

02-1130-CD

Arthur Minds vs E.P. Bender Coal CO

02

02-1130-CD
ARTHUR J. MINDS -vs- E. P. BENDER COAL CO., INC.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.: 46-3-04
DJ Name: Hon. JAMES L. HAWKINS
Address: 251 SPRING STREET P.O. BOX 362 HOUTZDALE, PA
Telephone: (814) 378-7160 16651-0362

JAMES L. HAWKINS
251 SPRING STREET
P.O. BOX 362
HOUTZDALE, PA 16651-0362

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF: NAME and ADDRESS
MINDS, J ARTHUR
PO BOX 95
RAMEY, PA 16671

VS.
DEFENDANT: NAME and ADDRESS
E P BENDER COAL CO. INC.
PO BOX 594
MAIN & LEHMIER ST
CARROLLTOWN, PA 15722

Docket No.: **CV-0000079-02**
Date Filed: **4/23/02**



THIS IS TO NOTIFY YOU THAT:

Judgment:

FOR PLAINTIFF

02-1130-60

☒ Judgment was entered for: (Name) MINDS, J ARTHUR

☒ Judgment was entered against: (Name) E P BENDER COAL CO. INC.

in the amount of \$ 8,325.30 on: (Date of Judgment) 6/24/02

☐ Defendants are jointly and severally liable. (Date & Time) _____

☐ Damages will be assessed on:

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to Attachment/Act 5 of 1996 \$ _____

☐ Levy is stayed for _____ days or ☐ generally stayed.

☐ Objection to levy has been filed and hearing will be held:

Amount of Judgment	\$ <u>7,829.81</u>
Judgment Costs	\$ <u>104.00</u>
Interest on Judgment	\$ <u>391.49</u>
Attorney Fees	\$ <u>.00</u>
Total	\$ <u>8,325.30</u>
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total	\$ _____

FILED

Date:	Place:
Time:	JUL 24 2002 William A. Shaw Prothonotary

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

6-24-02 Date James L. Hawkins, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.
_____, Date _____, District Justice

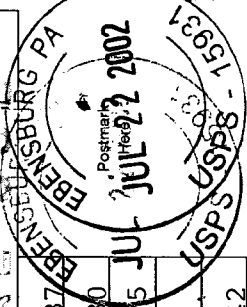
My commission expires first Monday of January,

2006

SEAL

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE	
Postage	\$.37
Certified Fee	2.10
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.42



Sent To
 District Justice James L. Hawkins
 Street, Apt. No. 251 Spring St., PO Box 362
 or PO Box No. 251 Spring St., PO Box 362
 City, State, ZIP+4
 Houtzdale, PA 16651-0362

PS Form 3800, January 2001 See Reverse for Instructions

7001 0152 0002 2679 6928

Certified Mail Provides:

- A mailing receipt
- A unique identifier for your mailpiece
- A signature upon delivery
- A record of delivery kept by the Postal Service for two years

Important Reminders:

- Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.
- Certified Mail is *not* available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

PS Form 3800, January 2001 (Reverse)

102535-01-M-1049

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Postage
Certified Fee
Return Receipt Fee
(Endorsement Required)
Restricted Delivery Fee
(Endorsement Required)
Total Postage & Fees

\$.37
2.30
1.75
\$ 4.42

JUL 22 2002
Postmark
Here
USPS - 15613

Sent To
Peter F. Smith, Esquire
Street Apt No.
or PO Box No. 30 South 2nd St., P.O. Box 130
City, State, Zip+4
Clearfield, PA 16830

PS Form 3800, January 2001
See Reverse for Instructions

7678 0797 9000 0752 7006

Certified Mail Provides:

- ❑ A mailing receipt
- ❑ A unique identifier for your mailpiece
- ❑ A signature upon delivery
- ❑ A record of delivery kept by the Postal Service for two years

Important Reminders:

- ❑ Certified Mail may **ONLY** be combined with First-Class Mail or Priority Mail.
- ❑ Certified Mail is **not** available for any class of international mail.
- ❑ **NO INSURANCE COVERAGE IS PROVIDED** with Certified Mail. For valuable*, please consider Insured or Registered Mail.
- ❑ For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- ❑ For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- ❑ If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

PS Form 3800, January 2001 (Reverse)

102595-01-M-1049

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

JUDICIAL DISTRICT

FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 02-1130 CD

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT E. P. Bender Coal Co., Inc.		MAG. DIST. NO. OR NAME OF D.J. 46-3-04	
ADDRESS OF APPELLANT P.O. Box 594, Main & Lehmier Streets		CITY Carrolltown	STATE PA
		ZIP CODE 15722	
DATE OF JUDGMENT 6/24/02	IN THE CASE OF (Plaintiff) Arthur J. Minds		
		(Defendant) E. P. Bender Coal Co., Inc.	
CLAIM NO.		SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT <i>George J. Gerdich, Jr.</i>	
TA 19 _____ LT 19 _____			
This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B. This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.		If appellant was Claimant (see Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.	
_____ Signature of Prothonotary or Deputy			

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

PRAECIPE: To Prothonotary

Enter rule upon Arthur J. Minds, appellee(s), to file a complaint in this appeal
Name of appellee(s)

(Common Pleas No. 02-1130 CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

RULE: To Arthur J. Minds, appellee(s)
Name of appellee(s)

George J. Gerdich, Jr.
Signature of appellant or his attorney or agent

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: July 22, ~~19~~ 2002

William A. Allen
Signature of Prothonotary or Deputy

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

JUL 22 2002

Attest.

William A. Allen
Prothonotary/
Clerk of Courts

02-1130-10

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN FIVE (5) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD ; ss

AFFIDAVIT: I hereby swear or affirm that I served

☒ a copy of the Notice of Appeal, Common Pleas No. 02-1130-CD, upon the District Justice designated therein on (date of service) July 22, ~~xx~~ 2002 ☐ by personal service ☒ by (certified) (registered) mail, sender's receipt attached hereto, and upon the appellee, (name) Peter F. Smith, Esq., Attorney for Arthur J. Minds, on July 22, ~~xx~~ 2002 ☐ by personal service ☒ by (certified) (registered) mail, sender's receipt attached hereto.

☒ and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom the Rule was addressed on July 22, ~~xx~~ 2002 ☐ by personal service ☒ by (certified) (registered) mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME
THIS 22nd DAY OF July, ~~xx~~ 2002

Kari L. Kopsic
Signature of official before whom affidavit was made

Notary Public

Title of official

My commission expires on Sept, 19__.

George Trudick Jr.
Signature of affiant



FILED

JUL 23 2002 File
m/10:46/am
William A. Shaw
Prothonotary

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
JUDICIAL DISTRICT

FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 02-1130-CD

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT E. P. Bender Coal Co., Inc.		MAG. DIST. NO. OR NAME OF D.J. 46-3-04	
ADDRESS OF APPELLANT P.O. Box 594, Main & Lehmier Streets		CITY Carrolltown	STATE PA
		ZIP CODE 15722	
DATE OF JUDGMENT 6/24/02	IN THE CASE OF (Plaintiff) Arthur J. Minds		(Defendant) vs. E. P. Bender Coal Co., Inc.
CLAIM NO.	SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT <i>George Grogdich, Jr.</i>		
TA 19 _____ LT 19 _____			

This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B.

This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.

If appellant was Claimant (see Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.

Signature of Prothonotary or Deputy

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

PRAECIPE: To Prothonotary

Enter rule upon Arthur J. Minds, appellee(s), to file a complaint in this appeal
Name of appellee(s)

(Common Pleas No. 02-1130-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

George Grogdich, Jr.
Signature of appellant or his attorney or agent

RULE: To Arthur J. Minds, appellee(s)
Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: July 22, ~~19~~ 2002

William A. Shaw
Signature of Prothonotary or Deputy

FILED

JUL 22 2002

01:45/atty Grogdich pd
William A. Shaw
Prothonotary
cc to atty.

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN FIVE (5) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF _____ ; ss

AFFIDAVIT: I hereby swear or affirm that I served

- ☐ a copy of the Notice of Appeal, Common Pleas No. _____, upon the District Justice designated therein on
(date of service) _____, 19____, ☐ by personal service ☐ by (certified) (registered) mail, sender's
receipt attached hereto, and upon the appellee, (name) _____, on
_____, 19____ ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto.
- ☐ and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to
whom the Rule was addressed on _____, 19____, ☐ by personal service ☐ by (certified) (registered)
mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME
THIS _____ DAY OF _____, 19____.

Signature of affiant

Signature of official before whom affidavit was made

Title of official

My commission expires on _____, 19____.



Mag. Dist. No.:	46-3-04
DJ Name: Hon.	JAMES L. HAWKINS
Address:	251 SPRING STREET P.O. BOX 362 HOUTZDALE, PA
Telephone:	(814) 378-7160 16651-0362

ATTORNEY DEF PRIVATE :

**GEORGE GVOZDICH, JR
107 E LLOYD ST
PO BOX 330
EBENSBURG, PA 15931**

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF: NAME and ADDRESS
**MINDS, J ARTHUR
PO BOX 95
RAMEY, PA 16671**

VS.
DEFENDANT: NAME and ADDRESS
**E P BENDER COAL CO. INC.
PO BOX 594
MAIN & LEHMIER ST
CARROLLTOWN, PA 15722**

Docket No.: **CV-0000079-02**
Date Filed: **4/23/02**



THIS IS TO NOTIFY YOU THAT:

Judgment: **FOR PLAINTIFF**

☒ Judgment was entered for: (Name) **MINDS, J ARTHUR**

☒ Judgment was entered against: (Name) **E P BENDER COAL CO. INC.**

in the amount of \$ **8,325.30** on: (Date of Judgment) **6/24/02**

☐ Defendants are jointly and severally liable. (Date & Time) _____

☐ Damages will be assessed on:

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to Attachment/Act 5 of 1996 \$ _____

☐ Levy is stayed for _____ days or ☐ generally stayed.

☐ Objection to levy has been filed and hearing will be held:

Amount of Judgment	\$ 7,829.81
Judgment Costs	\$ 104.00
Interest on Judgment	\$ 391.49
Attorney Fees	\$.00
Total	\$ 8,325.30

Post Judgment Credits \$ _____
Post Judgment Costs \$ _____

=====
Certified Judgment Total \$ _____

Date:	Place:
Time:	

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

6-24-02 Date *James L. Hawkins*, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.
____ Date _____, District Justice

My commission expires first Monday of January,

2006

SEAL



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

 **COPY**

Notice of Proposed Termination of Court Case

SEPTEMBER 12, 2005

RE: 02-1130-CD

J. Arthur Minds vs. E. P. Bender Coal Company, et al

Dear Peter F. Smith, Esq.:

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary** of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830. The Statement of Intention to Proceed must be filed on or before November 17, 2005.

If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.

By the Court,

David S. Meholic
Court Administrator

FILED

SEP 12 2005

William A. Shaw
Prothonotary/Clerk of Courts



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

Notice of Proposed Termination of Court Case

SEPTEMBER 12, 2005

RE: 02-1130-CD

J. Arthur Minds vs. E. P. Bender Coal Company, et al

Dear Wayne A. Kablack, Esq.:

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary** of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830. The Statement of Intention to Proceed must be filed on or before **November 17, 2005.**

If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.

By the Court,

David S. Meholic
Court Administrator



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

Notice of Proposed Termination of Court Case

SEPTEMBER 12, 2005

RE: 02-1130-CD

J. Arthur Minds vs. E. P. Bender Coal Company, et al

Dear George Gvozdich Jr., Esq.:

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary** of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830. The Statement of Intention to Proceed must be filed on or before **November 17, 2005.**

If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.

By the Court,

A handwritten signature in black ink, appearing to read "David S. Meholic".

