

03-340-CD
HARLAN R. SCHNARRS -vs- GAIL WILKS et al

Appellal Docket Sheet

Docket Number: 1372 WDA 2004

Page 1 of 5

August 4, 2004

Superior Court of Pennsylvania



Harlan I. Schnarrs, James E. Schnarrs, Sr;
and Shirley S. Johns, Appellants

v.

Gail Wilks, James H. Meas, Marian D. Shimmel,
Norma J. Knepp, Leonard Thompson, Alvin C. Bush,

03-340-CD

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: August 4, 2004

Awaiting Original Record

Journal Number.

Case Category: Civil

Case Type:

Declaratory Judgment

Equity

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Case Initiation

Next Event Due Date: August 4, 2004

Next Event Type: Docketing Statement Received

Next Event Due Date: August 18, 2004

Next Event Type: Original Record Received

Next Event Due Date: September 13, 2004



FILED *cc*
11/1/2004
AUG 06 2004
 by William A. Shaw
 Prothonotary/Clerk of Courts

Recd - 1
Transcript - 2
 3023
#25

Appeal Docket Sheet

Docket Number: 1372 WDA 2004

Page 2 of 5

August 4, 2004

Superior Court of Pennsylvania



COUNSEL INFORMATION

Appellant Schnarrs, Harlan I.

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Kasubick, Girard

Bar No.: 30109 Law Firm: Lehman & Kasubick

Address: 611 Brisbin Street

Houtzdale, PA 16651

Phone No.: (814)378-7840 Fax No.: (814)378-6231

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellant Schnarrs, James E.

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Kasubick, Girard

Bar No.: 30109 Law Firm: Lehman & Kasubick

Address: 611 Brisbin Street

Houtzdale, PA 16651

Phone No.: (814)378-7840 Fax No.: (814)378-6231

Receive Mail: No

E-Mail Address:

Receive E-Mail: No

Appellant Johns, Shirley S.

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Kasubick, Girard

Bar No.: 30109 Law Firm: Lehman & Kasubick

Address: 611 Brisbin Street

Houtzdale, PA 16651

Phone No.: (814)378-7840 Fax No.: (814)378-6231

Receive Mail: No

E-Mail Address:

Receive E-Mail: No

Appellee Wilks, Gail

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

Appeal Docket Sheet

Docket Number: 1372 WDA 2004

Page 3 of 5

August 4, 2004

Superior Court of Pennsylvania



Attorney: Mason, David Charles
 Bar No.: 39180 Law Firm:
 Address: 409 N Front Street
 PO Box 28
 Philipsburg, PA 16866
 Phone No.: (814)342-2240 Fax No.: (814)342-5318
 Receive Mail: Yes
 E-Mail Address: |0
 Receive E-Mail: No

Appellee Meas, James H.
 Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:
 Attorney: Mason, David Charles
 Bar No.: 39180 Law Firm:
 Address: 409 N Front Street
 PO Box 28
 Philipsburg, PA 16866
 Phone No.: (814)342-2240 Fax No.: (814)342-5318
 Receive Mail: No
 E-Mail Address: |0
 Receive E-Mail: No

Appellee Shimmel, Marian D.
 Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:
 Attorney: Mason, David Charles
 Bar No.: 39180 Law Firm:
 Address: 409 N Front Street
 PO Box 28
 Philipsburg, PA 16866

Phone No.: (814)342-2240 Fax No.: (814)342-5318
 Receive Mail: No
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 Receive E-Mail: No

Appellee Knepp, Norma J.
 Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

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Appellee Thompson, Leonard
 Pro Se: Appoint Counsel Status:

IFP Status: No

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Appellee Bush, Alvin C.
 Pro Se: Appoint Counsel Status:

IFP Status: No

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FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
8/4/04	Notice of Appeal	60.00	60.00	2004SPRWD001033

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield Division: Civil

8/4/2004

Appeal Docket Sheet

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Page 5 of 5

August 4, 2004

Superior Court of Pennsylvania



Date of OrderAppealed From: July 1, 2004 Judicial District: 46
 Date Documents Received: August 4, 2004 Date Notice of Appeal Filed: July 27, 2004
 Order Type: Order Entered OTN:
 Judge: Ammerman, Fredric J. Lower Court Docket No.: No. 2003-340-CD
 President Judge

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
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Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
August 4, 2004	Notice of Appeal Filed	Appellant	Schnarrs, Harlan I.
August 4, 2004	Docketing Statement Exited (Civil)	Lower Court or Agency	



Superior Court of Pennsylvania

David A. Szewczak, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

Western District

August 4, 2004

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
412-565-7592
www.superior.court.state.pa.us

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: 1372 WDA 2004

Harlan I. Schnarrs, James E. Schnarrs, Sr;
and Shirley S. Johns, Appellants
v.
Gail Wilks, James H. Meas, Marian D. Shimmel,
Norma J. Knepp, Leonard Thompson, Alvin C. Bush,

Dear Mr. Shaw:

Enclosed please find a copy of the docket for the above appeal that was recently filed in the Superior Court. Kindly review the information on this docket and notify this office in writing if you believe any corrections are required.

Appellant's counsel is also being sent a Docketing Statement, pursuant to Pa.R.A.P. 3517, for completion and filing. Please note that Superior Court Dockets are available on the Internet at the Web site address printed at the top of this page. Thank you.

Very truly yours,

Eleanor R. Valecko
Deputy Prothonotary

GJM

**CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(C)**

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

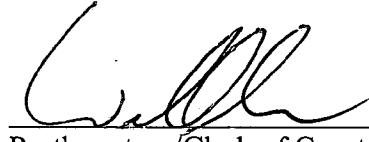
03-340-CD

**Harlan I. Schnarrs, James E. Schnarrs, Sr., and Shirley S. Johns
VS.
Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard
Thompson, and Alvin C. Bush**

In compliance with Pa. R.A.P. 1931 (c).

The documents compromising the record have been numbered from **No. 1 to No. 25**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages compromising the document.

The date on which the record had been transmitted to the Appellate Court is
September 8, 2004.



Prothonotary/Clerk of Courts

(seal)

Date: 09/07/2004

Time: 11:04 AM

Page 1 of 2

Cuyahoga County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2003-00340-CD

Current Judge: Fredric Joseph Ammerman

Harlan I. Schnarrs, James E. Schnarrs Sr., Shirley S. Johns vs. Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson, Alvin C. Bush

Civil Other

Date		Judge
03/11/2003	Filing: Complaint for Declaratory Judgment Paid by: Kasubick, Girard (attorney for Schnarrs, Harlan I.) Receipt number: 1856990 Dated: 03/11/2003 Amount: \$85.00 (Check) 6cc to Sheriff, 1cc to Atty Kasubick	No Judge
03/25/2003	Praeclipe For Appearance on Behalf of Defendant, GAIL WILKS. filed by s/David C. Mason, Esquire no cc	No Judge
04/07/2003	Revised/Amended Praeclipe For Entry of Appearance on Behalf of Defendants. filed by s/David C. Mason, Esq. no c/c	No Judge
04/29/2003	Answer Containing New Matter And Counter-Claim. filed by s/David C. Mason, Easquire 1 cc to Atty Certificate of Service, Answer Containing New Matter And Counter-Claim upon: GIRARD KASUBICK, ESQ. filed by s/David C. Mason, Esquire 2 cc to Atty	No Judge
05/28/2003	Reply to New Matter and Counter-Claim filed on behalf of Plaintiffs. 2 cc to Atty.	No Judge
06/27/2003	Sheriff Returns: Mar. 14, 2003 served complaint on Norma J. Knepp at residence, served Marian D. Shimmel at residence, served Leonard Thompson at residence, Shff Brewer served Alvin C. Bush, Shff. Nau served Gail Wilks, Shff. Lotwick returned complaint "not served" on James H. Meas.	No Judge
07/17/2003	Certificate of Readiness and Praeclipe for Trial filed on behalf of Plaintiffs. No cc. Copy to CA	No Judge
08/07/2003	ORDER, NOW, this 6th day of August, 2003, re: Matter is CONTINUED. CA is directed to place the matter on the Civil Call List for the next Term of Court. by the Court, s/FJA, J. 2 cc Atty Kasubick, Mason, 1 copy to Judge Ammerman and CA	Fredric Joseph Ammerman
01/26/2004	ORDER, NOW, this 22nd day of January, 2004, re: Case is hereby CONTINUED. CA shall cause the matter to be listed for Spring, 2004 Term of Court. Parties shall have no later than April 1, 2004 in which to file any Motions for Summary Judgment. by the Court, s/FJA, P.J. 2 cc Atty Kasubick, Mason	Fredric Joseph Ammerman
03/24/2004	Motion For Summary Judgment. filed by, s/David C. Mason, Esquire 2 cc to Atty Joint Exhibit of Documents Relative to Defendants' Motion For Summary Judgment. filed 1 cc to Atty Certificate of Service, Defendants' Motion For Summary Judgment upon Girard Kasubick, Esquire. filed by, s/David C. Mason, Esquire 1 cc to Atty	Fredric Joseph Ammerman
04/01/2004	RULE RETURNABLE, NOW, this 29th day of March, 2004, issued upon the Fredric Joseph Ammerman Plaintiffs. Rule Returnable the 16th day of April, 2004, at 9:00 a.m., in Courtroom No. 1. by the Court, s/FJA, P.J.	Fredric Joseph Ammerman
04/06/2004	ORDER, NOW, this 1st day of April, 2004, re: Pre-Trial Conference w/counsel for the parties and the Court scheduled for Friday, April 16, 2004 at 9:00 a.m. in President Judge Ammerman's Chambers. by the Court, s/FJA, P.J. 2 cc Atty Mason, Kasubick	Fredric Joseph Ammerman
04/07/2004	ORDER, AND NOW, this 6th day of April, 2004, Pre-Trial Conference and Argument on Defendants' Motion for Summary Judgment has been RESCHEDULED from 9:00 a.m. to 10:30 a.m. on Friday, April 16, 2004, in Courtroom No. 1. by the Court, s/FJA, P.J. 1 cc Atty Kasubick, Mason	Fredric Joseph Ammerman
04/08/2004	Order, NOW, this 1st day of April, 2004, following Civil Call, Order that Civil Pre-Trial Conference with counsel for the parties as set forth above and the Court be and is hereby scheduled for April 16, 2004, at 9:00 a.m. in President Judge Ammerman's Chambers. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Atty Mason, Kasubick	Fredric Joseph Ammerman

Date: 09/07/2004

Time: 11:04 AM

Page 2 of 2

Cuyahoga County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2003-00340-CD

Current Judge: Fredric Joseph Ammerman

Harlan I. Schnarrs, James E. Schnarrs Sr., Shirley S. Johns vs. Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson, Alvin C. Bush

Civil Other

Date		Judge
04/12/2004	Certificate of Service, Pre-Trial Memorandum upon David C. Mason, Esquire filed by, s/Girard Kasubick, Esquire no cc Certificate of Service, Pre-trial Statement upon Girard Kasubick, Esquire. filed by, s/David C. Mason, Esquire no cc	Fredric Joseph Ammerman
04/15/2004	Response To Motion For Summary Judgment. filed by, s/Girard Kasubick, Esquire 2 cc Atty Kasubick	Fredric Joseph Ammerman
04/16/2004	Order, NOW, this 16th day of April, 2004, date set for both pre-trial conference and argument on Defendant's Motion for Summary Judgment, Order as follows: 1. Counsel for Plaintiff shall submit brief to the Court relative the Motion for Summary Judgment within no more than 20 days from this date. Counsel for the Defendant shall file any response thereto in the event he wishes to do so within no more than 10 days thereafter; 2. Nonjury trial is hereby scheduled for the 7th day of July, 2004, at 9:00 a.m., Courtroom No. 1. BY THE COURT: s/Fredric J. Ammerman, P.J. Two CC Attorney Kasubick Two CC Attorney Mason	Fredric Joseph Ammerman
07/01/2004	Order, AND NOW, this 1st day of July, 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson, and Alvin C. Bush, and after considering the record as a whole, the Court finds as follows: (See Original for Details). The Court hereby grants Defendant's Motion for Summary Judgment. The Lease is Terminated. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys Kasubick and Mason Court faxed copies to both attorneys on July 1, 2004.	Fredric Joseph Ammerman
07/27/2004	Filing: Notice of Appeal to High Court Paid by: Kasubick, Girard (attorney for Schnarrs, Harlan I.) Receipt number: 1883435 Dated: 07/27/2004 Amount: \$45.00 (Check) One CC and \$60.00 to Superior Court Proof of Service, Notice of Appeal upon Honorable Judge Fredric J. Ammerman, Court Reporter, David Meholic, David C. Mason, Esq., filed by s/Girard Kasubick, Esq. No CC	Fredric Joseph Ammerman
08/06/2004	Appeal Docket Sheet, filed. Superior Court Number 1372 WDA 2004.	Fredric Joseph Ammerman

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

SEP 07 2004

Attest.

William L. Bush
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 03-340-CD

Harlan I. Schnarrs; James E. Schnarrs, Sr.; and Shirley S. Johns

VS.

Gail Wilks; James H. Meas; Marian D. Shimmel; Norma J. Knepp; Leonard Thompson; and Alvin C. Bush

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	03/11/03	Complaint for Declaratory Judgment	25
02	03/25/03	Praeclipe for Appearance on behalf of Defendant, Gail Wilks	02
03	04/07/03	Revised/Amended Praeclipe for Entry of Appearance on behalf of Defendants	02
04	04/29/03	Answer Containing New Matter and Counter-Claim	14
05	04/29/03	Certificate of Service, Answer Containing New Matter and Counter-Claim, upon Girard Kasubick, Esq.	02
06	05/28/03	Reply to New Matter and Counter-Claim filed on behalf of Plaintiffs	08
07	06/27/03	Sheriff Returns	33
08	07/17/03	Certificate of Readiness and Praeclipe for Trial filed on behalf of Plaintiffs	04
09	08/07/03	Order, Re: Matter is Continued	01
10	01/26/04	Order, Re: Case is hereby Continued	01
11	03/24/04	Motion for Summary Judgment	04
12	03/24/04	Joint Exhibit of Documents Relative to Defendants' Motion for Summary Judgment	Separate Cover
13	03/24/04	Certificate of Service, Defendants' Motion for Summary Judgment, upon Girard Kasubick, Esq.	02
14	04/01/04	Rule Returnable, issued upon the Plaintiffs	01
15	04/06/04	Order, Re: Pre-Trial Conference scheduled	01
16	04/07/04	Order, Re: Pre-Trial Conference and Argument on Defendants' Motion for Summary Judgment Rescheduled	01
17	04/08/04	Order, Re: Pre-trial Conference scheduled	01
18	04/12/04	Certificate of Service, Pre-Trial Memorandum upon David C. Mason, Esq.	01
19	04/12/04	Certificate of Service, Pre-Trial Statement upon Girard Kasubick, Esq.	02
20	04/15/04	Response to Motion for Summary Judgment	12
21	04/16/04	Order, Re: Pre-Trial conference and argument on Defendant's Motion for Summary Judgment	01
22	07/01/04	Order, Re: Following oral argument and submission of briefs on the Motion for Summary Judgment	03
23	07/27/04	Notice of Appeal to High Court	04
24	07/27/04	Proof of Service, Re: Notice of Appeal	02
25	08/06/04	Appeal Docket Sheet, Superior Court Number 1372 WDA 2004	06

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

Harlan I. Schnarrs, James E. Schnarrs, Sr., and Shirley S. Johns
VS.

Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson, and Alvin C. Bush

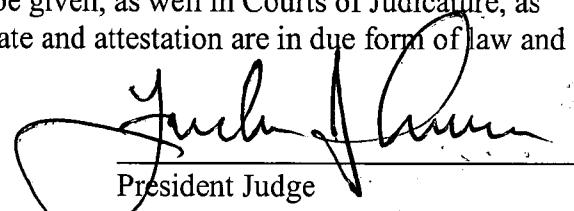
03-340-CD

So full and entire as the same remains of record before the said Court, at No. 03-340-CD

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 7th Day of September, 2004.

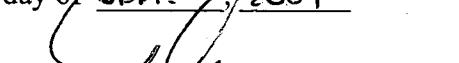

Prothonotary/Clerk of Courts

I, **Fredric J. Ammerman**, President Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw** by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.


President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Fredric J. Ammerman**, President Judge by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is President Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 8th day of Sept. 2004.


Prothonotary/Clerk of Courts

Appellal Docket Sheet

Docket Number: 1372 WDA 2004

Page 1 of 5

August 4, 2004

Superior Court of Pennsylvania



Harlan I. Schnarrs, James E. Schnarrs, Sr;
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v.

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CaseType:

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FILED NO CC
 B.A. Shaw
 AUG 6 2004
 William A. Shaw
 Prothonotary/Clerk of Courts

Appeal Docket Sheet

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Superior Court of Pennsylvania

Page 2 of 5

August 4, 2004



COUNSEL INFORMATION

Appellant Schnarrs, Harlan I.
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellant Attorney Information:
 Attorney: Kasubick, Girard
 Bar No.: 30109 Law Firm: Lehman & Kasubick
 Address: 611 Brisbin Street
 Houtzdale, PA 16651
 Phone No.: (814)378-7840 Fax No.: (814)378-6231
 Receive Mail: Yes
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 Receive E-Mail: No

Appellant Schnarrs, James E.
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellant Attorney Information:
 Attorney: Kasubick, Girard
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Appellant Johns, Shirley S.
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellant Attorney Information:
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Appellee Wilks, Gail
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 IFP Status: No

Appellee Attorney Information:

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Superior Court of Pennsylvania



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Appellee Shimmel, Marian D.
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Appellee Knepp, Norma J.
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Appellee Attorney Information:

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August 4, 2004



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Appellee Thompson, Leonard
 Pro Se: Appoint Counsel Status:

IFP Status: No

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Appellee Bush, Alvin C.
 Pro Se: Appoint Counsel Status:

IFP Status: No

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8/4/04	Notice of Appeal	60.00	60.00	2004SPRWD001033

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

8/4/2004

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1372 WDA 2004



Page 5 of 5

August 4, 2004

Date of OrderAppealed From: July 1, 2004

Judicial District: 46

Date Documents Received: August 4, 2004

Date Notice of Appeal Filed: July 27, 2004

Order Type: Order Entered

OTN:

Judge: Ammerman, Fredric J.
President Judge

Lower Court Docket No.: No. 2003-340-CD

ORIGINAL RECORD CONTENTS

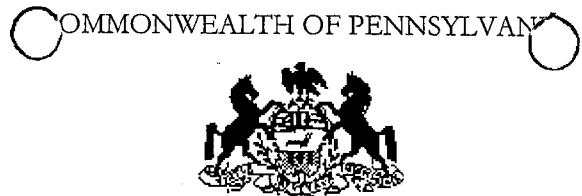
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BRIEFS

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August 4, 2004	Notice of Appeal Filed	Appellant	Schnarrs, Harlan I.
August 4, 2004	Docketing Statement Exited (Civil)		Lower Court or Agency



Superior Court of Pennsylvania

David A. Szewczak, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

Western District

August 4, 2004

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Re: 1372 WDA 2004

Harlan I. Schnarrs, James E. Schnarrs, Sr;
and Shirley S. Johns, Appellants
v.
Gail Wilks, James H. Meas, Marian D. Shimmel,
Norma J. Knepp, Leonard Thompson, Alvin C. Bush,

Dear Mr. Shaw:

Enclosed please find a copy of the docket for the above appeal that was recently filed in the Superior Court. Kindly review the information on this docket and notify this office in writing if you believe any corrections are required.

Appellant's counsel is also being sent a Docketing Statement, pursuant to Pa.R.A.P. 3517, for completion and filing. Please note that Superior Court Dockets are available on the Internet at the Web site address printed at the top of this page. Thank you.

Very truly yours,

Eleanor R. Valecko
Deputy Prothonotary

GJM

LEHMAN & KASUBICK

611 BRISBIN STREET

HOOTZDALE, PA 16651

(814) 378-7840

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

HARLAN I. SCHNARRS; JAMES E. : No.: 2003-340-CD
SCHNARRS, SR; and SHIRLEY S. : Type of Case: Equity
JOHNS, : Type of Pleading:
Plaintiffs : Proof of Service
vs. : Filed on behalf of:
GAIL WILKS; JAMES H. MEAS; : Plaintiffs
MARIAN D. SHIMMEL; NORMA : Counsel of Record for
J. KNEPP; LEONARD THOMPSON; : This Party:
and ALVIN C. BUSH, : Girard Kasubick, Esq.
Defendants : Supreme Court #30109
: LEHMAN & KASUBICK
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7840

FILED

01/05/04
JUL 27 2004

cc
by William A. Shaw
Prothonotary/Clerk of Courts

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

JUL 27 2004

Attest.

William A. Shaw
Prothonotary/
Clerk of Courts

(14)

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

HARLAN I. SCHNARRS; JAMES E. :
SCHNARRS, SR; and SHIRLEY S. : No.: 2003-340-CD
JOHNS, :
Plaintiffs :
: :
vs. :
: :
GAIL WILKS; JAMES H. MEAS; :
MARIAN D. SHIMMEL; NORMA J. :
KNEPP; LEONARD THOMPSON; :
and ALVIN C. BUSH, :
Defendants :
:

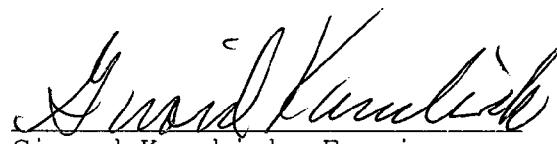
PROOF OF SERVICE

I hereby certify that I, Girard Kasubick, Esq.,
mailed a copy of the Notice of Appeal in the above
captioned matter by regular U.S. mail on July 26, 2004,
upon the following persons at the following addresses:

The Honorable Fredric J. Ammerman
CLEARFIELD COUNTY COURTHOUSE
230 East Market Street
Clearfield, PA 16830

Court Reporter's Office CLEARFIELD COUNTY COURTHOUSE 230 East Market Street Clearfield, PA 16830	David Meholick Court Administrator CLEARFIELD COUNTY COURTHOUSE 230 East Market Street Clearfield, PA 16830
---	---

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


Girard Kasubick, Esquire,
Attorney for Plaintiffs

LEHMAN & KASUBICK
611 BRISBIN STREET
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(814) 378-7840

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

HARLAN I. SCHNARRS; JAMES E. : No.: 2003-340-CD
SCHNARRS, SR; and SHIRLEY S. : Type of Case: Equity
JOHNS, : Type of Pleading:
Plaintiffs : Notice of Appeal
vs. : Filed on behalf of:
GAIL WILKS; JAMES H. MEAS; : Plaintiffs
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J. KNEPP; LEONARD THOMPSON; : This Party:
and ALVIN C. BUSH, : Girard Kasubick, Esq.
Defendants : Supreme Court #30109
: LEHMAN & KASUBICK
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7840

FILED

JUL 27 2004

William A. Stroh,
Prothonotary/Clerk of Courts

(23)

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

HARLAN I. SCHNARRS; JAMES E. :
SCHNARRS, SR; and SHIRLEY S. : No.: 2003-340-CD
JOHNS, :
Plaintiffs :
vs. :
GAIL WILKS; JAMES H. MEAS; :
MARIAN D. SHIMMEL; NORMA J. :
KNEPP; LEONARD THOMPSON; :
and ALVIN C. BUSH, :
Defendants :

NOTICE OF APPEAL

Notice is hereby given that Harlan I. Schnarrs, James E. Schnarrs, Sr., and Shirley S. Johns, Plaintiffs above named, hereby appeals to the Superior Court of Pennsylvania from the order entered in this matter on the 1st day of July, 2004. This order has been entered in the docket as evidenced by the attached copy of the docket entry.

