

02-1469-CD  
Irvona Municipal Auth vs Merlo  
~~Contracting~~ Contracting

02

02-1469-CD

IRVONA MUNICIPAL AUTHORITY vs.MERLO CONTRACTING

COURT OF COMMON PLEAS

Clearfield  
JUDICIAL DISTRICT

46th

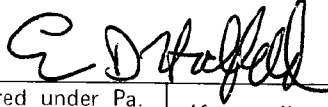
FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 02-1469-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.

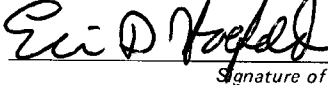
NAME OF APPELLANT <b>Merlo Contracting</b>		MAG. DIST. NO. OR NAME OF D.J. <b>46-3-04</b>	
ADDRESS OF APPELLANT <b>R.D. 1 Box 234</b>		CITY <b>Mineral Point</b>	STATE <b>PA</b>
		ZIP CODE <b>15942</b>	
DATE OF JUDGMENT <b>09/16/2002</b>	IN THE CASE OF (Plaintiff) <b>Irvona Municipal Authority</b>		(Defendant) <b>Merlo Contracting</b>
CLAIM NO. <b>CV XX 00000116-02</b> <b>LT 19</b>		SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT  <b>Eric D. Hochfeld</b> <b>Attorney for Appellant</b>	
<p>This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B.</p> <p>This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.</p> <p>_____ Signature of Prothonotary or Deputy</p>		<p>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.</p>	

## 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 **Irvona Municipal Authority**, appellee(s), to file a complaint in this appeal  
(Common Pleas No. 02-1469-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

 **Eric D. Hochfeld**  
Signature of appellant or his attorney or agent

RULE: To **Irvona Municipal Authority**, 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: Sept. 23, 2002

FILED

SEP 23 2002

William A. Shaw  
Prothonotary

Signature of Prothonotary or Deputy

**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\_\_\_\_.

*[Handwritten signature]*

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**

**MERLO CONTRACTING**

**R.D.1 BOX 234**

**MINERAL POINT, PA 15942**

*TOM BENDER*

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

PLAINTIFF:

NAME and ADDRESS

**IRVONA MUNICIPAL AUTHORITY**

**P.O. BOX 247**

**IRVONA, PA 16656**

**COPY**

VS.

DEFENDANT:

NAME and ADDRESS

**MERLO CONTRACTING**

**R.D.1 BOX 234**

**MINERAL POINT, PA 15942**

Docket No.: **CV-0000116-02**

Date Filed: **8/15/02**



**THIS IS TO NOTIFY YOU THAT:**

Judgment:

**FOR PLAINTIFF**



Judgment was entered for:

(Name)

**IRVONA MUNICIPAL AUTHORITY**



Judgment was entered against:

(Name)

**MERLO CONTRACTING**

in the amount of \$ **840.50** on:

(Date of Judgment) **9/16/02**



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><b>781.00</b></u>
Judgment Costs	\$ <u><b>59.50</b></u>
Interest on Judgment	\$ <u><b>.00</b></u>
Attorney Fees	\$ <u><b>.00</b></u>
<b>Total</b>	<b>\$ <u><b>840.50</b></u></b>
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
	=====
<b>Certified Judgment Total</b>	<b>\$ _____</b>

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.**

**9-16-02** 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

**FILED**

Atty pd.

8000

SEP 23 2002

Copied to Atty

William A. Shaw  
Prothonotary

# SAHLANEY & DUDECK LAW OFFICE

430 MAIN STREET  
JOHNSTOWN, PA 15901-1823  
(814) 535-6509  
FAX (814) 535-1876

**MICHAEL W. SAHLANEY**  
msahlaney@charter.net

September 20, 2002

**ARLENE ANN DUDECK**  
adudeck@charter.net

**ERIC D. HOCHFELD\***  
ehochfeld@charter.net  
\*ALSO ADMITTED IN NEW YORK

William Shaw, Prothonotary  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830

RE: Irvona Municipal Authority vs. Merlo Contracting  
Notice of Appeal from District Justice Judgement

Dear Mr. Shaw:

Please find enclosed herewith for filing Merlo Contracting's Notice of Appeal from District Justice judgement with the Notice of Judgement attached.. Also enclosed is a check in the amount of \$80.00 for fees associated with this filing.

Kindly return the copies of the Notice of Appeal to my office in the self addressed, stamped envelope provided.

Thank you for your attention to this matter. If you should have any questions, please feel free to contact me.

Sincerely,

SAHLANEY & DUDECK LAW OFFICE



Eric D. Hochfeld,  
Attorney at Law

EDH/gmj  
Enclosure  
cc: Charles J. Merlo

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA	
CASE NO. 02-1469-CD	
IRVONA MUNICIPAL AUTHORITY,  Plaintiff,  v.  MERLO CONTRACTING,  Defendant.	
PROOF OF SERVICE OR NOTICE OF APPEAL AND RULE TO FILE COMPLAINT	
SAHLANEY & DUDECK LAW OFFICE 430 MAIN STREET JOHNSTOWN, PA 15901 814/535-6509 FAX 814/535-1876	

COURT OF COMMON PLEAS

Clearfield  
JUDICIAL DISTRICT

46th

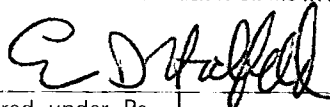
FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 02-1469-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 <b>Marlo Contracting</b>		MAG. DIST. NO. OR NAME OF D.J. <b>46-3-04</b>	
ADDRESS OF APPELLANT <b>R.D. 1 Box 234</b>		CITY <b>Mineral Point</b>	STATE <b>PA</b>
DATE OF JUDGMENT <b>09/16/2002</b>		ZIP CODE <b>15942</b>	
IN THE CASE OF (Plaintiff) <b>Irvona Municipal Authority</b>		VS. <b>Marlo Contracting</b>	
CLAIM NO. <b>CV 02120000116-02</b> LT 19		SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT  <b>Attorney for Appellant</b>	

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.

\_\_\_\_\_  
Signature of Prothonotary or Deputy

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.