David S. Meholic
Court Administrator

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

J. ARTHUR MINDS and
RUTH E. MINDS

Plaintiffs

vs.

No. 02-1130-CD

E. P. BENDER COAL COMPANY,
INC., and BETH MINING COMPANY

Defendants

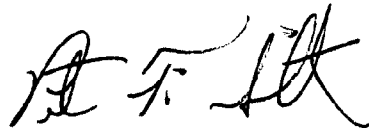
CERTIFICATE OF SERVICE

I, Peter F. Smith, Attorney for the Plaintiffs in the above-captioned matter, certify that I served true and correct copies of **PLAINTIFF'S ANSWER TO DEFENDANT BETH MINING'S NEW MATTER** by U.S. First Class Mail postage prepaid as follows:

George Gvozdoch, Jr., Esquire
Attorney for E. P. Bender Coal Company
107 East Lloyd Street
P. O. Box 330
Ebensburg, PA 15931

Wayne A. Kablack, Esquire
Attorney for Beth Mining Company
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701

Dated: April 9, 2003



Peter F. Smith
Attorney for Plaintiffs

FILED

APR 10 2003

William A. Shaw
Prothonotary

FILED

07/10:22-84
APR 10 2003

no cc
R28

William A. Shaw
Prothonotary

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

J. ARTHUR MINDS and
RUTH E. MINDS
:
:
:
Plaintiffs :
:
Type of Pleading:
:
PLAINTIFFS' ANSWER TO
:
DEFENDANT BETH'S NEW MATTER
:
:
vs. :
:
Filed on Behalf of:
:
PLAINTIFFS
:
E. P. BENDER COAL COMPANY,
INC. and BETH MINING COMPANY :
:
Attorney for this party:
:
Peter F. Smith, Esquire
:
Supreme Court No. 34291
:
30 South Second Street
:
P. O. Box 130
:
Clearfield, PA 16830
:
(814) 765-5595
:
:
Attorney for the Defendant
:
E. P. Bender Coal Company:
:
George Gvozdoch, Jr., Esquire
:
Supreme Court No. 30728
:
107 East Lloyd Street
:
P.O. Box 330
:
Ebensburg, PA 15931
:
(814) 472-5850
:
:
Attorney for the Defendant
:
Beth Mining Company:
:
Wayne A. Kablack, Esquire
:
Simpson, Kablack & Bell
:
Attorney's State ID# 25818
:
834 Philadelphia Street
:
Indiana, PA 15701
:
(724) 465-5559
:

FILED

APR 10 2003

William A. Shaw
Prothonotary

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

J. ARTHUR MINDS and	:	
RUTH E. MINDS	:	
	:	
Plaintiffs	:	
	:	
vs.	:	No. 02-1130-CD
	:	
E. P. BENDER COAL COMPANY,	:	
INC., and BETH MINING COMPANY	:	
	:	
Defendants	:	

PLAINTIFFS' ANSWER TO DEFENDANT BETH'S NEW MATTER

COMES NOW, The PLAINTIFFS, by their attorney, Peter F. Smith, who answer the New Matter as follow:

24. Paragraphs one through twenty-three of the Complaint are incorporated herein as those set forth in full.

25. Admitted.

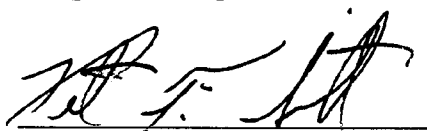
26. Denied that the property has been substantially restored. Although the Defendants or their agents have made recent efforts to complete this work, vegetation has not been established, nor has them Pennsylvania Department of Environmental given its final approval.

27. Denied the Plaintiffs have agreed to accept the restoration as it currently stands.

WHEREFORE, Plaintiffs pray this Honorable Court to enter judgment in their favor as requested in the complaint.

Respectfully submitted,

Dated: April 9, 2003



Peter F. Smith
Attorney for Plaintiffs

VERIFICATION

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


J. Arthur Minds


Ruth E. Minds

FILED

APR 10 2003

William A. Shaw
Prothonotary

No
ac
227

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

vs.

E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,
Defendants

CIVIL DIVISION

CASE NUMBER: 02-1130-CD

TYPE OF PLEADING: Certificate of
Service

FILED ON BEHALF OF: Defendant,
Beth Mining Company

NAME, ADDRESS AND
TELEPHONE OF:
Counsel of Record

Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559

FILED

APR 01 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

CIVIL DIVISION

CASE NUMBER: 02-1130-CD

vs.

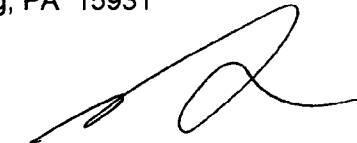
E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,
Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Answer to Complaint filed on behalf of the defendant, Beth Mining Company were served upon counsel, listed below, by placing a copy of the same in the United States Mail, postage prepaid, at Indiana, Pennsylvania this 31st day of March, 2003.

Peter F. Smith
Attorney at Law
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

George Gvozdich, Jr.
107 East Lloyd Street
P.O. Box 330
Ebensburg, PA 15931



Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701

FILED

N^o
cc

MAY 15 2003
APR 01 2003

William A. Shaw
Fetters

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

vs.

E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,

Defendants

CIVIL DIVISION

CASE NUMBER: 02-1130-CD

TYPE OF PLEADING: ANSWER TO
COMPLAINT

FILED ON BEHALF OF: Defendant, Beth
Mining Company

NAME, ADDRESS AND
TELEPHONE OF:
Counsel of Record

Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559

FILED

APR 01 2003

William A. Shaw
Prothonetary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

CIVIL DIVISION

CASE NUMBER: 02-1130-CD

vs.

E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,
Defendants

NOTICE TO PLEAD

TO J. ARTHUR MINDS and RUTH E. MINDS:

You are hereby notified to plead to the within Answer and New Matter within 20 days from service hereof or a default judgment may be entered against you.



Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559
Attorneys for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

CIVIL DIVISION

CASE NUMBER: 02-1130-CD

vs.

E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,
Defendants

ANSWER

AND NOW, comes the defendant, Beth Mining Company, by and through its attorney, Wayne A. Kablack, Esquire and Simpson, Kablack & Bell and files the following response to the plaintiff's Complaint:

1. Admitted.

2. Denied. After reasonable investigation the defendant is without sufficient knowledge or information concerning the allegations contained therein and strict proof thereof is demanded at trial. This defendant, however, does not contest the fact that the plaintiff's name is J. Arthur Minds.

3. Admitted.

4. Admitted.

6-13. Admitted.

14. Admitted in part and denied in part. It is admitted that Beth Mining Company did mine the premises, however, the actual mining activities have ceased. After reasonable investigation, the defendant is without sufficient knowledge or information concerning the allegations regarding the knowledge of the plaintiffs in regard to a written agreement between the defendants to this action or whether the plaintiffs have a copy of that document. It is noted, however, that the plaintiffs have never refused any checks from either defendant for mining on

the premises nor have they objected to the mining on the premises while they were receiving checks.

15. Denied. The document speaks for itself.

16. Admitted in part and denied in part. It is denied that there are any current operations on the property for the mining of coal nor have there been any operations for the mining of coal on the property for some time. The only operations that have occurred recently on the property are back-filling and seeding.

17-18. Denied. By virtue of the Order of Court, the claims for royalties have been dismissed.

19. Admitted.

20. Denied. The defendants have done everything possible to restore the premises to the approximate original contour and very little work needs to be done a portion of the property. Any work that needs to be performed at the current time is some back-filling and seeding which will be done at an appropriate time, weather permitting.

21. Denied. By virtue of the court's order, this claim has been dismissed.

22. Denied. By virtue of the court's order, this claim has been dismissed.

23. Denied. The cost of completing the restoration of the premises is minimal and will be performed by this defendant in accordance with applicable law.

WHEREFORE, this defendant prays this Honorable Court dismiss the plaintiffs' Complaint.

NEW MATTER

24. Paragraphs 1 through 23 are incorporated herein by reference as though set forth fully herein.

25. This defendant's obligations regarding the restoration of the property are to restore the property in accordance with any lease documents as well as in accordance with applicable laws and regulations.

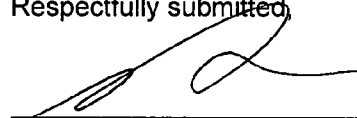
26. The property has been substantially restored in accordance with the lease documents and applicable laws and regulations. The remainder will be restored accordingly.

WHEREFORE, this defendant prays this Honorable Court dismiss the plaintiffs' Complaint.

27. It is believed and therefore averred that the plaintiffs were fully aware of the agreement and consented thereto.

WHEREFORE, this defendant prays this Honorable Court dismiss the plaintiffs' Complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wayne A. Kablack', is written over a horizontal line.

Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701

WAK/lb

VERIFICATION

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

Atty. W. L. L.

Date: 3-25-03

FILED
MAY 15 2003
APR 01 2003
cc
E
Ker

William A. Shaw
Prothonotary

Date: 02/03/2003

Clearfield County Court of Common Pleas

User: DGREGG

Time: 02:12 PM

ROA Report

Page 1 of 1

Case: 2002-01130-CD

Current Judge: John K. Reilly Jr.

Arthur J. Minds, Ruth E. Minds vs. E P Bender Coal Co., Inc., Beth Mining Company

District Justice Appeal

Date		Judge
07/22/2002	✓ Filing: Notice of Appeal/DJ Appeal Paid by: George Gvozdoch, Jr., Esquire Receipt number: 1845820 Dated: 07/22/2002 Amount: \$80.00 (Check) Praecipe to Enter Rule to File Complaint and Rule to File Praecipe: To Prothonotary Enter rule upon Arthur J. Minds, appellee(s), to file a complaint in this appeal (Common Pleas No. 02-1130-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros. s/George Gvozdoch, Jr. Rule: To Arthur J. Minds, appellee Copies to Attorney	No Judge
07/23/2002	✓ Proof of Service of Notice of Appeal and Rule to File Complaint, filed by Atty. Gvozdoch	No Judge
07/24/2002	✓ Filing: Transcript from District Justice Hawkins Amount: 8325.30.	No Judge
08/13/2002	✓ Complaint. Filed by s/Peter F. Smith, Esq. Verification s/J. Arthur Minds s/Ruth E. Minds 4 cc Atty Smith	No Judge
08/23/2002	✓ Filing: Entry of Appearance on behalf of Beth Mining. Co. Defendant. No CC	No Judge
09/19/2002	✓ Preliminary Objections filed on behalf of Beth Mining Company by Atty. Kablack. No cc.	No Judge
	✓ Filing: Certificate of Service of Preliminary Objection by Beth Mining by Atty. Kablack. No cc.	No Judge
09/20/2002	✓ Answer and New Matter filed on behalf of Bender Coal Co. No cc.	No Judge
	✓ Sheriff Return of Service filed.	No Judge
10/03/2002	✓ Now, August 20, 2002, served complaint on Beth Mining Company	
	✓ Plaintiffs' Answer to Defendant Bender's New Matter. filed by s/Peter F. Smith, Esq. Verification s/J. Arther Minds s/Ruth E. Minds no cc	No Judge
	✓ Plaintiffs' Answer to Defendant Beth Mining's Preliminary Objections. s/Peter F. Smith, Esq. Verification s/J. Arthur Minds s/Ruth E. Minds no cc	No Judge
	✓ Certificate of Service, Plaintiff's Answer to Beth Mining's Preliminary Objections and Plaintiff's Answer to Defendant Bender's New Matter upon GEORGE GVOZDICH, JR., ESQ. and WAYNE A. KABLACK, ESQ. s/Peter F. Smith, Esq. no cc	No Judge
11/26/2002	✓ Certificate of Service, Brief In Support Of Preliminary Objections upon Peter F. Smith, Esq. and George Gvozdoch, Jr. s/Wayne A. Kablack, Esquire no cc	John K. Reilly Jr.
01/31/2003	OPINION AND ORDER, NOW, this 31st day of January, 2003, re: Objections be and are hereby SUSTAINED and Plaintiffs' claim for advance royalties STRICKEN. by the Court, s/JKR,JR.,P.J. 1 cc Atty P. Smith, Gvozdoch, Kablack, and D. Mikesell	John K. Reilly Jr.