Dated: 07/26/04


Girard Kasubick, Esq.,
Attorney for Plaintiffs
Lehman & Kasubick
611 Brisbin Street
Houtzdale, PA 16651
(814) 378-7840

Time: 09:21 AM

Page 1 of 2

ROA Report

Case: 2003-00340-CD

Current Judge: Fredric Joseph Ammerman

Harlan I. Schnarrs, James E. Schnarrs Sr., Shirley S. Johns vs. Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson, Alvin C. Bush

Civil Other

Date		Judge
03/11/2003	Filing: Civil Complaint/Declaratory Judgement Paid by: Kasubick, Girard (attorney for Schnarrs, Harlan I.) Receipt number: 1856990 Dated: 03/11/2003 Amount: \$85.00 (Check) 6cc to Sheriff, 1cc to Atty Kasubick	No Judge
03/25/2003	Praecipe For Appearance on Behalf of Defendant, GAIL WILKS. filed by s/David C. Mason, Esquire no cc	No Judge
04/07/2003	Revised/Amended Praecipe For Entry of Appearance on Behalf of Defendants. filed by s/David C. Mason, Esq. no c/c	No Judge
04/29/2003	Answer Containing New Matter And Counter-Claim. filed by s/David C. Mason, Esquire 1 cc to Atty Certificate of Service, Answer Containing New Matter And Counter-Claim upon: GIRARD KASUBICK, ESQ. filed by s/David C. Mason, Esquire 2 cc to Atty	No Judge
05/28/2003	Reply to New Matter and Counter-Claim filed on behalf of Plaintiffs. 2 cc to Atty.	No Judge
06/27/2003	Sheriff Returns: Mar. 14, 2003 served complaint on Norma J. Knepp at residence, served Marian D. Shimmel at residence, served Leonard Thompson at residence, Shff Brewer served Alvin C. Bush, Shff. Nau served Gail Wilks, Shff. Lotwick returned complaint "not served" on James H. Meas.	No Judge
07/17/2003	Certificate of Readiness and Praecipe for Trial filed on behalf of Plaintiffs. No Judge No cc. Copy to CA	
08/07/2003	ORDER, NOW, this 6th day of August, 2003, re: Matter is CONTINUED. Fredric Joseph Ammerman CA is directed to place the matter on the Civil Call List for the next Term of Court. by the Court, s/FJA,J. 2 cc Atty Kasubick, Mason, 1 copy to Judge Ammerman and CA	
01/26/2004	ORDER, NOW, this 22nd day of January, 2004, re: Case is hereby CONTINUED. CA shall cause the matter to be listed for Spring, 2004 Term of Court. Parties shall have no later than April 1, 2004 in which to file any Motions for Summary Judgment. by the Court, s/FJA,P.J. 2 cc Atty Kasubick, Mason	Fredric Joseph Ammerman
03/24/2004	Motion For Summary Judgment. filed by, s/David C. Mason, Esquire 2 cc to Atty Joint Exhibit of Documents Relative to Defendants' Motion For Summary Judgment. filed 1 cc to Atty Certificate of Service, Defendants' Motion For Summary Judgment upon Girard Kasubick, Esquire. filed by, s/David C. Mason, Esquire 1 cc to Atty	Fredric Joseph Ammerman
04/01/2004	RULE RETURNABLE, NOW, this 29th day of March, 2004, issued upon the Plaintiffs. Rule Returnable the 16th day of April, 2004, at 9:00 a.m., in Courtroom No. 1. by the Court, s/FJA, P.J.	Fredric Joseph Ammerman
04/07/2004	ORDER, AND NOW, this 6th day of April, 2004, Pre-Trial Conference and Argument on Defendants' Motion for Summary Judgment has been RESCHEDULED from 9:00 a.m. to 10:30 a.m. on Friday, April 16, 2004, in Courtroom No. 1. by the Court, s/FJA, P.J. 1 cc Atty Kasubick, Mason	Fredric Joseph Ammerman

Time: 09:21 AM

User: ASELFRI

Page 2 of 2

ROA Report

Case: 2003-00340-CD

Current Judge: Fredric Joseph Ammerman

Harlan I. Schnarrs, James E. Schnarrs Sr., Shirley S. Johns vs. Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson, Alvin C. Bush

Civil Other

Date	Judge	
04/12/2004	ORDER, NOW, this 1st day of April, 2004, re: Pre-Trial Conference w/counsel for the parties and the Court scheduled for Friday, April 16, 2004 at 9:00 a.m. in President Judge Ammerman's Chambers. by the Court, s/FJA, P.J. 2 cc Atty Mason, Kasubick Certificate of Service, Pre-Trial Memorandum upon David C. Mason, Esquire filed by, s/Girard Kasubick, Esquire no cc Certificate of Service, Pre-trial Statement upon Girard Kasubick, Esquire. filed by, s/David C. Mason, Esquire no cc	Fredric Joseph Ammerman
04/14/2004	Response To Motion For Summary Judgment. filed by, s/Girard Kasubick, Esquire 2 cc Atty Kasubick	Fredric Joseph Ammerman
04/16/2004	Order, NOW, this 16th day of April, 2004, date set for both pre-trial conference and argument on Defendant's Motion for Summary Judgment, Order as follows: 1. Counsel for Plaintiff shall submit brief to the Court relative the Motion for Summary Judgment within no more than 20 days from this date. Counsel for the Defendant shall file any response thereto in the event he wishes to do so within no more than 10 days thereafter; 2. Nonjury trial is hereby scheduled for the 7th day of July, 2004, at 9:00 a.m., Courtroom No. 1. BY THE COURT: s/Fredric J. Ammerman, P.J. Two CC Attorney Kasubick Two CC Attorney Mason	Fredric Joseph Ammerman
07/01/2004	Order, AND NOW, this 1st day of July, 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson, and Alvin C. Bush, and after considering the record as a whole, the Court finds as follows: (See Original for Details). The Court hereby grants Defendant's Motion for Summary Judgment. The Lease is Terminated. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys Kasubick and Mason Court faxed copies to both attorneys on July 1, 2004.	Fredric Joseph Ammerman

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

HARLAN I. SCHNARRS; JAMES
E. SCHNARRS, SR.; and SHIRLEY
S. JONES

Plaintiffs,

v.

No. 2003-340-CD

GAIL WILKS; JAMES H. MEAS;
MARIAN D. SHIMMEL; NORMA
J. KNEPP; LEONARD THOMPSON;
And ALVIN C. BUSH

Defendants.

FILED

JUL 01 2004

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 1st day of July, 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson, and Alvin C. Bush (collectively, Defendants), and after considering the record as a whole, the Court finds as follows:

1. This case involves a fifty-year-old mineral lease (Lease) entered into by the predecessor in interest of Plaintiffs (i.e. the original Lessee) and Defendants' predecessors in interest (i.e. the original Lessors) on April 20, 1954. The parties and their successors operated as if the Lease has been in effect from that time until approximately May of 2002 at which time Defendants attempted to terminate the Lease by refusing to accept the royalty payments tendered by Plaintiffs pursuant to the terms of the Lease.

2. Paragraph 15 of the Lease deals with the duration of the Lease. It states:

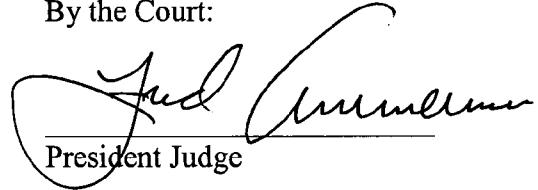
This lease shall continue for a period of one (1) year from the exercise of the option as herein provided for, or until all the merchantable stripping and minable coal shall be removed therefrom. Provided, the [Lessee] shall have complied with and performed all the conditions, covenants, and stipulations of this lease, the same shall automatically renew itself from year to year thereafter until such time as the [Lessee] shall notify the [Lessors], in writing sixty (60) days prior to the end of any yearly terms, of their intention not to so renew or until all the merchantable and minable coal is removed from the said premises, whichever may first occur. All the terms[,] covenants, conditions, and stipulations herein contained are to extend to any yearly renewals as herein provided for.

3. The Court's determination in this case centers on the perpetual term of the Lease which Plaintiffs' position would require the Court to imply from the terms of the Lease. This, the Court will not do. While it is true that Paragraph 15 of the Lease contains an automatic renewal provision, and that leases for a certain term containing such a provision may be enforceable, this is not the situation in the case at bar. It is clear that covenants for continued renewals tending to create a perpetuity are not favored in law and that a lease will not be construed to give that effect unless the parties unequivocally express that intention in the terms of the contract. Sterle v. Galiard Coal & Coke Co., 77 A.2d 699 (Pa.Super. 1951). See: Egger v. First Nat'l Bank 19 Pa. D. & C.3d 724 (Ct.Cm.Pl. Cumberland 1981); Scott v. Spezialetti, 72 Pa. D. & C.2d 269 (Ct.Cm.Pl. Luzerne 1975).

4. In the present case, the Court notes that the language of the Lease provides for an initial one-year term, followed by additional renewal periods *one year* in length. This, coupled with the facts that the language of the Lease contains neither a royalty-escalation provision compensating for economic inflation, nor any word or phrase expressing the party's specific intent to create a perpetual contract, indicates to the court that inferring a perpetual

contract between the parties in this case would be unconscionable. The Court HEREBY
GRANTS Defendants' Motion for Summary Judgment. The Lease is TERMINATED.

By the Court:



A handwritten signature in black ink, appearing to read "Andrew J. Sperling". The signature is fluid and cursive, with a long, sweeping line on the right side.

President Judge

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

FILED

APR 16 2004

William A. Shaw
Prothonotary/Clerk of Courts

HARLAN I. SCHNARRS; JAMES :
E. SCHNARRS, SR.; and
SHIRLEY S. JONES :

-VS-

No. 2003-340-CD

GAIL WILKS; JAMES H. MEAS; :
MARIAN D. SHIMMEL; NORMA J. :
KNEPP; LEONARD THOMPSON; :
and ALVIN C. BUSH :

O R D E R

NOW, this 16th day of April, 2004, this being the date set for both pre-trial conference and argument on the Defendant's Motion for Summary Judgment, and following said argument, it is the ORDER of this Court as follows:

1. Counsel for the Plaintiff shall submit brief to the Court relative the Motion for Summary Judgment within no more than twenty (20) days from this date. Counsel for the Defendant shall file any response thereto in the event he wishes to do so within no more than ten (10) days thereafter;

2. Nonjury trial is hereby scheduled for the 7th day of July, 2004, at 9:00 a.m., Courtroom No. 1, Clearfield County Courthouse.

BY THE COURT


President Judge

FILED
04-03-2004
APR 16 2004
cc Atty Kasubick
cc Atty Mason
cc Atty Shaw
cc Prothonotary/Clerk of Courts
WAS
William A. Shaw
Prothonotary/Clerk of Courts

LEHMAN & KASUBICK

611 BRISBIN STREET

HOULTSDALE, PA 16651

(814) 378-7840

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

HARLAN I. SCHNARRS; JAMES E. : No.: 2003-340-CD
SCHNARRS, SR; and SHIRLEY S. : Type of Case: Equity
JOHNS, : Type of Pleading:
Plaintiffs : Response to Motion
vs. : for Summary
GAIL WILKS; JAMES H. MEAS; : Judgment
MARIAN D. SHIMMEL; NORMA J. : Filed on behalf of:
KNEPP; LEONARD THOMPSON; : Plaintiffs
and ALVIN C. BUSH, : Counsel of Record for
Defendants : This Party:
: Girard Kasubick, Esq.
: Supreme Court #30109
: LEHMAN & KASUBICK
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7840

FILED

APR 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

100

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

HARLAN I. SCHNARRS; JAMES E. :
SCHNARRS, SR; and SHIRLEY S. : No.: 2003-340-CD
JOHNS, :
Plaintiffs :
vs. :
GAIL WILKS; JAMES H. MEAS; :
MARIAN D. SHIMMEL; NORMA J. :
KNEPP; LEONARD THOMPSON; :
and ALVIN C. BUSH, :
Defendants :

PLAINTIFF'S RESPONSE TO MOTION FOR
SUMMARY JUDGMENT

AND NOW, comes Plaintiffs by and through their attorney, Girard Kasubick, Esq. and files this Response to Defendants Motion for Summary Judgment under Pa. R. C. P. 1035.3:

1. The Defendant has raised four (4) issues in its Motion any of which the Defendant offers should result in the grant of the Motion for Summary Judgment. The issues are:

- a. Lease has expired by its terms.
- b. Perpetual Term of Lease.
- c. Breach of Covenant of Lease.
- d. Impossibility of Performance.

Plaintiff will address these issues herein in the same order.

2. Pa. R. C. P. 1035.3(a) requires the adverse party to file a Response to the Motion for Summary Judgment. This rules states in part:

". . . the adverse party may not rest upon the mere allegations or denials of the pleading but must file a response within thirty days after service of the motion identifying

(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion."

The Plaintiff sets for the following facts controverting the position of the Defendant.

I. LEASE EXPIRED BY ITS TERMS

Paragraph Fifteenth of the April 20, 1954 Lease (Joint Exhibit 44) does set forth the term of the Lease. Paragraph 15 reads as follows:

"FIFTEENTH: This lease shall continue for a period of one (1) year from the date of the exercise of the option as herein provided for, **or** until all the merchantable stripping and minable coal shall be removed therefrom. Provided, the Lease shall have complied with and performed all the conditions, covenants and stipulations of this lease, the same shall automatically renew itself from year to year thereafter until such time as the leasee shall notify the lessors, in writing sixty (60) days prior to the end of any yearly term, of their intention not to so renew or until all the merchantable and minable coal is removed from the said premises, whichever may first occur. All the terms, covenants, conditions, and stipulations herein contained are to extend to any yearly renewals as herein provided for."

The Defendant argues that the term of the Lease in this paragraph for "one (1) year **or** until all the merchantable stripping and minable coal shall be removed" is a disjunctive or alternative meaning. Either one or the other applies. This implies that if all minable coal is not removed within one (1) year of exercise of the option then the Lease terminates at the end of one (1) year.

Under Paragraph Second of the April 20, 1954 Lease (Joint Exhibit 44) the option period was ninety (90) days or until July 20, 1954. There is nothing in the record to show when the option was exercised but at the latest it was July 20, 1954. This means the one (1) year term expired July 20, 1955.

The Defendant's argument is that the Lease was terminated by July 20, 1955. The cases cited by Defendant, Frenchak v. Sunbeam Coal Corp. 344 Pa. Super 37, 495 A.2d 1385 (1985) and Hutchison v. Sunbeam Coal Corporation 513 Pa. 192, 519 A.2d 385 (1986) do hold that when the "or" language is used the lease term does not go beyond the set term. However, there is a big difference in the facts of those cases and the current facts. In both cases cited by Defendant nothing happened on the

properties after the initial set term expired. In this case, after July 20, 1955 mining operations occurred. Successor Lessors verified the Lease as valid by Affidavits dated 1988 and recorded in the Clearfield County Recorders Office (Joint Exhibits 46, 47 and 48). Also, Lessors accepted royalty payments through the year 2002 and one Lessor through 2007. (See schedule of royalty payments in Joint Exhibit 55 and letters Joint Exhibits 50, 51, 52, 53 and 54).

In conclusion, the extrinsic material facts show that Lessors and Lessees did not consider this Lease terminated on July 20, 1955 or for a one (1) year term. The facts of record show that the parties operated under a basis of until all merchantable coal was removed.

In Hutchison v. Sunbeam Coal Corporation Supra (1986) 513 Pa. 192, at page 201 it states:

"We first must analyze the lease to determine whether an ambiguity exists requiring the use of extrinsic evidence."

The ambiguity exists from the facts noted above that the parties consider this lease in existence for more than forty (40) years.

In Hutchison v. Sunbeam Coal Corporation, Supra, at 513 Pa. page 201 it further states:

"The court, as a matter of law determines the existence of an ambiguity and interprets the contract whereas the resolution of conflicting parol evidence relevant to what the parties intended by the ambiguous provision is for the trier of fact." (Citing Easton v. Washington County Insurance Co. 391 Pa. 28, 137 A.2d 332) (1957)."

The pleadings and record in this case shows the ambiguity since the parties have been acting under the lease for much longer than the one (1) year term.

II. PERPETUAL TERM OF THE LEASE

Although leases in perpetuity are not favored by the law the court in equity needs to look at the Lessees investment in the lease and how the parties by their actions under the contract interpreted the rights and duties of the parties.

The case cited by the Defendant being Chauvenet v. Person 217 Pa. 464, 66 A. 855 (1907) and Sterle v. Galiardi Coal & Coke Co. 168 Pa. Super. 254, 77 A.2d 669 (1951) both are cases where action was taken by Lessor at the end of the initial option period or the initial period to commence mining for Lessees failure to commence operations.

In the present case mining operations occurred in the 1990's and no objection was made by the Defendants. The issues of fact are that no Lessor has objected to the lease term until 2002 when certain Lessors returned royalty payments (See Joint Exhibits 50, 51, 52, 53) and their attorney wrote a letter of violation and termination of the lease (Joint Exhibit 60).

The extrinsic evidence being the actions of both Lessor and Lessee under the lease shows that the parties believed this lease was to continue until all strippable and minable coal is removed. The Lessors have accepted royalty payments and permitted Lessees mining of coal for forty (40) plus years. The actions of the parties are facts which shows the term of this lease to be a sale of mineral rights.

The lease dated April 20, 1954 is a sale of all the coal in place with the Lessor having only an interest in the royalties as personal property. The case of Smith v. Glen Aden Coal Co. 347 Pa 290, 32 A.2d 227 (1945) at page 298 and 299 states and holds:

"It is well settled in this State that a lease of coal in place such as this is 'until such time as all the available merchantable coal shall have been mined and removed' is a sale of an estate in fee simple and leaves

the Lessor with only an interest in the royalties to be paid him under the lease. That lease is personality."

The facts of record in this case are that the parties have acknowledge the rights and duties of the other for nearly fifty (50) years, shows that the present lease is a sale of the mineral rights in fee simple.

The extrinsic facts in this case shows this lease is still valid by the parties action. The case of Sterle supra at 168 Pa. Super at page 257 does also state:

"A lease for a term certain and thereafter to continue at the will of the Lessee may be enforceable. Myers v. Kingston Coal Co. 126 Pa 582; 17 A. 891."

The second sentence of Paragraph Fifteen in the original lease (Joint Exhibit 44) gives the Lessee the right to terminate at the end of any year or to proceed to remove all minable and merchantable coal at Lessee's will.

In conclusion, the facts show this lease is a sale of the mineral rights in fee simple with the Lessee controlling the term of the lease.

III. BREACH OF COVENANT AND TERMINATION

The record shows that there is an open cut on the property and some concern with it being there. There is nothing in the record of this case that shows the

Plaintiffs have committed any violation. Some of their sub-lessors have been cited by Department of Environmental Resources (DER) now Department of Environmental Protection (DEP). The current Lessees have never been cited themselves for violations by DER or DEP.

The facts of record in Paragraph 31, 32 and 33 of the Complaint of Plaintiffs, shows some interference with Plaintiffs rights under the Lease and that this has created problems in Lessor finding a Sub-Lessor. These are facts which Defendants have created imposing difficulties on Plaintiff to proceed under the Lease. A coal exploration permit was granted to Ferlitch Coal Company (Joint Exhibit 62) with cooperation of Defendants or their agent without Plaintiffs knowledge beforehand.

Furthermore DEP by letter of April 4, 2002 (Joint Exhibit 59) recognizes that Plaintiffs still have an outstanding lease on the property which can be permitted.

Paragraph Tenth of the Lease (Joint Exhibit 44) cited by Defendant places a condition precedent that backfilling must be done prior to termination, but termination has not taken place. Therefore, the backfilling need not be completed at this time.

Furthermore, if the court finds this is a sale of mineral rights in fee simple under Argument II above, then the issue becomes only whether Defendants can enforce their surface rights claims and not a termination of the Lease. In this factual claim the Defendants have know rights to terminate the Lease.

The Plaintiffs do not object to DER proceeding to complete backfilling.

IV. IMPOSSIBILITY OF PERFORMANCE

There is nothing in the April 20, 1954 Lease (Joint Exhibit 44) that requires the Plaintiffs to actually do the mining and removing of the coal.

The Lease has no restriction on assignment or sub-leasing in it which gives the Plaintiffs another option for removing the coal.

The facts shows that Plaintiffs have agreed with other parties to have coal mined and removed. Under the original lease the Lessees have only had active mining one time. In the 1990's a permit was obtained by T & T Clay Company (Joint Exhibit 3) under the Sub-lease from the Lessees (Joint Exhibit 9).

The Defendants claim the Plaintiffs obtaining a contractor is 1. Speculation, 2. Economically undesirable, 3. Risky to a contractor, 4. Impossible because the permit has expired and 5. Because of the hazardous condition of the property.

The Defendants claims noted above are pure conjecture and speculation on their part. There is no requirement in the original lease for the Lessee to obtain equipment or the mining permit themselves. Facts may show that this property could be mined with coal removed and thereby removing the hazardous condition all in an economically sound manner.

It is clear from Join Exhibit 64 that the property can still be mined. Mr. Steve R. Jones at DEP in this letter states:

"We understand that reclamation of the site will not preclude future mining of the reclaimed area."

V. CONCLUSION

The Lease of April 20, 1954 based on facts of record and that both parties for more than forty (40) years have acknowledged this contract is a sale of coal rights in fee

to Plaintiffs as successors, assigns (Joint Exhibit 49) and that material facts and extrinsic facts are important to this case and the Defendants Motion for Summary Judgment should be denied in its entirety.

Respectfully Submitted
LEHMAN & KASUBICK



Girard Kasubick, Esquire
Attorney for Plaintiffs

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

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E. *
SCHNARRS, SR.; and SHIRLEY S. * No. 2003-340-CD
JOHNS *

Plaintiffs *

VS. *

GAIL WILKS; JAMES H. MEAS; *
MARIAN D. SHIMMEL; NORMA J. *
KNEPP; LEONARD THOMPSON; *
and ALVIN C. BUSH *

Defendants *

* TYPE OF PLEADING: CERTIFICATE OF
* SERVICE

* FILED ON BEHALF OF: Defendants

*

* COUNSEL OF RECORD FOR
* THIS PARTY:

* David C. Mason, Esq.
* MASON LAW OFFICE
* Supreme Court No. 39180
* P. O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

* COUNSEL OF RECORD FOR PLAINTIFFS

* Girard Kasubick, Esquire
* LEHMAN & KASUBICK
* 611 Brisbin Street
* Houtzdale, PA 16651
* (814) 378-7840

FILED

APR 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E. *
SCHNARRS, SR.; and SHIRLEY S. * No. 2003-340-CD
JOHNS *

Plaintiffs *

vs. *

GAIL WILKS; JAMES H. MEAS; *
MARIAN D. SHIMMEL; NORMA J. *
KNEPP; LEONARD THOMPSON; *
and ALVIN C. BUSH *

Defendants *

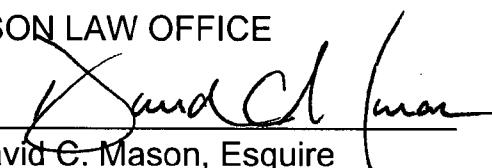
CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of **PRE-TRIAL STATEMENT** filed to the above captioned action, by faxing the same and also placing the same in the United States mail, postage prepaid and addressed as follows:

Girard Kasubick, Esquire
LEHMAN & KASUBICK
611 Brisbin Street
Houtzdale, PA 16651

DATED: 4-8-04

MASON LAW OFFICE

BY: 

David C. Mason, Esquire

FILED NO CC
APR 12 2004
KEL

William A. Shaw
Prothonotary/Clerk of Courts

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William A. Shaw
Prothonotary/Clerk of Courts

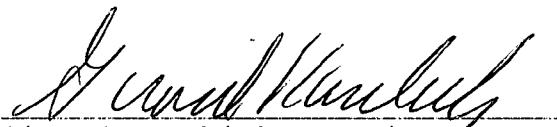
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E. :
SCHNARRS, SR; and SHIRLEY S. : No.: 2003-340-CD
JOHNS, :
Plaintiffs :
vs. :
GAIL WILKS; JAMES H. MEAS; :
MARIAN D. SHIMMEL; NORMA J. :
KNEPP; LEONARD THOMPSON; :
and ALVIN C. BUSH, :
Defendants :
10

CERTIFICATE OF SERVICE

I hereby certify that I, Girard Kasubick, Esq., served a copy of the Pre-Trial Memorandum by regular United States mail, postage pre-paid, mailed on April 8, 2004 upon the Attorney for the Defendants at the following address:

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


Girard Kasubick, Esquire,
Attorney for Plaintiffs

18

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

HARLAN I. SCHNARRS; JAMES
E. SCHNARRS, SR; and
SHIRLEY S. JOHNS,
Plaintiffs

*
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*
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vs.

NO. 2003-340-C.D.

GAIL WILKS; JAMES H. MEAS;
MARIAN D. SHIMMEL; NORMA J.
KNEPP; LEONARD THOMPSON;
and ALVIN C. BUSH,
Defendants

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O R D E R

NOW, this 1st day of April, 2004, following Civil Call,
it is the ORDER of this Court that Civil Pre-Trial Conference
with counsel for the parties as set forth above and the Court be
and is hereby scheduled for Friday, April 16, 2004 at 9:00 a.m.
in President Judge Ammerman's Chambers, Clearfield County
Courthouse, Second Floor, Clearfield, Pennsylvania.

FILED

APR 08 2004

William A. Shaw
Prothonotary

By the Court,


FREDRIC J. AMMERMAN

PRESIDENT JUDGE

FILED

6 3:45 PM
2004-04-08
2cc *Walter Kosubick*

APR 08 2004

WAS

William A. Shaw
Prothonotary

(16) CA

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

HARLAN I. SCHNARRS; JAMES E. :
SCHNARRS, SR.; and SHIRLEY :
S. JOHNS :
vs. : No. 03-340-CD
:
GAIL WILKS; JAMES H. MEAS; :
MARIAN D. SHIMMER; NORMA :
J. KNEPP; LEONARD THOMPSON; :
and ALVIN C. BUSH :
:

ORDER

AND NOW, this 6th day of April, 2004, it is the ORDER of the Court that the Pre-Trial Conference and argument on Defendants' Motion for Summary Judgment in the above matter has been rescheduled from 9:00 A.M. to **10:30 A.M. on Friday, April 16, 2004**, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

FILED

APR 07 2004

William A. Shaw
Prothonotary/Clerk of Courts

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

(16)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HARLAN I. SCHNARRS; JAMES
E. SCHNARRS, SR; and
SHIRLEY S. JOHNS,
Plaintiffs

vs.

