

02-984-CD
WALKER LUMBER, INC. -vs- SMITH TRUCKING

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

WALKER LUMBER, INC.,

Plaintiff

vs.

SMITH TRUCKING,

Defendant

No. 02 • 984 • CO

Type of Pleading: Complaint

Filed on behalf of: Walker Lumber, Inc.

Counsel of Record for this party:

THE HOPKINS LAW FIRM

DAVID J. HOPKINS, ESQUIRE

Attorney at Law

Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE

Attorney at Law

Supreme Court No. 83998

900 Beaver Drive

DuBois, Pennsylvania 15801

(814) 375-0300

FILED

JUN 20 2002
019:221 atty Heltzel
William A. Shaw
Prothonotary

pd 80.00

1 cc atty Heltzel

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

| | | |
|----------------------|---|-----|
| WALKER LUMBER, INC., | : | |
| Plaintiff | : | |
| | : | |
| vs. | : | No. |
| | : | |
| SMITH TRUCKING, | : | |
| Defendant | : | |

TO: Defendant

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 is served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

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

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

| | | |
|----------------------|---|-----|
| WALKER LUMBER, INC., | : | |
| Plaintiff | : | |
| | : | |
| vs. | : | No. |
| | : | |
| SMITH TRUCKING, | : | |
| Defendant | : | |

COMPLAINT

AND NOW, comes Defendant, Walker Lumber, Inc., by and through its attorneys, The Hopkins Law Firm, and says as follows:

1. Walker Lumber, Inc. is a Pennsylvania corporation maintaining a principal business address in Woodland, Pennsylvania. Plaintiff's mailing address is P.O. Box 60, Woodland, Pennsylvania 16881.

2. Smith Trucking is believed to be a sole proprietor maintaining a principal business address at 1708 4th Avenue North, Clanton, Alabama.

3. Plaintiff is engaged in the business of selling lumber to individuals and entities throughout the United States.

4. In or about February, 2002, Plaintiff contracted to sell timber to J and M Hardwood, 208 Cardsondale Road, Dalton, Georgia 30721.

5. To deliver said lumber, Plaintiff contracted the services of Defendant Smith Trucking to transport the lumber from Woodland, Pennsylvania to Dalton, Georgia.

6. At all material times hereto, Smith Trucking held itself out as an expert in the field of trucking services and able to safely transport loads of lumber from Pennsylvania to Georgia.

7. Plaintiff retained Defendant to transport lumber from Woodland, Pennsylvania to Dalton, Georgia in a covered truck.

8. Smith Trucking's employees, agents or contractors transported the lumber covered with tarps from Woodland, Pennsylvania into the State of Georgia. Without cause nor reason, said Smith Trucking driver removed the truck tarps thereby exposing the wood approximately twelve (12) miles from its ultimate destination at a time when it was raining or shortly thereafter began to rain.

9. As a result of the actions of Smith Trucking's employees, agents or contractors, said lumber became wet and damaged to the extent that Plaintiff's customer, J and M Hardwood of Dalton, Georgia would not accept the lumber.

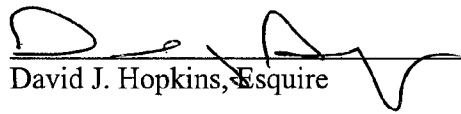
10. As a result of the aforesaid actions of Defendant, its employees, agents or contractors, the truckload of lumber was ruined.

11. The value of the lumber is \$23,248.88.

12. The actions of the Defendant constitute both breach of contract and negligence and as a result thereof, Plaintiff has suffered damages in the amount of \$23,248.88.

WHEREFORE, Plaintiff demands judgment against Defendant in the amount of \$23,248.88 together with pre and post judgment interest and such other and further relief as the Court deems fair, just and equitable.

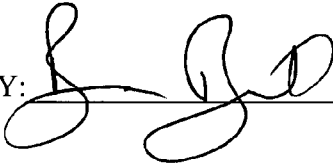
Respectfully submitted,


David J. Hopkins, Esquire

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

WALKER LUMBER, INC.