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

J. ARTHUR MINDS and
RUTH E. MINDS

-vs-

E.P. BENDER COAL COMPANY, INC.
and BETH MINING COMPANY

No. 02 - 1130 - CD

FILED

JAN 31 2003

OPINION AND ORDER

William A. Shaw
Prothonetary

Plaintiffs above-named are the owners of a tract of land in Guelich Township, Clearfield County which through a series of coal leases, granted to the Defendant E.P. Bender Coal Company, Inc. the right to mine and remove the coal therefrom. These leases provided for advanced royalties to be paid to Plaintiffs in the amount of \$300 a month, credit for which was to be given to Bender once mining operations commenced, against the \$2.50 a ton royalty for all coal removed. Bender assigned the lease to Defendant Beth Mining Company. Mining operations commenced, the royalty on the coal removed from the premises paid to the Plaintiffs and now mining operations have ceased and it appears that Beth Mining Company is in the process of back-filling, reseeding and reclaiming the premises. (See Plaintiffs' Complaint Paragraphs 19 and 20)

Plaintiffs have commenced this instant case against both Defendants seeking to be awarded the payment of advanced royalties for the period of time during which Defendant Beth Mining Company was actively engaged in removing coal from the premises and/or after all mining operations ceased. Defendant Beth Mining Company has filed Preliminary Objections to this claim of the Plaintiffs' alleging that once operations for the removal of the coal have commenced, advanced royalties are no longer applicable and the lessee achieves the benefit of the bargain through the royalties paid on the actual coal removed. Based on this

allegation, Defendant Beth Mining Company seeks to have this Court dismiss all claims demanding payment of advanced royalties. This Court agrees and does herein grant Beth Mining Company's Preliminary Objections. The issue here is the definition of "advanced royalties". The Supreme Court of Pennsylvania in Hutchinson v. Sunbeam Coal Corporation, 513 Pa. 192, 519 A.2d 385 (1986) defined advance royalties as follows:

Pennsylvania courts have reasoned that minimum advanced royalties are in the nature of liquidated damages for the lessee's failure to mine. Such reasoning recognizes minimum advanced royalties as a consideration flowing from the coal company to the landowner in lieu of the tonnage royalties which would be paid if mining operations were undertaken.

Under this definition which is reasonable in all respects, the requirement to pay advanced royalties ceases upon commencement of mining operations. Once these operations have been concluded and all coal removed, the only obligation remaining on the lessee is to reclaim the premises in accordance with the lease and the laws of the Commonwealth of Pennsylvania. Following conclusion of mining operations, no further advanced royalties are required. In this respect, Plaintiffs have no demand against Beth Mining Company for any further payments of advanced royalties and therefore the Court enters the following:

ORDER

NOW, this 31st day of January, 2003, following argument and briefs into Preliminary Objections filed on behalf of Defendant Beth Mining Company, it is the ORDER of this Court that said Objections be and are hereby sustained and Plaintiffs' claim for advanced royalties stricken.

By the Court,



President Judge

FILED

1cc P. Smith

3:09 PM
JAN 31 2003

1cc Aug Gvozdenich
1cc Aug Kaback

1cc D. Mikeseel

William A. Shaw
Prothonotary

WAS

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

No. 02-1130-C.D.

J. ARTHUR MINDS and
RUTH E. MINDS,
Plaintiffs

vs.

E. P. BENDER COAL COMPANY, INC.
AND BETH MINING COMPANY,
Defendants

CERTIFICATE OF SERVICE

SIMPSON, KABLACK & BELL
ATTORNEYS AT LAW
834 PHILADELPHIA STREET
INDIANA, PENNSYLVANIA 15701

NO CC
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NEW
HARRISBURG

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

vs.

E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,
Defendants

CIVIL DIVISION

CASE NUMBER: 02-1130-CD

TYPE OF PLEADING: Certificate of
Service

FILED ON BEHALF OF: Defendant,
Beth Mining Company

NAME, ADDRESS AND
TELEPHONE OF:
Counsel of Record

Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559

FILED

NOV 20 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

CIVIL DIVISION

CASE NUMBER: 02-1130-CD

vs.

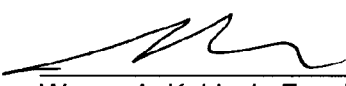
E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,
Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Brief in Support of Preliminary Objections filed on behalf of the defendant, Beth Mining Company were served upon counsel, listed below, by placing a copy of the same in the United States Mail, postage prepaid, at Indiana, Pennsylvania this 21st day of November, 2002.

Peter F. Smith
Attorney at Law
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

George Gvozdich, Jr.
107 East Lloyd Street
P.O. Box 330
Ebensburg, PA 15931



Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701

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

J. ARTHUR MINDS and
RUTH E. MINDS

Plaintiffs

vs.

E. P. BENDER COAL COMPANY,
INC., and BETH MINING COMPANY

Defendants

No. 02-1130-CD

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William A. Shaw
Prothonotary

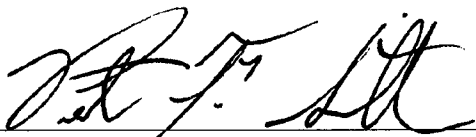
CERTIFICATE OF SERVICE

I, Peter F. Smith, Attorney for the Plaintiffs in the above-captioned matter, certify that I served true and correct copies of PLAINTIFF'S ANSWER TO BETH MINING'S PRELIMINARY OBJECTIONS and PLAINTIFF'S ANSWER TO DEFENDANT BENDER'S NEW MATTER by U.S. First Class Mail postage prepaid as follows:

George Gvozdoch, Jr.
Attorney for E. P. Bender Coal Company
107 East Lloyd Street
P. O. Box 330
Ebensburg, PA 15931

Wayne A. Kablack
Attorney for Beth Mining Company
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701

Dated: 10-3-02


Peter F. Smith
Attorney for Plaintiffs

FILED

9/11:27 Bdx
OCT 03 2002

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William A. Shaw
Prothonotary

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

J. ARTHUR MINDS and
RUTH E. MINDS

Plaintiffs

vs.

E. P. BENDER COAL COMPANY,
INC. and BETH MINING COMPANY

Defendants

No. 02-1130-CD

Type of Pleading:

**PLAINTIFFS' ANSWER TO
DEFENDANT BETH MINING'S
PRELIMINARY OBJECTONS**

Filed on Behalf of:

PLAINTIFFS

Attorney for this party:

Peter F. Smith, Esquire
Supreme Court No. 34291
30 South Second Street
P. O. Box 130
Clearfield, PA 16830
(814) 765-5595

Attorney for the Defendant

E. P. Bender Coal Company:

George Gvozdich, Jr., Esquire
Supreme Court No. 30728
107 East Lloyd Street
P.O. Box 330
Ebensburg, PA 15931
(814) 472-5850

Attorney for the Defendant

Beth Mining Company:

Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
Attorney's State ID# 25818
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559

FILED

OCT 03 2002

William A. Shaw
Prothonotary

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

J. ARTHUR MINDS and
RUTH E. MINDS

Plaintiff

vs.

E. P. BENDER COAL COMPANY,
INC., and BETH MINING COMPANY

Defendants

No. 02-1130-CD

PLAINTIFF'S ANSWER TO BETH MINING'S PRELIMINARY OBJECTIONS

COMES NOW, The PLAINTIFFS, by their attorney, Peter F. Smith, who answer the Preliminary Objections as follows:

1. Admitted but further averred that defendant Beth Mining is attempting to litigate material issues of fact with its Preliminary Objections. Those Objections constitute a speaking demurr which is impermissible under Pennsylvania Law.
2. Denied because the complaint speaks for itself.
3. Admitted that paragraph 17 and 18 of the complaint deal with the royalties. The balance of Defendant's allegations as concerning a "First cause of action" and its characterization of the royalties as "Advance" is denied.
4. Denied back filling and seeding are integral parts of mining operations. Further more, Defendant is using the property in conjunction with its mining on adjoining properties.
5. Denied because Defendant misquotes and misconstrues the leases in question.
6. Denied for the reasons stated in paragraph 5 above.

7. Denied as a conclusion of law and further denied for the reason set forth in paragraph 4 and 5 above.

8. Denied because the statement is irrelevant. The issue is determined by the parties agreement.

It is also interesting to observe at this point that Magistrate Hawkins disagreed with the Defendant's characterization of royalties and its interpretation of the lease and assignments in question as demonstrated by the Magistrate's award of Judgment to Plaintiffs.

9. Denied for the reasons set forth in paragraphs 4, 5, and 8 above.

10. Denied for the reasons stated in paragraphs 4, 5 and 8 above.

11. Denied for the reasons set forth in paragraphs 4, 5 and 8 above.

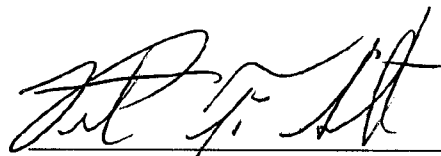
12. Denied for the reasons stated in paragraphs 4, 5 and 8 above.

13. Denied; this information is irrelevant. These amounts do not determine the amount still owed to and claimed by the Plaintiffs.

14. Denied as a conclusion of law and denied for the reasons set forth in paragraphs 4, 5 and 8 above.

WHEREFORE Plaintiffs prays that Beth Mining's Preliminary Objections be dismissed.

Respectfully submitted,

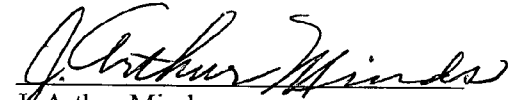
A handwritten signature in black ink, appearing to read "Peter F. Smith", written over a horizontal line.

Peter F. Smith, Attorney for Plaintiffs

Date: October 2, 2002


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.


J. Arthur Minds

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.


Ruth E. Minds

FILED

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William A. Shaw
Prothonotary

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

J. ARTHUR MINDS and
RUTH E. MINDS

Plaintiffs

vs.

E. P. BENDER COAL COMPANY,
INC. and BETH MINING COMPANY

Defendants

No. 02-1130-CD

Type of Pleading:
**PLAINTIFFS' ANSWER TO
DEFENDANT BENDER'S NEW MATTER**

Filed on Behalf of:
PLAINTIFFS

Attorney for this party:
Peter F. Smith, Esquire
Supreme Court No. 34291
30 South Second Street
P. O. Box 130
Clearfield, PA 16830
(814) 765-5595

Attorney for the Defendant
E. P. Bender Coal Company:
George Gvozdoch, Jr., Esquire
Supreme Court No. 30728
107 East Lloyd Street
P.O. Box 330
Ebensburg, PA 15931
(814) 472-5850

Attorney for the Defendant
Beth Mining Company:
Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
Attorney's State ID# 25818
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559

FILED

OCT 03 2002

William A. Shaw
Prothonotary

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

J. ARTHUR MINDS and	:	
RUTH E. MINDS	:	
	:	
Plaintiffs	:	
	:	
vs.	:	No. 02-1130-CD
	:	
E. P. BENDER COAL COMPANY,	:	
INC., and BETH MINING COMPANY	:	
	:	
Defendants	:	

PLAINTIFFS' ANSWER TO E.P. BENDER COAL COMPANY'S NEW MATTER

COMES NOW, The PLAINTIFFS, by their attorney, Peter F. Smith, who answer the Defendant, E. P. Bender Coal Company's New Matter as follows:

1-23. The first twenty-three paragraphs of the Complaint are referred to and incorporated herein by reference.