GAIL WILKS; JAMES H. MEAS;
MARIAN D. SHIMMEL; NORMA J.
KNEPP; LEONARD THOMPSON;
and ALVIN C. BUSH,
Defendants

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NO. 2003-340-C.D.

O R D E R

NOW, this 1st day of April, 2004, following Civil Call, it is the ORDER of this Court that Civil Pre-Trial Conference with counsel for the parties as set forth above and the Court be and is hereby scheduled for Thursday, April 16, 2004 at 9:00 a.m. in President Judge Ammerman's Chambers, Clearfield County Courthouse, Second Floor, Clearfield, Pennsylvania.

By the Court,



FREDRIC J. AMMERMAN
PRESIDENT JUDGE

FILED

APR 06 2004

William A. Shaw
Prothonotary/Clerk of Courts

(15)

(15)

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

HARLAN I. SCHNARRS; JAMES E.
SCHNARRS, SR.; and SHIRLEY S. JOHNS

No. 2003-340-CD

Plaintiffs

vs.

GAIL WILKS; JAMES H. MEAS; MARIAN D. SHIMMEL; NORMA J. KNEPP; LEONARD THOMPSON; and ALVIN C. BUSH

Defendants

RULE RETURNABLE

NOW, this 29 day of March, 2004, upon consideration of the attached Motion for Summary Judgment, a Rule is hereby issued upon the Plaintiffs to Show Cause why the Summary Judgment should not be entered against the Plaintiffs and in favor of the Defendants.

Rule Returnable the 16 day of April, 2004, at 9:00
o'clock, in Courtroom No. 1, of the Clearfield County Courthouse, Clearfield,
Pennsylvania. .

BY THE COURT:

FILED

APR 01 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED

cc

04/07/04
APR 01 2004
Amy Mason

William A. Shaw
Prothonotary/Clerk of Courts

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

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E. SCHNARRS, SR.; and SHIRLEY S. JOHNS * * * * * No. 2003-340-CD

Plaintiffs

vs.

GAIL WILKS; JAMES H. MEAS;
MARIAN D. SHIMMEL; NORMA J.
KNEPP; LEONARD THOMPSON;
and ALVIN C. BUSH

Defendants

* TYPE OF PLEADING: CERTIFICATE OF
* SERVICE

* FILED ON BEHALF OF: Defendants

* COUNSEL OF RECORD FOR
* THIS PARTY:

* David C. Mason, Esq.
* MASON LAW OFFICE
* Supreme Court No. 39180
* P. O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

* COUNSEL OF RECORD FOR PLAINTIFFS

* Girard Kasubick, Esquire
* LEHMAN & KASUBICK
* 611 Brisbin Street
* Houtzdale, PA 16651
* (814) 378-7840

FILED

MAR 24 2004

THUR 21 2004

William A. Shaw

Voluntary Clerk of Courts

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

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E. *
SCHNARRS, SR.; and SHIRLEY S. * No. 2003-340-CD
JOHNS *
*
*
*

Plaintiffs *

vs. *

GAIL WILKS; JAMES H. MEAS; *
MARIAN D. SHIMMEL; NORMA J. *
KNEPP; LEONARD THOMPSON; *
and ALVIN C. BUSH *

Defendants *

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** filed to the above captioned action, by faxing the same and also placing the same in the United States mail, postage prepaid and addressed as follows:

Girard Kasubick, Esquire
LEHMAN & KASUBICK
611 Brisbin Street
Houtzdale, PA 16651

DATED: *March 25, 2004*

MASON LAW OFFICE

BY: *David C. Mason*
David C. Mason, Esquire

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

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E. *
SCHNARRS, SR. and SHIRLEY S. * No. 2003-340-CD
JOHNS *
*
*
*

Plaintiffs

vs.

GAIL WILKS; JAMES H. MEAS; *
MARIAN D. SHIMMEL; NORMA J. *
KNEPP; LEONARD THOMPSON; *
and ALVIN C. BUSH *

Defendants

* TYPE OF PLEADING: Motion For Summary
* Judgment

* FILED ON BEHALF OF:
* Defendants

* COUNSEL OF RECORD FOR
* THIS PARTY:
* David C. Mason, Esquire
* I.D. No. 39180
* MASON LAW OFFICE
* P.O. Box 28
* Philipsburg, PA 16866
* 814 342 2240

* COUNSEL OF RECORD FOR
* PLAINTIFFS:
* Girard Kasubick, Esquire
* LEHMAN & KASUBICK
* 611 Brisbin Street
* Houtzdale, PA 16651
* (814) 378-7840

FILED

MAR 24 2004
019:30 AM
William A. Shaw
Prothonotary/Clerk of Courts
2 canon to Atts

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

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E. *
SCHNARRS, SR.; and SHIRLEY S. * No. 2003-340-CD
JOHNS. *

Plaintiffs *

vs. *

GAIL WILKS; JAMES H. MEAS; *
MARIAN D. SHIMMEL; NORMA J. *
KNEPP; LEONARD THOMPSON; *
and ALVIN C. BUSH *

Defendants *

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

AND NOW, come the defendants by and through their attorney, David C. Mason, Esquire, and move the court for entry of summary judgment in favor of the Defendants and against the Plaintiffs, both on the Plaintiffs' Complaint against the Defendants and on Defendants' Counter-claim against the Plaintiffs, and in support thereof state as follows:

1. Plaintiffs have filed an action in declaratory judgment seeking a determination of this Court on the validity of an agreement dated April 20, 1954, regarding surface mining of coal on premises owned by the Defendants in Boggs Township, Clearfield County, Pennsylvania.

2. Defendants have filed an Answer Containing New Matter and

Counterclaim, the substance of which is that the 1954 coal lease has expired by its own terms, or has no definitive expiration period but fifty (50) years is an unreasonable length of time, or the lease has been terminated by the defendants, or the current plaintiffs have no ability to perform the obligations as required by the said agreement. The Counterclaim of the defendants requests that the Court declare the agreement expired, invalid, terminated or frustrated.

4. The parties have exchanged documents, and filed separately is a joint exhibit of the parties which contains the documents which the parties believe are relevant to the court's determination of Defendants' Motion for Summary Judgment.

5. The Pennsylvania Rules of Civil Procedure permit the entry of summary judgment whenever there is no genuine issue of material fact as to a necessary element of the cause of action or defense. Pa. R. C. P. No. 1035.2(1).

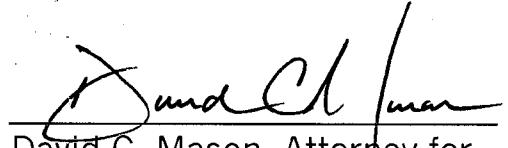
6. Defendants are entitled to summary judgment in their favor and against the Plaintiffs, on the Plaintiffs' Complaint and on the Defendants' Counter-claim, for the reasons set forth in the accompanying memorandum of law.

WHEREFORE, Defendants pray for the entry of summary judgment in favor of the Defendants and against the Plaintiffs on the claims asserted in

Plaintiffs' Complaint, and in favor of Defendants and against the Plaintiffs on
the claims asserted in Defendants' Counter-claim

Respectfully submitted,

MASON LAW OFFICE

By: 

David C. Mason, Attorney for
Defendants

FILED

MAR 24 2004

William A. S.
Prothonotary/Clerk of Court

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HARLAN I. SCHNARRS; JAMES E. *
SCHNARRS, SR.; and SHIRLEY S. *
JOHNS, *

Plaintiffs *

vs. *

NO. 2003-340-C.D.

GAIL WILKS; JAMES H. MEAS; *
MARIAN D. SHIMMEL; NORMA J. *
KNEPP; LEONARD THOMPSON; *
and ALVIN C. BUSH, *

Defendants *

FILED

JAN 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

O R D E R

NOW, this 22nd day of January, 2004, following Pre-Trial Conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. The case is hereby continued upon agreement of counsel for the parties.

2. The Court Administrator shall cause the matter to be listed for the Spring, 2004 Term of Court.

3. The parties shall have until no later than April 1, 2004 in which to file any Motions for Summary Judgment.

By the Court,

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

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

HARLAN I. SCHNARRS, JAMES *
E. SCHNARRS, SR., and *
SHIRLEY S. JOHNS, *
Plaintiffs *
*
vs. * NO. 2003-340-C.D.
*
GAIL WILKS, JAMES H. MEAS, *
MARIAN D. SHIMMEL, NORMA J. *
KNEPP, LEONARD THOMPSON, *
and ALVIN C. BUSH, *
Defendant *

FILED

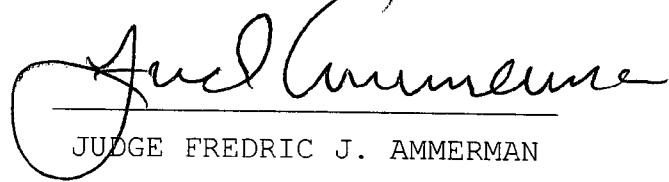
AUG 07 2003

William A. Shaw
Prothonotary/Clerk of Courts

O R D E R

NOW, this 6th day of August, 2003, upon the request for continuance by counsel for the Defendants, David C. Mason, Esquire, by his letter dated August 1, 2003, and it is the ORDER of this Court that the matter be and is hereby continued. The Court Administrator is directed to place the matter on the Civil Call List for the next Term of Court.

By the Court,



JUDGE FREDRIC J. AMMERMAN

FILED

03:22 61
AUG 07 2003 61

William A. Shaw
Prothonotary/Clerk of Courts

2 certified copies to Girard Kasubick, Esquire
2 certified copies to David C. Mason, Esquire
1 copy to Judge Ammerman
1 copy to Court Administrator

⑧
LEHMAN & KASUBICK

611 BRISBIN STREET
HOUTZDALE, PA 16651

(814) 378-7840

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

HARLAN I. SCHNARRS; JAMES E. : No.: 2003-340-CD
SCHNARRS, SR; and SHIRLEY S. : Type of Case:
JOHNS, : Civil Action
Plaintiffs : Type of Pleading:
vs. : Certificate of
GAIL WILKS; JAMES H. MEAS; : Readiness and Praecepse
MARIAN D. SHIMMEL; NORMA J. : for Trial
KNEPP; LEONARD THOMPSON; : Filed on behalf of:
and ALVIN C. BUSH, : Plaintiffs
Defendants : Counsel of Record for
This Party: : Girard Kasubick, Esq.
: Supreme Court #30109
: LEHMAN & KASUBICK
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7846

FILED

JUL 17 2003

William A. Shaw
Prothonotary

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

HARLAN I. SCHNARRS; JAMES E. :
SCHNARRS, SR; and SHIRLEY S. : No.: 2003-340-CD
JOHNS, :
Plaintiffs :
vs. :
GAIL WILKS; JAMES H. MEAS; :
MARIAN D. SHIMMEL; NORMA J. :
KNEPP; LEONARD THOMPSON; :
and ALVIN C. BUSH, :
Defendants :
:

CERTIFICATE OF READINESS

TO: William A. Shaw, Prothonotary

DATE PRESENTED: July 17, 2003

CASE NUMBER: 2003-340-CD

Date Complaint Filed: March 11, 2003

TYPE OF TRIAL REQUESTED:

Jury Non-Jury Arbitration

ESTIMATED TRIAL TIME:

3/4 day

PLAINTIFF(S): Harlan I. Schnarrs; James E. Schnarrs, Sr. and Shirley S. Johns Check Block if a Minor is a Party to the Case

DEFENDANT(S): Gail Wilks; James H. Meas; Marian D. Shimmel; Norma J. Knepp; Leonard Thompson; and Alvin C. Bush

ADDITIONAL

DEFENDANT(S): None ()

AMOUNT AT ISSUE: No amount at issue under this
Declaratory Judgment Case.

CONSOLIDATION: () yes (X) no

DATE CONSOLIDATION ORDERED: N/A

PRAECIPE FOR TRIAL

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed or will be completed, all necessary parties and witnesses are available; serious settlement negotiations have been conducted; there are no outstanding motions; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel:

Girard Kasubick, Esq.
611 Brisbin Street
Houtzdale, PA 16651

(814) 378-7840

FOR THE PLAINTIFF

TELEPHONE NUMBER

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

(814) 342-2240

FOR THE DEFENDANT

TELEPHONE NUMBER

Respectfully Submitted,



Girard Kasubick, Esq.,
Attorney for Plaintiffs

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

HARLAN I. SCHNARRS; JAMES E. :
SCHNARRS, SR; and SHIRLEY S. : No.: 2003-340-CD
JOHNS, :
Plaintiffs :
vs. :
GAIL WILKS; JAMES H. MEAS; :
MARIAN D. SHIMMEL; NORMA J. :
KNEPP; LEONARD THOMPSON; :
and ALVIN C. BUSH, :
Defendants :
:

CERTIFICATE OF SERVICE

I hereby certify that I, Girard Kasubick, Esq., served a true and correct copy of the Certificate of Readiness and Praeclipe for Trial by United States First Class Mail, postage prepaid, on July 16, 2003, on the following counsel of record:

David C. Mason
MASON LAW OFFICE
P.O. Box 28
Philipsburg, PA 16866



Girard Kasubick, Esquire,
Attorney for Plaintiffs

(7)

In The Court of Common Pleas of Clearfield County, Pennsylvania

SCHNARRS, HARLAN I. AI

VS.

WILKS, GAIL AI

Sheriff Docket #

13785

03-340-CD

COMPLAINT FOR DECLARATORY JUDGMENT/EQUITY

SHERIFF RETURNS

NOW MARCH 14, 2003 AT 10:35 AM SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON NORMA J. KNEPP, DEFENDANT AT RESIDENCE, RD#1 BOX 195, WEST DECATUR, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DALLAS KNEPP, SON A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

NOW MARCH 14, 2003 AT 10:37 AM SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON MARIAN D. SHIMMEL, DEFENDANT AT RESIDENCE, RD#1 BOX 200, WEST DECATUR, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO MARIAN D. SHIMMEL A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

NOW MARCH 18, 2003 AT 11:18 AM SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON LEONARD THOMPSON, DEFENDANT AT RESIDENCE, RD#1 BOX 11, WEST DECATUR, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO LEONARD THOMPSON A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

NOW MARCH 13, 2003, CHARLES BREWER, SHERIFF OF LYCOMING COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON ALVIN C. BUSH, DEFENDANT.

NOW MARCH 20, 2003 SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON ALVIN C. BUSH, DEFENDANT BY DEPUTIZING THE SHERIFF OF LYCOMING COUNTY. THE RETURN OF SHERIFF BREWER IS HERETO ATTACHED AND MADE A PART OF THIS RETURN.

NOW MARCH 13, 2003, DENNY NAU, SHERIFF OF CENTRE COUNTY WAS DEPUTIZED BY CHESTER A HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON GAIL WILKS, DEFENDANT.

NOW MARCH 21, 2003 SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON GAIL WILKS, DEFENDANT BY DEPUTIZING THE SHERIFF OF CENTRE COUNTY. THE RETURN OF SHERIFF NAU IS HERETO ATTACHED AND MADE A PART OF THIS RETURN.

FILED
-20 o 2:02 PM
JUN 27 2003

William A. Shaw
Prothonotary

(1)

In The Court of Common Pleas of Clearfield County, Pennsylvania

SCHNARRS, HARLAN I. AI

VS.

WILKS, GAIL ai

Sheriff Docket # 13785

03-340-CD

COMPLAINT FOR DECLARATORY JUDGMENT/EQUITY

SHERIFF RETURNS

NOW MARCH 13, 2003, JACK LOTWICK, SHERIFF OF DAUPHIN COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON JAMES H. MEAS, DEFENDANT.

NOW APRIL 10, 2003 ATTEMPTED TO SERVE THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON JAMES H. MEAS, DEFENDANT BY DEPUTIZING THE SHERIFF OF DAUPHIN COUNTY. THE RETURN OF SHERIFF LOTWICK IS HERETO ATTACHED AND MADE A PART OF THIS RETURN MARKED "NOT FOUND". DEFENDANT IS IN FLORIDA UNTIL END OF APRIL.

Return Costs

Cost	Description
95.46	SHERIFF HAWKINS PAID BY: Atty
60.00	SURCHARGE PAID BY: ATTY CK# 10517
64.00	CENTRE CO. SHFF. PAID BY ATTY CK# 10518
30.50	DAPUHIN CO. SHFF. PAID BY ATTY CK# 10519
26.50	LYCOMING CO. SHFF. PAID BY ATTY CK# 10520

Sworn to Before Me This

27 Day Of June 2003
Willie Shars

So Answers,

*Chester Hawkins
by Marilyn Hamm*
Chester A. Hawkins
Sheriff

SHERIFF'S RETURN - REGULAR

CASE NO: 2003-00340

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF LycomingHARLAN I SCHNARRS ET AL

VS

GAIL WILKS AND JAMES H MEAS ETSTEVE HALL, Sheriff or Deputy Sheriff of Lycoming

County, Pennsylvania, who being duly sworn according to law,

says, the within COMP-DECLATORY JDGMNT was served uponBUSH ALVIN C theDEFENDANT, at 0010:30 Hour, on the 20th day of March, 2003at 231 SOUTH MALL RDPENNSDALE, PA 17756 by handing toPERSONALLYa true and attested copy of COMP-DECLATORY JDGMNT together withand at the same time directing His attention to the contents thereof.

Sheriff's Costs:

Docketing	9.00
Service	9.00
Affidavit	2.50
Surcharge	.00
Mileage	6.00

So Answers:

Charles T. Brewer
 Charles T. Brewer, Sheriff
 By Steve Hall
 00/00/0000 Deputy Sheriff
 \$50.00 DEPOSIT-REFUND \$23.50

Sworn and subscribed to before

me this 9th day ofJUNE 2003 A.D.William J. Beard

WILLIAM J. BEARD
 Prothonotary & Clerk of Courts
 Williamsport, Lycoming County
 My Commission Expires Jan. 2, 2004

RECEIPT FOR DISTRIBUTION OF ADVANCE PAYMENTS HELD IN ESCROW

Lycoming County Pennsylvania
48 W 3rd Street
Williamsport PA 17701

Receipt Date 03/21/2003
Receipt Time 11:26:56
Receipt No. 19741

HARLAN I SCHNARRS ET AL (VS) GAIL WILKS AND JAMES H MEAS ET

Case Number 2003-00340 T

Service Info

Remarks Escrow Transfer Out

Advance Payment Balance	50.00	LEHMAN & KASUBICK
Total Amount Distributed	26.50	

Balance Remaining	23.50
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----- Distribution -----

Transaction Description	Amount	Payee
DOCKET/RETURN	9.00	LYCOMING COUNTY TREASURER
SERVICE	9.00	LYCOMING COUNTY TREASURER
MILEAGE	6.00	LYCOMING COUNTY TREASURER
NOTARY FEE	2.50	LYCOMING COUNTY TREASURER
Total Amount Distributed	26.50	

13985 #481

SHERIFF'S OFFICE
CENTRE COUNTY

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

SHERIFF SERVICE PROCESS RECEIPT, AND AFFIDAVIT OF RETURN				INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. Please type or print legibly. Do Not detach any copies.					
1. Plaintiff(s) <u>Harlan J. Schnarrs</u>				2. Case Number <u>03-340-CD</u>					
3. Defendant(s) <u>Gail Wilks</u>				4. Type of Writ or Complaint: <u>Complaint</u>					
SERVE → AT	5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levyed, Attached or Sold. <u>Gail Wilkins</u>			6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code) <u>161 Richard Street, Philipsburg, Pa 16866</u>					
7. Indicate unusual service: <input type="checkbox"/> Reg Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Deputize <input type="checkbox"/> Post <input type="checkbox"/> Other									
Now, <u>20</u> I SHERIFF OF CENTRE COUNTY, PA., do hereby depose the Sheriff of County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. _____ Sheriff of Centre County									
8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE									
NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN – Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.									
9. Print/Type Name and Address of Attorney/Originator					10. Telephone Number		11. Date		
					12. Signature				
SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE									
13. I acknowledge receipt of the writ or complaint as indicated above.		14. Date Filed			15. Expiration/Hearing Date				
TO BE COMPLETED BY SHERIFF									
16. Served and made known to <u>Gail Wilks</u> , on the <u>21</u> day of <u>March</u> , 20 <u>03</u> , at <u>10:55</u> o'clock, <u>A</u> m., at <u>SAME AS ABOVE</u> , County of Centre									
Commonwealth of Pennsylvania, in the manner described below:									
<input checked="" type="checkbox"/> Defendant(s) personally served. <input type="checkbox"/> Adult family member with whom said Defendant(s) resides(s). Relationship is _____ <input type="checkbox"/> Adult in charge of Defendant's residence. <input type="checkbox"/> Manager/Clerk of place of lodging in which Defendant(s) resides(s). <input type="checkbox"/> Agent or person in charge of Defendant's office or usual place of business. <input type="checkbox"/> _____ and officer of said Defendant company. <input type="checkbox"/> Other _____									
On the _____ day of _____, 20_____, at _____ o'clock, _____ M.									
Defendant not found because: <input type="checkbox"/> Moved <input type="checkbox"/> Unknown <input type="checkbox"/> No Answer <input type="checkbox"/> Vacant <input type="checkbox"/> Other _____									
Remarks:									
Advance Costs <u>75.00</u>	Docket <u>9.00</u>	Service <u>9.00</u>	Sur Charge <u>—</u>	Affidavit <u>2.50</u>	Mileage <u>42.00</u>	Postage <u>.50</u>	Misc. <u>1.00</u>	Total Costs <u>64.00</u>	Costs Due or Refund <u>11.00</u>
17. AFFIRMED and subscribed to before me this <u>25</u>									
20. day of <u>March</u> 20 <u>03</u>									
23. <u>Corinne F. Peters</u> Notary Public Bellefonte Boro, Centre County My Commission Expires Sept. 5, 2005									
My Commission Expires Sept. 5, 2005									
18. Signature of Dep. Sheriff <u>Corinne F. Peters</u>									
19. Date <u>3-21-03</u>									
21. Signature of Sheriff <u>Corinne F. Peters</u>									
22. Date									
SHERIFF OF CENTRE COUNTY									
Amount Pd. _____ Page _____									
24. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE OF AUTHORIZED AUTHORITY AND TITLE.									
25. Date Received									



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

#481
OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533
CLEARFIELD COUNTY FAX
(814) 765-5915

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
Pg. 13785

HARLAN I. SCHNARRS al TERM & NO. 03-340-CD

VS DOCUMENT TO BE SERVED:

GAIL WILKS al COMPLAINT FOR DECLARATORY JUDGMENT

SERVE BY: 04/10/2003

MAKE REFUND PAYABLE TO: LEHMAN & KASUBICK, ATTORNEYS

SERVE: GAIL WILKS

ADDRESS: RD#1 BOX 96, PHILIPSBURG, PA.

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF OF CENTRE COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 13th Day of MARCH 2003

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

2301-AF JV
75

SHERIFF'S OFFICE WORK SHEET

481

Deputy assigned TW Date assigned 3-19-03 Last Day April 9, 2003

DEFENDANT (S) Gail Wilks Type of Writ Complaint

address RD #1 Box 96 Order # 03-340-CD
Philipsburg, PA Page # 2301-AA

PLAINTIFF Harlan I. Schnarrs Date Served

161 Richard St. 2nd House on Right
#161

Action Taken

Date/Time

3-19-03/1600 Left Card @ 161 Richard St.

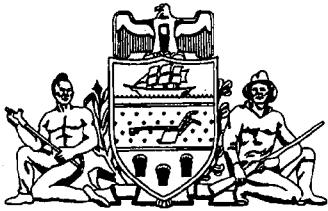
3-21-03/0815 Def. Called - will be home today - she works
as the tax collector for Rush Twp. @ Twp Building

3-21-03 / 1655 SERVED DEF @ RES

Miscellaneous Information

13785

Office of the Sheriff



Mary Jane Snyder
Real Estate Deputy

William T. Tully
Solicitor

J. Daniel Basile
Chief Deputy

Michael W. Rinehart
Assistant Chief Deputy

Dauphin County
Harrisburg, Pennsylvania 17101
ph: (717) 255-2660 fax: (717) 255-2889

Jack Lotwick
Sheriff

Commonwealth of Pennsylvania : SZNARRS HARLAN I AL
County of Dauphin : MEAS JAMES H
vs

Sheriff's Return

No. 0565-T - - - 2003
OTHER COUNTY NO. 03 340 CD

I, Jack Lotwick, Sheriff of the County of Dauphin, State of Pennsylvania, do hereby certify and return, that I made diligent search and inquiry for MEAS JAMES H the DEFENDANT named in the within COMPLAINT FOR DECLARATORY JUDGE and that I am unable to find him/her in the County of Dauphin, and therefore return same NOT FOUND, April 10, 2003

DEF IS IN FLORDIA WILL NOT BE BACK UNTIL THE END OF APRIL AS PER NEIGHBOR.

Sworn and subscribed to

before me this 14TH day of APRIL, 2003

Stephen C. (Parina) *J.R. Lotwick*

So Answers,

Sheriff of Dauphin County, Pa.