BY:  _____

Date: 6/12/02

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

| | | |
|------------------------------|---|-------------------------------|
| WALKER LUMBER, INC., | : | |
| Plaintiff, | : | No. 02 - 984 - CD |
| | : | |
| vs. | : | Type of Pleading: |
| | : | ANSWER, NEW MATTER, |
| SMITH'S TRUCKING, | : | COUNTERCLAIM, JOINDER |
| Defendant, | : | |
| | : | Filed on behalf of: DEFENDANT |
| | : | |
| | : | Counsel of Record for this |
| | : | Party: |
| HARDWOODS OF MICHIGAN, INC., | : | |
| Additional Defendant. | : | Joseph H. Ellermeyer, Esquire |
| | : | Supreme Court No. 43944 |
| | : | |
| | : | ACHILLE, ELLERMEYER & FRENCH |
| | : | 379 Main Street |
| | : | Brookville, PA 15825 |
| | : | (814) 849-6701 |
| | : | |

FILED

JUL 26 2002
mll:171nocc
William A. Shaw
Prothonotary 

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

| | | |
|------------------------------|---|-------------------|
| WALKER LUMBER, INC., | : | |
| Plaintiff, | : | No. 02 - 984 - CD |
| | : | |
| vs. | : | |
| | : | |
| SMITH'S TRUCKING, | : | |
| Defendant, | : | |
| | : | |
| HARDWOODS OF MICHIGAN, INC., | : | |
| Additional Defendant. | : | |

NOTICE TO DEFEND

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 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.

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 50-51

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

| | | |
|------------------------------|---|-------------------|
| WALKER LUMBER, INC., | : | |
| Plaintiff, | : | No. 02 - 984 - CD |
| | : | |
| vs. | : | |
| | : | |
| SMITH'S TRUCKING, | : | |
| Defendant, | : | |
| | : | |
| HARDWOODS OF MICHIGAN, INC., | : | |
| Additional Defendant. | : | |

ANSWER, NEW MATTER, COUNTERCLAIM AND JOINDER

AND NOW comes the Defendant, by and through its attorney,
Joseph H. Ellermeyer, Esquire, and files the following Answer,
New Matter, Counterclaim, and Joinder:

ANSWER

1. ADMITTED.
2. ADMITTED.
3. ADMITTED.
4. DENIED. After reasonable investigation of the same, the Defendant is without sufficient knowledge to form a belief as to the same. Strict proof is demanded at trial.
5. DENIED. The Defendant's contract to transport the lumber from Woodland, Pennsylvania, to Dalton, Georgia, was with the Allen Lund Company.
6. ADMITTED.
7. DENIED. Defendant was retained by the Allen Lund Company.

8. ADMITTED IN PART, DENIED IN PART. The Defendant ADMITS that it transported the lumber with tarps and that the tarps were removed approximately 12 miles from the destination. The Defendant DENIES that it was damaged by rain while the lumber was not covered by tarps. Strict proof is demanded at trial.

9. DENIED. The lumber did not become wet and/or damaged because of the Defendant's action and the Defendant denies that the J and M Hardwood of Dalton, Georgia, refused to accept delivery because the lumber was wet and/or damaged. J and M Hardwood refused the load without examining it because it was not covered.

10. DENIED. The Defendant specifically denies that the truckload of lumber was ruined. Strict proof is demanded at trial.

11. DENIED. After reasonable investigation of the same, the Defendant is without sufficient knowledge to form a belief as to the value of the lumber. Strict proof is demanded at trial. By way of further response, the Plaintiff is entitled to recover only for damaged portions of the lumber and/or lost profits.

12. This is a Conclusion of Law to which no response is required. By way of further response, the Defendant DENIES that there was a breach of contract or negligence and that the Plaintiff suffered damages in the amount of \$23,248.88. Strict proof is demanded at time of trial.

WHEREFORE, the Defendant requests this Honorable Court DISMISS the Plaintiff's Complaint.

NEW MATTER

13. Paragraphs 1 through 12 are incorporated herein by reference.

14. Subsequent to learning that J and M Hardwood of Dalton, Georgia, would not accept delivery of the lumber, the Plaintiff, through its agents Hardwoods of Michigan, Inc., and Brian Burt, instructed the Defendant to transport the lumber to Defendant's warehouse in Clanton, Alabama.