24. Admitted.

25. Admitted that Plaintiffs are aware of Defendant Beth's continuing operations on the premises but denied that a novation has occurred. The governing documents and facts of this case describe a series of assignments. Additionally, Plaintiffs never agreed to release Defendant Bender or to waive their right of recourse against Bender, and Bender can produce no executed documents or other evidence establishing a waiver or release of recourse.

26. Denied for the reasons set forth in paragraph 25.

27. Denied for the reasons set forth in paragraph 25.

28. Denied for the reasons set forth in paragraph 25 and further denied because any subsequent dealings between Plaintiffs and Defendant Beth are immaterial to the issue of waiver of recourse and release.

29. Denied for the reasons set forth in the Complaint.

30. Admitted that Plaintiffs have accepted and deposited all checks they have received but denied they have been paid in full for the reasons set forth in the Complaint.

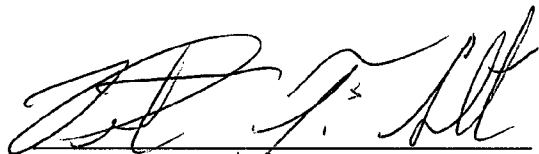
31. Denied for the reasons set forth in paragraph 30.

WHEREFORE, Plaintiffs pray that Defendant Bender's New Matter be dismissed and that they be awarded judgment as requested in their Complaint.

NEW MATTER PURSUANT TO Pa.R.C.P 2252(d)

32-35. This New Matter is addressed by Defendant Bender to Defendant Beth, and no response is required by the Plaintiffs.

Dated: 10/2/02


Peter F. Smith
Attorney for Plaintiffs

VERIFICATION

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


J. Arthur Minds


Ruth E. Minds

FILED ¹⁰cc

9/11/27 ~~2011~~
OCT 6 3 2002



William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12927

MINDS, J. ARTHUR & RUTH E.

02-1130-CD

VS.

E.P. BENDER COAL COMPANY, INC.

COMPLAINT

SHERIFF RETURNS

NOW AUGUST 14, 2002, DONALD BECKWITH, SHERIFF OF INDIANA COUNTY
WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY
TO SERVE THE WITHIN COMPLAINT ON BETH MINING COMPANY, DEFENDANT.

NOW AUGUST 20, 2002 SERVED THE WITHIN COMPLAINT ON BETH MINING
COMPANY, DEFENDANT BY DEPUTIZING THE SHERIFF OF INDIANA COUNTY.
THE RETURN OF SHERIFF BECKWITH IS HERETO ATTACHED AND MADE A
PART OF THIS RETURN STATING THAT HE SERVED BETH PELES, P.I.C.

Return Costs

Cost	Description
29.12	SHFF. HAWKINS PAID BY: ATTY.
87.00	SHFF. BECKWITH PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

126.12

Sworn to Before Me This

20 Day Of Sept 2002

[Signature]

FILED

SEP 20 2002

2:40 PM *[Signature]*

William A. Shaw
Prothonotary

So Answers,

[Signature]
by Marilyn Harris
Chester A. Hawkins
Sheriff



INDIANA COUNTY SHERIFF

825 PHILADELPHIA STREET
INDIANA, PENNSYLVANIA 15701-3934
(724) 465-3930
FAX: (724) 465-3937

Donald L. Beckwith
Sheriff

David J. Rostis
Chief Deputy Sheriff

Affidavit of Service

Page: 681

Docket Number: 02-1130-CD

Now, August 20, 2002 at 1122 hrs. served the within

Complaint upon Beth Mining Company

at 815 Rockrun Road Glen Campbell, Pa.

by handing to Beth Peles, person in charge, at above address

1 true and correct copy(s) of the within Complaint

and making known to him/her/them the contents thereof.

So Answers:

Donald L. Beckwith

Donald L. Beckwith, Sheriff

By:

David J. Rostis
Deputy

Sworn and subscribed before me

This 10 day of Sept 2002

Loretta J. Wissinger

Costs: \$87.00 paid

NOTARIAL SEAL
LORETTA J. WISSINGER, NOTARY PUBLIC
INDIANA, INDIANA CO
MY COMMISSION EXPIRES MARCH 6, 2006



Sheriff's Office Clearfield County

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533
CLEARFIELD COUNTY FAX
(814) 765-5915

CHESTER A. HAWKINS
SHERIFF

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

Robert Snyder
CHIEF DEPUTY
Cynthia Aughenbaugh
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS & RUTH E. MINDS

TERM & NO. 02-1130-CD

VS

DOCUMENT TO BE SERVED:
COMPLAINT

E.P. BENDER COAL CO. INC. AND
BETH MINING COMPANY

SERVE BY: 9/11/02

MAKE REFUND PAYABLE TO:

PETER F. SMITH, Attorney

SERVE: BETH MINING COMPANY

ADDRESS: 815 Rockrun Road, Glen Campbell, Pa. 15742

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF INDIANA COUNTY Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 14th Day of AUGUST 2002.

Respectfully,

2002 AUG 16 2:09

INDIANA COUNTY SHERIFF

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

NO. 02-1130-CD

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

J. ARTHUR MINDS and RUTH
E. MINDS,

Plaintiffs

vs.

E. P. BENDER COAL COMPANY,
INC. and BETH MINING COMPANY

Defendants.

ANSWER AND NEW MATTER

FILED

SEP 20 2002
NO CC

William A. Shaw
Prothonotary

LAW OFFICE OF
GVOZDICH, BUCHAN, SVIRSKO
& KALTENBAUGH
107 E. LLOYD STREET
P.O. BOX 330
EBENSBURG, PA 15931

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

J. ARTHUR MINDS and RUTH
E. MINDS,

Plaintiffs,

vs.

E. P. BENDER COAL COMPANY,
INC. and BETH MINING COMPANY,

Defendants.

No. 02-1130-CD

Type of Pleading:

ANSWER AND NEW MATTER

Filed on Behalf of:

DEFENDANT, E. P. Bender Coal Co., Inc.

Attorney for this party:

George Gvozdich, Jr., Esquire

I.D #30728

107 East Lloyd Street

P.O. Box 330

Ebensburg, PA 15931

(814) 472-5850

FILED

SEP 20 2002

William A. Shaw
Prothonotary

J. ARTHUR MINDS and RUTH
E. MINDS,

Plaintiffs,

E. P. BENDER COAL COMPANY,
INC. and BETH MINING COMPANY,

NOTICE TO PLEAD

You are notified to plead to the enclosed Answer and New Matter within twenty (20) days from the date of service or a judgment may be entered against you.

George Gozdich, Jr.
George Gozdich, Jr.
Attorney for Defendant, E. P. Bender
Coal Co., Inc.

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

J. ARTHUR MINDS and RUTH	:	
E. MINDS,	:	NO. 02-1130-CD
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
E. P. BENDER COAL COMPANY,	:	
INC. and BETH MINING COMPANY,	:	
	:	
Defendants.	:	

ANSWER AND NEW MATTER

NOW, comes the Defendant, E. P. Bender Coal Co., Inc., by its counsel, George Gvozdoch, Jr., Esquire, and files this Answer and New Matter to the Plaintiff's Complaint:

ANSWER

1. Admitted.
2. Admitted, and by way of further answer, the lease documents attached to the Plaintiff's Complaint, and upon which the Plaintiff's assert their cause of action, at various times identify the Plaintiff, J. Arthur Minds, as "Arthur Minds".
3. Admitted in part and denied in part. The correct name of this Defendant is E. P. Bender Coal Co., Inc. (hereinafter "Bender"). The remainder of the allegations set forth in Paragraph 3 are admitted.
4. Admitted.
5. Admitted.
6. Admitted.

7. Denied, as after reasonable investigation, Defendant, Bender, is without knowledge or information sufficient to form a belief as to the truth of this averment.

8. Denied, as after reasonable investigation, Defendant, Bender, is without knowledge or information sufficient to form a belief as to the truth of this averment.

9. Admitted.

10. Admitted.

11. Admitted in part and denied in part. It is denied that the original lease was with C & K Coal Company. On the contrary, as stated previously in the complaint, the original lease was with GRC Coal Company.

12. Admitted.

13. Admitted.

14. Admitted in part and denied in part. It is admitted that in 1994 the Defendant, Bender, entered into a verbal agreement with Beth Mining Company (hereinafter "Beth") under which Beth would pursue strip mining on the Plaintiff's property. It is denied that the Plaintiffs did not have knowledge of this arrangement and also denied that the Plaintiffs failed to be asked to or did consent to this arrangement. With regard to the remainder of the allegations set forth in Paragraph 14, they are denied as after reasonable investigation, the Defendant, Bender, is without knowledge or information sufficient to form a belief as to the truth of the averments.

15. Admitted.

16. Admitted in part and denied in part. It is admitted that the Defendant, Bender, used the property of the Plaintiff until 1994 when it assigned its rights in the property to the Defendant, Beth. It is denied that the Defendant, Bender, has continued to use the property in its

operations, has actively strip-mined the premises, is engaged in back filling the premises, is engaged in the storing of coal on the premises, is engaged in the blending of coal on the premises, the keeping of equipment on the premises or the hauling of coal over the premises. On the contrary, it is averred that Bender has not engaged in any mining activities on the Plaintiff's property since 1994 when it assigned the rights to Beth.

17. Admitted.

18. Admitted in part and denied in part. It is admitted that none of the agreements at issue in this action define "advanced royalty". It is denied that the established custom in the surface mining industry in Pennsylvania requires lessee/mining companies to pay an advance or minimum royalty during such periods when a property is under lease but either not producing coal or not producing coal in sufficient quantities to produce an actual royalty exceeding the advance. On the contrary, advance royalties are separate and distinct from minimum royalties. Advanced royalties are paid up to and until the time that coal begins to be removed from the premises subject to the lease or mining agreement. Once coal begins to be removed, it is the custom in the industry that advance royalties cease and are not reinstated upon completion of mining. None of the lease documents require the payment of a minimum royalty.

19. Admitted in part and denied in part. It is admitted that the Defendant, Beth, is required to promptly backfill and restore the premises to their approximate original contour and then to establish vegetation. It is denied that Bender has any obligation to backfill the property or to establish vegetation on the property.

20. Admitted in part and denied in part. It is admitted that the Defendant, Bender, has failed to restore the premises to their approximate original contour. It is denied that the

Defendant, Bender, has any obligation to restore the premises to their approximate original contour. It is further denied that the Defendant, Bender, has deprived the Plaintiffs of the use of any portion of their property.

21. Admitted that Exhibit F to the complaint is a copy of a letter sent by Plaintiff to Bender. It is denied that Bender owes any royalty payments to the Plaintiffs as no royalty payments are due under the lease documents.

22. Denied. It is denied that the Defendant, Bender, has breached any agreement with the Plaintiff requiring it to pay advance royalties to the Plaintiffs. On the contrary, the Defendant, Bender, has paid all advance royalties required of it to the Plaintiffs. It is further denied that the Defendant, Bender, has failed to properly restore the premises to their approximate original contour. On the contrary, the Defendant, Bender, has no obligation to restore the premises to their original contour.

23. Denied, as after reasonable investigation, Defendant, Bender, is without knowledge or information sufficient to form a belief as to the truth of this averment.

WHEREFORE, the Defendant, E. P. Bender Coal Co., Inc., prays your Honorable Court to dismiss the complaint as to said Defendant.