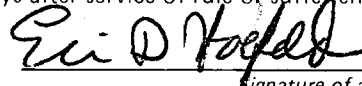
## PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(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 **Irvona Municipal Authority**, appellee(s), to file a complaint in this appeal  
Name of appellee(s)

(Common Pleas No. **02-1469-CD**) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

 **Attorney for Appellant**  
Signature of appellant or his attorney or agent

RULE: To **Irvona Municipal Authority**, 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: **Sept. 23, 2002**

  
Signature of Prothonotary or Deputy

IRVONA MUNICIPAL AUTHORITY, : IN THE COURT OF COMMON PLEAS  
Plaintiff, : OF CLEARFIELD COUNTY, PENNSYLVANIA  
vs. :  
MERLO CONTRACTING, : CIVIL ACTION – LAW  
Defendants. : CASE NO: 02-1469-CD

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

I Eric D. Hochfeld, Esquire hereby verify subject to the penalties of 18 Pa C.S. §4904 relating to unsworn falsifications to authorities, that I served a copy of the attached Notice of Appeal from District Justice Judgment upon the District Justice and the Plaintiff, IRVONA MUNICIPAL AUTHORITY, and further that I served the Rule to File a Complaint accompanying the Notice of Appeal upon the Plaintiff, IRVONA MUNICIPAL AUTHORITY, by mailing both via certified mail, sender's receipts attached hereto as Exhibit A, upon the following on the date written below.

James L. Hawkins  
251 Spring Street  
P.O. Box 362  
Houtzdale, PA 16651-0362

Irvona Municipal Authority  
P.O. Box 247  
Irvona, PA 16656

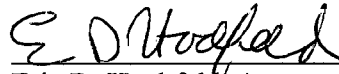
SAHLANEY & DUDECK LAW OFFICE

Date: September 24, 2002

**FILED**

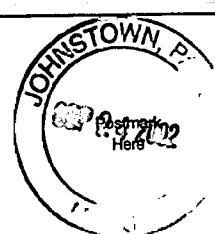
SEP 25 2002

William A. Shaw  
Prothonotary

  
Eric D. Hochfeld, Attorney for the Defendants  
Supreme Court I.D. #70424  
430 Main Street  
Johnstown, PA. 15901  
(814) 535-6509

7002 0460 0001 8998 9450

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
13 MAR 2002	
Postage	\$ .37
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.42



Postmark Here

Sent To	
Irvona Municipal Authority	
Street, Apt. No.; or PO Box No. P.O. Box 247	
City, State, ZIP+ 4 Irvona, PA 16656	

PS Form 3800, January 2001 See Reverse for Instructions

7002 0460 0001 8998 9467

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
HOUTZDALE PA 16651	
Postage	\$ <del>0.37</del> 37
Certified Fee	<del>2.30</del> 30
Return Receipt Fee (Endorsement Required)	<del>1.75</del> 75
Restricted Delivery Fee (Endorsement Required)	<del>0.00</del> 00
Total Postage & Fees	\$ <del>4.42</del> 42

0916  
06

Postmark Here

09/24/2002

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

PS Form 3800, January 2001 See Reverse for Instructions

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  
**IRVONA MUNICIPAL AUTHORITY**  
**P.O. BOX 247**  
**IRVONA, PA 16656**

VS.  
DEFENDANT: NAME and ADDRESS  
**MERLO CONTRACTING**  
**R.D.1 BOX 234**  
**MINERAL POINT, PA 15942**

Docket No.: **CV-0000116-02**  
Date Filed: **8/15/02**



**THIS IS TO NOTIFY YOU THAT:**

Judgment:

**FOR PLAINTIFF**

*02-1469-02*

☒ Judgment was entered for: (Name) **IRVONA MUNICIPAL AUTHORITY**

☒ Judgment was entered against: (Name) **MERLO CONTRACTING**

in the amount of \$ **840.50** on: (Date of Judgment) **9/16/02**

☐ 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	\$ <b>781.00</b>
Judgment Costs	\$ <b>59.50</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
<b>Total</b>	<b>\$ 840.50</b>

Post Judgment Credits \$ \_\_\_\_\_  
Post Judgment Costs \$ \_\_\_\_\_  
=====

**Certified Judgment Total \$ \_\_\_\_\_**

Date:	Place: <b>FILED</b> <i>SEP 27 2002</i>
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.

*9-16-02* 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.  
*9-25-02* Date *James L. Hawkins*, District Justice

My commission expires first Monday of January,

**2006**

SEAL

FILED <sup>NO</sup> CC  
SEP 27 2002  
10:35 AM

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
No. 02- 1469- CD

IRVONA MUNICIPAL AUTHORITY,  
Plaintiff

-vs-

CHARLES J. MERLO, INC., Defendant

C O M P L A I N T

1cc  
013:2781  
Atty Gates  
E

LAW OFFICES  
GATES & SEAMAN  
2 NORTH FRONT STREET  
P.O. BOX 846  
CLEARFIELD, PA. 16830

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

IRVONA MUNICIPAL  
AUTHORITY, Plaintiff

vs.

CHARLES J. MERLO, INC.,  
Defendant

No. 02 - 1469 - CD

Type of Case: Civil

Type of Pleading:  
COMPLAINT

Filed on behalf of: Plaintiff

Counsel of Record for this Party:  
Andrew P. Gates

Supreme Court No.: 36604

GATES & SEAMAN  
Attorneys at law  
Two North Front Street  
P. O. Box 846  
Clearfield, Pennsylvania 16830  
(814) 765-1766

OCT 14 2002

William A. Shaw  
Prothonotary

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

IRVONA MUNICIPAL AUTHORITY,	:	
Plaintiff	:	No. 02-1469-CD
	:	
-vs-	:	
	:	
CHARLES J. MERLO, INC.,	:	
Defendant	:	

NOTICE TO DEFEND

YOU have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering 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 claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

DAVID S. MEHOLICK, COURT ADMINISTRATOR  
Clearfield County Court House  
Clearfield, PA 16830  
(814) 755-2641, Ext. 1303

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

IRVONA MUNICIPAL AUTHORITY,	:	
Plaintiff	:	No. 02-1469-CD
	:	
-vs-	:	
	:	
CHARLES J. MERLO, INC.,	:	
Defendant	:	

COMPLAINT

NOW COMES, IRVONA MUNICIPAL AUTHORITY, by its Solicitor, Andrew P. Gates, Esquire, and alleges the following causes of action versus the named Defendant:

1. Plaintiff, Irvona Municipal Authority, is a body corporate and politic organized and existing under the Municipalities Authorities Act of 1945, as amended, (53 P.S. § 5601 et seq.), having an office on Berwind Street in the Borough of Irvona, Clearfield County, Pennsylvania, with a mailing address of P. O. Box 247, Irvona, PA 16656.