PROTHONOTARY

By _____
Deputy Sheriff

Sheriff's Costs: \$30.50 PD 03/17/2003
RCPT NO 176500



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
Pg. 13785

HARLAN I. SCHNARRS al TERM & NO. 03-340-CD

VS DOCUMENT TO BE SERVED:

GAIL WILKS al COMPLAINT FOR DECLARATORY JUDGMENT

SERVE BY: 04/10/2003

MAKE REFUND PAYABLE TO: LEHMAN & KASUBICK, ATTORNEYS

SERVE: JAMES H. MEAS

ADDRESS: 730 North Highlands Drive, Harrisburg, Pa. 17111

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 DAUPHIN COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 13th Day of MARCH 2003

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY



COUNTY OF DAUPHIN
HARRISBURG, PA.

J. R. LOTWICK
SHERIFF OF DAUPHIN COUNTY
OFFICIAL RECEIPT

RECEIPT NUMBER... 176500

RECEIPT DATE... 03/17/2003

RECEIVED FROM.... JL LEHMAN & GIRAD KA

OPERATOR.... HAH

DESCRIPTION..... (1) CIVIL ACTION-NOTICE

DOCKET NUMBER... 0565T 2003

DEFENDANT..... JAMES H MEAS

COUNTY.... *****28.00

STATE.... *****.00

AGENCY.... *****2.50

TOTAL.... *****30.50

CASH.... *****.00

CHECK.... *****30.50

RECD. BY

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

HARLAN I. SCHNARRS; JAMES E. : No.: 2003-340-CD
SCHNARRS, SR; and SHIRLEY S. : Type of Case: Equity
JOHNS, : Type of Pleading:
Plaintiffs : Complainant for
vs. : Declaratory Judgement
GAIL WILKS; JAMES H. MEAS; : Filed on behalf of:
MARIAN D. SHIMMEL; NORMA J. : Plaintiffs
KNEPP; LEONARD THOMPSON; : Counsel of Record for
and ALVIN C. BUSH, : This Party:
Defendants : Girard Kasubick, Esq.
: Supreme Court #30109
: LEHMAN & KASUBICK
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7840

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

MAR 11 2003

Attest.

William J. Rose
Prothonotary/
Clerk of Courts

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

HARLAN I. SCHNARRS; JAMES E. :
SCHNARRS, SR; and SHIRLEY S. : No.: 2003-
JOHNS, :
Plaintiffs :
vs. :
GAIL WILKS; JAMES H. MEAS; :
MARIAN D. SHIMMEL; NORMA J. :
KNEPP; LEONARD THOMPSON; :
and ALVIN C. BUSH, :
Defendants :
:

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. 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 Meholick
Court Administrator's Office
Clearfield County Court House
Clearfield, PA 16830
(814) 765-2641

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

HARLAN I. SCHNARRS; JAMES E. :
SCHNARRS, SR; and SHIRLEY S. : No.: 2003-
JOHNS, :
Plaintiffs : In Equity
vs. :
GAIL WILKS; JAMES H. MEAS; :
MARIAN D. SHIMMEL; NORMA J. :
KNEPP; LEONARD THOMPSON; :
and ALVIN C. BUSH, :
Defendants :

COMPLAINT FOR DECLARATORY JUDGEMENT

AND NOW, comes Harlan I. Schnarrs, James E. Schnarrs and Shirley S. Johns, Plaintiffs, by and through their attorney, Girard Kasubick, Esq., and files the following Complaint:

1. The Plaintiff, Harlan I. Schnarrs resides at 1219 Benson Drive, Duncansville, PA 16635.
2. The Plaintiff, James E. Schnarrs, Sr. resides at 4436 Woods Edge Court, Chantilly, VA 22021.
3. The Plaintiff, Shirley S. Johns, resides at R.D. 1, Box 604, Mahaffey, PA 15737.
4. The Defendant, Gail Wilks, resides at RD #1, Box 96, Philipsburg, PA 16866.
5. The Defendant, James H. Meas, resides at 730 North Highlands Drive, Harrisburg, PA 17111.
6. The Defendant, Marian D. Shimmel, resides at R.D. 1, Box 240, West Decatur, PA 16878.

7. The Defendant, Norma J. Knepp, resides at R.D. 1, Box 195, West Decatur, PA 16878.

8. The Defendant, Leonard Thompson, resides at R.D. 1, Box 11, West Decatur, PA 16878.

9. The Defendant, Alvin C. Bush, resides at 231 South Mall Road, Pennsdale, PA 17756.

10. The heirs of the Estates of David P. Mease and James I. Mease entered into an Article of Agreement with Edgar Schnarrs dated April 20, 1954, a copy of which is attached hereto and marked Exhibit "A".

11. The April 20, 1954 Article of Agreement attached hereto and marked Exhibit "A" was a lease to mine and remove coal and other minerals from the Robert Morris Warrant, excepting the Southwest one-fourth, more or less, of said Warrant located in Boggs Township Clearfield County, Pennsylvania. The property being along PA Route 970, a portion of the real property subject of the lease on both sides of said roadway. The real property subject of the lease hereinafter referred to as "Premises."

12. All parties have been unable to find an original signed copy of the Article of Agreement attached hereto and marked Exhibit "A".

13. Certain owners of the Premises who received royalty payments from Edgar Schnarrs, namely; James H. Meas, Mabel Fleck, and George R. Mease all executed Affidavits in 1988 that the April 20, 1954 Article of

Agreement was in existence and that they have received royalties under the April 20, 1954 Article of Agreement attached hereto and marked Exhibit "A". The James H. Meas Affidavit was recorded in Clearfield County Deeds and Records Book 1224, Page 490 and the first four pages of said recorded document is attached hereto and marked Exhibit "B". The Mabel Fleck Affidavit was recorded in Clearfield County Deeds and Records Book 1219, Page 129 and the George R. Mease Affidavit was recorded in Clearfield County Deeds and Records Book 1224, Page 509 and were similar to James H. Meas Affidavit attached hereto and marked Exhibit "B".

14. On May 9, 1989 Edgar Schnarrs assigned all his rights, title, and interest in the April 20, 1954 Article of Agreement attached hereto and marked Exhibit "A" to his three (3) children, Harlan I. Schnarrs, James E. Schnarrs, Sr. and Shirley S. Johns, a copy of said assignment is attached hereto and marked Exhibit "C."

15. Edgar Schnarrs also known as Edgar H. Schnarrs died on March 3, 1995.

16. The various David F. Mease heirs and James I. Mease heirs have been paid royalty payments and minimum royalty payments by Edgar Schnarrs and his Assignees under Paragraphs Third, Fifth and Sixth of the Article of Agreement attached hereto and marked Exhibit "A" from 1954 until August 2002.

17. On February 22, 2002, Plaintiffs sent to the six (6) Defendants minimum royalty payments for September 2002 through August 2007.

18. All of the Defendants returned their minimum royal payments from September 2002 through August 2007 to Plaintiffs, except the Defendant Alvin C. Bush who did accept his minimum royalty payment through September 2007.

19. The Defendant, Gail Wilks is handling the distribution of one-half (1/2) of the royalties to the heirs of David P. Mease.

20. The Defendant, James H. Meas, is handling the distribution of one-fifth (1/5) of the one-half (1/2) distribution of William T. Meas, deceased, an heir of James I. Mease.

21. The Defendant, Marian D. Shimmel is handling the distribution of one-fifth (1/5) of the one-half (1/2) distribution of David A. Mease, deceased, an heir of James I. Mease.

22. The Defendant, Norma J. Knepp is handling the distribution of one-fifth (1/5) of the one-half (1/2) distribution of Dorsey G. Mease an heir of James I. Mease

23. The Defendant, Leonard Thompson is handling the distribution of one-fifth (1/5) of the one-half (1/2) distribution of Leonard I. Mease an heir of James I. Mease.

24. The Defendant, Alvin C. Bush is handling the distribution of one-fifth (1/5) of the one-half (1/2) distribution of Myrtle M. Bush an heir of James I. Mease.

25. The Plaintiff, Harlan I. Schnarrs, received a letter from Attorney David C. Mason, Esq. dated April 24, 2002 on behalf of the Defendants and the Mease heirs alleging a breach of the Article of Agreement and breach under Paragraphs Tenth and Twelfth of the Agreement attached hereto and marked Exhibit "A" and incorporated herein by reference thereto for failure to backfill.

26. Plaintiffs responded to letter dated April 24, 2002 from Attorney David C. Mason, Esq., by letter dated May 6, 2002 from Girard Kasubick, Esq., Attorney for Plaintiffs, that failure to backfill does not violate the original Article of Agreement and that no laws of the Commonwealth of Pennsylvania have been violated for failure to backfill at this time when the bonds are held by Department of Environmental Protection (DEP) and there is an existing lease. A representative of DEP confirmed this with the Plaintiffs.

27. Edgar Schnarrs entered a Sub-Lease Agreement under the April 20, 1954 Agreement with Clinton Thompson dated June 24, 1988 which was recorded in Clearfield County Deeds and Records Book 1278, Page 282.

28. The Sub-Lease to Clinton Thompson was then assigned to Swistock Contracting by Assignment dated

August 28, 1992 and then Plaintiffs entered into Modification of Sub-Lease Agreement with Swistock Contracting also dated August 28, 1992.

29. Swistock Contracting and Clinton Thompson, who operated under T & T Clay Co., have abandoned mining operation on the property under the Agreements set forth in Paragraphs 27 and 28 above which paragraphs are incorporated herein by reference thereto.

30. The original mining permit of Clinton Thompson or T & T Clay Co., No. 1790126, has been forfeited and the bonds have been taken over by DEP.

31. The Defendants, their agent or part owner of the Premises, Jack L. Woods, has consented by consent dated November 15, 2002 to DEP to issue an Exploratory Permit I.T.E. #17021156 to Ferlitch Coal Company for removal of coal on the property subject of the April 20, 1954 Article of Agreement in violation of said Article of Agreement attached hereto and marked Exhibit "A."

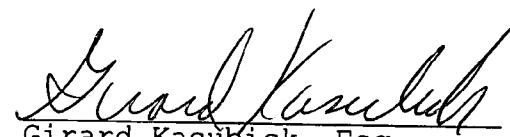
32. Plaintiffs desire to find a coal company to complete mining the coal from the property under the Article of Agreement dated April 20, 1954 attached hereto and marked Exhibit "A."

33. The Plaintiffs have been unable to find a coal company interested in removing the remaining coal from the Premises partly due to the issues that are outstanding on the rights of the parties under the Article of Agreement

dated April 20, 1954 attached hereto and marked Exhibit "A." and incorporated herein by reference thereto.

34. Plaintiffs desire to have the court determine the rights and duties of all parties under the April 20, 1954 Article of Agreement attached hereto and marked Exhibit "A." incorporated herein by reference thereto and to declare the validity of said Agreement and the right of Plaintiffs to mine or sub-lease to mine the Premises.

WHEREFORE, Plaintiff request Your Honorable Court to issue a Declaratory Judgment that the Article of Agreement dated April 20, 1954 is an existing binding Agreement subjecting all parties, their heirs, successors and assigns to the terms covenants and conditions in said Agreement, and to allow Plaintiffs to mine or sub-lease to mine the Premises, and to award Plaintiffs' attorney fees and costs of court.



Girard Kasubick
Girard Kasubick, Esq.
Attorney for Plaintiffs

VERIFICATION

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

Harlan I. Schnarrs
Harlan I. Schnarrs

James E. Schnarrs
James E. Schnarrs

Shirley S. Johns
Shirley S. Johns

ARTICLE OF AGREEMENT

Made this 20th day of April 1954, by and between
the heirs of the DAVID MEASE ESTATE and JAMES I. MEASE
ESTATE, to wit: DAVID A. MEASE of Decatur Township, Clearfield
County, Pennsylvania; EDIZARETH M. MEASE; LEONARD I. MEASE and
JANE MEASE, his wife; DORSEY C. MEASE and EVA A. MEASE, his wife,
all of Boggs Township, Clearfield County, Pennsylvania; ALVIN R.
BUSH and LUCINDA BUSH, his wife, of Williamsport, Lycoming County,
Pennsylvania; VERA BAUGHMAN and ROY BAUGHMAN, her husband, of the
Borough of State College, Centre County, Pennsylvania; and RUBY
BUSH, unmarried, of Massillon, Ohio, being all the legal heirs of
James I. Mease late of Boggs Township, Clearfield County, Pennsyl-
vania; LIDA WOODS and MARTIN A. WOODS, her husband, and ANNIE DIXON,
widow, all of Boggs Township, Clearfield County, Pennsylvania;
EVIN HAINES and FLORENCE HAINES, his wife, of Plymouth Meeting,
Pennsylvania; LESTER HAINES his wife, VERA HAINES, of Plymouth
Meeting, Pennsylvania; LEONORA MEASE, widow, MELVYN L. MEASE and
ADA MAY MEASE, his wife; CATHERINE MCCASLIN, GEORGE R. MEASE and
VIRGINIA R. MEASE, his wife; CLAIR R. MEASE and HELEN MEASE, his
wife, LOLA E. TAYLOR and ROBERT J. TAYLOR, her husband; DAVID D.
MEASE and MARGARET E. MEASE, his wife; LEO H. MEASE and LOIS
MEASE, his wife; ESTHER MASON and JAMES MASON, her husband; LEAH
MURKIN MEEK and WILLIAM D. MEEK, her husband, all of Cumberland,
Maryland; JAMES H. MEASE and LOIS W. MEASE, his wife, of Allegheny
County, Maryland; ANNA L. MEASE, unmarried of the City of
Washington, District of Columbia, by their attorney in fact, GEORGE
R. MEASE, of Cumberland, Maryland, under Power of Attorney dated
July 1, 1948, and recorded August 16, 1948, in the office
of the Recorder of Deeds in and for the County of Clearfield, in
Miscellaneous Book 71, Page 126, hereinafter called LEASORS, EDGAR
SCHNARING, of R. D., Philipsburg, Pennsylvania, hereinafter called
LEASER.

WITNESSETH:

1. That the Leasors for and in consideration of the sum of one (\$1.00) dollar in and paid to the Leasors by the Lessee, the receipt of which is hereby acknowledged, does hereby grant unto the said Lessee an option for a period of ninety (90) days from the said date of this Lease, to let and lease the exclusive right and privilege to mine and take away, at the convenience of the Lessee, all the coal contained under that certain tract of land located in Boggs Township, Clearfield County Pennsylvania, more fully described as follows, to wit:

Being bounded on the North by the Henry Drinker warrant and land of Dorsey Mease; on the East by lands which are part of the John Houston warrant and owned now or formerly by William H. Garland, E. A. Dixon and Harbison-Walker Refractories Company; on the South by the Steven Kingston warrant; the adjoining land being now or formerly owned by George Newton; on the West from the South to north by lands of the Leasers herein known as the Fire Brick Company which is part of the William Morris warrant.

The said land, the subject of this agreement, is part of the Robert Morris warrant and includes all of said Robert Morris warrant except the Southwest one-fourth, more or less, which Southwest portion is known as the David Mease Homestead.

The rights herein granted by the Leasors to Lessee are subject to rights vested in Martin Woods owner of 25 acres, more or less, of surface part of the herein described premises and which 25 acres, more or less, lies at or near the Southeast corner of said described premises. The minerals under the said 25 acres, more or less, being owned by the Leasors herein and are included in this agreement, except as to one (1) acre, more or less, around the buildings on the 25 acre lot. The Leasors except and reserve from the operation of this lease the minerals on the (1) acre, more or less, surrounding the Martin Woods buildings heretofore conveyed to Martin Woods. CONTAINING 200 acres more or less. This lease is further subject to the prior rights vested in the owners of the Robert Cimmel surface lot on which a dwelling house was recently constructed.

The Leasors further reserve from the operation of this lease such minerals as is necessary to properly support and protect the public highways located on the premises.

TOGETHER WITH THE RIGHT TO enter in, upon and under the said premises for the purpose of examining, testing and mining by the strip mine and the deep mine method of removing and carrying away said coal by such ways and means as may be necessary in the judgment of the Lessee in the successful mining and taking away of the same, together with all and singular mining, operation, ventilating, drainage, surface and other rights and privileges, and all Releases of damages owned by or vested in the Lessors so fully as the same were acquired by the said Lessors upon the following terms and conditions.

SECOND: The Leasee herein is hereby granted an option for a period of ninety (90) days from the date of this instrument, during which period of time no minimum royalty shall accrue as hereinafter provided but the said Leasee shall have the full right and privilege to explore the said land and to do such prospecting, drilling and exploration work as they desire thereon. If the said Leasee herein does not desire to operate the said land under the terms of this lease, he shall notify the Lessors by giving written notice to that effect within the sixty (60) days option period. If no such notices is given, then the provisions of this instrument shall automatically become the Lease Agreement between the parties herein. If such notice is given then this lease shall be null and void except for the exploration rights herein provided.

THIRD: The said Leasee agrees with and to the said Lessors that it will pay as royalty to the said Lessors the sum of twenty-five (25) cents per ton of two thousand (2000) pounds of merchantable coal which the Leasee removes from the said premises by strip mining methods, and fifteen (15) cents per ton of two thousand (2000) pounds of merchantable coal for all coal removed from the said premises by the deep mining method during the continuance of this lease.

FOURTH: The payments of royalty are to be made on or before the Twenty-fifth day of each month for the said leased coal removed from the said premises during the previous calendar month; such payments to be accompanied by a correct statement showing the amount of all coal shipped from the leased premises during the said monthly period. The weight of the coal shipped from the said premises shall be determined by the scales of the Railroad Company over which line the coal is shipped, and for all coal sold locally, the weight shall be determined by the mine scales or public scales; it being understood and agreed upon by and between the parties hereto that the Leasee shall not be required to ship or pay for coal which in its judgment is not merchantable or mineable.

FIFTH: Any merchantable clay removed from said estate shall be paid for at the rate of 15 (fifteen) cents per ton.

SIXTH: The Leasee further agrees to mine and ship monthly from the said leasehold premises sufficient coal to provide a minimum royalty at the rate hereinbefore set forth of fifty (50) dollars, or to pay the said Lessors the said minimum royalty at the time hereinafter provided; it being provided, however, that if the coal mined shall fall short of the minimum quantity required for the payment of the minimum royalty herein-after set forth, but the minimum quantity has been paid for as hereinbefore stipulated, the Leasee shall be entitled at any time during the leasehold period or any renewal thereof to take out sufficient coal to reimburse it without payment therefor; provided, always, nevertheless, that the same be taken out in excess of the regular monthly minimum herein specified.

Provided, however, that there shall be no minimum monthly payments required and no liability beyond the rate of royalty above named for the quantity of coal actually mined and shipped during such months in which the mining upon the said

impracticable by reason of a labor strike continuing for thirty (30) days or more affecting the mining operation of the Lessee's mine or the railroad conveying the product to market.

SEVENTH: It is the intention of the parties hereto that the Lessee herein shall not be required to pay in minimum or otherwise for more coal than in its judgment is merchantable and minable, as contained in the leased premises, and the Lessee shall have the right at any time when it has paid for approximately all of said minable coal to request the Lessors that an estimate be made of the said merchantable and minable coal remaining in the leased premises. The Lessors shall thereupon appoint a mining engineer, who with the mining engineer of the Lessee, shall make an estimate of said coal, and their decision thereon shall be final and conclusive. When all said coal shall have been paid for under the terms of this contract and in accordance with such estimate, no further payment of royalty, either in minimum or otherwise, shall be required of the Lessee and it shall have the right to mine and remove the said coal as it has been paid for at any time during the term of this lease, any renewal thereof, within five (5) years thereafter, and in the event that more of said coal is actually mined and removed from the said premises than shown by such estimate, such excess coal shall be paid for as mined and shipped by the Lessee at the same royalty rate and in the same manner as hereinbefore set out, with the right to use and enjoy all the rights and privileges herein contained.

EIGHTH: The Lessors shall have designated their agents to the right at all reasonable times, at Lessors' own risk, to enter said mine, for themselves, or engineers, for the purpose of examining, inspecting and surveying said mines and stripping operations upon the herein leased premises in order to see that the terms of this lease are being complied with.

NINTH: The Lessors shall pay for all taxes levied or assessed against the property and on the coal remaining in place upon the herein leased premises. The Lessee shall pay, during the continuance of this lease, all taxes levied or assessed upon all improvements placed upon the premises by the Lessee or upon

of the improvements and personal property contained thereon to reimburse themselves fully for any and all royalty due and payable under this lease and not paid as hereinbefore stipulated without being considered a trespasser upon such default continuing for sixty (60) days authorized and empowered any attorney of any Court of record to appeal and enter in the Court of Common Pleas of Clearfield County an amicable action and confession of judgment in ejectment for the premises as hereinbefore described, and thereupon authorize the immediate issuing of a Writ of Habere Facias Possessionem with a clause of Pieri Facias for costs and any royalty due and unpaid without asking leave of Court and without any prior writ or proceeding whatsoever by virtue of which the Leasors herein named shall be placed in possession of the premises, and the said Leaseee hereby released to the Leasors all errors and defects whatsoever in entering such action or judgment or causing such Writ of Habere Facias Possessionem to be issued or in any proceeding thereon, or concerning the same.

FOURTEENTH: The Leaseee further authorizes and empowers any attorney of any court of Record in case of such default in the payment of royalty as aforesaid under this lease for a period of thirty (30) days, to appear for it in the court of Common Pleas of any county in this Commonwealth and confess judgment in favor of the said Leasors for the amount then due and unpaid, and thereupon authorizes the immediate issuing of a Writ of Pieri Facias for the amount of said judgment, with cost of suit, release of errors and with five per cent (5%) attorney's commission for collection, waiving all exemption laws now in force or that may hereafter be put to force.

FIFTEENTH: This lease shall continue for a period of one (1) year from the exercise of the option as herein provided for, or until all the merchantable stripping and minable coal shall be removed therefrom. Provided, the Leaseee shall have complied with and performed all the conditions, covenants, and stipulations of this lease, the same shall automatically re-

itself from year to year thereafter until such time as the lessee shall notify the lessors, in writing sixty (60) days prior to the end of any yearly term, of their intention not to so renew or until all the merchantable and minable coal is removed from the said premises, whichever may first occur. All the terms covenants, conditions, and stipulations herein contained are to extend to any yearly renewals as herein provided for.

SIXTEENTH: It is mutually understood and agreed upon by the parties hereto that upon the expiration of the term hereby demised or sooner proper determination of the same, or at the end of any renewal as herein provided for, provided the Lessee shall have paid all royalty and fulfilled all covenants in this lease on its part agreed to be kept, it shall have this right at any time, within three (3) months after the expiration or sooner proper determination of this lease to remove from the hereby demised premises any and all improvements and implements which have been placed upon said premises by the said Lessee; it being understood and agreed that all improvements and implements remaining on the said premises after the expiration of the said three (3) months shall revert and become the property of the Lessors.

SEVENTEENTH: Whenever a notice is presented herein, it is agreed by and between the parties hereto that such notice shall be given by regular United States registered mail, and notice shall be considered to have been given to the Lessees upon such notice being sent to David A. Mease of Osceola Mills, Pennsylvania; and Lida Woods of West Decatur, R.D., Pennsylvania; and George Mease of Cumberland, Maryland; while notice to the parties of the second part shall be considered to be given if such notice is given to Edgar Schnarrs, R.D., Philipsburg, Pennsylvania. All payments of royalties are hereby provided for to be paid one-half (1/2) to Lida Woods of West Decatur, R.D., Pennsylvania, for and on behalf of the heirs of James I. Mease

Estate, and the parties hereto hereby appoint the said David A. Mease and Lida Woods as their agents to administer the terms and provisions of this lease.

EIGHTEENTH: This Agreement shall be binding and shall enure to the benefit of the heirs, successors and/or assigns of the Parties of the First Part hereto and to the successors and/or assigns of the Lessee herein.

IN WITNESS WHEREOF, the said parties of the First Part, Lessors herein, have hereunto set their respective hands and seals, and the said Lessee has affixed the Common or Corporate seal, duly attested, the day and year first above written. The said Agreement being executed in duplicate and such copies to have the same effect as though they were originals.

STEELE BUTTERWORTH, J.P.

DAVID A. MEASE (SEAL)

STEELE BUTTERWORTH, J.P.

ELIZABETH M. MEASE (SEAL)

STEELE BUTTERWORTH, J.P.

LEONARD MEASE (SEAL)

STEELE BUTTERWORTH, J.P.

JENNIE MEAS (SEAL)

STEELE BUTTERWORTH, J.P.

DORSEY G. MEASE (SEAL)

STEELE BUTTERWORTH, J.P.

EVA A. MEASE (SEAL)

MILDRED L. GRAZIA

ALVIN R. BUSH (SEAL)

MILDRED L. GRAZIA

LUCINDA M. BUSH (SEAL)

MILDRED L. GRAZIA

VERA BAUGHMAN (SEAL)

MILDRED L. GRAZIA

ROY BAUGHMAN (SEAL)

MARY E. BACHTEL

RUBY BUSH (SEAL)

STEELE BUTTERWORTH, J.P.

MRS. LIDA WOODS (SEAL)

STEELE BUTTERWORTH, J.P.

MARTIN A. WOODS (SEAL)

STEELE BUTTERWORTH, J.P.