NEW MATTER

24. Plaintiff's complaint alleges that they continued to have an existing lease agreement with the Defendant, Bender.

25. The Plaintiffs are and have been aware of an agreement existing between the Defendant, Bender, and the Defendant, Beth. The agreement entered into between Bender and

Beth represents a novation wherein the agreement that existed between the Plaintiffs and Bender has been replaced by the agreement that currently exists between the Plaintiffs and Beth.

26. The Plaintiffs were fully aware of this agreement and consented thereto.

27. The Defendant, Bender, justifiably and in good faith relied upon its understanding that the Plaintiffs had consented to the transfer of its rights to Beth and recouped royalties, transferred its mining permit for the Plaintiff's property and allowed for the replacement of its bonds relating to the Plaintiff's property with the understanding that they would have no further obligation to the Plaintiffs. The consent of the Plaintiffs estops them from asserting a claim to the contrary and the Plaintiff's action as to Defendant, Bender, is accordingly barred.

28. Subsequent to the transfer of mining rights by the Defendant, Bender, to Beth, it is believed and therefore averred that the Plaintiffs negotiated various separate agreements with the Defendant, Beth, for the storage of coal on the Plaintiff's property and the payment of wheelage by Beth to the Plaintiffs for the use of their property.

29. The Plaintiffs have received all advance royalties required under the lease agreement set forth in the Plaintiff's complaint.

30. The Plaintiffs have accepted and deposited to their account all checks for said advance royalties.

31. The Plaintiffs, having previously received payment for the advance royalties, are barred from recovering any advance royalties under this complaint.

WHEREFORE, Defendant, E. P. Bender Coal Co., Inc., prays for the dismissal of the Plaintiff's complaint as to said Defendant.

NEW MATTER PURSUANT TO PA.R.C.P. 2252(d)

32. Defendant, E. P. Bender Coal Co., Inc., asserts this new matter pursuant to Pa.R.C.P. 2252(d) and joins Defendant, Beth, as additional Defendant based upon the following information.

33. If Plaintiffs establish that they have suffered damages as alleged in their complaint, which allegations the Defendant, Bender, denies, then said damages were caused solely by the negligence or breach of contract of the additional Defendant, Beth, its agents, servants, workmen and/or employees. As a result of the aforesaid actions, the additional Defendant, Beth, is alone liable to the Plaintiffs for any alleged damages that they may have suffered.

34. If, as a result of the matters alleged in the Plaintiff's complaint, the Defendant, Bender, is held liable to Plaintiff for all or part of such damages as they may have sustained, additional Defendant, Beth, as the party primarily liable for such damages, is liable over to the Defendant, Bender, by way of contribution and/or indemnification, for all such damages it may be required to pay to the Plaintiff.

35. In the alternative, if, as a result of the matters alleged in the Plaintiff's complaint, the Defendant, Bender, is held liable to the Plaintiffs for all or part of such damages as claimed, additional Defendant, Beth, is jointly and/or severally liable to the Plaintiffs for such damages and liable over to the Defendant, Bender, by way of contribution for all such damages, Defendant, Bender, may be required to pay to the Plaintiffs.


WHEREFORE, Defendant, E. P. Bender Coal Co., Inc., demands:

1. Judgment in its favor together with costs;

2. Judgment that, if there is any liability to Plaintiffs, additional Defendant, Beth Mining Company, is solely liable to the Plaintiffs; and

3. In the event that a verdict is recovered by Plaintiffs against the Defendant, E. P. Bender Coal Co., Inc., that Defendant may have judgment over and against addition Defendant, Beth Mining Company, by way of indemnification and/or contribution for the amount recovered by Plaintiffs against the Defendant, together with its costs.

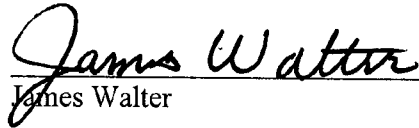
Respectfully submitted,


George Gwozdich, Jr., Esquire

VERIFICATION

I hereby verify that the statements contained in the foregoing Answer and New Matter are true and correct to the best of my information, knowledge and belief. I am authorized as an officer of Defendant to make this verification. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4909, relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalty.

Dated: September 12, 2002


James Walter

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

J. ARTHUR MINDS and RUTH
E. MINDS,

Plaintiffs,

vs.

E. P. BENDER COAL COMPANY,
INC. and BETH MINING COMPANY,

Defendants.

:
:
:
:
:
:
:
:
:
:

NO. 02-1130-CD

CERTIFICATE OF SERVICE

I, George Gvozdich, Jr., Esquire, hereby certify that a true and correct copy of the foregoing Answer and New Matter has been served by first class mail, postage prepaid, upon Peter F. Smith, Esquire, 30 South Second Street, P.O. Box 130, Clearfield, PA 16830 and Wayne A. Kablack, Esquire, Simpson, Kablack & Bell, 834 Philadelphia Street, Indiana, PA 15701, this 18th day of September, 2002.


George Gvozdich, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

vs.

E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,

Defendants

CIVIL DIVISION

CASE NUMBER: 02-1130-CD

TYPE OF PLEADING: Preliminary
Objections

FILED ON BEHALF OF: Defendant, Beth
Mining Company

NAME, ADDRESS AND TELEPHONE
OF: Counsel of Record

Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559

Attorney's State ID#: 25818

Attorney's Firm ID#: 25-0918627

FILED

SEP 19 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

vs.

E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,

Defendants

CIVIL DIVISION

CASE NUMBER: 02-1130-CD

TYPE OF PLEADING: Preliminary
Objections

FILED ON BEHALF OF: Defendant, Beth
Mining Company

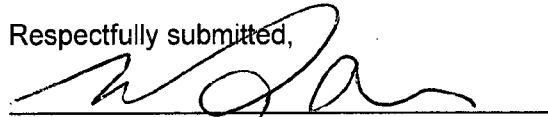
NAME, ADDRESS AND TELEPHONE
OF: Counsel of Record

Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559

NOTICE TO PLEAD

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE WITHIN PRELIMINARY
OBJECTIONS WITH TWENTY DAYS FROM THE SERVICE HEREOF OR A DEFAULT
JUDGMENT MAY BE ENTERED AGAINST YOU.

Respectfully submitted,



Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

CIVIL DIVISION

CASE NUMBER: 02-1130-CD

vs.

TYPE OF PLEADING: Entry of Appearance

E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,
Defendants

PRELIMINARY OBJECTIONS

AND NOW, comes the defendant, Beth Mining Company, by and through its attorney, Wayne A. Kablack, Esquire and Simpson, Kablack & Bell, and files the following Preliminary Objections to the plaintiffs' Complaint.

1. The plaintiffs filed a Complaint in regard to certain mining operations that took place on the plaintiffs' property located in Gulich Township, Clearfield County, Pennsylvania.

2. Though the plaintiff has not stated two separate causes of action, the Complaint does provide two causes of action.

3. The first cause of action is in paragraphs 17 and 18 and deals with advance royalty payments.

4. Mining operations have ceased on the premises and the only activity is back-filling and seeding the property.

5. Attached to the Complaint is an exhibit which provides for the payment of \$300.00 a month advance royalty. Exhibit B to the Complaint provides that all advance royalties paid to the parties of the first party from the prior lease and the new lease will be deducted from the first coal removed from the property.

6. Exhibit C similarly provides that all advance royalties paid to the parties of the first part will be deducted from the first coal removed and sold from the property.

7. Since coal mining operations have occurred and have been completed, there is no basis for a demand for continued advance royalties.

8. There is no practice to pay advance royalties after coal has already been mined or during the period of back-filling and seeding.

9. The payments listed in Exhibit F are wheelage, not for advance royalties or minimum royalties.

10. In Exhibit F, the plaintiff is requesting minimum royalties. The plaintiff is not entitled to minimum royalties. The plaintiff is only entitled to advanced royalties before the operations begin.

11. After the operations had been completed, advance royalties are no longer appropriate and any advanced royalties would have been deducted from the royalties paid.

12. The earliest lease is Exhibit A which provides for the payment of an advance royalty for \$300.00 per month.

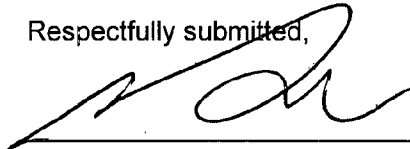
13. The royalties in the amount of \$294,028.96 had been paid by Beth Mining Company and it is believed that there are approximately \$48,300.00 in advance royalties or royalties paid by the E. P. Bender Coal Company, Inc. that were reimbursed by Beth Mining Company.

Even if advance royalties were still appropriate, which they are not, the plaintiff has already been prepaid for approximately 60 years.

14. In regard to the claim for advance royalties, the plaintiffs fail to state a cause of action upon which relief may be granted.

WHEREFORE, the defendant, Beth Mining Company, prays this Honorable Court
dismiss all claims dealing with the payment of advance royalties.


Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wayne A. Kablack', written over a horizontal line.

Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701

VERIFICATION

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



Date: 9-12-02

FILED

11/12/01

SEP 19 2002

NO cc

William A. Shaw
Prothonotary

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-5595
FAX (814) 765-6662

E-mail
pfsatty@uplink.net

September 20, 2002

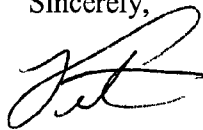
Marcy Kelly, Deputy Court Administrator **HAND DELIVER**
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Minds vs. E. P. Bender Coal Co. et al.
Case No. 02-1130-CD

Dear Marcy:

Defendant Beth Mining Company has filed Preliminary Objections in the above-captioned matter. Would you kindly establish briefing deadlines and schedule this matter for argument at the Court's earliest convenience.

Sincerely,



Peter F. Smith

PFS/jac

cc: Wayne A. Kablack, Esquire
George Gvozdich, Jr. Esquire
M/M Minds

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

CIVIL DIVISION

CASE NUMBER: 02-1130-CD

vs.

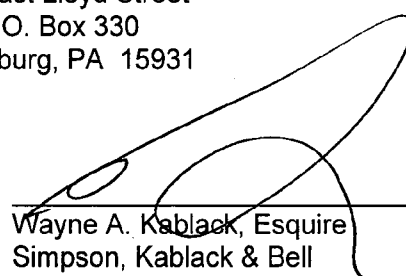
E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,
Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Preliminary Objections filed on behalf of the defendant, Beth Mining Company were served upon counsel, listed below, by placing a copy of the same in the United States Mail, postage prepaid, at Indiana, Pennsylvania this 18th day of September, 2002.

Peter F. Smith
Attorney at Law
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

George Gvozdich, Jr.
107 East Lloyd Street
P.O. Box 330
Ebensburg, PA 15931



Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701

FILED
NO
SEP 18 2002
M 11:28 AM
AC

William A. Shaw
Notary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

vs.

E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,

Defendants

CIVIL DIVISION

CASE NUMBER: 02-1130-CD

TYPE OF PLEADING: Certificate of Service

FILED ON BEHALF OF: Defendant, Beth
Mining Company

NAME, ADDRESS AND TELEPHONE
OF: Counsel of Record

Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559

FILED

SEP 19 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

vs.

E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,
Defendants

CIVIL DIVISION

CASE NUMBER: 02-1130-CD

TYPE OF PLEADING: Entry of Appearance

FILED ON BEHALF OF: Defendant, Beth
Mining Company

NAME, ADDRESS AND TELEPHONE
OF: Counsel of Record

Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559

Attorney's State ID#: 25818

Attorney's Firm ID#: 25-0918627

FILED



AUG 23 2002

m/l.40/noce

William A. Shaw

Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

J. ARTHUR MINDS and
RUTH E. MINDS,

Plaintiffs

vs.

E. P. BENDER COAL COMPANY, INC.,
and BETH MINING COMPANY,
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA


: NO. 02-1130-CD

: CIVIL DIVISION

PRAECIPE

TO THE PROTHONOTARY:

Please enter my appearance on behalf of the Defendant, Beth Mining Company, in
regard to the above-captioned matter.



