A. § 1204

Note 4

could not have been discovered until flowering time. *Q. Vandenberg and*

Sons, N. V. v. Siter, 204 A.2d 494, 204 Pa.Super. 392, Super.1964.

COMMERCIAL CODE

§ 1205. Course of dealing and usage of trade

(a) **Definition of course of dealing.**—A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(b) **Usage of trade.**—A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(c) **Effect on agreements.**—A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(d) **Construction.**—The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(e) **Applicable usage of trade.**—An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(f) **Admissibility of evidence.**—Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

1979, Nov. 1, P.L. 255, No. 86, § 1, effective Jan. 1, 1980.

Uniform Commercial Code Comment

Prior Uniform Statutory Provision: No such general provision but see Sections 9(1), 15(5), 18(2), and 71, Uniform Sales Act.

For text of prior provision, see Appendix in end volume of Uniform Laws Annotated, U.C.C., Master Edition.

Purposes: This section makes it clear that:

1. This Act rejects both the "lay-dictionary" and the "conveyancer's" reading of a commercial agreement. Instead the meaning of the agreement of the parties is to be determined by the language used by them

GENERAL PROVISIONS

and by their action, read and interpreted in the light of commercial practices and other surrounding circumstances. The measure and background for interpretation are set by the commercial context, which may explain and supplement even the language of a formal or final writing.

2. Course of dealing under subsection (1) is restricted, literally, to a sequence of conduct between the parties previous to the agreement. However, the provisions of the Act on course of performance make it clear that a sequence of conduct after or under the agreement may have equivalent meaning. (Section 2-208.)

3. "Course of dealing" may enter the agreement either by explicit provisions of the agreement or by tacit recognition.

4. This Act deals with "usage of trade" as a factor in reaching the commercial meaning of the agreement which the parties have made. The language used is to be interpreted as meaning what it may fairly be expected to mean to parties involved in the particular commercial transaction in a given locality or in a given vocation or trade. By adopting in this context the term "usage of trade" this Act expresses its intent to reject those cases which see evidence of "custom" as representing an effort to displace or negate "established rules of law". A distinction is to be drawn between mandatory rules of law such as the Statute of Frauds provisions of Article 2 on Sales whose very office is to control and restrict the actions of the parties, and which cannot be abrogated by agreement, or by a usage of trade, and those rules of law (such as those in Part 3 of Article 2 on Sales) which fill in points which the parties have not considered and in fact agreed upon. The latter rules hold "unless otherwise agreed" but yield to the contrary agreement of the parties. Part of the agreement of the parties to which such rules yield is to be

sought for which full give part language use of comm ling any hold only derstandi

5. A u tion (2) n observanc English te doned in it is not trade be "universa requirem recognitic usages ar served by cent deal ready to There is r nition of chants in

6. The ling expl tracts and 2-302) a which re carries for the ancie tom or us However, The very tance mal that the u burden is establish But the a ing of usa ued to th with the consciona should be

7. Sub scribed ef parties "a reinforces tion (2) re only the c servance" This subs point of s

CERTIFICATE OF SERVICE

I certify that I am this day serving a copy of the foregoing document upon the person(s) and in the manner indicated below, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure, by depositing a copy of same in the United States Mail at Harrisburg, Pennsylvania, with first-class postage, prepaid, as follows:

Joseph Colavecchi, Esquire
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

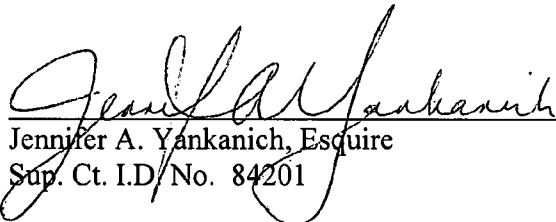
VIA HAND DELIVERY:

Clearfield County Prothonotary and Court Administrator

Respectfully submitted,

METTE, EVANS & WOODSIDE

By:


Jennifer A. Yankanich, Esquire
Sup. Ct. I.D. No. 84201

3401 North Front Street
P. O. Box 5950
Harrisburg, PA 17110-0950
(717) 232-5000 - Phone
(717) 236-1816 - Fax

Attorneys for Plaintiff, General Woods & Veneers,
LTD.

Date: March 10, 2004