MRS. ANNIE DIXON (SEAL)

REBECCA E. HASTINGS

MARVIN C. HAINES (SEAL)

REBECCA E. HASTINGS

FLORENCE HAINES (SEAL)

MARGARET A. DEHAVEN

LESTER HAINES (SEAL)

MARGARET A. DEHAVEN

VERNA HAINES (SEAL)

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF : §

Before me, a Notary Public, personally appeared JAMES H. MEASE, of 1508 Montford Drive, Harrisburg, PA 17110, known to me, or satisfactorily proven, to be the person whose name appears below and who, being duly sworn according to law, hereby deposes and says as follows:

1. That he is an adult resident of Pennsylvania as noted above.
2. That he has been receiving royalty payments from Edgar Schnarrs, on behalf of certain heirs of the David F. Mease Estate or James I. Mease Estate for many years.
3. That he has been receiving the aforesaid royalty payments under an Article of Agreement in the nature of a mining lease which is dated April 20, 1954, between the heirs of David F. Mease and James I. Mease and Edgar Schnarrs, and which said lease is upon certain property in Boggs Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEING bounded on the North by the Henry Drinker warrant and land of Dorsey Mease; on the East by lands which are part of the John Houston warrant and owned now or formerly by William H. Garland, E. A. Dixon and Harbison-Walker Refractories Company; on the South by the Steven Kingston warrant; the adjoining land being now or formerly owned by George Newton; on the West from the South to north by lands of the Leasers herein known as the Fire Brick Company which is part of the William Morris warrant.

The said land, the subject of this agreement, is part of the Robert Morris warrant and includes all of said Robert Morris warrant except the Southwest one-fourth, more or less, which Southwest portion is known as the David Mease Homestead.

The rights herein granted by the Leasors to Leaseee are subject to rights vested in Martin Woods owner of 25 acres, more or less, of surface part of the herein described premises and which 25 acres, more or less, lies at or near the Southeast corner of said described premises. The minerals under the said 25 acres, more or less, being owned by the Lessors herein and are included in this agreement, except as to one (1) acre, more or less, around the buildings on the 25 acre lot. The Leasors except and reserve from the operation of this lease the minerals on the (1) acre, more or less, surrounding the Martin Woods buildings heretofore conveyed to Martin Woods. CONTAINING 200 acres, more or less.

This lease is further subject to the prior rights vested in the owners of the Robert Shimmel surface lot on which a dwelling house was recently constructed.

The Leasors further reserve from the operation of this lease such minerals as is necessary to properly support and protect the public highways located on the premises.

4. That the original Article of Agreement in the nature of a lease dated April 20, 1954, was never recorded; is lost, misplaced, destroyed or unknown, however, the attached copy hereto is a true and accurate copy or reproduction of the original Article of Agreement and its terms.

5. That affiant has personal knowledge of the existence of the original lease because of his family relationship as an heir of David F. Mease or James I. Mease.

6. That the affiant acknowledges the existence of said lease.

James H. Mease
James H. Mease

A. Sworn to and subscribed
before me this 99th
day of April,
of 1988.
JON A. SNAVELY, NOTARY PUBLIC
HARRISBURG, DAUPHIN COUNTY
MY COMMISSION EXPIRES NOV. 5, 1990
Member, Pennsylvania Association of Notaries
N.P.

CLEARFIELD COUNTY
ENTERED OF RECORD 5-31-88
TIME 2 p.m.
BY Michael R. Lytle Rec'd 11
FEES 43.40 Box 301
Michael R. Lytle, Recorder P.M. CSC
16-846



Commonwealth of Pennsylvania
COUNTY OF Clearfield

AFFIDAVIT

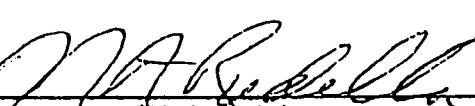
ss:

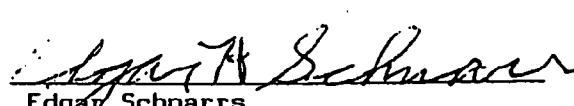
On this 1st day of September, 19 87 personally appeared before me, the subscriber, one of the District Justices in and for said County and State duly authorized to administer oaths, Edgar Schnarrs; RR 1 Box 321; Philipsburg, PA. 16866 who being duly sworn or affirmed, according to law, doth depose and say, THAT the Attached "Article of Agreement" is a true and correct copy of the original, which was signed by me, on or about the 20th day of April, 1954.

and further deponent I saith not.

Sworn to and subscribed before me this
01 day of September, 19 87.

(SEAL)


(District Justice)


Edgar Schnarrs

MAGISTERIAL DISTRICT NO. 46-3-03

MICHAEL A. RUDELLA
District Justice, State of Pennsylvania
No. 46-3-G3, Clearfield County
Term Expires January 4, 1988

ARTICLE OF AGREEMENT

Made this 20th day of April 1954, by and between
the heirs of the DAVID T. MEASE ESTATE and JAMES I. MEASE
ESTATE, to wit: DAVID T. MEASE of Decatur Township, Clearfield
County, Pennsylvania; EDIZABETH M. MEASE; LEONARD I. MEASE and
JANE MEASE, his wife; DORSEY C. MEASE and EVA A. MEASE, his wife;
all of Boggs Township, Clearfield County, Pennsylvania; ALVIN R.
BUSH and LUCINDA BUSH, his wife; of Williamsport, Lycoming County,
Pennsylvania; VERA BAUGHMAN and ROY BAUGHMAN, her husband, of the
Borough of State College, Centre County, Pennsylvania; and RUBY
BUSH, unmarried, of Massillon, Ohio, being all the legal heirs of
James I. Mease late of Boggs Township, Clearfield County, Pennsylvania;
LIDA WOODS and MARTIN A. WOODS, her husband, and ANNIE DIXON,
widow, all of Boggs Township, Clearfield County, Pennsylvania;
IRVIN HAINES and FLORENCE HAINES, his wife, of Plymouth Meeting,
Pennsylvania; LESTER HAINES his wife, Verna Haines, of Plymouth
Meeting, Pennsylvania; LEONORA MEASE, widow; MELVIN L. MEASE and
ADA MAY MEASE, his wife; CATHERINE MCCASLIN, GEORGE R. MEASE and
VIRGINIA R. MEASE, his wife; CLAIR R. MEASE and HELEN MEASE, his
wife, LOLA E. TAYLOR and ROBERT J. TAYLOR, her husband; DAVID D.
MEASE and MARGARET E. MEASE, his wife; LEO H. MEASE and LOIS
MEASE, his wife; ESTHER MASON and JAMES MASON, her husband; LEAH
IMogene MEEK and WILLIAM D. MEEK, her husband, all of Cumberland
Maryland; JAMES H. MEASE and LOIS W. MEASE, his wife, of Allegheny
County, Maryland; ANNALIE MEASE, unmarried of the City of
Washington, District of Columbia, by their attorney in fact, GEORGE
R. MEASE, of Cumberland, Maryland; under Power of Attorney dated
July _____, 1948, and recorded August 16, 1948, in the office
of the Recorder of Deeds in and for the County of Clearfield, in
Miscellaneous Book 71, Page 126, hereinafter called LEASORS, EDGAR
SCHNARRS, of R. D., Philipsburg, Pennsylvania, hereinafter called
TEASERS.

ASSIGNMENT AGREEMENT

FOR VALUE RECEIVED, and in consideration of the sum of One Dollar, in hand paid, with the intent to be legally bound hereby, I, EDGAR SCHNARRS, of R. D. 1, Box 321, Philipsburg, PA 16866, Assignor, do hereby assign to SHIRLEY S. JOHNS, of R. D. 1, Box 604, Mahaffey, PA 15757; JAMES E. SCHNARRS, SR., of 4310 Markwood Lane, Fairfax, VA 22033; and HARLAN I. SCHNARRS, of 519 North Sterling Boulevard, Sterling Park, VA 22170, herein collectively referred to as Assignees, with equal interests, all my rights, title and interests in and to the Sub-lease Agreement between Edgar Schnarrs and Clinton Thompson dated June 24, 1988 and in and to the Article of Agreement dated April 20, 1954, between all the Mease Heirs and Edgar Schnarrs. The Assignees shall have all rights, titles, interests and duties under the aforesaid Sub-Lease Agreement and Article of Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 9th day of May, 1989,



Edgar H. Schnarrs

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CENTRE : §:

Before me, the undersigned officer, personally appeared EDGAR SCHNARRS, 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 have hereunto set my hand and official seal.

Girard Kasubick
N.P.

Notarial Seal
Girard Kasubick, Notary Public
Philipeburg Boro, Centre County
My Commission Expires June 8, 1991

⑥
LEHMAN & KASUBIC
61 BRISBIN STREET
HOUTZDALE, PA 16651
(814) 378-7840

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

HARLAN I. SCHNARRS; JAMES E.
SCHNARRS, SR; and SHIRLEY S.
JOHNS,

Plaintiffs

vs.

GAIL WILKS; JAMES H. MEAS;
MARIAN D. SHIMMEL; NORMA J.
KNEPP; LEONARD THOMPSON;
and ALVIN C. BUSH,

Defendants

: No.: 2003-340-CD
: Type of Case: Equity
: Type of Pleading:
: Reply to New Matter
: and Counter-Claim
: Filed on behalf of:
: Plaintiffs
: Counsel of Record for
: This Party:
: Girard Kasubick, Esq.
: Supreme Court #30109
: LEHMAN & KASUBICK
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7840

FILED

MAY 28 2003

019:50 AM

William A. Shaw
Prothonotary

2 Cents to Post

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

HARLAN I. SCHNARRS; JAMES E. :
SCHNARRS, SR; and SHIRLEY S. : No.: 2003-340-CD
JOHNS, :
Plaintiffs :
vs. :
GAIL WILKS; JAMES H. MEAS; :
MARIAN D. SHIMMEL; NORMA J. :
KNEPP; LEONARD THOMPSON; :
and ALVIN C. BUSH, :
Defendants :

REPLY TO NEW MATTER

35. ADMITTED.

36. DENIED. This is conclusion of law or fact for which no responsive pleading is required.

37. DENIED. Paragraph Fourteenth of the Lease Agreement does not state any term for the Lease Agreement, but is a provision providing for a Confession of Judgment as shown on Exhibit "A" attached to Plaintiffs' Complaint and incorporated herein. Paragraph Fifteenth of the Lease Agreement does contain the language quoted as being in Paragraph Fourteenth of the Lease Agreement by Defendants in this averment.

38. DENIED. Paragraph Fourteenth of the Lease Agreement contains a provision covering a Confession of Judgment upon default and has nothing to do with the term and annual renewal as set forth in Exhibit "A" attached to

Plaintiffs' Complaint and Paragraph 37 of this Reply, both of which are incorporated herein by reference thereto. If Defendant is again referring to Paragraph Fifteenth of the Lease Agreement it is further denied that Plaintiffs have failed to fulfil any condition precedent. The condition precedent is only required to terminate the Lease Agreement which the Plaintiffs have not done and Plaintiffs aver the Lease Agreement is an existing valid lease agreement with no failure to comply with any terms of the Lease Agreement.

39. ADMITTED, but by further reply to this averment, the language in Paragraph Tenth stated by Defendant is preceded by and has condition precedent that the backfilling is required only at the option of Lessee "upon the termination of the Lease or prior thereto".

40. DENIED. The Department of Environmental Protection (DEP) nor its predecessor the Department of Environmental Resources (DER) has never cited the Plaintiffs for violations of any laws of the Commonwealth, and the Defendant in its Answer, New Matter, and Counter-claim, all of which are incorporated herein, does not cite any section of laws, rules or regulations of the Commonwealth of Pennsylvania or the United States of America which Plaintiffs has violated.

41. DENIED. The replies to Paragraphs 39 and 40 above are incorporated herein by reference thereto. This

is further denied as a conclusion of law or fact for which no responsive pleading is required.

42. DENIED. The replies to Paragraphs 39 and 40 above are incorporated herein by reference thereto. This is further denied as a conclusion of law or fact for which no responsive pleading is required.

43. ADMITTED IN PART and DENIED IN PART. It is admitted that the bonds of T & T Clay Co., a sublesor of Plaintiffs have been forfeited. It is denied that any laws and regulations of the Commonwealth of Pennsylvania have been violated for the reasons set forth in Paragraphs 39 and 40 of this Reply which are incorporated herein by reference thereto. This is further denied as a conclusion of law or fact for which no responsive pleading is required.

44. ADMITTED IN PART and DENIED IN PART. It is admitted that Harlan Schnarrs received the April 24, 2002 letter from Attorney Mason. It is denied contents of the letter are true or factual, because the contents are conclusions of law or fact for which no responsive pleading is required. The contents of the letter are further denied as is set forth in Plaintiffs' Complaint in Paragraph 26 which is incorporated herein by reference thereto.

45. ADMITTED IN PART and DENIED IN PART. It is admitted as to the content of Paragraph Twelfth of the

Lease Agreement. It is denied as far as this averment implies that any breach has occurred for reasons set forth in this Reply to New Matter all of which are incorporated herein by reference thereto.

46. DENIED. Under Paragraph Tenth of the Lease Agreement backfilling was not required at the option of Lessee until "termination of this Lease or prior thereto" and under Paragraph Fifteenth at option of Lessee the Lease was not terminated until "all merchantable stripping and mineable coal shall be removed therefrom".

47. ADMITTED.

48. ADMITTED IN PART and DENIED IN PART. It is admitted that is what is stated in the letter. It is denied Plaintiffs have abandoned any mining operations.

49. DENIED. This is a conclusion of law or fact for which no responsive pleading is required.

50. ADMITTED IN PART and DENIED IN PART. It is admitted that clay royalties are fifteen (15¢) cents per ton. It is denied all coal royalties are twenty-five (25¢) cents per ton. Coal royalties are twenty-five (25¢) cents per ton for stripped coal and fifteen (15¢) cents per ton for deep mined coal.

51. DENIED. This is a conclusion of law or fact for which no responsive pleading is required.

52. DENIED. The Plaintiffs have sought to have mining done on the Lease Premises and due to economic

conditions and current issues with Defendants, Plaintiffs have been unable to obtain a mining company to mine coal. The Plaintiffs have not abandoned or terminated the Lease and had paid the required royalties to Defendants through August 2002 and paid additional royalties thereafter which certain Defendants have refused to accept as set forth in Paragraphs 17 and 18 of Plaintiffs' Complaint which is incorporated herein by reference thereto.

53. DENIED. There is no provision in the Lease Agreement that prohibits assignment of the parties interest in the Lease and Paragraph Eighteenth makes the Lease Agreement binding on Lessee's assigns such that an assignment is permissible.

54. ADMITTED IN PART and DENIED IN PART. It is admitted Plaintiffs do not have a mining license or equipment. It is denied that the Plaintiffs cannot successfully have coal mined by third parties under the Lease Agreement and the Lease Agreement does not require them to be licensed or own equipment.

55. DENIED. This is a conclusion of law or fact for which no responsive pleading is required.

56. DENIED. This is a conclusion of law or fact for which no responsive pleading is required. Furthermore, the Plaintiffs are without knowledge or information sufficient to determine if all parties are deceased on the original Agreement and proof thereof is demanded.

57. DENIED. This is a conclusion of law or fact for which no responsive pleading is required. By further reply, the Plaintiff incorporates Paragraph 13 of the Complaint by reference thereto.

WHEREFORE, Plaintiffs request Your Honorable Court to find judgment in favor of Plaintiffs that a valid Lease Agreement is in existence.

REPLY TO COUNTER-CLAIM

Paragraphs 1 through 34 of Plaintiffs' Complaint and 35 through 57 of Plaintiffs' Reply to New Matter are incorporated by reference thereto.

WHEREFORE, Plaintiffs request Your Honorable Court to find judgment in favor of Plaintiffs that a valid Lease Agreement is in existence.

Respectfully submitted,


Girard Kasubick, Esq.
Attorney for Plaintiffs

VERIFICATION

I verify that the statements made in the foregoing Reply to New Matter and Reply to Counter-Claim are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.


Harlan I. Schnarrs
Harlan I. Schnarrs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E.
SCHNARRS, SR.; and SHIRLEY S. JOHNS

Plaintiffs

vs.

GAIL WILKS; JAMES H. MEAS; MARIAN D.
SHIMMEL; NORMA J. KNEPP; LEONARD
THOMPSON; and ALVIN C. BUSH

Defendants

* No. 2003-340-CD

* TYPE OF PLEADING:

* CERTIFICATE OF SERVICE

*

* COUNSEL OF RECORD FOR THIS

* PARTY:

* David C. Mason

* Superior Court I.D. 39180

* MASON LAW OFFICE

* P.O. Box 28

* Philipsburg PA 16866

* (814) 342-2240

* COUNSEL OF RECORD FOR

* PLAINTIFF:

* Girard Kasubick, Esquire

* Lehman & Kasubick

* 611 Brisbin Street

* Houtzdale, PA 16651

* (814) 378-7840

FILED

APR 29 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E.
SCHNARRS, SR.; and SHIRLEY S. JOHNS

*
*
* No. 2003-340-CD

Plaintiffs

vs.

GAIL WILKS; JAMES H. MEAS; MARIAN D. SHIMMEL; NORMA J. KNEPP; LEONARD THOMPSON; and ALVIN C. BUSH

Defendants

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of the ANSWER CONTAINING NEW MATTER AND COUNTER-CLAIM filed in the above captioned action on the following by depositing the same in the U. S. Mail, postage prepaid and addressed as follows:

Girard Kasubick, Esquire
Attorney at Law
611 Brisbin Street
Houtzdale, PA 16651

DATED: 4-~~08~~⁰⁹-03

David C. Mason, Esquire
Attorney for Answering Defendants

FILED

3:29 Dkt. #
APR 29 2003 Filed

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E.
SCHNARRS, SR.; and SHIRLEY S. JOHNS

* No. 2003-340-CD

Plaintiffs

vs.

GAIL WILKS; JAMES H. MEAS; MARIAN D.
SHIMMEL; NORMA J. KNEPP; LEONARD
THOMPSON; and ALVIN C. BUSH

Defendants

* TYPE OF CASE: Civil Action

* TYPE OF PLEADING: ANSWER
* CONTAINING NEW MATTER
* AND COUNTER-CLAIM

* FILED ON BEHALF OF:
* Defendants

* COUNSEL OF RECORD FOR THIS
* PARTY:

* David C. Mason
* Superior Court I.D. 39180
* MASON LAW OFFICE
* P.O. Box 28
* Philipsburg PA 16866
* (814) 342-2240

* COUNSEL OF RECORD FOR
* PLAINTIFF:

* Girard Kasubick, Esquire
* Lehman & Kasubick
* 611 Brisbin Street
* Houtzdale, PA 16651
* (814) 378-7840

FILED
03-29 BA 100
APR 29 2003
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William A. Shaw
Prothonotary

(4)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E.
SCHNARRS, SR.; and SHIRLEY S. JOHNS

Plaintiffs

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*
No. 2003-340-CD

vs.

GAIL WILKS; JAMES H. MEAS; MARIAN D.
SHIMMEL; NORMA J. KNEPP; LEONARD
THOMPSON; and ALVIN C. BUSH

Defendants

*

NOTICE TO DEFEND

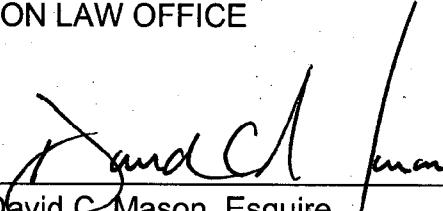
You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Answer Containing New Matter and Counter-Claim are served, by entering a written appearance personally or by attorney and filing in writing with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

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

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

MASON LAW OFFICE

By:


David C. Mason, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E.
SCHNARRS, SR.; and SHIRLEY S. JOHNS

Plaintiffs

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* No. 2003-340-CD
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vs.

GAIL WILKS; JAMES H. MEAS; MARIAN D.
SHIMMEL; NORMA J. KNEPP; LEONARD
THOMPSON; and ALVIN C. BUSH

Defendants

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to Plaintiff's Complaint is a document purportedly dated April 20, 1954. The balance of the averment contained in paragraph 11 is denied as the document, being a writing, speaks for itself. Strict proof of the factual averments contained in paragraph 11 is demanded at the time of trial.

12. ADMITTED. By way of further answer, Answering Defendants aver that all of the Lessors of the lease dated April 20, 1954, are deceased.

13. ADMITTED IN PART and DENIED IN PART. It is admitted that that certain document attached to Plaintiff's Complaint as Exhibit "B" contain the dates and evidence of recordings as recited in paragraph 13. The balance of the averments contained in paragraph 13 are denied and strict proof thereof is demanded at the time of trial, inasmuch as the documents attached as Exhibit "B" are writings and they speak for themselves. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

14. ADMITTED IN PART and DENIED IN PART. It is admitted that the document attached to Plaintiff's Complaint as Exhibit "C" is in existence, however, the content and effect of that writing as set forth in Plaintiff's Complaint is denied and strict proof thereof is demanded at the time of trial, inasmuch as the document attached as Exhibit "C" is a writing which speaks for itself.

15. DENIED. After reasonable investigation, answering defendants are without knowledge or information sufficient to form a belief as to the truth or falsity thereof, therefore said averment is denied and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

16. **ADMITTED IN PART and DENIED IN PART.** It is admitted that certain royalty payments and advance minimum payments have been made by the Lessee and/or others to the Lessors and/or their heirs. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as the truth of the balance of the averments contained in paragraph 16, and particularly proof of payment of all royalty payments over the past forty-nine (49) years, and therefore, to the extent deemed relevant, strict proof is demanded at the time of trial.

17 through 24. **ADMITTED.**

25. **ADMITTED.** By way of further answer, please see New Matter.

26. **ADMITTED.** It is admitted that such a document from Attorney Kasubick dated May 6, 2002, exists. Answering Defendants dispute the accuracy and validity of the legal conclusions contained within said letter. By way of further answer, please see New Matter.

27. **DENIED.** After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of this averment, and that the same are denied. To the extent deemed relevant, strict proof thereof is demanded at the time of trial.

28. **DENIED.** After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. Therefore, to the extent deemed relevant, strict proof thereof is demanded at the time of trial.

29. **DENIED.** After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. Therefore, to the extent deemed relevant, strict proof thereof is demanded at the time of trial.

30. **DENIED.** After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. Therefore, to the extent deemed relevant, strict proof thereof is demanded at the time of trial.

31. **DENIED.** It is denied that the Defendants have designated as their agent Jack L. Woods. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 31 and therefore strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

32. **DENIED.** After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the trust of the averments contained in paragraph 32 of Plaintiff's Complaint, as the proof thereof, if any such proof exists, is wholly within the control of the Plaintiff. By way of further answer, please see New Matter.

33. **DENIED.** After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the trust of the averments contained in paragraph 33 of Plaintiff's Complaint, as the proof thereof, if any such proof exists, is wholly within the control of the Plaintiff. By way of further

answer, please see New Matter.

34. No response is necessary. The statements contained in paragraph 34 constitute the intention of the Plaintiffs, and do not include any averments of fact to which a responsive pleading is required. To the extent a response is necessary or required, Answering Defendants deny, generally, any factual averments contained in paragraph 34 or necessarily arising by implication.

WHEREFORE, Defendant prays your Honorable Court for the entry of an Order dismissing Plaintiff's Complaint with prejudice.

NEW MATTER

35. The Article of Agreement dated April 20, 1954, does not contain a date for performance of the mining operation contemplated by the parties.

36. In the absence of an express time period for completion of the contract, the Court will impose a reasonable time.

37. Paragraph FOURTEENTH of the Lease Agreement provides that the term of the lease shall be "for a period of one year from the exercise of the option as herein provided for, or until all of the merchantable stripping and mineable coal shall be removed therefrom, provided, the LESSEE [Plaintiff herein] shall have complied with and performed all of the conditions, covenants, and stipulations of this Lease, the same which automatically renews itself from year to year thereafter ..."

38. Paragraph FOURTEENTH of the Lease Agreement contains a condition precedent to the annual renewal of the Lease Agreement, which condition precedent

has not been fulfilled by the Plaintiffs, despite due and proper notice being given by the Defendants to the Plaintiffs.

39. Paragraph TENTH of the Lease Agreement requires that the LESSEE "will backfill all stripping cuts in accordance with the laws of the Commonwealth of Pennsylvania, and that they will mine and strip the coal upon the premises in a lawful manner complying with and observing all the laws existing ... regulating the working of mines and stripping operations."

40. The LESSEE has neglected, failed and refused to abide by and comply with all of the laws of the Commonwealth of Pennsylvania in regard to backfilling.

41. The Plaintiff has breached the Lease Agreement by failing to abide by and comply with its covenant to backfill all stripping cuts in accordance with the laws of the Commonwealth of Pennsylvania.

42. The Plaintiff has breached the Lease Agreement by failing to fulfill a covenant to mine and strip the coal in a lawful manner complying with and observing the laws of the Commonwealth of Pennsylvania or the United States of American regulating the working of mines and stripping operations.

43. The Commonwealth of Pennsylvania, Department of Environmental Protection has declared a forfeiture on the mining reclamation bonds on the subject premises for failure to backfill the stripping cuts in accordance with the laws and regulations of the Commonwealth of Pennsylvania.

44. The Plaintiff was so notified of its breach of the Lease Agreement on or about April 24, 2002. Attached as Exhibit "A" is a true and correct copy of the letter

advising the Plaintiff of its breach of the Lease.