2. Defendant, Charles J. Merlo, Inc., is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having a principal place of business at R. D. #1, Box 234, Merlo Road, Mineral Point, Pennsylvania 15942, and which, at all times relevant hereto, was engaged in the business of contracting and construction, including the erection, construction and/or replacement of existing bridges utilized by the Commonwealth of Pennsylvania and/or municipalities for motor vehicle travel by the general public.

3. At all times relevant to these proceedings, including March 13, 2002, March 14, 2002 and March 15, 2002, May 18, 2002, and May 21, 2002, Plaintiff was the owner of piping and related accessories through which Plaintiff supplies public drinking water to customers situate in both Irvona Borough and a portion of Beccaria Township, Clearfield County, Pennsylvania.

4. One of the locations where Plaintiff owned and operated water distribution facilities consisting of piping and related accessories was a location situate in Beccaria Township, Clearfield County, Pennsylvania, along the south side of Legislative Route 3012.

5. Plaintiff believes and therefore avers that at all times relative to these proceedings, (specifically including the dates of March 13-15, 2002, May 18, 2002 and May 21, 2002), Defendant, while under contract with the Commonwealth of Pennsylvania, Department of Transportation, was engaged in the construction, erection and contracting of either a new and/or replacement bridge along Legislative Route 3012 in Beccaria Township, Clearfield County, Pennsylvania, at the location where Plaintiff maintained water distribution facilities as set forth in Paragraph 4 hereof.

#### COUNT I

6. Paragraphs 1 through 5 are herein incorporated by reference as though set forth at length herein.

7. On or before March 13-15, 2002, May 18, 2002 and May 21, 2002, Defendant, by his officers, agents, servants, subcontractors and/or employees, conducted or caused to be conducted, ground excavation and compacting operations in the vicinity of Plaintiff's water distribution facilities as described in Paragraph 4 hereof which involved the use of heavy equipment and/or explosives as part of its construction contract with the Commonwealth of Pennsylvania, Department of Transportation.

8. As a result of Defendant's operations with its heavy equipment and/or blasting operations with explosives at the aforementioned site, Plaintiff's water distribution facilities were damaged on the five dates specified in Paragraph 7 hereof which resulted in water leaks whereby Plaintiff lost several thousand gallons of water which it maintained for sale and distribution to its customers.

9. On March 13, 2002, a total of 5,262 gallons of water leaked from the piping/water line damaged by Defendant during the course of its operations.

10. On March 14, 2002, a total of 55,562 gallons of water leaked from the piping/water line damaged by Defendant during the course of its operations.

11. On March 15, 2002, a total of 20,362 gallons of water leaked from the piping/water line damaged by Defendant

during the course of its operations.

12. On May 18, 2002, a total of 66,000 gallons of water leaked from the piping/water line damaged by Defendant during the course of its operations.

13. On May 21, 2002, a total of 38,500 gallons of water leaked from the piping/water line damaged by Defendant during the course of its operations.

14. As a further result of Defendant's activities and to prevent further water loss, Plaintiff engaged the services of Norman Diehl Contracting on May 18, 2002 to dig up, repair and/or replace the damaged piping and in order to make the necessary repairs required, Plaintiff expended the sum of \$240.00 for said contractor's services which bill represents the fair and reasonable price for a repair of this nature and kind. A photocopy of the repair bill of Norman Diehl Contracting for the services provided on May 18, 2002 is attached hereto and made a part hereof as Exhibit "A".

15. The cost of said gallons of water specified in Paragraphs 9 and 13 hereof at the Plaintiff's then water usage rates was:

- (i) water loss on March 13, 2002 (5,262 gallons)=\$41.40;
- (ii) water loss on March 14, 2002 (55,562 gallons)=\$406.50;
- (iii) water loss on March 15, 2002 (20,362 gallons)=\$150.03;
- (iv) water loss on May 18, 2002 (66,000 gallons)=\$467.00;

and

(v) water loss on May 21, 2002 (38,500 gallons)=\$274.50.

16. The damage sustained by Plaintiff to its water distribution facilities and the water loss resulting therefrom was caused by Defendant's use of inherently dangerous materials and/or equipment under Defendant's exclusive management and control.

WHEREFORE, Plaintiff demands judgment against the Defendant for the following:

- a. Water loss for the period of March 13, 2002 (\$41.40);
  - b. Water loss for the period of March 14, 2002 (\$406.50);
  - c. Water loss for the period of March 15, 2002 (\$150.03);
  - d. Water loss for the period of May 18, 2002 (\$467.00);
  - e. Water loss for the period of May 21, 2002 (\$274.50);
  - f. For contracting services to repair the damage to Plaintiff's water distribution system caused by Defendant on May 18, 2002 (\$240.00);
  - g. Cost of filing Complaint with District Justice James L. Hawkins and having Defendant served with the Complaint (\$59.50);
- and
- h. Interest and costs.

#### COUNT II

17. Paragraphs 1 through 16 are incorporated herein by reference as though set forth at length.

18. The damages suffered by Plaintiff as set forth in more detail in Paragraphs 8 through 15 hereof were caused by Defendant, Charles J. Merlo, Inc., in that its officers, servants, agents, subcontractors and/or employees, negligently and/or carelessly:

(a) failed to make proper inspection of the construction site to ascertain the exact location of the Plaintiff's water distribution facilities (i.e. piping and water lines) and to take protective measures to ensure the same were not damaged;

(b) failed to properly mark the surface of the land and location of Plaintiff's water distribution facilities so as to make Defendant's workmen aware of the location of said facilities;

(c) failed to notify Plaintiff of digging operations by utilizing "Pennsylvania ONE Call";

(d) failed to take adequate steps to protect Plaintiff's water distribution facilities from the effects of Defendant's utilization of heavy equipment and/or explosives;

(e) hired and used negligent and incompetent agents, servants, employees and/or subcontractors to perform the work which the Defendant knew or should have known were incompetent and could not properly perform the work, especially when taking into consideration the close proximity of Plaintiff's water distribution facilities to Defendant's work site;

(f) failed to notify Plaintiff of the close proximity of where Defendant would be performing its work so as to allow Plaintiff to mark and/or otherwise take safety measures to prevent its water distribution facilities from being damaged, severed and broken by Defendant's use of heavy equipment;

(g) failed to take adequate steps and/or measures to prevent the damage done to Plaintiff's water distribution facilities in May 2002 considering Defendant, while performing work approximately two (2) months before on the same project, previously damaged Plaintiff's water distribution facilities which lead to water loss; and

(h) failed to perform the duties placed upon it by the terms of its agreement with the Commonwealth of Pennsylvania, Department of Transportation.