Wayne A. Kablack, Esquire
Simpson, Kablack & Bell
834 Philadelphia Street
Indiana, PA 15701
(724) 465-5559
Attorneys for Defendant, Beth Mining
Company

August 22, 2002

WAK/sh
1654-5

				<p>PETER F. SMITH ATTORNEY 30 SOUTH SECOND STREET P.O. BOX 130 CLEARFIELD, PA. 16830</p>
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

J. ARTHUR MINDS and
RUTH E. MINDS

Plaintiffs

vs.

E. P. BENDER COAL COMPANY,
INC. and BETH MINING COMPANY

Defendants

No. 02-1130-CD

Type of Case:
CIVIL

Type of Pleading:
COMPLAINT

Filed on Behalf of:
PLAINTIFF

Attorney for this party:

Peter F. Smith, Esquire
Supreme Court No. 34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

Attorney the Defendants

E. P. Bender Coal Company
George Gvozdoch, Jr.
107 East Lloyd Street
P.O. Box 330
Ebensburg, PA 15931

FILED

AUG 12 2002

0/330/4cc atty Smith
William A. Shaw
Prothonotary

EZA

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

J. ARTHUR MINDS and	:	
RUTH E. MINDS	:	
Plaintiff	:	
	:	
vs.	:	No. 02-1130-CD
	:	
E. P. BENDER COAL COMPANY,	:	
INC., and BETH MINING COMPANY	:	
Defendants	:	

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 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 other rights important to you.

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

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

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

J. ARTHUR MINDS and	:	
RUTH E. MINDS	:	
Plaintiff	:	
	:	
vs.	:	No. 02-1130-CD
	:	
E. P. BENDER COAL COMPANY,	:	
INC., and BETH MINING COMPANY	:	
Defendants	:	

COMPLAINT

COMES NOW, The PLAINTIFFS, by their attorney, Peter F. Smith, who aver in support of this complaint:

1. The name of the Plaintiffs are **J. ARTHUR MINDS**, and **RUTH E. MINDS**, who are husband and wife, and who reside at Box 95, Ramey, Pennsylvania, 16671.

2. The appeal of the Magistrate's judgment filed in this action incorrectly names the Plaintiff as "Arthur J. Minds" even though the underlining Magistrate's action correctly identified the first Plaintiff as J. Arthur Minds.

3. The name of the first Defendant is **E. P. BENDER COAL COMPANY, INC.**, which is believed to be a Pennsylvania business corporation with principal office and mailing address P.O. Box 594, Main and Lehmier Street, Carrolltown, Pennsylvania, 15722.

4. The name of the second Defendant is **BETH MINING COMPANY**, which is believed to be a Pennsylvania business corporation with principal office at 815 Rockrun Road, Glen Campbell, PA 15742.

5. Plaintiffs are the owners of 160 acres, more or less situate in Gulich Township Clearfield County Pennsylvania.

6. On February 2, 1981 Plaintiff Arthur Minds and his deceased brother Raymond Minds leased the premises subject to this action to GRC Coal Company, Box 69 Clarion, Pennsylvania, 16214. A true and correct copy of said lease is attached hereto and incorporated herein by reference as Exhibit A.

7. Raymond Minds departed this life on July 16, 2000. His estate is at Clearfield County Estate Number 2000-451.

8. The Plaintiff J. Arthur Minds and his wife succeeded to the interest of Raymond Minds in this property as heirs of his estate.

9. Plaintiff subsequently extended and amended the lease with GRC Coal Company by Instrument dated January 31, 1986. A true and correct copy of said instrument is attached hereto and incorporated and herein by reference as Exhibit B.

10. GRC Coal Company subsequently merged with Cambria Coal Company and became known as C & K Coal Company.

11. By Instrument dated February 14, 1991 the Plaintiff J. Arthur Minds extended and amended the original lease with C & K Coal Company which by that point was known as C & K Coal Company. A true and correct copy of said instrument is attached hereto and incorporated and herein by reference as Exhibit C.

12. By Instrument dated April 27, 1993 Plaintiff Arthur Minds and his brother Raymond Minds consented to the assignment of the lease at issue in this action from C & K Coal Company to Defendant E. P. Bender, Inc. A true and correct copy of said assignment is attached hereto and incorporated and herein by reference as Exhibit D.

13. Finally the Plaintiff and his deceased brother Raymond Minds extended the lease once again by Instrument dated February 1, 1994 and executed with E. P. Bender Coal Company, Inc. A true and correct copy of extension is attached hereto and incorporated herein by reference and marked as Exhibit E.

14. To the best of the Plaintiffs' knowledge, information and believe, E. P. Bender Coal company entered an agreement with Beth Mining Company under which Beth Mining Company would pursue strip mining on the Plaintiffs' property subject to this action. Plaintiffs have never seen and do not have in their possession a copy of any written agreement between the Defendants concerning this arrangement, nor did Plaintiffs receive formal notice of it, nor were Plaintiffs asked to consent to it.

15. Paragraph 1 of the final extension continued the lease until August 2, 1994... providing that it, "shall continue thereafter so long as operations for the removal of coal are continuously conducted on the premises."

16. Defendants have continued to use the property in their operations at all times relevant to this suit either by

actively strip mining the premises, back filling the premises in part, storing coal on the premises, blending coal on the premises, keeping equipment on the premises and hauling coal over the premises.

17. Paragraph I.A. of the original lease requires the Lessee to pay Lessors \$300.00 a month as "advanced royalty."

18. None of the agreements at issue in this action define "advanced royalty," but the established custom in the surface mining industry in central Pennsylvania requires Lessee/Mining Companies to pay an advance or minimum royalty during such periods when a property is under lease but either not producing coal or not producing coal in sufficient quantities to produce an actual royalty exceeding the advance.

19. Lessee is also required to promptly backfill and restore the premises to their approximant original contour and then to establish vegetation.

20. Defendants have failed to promptly restore the premises to their approximant original contour and thus have deprived the Plaintiffs of the use of approximately 87 acres of their property.

21. Attached hereto and incorporated herein by reference is a letter composed by J. Arthur Minds and sent to E. P. Bender Coal company, Inc. making demand on the Defendant for the unpaid royalties and calculating their amount to be \$7,829.81. That letter is identified and incorporated herein by reference as Plaintiffs Exhibit F.

22. The Defendants have breeched their agreement with

Plaintiffs by failing to all pay advanced royalties due and by failing to promptly restore the premises to their approximant original contour.

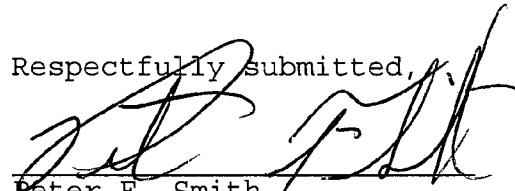
23. Plaintiffs estimate the cost of restoring the premises to exceed \$25,000.00.

WHEREFORE, Plaintiffs pray this Honorable Court to enter judgment in their favor and against the Defendants in an amount exceeding \$25,000.00 together with interest at the statutory rate accruing from the dated of Defendants' breech together with court cost.

Dated:

8/12/02

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter F. Smith', written over a horizontal line.

Peter F. Smith
Attorney for Plaintiffs

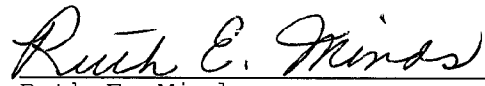
VERIFICATION

I verify that the statements made in this Complaint 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.


J. Arthur Minds

VERIFICATION

I verify that the statements made in this Complaint 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.


Ruth E. Minds

THIS AGREEMENT, Made this 2 day of February, 19 81.
 BETWEEN Arthur Minds and Raymond Minds
 Box 95 Box 162
 Ramey, PA 16671 Ramey, PA 16671
 parties of the first part,

AND
 GRC Coal Company, Box 69, Clarion, PA 16214
 party of the second part.

WITNESSETH, THAT the said parties of the first part for and in consideration of the covenants and agreements herein contained which are to be kept, done and performed by the second party, do grant and let to the second party, the right or option to go upon the premises situated in Gulich Township, Clearfield County, Pennsylvania, and bounded and described as follows:

On the North by lands of Sedhak
 On the East by lands of G. Baker and Hudish
 On the South by lands of Kittanning Coal Company
 On the West by lands of GRC Coal Company
 Containing 160 Acres more or less.

For the purpose of testing by drilling and boring for coal, this option to be exercised within 90 days from the date hereof. And in the event coal is found in sufficient quantities satisfactory to second party and this option is exercised, then first parties do grant and let to second party the exclusive right to go upon the premises to strip, remove and ship all the marketable coal that can be removed from the premises herein above described together with the right of ingress, egress and regress to, from, over and across the said premises, with the right to erect and construct the necessary buildings, roads, railroads and other equipment including such houses and buildings as may be necessary for the successful stripping of coal in and on the premises, to manufacture and prepare said coal for market on said premises, and to take, remove and transport the same, with the right to remove all and every part and portion of said coal. Also the right to dig drains for the drainage of water from the coal with the curtilage for the purpose of depositing dirt and debris from such operation as second party may conduct on the premises.

Second party shall have the right to transport coal produced from other lands through the cuts and workings that may be made on the above described premises.

Second party is released from any and all damages to the lands, the surface thereof, the improvements thereon, and the waters thereon and therein caused by mining or stripping operations on said premises. The party of the second part agrees to pay all damages done to timber, growing crops or fences in testing operations under this agreement in the event this option is not exercised.

\$1.25 surface
 \$1.25 coal

The consideration for this agreement shall be the sum of \$2.50 dollars per net ton of 2,000 pounds for every ton of marketable coal removed from the said premises so long as the party of the second part shall continue to operate the same. Said payments shall be made on or before the 25th day of each month for all of the coal removed during the preceding calendar month.

The parties of the first part shall have the right to examine the books and records of the party of the second part and to check the weight records by truck or by railroad as to the quantity of coal removed from the said premises. Each payment for royalty shall be accompanied by a statement showing the number of tons of coal removed during the period for which the royalty payment is made. The parties of the first part shall also have the right to go upon the premises where operations are being conducted for the purpose of inspecting the same. Second party hereby waives demand on the premises for all sums to become due under this agreement. Payment may be made by check mailed to parties of the first part.

Second party agrees to comply with all laws now or hereafter to be in effect with respect to operations for coal as contemplated by this agreement and for that purpose the first party grants to second party the right to re-enter the premises within the time limits of such laws to complete such work.

1. In the event that this option is exercised, the party of the second part agrees to the following:
 - A. To pay the party of the first part \$300.00 a month as advance royalty.
 - B. If the water is taken, lessee will drill a new well.
 - C. It is understood and agreed by the parties hereto that royalty rate shall be adjusted annually to reflect increase, if any, in the Wholesale Price Index published by the U.S. Bureau of Labor Statistics, by multiplying the percentage increase in the said Wholesale Price Index times the royalty rate due the owner with a minimum of the aforementioned tonnage royalty for 10% of selling price whichever is greater.

The term of this agreement, if the option is exercised, shall be 5 years from the date hereof, provided, however, that this agreement shall continue thereafter so long as operations for the removal of coal are continuously conducted on the premises.

It is agreed that this agreement may be terminated under any of the following conditions:

1. Upon the exhaustion of the marketable coal, under the terms of this agreement. The determination of the second party as to the exhaustion of the marketable coal shall be conclusive.
2. Party of the second part shall have the right to terminate this agreement by reconveying all the coal remaining and privileges herein given on condition that second party shall first perform all the agreements herein contained.
3. Upon the expiration of the term as herein provided.