45. Pursuant to Paragraph TWELFTH, the LESSEE is to be given notice of an alleged breach of the Lease, and the LESSEE would then have thirty (30) days from the date of service to correct or remedy the breach, failing which "... it shall be lawful for the LESSORS at their option to enter in and upon the premises for conditions broken and repossess themselves of their former estate".

46. The LESSEE has breached the Lease by failing to backfill in accordance with the laws of the Commonwealth of Pennsylvania, has been served due and proper notice of the breach, and has failed to remedy or correct the breach over the past twelve (12) months since the date of notice.

47. Attached as Exhibit "B" is a true and correct copy of a letter from the Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation. Said letter is dated April 4, 2002.

48. The Bureau of Abandoned Mine Reclamation has identified the former mining site on the subject premises as a "hazardous abandoned mine site".

49. The Department of Environmental Protection will not undertake to reclaim this hazardous abandoned mine site unless and until the existing lease is terminated.

50. The April 20, 1954, Agreement provides for payment of coal royalties of twenty-five (25¢) per ton, and clay royalties of fifteen (15¢) per ton.

51. The royalty rates provided for in said lease are unconscionable .
52. The Plaintiff has abandoned the mining of the subject premises and has voluntarily terminated the Lease.
53. The Lease Agreement was assigned by the original LESSEE to the Plaintiff and the Lease Agreement does not permit the assignment.
54. None of the Plaintiffs has a mining license or the equipment to successfully mine and extract this coal within a reasonable time.
55. The Plaintiffs should be estopped from seeking to declare the validity of this Lease Agreement given their breach of the Lease and their creation of a hazardous mine site on the premises owned by the Defendants.
56. The original Lease Agreement no longer exists, and none of the parties to the original Lease Agreement is alive.
57. Proof of the accuracy of the photocopy of the Lease which is attached to Plaintiffs' Complaint is impossible.

WHEREFORE, Answering Defendant prays your Honorable Court for the entry of an Order dismissing Plaintiff's Complaint.

COUNTER-CLAIM

**GAIL WILKS; JAMES H. MEAS; MARIAN D. SHIMMEL;
NORMA J. KNEPP; LEONARD THOMPSON and ALVIN C. BUSH**

vs.

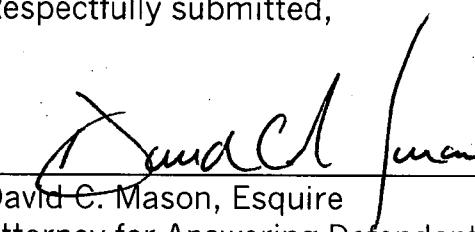
HARLAN I. SCHNARRS; JAMES E. SCHNARRS, SR., and SHIRLEY S. JOHNS

Paragraphs 1 through 12, 17 through 24, and 35 through 57 of the

Defendant's New Matter are incorporated herein by reference as though fully set forth herein.

WHEREFORE, Defendants pray your Honorable Court for the entry of an Order declaring the April 20, 1954, Article of Agreement invalid or in the alternative, terminated for reasons set forth in the foregoing pleading.

Respectfully submitted,



David C. Mason, Esquire

Attorney for Answering Defendants

DAVID C. MASON

Attorney at Law

409 NORTH FRONT STREET
P.O. Box 28
PHILIPSBURG, PENNSYLVANIA 16866
(814) 342-2240
FAX (814) 342-5318

April 24, 2002

Harlan Schnarrs
1219 Benson Drive
Duncansville, PA 16635

In Re: Mease Estate

Dear Mr. Schnarrs:

I represent the Mease heirs, owners of premises in Boggs Township, Clearfield County, Pennsylvania. Enclosed please find a copy of a letter dated April 4, 2002, from the Department of Environmental Protection.

Be advised that the enclosed letter indicates the existence of a "hazardous abandoned mine site." The Department of Environmental Protection would be willing to design and proceed with a reclamation project but will not do so, so long as there is an outstanding lease on the property. No mining has been conducted on the premises since 1994.

I would refer you to paragraph TENTH of the Lease Agreement wherein the Lessee agrees to "backfill all stripping cuts in accordance with the laws of the Commonwealth of Pennsylvania."

This letter serves as notice to you, pursuant to Paragraph TWELFTH of the Lease, of your breach of a condition of the Lease Agreement. Your failure to "backfill all stripping cuts in accordance with the laws of the Commonwealth of Pennsylvania" within thirty (30) days of this date shall constitute a default under the terms of this Lease Agreement.

Given this most recent evidence concerning abandoned mine sites, I feel that it will be unlikely that the Department will permit this site to languish. Your failure to respond will be sufficient acquiescence in the expiration of this Lease, however, it will not reduce or excuse your liability for any existing dangerous conditions.

Very truly yours,

MASON LAW OFFICE

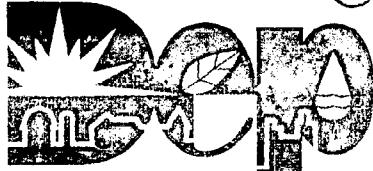

David C. Mason

DCM:blb
cc Gail Wilkes

Ex. "A"

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Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P. O. Box 8476

Harrisburg, PA 17105-8476

April 4, 2002

Bureau of Abandoned Mine Reclamation

Ms. Gail Wilkes
161 Richard Street
Philipsburg, PA 16866

Re: DEP File No. BF 442, CN 97-05

Dear Ms. Wilkes:

The Bureau of Abandoned Mine Reclamation initiated design in May of 1999 for the reclamation of a hazardous abandoned mine site. This project is on property for which you represent a number of owners. This site in Boggs Township, Clearfield County, was last mined in January of 1994 and was left unclaimed by T&T Clay Company. I have explained in the past that our office cannot proceed with the necessary reclamation design because of the outstanding lease with Mr. Harlan Schnarrs. You previously expressed your concern about the liability of the site and your desire to terminate the long running lease with Mr. Schnarrs when it comes up for renewal. This would enable the property to be reclaimed by the Bureau of Abandoned Mine Reclamation. I understand that the current lease expired at the end of March 2002.

Our office cannot continue our design work for the project until the property owners terminate the lease. In view of this, please proceed with such termination and send confirmation of same in writing, at the point in time when the lease is actually terminated.

If you have any questions concerning this matter, please contact me at 717-787-3448, between the hours of 7:00 am and 3:30 pm. Your assistance in this matter is greatly appreciated.

Sincerely,

Charles E. Lonkart

Charles E. Lonkart
Project Coordinator
Division of Mine Hazards



VERIFICATION

I certify that the facts set forth in the foregoing ANSWER CONTAINING NEW MATTER AND COUNTER-CLAIM are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 PA. C.S. §4904, relating to unsworn falsification to authorities.

DATED: 4-29-03

By: Gail Wilks

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E.
SCHNARRS, SR.; and SHIRLEY S. JOHNS

Plaintiffs

No. 2003-340-CD

VS.

GAIL WILKS; JAMES H. MEAS; MARIAN D. SHIMMEL; NORMA J. KNEPP; LEONARD THOMPSON; and ALVIN C. BUSH

Defendants

EQUITY DIVISION

TYPE OF PLEADING
REVISED/AMENDED
PRAECIPE FOR ENTRY OF
APPEARANCE

FILED ON BEHALF OF:
DEFENDANTS

ATTORNEY FOR DEFENDANTS:

David C. Mason, Esquire
Supreme Court ID #39180
DAVID C. MASON LAW OFFICE
P.O. Box 28
Philipsburg, PA 16866
(814) 342-2240

ATTORNEY FOR PLAINTIFFS:

Girard Kasubick, Esquire
Lehman & Kasubick
611 Brisbin Street
Houtzdale, PA 16651
814-378-7840

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FILED

APR 07 2003

4/2:20 (new)
William A. Shaw
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E.
SCHNARRS, SR.; and SHIRLEY S. JOHNS

No. 2003-340-CD

Plaintiffs

vs.

GAIL WILKS; JAMES H. MEAS; MARIAN D. SHIMMEL; NORMA J. KNEPP; LEONARD THOMPSON; and ALVIN C. BUSH

Defendants

REVISED/AMENDED
PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY OF SAID COURT:

Kindly enter my appearance on the behalf of the above named Defendants, Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson and Alvin C. Bush.

MASON LAW OFFICE

DATED: 4-4-03

By: David C. Mason, Esquire,
Attorney for Defendants

FILED

APR 07 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E.
SCHNARRS, SR.; and SHIRLEY S. JOHNS

Plaintiffs

vs.

GAIL WILKS; JAMES H. MEAS; MARIAN D. SHIMMEL; NORMA J. KNEPP; LEONARD THOMPSON; and ALVIN C. BUSH

Defendants

No. 2003-340-CD

EQUITY DIVISION

**TYPE OF PLEADING
PRAECLPICE FOR ENTRY
OF APPEARANCE**

FILED ON BEHALF OF:
DEFENDANT, GAIL WILKS

ATTORNEY FOR DEFENDANT,
GAIL WILKS:
David C. Mason, Esquire
Supreme Court ID #39180
DAVID C. MASON LAW OFFICE
P.O. Box 28
Philipsburg, PA 16866
(814) 342-2240

FILED

MAR 25 2003

William A. Shaw
Prehistoric

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY DIVISION

HARLAN I. SCHNARRS; JAMES E.
SCHNARRS, SR.; and SHIRLEY S. JOHNS

No. 2003-340-CD

Plaintiffs

vs.

GAIL WILKS; JAMES H. MEAS; MARIAN D. SHIMMEL; NORMA J. KNEPP; LEONARD THOMPSON; and ALVIN C. BUSH

Defendants

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY OF SAID COURT:

Kindly enter my appearance on the behalf of the above named Defendant, Gail Wilks.

MASON LAW OFFICE

DATED: 3-24-03

Bv7

David C. Mason, Esquire,
Attorney for Defendant, Gail Wilks

FILED

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cc

104274
MAR 25 2003

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FRET

William A. Shaw
Prothonotary

LEHMAN & KASUBIC
611 BRISBANE STREET
HOUTZDALE, PA 16651
(814) 378-7840

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

HARLAN I. SCHNARRS; JAMES E. : No.: 2003-340-CJ
SCHNARRS, SR; and SHIRLEY S. : Type of Case: Equity
JOHNS, : Type of Pleading:
Plaintiffs : Compliant for
vs. : Declaratory Judgement
GAIL WILKS; JAMES H. MEAS; : Filed on behalf of:
MARIAN D. SHIMMEL; NORMA J. : Plaintiffs
KNEPP; LEONARD THOMPSON; : Counsel of Record for
and ALVIN C. BUSH, : This Party:
Defendants : Girard Kasubick, Esq.
: Supreme Court #30109
: LEHMAN & KASUBICK
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7840

FILED

MAR 11 2003

William A. Shaw
Prothonotary

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

HARLAN I. SCHNARRS; JAMES E. :
SCHNARRS, SR; and SHIRLEY S. : No.: 2003-
JOHNS, :
Plaintiffs :
: :
vs. :
: :
GAIL WILKS; JAMES H. MEAS; :
MARIAN D. SHIMMEL; NORMA J. :
KNEPP; LEONARD THOMPSON; :
and ALVIN C. BUSH, :
Defendants :
:

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. 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 Meholick
Court Administrator's Office
Clearfield County Court House
Clearfield, PA 16830
(814) 765-2641

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

HARLAN I. SCHNARRS; JAMES E.	:	
SCHNARRS, SR; and SHIRLEY S.	:	No.: 2003-
JOHNS,	:	
	:	
Plaintiffs	:	In Equity
vs.	:	
	:	
GAIL WILKS; JAMES H. MEAS;	:	
MARIAN D. SHIMMEL; NORMA J.	:	
KNEPP; LEONARD THOMPSON;	:	
and ALVIN C. BUSH,	:	
	:	
Defendants	:	

COMPLAINT FOR DECLARATORY JUDGEMENT

AND NOW, comes Harlan I. Schnarrs, James E. Schnarrs and Shirley S. Johns, Plaintiffs, by and through their attorney, Girard Kasubick, Esq., and files the following Complaint:

1. The Plaintiff, Harlan I. Schnarrs resides at 1219 Benson Drive, Duncansville, PA 16635.

2. The Plaintiff, James E. Schnarrs, Sr. resides at 4436 Woods Edge Court, Chantilly, VA 22021.

3. The Plaintiff, Shirley S. Johns, resides at
R.D. 1, Box 604, Mahaffey, PA 15737.

4. The Defendant, Gail Wilks, resides at RD #1, Box 96, Philipsburg, PA 16866.

5. The Defendant, James H. Meas, resides at 730 North Highlands Drive, Harrisburg, PA 17111.

6. The Defendant, Marian D. Shimmel, resides at
R.D. 1, Box 240, West Decatur, PA 16878.

7. The Defendant, Norma J. Knepp, resides at R.D. 1, Box 195, West Decatur, PA 16878.

8. The Defendant, Leonard Thompson, resides at R.D. 1, Box 11, West Decatur, PA 16878.

9. The Defendant, Alvin C. Bush, resides at 231 South Mall Road, Pennsdale, PA 17756.

10. The heirs of the Estates of David P. Mease and James I. Mease entered into an Article of Agreement with Edgar Schnarrs dated April 20, 1954, a copy of which is attached hereto and marked Exhibit "A".

11. The April 20, 1954 Article of Agreement attached hereto and marked Exhibit "A" was a lease to mine and remove coal and other minerals from the Robert Morris Warrant, excepting the Southwest one-fourth, more or less, of said Warrant located in Boggs Township Clearfield County, Pennsylvania. The property being along PA Route 970, a portion of the real property subject of the lease on both sides of said roadway. The real property subject of the lease hereinafter referred to as "Premises."

12. All parties have been unable to find an original signed copy of the Article of Agreement attached hereto and marked Exhibit "A".

13. Certain owners of the Premises who received royalty payments from Edgar Schnarrs, namely; James H. Meas, Mabel Fleck, and George R. Mease all executed Affidavits in 1988 that the April 20, 1954 Article of

Agreement was in existence and that they have received royalties under the April 20, 1954 Article of Agreement attached hereto and marked Exhibit "A". The James H. Meas Affidavit was recorded in Clearfield County Deeds and Records Book 1224, Page 490 and the first four pages of said recorded document is attached hereto and marked Exhibit "B". The Mabel Fleck Affidavit was recorded in Clearfield County Deeds and Records Book 1219, Page 129 and the George R. Mease Affidavit was recorded in Clearfield County Deeds and Records Book 1224, Page 509 and were similar to James H. Meas Affidavit attached hereto and marked Exhibit "B".

14. On May 9, 1989 Edgar Schnarrs assigned all his rights, title, and interest in the April 20, 1954 Article of Agreement attached hereto and marked Exhibit "A" to his three (3) children, Harlan I. Schnarrs, James E. Schnarrs, Sr. and Shirley S. Johns, a copy of said assignment is attached hereto and marked Exhibit "C."

15. Edgar Schnarrs also known as Edgar H. Schnarrs died on March 3, 1995.

16. The various David F. Mease heirs and James I. Mease heirs have been paid royalty payments and minimum royalty payments by Edgar Schnarrs and his Assignees under Paragraphs Third, Fifth and Sixth of the Article of Agreement attached hereto and marked Exhibit "A" from 1954 until August 2002.

17. On February 22, 2002, Plaintiffs sent to the six (6) Defendants minimum royalty payments for September 2002 through August 2007.

18. All of the Defendants returned their minimum royal payments from September 2002 through August 2007 to Plaintiffs, except the Defendant Alvin C. Bush who did accept his minimum royalty payment through September 2007.

19. The Defendant, Gail Wilks is handling the distribution of one-half (1/2) of the royalties to the heirs of David P. Mease.

20. The Defendant, James H. Meas, is handling the distribution of one-fifth (1/5) of the one-half (1/2) distribution of William T. Meas, deceased, an heir of James I. Mease.

21. The Defendant, Marian D. Shimmel is handling the distribution of one-fifth (1/5) of the one-half (1/2) distribution of David A. Mease, deceased, an heir of James I. Mease.

22. The Defendant, Norma J. Knepp is handling the distribution of one-fifth (1/5) of the one-half (1/2) distribution of Dorsey G. Mease an heir of James I. Mease

23. The Defendant, Leonard Thompson is handling the distribution of one-fifth (1/5) of the one-half (1/2) distribution of Leonard I. Mease an heir of James I. Mease.

24. The Defendant, Alvin C. Bush is handling the distribution of one-fifth (1/5) of the one-half (1/2) distribution of Myrtle M. Bush an heir of James I. Mease.

25. The Plaintiff, Harlan I. Schnarrs, received a letter from Attorney David C. Mason, Esq. dated April 24, 2002 on behalf of the Defendants and the Mease heirs alleging a breach of the Article of Agreement and breach under Paragraphs Tenth and Twelfth of the Agreement attached hereto and marked Exhibit "A" and incorporated herein by reference thereto for failure to backfill.

26. Plaintiffs responded to letter dated April 24, 2002 from Attorney David C. Mason, Esq., by letter dated May 6, 2002 from Girard Kasubick, Esq., Attorney for Plaintiffs, that failure to backfill does not violate the original Article of Agreement and that no laws of the Commonwealth of Pennsylvania have been violated for failure to backfill at this time when the bonds are held by Department of Environmental Protection (DEP) and there is an existing lease. A representative of DEP confirmed this with the Plaintiffs.

27. Edgar Schnarrs entered a Sub-Lease Agreement under the April 20, 1954 Agreement with Clinton Thompson dated June 24, 1988 which was recorded in Clearfield County Deeds and Records Book 1278, Page 282.

28. The Sub-Lease to Clinton Thompson was then assigned to Swistock Contracting by Assignment dated

August 28, 1992 and then Plaintiffs entered into Modification of Sub-Lease Agreement with Swistock Contracting also dated August 28, 1992.

29. Swistock Contracting and Clinton Thompson, who operated under T & T Clay Co., have abandoned mining operation on the property under the Agreements set forth in Paragraphs 27 and 28 above which paragraphs are incorporated herein by reference thereto.

30. The original mining permit of Clinton Thompson or T & T Clay Co., No. 1790126, has been forfeited and the bonds have been taken over by DEP.

31. The Defendants, their agent or part owner of the Premises, Jack L. Woods, has consented by consent dated November 15, 2002 to DEP to issue an Exploratory Permit I.T.E. #17021156 to Ferlitch Coal Company for removal of coal on the property subject of the April 20, 1954 Article of Agreement in violation of said Article of Agreement attached hereto and marked Exhibit "A."

32. Plaintiffs desire to find a coal company to complete mining the coal from the property under the Article of Agreement dated April 20, 1954 attached hereto and marked Exhibit "A."

33. The Plaintiffs have been unable to find a coal company interested in removing the remaining coal from the Premises partly due to the issues that are outstanding on the rights of the parties under the Article of Agreement

dated April 20, 1954 attached hereto and marked Exhibit "A." and incorporated herein by reference thereto.

34. Plaintiffs desire to have the court determine the rights and duties of all parties under the April 20, 1954 Article of Agreement attached hereto and marked Exhibit "A." incorporated herein by reference thereto and to declare the validity of said Agreement and the right of Plaintiffs to mine or sub-lease to mine the Premises.

WHEREFORE, Plaintiff request Your Honorable Court to issue a Declaratory Judgment that the Article of Agreement dated April 20, 1954 is an existing binding Agreement subjecting all parties, their heirs, successors and assigns to the terms covenants and conditions in said Agreement, and to allow Plaintiffs to mine or sub-lease to mine the Premises, and to award Plaintiffs' attorney fees and costs of court.



Girard Kasubick, Esq.
Attorney for Plaintiffs

VERIFICATION

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

Harlan I. Schnarrs
Harlan I. Schnarrs

James E. Schnarrs
James E. Schnarrs

Shirley S. Johns
Shirley S. Johns

ARTICLE OF AGREEMENT

Made this 20th day of April 1954, by and between
the heirs of the DAVID F. MEASE ESTATE and JAMES I. MEASE
ESTATE, to wit: DAVID F. MEASE of Decatur Township, Clearfield
County, Pennsylvania; EDGARRET M. MEASE; LEONARD I. MEASE and
JANE MEASE, his wife; DORSEY C. MEASE and EVA A. MEASE, his wife,
all of Boggs Township, Clearfield County, Pennsylvania; ALVIN R.
BUSH and LUCINDA BUSH, his wife, of Williamsport, Lycoming County,
Pennsylvania; VERA BAUGHMAN and BOY BAUGHMAN, her husband, of the
Borough of State College, Centre County, Pennsylvania; and RUBY
BUSH, unmarried, of Massillon, Ohio, being all the legal heirs of
James I. Mease late of Boggs Township, Clearfield County, Pennsylvania;
LIDA WOODS and MARTIN A. WOODS, her husband, and ANNIE NIXON,
widow, all of Boggs Township, Clearfield County, Pennsylvania;
ERVIN HAINES and FLORENCE HAINES, his wife, of Plymouth Meeting,
Pennsylvania; LESTER HAINES his wife, VERA HAINES, of Plymouth
Meeting, Pennsylvania; LEONORA MEASE, widow; MELVIN L. MEASE and
ADA MAY MEASE, his wife; CATHERINE MCCASLIN, GEORGE R. MEASE and
VIRGINIA R. MEASE, his wife; CLAIR R. MEASE and HELEN MEASE, his
wife, LOLA E. TAYLOR and ROBERT J. TAYLOR, her husband; DAVID D.
MEASE and MARGARET E. MEASE, his wife; LEO H. MEASE and LOIS
MEASE, his wife; ESTHER MASON and JAMES MASON, her husband; LEAH
IMOGENE MEEK and WILLIAM D. MEEK, her husband, all of Cumberland,
Maryland; JAMES H. MEASE and LOIS W. MEASE, his wife, of Allegheny
County, Maryland; ANNA L. MEASE, unmarried of the City of
Washington, District of Columbia, by their attorney in fact, GEORGE
R. MEASE, of Cumberland, Maryland, under Power of Attorney dated
July 16, 1948, and recorded August 16, 1948, in the office
of the Recorder of Deeds in and for the County of Clearfield in
Miscellaneous Book 71, Page 126, hereinafter called LEASORS, EDGAR
SCHNARING, of R. D., Philipsburg, Pennsylvania, hereinafter called
LEASER.

WITNESSETH:

1. That the Lessors for and in consideration of the sum of one (\$1.00) dollar in and paid to the Lessors by the Lessee, the receipt of which is hereby acknowledged, does hereby grant unto the said Lessee an option for a period of ninety (90) days from the said date of this Lease, to let and lease the exclusive right and privilege to mine and take away, at the convenience of the Lessee, all the coal contained under that certain tract of land located in Boggs Township, Clearfield County Pennsylvania, more fully described as follows, to wit:

Being bounded on the North by the Henry Drinker warrant and land of Dorsey Mease; on the East by lands which are part of the John Houston warrant and owned now or formerly by William H. Garland, E. A. Dixon and Harbison-Walker Refractories Company; on the South by the Steven Kingston warrant; the adjoining land being now or formerly owned by George Newton; on the West from the South to north by lands of the Lessors herein known as the Fire Brick Company which is part of the William Morris warrant.

The said land, the subject of this agreement, is part of the Robert Morris warrant and includes all of said Robert Morris warrant except the Southwest one-fourth, more or less, which Southwest portion is known as the David Mease Homestead.

The rights herein granted by the Lessors to Lessee are subject to rights vested in Martin Woods owner of 25 acres, more or less, of surface part of the herein described premises and which 25 acres, more or less, lies at or near the Southeast corner of said described premises. The minerals under the said 25 acres, more or less, being owned by the Lessors herein and are included in this agreement, except as to one (1) acre, more or less, around the buildings on the 25 acre lot. The Lessors except and reserve from the operation of this lease the minerals on the (1) acre, more or less, surrounding the Martin Woods buildings heretofore conveyed to Martin Woods. CONTAINING 200 acres, more or less.

This lease is further subject to the prior rights vested in the owners of the Robert Sjimmel surface lot on which a dwelling house was recently constructed.

The Lessors further reserve from the operation of this lease such minerals as is necessary to properly support and protect the public highways located on the promises.

TOGETHER WITH THE RIGHT TO enter in, upon and under the said premises for the purpose of examining, testing and mining by the strip mine and the deep mine method of removing and carrying away said coal by such ways and means as may be necessary in the judgment of the Lessee in the successful mining and taking away of the same, together with all and singular mining, operation, ventilating, drainage, surface and other rights and privileges, and all Releases of damages owned by or vested in the Leasors so fully as the same were acquired by the said Leasors upon the following terms and conditions.

SECOND: The Lessee herein is hereby granted an option for a period of ninety (90) days from the date of this instrument, during which period of time no minimum royalty shall accrue as hereinafter provided but the said Lessee shall have the full right and privilege to explore the said land and to do such prospecting, drilling and exploration work as they desire thereon. If the said Lessee herein does not desire to operate the said land under the terms of this lease, he shall notify the Leasors by giving written notice to that effect within the sixty (60) days option period. If no such notices is given, then the provisions of this instrument shall automatically become the Lessee Agreement between the parties herein. If such notice is given then this lease shall be null and void except for the exploration rights herein provided.