WHEREFORE, Plaintiff, Irvona Municipal Authority, demands judgment against the Defendant, Charles J. Merlo, Inc., for the following amounts:

- a. Water loss for the period of March 13, 2002 (\$41.40);
- b. Water loss for the period of March 14, 2002 (\$406.50);
- c. Water loss for the period of March 15, 2002 (\$150.03);
- d. Water loss for the period of May 18, 2002 (\$467.00);
- e. Water loss for the period of May 21, 2002 (\$274.50);
- f. For contracting services to repair the damage to Plaintiff's water distribution system caused by Defendant on May

18, 2002 (\$240.00);

g. Cost of filing Complaint with District Justice James L. Hawkins and having Defendant served with the Complaint (\$59.50);  
and

h. Interest and costs.

Respectfully submitted,

GATES & SEAMAN

By:



---

Andrew R. Gates, Esquire  
Attorney for Plaintiff,  
Irvona Municipal Authority

Two North Front Street  
Clearfield, PA 16830  
(814) 765-1766

Date: October 14, 2002.

MAY 31 2002



# NORMAN DIEHL CONTRACTING



BOX 83  
GLEN HOPE, PENNSYLVANIA 16645  
814-672-3444

To: Irvona Water Auth.

Date: May 23, 2002

Date	Description	Amount
5-18-02	3 Hrs. Backhoe	120.00
	Labor	120.00
	Fixed leak at bridge next to Leyo's	

Total

\$240.00

memo

Thank you,

DIEHL CONTRACTING

*Norman G. Diehl*

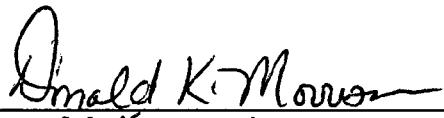
Norman G. Diehl  
Owner

EXHIBIT "A"

TERMS: Net 30 Days. A Service Charge Of  $1\frac{1}{2}\%$  Per Month (18% Per Annum) Of The Unpaid Balance Will Be Charged On All Past Due Amounts.

V E R I F I C A T I O N

I, DONALD A. MORRISON, CHAIRMAN OF THE IRVONA MUNICIPAL AUTHORITY, Plaintiff, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I, the undersigned, understand that false statements made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Donald K. Morrison,  
Chairman  
Irvona Municipal Authority

Date: 10/8/02

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

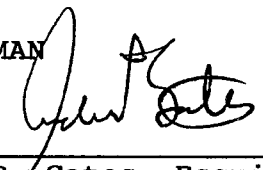
IRVONA MUNICIPAL AUTHORITY,	:	
Plaintiff	:	No. 02-1469-CD
	:	
-vs-	:	
	:	
CHARLES J. MERLO, INC.,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that I mailed a certified copy of the  
Plaintiff's Complaint to Counsel for Defendant by regular  
U. S. mail, postage prepaid, on the 14th day of October, 2002,  
as follows:

Eric D. Hochfeld, Esquire  
SAHLANEY & DUDECK LAW OFFICE  
430 Main Street  
Johnstown, PA 15901-1823

GATES & SEAMAN

By   
Andrew P. Gates, Esquire  
Attorney for Plaintiff,  
Irvona Municipal Authority

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION --- LAW  
CASE NO.: 02-1469-CD

**IRVONA MUNICIPAL AUTHORITY,**

**Plaintiff,**

**vs.**

**CHARLES J. MERLO, INC.,**

**Defendant.**

**ANSWER AND NEW MATTER  
AND COUNTERCLAIM**

CC NO  
11/26/81  
11/26/81

Secretary

**SAHLANEY & DUDECK  
LAW OFFICE**

**430 MAIN STREET  
JOHNSTOWN, PA 15901  
814/535-6509 FAX 814/535-1876**

IRVONA MUNICIPAL AUTHORITY,

Plaintiff,

vs.

CHARLES J. MERLO, INC.,

Defendant.

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

:  
: CIVIL ACTION – LAW

:  
: CASE NO: 02-1469-CD

:  
: ANSWER, NEW MATTER AND  
: COUNTERCLAIM

:  
: FILED ON BEHALF OF DEFENDANT  
: CHARLES J. MERLO, INC.

:  
: COUNSEL OF RECORD FOR DEFENDANT  
: Sahlaney & Dudeck Law Office  
: Michael W. Sahlaney, Esquire  
: Supreme Court I.D. #28078  
: Eric D. Hochfeld, Esquire  
: Supreme Court I.D. #70424  
: 430 Main Street  
: Johnstown, PA 15901  
: (814) 535-6509

FILED 06/20/02

William A. Shaw  
Prothonotary

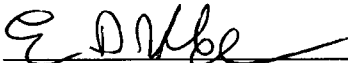
IRVONA MUNICIPAL AUTHORITY, : IN THE COURT OF COMMON PLEAS  
Plaintiff, : OF CLEARFIELD COUNTY, PENNSYLVANIA  
 :  
 : CIVIL ACTION – LAW  
vs. :  
 : CASE NO: 02-1469-CD  
CHARLES J. MERLO, INC., :  
 : ANSWER, NEW MATTER AND  
Defendant. : COUNTERCLAIM

**NOTICE TO PLEAD**

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

SAHLANEY & DUDECK LAW OFFICE

Date: Nov. 7, 2002

  
Eric D. Hochfeld,  
Attorney for Defendant

IRVONA MUNICIPAL AUTHORITY,	: IN THE COURT OF COMMON PLEAS
	: OF CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,	:
	: CIVIL ACTION – LAW
vs.	:
	: CASE NO: 02-1469-CD
CHARLES J. MERLO, INC.,	:
	: ANSWER, NEW MATTER AND
Defendant.	: COUNTERCLAIM

**ANSWER, NEW MATTER AND COUNTERCLAIM**

The Defendant, Charles J. Merlo, Inc., by and through its attorneys, Sahlaney & Dudeck Law Office, files the following Answer and New Matter:

1. Admitted.
2. Admitted.
3. Denied. After reasonable investigation, the Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this Paragraph and strict proof is demanded at the time of trial of this matter.
4. Denied. After reasonable investigation, the Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this Paragraph and strict proof is demanded at the time of trial of this matter.
5. Admitted in part, denied in part. It is admitted only that the Defendant was involved in the construction of a bridge along Legislative Route 3012 in Beccaria Township, Clearfield County, Pennsylvania, during the time frame from March 13, 2002 through May 21, 2002. It is denied that the Defendant conducted any construction activities on May 18, 2002. The Defendant is unaware of the location of the Plaintiff's water distribution facilities, and strict proof of a location of the Plaintiff's water distribution facilities is demanded at the time of trial of this matter.