15. After sitting in Defendant's warehouse in Clanton, Alabama, for two (2) months, the Defendant, at the instruction of the Plaintiff, through its agents Hardwoods of Michigan, Inc., and Brian Burt, transported the lumber to Hardwoods of Michigan, Inc., 430 Division Street, Clinton, Michigan.

16. Hardwoods of Michigan, Inc., received the lumber at the direction of the Plaintiff, Walker Lumber, as Walker Lumber is a related company of Hardwoods of Michigan, Inc.

17. The maximum amount of allegedly damaged lumber per Hardwoods of Michigan, Inc., was 1,148 board feet valued at \$1,848.23 and was not the entire load as alleged by the Plaintiff in its Complaint.

18. The Defendant requests a credit/offset against the alleged value of the entire load for the undamaged lumber delivered to Hardwoods of Michigan, Inc., per the Plaintiff's instructions.

19. The Plaintiff is equitably estopped from claiming the entire value of the load as damages as the Plaintiff gained benefit from having control of the undamaged lumber and possession of the same.

WHEREFORE, the Defendant requests this Honorable Court DISMISS the Plaintiff's Complaint.

COUNTERCLAIM

20. Paragraphs 1 through 19 are incorporated herein by reference.

21. The Plaintiff in the Counterclaim, the Defendant in the Complaint, is Smith Trucking Company, a corporation licensed under the laws of the State of Alabama with a principal business address at 1706 4th Avenue North, Clanton, Alabama, 35045.

22. The Defendant in the Counterclaim, the Plaintiff in the Complaint, is Walker Lumber, Inc., a Pennsylvania corporation maintaining a principle business address in Woodland, Pennsylvania, and a mailing address at P.O. Box 60, Woodland, Pennsylvania, 16881.

23. At the instruction of the Defendant in the Counterclaim, the Plaintiff in the Counterclaim transported lumber from Woodland, Pennsylvania, to Dalton Georgia, to Clanton, Alabama, and finally to Clinton, Michigan.

24. In transporting lumber for the Defendant in the Counterclaim, the Plaintiff in the Counterclaim incurred costs of

\$1,321.50 for transporting the lumber from Clanton, Alabama, to Clinton, Michigan, and \$775.00 for transporting the lumber from Woodland, Pennsylvania, to Dalton, Georgia.

25. At the instruction of the Defendant in the Counterclaim, the Plaintiff in the Counterclaim stored lumber in its warehouse for a period of two (2) months.

26. In warehousing the lumber at the instruction of the Defendant in the Counterclaim, the Plaintiff in the Counterclaim incurred costs of \$117.00.

WHEREFORE, the Plaintiff in the Counterclaim asks this Honorable Court award it TWO-THOUSAND, TWO-HUNDRED THIRTEEN DOLLARS AND FIFTY CENTS (\$2,213.50) plus costs, interest and attorney fees associated with bringing this matter and any other relief deemed appropriate by this Honorable Court.

**JOINDER OF HARDWOODS OF MICHIGAN, INC.,
AS AN ADDITIONAL DEFENDANT**

27. Paragraphs 1 through 26 are incorporated herein by reference.

28. Hardwoods of Michigan, Inc., is a corporation operating at 430 Division Street, P.O. Box 334, Clinton, Michigan 49236.

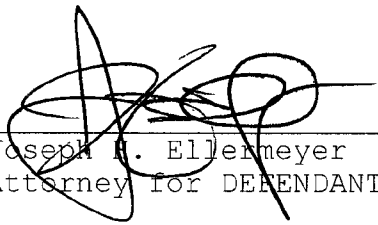
29. Hardwoods of Michigan, Inc., is believed to be the parent company of Walker Lumber, Inc.

30. Hardwoods of Michigan, Inc., received material benefit through the delivery of the lumber from Walker Lumber, Inc., by Smith's Trucking.

31. This economic enrichment to Hardwoods of Michigan, Inc., was the entire load of lumber and no freight costs for delivery of the lumber to its Clinton, Michigan, location.