Party of the second part shall have the right within six (6) months after the termination of the agreement to remove from the premises all personal property placed by second party thereon, first having paid all sums due hereunder, but any removal of the property when royalty is unpaid although not yet due shall constitute a default under the terms hereof and shall entitle the first party to exercise all remedies provided herein.

And it is further agreed that upon default on the part of the said second party to pay any royalty or rentals due under this agreement, ten (10) days written notice by registered mail having been given by the first parties to the second party of such default, the said parties of the first part, after ten (10) days written notice by registered mail of such other failure may thereupon enter forthwith upon the herein demised premises and take possession thereof without further proceedings; and in such case of default, the said second party does hereby authorize and empower any attorney of any court of record to appear for him or for it and confess a judgment for all royalties and sums of money due and unpaid hereon, with five percent attorney's commissions or fees; and waiving exemption, and inquisition on real estate or after such written notice of such default or failure any attorney of any court of record at the request of said parties of the first part, without any liability for so doing, may as attorney for the said second party, sign an agreement for entering in any proper court an amicable action of ejectment and judgment thereon without stay of execution, against the said party of the second part and all persons claiming under him or it for the recovery of the possession of the hereby demised premises and thereupon a writ of Habere Facias Possessionem, with a clause of fi fa, for all royalties due with five percent (5 percent) attorney's commission and costs, shall issue forthwith without any prior proceeding upon the said judgments, all errors and defects whatsoever in entering such action and judgments being hereby released, as well as any damages and right of exception or objection and exemption, and inquisition on real estate are waived. Any such termination of this agreement and re entry and repossession by the parties of the first part shall not release the said party of the second part from the payment of any sums of money due to the said parties of the first part under the terms of this agreement. The remedies herein provided shall be cumulative and any or all may be used by parties of the first part.

It is further understood and agreed that this agreement is executed and delivered subject to the terms and provisions of any outstanding leases for oil and gas, fire clay and also timber agreements covering the same premises, and rights of ways and pipe lines across the said property.

The party of the second part is hereby granted the right to remove and re locate any gas or oil lines that may interfere with this operation, in conformity with the rights of gas or oil companies.

In the event of the exercise of this option and if any sums of money become due the parties of the first part under the terms hereof the party of the second part is authorized to apply the same or such part of the sum as is necessary to the satisfaction of any liens of record against the said premises by payment to the holder of such liens unless the party of the first part shall obtain satisfactory release of the said liens as to the property the subject of this agreement.

Notice of the intention to exercise this option shall be given by the party of the second part to the parties of the first part by writing addressed thereto or initial royalty check addressed to and mailed to Arthur Minds, Box 95, Ramey, PA 16671

where royalties may also be sent if the option is exercised. Time is of the essence of this agreement and in the event that no such notice is given or royalty check mailed within 30 days from the date of execution of this agreement then the entire agreement shall be null and void and the party of the second part shall have no further rights thereunder, provided, however, that in the event that weather conditions make it impossible to conduct satisfactory testing of the premises within the said 30 days, the said time shall be and is hereby extended until weather conditions exist which render testing practical, and provided, further, that the time of this option shall at times be extended until ten days after the Sanitary Water Board of the Commonwealth of Pennsylvania has granted or refused to grant a water permit for the operation of these premises if such permit has been legally applied for during the original option period, but not beyond 60 months from the date of this agreement.

The provisions of this agreement shall extend to and be binding upon the heirs, administrators, successors and assigns of the parties hereto.

This Agreement constitutes the entire Agreement between the parties and may not be changed by either party unless in writing and signed by all parties hereto. The parties further acknowledge that neither is bound or liable in any manner by guarantees, promises, statements, representations, or information pertaining to this lease unless such guarantees, promises, statements, representations or information is expressly and specifically set forth in this Agreement.

Witness the proper execution of this agreement by the parties on the date above written.

Arthur Minds (SEAL)
James M. Minds (SEAL)
James M. Minds (SEAL)
James M. Minds (SEAL)
GRC Coal Company (SEAL)
W. J. Barkley (SEAL)
W.J. Barkley (SEAL)

EXHIBIT B
ESTOPPEL CERTIFICATE

THIS AGREEMENT, made this 31 day of January, 1986 between Arthur Minds, Box 95, Ramey, PA 16671 and Raymond Minds, Box 162, Ramey, PA 16671, parties of the first part,

and

DUPLICATE

GRC Coal Company, P.O. Box 69, Clarion, PA 16214, party of the second part.

It is agreed by the parties hereto that certain Lease Agreement, dated February 2, 1981, by and between the parties hereto be extended for a period of 5 years, until February 2, 1991, provided, however, this agreement shall continue thereafter so long as operations for the removal of coal are continuously conducted on the premises.

It is further agreed that all terms and conditions of the said February 2, 1981 agreement are to remain in full force and effect, excepting for the royalty rate to be increased to the sum of \$1.50 for surface, and \$1.50 per ton of marketable coal and to change item (C) in lease dated February 2, 1981 to read:

(C) It is agreed by the parties hereto that the aforementioned tonnage royalty rate be adjusted annually to reflect changes in the annual weighted average sales price per ton of coal sold under contract by Cambria Coal Company (the "average sales price"). The royalty rate adjustment shall be determined by multiplying the percentage increase or decrease of the average sales price times the then in effect royalty rate. Such adjustment shall be calculated as of December 31 and will remain in effect throughout the succeeding calendar year. Should any delay in adjustment calculation be found necessary in order to accumulate statistical evidence, the adjusted tonnage royalty rate shall be made retroactive to the designated date of adjustment calculation (December 31). The first such adjustment shall be calculated as of December 31, 1986. The percentage increase or decrease of the average sales price shall be certified by a national accounting firm. In no case will the adjustments cause a reduction of the aforementioned royalty rate of \$3.00 per ton for marketable coal where owned in fee.

All advance royalty paid to the parties of the first part from the prior lease which dated February 2, 1981 and the new lease, will be deducted from the first coal removed from the property.

Arthur Minds
Arthur Minds

Raymond Minds
Raymond Minds

W.J. Barkley
W.J. Barkley, V.P.

STATE OF PENNSYLVANIA

COUNTY OF Cambria, ss:

On this 31 day of January, 1986 before me, A Notary Public the undersigned officer, personally appeared Arthur Minds & Raymond Minds to me known to be the same persons whose names are subscribed to the foregoing instrument and in due form of law acknowledged the execution of the foregoing Agreement to be their act and deed for the purposes therein mentioned and desire that the same might be recorded as such.

WITNESS, my hand, and official seal the date first above written.

Gerald L. McClary (SEAL)
GERALD L. McCLARY, NOTARY PUBLIC
READE TOWNSHIP, CAMBRIA COUNTY
MY COMMISSION EXPIRES FEB. 16, 1989
Member, Pennsylvania Association of Notaries

STATE OF PENNSYLVANIA

COUNTY OF Clarion, ss:

On this 1st day of February, 1986 before me, a Notary Public the undersigned officer, personally appeared W. J. Barkley, Vice-President to me known to be the same persons whose names are subscribed to the foregoing instrument and in due form of law acknowledged the execution of the foregoing Agreement to be their act and deed for the purposes therein mentioned and desire that the same might be recorded as such.

WITNESS, my hand, and official seal the date first above written.

James A. Linn (SEAL)
JAMES A. LINN, NOTARY PUBLIC
MONROE TOWNSHIP, CLARION COUNTY
MY COMMISSION EXPIRES FEB. 14, 1989

THIS AGREEMENT, made this 14 day of February, 1991, between Arthur Minds, an individual with a mailing address of Box 95, Ramey, PA 16671, and Raymond Minds, an individual with a mailing address of Box 162, Ramey, PA 16671, parties of the first part,

AND

C & K Coal Company, a corporation with a mailing address of P. O. Box 69, Clarion, PA 16214, party of the second part.

It is agreed by the parties hereto that the certain Lease Agreement dated February 2, 1981, which was subsequently extended by Agreement dated January 31, 1986, by and between the parties hereto be extended for an additional period of three (3) years, until February 2, 1994, provided, however, that the Agreement shall continue thereafter so long as operations for the removal of coal are continuously conducted on the premises.

It is further agreed that all terms and conditions of the said February 2, 1981, Agreement are to remain in full force and effect, excepting for the addition of the following tonnage royalty adjustment:

It is agreed by the parties hereto that the aforementioned tonnage royalty rate be adjusted annually to reflect changes in the annual weighted average sales price per ton for all coal sold by C & K Coal Company which originates from its mines in Cambria and Clearfield Counties (the "average sales price"). The royalty rate adjustment shall be determined by multiplying the percentage increase or decrease of the average sales price times the royalty rate then in effect. Such adjustment shall be calculated as of December 31 and will remain in effect throughout the succeeding calendar year. Should any delay in adjustment calculation be found necessary in order to accumulate statistical evidence, the adjusted tonnage royalty rate shall be made retroactive to the designated date of adjustment calculation (December 31). The first adjustment shall be calculated as of December 31, 1991. The percentage increase or decrease of the average sales price will, upon request by owner, be certified by Independent Certified Public Accountants then employed by the Company. In no case will the adjustments cause a reduction of the aforementioned royalty rate below the base rate of \$3.00 per ton of marketable coal.

All advance royalties paid to the parties of the first part are to be deducted from the first coal removed and sold from the property.

Arthur Minds
Arthur Minds

Raymond Minds
Raymond Minds

WITNESS:

C & K COAL COMPANY

William T. Hartle

Gary C. Wilson
Gary C. Wilson, President

CONSENT TO ASSIGNMENT AND RELEASE

MADE and entered into this 27 day of April, 1993, by and between C & K COAL COMPANY, a Pennsylvania corporation (as successor by merger to Cambria Coal Company and GRC Coal Company) (the "Assignor") and ARTHUR MINDS and RAYMOND MINDS (the "Contract Party").

W I T N E S S E T H:

WHEREAS, the Contract Party and the Assignor entered into the agreement(s) described on Exhibit A attached hereto and made a part hereof (collectively, the "Agreement"); and

WHEREAS, pursuant to an agreement (the "Purchase Agreement") the Assignor is selling, conveying, assigning, transferring and delivering to E. P. Bender Coal Co., Inc. (the "Assignee"), and the Assignee is purchasing, acquiring and assuming certain of the assets and certain of the liabilities of the Assignor relating to the Assignor's Cambria Division; and

WHEREAS, in connection with and only upon the consummation of such sale the Assignor desires to assign all of its right, title and interest in and to the Agreement to the Assignee and to be relieved of any further liability under the Agreement; and

WHEREAS, the Assignee desires to accept the assignment of the Agreement and to assume all rights and obligations of the Assignor under the Agreement; and

WHEREAS, the Assignee and the Assignor desire to secure the consent of the Contract Party to such assignment and assumption of the Agreement; and

WHEREAS, the Assignor has requested the consent of the Contract Party to an assignment by the Assignor of all its right, title and interest in and to the Agreement to the Assignee; and

WHEREAS, the Assignor has also requested the release by the Contract Party of all of the Assignor's obligations under the Agreement, which obligations shall be assumed by the Assignee; and

WHEREAS, the Contract Party is agreeable to such an assignment, release and assumption.

NOW, THEREFORE, in mutual consideration of the covenants and agreements herein set forth, and intending to be legally bound hereby, the Assignor and the Contract Party agree as follows:

1. The Contract Party hereby consents to the assignment by the Assignor to the Assignee of all its right, title and interest in and to the Agreement.

2. The Contract Party does hereby forever release and discharge the Assignor, its successors and assigns, from all of its obligations under the Agreement and any and all liabilities, claims, demands and causes of action whatsoever, in law or in equity, known or unknown, which the Contract Party,

EXHIBIT "A"

its successors or assigns, ever had, now has or which may hereafter accrue to it by reason of any matter whatsoever arising out of, relating to or in connection with the Agreement.