## COUNT I

6. Paragraphs 1 through 5 of Defendant's Answer are incorporated by reference as though same were set forth at length herein.

7. Admitted in part, denied in part. It is admitted only that on or before March 13 - 15, 2002, and May 21, 2002, construction activities were conducted by the Defendant. It is denied that the Defendant on May 18, 2002 performed any construction activities. It is further denied that any explosives were used as part of the Defendant's construction activities. By way of further answer, the Defendant notified the Plaintiff through the "One Call System" prior to commencing its construction activities.

8. Admitted in part, denied in part. It is admitted only that on March 13, 2002, March 14, 2002 and May 21, 2002 the waterline owned by the Plaintiff was damaged. It is denied, however, that the Defendant is liable for the damage to the waterline and the alleged water loss. To the contrary, pursuant to 73 P.S. §180, the Defendant notified the Plaintiff through the "One Call System" of its construction activities and obtained serial number 3200787 deeming the Defendant's compliance with 73 P.S. §180(2.1). The Defendant exercised due care and took all reasonable steps necessary to avoid damaging the lines based on the Defendant's markings which located its underground waterlines. However, the Plaintiff misidentified or mislocated its waterlines resulting in the Defendant's damaging of the waterline. By way of further answer, the actual location of the waterlines were located outside of the "tolerance zone" as defined by 73 P.S. §176. It is further denied that several thousand gallons of water leaked from the piping/waterline and strict proof is demanded at time of trial of this matter. It is also denied that the Defendant damaged the Plaintiff's waterlines on March 15, 2002 and May 18, 2002 and strict proof of same is demanded at the time of trial of this matter.

9. Admitted in part, denied in part. It is admitted only that on March 13, 2002 the Defendant did damage a waterline owned by the Plaintiff. It is denied, however, that the Defendant is liable for the damage to the waterline and the alleged water loss. To the contrary, pursuant to 73 P.S. §180, the Defendant notified the Plaintiff through the “One Call System” of its construction activities and obtained serial number 3200787 deeming the Defendant’s compliance with 73 P.S. §180(2.1). The Defendant exercised due care and took all reasonable steps necessary to avoid damaging the lines based on the Plaintiff’s markings which located its underground waterlines, however, the Plaintiff misidentified or mislocated its waterlines. By way of further answer, the actual location of the waterline was located outside of the “tolerance zone” as defined by 73 P.S. §176. It is further denied that a total of 5,262 gallons of water leaked from the piping/waterline and strict proof is demanded at time of trial of this matter.

10. Admitted in part, denied in part. It is admitted only that on March 14, 2002 the Defendant did damage a waterline owned by the Plaintiff. It is denied, however, that the Defendant is liable for the damage to the waterline and the alleged water loss. To the contrary, pursuant to 73 P.S. §180, the Defendant notified the Plaintiff through the “One Call System” of its construction activities and obtained serial number 3200787 deeming the Defendant’s compliance with 73 P.S. §180(2.1). The Defendant exercised due care and took all reasonable steps necessary to avoid damaging the lines based on the Plaintiff’s markings which located its underground waterlines, however, the Plaintiff misidentified or mislocated its waterlines. Furthermore, the waterline was damaged while a representative of the Plaintiff was on the job site assisting in the location of the waterline. By way of further answer, the actual location of the waterline was located six feet outside of the “tolerance zone” as defined by 73 P.S. §176. The Defendant did fix the damage to the waterline. Finally, it is denied that a total of 55,562 gallons

of water leaked from the piping/waterline and strict proof is demanded at time of trial of this matter.

11. Denied. It is denied that on March 15, 2002 the Defendant during the course of its construction activities caused damage to the piping/waterline owned by the Plaintiff, and strict proof of same is demanded at time of trial of this matter. It is further denied that a total of 20,362 gallons of water leaked from the piping/waterline and strict proof is demanded at time of trial of this matter.

12. Denied. It is denied that on May 18, 2002 the Defendant during the course of its construction activities caused damage to the piping/waterline owned by the Plaintiff. To the contrary, on May 18, 2002, the Defendant did not conduct any construction activities as evidenced by the attached statement, which is made part of this Answer as Exhibit A. It is further denied that a total of 66,000 gallons of water leaked from the piping/waterline and strict proof is demanded at time of trial of this matter.

13. Admitted in part, denied in part. It is admitted only that on May 21, 2002 the Defendant did damage a waterline owned by the Plaintiff. It is denied, however, that the Defendant is liable for the damage to the waterline and the alleged water loss. To the contrary, pursuant to 73 P.S. §180, the Defendant notified the Plaintiff through the "One Call System" of its construction activities and obtained serial number 3200787 deeming the Defendant's compliance with 73 P.S. §180(2.1). The Defendant exercised due care and took all reasonable steps necessary to avoid damaging the lines based on the Plaintiff's markings which located its underground waterlines, however, the Plaintiff misidentified or mislocated its waterlines. By way of further answer, the actual location of the waterline was located outside of the "tolerance zone" as defined by 73 P.S. §176. It is further denied that a total of 38,500 gallons of water leaked from the piping/waterline and strict proof is demanded at time of trial of this matter. At

the time the waterline was hit, a representative of the Plaintiff was on the job site and immediately turned off the water valve located approximately 300 feet away. Finally, the Defendant repaired the waterline and supplied materials for the repair.

14. Denied. It is denied that as a result of the Defendant's construction activities, the Plaintiff was required to engage the services of Norman Diehl Contracting on May 18, 2002. It is further denied that the damaged piping was caused by the Defendant's construction activities and strict proof of same is demanded at the time of trial of this matter. By way of further Answer, the Defendant's did not conduct construction activities on May 18, 2002.

15. Denied. After reasonable investigation, the Defendant is without knowledge or information sufficient to form a belief as to the Plaintiff's then water usage rates and therefore the averments are denied and strict proof is demanded at the time of trial of this matter. It is further denied that the Defendant is responsible for the water losses noted in 15(i)-(v) and strict proof is demanded at the time of trial of this matter. The Defendant incorporates Paragraphs 9 through 13 of its Answer.

16. The averments contained in Paragraph 16 are conclusions of law to which no responsive pleading is required. To the extent the Court deems a response necessary, same are denied. To the contrary, the Defendant complied with the terms of 73 P.S. §180 and was not negligent in performing its construction activities. Furthermore the mislocation of the waterline by the Plaintiff was the proximate cause of the damage to waterline and alleged water loss.

WHEREFORE, the Defendant respectfully requests this Honorable Court to dismiss the Plaintiff's Complaint with prejudice.