WHEREFORE, Smith's Trucking, the Defendant in the Complaint, Plaintiff in the Counterclaim, asks this Honorable Court enter judgment against Hardwoods of Michigan, Inc., in the amount of TWENTY-THREE THOUSAND TWO-HUNDRED FORTY-EIGHT DOLLARS AND EIGHTY-EIGHT CENTS (\$23,248.88) for the value of the lumber and ONE THOUSAND THREE-HUNDRED TWENTY-ONE DOLLARS AND FIFTY CENTS (\$1,321.50) for the transportation of the lumber along with interest and costs and such other relief as this Honorable Court sees fit.

Respectfully submitted,



Joseph R. Ellemeyer
Attorney for DEFENDANT

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct to the best of my knowledge. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

SMITH TRUCKING, INC.

Date: 7-17-02

BY: Chris Smith
Chris Smith, President

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

| | | |
|------------------------------|---|-------------------------------|
| WALKER LUMBER, INC., | : | |
| Plaintiff, | : | No. 02 - 984 - CD |
| | : | |
| vs. | : | Type of Pleading: |
| | : | CERTIFICATE OF SERVICE |
| SMITH'S TRUCKING, | : | |
| Defendant, | : | Filed on behalf of: DEFENDANT |
| | : | |
| | : | Counsel of Record for this |
| | : | Party: |
| HARDWOODS OF MICHIGAN, INC., | : | |
| Additional Defendant. | : | Joseph H. Ellermeyer, Esquire |
| | : | Supreme Court No. 43944 |
| | : | |
| | : | ACHILLE, ELLERMEYER & FRENCH |
| | : | 379 Main Street |
| | : | Brookville, PA 15825 |
| | : | (814) 849-6701 |
| | : | |

FILED

JUL 29 2002

013.00 NOCC
William A. Shaw
Prothonotary *E*
KRL

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

| | | |
|------------------------------|---|-------------------|
| WALKER LUMBER, INC., | : | |
| Plaintiff, | : | No. 02 - 984 - CD |
| | : | |
| vs. | : | |
| | : | |
| SMITH'S TRUCKING, | : | |
| Defendant, | : | |
| | : | |
| HARDWOODS OF MICHIGAN, INC., | : | |
| Additional Defendant. | : | |

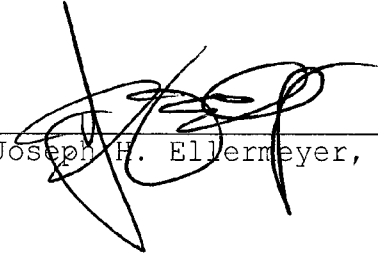
CERTIFICATE OF SERVICE

I, Joseph H. Ellermeyer, Esquire, do hereby swear and affirm that on the 23d day of July, 2002, I served on the Plaintiff, Walker Lumber, Inc., and Hardwoods of Michigan, Inc., a true and correct copy of the Defendant's Answer, New Matter, Countersuit and Joinder by mailing the same by First-Class U.S. Mail, postage prepaid to the following address:

THE HOPKINS LAW FIRM
David J. Hopkins, Esquire
Lea Ann Heltzel, Esquire
900 Beaver Drive
DuBois, PA 15801

Hardwoods of Michigan, Inc. (Certified Mail)
P.O. Box 334 with Complaint
430 Division Street
Clinton, MI 49236

Respectfully submitted,



Joseph H. Ellermeyer, Esquire

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

WALKER LUMBER, INC., :
 :
 :
 Plaintiff : CIVIL ACTION - Law
 :
 vs. : No. 02 CD 984
 :
 SMITHS TRUCKING, : Type of Pleading:
 : CERTIFICATE OF SERVICE
 :
 Defendant : Filed on behalf of: Defendant
 :
 : Counsel of Record for this
 HARDWOODS OF MICHIGAN, INC., : Party:
 :
 Additional Defendant: JOSEPH H. ELLERMEYER, ESQUIRE
 : 379 Main Street
 : Brookville, PA 15825
 : 814-849-6701
 : I.D. No. 43944

FILED

JUL 31 2002
m 11:17:10cc
William A. Shaw
Prothonotary

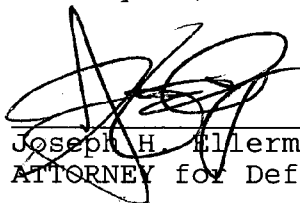
JOSEPH H. ELLERMAYER, ESQUIRE
379 Main Street
Brookville, PA 15825
814-849-6701
I.D. # 43944