THIRD: The said Lessee agrees with and to the said Leasors that it will pay as royalty to the said Leasors the sum of twenty-five (25) cents per ton of two thousand (2000) pounds of merchantable coal which the Lessee removes from the said premises by strip mining methods, and fifteen (15) cents per ton of two thousand (2000) pounds of merchantable coal for all coal removed from the said premises by the deep mining method during the continuance of this lease.

FOURTH: The payments of royalty are to be made on or before the Twenty-fifth day of each month for the said leased coal removed from the said premises during the previous calendar month; such payments to be accompanied by a correct statement showing the amount of all coal shipped from the leased premises during the said monthly period. The weight of the coal shipped from the said premises shall be determined by the scales of the Railroad Company over which line the coal is shipped, and for all coal sold locally, the weight shall be determined by the mine scales or public scales; it being understood and agreed upon by and between the parties hereto that the Leesee shall not be required to ship or pay for coal which in its judgment is not merchantable or mineable.

FIFTH: Any merchantable clay removed from said estate shall be paid for at the rate of 15 (fifteen) cents per ton.

SIXTH: The Leesee further agrees to mine and ship monthly from the said leasehold premises sufficient coal to provide a minimum royalty at the rate hereinbefore set forth of fifty (50) dollars, or to pay the said Lessors the said minimum royalty at the time hereinafter provided; it being provided, however, that if the coal mined shall fall short of the minimum quantity required for the payment of the minimum royalty herein-after set forth, but the minimum quantity has been paid for as hereinbefore stipulated, the Leesee shall be entitled at any time during the leasehold period or any renewal thereof to take out sufficient coal to reimburse it without payment therefor; provided always, nevertheless, that the same be taken out in excess of the regular monthly minimum herein specified.

Provided, however, that there shall be no minimum monthly payments required and no liability beyond the rate of royalty above named for the quantity of coal actually mined and shipped during such months in which the mining upon the said

impracticable by reason of a labor strike continuing for thirty (30) days or more affecting the mining operation of the Lessee's mine or the railroad conveying the product to market.

SEVENTH: It is the intention of the parties hereto that the Lessee herein shall not be required to pay in minimum or otherwise for more coal than in its judgment is merchantable and minable, as contained in the leased premises, and the Lessee shall have the right at any time when it has paid for approximately all of said minable coal to request the Lessors that an estimate be made of the said merchantable and minable coal remaining in the leased premises. The Lessors shall thereupon appoint a mining engineer, who with the mining engineer of the Lessee, shall make an estimate of said coal, and their decision thereon shall be final and conclusive. When all said coal shall have been paid for under the terms of this contract and in accordance with such estimate, no further payment of royalty, either in minimum or otherwise, shall be required of the Lessee and it shall have the right to mine and remove the said coal as it has been paid for at any time during the term of this lease, any renewal thereof, within five (5) years thereafter, and in the event that more of said coal is actually mined and removed from the said premises than shown by such estimate, such excess coal shall be paid for as mined and shipped by the Lessee at the same royalty rate and in the same manner as hereinbefore set out, with the right to use and enjoy all the rights and privileges herein contained.

EIGHTH: The Lessors shall have designated their agents to the right at all reasonable times, at Lessors' own risk, to enter said mine, for themselves, or engineers, for the purpose of examining, inspecting and surveying said mines and stripping operations upon the herein leased premises in order to see that the terms of this lease are being complied with.

NINTH: The Lessors shall pay for all taxes levied or assessed against the property and on the coal remaining in place upon the herein leased premises. The Lessee shall pay, during the continuance of this lease, all taxes levied or assessed upon all improvements placed upon the premises by the Lessee or upon

the coal mined and removed from the said premises.

TENTH: The Lease hereby covenants and agrees that upon the termination of this lease or prior thereto, it will backfill all stripping cuts in accordance with the law of the Commonwealth of Pennsylvania, and that they will mine and strip the coal upon the premises in a lawful manner complying with and observing all the laws existing or that may hereafter be passed by the Commonwealth of Pennsylvania, or the United States regulating the working of mines and stripping operations.

ELEVENTH: The Leasors covenant and agree that they are the owners in fee of both the surface and coal rights of the lands herein described and they further covenant and agree that they have the legal right to enter unto this covenant and agree that they will save harmless the Lessee from any and all claims by others for royalty and/or damages arising from the minimum or stripping of the coal upon the premises herein demised.

TWELFTH: The Lessee agrees that in case of any breach of any of the covenants of this lease contained and proper notice having first been given thereof in writing by the Leasors to the Lessee, and the same shall not be corrected or remedied within thirty (30) days from the date of service of the said written notice, it shall be lawful for the Leasors, at their option to enter in and upon the premises for conditions broken and repossess themselves of their former estate. The Lessee agrees that all the landlord and tenant laws relating to the collection of rents shall apply to the collection of royalty under this lease and that this right shall not be questioned by the Lessee.

THIRTEENTH: In case the Lessee shall fail, neglect or refuse to pay royalty provided for herein for a period of sixty (60) days after the same shall become due and payable, the Leasors shall have the right, at their option, to repossess themselves of the property herein leased, together with sufficient

of the improvements and personal property contained thereon to reimburse themselves fully for any and all royalty due and payable under this lease and not paid as hereinbefore stipulated without being considered a trespasser upon such default continuing for sixty (60) days authorized and empowered any attorney of any Court of record to appeal and enter in the Court of Common Pleas of Clearfield County an amicable action and confession of judgment in ejectment for the premises as hereinbefore described, and thereupon authorize the immediate issuing of a Writ of Habere Facias Possessionem with a clause of Fieri Facias for costs and any royalty due and unpaid without asking leave of Court and without any prior writ or proceeding whatsoever by virtue of which the Leasors herein named shall be placed in possession of the premises, and the said Leesee hereby released to the Leasors all errors and defects whatsoever in entering such action or judgment or causing such Writ of Habere Facias Possessionem to be issued or in any proceeding thereon or concerning the same.

FOURTEENTH: The Leesee further authorizes and empowers any attorney of any court of Record in case of such default in the payment of royalty as aforesaid under this lease for a period of thirty (30) days, to appear for it in the court of Common Pleas of any county in this Commonwealth and confess judgment in favor of the said Leasors for the amount then due and unpaid, and thereupon authorizes the immediate issuing of a Writ of Fieri Facias for the amount of said judgment, with cost of suit, release of errors and with five per cent (5%) attorney's commission for collection, waiving all exemption laws now in force or that may hereafter be put to force.

FIFTEENTH: This lease shall continue for a period of one (1) year from the exercise of the option as herein provided for, or until all the merchantable stripping and minable coal shall be removed therefrom. Provided, the Leesee shall have complied with and performed all the conditions, covenants, and stipulations of this lease, the same shall automatically re-

itself from year to year thereafter until such time as the leasee shall notify the lessors, in writing sixty (60) days prior to the end of any yearly term, of their intention not to so renew or until all the merchantable and minable coal is removed from the said premises, whichever may first occur. All the terms covenants, conditions, and stipulations herein contained are to extend to any yearly renewals as herein provided for.

SIXTEENTH: It is mutually understood and agreed upon by the parties hereto that upon the expiration of the term hereby demised or sooner proper determination of the same, or at the end of any renewal as herein provided for, provided the Leasee shall have paid all royalty and fulfilled all covenants in this lease on its part agreed to be kept, it shall have this right at any time, within three (3) months after the expiration or sooner proper determination of this lease to remove from the hereby demised premises any and all improvements and implements which have been placed upon said premises by the said Leasee; it being understood and agreed that all improvements and implements remaining on the said premises after the expiration of the said three (3) months shall revert and become the property of the Lessors.

SEVENTEENTH: Whenever a notice is presented herein, it is agreed by and between the parties hereto that such notice shall be given by regular United States registered mail, and notice shall be considered to have been given to the Lessors upon such notice being sent to David A. Mease of Osceola Mills, Pennsylvania; and Lida Woods of West Decatur, R.D., Pennsylvania; and George Mease of Cumberland, Maryland; while notice to the parties of the second part shall be considered to be given if such notice is given to Edgar Schnarrs, R.D., Philipsburg, Pennsylvania. All payments of royalties are hereby provided for to be paid one-half (1/2) to Lida Woods of West Decatur, R.D., Pennsylvania, for and on behalf of the heirs of James I. Mease

Estate, and the parties hereto hereby appoint the said David A. Mease and Lida Woods as their agents to administer the terms and provisions of this lease.

EIGHTEENTH: This Agreement shall be binding and shall enure to the benefit of the heirs, successors and/or assigns of the parties of the First Part hereto and to the successors and/or assigns of the Lessee herein.

IN WITNESS WHEREOF, the said parties of the First Part, Lessors herein, have hereunto set their respective hands and seals, and the said Lessee has affixed the Common or Corporate seal, duly attested, the day and year first above written. The said Agreement being executed in duplicate and such copies to have the same effect as though they were originals.

STEELE BUTTERWORTH, J.P.
MILDRED L. GRAZIA
MILDRED L. GRAZIA
MILDRED L. GRAZIA
MARY E. BACHTEL
STEELE BUTTERWORTH, J.P.
STEELE BUTTERWORTH, J.P.
STEELE BUTTERWORTH, J.P.
REBECCA E. HASTINGS
REBECCA E. HASTINGS
MARGARET A. DEHAVEN
MARGARET A. DEHAVEN

DAVID A. MEASE (SEAL)
ELIZABETH M. MEASE (SEAL)
LEONARD MEASE (SEAL)
JENNIE MEAS (SEAL)
DORSEY G. MEASE (SEAL)
EVA A. MEASE (SEAL)
ALVIN R. BUSH (SEAL)
LUCINDA M. BUSH (SEAL)
VERA BAUGHMAN (SEAL)
ROY BAUGHMAN (SEAL)
RUBY BUSH (SEAL)
MRS. LIDA WOODS (SEAL)
MARTIN A. WOODS (SEAL)
MRS. ANNIE DIXON (SEAL)
MARVIN C. HAINES (SEAL)
FLORENCE HAINES (SEAL)
ESTER HAINES (SEAL)
VERNA HAINES (SEAL)

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF : § :

Before me, a Notary Public, personally appeared JAMES H. MEASE, of 1508 Montford Drive, Harrisburg, PA 17110, known to me, or satisfactorily proven, to be the person whose name appears below and who, being duly sworn according to law, hereby deposes and says as follows:

1. That he is an adult resident of Pennsylvania as noted above.
2. That he has been receiving royalty payments from Edgar Schnarrs, on behalf of certain heirs of the David F. Mease Estate or James I. Mease Estate for many years.
3. That he has been receiving the aforesaid royalty payments under an Article of Agreement in the nature of a mining lease which is dated April 20, 1954, between the heirs of David F. Mease and James I. Mease and Edgar Schnarrs, and which said lease is upon certain property in Boggs Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEING bounded on the North by the Henry Drinker warrant and land of Dorsey Mease; on the East by lands which are part of the John Houston warrant and owned now or formerly by William H. Garland, E. A. Dixon and Harbison-Walker Refractories Company; on the South by the Steven Kingston warrant; the adjoining land being now or formerly owned by George Newton; on the West from the South to north by lands of the Leasers herein known as the Fire Brick Company which is part of the William Morris warrant.

The said land, the subject of this agreement, is part of the Robert Morris warrant and includes all of said Robert Morris warrant except the Southwest one-fourth, more or less, which Southwest portion is known as the David Mease Homestead.

The rights herein granted by the Leasors to Lease are subject to rights vested in Martin Woods owner of 25 acres, more or less, of surface part of the herein described premises and which 25 acres, more or less, lies at or near the Southeast corner of said described premises. The minerals under the said 25 acres, more or less, being owned by the Lessors herein and are included in this agreement, except as to one (1) acre, more or less, around the buildings on the 25 acre lot. The Leasors except and reserve from the operation of this lease the minerals on the (1) acre, more or less, surrounding the Martin Woods buildings heretofore conveyed to Martin Woods. CONTAINING 200 acres, more or less.

This lease is further subject to the prior rights vested in the owners of the Robert Shimmel surface lot on which a dwelling house was recently constructed.

The Leasors further reserve from the operation of this lease such minerals as is necessary to properly support and protect the public highways located on the premises.

4. That the original Article of Agreement in the nature of a lease dated April 20, 1954, was never recorded; is lost, misplaced, destroyed or unknown, however, the attached copy hereto is a true and accurate copy or reproduction of the original Article of Agreement and its terms.

5. That affiant has personal knowledge of the existence of the original lease because of his family relationship as an heir of David F. Mease or James I. Mease.

6. That the affiant acknowledges the existence of said lease.

James H. Mease
James H. Mease

Sworn to and subscribed
before me this 99th
day of April,
1988.
JON A. SNAVELY, NOTARY PUBLIC
HARRISBURG, DAUPHIN COUNTY
MY COMMISSION EXPIRES NOV. 5, 1990
Member, Pennsylvania Association of Notaries
N.P.

CLEARFIELD COUNTY
ENTERED OF RECORD 5-31-88
TIME 2:45 p.m.
BY Michael R. Lytle R-114
FEES 43.44 Box 301
Michael R. Lytle, Recorder P.M.C. 16-846



Commonwealth of Pennsylvania }
COUNTY OF Clearfield } ss:

AFFIDAVIT

On this 1st day of September, 1987 personally appeared before me, the subscriber, one of the District Justices in and for said County and State duly authorized to administer oaths, Edgar Schnarrs; RR 1 Box 321; Philipsburg, PA. 16866 who being duly sworn or affirmed, according to law, doth depose and say, THAT the Attached "Article of Agreement" is a true and correct copy of the original, which was signed by me, on or about the 20th day of April, 1954.

and further deponent I saith not.

Sworn to and subscribed before me this

01 day of September, 1987.

(SEAL) (District Justice)

Edgar Schnarrs

MAGISTERIAL DISTRICT NO. 46-3-03

MICHAEL A. RUDELLA
District Justice, State of Pennsylvania
No. 46-3-63, Clearfield County
Term Expires January 4, 1988

ARTICLE OF AGREEMENT

Made this 20th day of April 1954, by and between the heirs of the DAVID F. MEASE ESTATE and JAMES I. MEASE ESTATE, to wit: DAVID A. MEASE of Decatur Township, Clearfield County, Pennsylvania; EDIZABETH M. MEASE; LEONARD I. MEASE and JANE MEASE, his wife; DORSEY C. MEASE and EVA A. MEASE, his wife; all of Boggs Township, Clearfield County, Pennsylvania; ALVIN R. BUSH and LUCINDA BUSH, his wife; of Williamsport, Lycoming County, Pennsylvania; VERA BAUGHMAN and ROY BAUGHMAN, her husband, of the Borough of State College, Centre County, Pennsylvania; and RUBY BUSH, unmarried, of Massillon, Ohio, being all the legal heirs of James I. Mease late of Boggs Township, Clearfield County, Pennsylvania; LIDA WOODS and MARTIN A. WOODS, her husband, and ANNIE DIXON, widow, all of Boggs Township, Clearfield County, Pennsylvania; RYAN HAINES and FLORENCE HAINES, his wife, of Plymouth Meeting, Pennsylvania; LESTER HAINES his wife, Verna Haines, of Plymouth Meeting, Pennsylvania; LEONORA MEASE, widow; MELVIN L. MEASE and ADA MAY MEASE, his wife; CATHERINE MCCASLEN, GEORGE R. MEASE and VIRGINIA R. MEASE, his wife; CLAIR R. MEASE and HELEN MEASE, his wife, LOLA E. TAYLOR and ROBERT J. TAYLOR, her husband; DAVID D. MEASE and MARGARET E. MEASE, his wife; LEO H. MEASE and LOIS MEASE, his wife; ESTHER MASON and JAMES MASON, her husband; LEAH IMOGENE MEEK and WILLIAM D. MEEK, her husband, all of Cumberland, Maryland; JAMES H. MEASE and LOIS W. MEASE, his wife, of Allegheny County, Maryland; ANNA L. MEASE, unmarried of the City of Washington, District of Columbia, by their attorney in fact, GEORGE R. MEASE, of Cumberland, Maryland; under Power of Attorney dated July 1, 1948, and recorded August 16, 1948, in the office of the Recorder of Deeds in and for the County of Clearfield, in Miscellaneous Book 71, Page 126, hereinafter called LEASORS, EDGAR SCHNARRS, of R. D., Philipsburg, Pennsylvania, hereinafter called LEASER.

ASSIGNMENT AGREEMENT

FOR VALUE RECEIVED, and in consideration of the sum of One Dollar, in hand paid, with the intent to be legally bound hereby, I, EDGAR SCHNARRS, of R. D. 1, Box 321, Philipsburg, PA 16866, Assignor, do hereby assign to SHIRLEY S. JOHNS, of R. D. 1, Box 604, Mahaffey, PA 15757; JAMES E. SCHNARRS, SR., of 4310 Markwood Lane, Fairfax, VA 22033; and HARLAN I. SCHNARRS, of 519 North Sterling Boulevard, Sterling Park, VA 22170, herein collectively referred to as Assignees, with equal interests, all my rights, title and interests in and to the Sub-lease Agreement between Edgar Schnarrs and Clinton Thompson dated June 24, 1988 and in and to the Article of Agreement dated April 20, 1954, between all the Mease Heirs and Edgar Schnarrs. The Assignees shall have all rights, titles, interests and duties under the aforesaid Sub-Lease Agreement and Article of Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 9th day of May, 1989,



Edgar Schnarrs

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CENTRE : §:

Before me, the undersigned officer, personally appeared EDGAR SCHNARRS, 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 have hereunto set my hand and official seal.

Girard Kasubick
N.P.

Notarial Seal
Girard Kasubick, Notary Public
Philipsburg Boro, Centre County
My Commission Expires June 8, 1991

FILED

SEP 07 2004

01/11/01
William A. Shaw
Prothonotary

93-340-10

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POSTAL RECEIPT
PITTSBURGH PA 15219

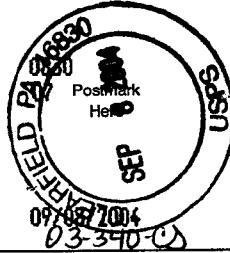
Postage	\$ 6.30
Certified Fee	\$2.30
Return Receipt Fee (Endorsement Required)	\$1.75
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$ 10.35

Send To
Superior Court of PA - Prothonotary
Street, Apt. No.;
or P.O. Box No.
600 Grant Building
City, State, ZIP+
Pittsburgh, PA 15219

PS Form 3800, June 2002

See Reverse for Instructions

POSTAL RECEIPT
PITTSBURGH PA 15219
07/07/2004
03-340-10



1372 WDA 2004

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Superior Court of PA
Office of Prothonotary
600 Grant Building
Pittsburgh, PA 15219

03-340-50

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X g. L. West

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

4 - 9

D. Is delivery address different from item 1? Yes No

If YES, enter delivery address below:

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2 Article Number

Transfer from service 1

7002 3150 0000 7855 4872

PS Form 3811, August 2001

Domestic Return Receipt

$$\mu_{\text{max}} = 1.1 \times 10^{-10}$$

03-340-CD

Schnarrs vs. Wilks

03340-CD
Schnarrs vs. Wilks

FILED *EGK*
m 19:2003
SEP 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

03-340-CD

FILED

OCT 01 2004

0/8/04
William A. Shaw
Prothonotary

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PITTSBURGH PA 15219

Postage	\$ 1.75
Certified Fee	\$ 2.30
Return Receipt Fee (Endorsement Required)	\$ 1.75
Restricted Delivery Fee (Endorsement Required)	\$ 0.00
Total Postage & Fees	\$ 5.80

0830 30 SEP 2004
Postmark Here
CLEARFIELD PA 16830
USPS

09/30/2004 0107104
03-340-CD Transcript

Send To
Superior Court of PA - Prothonotary
Street, Apt. No.;
or PO Box No. 1000 Grant Building
City, State, ZIP+4 Pittsburgh, PA 15299

PS Form 3800, June 2002 See Reverse for Instructions

2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030

*** ACTIVITY REPORT ***

Oct. 1 '04 1:28

Tx.	TOTAL PAGES	007436
Rx.	TOTAL PAGES	002956
PRINT	TOTAL PAGES	006792

No.	DATE	START	TIME	PARTNER	MODE	PAGE	RESULT
Tx.							
1	Sep.30	9:18	0'24	17244301430	G3	01	E-20
2	Sep.30	9:20	0'40	17244301430	G3	01	E-20
3	Sep.30	9:35	1'40	*****	G3	03	OK

Rx.

1	Sep.30	1:50	0'20	800-734-6859	G3	00	E-52
2	Sep.30	13:14	0'35	*****	G3	00	E-10
3	Sep.30	13:27	0'43	8145835374	G3	01	OK

7 7 7
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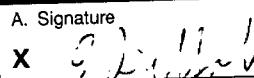
SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Superior Court of PA
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

COMPLETE THIS SECTION ON DELIVERY

A. Signature 	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
B. Received by (Printed Name)	C. Date of Delivery 10-1
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

03-340-CD Transcript2. Article Number
(Transfer from service label)

7002 3150 0000 7855 4902

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

03-340-CD

Transcript-Motion
for Summary
Judgment

(R)
M 10:23.6X
OCT 05 2004

Prothonotary

In the Superior Court of Pennsylvania

Sitting at Pittsburgh

No. 1372

HARLAN I. SCHNARRS., ET AL
V.
GAIL WILKINS., ET AL

WESTERN DOCKET APPEAL. 2004

: Appeal from the Order of 7-1- 2004 by the
Honorable Frederic J. Ammerman
Court of Common Pleas of Clearfield County
Civil Division.

Docket Number: 2003-340-CD

Certified From the Record

"Order of Court"

Upon the filing of Girard Kusubick, Esquire's October 21, 2004 "praecipe for withdrawal of counsel," and upon noting that David D. Engle, Esquire has entered his appearance on behalf of appellants Harlan I Schnarrs, Sr., and Shirley S. Johns, the prothonotary is **DIRECTED** to remove Attorney Kasubick as counsel of record for appellants.

Date: October 25, 2004

Per Curiam"

COIK
m/14537 NOCC
OCT 27 2004

In Testimony Whereof, I have hereunto set my hand and the seal of said Court at
Pittsburgh, Pa.

this

25th

Day of

October

2004

Elean R. Valech
Deputy Prothonotary

SUPERIOR COURT OF PENNSYLVANIA

CIVIL DIVISION

RECEIVED FROM THE SUPERIOR COURT OF PENNSYLVANIA,

THE CASE OF:
HARLAN I SCHNARRS., ET AL
V.
GAIL WILKS., ET AL

1372 WDA 2004

CLEARFIELD COUNTY CIVIL DIVISION
LOWER COURT DOCKET NO. 2003-340-CD

Filed: CERTIFIED COPY ORDER OF COURT DATED OCTOBER 25, 2004

RECEIPT ACKNOWLEDGED: _____ DATE: _____



Supreme Court of Pennsylvania

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

Western District
July 28, 2005

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Harlan I. Schnarrs, James E. Schnarrs, Sr., and Shirley S. Johns, Petitioners
v.

Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp,
Leonard Thompson, Alvin C. Bush, Respondents
Superior Docket Number - 1372 WDA 2004

Trial Court/Agency Dkt. Number: 2003-340-CD
No. 363 WAL 2005

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: July 27, 2005

Disposition:

Date:

Reargument/Reconsideration Disposition:

Reargument/Reconsideration
Disposition Date:

*RECEIVED
AUG 01 2005
7/12/05
William A. Shaw
Prothonotary Clerk of Courts*

/dad

**The Superior Court of Pennsylvania
Sitting at Pittsburgh**

600 Grant Building
Pittsburgh, Pennsylvania
15219

**CERTIFICATE OF CONTENTS OF REMANDED RECORD
AND NOTICE OF REMAND
under
PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572**

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:
ORIGINAL RECORD 1 PARTS, 2 TRANSCRIPT , 1 SUPERIOR COURT OPINION.

As remanded from said court in the following matter:

**IN RE: HARLAN I SCHNARRS ., ET AL V. GAIL WILKS., ET AL
No(s). 1372 WDA 2004
COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION NO. 2003-340-CD**

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is: JANUARY 3, 2006

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

Eleanor R. Valecko

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: 1/10/06

William A. Shaw
Prothonotary
(Signature & Title)

FILED
m 10/15/06
JAN 06 2006
WM

William A. Shaw
Prothonotary/Clerk of Courts



Supreme Court of Pennsylvania

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

Western District

July 28, 2005

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Ms. Eleanor R. Valecko
Deputy Prothonotary
310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297

RE: Harlan I. Schnarrs, James E. Schnarrs, Sr., and Shirley S. Johns, Petitioners
v.
Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp,
Leonard Thompson, Alvin C. Bush, Respondents
Superior Docket Number - 1372 WDA 2004

Trial Court/Agency Dkt. Number: 2003-340-CD
No. 363 WAL 2005

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: July 27, 2005

Disposition:
Date:

Reargument/Reconsideration Disposition:
Reargument/Reconsideration
Disposition Date:

/dad

6-28-04



Supreme Court of Pennsylvania

Western District

December 30, 2005

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Ms. Eleanor R. Valecko
Deputy Prothonotary
310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297

JAN 3 - 2006

PITTSBURGH COURT OF
COMMON PLEASE

RE: Harlan I. Schnarrs, James E. Schnarrs, Sr., and Shirley S. Johns, Petitioners
v.
Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp,
Leonard Thompson, and Alvin C. Bush, Respondents
Superior Docket Number - 1372 WDA 2004

Trial Court/Agency Dkt. Number: 2003-340-CD
No. 363 WAL 2005

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: July 27, 2005

Disposition: Order Denying Petition for Allowance of Appeal
Date: December 13, 2005

Reargument/Reconsideration Disposition:

Reargument/Reconsideration
Disposition Date:

/kao

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

HARLAN I. SCHNARRS, JAMES E.
SCHNARRS, SR., AND SHIRLEY S.
JOHNS,

Petitioners

: No. 363 WAL 2005

: Petition for Allowance of Appeal from the
Order of the Superior Court

v.