## COUNT II

17. The Defendant incorporates Paragraphs 1 through 16 of its Answer as though same were set forth at length herein.

18. The averments contained in this paragraph and sub-paragraphs (a through h) are conclusions of law to which no responsive pleading is required. To the extent the Court deems a response necessary, same are denied. It is specifically denied that the Defendant's construction activities caused the damages suffered by the Plaintiff as set forth in Paragraphs 8 thorough 15 of its Complaint.

(a) Denied. It is denied that the Defendant failed to make proper inspection of the construction site to determine the exact location of Plaintiff's water distribution facilities and to take protective measures therein. To the contrary, the Defendant notified the Plaintiff utilizing the "One Call System", but Plaintiff misidentified the location of its waterlines. By way of further answer, the Plaintiff's failure to properly identify the location of its waterline was the direct and proximate result of the alleged damages suffered by Plaintiff.

(b) Denied. It is denied that the Defendant failed to properly mark the surface where the construction activities took place. To the contrary, it was the Plaintiff's responsibility under 73 P.S. §177(5)(i) to mark the location of its waterlines. By way of further answer, the Defendant contacted the Plaintiff utilizing the "One Call System" to determine the location of the Plaintiff's water distribution system. The Plaintiff was unable to identify the exact location of its waterlines.

(c) Denied. To the contrary, the Defendant did contact the Plaintiff prior to its construction operations by utilizing the Pennsylvania One Call System. The Plaintiff was unable to locate the exact location of its waterlines. A copy of the Request and return fax from the Pennsylvania One Call System, Inc. is attached as Exhibit B.

(d) Denied. It is denied that the Defendant failed to take adequate steps to protect the Plaintiff's water distribution system for its construction activities. To the

contrary, it was the Plaintiff's mislocation of its waterlines which caused the damage of the Plaintiff's water distribution facilities. By way of further answer, the Defendant did not use explosives in its construction activities.

(e) Denied. It is denied that the Defendant's agents, servants, employees and/or subcontractors incompetently performed the construction work. To the contrary, the construction work performed by the Defendant's agents, servants, employees and/or subcontractors was in accordance with construction industry standards. By way of further answer, the work performed by the Defendant was located outside of the "tolerance zone", as defined by 73 P.S. §176, of the location of the waterlines as identified by the Plaintiff.

(f) Denied. It is denied that the Defendant did not notify the Plaintiff of its construction activities. To the contrary, the Defendant notified the Plaintiff using the "One Call System" to determine the exact location of the water distribution facilities, however, the Plaintiff misidentified the exact location of its water distribution facility, which was the proximate cause of the damages allegedly suffered by the Plaintiff.

(g) Denied. It is denied that the Defendant failed to take adequate steps in its construction activities in March, 2002 or May, 2002. To the contrary, prior to commencing its construction activities, the Defendant notified the Plaintiff through the "One Call System". The Plaintiff, however, mislocated the location of its waterlines which caused the Defendant to perform construction activities in an area that was believed that the Plaintiff did not have any waterlines. It is further denied, to the extent it has been implied, that the Defendant had any knowledge of the water loss that allegedly occurred in March, 2002 or May, 2002 as Plaintiff did not notify Defendant of any of these alleged water losses until June 6, 2002.

(h) Denied. To the contrary, the Defendant fully performed the terms of its agreement with the Commonwealth of Pennsylvania, Department of Transportation.

WHEREFORE, the Defendant, Charles J. Merlo, Inc., respectfully requests this Honorable Court to dismiss the Plaintiff, Irvona Municipal Authorities Complaint with prejudice

NEW MATTER

19. The Defendant incorporates Paragraphs 1 through 18 of its Answer as though same were set forth at length herein.

20. 73 P.S. §180(2.1) and (2.2) provides as follows:

It shall be the duty of each contractor who intends to perform excavation or demolition work within this Commonwealth:

(2.1) To request the location and type of facility owner lines at each site by notifying the facility owner through a One Call System. Notification shall be not less than three nor more than ten working days in advance of beginning excavation or demolition work.

(2.2) To provide a One Call System with specific information to identify the site so that facility owners might provide indications of their lines. A contractor shall be deemed to have met the obligations of clause (2.1) if he calls a One Call System, provides the required information and receives a serial number.

21. On November 14, 2001, the Defendant notified the "One Call System" of its intent to conduct bridge and roadway construction at the intersection of State Route 0053 and State Route 3012 in Beccaria Township, Clearfield County, on November 20, 2001. In response to this submission, the Defendant received Serial Number 3200787. A copy of the Routine Work Location Request Form and return fax from the Pennsylvania One Call System, Inc. is attached hereto as Exhibit B.

22. On March 13, 2002, while exercising due care and performing construction activities outside the "tolerance zone" of the waterline located by the Plaintiff, the Defendant hit Plaintiff's waterline.

23. The actual location of the waterline was misidentified by Plaintiff.

24. Upon striking the waterline, the Defendant notified the Plaintiff who repaired the waterline.

25. On March 14, 2002, while exercising due care and performing construction activities outside the “tolerance zone” of the waterline located by the Plaintiff and with the assistance of a representative of the Plaintiff, the Defendant hit Plaintiff’s waterline.

26. The actual location of the waterline was six feet from where it was marked.

27. Upon striking the waterline, the Defendant notified the Plaintiff, and the Defendant made repairs to the waterline.

28. On March 15, 2002, the Defendant did not conduct any construction activities which damaged the Plaintiff’s waterlines.

29. On March 18, 2002, a Saturday, the Defendant did not perform any construction activities.

30. On May 21, 2002, while exercising due care and performing construction activities outside the “tolerance zone” of the waterline located by the Plaintiff, the Defendant hit Plaintiff’s waterline.

31. The location of the waterline was misidentified by Plaintiff.

32. Upon striking the waterline, the Defendant notified the Plaintiff who turned off the water shut off valve approximately 300 feet away, and the Defendant made repairs to the waterline.

33. 73 P.S. §180(12) provides as follows:

(12) The following standards shall be applied in determining whether a contractor shall incur any obligation or be subject to liability as a result of a contractor’s demolition or excavation work damaging a facility owner’s facilities:

(i) The contractor who has complied with the terms of this act and who was not otherwise negligent shall not be subject to liability or incur any obligation to facility owners, operators, owners or other persons who sustain

injury to person or property as a result of the contractor's excavation or demolition work damaging a facility owner's lines.

34. At all times relevant to this Complaint, the Defendant exercised due care and was not negligent and otherwise complied with the terms of the "One Call System" 73 P.S. §§176-182.7.