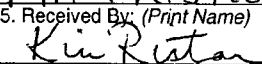
Attorney for the Defendant

WALKER LUMBER, INC., : IN THE COURT OF COMMON PLEAS OF
Plaintiff, : CLEARFIELD COUNTY, PENNSYLVANIA
:
vs. : CIVIL ACTION - Law
:
SMITHS TRUCKING, : No. 02 C.D. 984
Defendant. :
:
HARDWOODS OF MICHIGAN, INC., :
Additional Defendant: :

CERTIFICATE OF SERVICE

I, hereby swear that on July 26, 2002, I served the above-named Additional Defendant with the Plaintiffs Notice and Complaint and the Defendants Answer, New Matter, Counterclaim and Joinder relative to the above-captioned matter. Attached hereto is the original certified mail, return receipt which has been signed by an agent for the Defendant on July 26, 2002.


Joseph H. Ellermeyer
ATTORNEY for Defendant

| | | | | |
|---|--|--|---|--|
| Is your RETURN ADDRESS completed on the reverse side? | SENDER: <input type="checkbox"/> Complete items 1 and/or 2 for additional services. Complete items 3, 4a, and 4b. <input type="checkbox"/> Print your name and address on the reverse of this form so that we can return this card to you. <input type="checkbox"/> Attach this form to the front of the mailpiece, or on the back if space does not permit. <input type="checkbox"/> Write "Return Receipt Requested" on the mailpiece below the article number. <input type="checkbox"/> The Return Receipt will show to whom the article was delivered and the date delivered. | | I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery | |
| | 3. Article Addressed to: Hardwoods of Michigan, Inc. P.O. Box 334 430 Division Street Clinton, MI 49236 | | 4a. Article Number 7000 1530 0000 9215 3068 | |
| | | | 4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD | |
| | 5. Received By: (Print Name) Kim Ristau | | 7. Date of Delivery 7-26-02 | |
| | 6. Signature (Addressee or Agent)  | | 8. Addressee's Address (Only if requested and fee is paid) | |

Thank you for using Return Receipt Service.

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

WALKER LUMBER, INC.,
Plaintiff

vs.

SMITH TRUCKING,
Defendant

No. 02- 984 C.D.

Type of Pleading: Praeipue to Discontinue

Filed on behalf of: Walker Lumber, Inc.

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE

Attorney at Law

Supreme Court No. 42519

900 Beaver Drive

DuBois, Pennsylvania 15801

(814) 375-0300

FILED

AUG 11 2003

William A. Shaw
Prothonotary/Clerk of Courts


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

| | | |
|----------------------|---|------------------|
| WALKER LUMBER, INC., | : | |
| Plaintiff | : | |
| | : | |
| vs. | : | No. 02- C.D. 984 |
| | : | |
| SMITH TRUCKING, | : | |
| Defendant | : | |

PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Kindly mark the above captioned civil action settled and discontinued.


David J. Hopkins, Esquire

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

| | | |
|----------------------|---|--------------------|
| WALKER LUMBER, INC., | : | |
| Plaintiff | : | |
| | : | |
| vs. | : | No. 02- 984 – C.D. |
| | : | |
| SMITH TRUCKING, | : | |
| Defendant | : | |

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Plaintiff's Praecipe to Discontinue, filed on behalf of Walker Lumber, Inc., was forwarding by first class mail, postage prepaid, on the 3rd day of August, 2003, to all counsel of record, addressed as follows:

Joseph H. Ellermeyer, Esquire
Achille, Ellermeyer & French
379 Main Street
Brookville, PA 15825



David J. Hopkins, Esquire
Attorney for Plaintiff

FILED

1000 a Disc.

to Atty Hopkins

8/19:59:34
AUG 11 2003

Copy of Disc. to CIA

William A. Shaw

Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

Walker Lumber, Inc.

Vs.

No. 2002-00984-CD

Smith Trucking

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on August 11, 2003, marked:

Settled and Discontinued

Record costs in the sum of \$80.00 have been paid in full by David J. Hopkins, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 11th day of August A.D. 2003.

William A. Shaw, Prothonotary