3. The Contract Party hereby represents and warrants that, except as set forth in Exhibit B hereto, the Agreement has not been modified or amended, the Agreement is in full force and effect and, as of the date hereof to the best knowledge and belief of the Contract Party, no default has occurred or is continuing, and no event has occurred or condition exists which would, with the giving of notice or the expiration of any grace period, constitute a default under the Agreement.

4. Anything to the contrary notwithstanding, this Consent and Release shall nevertheless be of no force and effect unless and until the Assignee executes the Acceptance of Assignment and Performance of Obligations in the form as set forth in Exhibit C attached hereto and made a part hereof. In the event that the sale by the Assignor of certain of its assets and certain of its liabilities to the Assignee does not take place on or before June 30, 1993, this Consent and Release shall be null and void.

5. This Consent to Assignment and Release shall be binding on and inure to the parties hereto, and their respective successors, heirs, or assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Consent to Assignment and Release to be duly executed this 27 day of April, 1993.

ATTEST:

William St. Amato
Secretary

C & K COAL COMPANY:

By: Gary C. Wilson
Gary C. Wilson, President

WITNESS:

Donald C. Little
Donald C. Little

CONTRACT PARTY:

By: Arthur Minds
Arthur Minds
Raymond Minds
Raymond Minds

COMMONWEALTH OF PENNSYLVANIA

Cambria
COUNTY OF CLARION

On this, the 27 day of April, 1993, before me; a Notary Public,
the undersigned officer personally appeared, Arthur Minds known to me (or
satisfactorily proven) to be the person whose name is subscribed to the within
instrument and acknowledged that they executed the same for the purposes therein
contained. .

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

Notarial Seal
Gerald L. McElroy, Notary Public
Reade Twp., Cambria County
My Commission Expires Feb. 16, 1997
Member, Pennsylvania Association of Notaries

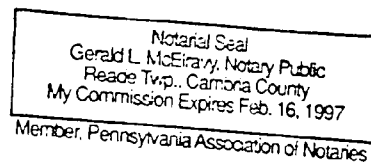
COMMONWEALTH OF PENNSYLVANIA

CANADIA
COUNTY OF CLARION

On this, the 27 day of April, 1993, before me; a Notary Public, the undersigned officer personally appeared, Raymond Minds known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Gerald L. McElrath
Notary Public




STATE OF PENNSYLVANIA

COUNTY OF Camden

On this, the 14 day of ~~January~~ February, 1991, before me, Notary Public,
the undersigned officer, personally appeared Arthur Minds and Raymond Minds,
known to me to be the same persons whose names are subscribed to the foregoing
instrument and in due form of law acknowledged the execution of the foregoing
Agreement to be their act and deed for the purposes therein mentioned and desire
that the same might be recorded as such.

WITNESS, my hand and official seal the date first above written.

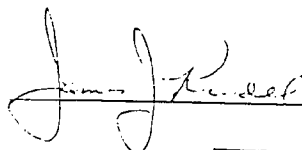
 (SEAL)
NOTARY SEAL
GERALD L. MCLARY, NOTARY PUBLIC
HEDGE TOWNSHIP, CAMDEN COUNTY
MY COMMISSION EXPIRES FEB. 15, 1993
Member, Pennsylvania Association of Notaries

STATE OF PENNSYLVANIA

COUNTY OF CLARION

On this, the 21st day of January, 1991, before me, a Notary Public
the undersigned officer, personally appeared Gary C. Wilson, President, known to
me to be the same person whose name is subscribed to the foregoing instrument and
in due form of law acknowledged the execution of the foregoing Agreement to be
his act and deed for the purposes therein mentioned and desires that the same
might be recorded as such.

WITNESS, my hand and official seal the date first above written.

 (SEAL)

NOTARY SEAL
JAMES J. KINKEL, NOTARY PUBLIC
MONROE TOWNSHIP, CLARION COUNTY
MY COMMISSION EXPIRES FEB. 14, 1993
Member, Pennsylvania Association of Notaries

EXTENSION AGREEMENT

THIS EXTENSION AGREEMENT, made this 1st day of February, 1994, by and between ARTHUR MINDS, an individual with a mailing address of Box 95, Ramey, PA 16671 and RAYMOND MINDS, an individual with a mailing address of Box 162, Ramey, PA 16671, parties of the first part,

AND

E. P. BENDER COAL CO., INC., a corporation with a mailing address of Main and Lehmier Streets, P. O. Box 594, Carrolltown, PA 15722, party of the second part.

WITNESSETH:

WHEREAS, the parties of the first part and C & K Coal Company entered into a Consent to Assignment and Release dated April 27, 1993, described on Exhibit "A" attached hereto and made a part hereof (hereafter referred to as the "Assignment"); and

WHEREAS, by virtue of the Assignment the parties of the first part have consented to an assignment of their rights, title and interests to E. P. Bender Coal Co., Inc.; and

WHEREAS, the Lease Agreement dated February 2, 1981, which was subsequently extended by Agreement dated January 31, 1986, was subsequently extended by Agreement dated February 14, 1991, for an additional period of three (3) years, until February 2, 1994, provided, however, that the

Agreement shall continue thereafter so long as operations for the removal of coal are continuously conducted on the premises; and

WHEREAS, it is the desire of the parties of the first part and the party of the second part to extend the Agreement further.

NOW, THEREFORE, in mutual consideration of the covenants and agreements herein set forth, and intending to be legally bound hereby, the parties of the first part and the party of the second part agree as follows:

1. It is agreed by the parties hereto that the certain Lease Agreement dated February 2, 1981, which was subsequently extended by Agreement dated January 31, 1986, which was subsequently extended by Agreement dated February 14, 1991, which was subsequently assigned to E. P. Bender Coal Co., Inc. by the Consent to Assignment and Release dated April 27, 1993, be extended for an additional period of six (6) months, until August 2, 1994, provided, however, that the Agreement shall continue thereafter so long as operations for the removal of coal are continuously conducted on the premises.

2. The party of the second part herein agrees to produce coal from the premises prior to August 2, 1994, otherwise this Agreement will become null and void.

3. The party of the second part herein agrees to

produce tonnage in approximate equal monthly quantities of two thousand (2,000) tons per month and, further, the party of the second part herein agrees to produce a minimum quantity of twenty-four thousand (24,000) tons per year.

4. It is further agreed that all other terms and conditions of the Agreement dated February 2, 1981, and all subsequent extensions and assignment shall remain in full force and effect.

5. This Extension Agreement shall be binding on and inure to the parties hereto, and their respective successors, heirs, or assigns.

[PURPOSELY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this
Extension Agreement to be duly executed this 1st day of
February, 1994.

WITNESS:

Ronald C. Lettner

Arthur Minds
ARTHUR MINDS

WITNESS:

Ronald C. Lettner

Raymond Minds
RAYMOND MINDS

ATTEST:

E. P. BENDER COAL CO., INC

Edward C. Bender
SECRETARY

By: Martha C. Bender
PRESIDENT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF *Cambria*

On this, the 1st day of February, 1994, before me, a Notary Public, the undersigned officer personally appeared Arthur Minds , known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

My Commission Expires:

Notarial Seal
Gerald L. McElravy, Notary Public
Reade Twp., Cambria County
My Commission Expires Feb. 16, 1997

Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF *Cambria*

On this, the 1st day of February, 1994, before me, a Notary Public, the undersigned officer personally appeared Raymond Minds , known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

My Commission Expires:

Notarial Seal
Gerald L. McElravy, Notary Public
Reade Twp., Cambria County
My Commission Expires Feb. 16, 1997

Member, Pennsylvania Association of Notaries

PO BOX 95
RAMEY, PA 16671

MARCH 22, 2002

CERTIFIED MAIL

E. P. BENDER COAL CO., INC.
MAIN AND LEHMIER STREETS
PO BOX 594
CARROLLTOWN, PA 15722

GENTLEMEN:

RE: BETH MINING CO., STEVE PELES, GLEN CAMPBELL, PA
LEASE AGREEMENT BETWEEN J. ARTHUR MINDS & RAYMOND A.
MINDS AND E.P.BENDER COAL CO., INC.

SHOWN BELOW IS MONIES DUE FOR MINIMUM ROYALTIES FROM
DECEMBER 1998 THROUGH JANUARY 2002: *Feb, + Mar-2002*

MONTH/YEAR	MINIMUM ROYALTY DUE	PAID	BALANCE DUE
DEC. 1998	\$300.00	\$143.85	\$156.15
		BALANCE DUE 1998	\$156.15
JAN. 1999	300.00	138.09	161.91
FEB. 1999	300.00	-0-	300.00
MAR. 1999	300.00	142.56	157.44
APR. 1999	300.00	-0-	300.00
MAY 1999	300.00	-0-	300.00
JUNE 1999	300.00	62.09	237.91
JULY 1999	300.00	265.78	34.30
AUG. 1999	300.00	-0-	300.00
SEPT. 1999	300.00	195.06	104.94
OCT. 1999	300.00	219.11	80.89
NOV. 1999	300.00	82.86	217.14
DEC. 1999	300.00	236.59	63.41
		BALANCE DUE 1999	\$2257.94

(CONTINUED)

MONTH/YEAR	MINIMUM ROYALTY DUE	PAID	BALANCE OWED
JAN. 2000	\$300.00	\$214.01	\$ 85.99
FEB. 2000	300.00	-0-	300.00
MAR. 2000	300.00	259.08	40.92
APR. 2000	300.00	252.60	47.40
MAY 2000	300.00	205.50	94.50
JUNE 2000	300.00	165.06	134.94
JULY 2000	300.00	270.63	29.37
AUG. 2000	300.00	168.00	132.00
SEPT. 2000	300.00	284.73	15.27
OCT. 2000	300.00	293.13	6.87
NOV. 2000	300.00	183.30	116.70
DEC. 2000	300.00	218.24	81.76
		BALANCE DUE 2000:	\$1085.72
JAN 2001	300.00	170.00	130.00
FEB. 2001	300.00	-0-	300.00
MAR 2001	300.00	-0-	300.00
APR. 2001	300.00	-0-	300.00
MAY 2001	300.00	-0-	300.00
JUNE 2001	300.00	-0-	300.00
JULY 2001	300.00	-0-	300.00
AUG. 2001	300.00	-0-	300.00
SEPT. 2001	300.00	-0-	300.00
OCT. 2001	300.00	-0-	300.00
NOV. 2001	300.00	-0-	300.00
DEC. 2001	300.00	-0-	300.00
		BALANCE DUE 2001:	\$3430.00
JAN. 2002	300.00	-0-	300.00
FEB. 2002	300.00	-0-	300.00
MAR. 2002	300.00	-0-	300.00
		BALANCE DUE TO DATE 2002:	\$ 900.00

GRAND TOTAL DUE: \$7,829.81

THE ABOVE AMOUNT IS DUE SINCE YOU STILL HOLD THE LEASE AND WE HAVE NEVER BEEN NOTIFIED OTHERWISE.

VERY TRULY YOURS,

J. ARTHUR MINDS

CC: BETH MINING COMPANY

APP ORIGINAL contour?

CHEAP rent for 87 acres AT \$300. per month

Last coal removed 4-24-2502

Court of Common Pleas of Clearfield County, Pennsylvania
Civil Division

J. Arthur Minds

Vs.

02-1130-CD

E. P. Bender Coal Company

Termination of Inactive Case

This case is hereby terminated with prejudice
this 17th day of November, 2005, as per Rule 230.2.



William A. Shaw
Prothonotary

FILED

NOV 17 2005

William A. Shaw
Prothonotary/Clerk of Courts