35. The Plaintiff's cause of action is barred by the Defendant's compliance with the requirements of the "One Call System" 73 P.S. §§176-182.7.

36. The damage to the alleged waterlines and alleged water loss was a direct and approximate cause by the Plaintiff's failure to identify the location of the waterlines.

37. It is believed and therefore averred that the Plaintiff's alleged damages were caused by the construction activities not undertaken by the Defendant.

38. Plaintiff's claim is barred by its contributory negligence.

39. Plaintiff's claim is barred by its comparative negligence.

WHEREFORE, the Defendant, Charles J. Merlo, Inc., respectfully requests this Honorable Court to dismiss the Plaintiff's Complaint with prejudice.

#### COUNTERCLAIM

40. Defendant incorporates Paragraphs 1 through 39 of its Answer and New Matter as though same were set forth at length herein.

41. On November 14, 2001, the Defendant notified the "One Call System" of its intent to conduct bridge and roadway construction at the intersection of State Route 0053 and State Route 3012 in Beccaria Township, Clearfield County, on November 20, 2001. In response to its submission the Defendant received Serial No. 3200787. A copy of the Routine Work Location Request Form and return fax from the Pennsylvania One Call System, Inc. is attached hereto as Exhibit B.

42. 73 P.S. §177(5)(i): provides that each facility owner shall:

(i) [To] mark, stake, locate or otherwise provide the position of the facility owners underground lines at the site within 18 inches horizontally from the outside wall of such line in a manner so as to enable the contractor, where appropriate, to employ prudent techniques, which may include hand dug test holes, to determine the precise position of the underground facility owners lines. This shall be done to the extent that such information is available on the facility owners records or by use of standard locating techniques other than excavation.

43. On March 13, March 14, and May 21, 2002, the Defendant exercising due care and not negligently struck the waterlines owned by the Plaintiff. On each occasion, the actual location of the waterline was located outside the "tolerance zone" or at least 18 inches from the waterline location misidentified by the Plaintiff.

44. The failure of the Plaintiff to properly identify the location of its waterlines, was the direct and proximate result of the damage to the Plaintiff's lines.

45. As a direct and proximate result of the Plaintiff's failure to properly identify the location of its waterlines, the Defendant incurred a delay in its construction activities resulting in additional labor time to make the repairs and additional materials needed for the repairs.

46. The additional labor time and materials expended to repair the waterlines misidentified by Plaintiff are in excess of \$3,000.00.

WHEREFORE, the Defendant, respectfully requests this Honorable Court to enter judgment in its favor and against the Plaintiff, Irvona Municipal Authority in the amount in excess of \$3,000.00, plus interests and costs.

Respectfully submitted,

SAHLANEY & DUDECK LAW OFFICE



Eric D. Hochfeld, Attorney for the Defendant  
Supreme Court I.D. #70424  
430 Main Street  
Johnstown, PA. 15901  
(814) 535-6509

# CHARLES J. MERLO, INC.

EXCAVATION, GRADING, REINFORCED  
CONCRETE STRUCTURES, HEAVY  
EQUIPMENT RENTAL & HAULING

234 Merlo Road Mineral Point, PA 15942-9719  
814 322-1545 Fax: 814 322-1549

DESIGN/BUILD,  
LAND DEVELOPMENT,  
BRIDGES, RESERVOIRS

November 1, 2002

To Whom It May Concern:

Charles J. Merlo, Inc. did not have any labor hours at the Coalport SR 3012/3019 Project on May 18, 2002.

Kelly Kachik  
Bookkeeper

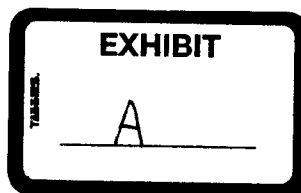
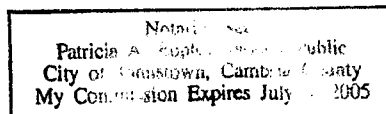
COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CAMBRIA

On this, the 1<sup>st</sup> day of November, 2002, before me a notary public, the undersigned officer, personally appeared Kelly Kachik, known to me to be the person whose name is Subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Patricia A. Eppley  
Notary Public



11/17/01

10:12:26

POCS

Page 1

FAXCFM 00128 POCS 11/14/01 16:12:56 3181830-000 ROUTINE FAX PLACE

=====PENNSYLVANIA ONE CALL SYSTEM - ACT 287 AS AMENDED REQUEST=====

Serial Number--[~~3181830~~][~~3181830~~] 3200787 - WENDY

Message Type--[ROUTINE FAX] Lead Time--[0024] Tape Channel #--[1600FX][0102]

County--[CLEARFIELD] Municipality--[BECCARIA TWP]

Work Site--[\*\* \*\*SR ~~3024~~ \*\* \*\*]  
3012

Nearest Intersection--[SR 0053]

Latitude/Longitude--[ / ]

Location Information--

[FROM THE INTER OF SR 0053 & SR 3012 TO 700FT WEST OF THE INTER ON SR 3012. WILL  
BE DIGGING 25FT AT THE BRIDGE ABUTMENTS. EXCAV WILL BE OPEN CUT.]

Site Marked in White--[N] PennDOT Permit Number--[ ]

Type of Work--[BRIDGE &amp; ROADWAY CONSTRUCTION] Depth--[25FT]

Method of Excavation--[TRACK MOUNTED] Extent of Excavation--[100FT]

Working in--

Street--[X] Sidewalk--[ ] Public Prop--[X] Pvt Prop--[ ]

Other--[ ] Owner/Done for--[CHARLES J MERLO INC]

Proposed Dig Date--[20-NOV-01] Dig Time--[0700]

Lawful Dig Dates---[20-NOV-01][0800] Through [03-DEC-01][0800]

Contractor--[CHARLES J MERLO INC] Contractor/Utility--[Y]

Address-----[234 MERLO RD]

City-----[MINERAL POINT] State--[PA] Zip--[15942]

Caller--[TOM BENDER] Phone--[814-322-1545]

FAX--[814-322-1549] E-mail address--[MERLOINE@SURFSHOP.NET]

Person to Contact--[TOM BENDER] Phone--[814-322-1545]

Best Time to Call--[0800-1730 M-F]

Prepared--[14-NOV-01] at [1601] by [MARY JO BAIER]