GAIL WILKS, JAMES H. MEAS, MARIAN
D. SHIMMEL, NORMA J. KNEPP,
LEONARD THOMPSON, ALVIN C. BUSH,

Respondents

ORDER

PER CURIAM:

AND NOW, this 13th day of December, 2005, the Petition for Allowance of Appeal
is hereby DENIED.

A True Copy Patricia Nicola
As of: December 13, 2005
Attest: *Patricia Nicola*
Chief Clerk
Supreme Court of Pennsylvania

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

HARLAN I. SCHNARRS, JAMES E. : IN THE SUPERIOR COURT OF
SCHNARRS, SR. and SHIRLEY S. : PENNSYLVANIA
JOHNS,

Appellants

v.

GAIL WILKS, JAMES H. MEAS, MARIAN :
D. SHIMMEL, NORMA J. KNEPP, :
LEONARD THOMPSON, ALVIN C. BUSH, :

Appellees

IN THE SUPERIOR COURT OF
PENNSYLVANIA

FILED No. cc
m10/5/06
JAN 06 2006
S

William A. Shaw
Prothonotary/Clerk of Courts

No. 1372 WDA 2004

Appeal from the Judgment entered on July 1, 2004
in the Court of Common Pleas of Clearfield County,
Civil Division, No. 2003-340-CD

BEFORE: FORD ELLIOTT, MUSMANNO and LALLY-GREEN, JJ.

MEMORANDUM: FILED: June 28, 2005

Harlan I. Schnarrs, James E. Schnarrs, Sr. and Shirley S. Johns (collectively the "Schnarrses") appeal from the Judgment entered following the trial court's grant of summary judgment in favor of Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson, and Alvin C. Bush¹ (collectively the "Property Owners"), and declaration that the Coal Lease terminated. We affirm.

This case involves a dispute over a Coal Lease that was executed by the parties' predecessors-in-interest on April 20, 1954. The Coal Lease provided the Schnarrses with the right to strip mine a 200-acre tract of land

¹ The current parties to this action are all successors-in-interest to the original parties to the Lease.

located in Boggs Township, Clearfield County. In exchange, the Property Owners would receive royalties. The Coal Lease provides in relevant part:

This lease shall continue for a period of one (1) year from the exercise of the option as herein provided for, or until all the merchantable stripping and minable coal shall be removed therefrom. Provided, the leasee [sic] shall have complied with and performed all the conditions, covenants, and stipulations of this lease, the same shall automatically renew itself from year to year thereafter until such time as the leasee [sic] shall notify the lessors [sic], in writing sixty (60) days prior to the end of any yearly term, of their intention not to so renew or until all the merchantable and minable coal is removed from said premises, whichever may occur first. All the terms, covenants, conditions, and stipulations herein contained are to extend to any yearly renewals as herein provided for.

Trial Court Order, 7/1/04, at 2.

Over the years, the Schnarrses assigned their rights under the Coal Lease to various mining companies, which strip mined the property. The various mining companies paid the royalties directly to the Property Owners. The site has not been mined since 1995. However, in February 2002, the Schnarrses paid the minimum royalties due from September 2002 through February 2007 to the Property Owners. Upon receipt of the royalty checks, five of the six Property Owners refused to accept the checks.

On April 24, 2002, counsel for the Property Owners sent a letter to the Schnarrses stating that the Property Owners were providing notice of their intent to terminate the lease under paragraph Twelve of the Coal Lease. The

Property Owners asserted that the Schnarrses had breached paragraph Ten of the lease by failing to backfill all stripping cuts in accordance with Pennsylvania law. Thereafter, the Schnarrses' counsel sent a letter disputing the allegation of breach and refusing to recognize the Property Owners' notice of intent to terminate the lease.

The Schnarrses subsequently filed a Declaratory Judgment action, requesting the trial court to declare the Coal Lease valid. The Property Owners filed an Answer and New Matter, alleging the Coal Lease had been breached and requesting the trial court declare the Lease invalid or otherwise terminated. The Property Owners then filed a Motion for summary judgment, with which a joint exhibit of relevant documents was filed. After receiving the Schnarrses' Brief in opposition and hearing arguments, the trial court issued an Order granting the Motion for summary judgment and declaring the Coal Lease terminated. In reaching its determination, the trial court stated that it would not imply a perpetual term to the lease, as the terms of the Coal Lease did not unequivocally express such intent of the parties. Trial Court Opinion, 7/1/04, at 2. The trial court noted that the lease did not contain any words to express such intent. ***Id.*** Furthermore, the trial court also relied upon the fact that the Coal Lease did not contain a royalty-escalation clause to conclude that the parties did not specifically intend to create a perpetual lease. ***Id.***

The Schnarrses filed this timely appeal, pursuant to which they raise the following issues:

1. Did the trial court commit an error of law and abuse its discretion in interpreting paragraph 15 of the Coal Lease to grant Lessors' Motion for summary judgment: (A) by failing to apply the Last Antecedent Rule; (B) by placing great reliance on the lack of a royalty-escalation provision in violation of **DiPompeo**, **Mascaro**, and **Harnish**; and (C) by failing to find **Hutchison**, **Frenchak**, and **Sterle** distinguishable from the instant facts? [²]
2. Alternatively, did the trial court commit an error of law and abuse its discretion by not finding the language of paragraph 15 of the coal lease to be ambiguous and by granting Lessors' Motion for summary judgment rather than leaving the resolution of any extrinsic evidence concerning the intent of the parties regarding the term of the lease to the ultimate fact finder?
3. Did the trial court commit an error of law and abuse its discretion by granting the Lessors' Motion for summary judgment even though genuine issues of material fact were raised regarding such issues as [to] whether the Lessees: (A) had paid required minimum royalties and had not breached paragraph 10's mandate to backfill stripping cuts as required by Pennsylvania law; and (B) had abandoned the mining site?

² **DiPompeo v. Preston**, 123 A.2d 671 (Pa. Super. 1956); **County of Delaware v. J.P. Mascaro & Sons, Inc.**, 830 A.2d 587 (Pa. Super. 2003); **Harnish v. Shannon**, 141 A.2d 347 (Pa. 1958); **Hutchison v. Sunbeam Coal Corp.**, 519 A.2d 385 (Pa. 1986); **Frenchak v. Sunbeam Coal Corp.**, 495 A.2d 1385 (Pa. Super. 1985); **Sterle v. Galiardi Coal & Coke Co.**, 77 A.2d 669 (Pa. Super. 1951).

Brief for Appellants at 1.³

In their first issue, the Schnarrses argue that the trial court committed an error of law and abused its discretion in interpreting paragraph 15 of the Coal Lease as creating a perpetual term and granting the Property Owners' Motion for summary judgment. Our standard of review from the grant of summary judgment is well-settled:

[O]n an appeal from the grant of a motion for summary judgment . . . , [a] reviewing court may disturb the order of the trial court only where it is established that the court committed an error of law or abused its discretion. As with all questions of law, our review is plenary.

In evaluating the trial court's decision to enter summary judgment, we focus on the legal standard articulated in the summary judgment rule. Pa.R.C.P. 1035.2. The rule states that where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law, summary judgment may be entered. . . . [W]e will view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.

Murphy v. Duquesne University of the Holy Ghost, 777 A.2d 418, 429 (Pa. 2001) (citations omitted).

The trial court concluded that the lease term in Paragraph 15 created a perpetual term lease, which was not enforceable absent an express intent by the parties. The trial court found that the lease created an initial one-year term, followed by automatic renewal periods of one year. Trial Court Order,

³ We have renumbered the Schnarrses' issues.

7/1/04, at 2. The trial court noted that this Court has held that covenants for continued renewals that tend to create a perpetuity are not favored and will not be enforced unless the parties unequivocally express such an intent in the lease. ***Id.*** Upon review of the remainder of the lease, the trial court found that the parties did not unequivocally express an intent to create a perpetual term lease. ***Id.*** at 2-3.

The Schnarrses assert that the trial court erred in finding that the coal lease created a perpetual term by: (1) failing to apply the last antecedent rule;⁴ (2) improperly placing reliance on the lack of a royalty-escalation provision; and (3) failing to find the cases of ***Hutchinson, Frenchak***, and ***Sterle*** distinguishable from the case at hand.

We conclude that the Schnarrses failed to preserve this issue for appellate review. Pennsylvania Rule of Appellate Procedure 302(a) provides that “[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal.” Pa.R.A.P. 302(a). Upon a review of the record, it is clear that the Schnarrses did not raise this issue before the trial court. Rather, the Schnarrses argued before the trial court that the lease

⁴ The last antecedent rule of construction advises that a *proviso* usually is construed to apply only to the provision or clause immediately preceding it. ***See Commonwealth v. Rosenbloom Finance Corp.***, 325 A.2d 907, 909 (Pa. 1974) (stating that “referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent, which consists of ‘the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence’” (citations omitted)).

constituted a sale of the mineral rights in fee simple. **See** Plaintiff's [sic] Response to Motion for Summary Judgment, 5/15/04, at 6-7; N.T. (Summary Judgment Argument), 4/16/04, at 11-12. In the alternative, the Schnarrses argued at oral argument that the trial court, sitting in equity, should look at the parties' actions and determine when it is fair to end the lease. N.T. (Summary Judgment Argument), 4/16/04, at 12. Accordingly, this issue is waived.

In the alternative, the Schnarrses assert in their second issue that the trial court erred by not finding the language of paragraph 15 of the coal lease to be ambiguous. The Schnarrses argue that the trial court erred when it determined that the second sentence of paragraph 15 of the Coal Lease did not conflict with the first sentence and create an ambiguity concerning the lease term. According to the Schnarrses, the Coal Lease is ambiguous since the first sentence of paragraph 15 identifies the term of the lease as the period of time until all minable coal is removed, and the second sentence provides for an automatic renewal period of one year. We conclude that Schnarrses have also waived this issue for failure to raise it before the trial court. Pa.R.A.P. 302(a).

Finally, the third issue raised by the Schnarrses is moot. The existence of questions of fact concerning whether the Schnarrses (1) paid required minimum royalties, (2) failed to backfill stripping cuts, and/or (3)

abandoned the mining site, are of no consequence given the fact that the trial court granted summary judgment based upon the term of the lease.

Judgment affirmed.

Judgment Entered:

Eleanor R. Valecko
Deputy Prothonotary

DATE: June 28, 2005

FILED
JAN 06 2006
William A. Shaw
Prothonotary/Clerk of Courts

September 8, 2004

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

Re: Harlan I. Schnarrs, James E. Schnarrs, Sr. and Shirley S. Johns
Vs.
Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard
Thompson, and Alvin C. Bush
No. 03-340-CD
Superior Court No. 1372 WDA 2004

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Also, please find enclosed one separate cover item.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Fredric J. Ammerman, P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Girard Kasubick
611 Brisbin Street
Houtzdale, PA 16651

David C. Mason
PO Box 28
409 N. Front Street
Philipsburg, PA 16866

Harlan I. Schnarrs, James E. Schnarrs, Sr., and Shirley S. Johns
Vs.
Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson,
and Alvin C. Bush

Court No. 03-340-CD; Superior Court No. 1372 WDA 2004

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on September 8, 2004.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 03-340-CD

Harlan I. Schnarrs; James E. Schnarrs, Sr.; and Shirley S. Johns

VS.

Gail Wilks; James H. Meas; Marian D. Shimmel; Norma J. Knepp; Leonard Thompson; and Alvin C. Bush

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	03/11/03	Complaint for Declaratory Judgment	25
02	03/25/03	Praecipe for Appearance on behalf of Defendant, Gail Wilks	02
03	04/07/03	Revised/Amended Praecipe for Entry of Appearance on behalf of Defendants	02
04	04/29/03	Answer Containing New Matter and Counter-Claim	14
05	04/29/03	Certificate of Service, Answer Containing New Matter and Counter-Claim, upon Girard Kasubick, Esq.	02
06	05/28/03	Reply to New Matter and Counter-Claim filed on behalf of Plaintiffs	08
07	06/27/03	Sheriff Returns	33
08	07/17/03	Certificate of Readiness and Praecipe for Trial filed on behalf of Plaintiffs	04
09	08/07/03	Order, Re: Matter is Continued	01
10	01/26/04	Order, Re: Case is hereby Continued	01
11	03/24/04	Motion for Summary Judgment	04
12	03/24/04	Joint Exhibit of Documents Relative to Defendants' Motion for Summary Judgment	Separate Cover
13	03/24/04	Certificate of Service, Defendants' Motion for Summary Judgment, upon Girard Kasubick, Esq.	02
14	04/01/04	Rule Returnable, issued upon the Plaintiffs	01
15	04/06/04	Order, Re: Pre-Trial Conference scheduled	01
16	04/07/04	Order, Re: Pre-Trial Conference and Argument on Defendants' Motion for Summary Judgment Rescheduled	01
17	04/08/04	Order, Re: Pre-trial Conference scheduled	01
18	04/12/04	Certificate of Service, Pre-Trial Memorandum upon David C. Mason, Esq.	01
19	04/12/04	Certificate of Service, Pre-Trial Statement upon Girard Kasubick, Esq.	02
20	04/15/04	Response to Motion for Summary Judgment	12
21	04/16/04	Order, Re: Pre-Trial conference and argument on Defendant's Motion for Summary Judgment	01
22	07/01/04	Order, Re: Following oral argument and submission of briefs on the Motion for Summary Judgment	03
23	07/27/04	Notice of Appeal to High Court	04
24	07/27/04	Proof of Service, Re: Notice of Appeal	02
25	08/06/04	Appeal Docket Sheet, Superior Court Number 1372 WDA 2004	06

Date: 07/30/2004

Clearfield County Court of Common Pleas

User: ASELFRI

Time: 02:58 PM

ROA Report

Page 1 of 2

Case: 2003-00340-CD

Current Judge: Fredric Joseph Ammerman

Harlan I. Schnarrs, James E. Schnarrs Sr., Shirley S. Johns vs. Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson, Alvin C. Bush

Civil Other

Date	Judge
03/11/2003	① Filing: Civil Complaint/Declaratory Judgement Paid by: Kasubick, Girard (attorney for Schnarrs, Harlan I.) Receipt number: 1856990 Dated: 03/11/2003 Amount: \$85.00 (Check) 6cc to Sheriff, 1cc to Atty Kasubick
03/25/2003	② Praeclipe For Appearance on Behalf of Defendant, GAIL WILKS. filed by s/David C. Mason, Esquire no cc
04/07/2003	③ Revised/Amended Praeclipe For Entry of Appearance on Behalf of Defendants. filed by s/David C. Mason, Esq. no c/c
04/29/2003	④ Answer Containing New Matter And Counter-Claim. filed by s/David C. Mason, Esquire 1 cc to Atty
	⑤ Certificate of Service, Answer Containing New Matter And Counter-Claim upon: GIRARD KASUBICK, ESQ. filed by s/David C. Mason, Esquire 2 cc to Atty
05/28/2003	⑥ Reply to New Matter and Counter-Claim filed on behalf of Plaintiffs. 2 cc to Atty.
06/27/2003	⑦ Sheriff Returns: Mar. 14, 2003 served complaint on Norma J. Knepp at residence, served Marian D. Shimmel at residence, served Leonard Thompson at residence, Shff Brewer served Alvin C. Bush, Shff. Nau served Gail Wilks, Shff. Lotwick returned complaint "not served" on James H. Meas.
07/17/2003	⑧ Certificate of Readiness and Praeclipe for Trial filed on behalf of Plaintiffs. No Judge 4 No cc. Copy to CA
08/07/2003	⑨ ORDER, NOW, this 6th day of August, 2003, re: Matter is CONTINUED. Fredric Joseph Ammerman 1 CA is directed to place the matter on the Civil Call List for the next Term of Court. by the Court, s/FJA, J. 2 cc Atty Kasubick, Mason, 1 copy to Judge Ammerman and CA
01/26/2004	⑩ ORDER, NOW, this 22nd day of January, 2004, re: Case is hereby CONTINUED. CA shall cause the matter to be listed for Spring, 2004 Term of Court. Parties shall have no later than April 1, 2004 in which to file any Motions for Summary Judgment. by the Court, s/FJA, P.J. 2 cc Atty Kasubick, Mason
03/24/2004	⑪ Motion For Summary Judgment. filed by, s/David C. Mason, Esquire 2 Fredric Joseph Ammerman 4 cc to Atty
	⑫ Joint Exhibit of Documents Relative to Defendants' Motion For Summary Judgment. filed 1 cc to Atty
	⑬ Certificate of Service, Defendants' Motion For Summary Judgment upon Girard Kasubick, Esquire. filed by, s/David C. Mason, Esquire 1 cc to Atty
04/01/2004	⑭ RULE RETURNABLE, NOW, this 29th day of March, 2004, issued upon the Plaintiffs. Rule Returnable the 16th day of April, 2004, at 9:00 a.m., in Courtroom No. 1. by the Court, s/FJA, P.J.
04/06/2004	⑮ ORDER, NOW, this 1st day of April, 2004, re: Pre-Trial Conference w/counsel for the parties and the Court scheduled for Friday, April 16, 2004 at 9:00 a.m. in President Judge Ammerman's Chambers. by the Court, s/FJA, P.J. 2 cc Atty Mason, Kasubick

Date: 07/30/2004

Clearfield County Court of Common Pleas

User: ASELFRI

Time: 02:58 PM

ROA Report

Page 2 of 2

Case: 2003-00340-CD

Current Judge: Fredric Joseph Ammerman

Harlan I. Schnarrs, James E. Schnarrs Sr., Shirley S. Johns vs. Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson, Alvin C. Bush

Civil Other

Date	Judge
04/07/2004	⑩ ORDER, AND NOW, this 6th day of April, 2004, Pre-Trial Conference and Fredric Joseph Ammerman / Argument on Defendants' Motion for Summary Judgment has been RESCHEDULED from 9:00 a.m. to 10:30 a.m. on Friday, April 16, 2004, in Courtroom No. 1. by the Court, s/FJA, P.J. 1 cc Atty's Kasubick, Mason
04/08/2004	⑪ Order, NOW, this 1st day of April, 2004, following Civil Call, Order that Fredric Joseph Ammerman / Civil Pre-Trial Conference with counsel for the parties as set forth above and the Court be and is hereby scheduled for April 16, 2004, at 9:00 a.m. in President Judge Ammerman's Chambers. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Atty's Mason, Kasubick
04/12/2004	⑫ Certificate of Service, Pre-Trial Memorandum upon David C. Mason, Fredric Joseph Ammerman / Esquire filed by, s/Girard Kasubick, Esquire no cc
04/14/2004	⑬ Certificate of Service, Pre-trial Statement upon Girard Kasubick, Esquire. Fredric Joseph Ammerman / filed by, s/David C. Mason, Esquire no cc
04/14/2004	⑭ Response To Motion For Summary Judgment. filed by, s/Girard Fredric Joseph Ammerman / Kasubick, Esquire 2 cc Atty Kasubick
04/16/2004	⑮ Order, NOW, this 16th day of April, 2004, date set for both pre-trial Fredric Joseph Ammerman / conference and argument on Defendant's Motion for Summary Judgment, Order as follows: 1. Counsel for Plaintiff shall submit brief to the Court relative the Motion for Summary Judgment within no more than 20 days from this date. Counsel for the Defendant shall file any response thereto in the event he wishes to do so within no more than 10 days thereafter; 2. Nonjury trial is hereby scheduled for the 7th day of July, 2004, at 9:00 a.m., Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorney Kasubick Two CC Attorney Mason
07/01/2004	⑯ Order, AND NOW, this 1st day of July, 2004, following oral argument and Fredric Joseph Ammerman / submission of briefs on the Motion for Summary Judgment filed on behalf of Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson, and Alvin C. Bush, and after considering the record as a whole, the Court finds as follows: (See Original for Details). The Court hereby grants Defendant's Motion for Summary Judgment. The Lease is Terminated. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys Kasubick and Mason Court faxed copies to both attorneys on July 1, 2004.
07/27/2004	⑰ Filing: Appeal to High Court Paid by: Kasubick, Girard (attorney for Fredric Joseph Ammerman Schnarrs, Harlan I.) Receipt number: 1883435 Dated: 07/27/2004 Amount: \$45.00 (Check)

✓ Date: 07/30/2004

Clearfield County Court of Common Pleas

User: ASELFridge

Time: 03:12 PM

Page 1 of 1

ROA Report

Case: 2003-00340-CD

Current Judge: Fredric Joseph Ammerman

Harlan I. Schnarrs, James E. Schnarrs Sr., Shirley S. Johns vs. Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp, Leonard Thompson, Alvin C. Bush

Civil Other

Date	Selected Items	Judge
07/27/2004	(23) Filing: Notice of Appeal to High Court Paid by: Kasubick, Girard (attorney Fredric Joseph Ammerman for Schnarrs, Harlan I.) Receipt number: 1883435 Dated: 07/27/2004 Amount: \$45.00 (Check) One CC and \$60.00 to Superior Court	
(24)	Proof of Service, Notice of Appeal upon Honorable Judge Fredric J. Ammerman, Court Reporter, David Meholick, David C. Mason, Esq., filed by s/Girard Kasubick, Esq. No CC	Fredric Joseph Ammerman ↳



The Superior Court of Pennsylvania
Office of the Prothonotary

GRANT BUILDING
310 GRANT STREET, SUITE 600
PITTSBURGH, PA 15219-2297

DAVID A. SZEWCZAK, ESQUIRE
PROTHONOTARY

ELEANOR R. VALECKO
DEPUTY PROTHONOTARY

(412) 565-7592
FAX: (412) 565-7711
WEBSITE: www.superior.pacourts.us

July 29, 2004

William A. Shaw, Prothonotary
Court House
Clearfield, Pa. 16830

In Re: Schnarrs v Wilks
No. 2003-340-CD

RECEIVED
PROTHONOTARY'S OFFICE
8/2/04
WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS

Dear Mr. Shaw:

When counsel provides you with a proof of service verifying that the trial court judge, court reporter and opposing counsel received a copy, kindly return this appeal to our office.

Very truly yours,

DEPUTY PROTHONOTARY

ERV/smc
Cc: Girard Kasubick, Esquire

Re-mailed Certified Notice of
Appeal on \$100.00 check along
with a certified proof
of service filed 7/27/04

TRANSMITTAL FORM

GENERAL INFORMATION:

Judge: Fredric J. Ammerman

6/3/04

Case: HARLAN I. SCHANRRS, al

vs.

GAIL WILKS, al

No: 03-340-CD

BRIEFS:

Briefs Ordered: () yes / () no

Defendants' Due: 5/17/04

Date Received: unknown

Plaintiffs' due: 5/6/04

Date Received: 5/4/04

TRANSCRIPTS:

Transcripts Ordered: () yes / () no

ARGUMENT DATE: 4/16/04

COURT ACTION:

Decision due on or before: _____

COMMENTS: Defendants' Motion for Summary Judgment

DATE OF COUT DECISION: _____/_____/_____

**IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

HARLAN I. SCHNARRS, JAMES E. SCHNARRS, SR., AND SHIRLEY S. JOHNS,	:	No. 363 WAL 2005
	:	
Petitioners	:	Petition for Allowance of Appeal from the Order of the Superior Court
	:	
V.	:	
	:	
GAIL WILKS, JAMES H. MEAS, MARIAN D. SHIMMEL, NORMA J. KNEPP, LEONARD THOMPSON, ALVIN C. BUSH,	:	
	:	
Respondents	:	

ORDER

PER CURIAM:

AND NOW, this 13th day of December, 2005, the Petition for Allowance of Appeal is hereby DENIED.

A True Copy Patricia Nicola
As of: December 13, 2005
Attest: *Patricia Nicola*
Chief Clerk
Supreme Court of Pennsylvania

FILED NO CC
m 11:57 6/4
JAN 03 2006 C.R.

William A. Shaw
Prothonotary/Clerk of Courts



Supreme Court of Pennsylvania

Western District

December 30, 2005

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Harlan I. Schnarrs, James E. Schnarrs, Sr., and Shirley S. Johns, Petitioners
v.
Gail Wilks, James H. Meas, Marian D. Shimmel, Norma J. Knepp,
Leonard Thompson, and Alvin C. Bush, Respondents
Superior Docket Number - 1372 WDA 2004

Trial Court/Agency Dkt. Number: 2003-340-CD
No. 363 WAL 2005

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: July 27, 2005

Disposition: Order Denying Petition for Allowance of Appeal
Date: December 13, 2005

Reargument/Reconsideration Disposition:
Reargument/Reconsideration
Disposition Date:

/kao