AH =ALLTEL COMM

BB1=REA ENERGY COOP

BCI=BCI MUN AUTH

CWV=COONEY CABLE

JR =TCI STAT COLLEG

FG =VERIZON DUBOIS

HTZ=HOUTZDALE MA

IRV=IRVONA MUN AUTH

JUL=

KZ =UNITED REC

LG =GPU PHILIPSBURG

EXHIBIT

B

# FAX-A-LOCATE HEADER INFORMATION (Replaces Cover Sheet)

TO: FAX-A-LOCATE PROCESSOR		No. of Pages: 1	Today's Date: 11/14/01	Time: 2:30 PM
COMPANY: PENNSYLVANIA ONE CALL SYSTEM, INC.		FROM: TOM BENDER		
LOCATION: BORLAND COMPLEX - 925 IRWIN RUN ROAD		COMPANY: MERLO (CHARLES J.), INC.		
WEST MIFFLIN PA 15122-1078		LOCATION: <del>RDX B6X104A</del> 234 MERLO ROAD		
		Mineral Point, PA 15942		
FAX #: 1-412-464-7135	PHONE #: 1-800-242-1776	FAX #: 814-322-1549	TELEPHONE #: 814-322-1545	

The sender of the FAX-A-LOCATE request assumes all responsibility for non-notification until they receive an acknowledgment from POCS in the form of a member transmission or return which will assign a serial number to the job(s).

## ROUTINE WORK LOCATION REQUEST FORM

PERSON COMPLETING FORM: TOM BENDER PHONE #: 814-322-1545  
 PERSON TO CONTACT: TOM BENDER TELEPHONE NUMBER: 814-322-1545  
 E-MAIL ADDRESS: merloinc@surfshop.net FAX NUMBER: 814-322  
 BEST TIME TO CALL: 8:00 AM - 5:30 PM MON. THRU. FRI.

WORKSITE INFORMATION:  
 COUNTY: CLEARFIELD MUNICIPALITY: BECCARIA TOWNSHIP WARD N/A  
 STREET NUMBER: SR 3012 STREET NAME: \_\_\_\_\_  
 NEAREST INTERSECTION: SR C053 AND SR 3012  
 LOCATION INFORMATION: FROM THE INTERSECTION OF SR C053 AND SR 3012 TO 700 FT. WEST OF THE INTERSECTION ON SR 3012

SITE MARKED IN WHITE: ☐ YES ☒ NO PENNDOT PERMIT #: \_\_\_\_\_ LAT./LONG. \_\_\_\_\_  
 TYPE OF WORK: BRIDGE & ROADWAY CONSTRUCTION DEPTH: 25 FT. AT BRIDGE ABUTMENT  
 METHOD OF EXCAV.: OPEN CUT - TRACK MOUNTED EXCAVATOR EXTENT OF EXCAV.: MAX. 100 FT. WIDE  
 WORKING IN: STREET ☒ SIDEWALK ☐ IS THIS: PUBLIC PROPERTY ☒ PRVT. PROPERTY ☐  
 OTHER ☐ OWNER/FOR BEING DONE FOR: \_\_\_\_\_  
 (PLEASE SPECIFY)

REMARKS/ADDITIONAL INFORMATION: P.A. ONE-CALL SERIAL # 13CC088 FOR DESIGN/1 PHASE.

DIG DATE: 11/20/01 TIME: 7:00 AM

MUST GIVE NO LESS THAN 3 WORKING DAYS NOR MORE THAN 10 WORKING DAYS NOTICE  
 (INCLUDE AN ADDITIONAL 2 BUSINESS HOURS FOR PROCESSING BY THE CENTER)

SERIAL NUMBER ASSIGNED: \_\_\_\_\_

FOR CALL CENTER USE ONLY:

# OF LOCATES RECEIVED \_\_\_\_\_ INITIALS \_\_\_\_\_ # OF LOCATES ENTERED: \_\_\_\_\_ INITIALS \_\_\_\_\_

IRVONA MUNICIPAL AUTHORITY,	: IN THE COURT OF COMMON PLEAS
	: OF CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,	:
	: CIVIL ACTION – LAW
vs.	:
	: CASE NO: 02-1469-CD
CHARLES J. MERLO, INC.,	:
	:
Defendant.	:

**CERTIFICATE OF SERVICE**

I, Eric D. Hochfeld, Esquire, hereby certify that I served a true and correct copy of the foregoing Answer, New Matter and Counterclaim upon the attorney for the Plaintiff, by mailing the same first-class mail, postage prepaid on the date written below as follows:

Andrew P. Gates, Esquire  
Gates & Seaman  
P.O. Box 846  
2 North Front Street  
Clearfield, PA 16830

SAHLANEY & DUDECK LAW OFFICE

Dated: Nov 7, 2002

  
Eric D. Hochfeld, Attorney for Defendant

IRVONA MUNICIPAL AUTHORITY,

Plaintiff,

vs.

CHARLES J. MERLO, INC.,

Defendant.

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

:  
: CIVIL ACTION – LAW

:  
: CASE NO: 02-1469-CD

:  
:  
:

**PRAECIPE TO DISCONTINUE**

To the Prothonotary:

Please mark both the Plaintiff's Claim and the Defendant's Counterclaim in the above matter as settled, discontinued and ended, with prejudice.

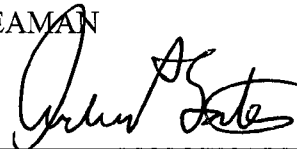
Respectfully submitted,

GATES & SEAMAN

Date:

December 20, 2002

By:

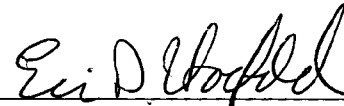


Andrew P. Gates, Esquire  
Attorney for Plaintiff,  
Irvona Municipal Authority  
2 North Front Street  
Clearfield, PA 16830

SAHLANEY & DUDECK LAW OFFICE

Date: December 19, 2002

By:



Eric D. Hochfeld, Esquire  
Attorney for Defendant,  
Charles J. Merlo, Inc.  
430 Main Street  
Johnstown, PA 15901

**FILED**

DEC 23 2002

William A. Shaw  
Prothonotary

**FILED**

*of* Cert. of Disc.  
01/31/25 *RDH* to Atty Genes  
DEC 23 2002 Copy to C/A

William A. Shaw *cc*  
Prothonotary *GA*

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Irvona Municipal Authority

Vs.

No. 2002-01469-CD

Charles J. Merlo, Inc.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on December 23, 2002 marked:

Settled, Discontinued and Ended with Prejudice

Record costs in the sum of \$80.00 have been paid in full by Sahlaney & Dudeck.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 23rd day of December: A.D. 2002.

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William A. Shaw, Prothonotary